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2013 DEC 27 PM 2:37

CLERK U.S. DISTRICT COURT
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BY: _____

6 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 CORE INDUSTRIES, LLC, as
12 successor-in-interest to original
13 plaintiff FITISTICS, LLC, a
14 Connecticut corporation,

CASE NO. 8:12-SACV-01774-
JGB (ANx)

13 Plaintiff,

FOURTH ALI M.M.M.

14 v.

AMENDED COMPLAINT FOR (1)
INTENTIONAL
MISREPRESENTATION (FRAUD
& DECEIT); (2) NEGLIGENT
MISREPRESENTATION; (3)
INTENTIONAL INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE; (4)
NEGLIGENT INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE; (5)
UNJUST ENRICHMENT; (6)
TRADE LIBEL

15 UNISEN, INC.; FORD
16 INSOLVENCY MANAGEMENT
17 SERVICES, INC., fka FORD-ABC
18 864736, INC., in its capacity as
19 assignee for the benefit of the creditors
of Unisen, Inc.; and, STAR TRAC
HEALTH & FITNESS

20 Defendants.

DEMAND FOR JURY TRIAL

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22

23 Plaintiff alleges:

24 I

25 THE NATURE OF THE ACTION

26

27 1. UNISEN and FITISTICS entered into a written license and distribution
28 agreement on or about May 9, 2008 (herein "the License Agreement"). FITISTICS

1 had developed an external device that plugs into commercial cardiovascular
2 exercise equipment and allows for the download of data from the exercise
3 equipment onto a USB device plugged into the docking station (hereinafter the
4 “FITISTICS Docking Station”). FITISTICS has also developed technology in the
5 form of an “interface device for facilitating transfer of data between exercise
6 equipment and a USB device, which was then the subject of two provisional patent
7 applications: (i) US Patent Application No. 60/872,203, filed on December 1, 2006
8 and entitled “System and Method for Processing Information”; and (ii) US Patent
9 Application No. 11/998,766, PCT US207/024630 Filed on November 30, 2007 and
10 entitled “System and Method for Processing Information (together, the “Licensed
11 Patents”). The Licensed Rights licensed to UNISEN under the License Agreement
12 were defined therein as “all inventions, concepts, processes, software and firmware,
13 and know-how related to the Licensed Patents or included in the Docking Station or
14 necessary to the manufacture or use of the Docking Station, including the Licensed
15 Patents” (hereinafter, the “Docking Station Technology”).

16 2. The License Agreement not only permitted UNISEN to use the
17 Docking Station Technology to sell the FITISTICS Docking Stations as an add-on
18 after-market feature, but it also enabled UNISEN use of the Docking Station
19 Technology to develop, make, or sell an embedded USB functionality (the “New
20 Docking Station”). Under the License Agreement, Unisen was granted an exclusive
21 license under the Licensed Rights, to “make, have made, use, sell offer for sale,
22 import and export” Docking Stations throughout the world. Under the License
23 Agreement, FITISTICS was to stop all sales of the FITISTICS Docking Station,
24 and Unisen was to sell the FITISTICS Docking Station, which was an after-market
25 solution, until a jointly developed embedded New Docking Station was available
26 for sale.

27 3. At the time, the fitness industry, and in particular, the larger fitness
28 clubs, began to insist on more technologically advanced machines that would be

1 compatible with software applications that could track and analyze individual
2 fitness data extracted from the exercise machines. In order to accomplish this, it
3 was necessary to have an exercise machine that was compatible with USB devices
4 that: (i) facilitated the download of data from the exercise equipment onto a USB
5 device plugged into the exercise machine (the “USB Functionality”); and (ii)
6 encrypted the fitness data for transfer onto the USB device, so that the data could
7 later be transported on the USB device and be loaded into various software
8 applications (the “Encryption”). Such functionality could either be embedded into
9 an exercise machine having a USB port, or it could be delivered via an external
10 docking station, into which a USB device could be inserted.

11 4. At the time UNISEN entered into negotiations for the License
12 Agreement with FITISTICS, it had its own independently developed technology for
13 embedded USB Functionality (the “UNISEN Docking Station”). At the time
14 UNISEN entered negotiations for the relationship with FITISTICS, UNISEN did
15 not have Encryption technology. UNISEN’s development efforts had resulted only
16 in the ability to play music, perform software updates and save a workout, in non-
17 encrypted form with the UNISEN Docking Station. Unisen therefore had no
18 practical ability to enable customers to make use of the saved data or to transfer the
19 data to software applications for further analysis and review, rendering UNISEN’S
20 solution of limited marketability.

21 5. At the time UNISEN entered negotiations for the License Agreement,
22 it had a large customer order that required it to deliver equipment that could allow
23 customers to make use of the saved data or to transfer the data to software
24 applications. At the time, UNISEN did not have the resources to develop such
25 technology.

26 6. UNISEN therefore engaged FITISTICS in negotiations for the License
27 Agreement by representing to FITISTICS that it desired to jointly develop the New
28 Docking Station with FITISTICS, utilizing FITISTICS’ Docking Station

1 Technology. UNISEN represented that it would ultimately sell the embedded New
2 Docking Station in each of UNISEN's exercise machines and, as such, a business
3 relationship with UNISEN could be immensely profitable for FITISTICS. UNISEN
4 also extended offers of employment to FITISTICS' principals, Sean McKirdy
5 ("McKirdy") and Robert Nutini ("Nutini"), to help facilitate the joint development
6 and marketing of the New Docking Station.

7 7. As a result of UNISEN's representations to FITISTICS, *e.g.*, that the
8 parties would work together to jointly develop and market a New Docking Station
9 with FITISTICS' Docking Station Technology, which would ultimately reap
10 millions of dollars in profits to FITISTICS after the development effort was
11 completed, FITISTICS agreed to enter the License Agreement. As a result of
12 UNISEN's representations, FITISTICS also acceded to terms in the License
13 Agreement that were highly favorable to UNISEN. FITISTICS did so because, in
14 light of the promise of future sales of the New Docking Station, it would reap huge
15 financial rewards in the long run.

16 8. As a result of UNISEN's promises and inducements, FITISTICS
17 agreed to grant UNISEN ownership on all improvements on the Docking Station
18 Technology that were created by UNISEN *or its employees*. McKirdy and Nutini
19 also agreed to become employees of UNISEN and otherwise agreed to cease all
20 independent actions on behalf of FITISTICS in connection with the FITISTICS
21 Docking Stations. Furthermore, FITISTICS granted UNISEN exclusivity with
22 respect to FITISTICS' Docking Station Technology. Similarly, FITISTICS agreed
23 that no compensation should be paid by UNISEN for the Docking Station
24 Technology other than: (i) royalties on any FITISTICS Docking Station or New
25 Docking Station "units" that *actually were sold*; and (ii) a revenue sharing
26 arrangement with respect to any monthly fees that *actually were paid* for the use of
27 the FITISTICS Docking Stations or New Docking Stations that were later to be
28 developed. FITISTICS never would have agreed to these things but for UNISEN's

1 representations and promises that UNISEN would work with FITISTICS to develop
2 and market a New Docking Station based on FITISTICS' Docking Station
3 Technology, which would ultimately reap millions in profits to FITISTICS after the
4 development effort was completed.

5 9. In fact, UNISEN'S representations (i) that it would sell FITISTICS
6 Docking Stations and (ii) that it would work together with FITISTICS to jointly
7 develop and market a New Docking Station using FITISTICS' Licensed Patents,
8 which would be embedded in all of UNISEN's exercise equipment, were
9 completely false. In fact, UNISEN never intended to do any of these things. As
10 stated above, UNISEN had already developed its own USB Functionality and did
11 not need to develop a New Docking Station using FITISTICS' Docking Station
12 Technology. UNISEN did not actually need or want the Licensed Patents at all,
13 which it never used, except for the limited purpose of selling a small amount of
14 FITISTICS' Docking Stations. UNISEN had no intent to develop a New Docking
15 Station using FITISTICS' Licensed Patents. UNISEN only needed access to
16 FITISTICS' trade secret encryption keys and copyrighted file structures in order to
17 add Encryption technology and certain interoperability with outside software
18 applications to UNISEN'S independently developed UNISEN Docking Station.
19 UNISEN saw the long-term potential of a solution that would enable customers to
20 make use of the saved data or to transfer the data to software applications for
21 analysis and review—and how it could potentially provide market differentiation.
22 UNISEN initially wanted to test out the market, and the use of FITISTICS'
23 Encryption technology, was a low-cost way of doing it. It was a low-cost solution
24 because under the License Agreement, UNISEN would own all derivative works of
25 the Docking Station Technology it or its employees (including McKirdy and
26 Nutini) created. It was also low-cost because, under the express terms of the
27 License Agreement, where only minimal FITISTICS Docking Stations would be
28 sold and no New Docking Station would ever be developed with FITISTICS'

1 Licensed Patents, UNISEN would not have to pay more than *de minimis* royalties to
2 FITISTICS, that is, on the few after-market FITISTICS Docking Stations it might
3 sell.

4 10. UNISEN's competitors were also coming out with similar technology,
5 and UNISEN would lose market share if it did not have something to compete with.
6 UNISEN also wanted to ensure that FITISTICS did not sell its Docking Station
7 Technology to UNISEN'S competitors. Therefore, UNISEN fraudulently induced
8 FITISTICS to enter an exclusive License Agreement with promises of mutually
9 beneficial sales of a jointly-developed New Docking Station, for the purpose of
10 gaining access to FITISTICS Encryption (including methods and encryption and
11 decryption keys) and certain file structures, and use these to create derivative works
12 (which it would own under the License Agreement) to enhance the existing
13 UNISEN Docking Station, with no revenue to accrue to FITISTICS as a result.

14 11. UNISEN induced FITISTICS to enter the License Agreement by such
15 deceit. It then maliciously took actions to ruin and impoverish FITISTICS. First, it
16 refused to develop a New Docking Station. UNISEN took no steps to sell
17 FITISTICS Docking Stations. To the contrary, UNISEN actively discouraged any
18 sale of the FITISTICS Docking Stations and actively defeated FITISTICS'
19 expectations of any revenues or profits. Also, as noted above, FITISTICS had
20 agreed to exclusivity, such that it would cease selling the FITISTICS Docking
21 Station Technology, apart from joint efforts with UNISEN, and thus was
22 completely dependent upon UNISEN and had no other opportunity for revenue or
23 exploitation of its technology.

24 12. In November 2010, having sold only a paltry amount of FITISTICS
25 Docking Stations, and having accomplished its ulterior objective in entering the
26 License Agreement, UNISEN terminated McKirdy and Nutini's employment and at
27 the same time terminated the License Agreement.

28 13. Adding to the injury, prior to the time it terminated the License

1 Agreement, UNISEN also maliciously sought to destroy FITISTICS' brand and
2 reputation in the industry. UNISEN made representations to third parties that it
3 "owned" all of Fitistics' proprietary technology. These false and misleading
4 representations placed a cloud on FITISTICS' reputation and its title to its
5 inventions. This cloud on title and ownership destroyed FITISTICS' relationships
6 with potential customers and partners and prevented FITISTICS' from selling or
7 licensing its products, inventions, patents, and proprietary technology to others.

8 14. As a direct and proximate result of UNISEN's wrongful, intentional
9 and malicious conduct and libelous statements, FITISTICS' business and economic
10 opportunities for sale and/or distribution of its products and technology were
11 substantially destroyed, resulting in damages to FITISTICS.

12 15. The claims alleged in this Amended Complaint arise from UNISEN'S
13 fraud and malicious misrepresentations. The true extent of the damages wrought by
14 UNISEN's misconduct have only recently come to light. As a result, the Amended
15 Complaint should relate back to the date of the filing of the Complaint, on October
16 12, 2012.

17 **II**

18 **THE PARTIES**

19 16. Fitistics, LLC ("FITISTICS") is a Connecticut limited liability
20 company having a principal place of business in Connecticut.

21 17. CORE INDUSTRIES, LLC, formerly known as CORE INDUSTRIES,
22 INC., as successor-in-interest by assignment to the claims of FITISTICS alleged in
23 this Complaint (hereinafter referred to as "CORE" or "PLAINTIFF"), is a limited
24 liability company incorporated under the laws of the state of California and with a
25 principal place of business in Vancouver, Washington. Pursuant to a certain
26 Confidential Settlement and Non-Exclusive License Agreement, Core has received
27 by assignment all right title and interest in and to claims and/or defenses that any of
28

1 FITISTICS, Robert Nutini, Sean McKirdy or Eric Cherdak or any of their affiliates
2 has or may have against the Assignment Estate and/or the Assignee, including
3 without limitation, the Claims asserted herein, along with the right to assert same.

4 18. Defendant, UNISEN, INC. (hereinafter referred to as "UNISEN"), is a
5 corporation incorporated under the laws of the state of California and doing
6 business in the state of California.

7 19. Defendant, FORD INSOLVENCY MANAGEMENT SERVICES,
8 INC., fka FORD-ABC 864736, INC., in its capacity as assignee for the benefit of
9 the creditors of Unisen, Inc. (hereinafter referred to as "ASSIGNEE"), is and was a
10 corporation incorporated under the laws of the state of California and doing
11 business in the state of California.

12 **JURISDICTION AND VENUE**
13

14 20. This Court has original subject matter jurisdiction over this action
15 pursuant to 28 U.S.C. § 1332.

16 21. This Court may exercise personal jurisdiction over Defendants because
17 all of the Defendants are residents of the state of California, all of the Defendants
18 reside in this judicial district, and all of the Defendants have minimum contacts
19 with this forum as a result of business regularly conducted within the State of
20 California and this judicial district.

21 22. Venue is proper in this Court under 28 U.S.C. §§ 1391(b),(c), and (d).
22 All of the Defendants reside in this district. Moreover, a substantial part of the
23 events, acts, and omissions giving rise to this action occurred in this district,
24 Defendants conduct substantial business in this district, and Defendants have a
25 substantial presence here.

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III

FACTS COMMON TO ALL COUNTS

23. UNISEN manufactured and sold cardio-vascular exercise equipment up until approximately November 2010, when it entered into the ABC Transaction (defined below) with the ASSIGNEE.

24. In or about November 2010, Defendant ASSIGNEE entered into a written agreement with Defendant UNISEN by which the later party assigned all of its assets to Defendant ASSIGNEE for the benefit of the creditors of Defendant UNISEN (the "ABC Estate") and Defendant ASSIGNEE agreed to act as the trustee of the ABC Estate and as a fiduciary for the benefit of said creditors (the "ABC Transaction").

25. Thereafter, in compliance with the notices provided by ASSIGNEE, FITISTICS filed timely claims with the ABC Estate for payment of the claims set forth herein in the sum of at least \$900,000.00 (the "Proof of Claim").

26. Defendant has failed and refused to pay all or any portion of said sums to FITISTICS.

27. UNISEN acted in deceit and with fraud, and it secretly engaged in the acts alleged herein that have resulted in damage to FITISTICS. FITISTICS was not represented by counsel and had no advice in connection with the Proof of Claim. The Proof of Claim was filed with the ABC Estate by FITISTICS prior to the time FITISTICS was informed of the full extent of its rights to lost profits and other damages caused to it by UNISEN'S conduct. The allegations in this Amended Complaint reflect new facts regarding the claims previously asserted in the Proof of Claim. This Amended Complaint and the damages asserted herein are intended to replace and supersede the Proof of Claim in its entirety and relate back to the time of the filing of the Proof of Claim.

28. CORE entered into a written contract with Defendant ASSIGNEE by

1 which CORE purchased certain assets of the ABC Estate from Defendant
2 ASSIGNEE and assumed certain contractual liabilities of the ABC Estate,
3 including specifically, the “Assumed Contracts” and “License/Royalty
4 Obligations.” Core did not assume the License Agreement, which was terminated.
5 The purchase agreement with ASSIGNEE provides that

6 Except for the Assumed Liabilities as set forth in Section
7 2.4, the Buyer shall not assume or be obligated to pay,
8 perform or otherwise discharge any liabilities or
9 obligations of [UNISEN] or Assignor of whatever kind or
10 nature and whenever arising, including any liabilities for
11 or arising from (i) any violation or claimed violation
12 by [UNISEN] or Assignor of applicable Law arising prior
13 to the Closing Date; (ii) any Excluded Assets; or (iii) any
14 proceedings currently pending against [UNISEN] or
15 Assignor or which may hereafter be instituted by any
16 Person against [UNISEN] or Assignor based in part or in
17 its entirety on facts or circumstances arising prior to the
18 Closing Date.

13 29. The claims set forth herein arise in tort, and are based in their entirety
14 on the License Agreement, which was an Excluded Asset, and also are based on
15 facts or circumstances arising prior to the Closing Date. Moreover, the existence of
16 the claims herein was fraudulently concealed by UNISEN’s management from
17 CORE. They thus are not among the liabilities assumed by CORE in connection
18 with its purchase of assets of the ABC Estate.

19 30. FITISTICS develops and sells fitness solutions, including, but not
20 limited to its proprietary FITISTICS Docking Stations. The FITISTICS Docking
21 Station is an externally mounted box, which plugs into a C-SAFE port in virtually
22 any cardiovascular exercise equipment and allow users to record various workout-
23 related data. The data is then organized in accordance with a file structure.
24 Encryption enables the data that is transferred to the USB device to be able to be
25 used in conjunction with various software applications, where it can be analyzed
26 and used to proactively monitor exercise and encourage a healthier lifestyle.

27 31. In or about February of 2008, FITISTICS completed its first release of
28 www.FITISTICS.com, a proprietary website designed to analyze encrypted data

1 captured from the externally mounted FITISTICS' Docking Stations (the
2 "Website").

3 32. In or about March of 2008, representatives of FITISTICS attended the
4 International Health, Racquet & Sportsclub Association (IHRSA) trade show as an
5 exhibitor to display FITISTICS' technology and conduct meetings with health club
6 chains and equipment manufacturers.

7 33. UNISEN was one of five equipment manufacturers with which
8 FITISTICS was actively engaged in business conversations at the 2008 IHRSA
9 trade show. Representatives of FITISTICS met with UNISEN's Vice President of
10 Marketing, Randy Bergstedt (herein "Bergstedt"), multiple times at the trade show.

11 34. During those March 2008 meetings, and thereafter, Bergstedt
12 expressed interest in FITISTICS' Docking Station Technology, and arranged for
13 FITISTICS representatives to travel to UNISEN's Irvine, California corporate
14 office for a demonstration of the FITISTICS Docking Station. FITISTICS
15 successfully demonstrated the use of its proprietary technology on equipment that
16 UNISEN presented for use in such testing inside UNISEN's engineering laboratory.

17 35. Immediately after the demonstration, FITISTICS' representatives met
18 with UNISEN's President, Steve Nero ("Nero"); its Vice President of Engineering,
19 Kevin Corbalis ("Corbalis"); its Chief Systems Architect, Greg Wallace; its Cardio
20 Product Manager, Andrew Moore; and Bergstedt, to discuss potential business
21 relationships moving forward.

22 36. In the first week of April 2008, Bergstedt informed FITISTICS that
23 Corbalis would be taking over future discussions on defining the business
24 opportunity that he said existed between FITISTICS and UNISEN. Corbalis
25 immediately thereafter contacted representatives of FITISTICS and started a 1½
26 month long negotiation process that included UNISEN performing due diligence
27 relative to FITISTICS' software and hardware, Website and patent filings, as well
28 as the negotiation of (i) a patent license and distribution agreement relating to the

1 Docking Station Technology; (ii) a website purchase agreement relating to the
2 Website; and (iii) certain employment contracts with certain of the principals of
3 FITISTICS (“Employment Contracts”).

4 37. Corbalis took direction from Nero, and negotiated the terms of the
5 relationship, thinking that UNISEN actually intended to sell the FITISTICS
6 Docking Station and to develop a New Docking Station with the use of the
7 Licensed Patents. Corbalis had no knowledge that UNISEN never intended for
8 FITISTICS to benefit under the License Agreement, never intended to sell or
9 market the FITISTICS Docking Station, and never intended to jointly develop a
10 New Docking Station with the use of the Licensed Patents. Corbalis did not know
11 that UNISEN upper management instead wanted access to FITISTICS’ proprietary
12 Encryption and copyrighted file structures to provide their exercise equipment with
13 Encryption. As a result, Corbalis (at the behest of upper UNISEN management)
14 encouraged FITISTICS with promises of profits in the millions of dollars from the
15 deal.

16 38. During the negotiations, FITISTICS was also repeatedly assured by
17 UNISEN upper management representatives, including Nero and Bergstedt, that
18 UNISEN actually intended to sell the FITISTICS Docking Station and to develop a
19 New Docking Station with the use of the Licensed Patents. FITISTICS relied upon
20 these representations, along with the representations that UNISEN would act in
21 good faith to ensure that the structure would ultimately result in a mutually-
22 beneficial business relationship and significant profit to FITISTICS, and was
23 induced thereby to enter into the License Agreement.

24 39. UNISEN and FITISTICS entered into the License Agreement on or
25 about May 9, 2008 (herein, the “License Agreement”).

26 40. Shortly after the License Agreement had been entered into, UNISEN
27 and FITISTICS entered into a second written agreement by which UNISEN agreed
28 to purchase and FITISTICS agreed to sell to UNISEN the Website, which included

1 the rights to the technology that enabled Encryption. In exchange therefor and as a
2 part of the consideration for said agreement, UNISEN agreed to pay FITISTICS the
3 sum of \$225,000.00 (herein "the Website Purchase Agreement").

4 41. FITISTICS was induced to enter into the Website Purchase Agreement
5 by UNISEN's representations that UNISEN needed the Website as part of the New
6 Docking Station that would be developed, in that it would facilitate the collection of
7 data from the cardiovascular equipment outfitted with the New Docking Station and
8 the porting of the data to a USB device, which then could be plugged into a
9 computer and analyzed by the software sold to UNISEN as part of the Website.
10 FITISTICS understood, based on representations made by UNISEN, that selling the
11 Website would therefore result in additional revenues to FITISTICS under the
12 revenue sharing provisions of the License Agreement. FITISTICS was also led to
13 believe by UNISEN that the Website would be marketed to UNISEN's customers
14 both as an incentive for them to purchase FITISTICS Docking Stations as an add-
15 on to the UNISEN cardiovascular equipment and as an incentive to purchase the
16 New Docking Station, after it had been developed. Contrary to its representations,
17 UNISEN actually intended to use the Encryption it had purchased under the
18 Website Purchase Agreement with the UNISEN Docking Station. No benefit at all
19 was ever intended to accrue to FITISTICS. FITISTICS would never have sold the
20 Website or the Encryption if it had known the truth of UNISEN's intentions.

21 42. Pursuant to the License Agreement, FITISTICS granted UNISEN an
22 exclusive, royalty-bearing license, during the agreement term, to "make, have
23 made, use sell, offer for sale, import and export" FITISTICS' Docking Stations
24 throughout the world. A royalty was payable for each FITISTICS Docking Station
25 sold in any country in which FITISTICS owned a pending application or issued
26 patent in the Licensed Patents. Because UNISEN never intended to actively market
27 the FITISTICS' Docking Stations, only a *de minimis* amount of royalties were
28 incurred under the License Agreement terms, all of which have been paid by

1 UNISEN.

2 43. Under the License Agreement, any “patentable improvements on the
3 Docking Station” made by UNISEN in the scope of its licensed use of the Licensed
4 Rights under the License Agreement were to be owned by UNISEN. Any
5 “patentable improvements on the Docking Station” created and developed by Sean
6 McKirdy or Robert Nutini were to be owned by FITISTICS.

7 44. All patentable improvements on the Docking Station during the term
8 of the License Agreement were made by UNISEN or their agents and/or employees
9 in the scope of their licensed use of the Licensed Rights.

10 45. In entering into the License Agreement, Fitistics also relied upon
11 UNISEN’s good faith intent to sell the FITISTICS Docking Station and to jointly
12 develop and market a New Docking Station, with the use of the Licensed Patents.
13 UNISEN’S related promises that the parties would work together in good faith and
14 cooperate to “jointly issue one or more appropriate media/press releases with regard
15 to the existence of License Agreement within seven (7) days of the Effective Date
16 or as soon as reasonably practicable thereafter.” No joint media/press release was
17 ever issued. UNISEN did not act in good faith and did not cooperate in developing
18 a mutual statement, despite the fact that FITISTICS repeatedly made demand
19 therefor of UNISEN. UNISEN refused to do so because it never intended to market
20 the FITISTICS Docking Station and never intended to develop a New Docking
21 Station with FITISTICS. In fact, UNISEN did not want FITISTICS for a business
22 partner and only wanted its Encryption technology. Therefore, UNISEN did not
23 want its customers to know about the License Agreement.

24 46. Under section 4 of the License Agreement, McKirdy and Nutini were
25 to endeavor to obtain additional customers for UNISEN and the Docking Station
26 Technology under a structure where customers would pay for the FITISTICS
27 Docking Station or the New Docking Station (once it was developed) on a usage
28 basis as part of an incentive or reward program. In marketing such a program,

1 McKirdy and Nutini could offer such customers use of the FITISTICS Docking
2 Stations, and/or use of the New Docking Station (once it had been developed). For
3 any customer agreement that was entered into as a result of such efforts by
4 McKirdy and/or Nutini, they were to receive a total of 10 percent of the revenue
5 that was received on the collection of data, up to a maximum amount of \$1 million.
6 Because UNISEN had no intent to actually sell the FITISTICS Docking Stations,
7 and it never intended to develop the New Docking Station, UNISEN actively and
8 aggressively blocked all marketing efforts by McKirdy and Nutini and, on
9 information and belief, made disparaging remarks to its customers about McKirdy
10 and/or Nutini and/or the FITISTICS Docking Station to ensure that McKirdy and/or
11 Nutini would not discuss the New Docking Station to otherwise prevent them from
12 entering into any of the usage-based contracts for the FITISTICS Docking Station
13 that were being proposed by McKirdy and Nutini.

14 47. As of November 2008, and despite the lack of a working product that
15 had Encryption, UNISEN signed a major equipment deal with Esporta, a European
16 health club chain, worth up to \$10 million. Multiple UNISEN executives told
17 FITISTICS that the promise to deliver the New Docking Station (which UNISEN
18 never intended to implement at all) were the main reason for the success of this
19 transaction. At the time UNISEN entered into the Esporta contract, UNISEN had
20 the necessary USB Functionality in the UNISEN Docking Station. All they lacked
21 was Encryption technology.

22 48. UNISEN promised to deliver USB Functionality and Encryption
23 technology to Esporta as an embedded feature on its exercise machines. To
24 accomplish this objective, UNISEN induced FITISTICS to enter into the License
25 Agreement and also induced it to enter into the Website Purchase Agreement,
26 falsely representing that FITISTICS would be a key partner in the Esporta deal and
27 that the New Docking Station would be marketed and sold to Esporta. Bergstedt
28 falsely represented to FITISTICS that UNISEN's access to the Licensed Rights

1 under the License Agreement would open opportunities to sell FITISTICS Docking
2 Stations to Esporta and to others. In fact, UNISEN did not want to open up any
3 opportunities to sell FITISTICS Docking Stations or a New Docking Station to
4 Esporta or to anyone else. In truth, UNISEN said these things because it needed the
5 Encryption technology and related know-how that FITISTICS could provide.

6 49. UNISEN intended to cut FITISTICS out of the equation after it had
7 obtained the Encryption and after McKirdy and Nutini's employment services had
8 been used to help seamlessly integrate the Encryption into the UNISEN Docking
9 Station.

10 50. In the Fall of 2008, in a marketing requirements document provided to
11 FITISTICS, UNISEN conservatively projected (without adjustment for inflation)
12 approximately \$4.5 million in high-confidence client revenue and user fees over 2
13 1/2 years, from the sale of Docking Stations with USB Functionality and
14 Encryption, and/or revenues from data extraction. A more bullish projection by
15 UNISEN estimated that it would receive \$8,734,293 in that same time period.
16 UNISEN represented that this revenue would be derived from the sale of the
17 FITISTICS Docking Stations and the New Docking Station that would be
18 developed. In fact, UNISEN intended for all of this revenue to be generated by the
19 UNISEN Docking Stations, which would be made marketable by virtue of the
20 Encryption.

21 51. By March of 2009, the Encryption and related file structures that
22 enabled the data transfer to external software applications had been successfully
23 embedded in the UNISEN Docking Station, enabling UNISEN's fitness products to
24 transfer data to a USB device and then allow that data to be transferred from the
25 USB to various software applications, including the Website. UNISEN immediately
26 began to take actions to affirmatively distance itself from FITISTICS.

27 52. In March of 2009, UNISEN once again had a booth at the IHRSA
28 trade show. UNISEN used the trade show as the official launch of the UNISEN

1 fitness website, www.eFitnesssystem.com. This website (herein “UNISEN’s
2 eFitness Website”) was UNISEN’s modification of the Website FITISTICS had
3 sold to UNISEN (www.FITISTICS.com). Leading up to the trade show, Bergstedt
4 and others had continued to represent to FITISTICS that the company was
5 fostering a development strategy and business plan where the focus was on exercise
6 equipment with USB Functionality and Encryption technology, and that the
7 marketing and sale of the New Docking Station and FITISTICS’ technology was a
8 part of that strategy.

9 53. Immediately prior to the trade show, however, Bergstedt told
10 FITISTICS that there would not be any FITISTICS products on display at the show.
11 This was because the UNISEN Docking Station was ready to be released to the
12 market, and UNISEN did not intend to promote its alliance with FITISTICS, the
13 FITISTICS Docking Station, the development of a New Docking Station, or any
14 FITISTICS’ technology.

15 54. At the trade show, a team from Nike+ (“Nike”) visited the UNISEN
16 booth, where Messrs. McKirdy, and Nutini (both of whom were FITISTICS
17 officers) and Bergstedt discussed having an aftermarket product with USB
18 Functionality and Encryption become part of the Nike+ “ecosystem.”

19 55. After the trade show, discussions began among Nike, through Brandon
20 Burroughs (herein “Burroughs”); UNISEN, through Bergstedt; and FITISTICS.
21 Mr. Burroughs also began having direct discussions with Messrs. McKirdy and
22 Nutini about its Docking Station Technology, generally. FITISTICS supplied a
23 demonstration FITISTICS Docking Station to Nike for evaluation at the Nike
24 corporate office in Oregon, which was very well received.

25 56. Between the months of March and October of 2009, Nike, UNISEN
26 and FITISTICS discussed options for integrating data from exercise machines onto
27 the Nike+ system. Additionally, Nike wanted to explore an after-market product
28 that would allow for faster penetration of their technology into the commercial

1 market without having to rely on new exercise equipment being sold that worked
2 seamlessly with iPods/iPhones through a USB port. The FITISTICS Docking
3 Stations were a perfect match.

4 57. These discussions with Nike presented an enormous opportunity for
5 FITISTICS as well as for UNISEN. UNISEN would gain significant revenue
6 through the sale of UNISEN equipment fitted with the after-market FITISTICS
7 Docking Station, and FITISTICS would gain royalties on the sales.

8 58. At the same time, Bergstedt repeatedly inserted himself in such
9 negotiations in an effort to block any business relationship with Nike involving
10 FITISTICS or its technology or products.

11 59. On information and belief, Bergstedt also actively interfered with
12 FITISTICS' other business relationships and made negative statements to potential
13 customers about FITISTICS and its products, thereby blocking numerous
14 opportunities for FITISTICS' sale or licensing of the Docking Station Technology,
15 and other related products.

16 60. Bergstedt unilaterally terminated the discussions in respect to a
17 number of potentially lucrative business opportunities for FITISTICS. On
18 information and belief, one of the opportunities that was blocked by UNISEN was a
19 potential alliance with Virgin Active, which would have opened up numerous
20 opportunities worldwide. Bergstedt represented to FITISTICS that he had
21 terminated these discussions because they would not provide any profit for
22 UNISEN. In fact, UNISEN would have received the bulk of the revenue for all
23 sales of the FITISTICS' Docking Station, or a New Docking Station that might be
24 developed, with only a royalty going to FITISTICS, and it would only pay a
25 revenue split on usage fees, up to \$1 million. The loss of the Virgin Active
26 opportunity, along with others, represented significant lost opportunities to
27 FITISTICS. UNISEN took these actions because UNISEN really only wanted to
28 sell the Unisen Docking Station, now that it possessed the Encryption, which

1 McKirdy and Nutini had by then helped to integrate with UNISEN's machines in
2 the course of their employment. Despite its previous representations to FITISTICS,
3 UNISEN had had no intention to work with FITISTICS in cultivating new markets
4 or channels of distribution for the sale of an external FITISTICS Docking Station or
5 a New Docking Station with UNISEN'S exercise equipment. Much to the contrary,
6 UNISEN wanted to keep these opportunities for itself, steal all of FITISTICS'
7 market share and destroy FITISTICS.

8 61. By the end of September 2009, FITISTICS had held multiple
9 discussions with Nike regarding the FITISTICS Docking Station and related
10 technology and had proposed various structures for a formal joint engagement that
11 would have involved various levels of involvement by UNISEN.

12 62. At this time, there had still been no press release by UNISEN even
13 mentioning FITISTICS, and the FITISTICS Docking Station was not listed on the
14 UNISEN website or in any sales catalogs as an available product or option.
15 UNISEN refused to list the FITISTICS Docking Station as an available product or
16 option because UNISEN was then selling the UNISEN Docking Station as a
17 standard feature and had no need for an after-market solution.

18 63. In or about October 2009, the Club Industry Trade Show was held in
19 Chicago. Once again, UNISEN refused to mention, much less promote, the
20 FITISTICS Docking Station or its business relationship with FITISTICS.

21 64. On the first night of that trade show, on or about October 15, 2009,
22 McKirdy approached Nero, then the President of UNISEN, and asked to speak with
23 him about the Nike business opportunity.

24 65. At the October 2009 industry trade show, Nero became aware that
25 McKirdy had been attempting to discuss a proposed deal with Nike involving the
26 Docking Station Technology. Nero informed McKirdy that he should cease those
27 discussions, instructing him to focus on selling UNISEN equipment, which
28 included the Unisen Docking Station as a standard feature. Nero also falsely

1 represented to McKirdy that UNISEN had “bought exclusivity” and thus “owned
2 all of Fitistics’ technology,” including their patents. Nero then threatened McKirdy
3 that his employment contract with UNISEN would not be renewed if he did not
4 cease his efforts to sell or market the FITISTICS Docking Station and/or Docking
5 Station Technology and did not focus solely on selling UNISEN exercise
6 equipment. Nero further instructed McKirdy that he was not to discuss or try to
7 market the FITISTICS Docking Station or any FITISTICS’ technology with any of
8 the contracts being made by FITISTICS.

9 66. The statements made by Nero at the October 2009 industry trade show
10 were made because UNISEN had no intention of selling the external FITISTICS
11 Docking Stations or jointly developing and selling a solution based on FITISTICS’
12 technology. UNISEN only entered into the License Agreement for the purpose of
13 inducing FITISTICS to sell its Encryption and for McKirdy and Nutini to assist
14 UNISEN in enabling its fitness machines to save encrypted data to a USB device in
15 a format that could be shared with and used by external software applications.
16 UNISEN desperately needed this capability for market differentiation. Once
17 UNISEN had obtained this ability, it then used it to compete with FITISTICS. In
18 furthering its goals, UNISEN also acted to destroy FITISTICS’ brand and place a
19 cloud on its ownership of its intellectual property.

20 67. As a result of UNISEN’s unfair and wrongful conduct, fraud and
21 interference, FITISTICS never entered into an agreement with Nike. In addition to
22 the lost profits from that potentially lucrative opportunity, UNISEN took actions
23 which damaged FITISTICS’ relationship with Nike.

24 68. Combined with the loss of the Virgin Active opportunity and, due to
25 the exclusivity it had agreed to under the License Agreement, FITISTICS’ inability
26 to independently sell the FITISTICS Docking Station, FITISTICS’ presence, brand
27 reputation, and credibility as a viable provider in the fitness solutions market further
28 suffered.

1 69. Shortly thereafter, UNISEN's business was in decline. UNISEN's
2 suppliers/vendors began to delay shipments due to lack of payments from UNISEN.
3 As a result of the exclusivity provided under the License Agreement, this business
4 decline by UNISEN caused further harm to FITISTICS' business and its reputation.

5 70. Despite all this, FITISTICS honored the terms of its agreements with
6 UNISEN and even helped UNISEN close large equipment sales in the YMCA and
7 University markets.

8 71. Mr. McKirdy began working with and reaching out to key UNISEN
9 accounts, including Anytime Fitness and Lifetime Fitness. At the March 2010
10 IHRSA trade show, the executive teams from Anytime Fitness and Lifetime Fitness
11 met with Mr. McKirdy regarding custom hardware options that could be further
12 developed around the FITISTICS technology.

13 72. However, a few months after the 2010 IHRSA trade show, UNISEN
14 was in such a poor position financially that Lifetime Fitness, which knew that
15 FITISTICS was in an exclusive business relationship with UNISEN, e-mailed Mr.
16 McKirdy and said, "Sean, I like your product, but I will not do business with
17 UNISEN until there are significant management changes."

18 73. Anytime Fitness had UNISEN as a preferred vendor at that time.
19 However, due to dissatisfaction with UNISEN, Anytime Fitness released UNISEN
20 from its preferred vendor status list. This change in preferred vendor status also
21 eliminated FITISTICS' opportunity to provide a custom solution for Anytime
22 Fitness around FITISTICS' technology, and further damaged FITISTICS' business
23 reputation.

24 74. In May of 2010, Mr. Nero was replaced as President of UNISEN. The
25 new president was Mike Leveque, who previously served as UNISEN's European
26 division director.

27 75. Soon after Mr. Leveque took over as President, Mr. McKirdy held a
28 telephone conference with Mr. Leveque to review the business relationship between

1 FITISTICS and UNISEN.

2 76. During that telephone conference, Mr. Leveque agreed to help “make
3 things right” and asked FITISTICS for some time to try to repair the relationship.
4 Mr. Leveque tasked Corbalis to review the existing License Agreement and
5 communicate with FITISTICS about a possible renegotiation of the terms of the
6 License Agreement.

7 77. In or about July 2010, there was a change in control of UNISEN.
8 Despite the change in control, the sales and development management team
9 remained substantially the same, and FITISTICS and Corbalis, and others,
10 continued to discuss a renegotiation of the terms of the License Agreement. During
11 this time, UNISEN continued to benefit from its business relationship with
12 FITISTICS.

13 78. The new owners of UNISEN were not informed of the history with
14 FITISTICS or the issues with the License Agreement. During their due diligence on
15 UNISEN, the new owners of UNISEN were not informed of the true facts of
16 UNISEN’s misrepresentations made to FITISTICS in connection with the
17 inducements to enter the License Agreement, nor were they informed of the
18 promises made to FITISTICS regarding joint development and the extent of the
19 revenues to be enjoyed. Instead, existing management represented that the License
20 Agreement had been entered into by UNISEN to enable UNISEN to distribute and
21 sell the external FITISTICS Docking Station as an after-market solution, and that
22 such had no further utility.

23 79. On or about November 18, 2010, FITISTICS learned that UNISEN
24 would be restructuring under an assignment for benefit of creditors filing. Prior
25 thereto and during the time of the parties’ negotiations, UNISEN was fully aware
26 that they would be restructuring a company under an assignment for benefit of
27 creditors filing, and had been working with a law firm to manage this process.
28 UNISEN’s sales and development management continued the negotiations

1 (knowing full well that these negotiations would never result in a new agreement),
2 and represented that these negotiations were being conducted in good faith, in order
3 to continue to receive the benefit of its business relationship with FITISTICS.

4 UNISEN thus actively misled FITISTICS about the prospect of a new agreement.

5 80. The License Agreement was terminated on or about November 19,
6 2010.

7 81. However, even after termination of the License Agreement the damage
8 to FITISTICS' business and reputation continued. Potential customers of
9 FITISTICS had been informed by UNISEN representatives prior to the ABC
10 Transaction that UNISEN owned all of FITISTICS' Docking Station Technology,
11 including FITISTICS Docking Station software and source code. These
12 misrepresentations had tainted FITISTICS' brand and had poisoned third parties'
13 perceptions of FITISTICS and destroyed FITISTICS' prospective economic
14 relationships with numerous potential customers and partners.

15 82. UNISEN's deliberate and fraudulent misrepresentations regarding the
16 ownership of FITISTICS' intellectual property made prior to the ABC Transaction
17 damaged FITISTICS, and the lasting effects of these statements continue to linger
18 and cause harm to FITISTICS.

19 83. Similarly, during CORE'S due diligence for the purchase of the assets
20 of the UNISEN estate from the ASSIGNEE, UNISEN also made
21 misrepresentations to CORE that no claims against it existed by FITISTICS, either
22 under the License Agreement, or otherwise.

23 84. CORE was sued for copyright infringement in the Eastern District of
24 Virginia by the purchaser of FITISTICS' copyrights, Erik B. Cherdak. That
25 complaint alleged that the Encryption and file structures had been copied by
26 UNISEN. While CORE denies that there is any basis for copyright infringement, in
27 the course of litigation with Mr. Cherdak, CORE first became aware of the facts
28 that FITISTICS had valid claims against UNISEN based on the fact that it

1 fraudulently induced FITISTICS to enter the License Agreement, and otherwise to
2 enter the Website Purchase Agreement, with false promises--to the end that it might
3 obtain FITISTICS' Encryption technology and unique file structures that together
4 enabled exercise data to be saved to a USB device in encrypted form and then be
5 transferred to application software.

6 85. CORE has now settled that lawsuit with Mr. Cherdak, after it had
7 incurred a significant amount of litigation expenses.

8 **IV CLAIMS**

9 **COUNT I**

10 **(AGAINST ALL DEFENDANTS)**

11 **INTENTIONAL MISREPRESENTATION (FRAUD AND DECEIT)**

12 **(Against All Defendants)**

13 86. Plaintiff refers to and incorporates by this reference as though fully set
14 forth herein, each and every allegation set forth in paragraphs 1 through 85 above.

15 87. UNISEN acted with and is liable for fraud, deceit, and/or intentional
16 misrepresentations under California Civil Code §§ 1710, 1572, and 1709.

17 88. Defendants acted with oppression, fraud, and/or malice under
18 California Civil Code § 3294.

19 89. As set forth above, UNISEN represented to FITISTICS that they
20 wished to obtain access to the FITISTICS Docking Station Technology for the
21 purpose of entering into a mutually-beneficial exclusive business relationship with
22 FITISTICS towards the purpose that UNISEN would both market and sell the
23 FITISTICS Docking Stations as an add-on feature to UNISEN's exercise
24 equipment and that the parties would jointly develop a New Docking Station with
25 the use of the Licensed Patents.

26 90. Prior to entering into the License Agreement, the Website Purchase
27 Agreement and Employment Contracts, and in the course of the negotiations
28

1 therefor, representatives of UNISEN also made the following representations,
2 among others:

3 (a) At the IHRSA trade show meeting in March 2008, when specifically
4 asked by Plaintiff's representatives, Messrs. McKirdy and Nutini, about
5 UNISEN's existing abilities to track and record workout data on its existing
6 line of products, Randy Bergstedt invited them to the UNISEN booth to
7 provide a demonstration. Mr. Bergstedt plugged in a USB drive into the
8 treadmill on which Mr. McKirdy performed a quick workout. Mr. Bergstedt
9 then removed the USB drive and handed it to another UNISEN employee,
10 Andrew Moore. Mr. Moore then plugged the USB drive into a nearby
11 computer that was connected to a printer and printed out a report, claiming
12 that it set forth the results of Mr. McKirdy's workout. Thereby, UNISEN
13 claimed that it had an existing technology that would perform such functions.
14 This was a critical factor to FITISTICS, inasmuch as FITISTICS believed it
15 was proof that UNISEN's existing line of products would facilitate data
16 transfer to various software applications which would enable it to operate
17 with the New Docking Station that would be developed and that would also
18 enable the New Docking Station to be quickly put into the marketplace and
19 generate substantial amounts of money for both UNISEN and FITISTICS.

20 (b) In addition, at that same meeting at the IHRSA trade show, Mr.
21 Bergstedt represented that UNISEN had a strong and good relationship with
22 KoKo Fitness, Inc. ("KoKo"), a specialized fitness technology and
23 equipment company with a computerized commercial multi-gym product.
24 UNISEN represented that this relationship was strong and would further
25 assist in positioning UNISEN to market, promote and take full advantage of
26 FITISTICS Docking Stations and a New Docking Station and which would
27 facilitate data transfer from the UNISEN exercise machines to various
28 software applications.

1 (c) In addition, in mid- to late-March 2008, during meetings at UNISEN's
2 Irvine, California office, Nero, then the President of UNISEN, represented
3 that (1) UNISEN would work with FITISTICS to develop a New Docking
4 Station that utilized FITISTICS' technology; (2) UNISEN had 75 direct sales
5 people and a global network of dealers ready to sell the FITISTICS Docking
6 Stations and New Docking Stations if the parties entered into a license
7 agreement; (3) UNISEN would use its best efforts to sell as many FITISTICS
8 Docking Stations and New Docking Stations as possible if the parties entered
9 into a license agreement; and (4) UNISEN would permit, encourage, and
10 assist Messrs. McKirdy and Nutini in selling as many such FITISTICS
11 Docking Stations and New Docking Stations as possible. In addition, at that
12 same meeting at UNISEN's Irvine office in late March 2008, Bergstedt, Nero
13 and other members of UNISEN's executive team again represented that
14 UNISEN had a strong and good relationship with KoKo that would further
15 assist in positioning it to market, promote and take full advantage of
16 FITISTICS Docking Stations and New Docking Stations, along with the fee-
17 based extraction and analysis of fitness data with external software
18 applications that the FITISTICS Docking Stations and New Docking Stations
19 would enable.

20 (d) In approximately mid-April 2008, various UNISEN representatives
21 represented to Mr. McKirdy that UNISEN would use its best efforts to sell
22 "many" FITISTICS Docking Stations and New Docking Stations and that the
23 proposed deal had a value that was greater than \$3,000,000.00.

24 91. Before UNISEN entered into the License Agreement, Website
25 Purchase Agreement, and Employment Contracts, UNISEN had represented that it
26 would use its best efforts to promote and sell FITISTICS Docking Stations and to
27 promote, develop and sell the New Docking Stations and that it would pay royalties
28 to FITISTICS for the FITISTICS Docking Stations and any New Docking Stations

1 that were sold under the License Agreement if FITISTICS would enter into said
2 agreement. In addition, UNISEN had made repeated representations that
3 FITISTICS could, either jointly with UNISEN, or independently, pursue business
4 relationships with third parties and continue to promote the FITISTICS brand and
5 technology, other than any docking station product or technology, which
6 FITISTICS could only market and sell in conjunction with UNISEN products.

7 92. UNISEN intended for FITISTICS to rely on each of the foregoing
8 representations.

9 93. In reasonable and justifiable reliance on UNISEN's representations,
10 FITISTICS executed the License Agreement with UNISEN.

11 94. In reasonable and justifiable reliance on UNISEN's representations,
12 FITISTICS also entered into the Website Purchase Agreement, under which it sold
13 all of its rights to the Encryption to UNISEN.

14 95. In reasonable and justifiable reliance on UNISEN's representations of
15 millions of dollars of shared revenues, FITISTICS also acceded to very one-sided
16 terms unfavorable to FITISTICS, such as (i) granting UNISEN ownership on all
17 improvements on the Docking Station Technology that were created by UNISEN or
18 its employees and to have its principals become employees of UNISEN; (ii)
19 agreeing to exclusivity as to the Docking Station Technology; (iii) ceasing all
20 independent actions on behalf of Fitistics in connection with the FITISTICS
21 Docking Stations; (iii) agreeing that no compensation should be paid by UNISEN
22 for the Docking Station Technology other than royalties on "units" that *actually*
23 *were sold and* a revenue sharing arrangement with respect to any monthly fees that
24 *actually were paid* for the use of the New Docking Stations that were later to be
25 developed; and (iv) selling its Encryption technology under the Website Purchase
26 Agreement. FITISTICS never would have agreed to these things but for UNISEN's
27 representations and promises that UNISEN would work with FITISTICS to develop
28 and market a New Docking Station based on FITISTICS' Docking Station

1 Technology, which would ultimately reap millions in profits to FITISTICS after the
2 development effort was completed.

3 96. But for the representations of UNISEN, FITISTICS would not have
4 entered the License Agreement nor the Website Purchase Agreement and would not
5 have agreed to the terms of either of these agreements.

6 97. Unfortunately, each of UNISEN's representations was false. In truth:

7 (a) UNISEN always intended to market its UNISEN Docking Station
8 product, and it never intended to use, and in fact did not make any effort to
9 promote and/or sell FITISTICS Docking Stations, let alone use its best
10 efforts to do so;

11 (b) UNISEN always intended to market its UNISEN Docking Station
12 product, and it never intended to develop a New Docking Station or use any
13 of FITISTICS' patented technology;

14 (c) UNISEN never intended to use, and did not use, its direct sales
15 personnel and/or global dealer network to sell FITISTICS Docking Stations
16 or a New Docking Station. UNISEN never intended to, and did not assist,
17 permit, and/or encourage Messrs. McKirdy and/or Nutini to sell and/or
18 promote such FITISTICS Docking Stations or any New Docking Station;

19 (d) UNISEN also misrepresented its relationship with KoKo to
20 FITISTICS. In fact, UNISEN had a very bad relationship with KoKo in that
21 it was not paying KoKo various royalties owed to it, and KoKo was about to
22 file suit against UNISEN. None of this was disclosed to FITISTICS.

23 (e) UNISEN also misrepresented the status of its product development
24 regarding USB Functionality and Encryption. In fact, Greg Wallace, the
25 Director of Software Engineering for UNISEN, subsequently admitted to Mr.
26 McKirdy that the demonstration that Mr. Bergstedt performed at the IRHSA
27 meeting in March 2008 was nothing more than "smoke and mirrors" and that
28 UNISEN then had no Encryption capability as it purported to demonstrate.

1 Actually, at the time UNISEN's equipment could only play music, perform
2 software updates and save workout data through the USB port.

3 98. UNISEN had no intent to market or sell the FITISTICS Docking
4 Station or to develop and/or market, promote and sell a New Docking Station with
5 FITISTICS technology.

6 99. UNISEN's malicious intent is evidenced by its actions including (i)
7 knowing misrepresentations to FITISTICS expressly stating that the revenues from
8 marketing or selling the FITISTICS Docking Station and the marketing, promotion
9 and sale of New Docking Stations created with FITISTICS technology would
10 amount to at least \$3 million in the first few years; (ii) UNISEN's affirmative
11 actions to prevent FITISTICS from trying to market, sell, or promote either the
12 FITISTICS Docking Stations, the New Docking Station, or any other related
13 FITISTICS' technology; and (iii) telling third parties that UNISEN owned all of
14 FITISTICS' technology.

15 100. FITISTICS has been damaged by UNISEN's intentional
16 misrepresentations, in that UNISEN never intended to fulfill the purposes of the
17 License Agreement and induced FITISTICS to enter the License Agreement and the
18 Website Purchase Agreement for the purpose of selling its own UNISEN Docking
19 Station, and otherwise preventing FITISTICS from selling its technology to others
20 and thereby taking customers and market share from FITISTICS.

21 101. FITISTICS' reliance on UNISEN's misrepresentations and false
22 promises were a substantial factor in causing harm to FITISTICS, because
23 FITISTICS would not have entered into the License Agreement or the Website
24 Purchase Agreement, nor would it have agreed to exclusivity or other onerous terms
25 in the License Agreement had it not been for UNISEN's misrepresentations, which
26 has thus led to financial and commercial harm to FITISTICS.

27 102. UNISEN made these representations on numerous occasions prior to
28 the time the parties entered into the agreements at issue herein and through several

1 of its officers and employees, knowing that they were false, and intending for
2 FITISTICS to rely on them.

3 103. FITISTICS did in fact reasonably rely on UNISEN's representations as
4 set forth above. Said reliance was reasonable, because FITISTICS had no way of
5 knowing that UNISEN, in fact, did not intend to market, sell, or promote either the
6 FITISTICS Docking Stations or any other related FITISTICS' technology, and did
7 not intend to develop the New Docking Station. In reliance thereon, FITISTICS
8 entered in the License Agreement and other agreements set forth herein, and
9 UNISEN undertook the course of conduct alleged herein.

10 104. In reality, UNISEN's goal was to obtain the Encryption technology
11 and file structures that would provide the needed functionality, while blocking off
12 any and all opportunities for FITISTICS' growth and exposure with the other hand,
13 in order that UNISEN could destroy FITISTICS and compete with it unhindered.
14 As outlined in detail above, UNISEN's fraud and wrongful misappropriation was
15 admitted by its then President, Nero, on or about October 15, 2009.

16 105. As a direct and proximate result of Plaintiffs' reliance on UNISEN's
17 repeated fraudulent misrepresentations, Plaintiff has suffered financial and
18 reputational damage, in an amount to be determined at trial, but in excess of
19 \$9,000,000.00.

20 106. Furthermore, UNISEN acted, or failed to act, fraudulently,
21 oppressively, and maliciously in conscious disregard of Plaintiffs rights and with
22 the intent to cause it cruel and unjust hardship, thus warranting punitive damages,
23 in an amount to be determined at trial.

24 107. The Assignment Estate is liable for payment of, *without limitation*, all
25 pre-assignment extra-contractual liabilities of UNISEN, including the intentional
26 tort of fraud and/or deceit.

27 108. WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.
28

COUNT II

NEGLIGENT MISREPRESENTATION

(AGAINST ALL DEFENDANTS)

1
2
3
4 109. Plaintiff refers to and incorporates by this reference as though fully set
5 forth herein, each and every allegation set forth in paragraphs 1 through 108 above.

6 110. In addition to or in the alternative regarding the actions grounded in
7 deceit named herein, upon information and belief, UNISEN acted with and is liable
8 for negligent misrepresentation under California Civil Code §§ 1572(2), 1709, and
9 1710(2).

10 111. As set forth above, UNISEN represented to FITISTICS that they
11 wished to obtain access to the FITISTICS Docking Station Technology for the
12 purpose of entering into a mutually beneficial exclusive business relationship with
13 FITISTICS towards the purpose that UNISEN would both market and sell the
14 FITISTICS Docking Stations as an add-on feature to UNISEN's exercise
15 equipment and that the parties would jointly develop a New Docking Station with
16 the use of the Licensed Patents.

17 112. As set forth above, prior to entering into the License Agreement, the
18 Website Purchase Agreement and Employment Contracts, and in the course of the
19 negotiations therefor, representatives of UNISEN also made the representations set
20 forth herein in Count I, among others:

21 113. UNISEN intended for FITISTICS to rely on each of the foregoing
22 representations.

23 114. In reasonable and justifiable reliance on UNISEN's representations,
24 FITISTICS executed the License Agreement with UNISEN.

25 115. In reasonable and justifiable reliance on UNISEN's representations,
26 FITISTICS also entered into the Website Purchase Agreement, under which it sold
27 all of its rights to the Encryption to UNISEN.
28

1 116. In reasonable and justifiable reliance on UNISEN's representations of
2 millions of dollars of shared revenues, FITISTICS also acceded to very one-sided
3 terms unfavorable to FITISTICS, such as (i) granting UNISEN ownership on all
4 improvements on the Docking Station Technology that were created by UNISEN or
5 its employees and to have its principals become employees of UNISEN; (ii)
6 agreeing to exclusivity as to the Docking Station Technology; (iii) ceasing all
7 independent actions on behalf of Fitistics in connection with the FITISTICS
8 Docking Stations; (iii) agreeing that no compensation should be paid by UNISEN
9 for the Docking Station Technology other than royalties on "units" that *actually*
10 *were sold and* a revenue sharing arrangement with respect to any monthly fees that
11 *actually were paid* for the use of the New Docking Stations that were later to be
12 developed; and (iv) selling its Encryption technology under the Website Purchase
13 Agreement. FITISTICS never would have agreed to these things but for UNISEN's
14 representations and promises that UNISEN would work with FITISTICS to develop
15 and market a New Docking Station based on FITISTICS' Docking Station
16 Technology, which would ultimately reap millions in profits to FITISTICS after the
17 development effort was completed.

18 117. But for the representations of UNISEN, FITISTICS would not have
19 entered the License Agreement nor the Website Purchase Agreement and would not
20 have agreed to the terms of either of these agreements.

21 118. FITISTICS would not have done the foregoing things if not for the
22 representations of UNISEN.

23 119. UNISEN owed a duty of care to FITISTICS in connection with the
24 representations it made to FITISTICS in connection with inducing FITISTICS to
25 sign the exclusive License Agreement and the Website Purchase Agreement.

26 120. Unfortunately, each of UNISEN's representations was false and
27 UNISEN made each representation without any reasonable basis to believe them to
28 be true. In truth:

1 (a) UNISEN always intended to market its UNISEN Docking Station
2 product, and it never intended to use, and in fact did not make any effort to
3 promote and/or sell FITISTICS Docking Stations, let alone use its best
4 efforts to do so.

5 (b) UNISEN always intended to market its UNISEN Docking Station
6 product, and it never intended to develop a New Docking Station or use any
7 of FITISTICS' patented technology.

8 (c) UNISEN never intended to use, and did not use, its direct sales
9 personnel and/or global dealer network to sell such FITISTICS Docking
10 Stations or a New Docking Station. UNISEN never intended to, and did not
11 assist, permit, and/or encourage Messrs. McKirdy and/or Nutini to sell and/or
12 promote such FITISTICS Docking Stations or any New Docking Station.

13 (d) UNISEN also misrepresented its relationship with KoKo to
14 FITISTICS. In fact, UNISEN had a very bad relationship with KoKo in that
15 it was not paying KoKo various royalties owed to it, and KoKo was about to
16 file suit against UNISEN. None of this was disclosed to FITISTICS.

17 (e) UNISEN also misrepresented the status of its product development
18 regarding USB Functionality and Encryption. In fact, Greg Wallace, the
19 Director of Software Engineering for UNISEN, subsequently admitted to Mr.
20 McKirdy that the demonstration that Mr. Bergstedt performed at the IRHSA
21 meeting in March 2008 was nothing more than "smoke and mirrors" and that
22 UNISEN then had no Encryption capability as it purported to demonstrate.
23 Actually, at the time UNISEN's equipment could only play music, perform
24 software updates and save workout data through the USB port.

25 121. UNISEN had no intent to market or sell the FITISTICS Docking
26 Station or to develop and/or market, promote and sell a New Docking Station with
27 FITISTICS technology.

28 122. UNISEN also had no reasonable basis to believe that it would (i)

1 market or sell the FITISTICS Docking Station; (ii) or develop, market or sell the
2 New Docking Station.

3 123. UNISEN's lack of reasonable belief in its representations is evidenced
4 in part by its actions including (i) statements to FITISTICS that the revenues from
5 marketing or selling the FITISTICS Docking Station and the marketing, promotion
6 and sale of New Docking Stations created with FITISTICS technology would
7 amount to at least \$3 million in the first few years; (ii) UNISEN's affirmative
8 actions to prevent FITISTICS from trying to market, sell, or promote either the
9 FITISTICS Docking Stations, the New Docking Station, or any other related
10 FITISTICS' technology; and (iii) telling third parties that UNISEN owned all of
11 FITISTICS' technology.

12 124. FITISTICS has been damaged by UNISEN's misrepresentations, in
13 that UNISEN never intended to fulfill the purposes of the License Agreement and
14 induced FITISTICS to enter the License Agreement and the Website Purchase
15 Agreement for the purpose of selling its own UNISEN Docking Station, and
16 otherwise preventing FITISTICS from selling its technology to others and thereby
17 taking customers and market share from FITISTICS.

18 125. FITISTICS' reliance on UNISEN's misrepresentations and false
19 promises were a substantial factor in causing harm to FITISTICS, because
20 FITISTICS would not have entered into the License Agreement or the Website
21 Purchase Agreement, nor would it have agreed to exclusivity or other onerous terms
22 in the License Agreement had it not been for UNISEN's misrepresentations, which
23 has thus led to financial and commercial harm to FITISTICS.

24 126. Based on the foregoing, FITISTICS has been damaged in an amount
25 according to proof at trial.

26 127. The Assignment Estate is liable for payment of, *without limitation*, all
27 pre-assignment extra-contractual liabilities of UNISEN, including the tort of
28 negligent misrepresentation.

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128. WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

COUNT III

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

(Against All Defendants)

129. Plaintiff refers to and incorporates by this reference as though fully set forth herein, each and every allegation set forth in paragraphs 1 through 128 above.

130. FITISTICS has and had an expectancy in ongoing economic relationships with current and prospective customers.

131. These relationships contained the probability of future economic benefit in the form of profits from providing, licensing, and/or selling FITISTICS Docking Stations and FITISTICS' Docking Station Technology to the fitness industry. Had UNISEN refrained from engaging in the unlawful and wrongful conduct described in this Complaint, there is a substantial probability that FITISTICS would have been able to further profit from its exclusive rights.

132. UNISEN engaged in actions to induce FITISTICS to enter into an exclusive licensing arrangement regarding the Docking Station Technology, but then acted to prevent FITISTICS from selling or promoting said products, and has made intentionally false statements regarding its ownership of FITISTICS' technology and software in order to divert customers, distributors, and fitness industry companies from purchasing FITISTICS products.

133. This conduct, as alleged above, constitutes, at the very least, unfair business practices.

134. UNISEN, through their relationship with FITISTICS, knew of and intended to interfere with FITISTICS' prospective business advantages as described herein.

135. UNISEN took active steps to prevent FITISTICS from holding discussions with third parties regarding their Docking Station Technology,

1 including, without limitation, threatening FITISTICS' principals that their
2 employment contracts would be terminated if they continued to market the Docking
3 Station Technology to Nike or others.

4 136. Plaintiff is informed and believes that UNISEN's public and materially
5 incorrect statements that UNISEN owned all of FITISTICS' intellectual property
6 were made in an effort to disrupt FITISTICS' business relationships and
7 opportunities.

8 137. UNISEN made these false and deceptive statements (namely, that
9 UNISEN, not FITISTICS, owned FITISTICS' intellectual property).

10 138. As a result, FITISTICS' economic relationship with Nike and others
11 was disrupted, and FITISTICS was harmed.

12 139. UNISEN's deliberate misstatements regarding the ownership of
13 FITISTICS' intellectual property and its wrongful actions to block FITISTICS from
14 having discussions with potential customers concerning their Docking Station
15 Technology was a substantial factor in causing harm to FITISTICS.

16 140. These acts constitute an intentional inference with FITISTICS'
17 economic relationship with, *inter alia*, Nike – an economic relationship that would
18 have resulted in a substantial economic benefit to FITISTICS.

19 141. As a proximate result of UNISEN's actions, FITISTICS has suffered
20 economic harm, including, but not limited to, loss of profits from sales or licenses
21 to current and potential customers of FITISTICS. UNISEN'S wrongful conduct
22 was a substantial factor in causing this harm.

23 142. As a direct and proximate result of UNISEN's wrongful interference
24 with FITISTICS' prospective economic advantage with its current and future
25 customers, as described above, PLAINTIFF has suffered financial and reputational
26 damage, in an amount to be determined at trial.

27 143. UNISEN'S interference with FITISTICS' prospective economic
28 advantage with its current and future customers, as described above, was willful,

1 malicious, oppressive, intentional, and in conscious disregard of FITISTICS' rights.
2 PLAINTIFF is therefore entitled to an award of punitive damages.

3 144. The Assignment Estate is liable for payment of, *without limitation*, all
4 pre-assignment extra-contractual liabilities of UNISEN, including the tort of
5 Interference with Economic Relations.

6 **COUNT IV**

7 **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 145. Plaintiff refers to and incorporates by this reference as though fully set
10 forth herein, each and every allegation set forth in paragraphs 1 through 144 above.

11 146. FITISTICS has and had an expectancy in ongoing economic
12 relationships with current and prospective purchasers and licensees of FITISTICS'
13 Products.

14 147. These relationships contained the probability of future economic
15 benefit in the form of profits from providing, licensing, and/or selling FITISTICS
16 Docking Stations and/or FITISTICS' Docking Station Technology. Had UNISEN
17 refrained from engaging in the unlawful and wrongful conduct described in this
18 Complaint, there is a substantial probability that FITISTICS would have been able
19 to further profit from its exclusive rights and proprietary technology.

20 148. UNISEN'S conduct was wrongful by a measure beyond the fact of the
21 interference itself. UNISEN engaged in actions to prevent consumers from
22 purchasing said products, and have made false statements regarding UNISEN'S
23 ownership of FITISTICS' technology to divert customers, distributors, and fitness
24 industry businesses from purchasing or licensing FITISTICS products or
25 technology.

26 149. This conduct, as alleged above, constitutes, at the very least, unfair
27 business practices.
28

1 expense.

2 158. The Assignment Estate is liable for payment of, *without limitation*, all
3 pre-assignment extra-contractual liabilities of UNISEN, including those amounts
4 relating to UNISEN's unjust enrichment.

5 **COUNT VI**
6 **TRADE LIBEL; SLANDER OF TITLE**
7 **(AGAINST ALL DEFENDANTS)**

8 159. Plaintiff refers to and incorporates by this reference as though fully set
9 forth herein, each and every allegation set forth in paragraphs 1 through 158 above.

10 160. FITISTICS' personal property included the FITISTICS Docking
11 Station Technology, including the Licensed Patents and confidential and
12 proprietary information, and information regarding its business contracts,
13 relationships and development efforts.

14 161. During the time period of approximately July 2009 to November 2010,
15 UNISEN willfully, wrongfully, without justification, and without privilege told
16 third parties that might be interested in FITISTICS' Docking Station that UNISEN
17 "owned all of" FITISTICS' intellectual property.

18 162. UNISEN made these false and deceptive statements (namely, that
19 UNISEN, not FITISTICS, owned FITISTICS' intellectual property) in an effort to
20 disrupt FITISTICS' business relationships.

21 163. The words were false and caused doubt to be cast on FITISTICS' title
22 to the property described above.

23 164. As a proximate result of UNISEN's actions, FITISTICS has suffered
24 economic harm, including, but not limited to, loss of profits from sales or licenses
25 to current and potential customers of FITISTICS, as well as permanent damage to
26 its brand and industry reputation.

27 165. Furthermore, UNISEN's words were motivated by oppression, fraud
28 and malice in that UNISEN's ulterior motive was to unfairly prevent FITISTICS

1 from ever being able to sell or license its Docking Station Technology to others in
2 the fitness industry, so that UNISEN would be able to compete unhindered.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for judgment and relief against the Defendants,
5 and each of them, as follows:

6 A. For an award of actual damages according to proof herein, but in
7 excess of \$9,000,000.00 (exclusive of attorney's fees and costs, if any);

8 B. For an award equal to the amount of unjust enrichment of UNISEN, to
9 the extent not taking into account in computing damages for actual loss;

10 C. For an order for an accounting of any profits improperly made by
11 UNISEN, and imposing a constructive trust on the profits in favor of CORE.

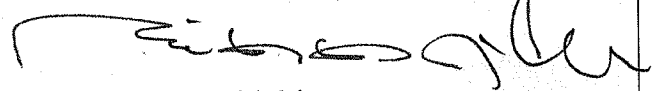
12 D. For interest at the legal rate on all damages awarded herein;

13 E. For punitive and exemplary damages according to proof; and

14 F. Such other and further relief as this Court shall deem just and proper.

15 Dated: December 27, 2013

COOLEY LLP
ALI M. M. MOJDEHI (123846)



18 /s/ Ali M.M. Mojdehi
19 Ali M. M. Mojdehi (123846)
20 Attorneys for Plaintiff

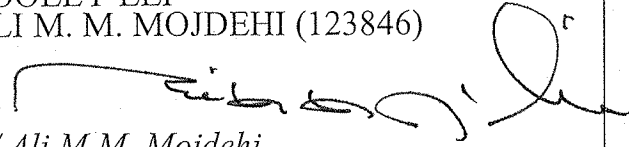
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DEMAND FOR TRIAL BY JURY

The Plaintiff hereby demands a TRIAL BY JURY on all issues so triable.

Dated: December 27, 2013

COOLEY LLP
ALI M. M. MOJDEHI (123846)



/s/ Ali M.M. Mojdehi
Ali M. M. Mojdehi (123846)
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 4401 Eastgate Mall, San Diego, California 92121.

On December 27, 2013, I served the foregoing document(s) described as **AMENDED COMPLAINT**, on the person(s) listed below in the action of Core Indus., LLC v. Unisen, Inc. et al. by placing a true copy thereof in sealed envelopes addressed as follows:

Kathryn M.S. Catherwood, Esq.
FOLEY & LARDNER, LLP
3579 Valley Centre Drive , Suite 300
San Diego, CA 92130-3302

By facsimile machine, I caused the above-referenced document(s) to be transmitted to the above person(s) at their respective facsimile number listed above. I received confirmation of a completed facsimile transmission.

I deposited such envelope(s) in a box or other facility regularly maintained by an express-overnight service carrier, or delivered it to an authorized express overnight service driver or courier, in a sealed envelope, with postage fully prepaid

I deposited the fully prepaid envelope with the United States Postal Service at San Diego, California.

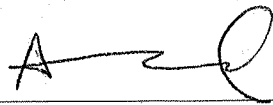
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

Executed and served on October 28, 2013, at San Diego, California.

(State) I declare under penalty of perjury under the laws the State of California that the above is true and correct.

(Federal) I declare under the penalty of perjury under the laws of the United States and the State of California that I am employed in the office of an attorney admitted to practice before the bar of this court at whose direction the service was made and that the above is true and correct.

Dated: December 27, 2013



Andrea Behrend