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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

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OPTIMA EXERCISE, LLC,

Plaintiff,

v.

LIFECORE FITNESS, INC. d/b/a  
DIAMONDBACK FITNESS and FITCORP  
USA, INC. d/b/a FITNESS  
HEADQUARTERS,

Defendants.

Civil Action No. \_\_\_\_\_

**(JURY TRIAL DEMANDED)**

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**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Optima Exercise, LLC (“*Optima Exercise*” or “*Plaintiff*”) hereby alleges and complains as follows:

**PARTIES**

1. Plaintiff Optima Exercise is a Texas limited liability company with its principal place of business in this district.

2. Optima Exercise is the owner of all right, title, and interest, in and to U.S. Patent No. 6,626,800 (“the ‘*800 Patent*’”), a copy of which is attached hereto as Exhibit A, and is entitled “Method of Exercise Prescription and Evaluation” and was duly and legally issued by the United States Patent and Trademark Office.

3. Upon information and belief, Defendant Lifecore Fitness, Inc. d/b/a DiamondBack Fitness (“Lifecore”) is a California corporation with a principal place of business at 2575 Pioneer Ave, Vista, California.

4. Upon information and belief, Lifecore manufactures, imports, sells and/or offers for sale exercise machines that infringe the '800 Patent.

5. Upon information and belief, Defendant Fitcorp USA, Inc. d/b/a Fitness Headquarters ("Fitcorp") is a Texas corporation with a place of business at 2809 Preston Rd., Ste 1212, Frisco, Texas.

6. Upon information and belief, Fitcorp is a retailer that has sold, currently sells, and offers for sale exercise machines manufactured and/or sold by Lifecore that infringe the '800 Patent.

7. Lifecore and Fitcorp are collectively referred to hereinafter as "Defendants."

#### **JURISDICTION AND VENUE**

8. This is a claim for patent infringement brought by Optima Exercise that arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271.

9. This Court has exclusive subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338, and applicable principles of supplemental jurisdiction.

10. Defendants are subject to personal jurisdiction in the state of Texas (this "***State***") and this judicial district consistent with the principles of due process.

11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have done business, have infringed, and continue to infringe the '800 Patent within this judicial district, and this action arises from transactions of that business, including via their interactive websites, contact with consumers in this judicial district, and retail sales within this judicial district.

12. Upon information and belief, Defendants transacted business, contracted to supply goods or services, and caused injury to Plaintiff within Texas and this judicial district, and have otherwise purposefully availed themselves of the privileges and benefits of the laws of Texas and are therefore subject to the jurisdiction of this Court.

13. Upon information and belief, Defendants place infringing products for sale online and in retail stores to be used, shipped, and sold in this judicial district.

14. Upon information and belief, Defendants place infringing products in the stream of commerce with the expectation that they would be bought and sold in its retail stores within this judicial district.

15. Defendants have offered and continue to offer their products for sale in this State, have transacted business and continue to transact business in this State, have committed and/or induced acts of patent infringement in this State, and/or have placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this State.

16. Upon information and belief, Defendants are subject to this Court's general and specific personal jurisdiction because they have minimum contacts within the State and this judicial district, including via their websites, pursuant to due process and/or the Texas Long Arm Statute.

17. Upon information and belief, Defendants regularly conduct business within this State and judicial district and Optima Exercise's causes of action arise directly from Defendants' business contacts and other activities in the State and this judicial district.

**FIRST CLAIM FOR RELIEF**

**INFRINGEMENT OF U.S. PATENT NO. 6,626,800**

18. Optima Exercise is the owner, by assignment, of all right, title and interest in and to the '800 Patent, including standing to sue and recover all past, present, and future damages for infringement of the '800 Patent.

19. Optima Exercise has complied with the provisions of 35 U.S.C. § 287.

20. Upon information and belief, Defendants, either alone or in conjunction with others, have infringed and continue to infringe, contribute to infringement, and/or induce infringement of the '800 Patent by making, using, selling, and/or offering to sell, and/or causing others to use, methods and systems, including, but not limited to the Diamondback 510Ef, Diamondback 910lc, Diamondback 910Sr, 850RBs, 950RBs, 1050RBs, 1050UBS, LC-R100, VST-V4, each of which infringes one or more claims of the '800 Patent ("Accused Products").

21. Defendants are liable for infringement of one or more claims of the '800 Patent, including, pursuant to 35 U.S.C. § 271 as set forth therein and incorporated by this reference, by making, using, selling, offering for sale, and/or importing the Accused Products.

22. Defendants are liable for indirect infringement of the '800 Patent by inducing and/or contributing to direct infringements of the '800 Patent committed by end users of the Accused Products.

23. At least from the time Defendants received this Complaint, by which it was given actual notice of the '800 Patent, Defendants induced infringement because they knew, or should have known, that their acts would cause patent infringement, and they acted with intent to encourage direct infringement by their end users.

24. At least from the time Defendants received this Complaint, Defendants contributed to direct infringement by its end users by knowing that the Accused Products and methods would be implemented by its end users; that its methods, components, system and Accused Products were especially designed or especially adapted for a combination covered by one or more claims of the '800 Patent; that there are no substantial non-infringing uses; and the Accused Products are a material part of the infringement.

25. Upon information and belief, Defendants had knowledge of the '800 Patent and are infringing despite such knowledge and the infringement has been and continues to be willful and deliberate.

26. Defendants' acts of infringement have caused damage to Plaintiff, and Plaintiff is entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that, after a trial, this Court enter judgment against Defendant as follows:

- A. An entry of final judgment in favor of Plaintiff and against Defendants;
- B. An award of damages adequate to compensate Plaintiff for the infringement that has occurred, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- C. Treble damages as provided for under 35 U.S.C § 284 in view of the knowing, willful, and intentional nature of Defendants' acts;

- D. Awarding Plaintiff its costs and expenses of this litigation, including its reasonable attorneys' fees and disbursements, pursuant to 35 U.S.C. § 285; and
- E. Such other further relief that Plaintiff is entitled to under the law, and any other and further relief that this Court or a jury may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury on all claims and issues so triable.

Dated: June 23, 2015

By: /s/ Elizabeth L. DeRieux

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