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HOIST FITNESS SYSTEMS, INC.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 HOIST FITNESS SYSTEMS, INC.,

12 Plaintiff,

13 v.

14 HEALTH IN MOTION LLC,
15 INSPIRE FITNESS AND SUNSET
SWINGS, AND DOES 1-10,

16 Defendants.
17
18
19
20

Case No. **'15CV1920 MMARBB**

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
FOR:**

**1. INFRINGEMENT OF U.S.
PATENT NOS. D544,050,
D519,585, AND D455,310**

**2. TRADE DRESS
INFRINGEMENT**

**3. UNFAIR COMPETITION
(CAL. BUS. & PROF. CODE
§ 17200)**

(DEMAND FOR JURY TRIAL)

1 Plaintiff Hoist Fitness Systems, Inc. (“Hoist”), asserts this Complaint against
2 Defendants Health In Motion, LLC (“Health In Motion”), Inspire Fitness and
3 Sunset Swings (“Inspire Fitness”), and Does 1-10 (collectively, “Defendants”).

4 Hoist seeks injunctive and monetary relief from Defendants for patent
5 infringement, trade dress infringement, unfair competition, and unjust enrichment
6 with regard to Hoist’s intellectual property rights relating to its strength training
7 products. As alleged more fully below, Defendants have violated, and continue to
8 violate, the Patent Act (35 U.S.C. § 1 *et seq.*), the Lanham Act (15 U.S.C. § 1051 *et*
9 *seq.*), and California law through their unauthorized use of Hoist’s intellectual
10 property rights relating to its strength training products.

11 Hoist alleges the following against Defendants:

12 1. This is an action to combat Defendants’ willful infringement of Hoist’s
13 United States patents in violation of 35 U.S.C. § 271, Defendants’ federal trade
14 dress infringement and unfair competition in violation of Section 43(a) of the
15 Lanham Act, 15 U.S.C. § 1125(a), and Defendants’ violation of Cal. Bus. & Prof.
16 Code § 17200.

17 2. As a direct and proximate result of Defendants’ unlawful manufacture,
18 distribution, promotion, advertising, offering for sale, sale, and/or importation of
19 infringing products, Hoist is irreparably harmed. Hoist seeks a permanent
20 injunction, damages adequate to compensate for the infringement, enhanced
21 damages for Defendants’ willful infringement, and disgorgement of ill-gotten gain
22 by Defendants, including, without limitation, Defendants’ profits as well as Hoist’s
23 costs, and attorneys’ fees as authorized by the Patent Act, the Lanham Act, and
24 California law.

25 **THE PARTIES**

26 3. Hoist is a corporation organized under, and existing by virtue of, the
27 laws of the state of California, with its principal place of business located at 11900
28 Community Road, Poway, California 92064.

1 4. On information and belief, Hoist alleges that Health In Motion is a
2 limited liability corporation organized and existing under the laws of the State of
3 California with its principal place of business at 255 Airport Circle, Suite 101,
4 Corona, California 92880.

5 5. On information and belief, Hoist alleges that Health In Motion is doing
6 business as Inspire Fitness. On information and belief, Hoist further alleges that
7 Inspire Fitness is a division of Health In Motion.

8 6. Hoist does not know the true names of defendants named as DOES 1-
9 10 and thus names said defendants fictitiously. These fictitious defendants include,
10 but are not limited to, any subsidiaries, affiliates, and/or parent companies of Health
11 In Motion of which Hoist is presently unaware, and which have participated and/or
12 are participating in the acts of infringement and unfair competition alleged herein.
13 Hoist will amend its complaint to substitute the true names of DOES 1-10 as those
14 names are discovered.

15 7. On information and belief, Hoist alleges that at all relevant times each
16 Defendant was the agent, employee, representative, partner, attorney, successor,
17 joint venture, assignee and related or an affiliated entity of the remaining Co-
18 Defendants, and in doing the things hereinafter mentioned, was acting within the
19 course and scope of his, her, or its agency and employment with the permission,
20 consent, authority, and/or ratification of the remaining Co-Defendants.

21 **JURISDICTION AND VENUE**

22 8. This Court has original subject matter jurisdiction pursuant to the
23 Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; the Patent Act, 35 U.S.C. §§ 1 *et seq.*; and
24 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the
25 California state claims pursuant to 28 U.S.C. § 1367 because such claims are so
26 related to the federal claims that they form part of the same case or controversy and
27 derive from a common nucleus of operative facts.

28 9. This Court has personal jurisdiction over Defendants because

1 Defendants have in the past transacted, and/or continue to transact and/or solicit
2 business throughout the United States, including in this District, and their infringing
3 activities have occurred and continue to occur throughout the United States and in
4 this District. On information and belief, Defendants maintain a sales force and
5 retail outlets in California for the purpose of serving customers in California and in
6 this District. On information and belief, Defendants have furnished and continue to
7 furnish strength training equipment within this District. On information and belief,
8 by furnishing strength training equipment within this District, Defendants have
9 purposely availed themselves of the privilege of doing business in California and in
10 this District.

11 10. Venue is proper in this District pursuant to 35 U.S.C. § 1391.

12 **HOIST'S INTELLECTUAL PROPERTY RIGHTS**

13 11. Hoist is in the business of designing, manufacturing, promoting,
14 marketing, advertising, distributing, and selling strength training equipment
15 worldwide, including the United States and in this District.

16 12. Hoist began in 1977 when two friends with a passion for exercise and
17 health launched a fitness club in Solana Beach, CA. They quickly realized the
18 strength training equipment available did not meet the needs of their facility. Soon
19 after, Hoist was officially founded with the goal of providing innovative equipment
20 that would perform better, be easier to use and withstand high-use commercial
21 settings.

22 13. Over the years Hoist established a name for itself as an innovator in
23 developing strength products. Hoist initially specialized in commercial strength
24 equipment. But later Hoist entered the consumer market after a number of clients
25 requested "Health Club Quality" fitness equipment, reimagined for home use. The
26 result was the Hoist 1000 Home Gym, the world's first-ever home gym Vertical
27 Press. The Hoist 1000 set a new industry standard, firmly establishing Hoist as a
28 leader in fitness equipment innovation.

14. Since then, Hoist has developed and built a series of products suited for the training needs of diverse population groups, ranging from children, to active seniors, to the more athletic and well-conditioned.

15. Hoist has expended significant resources at its San Diego County-based design center developing its innovative products. For the past ten years, Hoist's research and development expenditures have averaged over \$2 million annually. And Hoist currently employs sixteen people in its R&D department, including engineers, drafters and craftsmen building prototypes. As a result of these innovations, Hoist has been awarded over 70 design and utility patents worldwide, including United States Design Patent Nos. D544,050, D519,585 and D455,310.

16. Hoist has also expended substantial resources in manufacturing, promoting, marketing, advertising, distributing and selling its products, brands and packaging, and has built a very valuable business based on demand for its distinctively-styled, quality strength training equipment.

HOIST FITNESS TREE

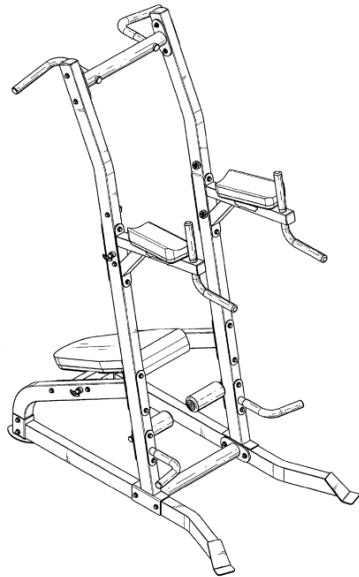
17. Hoist is the lawful assignee and owner of all right, title, and interest in and to United States Design Patent No. D544,050 (“’050 patent”), which is entitled “Body weight exercise apparatus.” The United States Patent & Trademark Office (“PTO”) duly and legally issued the ’050 patent on June 5, 2007. A true and correct copy of the ’050 patent is attached hereto as Exhibit 1.

18. In September 2005, Hoist introduced a strength training product known as a fitness tree (Model No. HF-4962) (hereinafter, “Hoist Fitness Tree”), having the distinctively-shaped design depicted below:



19. This design incorporates the design claimed in the '050 patent. Among other things, the design consists of: a pair of angled, upright posts having “bent” upper portions that support a pull-up bar at the top and arm rests at the center; a rear-mounted pair of curved supports that form a base for an angled sit-up pad; and a pair of flared foundational supports terminating in angled and flat feet. The overall appearance created by the combination of the foregoing elements, as depicted in the graphics above, will hereinafter be referred to as the “Hoist Fitness Tree Trade Dress.”

20. Defendants have made, used, offered for sale, sold, and/or imported a strikingly similar, infringing copy of Hoist’s fitness tree product known as the VKR Chin/Dip Station. As shown in the following side-by-side comparison, Defendants’ product misappropriates and copies Hoist’s patented design:

**'050 Patent****Defendants' VKR Chin/Dip Station**

HOIST FOLDING BENCH

21. Hoist is the lawful assignee and owner of all right, title, and interest in and to United States Design Patent No. D519,585 ("585 patent"), which is entitled "Folding exercise bench." The PTO duly and legally issued the '585 patent on April 25, 2006. A true and correct copy of the '585 patent is attached hereto as Exhibit 2.

22. In April 2006, Hoist introduced a strength training product known as a folding bench (Model No. HF-4145) (hereinafter, "Hoist Folding Bench"), having the distinctively-shaped design depicted below:



23. This design incorporates the design claimed in the '585 patent. Among other things, the design consists of: a folding base comprising a shorter front support with a cross-mounted cylindrical base and a pair of mid-mounted cylindrical elements, and a longer rear support having a single cylindrical base; a flat bracing element; a thin, rectangular handle located at the side; and a two-part folding seat comprising rounded and padded seat and back rest portions. The overall appearance created by the combination of the foregoing elements, as depicted in the graphics above, will hereinafter be referred to as the "Hoist Folding Bench Dress."

24. Defendants have made, used, offered for sale, sold, and/or imported a strikingly similar, infringing copy of Hoist's folding bench product known as the Folding Bench - FLB1. As shown in the following side-by-side comparison, Defendants' product misappropriates and copies Hoist's patented design:



'585 Patent

Defendants' Folding Bench FLB-1

HOIST DUMBBELL RACK

25. Hoist is the lawful assignee and owner of all right, title, and interest in and to United States Design Patent No. D455,310 ("310 patent"), which is entitled "Vertical dumbbell rack." The PTO duly and legally issued the '310 patent on April 9, 2002. A true and correct copy of the '310 patent is attached hereto as

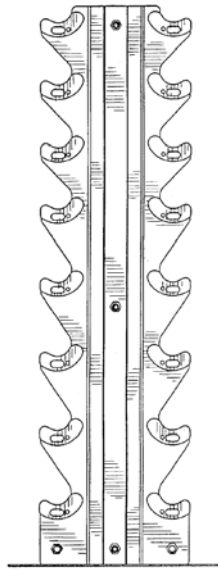
Exhibit 3.

26. In May 2005, Hoist introduced a strength training product known as a dumbbell rack (Model No. HF-4460) (hereinafter, “Hoist Dumbbell Rack”), having the distinctively-shaped design depicted below:



27. This design incorporates the design claimed in the '310 patent. Among other things, the design consists of: a two-sided column having shark-fin shaped supports for the cylindrical handles of dumbbells with gradually shallower handle bays along its length; rounded and curved elastomeric pads for receiving and supporting dumbbell handles; a central groove along the length of the column; and a base portion that connects to flat feet. The overall appearance created by the combination of the foregoing elements, as depicted in the graphics above, will hereinafter be referred to as the “Hoist Dumbbell Rack Dress.”

28. Defendants have made, used, offered for sale, sold, and/or imported a strikingly similar, infringing copy of Hoist’s dumbbell rack product known as the Vertical Dumbbell Rack – VDB8. As shown in the following side-by-side comparison, Defendants’ product misappropriates and copies Hoist’s patented design:

**'585 Patent****Defendants' Dumbbell Rack – VDB8**

HOIST SQUAT RACK

29. In October 2005, Hoist introduced a strength training product known as a squat rack (Model No. HF-4970) (hereinafter, "Hoist Squat Rack"), having the distinctively shaped design depicted below:



30. Among other things, the design consists of: a pair of nearly upright posts that angle forward at their bases; an angled pull-up bar connecting the posts at the top; a pair of angled rear supports connected by a cylindrical brace near the floor that each have two cylindrical posts for stacking free weights; flat, oval-shaped feet. On the front of the posts are a series of angled supports, with "L"-

1 shaped braces having circular holes. The overall appearance created by the
 2 combination of the foregoing elements, as depicted in the graphics above, will
 3 hereinafter be referred to as the “Hoist Squat Rack Dress.”

4 31. Defendants have made, used, offered for sale, sold, and/or imported a
 5 strikingly similar, infringing copy of Hoist’s squat rack product known as the Squat
 6 Rack. As shown below, Defendants’ product misappropriates and copies Hoist’s
 7 trade dress:



18
 19 **Defendants’ Squat Rack**

20
 21 **HOIST INCLINE/DECLINE BENCH**

22 32. In August 2005, Hoist introduced a strength training product known as
 23 an incline/decline bench (Model No. HF-4165) (hereinafter “Hoist Incline/Decline
 24 Bench”), having the distinctively shaped design depicted below:



33. Among other things, the design consists of: an inverted “V”-shaped base that is supported at the front by a wide, flat foot and at the rear by a cylindrical base with angled, flat feet at each end; a post on the front support that allows placement of various attachments, and is braced by an angled bar support that connects to the flat part of the front foot; the base having a series of jagged, sharkfin-shaped slots for supporting the brace for the seat portion; and a padded, two-part seat comprising rounded, padded seat and backrest portions. The overall appearance created by the combination of the foregoing elements, as depicted in the graphics above, will hereinafter be referred to as the “Hoist Incline/Decline Bench Trade Dress.”

34. Defendants have made, used, offered for sale, sold, and/or imported a strikingly similar, infringing copy of Hoist’s incline/decline bench product known as the SCS Bench – SCS-WB. As shown below, Defendants’ product misappropriates and copies Hoist’s trade dress:



Defendants' SCS Bench – SCS-WB
HOIST ROMAN HYPER

35. In February 2006, Hoist introduced a strength training product known as an ab/back Roman hyper (Model No. HF-4664) (hereinafter “Hoist Roman Hyper”), having the distinctively shaped design depicted below:



36. Among other things, the design consists of: a “Y”-shaped base with two angled elements at the rear that terminate in angled, flat feet; a long element extending forward and terminating in a cylindrical base with angled, flat feet at

each end; an angled post that extends up from the intersection of the “Y”-shaped base, and supports a pair of pads; two armrests/grips extend from a triangular base beneath the pair of pads, which are further supported by an adjustment arm that angles forward and meets a boom assembly that slides into a support arm mounted on the base that includes a pair of cylindrical pad assemblies connected by a curved strut. The overall appearance created by the combination of the foregoing elements, as depicted in the graphics above, will hereinafter be referred to as the “Hoist Roman Hyper Trade Dress.”

37. Defendants have made, used, offered for sale, sold, and/or imported a strikingly similar, infringing copy of Hoist’s incline/decline bench product known as the 45/90 Hyperextension Bench. As shown below, Defendants’ product misappropriates and copies Hoist’s trade dress:



Defendants’ 45/90 Hyperextension Bench

38. On August 28, 2015, Hoist’s representatives sent a letter notifying Defendants’ representatives that all of Defendants’ foregoing products infringed Hoist’s patent or trade dress rights in a cease and desist letter. In the letter, Hoist’s representatives demanded that Hoist immediately stop all infringement of Hoist’s patent and trade dress rights and confirm that all infringement had ceased by September 14, 2015. A true and correct copy of that letter is attached as Exhibit 4.

1 39. On information and belief, Defendants have not ceased their
2 infringement of Hoist's foregoing patent and/or trade dress rights.

3 **FIRST CLAIM FOR RELIEF**

4 **(Infringement – '050 patent)**

5 40. Hoist re-alleges and incorporates by reference each of the foregoing
6 allegations as though fully set forth herein.

7 41. Hoist is the owner of all right, title, and interest in the '050 patent.

8 42. Defendants have infringed the '050 patent, and continue to infringe
9 the '050 patent, in violation of 35 U.S.C. §§ 271 and 289 by using, manufacturing,
10 offering for sale, selling, and/or importing fitness tree products, including but not
11 limited to the VKR Chin/Dip Station, that copy the design disclosed and claimed in
12 the '050 patent.

13 43. Hoist has been and will continue to be irreparably injured by
14 Defendants' ongoing patent infringement in a manner that may be impossible to
15 quantify, unless enjoined by this Court. Hoist has no adequate remedy at law for
16 the ongoing injury. Accordingly, Hoist seeks a preliminary and permanent
17 injunction, pursuant to 35 U.S.C. § 283, to prohibit Defendants from any further
18 infringement of the '050 patent.

19 44. As a consequence of Defendants' infringement and in addition to
20 injunctive relief, Hoist is entitled to damages in an amount no less than a reasonable
21 royalty for the use made of the invention by Defendants, plus interest and costs.
22 Plaintiff is also entitled to Defendants' profits, pursuant to 35 U.S.C. § 289.

23 45. In addition, because Defendants have willfully infringed the '050
24 patent with both knowledge and notice of Hoist's rights, and with the intent to
25 infringe those rights, Hoist is entitled to increased damages of three times the
26 damages assessed pursuant to 35 U.S.C. § 285, as well as attorney's fees pursuant
27 to 35 U.S.C. § 285.

SECOND CLAIM FOR RELIEF

(Infringement – Hoist Fitness Tree Trade Dress)

46. Hoist re-alleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

47. Hoist owns the design of the Hoist Fitness Tree Trade Dress.

48. Hoist's Fitness Tree Trade Dress is distinctive. Customers have come to associate the design of the Hoist Fitness Tree only with Hoist.

49. The design of the Hoist Fitness Tree Trade Dress is nonfunctional.

50. Defendants have used, and continue to use, the Hoist Fitness Tree Trade Dress without Hoist's consent in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the Defendants' products.

51. As a direct and proximate result of Defendants' conduct, Hoist is entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendants' profits related to all uses of Hoist's Fitness Tree Trade Dress; (ii) any damages sustained by Hoist as a result of Defendants' conduct, the precise amount of which shall be established by Hoist at trial; and (iii) the costs of this action.

52. In addition, Hoist will be irreparably injured by Defendants' continued infringement of Hoist's Fitness Tree Trade Dress, in a manner which may be impossible to quantify, unless enjoined by this Court. Hoist has no adequate remedy at law for this ongoing injury. Hoist therefore seeks a preliminary and permanent injunction to prohibit Defendants from any further use of Hoist's Fitness Tree Trade Dress without Hoist's express written consent in advance.

53. Defendants have willfully copied Hoist's Fitness Tree Trade Dress. Given the exceptional circumstances of flagrant and willful infringement, Plaintiff requests treble damages, judgment for a sum that this Court finds to be just, and reasonable attorney's fees, pursuant to 15 U.S.C. § 1117(a).

THIRD CLAIM FOR RELIEF

(Unfair Competition, Cal. Bus. & Prof. Code § 17200 – Hoist Fitness Tree)

54. Hoist realleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

55. Defendants' acts described above constitute unfair competition in violation of California Business and Professions Code § 17200 *et seq.*, as they are unlawful, fraudulent, unfair, misleading and likely to deceive the public.

56. As a result of Defendants' acts of unfair competition, Hoist is entitled to restitution of the profits and other ill-gotten gains by Defendants.

57. Plaintiff is also entitled to injunctive relief pursuant to California Business and Professions Code § 17203.

FOURTH CLAIM FOR RELIEF

(Infringement – '585 patent)

58. Hoist re-alleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

59. Hoist is the owner of all right, title, and interest in the '585 patent.

60. Defendants have infringed the '585 patent, and continue to infringe the '585 patent, in violation of 35 U.S.C. §§ 271 and 289 by using, manufacturing, offering for sale, selling, and/or importing folding bench products, including but not limited to the Folding Bench - FLB1, that copy the design disclosed and claimed in the '585 patent.

61. Hoist has been and will continue to be irreparably injured by Defendants' ongoing patent infringement in a manner that may be impossible to quantify, unless enjoined by this Court. Hoist has no adequate remedy at law for the ongoing injury. Accordingly, Hoist seeks a preliminary and permanent injunction, pursuant to 35 U.S.C. § 283, to prohibit Defendants from any further infringement of the '585 patent.

62. As a consequence of Defendants' infringement and in addition to

1 injunctive relief, Hoist is entitled to damages in an amount no less than a reasonable
 2 royalty for the use made of the invention by Defendants, plus interest and costs.
 3 Plaintiff is also entitled to Defendants' profits, pursuant to 35 U.S.C. § 289.

4 63. In addition, because Defendants have willfully infringed the '585
 5 patent with both knowledge and notice of Hoist's rights, and with the intent to
 6 infringe those rights, Hoist is entitled to increased damages of three times the
 7 damages assessed pursuant to 35 U.S.C. § 285, as well as attorney's fees pursuant
 8 to 35 U.S.C. § 285.

9 **FIFTH CLAIM FOR RELIEF**

10 **(Infringement – Hoist Folding Bench Trade Dress)**

11 64. Hoist re-alleges and incorporates by reference each of the foregoing
 12 allegations as though fully set forth herein.

13 65. Hoist owns the design of the Hoist Folding Bench Trade Dress.

14 66. Hoist's Folding Bench Trade Dress is distinctive. Customers have
 15 come to associate the design of the Hoist Folding Bench only with Hoist.

16 67. The design of the Hoist Folding Bench Trade Dress is nonfunctional.

17 68. Defendants have used, and continue to use, the Hoist Folding Bench
 18 Trade Dress without Hoist's consent in a manner that is likely to cause confusion
 19 among ordinary consumers as to the source, sponsorship, affiliation, or approval of
 20 the Defendants' products.

21 69. As a direct and proximate result of Defendants' conduct, Hoist is
 22 entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendants' profits
 23 related to all uses of Hoist's Folding Bench Trade Dress; (ii) any damages sustained
 24 by Hoist as a result of Defendants' conduct, the precise amount of which shall be
 25 established by Hoist at trial; and (iii) the costs of this action.

26 70. In addition, Hoist will be irreparably injured by Defendants' continued
 27 infringement of Hoist's Folding Bench Trade Dress, in a manner which may be
 28 impossible to quantify, unless enjoined by this Court. Hoist has no adequate

1 remedy at law for this ongoing injury. Hoist therefore seeks a preliminary and
 2 permanent injunction to prohibit Defendants from any further use of Hoist's
 3 Folding Bench Trade Dress without Hoist's express written consent in advance.

4 71. Defendants have willfully copied Hoist's Folding Bench Trade Dress.
 5 Given the exceptional circumstances of flagrant and willful infringement, Plaintiff
 6 requests treble damages, judgment for a sum that this Court finds to be just, and
 7 reasonable attorney's fees, pursuant to 15 U.S.C. § 1117(a).

8 **SIXTH CLAIM FOR RELIEF**

9 **(Unfair Competition, Cal. Bus. & Prof. Code § 17200 – Hoist Folding Bench)**

10 72. Hoist realleges and incorporates by reference each of the foregoing
 11 allegations as though fully set forth herein.

12 73. Defendants' acts described above constitute unfair competition in
 13 violation of California Business and Professions Code § 17200 *et seq.*, as they are
 14 unlawful, fraudulent, unfair, misleading and likely to deceive the public.

15 74. As a result of Defendants' acts of unfair competition, Hoist is entitled
 16 to restitution of the profits and other ill-gotten gains by Defendants.

17 75. Plaintiff is also entitled to injunctive relief pursuant to California
 18 Business and Professions Code § 17203.

19 **SEVENTH CLAIM FOR RELIEF**

20 **(Infringement – '310 patent)**

21 76. Hoist re-alleges and incorporates by reference each of the foregoing
 22 allegations as though fully set forth herein.

23 77. Hoist is the owner of all right, title, and interest in the '310 patent.

24 78. Defendants have infringed the '310 patent, and continue to infringe
 25 the '310 patent, in violation of 35 U.S.C. §§ 271 and 289 by using, manufacturing,
 26 offering for sale, selling, and/or importing dumbbell rack products, including but
 27 not limited to the Vertical Dumbbell Rack – VDB8, that copy the design disclosed
 28 and claimed in the '310 patent.

79. Hoist has been and will continue to be irreparably injured by Defendants' ongoing patent infringement in a manner that may be impossible to quantify, unless enjoined by this Court. Hoist has no adequate remedy at law for the ongoing injury. Accordingly, Hoist seeks a preliminary and permanent injunction, pursuant to 35 U.S.C. § 283, to prohibit Defendants from any further infringement of the '310 patent.

80. As a consequence of Defendants' infringement and in addition to injunctive relief, Hoist is entitled to damages in an amount no less than a reasonable royalty for the use made of the invention by Defendants, plus interest and costs. Plaintiff is also entitled to Defendants' profits, pursuant to 35 U.S.C. § 289.

81. In addition, because Defendants have willfully infringed the '310 patent with both knowledge and notice of Hoist's rights, and with the intent to infringe those rights, Hoist is entitled to increased damages of three times the damages assessed pursuant to 35 U.S.C. § 285, as well as attorney's fees pursuant to 35 U.S.C. § 285.

EIGHTH CLAIM FOR RELIEF

(Infringement – Hoist Dumbbell Rack Trade Dress)

82. Hoist re-alleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

83. Hoist owns the design of the Hoist Dumbbell Rack Trade Dress.

84. Hoist's Dumbbell Rack Trade Dress is distinctive. Customers have come to associate the design of the Hoist Dumbbell Rack only with Hoist.

85. The design of the Hoist Dumbbell Rack Trade Dress is nonfunctional.

86. Defendants have used, and continue to use, the Hoist Dumbbell Rack Trade Dress without Hoist's consent in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the Defendants' products.

87. As a direct and proximate result of Defendants' conduct, Hoist is

entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendants' profits related to all uses of Hoist's Dumbbell Rack Trade Dress; (ii) any damages sustained by Hoist as a result of Defendants' conduct, the precise amount of which shall be established by Hoist at trial; and (iii) the costs of this action.

88. In addition, Hoist will be irreparably injured by Defendants' continued infringement of Hoist's Dumbbell Rack Trade Dress, in a manner which may be impossible to quantify, unless enjoined by this Court. Hoist has no adequate remedy at law for this ongoing injury. Hoist therefore seeks a preliminary and permanent injunction to prohibit Defendants from any further use of Hoist's Dumbbell Rack Trade Dress without Hoist's express written consent in advance.

89. Defendants have willfully copied Hoist's Dumbbell Rack Trade Dress. Given the exceptional circumstances of flagrant and willful infringement, Plaintiff requests treble damages, judgment for a sum that this Court finds to be just, and reasonable attorney's fees, pursuant to 15 U.S.C. § 1117(a).

NINTH CLAIM FOR RELIEF

(Unfair Competition, Cal. Bus. & Prof. Code § 17200 – Hoist Dumbbell Rack)

90. Hoist realleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

91. Defendants' acts described above constitute unfair competition in violation of California Business and Professions Code § 17200 *et seq.*, as they are unlawful, fraudulent, unfair, misleading and likely to deceive the public.

92. As a result of Defendants' acts of unfair competition, Hoist is entitled to restitution of the profits and other ill-gotten gains by Defendants.

93. Plaintiff is also entitled to injunctive relief pursuant to California Business and Professions Code § 17203.

TENTH CLAIM FOR RELIEF

(Infringement – Hoist Squat Rack Trade Dress)

94. Hoist re-alleges and incorporates by reference each of the foregoing

1 allegations as though fully set forth herein.

2 95. Hoist owns the design of the Hoist Squat Rack Trade Dress.

3 96. Hoist's Squat Rack Trade Dress is distinctive. Customers have come
4 to associate the design of the Hoist Squat Rack only with Hoist.

5 97. The design of the Hoist Squat Rack Trade Dress is nonfunctional.

6 98. Defendants have used, and continue to use, the Hoist Squat Rack
7 Trade Dress without Hoist's consent in a manner that is likely to cause confusion
8 among ordinary consumers as to the source, sponsorship, affiliation, or approval of
9 the Defendants' products.

10 99. As a direct and proximate result of Defendants' conduct, Hoist is
11 entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendants' profits
12 related to all uses of Hoist's Squat Rack Trade Dress; (ii) any damages sustained by
13 Hoist as a result of Defendants' conduct, the precise amount of which shall be
14 established by Hoist at trial; and (iii) the costs of this action.

15 100. In addition, Hoist will be irreparably injured by Defendants' continued
16 infringement of Hoist's Squat Rack Trade Dress, in a manner which may be
17 impossible to quantify, unless enjoined by this Court. Hoist has no adequate
18 remedy at law for this ongoing injury. Hoist therefore seeks a preliminary and
19 permanent injunction to prohibit Defendants from any further use of Hoist's Squat
20 Rack Trade Dress without Hoist's express written consent in advance.

21 101. Defendants have willfully copied Hoist's Squat Rack Trade Dress.
22 Given the exceptional circumstances of flagrant and willful infringement, Plaintiff
23 requests treble damages, judgment for a sum that this Court finds to be just, and
24 reasonable attorney's fees, pursuant to 15 U.S.C. § 1117(a).

25 **ELEVENTH CLAIM FOR RELIEF**

26 **(Unfair Competition, Cal. Bus. & Prof. Code § 17200 – Hoist Squat Rack)**

27 102. Hoist realleges and incorporates by reference each of the foregoing
28 allegations as though fully set forth herein.

103. Defendants' acts described above constitute unfair competition in violation of California Business and Professions Code § 17200 *et seq.*, as they are unlawful, fraudulent, unfair, misleading and likely to deceive the public.

104. As a result of Defendants' acts of unfair competition, Hoist is entitled to restitution of the profits and other ill-gotten gains by Defendants.

105. Plaintiff is also entitled to injunctive relief pursuant to California Business and Professions Code § 17203.

TWELFTH CLAIM FOR RELIEF

(Infringement – Hoist Incline/Decline Bench Trade Dress)

106. Hoist re-alleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

107. Hoist owns the design of the Hoist Incline/Decline Bench Trade Dress.

108. Hoist's Incline/Decline Bench Trade Dress is distinctive. Customers have come to associate the design of the Hoist Incline/Decline Bench only with Hoist.

109. The design of the Hoist Incline/Decline Bench Trade Dress is nonfunctional.

110. Defendants have used, and continue to use, the Hoist Incline/Decline Bench Trade Dress without Hoist's consent in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the Defendants' products.

111. As a direct and proximate result of Defendants' conduct, Hoist is entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendants' profits related to all uses of Hoist's Incline/Decline Bench Trade Dress; (ii) any damages sustained by Hoist as a result of Defendants' conduct, the precise amount of which shall be established by Hoist at trial; and (iii) the costs of this action.

112. In addition, Hoist will be irreparably injured by Defendants' continued infringement of Hoist's Incline/Decline Bench Trade Dress, in a manner which may

1 be impossible to quantify, unless enjoined by this Court. Hoist has no adequate
 2 remedy at law for this ongoing injury. Hoist therefore seeks a preliminary and
 3 permanent injunction to prohibit Defendants from any further use of Hoist's
 4 Incline/Decline Bench Trade Dress without Hoist's express written consent in
 5 advance.

6 113. Defendants have willfully copied Hoist's Incline/Decline Bench Trade
 7 Dress. Given the exceptional circumstances of flagrant and willful infringement,
 8 Plaintiff requests treble damages, judgment for a sum that this Court finds to be just,
 9 and reasonable attorney's fees, pursuant to 15 U.S.C. § 1117(a).

10 **THIRTEENTH CLAIM FOR RELIEF**

11 **(Unfair Competition, Cal. Bus. & Prof. Code § 17200 –** 12 **Hoist Incline/Decline Bench)**

13 114. Hoist realleges and incorporates by reference each of the foregoing
 14 allegations as though fully set forth herein.

15 115. Defendants' acts described above constitute unfair competition in
 16 violation of California Business and Professions Code § 17200 *et seq.*, as they are
 17 unlawful, fraudulent, unfair, misleading and likely to deceive the public.

18 116. As a result of Defendants' acts of unfair competition, Hoist is entitled
 19 to restitution of the profits and other ill-gotten gains by Defendants.

20 117. Plaintiff is also entitled to injunctive relief pursuant to California
 21 Business and Professions Code § 17203.

22 **FOURTEENTH CLAIM FOR RELIEF**

23 **(Infringement – Hoist Roman Hyper Trade Dress)**

24 118. Hoist re-alleges and incorporates by reference each of the foregoing
 25 allegations as though fully set forth herein.

26 119. Hoist owns the design of the Hoist Roman Hyper Trade Dress.

27 120. Hoist's Roman Hyper Trade Dress is distinctive. Customers have
 28 come to associate the design of the Hoist Roman Hyper only with Hoist.

121. The design of the Hoist Roman Hyper Trade Dress is nonfunctional.

122. Defendants have used, and continue to use, the Hoist Roman Hyper Trade Dress without Hoist's consent in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the Defendants' products.

123. As a direct and proximate result of Defendants' conduct, Hoist is entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendants' profits related to all uses of Hoist's Roman Hyper Trade Dress; (ii) any damages sustained by Hoist as a result of Defendants' conduct, the precise amount of which shall be established by Hoist at trial; and (iii) the costs of this action.

124. In addition, Hoist will be irreparably injured by Defendants' continued infringement of Hoist's Roman Hyper Trade Dress, in a manner which may be impossible to quantify, unless enjoined by this Court. Hoist has no adequate remedy at law for this ongoing injury. Hoist therefore seeks a preliminary and permanent injunction to prohibit Defendants from any further use of Hoist's Roman Hyper Trade Dress without Hoist's express written consent in advance.

125. Defendants have willfully copied Hoist's Roman Hyper Trade Dress. Given the exceptional circumstances of flagrant and willful infringement, Plaintiff requests treble damages, judgment for a sum that this Court finds to be just, and reasonable attorney's fees, pursuant to 15 U.S.C. § 1117(a).

FIFTEENTH CLAIM FOR RELIEF

(Unfair Competition, Cal. Bus. & Prof. Code § 17200 – Hoist Roman Hyper)

126. Hoist realleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

127. Defendants' acts described above constitute unfair competition in violation of California Business and Professions Code § 17200 *et seq.*, as they are unlawful, fraudulent, unfair, misleading and likely to deceive the public.

128. As a result of Defendants' acts of unfair competition, Hoist is entitled

1 to restitution of the profits and other ill-gotten gains by Defendants.

2 129. Plaintiff is also entitled to injunctive relief pursuant to California
3 Business and Professions Code § 17203.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Hoist respectfully requests that the Court enter judgment for
6 Hoist and against Defendants, and award Hoist the following relief:

- 7 1. Permanently enjoining Defendants, their successors, officers, agents,
8 and employees, and anyone acting in concert or participation with or
9 at the behest or direction of any of them, from:
- 10 a. further infringing the '050 patent by manufacturing, using,
11 offering for sale, selling, or importing any products that infringe
12 the '050 patent;
 - 13 b. using the Hoist Fitness Tree Trade Dress or any colorable
14 imitation thereof, or any otherwise confusingly similar trade
15 dress;
 - 16 c. doing any other act or thing likely to confuse, mislead, or
17 deceive others into believing that Defendants, or their products,
18 are connected with, sponsored by, or approved by Hoist;
 - 19 d. engaging in any other activity constituting unfair competition
20 with Hoist, or constituting an infringement of Hoist's rights in
21 and to the '050 patent or the Hoist Fitness Tree Trade Dress;
 - 22 e. further infringing the '585 patent by manufacturing, using,
23 offering for sale, selling, or importing any products that infringe
24 the '585 patent;
 - 25 f. using the Hoist Folding Bench Trade Dress or any colorable
26 imitation thereof, or any otherwise confusingly similar trade
27 dress;
 - 28 g. doing any other act or thing likely to confuse, mislead, or

- 1 deceive others into believing that Defendants, or their products,
2 are connected with, sponsored by, or approved by Hoist;
- 3 h. engaging in any other activity constituting unfair competition
4 with Hoist, or constituting an infringement of Hoist's rights in
5 and to the '585 patent or the Hoist Dumbbell Rack Trade Dress;
- 6 i. further infringing the '310 patent by manufacturing, using,
7 offering for sale, selling, or importing any products that infringe
8 the '310 patent;
- 9 j. using the Hoist Dumbbell Rack Trade Dress or any colorable
10 imitation thereof, or any otherwise confusingly similar trade
11 dress;
- 12 k. doing any other act or thing likely to confuse, mislead, or
13 deceive others into believing that Defendants, or their products,
14 are connected with, sponsored by, or approved by Hoist;
- 15 l. engaging in any other activity constituting unfair competition
16 with Hoist, or constituting an infringement of Hoist's rights in
17 and to the '310 patent or the Hoist Dumbbell Rack Trade Dress;
- 18 m. using the Hoist Squat Rack Trade Dress or any colorable
19 imitation thereof, or any otherwise confusingly similar trade
20 dress;
- 21 n. doing any other act or thing likely to confuse, mislead, or
22 deceive others into believing that Defendants, or their products,
23 are connected with, sponsored by, or approved by Hoist;
- 24 o. engaging in any other activity constituting unfair competition
25 with Hoist, or constituting an infringement of Hoist's rights in
26 and to the Hoist Squat Rack Trade Dress;
- 27 p. using the Hoist Incline/Decline Bench Trade Dress or any
28 colorable imitation thereof, or any otherwise confusingly similar

trade dress;

- q. doing any other act or thing likely to confuse, mislead, or deceive others into believing that Defendants, or their products, are connected with, sponsored by, or approved by Hoist;
- r. engaging in any other activity constituting unfair competition with Hoist, or constituting an infringement of Hoist's rights in and to the Hoist Incline/Decline Bench Trade Dress;
- s. using the Hoist Roman Hyper Trade Dress or any colorable imitation thereof, or any otherwise confusingly similar trade dress;
- t. doing any other act or thing likely to confuse, mislead, or deceive others into believing that Defendants, or their products, are connected with, sponsored by, or approved by Hoist; and
- u. engaging in any other activity constituting unfair competition with Hoist, or constituting an infringement of Hoist's rights in and to the Hoist Roman Hyper Trade Dress.

- 2. Ordering that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the Defendants relating to the foregoing infringement of Hoist's patents and/or trade dress rights, or any colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, be delivered to Hoist for destruction pursuant to 15 U.S.C. § 1118;
- 3. Ordering Defendants, pursuant to 15 U.S.C. § 1116(a), to file with the Court and serve on Hoist's counsel within 30 days after service of the injunction, a written report, sworn under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;
- 4. Directing an accounting to determine Defendants' profits resulting

1 from their unlawful activities;

- 2 5. Awarding Hoist compensation for any and all damages, injury or
3 harm pursuant to 35 U.S.C. § 284, 15 U.S.C. § 1117 and California
4 law;
- 5 6. Ordering full restitution and/or disgorgement of all profits and
6 benefits that may have been obtained by Defendants as a result of
7 their wrongful conduct pursuant to 35 U.S.C. § 289 and 15 U.S.C.
8 § 1117;
- 9 7. Awarding Hoist treble damages resulting from Defendants' willful
10 and intentional conduct pursuant to 35 U.S.C. § 284 and 15 U.S.C.
11 § 1117;
- 12 8. Awarding Hoist punitive and exemplary damages pursuant to
13 California law;
- 14 9. Assessing Hoist's costs of this action and Hoist's attorneys' fees
15 against Defendants pursuant to 35 U.S.C. §§ 284-285 and 15 U.S.C.
16 § 1117; and
- 17 10. Ordering or awarding any other such relief that the Court deems just
18 and proper.

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DEMAND FOR JURY TRIAL

Hoist hereby makes a demand pursuant to Federal Rule of Civil Procedure 38(b) for a trial by jury on all issues triable to a jury.

Dated: August 31, 2015 JONES DAY,

/s/ John D. Kinton
John D. Kinton

Attorney for Plaintiff
HOIST FITNESS SYSTEMS, INC.

Email: jkinton@jonesday.com