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Attorneys for Plaintiffs
LAGREE TECHNOLOGIES, INC., LAGREE FITNESS, INC.,
MAXIMUM FITNESS INCORPORATED, and SEBASTIEN LAGREE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAGREE TECHNOLOGIES, INC., LAGREE
FITNESS, INC., MAXIMUM FITNESS
INCORPORATED, AND
SEBASTIEN LAGREE,

Plaintiffs,

v.

SPARTACUS 20TH L.P., SPARTACUS 20TH
G.P., INC., PHILIP R. PALUMBO,
JAKOB IRION, BODYROK FRANCHISE,
LIMITED PARTNERSHIP, BODYROK
FRANCHISE GP, INC., EXERCISE
TECHNOLOGIES, L.P., BODYROK
MARINA, L.P., SCULPT FITNESS
BERKELEY, LLC, AND DOES 1 THROUGH
10, INCLUSIVE,

Defendants.

CASE NO.: 3:17-CV-00795-JST

FIRST AMENDED COMPLAINT FOR:

- 1. PATENT INFRINGEMENT (35 U.S.C. § 100 *et seq.*)**
- 2. COPYRIGHT INFRINGEMENT (17 U.S.C. § 501, *et seq.*)**
- 3. TRADEMARK INFRINGEMENT (15 U.S.C. § 1051 *et seq.*)**
- 4. NAME MISAPPROPRIATION (CAL. CIVIL CODE § 3344)**
- 5. UNLAWFUL AND FRAUDULENT BUSINESS PRACTICES (CAL. BUS. PROF. CODE § 17200, *et seq.*)**
- 6. CALIFORNIA COMMON LAW UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

1 Plaintiffs Lagree Technologies, Inc., Lagree Fitness, Inc. Maximum Fitness Incorporated,
 2 and Sebastien Lagree hereby allege for their complaint against Defendants Spartacus 20th L.P.,
 3 Spartacus 20th G.P., Inc., Philip R. Palumbo, Jakob Irion, BodyROK Franchise, Limited
 4 Partnership, BodyROK Franchise GP, Inc., Exercise Technologies, L.P., BodyRok Marina, L.P.,
 5 Sculpt Fitness Berkeley, LLC, and Does 1 through 10, inclusive, on personal knowledge as to
 6 their own activities and on information and belief as to the activities of others, as follows:

7 **I. NATURE OF THIS ACTION**

8 1. This is an action for judgment of patent infringement pursuant to United States
 9 Patent Law, 35 U.S.C. § 100 *et seq.*, copyright infringement pursuant to the Copyright Act,
 10 17 U.S.C. § 501 *et seq.*, trademark infringement pursuant to the Lanham Act, 15 U.S.C. § 1051
 11 *et seq.*, name misappropriation pursuant to Cal. Civil Code § 3344, unlawful and fraudulent
 12 business practices pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.*, and unfair competition
 13 under California common law.

14 **II. JURISDICTION AND VENUE**

15 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a),
 16 2201, and 2202, the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, the Copyright Act,
 17 17 U.S.C. § 501 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*

18 3. This Court has supplemental jurisdiction over the state law claims under
 19 28 U.S.C. § 1367, as the facts underlying the state law claims are so related to the patent and
 20 copyright claims that they form part of the same case or controversy under Article III of the
 21 United States Constitution.

22 4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a
 23 substantial part of the events giving rise to the claims occurred and are occurring in this judicial
 24 district.

III. PARTIES

A. Plaintiffs

5. Plaintiff Lagree Technologies, Inc. (“**Lagree Technologies**”) is a corporation organized and existing under the laws of the State of California, with its principal place of business at 3098 North California Street, Burbank, California 91504.

6. Plaintiff Lagree Fitness, Inc. (“**Lagree Fitness**”) is a corporation organized and existing under the laws of the State of California, with its principal place of business at 3098 North California Street, Burbank, California 91504.

7. Plaintiff Maximum Fitness Incorporated (“**Maximum Fitness**”) is a corporation organized and existing und the laws of Oregon, with its principal place of business at 10015 Fairview Road, Tillamook, Oregon 97141.

8. Plaintiff Sebastien Lagree is a natural person who resides in Los Angeles County, California.

B. Defendants

9. On information and belief, **Spartacus 20th L.P.** is a Nevada limited partnership with its principal place of business at 1900 Western Avenue, Las Vegas, Nevada 89021.

10. On information and belief, **Spartacus 20th G.P., Inc.** is a Nevada corporation with its principal place of business at 1900 Western Avenue, Las Vegas, Nevada 89021. On further information and belief, **Spartacus 20th G.P., Inc.** is the general partner of Spartacus 20th L.P. (together Spartacus 20th L.P. and Spartacus 20th G.P., Inc. are hereafter referred to as “**Spartacus**”). On information and belief, Spartacus maintains a corporate office located at 2128 Lombard Street, San Francisco, California 94123.

11. On information and belief, Philip R. Palumbo (“**Palumbo**”) is a natural person who resides in San Diego County, California and is the President of Spartacus 20th G.P., Inc.

12. On information and belief, Jakob Irion (“**Irion**”) is a natural person who resides in San Francisco County, California, is the Director and Treasurer of Spartacus 20th G.P., Inc.

13. On information and belief, **BodyROK Franchise, Limited Partnership** is a Missouri limited partnership with its principal place of business at 2269 Chestnut Street,

1 Suite 388, San Francisco, California 94123. On information and belief, **BodyROK Franchise**
 2 **GP, Inc.**, is a Missouri corporation with its principal place of business at 2269 Chestnut Street,
 3 Suite 388, San Francisco, California 94123. On further information and belief, BodyROK
 4 Franchise GP, Inc. is the general partner of BodyROK Franchise, Limited Partnership (together
 5 BodyROK Franchise, Limited Partnership and BodyROK Franchise GP, Inc. are hereafter
 6 referred to as “**BodyROK Franchise**”).

7 14. On information and belief, Exercise Technologies, L.P. (“**Exercise**
 8 **Technologies**”) is a Missouri limited partnership with its principal place of business at
 9 2269 Chestnut Street, Suite 388, San Francisco, California 94123.

10 15. On information and belief, **BodyRok Marina, L.P.** is a California limited
 11 partnership with its principal place of business at 7040 Avenida Encinas, Suites 104-148,
 12 Carlsbad, California 92011. On further information and belief, BodyRok Marina L.P. is the
 13 successor in interest to **BodyRok Marina LLC**, a California limited liability corporation with its
 14 principal place of business at 453 South Sierra Avenue, Number 165, Solana Beach, CA 92075.

15 16. On information and belief, Sculpt Fitness Berkeley, LLC (“**Sculpt Fitness**”) is a
 16 California limited liability company registered by Caroline Johnson with a principal place of
 17 business at 3126A Laguna Street, San Francisco, California 94123.

18 17. Plaintiffs are without full information regarding the true names and capacities of
 19 the defendants sued herein as Does 1 through 10, inclusive. Plaintiffs will amend to allege their
 20 true names and capacities when ascertained. Upon information and belief, Defendants Does 1
 21 through 10 have intentionally obfuscated their identities and the corporate structures of
 22 Defendants in order to avoid accountability for the very allegations contained herein, and, as
 23 such, Plaintiffs have included the responsible parties in their individual capacities, as well as the
 24 identifiable entities, and Does 1 through 10, inclusive. Such additional entities may include,
 25 without limitation, BodyRok 20th Limited Partnership, BodyROK Mission GP, Inc., BodyROK
 26 Mission Limited Partnership, BodyROK Haight Street GP, Inc., BODYROK Union Square,
 27 Limited Partnership, and BODYROK Union Square GP, Inc., each of which was newly
 28 registered in either Missouri or California in 2016.

IV. BACKGROUND

A. The Lagree Fitness System

18. Sebastien Lagree is a fitness guru, celebrity trainer, entrepreneur and inventor. He is the founder of Lagree Fitness, and the creator of the Lagree Fitness Training Method (“**the Lagree Method**”), a unique Pilates-style fitness program practiced by hundreds of thousands of people in over 300 licensed studios in North America, Europe, Asia, the Middle East and Australia. He is also the inventor of the PROFORMER, MEGAFORMER and SUPRAFORMER exercise machines, each designed specifically for use with the Lagree Method.

19. Lagree Fitness was started when Lagree opened his first Pilates studio in Burbank, California in 2001. There, Lagree created a holistic fitness program which was the first to combine elements of traditional Pilates with the addition of both weight and cardio training. Lagree explains on his website that he “had a deep burning desire to add something new to the mix of personal training – a workout that would create beautiful physiques, with more precision and speed, in less time and that would free my clients from becoming a slave to the workout. A workout that was a one stop shop of the rejuvenating properties of Pilates, the strength building impact of weights, and the revitalizing effects of extreme cardio.” The program would integrate key elements of resistance and counter-resistance in a sequence that allows for periods of zero gravity at peak muscle contraction. In that regard, the method would demand intense muscle exertion with low impact and low risk of injury. In total, the program focused on peak-level achievement of five pillars: resistance, range of motion, angularity, tempo and duration. The program would come to be known in the Pilates industry and among Pilates enthusiasts as the “Lagree Method.”

1. Lagree MEGAFORMER Exercise Machine

20. Lagree’s unique program quickly gained popularity, especially among celebrities and top athletes. While happy with the success of the program, he nevertheless continued to both expand and refine the Lagree Method. Eventually, however, creativity gave way to practicality, as the limitations of the traditional “reformer” Pilates machines became evident. To free himself

of these constraints, Lagree began designing a new exercise machine that would bring his emerging methods and holistic philosophy into full flower. Lagree was convinced that the Lagree Method, and the science behind it, could revolutionize fitness, but that it was critical that he create his own unique machine. The result of this early work was the PROFORMER exercise machine.



21. The PROFORMER was much more versatile than the traditional “reformer” Pilates machine and had a number of unique features created around the five pillars concepts. The PROFORMER featured an adjustable counter-resistance system, which made Lagree’s exercises more intense while minimizing the impact on the joints and on the spine. The PROFORMER also featured adjustable transverse bars at the head and foot that permitted exercise in various poses and at different angles.

22. In 2006, Mr. Lagree’s first licensee opened its studio with the Lagree Method and the PROFORMER in Encino, California. The program was a tremendous success and by 2010, the number of licensees using the Lagree Method and PROFORMER quickly expanded.

23. Through his fitness technology lab, Lagree continued to engineer and develop state of the art concept equipment. Using cutting edge fitness science, Lagree also continued to perfect the Lagree Method. Lagree introduced his second machine for use with the Lagree Method, the MEGAFORMER. The MEGAFORMER M3 model is pictured as follows:



24. The MEGAFORMER featured rotatable arms at the head and foot designed to make the transition between poses and angles effortless. The machine also featured an enhanced counter-resistance system.

25. The MEGAFORMER also has a redesigned carriage platform with precisely patterned handles and slots for hands and feet designed for peak-achievement of range of motion and angularity.

26. The machine was lighter and better suited for use in group classes. The MEGAFORMER machine comes in the following models: M2, M2S, M3 and M3S.

2. The Lagree Method

27. Sebastien Lagree designed a number of unique exercises on the PROFORMER and MEGAFORMER machine. Each unique exercise focused on specific muscles within the core, upper body or lower body muscle groups. As with the design of the machine, each exercise was designed to reach peak achievement of the five pillars: resistance, range of motion, angularity, tempo and duration.

28. Each Lagree exercise specified (1) hand placement, foot placement, and body angle and alignment on the MEGAFORMER machine, (2) targeted muscle exercise based on precise body movement (e.g., flexion and extension, abduction and adduction), all using counter-resistance system on the MEGAFORMER, and (3) breathing techniques.

29. Each Lagree exercise is given a unique trademarked name, e.g., Catfish, Wheelbarrow, Escalator Lunge, Elevator Lunge, Scrambled Eggs, Donkey Kick.

30. Due to the innovative approach and the results practitioners enjoy, the Lagree Method and the MEGAFORMER have achieved overwhelming commercial success and have developed what the New York Times describes as a “cult following.” <http://www.nytimes.com/2013/02/01/nyregion/megaformer-workout-at-slt-studio.html>. Sebastien Lagree and the Lagree Method have been featured on “*Good Morning America*” and in numerous news and entertainment outlets, including *The Wall Street Journal*, *People.com*, *Huffington Post*, the *L.A. Times*, and the *Chicago Tribune*, to name a few.

3. Lagree’s Training Manual

31. To ensure the best client experience, Lagree fitness trainers and Lagree Licensee’s fitness trainers must be certified to teach the unique Lagree exercise techniques through a certification program (“**Lagree Method Certification Program**”). To ensure that Lagree-Certified Trainers employ the precise, correct exercise techniques, Sebastien Lagree authored a confidential training manual (“**the Lagree Manual**”).

32. The Lagree Manual contains over fifty (50) pages of detailed training instructions detailing the best methods both for teaching the exercises and for practicing the exercises. The Lagree Manual contains the “specification” for each Lagree exercise, including for each exercise precise instructions on (1) hand placement, foot placement, and body angles on the MEGAFORMER machine, (2) precise, relative body alignment and orientation, (3) precise body motion, including motion using the counter-resistance system on the MEGAFORMER, (4) isolating target muscles, (5) breathing techniques, and (6) identification of specific exercise modifications and variations and related exercises, to tailor the workout. The Lagree Manual also contains detailed instructions on philosophy, trainer etiquette, creating the best class environment, demeanor and client interaction.

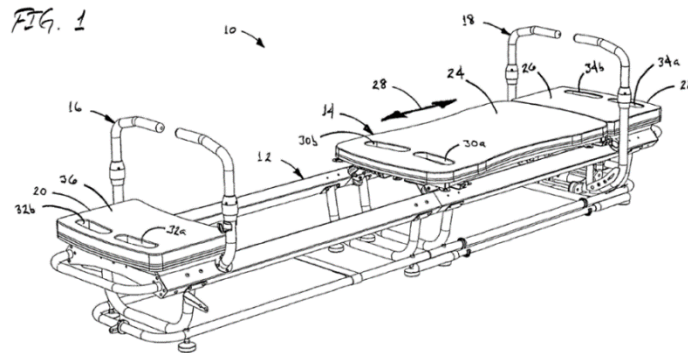
B. **Lagree’s Intellectual Property**

33. To protect his valuable intellectual property (hereinafter “**Lagree Intellectual Property**”), Lagree has sought and been granted numerous patents, trademark registrations and

copyright registrations directed to the MEGAFORMER machine and the Lagree Method, including its unique exercises and training methods.

1. Lagrange Patents

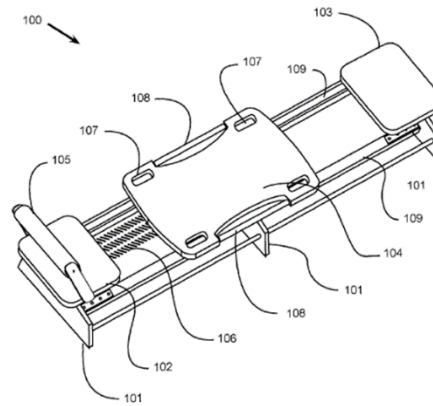
34. On February 14, 2014, the United States Patent and Trademark Office (“USPTO”) issued U.S. Patent No. 8,641,585 (“the ’585 patent”), entitled “Exercise Machine,” to named inventor Sebastien Lagree. Figure 1 of the ’585 patent (below) illustrates an embodiment of the invention:



35. Lagree Technologies is the owner of all right, title, and interest in and to the ’585 patent. Maximum Fitness is the exclusive licensee of the ’585 patent. The MEGAFORMER machine practices the ’585 patent. A true and correct copy of the ’585 patent forms **Exhibit 1** hereto.

36. On August 16, 2016, the USPTO issued U.S. Patent No. 9,415,253 (“the ’253 patent”), entitled “Exercise Machine Carriage Handle System,” to named inventors Sebastien Lagree and John C. Hamilton. Figure 1 of the ’253 patent illustrates an embodiment of the invention:

FIG. 1



Lagree Technologies is the owner of all right, title, and interest in and to the '253 patent. Maximum Fitness is the exclusive licensee of the '253 patent. The MEGAFORMER machine practices the '253 patent. A true and correct copy of the '253 patent forms **Exhibit 2** hereto.

37. On November 22, 2016, the USPTO issued U.S. Patent No. 9,498,667 ("the '667 patent"), titled "Exercise Machine Carriage Handle," to named inventors Sebastien Lagree and John C. Hamilton. (The application leading to '667 patent is a continuation of the application leading to the '253 patent and thus shares the same Figure 1, above.) Lagree Technologies is the owner of all right, title, and interest in and to the '667 patent. Maximum Fitness is the exclusive licensee of the '667 patent. The MEGAFORMER machine practices the '667 patent. A true and correct copy of the '667 patent forms **Exhibit 3** hereto.

38. The '585 patent, '253 patent, and '667 patent are referred to collectively herein as the "**Lagree Patents.**"

2. Lagree Copyrights

39. Lagree Fitness holds copyrights in the current Lagree Manual, which were duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificates for the Lagree Manual, bearing the numbers TXu 2-021-950 and TXu 2-026-210, which form **Exhibits 4 and 5** respectively. ("Lagree Copyrights").

1 3. Lagree Registered Trademarks

2 40. Since at least 2006, Sebastien Lagree has developed unique and highly-distinctive
3 exercises in conjunction with the Lagree Method and the PROFORMER and MEGAFORMER
4 machines. Ever since that time, Lagree Fitness has continuously marketed, advertised and
5 promoted the Lagree Method, its unique exercises, and the MEGAFORMER machine, in
6 interstate commerce in the United States. Lagree Fitness (and before it, SPX Fitness, Inc. (“**SPX**
7 **Fitness**”)) administers licenses to approved studios for use of (1) the Lagree Method and (2) the
8 right to purchase or lease the MEGAFORMER machine. Lagree Fitness has expended
9 significant resources in marketing, advertising and promoting the Lagree Method, its unique
10 exercises, and the MEGAFORMER machine, and, as a direct consequence, has expanded the
11 number of licensed studios to over 300 in 30 U.S. States and in eighteen countries in Europe,
12 Asia, the Middle East and Australia. Lagree Fitness uses unique names to identify each unique
13 exercise in connection with providing Lagree Method fitness classes, workouts, training, and
14 exercise routines. Each unique exercise is a valid and protectable trademark under either
15 15 U.S.C. § 1114(1) or 15 U.S.C. § 1125(a).

16 41. Lagree Technologies is the owner of U.S. Trademark Reg. No. 5,113,116, filed on
17 April 25, 2016 and registered on January 3, 2017, for the word mark “**SUPER LUNGE**” in
18 connection with providing fitness classes, workouts, training, and exercise routines.

19 42. Lagree Technologies is the owner of U.S. Trademark Reg. No. 5,113,043 filed on
20 April 21, 2016 and registered on January 3, 2017, for the word mark “**ESCALATOR LUNGE**”
21 in connection with providing fitness classes, workouts, training, and exercise routines.

22 43. Lagree Technologies is the owner of U.S. Trademark Reg. No. 5,112,999 filed on
23 April 20, 2016 and registered on January 3, 2017, for the word mark “**ELEVATOR LUNGE**” in
24 connection with providing fitness classes, workouts, training, and exercise routines.

25 44. Lagree Technologies is the owner of U.S. Trademark Reg. No. 5,113,114 filed on
26 April 25, 2016 and registered on January 3, 2017, for the word mark “**FIFTH LUNGE**” in
27 connection with providing fitness classes, workouts, training, and exercise routines.
28

45. Lagree Technologies is the owner of U.S. Trademark Reg. No. 5,090,889 filed on April 21, 2016 and registered on November 29, 2016, for the word mark “**CATFISH**” in connection with providing fitness classes, workouts, training, and exercise routines.

46. Lagree Technologies is the owner of U.S. Trademark Reg. No. 5,031,174 filed on January 19, 2016 and registered on August 30, 2016, for the word mark “**FRENCH TWIST**” in connection with providing fitness classes, workouts, training, and exercise routines.

47. Lagree Technologies is the owner of the foregoing registered trademarks (“**Lagree Registered Trademarks**”). True and correct copies of the registrations for the Lagree Registered Trademarks are attached hereto as composite **Exhibit 6**.

4. Lagree Common Law Trademarks

48. Lagree Technologies is the owner of the following common law trademarks used in connection with providing fitness classes, workouts, training, and exercise routines (“**Lagree Common Law Trademarks**”):

- “**WHEELBARROW**” (registration pending)
- “**SCRAMBLED EGGS**” (registration pending)
- “**DONKEY KICKS**” (registration pending)
- “**REVERSE WHEELBARROW**”
- “**GIANT WHEELBARROW**”
- “**REVERSE GIANT WHEELBARROW**”
- “**REVERSE CATFISH**”
- “**SPOON**”
- “**SUPER CRUNCH**”
- “**MEGA CRUNCHES**”
- “**ANGEL CRUNCHES**”
- “**TEASER**”
- “**THE MERMAID TWIST**”
- “**THE MERMAID CRUNCH**”
- “**THE KNEELING TORSO TWIST**”

- 1 • **“THE TAILBONE TORSO TWIST”**
- 2 • **“THE SERVE THE PLATTER”**
- 3 • **“THE SEXY BACK”**
- 4 • **“THE GIANT SEXY BACK”**
- 5 • **“THE NEWSPAPER”**
- 6 • **“SWIMMER”**
- 7 • **“FLOOR LUNGE”**
- 8 • **“BUNGEE KICKS”**
- 9 • **“BACK FLOOR LUNGE”**
- 10 • **“SPIDER LUNGE”**

11 49. Lagree Fitness is a non-exclusive licensee of the Lagree Registered Trademarks
 12 and the Lagree Common Law Trademarks (together **“Lagree Trademarks”**) in connection with
 13 providing fitness classes, workouts, training, and exercise routines, including the exclusive right
 14 to sublicense the use of the Lagree Trademarks. In addition to the Lagree Registered
 15 Trademarks, Lagree Fitness and/or its sublicensees since at least 2014 have continuously used
 16 the Common Law Trademarks in connection with providing fitness classes, workouts, training
 17 and exercise routines throughout the United States [including throughout California]. As a result
 18 of said use, the Common Law Trademarks have developed and now have a secondary and
 19 distinctive trademark meaning to consumers, including exercise professionals, fitness clients and
 20 prospective clients, and has come to indicate to said consumers that the services and goods with
 21 which the Common Law Trademarks are used are associated with Lagree Fitness and/or the
 22 Lagree Method.

1 **C. The Accused BodyRok Machine**

2 50. Upon information and belief, by early 2016, the exercise machine of Figure 1
3 (below) (“**the Accused BodyRok Machine**”) was featured at the opening of the BodyRok
4 Mission Studio in San Francisco, California.



13 Fig. 1

14 51. Upon information and belief, the features of the Accused BodyRok Machine were
15 copied from a MEGAFORMER M3 machine. Those features include, among other things, the
16 rotatable handle feature, adjustable cable system, and carriage handle system, of the
17 MEGAFORMER M3.

18 52. Upon information and belief, the Accused BodyRok Machine is in current use by
19 BodyRok fitness trainers and clientele, as well as BodyRok Haight Street in San Francisco,
20 BodyRok Marina in San Francisco, BodyRok Berkeley in Berkeley, California. Upon
21 information and belief, the Accused BodyRok Machine will be introduced at BodyRok Encinitas
22 in Encinitas, California, sometime in 2017.

53. Upon information and belief, in and around January 2017, carriage handles appear to have been removed from one or more Accused BodyRok Machines as shown in Figure 2 below.



Fig. 2

D. BodyRok's Infringing Activities and Offending Conduct

54. Palumbo, Irion and the other defendants own, operate and/or franchise studios under the name "BodyRok," a Pilates studio business and franchisor in direct competition with Lagree studios. Palumbo, Irion and the other defendants unlawfully co-opted and are now using Lagree Intellectual Property and Sebastien Lagree's name and celebrity in connection with BodyRok Studios, all with the intention of deceiving the public, potential licensees and fitness professionals into believing that BodyRok studios offer the same unique exercises, employing the same training techniques, on the same innovative machines, with the same high quality, as Lagree studios – when they, in fact, do not. These willful and deceptive acts constitute infringement of Plaintiffs' patents, copyrights and trademarks, as well as name misappropriation and unfair competition.

1. "BodyRok" Is a Former Lagree Licensee of Lagree

55. In 2011, SPX Fitness entered into three licensing agreements, which gave Lisa and Dean Grafos ("Grafos") the rights to open Lagree studios in exclusive California zip code locations in Carlsbad, BodyRok Marina LLC the rights to open Lagree studio in San Francisco, and Ark Holdings, Inc. exclusive California zip code locations in Danville and Walnut Creek. The license agreements granted the rights to teach the Lagree Method and lease and use

1 PROFORMER and/or MEGAFORMER machines. The license fee included certification for
 2 instructors in the Lagree Method Certification Program, including access to the Lagree Manual
 3 and other proprietary training videos and materials. Upon information and belief, Palumbo and
 4 Irion had an affiliation with Grafos, BodyRok Marina LLC and Ark Holdings, Inc. in connection
 5 opening BodyRok studios in these four zip code locations.

6 56. Upon information and belief, Grafos opened BodyRok Carlsbad (“**BodyRok**
 7 **Carlsbad Studio**”) under license from SPX Fitness. Upon information and belief, BodyRok
 8 Marina LLC opened BodyRok Marina (“**the BodyRok Marina Studio**”) under license from
 9 SPX Fitness. The instructors at both studios were certified. Both studios featured
 10 MEGAFORMER M2 machines at their respective openings. Both studios were promoted based
 11 on their association with Lagree, and their use of the Lagree Method on MEGAFORMER
 12 machines.

13 57. BodyRok studios were never ultimately opened in Walnut Creek or Danville.
 14 Upon information and belief, on March 10, 2014, the license was terminated at the behest of The
 15 Ark Holdings, L.P. and/or its general partner with SPX Fitness refunding the licensing fee.

16 **2. BodyRok Was Formed to Compete with Lagree Fitness**

17 58. In January 2014, just three months prior to the termination of the Walnut Creek
 18 and Danville licenses, Palumbo and Irion registered Spartacus and a separate real estate holding
 19 partnership (“**Spartacus Properties**”) as domestic partnerships in the State of Nevada. Upon
 20 information and belief, on March 19, 2014, Spartacus Properties purchased a building located at
 21 3585 20th Street, San Francisco, California 94110.

22 59. Upon information and belief, the building was leased to Spartacus, which opened
 23 a BodyRok fitness studio in the building later in 2016 (“**BodyRok Mission Studio**”). The
 24 BodyRok Mission Studio was not a Lagree licensed studio.

25 **3. BodyRok Copied the Patented Features of the Lagree MEGAFORMER**

26 60. Upon information and belief, Palumbo and Irion obtained a MEGAFORMER M3
 27 model machine belonging to another Lagree Fitness licensee for the express purpose of creating
 28 a knock off machine for use at the BodyRok Mission Studio. Upon information and belief, the

1 knock-off machine was later commercialized as the Accused BodyRok Machine, which was
2 featured at the opening of the BodyRok Mission Studio.

3 **4. BodyRok Copied the Lagree Manual for use at the BodyRok Mission**
4 **Studio**

5 61. As affiliates of the Grafos, BodyRok Marina LLC and/or Ark Holdings, Inc.,
6 Palumbo and Irion had password access to and electronic copies of the Lagree Manual and other
7 proprietary information owned by Lagree Fitness. Upon information and belief, Palumbo and
8 Irion downloaded the Lagree Fitness Manual from the Lagree website and copied substantially
9 all of its contents, layout and formatting into a BodyRok manual (“**BodyRok Manual**”) for use
10 at their BodyRok Mission Studio to certify BodyRok instructors on the Lagree Method using the
11 Accused BodyRok Machines.

12 62. The BodyRok Manual recites the “specification” for each Lagree Method exercise
13 from the Lagree Manual *verbatim*, including all of the Lagree Trademarks. Upon information
14 and belief, Pilates machine classes at BodyRok Mission Studio all use the Lagree Method on
15 Accused BodyRok Machines, as taught by BodyRok certified instructors, using the Lagree
16 Trademarks to identify Lagree Method exercises.

17 63. Upon information and belief, Palumbo and Irion have used and provided
18 instructions for use of the Lagree Method on the Accused BodyRok Machines at the BodyRok
19 Mission Studio, and have used the Lagree Trademarks to identify Lagree Method exercises.

20 64. Upon information and belief, the success of the BodyRok Mission Studio is
21 wholly derived from (1) its unauthorized and infringing use of the BodyRok Manual to teach
22 classes and certify instructors on the specified exercises and routines comprising the Lagree
23 Method, (2) the use of the Lagree Trademarks to identify Lagree Method exercises, and (3) its
24 unlicensed and infringing use of the Accused BodyRok Machine.

25 **5. BodyRok Uses the Accused BodyRok Machines, Lagree Trademarks, and**
26 **BodyRok Manual to Form Studios that Compete with Lagree**

27 65. Upon information and belief, in 2013, BodyRok Marina LLC was converted to
28 BodyRok Marina L.P., with a new general partner and new set of limited partners. Palumbo,

1 Irion and BodyRok Marina L.P and/or its general partner replaced the MEGAFORMER M2
2 model machines at the BodyRok Marina Studio with Accused BodyRok Machines. On
3 information and belief, Palumbo, Irion and BodyRok Marina L.P. use the BodyRok Manual,
4 along with the Lagree Trademarks, at BodyRok Marina Studio in the same infringing manner as
5 the BodyRok Mission Studio.

6 66. Upon information and belief, the success of the BodyRok Marina Studio, while
7 operated as a Lagree licensed studio, was due to the studio's affiliation with Sebastien Lagree,
8 the Lagree Method, and the MEGAFORMER machine. Upon information and belief, the
9 continued success of the BodyRok Marina Studio after termination of the license is wholly
10 derived from (1) its unauthorized and infringing use of the BodyRok Manual to teach classes and
11 certify instructors on the specified exercises and routines comprising the Lagree Method, (2) the
12 use of the Lagree Trademarks to identify Lagree Method exercises, and (3) its unlicensed and
13 infringing use of the Accused BodyRok Machine.

14 67. Upon information and belief, Palumbo and Irion have used and provided
15 instructions for use of the Lagree Method on the Accused BodyRok Machines at the BodyRok
16 Marina Studio.

17 68. Upon information and belief, in 2016 the ownership of the BodyRok Carlsbad
18 Studio was transferred to Spartacus in 2016 and moved to a new location in Encinitas
19 ("BodyRok Encinitas Studio"). Upon information and belief, while BodyRok Encinitas Studio
20 currently uses the MEGAFORMER M2 model machines transferred from the BodyRok Carlsbad
21 Studio, Palumbo, Irion and Spartacus have imminent plans to replace the MEGAFORMER M2
22 model machines with Accused BodyRok Machines. Upon information and belief, Palumbo,
23 Irion and Spartacus are using the BodyRok Manual, along with the Lagree Trademarks, at
24 BodyRok Encinitas Studio in the same infringing manner as the BodyRok Mission Studio. Upon
25 information and belief, the success of the BodyRok Encinitas Studio is and will continue to be
26 wholly derived from (1) its unauthorized and infringing use of the BodyRok Manual to teach
27 classes and certify instructors on the specified exercises and routines comprising the Lagree
28 Method, (2) the use of the Lagree Trademarks to identify Lagree Method exercises, and (3) its

1 use of the MEGAFORMER M2 model machines now and the Accused BodyRok Machines in
2 the near future.

3 69. Upon information and belief, in 2016, Palumbo, Irion and Spartacus opened a
4 fourth Studio, BodyRok Haight, in San Francisco (“**BodyRok Haight Studio**”). Upon
5 information and belief, the Accused BodyRok Machines are featured at the BodyRok Haight
6 Studio. Upon information and belief, the BodyRok Haight Studio is using the BodyRok Manual,
7 along with the Lagree Trademarks, in the same infringing manner as the BodyRok Mission
8 Studio. Upon information and belief, the success of the BodyRok Haight Studio is based solely
9 on (1) its unauthorized and infringing use of the BodyRok Manual to teach classes and certify
10 instructors on the specified exercises and routines comprising the Lagree Method, (2) the use of
11 the Lagree Trademarks to identify Lagree Method exercises, and (3) its unlicensed and infringing
12 use of the Accused BodyRok Machine.

13 70. Upon information and belief, Palumbo and Irion have used and provided
14 instructions for use of the Lagree Method on the Accused BodyRok Machines at the BodyRok
15 Haight Studio.

16 **6. BodyRok Franchise Uses the Infringing Machines and Copied Manual**

17 71. In or around March 2015, Palumbo and Irion embarked on franchising their
18 BodyRok business (“**BodyRok Franchise Program**”). To that end, upon information and
19 belief, Palumbo and Irion organized defendants BodyROK Franchise L.P. and its general partner
20 BodyROK Franchise G.P. to administer the BodyRok Franchise Program.

21 72. Upon information and belief, in late 2015, Palumbo and Irion also acquired
22 Exercise Technologies to make, have made, sell, offer for sale, import and/or license the
23 Accused BodyRok Machines to franchisees.

24 73. Upon information and belief, BodyROK Franchise promotes its franchises by
25 offering the misleading “BodyROK system,” which it licenses to franchisees for use in retail
26 outlet studios (“**BodyRok Franchisee Studios**”). BodyROK claims in its franchisee disclosure
27 statements that the BodyROK system was developed by Irion in 2011. Upon information and
28 belief, however, the “BodyROK system” consists of (1) using the Lagree Method as taught by

the BodyRok Manual and (2) rights to purchase or lease Accused BodyRok Machines. Upon information and belief, BodyRok Franchisee Studios are obligated to operate using the BodyROK system. Upon information and belief, BodyRok Franchisee Studios may only use the Accused BodyRok Machines purchased or leased from Exercise Technologies and franchisee instructors must be certified to teach the Lagree Method as taught by the BodyRok Manual and refer to exercises using the Lagree Trademarks.

74. Upon information and belief, the BodyROK Franchise Program and the BodyROK system are promoted and marketed to prospective franchisees as providing the same Lagree Method exercises with the same or similar innovations as machines featured at Lagree studios.

75. Upon information and belief, BodyRok Berkeley is a licensed studio (“**BodyRok Berkeley Studio**”). Upon information and belief, BodyRok Berkeley Studio is owned by defendant Sculpt Fitness, which is a franchisee of BodyROK Franchise. Upon information and belief, the Accused BodyRok Machines are used at the BodyRok Berkeley Studio. Upon information and belief, the BodyRok Manual and the Lagree Trademarks are used at the BodyRok Berkeley Studio in the same manner as the BodyRok Mission Studio.

76. Upon information and belief, Palumbo and Irion have used and provided instructions for use of the Lagree Method on the Accused BodyRok Machines the BodyRok Berkeley Studio.

77. Upon information and belief, the success of the BodyRok Berkeley Studio is wholly derived from (1) its unauthorized and infringing use of the BodyRok Manual to teach classes and certify instructors on the specified exercises and routines comprising the Lagree Method, (2) the use of the Lagree Trademarks to identify Lagree Method exercises, and (3) its unlicensed and infringing use of the Accused BodyRok Machines.

78. Upon information and belief, BodyRok Petaluma is a licensed studio (“**BodyRok Petaluma Studio**”). Upon information and belief, BodyRok Berkeley Studio is owned by an unknown franchisee of BodyROK Franchise. Upon information and belief, the Accused BodyRok Machines are used at the BodyRok Petaluma Studio. Upon information and belief, the

1 BodyRok Manual and the Lagree Trademarks are used at the BodyRok Petaluma Studio in the
2 same manner as the BodyRok Mission Studio.

3 79. Upon information and belief, Palumbo and Irion have used and provided
4 instructions for use of the Lagree Method on the Accused BodyRok Machines the BodyRok
5 Petaluma Studio.

6 80. Upon information and belief, the success of the BodyRok Petaluma Studio is and
7 will be wholly derived from (1) its unauthorized and infringing use of the BodyRok Manual to
8 teach classes and certify instructors on the specified exercises and routines comprising the
9 Lagree Method, (2) the use of the Lagree Trademarks to identify Lagree Method exercises, and
10 (3) its unlicensed and infringing use of the Accused BodyRok Machines.

11 81. Upon information and belief, BodyRok Union Square, Limited Partnership has
12 entered a franchise agreement for a BodyRok Studio in the Union Square area of San Francisco
13 (“**BodyRok Union Square Studio**”). Upon information and belief, BodyRok Union Square GP,
14 Inc. is the general partner BodyRok Union Square, Limited Partnership. On information and
15 belief, Palumbo and Irion are partners in BodyRok Union Square, Limited Partnership. On
16 information and belief, the BodyRok Union Square Studio will open in 2017. On information
17 and belief, the BodyRok Union Square Studio will feature the Accused BodyRok Machine and
18 will employ the BodyRok Manual to teach classes and certify instructors based on the Lagree
19 Method.

20 7. BodyRok Has Traded on Sebastien Lagree’s Name and Celebrity without
21 Authorization

22 82. In addition to copying the MEGAFORMER and the Lagree Manual, and teaching
23 the Lagree Method without authorization, Palumbo, Irion and Spartacus have used Sebastien
24 Lagree’s name and celebrity without permission to promote BodyRok studios. For example, the
25 BodyRok Encinitas Studio website until recently promoted its training as having been
26 “[d]eveloped by Hollywood celebrity trainer Sebastien Lagree:”
27
28

SCULPT

Our signature class. Developed by Hollywood celebrity trainer Sebastien Lagree, SPX is an innovative blend of pilates, cardio and weight training specifically designed to strengthen, tighten, and tone the body quickly and safely using our specially engineered, state-of-the-art Megaformer™ (we like to think of it as the Ferrari of reformers ...).

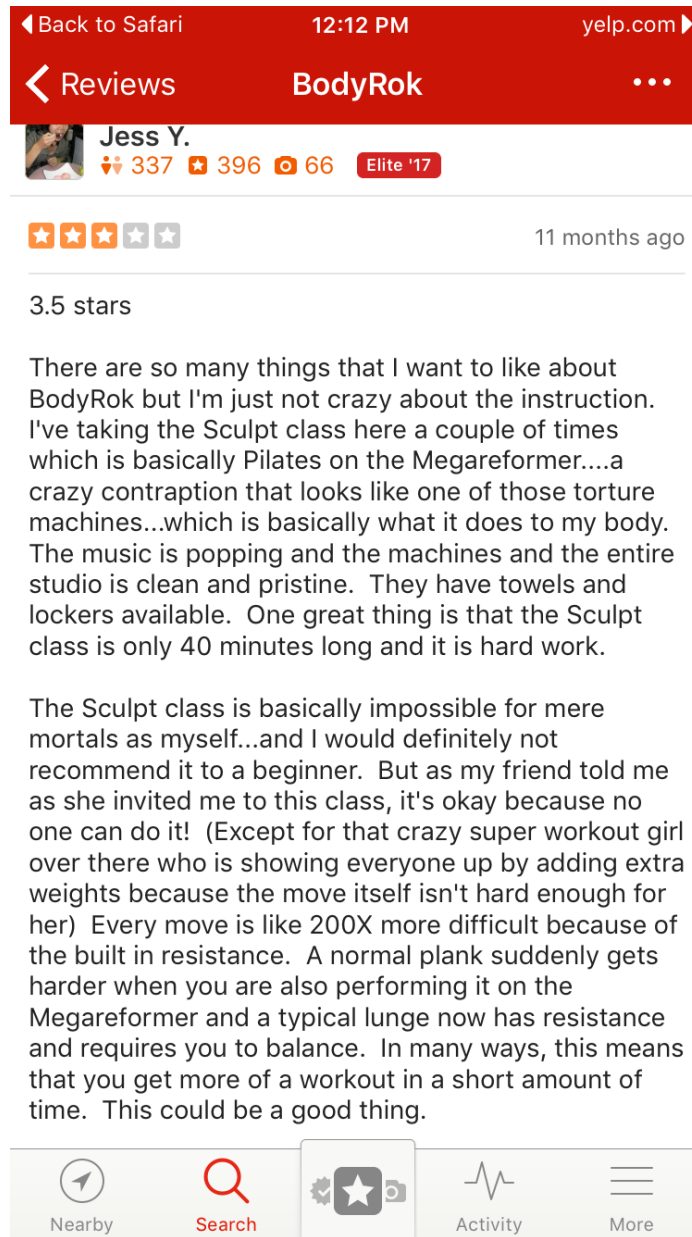
This 40-minute, music-inspired, full body workout gets and keeps your heart rate up while targeting your upper body, lower body and core. This class will give you that additional time to achieve a deeper burn and enhanced results. Be careful ... you'll get hooked!

POWERED BY:

healcode® + MINDBODY

8. BodyRok Has Caused Significant Damage to Plaintiffs

83. Palumbo and Irion, and their various entities and partners, have taken valuable Lagree Intellectual Property and unlawfully used it to clone an enterprise that directly competes with Lagree and its licensees. By so doing, they deceive the public into believing that BodyRok studios, exercises and machines are sponsored, approved or authorized by Sebastien Lagree and Lagree, when they are not. The public is further misled to believe that BodyRok studios, exercises and machines are of the same high standards and quality as Lagree Fitness, when they are not. The damage caused to Lagree and its reputation by such deception is exemplified in the following *Yelp* review of a BodyRok Studio from February 29, 2016:



9. Defendants' and Related Entities' Relationship and Activities

84. On information and belief, Spartacus 20th L.P. owns the BodyRok Marina Studio.

85. On information and belief, Spartacus 20th L.P. owns the BodyRok Encinitas Studio.

86. On information and belief, Spartacus 20th L.P. owns the BodyRok Mission Studio.

87. On information and belief, Spartacus 20th L.P. owns the BodyRok Haight Studio.

1 88. On information and belief, Spartacus 20th G.P., Inc. operates the BodyRok
2 Marina Studio.

3 89. On information and belief, Spartacus 20th G.P., Inc. operates the BodyRok
4 Encinitas Studio.

5 90. On information and belief, Spartacus 20th G.P., Inc. operates the BodyRok
6 Mission Studio.

7 91. On information and belief, Spartacus 20th G.P., Inc. operates the BodyRok Haight
8 Studio.

9 92. On information and belief, Sculpt Fitness Berkeley, LLC owns the BodyRok
10 Berkeley Studio.

11 93. On information and belief, Sculpt Fitness Berkeley, LLC is franchised to operate
12 the BodyRok Berkeley Studio.

13 94. On information and belief, BodyRok Franchise, Limited Partnership is the
14 franchisor that franchised Sculpt Fitness Berkeley, LLC to operate the BodyRok Berkeley
15 Studio.

16 95. On information and belief, Exercise Technologies, L.P. provided Accused
17 BodyRok machines to Sculpt Fitness Berkeley, LLC in connection with the operation of the
18 BodyRok Berkeley Studio.

19 96. On information and belief, Palumbo is the general partner of Exercise
20 Technologies, L.P.

21 97. In the alternative, Exercise Tech GP, Inc. is the general partner of Exercise
22 Technologies, L.P.

23 98. In the alternative, BodyRok Marina, L.P. owns the BodyRok Marina Studio.

24 99. In the alternative, BodyRok Marina, L.P. is franchised to operate the BodyRok
25 Marina Studio.

26 100. In the alternative, BodyRok Franchise, Limited Partnership is the franchisor that
27 franchised BodyRok Marina, L.P. to operate the BodyRok Marina Studio.
28

1 101. In the alternative, Exercise Technologies, L.P. provided Accused BodyRok
2 machines to BodyRok Marina, L.P. in connection with the operation of the BodyRok Marina
3 Studio.

4 102. In the alternative, BodyRok Mission, L.P. owns the BodyRok Mission Studio.

5 103. In the alternative, BodyRok Mission, L.P. is franchised to operate the BodyRok
6 Mission Studio.

7 104. In the alternative, BodyRok Franchise, Limited Partnership is the franchisor that
8 franchised BodyRok Mission, L.P. to operate the BodyRok Mission Studio.

9 105. In the alternative, BodyRok Mission GP, Inc. operates the BodyRok Mission
10 Studio.

11 106. In the alternative, Exercise Technologies, L.P. provided Accused BodyRok
12 machines to BodyRok Mission GP, Inc. in connection with the operation of the BodyRok
13 Mission Studio.

14 107. On information and belief, BodyRok Mission GP, Inc. is the general partner of
15 BodyRok Mission, L.P.

16 108. In the alternative, BodyRok Haight Street GP, Inc. owns the BodyRok Haight
17 Studio.

18 109. In the alternative, BodyRok Haight Street GP, Inc. is franchised to operate the
19 BodyRok Haight Studio.

20 110. In the alternative, BodyRok Franchise, Limited Partnership is the franchisor that
21 franchised BodyRok Haight Street GP, Inc. to operate the BodyRok Haight Studio.

22 111. In the alternative, BodyRok Haight Street GP, Inc. operates the BodyRok Haight
23 Studio.

24 112. In the alternative, Exercise Technologies, L.P. provided Accused BodyRok
25 machines to BodyRok Haight Street GP, Inc. in connection with the operation of the BodyRok
26 Haight Studio.

113. In the alternative, Exercise Technologies, L.P. provided Accused BodyRok machines to BodyRok Haight Street GP, Inc. in connection with the operation of the BodyRok Haight Studio.

E. Defendants Received Written Notice of Their Patent Infringement

114. Between August 2016 and December 2016, Plaintiffs provided Defendants with written notice of the Lagree Patents, along with copies of the patents, as well as notice of Defendants' infringement of the Lagree Patents. True and correct copies of said letters form **Exhibits 7-11** hereto.

115. In addition, Defendants have had constructive notice of the Lagree Patents based on Plaintiffs' marking of patented articles in accordance with 35 U.S.C. § 287(a).

V. FIRST CAUSE OF ACTION

(Infringement of U.S. Patent No. 9,415,253 – Carriage Side Handles)

116. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

117. As described below, Defendants have infringed and continue to infringe the '253 patent.

118. The Accused BodyRok Machine infringes at least claim 1 of the '253 patent either literally or under the doctrine of equivalents.

119. Claim 1 recites an exercise machine, comprising:

a **frame** having a **track**, a first end and a second end, wherein the track has a **longitudinal axis**;

a **carriage** having an upper surface, a first end, a second end opposite of the first end, a first side and a second side opposite of the first side, wherein the carriage is movably connected to the track and adapted to be movable along a portion of the longitudinal axis of the track during execution of an exercise;

a **bias member** connected between the frame and the carriage, wherein the bias member provides a biasing force to the carriage;

a **first handle** connected to the carriage near the first side, wherein the first handle is adapted for grasping with a first hand of a user; a **second handle** connected to the carriage near the second side, wherein the second handle is adapted for grasping with a second hand of the user; wherein the first handle and the second handle are each comprised of an elongated structure and are substantially parallel with respect to the longitudinal axis of the track;

a **first opening** between the first handle and the carriage, wherein the first opening is elongated in a direction substantially parallel to the longitudinal axis of the track;

and a **second opening** between the second handle and the carriage, wherein the second opening is elongated in a direction substantially parallel to the longitudinal axis of the track.

120. The Accused BodyRok Machine meets each element of claim 1 as shown in Figure 3:

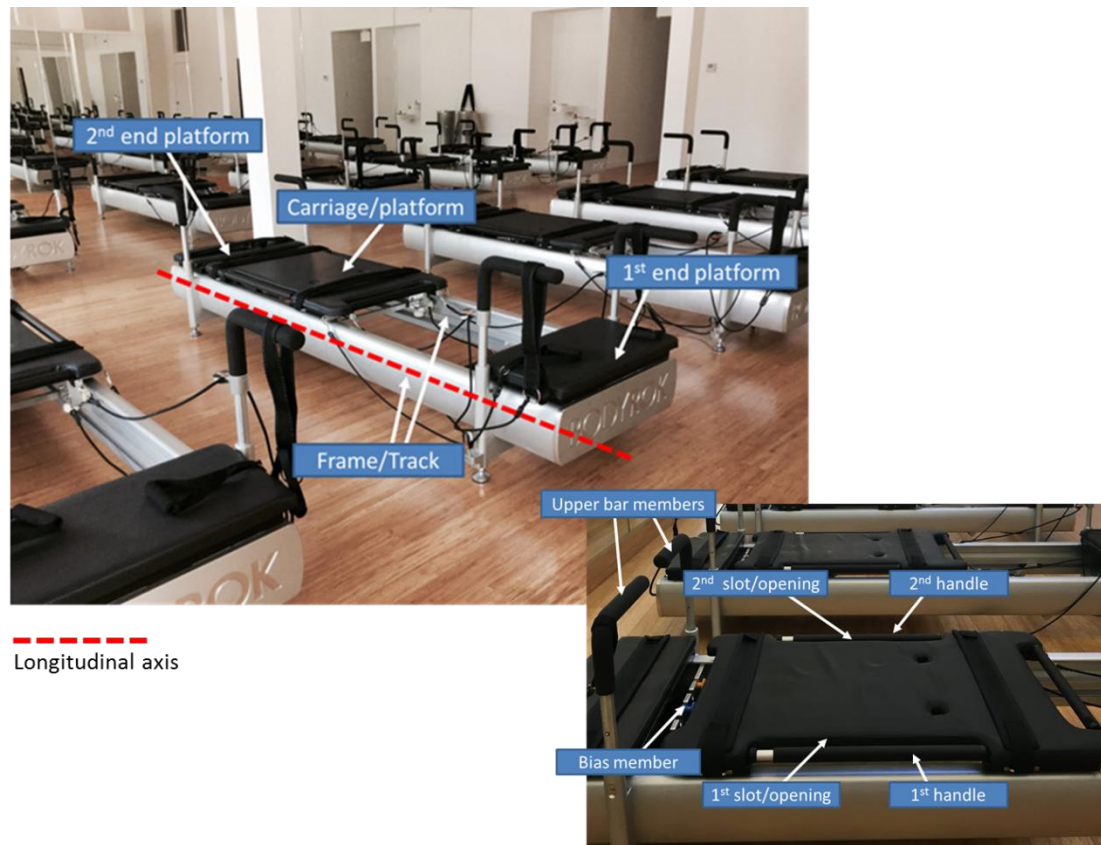


Fig. 3

121. The Accused BodyRok Machine has a frame having a track, a first end and a second end, wherein the track has a longitudinal axis.

122. The Accused BodyRok Machine has a carriage having an upper surface, a first end, a second end opposite of the first end, a first side and a second side opposite of the first side.

123. The carriage of the Accused BodyRok Machine is movably connected to the track and adapted to be movable along a portion of the longitudinal axis of the track during execution of an exercise.

124. The Accused BodyRok Machine has a bias member connected between the frame and the carriage, wherein the bias member provides a biasing force to the carriage.

125. The Accused BodyRok Machine has a first handle connected to the carriage near the first side, wherein the first handle is adapted for grasping with a first hand of a user.

126. The Accused BodyRok Machine has a second handle connected to the carriage near the second side, wherein the second handle is adapted for grasping with a second hand of the user.

127. The first handle and the second handle of the Accused BodyRok Machine are each comprised of an elongated structure and are substantially parallel with respect to the longitudinal axis of the track.

128. The Accused BodyRok Machine has a first opening between the first handle and the carriage, wherein the first opening is elongated in a direction substantially parallel to the longitudinal axis of the track.

129. The Accused BodyRok Machine has a second opening between the second handle and the carriage, wherein the second opening is elongated in a direction substantially parallel to the longitudinal axis of the track.

130. Defendants Palumbo, Irion, Spartacus, Exercise Technologies, BodyRok Marina L.P. and Sculpt Fitness ("Group I Defendants") make, use, offer to sell, sell and/or import the

1 Accused BodyRok Machine within the United States or into the United States without authority
2 from Plaintiffs.

3 131. Group I Defendants therefore infringe the '253 patent under 35 U.S.C. § 271(a).

4 132. Defendants Palumbo, Irion, Spartacus, Exercise Technologies, BodyRok Marina
5 L.P., Sculpt Fitness, and BodyROK Franchise ("Group II Defendants"), separately or acting in
6 concert, indirectly infringe the '253 patent by inducing infringement by others, including, for
7 example, inducing direct infringement by professional trainers and customers by instructing
8 and/or requiring these third parties to use the Accused BodyRok Machines. Palumbo and Irion,
9 as founders, owners, officers and/or directors of one or more of the Group I Defendant entities,
10 indirectly infringe the '253 patent by inducing and aiding and abetting the infringement of those
11 Group I Defendant entities.

12 133. Having knowledge of the '253 patent, Group II Defendants took the above actions
13 intending to cause the infringing acts by others. Group II Defendants knew that the others'
14 actions, if taken, would constitute direct infringement of the '253 patent. Alternatively, Group II
15 Defendants believed there was a high probability that others would infringe the '253 patent but
16 remained willfully blind to the infringing nature of others' actions. Group II Defendants
17 therefore infringe the '253 patent under 35 U.S.C. § 271(b).

18 134. Defendants' acts of patent infringement have caused damage to Plaintiffs Lagree
19 Technologies and Maximum Fitness. Lagree Technologies and Maximum Fitness are entitled to
20 recover from Defendants the damages Plaintiffs have sustained as a result of Defendants'
21 wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty
22 for the manufacture, use, sale, offer for sale, and/or import of the Accused BodyRok Machine by
23 Defendants.

24 135. In addition, Defendants' infringing acts and practices have caused, are causing,
25 and, unless such acts and practices are enjoined by the Court, will continue to cause immediate
26 and irreparable harm to Lagree Technologies and Maximum Fitness for which there is no
27 adequate remedy at law, and for which Lagree Technologies and Maximum Fitness are entitled
28 to injunctive relief under 35 U.S.C. § 283.

136. Defendants' infringement of the '253 patent has been and continues to be willful.

VI. SECOND CAUSE OF ACTION

(Infringement of U.S. Patent No. 9,498,667 – Carriage Side Handles)

137. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

138. As described below, Defendants have infringed and continue to infringe the '667 patent.

139. The Accused BodyRok Machines infringe at least claim 19 of the '667 patent either literally or under the doctrine of equivalents.

140. Claim 19 recites an exercise machine, comprising:

a **frame** having a **track**, a first end and a second end, wherein the track has a **longitudinal axis**;

a **first end platform** connected to the frame and positioned near the first end of the frame; a **second end platform** connected to the frame and positioned near the second end of the frame;

a **carriage** movably connected to the track and adapted to be movable along a portion of the longitudinal axis of the track during execution of an exercise, wherein the carriage comprises:

an upper surface, a lower surface, a first end, a second end opposite of the first end, a first side and a second side opposite of the first side;

a **first slot** extending through the carriage near the first side from the upper surface to the lower surface, wherein the first slot is elongated in a direction substantially parallel to the longitudinal axis of the track;

a **first handle** defining at least a portion of the first side of the carriage, wherein the first handle is adapted for grasping with a first hand of a user, wherein the first handle encloses one side of the first slot, and wherein the first handle is comprised of an elongated structure that is substantially parallel with respect to the longitudinal axis of the track;

1 a **second slot** extending through the carriage near the second side from the upper
2 surface to the lower surface, wherein the second slot is elongated in a direction
3 substantially parallel to the longitudinal axis of the track;

4 and a **second handle** defining at least a portion of the second side of the carriage,
5 wherein the second handle is adapted for grasping with a second hand of a user, wherein
6 the second handle encloses one side of the second slot, and wherein the second handle is
7 comprised of an elongated structure that is substantially parallel with respect to the
8 longitudinal axis of the track;

9 wherein the first handle and the second handle are substantially parallel with
10 respect to the upper surface of the carriage;

11 wherein the first handle and the second handle have a substantially flush
12 relationship with the upper surface of the carriage;

13 and a **bias member** connected between the frame and the carriage, wherein the
14 bias member provides a biasing force to the carriage.

15 141. The Accused BodyRok Machine meets each element of claim 19 as shown in
16 reproduced Figure 3:

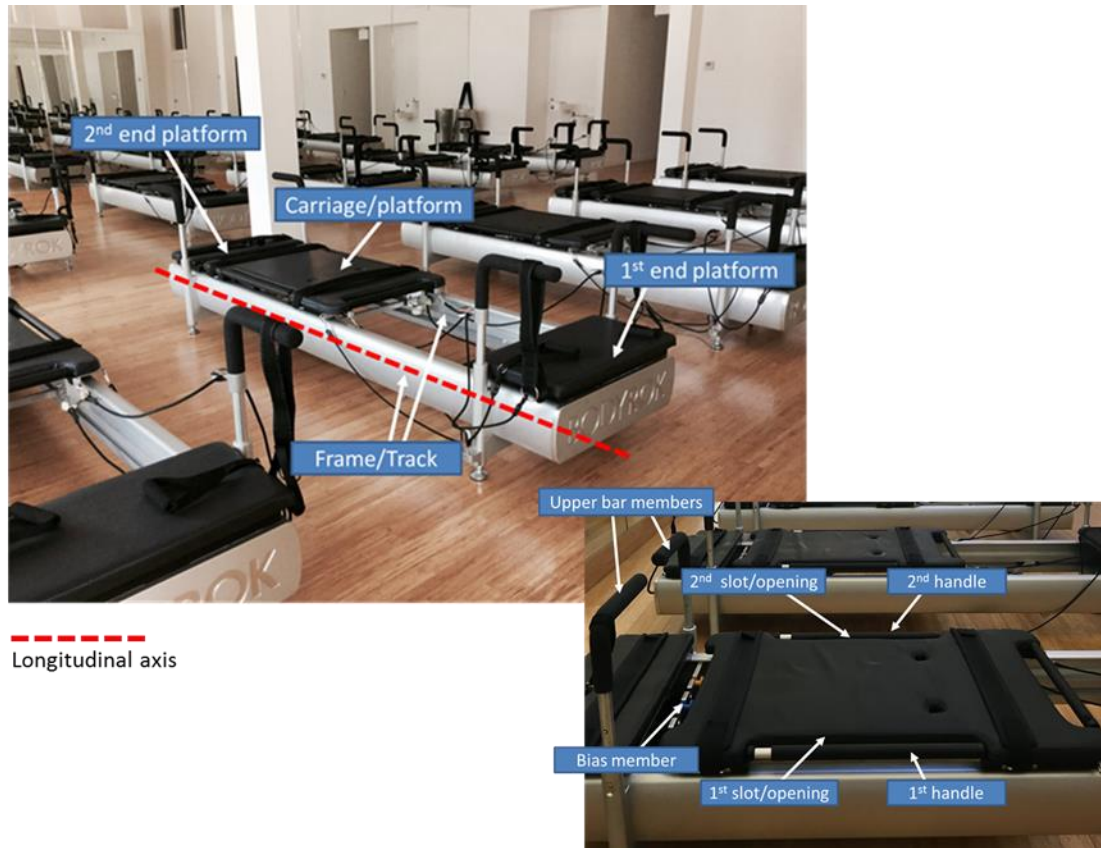


Fig. 3 (Reproduced)

142. The Accused BodyRok Machine has a frame.

143. The frame of the Accused BodyRok Machine has a track, a first end and a second end, wherein the track has a longitudinal axis.

144. The Accused BodyRok Machine has a first end platform connected to the frame and positioned near the first end of the frame.

145. The Accused BodyRok Machine has a second end platform connected to the frame and positioned near the second end of the frame.

146. The Accused BodyRok Machine has a carriage movably connected to the track and adapted to be movable along a portion of the longitudinal axis of the track during execution of an exercise.

147. The carriage of the Accused BodyRok Machine has an upper surface, a lower surface, a first end, a second end opposite of the first end, a first side and a second side opposite of the first side.

1 148. The carriage of the Accused BodyRok Machine has a first slot extending through
2 the carriage near the first side from the upper surface to the lower surface, wherein the first slot
3 is elongated in a direction substantially parallel to the longitudinal axis of the track.

4 149. The carriage of the Accused BodyRok Machine has a first handle defining at least
5 a portion of the first side of the carriage.

6 150. The first handle of the carriage of the Accused BodyRok Machine is adapted for
7 grasping with a first hand of a user, wherein the first handle encloses one side of the first slot.

8 151. The first handle of the carriage of the Accused BodyRok Machine is comprised of
9 an elongated structure that is substantially parallel with respect to the longitudinal axis of the
10 track.

11 152. The carriage of the Accused BodyRok Machine has a second slot extending
12 through the carriage near the second side from the upper surface to the lower surface, wherein
13 the second slot is elongated in a direction substantially parallel to the longitudinal axis of the
14 track.

15 153. The carriage of the Accused BodyRok Machine has a second handle defining at
16 least a portion of the second side of the carriage, wherein the second handle is adapted for
17 grasping with a second hand of a user.

18 154. The second handle of the carriage of the Accused BodyRok Machine encloses one
19 side of the second slot.

20 155. The second handle of the carriage of the Accused BodyRok Machine is comprised
21 of an elongated structure that is substantially parallel with respect to the longitudinal axis of the
22 track.

23 156. The first and second handles of the carriage of the Accused BodyRok Machine
24 are substantially parallel with respect to the upper surface of the carriage.

25 157. The first and second handles of the carriage of the Accused BodyRok Machine
26 have a substantially flush relationship with the upper surface of the carriage.

27 158. The Accused BodyRok Machine has a bias member connected between the frame
28 and the carriage, wherein the bias member provides a biasing force to the carriage.

1 159. Group I Defendants make, use, offer to sell, sell and/or import the Accused
2 BodyRok Machine within the United States or into the United States without authority from
3 Plaintiffs.

4 160. Group I Defendants therefore infringe the '667 patent under 35 U.S.C. § 271(a).

5 161. Group II Defendants indirectly infringe the '667 patent by inducing infringement
6 by others, including, for example, inducing direct infringement by professional trainers and
7 customers by instructing and/or requiring these third parties to use the Accused BodyRok
8 Machines. Palumbo and Irion, as founders, owners, officers and/or directors of one or more of
9 the Group I Defendant entities, indirectly infringe the '667 patent by inducing and aiding and
10 abetting the infringement of those Group I Defendant entities.

11 162. Having knowledge of the '667 patent, Group II Defendants took the above actions
12 intending to cause the infringing acts by others. Group II Defendants knew that the others'
13 actions, if taken, would constitute direct infringement of the '667 patent. Alternatively, Group II
14 Defendants believed there was a high probability that others would infringe the '667 patent but
15 remained willfully blind to the infringing nature of others' actions. Group II Defendants
16 therefore infringes the '667 patent under 35 U.S.C. § 271(b).

17 163. Defendants' acts of patent infringement have caused damage to Plaintiffs Lagree
18 Technologies and Maximum Fitness. Lagree Technologies and Maximum Fitness are entitled to
19 recover from Defendants the damages Plaintiffs have sustained as a result of Defendants'
20 wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty
21 for the manufacture, use, sale, offer for sale, and/or import of the Accused BodyRok Machine by
22 Defendants.

23 164. In addition, Defendants' infringing acts and practices have caused, are causing,
24 and, unless such acts and practices are enjoined by the Court, will continue to cause immediate
25 and irreparable harm to Lagree Technologies and Maximum Fitness for which there is no
26 adequate remedy at law, and for which Lagree Technologies and Maximum Fitness are entitled
27 to injunctive relief under 35 U.S.C. § 283.

28 165. Defendants' infringement of the '667 patent has been and continues to be willful.

VII. THIRD CAUSE OF ACTION

(Infringement of U.S. Patent No. 8,641,585 – Rotatable Locking Handles)

166. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

167. As described below, Defendants have infringed and continue to infringe the '585 patent.

168. The Accused BodyRok Machine infringes at least claim 1 of the '585 patent, either literally or under the doctrine of equivalents.

169. Claim 1 recites an exercise machine, comprising:

a **frame** having first and second ends;

a **platform** mounted on said frame so as to be reciprocatingly moveable towards said first and second ends thereof;

and at least one **bar assembly** comprising a pair of upright bars mounted on opposite sides of said frame, said upright bars each comprising:

a **lower bar member** extending generally upwardly from said frame;

an **upper bar member** having a grip portion extending generally horizontally so as to be accessible to a user on said platform;

and a **coupling** rotatably connecting said upper bar member to said lower bar member so that said generally horizontal grip portion is selectively rotatable to a plurality of positions for differing exercises performed on said machine, said coupling comprising:

a **first coupling member** mounted to an upper end of said lower bar member;

a **second coupling member** mounted to a lower end of said upper bar member;

and a **spring** yieldingly biasing said first and second coupling members into a locking engagement; so that in response to a user applying force to said upper bar segment against said spring said first and second coupling members are separated from said locking engagement to allow said grip portion to be rotated to a selected position, and in response to a user releasing said upper bar member said first and

second coupling members are biased into said locking engagement so as to retain said grip portion in said selected position.

170. The Accused BodyRok Machine includes each of the elements of claim 1 as shown in Figure 4 below:

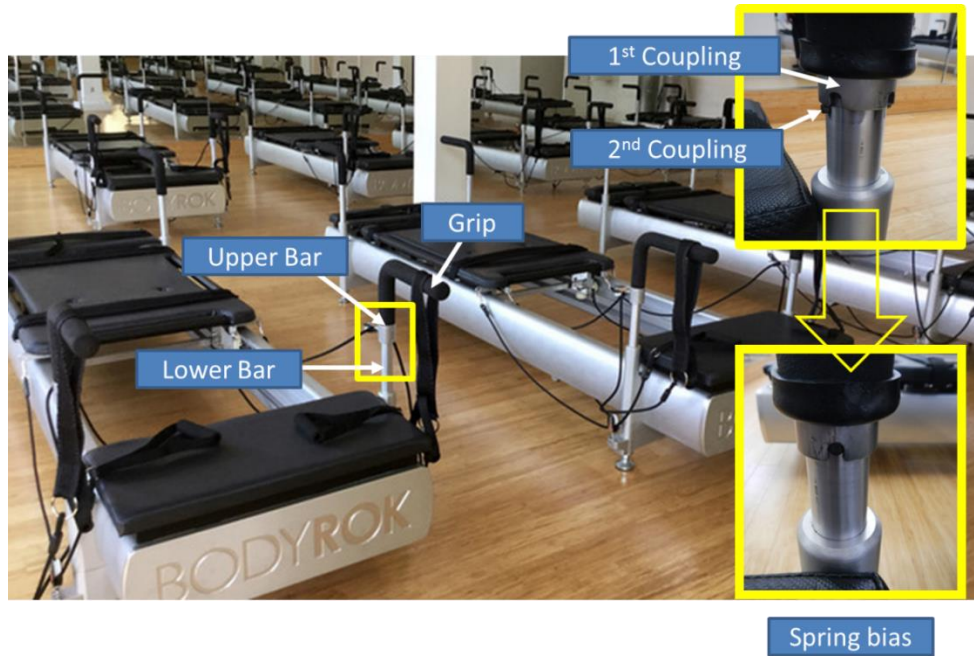


Fig. 4

171. The Accused BodyRok Machine has a frame having first and second ends.

172. The Accused BodyRok Machine has a platform mounted on said frame so as to be reciprocatingly moveable towards said first and second ends thereof.

173. The Accused BodyRok Machine has at least one bar assembly comprising a pair of upright bars mounted on opposite sides of said frame.

174. The upright bars of the Accused BodyRok Machine each comprise a lower bar member extending generally upwardly from said frame.

175. The upright bars of the Accused BodyRok Machine each comprise an upper bar member having a grip portion extending generally horizontally so as to be accessible to a user on said platform.

1 176. The upright bars of the Accused BodyRok Machine each comprise a coupling
2 rotatably connecting said upper bar member to said lower bar member so that said generally
3 horizontal grip portion is selectively rotatable to a plurality of positions for differing exercises
4 performed on said machine.

5 177. The coupling of each upright bar of the Accused BodyRok Machine comprises a
6 first coupling member mounted to an upper end of said lower bar member.

7 178. The coupling of each upright bar of the Accused BodyRok Machine comprises a
8 second coupling member mounted to a lower end of said upper bar member.

9 179. The coupling of each upright bar of the Accused BodyRok Machine comprises a
10 spring yieldingly biasing said first and second coupling members into a locking engagement.

11 180. In response to a user applying force to an upper bar segment against the spring,
12 the first and second coupling members of the coupling of each upright bar of the Accused
13 BodyRok Machine are separated from said locking engagement to allow said grip portion to be
14 rotated to a selected position.

15 181. In response to a user releasing said upper bar member, the first and second
16 coupling members of the coupling of each upright bar of the Accused BodyRok Machine are
17 biased into said locking engagement so as to retain said grip portion in said selected position.

18 182. Group I Defendants make, use, offer to sell, sell and/or import the accused
19 BodyRok Machine within the United States or into the United States without authority from
20 Plaintiffs.

21 183. Group I Defendants therefore infringe the '585 patent under 35 U.S.C. § 271(a).

22 184. Group II Defendants indirectly infringe the '585 patent by inducing infringement
23 by others, including, for example, inducing direct infringement by professional trainers and
24 customers by instructing and/or requiring these third parties to use the accused BodyRok
25 machines. Palumbo and Irion, as founders, owners, officers and/or directors of one or more of
26 the Group I Defendant entities, indirectly infringe the '585 patent by inducing and aiding and
27 abetting the infringement of those Group I Defendant entities.
28

185. Having knowledge of the '585 patent, Group II Defendants took the above actions intending to cause the infringing acts by others. Group II Defendants knew that the others' actions, if taken, would constitute direct infringement of the '585 patent. Alternatively, Group II Defendants believed there was a high probability that others would infringe the '585 patent but remained willfully blind to the infringing nature of others' actions. Group II Defendants therefore infringes the '585 patent under 35 U.S.C. § 271(b).

186. Defendants' acts of patent infringement have caused damage to Plaintiffs Lagree Technologies and Maximum Fitness. Lagree Technologies and Maximum Fitness are entitled to recover from Defendants the damages Plaintiffs have 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 for the manufacture, use, sale, offer for sale, and/or import of the Accused BodyRok Machine by Defendants.

187. In addition, Defendants' infringing acts and practices have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Lagree Technologies and Maximum Fitness for which there is no adequate remedy at law, and for which Lagree Technologies and Maximum Fitness are entitled to injunctive relief under 35 U.S.C. § 283.

188. Defendants' infringement of the '585 patent has been and continues to be willful.

VIII. FOURTH CAUSE OF ACTION

(Copyright Infringement – 17 U.S.C. § 501, *et seq.*)

189. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

190. Defendant Palumbo has directly infringed the Lagree Copyrights in the Lagree Manual by reproducing, making derivative works of, and/or distributing copies of infringing materials in the United States of America without approval or authorization from Plaintiff Lagree Fitness.

1 191. In addition, on information and belief, Palumbo has had actual or constructive
2 knowledge of at least one other Defendant's infringement of the Lagree Copyrights in the Lagree
3 Manual.

4 192. On information and belief, Palumbo has materially contributed to, encouraged,
5 assisted in or induced the infringement of at least one other Defendant's infringement of the
6 Lagree Copyrights in the Lagree Manual.

7 193. Palumbo's infringement has been willful within the meaning of the copyright act.
8 At a minimum, Palumbo acted with willful blindness to and in reckless disregard of the Lagree
9 Copyrights.

10 194. As a result of his wrongful conduct, Palumbo is liable to Lagree Fitness for
11 copyright infringement pursuant to 17 U.S.C. § 501 et seq. Lagree Fitness has suffered
12 significant damages as a result of Palumbo's copyright infringement. Lagree Fitness is entitled
13 to recover damages, which include any and all profits Palumbo has made as result of his
14 wrongful conduct, pursuant to 17 U.S.C. § 504(b).

15 195. Lagree Fitness is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and
16 to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Lagree
17 Fitness has no adequate remedy at law for Palumbo's wrongful conduct because, among other
18 things, Palumbo's infringement harms Lagree Fitness such that it could not be made whole by
19 any monetary award and Palumbo's wrongful conduct, and the resulting damages to Lagree
20 Fitness is continuing.

21 IX. FIFTH CAUSE OF ACTION

22 (Copyright Infringement – 17 U.S.C. § 501, *et seq.*)

23 196. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs
24 of this Complaint, inclusive, as if fully set forth herein.

25 197. Defendants Irion, Spartacus, BodyRok Marina L.P., Sculpt Fitness, and
26 BodyROK Franchise ("**Group III Defendants**") have infringed the Lagree Copyrights in the
27 Lagree Manual by reproducing, making derivative works of, and/or distributing copies of
28

1 infringing materials in the United States of America without approval or authorization from
 2 Plaintiff Lagree Fitness.

3 198. In addition, on information and belief, each member of the Group III Defendants
 4 has had actual or constructive knowledge of at least one other Defendant's infringement of the
 5 Lagree Copyrights in the Lagree Manual.

6 199. On information and belief, each member of the Group III Defendants has
 7 materially contributed to, encouraged, assisted in or induced the infringement of at least one
 8 other Defendant's infringement of the Lagree Copyrights in the Lagree Manual.

9 200. Each of the Group III Defendant's infringement has been willful within the
 10 meaning of the copyright act. At a minimum, each Group III Defendant acted with willful
 11 blindness to and in reckless disregard of the Lagree Copyrights.

12 201. As a result of their wrongful conduct, Group III Defendants are liable to Lagree
 13 Fitness for copyright infringement pursuant to 17 U.S.C. § 501 et seq. Lagree Fitness has
 14 suffered significant damages as a result of Palumbo's copyright infringement. Lagree Fitness is
 15 entitled to recover damages, which include any and all profits Group III Defendants have made a
 16 result of their wrongful conduct, pursuant to 17 U.S.C. § 504(b).

17 202. Lagree Fitness is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and
 18 to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Lagree
 19 Fitness has no adequate remedy at law for Group III Defendants' wrongful conduct because,
 20 among other things, Group III Defendants' infringement harms Lagree Fitness such that it could
 21 not be made whole by any monetary award and Group III Defendants' wrongful conduct, and the
 22 resulting damages to Lagree Fitness is continuing.

23 **X. SIXTH CAUSE OF ACTION**

24 **(Trademark Infringement and Unfair Competition – 15 U.S.C. § 1051 et seq.)**

25 203. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs
 26 of this Complaint, inclusive, as if fully set forth herein.

27 204. The Lagree Trademarks are valid and protectable under the Lanham Act.

28 205. Lagree Technologies owns the Lagree Trademarks.

1 206. Lagree Fitness is a non-exclusive licensee of the Lagree Trademarks. Lagree
2 Fitness uses the Lagree Trademarks in connection with providing fitness classes, workouts,
3 training, and exercise routines.

4 207. Palumbo uses the names of the Lagree unique exercises covered by the Lagree
5 Trademarks in a way that associates the marks with his business, including, without limitation,
6 his exercise and training methods.

7 208. Such use creates confusion and the misperception that Palumbo is authorized to
8 use the Lagree Method, when in fact he is not. Palumbo's use of the Lagree Trademarks are
9 aimed at misleading exercise professionals, clients and prospective clients, franchisees and
10 potential franchisees, into believing that he is authorized to use the Lagree Method, including its
11 exercise methods at BodyRok studios, and that the exercises offered by Palumbo are of the same
12 high quality and standards as those set by Lagree Technologies and Lagree Fitness, which they
13 are not.

14 209. In sum, Palumbo uses the Lagree Trademarks without the consent of Lagree
15 Technologies in a manner that is likely to cause confusion among ordinary consumers as to the
16 source, sponsorship, affiliation, or approval of Palumbo's goods and service.

17 210. In addition, Palumbo has and continues to induce others, including Group III
18 Defendants, to infringe Lagree Trademarks.

19 211. As a result of the wrongful conduct, Palumbo is liable to Lagree Technologies and
20 Lagree Fitness for trademark infringement and unfair competition pursuant to 15 U.S.C. §§ 1114
21 and 1125.

22 212. Palumbo's past and continuing trademark infringement has been deliberate and
23 willful.

24 213. Lagree Technologies and Lagree Fitness have been, and will continue to be,
25 damaged by Palumbo's past and continuing willful trademark infringement and unfair
26 competition in an amount to be proven at trial.

XI. SEVENTH CAUSE OF ACTION

(Trademark Infringement and Unfair Competition – 15 U.S.C. § 1051 et seq.)

214. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

215. Group III Defendants use the names of the Lagree unique exercises covered by the Lagree Trademarks in a way that associates the marks with their business, including, without limitation, their exercise and training methods.

216. Such use creates confusion and the misperception that Group III Defendants are authorized to use the Lagree Method, when in fact they are not. Group III Defendants' use of the Lagree Trademarks are aimed at misleading exercise professionals, clients and prospective clients into believing that Group III Defendants are authorized to use the Lagree Method, including its exercise methods at their studios, and that the exercises offered by Group III Defendants are of the same high quality and standards as those set by Lagree Technologies and Lagree Fitness, which they are not.

217. In sum, Group III Defendants use the Lagree Trademarks without the consent of Lagree Technologies in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of Group III Defendants' goods and service.

218. As a result of the wrongful conduct, Group III Defendants are liable to Lagree Technologies and Lagree Fitness for trademark infringement and unfair competition pursuant to 15 U.S.C. §§ 1114 and 1125.

219. Group III Defendants' past and continuing trademark infringement and unfair competition has been deliberate and willful.

220. Lagree Technologies and Lagree Fitness have been, and will continue to be, damaged by Group III Defendants' past and continuing willful trademark infringement and unfair competition in an amount to be proven at trial.

XII. EIGHTH CAUSE OF ACTION

(Name Misappropriation – Cal. Civil Code § 3344)

221. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

222. Palumbo has knowingly used the name and celebrity of Sebastien Lagree for purposes of advertising and selling, and soliciting purchases of products, merchandise, goods and services, and promoting BodyRok studios to potential franchisees, without Sebastien Lagree's prior consent.

223. Palumbo has earned significant profits attributable to the unauthorized use of the name and celebrity of Sebastien Lagree, all of which should be disgorged.

224. In addition, Sebastien Lagree has been damaged by Palumbo's misappropriation in an amount to be proven at trial.

225. Sebastien Lagree is also entitled to a punitive damages award, as well as costs and attorney's fees.

XIII. NINTH CAUSE OF ACTION

(Name Misappropriation – Cal. Civil Code § 3344)

226. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth herein.

227. Group III Defendants knowingly have used the name and celebrity of Sebastien Lagree for purposes of advertising and selling, and soliciting purchases of products, merchandise, goods and services, without Sebastien Lagree's prior consent.

228. Group III Defendants have earned significant profits attributable to the unauthorized use of the name and celebrity of Sebastien Lagree, all of which should be disgorged.

229. In addition, Sebastien Lagree has been damaged by Group III Defendants' name misappropriation in an amount to be proven at trial.

230. Sebastien Lagree is also entitled to a punitive damages award, as well as costs and attorney's fees.

XIV. TENTH CAUSE OF ACTION
(Unlawful and Fraudulent Business Practices –
Cal. Bus. & Prof. Code § 17200, *et seq.*)

231. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth here.

232. Palumbo and Group III Defendants have engaged in acts and practices herein alleged while doing business, in that such acts and practices were done in the course of selling Defendants' services and products to customers in California. Palumbo Group III Defendants have violated California Business and Professions Code § 17200, *et seq.* by engaging in unlawful, unfair and fraudulent practices, including but not limited to:

- a. Unlawful and unfair practices by using and infringing Lagree Technologies' trademarked names in Defendants' commercial endeavors in violation 15 U.S.C. § 1051 *et seq.*, as alleged herein.
- b. Unlawful practices through name misappropriation in violation of California Business and Professions Code § 3344, as alleged herein.
- c. Unlawful practices in breaching or intentionally interfering with the confidentiality covenants in the License Agreements through Group III Defendants unlicensed and unauthorized disclosure and/or use of Lagree Fitness's confidential information related to the Lagree Method, including unauthorized disclosures of Lagree Fitness's training manual, methods, instructions, and procedures, among other confidential information provided under the License Agreements, as alleged herein.
- d. Unfair practices by usurpation and use of Lagree Fitness's unique exercises and exercise names, training, methodology and the overall Lagree Method products and services – in which Lagree Fitness has invested substantial resources to research, develop, implement, and maintain – and which have come to mean and be associated by licensees, customers, and the public with Plaintiffs unique exercise program and which use by Group III Defendants is likely to mislead

Group III Defendants' trainers, customers and other members of the public into believing that the services Group III Defendants offer and provide are sponsored by, approved or authorized by Lagree Fitness, in violation of Lagree Fitness's rights under common law unfair competition of the State of California.

233. The acts and practices alleged herein constitute unlawful, unfair and/or fraudulent business practices as set forth in California Business & Professions Code § 17200 et seq.

234. Palumbo and Group III Defendants continue to engage in such unlawful, unfair and/or fraudulent business practices as identified herein to the present day, and there is a substantial risk that the wrongful acts will continue in the future, thus warranting injunctive relief.

235. Plaintiffs have suffered injuries in fact, and have lost money or property as a result of Group III Defendants' unfair competition.

236. Pursuant to California Business and Professions Code Section 17203, Plaintiffs are entitled to equitable relief, including restitution of all money Palumbo and Group III Defendants have retained as a consequence of the unlawful business practices in which Plaintiffs have an interest and to which Plaintiffs are entitled as a result of the unlawful and unfair business practices.

237. Lagree Fitness is also entitled to injunctive relief preliminary and permanently restraining Palumbo and Group III Defendants from continuing the unlawful and unfair business practices described here.

XV. ELEVENTH CAUSE OF ACTION

(California Common Law Unfair Competition)

238. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs of this Complaint, inclusive, as if fully set forth here.

239. The acts and conduct of Palumbo and Group III Defendants as alleged above in this Complaint constitute unfair competition pursuant to the common law of California.

240. Palumbo Group III Defendants' acts and conduct are likely to confuse the public into believing that the services and products offered, licensed or distributed by Palumbo and

1 Group III Defendants are sponsored, approved or authorized by Plaintiffs in violation of its rights
2 under California's common law of unfair competition.

3 241. Palumbo and Group III Defendants' acts and conduct as alleged have damaged
4 and will continue to damage Plaintiffs' goodwill and reputation and have resulted in losses to
5 Plaintiffs and illicit gain of profit to Palumbo and Group III Defendants.

6 **XVI. PRAYER FOR RELIEF**

7 WHEREFORE, Lagree Fitness prays for judgment as follows:

8 (a) A judgment that each of the Defendants has infringed one or more claims of the
9 '253 patent;

10 (b) A judgment that each of the Defendants has infringed one or more claims of the
11 '667 patent;

12 (c) A judgment that each of the Defendants has infringed one or more claims of the
13 '585 patent;

14 (d) An order and judgment temporarily, preliminarily, and permanently enjoining
15 each of the Defendants, and their officers, agents, affiliates, franchisees, employees, and
16 attorneys, and all those persons acting or attempting to act in concert or participation with them,
17 from further acts of infringement of the Lagree Patents;

18 (e) A judgment awarding Plaintiffs compensatory damages, together with interest
19 thereon, such amount to be trebled pursuant to 35 U.S.C. § 284 because this is an exceptional
20 case in view of the willful and deliberate nature of Defendants' acts of patent infringement;

21 (f) A judgment awarding Plaintiffs' reasonable attorney's fees pursuant to 35 U.S.C.
22 § 285;

23 (g) A judgment that Palumbo has willfully infringed Plaintiffs' rights in Copyright
24 Registration Numbers TXu 2-021-950 and TXu 2-026-210;

25 (h) A judgment that Group III Defendants have willfully infringed Plaintiffs' rights
26 Copyright Registration Numbers TXu 2-021-950 and TXu 2-026-210;

27 (i) An order and judgment temporarily, preliminarily, and permanently enjoining
28 Palumbo and Group III Defendants, and their officers, agents, affiliates, franchisees, employees,

1 and attorneys, and all those persons acting or attempting to act in concert or participation with
2 them, from further acts of infringement of the Lagree Copyrights;

3 (j) A judgment awarding Plaintiffs actual damages suffered as a result of the
4 infringement and the profits of Palumbo and Group III Defendants that are attributable to the
5 infringement and are not taken into account in computing the actual damages pursuant to
6 17 U.S.C. § 504(b);

7 (k) An order impounding any and all infringing materials pursuant to 17 U.S.C.
8 § 503;

9 (l) A judgment that Palumbo infringed the Lagree Trademarks;

10 (m) A judgment that each of Group III Defendants infringed the Lagree Trademarks;

11 (n) A judgment ordering an accounting and an award of Palumbo and Group III
12 Defendants' profits in connection with the unauthorized use of Lagree Trademarks;

13 (o) A judgment awarding Plaintiffs compensatory damages, together with interest
14 thereon, such amount to be trebled pursuant to 15 U.S.C. § 1117 because this is an exceptional
15 case in view of the willful and deliberate nature of Palumbo and Group III Defendants' use of
16 the Lagree Trademarks;

17 (p) An order and judgment temporarily, preliminarily, and permanently enjoining
18 Palumbo and the Group III Defendants, and their officers, agents, affiliates, franchisees,
19 employees, and attorneys, and all those persons acting or attempting to act in concert or
20 participation with them, from further acts of infringement of the Lagree Trademarks;

21 (q) A judgment awarding compensatory damages, together with interest thereon,
22 suffered by Plaintiffs as a result of Palumbo's unauthorized use of Sebastien Lagree's name and
23 celebrity, and any profits from the unauthorized use that are attributable to the use and not taken
24 into account in computing compensatory damages;

25 (r) A judgment awarding compensatory damages, together with interest thereon,
26 suffered by Plaintiffs as a result of the Group III Defendants' unauthorized use of Sebastien
27 Lagree's name and celebrity, and any profits from the unauthorized use that are attributable to
28 the use and not taken into account in computing compensatory damages;

1 (s) A judgment awarding punitive damages and attorneys' fees under Cal. Civil Code
2 § 33;

3 (t) An order and judgment temporarily, preliminarily, and permanently enjoining
4 Palumbo and the Group III Defendants, and their officers, agents, affiliates franchisees,
5 employees, and attorneys, and all those persons acting or attempting to act in concert or
6 participation with them, from further acts of judgment unfair competition under Cal. Bus. &
7 Prof. Code § 17203;

8 (u) A judgment awarding restitutionary relief, including disgorgement of wrongfully
9 obtained profits and any other appropriate relief under Cal. Bus. & Prof. Code § 17535 and/or
10 California common law;

11 (v) A judgment awarding Plaintiffs their costs incurred in this action, disbursements,
12 and attorneys' fees, to the extent permitted by law; and

13 (w) A judgment granting such other and further relief as this Court may deem just and
14 proper.

15 **XVII. JURY DEMAND**

16 Plaintiffs demand a trial by jury of all issues so triable.

17
18 Respectfully submitted,

19 Dated: April 14, 2017

NEUSTEL LAW OFFICES LTD

20
21 By: /s/ Chad E. Ziegler

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Attorneys for Plaintiffs

22 LAGREE TECHNOLOGIES, INC., LAGREE
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24 INCORPORATED, and SEBASTIEN
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26
27
28