

1 DAVID M. BECKWITH (CSB NO. 125130)  
[davidbeckwith@sandiegoplaw.com](mailto:davidbeckwith@sandiegoplaw.com)  
 2 JAMES V. FAZIO, III (CSB NO. 183353)  
[jamesfazio@sandiegoplaw.com](mailto:jamesfazio@sandiegoplaw.com)  
 3 TREVOR Q. CODDINGTON, PH.D. (CSB NO. 243042)  
[trevorcoddington@sandiegoplaw.com](mailto:trevorcoddington@sandiegoplaw.com)  
 4 SAN DIEGO IP LAW GROUP LLP  
 12526 High Bluff Drive, Suite 300  
 5 San Diego, CA 92130  
 Telephone: (858) 792-3446  
 6 Facsimile: (858) 408-4422

7 Attorneys for Plaintiff,  
 8 GREEN FITNESS EQUIPMENT COMPANY, LLC

9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
 12 Green Fitness Equipment Company,  
 13 LLC, a California limited liability  
 corporation,

14 Plaintiff,

15 vs.

16 Precor Inc., a Delaware corporation; 24  
 17 Hour Fitness USA, Inc., a California  
 corporation; and DOES 1-10, inclusive,

18 Defendants.

CASE NO. '17CV0245 AJB KSC

**COMPLAINT FOR:**

- 19 (1) **PATENT INFRINGEMENT –**  
**35 U.S.C. § 271;**
- 20 (2) **CORRECTION OF**  
**INVENTORSHIP – 35 U.S.C.**  
**§ 256;**
- 21 (3) **FALSE ADVERTISING – 15**  
**U.S.C. § 1125**
- 22 (4) **CALIFORNIA COMMON**  
**LAW UNFAIR**  
**COMPETITION;**
- 23 (5) **CALIFORNIA STATUTORY**  
**UNFAIR COMPETITION;**
- 24 (6) **DECLARATORY RELIEF;**  
**AND**
- 25 (7) **CONSTRUCTIVE TRUST**  
**AND ACCOUNTING**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Green Fitness Equipment Company, LLC (collectively, “*GFE*” or  
2 “*Plaintiff*”), by and through its attorneys, makes and files this Complaint against  
3 Defendants Precor Incorporated (“*Precor*”) and 24 Hour Fitness USA, Inc. (“*24*  
4 *Hour Fitness*”) (collectively, “*Defendants*”). In support of this Complaint,  
5 Plaintiff alleges as follows:

6 **NATURE OF THE ACTION**

7 1. This is an action for patent infringement under the patent laws of the  
8 United States, 35 U.S.C. § 271, *et seq.*; correction of inventorship of a patent under  
9 35 U.S.C. § 256; false advertising under § 43(a) of the Lanham Act (codified as 15  
10 U.S.C. § 1051, *et seq.*); and related state and common law causes of action.

11 **THE PARTIES**

12 2. Plaintiff GFE is a California limited liability corporation with a  
13 principal place of business at 2683 Via De La Valle, Ste. G-319, Del Mar, CA  
14 92014.

15 3. Defendant Precor is a Delaware corporation with a principal place of  
16 business in Woodinville, WA. Precor is a subsidiary of Amer Sports Corporation.

17 4. Defendant 24 Hour Fitness is a California corporation with a principal  
18 place of business in San Ramon, CA. 24 Hour Fitness also has a processing center  
19 located in Carlsbad, CA.

20 5. GFE is ignorant of the true names and capacities of the parties sued  
21 herein as DOES 1 through 10, inclusive, whether individual, corporate or  
22 otherwise, and therefore sues these defendants by such fictitious names. If  
23 applicable, GFE will seek leave to amend the complaint to assert their true names  
24 and capacities when they have been ascertained. GFE is informed and believes and  
25 based thereon alleges that all defendants sued herein as DOES 1 through 10 are in  
26 some manner responsible for the acts and omissions alleged herein.

27 **JURISDICTION AND VENUE**

28 6. This Court has original and exclusive subject matter jurisdiction over

1 this action under 28 U.S.C. §§ 1331 and 1338(a) because GFE's claim of patent  
2 infringement, correction of inventorship, and false advertising arise under the laws  
3 of the United States, including 35 U.S.C. §§ 256 and 271, and 15 U.S.C. § 1125(a).  
4 This Court has supplemental jurisdiction over GFE's state and common law claims  
5 under 28 U.S.C. § 1367(a) because the state and common law claims are so related  
6 to the federal claims that they form part of the same case or controversy and derive  
7 from a common nucleus of operative facts.

8         7. This Court has personal jurisdiction over Defendants because they  
9 reside in this District and have a continuous, systematic and substantial presence in  
10 this District, because they regularly conduct business and/or solicit business within  
11 this District, because they have committed and continue to commit patent  
12 infringement in this District, including without limitation by selling, offering for  
13 sale, and/or using infringing products in this District and by purposefully directing  
14 activities at residents of this District, by Precor placing infringing products into the  
15 stream of commerce with the knowledge that such products would be sold and used  
16 in California and this District, by Precor knowingly releasing misleading  
17 advertisements in California and this District that deceive consumers in California  
18 and this District, all of which acts form a substantial part of the events giving rise to  
19 GFE's claims.

20         8. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400  
21 because Defendants have done business, have infringed, and continue to infringe  
22 United States Patent No. 8,884,553 within this District, and by Precor purposefully  
23 directing misleading advertisements to deceive residents of this District, and this  
24 action arises from transactions of that business, that infringement, and those  
25 advertisements. In addition, venue is proper because GFE resides in this District  
26 and suffered harm in this District. Many pertinent witnesses including third party  
27 witnesses are also located in this District.

28 ///

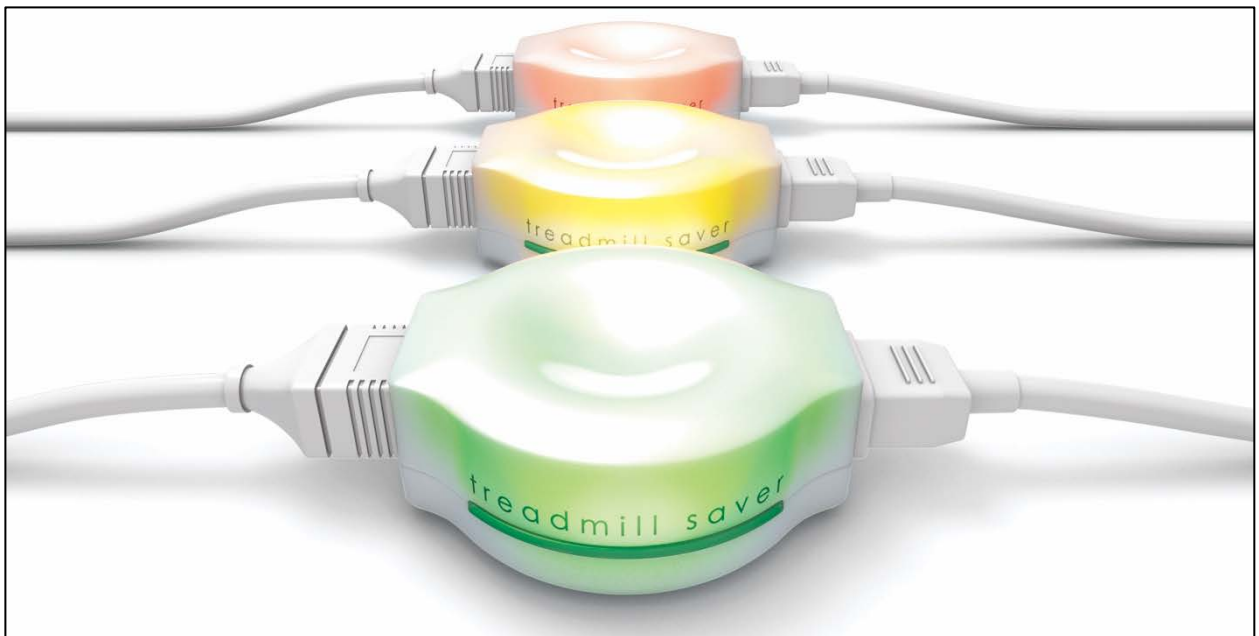
## FACTUAL BACKGROUND

### **I. GFE's Patented Treadmill Saver®**

9. GFE is an innovative health and fitness company focused on preventative maintenance of exercise equipment. Exercise equipment such as treadmills require regular preventative maintenance to ensure efficient, consistent, and safe operation. When a user exercises on a treadmill, stress and load are created with every step. In addition, dust, dirt, and debris accumulate in various treadmill components such as the belt, the deck, and rollers causing addition friction. To compensate for the added friction, the motor draws more electricity, which produces undesirable heat. As the usage and friction increases, the lubrication wears out, and more friction and stress are loaded on the treadmill's components. This increased friction and stress causes inefficiencies and ultimately requires the motor to draw more power, i.e., current, to be able to perform and maintain the speed of a well lubricated and maintained treadmill. The added current and friction increases the amount of heat generated. Excessive heat leads to damage or failure of electronic circuitry and mechanical parts. In addition to excessive and costly power bills, repair or replacement of treadmill components is expensive. Moreover, treadmill component failure can occur suddenly and cause serious injury to a user, and create liability for a health club operator. *See, e.g., Guerra v. Howard Beach Fitness Ctr., Inc.*, 934 N.Y.S.2d 34 (Sup. Ct., Kings Cty. 2011) (“Falling off of a treadmill due to a malfunctioning tread is not a commonly appreciated or foreseeable risk which is inherent in exercising on a treadmill.”).

10. To address the unmet need for a diagnostic solution for treadmills and other fitness equipment, GFE developed its flagship product, the Treadmill Saver®. A treadmill's energy consumption is directly related to its “health.” If the motor pulls more energy than it should, it is a direct indication that something is wrong. The more energy the motor needs, the hotter it gets. Heat destroys electronics and ultimately the treadmill. The more energy the motor pulls, power bills increase.

1           11. The Treadmill Saver takes the guesswork out of preventative  
2 maintenance while reducing costly service technician calls and power bills, alerting  
3 health club operators early in problem life-cycle, and satisfying treadmill users by  
4 monitoring electrical consumption and visually indicating the health of a treadmill.  
5 Like a traffic light, the Treadmill Saver (shown below) glows green (normal),  
6 yellow (check), or red (repair) when a treadmill needs various levels of attention.  
7 This “active status light” acts as an early warning system to help health club  
8 operators identify maintenance needs before negative events happen, reduce their  
9 energy footprint, ensure user safety, and satisfy customers.



20           12. On October 19, 2011, GFE filed United States Patent Application No.  
21 13/277,169 (“the ‘169 application”), covering its Treadmill Saver. On November  
22 11, 2014, the United States Patent and Trademark Office (PTO) duly and lawfully  
23 issued United States Patent No. 8,884,553 (“the ‘553 patent”) from the ‘169  
24 application, entitled “Current Monitor for Indicating Condition of Attached  
25 Electrical Apparatus.” A true and correct copy of the ‘553 patent is attached hereto  
26 as **Exhibit A**. GFE owns all rights to the ‘553 patent via an Assignment, which was  
27 recorded at the PTO on February 4, 2015 at Reel/Frame 034886/0691.  
28

## 1 **II. GFE and its Treadmill Saver Disrupt the Treadmill Industry**

2 13. GFE introduced its breakthrough Treadmill Saver during the March  
3 2012 International Health, Racquet & Sportsclub Association (IHRSA) trade show  
4 held in Los Angeles, California. The IHRSA trade show is the largest health and  
5 fitness trade show in the United States and allows exercise equipment  
6 manufacturers to demonstrate the newest and cutting-edge, state-of-the-art fitness  
7 technology to health club operators. The Treadmill Saver was exhibited at the trade  
8 show and received much attention from fellow trade show exhibitors including, but  
9 not limited to treadmill manufacturers Precor, Life Fitness, Star Trac, Technogym,  
10 and Woodway. The Treadmill Saver products exhibited at the trade show were  
11 prominently marked with “patent pending.” In its April 2012 issue, Club Solutions  
12 Magazine declared the Treadmill Saver as one of four “Cool Products of IHRSA”  
13 and noted that the Treadmill Saver “provides monitoring of needed maintenance of  
14 treadmills before repairs are required.”

15 14. Upon information and belief, around 2012, some treadmill  
16 manufacturers were generally not interested in and strategically shied away from  
17 incorporating treadmill saver technology into their treadmills. Instead,  
18 manufacturers relied on treadmills having to be replaced every six to eight years, if  
19 not sooner for high traffic health clubs, which generated significant recurring  
20 revenue. Treadmill saver technology was viewed as negatively impacting revenue  
21 because legacy treadmills using such technology would last longer; owners would  
22 prefer to detect and fix potential mechanical and electrical issues cheaply rather  
23 than replace a treadmill at significant cost. Manufacturers made their money selling  
24 new treadmills, not maintaining used treadmills. In fact, treadmill maintenance and  
25 refurbishing is generally facilitated by third party service and repair companies, not  
26 the manufacturers.

27 15. One non-conforming company, Noritsu America Corporation, which  
28 was the largest fitness service company in the United States at the time, saw the

1 Treadmill Saver as a must have for any gym and bought the first pallet of Treadmill  
2 Savers off the production line and proceeded to enter into a strategic partnership  
3 with GFE to support all of its treadmills under contract.

4 16. Between March and October of 2012, numerous health club owners  
5 and operators marveled at the Treadmill Saver and recognized its benefits,  
6 particularly the electricity costs they could save by early detection of treadmills that  
7 were starting to operate inefficiently and thus, consuming unnecessary current and  
8 increasing their operation costs and decreasing profits.

9 17. At the October 2012 Club Industry trade show held in Las Vegas,  
10 Nevada, GFE again exhibited its Treadmill Saver to treadmill manufacturers and  
11 health club operators. The Treadmill Saver products exhibited at this trade show  
12 were prominently marked with “patent pending.”

13 18. At the end of the 2012 Club Industry Show, GFE captured the  
14 attention of Mr. Michael Bruno, Chief Executive Office of Star Trac. In the middle  
15 of Star Trac’s large booth, with GFE representatives surrounded by numerous Star  
16 Trac employees, Mr. Terry Woods (Vice President of Sales and Service Operations  
17 at Star Trac) and Mr. Jeff Dilts (Senior Director of Marketing and Product  
18 Management at Star Trac) told Mr. Bruno that they wanted to have an agreement  
19 with GFE to incorporate GFE’s treadmill saver technology into Star Trac’s  
20 treadmills. Particularly, Mr. Dilts was informed by Mr. Mike Feeny (Executive  
21 Vice President at New Evolution Ventures, a co-owner of Crunch Fitness, and prior  
22 thereto, Vice President of facilities and purchasing at 24 Hour Fitness) and Mr.  
23 Patrick Regan (Vice President of Purchasing at Life Time Fitness) that if GFE’s  
24 treadmill saver technology was integrated into a treadmill they would be very  
25 interested in buying that treadmill, in large numbers, for their various clubs.  
26 Together, Mr. Feeny and Mr. Regan represented over 9,000 treadmills, at that time,  
27 at an average of at least \$6,000 per treadmill (i.e., \$54,000,000 in business). On  
28 information and belief, Mr. Feeny and Mr. Regan went to other manufacturers at



1 the trade show, including Precor, stating the same.

2 19. GFE and Star Trac negotiated a preliminary written license agreement,  
3 but the deal was ultimately cut short before execution by Star Trac's engineering  
4 department. Star Trac's engineers were purportedly unable to incorporate GFE's  
5 treadmill saver technology into Star Trac's treadmills in a way that legacy  
6 electronic circuitry complied with industry certification requirements.

7 20. In and around 2013, GFE tested, conducted studies, and gathered data  
8 with its Treadmill Saver at numerous global health club chains. GFE installed and  
9 demonstrated its Treadmill Savers at various sites and in every instance, found that  
10 a majority, if not all, of the treadmills were operating inefficiently under load and  
11 drawing excessive current and increasing operational costs. GFE has numerous  
12 reports evidencing its findings. In one such report, GFE determined that Crunch  
13 Fitness would save nearly \$2,000,000 in operating costs over six years by  
14 implementing the Treadmill Saver. In electricity costs alone, Crunch Fitness would  
15 save \$230,000 per year. In another report, GFE determined that the Department of  
16 Defense (DOD) could save \$20,000,000 per year of taxpayer money across the  
17 17,000 treadmills operated by the federal government. That case study yielded an  
18 invitation to meet with the Under Secretary of Defense at the Pentagon to review  
19 GFE's findings. Many of the treadmills investigated by GFE were Precor  
20 treadmills, which operated inefficiently under load.

21 21. Around that time, Precor treadmills were notorious for breaking down  
22 and requiring service. As one certified technician stated online, "I've been a  
23 certified Precor service tech for about 9 years now. Our company has made  
24 thousands of dollars off repairing their treadmills and ellipticals. They are just like  
25 Mercedes. They cost a lot and break down a lot. They generally put out their  
26 products without proper testing, as a result, the machines keep breaking down and  
27 have to keep getting upgrades. ... Thank you for keeping us employed Precor.  
28 Please continue to design crappy over priced machines and please don't test them



1 properly like your competitors. On a positive note, they are good while they work.”  
2 See <http://www.treadmilltips.com/precors-treadmills-all-models-truly-garbage.html>.

3 22. On information and belief, Precor had lost some of their market share  
4 of the health club customers in 2012 and 2013. Instead, the largest global health  
5 club chains such as 24 Hour Fitness, Life Time Fitness, Hilton, YMCA, LA Fitness,  
6 and Crunch Fitness, each of which operated up to 10,000 treadmills, if not more,  
7 bought their commercial-grade treadmills from other manufacturers such as Life  
8 Fitness, Star Trac, and Woodway. Recognizing the substantial amount of treadmills  
9 purchases health club chains could make, Precor was interested in increasing its  
10 commercial market by selling thousands of treadmills to 24 Hour Fitness, Life  
11 Time Fitness, Hilton, YMCA, LA Fitness, and Crunch Fitness, among others.

### 12 **III. Precor’s Firsthand Evaluation of GFE’s Treadmill Saver Technology**

13 23. In October of 2012, GFE met with Precor to discuss the Treadmill  
14 Saver. A copy of emails between GFE sales manager, Ms. Tina Pauley, and Precor  
15 Director of Commercial Dealers, Mr. Steve Menzel, confirming the foregoing  
16 meeting is attached as **Exhibit B**. Mr. Menzel commented that he was “excited  
17 about [GFE’s] product” and that after talking about the Treadmill Saver with others  
18 at Precor, those other individuals were “excited about the product as well.” See  
19 Exh. B.

20 24. By April 11, 2013, Precor installed a Treadmill Saver in its company  
21 workout room. Around the same time, a Treadmill Saver was being personally  
22 evaluated by Precor’s Electrical Engineering Director, Mr. Tormay Brown. All  
23 Treadmill Saver products in Precor’s possession were prominently marked with  
24 “patent pending.” On information and belief, Mr. Brown or one or more other  
25 engineers at Precor were instructed to reverse engineer the Treadmill Saver in order  
26 to misappropriate and duplicate its technology. In disassembling the Treadmill  
27 Saver, one would have to remove its bottom cover, which was prominently marked  
28 with “patent pending.”

1           25. After seeing and evaluating the Treadmill Saver, Precor incorporated  
2 GFE's Treadmill Saver technology – more particularly, the invention claimed in the  
3 '553 patent, into its products. For example, Precor's Experience Series of treadmills  
4 and EFC Elliptical Cross-trainers include "Active Status Light" technology, which  
5 reads on one or more claims of the '553 patent.

6           26. Precor also misappropriated GFE's global marketing materials. For  
7 example, in 2014, GFE attended a trade show where Precor's Senior Manager, Mr.  
8 Doug Durnford, was presenting Precor's Active Status Light technology. There,  
9 GFE witnessed Mr. Durnford expressly quoting content taken from GFE's sales  
10 pitch materials and case studies. Particularly, Mr. Durnford discussed, among other  
11 things, research performed on treadmills at the East Bank Club in Chicago, Illinois.  
12 GFE conducted the research at East Bank Club. On information and belief, Precor  
13 has misappropriated portions of GFE's copyrighted marketing materials and  
14 research findings, and passed it off to potential customers as its own.

15           27. After evaluating the Treadmill Saver technology and intent on taking  
16 such as its own, Precor filed United States Provisional Patent Application No.  
17 61/952,053 ("Precor's '053 provisional application"), on March 12, 2014, which  
18 led to United States Patent Application No. 14/656,640 ("Precor's '640  
19 application"), filed on March 12, 2015. The Precor '053 provisional patent  
20 application and '640 patent application both erroneously name Tormay Brown,  
21 among other co-inventors, who previously evaluated GFE's Treadmill Saver.  
22 Precor's '640 application eventually issued as United States Patent No. 9,430,920,  
23 on August 30, 2016 ("Precor's '920 patent"). A true and correct copy of the '920  
24 patent is attached as **Exhibit C**. Precor is the sole and exclusive assignee of the  
25 '920 patent, and the named inventors assigned to Precor all right, title, and interest  
26 in the '920 patent by way of an Assignment recorded with the PTO at Reel/frame  
27 039155/0111.

28           28. The '920 patent discloses and claims Treadmill Saver technology,

1 which was conceived by GFE founder, Mr. Justin Hai. Mr. Hai is the sole inventor  
2 of the '553 patent. Yet, Mr. Justin Hai was not named as an inventor on Precor's  
3 '053 provisional application, Precor's '640 application, and Precor's '920 patent.

4 **IV. 24 Hour Fitness Nationwide Rollout of Treadmill Saver Stalled at 11th**  
5 **Hour in Favor of Purchase of Precor's "Redesigned" Treadmills with**  
6 **Active Light Status Technology**

7 29. In January of 2014, GFE was beginning to have success with 24 Hour  
8 Fitness in implementing its Treadmill Saver. GFE installed Treadmill Savers on  
9 forty treadmills at 24 Hour Fitness' Balboa gym in San Diego, California. The  
10 Balboa gym sent an email to its members touting that it was "going green" after  
11 installing the Treadmill Savers.

12 30. Based on the measurements taken from Treadmill Savers installed at  
13 24 Hour Fitness, GFE determined that many, if not all, of the treadmills at 24 Hour  
14 Fitness were operating inefficiently under load and drawing unnecessary current.  
15 GFE provided 24 Hour Fitness with a "Financial Impact Summary" that estimated  
16 that a nationwide rollout of the Treadmill Saver would save 24 Hour Fitness more  
17 than \$7,000,000 per year in operating costs. A true and correct copy of the  
18 Financial Impact Summary is attached as **Exhibit D**.

19 31. On May 15, 2014, Precor issued a press release regarding its  
20 Experience Series treadmills that "sets a new standard in state-of-the-art treadmill  
21 technology." A true and correct copy of the press release is attached as **Exhibit E**.  
22 Precor noted that the "the Experience Series redesign was based on valuable  
23 insights from an extensive Precor study of its three primary stakeholders:  
24 commercial customers (fitness centers and spas), exercisers and service technicians.  
25 This collective feedback informed the design of its three new models – the 885, 835  
26 and 811." Exh. E. The redesigned Precor treadmills include an "'Active Status  
27 Light,' the first-of-its-kind, allows facility operators and service personnel to  
28 quickly assess the operating status of a machine with a glance." Exh. E.

1           32. In June of 2014, Precor demonstrated the “brand new” Experience  
2 Series treadmill to 24 Hour Fitness. A copy of emails between GFE owner Mr. Hai  
3 and Mr. Charles Huff, Vice President – Facilities & Maintenance at 24 Hour  
4 Fitness), confirming the foregoing meeting is attached as **Exhibit F**. Particularly,  
5 Mr. Huff stated on June 12, 2014, “I’d like to wait at least until the end of the  
6 month to see where things stand before we discuss possible next steps. We have a  
7 meeting with Precor later this month to see firsthand their brand new Treadmill  
8 which they claim has a light system integrated into the unit to provide generally the  
9 same info as your Treadmill Saver.” Exh. F.

10           33. On July 29, 2014, Mr. Huff informed Mr. Hai: “We’ve had a lot of  
11 changes in our company since we last met and we’re in the process of ordering a  
12 large number of the new Precor Treadmills which have incorporated much of the  
13 same concept as the Treadmill Saver into their newest Tread design. They have a  
14 blue light on the shroud that blinks to communicate issues similar to the green,  
15 yellow, and red of your unit. Considering we’ll have these new treads in our clubs  
16 beginning next week, we’d like to take some time to review how they work and  
17 compare to what your unit offers. Based on this new info, we’re not prepared to go  
18 any further with the Tread Saver as of right now.” Exh. F. In August of 2014, 24  
19 Hour Fitness notified GFE that it was not interested in purchasing any Treadmill  
20 Savers.

21           34. On information and belief, in order to influence 24 Hour Fitness into  
22 purchasing Precor’s Experience Series treadmills, Precor falsely disparaged and/or  
23 undermined the findings in GFE’s Financial Impact Summary for 24 Hour Fitness,  
24 and/or provided 24 Hour Fitness with deceptive and misleading information about  
25 the Precor Experience Series treadmills.

26           35. Thereafter, during the 2015 IHRSA trade show, Precor advertised its  
27 newly designed Experience Series treadmills with a “breakthrough Active Status  
28 Light [that] allows club staff to see the current operating condition of the treadmill

1 at a glance, helping them quickly and diagnose and resolve any issues.” *See*  
2 **Exhibit G**. Precor noted that the “design and innovations in the Experience Series  
3 treadmills have made them so popular, we’ve added a second manufacturing shift to  
4 keep with sales demand. You’ll find them in every corner of the world, from 24  
5 Hour Fitness in North America to Hosa Fitness in China.” Exh. G.

### 6 **FIRST CLAIM FOR RELIEF**

#### 7 **(Infringement of the ‘553 Patent Against All Defendants)**

8 36. Plaintiff realleges and incorporates by reference the allegations  
9 contained in the previous paragraphs of this Complaint as though fully set forth  
10 herein.

11 37. The ‘553 patent has an effective filing date of October 29, 2011.  
12 Accordingly, the “first to invent” laws of the United States (and not the “first to  
13 file” laws of the America Invents Act, which went into effect March 16, 2013)  
14 govern the presumed validity of the ‘553 patent.

15 38. Precor, and/or those acting in concert with Precor including, but not  
16 limited to 24 Hour Fitness, with actual knowledge of the ‘553 patent before the  
17 filing of this action, have intentionally infringed and continue to infringe, contribute  
18 to infringement, and/or induce infringement of the ‘553 patent, either literally or  
19 under the doctrine of equivalents. Defendants’ infringing activities in the United  
20 States and this District include, among other things, making, using, importing,  
21 exporting, selling, and/or offering to sell methods and/or systems, including, but not  
22 limited to (1) Precor’s Experience Series of treadmills, (2) Precor’s EFC Elliptical  
23 Cross-trainers, and (3) any other exercise equipment that employs Precor’s  
24 “Accurate Belt Wear Detection” and/or “Active Status Light” technology  
25 (collectively, the “Accused Products”), which infringe at least claim 1 of the ‘553  
26 patent as indicated in the attached claim chart, **Exhibit H**, incorporated herein. This  
27 infringement chart is based on GFE’s current understanding of the Accused  
28 Products, which only considers publicly available information. The chart does not

1 set forth all of GFE’s infringement theories – the Accused Products embody other  
2 claims set forth in the ‘553 patent.

3 39. GFE reserves the right to amend or supplement its infringement  
4 theories upon more information becoming available through formal discovery  
5 and/or this Court completing its claim construction proceedings. Pursuant to CivLR  
6 3.1, GFE will serve a Disclosure of Asserted Claims and Infringement Contentions  
7 (that may alter and/or supplement the infringement chart submitted herewith).

8 40. Precor, and/or those acting in concert with Precor, with actual  
9 knowledge of the ‘553 patent before the filing of this action, contributed to the  
10 infringement of the ‘553 patent, by having its direct and indirect customers such as  
11 24 Hour Fitness sell, offer for sale, use, and/or import into the United States and  
12 this District, and placing into the stream of commerce, the Accused Products, and  
13 having the specific intention to induce those direct and indirect customers to  
14 infringe at least claim 1 of the ‘553 patent by instructing and promoting the use of  
15 the Accused Products.

16 41. The Accused Products are especially made or adapted to include  
17 Precor’s “Active Status Light” and/or “Accurate Belt Wear Detection” technology,  
18 such that they infringe the ‘553 patent, and have no substantially non-infringing  
19 uses.

20 42. Precor, and/or those acting in concert with Precor, with actual  
21 knowledge of the ‘553 patent before the filing of this action (and the application  
22 maturing to the ‘553 patent), have intentionally induced infringement of the ‘553  
23 patent, by having its direct and indirect customers sell, offer for sale, use, and/or  
24 import into the United States and this Judicial District, and placing into the stream  
25 of commerce, the Accused Products, with knowledge that such products infringe  
26 the ‘553 patent.

27 43. Precor was aware or should have been aware or was willfully ignorant  
28 of the existence of the ‘169 application by at least October of 2012. 24 Hour Fitness

1 was aware or should have been aware or was willfully ignorant of the existence of  
2 the '169 application by at least January of 2014.

3 44. GFE has complied with the notice provisions of the patent statutes by  
4 providing Precor additional notice of patent ownership and charges of infringement  
5 concerning Precor's products. Namely, on November 19, 2014, GFE's  
6 representative, Mr. Andrew Skale, advised Precor's President, Mr. Rob Barker, that  
7 one or more of Precor's products infringed at least one of the claims of the '553  
8 patent. A true and correct copy of the notice letter from Mr. Andrew Skale to Mr.  
9 Rob Barker is attached hereto as **Exhibit I**.

10 45. Defendants had actual notice of the '553 patent since at least  
11 November 19, 2014, before the filing of this action, and acted despite an objectively  
12 high likelihood that its actions constituted infringement. Despite knowledge of the  
13 '553 patent, Precor has not made any changes to the relevant operation of the  
14 Accused Products, but continues to recklessly, willfully, and/or deliberately  
15 manufacture, distribute and sell products that infringe the '553 patent.

16 46. Upon information and belief, Precor has generated significant sales of  
17 products incorporating the Plaintiff's technology, exposing Precor to significant  
18 liability for its infringement of the '553 patent.

19 47. Upon information and belief, unless enjoined, Defendants, and/or  
20 others acting on behalf of Defendants, will continue their infringing acts, thereby  
21 causing irreparable harm to GFE for which there is no adequate remedy at law.

22 48. As a result of Defendants' infringement of the '553 patent, GFE has  
23 suffered and will continue to suffer harm and injury, including monetary damages  
24 in an amount to be determined at trial, and is entitled to recovery of all said  
25 damages.

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**SECOND CLAIM FOR RELIEF**

**(Correction of Inventorship of Precor’s ‘920 Patent Against Precor)**

**(35 U.S.C. § 256)**

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4 49. Plaintiff realleges and incorporates by reference the allegations  
5 contained in the previous paragraphs of this Complaint as though fully set forth  
6 herein.

7 50. Justin Hai is the founder, owner, and Manager of GFE.

8 51. Justin Hai is responsible for the conception of all of the claimed  
9 subject matter of the ‘920 patent. Justin Hai was under no obligation to assign his  
10 works of invention to Precor, and retained all rights to knowledge, processes, and  
11 apparatuses known to him before his business dealings with Precor. The claimed  
12 subject matter of the ‘920 patent reflects inventions known and conceived by Justin  
13 Hai and disclosed by him to Precor.

14 52. Pursuant to an employee agreement with GFE, Justin Hai has assigned  
15 any and all of his rights to the ‘920 patent to GFE. Accordingly, GFE has an  
16 ownership interest in the ‘920 patent.

17 53. Justin Hai is responsible for the conception of all of the inventions  
18 forming the claimed subject matter of the ‘920 patent. In the alternative, Justin Hai  
19 is responsible for the conception of one or more of the inventions forming the  
20 claimed subject matter of the ‘920 patent.

21 54. Without deceptive intent, Justin Hai was incorrectly not named as the  
22 sole inventor of the claimed subject matter of the ‘920 patent. In the alternative,  
23 without deceptive intent, Justin Hai was incorrectly not named as a co-inventor of  
24 the subject matter of the ‘920 patent.

25 55. The ‘920 patent should be corrected to reflect that Justin Hai is the sole  
26 inventor thereon, or, in the alternative, that Justin Hai is a co-inventor of the subject  
27 matter of the ‘920 patent, and Justin Hai should be accorded any other remedies due  
28 him under U.S. patent law.

**THIRD CLAIM FOR RELIEF**

**(False Advertising under 15 U.S.C. § 1125(a) Against Precor)**

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3 56. Plaintiff realleges and incorporates by reference the allegations  
4 contained in the previous paragraphs of this Complaint as though fully set forth  
5 herein.

6 57. Mr. Hai discovered and developed active status light technology.  
7 Precor did not discover active status light technology.

8 58. The acts of Precor alleged herein, including falsely advertising “first-  
9 of-its-kind” and “breakthrough Active Status Light” in connection with the  
10 Accused Products for the purpose of increasing sales and profits, constitute false  
11 advertising in violation of 15 U.S.C. § 1125. Precor knew that GFE invented Active  
12 Status Light technology and that such statements were false and misleading.

13 59. Precor’s advertisements of “first-of-its-kind” and “breakthrough  
14 Active Status Light” in connection with the Accused Products deceives or has the  
15 tendency to deceive consumers and is for the purpose of inducing, or is likely to  
16 induce, directly or indirectly the purchase of the Accused Products from Precor.

17 60. Advertising “first-of-its-kind” and “breakthrough Active Status Light”  
18 influences purchasing decisions by potential consumers.

19 61. Precor placed its false “first-of-its-kind” and “breakthrough Active  
20 Status Light” statements into interstate commerce.

21 62. GFE has been or is likely to be injured as a result of Precor’s false  
22 “first-of-its-kind” and “breakthrough Active Status Light” statements, either by  
23 direct diversion of sales to Precor or by a lessening of goodwill associated with  
24 GFE’s products.

25 63. As a direct and proximate result of the aforesaid false statements, GFE  
26 has and will continue to suffer great harm and damage. GFE has incurred and will  
27 continue to incur irreparable harm unless Precor is enjoined from further  
28 commission of false advertising.



1 herein.

2 71. This claim is for statutory unfair competition in violation of California  
3 Business & Professions Code § 17200 *et seq.*

4 72. The acts of Precor alleged herein, including falsely advertising “first-  
5 of-its-kind” and “breakthrough Active Status Light” in connection with the  
6 Accused Products for the purposes of increasing sales and profits, constitute  
7 unlawful, unfair, and fraudulent business practices in violation of California  
8 Business & Professions Code § 17200 *et seq.*

9 73. As a direct and proximate result of the aforesaid deceptive business  
10 practices, GFE has and will continue to suffer great harm and damage. GFE has  
11 incurred and will continue to incur irreparable harm unless Precor is enjoined from  
12 further commission of unfair and unlawful business acts and practices.

13 74. GFE is informed and believes and based thereon alleges that by virtue  
14 of Precor’s acts of unfair competition in violation of California Bus. & Prof. Code §  
15 17200 *et seq.*, Precor has derived and continues to derive gains, profits and  
16 advantages in an amount subject to proof at trial, but in excess of the jurisdictional  
17 requirement of the Court.

18 75. Due to Precor’s acts constituting unfair competition, GFE has suffered  
19 and continues to suffer great and irreparably injury for which there is no adequate  
20 remedy at law. GFE is entitled to injunctive relief and to restitution and  
21 disgorgement of Precor’s ill-gotten gains, including Precor’s profits, and to recover  
22 Precor’s damages, costs and reasonable attorneys’ fees.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Unjust Enrichment Against Precor)**

25 76. Plaintiff realleges and incorporate by reference the allegations  
26 contained in the previous paragraphs of this Complaint as though fully set forth  
27 herein.

28 77. Mr. Hai is the inventor of all claims of the ‘920 patent.



1 licensing royalties and/or fees, lower costs of capital, grant awards, preferred  
2 lending terms, and other pecuniary gain.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, GFE prays for entry of judgment in its favor and against  
5 Defendants as follows:

6 (a) An Order adjudging Defendants to have infringed the ‘553 patent  
7 under 35 U.S.C. § 271;

8 (b) An Order adjudging Defendants to have willfully infringed the ‘553  
9 patent under 35 U.S.C. § 271;

10 (c) A permanent injunction under 35 U.S.C. § 283 enjoining Defendants,  
11 their officers, directors, agents, servants, resellers, retailers, employees and  
12 attorneys, and those persons acting in concert or participation with them, from  
13 infringing the ‘553 patent in violation of 35 U.S.C. § 271;

14 (d) A permanent injunction enjoining Defendants, their officers, directors,  
15 agents, servants, resellers, retailers, employees and attorneys, and those persons  
16 acting in concert or participation with them, from making, using, selling, offering  
17 for sale, exporting, and importing the Accused Products;

18 (e) An award to GFE of its lost profits and/or a reasonable royalty for  
19 Precor’s sales of the Accused Products;

20 (f) An award to GFE of a reasonable royalty for 24 Hour Fitness’ use of  
21 the Accused Products by its members;

22 (g) An order for a trebling of damages and/or enhanced damages due to  
23 Defendants’ willful infringement under 35 U.S.C. § 284;

24 (h) An Order adjudicating that this is an exceptional case;

25 (i) An award to GFE of all attorneys’ fees and costs incurred by GFE in  
26 connection with this action under 35 U.S.C. § 285;

27 (j) An award of pre-judgment and post-judgment interest and costs of this  
28 action against Defendants;

1 (k) Declaring that Mr. Hai is the true and sole inventor of the '920 patent;

2 (l) For a directive to issue to the Commissioner of the United States  
3 Patent & Trademark Office instructions to issue a Certificate of Correction in  
4 connection with the '920 patent attesting to the fact that Mr. Hai was omitted as  
5 inventor on the '920 patent and correcting that error by designating Mr. Hai as the  
6 sole inventor or a joint inventor;

7 (m) Declaring that GFE is the owner or co-owner of the '920 patent or  
8 alternatively, declaring that GFE holds the '920 patent as constructive trustee for  
9 the benefit of GFE;

10 (n) An Order requiring Precor to correct its false advertising at its own  
11 expense;

12 (o) An award to GFE of its actual damages due to Precor's false  
13 advertising and/or unfair competition; and

14 (p) For such other and further relief as the Court deems just and proper.

15 Dated: February 8, 2017

SAN DIEGO IP LAW GROUP LLP

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By: /s/Trevor Coddington/

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DAVID M. BECKWITH

JAMES V. FAZIO, III

TREVOR Q. CODDINGTON, PH.D.

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Attorneys for Plaintiff,  
GREEN FITNESS EQUIPMENT COMPANY,  
LLC

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