

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION 6:12CV704

SMARTFIT SOLUTIONS LLC,

Plaintiff,

v.

PACEMASTER, LLC; STAR TRAC  
STRENGTH, INC.; BH NORTH AMERICA  
CORP.; PRECOR INCORPORATED; TRUE  
FITNESS TECHNOLOGY, INC.;  
SPORTSARTS, INC.; VISION FITNESS  
LLC; INTERNETFITNESS.COM, INC.  
D/B/A SMOOTH FITNESS; FITNESS  
EQUIPMENT SERVICES, INC. D/B/A  
SOLE FITNESS; ADVANCED FITNESS  
GROUP; FREEMOTION FITNESS, INC.;  
ICON HEALTH & FITNESS INC.; CYBEX  
INTERNATIONAL INC.; HORIZON  
FITNESS; LIFE FITNESS  
INTERNATIONAL SALES, INC.;  
WINSTON FITNESS EQUIPMENT INC.;  
LIFE SPAN FITNESS; NAUTILUS, INC.;  
BUSY BODY & FITNESS; FITNESS  
UNLIMITED; ECLAT, INC.; FIT SUPPLY,  
LLC; FITNESS GROUP OF TEXAS LLC  
d/b/a HEST FITNESS; BODY WORKS  
FITNESS EQUIPMENT, INC.; EQUINOX  
HOLDINGS, INC.; FITNESS HQ AND  
FITNESS IN MOTION d/b/a FITCORPUSA,  
INC.; AMAZON.COM, INC.; BJ'S  
WHOLESALE CLUB, INC.; BODY-SOLID,  
INC.; COSTCO WHOLESALE  
CORPORATION; DICK'S SPORTING  
GOODS, INC.; ESPN, INC.; GENERAL  
NUTRITION CENTERS, INC.; KMART  
CORPORATION; LINENS 'N THINGS,  
INC.; MODELL'S SPORTING GOODS,  
INC.; OVERSTOCK.COM; PCE FITNESS  
D/B/A PARK CITY ENTERTAINMENT,  
INC.; QVC, INC.; SEARS, ROEBUCK AND  
CO.; SPORTS AUTHORITY, INC.; TOYS  
"R" US, INC.; TOWN SPORTS  
INTERNATIONAL HOLDINGS, INC.;  
WAYFAIR LLC; SPIRIT  
MANUFACTURING, INC.

Defendants.

SEVERED FROM  
CIVIL ACTION NO. 6:11-cv-487

JURY TRIAL DEMANDED

## **AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff SmartFit Solutions LLC (together “SmartFit” or “Plaintiff”), as and for its Complaint against PaceMaster, LLC; Star Trac Strength, Inc.; BH North America Corp; Precor Incorporated; TRUE Fitness Technology, Inc.; SportsArt, Inc.; Vision Fitness LLC; InternetFitness.com, Inc. d/b/a Smooth Fitness; Fitness Equipment Services, Inc. d/b/a SOLE Fitness; Advanced Fitness Group; FreeMotion Fitness, Inc.; Icon Health & Fitness Inc.; Cybex International Inc.; Horizon Fitness; Life Fitness International Sales, Inc; Winston Fitness Equipment Inc.; Life Span Fitness; Nautilus, Inc.; Busy Body & Fitness; Fitness Unlimited; Eclat, Inc.; Fit Supply, LLC; Fitness Group of Texas LLC d/b/a Hest Fitness; Body Works Fitness Equipment, Inc.; Equinox Holdings, Inc.; Fitness HQ and Fitness in Motion d/b/a FitcorpUSA, Inc.; Amazon.com, Inc.; BJ’s Wholesale Club, Inc.; Body-Solid, Inc.; Costco Wholesale Corporation; Dick’s Sporting Goods, Inc.; ESPN, Inc.; General Nutrition Centers, Inc.; Kmart Corporation; Linens ‘n Things, Inc.; Modell’s Sporting Goods, Inc.; Overstock.com; PCE Fitness d/b/a Park City Entertainment, Inc.; QVC, Inc.; Sears, Roebuck and Co.; Sports Authority, Inc.; Toys “R” Us, Inc.; Town Sports International Holdings, Inc.; Wal-Mart Stores, Inc.; Wayfair LLC and Spirit Manufacturing, Inc. (collectively “Defendants”), demand a trial by jury and allege as follows:

### **PARTIES**

1. Plaintiff SmartFit Solutions LLC is a Texas limited liability company.
2. On information and belief, Defendant PaceMaster, LLC is incorporated under the laws of New Jersey with its principal place of business at 34 Fairfield Pl., West Caldwell, New Jersey, 07006. This defendant has appointed Bill Staub, its President, 34 Fairfield Pl., West Caldwell, New Jersey, 07006 as its agent for service of process. PaceMaster, LLC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern

District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

3. On information and belief, Defendant Star Trac Strength, Inc. is incorporated under the laws of Delaware with its principal place of business at 41180 Raintree Ct., Murrieta, CA 92562. This defendant has appointed MJ Hong, 14410 Myford Road, Irvine, CA 92606 as its agent for service of process. Star Trac Strength, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

4. On information and belief, Defendant BH North America Corp. is incorporated under the laws of Delaware with its principal place of business at 20155 Ellipse, Foothill Ranch, CA 92610. This defendant has appointed National Corporate Research, Ltd., 523 W. 6<sup>th</sup> Street, Suite 544, Los Angeles, CA 90014 as its agent for service of process. BH North America Corp. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

5. On information and belief, Defendant Precor Incorporated is a corporation organized and existing under the laws of the State of Delaware with their principal place of business at 20031 142<sup>nd</sup> Avenue Ne, Woodinville, WA 98072. This defendant has appointed CT Corporation System, 1801 West Bay Dr. NW Suite 206, Olympia, WA 98502 as its agent for service of process. Precor Incorporated regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

6. On information and belief, Defendant TRUE Fitness Technology, Inc. is incorporated under the laws of Missouri with its principal place of business at 865 Hoff Road, St. Louis, MO 63366. This defendant is registered to do business in Texas and has appointed Jacob

W. Reby, 12935 N. Forty Drive, Suite 210, St. Louis, MO 63141 as its agent for service of process. TRUE Fitness Technology Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

7. On information and belief, Defendant SportsArt, Inc. is incorporated under the laws of Delaware with its principal place of business at 19510 144<sup>th</sup> Avenue NE #A1, Woodinville, Washington 98072. This defendant is registered to do business in Texas and has appointed Sanford R. Holien, 517 Quinault Avenue SE, Ocean Shores, WA 98569 as its agent for service of process. Defendant SportsArt, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

8. On information and belief, Defendant Vision Fitness LLC is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business at 500 South CP Avenue, Lake Mills, WI 53551-0280. This defendant is registered to do business in Texas and has appointed Kenneth John Brauer, N7768 Laura Lane, Elkhorn, WI 53121 as its agent for service of process. Vision Fitness LLC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

9. On information and belief, Defendant InternetFitness.com, Inc. is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business at 780 5<sup>th</sup> Avenue, Suite 200, King of Prussia, PA 19406. This defendant has appointed InternetFitness.com, Inc., 780 5<sup>th</sup> Avenue, Suite 200, King of Prussia, PA 19406 as its agent for service of process. InternetFitness.com, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

10. On information and belief, Defendant Fitness Equipment Services, LLC is incorporated under the laws of Utah with its principal place of business at 56 Exchange Place, Salt Lake City, UT 84111. This defendant has appointed David Babcock, 56 Exchange Place, Salt Lake City, UT 84111 as its agent for service of process. Fitness Equipment Services, LLC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

11. On information and belief, Defendant Advanced Fitness Group is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business at 1620 Landmark Drive, Cottage Grove, WI 53527. This defendant has appointed Robert D. Whip, 1620 Landmark Drive, Cottage Grove, WI 53527 as its agent for service of process. Advanced Fitness Group regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

12. On information and belief, Defendant FreeMotion Fitness, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business at 1500 South 1000 West, Logan, UT 84321. This defendant has appointed Everett Smith, 1500 South 1000 West, Logan, UT 84321 as its agent for service of process. Free Motion Fitness, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

13. On information and belief, Defendant Icon Health & Fitness Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business at 1500 South 1000 West, Logan, UT 84321. This defendant has appointed CT Corporation Systems, 350 N. St. Paul, Dallas, TX 75201 as its agent for service of process. Icon Health &

Fitness regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

14. On information and belief, Defendant Cybex International Inc. is a corporation organized and existing under the laws of the State of New York with its principal place of business at 10 Trotter Drive, Medway, MA 02053-2299. This defendant has appointed Corporation Service Company, 84 State Street, Boston, MA 02109 as its agent for service of process. Cybex International Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

15. On information and belief, Defendant Horizon Fitness is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business 1620 Landmark Drive, Cottage Grove, WI 53527. This defendant has appointed Robert D. Whip, 1620 Landmark Drive, Cottage Grove, WI 53527 as its agent for service of process. Horizon Fitness regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

16. On information and belief, Defendant Life Fitness International Sales, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 5100 North River Road, Schiller Park, IL 60176. This defendant has appointed CT Corporation System, 208 S. LaSalle Street, Suite 814, Chicago, IL 60604 as its agent for service of process. Life Fitness regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

17. On information and belief, Defendant Winston Fitness Equipment Inc. is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 3730 Sunset Blvd., Houston, TX 77005. This defendant has appointed Winston Boeker, 3618 South Shepherd, Houston, TX 77098 as its agent for service of process. Winston Fitness Equipment Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

18. On information and belief, Defendant Life Span Fitness is a corporation organized and existing under the laws of the State of Utah with its principal place of business at 785 W 1700 S. #3, Salt Lake City, UT 84104. This defendant has appointed Pete Schenk, 785 W 1700 S. #3, Salt Lake City, UT 84104 as its agent for service of process. Life Span Fitness regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

19. On information and belief, Defendant Nautilus, Inc. is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 16400 SE Nautilus Drive, Vancouver, WA 98683. This defendant has appointed Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, TX 78701 as its agent for service of process. Nautilus, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

20. On information and belief, Defendant Busy Body & Fitness is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 9990 Empire Street, San Diego, CA 92126. This defendant has appointed Stanley R. Terry, Jr.,

1001 Kilgore Road, Baytown, TX 77520 as its agent for service of process. Busy Body & Fitness regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

21. On information and belief, Defendant Fitness Unlimited a corporation organized and existing under the laws of the State of Texas with its principal place of business at 105 Challenger Road Ridgefield Park, NJ 07660. This defendant has appointed Stanley R. Terry, Jr., 1001 Kilgore Road, Baytown, TX 77520 as its agent for service of process. Fitness Unlimited regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

22. On information and belief, Defendant Eclat, Inc. a corporation organized and existing under the laws of the State of Texas with its principal place of business at 10916 Westheimer, Houston, TX 77042. This defendant has appointed Stanley R. Terry, Jr., 1001 Kilgore Road, Baytown, TX 77520 as its agent for service of process. Eclat, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

23. On information and belief, Defendant Fit Supply, LLC is a Texas limited liability company with its principal place of business at 4760 Preston Road, Suite 244, PMB 255, Frisco, TX 75034. This defendant has appointed Fit Supply, LLC, 4760 Preston Road, Suite 244, PMB 255, Frisco, TX 75034 as its agent for service of process. Fit Supply, LLC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.



24. On information and belief, Defendant Fitness Group of Texas LLC d/b/a Hest Fitness is a Texas limited liability company with its principal place of business at 4730 S. Padre Island Dr., Corpus Christi, TX 78411. This defendant has appointed Albert Kessler, 4360 South Staples, Corpus Christi, TX 78411 as its agent for service of process. Fit Supply, LLC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

25. On information and belief, Defendant Body Works Fitness Equipment Inc. is a Texas corporation with its principal place of business at 2222 W. Rundberg Lane, Suite 400, Austin, TX 78758. This defendant has appointed Michael Berger, 2222 W. Rundberg Lane, Suite 400, Austin, TX 78758 as its agent for service of process. Body Works Fitness Equipment Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

26. On information and belief, Defendant Equinox Holdings, Inc. is a Texas corporation with its principal place of business at 6671 Southwest Freeway, Suite 200, Houston, TX 77074. This defendant has appointed CT Corporation System, 350 N. St. Paul, Dallas, TX 75201 as its agent for service of process. Equinox Holdings, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

27. On information and belief, Defendant Fitness HQ is a Texas limited liability company with its principal place of business at 2330 Apollo Circle, Carrollton, TX 75006. This defendant has appointed Karen Glanger, 2330 Apollo Circle, Carrollton, TX 75006-5516 as its agent for service of process. Fitness HQ regularly conducts and transacts business in Texas,

throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

28. On information and belief, Defendant Fitness in Motion d/b/a Fitcorp USA, Inc. is a Texas corporation with its principal place of business at 2330 Apollo Cir. Carrollton, TX 75006. This defendant has appointed Karen Glanger, 2330 Apollo Circle, Carrollton, TX 75006-5516 as its agent for service of process. Fitness in Motion d/b/a Fitcorp USA, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

29. On information and belief, Defendant Amazon.com, Inc. is a Delaware corporation with its principal place of business at 410 Terry Avenue North, Seattle, WA 98109. This defendant has appointed Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, as its agent for service of process. Amazon.com, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

30. On information and belief, Defendant BJ's Wholesale Club, Inc. is a Delaware corporation with its principal place of business at 25 Research Dr., Westborough, MA 01581. This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. BJ's Wholesale Club, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

31. On information and belief, Defendant Body-Solid, Inc. is an Illinois corporation with its principal place of business at 1900 Des Plaines Avenue, Forest Park, IL 60130-2512.

This defendant has appointed Scott McDonald, 1900 Des Plaines Avenue, Forest Park, IL 60130, as its agent for service of process. Body-Solid, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

32. On information and belief, Defendant Costco Wholesale Corporation is a Texas corporation with its principal place of business at 999 Lake Dr., Issaquah, WA 98027. This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Costco Wholesale Corporation regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

33. On information and belief, Defendant Dick's Sporting Goods, Inc. is a Delaware corporation with its principal place of business at 345 Court St., Coraopolis, PA 15108. This defendant has appointed Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, as its agent for service of process. Dick's Sporting Goods, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

34. On information and belief, Defendant ESPN, Inc. is a Delaware corporation with its principal place of business at Espn Plaza, 935 Middle St., Bristol, CT 06010. This defendant has appointed Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, as its agent for service of process. ESPN, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

35. On information and belief, Defendant General Nutrition Centers, Inc. is a Delaware corporation with its principal place of business at 300 6<sup>th</sup> Avenue #2, Pittsburgh, PA 15222-2531. This defendant has appointed National Registered Agents, 160 Greentree Dr., Ste. 101, Dover, DE 19904, as its agent for service of process. General Nutrition Centers, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

36. On information and belief, Defendant Kmart Corporation is a Delaware corporation with its principal place of business at 3333 Beverly Road, Hoffman Estates, IL 60179-0001. This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Kmart Corporation regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

37. On information and belief, Defendant Linens 'n Things, Inc. is a Delaware corporation with its principal place of business at 6 Brighton Rd., Ste. 1, Clifton, NJ 07012-1647. This defendant has appointed Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, as its agent for service of process. Linens 'n Things, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

38. On information and belief, Defendant Modell's Sporting Goods, Inc. is a Delaware corporation with its principal place of business at 498 7<sup>th</sup> Avenue, 20<sup>th</sup> Fl., New York, NY 10018. This defendant has appointed National Registered Agents, 160 Greentree Dr., Ste. 101, Dover, DE 19904, as its agent for service of process. Modell's Sporting Goods, Inc.

regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

39. On information and belief, Defendant Overstock.com is a Delaware corporation with its principal place of business at 6350 S. 3000 East, Salt Lake City, UT 84121. This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Overstock.com regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

40. On information and belief, Defendant PCE Fitness d/b/a Park City Entertainment, Inc. is a Utah corporation with its principal place of business at 785 W 1700 S #1, Salt Lake City, UT 84104-1752. This defendant has appointed Peter Schenk, 785 W 1700 S #1, Salt Lake City, UT 84104-1752, as its agent for service of process. PCE Fitness regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

41. On information and belief, Defendant QVC, Inc. is a Delaware corporation with its principal place of business at 1200 Wilson Dr., West Chester, PA 19380. This defendant has appointed Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, as its agent for service of process. QVC, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

42. On information and belief, Defendant Sears, Roebuck and Co. is a Delaware corporation with its principal place of business at 3333 Beverly Rd., Hoffman Estates, IL 60179.

This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Sears, Roebuck and Co. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

43. On information and belief, Defendant Sports Authority, Inc. is a Delaware corporation with its principal place of business at 1050 W. Hampden Ave., Englewood, CO 80110. This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Sports Authority, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

44. On information and belief, Defendant Toys “R” Us, Inc. is a Delaware corporation with its principal place of business at One Geoffrey Way, Wayne, New Jersey 07470-2030. This defendant has appointed Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, as its agent for service of process. Toys “R” Us, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

45. On information and belief, Defendant Town Sports International Holdings, Inc. is a Delaware corporation with its principal place of business at 5 Penn Plaza, 4<sup>th</sup> Fl., New York, NY 10001. This defendant has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Town Sports International Holdings, Inc. regularly conducts and transacts business in Texas,

throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

46. On information and belief, Defendant Wayfair LLC is a Delaware corporation with its principal place of business at 177 Huntington Ave., Boston, MA 02115. This defendant has appointed Incorporating Services, Ltd., 3500 South Dupont Highway, Dover, DE 19901, as its agent for service of process. Wayfair LLC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

47. On information and belief, Defendant Spirit Manufacturing, Inc. is an Arkansas corporation with its principal place of business at 2601 Commerce Dr., Jonesboro, AR 72401. This defendant has appointed Christopher M. Cox, as its agent for service of process. Spirit Manufacturing, Inc. regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

#### **JURISDICTION AND VENUE**

48. This action arises under the Patent Laws of the United States, namely, 35 U.S.C. §§ 1 et seq. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

49. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) and (c) and/or 1400(b). On information and belief, each Defendant has transacted business in this district, and has committed acts of patent infringement in this district, including via their websites.

50. On information and belief, Defendants are subject to this Court's general and specific personal jurisdiction because: each Defendant has minimum contacts within the State of Texas and the Eastern District of Texas, including via their websites, pursuant to due process and/or the Texas Long Arm Statute, each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each

Defendant regularly conducts and solicits business within the State of Texas and within the Eastern District of Texas; and SmartFit's causes of action arise directly from Defendants' business contacts and other activities in the State of Texas and in the Eastern District of Texas.

51. More specifically, each Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of interactive web pages) its products and services in the United States, the State of Texas, and the Eastern District of Texas. On information and belief, each Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendants' products and services in the State of Texas and in the Eastern District of Texas.

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

52. SmartFit is the owner of all rights, title and interest to United States Patent No. 6,626,800 ("the '800 Patent") entitled "Method of Exercise Prescription and Evaluation." The '800 Patent was issued on September 30, 2003 after a full and fair examination by the United States Patent and Trademark Office. The application leading to the '800 Patent was filed on July 12, 2000.

53. The '800 Patent is generally directed to novel, unique and non-obvious systems and methods for presenting exercise protocols to a user and evaluating the effective of the same. The invention includes, is not limited to, novel, unique and non-obvious systems and methods for using exercise devices with processors having protocol generating algorithms.

54. On information and belief, Defendant PaceMaster, LLC has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating



algorithms. On information and belief, multiple Defendant PaceMaster, LLC including, but not limited to the Platinum Pro VR Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

55. On information and belief, Defendant Star Trac Strength, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Star Trac Strength, Inc. products including, but not limited to the E Series product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

56. On information and belief, Defendant BH North America Corp. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant BH North America Corp. products including, but not limited to the TS5 Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

57. On information and belief, Defendant Precor Incorporated has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Precor Incorporated products

including, but not limited to the M9.25i product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

58. On information and belief, Defendant TRUE Fitness Technology, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant TRUE Fitness Technology, Inc. products including, but not limited to the CS800 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

59. On information and belief, Defendant SportsArt, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant SportsArt, Inc. products including, but not limited to the E870 Elliptical product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

60. On information and belief, Defendant Vision Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Vision Fitness products including, but not limited to the Premier T9600 product, use systems and methods using exercise devices

with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

61. On information and belief, Defendant InternetFitness.com, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant InternetFitness.com, Inc. products including, but not limited to the 7.35 R Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

62. On information and belief, Defendant Fitness Equipment Services, LLC has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Fitness Equipment Services, LLC products including, but not limited to the E95 Elliptical product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

63. On information and belief, Defendant Advanced Fitness Group has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Advanced Fitness Group products including, but not limited to the 5.0 AT Treadmill product, use systems and methods using

exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

64. On information and belief, Defendant FreeMotion Fitness, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant FreeMotion Fitness, Inc. including, but not limited to the FreeMotion® Reflex t11.4 Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

65. On information and belief, Defendant Icon Health & Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Icon Health & Fitness products including, but not limited to the FreeMotion® Reflex t11.4 Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

66. On information and belief, Defendant Cybex International Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Cybex International Inc. products including, but not limited to the 800S Stepper product, use systems and methods using exercise

devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

67. On information and belief, Defendant Horizon Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Horizon Fitness products including, but not limited to the Elite Series Treadmill 4.1T, 5.1T product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

68. On information and belief, Defendant Life Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Life Fitness products including, but not limited to the Advanced Workouts Console product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

69. On information and belief, Defendant Winston Fitness Equipment Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Winston Fitness Equipment Inc. products including, but not limited to the Advanced Workouts Console product, use systems and

methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

70. On information and belief, Defendant LifeSpan Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant LifeSpan Fitness products including, but not limited to the TR3000i and TR4000i products, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

71. On information and belief, Defendant Nautilus, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Nautilus, Inc. products including, but not limited to the BowFlex Series 7 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

72. On information and belief, Defendant Busy Body & Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Busy Body & Fitness products including, but not limited to the Advanced Workouts Console product, use systems and methods

using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

73. On information and belief, Defendant Fitness Unlimited has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Fitness Unlimited products including, but not limited to the Platinum Pro VR Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

74. On information and belief, Defendant Eclat, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Eclat, Inc. products including, but not limited to the Platinum Pro VR Treadmill product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

75. On information and belief, Defendant Fit Supply, LLC has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendants' products including, but not limited to the E Series treadmill product, use systems and methods using exercise devices with

processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

76. On information and belief, Defendant Fitness Group of Texas LLC d/b/a Hest Fitness has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Fitness Group of Texas LLC d/b/a Hest Fitness products including, but not limited to the M9.25i product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

77. On information and belief, Defendant Body Works Fitness Equipment, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Body Works Fitness Equipment, Inc. products including, but not limited to the CS800 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

78. On information and belief, Defendant Equinox Holdings, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Equinox Holdings, Inc. products including, but not limited to the Equinox 95T Treadmill product, use systems and methods using



exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

79. On information and belief, Defendant Fitness HQ has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Fitness HQ products including, but not limited to the TR3000i and TR4000i products, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

80. On information and belief, Defendant Fitness in Motion d/b/a FitcorpUSA, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Fitness in Motion d/b/a FitcorpUSA, Inc. products including, but not limited to the TR3000i and TR4000i product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

81. On information and belief, Defendant Amazon.com, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Amazon.com, Inc. products including, but not limited to the Xterra TR450 product, use systems and methods using exercise

devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

82. On information and belief, Defendant Fitness in BJ's Wholesale Club, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant BJ's Wholesale Club, Inc. products including, but not limited to the Xterra TR450 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

83. On information and belief, Defendant Body-Solid, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Body-Solid, Inc. products including, but not limited to the Endurance T10 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

84. On information and belief, Defendant Costco Wholesale Corporation has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Costco Wholesale Corporation products including, but not limited to the LifeSpan TR100 product, use systems and methods

using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

85. On information and belief, Defendant Dick's Sporting Goods, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Dick's Sporting Goods, Inc. products including, but not limited to the LifeSpan TR200 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

86. On information and belief, Defendant ESPN, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant ESPN, Inc. products including, but not limited to the SOLE E95 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

87. On information and belief, Defendant General Nutrition Centers, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant General Nutrition Centers, Inc. products including, but not limited to the SOLE E95 product, use systems and methods using

exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

88. On information and belief, Defendant Kmart Corporation has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Kmart Corporation products including, but not limited to the SOLE E95 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

89. On information and belief, Defendant Linens 'n Things, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Linens 'n Things, Inc. products including, but not limited to the Body-Solid Endurance T10 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

90. On information and belief, Defendant Modell's Sporting Goods, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Modell's Sporting Goods, Inc. products including, but not limited to the SOLE Fitness E95 product, use systems and methods

using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

91. On information and belief, Defendant Overstock.com has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Overstock.com products including, but not limited to the Epic 600 MX product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

92. On information and belief, Defendant PCE Fitness d/b/a Park City Entertainment, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant PCE Fitness d/b/a Park City Entertainment, Inc. products including, but not limited to the LifeSpan Pro5 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

93. On information and belief, Defendant QVC, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant QVC, Inc. products including, but not limited to the Epic 600 MX product, use systems and methods using exercise devices with processors having

protocol generating algorithms. Defendant is thus liable for infringement of the ‘800 Patent pursuant to 35 U.S.C. § 271.

94. On information and belief, Defendant Sears, Roebuck and Co. has been and now is infringing the ‘800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Sears, Roebuck and Co. products including, but not limited to the Life Fitness T3 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the ‘800 Patent pursuant to 35 U.S.C. § 271.

95. On information and belief, Defendant Sports Authority, Inc. has been and now is infringing the ‘800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Sports Authority, Inc. products including, but not limited to the Xterra TR450 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the ‘800 Patent pursuant to 35 U.S.C. § 271.

96. On information and belief, Defendant Toys “R” Us, Inc. has been and now is infringing the ‘800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Toys “R” Us, Inc. products including, but not limited to the Xterra TR450 product, use systems and methods using exercise

devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

97. On information and belief, Defendant Town Sports International Holdings, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Town Sports International Holdings, Inc. products including, but not limited to the Precor 956i product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

98. On information and belief, Defendant Wayfair LLC has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Wayfair LLC products including, but not limited to the LifeSpan Pro5 product, use systems and methods using exercise devices with processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

99. On information and belief, Defendant Spirit Manufacturing, Inc. has been and now is infringing the '800 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling or offering to sell products that have systems and/or methods for using exercise devices with processors having protocol generating algorithms. On information and belief, multiple Defendant Spirit Manufacturing, Inc. products including, but not limited to the Xterra TR450 product, use systems and methods using exercise devices with

processors having protocol generating algorithms. Defendant is thus liable for infringement of the '800 Patent pursuant to 35 U.S.C. § 271.

100. To the extent that facts learned in discovery show that Defendants' infringement of the '800 Patent is or has been willful, SmartFit reserves the right to request such a finding at time of trial.

101. As a result of these Defendants' infringement of the '800 Patent, SmartFit has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

102. Unless a permanent injunction is issued enjoining these Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on in active concert therewith from infringing the '800 Patent, SmartFit will be greatly and irreparably harmed.

#### **PRAYER FOR RELIEF**

WHEREFORE, SmartFit respectfully requests that this Court enter:

A. A judgment in favor of SmartFit that Defendants have infringed the '800 Patent, and that such infringement was willful;

B. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '800 Patent;

C. A judgment and order requiring Defendants to pay SmartFit its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '800 Patent as provided under 35 U.S.C. § 284;

D. An award to SmartFit for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct with notice being made at least as early as the date of the filing of this Amended Complaint, as provided under 35 U.S.C. § 284;

E. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to SmartFit its reasonable attorneys' fees; and



F. Any and all other relief to which SmartFit may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

SmartFit, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: November 18, 2011

Respectfully submitted,

**SMARTFIT SOLUTIONS LLC**

/s/ Winston O. Huff

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ATTORNEYS FOR PLAINTIFF  
SMARTFIT SOLUTIONS LLC

**CERTIFICATE OF FILING**

I hereby certify that on November 18, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

Dated: November 18, 2011

Respectfully submitted,

/s/ Winston O. Huff

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