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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

**ICON HEALTH & FITNESS, INC.**, a  
Delaware corporation,

Plaintiff,

v.

**ISAAC CALDERON**, an individual,  
**MAHONRY J. SANCHEZ**, an  
individual, and **VENTO NORTH  
AMERICA, LLC**, a California limited  
liability company, collectively doing business  
as **LIME PRO EQUIPMENT USA**,

Defendants.

Civil Action No. 1:12-cv-00109-PMW

**COMPLAINT**

**JURY DEMANDED**

Magistrate Judge Paul M. Warner

Plaintiff ICON HEALTH & FITNESS, INC. (“ICON” or “Plaintiff”) hereby complains against defendants ISAAC CALDERON, MAHONRY J. SANCHEZ, and VENTO NORTH AMERICA, LLC, collectively doing business as LIME PRO EQUIPMENT USA (collectively, “LimePro” or “Defendants”) for the causes of action alleged as follows:

## **THE PARTIES**

1. ICON is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 1500 South 1000 West, Logan, Utah 84321.

2. ICON alleges on information and belief that defendant Isaac Calderon is an individual residing in the State of California and is, and at all times mentioned herein was, doing business as LimePro Equipment USA, a California entity with its principal place of business located at 6190 Cornerstone Court, Suite 200, San Diego, California, 92121.

3. ICON alleges on information and belief that defendant Mahonry J. Sanchez is an individual residing in the State of California and is, and at all times mentioned herein was, an individual doing business as LimePro Equipment USA, a California entity with its principal place of business located at 6190 Cornerstone Court, Suite 200, San Diego, California, 92121.

4. ICON alleges on information and belief that defendant Vento North America LLC is, and at all times mentioned herein was, a California limited liability company with its current principal place of business located 9265 Activity Road Ste. 112, San Diego, California, 92126, doing business as Lime Pro Equipment USA, with its principal place of business located at 6190 Cornerstone Court, Suite 200, San Diego, California, 92121.

5. ICON alleges on information and belief that defendant Lime Pro Equipment USA is, and at all times mentioned herein was, a California entity with its principal place of business located at 6190 Cornerstone Court, Suite 200, San Diego, California, 92121.

## **JURISDICTION AND VENUE**

6. This is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. § 271, which gives rise to the remedies specified under 35 U.S.C. §§ 281, and 283–85.

7. This is a civil action for trademark infringement under Sections 32 and 43 of the Lanham Act, Title 15 U.S.C. §§ 1114(1) and 1125.

8. This is also a civil action for unfair competition arising under Utah Code Ann. § 13-5a-101, *et seq.*

9. This is also a civil action for deceptive trade practices arising under Utah Code Ann. § 13-11a-1, *et seq.*

10. This is a civil action for breach of contract, and related claims, pursuant to the laws of the State of Utah.

11. This is a civil action for fraud and fraudulent inducement, pursuant to the laws of the State of Utah.

12. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

13. This also is an action in which the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between a citizen of the State of Utah and, upon information and belief, citizens of the State of California. Accordingly, this Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1).

14. This action also arises out of Defendants' violation of a standing order of this Court, over which the Court retains jurisdiction.

15. ICON further alleges on information and belief that Defendants have sold or contracted for the sale of goods within the State of Utah, to ICON's injury, which relate to the claims asserted by ICON, and out of which ICON's claims, in part, arise.

16. Defendants are the owners of the web site located at [www.limeproequipment.com](http://www.limeproequipment.com), which is available to persons within the State of Utah.

17. On information and belief, Defendants advertise, market, and sell their products through their website, [www.limeproequipment.com](http://www.limeproequipment.com), which advertising, marketing, and selling are available to the purchasing public in the State of Utah.

18. On information and belief, Defendants are the owners of the web site located at [www.ifitinternational.com](http://www.ifitinternational.com), which is available to persons within the State of Utah.

19. On information and belief, Defendants advertise and market their products through their website, [www.ifitinternational.com](http://www.ifitinternational.com), which advertising and marketing are available to the purchasing public in the State of Utah.

20. Defendants have contracted with ICON, a Utah corporation, and has failed to fulfill their contractual obligations to ICON pursuant to a contract interpreted, governed, and enforced according to the laws of the State of Utah.

21. This Court's exercise of personal jurisdiction over Defendants is consistent with the Constitutions of the United States and the State of Utah.

22. Venue is proper in this judicial district pursuant to the agreement of ICON and Defendants.

23. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §§ 1391(b)(2), 1391(b)(3), and 1391(c).

## **FACTUAL BACKGROUND**

### **ICON'S PATENTS AND TRADEMARKS**

24. ICON is an award-winning innovator in the field of exercise equipment, and markets and sells a variety of consumer products.

25. ICON came to its position of technological leadership through hard work and substantial investment in research and development. As a result of its endeavors, many of the technological innovations created and owned by ICON are protected by a valuable and diverse intellectual property portfolio that includes patents, trademarks, trade dress, and copyrights.

26. Many of ICON's technological innovations are protected, inter alia, by a portfolio of utility and design patents, including United States Patent No. 5,772,560 ("560 Patent"); a true and correct copy of which is attached hereto as Exhibit A.

27. ICON is the owner by assignment of the '560 Patent.

28. Several of ICON's successful innovations have been in the design and development of treadmills, elliptical machines, exercise bikes, weight benches, strength training equipment, and other fitness-related equipment, devices, and services that ICON markets in connection with the trademarks "I FIT" or "IFIT.COM."

29. ICON owns several federally registered trademarks including: United States Trademark Registration No. 2,466,474 ("474 Registration"), a true and correct copy of the Trademark Registration for the '474 Registration is attached hereto as Exhibit B and is incorporated herein by reference; United States Trademark Registration No. 2,618,509 ("509

Registration”), a true and correct copy of the United States Trademark Registration for the ’509 Registration is attached hereto as Exhibit C and is incorporated herein by reference. The ’474 Registration, ’509 Registration, and ICON’s “I FIT” and “IFIT.COM” trademarks are collectively as the “IFIT Trademarks.”

30. ICON’s ’474 Registration and ’509 Registration are incontestable marks.

31. ICON has developed recognition and goodwill for the products sold under the IFIT Trademarks, among both ICON’s immediate customers and the consuming public, generally.

32. As a result of, among other things, ICON’s substantial investment in the IFIT Trademarks and the products marketed under those trademarks, the consuming public recognizes the IFIT Trademarks and associates products with those marks with a single source, namely ICON.

#### **LIMEPRO’S INFRINGING PRODUCTS**

33. On information and belief, Defendants import, make, use, sell, and/or offers for sale within the United States and within the State of Utah, either directly or through established distribution channels, exercise equipment, including treadmills designated as, inter alia, the D11.3 Treadmill.

34. On information and belief, Defendants have sold products that infringe the ’560 Patent, including, for example, the D11.3 Treadmill.

35. ICON has not licensed Defendants to practice the ’560 Patent, and Defendants do not have any right or authority to license others to practice the ’560 Patent.

36. On information and belief, Defendants make, sell, offer for sale, and market products that compete with ICON, for example, treadmills and other exercise equipment, that are marketed under the marks “I FIT” and “I FIT INTERNATIONAL.”

37. Defendants use the “I FIT” and “I FIT INTERNATIONAL” marks in connection with their website located at [www.ifitinternational.com](http://www.ifitinternational.com).

38. Defendants use a United States, “1-800” telephone number in connection with the marketing and sale of their products on the [www.ifitinternational.com](http://www.ifitinternational.com) website.

39. The “I FIT” and “I FIT INTERNATIONAL” marks, as used by Defendants, are confusingly similar to the IFIT Trademarks.

40. On information and belief, Defendants manage their business and use of the “I FIT” and “I FIT INTERNATIONAL” marks on their products and on the [www.ifitinternational.com](http://www.ifitinternational.com) website from the United States.

41. Defendants’ use of the “I FIT” and “I FIT INTERNATIONAL” marks in their products promotion and advertising constitutes use in commerce of a colorable imitation of the IFIT Trademarks.

42. Upon information and belief, the “I FIT” and “I FIT INTERNATIONAL” marks, as used by Defendants, and ICON’s IFIT Trademarks share similar sight and sound characteristics as well as a similarity of meaning.

43. Defendants’ use of “I FIT” and “I FIT INTERNATIONAL” marks in connection with fitness-related products is deceptively and confusingly similar the IFIT Trademarks that ICON uses to market its cardio, strength, and other fitness-related equipment, devices, and services.

44. Defendants' use of the "I FIT" and "I FIT INTERNATIONAL" marks is likely to cause confusion, mistake, or deception in the minds of the public as to the source of Defendants' products or their affiliation with ICON.

45. Defendants have engaged in intentional infringements of ICON's intellectual property since at least 2008.

46. On information and belief and by reason of Defendants' continual copying of ICON's products and intellectual property, Defendants' conduct with respect to ICON as alleged herein has been willful, malicious, and with the specific intent to harm ICON.

**2008 ACTION & STIPULATED PERMANENT INJUNCTION AGAINST LIMEPRO**

47. On or about July 9, 2008, ICON initiated an action, Civil Action No. 1:08-CV-00077 DN, in this Court against Defendants ("2008 Action") for, among other things, infringing upon its protected trade dress of the NordicTrack Elite treadmill (the "ICON Trade Dress"); a true and correct copy of the Complaint in the 2008 Action is attached hereto as Exhibit D and is incorporated herein by reference.

48. On or about October 28, 2008, Defendants filed a "Stipulated Permanent Injunction and Order of Dismissal" ("Stipulated Permanent Injunction"), which was signed by both Defendants and ICON; a true and correct copy of the Stipulated Permanent Injunction filed with this Court is attached hereto as Exhibit E.

49. On or about October 28, 2008, the Honorable Judge Thomas Greene of the United States District Court for the District of Utah also signed the Stipulated Permanent Injunction; a true and correct copy of the Stipulated Permanent Injunction signed by Judge Thomas Greene is attached hereto as Exhibit F.



50. The Stipulated Permanent Injunction is an order of the Court over which the Court retains jurisdiction, venue, and authority to enforce.

51. Under the Stipulated Permanent Injunction, Defendants agreed to the following:

to cease all distributing, selling, offering for sale, importing, and any other use in commerce of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, and D15.0, and any other product that incorporates the same or substantially the same features of ICON's asserted trade dress design, as depicted in the images attached as Exhibit B to the Complaint [of the 2008 Action] (the "LimePro Treadmills") [and] ...

to refrain from placing images of the LimePro Treadmills ... on any websites that are in whole or in part, owned, controlled, or operated by or on behalf of any Defendant, including [www.limeproequipment.com](http://www.limeproequipment.com) and any webpages available through [www.ebay.com](http://www.ebay.com).

52. Defendants also agreed that "[t]his Court shall retain jurisdiction, venue and authority, to enforce the terms of" the Stipulated Permanent Injunction.

53. Also in October 2012, LimePro and ICON entered into a Confidential Settlement Agreement and Release ("Settlement Agreement") in connection with the Stipulated Permanent Injunction.

54. The Stipulated Permanent Injunction is a valid and lawful order of this Court.

55. The Stipulated Permanent Injunction is a valid and binding contract between ICON and Defendants.

56. The Settlement Agreement is a valid and binding contract between ICON and Defendants.

57. On information and belief, since agreeing to the terms of Stipulated Permanent Injunction and since the Court issued the Stipulated Permanent Injunction, Defendants have continued distributing, selling, offer for sale, importing, or otherwise using in commerce

LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action.

58. On information and belief, since agreeing to the terms of Stipulated Permanent Injunction and since the Court issued the Stipulated Permanent Injunction, Defendants have continued placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of Defendants, including on [www.limeproequipment.com](http://www.limeproequipment.com).

59. By reason of the foregoing, Defendants have violated and continue to violate the order of this Court as stated in the Stipulated Permanent Injunction.

60. By reason of the foregoing, Defendants have failed to perform their obligations in accordance with the Stipulated Permanent Injunction, Settlement Agreement, or both.

61. Defendants had, and continues to have, the ability to comply with the Court's order as stated in the Stipulated Permanent Injunction, but, on information and belief, chooses not to comply.

62. On information and belief, by reason of the foregoing, Defendants' disobedience to the Court's order as stated in the Stipulated Permanent Injunction has been intentional, willful, and deliberate.

63. ICON has been harmed and has incurred damages due to Defendants' failure to obey the Court's orders set forth in the Stipulated Permanent Injunction.

64. ICON has been harmed and has incurred damages due to Defendants' failure to perform its obligations under the Stipulated Permanent Injunction, Settlement Agreement, or both.

**FIRST CAUSE OF ACTION  
(Patent Infringement of the '560 Patent)**

65. By this reference ICON realleges and incorporates the foregoing paragraphs as through fully set forth herein.

66. ICON alleges on information and belief that Defendants have infringed one or more claims of the '560 Patent by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the '560 Patent, or by contributing to infringement, inducing others to infringe the '560 Patent, or carrying out acts constituting infringement under 35 U.S.C. § 271.

67. The conduct of Defendants as set forth hereinabove gives rise to a cause of action for infringement of the '560 Patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

68. On information and belief, Defendants have sold infringing products, including, for example, the treadmill identified as the D11.3 Treadmill, despite an objectively high likelihood that their actions constitute infringement.

69. On information and belief, Defendants' sales of infringing products have been both willful and deliberate.

70. By reason of the foregoing, ICON is entitled to monetary relief against Defendants, pursuant to 35 U.S.C. §§ 284–85, as more fully set forth herein below.

**SECOND CAUSE OF ACTION  
(Federal Trademark Infringement)**

71. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

72. Defendants' use of the "I FIT" and "I FIT INTERNATIONAL" marks is likely to cause confusion, mistake or deception as to the source, origin, affiliation, connection, or association of Defendants' products with ICON, or as to the approval of Defendants' products by ICON, and thus constitutes infringement of ICON's '474 Registration and '509 Registration in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

73. Defendants' infringement of the IFIT Trademarks negatively affects ICON's business in the United States and around the world.

74. Upon information and belief, Defendants' infringement of the IFIT Trademarks has taken place with full knowledge of ICON's marks, including ICON's incontestable marks, and, therefore, has been intentional, deliberate and willful.

75. Defendants' violation of 15 U.S.C. § 1114 has caused ICON to suffer damages and irreparable harm.

76. By reason of the foregoing, ICON is entitled to monetary and injunctive relief pursuant to 15 U.S.C. §§ 1116–1118, as more fully set forth hereinbelow.

**THIRD CAUSE OF ACTION  
(Federal Trademark Infringement, False Designation,  
and Unfair Competition)**

77. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

78. Defendants' use of the "I FIT" and "I FIT INTERNATIONAL" marks is likely to cause confusion, mistake, or deception as to the source, origin, affiliation, connection or association of Defendants' products with ICON, or as to the approval of Defendants' products by ICON, and thus constitutes trademark infringement, false designation of origin, and unfair competition with respect to the IFIT Trademarks in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

79. Defendants' actions have taken place with full knowledge of the IFIT Trademarks and therefore have been intentional, deliberate and willful.

80. Defendants' violation of 15 U.S.C. § 1125(a) has caused ICON to suffer damages and irreparable harm.

81. By reason of the foregoing, ICON is entitled to monetary and injunctive relief pursuant to 15 U.S.C. §§ 1116–1118, as more fully set forth hereinbelow.

**FOURTH CAUSE OF ACTION**  
**(State Law Trademark Infringement and Unfair Competition)**

82. By this reference ICON realleges and incorporates the forgoing paragraphs as though fully set forth herein.

83. Defendants, by their actions set forth hereinabove, have engaged in intentional business acts or practices that are unlawful, unfair, and/or fraudulent, including the infringement of ICON's trademarks or patents, and that have caused a material diminution in the value of the trademarks, trade names, patents, and other intellectual property held by ICON, in violation of, *inter alia*, Utah Code Ann. § 13-5a-101 *et seq.*

84. By reason of the foregoing, ICON has suffered damages and irreparable harm.

85. By reason of the foregoing, ICON is entitled to actual and punitive damages from Defendants, along with its attorney fees and costs pursuant to at least Utah Code Ann. § 13-5a-103(1)(b) as more fully set forth hereinbelow.

**FIFTH CAUSE OF ACTION  
(State Law Deceptive Trade Practices)**

86. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

87. Defendants, by their actions as set forth hereinabove, have caused, are causing, and will continue to cause a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of their products, including but not limited to, the Defendants' products marketed in connection with the marks "I FIT" and "I FIT INTERNATIONAL"; have caused, are causing, and will continue to cause a likelihood of confusion or misunderstanding as to the affiliation, connection, association with, or certification by another of their products, including but not limited to, Defendants' products marketed in connection with the marks "I FIT" and "I FIT INTERNATIONAL"; represented, represent, and will continue to represent that their goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have, including their products, including but not limited to, Defendants' products marketed in connection with the marks "I FIT" and "I FIT INTERNATIONAL"; and have thereby engaged in deceptive trade practices, pursuant to, *inter alia*, Utah Code Ann. §§ 13-11a-3(1)(b), (c), and (e).

88. Defendants' conduct as set forth hereinabove give rise to a cause of action for deceptive trade practices and related wrongs under the statutory and common law of the State of Utah and other states, including at least Utah Code Ann. § 13-11a-1, *et seq.*

89. On information and belief, Defendants have engaged in deceptive trade practices against ICON in willful and deliberate disregard of the rights of ICON and the consuming public.

90. By reason of Defendants' deceptive trade practices, ICON has suffered damages and irreparable harm.

91. By reason of the foregoing, ICON is entitled to injunctive and monetary relief against Defendants, along with its attorney fees and costs, pursuant to at least Utah Code Ann. §§ 13-11a-4(2)(a), (b), and (c), as more fully set forth hereinbelow.

### **SIXTH CAUSE OF ACTION (Breach of Contract)**

92. By this reference ICON realleges and incorporates the foregoing paragraphs as through fully set forth herein.

93. The Stipulated Permanent Injunction and Settlement Agreement are valid and binding contracts.

94. ICON has performed, and continues to perform, all of its obligations under the Stipulated Permanent Injunction and Settlement Agreement, or has been excused from performing its obligations under the Stipulated Permanent Injunction and Settlement Agreement.

95. Defendants have breached the Stipulated Permanent Injunction, Settlement Agreement, or both, and continue to breach the Stipulated Permanent Injunction, Settlement Agreement, or both at least by distributing, selling, offer for sale, importing, or otherwise using

in commerce LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action.

96. Defendants have breached the Stipulated Permanent Injunction, Settlement Agreement, or both, and continue to beach the Stipulated Permanent Injunction, Settlement Agreement, or both at least by placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of LimePro, including [www.limeproequipment.com](http://www.limeproequipment.com).

97. Defendants' breaches of the Stipulated Permanent Injunction, Settlement Agreement, or both are material and without justification.

98. As a direct and proximate result of Defendants' breaches, ICON has suffered, and will continue to suffer general and special damages, including consequential damages, in an amount to be proven at trial.

99. Defendants' conduct as set forth herein gives rise to a cause of action for breach of contract and related wrongs under the laws of the State of Utah.

100. By agreement, ICON is also entitled to recover all costs and expenses, including reasonable attorney fees, from Defendants that ICON has incurred and will incur in connection with the Defendants' breaches of the Stipulated Permanent Injunction, Settlement Agreement, or both.



101. By reason of the foregoing, ICON is entitled to monetary and injunctive relief against Defendants, as more fully set forth hereinbelow.

**SEVENTH CAUSE OF ACTION  
(Breach of the Covenant of Good Faith and Fair Dealing)**

102. By this reference ICON realleges and incorporates the foregoing paragraphs as through fully set forth herein.

103. The Stipulated Permanent Injunction and Settlement Agreement are valid and binding contracts.

104. ICON has performed, and continues to perform, all of its obligations under the Stipulated Permanent Injunction and Settlement Agreement, or has been excused from performing its obligations under the Stipulated Permanent Injunction and Settlement Agreement.

105. Defendants have breached the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both, and continue to breach the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both at least by failing to deal with ICON fairly and in good faith and by intentionally injuring ICON's right to receive the benefits of the Stipulated Permanent Injunction, Settlement Agreement, or both.

106. Defendants have breached the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both, and continue to breach the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both at least by distributing, selling, offer for sale, importing, or otherwise using in commerce LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other

products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action.

107. Defendants have breached the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both, and continue to breach the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both at least by placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of LimePro, including [www.limeproequipment.com](http://www.limeproequipment.com).

108. Defendants' breaches of the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both are material and without justification.

109. As a direct and proximate result of Defendants' breaches of the implied covenant of good faith and fair dealing, ICON has suffered, and will continue to suffer general and special damages, including consequential damages, in an amount to be proven at trial.

110. Defendants' conduct as set forth herein gives rise to a cause of action for breach of the implied covenant of good faith and fair dealing, and related wrongs, under the laws of the State of Utah.

111. ICON is also entitled to recover all costs and expenses, including reasonable attorney fees, from Defendants that ICON has incurred and will incur in connection with the

Defendants' breaches of the implied covenant of good faith and fair dealing of the Stipulated Permanent Injunction, Settlement Agreement, or both.

112. By reason of the foregoing, ICON is entitled to monetary and injunctive relief against Defendants, as more fully set forth hereinbelow.

**EIGHTH CAUSE OF ACTION  
(Fraud)**

113. By this reference ICON realleges and incorporates the foregoing paragraphs as through fully set forth herein.

114. Prior to entering into the Stipulated Permanent Injunction and Settlement Agreement, Defendants falsely represented to ICON, including to its principles and agents, that they were willing to cease all distributing, selling, offer for sale, importing, or otherwise using in commerce LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action, and were willing to refrain from placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of LimePro, including [www.limeproequipment.com](http://www.limeproequipment.com).

115. On information and belief, Defendants in fact did not intend to cease all distributing, selling, offer for sale, importing, or otherwise using in commerce LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action, and did

not intend to refrain from placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of LimePro, including [www.limeproequipment.com](http://www.limeproequipment.com).

116. On information and belief and by reason of Defendants' conduct, Defendants made the aforementioned statements to ICON knowing that the statements were false, or made them recklessly without regard for their truth.

117. On information and belief, Defendants intended ICON to rely on their false statements.

118. ICON reasonably relied on Defendants' false statements without knowledge of their falsity.

119. As a result of Defendants' false statements, ICON has suffered and continues to suffer harm.

120. Defendants' conduct as set forth herein gives rise to a cause of action for fraud and related wrongs under the laws of the State of Utah.

121. By reason of the foregoing, ICON is entitled to relief against Defendants, as more fully set forth hereinbelow.

### **NINTH CAUSE OF ACTION (Fraudulent Inducement)**

122. By this reference ICON realleges and incorporates the foregoing paragraphs as through fully set forth herein.

123. Prior to entering into the Stipulated Permanent Injunction and Settlement Agreement, Defendants falsely represented to ICON, including to its principles and agents, that they were willing to cease all distributing, selling, offer for sale, importing, or otherwise using in commerce LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action, and were willing to refrain from placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of LimePro, including [www.limeproequipment.com](http://www.limeproequipment.com).

124. On information and belief, Defendants in fact did not intend to cease all distributing, selling, offer for sale, importing, or otherwise using in commerce LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action, and did not intend to refrain from placing images of LimePro Treadmill Model Nos. D7.0, D9.0, D11.0, D15.0, or other products that incorporate the same or substantially the same features of ICON's trade dress design asserted in the 2008 Action on websites that are in whole or in part, owned, controlled, or operated by or on behalf of LimePro, including [www.limeproequipment.com](http://www.limeproequipment.com).

125. On information and belief and by reason of Defendants' conduct, Defendants made the aforementioned representations to ICON knowing that the representations were false, or made them recklessly without regard for their truth.

126. On information and belief, Defendants intended ICON to rely on their false representations.

127. On information and belief, Defendants made the aforementioned representations to ICON to induce ICON to agree to the Stipulated Permanent Injunction and Settlement Agreement.

128. ICON reasonably relied on Defendants' false representations without knowledge of their falsity.

129. In reliance on Defendants' false representations, ICON entered into the Stipulated Permanent Injunction and Settlement Agreement with LimePro.

130. ICON would not have entered into the Stipulated Permanent Injunction or Settlement Agreement if it had known that Defendants' representations were not true.

131. As a result of Defendants' false representations, ICON has suffered and continues to suffer harm.

132. Defendants' conduct as set forth herein gives rise to a cause of action for fraudulent inducement and related wrongs under the laws of the State of Utah.

133. By reason of the foregoing, ICON is entitled to relief against Defendants, as more fully set forth hereinbelow.

### **PRAYER FOR RELIEF**

WHEREFORE, ICON prays for judgment as follows:

- A. A judgment finding Defendants liable for infringement of the '560 Patent;
- B. A judgment finding Defendants liable for infringement of the IFIT trademarks, unfair competition, and deceptive trade practices.

C. A judgment finding Defendants liable for breach of contract and for breach of the implied covenant of good faith and fair dealing;

D. A judgment finding Defendants liable for fraud and fraudulent inducement;

E. An order of this Court temporarily, preliminarily, and permanently enjoining Defendants, their agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner or contributing in any manner to the infringement of the '560 Patent, pursuant to at least 35 U.S.C. § 283;

F. An award of damages to ICON for infringement of the '560 Patent, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 284;

G. An award of treble ICON's damages, pursuant to at least 35 U.S.C. § 284;

H. A declaration that this is an exceptional case and that ICON be awarded its attorney fees and expenses, pursuant to at least 35 U.S.C. § 285;

I. An order of this Court temporarily, preliminarily, and permanently enjoining Defendants, their principals, agents, and servants, and any and all parties acting in concert with any of them from directly or indirectly infringing in any manner ICON's '474 Registration and '509 Registration in connection with products or otherwise, pursuant to at least Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a);

J. An order of this Court permanently enjoining Defendants, their agents and servants, and any and all parties acting in concert with any of them from engaging in deceptive trade practices, pursuant to at least Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a), and Utah Code Ann. § 13-11a-4(2)(a);

K. An order of this Court permanently enjoining Defendants, their agents and servants, and any and all parties acting in concert with any of them from producing, manufacturing, marketing, advertising, promoting, offering for sale, selling, or distributing products, including the Defendants' products marketed in connection with the "I FIT" and "I FIT INTERNATIONAL" marks, pursuant to at least Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a) and Utah Code Ann. § 13-11a-4(2)(a);

L. An order of this Court directing Defendants to destroy their entire stock of products, together with all labels, signs, prints, packages, wrappers, receptacles, and advertisements, as well as all plates, molds, matrices, or other means of making the same pursuant to at least Section 36 of the Lanham Act, 15 U.S.C. § 1118;

M. An award of three times Defendants' profits or ICON's damages, whichever is greater, pursuant to at least Section 35(b) of the Lanham Act, 15 U.S.C. § 1117(b);

N. An award of ICON's damages and Defendants' profits in an amount to be proven at trial, pursuant to applicable state statutory and common law, including at least the greater of ICON's actual damages and \$2,000, pursuant to Utah Code Ann. § 13-11a-4(2)(b);

O. An award of damages against Defendants, including general, special, and consequential damages, in an amount according to proof, plus interest which continues to accrue thereon;

P. An order of the Court ordering specific performance by Defendants of their obligations under the Stipulated Permanent Injunction and Settlement Agreement;

Q. An award of punitive damages, pursuant to all applicable state statutory and common law, including at least Utah Code Ann. § 13-5a-103(b);



R. An award of ICON's costs in bringing this action, pursuant to all applicable state statutory and common law, including at least 35 U.S.C. § 284, Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a), and Utah Code Ann. §§ 13-5a-103(1)(b)(ii) and 13-11a-4(2)(c)

S. An award of ICON's attorney fees, pursuant to agreement all applicable state statutory and common law, including at least Sections 35(a) and (b) of the Lanham Act, 15 U.S.C. § 1117(a), and Utah Code Ann. §§ 13-5a-103(1)(b)(ii) and 13-11a-4(2)(c);

T. An imposition of constructive trust on, and an order requiring a full accounting of, the sales made by Defendants as a result of its wrongful or infringing acts alleged herein;

U. Prejudgment interest, pursuant to at least 35 U.S.C. § 284 and Section 35(b) of the Lanham Act, 15 U.S.C. § 1117(b);

V. Post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and

W. For such other and further relief as the Court deems just and equitable.

### **DEMAND FOR JURY TRIAL**

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

DATED: May 16, 2012.

WORKMAN | NYDEGGER

By: /s/ Jared J. Braithwaite

David R. Wright

Kirk R. Harris

Jared J. Braithwaite

Attorneys for Plaintiff

ICON HEALTH & FITNESS