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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

18 BTL INDUSTRIES, INC.,
19
20 Plaintiff,
21 v.
22 LA CURVES BODY SCULPTING
LLC; ANAIS LARIOS
23
24 Defendants.

CASE NO. 2:23-cv-03497
**COMPLAINT FOR
PATENT INFRINGEMENT,
TRADEMARK INFRINGEMENT,
AND UNFAIR COMPETITION**
DEMAND FOR JURY TRIAL

25
26 Plaintiff BTL Industries, Inc. (“BTL”) files this Complaint against LA Curves
27 Body Sculpting LLC (“LA Curves”) and Anais Larios (collectively, “Defendants”),
28 and alleges as follows:

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PARTIES

1. BTL is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752.

2. On information and belief, LA Curves is a limited liability company organized and existing under the laws of the State of California with a principal place of business at 7503 Atlantic Ave Unit J, Cudahy CA 90201.

3. On information and belief, Anais Larios is an individual residing at 6604 Corona Avenue Apt. A, Bell, CA 90201, which is the registered address of LA Curves. Further, on information and belief, Ms. Larios is the principal and organizer of LA Curves, and is actively involved in managing and directing the business of LA Curves and the activities described herein.

JURISDICTION AND VENUE

4. This is a complaint for damages and injunctive relief based on LA Curves’ and Ms. Larios’ infringing use and sales of medical and aesthetic devices and services, and includes multiple grounds for relief including patent infringement, trademark infringement, unfair competition, false designation of origin, and false advertising.

5. The complaint arises under the Patent Act, 35 U.S.C. § 1, *et seq.*; the Lanham Act, 15 U.S.C. § 1051, *et seq.*; federal common law; and state common law, including the law of California.

6. This Court has subject matter jurisdiction pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1332, 1338(a)-(b), and 1367(a).

7. This Court has personal jurisdiction over LA Curves because, among other things, LA Curves is purposefully and intentionally availing itself of the privileges of doing business in the State of California, including in this District, and is a limited liability company organized and existing under the laws of California with a principal place of business in this District. Among other things, (i) LA Curves

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1 has advertised, marketed, promoted, offered for sale, sold, used, distributed,
2 manufactured, and/or imported, and, unless enjoined, will continue to advertise,
3 market, promote, offer for sale, sell, use, distribute, manufacture, and/or import,
4 infringing products and services to customers and/or potential customers, including
5 in this District, (ii) LA Curves’ tortious acts giving rise to this lawsuit and harm to
6 BTL have occurred, and, unless enjoined, will continue to occur in the State of
7 California, including in this District, (iii) LA Curves has regularly and intentionally
8 done business in this District and has sold its infringing products and offered its
9 infringing services in this District, and these activities have provided LA Curves
10 with infringing business revenue from this District, (iv) LA Curves acted with
11 knowledge that its unauthorized use of BTL’s rights would cause harm to BTL in
12 the State of California and in this District, (v) LA Curves’ and BTL’s customers
13 and/or potential customers reside in the State of California, including in this District,
14 and (vi) LA Curves benefits financially from the California market, including, for
15 example, through sales of infringing products and services in California, including
16 in this District.

17 8. This Court has personal jurisdiction over defendant Ms. Larios because,
18 among other things, she resides in this district, has done and is doing business in the
19 state of California, including in this District, and is the active agent behind the
20 activities of LA Curves whose principal place of business is in this District. Among
21 other things, (i) Ms. Larios has advertised, marketed, promoted, offered for sale,
22 sold, used, distributed, manufactured, and/or imported, and, unless enjoined, will
23 continue to advertise, market, promote, offer for sale, sell, use, distribute,
24 manufacture, and/or import, infringing products and services to customers and/or
25 potential customers, including in this District, (ii) Ms. Larios’ tortious acts giving
26 rise to this lawsuit and harm to BTL have occurred, and, unless enjoined, will
27 continue to occur in the State of California, including in this District, (iii) Ms. Larios
28 has regularly and intentionally done business in this District and has sold infringing

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1 products and offered infringing services in this District, and these activities have
2 provided Ms. Larios with infringing business revenue from this District, (iv) Ms.
3 Larios acted with knowledge that her unauthorized use of BTL’s rights would cause
4 harm to BTL in the State of California and in this District, (v) Ms. Larios’ and
5 BTL’s customers and/or potential customers reside in the State of California,
6 including in this District, and (vi) Ms. Larios benefits financially from the California
7 market, including, for example, through sales of infringing products and services in
8 California, including in this District.

9 9. Venue is proper in this District under 28 U.S.C. §§ 1391(a)-(d) and
10 1400 at least because both LA Curves and Ms. Larios are residents of this District
11 and because both LA Curves and Ms. Larios are subject to personal jurisdiction in
12 this District.

13 **BACKGROUND**

14 10. BTL is a leading innovator and producer of medical and aesthetic
15 products and treatments. Through substantial investment of time, effort, and
16 resources, BTL has developed a market-leading reputation for providing innovative
17 and disruptive medical and aesthetic solutions worldwide, including in the United
18 States. For example, BTL and its affiliates developed proprietary technology that uses
19 high-intensity electromagnetic stimulation to tone and strengthen muscles in targeted
20 areas, and BTL pioneered the application of that technology in FDA cleared non-
21 invasive body contouring devices.

22 11. As one example, in 2018, BTL launched the ground-breaking
23 EMSCULPT® device (shown below) in the United States. BTL’s patent-protected
24 EMSCULPT® device is a standalone, non-invasive, FDA-cleared aesthetic body-
25 contouring device that uses high-intensity, focused electromagnetic technology to
26 induce powerful muscle contractions in a patient to tone and firm muscle. *See*
27 **Exhibit A** (BTL About EMSCULPT). With the introduction of BTL’s
28 EMSCULPT® device, BTL created a new market for non-invasive aesthetic body

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1 contouring and quickly emerged as an industry leader.



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15 12. The aesthetic industry recognized BTL’s innovation, hailing it as
16 having taken “the aesthetics industry by storm”; praising BTL as being the first to
17 apply high-intensity, focused electromagnetic energy technology for aesthetics; and
18 lauding the EMSculpt® device as having “transformed treatment protocols.”
19 **Exhibit B** (BTL 2019 Press Release).

20
21 13. BTL later launched its EMSculpt NEO® device (shown below).
22 BTL’s EMSculpt NEO® device uses non-invasive technology that
23 simultaneously uses radiofrequency and high-intensity electromagnetic energy to
24 eliminate fat and build muscle. The device also induces powerful muscle
25 contractions—unachievable through typical voluntary contractions—to contour an
26 individual’s physique. The EMSculpt NEO device is currently cleared by the
27 FDA as a non-invasive treatment for the abdomen, buttocks, arms, calves and
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15 14. The EMSCULPT NEO device has been a breakthrough development in
16 the aesthetics industry, receiving plaudits from some of the industry’s largest
17 companies. For example, the EMSCULPT NEO device won Dermascope.com’s
18 Aesthetician’s Choice Award in 2022 and Glamour magazine described the device
19 as “revolutionary.” **Exhibit C** (Dermascope and Glamour Awards).

20
21 15. BTL markets and distributes its EMSCULPT® and EMSCULPT
22 NEO® devices to healthcare professionals throughout the United States, and BTL
23 licenses these professionals to provide the associated treatment services using these
24 devices.

25
26 16. The BTL brand has thousands of its innovative EMSCULPT® and
27 EMSCULPT NEO® products in use globally, has received over 25 billion media
28 impressions for these products, and recently became the fastest aesthetic device

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1 brand to administer one million treatments. BTL’s products, including its
 2 EMSCULPT®, and EMSCULPT NEO® devices, continue to receive praise and
 3 awards, including for their innovation.

4 17. BTL has also invested substantially in its intellectual property rights and
 5 has developed a strong reputation for the innovative products and methods protected
 6 by its patents and for the high quality of goods associated with its trademarks,
 7 including the patent and trademarks asserted in this lawsuit.

8 **A. The Asserted Patent**

9
 10 18. On May 2, 2017, the USPTO duly and lawfully issued U.S. Patent No.
 11 9,636,519 (the “’519 patent”), entitled “Magnetic Stimulation Methods and Devices
 12 for Therapeutic Treatments.” A true and correct copy of the ’519 patent is attached
 13 to this Complaint as **Exhibit D**. The ’519 patent was exclusively licensed to BTL,
 14 and BTL possesses the exclusive right of recovery for any past, present, or future
 15 infringement of the ’519 patent, including equitable relief and damages.

16 **B. BTL’s Trademarks**

17 19. BTL uses and licenses registered and common law trademarks and
 18 trade dress, including its EM, EMSCULPT, and HIFEM trademarks, and including
 19 the federally registered marks identified below (collectively the “BTL Trademarks”)
 20 to market its aesthetic equipment and treatments throughout the United States. The
 21 BTL Trademarks include:

Reg No.	Mark	Goods/Services
5,572,801	EMSCULPT	Int'l Class: 10 (Int'l Class: 10) Medical apparatus and instruments for the treatment of cellulite; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks,

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Reg No.	Mark	Goods/Services
		rejuvenation of skin, and treatment of pigmentation spots; above medical apparatuses with exception for the treatment of the nasopharynx including inhalers and nasal irrigators; massage apparatus; medical apparatus and instruments for aesthetic skin treatment procedures; medical apparatus generating electromagnetic, magnetic, electrical, mechanical or thermal energy for use in skin treatment procedures; medical apparatus particularly apparatus for pain management, elimination of muscle spasms; gynaecological and urological apparatus and instruments, namely, for genital rejuvenation, treatment sexual dysfunction, gynecological treatment and pelvic floor treatment
6,069,279	EMSCULPT	Int'l Class: 44 (Int'l Class: 44) medical services; gynecology services; medical equipment rental; cosmetic and plastic surgery; beauty salons; liposuction services; removal of body cellulite
6,206,098	EM	Int'l Class: 10, 44 (Int'l Class: 10) Physical therapy devices for treating muscle spasms and pain management; medical apparatus and instruments, in particular apparatus and instruments for the treatment of cellulite, apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat, circumference reduction; medical devices for use in treating gynecological disorders, pelvic area disorders, bladder disorders and incontinence (Int'l Class: 44) Health assessment services; medical services, namely, providing treatment for patients with gynecological disorders, pelvic area disorders, bladder disorders and incontinence; gynecological services; urology medical care services; rental of medical apparatus and

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Reg No.	Mark	Goods/Services
		equipment; cosmetic and plastic surgery; beauty salon services; liposuction and surgical body shaping services; medical services, namely, removal of body cellulite; physical therapy services
5,915,636	EM	Int'l Class: 10, 44 (Int'l Class: 10) Physical therapy devices for treating muscle spasms and pain management; medical apparatus and instruments, in particular apparatus and instruments for the treatment of cellulite, apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat, circumference reduction; medical devices for use in treating gynecological disorders, pelvic area disorders, bladder disorders and incontinence (Int'l Class: 44) Health assessment services; medical services, namely, providing treatment for patients with gynecological disorders, pelvic area disorders, bladder disorders and incontinence; gynecological services; urology medical care services; rental of medical apparatus and equipment; cosmetic and plastic surgery; beauty salon services; liposuction and surgical body shaping services; medical services, namely, removal of body cellulite; physical therapy services
5,688,619	HIFEM	Int'l Class: 10, 44 (Int'l Class: 10) Medical and aesthetic apparatus and instruments, in particular non-invasive medical and surgical apparatus and instruments generating electrical, magnetic, electromagnetic, mechanical or thermal therapeutic energy used to stimulate gynecological and urological muscles and to increase strength and physical performance of gynecological and urological muscles for health, medical, and aesthetic purposes; medical and surgical apparatus and instruments for use in

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Reg No.	Mark	Goods/Services
		medical, surgical and aesthetic medicine procedures, namely, body shaping, fat removal, circumference reduction of waist, leg, arm, chest, neck, back, buttock, thigh, breast, saddlebags, and abdomen, tightening of skin, cellulite reduction, skin rejuvenation, wrinkle reduction, scar reduction, reduction of stretch marks; electric stimulation and magnetic stimulation apparatus for physical therapy purposes for the treatment of nerve and muscle pain and elimination of muscular spasms; gynecological and urological medical and surgical apparatus and instruments for examining and treating reproductive organs, bladder, rectum; body rehabilitation apparatus for medical purposes; beds specially made for medical purposes (Int'l Class: 44) Health care services

20. BTL’s rights protected by Registration Nos. 5,572,801; 6,069,279; 6,206,098; 5,915,636; and 6,688,619 are collectively referred to as “BTL’s Registered Trademarks.”

21. BTL has continuously and exclusively used the BTL Trademarks in the United States and has never abandoned them. BTL’s Registered Trademarks are validly registered in the United States and are in full force and effect. True and correct status copies of the certificates of registration for each of BTL’s Registered Trademarks in the table above, obtained from the Trademark Status Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office, are attached to this Complaint as **Exhibit E**. These registrations constitute prima facie evidence of validity of the BTL Trademarks and the exclusive right to use the BTL Trademarks under 15 U.S.C. § 1057(b).

22. Because of BTL’s continuous use of the BTL Trademarks in the United States, including the State of California, consumers have come to associate these

1 trademarks as source identifiers of BTL. The BTL Trademarks signify to purchasers
2 that the body-contouring devices come from BTL, and the body-contouring services
3 are rendered by BTL’s devices and administered by BTL-trained and BTL-
4 authorized service providers. The market reputation and consumer goodwill
5 associated with the BTL Trademarks are of significant value to BTL.

6 23. Because BTL’s Trademarks embody substantial consumer goodwill
7 and possess significant commercial value, others have copied the BTL Trademarks
8 and attempted to free-ride on BTL’s hard-earned reputation. Accordingly, BTL
9 monitors the market and polices against infringement. To that end, BTL has filed
10 trademark oppositions, sent cease and desist letters, and filed district court
11 litigations, all as part of its on-going efforts to stop unauthorized uses of the BTL
12 Trademarks and protect consumer clarity in the market.

13 **DEFENDANTS’ UNLAWFUL ACTS**

14 24. Defendants have purposefully advertised, marketed, promoted, offered
15 for sale, sold, used, distributed, manufactured, and/or imported, and, on information
16 and belief, continue to advertise, market, promote, offer for sale, use, distribute,
17 manufacture, and/or import devices that violate BTL’s rights, including BTL’s
18 patent and trademark rights. Defendants’ actions have all been without authorization
19 of BTL.

20 25. Defendants’ infringing devices include at least its devices and
21 attachments that were shown on LA Curves’ website at
22 <https://www.lacurvesbody.com/product-page/ems-2-wand-no-wheels;>
23 <https://www.lacurvesbody.com/product-page/2-wand-with-wheels;> and
24 <https://www.lacurvesbody.com/product-page/ems>, as well as similar devices
25 regardless of name (collectively, “Infringing Devices”). (**Exhibit F** (EMS no
26 Wheels), **Exhibit G** (EMS with Wheels)). Defendants’ Infringing Devices
27 incorporate BTL’s patented technology. Exemplary images of Defendants’
28 Infringing Devices are shown below:

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26. Upon information and belief, on February 10, 2021, LA Curves filed its articles of organization with the state of California listing as the principal address the residence of Anais Larios.

27. Upon information and belief, since at least November 2022, Defendants have promoted, offered for sale, and sold various medical devices that infringe BTL’s ’519 patent using the BTL Trademarks. Upon information and belief, the Infringing Devices were illegally imported without FDA clearance. Further, upon information and belief, Defendants used the BTL Trademarks to offer body contouring services to patients using those same unregulated devices, in violation of BTL’s patent and trademark rights.

28. At least as early as November 10, 2022, Defendants advertised that they had expanded their operations beyond treatments to include training. **Exhibit H** (Nov. 12, 2022 Instagram post). Upon information and belief, around this time, Defendants began illegally importing more Infringing Devices to sell to others in the United States. Upon information and belief, Defendants sold those devices using the BTL Trademarks and offered training for the devices to induce others to buy and use

1 them in violation of BTL’s patent and trademark rights.

2 29. Defendants advertised their devices as achieving the same muscle-
3 building results obtained by BTL’s EMSCULPT device in clinical studies, including
4 claims of 16% muscle mass growth and 19% fat loss. **Exhibit I** (Mar. 27, 2023
5 Instagram Post). On information and belief, Defendants’ devices do not achieve the
6 same muscle-building results obtained by BTL’s EMSCULPT device in clinical
7 studies, and Defendants’ statements were therefore false.

8 30. The images below show examples of Defendants’ infringing conduct.



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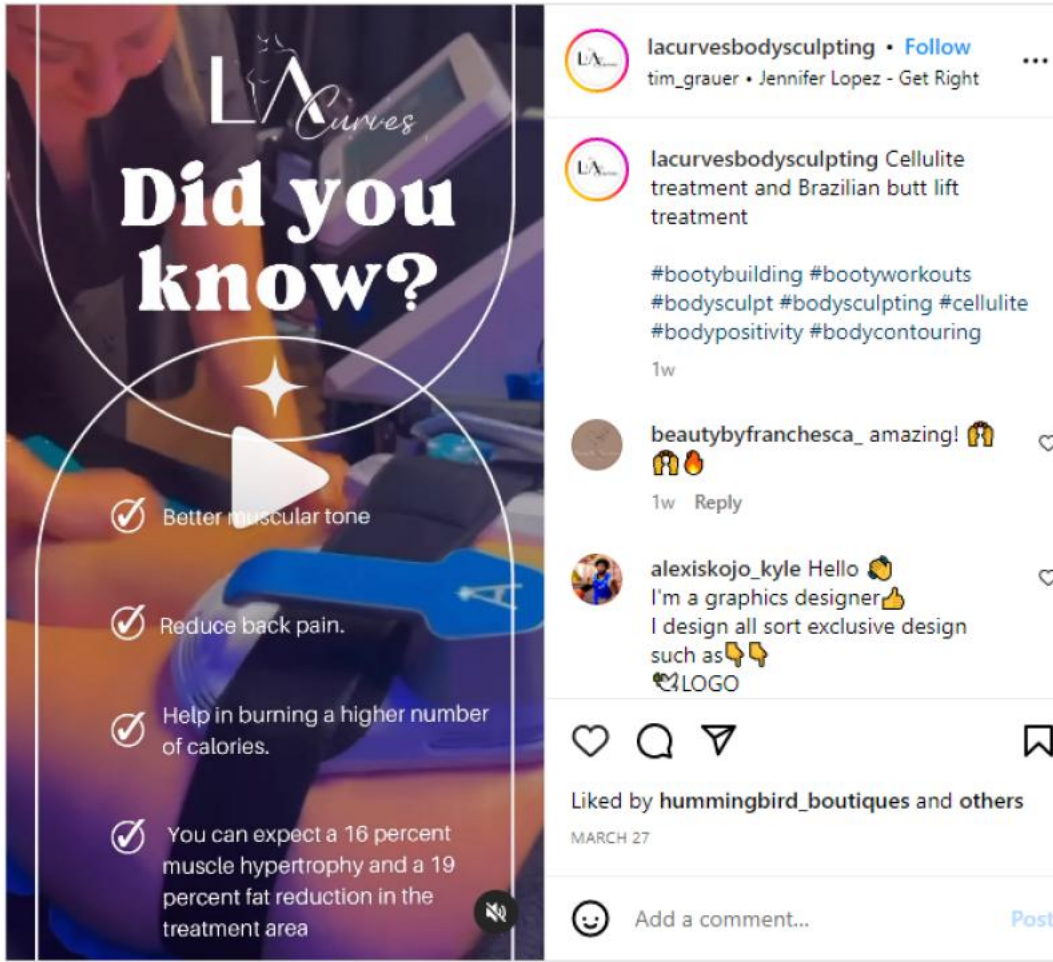
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The image shows an Instagram post from the account 'lacurvesbodysculpting'. The main content is a promotional graphic for 'EMS Sculpting Training'. At the top left, the 'LA Curves' logo is visible. The central graphic features a grid of six images showing a person wearing a black and white EMS training suit with blue electrode pads attached to the abdomen, arms, and legs. The pads are labeled 'A' and 'B'. Below this grid is a large image of the EMS training machine, which is white and black with a digital display screen. A red speech bubble on the left side of the graphic says '\$2,800 FREE SHIPPING'. At the bottom of the graphic, there is contact information: '@lacurvesbodysculpting', 'www.lacurvesbody.com', and 'Call or Text (323)561-2483 Se Habla Español'. The Instagram post interface shows the account name 'lacurvesbodysculpting' with a 'Follow' button and location 'Los Angeles, California'. The post text includes: 'Price \$2,800 FREE Shipping', 'FREE Training, Consent Forms, Accredited Certification, Training Manual!', 'Many options Available, Four wand, with wheels, RF', 'Pelvic Attachment Available!', and 'DM us For more information'. It also includes the hashtags '#emstraining #emsculpt #ems', 'Edited - 20w', and a comment from 'botoxclass Wow' with 1 like. The post is dated 'NOVEMBER 10, 2022' and is liked by 'veyolitgiris and others'. There is an 'Add a comment...' field and a 'Post' button at the bottom.

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31. The above images show that Defendants’ Infringing Devices are magnetic muscle stimulation devices with a blower that cools the coil inside the applicator, as can be seen by, for example, the air vents in the applicators and the space for internal fans.

32. Defendants have unlawfully used and, unless enjoined, will continue to unlawfully use the BTL Trademarks and/or confusingly similar variations thereof by, among other things, advertising, promoting, offering to sell, selling, distributing, manufacturing, and/or importing Defendants’ Infringing Devices, and are thereby infringing the BTL Trademarks and intentionally trading on BTL’s goodwill. Upon information and belief, Defendants intended to confuse consumers into associating their devices with BTL’s patented, FDA-cleared, clinically studied devices. For example, Defendants advertised one of their Infringing Devices using images and

1 descriptions lifted straight from BTL’s promotional materials for EMSCULPT—as
2 evidenced by the name “EMSCULPT” in the text of the graphic.

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18 33. As another example, Defendants’ use of “EMS SLIMPRO,” “EMS
19 Sculping,” “EMS SCULPT,” “EMSCULPT”, and “HIFEM” to promote and
20 advertise its Infringing Devices is likely to cause confusion with the BTL
21 Trademarks. Upon information and belief, Defendants—and specifically Ms.
22 Larios—intended to cause consumers to associate their devices with BTL.

23 34. Upon learning of Defendants’ infringing activities, BTL promptly sent
24 Defendants a cease and desist letter on December 14, 2022. **Exhibit J** (Letter to
25 Defendants). In the letter, BTL explained that Defendants were using marks,
26 including EMSCULPT, Ems Sculping, EMS Sculpt, and EMS Slimpro, that were
27 confusingly similar to the BTL Trademarks and were using and selling devices that
28

1 infringed BTL’s patent rights. BTL demanded that Defendants cease their infringing
2 conduct. When Defendants failed to respond, BTL followed up on February 8, 2023
3 to again request they cease their infringing conduct. **Exhibit K** (Dec. 2022-Feb.
4 2023 Emails).

5 35. Ms. Larios responded on February 9, 2023 and stated: “The item sold
6 in our website is EMSSLIMPRO we are not using EMSCULPTING you can check
7 our website.” **Exhibit K**.

8 36. On February 13, 2023, BTL responded and explained that, contrary to
9 Ms. Larios’s assertion, Defendants’ website did in fact use “EMS SCULPTING”, at
10 www.lacurvesbody.com/service-page/ems-sculpting. **Exhibit K**. BTL also
11 explained that Ms. Larios’ response failed to address BTL’s patent claims entirely.
12 Defendants subsequently removed that page from their website, but, on information
13 and belief, continued to sell their Infringing Devices. The page is still
14 visible at Internet Archive. **Exhibit L** (Internet Archive EMS Services Page).

15 37. Counsel for BTL sent another letter to Defendants on April 7, 2023,
16 explaining how Defendants’ products infringe BTL’s ’519 patent and informing
17 Defendants that a lawsuit would be filed if they did not address BTL’s demands
18 within two weeks. **Exhibit M** (Letter to Anais Larios). On April 19, 2023,
19 Defendants responded and confirmed receipt of BTL’s letter, but insisted that
20 “[they] don’t have any sales for the machine,” “stopped using it months ago,” and
21 that they tell customers that “[they] don’t have the machine anymore.” **Exhibit N**
22 (Email from Anais Larios).

23 38. Upon information and belief, Defendants did not stop operating the
24 Infringing Devices “months ago.” For example, Ms. Larios posted a video to
25 Facebook on March 4, 2023 showing an employee of LA Curves treating a patient
26 with an Infringing Device. **Exhibit O** (Facebook post). Similarly, as recently as
27 April 8, 2023 Defendants advertised “ABS Contouring for Males Available! Book
28 your appointment today!”. **Exhibit P** (April 8, 2023 Instagram Post). Upon

1 information and belief, this referred to Defendants services using an Infringing
2 Device, which Defendants advertised as “ABS Sculpting.” **Exhibit Q** (ABS
3 Sculpting Services Page).

4 39. Counsel for BTL sent a follow-up correspondence on April 20, 2023, to
5 which Defendants did not respond. **Exhibit R** (April 20, 2023 Email). Despite
6 BTL’s repeated demands, Defendants have refused to cease their infringing activity
7 or compensate BTL. As discussed above and set forth in the counts below, BTL’s
8 actions are unfair and unlawful.

9 **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 9,636,519**

10 40. BTL repeats and re-alleges paragraphs 1-39 as if fully set forth herein.

11 41. Defendants have infringed and continue to infringe the ’519 patent at
12 least by using, selling, offering to sell, making, and/or importing into the United
13 States their infringing medical and aesthetic devices, which include each and every
14 element of one or more claims of the ’519 patent, either literally or through the
15 doctrine of equivalents, including at least claim 1.

16 42. For example, claim 1 of the ’519 patent recites:

17 A magnetic stimulation device producing a time varying magnetic field
18 for treatment, comprising:

19 a connection to an energy source, a switch, a coil, an energy storage
20 device,

21 at least one blower and a casing;

22 with the blower arranged on a circumference of the coil; and

23 wherein the coil and the casing are arranged in a manner that fluid can
24 flow in-between them and wherein the coil is cooled by fluid flow over
25 at least upper and lower sides of the coil.

26 43. As described in paragraphs 30-33, for example, the Defendants’ goods
27 meet each and every limitation of at least claim 1 of the ’519 patent. The Infringing
28 Devices infringe at least claim 1 of the ’519 patent because they are magnetic

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1 stimulation devices producing a time varying magnetic field for treatment and they
2 include all of the claim elements of at least claim 1, either literally or under the
3 doctrine of equivalents, including “a connection to an energy source, a switch, a
4 coil, an energy storage device, at least one blower, a casing,” “the blower arranged
5 on a circumference of the coil,” and “the coil and the case are arranged in a manner
6 that fluid can flow between them” and “the coil is cooled by fluid flow over at least
7 upper and lower sides of the coil.”

8 44. Defendants have also induced infringement and continue to induce
9 direct infringement, literally or under the doctrine of equivalents, of at least claim 1
10 of the ’519 patent by making, using, offering to sell, selling, or importing the
11 Infringing Devices in the United States and by encouraging, promoting, and
12 instructing customers to use the Infringing Devices in a manner that directly
13 infringes the ’519 patent.

14 45. On information and belief, Defendants knew it was encouraging,
15 promoting, and instructing customers to use the Infringing Devices in a manner that
16 directly infringes the ’519 patent.

17 46. Defendants’ acts of infringement have been without express or implied
18 license by BTL, are in violation of BTL’s rights, and will continue unless enjoined
19 by this Court.

20 47. On information and belief, Defendants’ infringement of the ’519 patent
21 has been, and continues to be, deliberate, intentional, and willful. Defendants’ bad
22 faith is evidenced at least by its actual and constructive notice of BTL’s asserted
23 patent and by Defendants’ disregard for BTL’s rights. BTL marks its products in
24 compliance with 35 U.S.C. § 287 with a reference to its online patent listing at
25 www.btl.net.com/patents. In addition, Defendants were aware of BTL, BTL’s
26 products, and BTL’s patents at least as early as December 14, 2022, when BTL first
27 wrote Defendants regarding their infringement. Moreover, BTL had actual notice of
28 the ’519 Patent and of its infringement at least as early as April 7, 2023, when BTL

1 again informed Defendants of their patent infringement.

2 48. Anais Larios is the active agent behind the conduct of LA Curves.

3 49. BTL has been, is being, and will continue to be injured and has
4 suffered, is suffering, and will continue to suffer injury and damages for which it is
5 entitled to relief under at least 35 U.S.C. §§ 281, 284, and 285.

6 50. Defendants also have caused, are causing, and will continue to cause
7 irreparable harm to BTL for which there is no adequate remedy at law and for which
8 BTL is entitled to injunctive relief under at least 35 U.S.C. § 283.

9 **COUNT II: TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

10 51. BTL repeats and re-alleges paragraphs 1-50 as if fully set forth herein.

11 52. Based on the activities described above, including, for example,
12 Defendants’ use of BTL’s Registered Trademarks and confusingly similar variations
13 thereof, including at least Defendants’ use of EMSCULPT, EMS SCULPT, EMS
14 SCULPTING, EMS SLIMPRO, and HIFEM, in connection with advertising,
15 promoting, offering for sale, selling, distributing, manufacturing, and/or importing
16 the Infringing Devices and/or services related to the Infringing Devices, Defendants
17 have infringed BTL’s Registered Trademarks, including at least the trademarks
18 protected by Registration Nos. 5,572,801; 6,069,279; 6,206,098; 5,915,636; and
19 6,688,619.

20 53. Defendants’ use of EMSCULPT, EMS SCULPT, EMS SCULPTING,
21 EMS SLIMPRO, and HIFEM in connection with advertising, promoting, offering
22 for sale, selling, distributing, manufacturing, and/or importing the Infringing
23 Devices and/or services related to the Infringing Devices has created and/or is likely
24 to create confusion among the consuming public as to the source, origin,
25 sponsorship, and/or affiliation of Infringing Devices and services with BTL.
26 Defendants’ conduct is without authorization of BTL.

27 54. BTL’s Registered Trademarks, and/or colorable imitations thereof, are
28 entitled to protection under the Lanham Act. BTL’s Registered Trademarks are

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1 inherently distinctive. BTL’s Registered Trademarks have also acquired
2 distinctiveness through BTL’s extensive and continuous promotion and use of
3 BTL’s Registered Trademarks. Through that extensive and continuous promotion
4 and use, BTL’s Registered Trademarks have become well-known indicators of the
5 origin and quality of BTL’s products and services. Moreover, BTL’s Registered
6 Trademarks acquired this secondary meaning before Defendants commenced their
7 unlawful use of BTL’s Registered Trademarks in connection with the Infringing
8 Devices.

9 55. Defendants’ use of BTL’s Registered Trademarks and confusingly
10 similar variations thereof has caused, and, unless enjoined, will continue to cause
11 substantial and irreparable injury to BTL for which BTL has no adequate remedy at
12 law, including at least substantial and irreparable injury to the goodwill and
13 reputation for quality associated with BTL’s Registered Trademarks, BTL’s
14 products and services, and BTL.

15 56. Defendants are thus in violation of 15 U.S.C. § 1114 in view of
16 Defendants’ infringing use of BTL’s Registered Trademarks or confusingly similar
17 variations thereof.

18 57. On information and belief, Defendants’ use of BTL’s Registered
19 Trademarks has been, and continues to be, deliberate, intentional, and willful.
20 Defendants’ bad faith is evidenced at least by its unlawful use of BTL’s Registered
21 Trademarks in an effort to sell the Infringing Devices, Defendants’ infringements of
22 BTL’s other rights, and Defendants’ continuing disregard for BTL’s rights.

23 58. Anais Larios is the active agent behind the actions of LA Curves.

24 59. BTL is entitled to injunctive relief, and BTL is entitled to recover at
25 least Defendants’ profits and BTL’s actual damages, as well as enhanced damages,
26 costs, prejudgment interest, reasonable attorney fees, and the cost of corrective
27 advertising under at least 15 U.S.C. §§ 1114(1), 1116, and 1117.

28

1 **COUNT III: FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION**
2 **OF ORIGIN, AND FALSE ADVERTISING UNDER 15 U.S.C. § 1125**

3
4 60. BTL repeats and re-alleges paragraphs 1-59 as if fully set forth herein.

5 61. Based on the activities described above, including, for example,
6 Defendants' false statements as to research findings from the BTL Studies and
7 Defendants' use of the BTL Trademarks and confusingly similar variations thereof,
8 including at least Defendants' use of EMSCULPT, EMS SCULPT, EMS
9 SCULPTING, EMS SLIMPRO, and HIFEM, in connection with advertising,
10 promoting, offering for sale, selling, distributing, manufacturing, and/or importing
11 the Infringing Devices and/or services related to the Infringing Devices, Defendants
12 violate § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' conduct is
13 without authorization of BTL.

14 62. The BTL Trademarks, and/or colorable imitations thereof, are entitled
15 to protection under the Lanham Act. The BTL Trademarks are inherently
16 distinctive. The BTL Trademarks have also acquired distinctiveness through BTL's
17 extensive and continuous promotion and use of the BTL Trademarks. Through that
18 extensive and continuous promotion and use, the BTL Trademarks have become
19 well-known indicators of the origin and quality of BTL's products and services.
20 Moreover, the BTL Trademarks acquired this secondary meaning before Defendants
21 commenced their unlawful use of the BTL Trademarks in connection with the
22 Infringing Devices and/or services.

23 63. On information and belief, based at least on Defendants' use of the
24 BTL Trademarks and false statements as to research findings from the BTL Studies
25 in connection with Defendants' goods and/or services, Defendants have passed off
26 their goods and/or services to the public as if they were BTL's goods and have
27 falsely held themselves out to customers and potential customers as being connected
28 with BTL.

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1 64. On information and belief, Defendants have acted with intent to
2 confuse or deceive the public as to the source and origin of their goods and services.

3 65. On information and belief, the public has in fact been confused or
4 deceived by the source and origin of Defendants’ goods and services.

5 66. Anais Larios is the active agent behind the conduct of LA Curves.

6 67. On information and belief, Defendants’ use of the BTL Trademarks and
7 research findings from the BTL Studies has been, and continues to be, deliberate,
8 intentional, and willful. Defendants’ bad faith is evidenced at least by its unlawful
9 use of the BTL Trademarks in an effort to sell the Infringing Devices and services,
10 Defendants’ infringements of BTL’s other rights, and Defendants’ continuing
11 disregard for BTL’s rights.

12 68. The Defendant’s unlawful conduct constitutes unfair competition false
13 designation of origin, and false advertising under 15 U.S.C. § 1125.

14 69. BTL is entitled to injunctive relief, and BTL is entitled to recover at
15 least Defendants’ profits, BTL’s actual damages, enhanced damages, costs, and
16 reasonable attorney fees under at least 15 U.S.C. §§ 1125(a), 1116, and 1117.

17 **COUNT IV: COMMON LAW TRADEMARK INFRINGEMENT AND**
18 **UNFAIR COMPETITION**

19 70. BTL repeats and re-alleges paragraphs 1-69 as if fully set forth herein.

20 71. Defendants’ activities described above, including, for example,
21 Defendants’ use of the BTL Trademarks and confusingly similar variations thereof,
22 including at least Defendants’ use of EMSCULPT, EMS SCULPT, EMS
23 SCULPTING, EMS SLIMPRO, and HIFEM, in connection with advertising,
24 promoting, offering for sale, selling, distributing, manufacturing, and/or importing
25 the Infringing Devices and/or services related to the Infringing Devices, are likely to
26 cause consumer confusion as to the origin and/or sponsorship/affiliation of
27 Defendants’ Infringing Devices and/or services, at least by creating the false and
28 misleading impression that the Infringing Devices and/or Defendants’ services are

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1 authorized by or otherwise associated with BTL.

2 72. The BTL Trademarks, and/or colorable imitations thereof, are entitled
3 to protection under the common law. The BTL Trademarks are inherently
4 distinctive. The BTL Trademarks have also acquired distinctiveness through BTL’s
5 extensive and continuous promotion and use of the BTL Trademarks. Through that
6 extensive and continuous promotion and use, the BTL Trademarks have become
7 well-known indicators of the origin and quality of BTL’s products and services.
8 Moreover, the BTL Trademarks acquired this secondary meaning before Defendants
9 commenced their unlawful use of the BTL Trademarks in connection with the
10 Infringing Devices and/or services.

11 73. Defendants’ actions have caused and, unless enjoined, will continue to
12 cause BTL to sustain actual damages and lost profits in this District, as well as
13 substantial and irreparable injury for which BTL has no adequate remedy at law,
14 including at least substantial and irreparable injury to the goodwill and reputation
15 for quality associated with the BTL Trademarks, BTL’s products, and BTL.

16 74. On information and belief, Defendants’ use of the BTL Trademarks has
17 been, and continues to be, deliberate, intentional, and willful. Defendants’ bad faith
18 is evidenced at least by its unlawful use of the BTL Trademarks in an effort to sell
19 the Infringing Devices and services, Defendants’ infringements of BTL’s other
20 rights, and Defendants’ continuing disregard for BTL’s rights.

21 75. BTL is entitled to injunctive relief, and BTL is also entitled to recover
22 at least BTL’s damages, Defendants’ profits, punitive damages, costs, and
23 reasonable attorney fees.

24 **PRAYER FOR RELIEF**

25 WHEREFORE BTL requests entry of judgment against the Defendants as
26 follows:

27 A. Judgment that the Defendants have infringed one or more claims of the
28 U.S. Patent No. 9,636,519 in violation of 35 U.S.C. § 271(a)-(c), and that these

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1 wrongful activities by Defendants were willful;

2 B. An award of damages adequate to compensate BTL for Defendants’
3 infringement of the U.S. Patent No. 9,636,519, with said damages to be trebled
4 because of the intentional and willful nature of the Defendants’ infringement,
5 pursuant at least to 35 U.S.C. § 284, together with prejudgment interest and costs
6 and reasonable attorney fees, pursuant at least to 35 U.S.C. §§ 284 and 285;

7 C. An Order permanently enjoining Defendants, their officers, directors,
8 employees, agents, attorneys, successors and assigns, and all others in privity or
9 acting in concert with them, from infringing the ’519 patent, including at least
10 permanently enjoining Defendants from making, using, selling, and offering to sell
11 the infringing devices, and from inducing others to make, use, sell, or offer to sell
12 the infringing devices;

13 D. Judgment that the Defendants have infringed BTL’s Registered
14 Trademarks in violation of the Lanham Act, 15 U.S.C. § 1114, including that
15 Defendants’ use of the HIFEM mark has infringed BTL’s Registration No.
16 5,688,619 for HIFEM and Defendants’ use of the EMSCULPT, EMS SCULPTING,
17 EMS SCULPT, and EMS SLIMPRO marks has infringed BTL’s Registration Nos.
18 5,572,801, 6,069,279, 6,206,098, and 5,915,636 for EM, **EM**, and EMSCULPT and
19 that these wrongful activities by Defendants were willful;

20 E. Judgment that Defendants have infringed the BTL Trademarks in
21 violation of the Lanham Act, 15 U.S.C. §1125(a), including that Defendants’ use of
22 the HIFEM mark has infringed BTL’s HIFEM trademark and Defendants’ use of the
23 EMSCULPT, EMS SCULPTING, EMS SCULPT, and EMS SLIMPRO marks has
24 infringed BTL’s EM and EMSCULPT trademarks, and that these wrongful activities
25 by Defendants were willful;

26 F. Judgment that Defendants have violated the Lanham Act, 15 U.S.C. §
27 1125(a), at least by committing acts of federal unfair competition, false designation
28 of origin, and false advertising, and that these wrongful activities by Defendants

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1 were willful;

2 G. Judgment that Defendants have engaged in common law trademark
3 infringement and common law unfair competition, and that these wrongful activities
4 by Defendants were willful;

5 H. Judgment that Defendant Anais Larios’s conduct in infringing the ’519
6 patent, BTL’s Registered Trademarks, and engaging in common law trademark
7 infringement and unfair competition were willful and malicious within the meaning
8 of 11 U.S.C. § 523(a)(6);

9 I. An award of Defendants’ profits, BTL’s actual damages, enhanced
10 damages, punitive damages, exemplary damages, costs, prejudgment and post
11 judgment interest, reasonable attorney fees, and the cost of corrective advertising
12 pursuant at least to 15 U.S.C. §§ 1125(a), 1125(c), 1116, and 1117, for the
13 Defendants’ infringement of the BTL Trademarks and for Defendants’ acts of unfair
14 competition;

15 J. An award of damages against the Defendants as a result of its wrongful
16 acts against BTL in an amount to be proved at trial;

17 K. An award of any and all of the Defendant’s profits arising from the
18 foregoing acts;

19 L. An award of pre-and post-judgment interest of any monetary damages
20 at the highest rate allowed by law;

21 M. An Order permanently enjoining Defendants, their officers, directors,
22 employees, agents, attorneys, successors and assigns, and all others in privity or
23 acting in concert with them, from infringing BTL’s Trademarks, from unfair
24 competition, and from false advertising, including at least permanently enjoining
25 Defendants from:

26 i. using the BTL Trademarks or any confusingly similar marks, in any
27 manner in connection with the promotion, marketing, advertising,
28 offering for sale, or sale of any good or service that is not a good or

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- 1 service offered by a genuine BTL product, or is not authorized by
- 2 BTL to be offered in connection with the BTL Trademarks;
- 3 ii. passing off, inducing, or enabling others to sell or pass off any good
- 4 or service as a good or service offered by a genuine BTL product, or
- 5 any other good or service offered by BTL, that is not BTL’s or not
- 6 offered under the authorization, control, or supervision of BTL and
- 7 approved by BTL for sale under the BTL Trademarks;
- 8 iii. committing any acts calculated to cause consumers to believe that the
- 9 Defendants’ goods or services are those sold under the authorization,
- 10 control or supervision of BTL, or are sponsored by, approved by, or
- 11 otherwise connected with BTL; and
- 12 iv. further infringing BTL’s Trademarks and damaging BTL’s goodwill.
- 13 N. An award of BTL’s costs and expenses in this action;
- 14 O. An Order directing Defendants to recall all infringing products sold
- 15 and/or distributed and provide a full refund for all recalled infringing products;
- 16 P. An Order directing the destruction of (i) all infringing products,
- 17 including all recalled infringing products; (ii) any other products that embody and/or
- 18 use a copy, reproduction, or colorable imitation of BTL’s patents and/or trademarks
- 19 in Defendants possession, custody, or control, (iii) all plates, molds, and other
- 20 means of making the infringing products in Defendants’ possession, custody, or
- 21 control; and (iv) all advertising materials related to the infringing products in
- 22 Defendants’ possession, custody, or control, including on the Internet, pursuant at
- 23 least to 15 U.S.C. § 1118;
- 24 Q. An Order directing Defendants to publish a public notice providing
- 25 proper attribution of BTL’s trademarks to BTL, and to provide a copy of this notice
- 26 to all customers, distributors, and/or others from whom the infringing products are
- 27 recalled;
- 28 R. An Order barring importation of the infringing products and/or

1 colorable imitations thereof into the United States, and barring entry of the
2 infringing products and/or colorable imitations thereof into any customhouse of the
3 United States, pursuant at least to 15 U.S.C. § 1125(b); and

4 S. For such other relief as the Court may deem just and proper.
5

6 DATED: May 8, 2023

7 /s/ Randy R. Haj

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9 Randy R. Haj, Bar No. 288913

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JURY DEMAND

Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff BTL Industries, Inc. respectfully demands a trial by jury of any issues triable of right by a jury.

DATED: May 8, 2023

/s/ Randy R. Haj

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