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14 Attorneys for Plaintiffs
15 HYPER ICE, INC. and
16 HYPERICE IP SUBCO, LLC

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

19 HYPER ICE, INC., a California
20 corporation, and HYPERICE IP
21 SUBCO, LLC, a Delaware limited
22 liability company,

23 Plaintiffs,

24 vs.

25 TOLOCO INC., a California
26 corporation,

27 Defendant.

CASE NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Trial Date: None Set

1 U.S.C. § 1400(b) because Defendant has committed acts of infringement in this
2 District and has a regular and established place of business in this District, and
3 because Defendant is incorporated in this State and has a regular and established
4 place of business in this District.

5 **GENERAL ALLEGATIONS**

6 9. The '482 Patent is entitled "Massage Device Having Variable Stroke
7 Length" and issued on January 2, 2024, claiming priority to Application No.
8 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693,
9 filed on July 1, 2013. A true and correct copy of the '482 Patent is attached hereto as
10 Exhibit 1.

11 10. Philip C. Danby and John Charles Danby are the named inventors of
12 the inventions disclosed in the '482 Patent. Hyperice IP Subco, LLC, a wholly
13 owned subsidiary of Hyper Ice, Inc., is the owner of the '482 Patent. Hyper Ice, Inc.
14 is a licensee that has been granted the express, irrevocable right to, *inter alia*,
15 sublicense, enforce, and defend the '482 Patent.

16 11. This action arises out of Defendant's direct infringement of the '482
17 Patent.

18 12. Since at least 2018, Hyperice has developed, arranged for the
19 manufacture of, offered for sale, and sold the Hypervolt line of battery-powered
20 percussive massage devices, including the Hypervolt Go 2, Hypervolt 2, and
21 Hypervolt 2 Pro, all of which are covered by one or more claims of the '482 Patent.

22 13. Defendant offers for sale and/or sells products that infringe the '482
23 Patent, including but not limited to all TOLOCO massage guns, including but not
24 limited to Models EM26, X8, and TO-M63.

25 **COUNT 1 – PATENT INFRINGEMENT**

26 14. Hyperice incorporates by reference the allegations in Paragraphs 1-13
27 above.

28

1 15. Defendant has infringed and continues to infringe the '482 Patent under
2 the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Defendant offers for
3 sale and/or sells the infringing products at issue in this case.

4 16. Defendant infringes at least Claim 1 of the '482 Patent. Defendant
5 offers for sale and/or sells infringing products, which are battery-powered
6 percussive massagers that include the following claim limitations, either literally or
7 under the doctrine of equivalents:

8 a. a housing;

9 b. a piston having a proximal end and a distal end, the distal end of
10 the piston having a substantially cylindrical bore;

11 c. a motor at least partially within the housing and operatively
12 connected to the proximal end of the piston, wherein the motor is configured to
13 cause the piston to reciprocate at a first speed;

14 d. a drive mechanism that controls a predetermined stroke length of
15 the piston; and

16 e. a quick-connect system comprising the distal end of the piston
17 and a first massaging head, wherein the quick-connect system is configured to
18 secure the first massaging head to the percussive massager by a proximal end of the
19 massaging head being slid into the bore while the piston reciprocates the
20 predetermined stroke length at the first speed.

21 17. Defendant's infringement of the '482 Patent has caused, and will
22 continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled
23 to an award of damages adequate to compensate it for the infringement in an amount
24 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284.

25 Hyperice is also entitled to recover prejudgment interest, post-judgment interest, and
26 costs.

27 18. As a result of Defendant's infringement of the '482 Patent, Hyperice
28 has suffered irreparable harm and impairment of the value of its patent rights, and

1 Hyperice will continue to suffer irreparable harm and impairment of the value of its
2 patent rights, unless and until Defendant is permanently enjoined by this Court from
3 infringing the '482 Patent under 35 U.S.C. §283. Hyperice has no adequate remedy
4 at law and is entitled to a permanent injunction against Defendant.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Hyperice prays for the following relief:

7 1. That this Court enter judgment of infringement of the '482 Patent in
8 favor of Hyperice and against Defendant;

9 2. That this Court enter a permanent injunction against Defendant from
10 infringing the '482 Patent;

11 3. That this Court award Hyperice compensatory damages for
12 infringement of the '482 Patent, as well as interest thereon;

13 4. That this Court award Hyperice its costs of suit;

14 5. That this Court declare this an exceptional case under 35 U.S.C. §285
15 and award Hyperice its attorneys' fees and any other costs incurred in connection
16 with this action;

17 6. That this Court award Hyperice prejudgment and post-judgment
18 interest; and

19 7. That this Court grant such further relief as the Court deems just and
20 proper.

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1 DATED: January 16, 2024

MILLER BARONDESS LLP

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DEMAND FOR JURY TRIAL

8. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs HYPER ICE, INC. and HYPERICE IP SUBCO, LLC hereby demand a trial by jury of all issues triable by jury.

DATED: January 16, 2024 **MILLER BARONDESS LLP**

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