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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
19 SOUTHERN DIVISION
20

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

25 Plaintiffs,

26 vs.

27 THERABODY, INC.,

28 Defendant.

CASE NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Trial Date: None Set

1 this State; (2) enjoys substantial income from this State; and (3) maintains its principal
2 place of business in this State.

3 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28
4 U.S.C. § 1400(b) because Defendant has committed acts of infringement in this
5 District and has a regular and established place of business in this District.

6 **GENERAL ALLEGATIONS**

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

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

17 12. This action arises out of Defendant's direct infringement of the '482
18 Patent.

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

23 14. Defendant offers for sale and/or sells products that infringe the '482
24 Patent, including but not limited to the TheraFace PRO, TheraFace LED, Theragun
25 PRO, Theragun Sense, Theragun Elite, Theragun Prime, Theragun Mini, and
26 Theragun Relief. Attached as Exhibits 2-5 are claim charts for the TheraFace PRO
27 (substantially equivalent to the TheraFace LED for infringement analyses), Theragun
28 PRO, Theragun Elite (substantially equivalent to the Theragun Sense, Theragun

1 Prime, and Theragun Relief for infringement analyses), and Theragun Mini devices.
2 15. By no later than January 3, 2024, Defendant knew of the '482 Patent and
3 knew, or acted with willful, intentional, and conscious disregard of the objectively
4 high likelihood, that its conduct constitutes infringement of the '482 Patent. On
5 January 3, 2024, Hyperice filed suit in the United States District Court for the District
6 of Delaware, alleging infringement of the '482 Patent. *Hyper Ice, Inc. et al. v.*
7 *Therabody, Inc.*, Case No. 1:24-cv-00004 (the "Delaware Litigation"). On February
8 16, 2024, Hyperice filed a First Amended Complaint in the Delaware Litigation, and
9 Hyperice included the detailed claim charts that are attached hereto as Exhibits 2-5.
10 Moreover, Hyperice had provided the claim charts and related videos to Therabody's
11 counsel prior to filing the First Amended Complaint in the Delaware Litigation.

12 16. On February 23, 2024, Therabody filed a Complaint against Hyperice in
13 this District. In order to promote judicial efficiency, Hyperice has dismissed the
14 Delaware Litigation and files the instant action in this District.

15 **COUNT 1 – PATENT INFRINGEMENT**

16 17. Hyperice incorporates by reference the allegations in Paragraphs 1-16
17 above.

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

21 19. Defendant infringes at least Claim 34 of the '482 Patent. Therabody's
22 infringing products are battery-powered percussive massagers that include the
23 following claim limitations. Hyperice believes that the infringing products literally
24 meet the following claim limitations. If any of the limitations are not literally met, the
25 infringing products meet the limitations under the doctrine of equivalents, because
26 they perform the same function in substantially the same way to achieve substantially
27 the same result, and/or because the relevant structures and functions of the infringing
28

- 1 products are insubstantially different from the claimed limitation:
- 2 a. a housing;
 - 3 b. a piston in the housing having a proximal end and a distal end;
 - 4 c. a motor at least partially within the housing and operatively
 - 5 connected to the proximal end of the piston, wherein the motor is
 - 6 configured to cause the piston to reciprocate at a first speed;
 - 7 d. a drive mechanism between the motor and the piston that controls
 - 8 a predetermined stroke length of the piston; and
 - 9 e. a quick release connector at the distal end of the piston, wherein
 - 10 the quick release connector is configured to secure a first
 - 11 massaging head while the piston reciprocates a predetermined
 - 12 stroke length at the first speed, wherein the first massaging head
 - 13 has a substantially cylindrical pocket to receive the quick release
 - 14 connector.

15 20. Defendant's infringement of the '482 Patent has caused, and will
16 continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled to
17 an award of damages adequate to compensate it for the infringement in an amount
18 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284. Hyperice
19 is also entitled to recover prejudgment interest, post-judgment interest, and costs.

20 21. As a result of Defendant's infringement of the '482 Patent, Hyperice has
21 suffered irreparable harm and impairment of the value of its patent rights, and
22 Hyperice will continue to suffer irreparable harm and impairment of the value of its
23 patent rights, unless and until Defendant is permanently enjoined by this Court from
24 infringing the '482 Patent under 35 U.S.C. §283. Hyperice has no adequate remedy
25 at law and is entitled to a permanent injunction against Defendant.

26 22. Defendant's infringement of the '482 Patent has been and continues to
27 be willful. As noted above, Defendant has had knowledge of the '482 Patent and
28 knew, or acted with willful, intentional, and conscious disregard of the objectively

1 high likelihood, that its conduct constitutes infringement of the '482 Patent.
2 Nevertheless, Defendant continues to infringe the '482 Patent—wanton, malicious,
3 and egregious conduct that constitutes willful infringement under 35 U.S.C. §284,
4 entitling Hyperice to enhanced damages.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Hyperice prays for the following relief:

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

10 2. That this Court enter judgment that Defendant has willfully infringed the
11 '482 Patent;

12 3. That this Court enter a permanent injunction against Defendant from
13 infringing the '482 Patent;

14 4. That this Court award Hyperice compensatory damages for infringement
15 of the '482 Patent, as well as interest thereon;

16 5. That this Court award Hyperice its costs of suit;

17 6. That this Court award Hyperice increased damages in an amount not less
18 than three times the damages assessed for Defendant's infringement of the '482
19 Patent, in accordance with 35 U.S.C. §284.

20 7. That this Court declare this an exceptional case under 35 U.S.C. §285
21 and award Hyperice its attorneys' fees and any other costs incurred in connection with
22 this action;

23 8. That this Court award Hyperice prejudgment and post-judgment interest;
24 and

25 9. That this Court grant such further relief as the Court deems just and
26 proper.

27
28

1 DATED: February 23, 2024

MILLER BARONDESS LLP

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DEMAND FOR JURY TRIAL

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: February 23, 2024 **MILLER BARONDESS LLP**

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