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14 Attorneys for Plaintiff
15 HYPER ICE, INC.

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

18 HYPER ICE, INC., a California
19 corporation,

20 Plaintiff,

21 vs.

22 MERCHSOURCE, LLC,

23 Defendant.

CASE NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Trial Date: None Set

1 1. Plaintiff Hyper Ice, Inc. (“Plaintiff” or “Hyperice”) alleges as follows for
2 this Complaint for Patent Infringement (“Complaint”) against defendant
3 MerchSource, LLC (“Defendant” or “MerchSource”):

4 **THE PARTIES**

5 2. Hyperice is a California corporation with its principal place of business
6 at 525 Technology Drive, Suite 100, Irvine, California 92618.

7 3. Hyperice is informed and believes, and based thereon alleges, that
8 Defendant is a limited liability company organized and existing under the laws of the
9 State of Delaware, with its principal place of business at 7755 Irvine Center Drive,
10 Suite 100, Irvine, CA 92618.

11 4. On information and belief, either itself or through its subsidiaries,
12 parents, or other related companies, Defendant sells infringing products, via
13 Amazon.com and various retail stores, to consumers in this District, throughout the
14 State of California, and throughout the United States.

15 **JURISDICTION AND VENUE**

16 5. This is an action for patent infringement under 35 U.S.C. §§ 271 *et seq.*
17 brought by Hyperice against Defendant for Defendant’s infringement of U.S. Patent
18 No. 12,036,174 (“the ’174 Patent”).

19 6. This Court has subject matter jurisdiction over Hyperice’s claims
20 asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because those claims arise
21 under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

22 7. This Court has personal jurisdiction over Defendant by virtue of, *inter*
23 *alia*, Defendant’s conduct of business in this District; its purposeful availment of the
24 rights and benefits of California law; and its substantial, continuous, and systematic
25 contacts with the State of California and this District. On information and belief,
26 Defendant: (1) intentionally markets and sells its infringing products to residents of
27 this State; (2) enjoys substantial income from this State; and (3) maintains its principal
28 place of business in this State.

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

4 **GENERAL ALLEGATIONS**

5 9. The '174 Patent is entitled “Communication devices, methods, and
6 systems” and issued on July 16, 2024, claiming priority to Application No.
7 18/526,980, filed on December 1, 2023, and to, *inter alia*, Provisional Application
8 No. 62/575,951, filed on October 23, 2017. A true and correct copy of the '174 Patent
9 is attached hereto as Exhibit 1.

10 10. Matthew Robert Leaper is the named inventor of the inventions disclosed
11 in the '174 Patent. DataFeel Inc. is the assignee of the '174 Patent, and Hyper Ice,
12 Inc. is an exclusive licensee that has been granted the express, irrevocable right to,
13 *inter alia*, sublicense, enforce, and defend the '174 Patent.

14 11. This action arises out of Defendant’s direct infringement of the '174
15 Patent.

16 12. Defendant offers for sale and/or sells products that infringe the '174
17 Patent, including but not limited to the Powerboost Pro+ Hot & Cold percussion
18 massager. A claim chart for this product is attached hereto as Exhibit 2.

19 13. By no later than September 25, 2024, Defendant knew of the '174 Patent
20 and knew, or acted with willful, intentional, and conscious disregard of the objectively
21 high likelihood, that its conduct constitutes infringement of the '174 Patent.

22 **COUNT 1 – PATENT INFRINGEMENT**

23 14. Hyperice incorporates by reference the allegations in Paragraphs 1-13
24 above.

25 15. Defendant has infringed and continues to infringe the '174 Patent under
26 the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Defendant offers for
27 sale and/or sells the infringing products at issue in this case.
28

1 16. Defendant infringes at least Claim 17 of the '174 Patent. Therabody's
2 infringing products are battery-powered devices that include the following claim
3 limitations. Hyperice believes that the infringing products literally meet the following
4 claim limitations. If any of the limitations are not literally met, the infringing products
5 meet the limitations under the doctrine of equivalents, because they perform the same
6 function in substantially the same way to achieve substantially the same result, and/or
7 because the relevant structures and functions of the infringing products are
8 insubstantially different from the claimed limitation:

- 9 17. A treatment device, comprising:
- 10 a. a body provided with a power source and a processing unit
11 configured to receive input data and generate a control signal
12 based on the input data, the body including a skin contacting
13 surface maintainable against skin of a user by a force applied by
14 a hand of the user when gripping the body; and
 - 15 b. a first energy generator element and a second energy generator
16 element coupled to the body, the first and second energy
17 generator elements being independently operable to convert
18 electricity from the power source into a first energy type and a
19 second energy type, respectively, and direct the first and second
20 energy types toward an area of skin, the first energy generator
21 element including an impact generator element having a tissue
22 contact surface that is linearly actuatable along an axis to contact
23 and cause corresponding physical movement of the area of skin;
 - 24 c. wherein the processing unit is operable to output an optical
25 signal on a display that is observable by eyes of the user, the
26 output corresponding to the control signal.

27 18. Defendant's infringement of the '174 Patent has caused, and will
28 continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled

1 to an award of damages adequate to compensate it for the infringement in an amount
2 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284. Hyperice
3 is also entitled to recover prejudgment interest, post-judgment interest, and costs.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Hyperice prays for the following relief:

6 1. That this Court enter judgment of infringement of the '174 Patent in
7 favor of Hyperice and against Defendant;

8 2. That this Court enter judgment that Defendant has willfully infringed the
9 '174 Patent;

10 3. That this Court enter a permanent injunction against Defendant from
11 infringing the '174 Patent;

12 4. That this Court award Hyperice compensatory damages for infringement
13 of the '174 Patent, as well as interest thereon;

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

15 6. That this Court award Hyperice increased damages in an amount not less
16 than three times the damages assessed for Defendant's infringement of the '174
17 Patent, in accordance with 35 U.S.C. §284.

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

21 8. That this Court award Hyperice prejudgment and post-judgment interest;
22 and

23 9. That this Court grant such further relief as the Court deems just and
24 proper.
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DATED: September 26, 2024

MILLER BARONDESS LLP

By: /s/ Ben Herbert

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
HYPER ICE, INC. hereby demands a trial by jury of all issues triable by jury.

DATED: September 26, 2024 **MILLER BARONDESS LLP**

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