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8 Attorneys for Plaintiffs

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 10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 THERMOLIFE INTERNATIONAL, LLC,  
 and THE BOARD OF TRUSTEES OF  
 13 THE LELAND STANFORD JUNIOR  
 UNIVERSITY,

14 Plaintiffs,

15 vs.

16 SOLGAR, INC.,

17 Defendants

Case No. 13-cv-890 JLS (MDD)

**AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

1 Plaintiffs ThermoLife International, LLC and The Board of Trustees of the  
2 Leland Stanford Junior University (“Plaintiffs”) hereby allege for their Complaint  
3 against Solgar, Inc. (“Defendant”), on personal knowledge as to their own activities  
4 and on information and belief as to the activities of others, as follows:

5 **I. THE PARTIES**

6 1. Plaintiff ThermoLife International, LLC (“ThermoLife”) is a limited  
7 liability company organized and existing under the laws of Arizona, with a place of  
8 business at 1811 Ocean Front Walk in Venice, California, 90291.

9 2. Plaintiff The Board of Trustees of the Leland Stanford Junior University  
10 (“Stanford University”) is an institution of higher education having powers under the  
11 laws of the State of California, with a place of business at 1705 El Camino Real in  
12 Palo Alto, California, 94306-1106.

13 3. ThermoLife is and was at all relevant times the exclusive licensee of the  
14 following United States Patents:

15 a. Patent No. 6,117,872, titled “Enhancement of Exercise Performance  
16 by Augmenting Endogenous Nitric Oxide Production or Activity”;  
17 and

18 b. Patent No. 5,891,459, titled “Enhancement of Vascular Function By  
19 Modulation of Endogenous Nitric Oxide Production or Activity.”

20 4. The above patents are and were owned by Stanford University and  
21 ThermoLife exclusively licenses and licensed the patents from Stanford University.  
22 ThermoLife is pursuing this action and ThermoLife has the right to join Stanford as a  
23 necessary party.

24 5. The above patents are referred to herein as the “patents in suit.”

25 6. ThermoLife has been given the right by Stanford University to institute  
26 suit with respect to past, current, and future infringement of the patents in suit,  
27 including this suit against Defendant.

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**A. DIRECT INFRINGEMENTS**

1  
2 13. Defendant's employees, agents, representatives and other persons  
3 sponsored by or who endorse Defendant and Defendant's products in advertising and  
4 marketing activities, have taken, used, and orally administered the accused products.

5 14. The accused products are formulated, made, manufactured, shipped,  
6 distributed, advertised, offered for sale, and sold by Defendant to include certain  
7 ingredients that, by virtue of their inclusion in the products, infringe one or more  
8 claims of one or more of the patents in suit.

9 15. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendant to include specific  
11 ingredients for certain purposes that, by virtue of their inclusion in the products for  
12 such purposes, infringe one or more claims of one or more of the patents in suit, and  
13 as a result, when Defendant's employees, agents, representatives and other persons  
14 sponsored by or who endorse Defendant and Defendant's products in advertising and  
15 marketing activities orally administer the accused products, they are practicing and  
16 they practiced the methods disclosed in those claims.

17 16. These infringing ingredients, and/or combinations thereof, include,  
18 without limitation, L-Arginine, as set forth on Defendant's labels for the accused  
19 products.

20 17. The purposes for which these ingredients are included in the accused  
21 products are and were, without limitation, to enhance nitric oxide production, to  
22 improve nitric oxide activity, to produce nitric oxide, to boost nitric oxide levels in the  
23 body, and to enhance physical performance.

24 18. Defendant encouraged and/or is aware of the fact that its employees,  
25 agents, representatives and other persons sponsored by Defendant or who endorse  
26 Defendant and Defendant's products in advertising and marketing activities orally  
27 administered and administer the accused products and practice and practiced the  
28 methods disclosed in one or more claim of one or more of the patents in suit, and these

1 employees, agents, representatives and other persons sponsored by Defendant or who  
2 endorse Defendant and Defendant's products in advertising and marketing activities  
3 are and were acting under Defendant's direction and control when practicing those  
4 methods.

5 19. Therefore, Defendant is and was a direct infringer of one or more claims  
6 of one or more of the patents in suit, and Defendant practices and practiced the  
7 methods as set forth in one or more claims of one or more of the patents in suit.

8 **B. INDIRECT INFRINGEMENTS**

9 20. End-users of Defendant's accused products were and are also direct  
10 infringers of one or more claims of one or more of the patents in suit.

11 21. End-users of Defendant's accused products have taken, used, and orally  
12 administered the accused products.

13 22. The accused products are and were formulated, made, manufactured,  
14 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to include  
15 certain ingredients that, by virtue of their inclusion in the products, infringe and  
16 infringed one or more claims of one or more of the patents in suit.

17 23. The accused products are and were formulated, made, manufactured,  
18 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to include  
19 specific ingredients for certain purposes that, because of their inclusion in the products  
20 for such purposes, infringe and infringed one or more claims of one or more of the  
21 patents in suit, and as a result, when end-users of Defendant's accused products orally  
22 administer and administered the accused products, they are and were practicing the  
23 methods disclosed in those claims.

24 24. Defendant's labels and advertising for the accused products explain and  
25 explained the elements and essential elements of one or more of the methods disclosed  
26 in the patents in suit, and those labels and advertising statements encourage, urge, and  
27 induce the accused products' end-users, and did so in the past, to purchase and orally  
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1 ingest the products to practice those methods, and end-users do and did practice those  
2 methods.

3 25. Defendant has therefore specifically intended to cause these end-users to  
4 directly infringe the claimed methods of these patents, and in fact urged them to do so.

5 26. The accused products are and were not suitable for non-infringing uses,  
6 and none of Defendant's labels or advertisements for the accused products disclose or  
7 disclosed any uses for the products, nor for the compounds disclosed in the claimed  
8 methods of the patents in suit, that do not infringe upon such methods.

9 27. The inclusion of the specific infringing compounds in the products is and  
10 was material to practicing such methods.

11 28. Defendant has and had knowledge that the accused products are and were  
12 especially adapted by end-users of the products for the practicing of such methods,  
13 and, indeed, Defendant encourages, urges, and induces the accused products' end-  
14 users to purchase and orally administer the accused products to practice such methods,  
15 and has done so in the past.

16 29. Defendant intentionally and knowingly induced, encouraged, and urged  
17 end-users of the accused products to purchase and orally administer the accused  
18 products for the purposes of practicing the claimed methods, by having them orally  
19 ingest the compounds disclosed in such claims.

20 30. Defendant has and had knowledge of the fact that the accused products,  
21 particularly as administered, infringe on one or more claims of the patents in suit.

22 31. Defendant has and had direct, firsthand knowledge of the patents in suit.

23 32. For example and without limitation, Plaintiffs believe Defendant has had  
24 knowledge of the patents in suit since November 2006, when an ongoing settlement of  
25 a patent infringement case relating to at least some of the patents in suit against  
26 Herbalife, a well-known company in Defendant's industry, was announced in press  
27 releases issued in a highly publicized manner. Plaintiffs believe Defendant's  
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1 employees, agents, and representatives saw the press releases and were aware of the  
2 settlement and thus the patents in suit.

3 33. By way of further example and without limitation, Defendant sold its  
4 products through retailers, including online retailers, and those retailers have sold  
5 other companies' products whose labels and/or advertisements have been prominently  
6 marked with one or more of the patents in suit, by patent number, including without  
7 limitation, upon information and belief, the products manufactured and sold by  
8 Herbalife, Daily Wellness, and Vitality Research Labs. Defendant's employees,  
9 agents, and representatives have seen these labels and advertisements and, thus,  
10 Defendant has and had direct knowledge of the patents in suit.

11 34. Defendant brazenly and willfully decided to infringe the patents in suit  
12 despite knowledge of the patents' existence and its knowledge of the accused  
13 products' infringements of the patents.

14 35. At a minimum, and in the alternative, Plaintiffs plead that Defendant  
15 willfully blinded itself to the infringing nature of the accused products' sales.

16 36. Defendant did not cease its own direct infringement, nor its contributory  
17 infringement or inducement of infringement by end-users, despite its knowledge of the  
18 patents in suit and the end-users' infringing activities with respect to the patents in  
19 suit.

20 37. Plaintiffs also believe Defendant is infringing on one or more claims of  
21 United States Patent No. 5,428,070 and Patent No. 5,945,452, patents which  
22 Defendant has had prior knowledge of and are also licensed exclusively to Thermolife  
23 by Stanford University, to include the right to sue for infringement, and Plaintiffs will  
24 seek to amend this Complaint once facts confirming that belief are ascertained.

25 **IV. FIRST CAUSE OF ACTION**

26 **Infringement of U.S. Patent No. 6,117,872**

27 38. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
28 of this Complaint as if fully set forth herein.

1           39. Defendant has in the past and still is literally and directly infringing or  
2 directly infringing under the doctrine of equivalents one or more claims of United  
3 States Patent No. 6,117,872 by making, using, selling, and offering for sale the  
4 accused products, or any one of those products, and will continue to do so unless  
5 enjoined by this Court.

6           40. In addition to the fact that Defendant makes, uses, sells, and offers for  
7 sale the accused products, further examples of Defendant's direct infringements  
8 include, without limitation, the fact that Defendant has encouraged and/or is aware of  
9 the fact that its employees, agents, representatives and other persons sponsored by or  
10 who endorse Defendant and Defendant's products in advertising and marketing  
11 activities orally administer the accused products and practice the methods disclosed in  
12 one or more claims of United States Patent No. 6,117,872, and these employees,  
13 agents, representatives and other persons sponsored by or who endorse Defendant and  
14 Defendant's products in advertising and marketing activities are acting under  
15 Defendant's direction and control when practicing those methods.

16           41. Defendant has encouraged and is aware of these persons' oral  
17 administration of the accused products for these purposes, these persons are acting  
18 under Defendant's direction and control, and therefore Defendant is directly practicing  
19 the methods disclosed in United States Patent No. 6,117,872.

20           42. End-users of Defendant's accused products are also direct infringers of  
21 one or more claims of United States Patent No. 6,117,872.

22           43. End-users of Defendant's accused products have taken, used, and orally  
23 administered the accused products.

24           44. The accused products are formulated, made, manufactured, shipped,  
25 distributed, advertised, offered for sale, and sold by Defendant to include certain  
26 ingredients that, by virtue of their inclusion in the products, infringe one or more  
27 claims of United States Patent No. 6,117,872.

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1 45. The accused products is formulated, made, manufactured, shipped,  
2 distributed, advertised, offered for sale, and sold by Defendant to include specific  
3 ingredients for purposes that, by their inclusion in the products for such purposes,  
4 infringe one or more claims of United States Patent No. 6,117,872, and as a result,  
5 when end-users of Defendant's accused products orally administer the accused  
6 products, they are practicing the methods disclosed in one or more claims of that  
7 patent.

8 46. Defendant's labels and advertising for the accused products explain the  
9 elements and essential elements of the methods disclosed in United States Patent No.  
10 6,117,872, and those labels and advertising statements encourage, urge, and induce the  
11 accused products' end-users to purchase and orally ingest the products to practice  
12 those methods, and end-users do practice those methods.

13 47. Defendant has therefore specifically intended to cause these end-users to  
14 directly infringe the claimed methods of United States Patent No. 6,117,872, and has  
15 in fact urged them to do so.

16 48. The accused products are not suitable for non-infringing uses, and none  
17 of Defendant's labels or advertisements for the accused products disclose any uses for  
18 the products, nor for the compounds disclosed in the claimed methods, that do not  
19 infringe upon such methods.

20 49. The inclusion of these specific infringing compounds in the products is  
21 material to practicing such methods.

22 50. Defendant has knowledge that the accused products are especially  
23 adapted by end-users of the products for the practicing of such methods, and, indeed,  
24 Defendant encourages, urges, and induces the accused products' end-users to purchase  
25 and orally administer the accused products to practice such methods, and have done so  
26 in the past.

27 51. Defendant has intentionally and knowingly induced, encouraged, and  
28 urged end-users of the accused products to purchase and orally administer the accused

1 products for the purposes disclosed in one or more claims of United States Patent No.  
2 6,117,872, by having them orally ingest the compounds disclosed in such claims.

3 52. Defendant has knowledge of the fact that the accused products,  
4 particularly as administered, infringe on one or more claims of United States Patent  
5 No. 6,117,872.

6 53. Defendant also has direct, firsthand knowledge of United States Patent  
7 No. 6,117,872.

8 54. Defendant's activities have been without express or implied license by  
9 Plaintiff.

10 55. As a result of Defendant's acts of infringement, Plaintiffs have suffered  
11 and will continue to suffer damages in an amount to be proved at trial.

12 56. As a result of Defendant's acts of infringement, Plaintiffs have been and  
13 will continue to be irreparably harmed by Defendant's infringements, which will  
14 continue unless Defendant is enjoined by this Court.

15 57. Defendant's past infringements and/or continuing infringements have  
16 been deliberate and willful, and this case is therefore an exceptional case, which  
17 warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C.  
18 § 285.

19 **V. SECOND CAUSE OF ACTION**

20 **Infringement of U.S. Patent No. 5,891,459**

21 58. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
22 of this Complaint as if fully set forth herein.

23 59. Defendant has in the past literally and directly infringed or directly  
24 infringed under the doctrine of equivalents one or more claims of United States Patent  
25 No. 5,891,459 by making, using, selling, and offering for sale the accused products, or  
26 any one of those products.

27 60. In addition to the fact that Defendant makes, uses, sells, and offers for  
28 sale the accused products, and did so in the past, further examples of Defendant's

1 direct infringements include, without limitation, the fact that Defendant encouraged  
2 and/or is aware of the fact that its employees, agents, representatives and other persons  
3 sponsored by or who endorse Defendant and Defendant's products in advertising and  
4 marketing activities orally administer the accused products and practice the methods  
5 disclosed in one or more claims of United States Patent No. 5,891,459, and these  
6 employees, agents, representatives and other persons sponsored by or who endorse  
7 Defendant and Defendant's products in advertising and marketing activities acted  
8 under Defendant's direction and control when practicing those methods.

9 61. Defendant encouraged and was aware of these persons' oral  
10 administration of the accused products for these purposes, these persons are acting  
11 under Defendant's direction and control, and therefore Defendant directly practiced  
12 the methods disclosed in United States Patent No. 5,891,459.

13 62. End-users of Defendant's accused products were also direct infringers of  
14 one or more claims of United States Patent No. 5,891,459.

15 63. End-users of Defendant's accused products have taken, used, and orally  
16 administered the accused products.

17 64. The accused products were formulated, made, manufactured, shipped,  
18 distributed, advertised, offered for sale, and sold by Defendant to include certain  
19 ingredients that, by virtue of their inclusion in the products, infringed one or more  
20 claims of United States Patent No. 5,891,459.

21 65. The accused products were formulated, made, manufactured, shipped,  
22 distributed, advertised, offered for sale, and sold by Defendant to include specific  
23 ingredients for purposes that, by their inclusion in the products for such purposes,  
24 infringed one or more claims of United States Patent No. 5,891,459, and as a result,  
25 when end-users of Defendant's accused products orally administered the accused  
26 products, they were practicing the methods disclosed in one or more claims of that  
27 patent.

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1           66. Defendant's labels and advertising for the accused products explained the  
2 elements and essential elements of the methods disclosed in United States Patent No.  
3 5,891,459, and those labels and advertising statements encouraged, urged, and induced  
4 the accused products' end-users to purchase and orally ingest the products to practice  
5 those methods, and end-users did practice those methods.

6           67. Defendant therefore specifically intended to cause these end-users to  
7 directly infringe the claimed methods of United States Patent No. 5,891,459, and had  
8 in fact urged them to do so.

9           68. The accused products were not suitable for non-infringing uses, and none  
10 of Defendant's labels or advertisements for the accused products disclosed any uses  
11 for the products, nor for the compounds disclosed in the claimed methods, that did not  
12 infringe upon such methods.

13           69. The inclusion of these specific infringing compounds in the products was  
14 material to practicing such methods.

15           70. Defendant had knowledge that the accused products were especially  
16 adapted by end-users of the products for the practicing of such methods, and, indeed,  
17 Defendant encouraged, urged, and induced the accused products' end-users to  
18 purchase and orally administer the accused products to practice such methods.

19           71. Defendant intentionally and knowingly induced, encouraged, and urged  
20 end-users of the accused products to purchase and orally administer the accused  
21 products for the purposes disclosed in one or more claims of United States Patent No.  
22 5,891,459, by having them orally ingest the compounds disclosed in such claims.

23           72. Defendant had knowledge of the fact that the accused products,  
24 particularly as administered, infringed on one or more claims of United States Patent  
25 No. 5,891,459.

26           73. Defendant also had direct, firsthand knowledge of United States Patent  
27 No. 5,891,459 itself.

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1 74. Defendant's activities were without express or implied license by  
2 Plaintiffs.

3 75. As a result of Defendant's acts of infringement, Plaintiffs have suffered  
4 and will continue to suffer damages in an amount to be proved at trial.

5 76. As a result of Defendant's acts of infringement, Plaintiffs have been and  
6 will continue to be irreparably harmed by Defendant's infringements, which will  
7 continue unless Defendant is enjoined by this Court.

8 77. Defendant's past infringements and/or continuing infringements have  
9 been deliberate and willful, and this case is therefore an exceptional case, which  
10 warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C.  
11 § 285.

## 12 **VI. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as  
14 follows:

15 1. A declaration that Defendant has infringed the patents in suit, under 35  
16 U.S.C. §§ 271 *et seq.*;

17 2. That injunctions, preliminary and permanent, be issued by this Court  
18 restraining Defendant, its officers, agents, servants, directors, and employees, and all  
19 persons in active concert or participation with each, from directly or indirectly  
20 infringing, or inducing or contributing to the infringement by others of, United States  
21 Patent No. 6,117,872;

22 3. That Defendant be required to provide to Plaintiffs an accounting of all  
23 gains, profits, and advantages derived by Defendant's infringement of the patents in  
24 suit, and that Plaintiffs be awarded damages adequate to compensate Plaintiffs for the  
25 wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

26 4. That the damages awarded to Plaintiffs with regard to the patents in suit  
27 be increased up to three times, in view of Defendant's willful infringement, in  
28 accordance with 35 U.S.C. § 284;



**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,  
NEWPORT TRIAL GROUP  
A Professional Corporation

Dated: February 13, 2014

/s/Tyler J Woods  
By: Tyler J. Woods  
Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2014, I electronically filed the foregoing **THERMOLIFE INTERNATIONAL, LLC GROUP, LLC'S AMENDED COMPLAINT FOR PATENT INFRINGEMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/Tyler J Woods  
Tyler J Woods

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