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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 NUTREX RESEARCH, INC.,

17 Defendants

Case No. 13-cv-885 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 Nutrex Research, Inc. (“Defendant”), on personal knowledge as to their own  
4 activities 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. 7,452,916, 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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1 7. Defendant is a corporation organized and existing under the laws of  
2 Florida with a principal place of business at 579 South Econ Circle in Oviedo, Florida,  
3 32765.

4 **II. JURISDICTION AND VENUE**

5 8. This is an action for patent infringement arising under the patent laws of  
6 the United States, Title 35 of the United States Code. Accordingly, this Court has  
7 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

8 9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

9 10. This Court has personal jurisdiction over Defendant. By way of example  
10 and without limitation, Defendant, directly or through intermediaries (including  
11 distributors, retailers, and others), makes, manufactures, ships, distributes, advertises,  
12 markets, offers for sale, and/or sells dietary supplement products that infringe on one  
13 or more claims of the patents in suit (hereinafter the “accused products”), which  
14 include without limitation products sold under the “Niox” brand name, in the United  
15 States, the State of California, and the Southern District of California.

16 11. By way of further example and without limitation, Defendant has  
17 purposefully and voluntarily placed the accused products into the stream of commerce  
18 with the expectation that they will be purchased in the Southern District of California,  
19 and the products are actually purchased in the Southern District of California.

20 **III. THE DEFENDANT’S INFRINGEMENTS**

21 12. Defendant has committed the tort of patent infringement within the State  
22 of California, and more particularly, within the Southern District of California, by  
23 virtue of the fact that Defendant has formulated, made, manufactured, shipped,  
24 distributed, advertised, offered for sale, and/or sold the accused products in this  
25 District, and continues to do so.

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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 Ethyl Ester Dichloride and R+ Lipoic Acid, as set forth  
19 on Defendant's labels for the accused 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 by Stanford  
23 University, to include the right to sue for infringement, and Plaintiffs will seek to  
24 amend this Complaint once facts confirming that belief are ascertained.

25 **IV. THIRD CAUSE OF ACTION**

26 **Infringement of U.S. Patent No. 7,452,916**

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 literally and directly infringed or directly  
2 infringed under the doctrine of equivalents one or more claims of United States Patent  
3 No. 7,452,916 by making, using, selling, and offering for sale the accused products, or  
4 any one of those products.

5 40. In addition to the fact that Defendant makes, uses, sells, and offers for  
6 sale the accused products, and did so in the past, further examples of Defendant's  
7 direct infringements include, without limitation, the fact that Defendant encouraged  
8 and/or is aware of the fact that its employees, agents, representatives and other persons  
9 sponsored by or who endorse Defendant and Defendant's products in advertising and  
10 marketing activities orally administer the accused products and practice the methods  
11 disclosed in one or more claims of United States Patent No. 7,452,916, and these  
12 employees, agents, representatives and other persons sponsored by or who endorse  
13 Defendant and Defendant's products in advertising and marketing activities acted  
14 under Defendant's direction and control when practicing those methods.

15 41. Defendant encouraged and was aware of these persons' oral  
16 administration of the accused products for these purposes, these persons are acting  
17 under Defendant's direction and control, and therefore Defendant directly practiced  
18 the methods disclosed in United States Patent No. 7,452,916.

19 42. End-users of Defendant's accused products were also direct infringers of  
20 one or more claims of United States Patent No. 7,452,916.

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

23 44. The accused products were formulated, made, manufactured, shipped,  
24 distributed, advertised, offered for sale, and sold by Defendant to include certain  
25 ingredients that, by virtue of their inclusion in the products, infringed one or more  
26 claims of United States Patent No. 7,452,916.

27 45. The accused products were formulated, made, manufactured, shipped,  
28 distributed, advertised, offered for sale, and sold by Defendant to include specific



1 ingredients for purposes that, by their inclusion in the products for such purposes,  
2 infringed one or more claims of United States Patent No. 7,452,916, and as a result,  
3 when end-users of Defendant's accused products orally administered the accused  
4 products, they were practicing the methods disclosed in one or more claims of that  
5 patent.

6 46. Defendant's labels and advertising for the accused products explained the  
7 elements and essential elements of the methods disclosed in United States Patent No.  
8 7,452,916, and those labels and advertising statements encouraged, urged, and induced  
9 the accused products' end-users to purchase and orally ingest the products to practice  
10 those methods, and end-users did practice those methods.

11 47. Defendant therefore specifically intended to cause these end-users to  
12 directly infringe the claimed methods of United States Patent No. 7,452,916, and had  
13 in fact urged them to do so.

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

18 49. The inclusion of these specific infringing compounds in the products was  
19 material to practicing such methods.

20 50. Defendant had knowledge that the accused products were especially  
21 adapted by end-users of the products for the practicing of such methods, and, indeed,  
22 Defendant encouraged, urged, and induced the accused products' end-users to  
23 purchase and orally administer the accused products to practice such methods.

24 51. Defendant intentionally and knowingly induced, encouraged, and urged  
25 end-users of the accused products to purchase and orally administer the accused  
26 products for the purposes disclosed in one or more claims of United States Patent No.  
27 7,452,916, by having them orally ingest the compounds disclosed in such claims.

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1 52. Defendant had knowledge of the fact that the accused products,  
2 particularly as administered, infringed on one or more claims of United States Patent  
3 No. 7,452,916.

4 53. Defendant also had direct, firsthand knowledge of United States Patent  
5 No. 7,452,916 itself.

6 54. Defendant's activities were without express or implied license by  
7 Plaintiffs.

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

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

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

17 **V. FOURTH CAUSE OF ACTION**

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

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

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

26 60. In addition to the fact that Defendant makes, uses, sells, and offers for  
27 sale the accused products, further examples of Defendant's direct infringements  
28 include, without limitation, the fact that Defendant has encouraged and/or is aware of

1 the fact that its employees, agents, representatives and other persons sponsored by or  
2 who endorse Defendant and Defendant's products in advertising and marketing  
3 activities orally administer the accused products and practice the methods disclosed in  
4 one or more claims of United States Patent No. 6,117,872, and these employees,  
5 agents, representatives and other persons sponsored by or who endorse Defendant and  
6 Defendant's products in advertising and marketing activities are acting under  
7 Defendant's direction and control when practicing those methods.

8 61. Defendant has encouraged and is aware of these persons' oral  
9 administration of the accused products for these purposes, these persons are acting  
10 under Defendant's direction and control, and therefore Defendant is directly practicing  
11 the methods disclosed in United States Patent No. 6,117,872.

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

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

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

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

27 66. Defendant's labels and advertising for the accused products explain the  
28 elements and essential elements of the methods disclosed in United States Patent No.

1 6,117,872, and those labels and advertising statements encourage, urge, and induce the  
2 accused products' end-users to purchase and orally ingest the products to practice  
3 those methods, and end-users do practice those methods.

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

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

11 69. The inclusion of these specific infringing compounds in the products is  
12 material to practicing such methods.

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

18 71. Defendant has intentionally and knowingly induced, encouraged, and  
19 urged end-users of the accused products to purchase and orally administer the accused  
20 products for the purposes disclosed in one or more claims of United States Patent No.  
21 6,117,872, by having them orally ingest the compounds disclosed in such claims.

22 72. Defendant has knowledge of the fact that the accused products,  
23 particularly as administered, infringe on one or more claims of United States Patent  
24 No. 6,117,872.

25 73. Defendant also has direct, firsthand knowledge of United States Patent  
26 No. 6,117,872.

27 74. Defendant's activities have been without express or implied license by  
28 Plaintiff.

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

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

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

10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as  
 12 follows:

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

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

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

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

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1           5. That this case be declared to be exceptional in favor of Plaintiffs under 35  
2 U.S.C. § 285, and that Plaintiffs be awarded their reasonable attorneys' fees and other  
3 expenses incurred in connection with this action;

4           6. That Plaintiffs be awarded their interest and costs of suit incurred in this  
5 action;

6           7. Compensatory damages;

7           8. Punitive damages; and

8           9. That Plaintiffs be awarded such other and further relief as this Court may  
9 deem just and proper.

10                               Respectfully submitted,  
11                               NEWPORT TRIAL GROUP  
12                               A Professional Corporation

13           Dated: February 13, 2014

14                                   /s/Tyler J Woods      
15                               By: Tyler J. Woods  
16                               Attorneys for Plaintiffs

**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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