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8

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

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

13 Plaintiffs,

14 vs.

15 JOE WELLS ENTERPRISES, INC. DBA
16 MAXMUSCLE SPORTS NUTRITION,

17 Defendant.

Case No. 13cv0652 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 Max Muscle, Inc. d/b/a Max Muscle Sports Nutrition (“Defendant”), on
4 personal knowledge as to their own activities and on information and belief as to the
5 activities of others, as follows:

6 **I. THE PARTIES**

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

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

14 3. ThermoLife is the exclusive licensee of the following United States
15 Patents:

- 16 a. Patent No. 6,646,006, titled “Enhancement of Vascular Function By
17 Modulation of Endogenous Nitric Oxide Production or Activity”;
18 b. Patent No. 6,117,872, titled “Enhancement of Exercise Performance by
19 Augmenting Endogenous Nitric Oxide Production or Activity”;
20 c. Patent No. 5,891,459, titled “Enhancement of Vascular Function By
21 Modulation of Endogenous Nitric Oxide Production or Activity”; and
22 d. Patent No. 7,452,916, titled “Enhancement of Vascular Function By
23 Modulation of Endogenous Nitric Oxide Production or Activity.”

24 4. The above patents are owned by Stanford University and ThermoLife
25 exclusively licenses the patents from Stanford University. ThermoLife is pursuing this
26 action and ThermoLife has the right to join Stanford as a necessary party.

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

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1 virtue of the fact that Defendant has formulated, made, manufactured, shipped,
2 distributed, advertised, offered for sale, and/or sold the accused products in this District,
3 and continue to do so.

4 **A. DIRECT INFRINGEMENTS**

5 14. Defendant's employees, agents, representatives and other persons
6 sponsored by or who endorse Defendant and Defendant's products in advertising and
7 marketing activities, has taken, used, and orally administered the accused products.

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

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

20 17. These infringing ingredients, and/or combinations thereof, include, without
21 limitation, Arginine Alpha-Ketoglutarate, L-Norvaline, Citrulline Malate, L-Arginine
22 Pyroglutamate, L-Arginine, L-Arginine Monohydrate Hydrochloride, Capsicum fruit
23 extract, and Ginkgo Biloba extract, as set forth on Defendant's labels for NitroPlex-6
24 and EVP.

25 18. The purposes for which these ingredients are included in the accused
26 products are, without limitation, to enhance nitric oxide production, to improve nitric
27 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to
28 enhance physical performance.

1 19. For instance, as just as an example, the labels and/or advertisements for
2 NitroPlex-6 states that its “rapid nutrient delivery system combines an extremely potent
3 blend of N.O. releasers and energy precursors to support unprecedented muscle pumps,
4 muscle growth, strength, stamina and optimal recovery.”

5 20. Defendant has encouraged and/or are aware of the fact that their
6 employees, agents, representatives and other persons sponsored by Defendant or who
7 endorse Defendant and Defendant’s products in advertising and marketing activities
8 orally administer the accused products and practice the methods disclosed in one or
9 more claim of one or more of the patents in suit, and these employees, agents,
10 representatives and other persons sponsored by Defendant or who endorse Defendant
11 and Defendant’s products in advertising and marketing activities are acting under
12 Defendant’s direction and control when practicing those methods.

13 21. Therefore, Defendant are direct infringer of one or more claims of one or
14 more of the patents in suit, and Defendant practice the methods as set forth in one or
15 more claims of one or more of the patents in suit.

16 **B. INDIRECT INFRINGEMENTS**

17 22. End-users of Defendant’s accused products are also direct infringers of one
18 or more claims of one or more of the patents in suit.

19 23. End-users of Defendant’s accused products have taken, used, and orally
20 administered the accused products.

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

25 25. The accused products are formulated, made, manufactured, shipped,
26 distributed, advertised, offered for sale, and/or sold by Defendant to include specific
27 ingredients for certain purposes that, because of their inclusion in the products for such
28 purposes, infringe one or more claims of one or more of the patents in suit, and as a

1 result, when end-users of Defendant's accused products orally administer the accused
2 products, they are practicing the methods disclosed in those claims.

3 26. Defendant's labels and advertising for the accused products explain the
4 elements and essential elements of one or more of the methods disclosed in the patents
5 in suit, and those labels and advertising statements encourage, urge, and induce the
6 accused products' end-users to purchase and orally ingest the products to practice those
7 methods, and end-users do practice those methods.

8 27. Defendant has therefore specifically intended to cause these end-users to
9 directly infringe the claimed methods of these patents, and has in fact urged them to do
10 so.

11 28. The accused products are not suitable for non-infringing uses, and none of
12 Defendant's labels or advertisements for the accused products disclose any uses for the
13 products, nor for the compounds disclosed in the claimed methods of the patents in suit,
14 that do not infringe upon such methods.

15 29. The inclusion of the specific infringing compounds in the products is
16 material to practicing such methods.

17 30. Defendant has knowledge that the accused products are especially adapted
18 by end-users of the products for the practicing of such methods, and, indeed, Defendant
19 encourage, urge, and induce the accused products' end-users to purchase and orally
20 administer the accused products to practice such methods, and has done so in the past.

21 31. Defendant has intentionally and knowingly induced, encouraged, and
22 urged end-users of the accused products to purchase and orally administer the accused
23 products for the purposes of practicing the claimed methods, by having them orally
24 ingest the compounds disclosed in such claims.

25 32. Defendant has knowledge of the fact that the accused products, particularly
26 as administered, infringe on one or more claims of the patents in suit.

27 33. Defendant has direct, firsthand knowledge of the patents in suit.

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

7 35. By way of further example and without limitation, Defendant has sold
8 their products through retailers, including online retailers, and those retailers have sold
9 other companies' products whose labels and/or advertisements have been prominently
10 marked with one or more of the patents in suit, by patent number, including without
11 limitation the products manufactured and sold by Herbalife, Daily Wellness, and
12 Vitality Research Labs. Defendant's employees, agents, and representatives have seen
13 these labels and advertisements and, thus, Defendant has knowledge of the patents in
14 suit.

15 36. Defendant has brazenly and willfully decided to infringe the patents in suit
16 despite knowledge of the patents' existence and their knowledge of the accused
17 products' infringements of the patents.

18 37. At a minimum, and in the alternative, Plaintiffs plead that Defendant
19 willfully blinded themselves to the infringing nature of the accused products' sales.

20 38. Defendant has not ceased their own direct infringements, nor their
21 contributory infringements or inducements of infringements by end-users, despite their
22 knowledge of the patents in suit and their infringing activities with respect to the
23 patents in suit.

24 39. Plaintiffs also believe Defendant, or one of them, are infringing on one or
25 more claims of United States Patent No. 5,428,070 and Patent No. 5,945,452, patents
26 which Defendant has had prior knowledge of and are also licensed exclusively to
27 ThermoLife by Stanford University, to include the right to sue for infringement, and
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1 Plaintiffs will seek to amend this Complaint once facts confirming that belief are
2 ascertained.

3 **IV. FIRST CAUSE OF ACTION**

4 **Infringement of U.S. Patent No. 6,646,006**

5 40. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
6 of this Complaint as if fully set forth herein.

7 41. Defendant has in the past and still is literally and directly infringing or
8 directly infringing under the doctrine of equivalents one or more claims of United
9 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
10 products, and will continue to do so unless enjoined by this Court.

11 42. In addition to the fact that Defendant make, use, sell, and offer for sale the
12 accused products, further examples of Defendant's direct infringement include, without
13 limitation, the fact that Defendant has encouraged and/or are aware of the fact that their
14 employees, agents, representatives and other persons sponsored by or who endorse
15 Defendant and Defendant's products in advertising and marketing activities orally
16 administer the accused products and practice the methods disclosed in one or more
17 claims of United States Patent No. 6,646,006, and these employees, agents,
18 representatives and other persons sponsored by or who endorse Defendant and
19 Defendant's products in advertising and marketing activities are acting under
20 Defendant's direction and control when practicing those methods.

21 43. Defendant has encouraged and are aware of these persons' oral
22 administration of the accused products for these purposes, these persons are acting
23 under Defendant's direction and control, and therefore Defendant are directly practicing
24 the methods disclosed in United States Patent No. 6,646,006.

25 44. End-users of Defendant's accused products are also direct infringers of one
26 or more claims of United States Patent No. 6,646,006.

27 45. End-users of Defendant's accused products have taken, used, and orally
28 administered the accused products.

1 46. The accused products are formulated, made, manufactured, shipped,
2 distributed, advertised, offered for sale, and sold by Defendant to include certain
3 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
4 of United States Patent No. 6,646,006.

5 47. The accused products are formulated, made, manufactured, shipped,
6 distributed, advertised, offered for sale, and sold by Defendant to include specific
7 ingredients for purposes that, by their inclusion in the products for such purposes,
8 infringe one or more claims of United States Patent No. 6,646,006, and as a result,
9 when end-users of Defendant's accused products orally administer the accused
10 products, they are practicing the methods disclosed in one or more claims of that patent.

11 48. Defendant's labels and advertising for the accused products explain the
12 elements and essential elements of the methods disclosed in United States Patent No.
13 6,646,006, and those labels and advertising statements encourage, urge, and induce the
14 accused products' end-users to purchase and orally ingest the products to practice those
15 methods, and end-users do practice those methods.

16 49. Defendant has therefore specifically intended to cause these end-users to
17 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in
18 fact urged them to do so.

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

23 51. The inclusion of these specific infringing compounds in the products is
24 material to practicing such methods.

25 52. Defendant has knowledge that the accused products are especially adapted
26 by end-users of the products for the practicing of such methods, and, indeed, Defendant
27 encourage, urge, and induce the accused products' end-users to purchase and orally
28 administer the accused products to practice such methods, and has done so in the past.

1 53. Defendant has intentionally and knowingly induced, encouraged, and
2 urged end-users of the accused products to purchase and orally administer the accused
3 products for the purposes disclosed in one or more claims of United States Patent No.
4 6,646,006, by having them orally ingest the compounds disclosed in such claims.

5 54. Defendant has knowledge of the fact that the accused products, particularly
6 as administered, infringe on one or more claims of United States Patent No. 6,646,006.

7 55. Defendant also has direct, firsthand knowledge of United States Patent No.
8 6,646,006.

9 56. Defendant's activity has been without express or implied license by
10 Plaintiff.

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

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

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

19 **V. SECOND CAUSE OF ACTION**

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

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

23 61. Defendant has in the past and still is literally and directly infringing or
24 directly infringing under the doctrine of equivalents one or more claims of United
25 States Patent No. 5,891,459 by making, using, selling, and offering for sale the accused
26 products, and will continue to do so unless enjoined by this Court.

27 62. In addition to the fact that Defendant make, use, sell, and offer for sale the
28 accused products, further examples of Defendant's direct infringement include, without

1 limitation, the fact that Defendant has encouraged and/or are aware of the fact that their
2 employees, agents, representatives and other persons sponsored by or who endorse
3 Defendant and Defendant's products in advertising and marketing activities orally
4 administer the accused products and practice the methods disclosed in one or more
5 claims of United States Patent No. 5,891,459, and these employees, agents,
6 representatives and other persons sponsored by or who endorse Defendant and
7 Defendant's products in advertising and marketing activities are acting under
8 Defendant's direction and control when practicing those methods.

9 63. Defendant has encouraged and are 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 are directly practicing
12 the methods disclosed in United States Patent No. 5,891,459.

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

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

17 66. The accused products are 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, infringe one or more claims
20 of United States Patent No. 5,891,459.

21 67. The accused products are 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 infringe 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 administer the accused
26 products, they are practicing the methods disclosed in one or more claims of that patent.

27 68. 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 5,891,459, 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 those
3 methods, and end-users do practice those methods.

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

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

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

13 72. Defendant has knowledge that the accused products are especially adapted
14 by end-users of the products for the practicing of such methods, and, indeed, Defendant
15 encourage, urge, and induce the accused products' end-users to purchase and orally
16 administer the accused products to practice such methods, and has done so in the past.

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

21 74. Defendant has knowledge of the fact that the accused products, particularly
22 as administered, infringe on one or more claims of United States Patent No. 5,891,459.

23 75. Defendant also has direct, firsthand knowledge of United States Patent No.
24 5,891,459.

25 76. Defendant's activity has been without express or implied license by
26 Plaintiff.

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

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

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

7 **VI. THIRD CAUSE OF ACTION**

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

9 80. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
10 of this Complaint as if fully set forth herein.

11 81. Defendant has in the past and still is literally and directly infringing or
12 directly infringing under the doctrine of equivalents one or more claims of United
13 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused
14 products, and will continue to do so unless enjoined by this Court.

15 82. In addition to the fact that Defendant make, use, sell, and offer for sale the
16 accused products, further examples of Defendant's direct infringement include, without
17 limitation, the fact that Defendant has encouraged and/or are aware of the fact that their
18 employees, agents, representatives and other persons sponsored by or who endorse
19 Defendant and Defendant's products in advertising and marketing activities orally
20 administer the accused products and practice the methods disclosed in one or more
21 claims of United States Patent No. 7,452,916, and these employees, agents,
22 representatives and other persons sponsored by or who endorse Defendant and
23 Defendant's products in advertising and marketing activities are acting under
24 Defendant's direction and control when practicing those methods.

25 83. Defendant has encouraged and are aware of these persons' oral
26 administration of the accused products for these purposes, these persons are acting
27 under Defendant's direction and control, and therefore Defendant are directly practicing
28 the methods disclosed in United States Patent No. 7,452,916.

1 84. End-users of Defendant's accused products are also direct infringers of one
2 or more claims of United States Patent No. 7,452,916.

3 85. End-users of Defendant's accused products have taken, used, and orally
4 administered the accused products.

5 86. 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 claims
8 of United States Patent No. 7,452,916.

9 87. The accused products are formulated, made, manufactured, shipped,
10 distributed, advertised, offered for sale, and sold by Defendant to include specific
11 ingredients for purposes that, by their inclusion in the products for such purposes,
12 infringe one or more claims of United States Patent No. 7,452,916, and as a result,
13 when end-users of Defendant's accused products orally administer the accused
14 products, they are practicing the methods disclosed in one or more claims of that patent.

15 88. Defendant's labels and advertising for the accused products explain the
16 elements and essential elements of the methods disclosed in United States Patent No.
17 7,452,916, and those labels and advertising statements encourage, urge, and induce the
18 accused products' end-users to purchase and orally ingest the products to practice those
19 methods, and end-users do practice those methods.

20 89. Defendant has therefore specifically intended to cause these end-users to
21 directly infringe the claimed methods of United States Patent No. 7,452,916, and has in
22 fact urged them to do so.

23 90. The accused products are not suitable for non-infringing uses, and none of
24 Defendant's labels or advertisements for the accused products disclose any uses for the
25 products, nor for the compounds disclosed in the claimed methods, that do not infringe
26 upon such methods.

27 91. The inclusion of these specific infringing compounds in the products is
28 material to practicing such methods.

1 92. Defendant has knowledge that the accused products are especially adapted
2 by end-users of the products for the practicing of such methods, and, indeed, Defendant
3 encourage, urge, and induce the accused products' end-users to purchase and orally
4 administer the accused products to practice such methods, and has done so in the past.

5 93. Defendant has intentionally and knowingly induced, encouraged, and
6 urged end-users of the accused products to purchase and orally administer the accused
7 products for the purposes disclosed in one or more claims of United States Patent No.
8 7,452,916, by having them orally ingest the compounds disclosed in such claims.

9 94. Defendant has knowledge of the fact that the accused products, particularly
10 as administered, infringe on one or more claims of United States Patent No. 7,452,916.

11 95. Defendant also has direct, firsthand knowledge of United States Patent No.
12 7,452,916.

13 96. Defendant's activity has been without express or implied license by
14 Plaintiffs.

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

17 98. As a result of Defendant's acts of infringement, Plaintiffs have been and
18 will continue to be irreparably harmed by Defendant's infringements, which will
19 continue unless Defendant is enjoined by this Court.

20 99. Defendant's past infringements and/or continuing infringements has been
21 deliberate and willful, and this case is therefore an exceptional case, which warrants an
22 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

23 **VII. FOURTH CAUSE OF ACTION**

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

25 100. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
26 of this Complaint as if fully set forth herein.

27 101. Defendant has in the past and still is literally and directly infringing or
28 directly infringing under the doctrine of equivalents one or more claims of United

1 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused
2 products, and will continue to do so unless enjoined by this Court.

3 102. In addition to the fact that Defendant make, use, sell, and offer for sale the
4 accused products, further examples of Defendant's direct infringement include, without
5 limitation, the fact that Defendant has encouraged and/or are aware of the fact that their
6 employees, agents, representatives and other persons sponsored by or who endorse
7 Defendant and Defendant's products in advertising and marketing activities orally
8 administer the accused products and practice the methods disclosed in one or more
9 claims of United States Patent No. 6,117,872, and these employees, agents,
10 representatives and other persons sponsored by or who endorse Defendant and
11 Defendant's products in advertising and marketing activities are acting under
12 Defendant's direction and control when practicing those methods.

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

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

19 105. End-users of Defendant's accused products have taken, used, and orally
20 administered the accused products.

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

25 107. The accused products are formulated, made, manufactured, shipped,
26 distributed, advertised, offered for sale, and sold by Defendant to include specific
27 ingredients for purposes that, by their inclusion in the products for such purposes,
28 infringe one or more claims of United States Patent No. 6,117,872, and as a result,

1 when end-users of Defendant's accused products orally administer the accused
2 products, they are practicing the methods disclosed in one or more claims of that patent.

3 108. Defendant's labels and advertising for the accused products explain the
4 elements and essential elements of the methods disclosed in United States Patent No.
5 6,117,872, and those labels and advertising statements encourage, urge, and induce the
6 accused products' end-users to purchase and orally ingest the products to practice those
7 methods, and end-users do practice those methods.

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

11 110. The accused products are not suitable for non-infringing uses, and none of
12 Defendant's labels or advertisements for the accused products disclose any uses for the
13 products, nor for the compounds disclosed in the claimed methods, that do not infringe
14 upon such methods.

15 111. The inclusion of these specific infringing compounds in the products is
16 material to practicing such methods.

17 112. Defendant has knowledge that the accused products are especially adapted
18 by end-users of the products for the practicing of such methods, and, indeed, Defendant
19 encourage, urge, and induce the accused products' end-users to purchase and orally
20 administer the accused products to practice such methods, and has done so in the past.

21 113. Defendant has intentionally and knowingly induced, encouraged, and
22 urged end-users of the accused products to purchase and orally administer the accused
23 products for the purposes disclosed in one or more claims of United States Patent No.
24 6,117,872, by having them orally ingest the compounds disclosed in such claims.

25 114. Defendant has knowledge of the fact that the accused products, particularly
26 as administered, infringe on one or more claims of United States Patent No. 6,117,872.

27 115. Defendant also has direct, firsthand knowledge of United States Patent No.
28 6,117,872.

1 116. Defendant's activity has been without express or implied license by
2 Plaintiffs.

3 117. 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.

5 118. 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.

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

11 **VIII. PRAYER FOR RELIEF**

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

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

16 2. That injunctions, preliminary and permanent, be issued by this Court
17 restraining Defendant, their respective officers, agents, servants, directors, and
18 employees, and all persons in active concert or participation with each, from directly or
19 indirectly infringing, or inducing or contributing to the infringement by others of, the
20 patents in suit;

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

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

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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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