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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 HI-TECH PHARMACEUTICALS, INC.,  
 16

17 Defendant

Case No. 13-cv-830JLS (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 Hi-Tech Pharmaceuticals, Inc. (“Defendant”), on personal knowledge as to their  
4 own 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 Palo  
12 Alto, California, 94306-1106.

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

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

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

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

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1 6. ThermoLife has been given the right by Stanford University to institute  
2 suit with respect to infringement of the patents in suit, including this suit against  
3 Defendant.

4 7. Defendant is a corporation organized and existing under the laws of  
5 Georgia with a principal place of business at 6015-B Unity Drive in Norcross, Georgia,  
6 30071.

7 8. On information and belief, Defendant also does business as ALRI, ALR  
8 Industries, APS Nutrition, HealthSource, and NutraSource, or manufactures products  
9 marketed under such brands.

10 **II. JURISDICTION AND VENUE**

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

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

15 11. This Court has personal jurisdiction over Defendant. By way of example  
16 and without limitation, Defendant, directly or through intermediaries (including  
17 distributors, retailers, and others), makes, manufactures, ships, distributes, advertises,  
18 markets, offers for sale, and/or sells dietary supplement products that infringe on one or  
19 more claims of the patents in suit (hereinafter the “accused products”), which include  
20 without limitation products sold under the “Anavar,” “NO Overload,” “Zencore Plus,”  
21 “Mesomorph,” “SizeMatters,” and “StaminaRx” brand names in the United States, the  
22 State of California, and the Southern District of California.

23 12. By way of further example and without limitation, Defendant has  
24 purposefully and voluntarily placed the accused products into the stream of commerce  
25 with the expectation that they will be purchased in the Southern District of California,  
26 and the products are actually purchased in the Southern District of California.

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

2 13. Defendant has committed the tort of patent infringement within the State  
3 of California, and more particularly, within the Southern District of California, by  
4 virtue of the fact that Defendant has formulated, made, manufactured, shipped,  
5 distributed, advertised, offered for sale, and/or sold the accused products in this District,  
6 and continues to do so.

7 **A. DIRECT INFRINGEMENTS**

8 14. Defendant’s employees, agents, representatives and other persons  
9 sponsored by or who endorse Defendant and Defendant’s products in advertising and  
10 marketing activities, have taken, used, and orally administered the accused products.

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

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

23 17. These infringing ingredients, and/or combinations thereof, include, without  
24 limitation, L-Arginine, L-Arginine HCl, Arginine Alpha ketoglutarate, L-Arginine  
25 Malate, Creatine Ethyl Ester HCl, Creatine Monohydrate, Acacia Rigidula, Gyohimbe  
26 HCL, Epimedium, and Cnidium Monnier, as set forth on Defendant’s labels for the  
27 accused products.

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1 18. The purposes for which these ingredients are included in the accused  
2 products are, without limitation, to enhance nitric oxide production, to improve nitric  
3 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to  
4 enhance physical performance.

5 19. Defendant has encouraged and/or is aware of the fact that its employees,  
6 agents, representatives and other persons sponsored by Defendant 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 claim of one or more of the patents in suit, and these employees, agents, representatives  
10 and other persons sponsored by Defendant or who endorse Defendant and Defendant's  
11 products in advertising and marketing activities are acting under Defendant's direction  
12 and control when practicing those methods.

13 20. Therefore, Defendant is a direct infringer of one or more claims of one or  
14 more of the patents in suit, and Defendant practices 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 21. 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 22. End-users of Defendant's accused products have taken, used, and orally  
20 administered the accused products.

21 23. 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 24. 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 25. 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 26. 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 27. 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 28. The inclusion of the specific infringing compounds in the products is  
16 material to practicing such methods.

17 29. 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 encourages, urges, and induces 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 30. 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 31. 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 32. Defendant has direct, firsthand knowledge of the patents in suit.

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1           33. 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           34. By way of further example and without limitation, Defendant has sold its  
8 products through retailers, including online retailers, and those retailers have sold other  
9 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 direct knowledge of the  
14 patents in suit.

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

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

20           37. Defendant has not ceased its own direct infringement, nor its contributory  
21 infringement or inducement of infringement by end-users, despite its knowledge of the  
22 patents in suit and the end-users' infringing activities with respect to the patents in suit.

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

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1 **IV. FIRST CAUSE OF ACTION**

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

3 39. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
4 of this Complaint as if fully set forth herein.

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

9 41. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
10 the accused products, further examples of Defendant's direct infringements include,  
11 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
12 that its employees, agents, representatives and other persons sponsored by or who  
13 endorse Defendant and Defendant's products in advertising and marketing activities  
14 orally administer the accused products and practice the methods disclosed in one or  
15 more claims of United States Patent No. 6,646,006, and these employees, agents,  
16 representatives and other persons sponsored by or who endorse Defendant and  
17 Defendant's products in advertising and marketing activities are acting under  
18 Defendant's direction and control when practicing those methods.

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

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

25 44. End-users of Defendant's accused products have taken, used, and orally  
26 administered the accused products.

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



1 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
2 of United States Patent No. 6,646,006.

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

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

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

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

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

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

27 52. 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 6,646,006, by having them orally ingest the compounds disclosed in such claims.

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

5 54. Defendant also has direct, firsthand knowledge of United States Patent No.  
6 6,646,006.

7 55. Defendant's activities have been without express or implied license by  
8 Plaintiffs.

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

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

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

17 **V. SECOND CAUSE OF ACTION**

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

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

21 60. 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. 5,891,459 by making, using, selling, and offering for sale the accused  
24 products, and will continue to do so unless enjoined by this Court.

25 61. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
26 the accused products, further examples of Defendant's direct infringements include,  
27 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
28 that its employees, agents, representatives and other persons sponsored by or who

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

7 62. Defendant has encouraged and is aware of these persons' oral  
8 administration of the accused products for these purposes, these persons are acting  
9 under Defendant's direction and control, and therefore Defendant is directly practicing  
10 the methods disclosed in United States Patent No. 5,891,459.

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

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

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

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

25 67. Defendant's labels and advertising for the accused products explain the  
26 elements and essential elements of the methods disclosed in United States Patent No.  
27 5,891,459, and those labels and advertising statements encourage, urge, and induce the  
28

1 accused products' end-users to purchase and orally ingest the products to practice those  
2 methods, and end-users do practice those methods.

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

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

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

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

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

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

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

24 75. Defendant's activities have been without express or implied license by  
25 Plaintiffs.

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

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1 77. 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 78. Defendant's past infringements and/or continuing infringements have 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 79. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
10 of this Complaint as if fully set forth herein.

11 80. 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 81. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
16 the accused products, further examples of Defendant's direct infringements include,  
17 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
18 that its employees, agents, representatives and other persons sponsored by or who  
19 endorse Defendant and Defendant's products in advertising and marketing activities  
20 orally administer the accused products and practice the methods disclosed in one or  
21 more 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 82. Defendant has encouraged and is 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 is directly practicing  
28 the methods disclosed in United States Patent No. 7,452,916.

1           83. 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           84. End-users of Defendant’s accused products have taken, used, and orally  
4 administered the accused products.

5           85. 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           86. The accused products is 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           87. 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           88. 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           89. 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           90. The inclusion of these specific infringing compounds in the products is  
28 material to practicing such methods.

1 91. 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 encourages, urges, and induces the accused products' end-users to purchase and orally  
4 administer the accused products to practice such methods, and have done so in the past.

5 92. 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 93. 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 94. Defendant also has direct, firsthand knowledge of United States Patent No.  
12 7,452,916.

13 95. Defendant's activities have been without express or implied license by  
14 Plaintiffs.

15 96. 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 97. 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 98. Defendant's past infringements and/or continuing infringements have 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 99. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
26 of this Complaint as if fully set forth herein.

27 100. 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.

3 101. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
4 the accused products, further examples of Defendant's direct infringements include,  
5 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
6 that its employees, agents, representatives and other persons sponsored by 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 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.

13 102. Defendant has encouraged and is 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 is directly practicing  
16 the methods disclosed in United States Patent No. 6,117,872.

17 103. 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.

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

21 105. 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.

25 106. The accused products is 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.

3 107. 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.

8 108. 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.

11 109. 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.

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

17 111. 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 encourages, urges, and induces the accused products' end-users to purchase and orally  
20 administer the accused products to practice such methods, and have done so in the past.

21 112. 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.

25 113. 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.

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

1 115. Defendant's activities have been without express or implied license by  
2 Plaintiffs.

3 116. 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.

5 117. 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.

8 118. Defendant's past infringements and/or continuing infringements have 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, its officers, agents, servants, directors, and employees, and all  
18 persons in active concert or participation with each, from directly or indirectly  
19 infringing, or inducing or contributing to the infringement by others of, the patents in  
20 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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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

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**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demands 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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