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12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**  
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16 THERMOLIFE INTERNATIONAL, LLC,  
17 and THE BOARD OF TRUSTEES OF  
18 THE LELAND STANFORD JUNIOR  
UNIVERSITY,

19 Plaintiffs,

20 vs.

21 ALL AMERICAN PHARMACEUTICAL  
22 AND NATURAL FOODS CORP.,

23 Defendant

Case No. 13-cv-2543 JLS (MDD)

**AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

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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 All American Pharmaceutical and Natural Foods Corporation  
4 (“Defendant”), on personal knowledge or as to information and belief in those  
5 specific instances where it is stated, as follows:

6 **I. THE PARTIES**

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

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

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

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

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

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

2 6. Thermolife has been given the right by Stanford University to institute  
3 suit with respect to past, current, and future infringement of the patents in suit,  
4 including this suit against Defendant.

5 7. Defendant is a corporation organized and existing under the laws of  
6 Montana with places of business at 5301 Office Park Drive, Suite 400 in  
7 Bakersfield, California, 93309 and 2376 Main Street in Billings, Montana, 59105.

8 **II. JURISDICTION AND VENUE**

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

12 9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and  
13 1400.

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

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

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

2 12. Defendant has committed the tort of patent infringement within the  
3 State of California, and more particularly, within the Southern District of  
4 California, by virtue of the fact that Defendant has formulated, made,  
5 manufactured, shipped, distributed, advertised, offered for sale, and/or sold the  
6 accused products in this District, and continues to do so through GNC,  
7 eSupplements.com, supplementwarehouse.com and Advantage Supplements,  
8 among others.

9 **A. DIRECT INFRINGEMENTS**

10 13. Defendant’s employees, agents, representatives and other persons  
11 sponsored by or who endorse Defendant and Defendant’s products in advertising  
12 and marketing activities, have taken, used, and orally administered the accused  
13 products as evidenced by the statements made by various professional athletes at  
14 <http://stayfitnutrition.com/all-america-efx-nytric-efx-pro-120-caps.aspx>.

15 14. The accused products are formulated, made, manufactured, shipped,  
16 distributed, advertised, offered for sale, and sold by Defendant to include Arginine  
17 Alpha-Ketoglutarate, L-Citrulline and Rutacarpine that, by virtue of their inclusion  
18 in products sold under the “Nytric EFX Pro” brand name, infringe one or more  
19 claims of one or more of the patents in suit.

20 15. The accused products are formulated, made, manufactured, shipped,  
21 distributed, advertised, offered for sale, and sold by Defendant to include Arginine  
22 Alpha-Ketoglutarate, L-Citrulline and Rutacarpine for certain purposes that, by  
23 virtue of their inclusion in the products for such purposes, infringe one or more  
24 claims of one or more of the patents in suit, and as a result, when Defendant’s  
25 employees, agents, representatives and other persons sponsored by or who endorse  
26 Defendant and Defendant’s products in advertising and marketing activities orally  
27 administer the accused products, they are practicing and they practiced the methods  
28 disclosed in those claims.

1           16. The purposes for which Arginine Alpha-Ketoglutarate, L-Citrulline  
2 and Rutacarpine are included in the accused products are and were, without  
3 limitation, to enhance nitric oxide production, to improve nitric oxide activity, to  
4 produce nitric oxide, to boost nitric oxide levels in the body, and to enhance  
5 physical performance.

6           17. Defendant encouraged and/or is aware of the fact that its employees,  
7 agents, representatives and other persons sponsored by Defendant or who endorse  
8 Defendant and Defendant's products in advertising and marketing activities orally  
9 administered and administer "Nytric EFX Pro" brand name products and practice  
10 and practiced the methods disclosed in one or more claim of one or more of the  
11 patents in suit, and these employees, agents, representatives and other persons  
12 sponsored by Defendant or who endorse Defendant and Defendant's "Nytric EFX  
13 Pro" brand name products in advertising and marketing activities are and were  
14 acting under Defendant's direction and control when practicing those methods.

15           18. Therefore, Defendant is and was a direct infringer of one or more  
16 claims of one or more of the patents in suit, and Defendant practices and practiced  
17 the methods as set forth in one or more claims of one or more of the patents in suit.

18                           **B. INDIRECT INFRINGEMENTS**

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

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

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

27           22. The "Nytric EFX Pro" brand name products are and were formulated,  
28 made, manufactured, shipped, distributed, advertised, offered for sale, and/or sold

1 by Defendant to include specific ingredients for certain purposes that, because of  
2 their inclusion in the products for such purposes, infringe and infringed one or more  
3 claims of one or more of the patents in suit, and as a result, when end-users of  
4 Defendant's "Nytric EFX Pro" brand name products orally administer and  
5 administered such products, they are and were practicing the methods disclosed in  
6 those claims.

7 23. Defendant's labels and advertising for the "Nytric EFX Pro" brand  
8 name products explain and explained the elements and essential elements of one or  
9 more of the methods disclosed in the patents in suit, and those labels and  
10 advertising statements encourage, urge, and induce the accused products' end-users,  
11 and did so in the past, to purchase and orally ingest the products to practice those  
12 methods, and end-users do and did practice those methods.

13 24. Defendant has therefore specifically intended to cause these end-users  
14 to directly infringe the claimed methods of these patents, and in fact urged them to  
15 do so.

16 25. The "Nytric EFX Pro" brand name products are and were not suitable  
17 for non-infringing uses, and none of Defendant's labels or advertisements for the  
18 "Nytric EFX Pro" brand name products disclose or disclosed any uses for the  
19 products, nor for the compounds disclosed in the claimed methods of the patents in  
20 suit, that do not infringe upon such methods.

21 26. The inclusion of the specific infringing compounds in the products is  
22 and was material to practicing such methods.

23 27. Defendant has and had knowledge that the "Nytric EFX Pro" brand  
24 name products are and were especially adapted by end-users of the products for the  
25 practicing of such methods, and, indeed, Defendant encourages, urges, and induces  
26 the accused products' end-users to purchase and orally administer the accused  
27 products to practice such methods, and has done so in the past.

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1 28. Defendant intentionally and knowingly induced, encouraged, and  
2 urged end-users of the “Nytric EFX Pro” brand name products to purchase and  
3 orally administer the accused products for the purposes of practicing the claimed  
4 methods, by having them orally ingest the compounds disclosed in such claims.

5 29. Defendant has and had knowledge of the fact that the accused  
6 products, particularly as administered, infringe on one or more claims of the patents  
7 in suit.

8 30. Defendant has and had direct, firsthand knowledge of the patents in  
9 suit.

10 31. For example and without limitation, Plaintiffs believe Defendant has  
11 had knowledge of the patents in suit since November 2006, when an ongoing  
12 settlement of a patent infringement case relating to at least some of the patents in  
13 suit against Herbalife, a well-known company in Defendant’s industry, was  
14 announced in press releases issued in a highly publicized manner. Plaintiffs believe  
15 Defendant’s employees, agents, and representatives saw the press releases and were  
16 aware of the settlement and thus the patents in suit.

17 32. By way of further example and without limitation, Defendant sold its  
18 “Nytric EFX Pro” brand name products through retailers, including online retailers,  
19 and those retailers have sold other companies’ products whose labels and/or  
20 advertisements have been prominently marked with one or more of the patents in  
21 suit, by patent number, including without limitation, upon information and belief,  
22 the products manufactured and sold by Herbalife, Daily Wellness, and Vitality  
23 Research Labs. Defendant’s employees, agents, and representatives have seen  
24 these labels and advertisements and, thus, Defendant has and had direct knowledge  
25 of the patents in suit.

26 33. By way of further example and without limitation, Defendant received  
27 written notice of the patents in suit from Plaintiffs in April 2013.

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1 34. Defendant brazenly and willfully decided to infringe the patents in suit  
2 despite knowledge of the patents' existence and its knowledge of the "Nytric EFX  
3 Pro" brand name products' infringements of the patents.

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

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

#### 10 **IV. FIRST CAUSE OF ACTION**

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

12 37. Plaintiffs repeat and re-allege the allegations of the foregoing  
13 paragraphs of this Complaint as if fully set forth herein.

14 38. Defendant has in the past literally and directly infringed or directly  
15 infringed under the doctrine of equivalents one or more claims of United States  
16 Patent No. 6,646,006 by making, using, selling, and offering for sale the accused  
17 products, or any one of those products.

18 39. In addition to the fact that Defendant makes, uses, sells, and offers for  
19 sale the "Nytric EFX Pro" brand name products, and did so in the past, further  
20 examples of Defendant's direct infringements include, without limitation, the fact  
21 that Defendant encouraged and/or is aware of the fact that its employees, agents,  
22 representatives and other persons sponsored by or who endorse Defendant and  
23 Defendant's "Nytric EFX Pro" brand name products in advertising and marketing  
24 activities orally administer the accused products and practice the methods disclosed  
25 in one or more claims of United States Patent No. 6,646,006, and these employees,  
26 agents, representatives and other persons sponsored by or who endorse Defendant  
27 and Defendant's "Nytric EFX Pro" brand name products in advertising and  
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1 marketing activities acted under Defendant's direction and control when practicing  
2 those methods.

3 40. Defendant encouraged and was aware of these persons' oral  
4 administration of the accused products for these purposes, these persons are acting  
5 under Defendant's direction and control, and therefore Defendant directly practiced  
6 the methods disclosed in United States Patent No. 6,646,006.

7 41. End-users of Defendant's "Nytric EFX Pro" brand name products were  
8 also direct infringers of one or more claims of United States Patent No. 6,646,006.

9 42. End-users of Defendant's "Nytric EFX Pro" brand name products have  
10 taken, used, and orally administered such products.

11 43. The "Nytric EFX Pro" brand name products were formulated, made,  
12 manufactured, shipped, distributed, advertised, offered for sale, and sold by  
13 Defendant to include Arginine Alpha-Ketoglutarate, L-Citrulline and Rutacarpine  
14 that, by virtue of their inclusion in the "Nytric EFX Pro" brand name products,  
15 infringed one or more claims of United States Patent No. 6,646,006.

16 44. The "Nytric EFX Pro" brand name products were formulated, made,  
17 manufactured, shipped, distributed, advertised, offered for sale, and sold by  
18 Defendant to include Arginine Alpha-Ketoglutarate, L-Citrulline and Rutacarpine  
19 for purposes that, by their inclusion in the "Nytric EFX Pro" brand name products  
20 for such purposes, infringed one or more claims of United States Patent No.  
21 6,646,006, and as a result, when end-users of Defendant's "Nytric EFX Pro" brand  
22 name products orally administered such products, they were practicing the methods  
23 disclosed in one or more claims of that patent.

24 45. Defendant's labels and advertising for the "Nytric EFX Pro" brand  
25 name products explained the elements and essential elements of the methods  
26 disclosed in United States Patent No. 6,646,006, and those labels and advertising  
27 statements encouraged, urged, and induced the end-users of the "Nytric EFX Pro"  
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1 brand name products to purchase and orally ingest the products to practice those  
2 methods, and end-users did practice those methods.

3 46. Defendant therefore specifically intended to cause these end-users to  
4 directly infringe the claimed methods of United States Patent No. 6,646,006, and  
5 had in fact urged them to do so.

6 47. The “Nytric EFX Pro” brand name products were not suitable for non-  
7 infringing uses, and none of Defendant’s labels or advertisements for the “Nytric  
8 EFX Pro” brand name products disclosed any uses for the products, nor for the  
9 compounds disclosed in the claimed methods, that did not infringe upon such  
10 methods.

11 48. The inclusion of Arginine Alpha-Ketoglutarate, L-Citrulline and  
12 Rutacarpine in the “Nytric EFX Pro” brand name products was material to  
13 practicing such methods.

14 49. Defendant had knowledge that the “Nytric EFX Pro” brand name  
15 products were especially adapted by end-users of the products for the practicing of  
16 such methods, and, indeed, Defendant encouraged, urged, and induced the accused  
17 products’ end-users to purchase and orally administer the “Nytric EFX Pro” brand  
18 name products to practice such methods.

19 50. Defendant intentionally and knowingly induced, encouraged, and  
20 urged end-users of the “Nytric EFX Pro” brand name products to purchase and  
21 orally administer the “Nytric EFX Pro” brand name products for the purposes  
22 disclosed in one or more claims of United States Patent No. 6,646,006, by having  
23 them orally ingest the Arginine Alpha-Ketoglutarate, L-Citrulline and Rutacarpine  
24 compounds disclosed in such claims.

25 51. Defendant had knowledge of the fact that the “Nytric EFX Pro” brand  
26 name products, particularly as administered, infringed on one or more claims of  
27 United States Patent No. 6,646,006.

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1 52. Defendant also had direct, firsthand knowledge of United States Patent  
2 No. 6,646,006 itself.

3 53. Defendant's activities were without express or implied license by  
4 Plaintiff.

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

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

11 **V. SECOND CAUSE OF ACTION**

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

13 56. Plaintiffs repeat and re-allege the allegations of the foregoing  
14 paragraphs of this Complaint as if fully set forth herein.

15 57. Defendant has in the past literally and directly infringed or directly  
16 infringed under the doctrine of equivalents one or more claims of United States  
17 Patent No. 7,452,916 by making, using, selling, and offering for sale the "Nytric  
18 EFX Pro" brand name products, or any one of those products.

19 58. In addition to the fact that Defendant makes, uses, sells, and offers for  
20 sale the "Nytric EFX Pro" brand name products, and did so in the past, further  
21 examples of Defendant's direct infringements include, without limitation, the fact  
22 that Defendant encouraged and/or is aware of the fact that its employees, agents,  
23 representatives and other persons sponsored by or who endorse Defendant and  
24 Defendant's "Nytric EFX Pro" brand name products in advertising and marketing  
25 activities orally administer the products and practice the methods disclosed in one  
26 or more claims of United States Patent No. 7,452,916, and these employees, agents,  
27 representatives and other persons sponsored by or who endorse Defendant and  
28 Defendant's "Nytric EFX Pro" brand name products in advertising and marketing

1 activities acted under Defendant's direction and control when practicing those  
2 methods.

3 59. Defendant encouraged and was aware of these persons' oral  
4 administration of the "Nytric EFX Pro" brand name products for these purposes,  
5 these persons are acting under Defendant's direction and control, and therefore  
6 Defendant directly practiced the methods disclosed in United States Patent No.  
7 7,452,916.

8 60. End-users of Defendant's "Nytric EFX Pro" brand name products were  
9 also direct infringers of one or more claims of United States Patent No. 7,452,916.

10 61. End-users of Defendant's "Nytric EFX Pro" brand name products have  
11 taken, used, and orally administered the products.

12 62. The "Nytric EFX Pro" brand name products were formulated, made,  
13 manufactured, shipped, distributed, advertised, offered for sale, and sold by  
14 Defendant to include Arginine Alpha-Ketoglutarate that, by virtue of its inclusion  
15 in the products, infringed one or more claims of United States Patent No.  
16 7,452,916.

17 63. The "Nytric EFX Pro" brand name products were formulated, made,  
18 manufactured, shipped, distributed, advertised, offered for sale, and sold by  
19 Defendant to include Arginine Alpha-Ketoglutarate for purposes that, by its  
20 inclusion in the products for such purposes, infringed one or more claims of United  
21 States Patent No. 7,452,916, and as a result, when end-users of Defendant's "Nytric  
22 EFX Pro" brand name products orally administered the products, they were  
23 practicing the methods disclosed in one or more claims of that patent.

24 64. Defendant's labels and advertising for the "Nytric EFX Pro" brand  
25 name products explained the elements and essential elements of the methods  
26 disclosed in United States Patent No. 7,452,916, and those labels and advertising  
27 statements encouraged, urged, and induced the end-users of the "Nytric EFX Pro"  
28

1 brand name products to purchase and orally ingest the products to practice those  
2 methods, and end-users did practice those methods.

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

6 66. The “Nytric EFX Pro” brand name products were not suitable for non-  
7 infringing uses, and none of Defendant’s labels or advertisements for the “Nytric  
8 EFX Pro” brand name products disclosed any uses for the products, nor for the  
9 Arginine Alpha-Ketoglutarate compound disclosed in the claimed methods, that did  
10 not infringe upon such methods.

11 67. The inclusion of these Arginine Alpha-Ketoglutarate in the “Nytric  
12 EFX Pro” brand name products was material to practicing such methods.

13 68. Defendant had knowledge that the “Nytric EFX Pro” brand name  
14 products were especially adapted by end-users of the products for the practicing of  
15 such methods, and, indeed, Defendant encouraged, urged, and induced the end-  
16 users of the “Nytric EFX Pro” brand name products to purchase and orally  
17 administer the accused products to practice such methods.

18 69. Defendant intentionally and knowingly induced, encouraged, and  
19 urged end-users of the “Nytric EFX Pro” brand name products to purchase and  
20 orally administer the products for the purposes disclosed in one or more claims of  
21 United States Patent No. 7,452,916, by having them orally ingest the compounds  
22 disclosed in such claims.

23 70. Defendant had knowledge of the fact that the “Nytric EFX Pro” brand  
24 name products, particularly as administered, infringed on one or more claims of  
25 United States Patent No. 7,452,916.

26 71. Defendant also had direct, firsthand knowledge of United States Patent  
27 No. 7,452,916 itself.

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

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

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

9 **VI. THIRD CAUSE OF ACTION**

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

11 75. Plaintiffs repeat and re-allege the allegations of the foregoing  
12 paragraphs of this Complaint as if fully set forth herein.

13 76. Defendant has in the past and still is literally and directly infringing or  
14 directly infringing under the doctrine of equivalents one or more claims of United  
15 States Patent No. 6,117,872 by making, using, selling, and offering for sale the  
16 "Nytric EFX Pro" brand name products, or any one of those products, and will  
17 continue to do so unless enjoined by this Court.

18 77. In addition to the fact that Defendant makes, uses, sells, and offers for  
19 sale the "Nytric EFX Pro" brand name products, further examples of Defendant's  
20 direct infringements include, without limitation, the fact that Defendant has  
21 encouraged and/or is aware of the fact that its employees, agents, representatives  
22 and other persons sponsored by or who endorse Defendant and Defendant's "Nytric  
23 EFX Pro" brand name products in advertising and marketing activities orally  
24 administer the accused products and practice the methods disclosed in one or more  
25 claims of United States Patent No. 6,117,872, and these employees, agents,  
26 representatives and other persons sponsored by or who endorse Defendant and  
27 Defendant's "Nytric EFX Pro" brand name products in advertising and marketing  
28

1 activities are acting under Defendant’s direction and control when practicing those  
2 methods.

3 78. Defendant has encouraged and is aware of these persons’ oral  
4 administration of the “Nytric EFX Pro” brand name products for these purposes,  
5 these persons are acting under Defendant’s direction and control, and therefore  
6 Defendant is directly practicing the methods disclosed in United States Patent No.  
7 6,117,872.

8 79. End-users of Defendant’s “Nytric EFX Pro” brand name products are  
9 also direct infringers of one or more claims of United States Patent No. 6,117,872.

10 80. End-users of Defendant’s “Nytric EFX Pro” brand name products have  
11 taken, used, and orally administered the products.

12 81. The “Nytric EFX Pro” brand name products are formulated, made,  
13 manufactured, shipped, distributed, advertised, offered for sale, and sold by  
14 Defendant to include Arginine Alpha-Ketoglutarate that, by virtue of its inclusion  
15 in the products, infringe one or more claims of United States Patent No. 6,117,872.

16 82. The “Nytric EFX Pro” brand name products are formulated, made,  
17 manufactured, shipped, distributed, advertised, offered for sale, and sold by  
18 Defendant to include Arginine Alpha-Ketoglutarate for purposes that, by its  
19 inclusion in the products for such purposes, infringe one or more claims of United  
20 States Patent No. 6,117,872, and as a result, when end-users of Defendant’s “Nytric  
21 EFX Pro” brand name products orally administer the products, they are practicing  
22 the methods disclosed in one or more claims of that patent.

23 83. Defendant’s labels and advertising for the “Nytric EFX Pro” brand  
24 name products explain the elements and essential elements of the methods disclosed  
25 in United States Patent No. 6,117,872, and those labels and advertising statements  
26 encourage, urge, and induce the accused products’ end-users to purchase and orally  
27 ingest the products to practice those methods, and end-users do practice those  
28 methods.



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

4           85. The “Nytric EFX Pro” brand name products are not suitable for non-  
5 infringing uses, and none of Defendant’s labels or advertisements for the “Nytric  
6 EFX Pro” brand name products disclose any uses for the products, nor for the  
7 Arginine Alpha-Ketoglutarate compound disclosed in the claimed methods, that do  
8 not infringe upon such methods.

9           86. The inclusion of Arginine Alpha-Ketoglutarate in the “Nytric EFX  
10 Pro” brand name products is material to practicing such methods.

11           87. Defendant has knowledge that the “Nytric EFX Pro” brand name  
12 products are especially adapted by end-users of the products for the practicing of  
13 such methods, and, indeed, Defendant encourages, urges, and induces the end-users  
14 of the “Nytric EFX Pro” brand name products to purchase and orally administer the  
15 products to practice such methods, and have done so in the past.

16           88. Defendant has intentionally and knowingly induced, encouraged, and  
17 urged end-users of the “Nytric EFX Pro” brand name products to purchase and  
18 orally administer the “Nytric EFX Pro” brand name products for the purposes  
19 disclosed in one or more claims of United States Patent No. 6,117,872, by having  
20 them orally ingest the Arginine Alpha-Ketoglutarate disclosed in such claims.

21           89. Defendant has knowledge of the fact that the “Nytric EFX Pro” brand  
22 name products, particularly as administered, infringe on one or more claims of  
23 United States Patent No. 6,117,872.

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

26           91. Defendant’s activities have been without express or implied license by  
27 Plaintiffs.

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

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

6 94. 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  
9 U.S.C. § 285.

10 **VIII. 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  
17 all 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  
19 States 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  
23 the 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  
25 suit be increased up to three times, in view of Defendant's willful infringement, in  
26 accordance with 35 U.S.C. § 284;

27 5. That this case be declared to be exceptional in favor of Plaintiffs under  
28 35 U.S.C. § 285, and that Plaintiffs be awarded its reasonable attorneys' fees and



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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: March 17, 2014

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 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