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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 MYOGENIX CORP.; GNC  
 16 CORPORATION; GENERAL  
 NUTRITION CENTERS, INC.; and  
 17 GENERAL NUTRITION  
 CORPORATION,

18 Defendants

Case No. 13-CV-651 JLS (MDD)

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

19 AND ALL RELATED CASES  
 20

1 Plaintiffs ThermoLife International, LLC (“ThermoLife”) and The Board of  
2 Trustees of the Leland Stanford Junior University (“Stanford University”) (collectively,  
3 “Plaintiffs”) hereby allege for their Complaint against GNC Corporation; General  
4 Nutrition Centers, Inc.; and General Nutrition Corporation (“Defendants”), on personal  
5 knowledge as to their own activities and on information and belief as to the activities of  
6 others, as follows:

7 **I. THE PARTIES**

8 1. ThermoLife is a limited liability company organized and existing under the  
9 laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice, California,  
10 90291.

11 2. Stanford University is an institution of higher education having powers  
12 under the laws of the State of California, with a place of business at 1705 El Camino Real  
13 in Palo Alto, California, 94306-1106.

- 14 3. ThermoLife is the exclusive licensee of the following United States 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 ThermoLife  
24 exclusively licenses the patents from Stanford University. ThermoLife is pursuing this  
25 action and 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.”

27 6. ThermoLife has been given the right by Stanford University to institute suit  
28 with respect to infringement of the patents in suit, including this suit against Defendants.

1           7.     GNC Corporation; General Nutrition Centers, Inc.; and General Nutrition  
2 Corporation are corporations incorporated under the laws of the State of Delaware with  
3 places of business, meaning retail establishments, at, among other places:

- 4           • 546 Horton Plaza in San Diego, California, 92101 (Store #3128);
- 5           • 658 University Avenue in San Diego, California, 92103 (Store #9117);
- 6           • 1640 Camino Del Rio North in San Diego, California, 92108 (Store #280);
- 7           • 3369 Rosecrans Street, Suite 11-B in San Diego, California, 92110 (Store  
8           #5189);
- 9           • 6165 El Cajon Blvd. in San Diego, California, 92115 (Store #9035);
- 10          • 3030 Plaza Bonita Road, Suite 2282 in National City, California, 91950  
11          (Store #875);
- 12          • 555 Broadway, Suite 1028 in Chula Vista, California, 91910 (Store #2328);
- 13          • 4223 Genessee Avenue in San Diego, California, 92117 (Store #774);
- 14          • 10645-G Tierrasanta Boulevard in San Diego, California, 92124 (Store  
15          #7148);
- 16          • 4389 B Claremont Drive in San Diego, California, 92117 (Store #6380);
- 17          • 4545 La Jolla Village Drive, E-5 in San Diego, California, 92122 (Store  
18          #537);
- 19          • 425 Parkway Plaza in El Cajon, California, 92020 (Store #448); and
- 20          • 2514 Jamacha Road, Suite 501 in El Cajon, California, 92019 (Store  
21          #2349).

22           8.     Defendants GNC Corporation; General Nutrition Centers, Inc.; and General  
23 Nutrition Corporation are affiliated companies that derive their revenues principally from  
24 product sales through “GNC”-branded company-owned and franchisee-owned stores and  
25 on the internet, such as through [www.gnc.com](http://www.gnc.com), and have a common headquarters at 300  
26 6<sup>th</sup> Avenue in Pittsburgh, Pennsylvania, 15222, though they do extensive business in and  
27 generate significant revenues from their widespread business operations in the Southern  
28 District of California.

1 **II. JURISDICTION AND VENUE**

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

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

6 11. This Court has personal jurisdiction over Defendants. By way of example  
7 and without limitation, Defendants, directly or through intermediaries (including  
8 distributors, retailers, and others), make, manufacture, ship, distribute, advertise, market,  
9 offer for sale, and/or sell dietary supplement products that infringe on one or more claims  
10 of the patents in suit (hereinafter the “accused products”), which include without  
11 limitation products sold under the “HyperShock” brand name, in the United States, the  
12 State of California, and the Southern District of California.

13 12. By way of further example and without limitation, Defendants GNC  
14 Corporation; General Nutrition Centers, Inc.; and General Nutrition Corporation have  
15 multiple places of business throughout this District.

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

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

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

26 **A. DIRECT INFRINGEMENTS**

27 15. Defendants’ employees, agents, representatives and other persons  
28 sponsored by or who endorse Defendants and Defendants’ products in advertising and

1 marketing activities, have taken, used, and orally administered the accused products.

2 16. The accused products are formulated, made, manufactured, shipped,  
3 distributed, advertised, offered for sale, and sold by Defendants to include certain  
4 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
5 of one or more of the patents in suit.

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

14 18. These infringing ingredients, and/or combinations thereof, include, without  
15 limitation, Micronized L-Arginine, L-Norvaline, and Citrulline Malate, as set forth on  
16 Defendants' labels for Hypershock.

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

21 20. For instance, as just as an example, the labels and/or advertisements for  
22 Hypershock states that it is formulated for "nitric oxide pump, vascularity, and nutrient  
23 delivery" and that end-users of the products can "experience vein swelling pumps with 8  
24 hour sustained release nitric oxide."

25 21. Defendants have encouraged and/or are aware of the fact that their  
26 employees, agents, representatives and other persons sponsored by Defendants or who  
27 endorse Defendants and Defendants' products in advertising and marketing activities  
28 orally administer the accused products and practice the methods disclosed in one or more

1 claim of one or more of the patents in suit, and these employees, agents, representatives  
2 and other persons sponsored by Defendants or who endorse Defendants and Defendants'  
3 products in advertising and marketing activities are acting under Defendants' direction  
4 and control when practicing those methods.

5 22. Therefore, Defendants are direct infringers of one or more claims of one or  
6 more of the patents in suit, and Defendants practice the methods as set forth in one or  
7 more claims of one or more of the patents in suit.

8 **B. INDIRECT INFRINGEMENTS**

9 23. End-users of Defendants' accused products are also direct infringers of one  
10 or more claims of one or more of the patents in suit.

11 24. End-users of Defendants' accused products have taken, used, and orally  
12 administered the accused products.

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

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

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

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1 28. Defendants have therefore specifically intended to cause these end-users to  
2 directly infringe the claimed methods of these patents, and have in fact urged them to do  
3 so.

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

8 30. The inclusion of the specific infringing compounds in the products is  
9 material to practicing such methods.

10 31. Defendants have knowledge that the accused products are especially  
11 adapted by end-users of the products for the practicing of such methods, and, indeed,  
12 Defendants encourage, urge, and induce the accused products' end-users to purchase and  
13 orally administer the accused products to practice such methods, and have done so in the  
14 past.

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

19 33. Defendants have knowledge of the fact that the accused products,  
20 particularly as administered, infringe on one or more claims of the patents in suit.

21 34. Defendants have direct, firsthand knowledge of the patents in suit.

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

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1           36. By way of further example and without limitation, Defendants GNC  
2 Corporation; General Nutrition Centers, Inc.; and General Nutrition Corporation offer to  
3 sell and sell products manufactured and sold by Daily Wellness and Vitality Research  
4 Labs, which mark on their labels the patents in suit. Thus, these Defendants have  
5 knowledge of the patents in suit.

6           37. Defendants have brazenly and willfully decided to infringe the patents in  
7 suit despite knowledge of the patents' existence and their knowledge of the accused  
8 products' infringements of the patents.

9           38. At a minimum, and in the alternative, Plaintiff pleads that Defendants  
10 willfully blinded themselves to the infringing nature of the accused products' sales.

11           39. Defendants have not ceased their own direct infringements, nor their  
12 contributory infringements or inducements of infringements by end-users, despite their  
13 knowledge of the patents in suit and their infringing activities with respect to the patents  
14 in suit.

15           40. Plaintiff also believes Defendants, or one of them, are infringing on one or  
16 more claims of United States Patent No. 5,428,070 and Patent No. 5,945,452, patents  
17 which Defendants have had prior knowledge of and are also licensed exclusively to  
18 Plaintiff by Stanford University, to include the right to sue for infringement, and Plaintiff  
19 will seek to amend this Complaint once facts confirming that belief are ascertained.

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

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

22           41. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
23 of this Complaint as if fully set forth herein.

24           42. Defendants have in the past and still are literally and directly infringing or  
25 directly infringing under the doctrine of equivalents one or more claims of United States  
26 Patent No. 6,646,006 by making, using, selling, and offering for sale the accused  
27 products, and will continue to do so unless enjoined by this Court.

28           ///



1           43. In addition to the fact that Defendants make, use, sell, and offer for sale the  
2 accused products, further examples of Defendants' direct infringement include, without  
3 limitation, the fact that Defendants have encouraged and/or are aware of the fact that their  
4 employees, agents, representatives and other persons sponsored by or who endorse  
5 Defendants and Defendants' products in advertising and marketing activities orally  
6 administer the accused products and practice the methods disclosed in one or more claims  
7 of United States Patent No. 6,646,006, and these employees, agents, representatives and  
8 other persons sponsored by or who endorse Defendants and Defendants' products in  
9 advertising and marketing activities are acting under Defendants' direction and control  
10 when practicing those methods.

11           44. Defendants have encouraged and are aware of these persons' oral  
12 administration of the accused products for these purposes, these persons are acting under  
13 Defendants' direction and control, and therefore Defendants are directly practicing the  
14 methods disclosed in United States Patent No. 6,646,006.

15           45. End-users of Defendants' accused products are also direct infringers of one  
16 or more claims of United States Patent No. 6,646,006.

17           46. End-users of Defendants' accused products have taken, used, and orally  
18 administered the accused products.

19           47. The accused products are formulated, made, manufactured, shipped,  
20 distributed, advertised, offered for sale, and sold by Defendants to include certain  
21 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
22 of United States Patent No. 6,646,006.

23           48. The accused products are formulated, made, manufactured, shipped,  
24 distributed, advertised, offered for sale, and sold by Defendants to include specific  
25 ingredients for purposes that, by their inclusion in the products for such purposes, infringe  
26 one or more claims of United States Patent No. 6,646,006, and as a result, when end-  
27 users of Defendants' accused products orally administer the accused products, they are  
28 practicing the methods disclosed in one or more claims of that patent.

1 49. Defendants' labels and advertising for the accused products explain the  
2 elements and essential elements of the methods disclosed in United States Patent No.  
3 6,646,006, and those labels and advertising statements encourage, urge, and induce the  
4 accused products' end-users to purchase and orally ingest the products to practice those  
5 methods, and end-users do practice those methods.

6 50. Defendants have therefore specifically intended to cause these end-users to  
7 directly infringe the claimed methods of United States Patent No. 6,646,006, and have in  
8 fact urged them to do so.

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

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

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

20 54. Defendants have intentionally and knowingly induced, encouraged, and  
21 urged end-users of the accused products to purchase and orally administer the accused  
22 products for the purposes disclosed in one or more claims of United States Patent No.  
23 6,646,006, by having them orally ingest the compounds disclosed in such claims.

24 55. Defendants have knowledge of the fact that the accused products,  
25 particularly as administered, infringe on one or more claims of United States Patent No.  
26 6,646,006.

27 56. Defendants also have direct, firsthand knowledge of United States Patent  
28 No. 6,646,006.

1 57. Defendants' activities have been without express or implied license by  
2 Plaintiff.

3 58. As a result of Defendants' acts of infringement, Plaintiff has suffered and  
4 will continue to suffer damages in an amount to be proved at trial.

5 59. As a result of Defendants' acts of infringement, Plaintiff has been and will  
6 continue to be irreparably harmed by Defendants' infringements, which will continue  
7 unless Defendants are enjoined by this Court.

8 60. Defendants' 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 **V. SECOND CAUSE OF ACTION**

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

13 61. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
14 of this Complaint as if fully set forth herein.

15 62. Defendants have in the past and still are literally and directly infringing or  
16 directly infringing under the doctrine of equivalents one or more claims of United States  
17 Patent No. 5,891,459 by making, using, selling, and offering for sale the accused  
18 products, and will continue to do so unless enjoined by this Court.

19 63. In addition to the fact that Defendants make, use, sell, and offer for sale the  
20 accused products, further examples of Defendants' direct infringement include, without  
21 limitation, the fact that Defendants have encouraged and/or are aware of the fact that their  
22 employees, agents, representatives and other persons sponsored by or who endorse  
23 Defendants and Defendants' products in advertising and marketing activities orally  
24 administer the accused products and practice the methods disclosed in one or more claims  
25 of United States Patent No. 5,891,459, and these employees, agents, representatives and  
26 other persons sponsored by or who endorse Defendants and Defendants' products in  
27 advertising and marketing activities are acting under Defendants' direction and control  
28 when practicing those methods.

1           64. Defendants have encouraged and are aware of these persons' oral  
2 administration of the accused products for these purposes, these persons are acting under  
3 Defendants' direction and control, and therefore Defendants are directly practicing the  
4 methods disclosed in United States Patent No. 5,891,459.

5           65. End-users of Defendants' accused products are also direct infringers of one  
6 or more claims of United States Patent No. 5,891,459.

7           66. End-users of Defendants' accused products have taken, used, and orally  
8 administered the accused products.

9           67. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendants to include certain  
11 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
12 of United States Patent No. 5,891,459.

13           68. The accused products are formulated, made, manufactured, shipped,  
14 distributed, advertised, offered for sale, and sold by Defendants to include specific  
15 ingredients for purposes that, by their inclusion in the products for such purposes, infringe  
16 one or more claims of United States Patent No. 5,891,459, and as a result, when end-  
17 users of Defendants' accused products orally administer the accused products, they are  
18 practicing the methods disclosed in one or more claims of that patent.

19           69. Defendants' labels and advertising for the accused products explain the  
20 elements and essential elements of the methods disclosed in United States Patent No.  
21 5,891,459, and those labels and advertising statements encourage, urge, and induce the  
22 accused products' end-users to purchase and orally ingest the products to practice those  
23 methods, and end-users do practice those methods.

24           70. Defendants have therefore specifically intended to cause these end-users to  
25 directly infringe the claimed methods of United States Patent No. 5,891,459, and have in  
26 fact urged them to do so.

27           71. The accused products are not suitable for non-infringing uses, and none of  
28 Defendants' labels or advertisements for the accused products disclose any uses for the

1 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
2 upon such methods.

3 72. The inclusion of these specific infringing compounds in the products is  
4 material to practicing such methods.

5 73. Defendants have knowledge that the accused products are especially  
6 adapted by end-users of the products for the practicing of such methods, and, indeed,  
7 Defendants encourage, urge, and induce the accused products' end-users to purchase and  
8 orally administer the accused products to practice such methods, and have done so in the  
9 past.

10 74. Defendants have intentionally and knowingly induced, encouraged, and  
11 urged end-users of the accused products to purchase and orally administer the accused  
12 products for the purposes disclosed in one or more claims of United States Patent No.  
13 5,891,459, by having them orally ingest the compounds disclosed in such claims.

14 75. Defendants have knowledge of the fact that the accused products,  
15 particularly as administered, infringe on one or more claims of United States Patent No.  
16 5,891,459.

17 76. Defendants also have direct, firsthand knowledge of United States Patent  
18 No. 5,891,459.

19 77. Defendants' activities have been without express or implied license by  
20 Plaintiff.

21 78. As a result of Defendants' acts of infringement, Plaintiff has suffered and  
22 will continue to suffer damages in an amount to be proved at trial.

23 79. As a result of Defendants' acts of infringement, Plaintiff has been and will  
24 continue to be irreparably harmed by Defendants' infringements, which will continue  
25 unless Defendants are enjoined by this Court.

26 80. Defendants' past infringements and/or continuing infringements have been  
27 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
28 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

1 **VI. THIRD CAUSE OF ACTION**

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

3 81. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
4 of this Complaint as if fully set forth herein.

5 82. Defendants have in the past and still are literally and directly infringing or  
6 directly infringing under the doctrine of equivalents one or more claims of United States  
7 Patent No. 7,452,916 by making, using, selling, and offering for sale the accused  
8 products, and will continue to do so unless enjoined by this Court.

9 83. In addition to the fact that Defendants make, use, sell, and offer for sale the  
10 accused products, further examples of Defendants' direct infringement include, without  
11 limitation, the fact that Defendants have encouraged and/or are aware of the fact that their  
12 employees, agents, representatives and other persons sponsored by or who endorse  
13 Defendants and Defendants' products in advertising and marketing activities orally  
14 administer the accused products and practice the methods disclosed in one or more claims  
15 of United States Patent No. 7,452,916, and these employees, agents, representatives and  
16 other persons sponsored by or who endorse Defendants and Defendants' products in  
17 advertising and marketing activities are acting under Defendants' direction and control  
18 when practicing those methods.

19 84. Defendants have encouraged and are aware of these persons' oral  
20 administration of the accused products for these purposes, these persons are acting under  
21 Defendants' direction and control, and therefore Defendants are directly practicing the  
22 methods disclosed in United States Patent No. 7,452,916.

23 85. End-users of Defendants' accused products are also direct infringers of one  
24 or more claims of United States Patent No. 7,452,916.

25 86. End-users of Defendants' accused products have taken, used, and orally  
26 administered the accused products.

27 87. The accused products are formulated, made, manufactured, shipped,  
28 distributed, advertised, offered for sale, and sold by Defendants 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. 7,452,916.

3 88. The accused products are formulated, made, manufactured, shipped,  
4 distributed, advertised, offered for sale, and sold by Defendants to include specific  
5 ingredients for purposes that, by their inclusion in the products for such purposes, infringe  
6 one or more claims of United States Patent No. 7,452,916, and as a result, when end-  
7 users of Defendants' accused products orally administer the accused products, they are  
8 practicing the methods disclosed in one or more claims of that patent.

9 89. Defendants' labels and advertising for the accused products explain the  
10 elements and essential elements of the methods disclosed in United States Patent No.  
11 7,452,916, 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 90. Defendants have therefore specifically intended to cause these end-users to  
15 directly infringe the claimed methods of United States Patent No. 7,452,916, and have in  
16 fact urged them to do so.

17 91. The accused products are not suitable for non-infringing uses, and none of  
18 Defendants' 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 92. The inclusion of these specific infringing compounds in the products is  
22 material to practicing such methods.

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

28 ///

1 94. Defendants have 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 7,452,916, by having them orally ingest the compounds disclosed in such claims.

5 95. Defendants have knowledge of the fact that the accused products,  
6 particularly as administered, infringe on one or more claims of United States Patent No.  
7 7,452,916.

8 96. Defendants also have direct, firsthand knowledge of United States Patent  
9 No. 7,452,916.

10 97. Defendants' activities have been without express or implied license by  
11 Plaintiff.

12 98. As a result of Defendants' acts of infringement, Plaintiff has suffered and  
13 will continue to suffer damages in an amount to be proved at trial.

14 99. As a result of Defendants' acts of infringement, Plaintiff has been and will  
15 continue to be irreparably harmed by Defendants' infringements, which will continue  
16 unless Defendants are enjoined by this Court.

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

20 **VII. FOURTH CAUSE OF ACTION**

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

22 101. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
23 of this Complaint as if fully set forth herein.

24 102. Defendants have in the past and still are literally and directly infringing or  
25 directly infringing under the doctrine of equivalents one or more claims of United States  
26 Patent No. 6,117,872 by making, using, selling, and offering for sale the accused  
27 products, and will continue to do so unless enjoined by this Court.

28 ///



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

11           104. Defendants have encouraged and are aware of these persons' oral  
12 administration of the accused products for these purposes, these persons are acting under  
13 Defendants' direction and control, and therefore Defendants are directly practicing the  
14 methods disclosed in United States Patent No. 6,117,872.

15           105. End-users of Defendants' accused products are also direct infringers of one  
16 or more claims of United States Patent No. 6,117,872.

17           106. End-users of Defendants' accused products have taken, used, and orally  
18 administered the accused products.

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

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

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

6 110. Defendants have therefore specifically intended to cause these end-users to  
7 directly infringe the claimed methods of United States Patent No. 6,117,872, and have in  
8 fact urged them to do so.

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

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

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

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

24 ///

25 115. Defendants have knowledge of the fact that the accused products,  
26 particularly as administered, infringe on one or more claims of United States Patent No.  
27 6,117,872.

28 ///

1 116. Defendants also have direct, firsthand knowledge of United States Patent  
2 No. 6,117,872.

3 117. Defendants' activities have been without express or implied license by  
4 Plaintiff.

5 118. As a result of Defendants' acts of infringement, Plaintiff has suffered and  
6 will continue to suffer damages in an amount to be proved at trial.

7 119. As a result of Defendants' acts of infringement, Plaintiff has been and will  
8 continue to be irreparably harmed by Defendants' infringements, which will continue  
9 unless Defendants are enjoined by this Court.

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

13 **VIII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for entry of judgment against Defendants as  
15 follows:

16 1. A declaration that Defendants have infringed the patents in suit, under 35  
17 U.S.C. §§ 271 *et seq.*;

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

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

27 ///

28 ///



**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff 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: January 30, 2015

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2015, I electronically filed the foregoing **FIRST 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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