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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 **AKESO HEALTH SCIENCES, LLC,**

12 Plaintiff,

13 vs.

14 **QUANTUM, INC.,**

15 Defendant.

Case No. 2:16-cv-8917

**COMPLAINT FOR WILLFUL
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

16
17 Plaintiff Akeso Health Sciences, LLC alleges as follows for its Complaint for
18 Willful Patent Infringement arising under the Patent Laws of the United States,
19 35 U.S.C. § 1, *et seq.*, against Defendant Quantum, Inc.:

20 **THE PARTIES**

21 1. Plaintiff Akeso Health Sciences, LLC (“Akeso”) is a limited liability
22 company organized and existing under the laws of the State of California, with a
23 principal place of business located at 4607 Lakeview Canyon #561, Westlake
24 Village, California.

25 2. Defendant Quantum, Inc. (“Quantum”) is a corporation organized and
26 existing under the laws of the State of Oregon with a principal place of business
27 located at 4888 E. 11th Avenue, Suite 220A, Eugene, Oregon.
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1 **JURISDICTION AND VENUE**

2 3. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. §§ 1331 and 1338(a).

4 4. Upon information and belief, this Court has specific personal
5 jurisdiction over Quantum because Quantum has placed infringing goods into the
6 stream of commerce with the expectation that they would be purchased in the State
7 of California and/or otherwise has purposefully directed activities toward the State
8 of California related to the sale of infringing goods.

9 5. Venue for this action is proper in the Central District of California
10 pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

11 **PATENTS-IN-SUIT**

12 6. United States Patent Number 6,068,999 (“ ‘999 patent”) is titled
13 “Dietary Supplement for Supporting Cerebrovascular Tone and Treating Migraine
14 Headaches” and was duly and validly issued by the United States Patent and
15 Trademark Office on May 30, 2000. A true and correct copy of the ‘999 patent is
16 attached to and incorporated herein as Exhibit A.

17 7. United States Patent Number 6,500,450 (“ ‘450 patent”) is titled
18 “Composition for Treating Migraine Headaches” and was duly and validly issued
19 by the United States Patent and Trademark Office on December 31, 2002. A true
20 and correct copy of the ‘450 patent is attached and incorporated herein as Exhibit B.
21 The ‘999 and ‘450 patents are referred to collectively herein as the “Patents-in-
22 Suit”.

23 8. The Patents-in-Suit each name Akeso’s founder, Curt Hendrix, as the
24 sole inventor.

25 9. Akeso is the owner by assignment of all right, title, and interest in the
26 Patents-in-Suit, including all rights to sue and collect for past damages.

27 **AKESO’S PATENTED INVENTIONS**

28 10. The Patents-in-Suit relate to Mr. Hendrix’s pioneering inventions for

1 improving cerebrovascular tone and reducing the occurrence and severity of
2 migraine headaches. While many compounds have been tried as remedies for
3 migraine headaches, a major challenge in formulating an effective treatment for
4 migraine headaches is combining the correct compounds at therapeutically effective
5 dosages. The inventions claimed in Akeso's Patents-in-Suit overcame this
6 challenge through novel and non-obvious proprietary combinations of feverfew
7 plant extract (parthenolide), magnesium, and riboflavin.

8 11. Before the Patents-in-Suit, no known dietary supplement provided in a
9 single treatment the wide range of therapeutic benefits that are provided by Akeso's
10 patented inventions. In addition to improved cerebrovascular tone, patients
11 receiving the preferred embodiment experienced significantly reduced occurrence
12 of migraine headaches, decreased sensitivity to light and sound, reduced nausea,
13 and increased mobility.

14 12. Akeso's MigreLief® products sold under the Patents-in-Suit
15 succeeded in providing natural, drug-free relief for migraine headaches where
16 others failed, meeting a long-felt but unresolved need. They have enjoyed great
17 commercial success. And they have been widely copied in a variety of infringing
18 products, including those sold by Quantum and many others.

19 13. Akeso makes and sells its patented MigreLief® products under the
20 Patents-in-Suit. In accordance with 35 U.S.C. § 287(a), Akeso marks its
21 MigreLief® products with the number of the Patents-in-Suit.

22 **QUANTUM'S WILLFUL INFRINGEMENT**

23 14. Quantum has willfully infringed the Patents-in-Suit in connection with
24 distribution of MigreLief® outside of authorized channels of distribution.

25 15. Quantum's conduct in connection with making, using, selling, offering
26 to sell and/or importing MigreLief® directly infringes at least one claim of the '999
27 patent and at least one claim of the '450 patent pursuant to 35 U.S.C. § 271(a).

28 16. In addition to direct infringement, Quantum is liable for inducement of

1 infringement under 35 U.S.C. § 271(b).

2 17. Use of MigreLief® as directed on the product label constitutes direct
3 infringement of at least claim 16 of the '450 patent and at least claim 9 of the '999
4 patent. Quantum affirmatively directs and encourages users to directly infringe by
5 administering the recommended daily dosage of a therapeutically effective amount
6 of parthenolide, a magnesium salt and riboflavin, the magnesium salt being
7 provided as a salt of an organic acid.

8 18. Akeso and its MigreLief® product are well known in the dietary
9 supplement industry. Akeso's web site and every bottle of MigreLief® are marked
10 with the numbers of the Patents-in-Suit. Upon information and belief, Quantum has
11 actual and/or constructive knowledge of Akeso's MigreLief® product and of the
12 Patents-in-Suit and of restrictions imposed by Akeso on channels of distribution of
13 Quantum's MigreLief®.

14 19. Upon information and belief, Quantum knowingly induces
15 infringement of the Patents-in-Suit and possesses specific intent to encourage direct
16 infringement by users of MigreLief®. Accordingly, Quantum is liable for inducing
17 infringement of the Patents-in-Suit pursuant to 35 U.S.C. §271(b).

18 20. Quantum further is liable for contributory infringement pursuant to 35
19 U.S.C. § 271(c).

20 21. MigreLief® is material to practicing the inventions of the Patents-in-
21 Suit.

22 22. Administration of MigreLief® as directed on the label constitutes
23 direct infringement of the Patents-in-Suit.

24 23. There are no substantial non-infringing uses of MigreLief®. On the
25 contrary, the only known use, and the specific use directed on the product label, is
26 to be administered for the purpose of reducing the symptoms of migraine headache
27 in a directly infringing manner.

28 24. Upon information and belief, Quantum has knowledge of the Patents-

1 in-Suit and of the fact that MigreLief® is especially made or adapted for use in
2 infringement of the Patents-in-Suit.

3 25. Accordingly, Quantum is liable for contributory infringement of the
4 Patents-in-Suit pursuant to 35 U.S.C. § 271(c).

5 26. Upon information and belief, Quantum has knowledge of the Patents-
6 in-Suit and knows or should know that its conduct in relation to MigreLief®
7 infringes the Patents-in-Suit. Accordingly, Quantum’s infringement is and has been
8 willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant,
9 and/or characteristic of a pirate.

10 **FIRST CLAIM FOR RELIEF**

11 **(Infringement of U.S. Patent No. 6,068,999)**

12 27. Akeso repeats and realleges the allegations of the foregoing paragraphs
13 1 through 26 as if fully set forth herein.

14 28. Quantum has directly infringed at least one claim of the ‘999 patent
15 under 35 U.S.C. §§271(a) literally and/or under the doctrine of equivalents, by
16 making, using, selling, and/or offering to sell MigreLief®.

17 29. Quantum has indirectly infringed at least one claim of the ‘999 patent
18 by inducement under 35 U.S.C. §271(b) by instructing and encouraging end users
19 and healthcare practitioners to directly infringe the ‘999 patent, literally and/or
20 under the doctrine of equivalents. Quantum did so with knowledge of the ‘999
21 patent and specific intent to encourage end users and health care practitioners to
22 directly infringe, literally and/or under the doctrine of equivalents. End users and
23 health care practitioners directly infringed the ‘999 patent, literally and/or under the
24 doctrine of equivalents, in connection with MigreLief®.

25 30. Quantum has indirectly infringed at least one claim of the ‘999 patent
26 contributorily under 35 U.S.C. § 271(c) by offering to sell and selling MigreLief®,
27 knowing the same to be especially made or especially adapted for use in an
28 infringement of the ‘450 patent, and not a staple article or commodity of commerce

1 suitable for substantial non-infringing use.

2 31. Quantum's infringement is and has been willful.

3 32. Akeso has been damaged, in an amount to be determined, as a direct and
4 proximate result of Quantum's infringement of the '999 patent.

5 **SECOND CLAIM FOR RELIEF**

6 **(Infringement of U.S. Patent No. 6,500,450)**

7 33. Akeso repeats and realleges the allegations of the foregoing
8 Paragraphs 1 through 32 as if fully set forth herein.

9 34. Quantum has directly infringed at least one claim of the '450 patent
10 under 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
11 making, using, selling, and/or offering to sell MigreLief®.

12 34. Quantum has indirectly infringed at least one claim of the '450 patent
13 by inducement under 35 U.S.C. § 271(b) by instructing and encouraging end users
14 and/or health care practitioners to directly infringe the '450 patent, literally and/or
15 under the doctrine of equivalents. Quantum does so with knowledge of the '450
16 patent and specific intent to encourage end users and/or health care practitioners to
17 directly infringe, literally and/or under the doctrine of equivalents. End users and
18 health care practitioners directly infringe the '450 patent, literally and/or under the
19 doctrine of equivalents, in connection with MigreLief®.

20 35. Quantum has indirectly infringed at least one claim of the '450 patent
21 contributorily under 35 U.S.C. § 271(c) by offering to sell and selling MigreLief®,
22 knowing the same to be especially made or especially adapted for use in an
23 infringement of the '450 patent, and not a staple article or commodity of commerce
24 suitable for substantial non-infringing use.

25 36. Quantum's infringement is and has been willful.

26 37. Akeso has been damaged, in an amount to be determined, as a direct
27 and proximate result of Quantum's infringement of the '450 patent.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Akeso respectfully requests the Court to enter judgment in
3 favor of Akeso and against Quantum as to all claims asserted herein as follows:

- 4 A. Granting a judgment that Quantum has directly infringed the Patents-
5 in-Suit in violation of 35 U.S.C. § 271(a);
- 6 B. Granting a judgment that Quantum has indirectly infringed the Patents-
7 in-Suit in violation of 35 U.S.C. §§ 271(b) and 271(c);
- 8 C. Ordering Quantum to pay to Akeso actual damages in the form of lost
9 profits or, in the alternative, other damages adequate to compensate for the
10 infringement, but in no event less than a reasonable royalty for the use made
11 of the patented inventions by Quantum, together with pre-judgment and post-
12 judgment interest and costs as fixed by the Court, in accordance with 35
13 U.S.C. § 284;
- 14 D. Granting a judgment that Quantum’s infringement was willful and
15 ordering Quantum to pay to Akeso increased damages of three times the
16 compensatory damages, in accordance with 35 U.S.C. § 284;
- 17 E. Granting a judgment that this case is exceptional under 35 U.S.C. §285
18 and ordering Quantum to pay to Akeso its reasonable attorney fees incurred
19 in this action; and
- 20 F. Granting Akeso such other and further relief as this Court may deem
21 just and proper.

22 **JURY DEMAND**

23 Pursuant to Federal Rule of Civil Procedure 38 and Central District of
24 California L.R. 38-1, Akeso demands a trial by jury on all issues so triable.

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Dated: December 1, 2016

NIXON PEABODY LLP

By: /s/ Shawn G. Hansen

Attorneys for Plaintiff
AKESO HEALTH SCIENCES, LLC