

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

-----X	:	
AIDP, INC., a California corporation,	:	
	:	
Plaintiff,	:	<b>COMPLAINT FOR PATENT</b>
	:	<b>INFRINGEMENT</b>
-against-	:	
	:	
TERAPUTICS GROUP, INC., a New York	:	Case No.: 18 CV 6334
corporation, and DOES 1-20,	:	
	:	
Defendants,	:	<b>DEMAND FOR JURY TRIAL</b>
	:	
-----X	:	

Plaintiff AIDP, Inc. (“AIDP”) hereby alleges as follows:

**PARTIES**

1. AIDP is a corporation organized and existing under the laws of the State of California and doing business in the State of California. At all relevant times, AIDP has held by assignment all rights, title, and interest in the below-described patents and trademarks. AIDP’s principal place of business is located at 19535 East Walnut Drive South, City of Industry, California 91748.

2. AIDP alleges on information and belief that Defendant Terapeutics Group, Inc. (“Terapeutics”) is a corporation organized under the laws of the New York and doing business in the State of California. AIDP alleges on information and belief that Terapeutics’ corporate headquarters are at 3064 Coney Island Ave., Apt. 6C, Brooklyn, New York, 11235.

3. AIDP alleges on information and belief that at all relevant times, each named, and unnamed defendant was the agent and/or employee of the other co-defendants, and at all times, each defendant was and is acting within the purpose and scope of such agency and/or employment and with the permission and consent of his/her/its co-defendants with knowledge, authorization, permission, consent, and/or subsequent ratification and approval of each co-defendant. AIDP alleges on information and belief that each named and unnamed defendant knowingly and willfully conspired and agreed among themselves to deprive AIDP of their rights and cause damages to AIDP.

4. AIDP is ignorant of the true names of the defendants sued as DOES 1 through 20 inclusive, and therefore sue those defendants under such fictitious names. AIDP alleges on information

and belief that each of the fictitiously named defendants are responsible in some manner for the actions and inactions below. AIDP will amend this Complaint when it learns the true identities of any DOES.

#### **NATURE OF THE ACTION**

5. This is a civil action for patent infringement.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action under the laws of the United States, 35 U.S.C. § 271, 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Terapeutics and venue is also proper under 28 U.S.C. § 1400(b) because Terapeutics is incorporated in the State of New York and its principal place of business is in this district.

#### **BACKGROUND ALLEGATIONS**

8. AIDP is a leading developer, marketer, and distributor of functional ingredients with a focus on extensively researched products for wellness and healthy aging. AIDP markets and distributes a variety of branded ingredients for numerous health conditions including cognitive, digestive, and bone issues. AIDP is also a leader in plant-based proteins and encapsulation technology.

9. One of AIDP's most successful branded products is the Magtein® ("Magtein") ingredient, which is comprised of Magnesium L-Threonate. Magnesium L-Threonate is proven to be the only form of magnesium that can cross the blood brain barrier to increase brain synaptic density by rejuvenating neural cells. Studies show that Magnesium L-Threonate has a demonstrated effect on cognitive functions such as short-term and long-term memory improvement, increased learning and recognition ability, as well as decreased anxiety.

10. Neurocentria, Inc. dba Magceutics, Inc. ("Magceutics") designed and developed Magtein and protected its rights to Magtein, including various uses of Magnesium L-Threonate, through numerous patents issued by the United States Patent and Trademark Office (the "USPTO"), as described more fully below (the "Magtein Patents"). Magceutics then granted AIDP the exclusive license to market, sell, and distribute Magtein. Magceutics further assigned to AIDP the rights to

protect and enforce its proprietary ownership over the uses of Magnesium L-Threonate covered by the Magtein Patents.

### **THE MAGTEIN PATENTS**

11. The composition and uses of Magnesium L-Threonate, which is the subject of Therapeutics' infringement, are protected by 10 different patents, discussed more particularly below.

12. On September 8, 2015, the USPTO duly and lawfully issued United States Patent No. 9,125,878 (the "'878 Patent"), entitled "Magnesium compositions and uses thereof for neurological disorders." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '878 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '878 Patent is attached as **Exhibit "A."**)

13. On May 27, 2014, the USPTO duly and lawfully issued United States Patent No. 8,734,855 (the "'855 Patent"), entitled "Slow release magnesium composition and uses thereof." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '855 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '855 Patent is attached as **Exhibit "B."**)

14. On January 28, 2014, the USPTO duly and lawfully issued United States Patent No. 8,637,061 (the "'061 Patent"), entitled "Magnesium compositions and uses thereof for neurological disorders." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '061 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '061 Patent is attached as **Exhibit "C."**)

15. On June 25, 2013, the USPTO duly and lawfully issued United States Patent No. 8,470,352 (the "'352 Patent"), entitled "Magnesium compositions and uses thereof for metabolic disorders." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '352 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '352 Patent is attached as **Exhibit "D."**)

16. On February 19, 2013, the USPTO duly and lawfully issued United States Patent No. 8,377,473 (the "'473 Patent"), entitled "Slow release magnesium composition and uses thereof."

AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '473 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '473 Patent is attached as **Exhibit "E."**)

17. On May 15, 2012, the USPTO duly and lawfully issued United States Patent No. 8,178,133 (the "'133 Patent"), entitled "Magnesium compositions and uses thereof." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '133 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '133 Patent is attached as **Exhibit "F."**)

18. On May 15, 2012, the USPTO duly and lawfully issued United States Patent No. 8,178,132 (the "'132 Patent"), entitled "Magnesium-containing food compositions." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '132 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '132 Patent is attached as **Exhibit "G."**)

19. On May 15, 2012, the USPTO duly and lawfully issued United States Patent No. 8,178,118 (the "'118 Patent"), entitled "Magnesium compositions and uses thereof for cognitive function." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '118 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '118 Patent is attached as **Exhibit "H."**)

20. On April 24, 2012, the USPTO duly and lawfully issued United States Patent No. 8,163,301 (the "'301 Patent"), entitled "Magnesium compositions and uses thereof." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and interest in the '301 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '301 Patent is attached as **Exhibit "I."**)

21. On March 27, 2012, the USPTO duly and lawfully issued United States Patent No. 8,142,803 (the "'803 Patent"), entitled "Magnesium compositions and uses thereof for neurological disorders." AIDP, through its assignor, Magceutics, is the owner by assignment of all right, title, and

interest in the '803 Patent, and holds the right to sue and recover damages for infringement thereof, including past infringement. (A true copy of the '803 Patent is attached as **Exhibit "J."**)

22. Terapeutics received written notice of AIDP's intellectual property rights in the Magtein Patents. AIDP sent Terapeutics numerous written correspondence via electronic mail and certified U.S. mail informing Terapeutics of its intellectual property rights and demanding that Terapeutics cease and desist such infringement. On or about August 30, 2018, Terapeutics responded via electronic mail asking for a few days to investigate the matter. Terapeutics has not responded to any of AIDP's communications since that time. AIDP alleges upon information and belief that Terapeutics received actual notice.

### **DEFENDANTS' INFRINGING PRODUCTS**

23. Terapeutics markets and sells various health products online through their own website [www.terapeutics.com](http://www.terapeutics.com), as well as through [www.amazon.com](http://www.amazon.com). AIDP alleges on information and belief that Terapeutics produce their health products by purchasing raw ingredients and then contracting for the manufacture of the final products.

24. Terapeutics currently markets a product labeled "Magnesium L-Threonate" (the "Infringing Product"). Terapeutics sells bottles containing 100 capsules of 500mg of the Infringing Product for \$24.95 per bottle on [www.amazon.com](http://www.amazon.com). While the Infringing Product is no longer for sale on [www.terapeutics.com](http://www.terapeutics.com) and only provides a link to the Infringing Product on Amazon, AIDP alleges on information and belief that Terapeutics previously sold bottles containing 100 capsules of 500mg of the Infringing Product for approximately \$49.99 per bottle on [www.terapeutics.com](http://www.terapeutics.com).

25. Terapeutics advertises the Infringing Product for the following uses: (i) brain health; (ii) cognitive function; (iii) increased concentration; (iv) maintaining the density and stability of neuronal synapses; (v) improving recall; (vi) slowing age-related memory decline; (vii) creation of new neural pathways; and (viii) improve sleep. Terapeutics also claims to be "known as THE leading brand of magnesium formulas." Terapeutics further notes that their Infringing Product consists of magnesium capable of crossing the blood brain barrier, allowing for it to be absorbed by the brain giving way to the advertised cognitive benefits. (A true copy of Terapeutics' advertisement of the infringing

Magnesium Threonate is attached as **Exhibit “K.”**) All of the uses for Magnesium L-Threonate advertised by Terapeutics are protected by one or more of the Magtein Patents, which Terapeutics are currently infringing.

26. AIDP typically allows others to produce and distribute Magnesium L-Threonate in a non-infringing manner pursuant to a written licensing agreement conditioned on the purchase of Magtein from AIDP. AIDP alleges on information and belief that rather than lawfully purchasing Magnesium L-Threonate, Terapeutics seeks to increase profit margins by buying a less expensive generic of Magnesium L-Threonate manufactured in China and imported to the United States. In other words, Terapeutics believes it is more lucrative to infringe on the Magtein Products rather than producing their products through lawful channels.

#### **FIRST COUNT**

##### **(For Infringement of the ‘878 Patent Against Defendants [35 U.S.C. § 271])**

27. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

28. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the ‘878 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

29. AIDP provided Terapeutics with actual knowledge of the ‘878 Patent via written notice. Terapeutics’ actions therefore constitute willful and intentional infringement of the ‘878 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

30. Terapeutics’ acts of infringement of the ‘878 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

31. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

32. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '878 Patent.

33. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

34. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

### **SECOND COUNT**

#### **(For Infringement of the '855 Patent Against Terapeutics [35 U.S.C. § 271])**

35. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

36. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '855 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

37. AIDP provided Terapeutics with actual knowledge of the '855 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '855 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

38. Terapeutics' acts of infringement of the '855 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

39. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

40. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '855 Patent.

41. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

42. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

### **THIRD COUNT**

#### **(For Infringement of the '061 Patent Against Terapeutics [35 U.S.C. § 271])**

43. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

44. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '061 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

45. AIDP provided Terapeutics with actual knowledge of the '061 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '061 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

46. Terapeutics' acts of infringement of the '061 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

47. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an



amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

48. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '061 Patent.

49. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

50. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **FOURTH COUNT**

##### **(For Infringement of the '352 Patent Against Terapeutics [35 U.S.C. § 271])**

51. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

52. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '352 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

53. AIDP provided Terapeutics with actual knowledge of the '352 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '352 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

54. Terapeutics' acts of infringement of the '352 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

55. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

56. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '352 Patent.

57. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

58. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **FIFTH COUNT**

##### **(For Infringement of the '473 Patent Against Terapeutics [35 U.S.C. § 271])**

59. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

60. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '473 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

61. AIDP provided Terapeutics with actual knowledge of the '473 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '473 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

62. Terapeutics' acts of infringement of the '473 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

63. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

64. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '473 Patent.

65. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

66. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **SIXTH COUNT**

##### **(For Infringement of the '133 Patent Against Terapeutics [35 U.S.C. § 271])**

67. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

68. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '133 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

69. AIDP provided Terapeutics with actual knowledge of the '133 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '133 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

70. Terapeutics' acts of infringement of the '133 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

71. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

72. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '133 Patent.

73. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

74. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **SEVENTH COUNT**

##### **(For Infringement of the '132 Patent Against Terapeutics [35 U.S.C. § 271])**

75. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

76. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '132 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

77. AIDP provided Terapeutics with actual knowledge of the '132 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '132 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

78. Terapeutics' acts of infringement of the '132 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

79. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

80. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '132 Patent.

81. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

82. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **EIGHTH COUNT**

##### **(For Infringement of the '118 Patent Against Terapeutics [35 U.S.C. § 271])**

83. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

84. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '118 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

85. AIDP provided Terapeutics with actual knowledge of the '118 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '118 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

86. Terapeutics' acts of infringement of the '118 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

87. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

88. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '118 Patent.

89. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

90. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **NINTH COUNT**

##### **(For Infringement of the '301 Patent Against Terapeutics [35 U.S.C. § 271])**

91. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

92. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '301 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

93. AIDP provided Terapeutics with actual knowledge of the '301 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '301 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

94. Terapeutics' acts of infringement of the '301 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

95. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

96. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '301 Patent.

97. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

98. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **TENTH COUNT**

##### **(For Infringement of the '803 Patent Against Terapeutics [35 U.S.C. § 271])**

99. AIDP repeats and incorporates by reference into this count the allegations set forth above as though fully set forth in this count.

100. In acting or failing to act as described above, Terapeutics has in the past and continues to literally infringe or infringe under the doctrine of equivalents, directly and indirectly through contributory and/or induced infringement, one or more claims of the '803 Patent by directly and/or indirectly manufacturing, using, selling, and/or offering for sale nutritional supplements embodying the patented invention.

101. AIDP provided Terapeutics with actual knowledge of the '803 Patent via written notice. Terapeutics' actions therefore constitute willful and intentional infringement of the '803 Patent. AIDP also marks its products pursuant to 35 U.S.C. § 287.

102. Terapeutics' acts of infringement of the '803 Patent were undertaken and continue to be undertaken without permission or license from AIDP.

103. Upon information and belief, Terapeutics derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an

amount not presently known to AIDP. AIDP has been damaged as a result of Terapeutics' infringing conduct and is entitled to monetary relief in an amount to be determined at trial.

104. AIDP will also continue to suffer severe and irreparable harm for which AIDP has no adequate remedy at law. Terapeutics' continued infringement will only encourage others to infringe on the Magtein Patents thereby diluting the reputation of and consumer trust in the Magtein brand. As a result, AIDP seeks a permanent injunction from this Court prohibiting Terapeutics from infringing on the '803 Patent.

105. AIDP is also entitled to its attorneys' fees and costs upon prevailing in this action due to the exceptional nature of this dispute under 35 U.S.C. § 285.

106. Further, AIDP is entitled to treble damages and/or exemplary damages because of Terapeutics' knowing, intentional, and/or willful conduct under 35 U.S.C. § 284.

#### **PRAYER FOR RELIEF**

WHEREFORE, AIDP respectfully prays that this Court enter judgment against Terapeutics, as follows:

1. For an Order adjudging Terapeutics to have willfully infringed on each of the Magtein Patents;
2. For an Order enjoining Terapeutics from directly or indirectly infringing on each of the Magtein Patents;
3. For an accounting for all of Terapeutics' gains, profits, and advantages derived by Terapeutics' infringement on each of the Magtein Patents, and for an award of monetary damages adequate to compensate AIDP for the past infringement and any continuing or future infringement up until judgment is entered, in no event less than a reasonable royalty, costs, expenses, and pre-judgment and post-judgment interest for Terapeutics' infringement on each of the Magtein Patents;
4. For an award of damages and/or exemplary damages because of Terapeutics' willful conduct under 35 U.S.C. § 284;
5. For an Order that this is an exceptional case and for an award of attorneys' fees and costs under 35 U.S.C. § 285;



6. For an award of pre-judgment interest at the maximum legal rate in an amount to be proven at time of trial; and

7. For any other relief as the Court deems just and proper.

Dated: New York, New York  
November 7, 2018

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, AIDP demands a trial by jury on all issues triable to a jury.

Dated: New York, New York  
November 7, 2018

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