

Brent P. Lorimer (#3731)

[blorimer@wnlaw.com](mailto:blorimer@wnlaw.com)

Brian N. Platt (#17099)

[bplatt@wnlaw.com](mailto:bplatt@wnlaw.com)

**WORKMAN NYDEGGER**

60 East South Temple Suite 1000

Salt Lake City, UT 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

*Attorneys for Plaintiffs Access Global  
Sciences, LLC, and Pruvit Ventures, Inc.*

---

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

---

ACCESS GLOBAL SCIENCES, LLC, and  
PRUVIT VENTURES, INC.,

Plaintiffs,

vs.

NEW U LIFE DISC, INC.; and NEW U LIFE  
CORP.,

Defendants.

Case No: 2:21-cv-00215-HCN-CMR

AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT, ABUSE  
OF PROCESS, AND WRONGFUL USE  
OF CIVIL PROCEEDINGS

JURY TRIAL DEMANDED

District Judge Howard C. Nielson, Jr.  
Magistrate Judge Cecilia M. Romero

---

Plaintiffs Axxess Global Sciences, LLC (“Axxess Global”) and Pruvit Ventures, Inc. (“Pruvit”) (collectively “Plaintiffs”) complain and allege as follows against Defendants New U Life Disc, Inc. and New U Life Corporation (collectively “New U Life” or “Defendants”).

### **NATURE OF THE CLAIMS**

1. This is an action for patent infringement, abuse of process, and wrongful use of civil proceedings.

2. Plaintiffs allege that Defendants infringe U.S. Patent No. 6,613,356 titled “Weight loss medication and method” (the “356 Patent”) (the “Asserted Patent”). The Asserted Patent is attached as Exhibit A. Plaintiff Pruvit was the exclusive sublicensee of the patent in the relevant market.

3. Plaintiffs allege that Defendants sought to obtain a free license to the Asserted Patent through extortion, abuse of process, and the wrongful use of meritless civil proceedings including a meritless United States International Trade Commission (“ITC”) investigation, that the Defendants prosecuted using a non-lawyer, and where Plaintiffs prevailed on the merits.

### **THE PARTIES**

4. Plaintiff Axxess Global, LLC is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106. Axxess Global does business, has customers, and has suffered injury in the District of Utah. Axxess Global maintains a principal place of business in this Judicial District.

5. Plaintiff Pruvit Ventures, Inc. is a corporation organized under the laws of the State of Texas with its principal place of business at 901 Sam Rayburn Highway, Melissa, TX 75454.

6. Defendant New U Life Disc, Inc. is a Utah corporation with a principal place of business at 3098 W. Executive Parkway, Suite 350, Lehi, UT 94043.

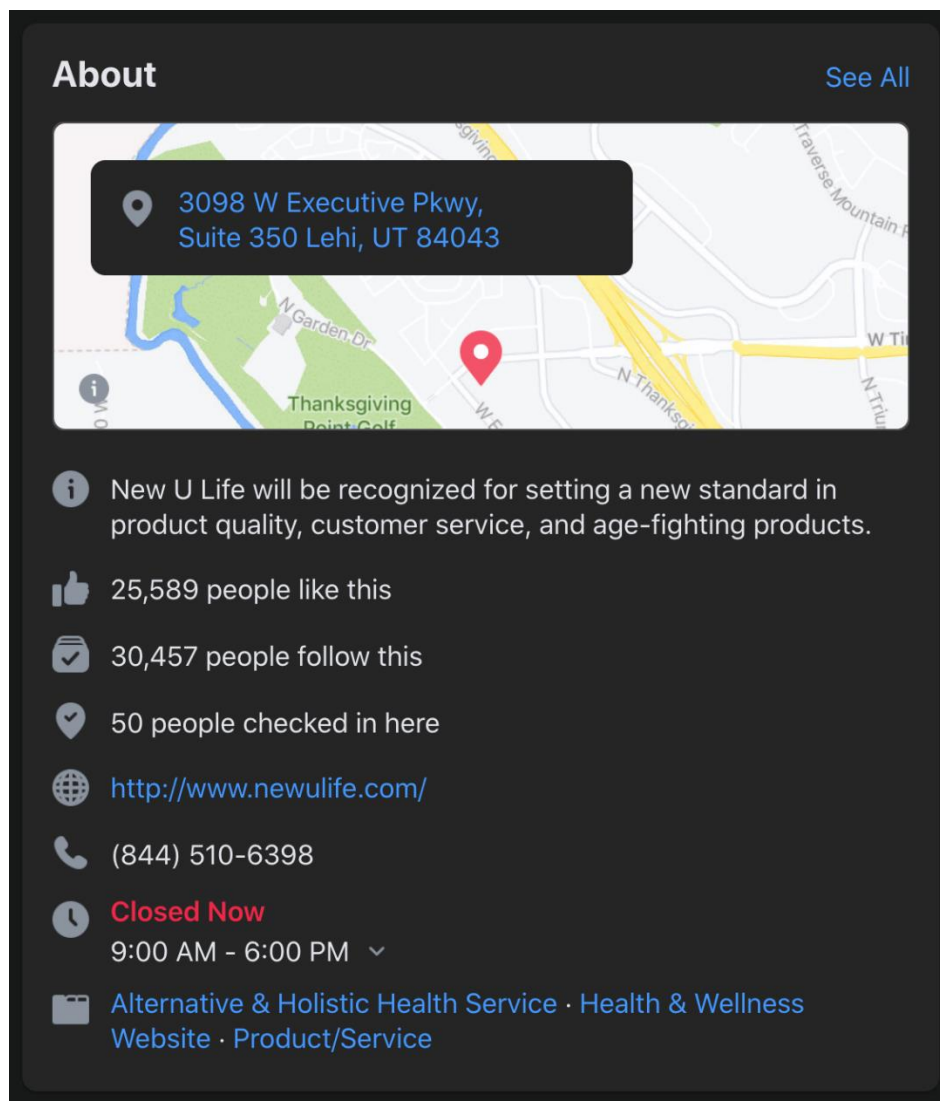
7. Defendant New U Life Corp. is a California corporation with a principal place of business at 3098 W. Executive Parkway, Suite 350, Lehi, UT 94043.

### **JURISDICTION**

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks), and 28 U.S.C. § 1367 (supplemental jurisdiction).

9. This Court has personal jurisdiction over Defendants because Defendants maintain a principal place of business in this Judicial District, have committed and continue to commit acts of infringement in violation of 35 U.S.C. § 271 in this Judicial District, and because Defendant places infringing products into the stream of commerce with the knowledge or understanding that such products are sold in the State of Utah and in this District. In addition, the acts by Defendants cause substantial injury to Plaintiffs in this Judicial District. On information and belief, Defendants derive substantial revenue from their sale of infringing products within this Judicial District, expect their actions to have consequences within this Judicial District, and derive substantial revenue from interstate and international commerce directed to and from this Judicial District.

10. Defendants' Facebook page lists their principal place of business as Lehi, UT, at the address shown below:



<https://www.facebook.com/newulife>

11. On October 9, 2019, the Defendants issued a Press Release titled “Grand Opening of New U Life’s Corporate Headquarters in Lehi, Utah.” The Press Release stated as follows:

## Grand Opening of New U Life's Corporate Headquarters in Lehi, Utah

NEWS PROVIDED BY  
**New U Life** →  
Oct 09, 2019, 19:09 ET

SHARE THIS ARTICLE



LEHI, Utah, Oct. 9, 2019 /PRNewswire/ -- A ceremony will be held Friday, October 11 at 11:00 a.m. (MT) to celebrate the official opening of the new headquarters of New U Life Corporation®. New U Life recently established its headquarters in Lehi, Utah – known as Utah Valley's Silicon Slopes and the start-up hub of Thanksgiving Point. The area is home to some of the nation's leading IT, tech, and direct selling brands.

<https://www.prnewswire.com/news-releases/grand-opening-of-new-u-lifes-corporate-headquarters-in-lehi-utah-300935094.html>

12. Accordingly, the Court has personal jurisdiction over the Defendants.

### **VENUE**

13. Defendants are entities subject to personal jurisdiction in this Judicial District, as shown above, and maintain a principal place of business in Lehi, UT.

14. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1400(b).

### **BACKGROUND**

15. Defendants New U Life are sellers and distributors of certain exogenous ketone supplement products including KetoGen4™ and KG4® as depicted below:

## Our Line of New U Life Transformational Products



### KetoDay® & KetoNight®

KetoDay and KetoNight feature an innovative, one of a kind MCT oil.

[Learn More](#)



### KG4®

KG4 is a naturally sweetened ketone drink mix created to be the most complete ketone supplement on the market to date.

[Learn More](#)



### KetoGen4™

KetoGen4 is a ketone drink mix created to be the most complete ketone supplement on the market to date.

[Learn More](#)



### The Keto Lifestyle

Make the most of our transformational products by living the Keto lifestyle. Get started with training from Keto expert, Thomas DeLauer.

[Learn More](#)

<https://newulife.com/products/>

16. Defendants describe their KG4® product as follows:

KG4® is a naturally sweetened ketone drink mix created to be the most complete ketone supplement on the market to date. Its cutting-edge formula and delicious flavor have been carefully designed for people who want to quickly reach the highly efficient fat-burning state of ketosis. Our exclusive 4-BHB salt combo provides an immediate source of exogenous ketones, key vitamins, and important nutrients to put you in the optimal state of ketosis while ensuring you feel your absolute best!

<https://newulife.com/products/transformational-products/kg4/>

17. Defendants provide the following supplement facts for their KG4 product:

<b>Supplement Facts</b>		
24 servings per container		
<b>Serving size</b>	<b>1 scoop (approx. 16g/0.47oz)</b>	
Amount per serving		
<b>Calories</b>	<b>15</b>	
		<b>% Daily Value *</b>
<b>Total Fat</b>	0g	0%
<b>Total Carbohydrate</b>	2g	1%
Sugars	0.5g	**
<b>Protein</b>	0g	0%
Vitamin A (from Retinyl Palmitate)	750mcg RAE	83%
Vitamin C (from Ascorbic Acid)	60mg	67%
Vitamin D (from Cholecalciferol)	10mcg (400IU)	50%
Vitamin E (from d-Alpha-Tocopherol Succinate)	7mg	47%
Niacin (as Niacin)	10mg	63%
Vitamin B6 (from Pyridoxine HCl)	2mg	118%
Folate (from [Calcium 5-Methyltetrahydrofolate (CA (as Folic acid 24mcg) 40mcg 5-MTHF)])	DFE	10%
Vitamin B12 (from Methylcobalamin)	10mcg	417%
Calcium (from Calcium Beta-Hydroxybutyrate)	1,137mg	110%
Iodine (from Potassium Iodide)	250mcg	170%
Magnesium (from TRAACS® Magnesium Bisglycinate & Beta-Hydroxybutyrate)	244mg	58%
Zinc (from TRAACS® Zinc Bisglycinate)	7mg	64%
Copper (from TRAACS® Copper Bisglycinate)	1mg	111%
Manganese (from TRAACS® Manganese Bisglycinate)	2mg	87%
Chromium (from Chromium polynicotinate)	200mcg	571%
Chloride (from Potassium Chloride)	94mg	4%
Sodium (from Sodium Beta-Hydroxybutyrate)	27mg	1%
Potassium (from Potassium Chloride, Iodide, Beta-Hydroxybutyrate)	100mg	2%

<https://newulife.com/products/transformational-products/kg4/>

<b>KetoGen4 Proprietary Blend</b>	9000mg	**
Calcium Beta-Hydroxybutyrate, Magnesium Beta-Hydroxybutyrate, Sodium Beta-Hydroxybutyrate, Potassium Beta-Hydroxybutyrate		
<b>KetoGen4 Fat Burning &amp; Mental Focus Proprietary Blend</b>	480mg	**
L-Carnitine Tartrate, Betaine (Trimethylglycine), Bacopa Monniera (Bacopa monnieri) Whole Herb Powder, Green Tea (Camellia sinensis) Leaf (98% Polyphenols/50% EGCG/80% Cat) Extract, N-Acetyl L Carnitine, Ginseng Panax (Panax ginseng) Whole Herb Extract, Mucuna Pruriens (Velvet Bean) Powder, Theobromine		
<b>KetoGen4 Alkalinizing Proprietary Blend</b>	110mg	**
Spinach (Spinacea oleracea) Leaf Powder, Broccoli (Brassica oleracea) Sprout Extract, Chlorella (Chlorella pyrenoidosa) Whole Powder, Kale (Brassica oleracea) Sprout Powder		
<b>KetoGen4 Normalizing Adaptogenic Proprietary Blend</b>	180mg	**
Ashwagandha (Withania somnifera) Root Powder, Reishi Mushroom (Ganoderma lucidum) Fruit Powder, Maitake Mushroom (Grifola frondosa) Fruit Extract, Lion's Mane (Hericium erinaceus) Mushroom Fruit Extract, Chaga Mushroom Powder Extract		
<b>KetoGen4 Enzyme Proprietary Blend</b>	25mg	**
Amylase, Cellulase, Lactase, Lipase, Protease White Kidney (Phaseolus vulgaris) Bean Extract 250mg **		
* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general supplement advice.		
**% Daily Value (DV) not established		
TRAACS® is a registered trademark of Albion		

<https://newulife.com/products/transformational-products/kg4/>

18. Defendants provide the following usage instructions for their KG4® product:

Six days a week, dissolve one scoop (13g) in 10-12 ounces of water and mix well. KG4® is best taken in the morning with a meal to optimize the absorption of the nutrients and avoid the discomfort that can exist when taking nutritional supplements on an empty stomach.

<https://newulife.com/products/transformational-products/kg4/>

19. Defendants describe their KetoGen4 product as follows:

KetoGen4™ is a ketone drink mix created to be the most complete ketone supplement on the market to date. Its cutting-edge formula has been carefully designed for people who want to quickly reach the highly efficient fat-burning state of ketosis. Our exclusive 4-BHB salt combo provides an immediate source of exogenous ketones, vital vitamins, and nutrients to put you in the optimal state of ketosis while ensuring you feel your absolute best!



20. Defendants provide the following supplement facts for KetoGen4™ product:

<b>Supplement Facts</b>		
24 servings per container		
<b>Serving size</b>	<b>1 Scoop (approx. 13g/0.47oz)</b>	
Amount per serving		
<b>Calories</b>	<b>5</b>	
		<b>% Daily Value *</b>
<b>Total Fat</b>	0g	0%
<b>Total Carbohydrate</b>	0g	0%
<b>Protein</b>	0g	0%
Vitamin A (from Retinyl Palmitate)	750mcg RAE	83% <input type="checkbox"/>
Vitamin C (from Ascorbic Acid)	60mg	67% <input type="checkbox"/>
Vitamin D (from Cholecalciferol)	10mcg (400IU)	50% <input type="checkbox"/>
Vitamin E (from d-Alpha-Tocopherol Succinate)	7mg	47% <input type="checkbox"/>
Niacin (as Niacin)	10mg	63% <input type="checkbox"/>
Vitamin B6 (from Pyridoxine HCl)	2mg	118% <input type="checkbox"/>
5-MTHF (from Folic Acid)	(as Folic acid 40mcg) 68mcg DFE	17%
Vitamin B12 (from Methylcobalamin)	10mcg	417%
Calcium (from Calcium Beta-Hydroxybutyrate)	1,137mg	110%
Iodine (from Potassium Iodide)	250mcg	170%
Magnesium (from TRAACS(R) Magnesium Bisglycinate & Beta-Hydroxybutyrate)	244mg	58%
Zinc (from TRAACS(R) Zinc Bisglycinate)	7mg	64%
Copper (from TRAACS(R) Copper Bisglycinate)	1mg	111%
Manganese (from TRAACS(R) Manganese Bisglycinate)	2mg	87%
Chromium (from Chromium polynicotinate)	200mcg	571%
Chloride (from Potassium Chloride)	94mg	4%
Sodium (from Sodium Beta-Hydroxybutyrate)	27mg	1%
Potassium (from Potassium Chloride, Iodide, Beta-Hydroxybutyrate)	100mg	2%

<https://newulife.com/products/transformational-products/ketogen4/>

<b>KetoGen4 Proprietary Blend</b>	9000mg	**
Calcium Beta-Hydroxybutyrate, Magnesium Beta-Hydroxybutyrate, Sodium Beta-Hydroxybutyrate, Potassium Beta-Hydroxybutyrate		
<b>KetoGen4 Fat Burning &amp; Mental Focus Proprietary Blend</b>	480mg	**
L-Carnitine Tartrate, Betaine (Trimethylglycine), Bacopa Monniera (Bacopa monnieri) Whole Herb Powder, Coffee (Coffea Arabica) Fruit (Providing Natural Slow Release Caffeine) Extract (Coffeeberry®), DiCaffeine Malate, Caffeine Anhydrous, N-Acetyl L Carnitine, Mucuna Pruriens (Velvet Bean) Powder, Theobromine		
<b>KetoGen4 Alkalinizing Proprietary Blend</b>	110mg	**
Spinach (Spinacea oleracea) Leaf Powder, Broccoli (Brassica oleracea) Sprout Extract, Chlorella (Chlorella pyrenoidosa) Whole Powder, Kale (Brassica oleracea) Sprout Powder		
<b>KetoGen4 Normalizing Adaptogenic Proprietary Blend</b>	180mg	**
Ashwagandha (Withania somnifera) Root Powder, Reishi Mushroom (Ganoderma lucidum) Fruit Powder, Maitake Mushroom (Grifola frondosa) Fruit Extract, Lion's Mane (Hericium erinaceus) Mushroom Fruit Extract, Chaga Mushroom Powder Extract		
<b>KetoGen4 Enzyme Proprietary Blend</b>	25mg	**
Amylase, Cellulase, Lactase, Lipase, Protease White Kidney (Phaseolus vulgaris) Bean Extract 250mg		
<p>* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general supplement advice.</p> <p><input type="checkbox"/> %Daily Value (DV) not established</p> <p>TRAACS® is a registered trademark of Albion. Coffeeberry® is a registered trademark of Futureceuticals, Inc.</p>		

<https://newulife.com/products/transformational-products/ketogen4/>

21. Defendants provide the following usage instructions for their KetoGen4™ product:

Six days a week, dissolve one scoop (13g) in 10-12 ounces of water and mix well.

KetoGen4 is best taken in the morning with a meal to optimize the absorption of the nutrients and avoid the discomfort that can exist when taking nutritional supplements on an empty stomach.

<https://newulife.com/products/transformational-products/ketogen4/>

22. Defendants do not have a license to the Asserted Patent.

23. In July 2019, Defendants began aggressively seeking a free license to the Asserted

Patent. Defendants' lead negotiator was Mr. Brian Galvin of Galvin Patent Law, LLC.

24. Mr. Galvin is not a lawyer.

25. The firm of Mr. Galvin—Galvin Patent Law, LLC—is not a law firm and, in spite of its misleading name, Mr. Galvin is not a licensed patent attorney.

26. On July 9, 2019, Mr. Galvin threatened that if Axxess Global did not accept a “time-sensitive” settlement proposal for a free license to the Asserted Patent, Defendants and Mr. Galvin would file an antitrust action with the United States International Trade Commission (the “ITC”). Attached as Exhibit C (July 9, 2019) is email correspondence between Mr. Galvin and Axxess Global regarding his urgent threat and proposal.

27. Axxess Global knew that Mr. Galvin was not a lawyer, and that as such, Mr. Galvin did not understand that the antitrust threats and “patent cartel” claims he was making were wholly without merit and not actionable.

28. On July 23, 2019, Axxess Global’s counsel wrote to Mr. Galvin informing him that his extortive threats, seeking a free license, were improper and unwarranted:

In our call on Tuesday, July 9 and in subsequent discussions, you represented that New U Life will file the ITC Complaint in the United States International Trade Commission (“ITC”) unless respondents agree to sign a “time-sensitive” proposed Settlement Agreement, which included a covenant not to sue for infringement of U.S. Patent Nos. 6,613,356 and other patents. After careful consideration, AGS and Pruvit do not agree to enter into the Settlement Agreement, as it would in essence convey a royalty-free license to the ‘356 Patent. This is unacceptable.

Exhibit D, at 1 (July 23, 2019).

29. Axxess Global and its counsel further advised that the threat of an ITC Complaint was presented for an improper purpose:

Upon review, we have concluded that the ITC Complaint has been presented for an improper purpose, that the arguments advanced therein are not objectively reasonable, that the claims and contentions advanced therein

are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, and that the allegations and other factual contentions therein lack evidentiary support. As such, should New U Life decide to proceed with filing the ITC Complaint, we intend to move for sanctions pursuant to Section 210.4 and all other applicable laws, to recover all costs and attorneys' fees incurred with respect to this matter.

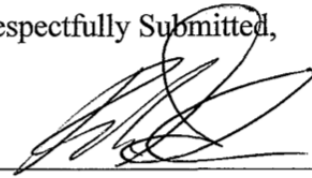
Exhibit D, at 2 (July 23, 2019).

30. In response, the next day Defendants filed their frivolous Section 337 Complaint with the ITC seeking to exclude Axxess Global and Pruvit from importing its patented products into the United States. Exhibit E (dated July 24, 2019).

31. Although he is not a lawyer, Mr. Galvin submitted the Defendants' Section 337 Complaint on the letterhead of his "GALVIN PATENT LAW LLC" firm.

32. Although he is not a lawyer, Mr. Galvin signed the submission as "Lead ITC Counsel for Complainant New U Life Corporation."

Respectfully Submitted,



---

Brian R. Galvin

Galvin Patent Law LLC  
4102 NW Anderson Hill Road  
Silverdale, WA 98383  
(360) 674-6233  
NewULifeITC@galvinpatentlaw.com

***Lead ITC Counsel for Complainant  
New U Life Corporation***

Exhibit E, at 2.

33. Mr. Galvin is not a lawyer. Throughout the submission paperwork and Section 337 Complaint, Mr. Galvin referred to himself as counsel or “Lead ITC Counsel.” Exhibit E, at 2, 7, 8, 53, 63.

34. The positions intentionally and knowingly asserted by the Defendants in the ITC were wholly without merit. The Defendants used the threat of an ITC action, and then willfully filed their meritless ITC action, for the improper purpose of extorting a free license to the Asserted Patent.

35. Contemporaneous with their Section 337 Complaint, Defendants issued a press release quoting “Brian Galvin, Lead ITC Counsel for New U Life . . .” regarding their Section 337 Complaint. The press release made numerous false statements regarding the proceedings, including attributing statements to “counsel” that was a non-lawyer. *See* Exhibit F.

36. The Defendants’ Section 337 Complaint filing was more than 70-pages and advanced numerous frivolous legal arguments concocted by non-lawyer Brian Galvin.

37. For example, although Defendants filed their Section 337 Complaint, they failed to investigate whether any products they were seeking to exclude were actually imported into the United States.

38. Moreover, the Defendants’ Section 337 Complaint failed to allege any actual or threatened injury following the alleged antitrust conduct, and wrongly advanced affirmative defenses such as “patent misuse” and “patent exhaustion” as affirmative causes of action.

39. Defendants’ improper purpose in filing the Section 337 Complaint was to leverage the threat of an ITC investigation to obtain a free license.

40. Access Global filed a motion for sanctions with the ITC. *See* Exhibit G.

41. The ITC evaluated and rejected the Defendants' Section 337 Complaint as without merit and, in turn, refused to institute a Section 337 investigation (accordingly, Axxess Global's motion for sanctions was not heard). *See* Exhibit H.

42. The ITC informed New U Life that their Section 337 Complaint failed to state any cognizable claim:

The allegations in New U Life's amended complaint (*see* Am. Compl., EDIS Doc. No. 687002, as supplemented by EDIS Doc. No. 689207) do not sufficiently support any cognizable claim under Section 337(a)(1)(A)(iii) of the Tariff Act of 1930, as amended, and the Commission's rules.

Specifically, New U Life's amended complaint does not sufficiently allege an actual or threatened antitrust injury as required to plead its Sherman Act antitrust claims before the Commission. *See Certain Carbon and Alloy Steel Products*, Inv. No. 337-TA-1002, Comm'n Op. (Mar. 19, 2018) (EDIS Doc. No. 639263). The Commission further notes that patents are presumed valid under 35 U.S.C. § 282 and except in circumstances that have not been sufficiently pleaded in New U Life's amended complaint, sections 1 and 2 of the Sherman Act do not negate the patentee's right to exclude.

To the extent New U Life asserts any claim (*e.g.*, patent misuse and false patent marking) independently from its Sherman Act claims, the allegations in New U Life's amended complaint fail to demonstrate a cognizable claim.

*See* Exhibit H, at 1-2.

43. On October 25, 2019, counsel for Axxess Global sent further correspondence to Defendants and Mr. Galvin, advising of a pending dispute regarding the lack of merit in the Section 337 Complaint:

As set forth in our correspondence dated July 23, 2019, we maintain that ITC Action was filed for an improper purpose, the arguments advanced therein are not objectively reasonable, the claims and contentions advanced therein are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, and the allegations and other factual contentions therein lack evidentiary support. As such, we have reserved the right to seek sanctions

and to recover all costs, attorneys' fees and other damages suffered with respect to this matter.

*See* Exhibit I, at 1.

44. The letter from Access Global's counsel further advised of the need to preserve documents and ESI regarding the dispute:

Accordingly, New U Life, Galvin Patent Law LLC, and any other persons in possession of documents or records relating to the ITC Action (collectively, "custodians") have the obligation to preserve all records, documents, information and evidence in their possession relating to the ITC Action. This obligation is imposed on each custodian regardless of whether the ITC Action ultimately results in institution or non-institution. The custodians are under a duty to preserve evidence which they know or reasonably should know is relevant to the ITC Action or to any action to recover attorneys' fees and other damages. *In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006). The duty attaches "from the moment that litigation is reasonably anticipated." *Apple Inc. v. Samsung Electronics Co., Ltd.*, 881 F. Supp. 2d 1132, 1136 (N.D. Cal. 2012). "Once a party reasonably anticipates litigation, it must suspend its routine [evidence] retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant [evidence]." *Zubulake v. UBS Warburg*, 220 FRD 212, 218 (S.D.N.Y. 2003).

*See* Exhibit I, at 1.

45. Had Defendants employed a lawyer (rather than Mr. Galvin, who is not a lawyer) familiar with ITC Section 337 Investigations, Defendants would have understood that the spurious arguments advanced by Mr. Galvin at the ITC in the Defendants Section 337 Complaint were unsupported and wholly unwarranted in law and thus, as the ITC concluded, "fail[] to state a cognizable claim." *See* Exhibit H, at 2.

46. Defendants appealed the Order dismissing their Section 337 Complaint to the United States Court of Appeals for the Federal Circuit; however, shortly after retaining counsel to represent them on appeal, Defendants voluntarily dismissed their appeal with prejudice. *See* Exhibit J.

47. Defendants' claims at the ITC "fail[ed] to demonstrate a cognizable claim," *See* Exhibit H, at 2; such claims were presented solely for the improper purpose of obtaining leverage in negotiations and for extorting a free license to the Patent-in-Suit.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,613,356**

48. Plaintiffs incorporate all of the allegations of the preceding paragraphs as if fully set forth herein.

49. On September 2, 2003, the '356 Patent, titled "Weight loss medication and method" was duly and legally issued. A true and correct copy of the '356 Patent is attached as Exhibit A.

50. The '356 Patent expired on October 10, 2020. "[A]n expired patent may form the basis of an action for past damages subject to the six-year limitation under 35 U.S.C. § 286." [\*Genetics Inst., LLC v. Novartis Vaccines & Diagnostics, Inc.\*](#), 655 F.3d 1291, 1299 (Fed. Cir. 2011).

51. Access Global is the owner of the '356 Patent.

52. Pruvit Ventures is the exclusive licensee in the relevant market segment.

53. During the term of the '356 Patent, Defendants made, used, offered for sale, distributed, and/or sold in the United States ketone supplement products including products branded as KetoGen4™ and KG4® (the "Accused Products").<sup>1</sup>

54. Claim 7 of the '356 Patent, which depends from claim 1, is reproduced in full below:

---

<sup>1</sup> The relevant supplement facts for the Accused Products reveal that the same quantities of ingredients relevant to infringement are present in each of the Accused Products. Accordingly, the infringement allegations of the Complaint are based on just one representative Accused Product – KG4 – and not all Accused Products. However, the infringement analysis for the other Accused Products is identical.



1. A process for causing weight loss, or avoidance of weight gain, in mammals, comprising oral administration to said mammals of butyric acid or one or more pharmaceutically effective and acceptable salts or derivatives of butyric acid selected from the group consisting of/butyric acid, sodium butyrate, calcium butyrate, potassium butyrate, magnesium butyrate, alphahydroxybutyric acid, sodium alphahydroxybutyrate, calcium alphahydroxybutyrate, potassium alphahydroxybutyrate, magnesium alphahydroxybutyrate, betahydroxybutyric acid, sodium betahydroxybutyrate, calcium betahydroxybutyrate, potassium betahydroxybutyrate, magnesium betahydroxybutyrate, isobutyric acid, sodium isobutyrate, calcium isobutyrate, potassium isobutyrate, and magnesium isobutyrate.

7. The process of claim 1, wherein the total amount of said butyric acid, alphahydroxybutyric acid, betahydroxybutyric acid, isobutyric acid, or their sodium, potassium, calcium, or magnesium salts administered to said mammal is greater than 0.9 grams, and equal to or less than 4.7 grams, per square meter of body surface area per day for all salts or derivatives, except for magnesium salts, wherein the upper limit for magnesium salts is 2.35 grams per square meter of body surface per day.

'356 Patent, cl. 7.

55. The Accused Products infringe at least claim 7 of the '356 Patent in the exemplary manner described below.

56. Regarding claim 7, which depends from claim 1, the Accused Products meet the following claim limitation as shown below:

1. **A process for causing weight loss, or avoidance of weight gain, in mammals, comprising oral administration to said mammals** of butyric acid or one or more pharmaceutically effective and acceptable salts or derivatives of butyric acid selected from the group consisting of/butyric acid, sodium butyrate, calcium butyrate, potassium butyrate, magnesium butyrate, alphahydroxybutyric acid, sodium alphahydroxybutyrate, calcium alphahydroxybutyrate, potassium alphahydroxybutyrate, magnesium alphahydroxybutyrate, betahydroxybutyric acid, sodium betahydroxybutyrate, calcium betahydroxybutyrate, potassium betahydroxybutyrate, magnesium betahydroxybutyrate, isobutyric acid, sodium isobutyrate, calcium isobutyrate, potassium isobutyrate, and magnesium isobutyrate.

'356 Patent, cl. 1.

## Your Key to Ketosis

KG4 is a naturally sweetened ketone drink mix created to be the most complete ketone supplement on the market to date. Its cutting-edge formula and delicious flavor have been carefully designed for people who want to quickly reach the highly efficient fat-burning state of ketosis. Our exclusive 4-BHB salt combo provides an immediate source of exogenous ketones, key vitamins, and important nutrients to put you in the optimal state of ketosis while ensuring you feel your absolute best!

<https://newulife.com/products/transformational-products/kg4/>

57. Regarding claim 7, which depends from claim 1, the Accused Products meet the following claim limitation as shown below:

1. A process for causing weight loss, or avoidance of weight gain, in mammals, comprising oral administration to said mammals of **butyric acid or one or more pharmaceutically effective and acceptable salts or derivatives of butyric acid selected from the group consisting of/butyric acid, sodium butyrate, calcium butyrate, potassium butyrate, magnesium butyrate, alphahydroxybutyric acid, sodium alphahydroxybutyrate, calcium alphahydroxybutyrate, potassium alphahydroxybutyrate, magnesium alphahydroxybutyrate, betahydroxybutyric acid, sodium betahydroxybutyrate, calcium betahydroxybutyrate, potassium betahydroxybutyrate, magnesium betahydroxybutyrate, isobutyric acid, sodium isobutyrate, calcium isobutyrate, potassium isobutyrate, and magnesium isobutyrate.**

'356 Patent, cl. 1.

## Your Key to Ketosis

KG4 is a naturally sweetened ketone drink mix created to be the most complete ketone supplement on the market to date. Its cutting-edge formula and delicious flavor have been carefully designed for people who want to quickly reach the highly efficient fat-burning state of ketosis. Our exclusive 4-BHB salt combo provides an immediate source of exogenous ketones, key vitamins, and important nutrients to put you in the optimal state of ketosis while ensuring you feel your absolute best!

<https://newulife.com/products/transformational-products/kg4/>

<b>Supplement Facts</b>		
24 servings per container		
<b>Serving size</b>	<b>1 scoop (approx. 16g/0.47oz)</b>	
Amount per serving		
<b>Calories</b>	<b>15</b>	
		<b>% Daily Value *</b>
<b>Total Fat</b>	0g	0%
<b>Total Carbohydrate</b>	2g	1%
Sugars	0.5g	**
<b>Protein</b>	0g	0%
Vitamin A (from Retinyl Palmitate)	750mcg RAE	83%
Vitamin C (from Ascorbic Acid)	60mg	67%
Vitamin D (from Cholecalciferol)	10mcg (400IU)	50%
Vitamin E (from d-Alpha-Tocopherol Succinate)	7mg	47%
Niacin (as Niacin)	10mg	63%
Vitamin B6 (from Pyridoxine HCl)	2mg	118%
Folate (from [Calcium 5-Methyltetrahydrofolate (CA 5-MTHF)])	(as Folic acid 24mcg) 40mcg DFE	10%
Vitamin B12 (from Methylcobalamin)	10mcg	417%
Calcium (from Calcium Beta-Hydroxybutyrate)	1,137mg	110%
Iodine (from Potassium Iodide)	250mcg	170%
Magnesium (from TRAACS® Magnesium Bisglycinate & Beta-Hydroxybutyrate)	244mg	58%
Zinc (from TRAACS® Zinc Bisglycinate)	7mg	64%
Copper (from TRAACS® Copper Bisglycinate)	1mg	111%
Manganese (from TRAACS® Manganese Bisglycinate)	2mg	87%
Chromium (from Chromium polynicotinate)	200mcg	571%
Chloride (from Potassium Chloride)	94mg	4%
Sodium (from Sodium Beta-Hydroxybutyrate)	27mg	1%
Potassium (from Potassium Chloride, Iodide, Beta-Hydroxybutyrate)	100mg	2%

<https://newulife.com/products/transformational-products/kg4/>

<b>KetoGen4 Proprietary Blend</b>	9000mg	**
Calcium Beta-Hydroxybutyrate, Magnesium Beta-Hydroxybutyrate, Sodium Beta-Hydroxybutyrate, Potassium Beta-Hydroxybutyrate		
<b>KetoGen4 Fat Burning &amp; Mental Focus Proprietary Blend</b>	480mg	**
L-Carnitine Tartrate, Betaine (Trimethylglycine), Bacopa Monniera (Bacopa monnieri) Whole Herb Powder, Green Tea (Camellia sinensis) Leaf (98% Polyphenols/50% EGCG/80% Cat) Extract, N-Acetyl L Carnitine, Ginseng Panax (Panax ginseng) Whole Herb Extract, Mucuna Pruriens (Velvet Bean) Powder, Theobromine		
<b>KetoGen4 Alkalizing Proprietary Blend</b>	110mg	**
Spinach (Spinacea oleracea) Leaf Powder, Broccoli (Brassica oleracea) Sprout Extract, Chlorella (Chlorella pyrenoidosa) Whole Powder, Kale (Brassica oleracea) Sprout Powder		
<b>KetoGen4 Normalizing Adaptogenic Proprietary Blend</b>	180mg	**
Ashwagandha (Withania somnifera) Root Powder, Reishi Mushroom (Ganoderma lucidum) Fruit Powder, Maitake Mushroom (Grifola frondosa) Fruit Extract, Lion's Mane (Hericium erinaceus) Mushroom Fruit Extract, Chaga Mushroom Powder Extract		
<b>KetoGen4 Enzyme Proprietary Blend</b>	25mg	**
Amylase, Cellulase, Lactase, Lipase, Protease White Kidney (Phaseolus vulgaris) Bean Extract 250mg **		
* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general supplement advice.		
**% Daily Value (DV) not established		
TRAACS® is a registered trademark of Albion		

<https://newulife.com/products/transformational-products/kg4/>

58. Regarding claim 7, which depends from claim 1, the Accused Products meet the following claim limitation as shown below:

7. The process of claim 1, **wherein the total amount of said butyric acid, alphahydroxybutyric acid, betahydroxybutyric acid, isobutyric acid, or their sodium, potassium, calcium, or magnesium salts administered to said mammal is greater than 0.9 grams**, and equal to or less than 4.7 grams, per square meter of body surface area per day for all salts or derivatives, except for magnesium salts, wherein the upper limit for magnesium salts is 2.35 grams per square meter of body surface per day.

'356 Patent, cl. 7.

## Your Key to Ketosis

KG4 is a naturally sweetened ketone drink mix created to be the most complete ketone supplement on the market to date. Its cutting-edge formula and delicious flavor have been carefully designed for people who want to quickly reach the highly efficient fat-burning state of ketosis. Our exclusive 4-BHB salt combo provides an immediate source of exogenous ketones, key vitamins, and important nutrients to put you in the optimal state of ketosis while ensuring you feel your absolute best!

<https://newulife.com/products/transformational-products/kg4/>

<b>Supplement Facts</b>		
24 servings per container		
<b>Serving size</b>	<b>1 scoop (approx. 16g/0.47oz)</b>	
Amount per serving		
<b>Calories</b>	<b>15</b>	
		<b>% Daily Value *</b>
<b>Total Fat</b>	0g	0%
<b>Total Carbohydrate</b>	2g	1%
Sugars	0.5g	**
<b>Protein</b>	0g	0%
Vitamin A (from Retinyl Palmitate)	750mcg RAE	83%
Vitamin C (from Ascorbic Acid)	60mg	67%
Vitamin D (from Cholecalciferol)	10mcg (400IU)	50%
Vitamin E (from d-Alpha-Tocopherol Succinate)	7mg	47%
Niacin (as Niacin)	10mg	63%
Vitamin B6 (from Pyridoxine HCl)	2mg	118%
Folate (from [Calcium 5-Methyltetrahydrofolate (CA 5-MTHF)])	(as Folic acid 24mcg) 40mcg DFE	10%
Vitamin B12 (from Methylcobalamin)	10mcg	417%
Calcium (from Calcium Beta-Hydroxybutyrate)	1,137mg	110%
Iodine (from Potassium Iodide)	250mcg	170%
Magnesium (from TRAACS® Magnesium Bisglycinate & Beta-Hydroxybutyrate)	244mg	58%
Zinc (from TRAACS® Zinc Bisglycinate)	7mg	64%
Copper (from TRAACS® Copper Bisglycinate)	1mg	111%
Manganese (from TRAACS® Manganese Bisglycinate)	2mg	87%
Chromium (from Chromium polynicotinate)	200mcg	571%
Chloride (from Potassium Chloride)	94mg	4%
Sodium (from Sodium Beta-Hydroxybutyrate)	27mg	1%
Potassium (from Potassium Chloride, Iodide, Beta-Hydroxybutyrate)	100mg	2%

<https://newulife.com/products/transformational-products/kg4/>

<b>KetoGen4 Proprietary Blend</b>	9000mg	**
Calcium Beta-Hydroxybutyrate, Magnesium Beta-Hydroxybutyrate, Sodium Beta-Hydroxybutyrate, Potassium Beta-Hydroxybutyrate		
<b>KetoGen4 Fat Burning &amp; Mental Focus Proprietary Blend</b>	480mg	**
L-Carnitine Tartrate, Betaine (Trimethylglycine), Bacopa Monniera (Bacopa monnieri) Whole Herb Powder, Green Tea (Camellia sinensis) Leaf (98% Polyphenols/50% EGCG/80% Cat) Extract, N-Acetyl L Carnitine, Ginseng Panax (Panax ginseng) Whole Herb Extract, Mucuna Pruriens (Velvet Bean) Powder, Theobromine		
<b>KetoGen4 Alkalizing Proprietary Blend</b>	110mg	**
Spinach (Spinacea oleracea) Leaf Powder, Broccoli (Brassica oleracea) Sprout Extract, Chlorella (Chlorella pyrenoidosa) Whole Powder, Kale (Brassica oleracea) Sprout Powder		
<b>KetoGen4 Normalizing Adaptogenic Proprietary Blend</b>	180mg	**
Ashwagandha (Withania somnifera) Root Powder, Reishi Mushroom (Ganoderma lucidum) Fruit Powder, Maitake Mushroom (Grifola frondosa) Fruit Extract, Lion's Mane (Hericium erinaceus) Mushroom Fruit Extract, Chaga Mushroom Powder Extract		
<b>KetoGen4 Enzyme Proprietary Blend</b>	25mg	**
Amylase, Cellulase, Lactase, Lipase, Protease White Kidney (Phaseolus vulgaris) Bean Extract 250mg **		
* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general supplement advice.		
**% Daily Value (DV) not established		
TRAACS® is a registered trademark of Albion		

<https://newulife.com/products/transformational-products/kg4/>

59. Regarding claim 7, which depends from claim 1, the Accused Products meet the following claim limitation as shown below:

7. The process of claim 1, wherein the total amount of said butyric acid, alpha-hydroxybutyric acid, beta-hydroxybutyric acid, isobutyric acid, or their sodium, potassium, calcium, or magnesium salts administered to said mammal is greater than 0.9 grams, **and equal to or less than 4.7 grams, per square meter of body surface area per day for all salts or derivatives, except for magnesium salts**, wherein the upper limit for magnesium salts is 2.35 grams per square meter of body surface per day.

'356 Patent, cl. 7.



<b>Supplement Facts</b>		
24 servings per container		
<b>Serving size</b>	<b>1 scoop (approx. 16g/0.47oz)</b>	
Amount per serving		
<b>Calories</b>	<b>15</b>	
		<b>% Daily Value *</b>
<b>Total Fat</b>	0g	0%
<b>Total Carbohydrate</b>	2g	1%
Sugars	0.5g	**
<b>Protein</b>	0g	0%
Vitamin A (from Retinyl Palmitate)	750mcg RAE	83%
Vitamin C (from Ascorbic Acid)	60mg	67%
Vitamin D (from Cholecalciferol)	10mcg (400IU)	50%
Vitamin E (from d-Alpha-Tocopherol Succinate)	7mg	47%
Niacin (as Niacin)	10mg	63%
Vitamin B6 (from Pyridoxine HCl)	2mg	118%
Folate (from [Calcium 5-Methyltetrahydrofolate (CA 5-MTHF)])	(as Folic acid 24mcg) 40mcg DFE	10%
Vitamin B12 (from Methylcobalamin)	10mcg	417%
Calcium (from Calcium Beta-Hydroxybutyrate)	1,137mg	110%
Iodine (from Potassium Iodide)	250mcg	170%
Magnesium (from TRAACS® Magnesium Bisglycinate & Beta-Hydroxybutyrate)	244mg	58%
Zinc (from TRAACS® Zinc Bisglycinate)	7mg	64%
Copper (from TRAACS® Copper Bisglycinate)	1mg	111%
Manganese (from TRAACS® Manganese Bisglycinate)	2mg	87%
Chromium (from Chromium polynicotinate)	200mcg	571%
Chloride (from Potassium Chloride)	94mg	4%
Sodium (from Sodium Beta-Hydroxybutyrate)	27mg	1%
Potassium (from Potassium Chloride, Iodide, Beta-Hydroxybutyrate)	100mg	2%

<https://newulife.com/products/transformational-products/kg4/>

<b>KetoGen4 Proprietary Blend</b>	9000mg	**
Calcium Beta-Hydroxybutyrate, Magnesium Beta-Hydroxybutyrate, Sodium Beta-Hydroxybutyrate, Potassium Beta-Hydroxybutyrate		
<b>KetoGen4 Fat Burning &amp; Mental Focus Proprietary Blend</b>	480mg	**
L-Carnitine Tartrate, Betaine (Trimethylglycine), Bacopa Monniera (Bacopa monnieri) Whole Herb Powder, Green Tea (Camellia sinensis) Leaf (98% Polyphenols/50% EGCG/80% Cat) Extract, N-Acetyl L Carnitine, Ginseng Panax (Panax ginseng) Whole Herb Extract, Mucuna Pruriens (Velvet Bean) Powder, Theobromine		
<b>KetoGen4 Alkalizing Proprietary Blend</b>	110mg	**
Spinach (Spinacea oleracea) Leaf Powder, Broccoli (Brassica oleracea) Sprout Extract, Chlorella (Chlorella pyrenoidosa) Whole Powder, Kale (Brassica oleracea) Sprout Powder		
<b>KetoGen4 Normalizing Adaptogenic Proprietary Blend</b>	180mg	**
Ashwagandha (Withania somnifera) Root Powder, Reishi Mushroom (Ganoderma lucidum) Fruit Powder, Maitake Mushroom (Grifola frondosa) Fruit Extract, Lion's Mane (Hericium erinaceus) Mushroom Fruit Extract, Chaga Mushroom Powder Extract		
<b>KetoGen4 Enzyme Proprietary Blend</b>	25mg	**
Amylase, Cellulase, Lactase, Lipase, Protease White Kidney (Phaseolus vulgaris) Bean Extract 250mg **		
<p>* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general supplement advice.</p> <p>**% Daily Value (DV) not established</p> <p>TRAACS® is a registered trademark of Albion</p>		

<https://newulife.com/products/transformational-products/kg4/>

60. Regarding claim 7, which depends from claim 1, the Accused Products meet the following claim limitation as shown below:

7. The process of claim 1, wherein the total amount of said butyric acid, alphahydroxybutyric acid, betahydroxybutyric acid, isobutyric acid, or their sodium, potassium, calcium, or magnesium salts administered to said mammal is greater than 0.9 grams, and equal to or less than 4.7 grams, per square meter of body surface area per day for all salts or derivatives, except for magnesium salts, **wherein the upper limit for magnesium salts is 2.35 grams per square meter of body surface per day.**

'356 Patent, cl. 7.

<b>Supplement Facts</b>		
24 servings per container		
<b>Serving size</b>	<b>1 scoop (approx. 16g/0.47oz)</b>	
Amount per serving		
<b>Calories</b>	<b>15</b>	
		<b>% Daily Value *</b>
<b>Total Fat</b>	0g	0%
<b>Total Carbohydrate</b>	2g	1%
Sugars	0.5g	**
<b>Protein</b>	0g	0%
Vitamin A (from Retinyl Palmitate)	750mcg RAE	83%
Vitamin C (from Ascorbic Acid)	60mg	67%
Vitamin D (from Cholecalciferol)	10mcg (400IU)	50%
Vitamin E (from d-Alpha-Tocopherol Succinate)	7mg	47%
Niacin (as Niacin)	10mg	63%
Vitamin B6 (from Pyridoxine HCl)	2mg	118%
Folate (from [Calcium 5-Methyltetrahydrofolate (CA 5-MTHF)])	(as Folic acid 24mcg) 40mcg DFE	10%
Vitamin B12 (from Methylcobalamin)	10mcg	417%
Calcium (from Calcium Beta-Hydroxybutyrate)	1,137mg	110%
Iodine (from Potassium Iodide)	250mcg	170%
Magnesium (from TRAACS® Magnesium Bisglycinate & Beta-Hydroxybutyrate)	244mg	58%
Zinc (from TRAACS® Zinc Bisglycinate)	7mg	64%
Copper (from TRAACS® Copper Bisglycinate)	1mg	111%
Manganese (from TRAACS® Manganese Bisglycinate)	2mg	87%
Chromium (from Chromium polynicotinate)	200mcg	571%
Chloride (from Potassium Chloride)	94mg	4%
Sodium (from Sodium Beta-Hydroxybutyrate)	27mg	1%
Potassium (from Potassium Chloride, Iodide, Beta-Hydroxybutyrate)	100mg	2%

<https://newulife.com/products/transformational-products/kg4/>

<b>KetoGen4 Proprietary Blend</b>	9000mg	**
Calcium Beta-Hydroxybutyrate, Magnesium Beta-Hydroxybutyrate, Sodium Beta-Hydroxybutyrate, Potassium Beta-Hydroxybutyrate		
<b>KetoGen4 Fat Burning &amp; Mental Focus Proprietary Blend</b>	480mg	**
L-Carnitine Tartrate, Betaine (Trimethylglycine), Bacopa Monniera (Bacopa monnieri) Whole Herb Powder, Green Tea (Camellia sinensis) Leaf (98% Polyphenols/50% EGCG/80% Cat) Extract, N-Acetyl L Carnitine, Ginseng Panax (Panax ginseng) Whole Herb Extract, Mucuna Pruriens (Velvet Bean) Powder, Theobromine		
<b>KetoGen4 Alkalizing Proprietary Blend</b>	110mg	**
Spinach (Spinacea oleracea) Leaf Powder, Broccoli (Brassica oleracea) Sprout Extract, Chlorella (Chlorella pyrenoidosa) Whole Powder, Kale (Brassica oleracea) Sprout Powder		
<b>KetoGen4 Normalizing Adaptogenic Proprietary Blend</b>	180mg	**
Ashwagandha (Withania somnifera) Root Powder, Reishi Mushroom (Ganoderma lucidum) Fruit Powder, Maitake Mushroom (Grifola frondosa) Fruit Extract, Lion's Mane (Hericium erinaceus) Mushroom Fruit Extract, Chaga Mushroom Powder Extract		
<b>KetoGen4 Enzyme Proprietary Blend</b>	25mg	**
Amylase, Cellulase, Lactase, Lipase, Protease White Kidney (Phaseolus vulgaris) Bean Extract 250mg **		
* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general supplement advice.		
**% Daily Value (DV) not established		
TRAACS® is a registered trademark of Albion		

<https://newulife.com/products/transformational-products/kg4/>

61. Defendants have directly infringed claim 7 of the '356 Patent in the United States by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '356 Patent under 35 U.S.C. § 271(a).

62. Defendants have indirectly infringed claim 7 of the '356 Patent in the United States by inducing others to infringe the '356 Patent by making, using, offering for sale, selling, and/or

importing the Accused Products in violation of 35 U.S.C. § 271(b). As such, Defendants are liable for infringement of the '356 Patent under 35 U.S.C. § 271(b).

63. Defendants knew the Accused Products were especially made for infringement of the '356 Patent, and not to be staple articles, and not to be commodities of commerce suitable for substantial non-infringing use. Defendants are liable for contributory infringement of the '356 Patent under 35 U.S.C. § 271(c).

64. Defendants are on notice of their direct and indirect infringement of the '356 Patent, having received written notice of their infringement from Axxess Global.

65. Defendants have known and intended that their actions would actively induce and contribute to the infringement of at least claim 7 of the '356 Patent.

66. Defendants' acts of direct and indirect infringement have caused damage to Plaintiffs. Plaintiffs are therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount that is to be proven at trial.

67. Defendants have willfully infringed the '356 Patent with knowledge of the '356 Patent or were willfully blind to the Patent and the risk of infringement.

## **COUNT II – ABUSE OF PROCESS**

68. Plaintiffs incorporate all of the allegations of the preceding paragraphs as if fully set forth herein.

69. In July 2019, for the ulterior motive of obtaining a free license to the Patent-in-Suit, Defendants threatened baseless litigation before the U.S. ITC. When Axxess Global refused to grant a free license, Defendants followed through with their threat to file a Section 337 Complaint at the U.S. ITC. Defendants thereafter knowingly and intentionally filed a baseless and improper

Section 337 Complaint for the purpose of exerting pressure on the patent licensing negotiations, and for the purpose of obtaining leverage in those negotiations as a result of the pending ITC Action.

70. Defendants publicized their meritless pending ITC Action through press releases.

71. Defendants filed their Section 337 Complaint against Plaintiffs with an ulterior purpose of securing leverage in the patent licensing negotiations, as evidenced by their statements in a telephone conference on July 9, 2019 that they would file the Section 337 Complaint if Access Global did not grant them a free license.

72. Defendants' Section 337 Complaint was a use of process not proper in the regular prosecution of the proceedings. Defendants' claims in the ITC proceedings were wholly without merit; they were evaluated and rejected by the Commission because Defendants failed to state any legally cognizable claim.

73. The U.S. ITC rejected each and every claim raised by Defendants.

74. Defendants appealed the decision, but after retaining counsel in the appeal voluntarily dismissed their appeal without making any arguments on the merits.

75. Defendants' abuse of process caused damages to Plaintiffs by forcing them to defend against a meritless proceeding at the U.S. ITC and expend substantial resources in defense of the Defendants' numerous meritless antitrust allegations.

### **COUNT III – WRONGFUL USE OF CIVIL PROCEEDINGS**

76. Plaintiff incorporates all of the allegations of the preceding paragraphs as if fully set forth herein.

77. In July 2019, for the purposes of obtaining a free license to the Patent-in-Suit, Defendants threatened baseless litigation before the U.S. ITC. When Axxess Global refused to grant a free license, Defendants followed through with their threat to file a Section 337 Complaint at the U.S. ITC, filing a baseless Section 337 Complaint for the purpose of exerting pressure on the patent licensing negotiations, and for the purpose of obtaining leverage in those negotiations as a result of the pending ITC Action.

78. Defendants publicized their meritless pending ITC Action through press releases.

79. Defendants filed their Section 337 Complaint against Plaintiffs without probable cause, and primarily for the purpose of obtaining leverage in patent licensing negotiations, as evidenced by their statements in a telephone conference on July 9, 2019 that they would file the Section 337 Complaint if Axxess Global did not immediately grant Defendants a free license.

80. Defendants' claim and Section 337 Complaint in the proceedings were without merit and were rejected by the ITC because Defendants failed to state any cognizable claim.

81. The ITC rejected each and every claim raised by Defendants.

82. Defendants appealed the decision, but after retaining counsel in the appeal voluntarily dismissed their appeal without making any arguments on the merits.

83. Accordingly, such proceedings have been terminated in favor of Plaintiffs, against whom they were brought.

84. Defendants' abuse of process caused damages to Plaintiffs by forcing them to defend against a meritless proceeding at the U.S. ITC and expend substantial resources in defense of the Defendants' numerous antitrust allegations.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully pray that the Court enter judgment in their favor and award the following relief against Defendants:

- A. A judgment that Defendants have infringed one or more claims of the Asserted Patent literally and/or under the doctrine of equivalents, and that such infringement was either direct and/or indirect by inducing infringement and/or by contributory infringement;
- B. An award of damages pursuant to 35 U.S.C. § 284;
- C. A judgment that this is an exceptional case pursuant to 35 U.S.C. § 285;
- D. A judgment that Defendants have committed the torts of abuse of process and/or wrongful use of civil proceedings;
- E. Money damages in an amount to be determined at trial;
- F. Punitive damages in an amount to be determined at trial;
- G. An award of reasonable attorney's fees in this action;
- H. An award of prejudgment and post-judgment interest on its damages;
- I. An award of costs; and
- J. Any such other and further relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all matters triable to a jury.



DATED this 2nd day of June, 2021.

Respectfully submitted,

By: /s/ Brian N. Platt

BRENT P. LORIMER (#3731)

[blorimer@wnlaw.com](mailto:blorimer@wnlaw.com)

BRIAN N. PLATT (#17099)

[bplatt@wnlaw.com](mailto:bplatt@wnlaw.com)

WORKMAN NYDEGGER

60 East South Temple, Suite 1000

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

*Counsel for Plaintiff Axcoss Global  
Sciences, LLC and Pruvit Ventures, Inc.*