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SUPERHUMAN INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SUPERHUMAN INC.,
Plaintiff,

v.

THERMOLIFE INTERNATIONAL,
LLC,
Defendant.

CASE NO.: _____

COMPLAINT FOR:

**DECLARATORY RELIEF,
BUSINESS DISPARAGEMENT,
TORTIOUS INTERFERENCE,
VIOLATION OF THE
CALIFORNIA UNFAIR
COMPETITION LAW, AND FALSE
OR MISLEADING
REPRESENTATION AND
PRODUCT DISPARAGEMENT**

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Superhuman Inc. (“Superhuman” or “Plaintiff”), by its undersigned attorneys, for its Complaint against Thermolife International, LLC (“Thermolife” or “Defendant”), alleges as follows:

NATURE AND BASIS OF THE ACTION

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 and the patent laws of the United States, Title 35 of the United States Code seeking declaratory judgment of non-infringement and invalidity with respect to U.S. Patent No. 8,455,531 (the “’531 Patent” or “Asserted Patent”). A copy of the ’531 Patent is attached hereto as Exhibit 1.

2. In addition, this is an action for unfair competition, trade libel, defamation, tortious interference, and violation of the California unfair competition law, and False or Misleading Representation and Product Disparagement Pursuant to 15 U.S.C. § 1125, based upon Thermolife’s bad faith and unjustified conduct with respect to Superhuman’s products and Amazon.com.

3. Thermolife filed several complaints with Amazon alleging that certain of Superhuman’s pre-workout supplement products infringe the ’531 Patent and requesting that Amazon take down Superhuman’s listings for these products on Amazon.com (the “Takedown Notices”). As a result, Amazon sent corresponding Policy Violation Notices to Superhuman and deactivated (*i.e.*, removed) Superhuman’s listings for these products.

4. Thermolife’s Takedown Notices were in bad faith and unjustified. The ’531 Patent is not infringed based on Thermolife’s own nitrate testing of the Accused Products. Thermolife knows this testing cannot show infringement because Thermolife previously told the U.S. PTO that the same quantity of nitrate shown in its tests is “de minimis” and does not satisfy the claims.

5. There is no possible interpretation or claim construction of claim 62 of the ’531 Patent that could result in both infringement and the ’531 Patent being valid.

6. As described further below, all claims of the '531 Patent require a "nitrate salt compound" or "non-ester nitrate compound." The Superhuman products that Thermolife has accused of infringement are non-nitrate supplements. Indeed, they are specifically formulated to boost nitric oxide *without* including nitrates as an ingredient like other supplements. Thermolife knows the '531 Patent could not possibly be infringed by non-nitrate products such as those sold by Superhuman. Thermolife has nevertheless attempted to use the '531 Patent to damage Superhuman in an effort to extract undeserved "royalty" payments.

7. Thermolife has an established reputation as a vexatious litigant and a track record of attempting to exploit the Amazon takedown process. *ThermoLife Int'l, LLC v. GNC Corp.*, 922 F.3d 1347, 1355 (Fed. Cir. 2019) (ThermoLife and counsel brought "frivolous claims," and their "motivation was seemingly to extract nuisance-value settlements"); *BPI Sports, LLC v. ThermoLife Int'l, LLC*, No. 19-60505-CIV-SMITH, 2021 WL 2946170, at *2 (S.D. Fla. July 14, 2021) (adopting magistrate judge's report and recommendation and sanctioning ThermoLife where its owner, Ron Kramer, "committed a fraud upon the Court when [he] knowingly fabricated evidence to advance his case and repeatedly attempted to obstruct discovery of that fraud"); *Thermolife Int'l, LLC v. Human Power of N Co.* No. 6-21-CV-00144-ADA, 2021 WL 6303232, at *1 (W.D. Tex. Dec. 21, 2021) ("ThermoLife shall refrain from taking any action to further pursue evaluation through Amazon's Patent Evaluation Process any of the patents at issue already pending in this case.").

8. Thermolife's goal with respect to Superhuman is clear: to force Superhuman to pay an unjustified "royalty" (i.e., ransom) to Thermolife, or to destroy Superhuman's business by improperly and unlawfully using Amazon's takedown process to remove Superhuman's products from Amazon's website.

9. Accordingly, Superhuman has been forced to bring this action to free itself from Thermolife's unwarranted allegations of patent infringement and to seek relief from Thermolife's tortious and harmful practices.

THE PARTIES

10. Superhuman is a Delaware corporation having its principal place of business at 1200 Brickell Avenue, Suite 1950 #1012 Miami, FL 33131.

11. Defendant Thermolife is incorporated in Arizona and has a principal place of business at 1220 E. Hill Street, Signal Hill, California 90755.

JURISDICTION AND VENUE

12. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the laws of the State of California.

13. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §§ 1391 and/or 1400.

14. This Court has subject matter jurisdiction over the federal law claims in this action under 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

15. This Court has supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. § 1367(a).

16. Personal jurisdiction and venue exist in this Court over Thermolife because Thermolife has its principal place of business in this judicial district.

17. The Accused Products have been sold and continue to be sold into this district.

18. A substantial part of the acts or events giving rise to the claims herein occurred and/or will arise in this judicial district.

19. Thermolife's actions give rise to a substantial, immediate, real, and justiciable controversy between Superhuman and Thermolife. A judicial declaration is necessary to determine the parties' respective rights.

BACKGROUND AND FACTS

20. Superhuman was founded in 2017 by Troy Adashun and Jordan Fares, who were frustrated with the realities of the fitness industry, including the fact that most brands were mass-marketing underdosed, dirty supplements with no purpose beyond driving sales. Superhuman was created to serve the fitness industry with

1 better and more innovative products. Since 2017, Superhuman has served over 2.4
2 million customers.

3 21. Superhuman sells a variety of fitness supplements, including its
4 Superhuman Pre and Superhuman Extreme supplements:



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10 (the “Accused Products” or “Superhuman Supplements”).

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13 22. Superhuman sells the Accused Products and other products through a
14 variety of retail channels including brick and mortar, and on online platforms. Each
15 year, Superhuman sells a substantial amount of its inventory on Amazon.com. Prior
16 to the Takedown Notices, Amazon.com accounted for approximately 40% of
17 Superhuman's total sales of the Accused Products.

18
19 23. Superhuman has sold the Accused Products on Amazon since 2021.

20 24. Defendant Thermolife does not sell products to consumers, but sells a
21 nitrate-based nitric oxide-boosting ingredient called NO3-T (arginine nitrate).
22 Thermolife holds a patent portfolio, and makes money by forcing companies that
23 market supplement products to purchase non-exclusive sub-licenses from Thermolife.
24 According to Docket Navigator, Thermolife has been involved in 161 patent cases
25 and has a “win rate” of 0.0%, meaning that it has “lost” or settled every case it has
26 brought. Ex. 4.

27 25. One of the patents owned by Thermolife is the '531 Patent. The '531
28 Patent relates generally to “amino acid compositions.” Ex. 1. The claims of the '531

1 Patent include formulations comprising at least one nitrate salt compound and at least
2 one isolated amino acid compound that is separate from the nitrate salt compound.

3 26. The '531 Patent has been through at least two *ex parte* reexaminations at
4 the U.S. PTO, during each of which the claims of the '531 Patent were significantly
5 amended. The reexamination certificates showing the claims of the current '531
6 Patent are appended as Ex. 1. As an example, Claim 62 of the '531 Patent states:

7 62. A solid supplement formulation comprising:

8 at least one non-ester nitrate compound; and

9 at least one isolated amino acid compound selected from the group
10 consisting of Agmatine, Beta Alanine, Citrulline, L-Histidine, Norvaline,
11 Ornithine, Aspartic Acid, Cysteine, Glycine, Lysine, Methionine, Praline,
12 Tyrosine, and Phenylalanine,

13 wherein the at least one isolated amino acid compound is a separate
14 compound than the at least one non-ester nitrate compound.

15 27. Each and every current claim of the '531 Patent requires a “non-ester
16 nitrate compound” or a “nitrate salt compound.”

17 28. On September 10, 2024, Superhuman received notices that Thermolife
18 had filed claims with Amazon, alleging that Superhuman's Pre and Extreme
19 Preworkout supplements infringe the '531 Patent. Exs. 2 and 3.

20 29. The notices do not specifically identify which claim or claims of the '531
21 Patent were allegedly infringed. *Id.*

22 30. On September 17, 2024, Superhuman sent a letter to Thermolife
23 demanding the immediate withdrawal of the Takedown Notices. Ex. 5. This letter
24 stated “[i]f ThermoLife has evidence to support an alleged breach of its patent
25 through SuperHuman's product, please immediately provide evidence supporting the
26 same.” *Id.* Thermolife refused to provide any evidence for its allegation of
27 infringement.

28 31. On or about September 19, 2024, Ron Kramer of Thermolife had a call
with the CEO of Superhuman. During the call, Thermolife demanded that

1 Superhuman pay a “royalty” via a license agreement to resolve the matter.
 2 Superhuman again requested that Thermolife provide evidence for its claim that the
 3 Accused Products meet the limitations of the ’531 Patent, but Thermolife stated that it
 4 would only provide such evidence after Superhuman acceded to Thermolife’s
 5 demands.

6 32. On September 18, 2024, Superhuman submitted a response to Amazon
 7 explaining that there was no infringement. Amazon responded only with a message
 8 that stated, “We completed our evaluation of your submission. We do not have
 9 enough information to remove the violation at this time.” Ex. 6.

10 33. For one specific listing of the Accused Products, Amazon reinstated the
 11 listing on September 19, 2024. However, on September 26, 2024, that listing was
 12 again deactivated by Amazon in response to a Takedown Notice from Thermolife.
 13 Ex. 7.

14 34. Since Superhuman filed suit against Thermolife, Thermolife has
 15 provided copies of the Takedown Notices submitted to Amazon on August 20, 2024.
 16 Exs. 10 and 11. In the Takedown Notices, Thermolife asserts that that the Accused
 17 Products “plainly infringe[] on claim 62 of Patent 8,455,531.” *Id.*

18 35. In the Takedown Notices, Thermolife attempted to convince Amazon to
 19 takedown Superhuman’s listings by asserting that the “situation” is “the same” as a
 20 prior APEX proceeding that Thermolife asserted against an entirely unrelated seller
 21 and unrelated product (which apparently contained beet root). Specifically,
 22 Thermolife stated:

23 During APEX ID 11879471251, the Amazon Evaluator determined that
 24 the accused seller in that APEX likely infringed claim 62 where the
 25 accused products contained a source of “nitrate” (beet root in that case),
 26 and listed “Citrulline” on its Supplement Facts panel. The same situation
 applies here because Alpha Lion’s Hulk Juice lists “Citrulline” on its
 Supplement Facts panel and contains nitrates

27 Ex. 10 at 1.

28 36. Superhuman’s Accused Products do not contain beetroot.

1 37. Thermolife's statements to Amazon did not explain that the product at
2 issue in the prior APEX proceeding was entirely unrelated to Superhuman or the
3 Accused Products. Nor did Thermolife provide Amazon with any indication of what
4 the result of nitrate "testing" of these other identified products showed. Thermolife's
5 assertions were intended to deceive and cause Amazon to remove Superhuman's
6 listing summarily without appropriate analysis.

7 38. One of Thermolife's Takedown Notices asserted that the Accused
8 Product "contains 20.3 ppm of nitrates." Ex. 11. In this statement, "ppm" refers to
9 parts per million.

10 39. Thermolife's other Takedown Notice asserted that the Accused Product
11 "contains 1810 mcg/serving of nitrates." Ex. 10. The test report associated with this
12 claim shows that the "serving size" used was 82 g. Ex. 12. 1810 mcg equals 1.81
13 mg. 1.81 mg per 82 g serving size is the equivalent of approximately 22 ppm (parts
14 per million).

15 40. The 82 g serving size reported in Thermolife's test is five to ten times the
16 serving sizes that are listed on the Supplement Facts panels for Accused Products,
17 which are 8.2g or 16.4g, as shown below:

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Supplement Facts				
Serving Size: 8.2g (1/2 Scoop) / 16.4g (1 Scoop)				
Servings Per Container: 42 (1/2 Scoop) / 21 (1 Scoop)				
	Amount Per 1/2 Scoop	%DV*	Amount Per 1 Scoop	%DV*
L-Citrulline	2000 mg	**	4000 mg	**
Beta Alanine	1600 mg	**	3200 mg	**
Betaine Anhydrous	1250 mg	**	2500 mg	**
L-Tyrosine	750 mg	**	1500 mg	**
Taurine	500 mg	**	1000 mg	**
SantEnergy™ Nu (Eriodictyon californicum)(aerial parts) Extract	200 mg	**	400 mg	**
SXT™ Energy System††				
Caffeine Anhydrous	137.5 mg	**	275 mg	**
zümXR® Extended Release Caffeine	15 mg	**	30 mg	**
zümXR® Delayed Release Caffeine	10mg	**	20 mg	**
S7® (Green Coffee Bean Extract, Green Tea Extract, Turmeric Extract, Tart Cherry, Blueberry, Broccoli, Kale)	25 mg	**	50 mg	**
Black Pepper Extract (95% piperine)(Piper nigrum)(Fruit)	5 mg	**	10 mg	**
†† Total Caffeine Yield is 311 mg per 1 scoop serving				
* Percent Daily Values (DV) are based on a 2,000 calorie diet				
** Daily Value not established				

Ex. 14 (<https://www.alphalion.com/products/superhuman-pre-workout>). See also Ex. 15 (<https://www.alphalion.com/products/superhuman-extreme>) (showing serving sizes of 8.1 and 16.1 g).

41. Thermolife's test result of 1810 mcg (1.81 mg) in 82g amounts to 0.181 mg in a 8.2g serving size, and 0.362 mg in a 16.4g serving size.

42. Thermolife's test result of 20 ppm (which is the same as 20 mg/kg) amounts to 0.167 mg in a 8.2g serving size, and 0.334 mg in a 16.4g serving size.

43. As explained further below, Thermolife has expressly taken the position that nitrates in such quantities are "de minimis" and do not satisfy the nitrate limitations of the claims of the '531 Patent. As a result, Thermolife's own testing results unambiguously establish that the Accused Products **do not** infringe the '531 Patent.

44. In 2019, ThermoLife filed a request for *ex parte* reexamination of the

1 '531 Patent at the U.S. PTO.

2 45. Thermolife's request for reexamination was based on several prior art
3 references that raised substantial new questions of patentability, including: Harris,
4 International Publication WO 2005/115175 ("Harris") and Yoshimura, U.S. Patent
5 No. 5,576,351 ("Yoshimura"). Ex. 16 (Request for Reexamination).

6 46. As part of the reexamination request, Thermolife also included argument
7 as to why it believed the claims of the '531 Patent were patentable in view of both
8 Harris and Yoshimura. Ex. 16.

9 47. Harris discloses snack bars containing an amino acid (creatine) and
10 thiamine mononitrate. Ex. 16 at 9. Even though Harris discloses a product with an
11 amino acid and a nitrate, Thermolife took the position that the quantity of nitrates in
12 Harris was too small to satisfy the "nitrate salt or non-ester nitrate" claim limitations.

13 48. Specifically, Thermolife argued that Harris does not "provide a
14 supplementary amount of at least one nitrate salt compound and at least one isolated
15 Creatine compound as required in claims 1, 7, 62, and 68." Ex. 16 at 7-8.

16 49. Thermolife stated that Harris discloses only 0.02 mg nitrate and this
17 amount was too small to satisfy the "nitrate salt" or "non-ester nitrate" limitations:

18 As indicated in Example 3 of Harris, the *amount of nitrate* provided in
19 the snack bar containing creatine is *far too low* to reasonably interpret the
20 disclosed snack bar as a supplement *comprising a nitrate salt
or non-ester nitrate*. The recommended dietary allowance (RDA) of
21 thiamin is 1.2 mg/day for men and 1.1 mg/day for women (see Exhibit R).
22 Accordingly, a vitamin mix providing 10% of the RDA as specified in
23 Example 3 of Harris would comprise about 0.1 mg thiamin. Because 0.1
24 mg thiamin is about 0.13 μ mol thiamin, the corresponding weight of
25 nitrate provided as a result of providing thiamin as thiamin mononitrate is
26 about 0.02 mg nitrate, which is well below the limits established by the
27 FDA for foodstuff. The amount of nitrate ingested from eating of the snack
28 bars described in Harris² is so small that it is actually less than the amount
of nitrate that could be ingested from drinking a cup of water, as the
National Primary Drinking Water Regulations allows up to 10 mg nitrate
to be found in one liter of drinking water. Thus, in view of the federal
regulations in 2005 regarding the RDA, and the established teachings in
the prior art concerning a supplement formulation comprising a nitrate salt
and an amino acid compound, the *de minimis amount of nitrate disclosed
in Harris cannot be reasonably interpreted to teach a supplement
formulation comprising a nitrate salt or non-ester nitrate*.

1 Ex. 16 at 9 (emphasis added).

2 50. Thermolife also stated that if the Harris product included the amount of
3 thiamine mononitrate permitted by FDA regulations, it would provide 0.22 mg of
4 nitrate, which Thermolife contended was still “de minimis” and “far too low” to
5 satisfy the nitrate limitations of the ’531 Patent:

6 The amount of nitrate ingested from ingesting thiamine mononitrate in an
7 amount that provides the maximum RDA of thiamine is about **0.22 mg.**
8 ***This amount is still far too low to result in nitrate supplementation.*** As
9 noted above, even the amount of nitrate provided in the maximum RDA
10 dose of thiamine mononitrate (which is 10 times more than the dose of
11 nitrate disclosed in Harris) is still less than the amount of nitrate ingested
12 from drinking water. Thus, even the broadest reasonable interpretation of
13 the compositions described in Harris still only allow ***a de minimis amount***
14 ***of a nitrate and does not encompass compositions for supplementation***
15 ***of nitrates.***

12 Ex. 16 at 10 (emphasis added).

13 51. Thermolife stated that “Because Harris does not describe a composition
14 that provides a supplementary amount of nitrate, the reference does not anticipate
15 claims 1, 7, 62, and 68. *Id.*”

16 52. Thermolife also argued that Yoshimura did not contain a nitrate salt
17 because Yoshimura did not provide a “supplementary amount” of nitrate:

18 ***The amount of nitrate in the compositions described in Yoshimura also***
19 ***is not a supplementary amount.*** The source of nitrate in Yoshimura's
20 composition comes from the thiamine mononitrate in the vitamin premix
21 (see Table 6a of Yoshimura). The weight percentage of thiamine
22 mononitrate in the vitamin premix is about 0.02%, and in the final
23 composition of Yoshimura, the total weight of the vitamin premix is 2.8
24 g, which is 0.53 mg of thiamine mononitrate. 0.53 mg of thiamine
25 mononitrate is about half of the RDA of thiamine mononitrate, which
26 supports the interpretation that the other “nutrients” in Yoshimura's
27 compositions (the ones that are not arginine or ornithine or a functional
28 analog of arginine or ornithine) are each not a supplementary amount.
Also, the amount of nitrate provided from this 0.53 mg of thiamine
mononitrate is about **0.1 mg. This is a de minimis amount of nitrate.** As
noted above, the National Primary Drinking Water Regulations allows up
to 10 mg nitrate to be found in one liter of drinking water, so the amount
of nitrate provided from the amount of thiamine mononitrate described by
Yoshimura is as much as 100 times less than the amount of nitrate that
would be ingested from drinking one liter of drinking water.

28 Ex. 16 at 30.

53. Thermolife has admitted that the terms “nitrate salt” and “non-ester nitrate compound” do not encompass de minimis amounts of nitrates.

54. Themolife has admitted that 0.22 mg nitrate is “far too low” to satisfy the nitrate limitations of the claims of the ’531 Patent.

55. Thermolife has admitted that the claims of the ’531 Patent each require nitrates in a “supplementary amount.”

56. Thermolife asserted that a “supplementary amount” of nitrate must be at least “greater than the amount of nitrate ingested from drinking water,” while also asserting that EPA regulations allow “up to 10 mg nitrate” in a liter of drinking water Ex. 16 at 12 (with respect to Harris) and 37 (with respect to Yoshimura).

57. And Thermolife’s expert declaration (relied upon by Thermolife in the reexamination) asserted that nitrate supplementation requires amounts “over” 20-30 mg:

The average total consumption of nitrate from daily meals in the USA is around **76 mg per day** (Harsha and Nathan, "Dietary sources of nitrite as a modulator of I/R injury", *Kidney International*, 2009, 75:1140-1144, attached as Exhibit I). Accordingly, we and other nitrate researchers expected that any effect of nitrate administration, pharmacological or otherwise, such as vasodilation and increase in athletic performance, would require amounts of nitrate that are **over** what one would ingest from a typical meal, which would be around **20-30 mg** of nitrate per meal.

Ex. 17 (Lundberg Declaration) at Paragraph 6 (emphasis added). *See also* Ex. 18 (Thermolife January 31, 2020 response to office action relying on Lundberg Declaration).

58. Thermolife has therefore admitted that a “supplementary amount” of nitrate would be more than 20-30 mg.

59. The doctrine of prosecution disclaimer precludes any claim construction of “nitrate salt compound” or a “non-ester nitrate compound” that encompasses trace or de minimis quantities of nitrates.

60. Patent claims must be construed the same way for both invalidity and infringement. Accordingly, if de minimis quantities of nitrates do not satisfy the

1 nitrate limitations with respect to validity, de minimis quantities do not satisfy the
2 nitrate limitations for purposes of infringement.

3 61. Based on Thermolife's own unequivocal admissions to the U.S. PTO,
4 nitrates in the range of 20-22 ppm do not result in infringement of the '531 Patent.

5 62. Thermolife submitted that Takedown Notices with full knowledge that
6 its own testing of the Accused Products showed nitrate amounts that it had already
7 argued before the U.S. PTO were de minimis and did not satisfy the nitrate limitations
8 of the '531 Patent.

9 63. Accordingly, Thermolife's allegations of infringement was objectively
10 baseless and in bad faith.

11 64. There is no reasonable interpretation of the '531 Patent under which de
12 minimis or trace quantities of nitrates (in the range of 20-22 ppm) could result in
13 infringement and, at the same time, the '531 Patent could be valid.

14 65. To the extent the "non-ester nitrate compound" and "nitrate salt
15 compound" limitations are satisfied by trace amounts of nitrates of only 20-22 ppm,
16 the prior art clearly discloses dietary supplements containing the claimed amino acids
17 in combination with vegetables, thiamine mononitrate, or other plant-based
18 ingredients that would necessarily contain the same (or greater) quantity of nitrates.

19 66. To the extent the claims of the '531 Patent contain no limitation on
20 quantity of nitrate, the patent is also invalid under 35 U.S.C. 101. If the claims of the
21 '531 Patent contain no limitation on quantity of nitrate, and therefore encompass
22 quantities of nitrates that have no effect when consumed, the claimed compositions do
23 not possess markedly different characteristics than amino acids found in nature. The
24 act of "isolating" amino acids and claiming them as part of a supplement is
25 insufficient to confer patent eligibility.

26 67. Nitrates (NO_3^-) are naturally-occurring compounds that are a metabolic
27 product of microbial digestion of wastes containing nitrogen, for example, animal
28 feces or nitrogen-based fertilizers.

68. Nitrates are present in many plants, fruits, and vegetables.

69. Vegetables such as spinach, kale, and lettuce are known to be particularly high in nitrates.

70. Any dietary supplement containing vegetables such as broccoli, spinach, kale, lettuce, beet root, ginko, garlic, ginseng will necessarily contains some amount of nitrates.

71. Any dietary supplement containing thiamine mononitrate necessarily contains some amount of nitrates.

72. Any dietary supplement containing spirulina necessarily contains some amount of nitrates.

73. Any dietary supplement containing milk thistle necessarily contains some amount of nitrates.

74. Any dietary supplement containing rosemary necessarily contains some amount of nitrates.

75. Dietary supplements containing both amino acids and nitrate-containing ingredients (such as thiamin mononitrate, vegetables, spirulina, milk thistle, and rosemary) were known prior to the earliest possible priority date of the '531 Patent.

76. If claims of the '531 Patent have no quantity limitation whatsoever with respect to nitrates, such claims are anticipated by prior art supplements that contained amino acids and nitrate-containing ingredients.

77. As a company focused entirely on dietary supplements containing amino acids, Thermolife certainly knew that supplements including amino acids and nitrate-containing vegetables were disclosed long before the earliest possible priority date of the '531 Patent.

78. Thermolife has long known that vegetables contain some quantity of nitrates.

79. During the 2019 reexamination of the '531 Patent, Thermolife submitted the declaration of Dr. Lundberg in support of its request for reexamination. Ex. 18.

1 Dr. Lundberg's declaration cited (and attached) an article that explained:

2 Nitrate is a naturally occurring form of nitrogen and is an integral part of
 3 the nitrogen cycle in the environment.. Nitrate is formed from fertilizers,
 4 decaying plants, manure and other organic residues. It is found in the air,
 5 soil, water and food (*particularly in vegetables*) and is produced naturally
 6 within the human body. 1- 4 It is also used as a food additive, mainly as a
 7 preservative and antimicrobial agent. It is used in foods such as cheese and
 8 cheese products, raw and processed meats, edible casings, processed fish,
 9 fish products, spirits and liqueurs.

10

11 Vegetables constitute *the major dietary source of nitrate*, generally
 12 providing from 300 to 940 mg g⁻¹ of the daily dietary intake (Tables 1 and
 13 2).

14 Ex. 17 (Lundberg Declaration at Exhibit D) (emphasis added).

15 80. Thus, prior to submitting the Takedown Notices, Thermolife knew that
 16 the claims of the '531 Patent are invalid if they are broad enough to read on a
 17 supplement merely containing amino acids and trace nitrates present from vegetables.

18 81. As a result, Thermolife could have no reasonable belief that the '531
 19 Patent is both valid and infringed by the Accused Products. Thermolife's Takedown
 20 Notices were therefore in bad faith and objectively baseless.

21 82. Following the Takedown Notices, Superhuman had each of the Accused
 22 Products tested for nitrates by Harken Research. Harken Research is a research
 23 laboratory accredited by the ANSI National Accreditation Board and an ISO/IEC
 24 17025 certified laboratory. Harken Research specializes in testing of consumer
 25 products, including dietary supplement products. *See*
 26 <https://harkenresearch.com/tests/supplements/>.

27 83. Harken Research's Certificate of Analysis for the Superhuman Pre
 28 product showed that the level of nitrates in the Accused Products were so small, if
 they existed at all, as to be below the level of detection. Ex. 8.

84. Harken Research's Certificate of Analysis for the Superhuman Extreme
 product also showed no detected nitrate. Ex. 9.

85. Harken Research's tests show there is no nitrate in the Accused Products

1 up to the limit of detection for those test.

2 86. Superhuman has and will continue to suffer reputational harm as a result
3 of the Takedown Notices. Before the Takedown Notices, Superhuman had created
4 and maintained a high ranking for the Accused Products on the Amazon platform,
5 which utilizes a complex algorithm to determine where products appear in search
6 results. The key factors that influence the valuable Amazon product rankings include
7 sales velocity, conversion rate, stock availability and click-through rate (amongst
8 other factors). These performance factors and sales history on the Accused Products
9 have been severely negatively affected due to the Takedown Notices, which has and
10 will continue to reduce the ranking values.

11 87. Superhuman has expended considerable costs in marketing and product
12 development to cultivate valuable consumer following, goodwill, and recognition,
13 along with a high Amazon performing rankings.

14 88. Online market share and rankings on Amazon.com can take months to
15 gain and are based upon algorithms that take into account consecutive sales and sales
16 velocity. Products are thus ranked higher, or near the top of the search, for products
17 with ongoing and positive sales. Superhuman has invested significant resources,
18 time, and money into improving and maintaining its Amazon ranking in order to be
19 highly placed in Amazon's ranking system for the Accused Products.

20 89. As a result of the Takedown Notices and the deactivated listings for the
21 Accused Products, there is now a significant and growing time period of no sales for
22 the Accused Products on Amazon. This has a negative effect on the rankings of the
23 Accused Products. If and when Superhuman's listings are reactivated, it will once
24 again have to spend significant time and money to recapture its high ranking in order
25 to once again be competitive in the pre-workout supplement market, and it may never
26 be able to fully restore its ranking and goodwill. If Thermolife's deactivations are
27 allowed to persist, this reputational and business harm will not be able to be recouped.

28 90. In addition, Superhuman has allocated significant resources to the

1 creation and growth of a subscription-based sales program through their Amazon
 2 channel for the Accused Products. This subscription model allows customers to
 3 automatically purchase and receive the Accused Products on a regular interval
 4 (primarily monthly cycles). As a result of the Takedown Notices and the deactivation
 5 of listings for the Accused Products, customers have not had their subscriptions filled.

6 91. These subscription agreements will be terminated because Superhuman
 7 is prevented from supplying the subscribed-to products. Subscription-based
 8 customers are incentivized by Amazon to try alternative products when subscribed
 9 products are unavailable.

10 92. As a result, Thermolife's Takedown Notices have caused Superhuman to
 11 lose extremely valuable subscriber customers for the Accused Products and the
 12 associated sales of Accused Products to these customers.

13 93. On information and belief, the actual purpose of Thermolife submitting
 14 the Takedown Notices was to unfairly remove Superhuman's listings from Amazon in
 15 order to unfairly extract unjustified royalty payments from Superhuman.

16 94. As of the filing of this Complaint, Thermolife has not withdrawn its
 17 Takedown Notices or recanted its allegation that the Accused Products infringe the
 18 Asserted Patent.

19 95. Superhuman continued use, selling, marketing, and sales of the Accused
 20 Products therefore raise a present case and controversy.

21 **COUNT I**

22 **Declaratory Judgment of Non-Infringement of the '531 Patent**

23 96. Superhuman incorporates and re-alleges paragraphs 1 through 95 as if
 24 fully set forth herein.

25 97. Thermolife is the owner of the '531 Patent.

26 98. By submitting the Takedown Notices, Thermolife has taken the position
 27 that Superhuman infringes at least one claim of the '531 Patent.

28 99. Superhuman has not infringed and does not infringe any claim of the

1 '531 Patent, either directly or indirectly, contributorily or by inducement, literally or
2 under the doctrine of equivalents, or in any manner whatsoever.

3 100. For example, and without limitation, Superhuman's Superhuman
4 Supplements (in all flavors and sizes), alone or in combination, do not infringe the
5 '531 Patent directly or indirectly, contributorily or by inducement, literally or under
6 the doctrine of equivalents, or in any manner whatsoever, at least because these
7 Accused Products do not satisfy the "non-ester nitrate compound" or "nitrate salt
8 compound" limitation.

9 101. An actual controversy exists between Superhuman and Thermolife as to
10 Superhumans's non-infringement of the '531 Patent as evidenced by Thermolife's
11 engagement of the Amazon takedown process and allegation of infringement of claim
12 62.

13 102. A judicial decision is necessary and appropriate so that Superhuman may
14 ascertain its rights with respect to the '531 Patent.

15 103. Superhuman seeks, and is entitled to, a declaration from this Court that
16 Superhuman has not infringed and does not infringe any claim of the '531 Patent,
17 either directly or indirectly, contributorily or by inducement, literally or under the
18 doctrine of equivalents, or in any manner whatsoever.

19 COUNT II

20 **Declaratory Judgment of Invalidity of the '531 Patent**

21 104. Superhuman incorporates and re-alleges the allegations of paragraphs 1
22 through 95 as if fully set forth herein.

23 105. The '531 Patent is invalid under at least 35 U.S.C. §§ 101, 102, 103, and
24 112.

25 106. For example, each and every claim limitation of the '531 Patent is
26 anticipated and/or obvious under §§ 102 and 103 because the prior art discloses
27 and/or renders obvious to one of ordinary skill in the art the limitations of the claims
28 of the '531 Patent.

107. In addition, to the extent Thermolife's proposed infringement interpretation of the '531 Patent is accepted, it means the nitrate requirement of the claims of the '531 Patent can be satisfied by trace amounts of nitrates in the range of 20-22 ppm. If the '531 Patent is broad enough to be infringed by trace quantities of nitrates in the range of 20-22 ppm, then the '531 Patent is invalid as anticipated or obvious in view of prior art supplements that disclose the claimed amino acids in combination with vegetables or other products that contain non-zero quantities of nitrates.

108. A lack of limitation on quantity of nitrates also means that the claims of the '531 Patent are invalid under 35 U.S.C. § 101 because they are directed to naturally-occurring products that do not possess markedly different characteristics from what is found in nature.

109. An actionable and justiciable controversy exists between the parties regarding the validity of the '531 Patent.

110. A judicial declaration is necessary to determine the parties' respective rights regarding the '531 Patent.

111. Superhuman is entitled to a judgment declaring that the claims of the '531 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

COUNT III

Unfair Competition Under Cal. Bus. & Prof. Code § 17200 et seq.

112. Superhuman incorporates and re-alleges the allegations of paragraphs 1 through 95 as if fully set forth herein.

113. Thermolife's conduct amounts to unfair competition under Section 17200 et. seq., of the California Business & Professions Code, which prohibits any unlawful, unfair, or fraudulent business act or practice.

114. Thermolife engaged in unfair competition by initiating the Amazon takedown process with respect to Superhuman's product while in possession of test results that demonstrate Superhuman's products do not infringe.

115. Thermolife wrongfully, deceptively, and unfairly asserted the Asserted Patents against the business operations and product listings of Superhuman on Amazon.com through the Takedown Notices, causing those products to be delisted. This resulted in substantial reputational and economic damages to Superhuman through: (a) disabled product listings; (b) lost product sales; (c) reputational damage to Superhuman's Amazon accounts, and; (d) other damages, including actual damages, to the product listings, inventories, and Superhuman's business.

116. Thermolife has demonstrated that it will continue its campaign of unfair business practices through its attempts to weaponize the Amazon takedown process.

117. Thermolife's actions have forced Superhuman's products from its primary sales channel for such goods in the marketplace, thereby causing injury to consumers through higher prices and reduced product purchase alternatives in violation of the California unfair competition law.

COUNT IV

Business Disparagement

118. Superhuman incorporates and re-alleges the allegations of paragraphs 1 through 95 as if fully set forth herein.

119. Thermolife communicated a falsehood to third-party Amazon when it submitted the Takedown Notices of infringement because the '531 Patent is not infringed by the Accused Products and Thermolife was in possession of test results that showed the '531 Patent was not infringed at the time it submitted its Takedown Notices. In addition, Thermolife's statements that the "situation" with the Accused Products was "the same" as a prior, unrelated APEX proceeding involving Thermolife and a third party was false.

120. Thermolife's Takedown Notices referred to Superhuman and its products and clearly derogated those products by stating that the products infringe and should be delisted from Amazon, when those products, in fact, do not infringe.

121. Thermolife, knew or reasonably should have known that its Takedown

1 Notices would result in Amazon delisting Superhuman's products and not doing
2 business with Superhuman with respect to the Accused Products. In fact, causing
3 Amazon to cease doing business with Superhuman with respect to the Accused
4 Products was the entire reason that Thermolife sent the Takedown Notices.

5 122. Thermolife's false claims in the Takedown Notices played a material and
6 substantial part in inducing Amazon to cease doing business with Superhuman with
7 respect to the Accused Products. In fact, it was the entire cause of Amazon's actions.

8 123. As a result of Thermolife's falsehood, Superhuman has suffered special
9 damages in the form of lost sales and profits. Specifically, Superhuman has lost at
10 least \$384,177 in sales of the Accused Products that would have been made on
11 Amazon.com but for Thermolife's false statement.

12 124. Prior to Thermolife's false statements, Superhuman's sales of the
13 Accused Products on Amazon were \$4,451,821 through August (i.e., January through
14 August), which amounts to approximately \$556,447 per month and \$18,294 per day.
15 After Thermolife's false statements induced Amazon to remove the Accused
16 Products, these sales have been entirely lost. Using just this past-performance data,
17 which does not take into account increasing sales trends, Superhuman has lost at least
18 \$384,177 in sales as a result of Thermolife's Takedown Notices. This number also
19 does not account for the damage to Superhuman's Amazon rankings and lost
20 subscribers.

21 125. When Amazon provided the Policy Violation Notices that led to the
22 listing deactivations, it also provided Amazon's estimate of the annualized "At-risk"
23 sales amount for each Accused product. The At-risk sales amount is the amount of
24 sales Amazon believes will be lost as a result of the alleged policy violations and
25 deactivations. Amazon's At-risk amount estimates are based on the sales data and
26 trends available to Amazon. The total At-risk sales amount for the Accused Product
27 was \$8,550,849, which amounts to approximately \$712,570 per month, \$164,439 per
28 week, and \$23,426 per day. Using Amazon's own estimates, Superhuman has lost at

1 least \$491,946 in sales as a result of Thermolife's Takedown Notices. This number
 2 also does not account for the damage to Superhuman's Amazon rankings and lost
 3 subscribers.

4 126. Thermolife's false statements have also directly affected Superhuman's
 5 Subscribe and Save ("SnS") subscriber base. The Accused Products had at least 4,654
 6 active subscribers prior to Thermolife's Takedown Notices. Superhuman generated
 7 average monthly revenue from these subscribers of approximately \$85,000, which
 8 was a stable and predictable revenue stream. Due to the Accused Products'
 9 unavailability, subscribers have been unable to receive their regular shipments,
 10 resulting in canceled subscriptions. The loss of valuable subscribers has and will
 11 deprive Superhuman of repeat customers that provide reliable revenue, contribute to
 12 Amazon rankings, and are likely to generate additional customer recognition and
 13 goodwill by word of mouth as long-term users of the Accused Products. Based
 14 conservatively on the year-to-date revenue from the SnS subscribers of the Accused
 15 Products, Superhuman estimates losses of \$1,020,000 per year based on lost SnS
 16 subscribers.

17 127. Based on the foregoing, Thermolife is liable for business disparagement
 18 under California law.

19 COUNT V

20 False or Misleading Representation and Product

21 Disparagement Pursuant to 15 U.S.C. § 1125

22 128. Superhuman incorporates and re-alleges the allegations of paragraphs 1
 23 through 95 as if fully set forth herein.

24 129. This is a claim for false or misleading representation of fact, unfair
 25 competition, and product disparagement under 15 U.S.C. § 1125(a).

26 130. Superhuman has a commercial interest in its commercial and business
 27 reputation.

28 131. Superhuman has established a business reputation as a popular and

1 trusted seller of fitness supplements on Amazon's online marketplace.

2 132. Thermolife knowingly made false, misleading, disparaging and
3 defamatory statements in commerce through the Takedown Notices to Amazon
4 relating to Superhuman's Superhuman Supplement products. These statements
5 actually deceived Amazon and are likely to deceive and confuse the public (i.e.,
6 Amazon's marketplace users) into believing that Superhuman's products violate
7 patent rights (or may violate patent rights when used by customers), thereby
8 materially affecting their decision and ability to purchase Superhuman's products.

9 133. Thermolife's Takedown Notices were designed to advance its business
10 interests by removing Superhuman's listings from the Amazon marketplace, which
11 delisting would force Superhuman out of business if it refused to pay an unjustified
12 royalty to Thermolife.

13 134. Thermolife made the above-referenced false and disparaging statements
14 in commercial promotion of Thermolife's only asset (patent rights) in order to
15 unfairly compete with Superhuman.

16 135. Thermolife's false and misleading representations were sufficiently
17 disseminated to actual and prospective customers by way of the Takedown Notices so
18 as to constitute advertising.

19 136. Thermolife's false and misleading representation of Superhuman's
20 alleged infringement have misled, confused and deceived customers and prospective
21 customers as to Superhuman's reputation. Further, these misrepresentations have the
22 capacity to continue misleading, confusing, and deceiving Superhuman's customers
23 and prospective customers.

24 137. The false and misleading representations had a material effect on
25 Superhuman's customers' and prospective customers' decisions to do business with
26 Superhuman because, as a direct result of Thermolife's Notices, Amazon has replaced
27 customer visibility of products offered by Superhuman with those offered by third-
28 party sellers with higher performance ranks.

1 138. Thermolife made these false and misleading representations in interstate
2 commerce and these false and misleading representations affect interstate commerce.

3 139. On information and belief, Thermolife lacked a basis for alleging
4 infringement by the Accused Products in the Takedown Notices submitted to
5 Amazon, and Thermolife acted with the intent that the Accused Listings be removed
6 from Amazon, preventing consumers from purchasing Superhuman's products in an
7 effort to damage Superhuman and extract unwarranted "royalty" payments.

8 140. Superhuman's injuries fall within the zone of interest protected by the
9 Lanham Act because Thermolife's false advertising and disparaging
10 misrepresentations have caused Superhuman to suffer a loss of goodwill, a loss of
11 sales, and damage to its commercial and business reputation.

12 141. Thermolife's wrongful acts as alleged in this Complaint constitute false
13 or misleading representations of fact, unfair competition and product disparagement
14 under 15 U.S.C. § 1125(a).

15 142. The damage to Superhuman's economic and reputational injuries were
16 directly caused by Thermolife's false and misleading representations.

17 143. As a direct and proximate result of Thermolife's actions, constituting
18 false or misleading representation of fact, unfair competition and product
19 disparagement, Superhuman has been damaged and is entitled to monetary relief in an
20 amount to be determined at trial.

21 144. In addition, as a direct and proximate result of Thermolife's actions
22 Superhuman has suffered and continues to suffer great and irreparable injury, for
23 which Superhuman has no adequate remedy at law, including loss of goodwill and
24 Amazon seller ranking.

25 145. Thermolife will continue its actions, constituting false or misleading
26 representation of fact, unfair competition, and product disparagement, unless enjoined
27 by this Court.

28

COUNT VI**Tortious Interference With Prospective Economic****Advantage**

146. Superhuman incorporates and re-alleges the allegations of paragraphs 1 through 95 as if fully set forth herein.

147. A business relationship exists between Superhuman and Amazon and Superhuman had every expectation that this relationship would continue in full, including with respect to the Accused Products.

148. ThermoLife had actual knowledge of the business relationship between Superhuman and Amazon, which is demonstrated by Thermolife's submission to Amazon of the Takedown Notices.

149. Thermolife submitted the Takedown Notices without having a sufficient basis for alleging infringement and despite having knowledge that the Accused Products did not infringe any claims of the '531 Patent and that the '531 Patent is invalid. Thermolife intended for Amazon to remove the listing for the Accused Products and thus Thermolife's Takedown Notices were an unjustified and an intentional interference with Superhuman's relationship with Amazon.

150. In addition, Thermolife made false statements to Amazon that the "situation" with the Accused Products was "the same" as a prior, unrelated APEX proceeding involving Thermolife and a third party.

151. Superhuman has been damaged by Thermolife's interference because Amazon removed the listing for the Accused Products and Superhuman has lost significant sales each day since the listings were removed. In addition, Superhuman's Amazon seller ranking has been damaged, and Superhuman's valuable brand, reputation, and goodwill has been, and will continue to be irreparably damaged by the listing removals and unavailability of the Accused Products on Amazon.

152. Superhuman has been forced to expend significant amounts of time, effort, and money on legal fees to defend against Thermolife's unjustified conduct.

153. Superhuman is entitled to damages for ThermoLife's tortious conduct.

JURY DEMAND

Superhuman demands a trial by jury as to all claims and all issues properly triable thereby.

REQUEST FOR RELIEF

WHEREFORE, Superhuman respectfully requests the Court enter judgment in its favor and against Thermolife as follows:

A. Declaring the Asserted Patent is invalid and unenforceable;

B. Declaring that the Superhuman has not and does not infringe the Asserted Patent;

C. Permanently enjoining Thermolife and its managers, members, officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or concert with any of them, from further acts of wrongful assertion of the Asserted Patent, including against Superhuman;

D. Ordering Thermolife to affirmatively withdraw all Amazon takedown requests it has submitted to Amazon with respect to the Accused Products and take all other necessary steps to allow Superhuman to sell the Accused Products through Amazon.

E. Finding that Thermolife has violated California Business & Professions Code, § 17200, and awarding all damages and remedies available thereunder;

F. Finding that Thermolife has engaged in business disparagement in violation of the common law of California;

G. Finding that Thermolife has made a false or misleading representation and product disparagement in violation of 15 U.S.C. § 1125;

H. Finding that Thermolife has intentionally interfered with Superhuman's prospective economic advantage;

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1 I. An award of pre-judgment and post-judgment interest and costs of this
2 action against Thermolife;

3 J. Awarding damages, attorneys' fees, and costs to the fullest extent
4 provided for by United States statute and the common law of California, including
5 exemplary and punitive damages; and

6 K. Granting any such other and further relief that the Court deems just and
7 proper.

8

9 DATED: November 5, 2024

GLASER WEIL FINK HOWARD
JORDAN & SHAPIRO LLP

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By: 
LAWRENCE M. HADLEY

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of this matter.

DATED: November 5, 2024

GLASER WEIL FINK HOWARD
JORDAN & SHAPIRO LLP

By:



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