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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

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11 Attorneys for Plaintiff

12 SOFT GEL TECHNOLOGIES, INC.

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17
18 SOFT GEL TECHNOLOGIES, INC.,

19 Plaintiff,

20 v.

21 JARROW FORMULAS, INC.,

22 Defendant.
23
24
25
26
27
28

CV11 0164 SJO (MANx)

CASE NO:

**COMPLAINT FOR
DECLARATORY JUDGMENT**

(JURY TRIAL DEMANDED)

1 Soft Gel Technologies, Inc. ("Soft Gel") for its Complaint against Jarrow
2 Formulas, Inc., alleges as follows.

3 **NATURE OF THE ACTION**

4 1. This is an action for declaratory judgment of patent noninfringement
5 and invalidity.

6 **PARTIES**

7 2. Soft Gel is a corporation organized under the laws of the State of
8 California with a principal place of business at 6982 Bandini Boulevard, Los
9 Angeles, California.

10 3. Jarrow Formulas, Inc. ("Jarrow") is, on information and belief a
11 corporation organized under the laws of the State of California with a principal
12 place of business at 1824 Robertson Boulevard, Los Angeles, California.

13 **JURISDICTION & VENUE**

14 4. This action arises under the federal Declaratory Judgment Act, 28
15 U.S.C. § 2201, et seq., and under the patent laws of the United States, 35 U.S.C.
16 § 1, et seq.

17 5. This Court has jurisdiction over this action pursuant to 28 U.S.C.
18 §§ 1331, 1338(a), 2201 and 2202.

19 6. Jarrow claims to own United States Patent No. 7,588,786, entitled
20 "Eutectic-Based Self-Nanoemulsified Drug Delivery System" ("the '786 Patent").
21 The '786 Patent issued on September 15, 2009, and names as inventors Mansoor
22 Khan and Sami Nazzal.

23 7. On or about September 23, 2009, Jarrow's counsel wrote to Soft Gel
24 on behalf of Jarrow, asserting that Soft Gel "has been infringing, and continues to
25 infringe the '786 Patent by making, using, selling, and/or offering to sell certain
26 CoQ₁₀ products, including its CoQsol-CF and CoQsol-CF Translucent
27 formulations"
28

COUNT II

DECLARATION OF PATENT INVALIDITY

15. Soft Gel repeats and incorporates by reference paragraphs 1 to 14 of this Complaint as if fully set forth herein.

16. The '786 Patent is invalid for failure to meet one or more of the requirements for patentability as set forth in the patent laws of the United States, including 35 U.S.C. §§ 102, 103 and/or 112. The applicant represented to the Patent Office during prosecution that "eutectic reactions are nearly impossible to predict" and that "the eutectic effect is completely dependent on the relative proportions of all ingredients in the mixture." (Emphasis in original). Accordingly, and without limitation, if the claims of the '786 Patent are construed to cover Soft Gel's products, then the claims of the '786 Patent are invalid for lack of an enabling disclosure.

17. Soft Gel is entitled to a declaratory judgment that one or more claims of the '786 Patent are invalid.

WHEREFORE, Soft Gel prays for judgment as follows:

1. Declaring the Soft Gel has not infringed any claim of the '786 Patent;
2. Declaring that one or more claims of the '786 Patent are invalid;
3. Declaring that this is an exceptional case under 35 U.S.C. § 285 and awarding Soft Gel its attorneys fees, costs and other expenses incurred in this action; and

4. Awarding Soft Gel such further relief as the Court deems just and equitable.

///

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///

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted,

DATED: January 6, 2011

By: 

Sri K. Sankaran
sankaran.sri@dorsey.com
John Baker
baker.john@dorsey.com
Bryan M. McGarry
mcgarry.bryan@dorsey.com

Attorneys for Plaintiff
Soft Gel Technologies, Inc.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Soft Gel Technologies, Inc.	DEFENDANTS Jarow Formulas, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) John Baker and Bryan McGarry, Dorsey & Whitney LLP, 38 Technology Drive, Ste. 100, Irvine, CA 92618, 949-932-3600; and Sri Sankaran, Dorsey & Whitney LLP, 50 S. 6th St., Ste. 1500, Minneapolis, MN 55402, 612-340-2600	Attorneys (If Known) Lawrence C. Jones, Law Offices of Lawrence Jones, 34 Hurricane St., Marina Del Rey, CA 90292, 310-428-7869; and Mark Giarratana and Thomas Rechen, McCarter & English LLP, City Place 1, 185 Asylum St., Hartford, CT 06103, 860-275-6719

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>		PTF DEF		PTF DEF	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): _____ <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ _____
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 U.S.C. Section 2201: Declaratory judgment of patent noninfringment /invalidity.

VII. NATURE OF SUIT (Place an X in one box only.) <table style="width:100%; border: none;"> <tr> <td style="width:16.6%; vertical-align: top;"> OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. 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FOR OFFICE USE ONLY: Case Number: _____

CV11 0164

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
 If yes, list case number(s): 2:10-cv-08301-PSG-JC (Jarrow Formulas v. Now Health Group)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☒ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Buye N. Wang Date January 6, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address:

Sri, Sankaran (SBN 236584)
 sankaran.sri@dorsey.com
 DORSEY & WHITNEY LLP
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 Minneapolis, MN 55402

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 Bryan McGarry (SBN 258156)
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 DORSEY & WHITNEY LLP
 38 Technology Drive, Suite 100
 Irvine, CA 92618-5310

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Soft Gel Technologies, Inc.,

PLAINTIFF(S)

v.

Jarrow Formulas, Inc.,

DEFENDANT(S).

CASE NUMBER

CV11 0164 \$10 (MANX)

SUMMONS

TO: DEFENDANT(S): Jarrow Formulas, Inc., 1824 South Robertson Boulevard, Los Angeles, California
90035

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Sri K. Sankaran, whose address is Dorsey & Whitney LLP, 50 South 6th Street, Suite 1500, Minneapolis, MN 55402. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

CHRISTOPHER POWERS

JAN - 6 2011

Dated: _____

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

ORIGINAL