

COPY

1 Tyler J. Woods (State Bar No. 232464)  
 twoods@trialnewport.com  
 2 Richard H. Hikida (State Bar No. 196149)  
 rhikida@trialnewport.com  
 3 Scott J. Ferrell (State Bar No. 202091)  
 sferrell@trialnewport.com  
 4 **NEWPORT TRIAL GROUP**  
 A Professional Corporation  
 5 895 Dove Street, Suite 425  
 Newport Beach, CA 92660  
 6 Tel: (949) 706-6464  
 Fax: (949) 706-6469

7 Attorneys for Plaintiff

FILED  
 2012 OCT 16 AM 10:37  
 CLERK, U.S. DISTRICT COURT  
 CENTRAL DIST. OF  
 LOS ANGELES

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**  
 11

12 THE TAWNSAURA GROUP, LLC,

13 Plaintiff,

14 vs.

15 SERIOUS NUTRITION SOLUTIONS,  
 16 LLC,

17 Defendant

Case No. SACV12-1396 SJO(AGRx)

**FIRST AMENDED COMPLAINT FOR  
 PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1 Plaintiff The Tawnsaura Group, LLC (“Plaintiff”) hereby alleges for its First  
2 Amended Complaint against Serious Nutrition Solutions, LLC (“Defendant”), on  
3 personal knowledge as to its own activities and on information and belief as to the  
4 activities of others, as follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under the  
7 laws of Nevada, with a registered office at 50 West Liberty Street, Suite 1100, Reno,  
8 Nevada 89501.

9 2. Plaintiff is the owner and assignee of United States Patent No. 5,874,471  
10 (“the ‘471 patent”) titled “Orthomolecular Medical Use of L-Citrulline for  
11 Vasoprotection, Relaxative Smooth Muscle Tone and Cell Protection,” and United  
12 States Patent No. 6,028,107 (“the ‘107 patent”) titled “Orthomolecular Medical Use of  
13 L-Citrulline for Vasoprotection, Relaxative Smooth Muscle Tone and Cell Protection,”  
14 and Plaintiff licenses the ‘471 patent and the ‘107 patent to at least one third-party and  
15 is in negotiations to license the patents to numerous other parties.

16 3. Upon information and belief, Defendant Serious Nutrition Solutions, LLC  
17 is a company organized and existing under the laws of Virginia with a principal place  
18 of business at 3801 U.S. Highway 29 in Danville, Virginia, 24540-1421.

19 **II. JURISDICTION AND VENUE**

20 4. This is an action for patent infringement arising under the patent laws of  
21 the United States, Title 35 of the United States Code. Accordingly, this Court has  
22 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

23 5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

24 6. This Court has personal jurisdiction over Defendant. Defendant, directly  
25 or through intermediaries (including distributors, retailers, and others), ships,  
26 distributes, offers for sale, sells, and advertises its nutritional supplement products in  
27 the United States, the State of California, and the Central District of California,  
28 including the product “Citrulline Malate.” Defendant has purposefully and voluntarily

1 placed the product Citrulline Malate into the stream of commerce with the expectation  
2 that it will be purchased in the Central District of California.

3 **III. THE DEFENDANT'S INFRINGING PRODUCT**

4 7. The label and/or advertisements for Defendant's product "Citrulline  
5 Malate" state that the product contains, inter alia, the ingredient "Citrulline Malate" (3  
6 grams per serving) used for "enhancing pumps and cell volumization." The product  
7 "Citrulline Malate" contains the ingredient l-citrulline.

8 8. As set forth herein, this product infringes the claimed methods of the '471  
9 patent and the '107 patent, and is therefore referred to herein as "the product that  
10 infringes the claimed methods."

11 9. Defendant has committed the tort of patent infringement within the State  
12 of California, and more particularly, within the Central District of California, by virtue  
13 of the fact that Defendant has shipped, distributed, offered for sale, sold, and advertised,  
14 and continues to ship, distribute, offer for sale, sell, and advertise the product that  
15 infringes the claimed methods in this District.

16 **IV. THE DEFENDANT'S INFRINGEMENTS**

17 10. Defendant's employees, agents, representatives and other persons  
18 sponsored by or who endorse Defendant and Defendant's products in advertising and  
19 marketing activities, have taken, used, and orally administered the product that  
20 infringes the claimed methods which has the effect, without limitation, of increasing the  
21 plasma level of arginine in the persons taking the product from a low or normal fasting  
22 level to a level which is up to three times an average overnight fasting level and  
23 increasing the plasma concentration of arginine in the persons taking the product from a  
24 low or normal fasting concentration to a level which is up to three times an average  
25 overnight fasting arginine level of about 90 mu.mole per liter of plasma. These persons  
26 included persons who, without limitation, were in good health, were in a condition of  
27 increased or continuing brain or neural activities, or were in a condition of increased or  
28 continuing muscular activities. Defendant has encouraged and/or is aware of these

1 persons' oral administration of the product that infringes the claimed methods for these  
2 purposes, and these persons are acting under Defendant's direction and control.  
3 Therefore, Defendant practices the methods as set forth in the '471 patent and the '107  
4 patent and is a direct infringer of the patents.

5 11. End-users of Defendant's product that infringes the claimed methods are  
6 also direct infringers of the '471 patent and the '107 patent, because they have taken,  
7 used, and orally administered the product that infringes the claimed methods which has  
8 the effect, without limitation, of increasing the plasma level of arginine in the persons  
9 taking the product from a low or normal fasting level to a level which is up to three  
10 times an average overnight fasting level and/or increasing the plasma concentration of  
11 arginine in the persons taking the product from a low or normal fasting concentration to  
12 a level which is up to three times an average overnight fasting arginine level of about  
13 90 mu.mole per liter of plasma. These persons included persons who, without  
14 limitation, were in good health, were in a condition of increased or continuing brain or  
15 neural activities, or were in a condition of increased or continuing muscular activities.  
16 Therefore, they practice the methods as set forth in the '471 patent and the '107 patent.

17 12. Defendant's labels and advertising for the product that infringes the  
18 claimed methods explain the elements and essential elements of the methods disclosed  
19 in the '471 patent and the '107 patent to end-users and encourage, urge, and induce the  
20 product's end-users to purchase and orally administer the product to practice those  
21 methods, and end-users do practice those methods. Defendant has therefore  
22 specifically intended to cause these end-users to directly infringe the claimed methods  
23 of the patents, and has urged them to do so.

24 13. Defendant's product that infringes the claimed methods is not suitable for  
25 non-infringing uses, and none of Defendant's labels or advertisements for the product  
26 disclose any uses for the product nor for the citrulline in the product that do not infringe  
27 upon the methods disclosed in the '471 patent and the '107 patent. The inclusion of the  
28

1 citrulline content in the product is, in fact, material to practicing the methods disclosed  
2 in the '471 patent and the '107 patent.

3 14. Defendant has knowledge that its product that infringes the claimed  
4 methods is especially adapted by end-users of the product for the practicing of the  
5 methods disclosed in the '471 patent and '107 patent, and, indeed, Defendant  
6 encourages, urges, and induces the product's end-users to purchase and orally  
7 administer the product to practice those methods, and has done so in the past.

8 15. Defendant has intentionally and knowingly induced, encouraged, and  
9 urged end-users of the product that infringes the claimed methods to purchase and  
10 orally administer the product for the purpose, without limitation, of increasing the  
11 plasma level of arginine in the persons taking the product from a low or normal fasting  
12 level to a level which is up to three times an average overnight fasting level and  
13 increasing the plasma concentration of arginine in the persons taking the product from a  
14 low or normal fasting concentration to a level which is up to three times an average  
15 overnight fasting arginine level of about 90 mu.mole per liter of plasma, including by  
16 end-users who, without limitation, were in good health, were in a condition of increased  
17 or continuing brain or neural activities, or were in a condition of increased or  
18 continuing muscular activities.

19 16. On information and belief, Defendant had actual, first-hand knowledge of  
20 the '471 patent and the '107 patent as early as the time Defendant launched the product  
21 that infringes the claimed methods in the marketplace. Defendant employs and engages  
22 sophisticated, experienced legal counsel with expertise in patent law. Defendant,  
23 through its counsel, conducts or should conduct due diligence on the potential for  
24 Defendant's products to infringe on patents and knew or should have known that the  
25 product that infringes the claimed methods actually infringes or could infringe on the  
26 '471 patent and '107 patent, but Defendant decided to infringe the patents anyway or  
27 ignored the risk of infringement.

28 ///

1           17. In the alternative, Plaintiff pleads that Defendant subjectively believed at  
2 the time Defendant launched the product that infringes the claimed methods in the  
3 marketplace that there is or was a high probability of the fact that patents existed that  
4 covered the use of citrulline as in the products, and that Defendant took deliberate  
5 actions to avoid confirming that fact, including not conducting due diligence as to  
6 potential patent infringements. Defendant therefore willfully blinded itself to the  
7 infringing nature of its sales of the product that infringes the claimed methods.

8           18. At a minimum, Defendant became aware of the '471 patent and the '107  
9 patent at the time of the filing of the initial Complaint in this matter and the receipt of  
10 Plaintiff's counsel's letter regarding the suit. Defendant has not ceased its own direct  
11 infringement, contributory infringement, or inducement of infringements by end-users  
12 despite such knowledge.

13           19. The earliest exact date Defendant obtained knowledge of the '471 patent  
14 and the '107 patent is within the exclusive possession and control of Defendant.  
15 However, Defendant specifically induces end-users to use its product, and particularly  
16 the citrulline component in the product, for getting "pumps" and increasing muscle  
17 volume, and Defendant knows and intends that end-users achieve those objectives by  
18 practicing the methods as set forth in the '471 and '107 patents. This is why Defendant  
19 includes citrulline in its product – for the purposes of improving of the health of end-  
20 users to increase the plasma level of arginine in end-users to a level from a low or  
21 normal fasting level to a level which is up to three times an average overnight fasting  
22 level, and improving the health of end-users to increase the plasma concentration of  
23 arginine in the subject to a level from a low or normal fasting concentration to a level  
24 which is up to three times an average overnight fasting arginine level of about 90  
25 mu.mole per liter of plasma – and Defendant knows that end-users purchase and ingest  
26 the product, and particularly the citrulline content of the product, for those purposes.  
27 Defendant's infringing activities have not stopped despite its knowledge of the patents'  
28 existence.





1 product from a low or normal fasting level to a level which is up to three times an  
2 average overnight fasting level. These persons included persons who, without  
3 limitation, were in good health, were in a condition of increased or continuing brain or  
4 neural activities, or were in a condition of increased or continuing muscular activities.  
5 Therefore, they practice the methods as set forth in the '471 patent.

6 25. Defendant's labels and advertising for the product that infringes the  
7 claimed methods explain the elements or essential elements of the methods disclosed in  
8 the '471 patent to end-users and encourage, urge, and induce the products' end-users to  
9 purchase and orally administer the products to practice those methods. Defendant's  
10 product that infringes the claimed methods is not suitable for non-infringing uses, and  
11 none of Defendant's labels or advertisements for the product disclose any uses for the  
12 relevant ingredients in the product that have a use that does not infringe upon the  
13 methods disclosed in the '471 patent. Defendant has knowledge that its product that  
14 infringes the claimed methods is especially adapted by end-users of the product for the  
15 practicing of the method disclosed in the '471 patent, as Defendant encourages, urges,  
16 and induces the product's end-users to purchase and orally administer the product to  
17 practice those methods, and has done so in the past. Defendant therefore is liable for  
18 contributory infringement of one or more claims of the '471 patent.

19 26. Defendant has intentionally and knowingly induced, encouraged, and  
20 urged end-users of the product that infringes the claimed methods to purchase and  
21 orally administer the product for the purpose, without limitation, of increasing the  
22 plasma level of arginine in the persons taking the product from a low or normal fasting  
23 level to a level which is up to three times an average overnight fasting level, including  
24 by end-users who, without limitation, were in good health, were in a condition of  
25 increased or continuing brain or neural activities, or were in a condition of increased or  
26 continuing muscular activities. On information and belief, Defendant had actual, first-  
27 hand knowledge of the '471 patent as early as the time Defendant launched the product  
28 that infringes the claimed methods in the marketplace. In the alternative, and on



1 information and belief, Plaintiff pleads that Defendant subjectively believed at the time  
2 Defendant launched the product that infringes the claimed methods in the marketplace  
3 that there is or was a high probability of the fact that patents existed that covered the  
4 use of citrulline as in the product that infringes the claimed methods, and that  
5 Defendant took deliberate actions to avoid confirming that fact. Defendant therefore  
6 willfully blinded itself to the infringing nature of its sales of the product that infringes  
7 the claimed methods. At a minimum, Plaintiff pleads that Defendant became aware of  
8 the '471 patent at the time of the filing of the initial Complaint in this matter and the  
9 issuance of a correspondence from Plaintiff's counsel regarding the suit. Defendant has  
10 not ceased its own contributory infringement or inducement of infringements by end-  
11 users despite such knowledge. Defendant is therefore liable for induced infringement  
12 of one or more of claims of the '471 patent.

13 27. Defendant's activities have been without express or implied license by  
14 Plaintiff.

15 28. The infringement by Defendant has been and continues to be willful, since  
16 the infringement has not ceased, particularly after the filing of the initial suit in this  
17 matter.

18 29. As a result of Defendant's acts of infringement, Plaintiff has suffered and  
19 will continue to suffer damages in an amount to be proved at trial.

20 30. As a result of Defendant's acts of infringement, Plaintiff has been and will  
21 continue to be irreparably harmed by Defendant's infringement and inducement, which  
22 will continue unless Defendant is enjoined by this Court.

23 31. Plaintiff believes that Defendant's past infringement and/or continuing  
24 infringement has been deliberate and willful, and that this case is therefore an  
25 exceptional case, which warrants an award of treble damages and attorneys' fees in  
26 accordance with 35 U.S.C. § 285.

27 ///

28 ///

1 **VI. SECOND CAUSE OF ACTION**

2 **Infringement of U.S. Patent No. 6,028,107**

3 32. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
4 of this First Amended Complaint as if fully set forth herein.

5 33. Defendant has in the past and still is literally infringing or infringing under  
6 the doctrine of equivalents, directly and indirectly through contributory and/or induced  
7 infringement, one or more claims of the '107 patent by making, using, selling, and  
8 offering for sale nutritional supplements embodying the patented invention, and will  
9 continue to do so unless enjoined by this Court.

10 34. The claims of the '107 patent infringed by Defendant include claims 1, 2,  
11 15, 16, 18, and 19.

12 35. Examples of Defendant's direct infringement includes, without limitation,  
13 the fact that Defendant's employees, agents, representatives and other persons  
14 sponsored by or who endorse Defendant and Defendant's products in advertising and  
15 marketing activities, have taken, used, and orally administered the product that  
16 infringes the claimed methods which has the effect, without limitation, of increasing the  
17 plasma concentration of arginine in the persons taking the product from a low or normal  
18 fasting concentration to a level which is up to three times an average overnight fasting  
19 arginine level of about 90 mu.mole per liter of plasma. These persons included persons  
20 who, without limitation, were in good health, were in a condition of increased or  
21 continuing brain or neural activities, or were in a condition of increased or continuing  
22 muscular activities. Defendant has encouraged and/or is aware of these persons' oral  
23 administration of the product that infringes the claimed methods for these purposes,  
24 these persons are acting under Defendant's direction and control, and therefore  
25 Defendant is directly practicing the methods set forth in the '107 patent.

26 36. End-users of Defendant's product that infringes the claimed methods are  
27 also direct infringers of the '107 patent, because they have taken, used, and orally  
28 administered the product that infringes the claimed methods which has the effect,

1 without limitation, of increasing the plasma concentration of arginine in the persons  
2 taking the product from a low or normal fasting concentration to a level which is up to  
3 three times an average overnight fasting arginine level of about 90 mu.mole per liter of  
4 plasma. These persons included persons who, without limitation, were in good health,  
5 were in a condition of increased or continuing brain or neural activities, or were in a  
6 condition of increased or continuing muscular activities. Therefore, they practice the  
7 methods as set forth in the '107 patent.

8 37. Defendant's labels and advertising for the product that infringes the  
9 claimed methods explain the elements or essential elements of the methods disclosed in  
10 the '107 patent to end-users and encourage, urge, and induce the products' end-users to  
11 purchase and orally administer the products to practice those methods. Defendant's  
12 product that infringes the claimed methods is not suitable for non-infringing uses, and  
13 none of Defendant's labels or advertisements for the product disclose any uses for the  
14 relevant ingredients in the product that have a use that does not infringe upon the  
15 methods disclosed in the '107 patent. Defendant has knowledge that its product that  
16 infringes the claimed methods is especially adapted by end-users of the product for the  
17 practicing of the method disclosed in the '107 patent, as Defendant encourages, urges,  
18 and induces the product's end-users to purchase and orally administer the product to  
19 practice those methods, and has done so in the past. Defendant therefore is liable for  
20 contributory infringement of one or more claims of the '107 patent.

21 38. Defendant has intentionally and knowingly induced, encouraged, and  
22 urged end-users of the product that infringes the claimed methods to purchase and  
23 orally administer the product for the purpose, without limitation, of increasing the  
24 plasma concentration of arginine in the persons taking the product from a low or normal  
25 fasting concentration to a level which is up to three times an average overnight fasting  
26 arginine level of about 90 mu.mole per liter of plasma, including by end-users who,  
27 without limitation, were in good health, were in a condition of increased or continuing  
28 brain or neural activities, or were in a condition of increased or continuing muscular

1 activities. On information and belief, Defendant had actual, first-hand knowledge of  
2 the '107 patent as early as the time Defendant launched the product that infringes the  
3 claimed methods in the marketplace. In the alternative, and on information and belief,  
4 Plaintiff pleads that Defendant subjectively believed at the time Defendant launched the  
5 product that infringes the claimed methods in the marketplace that there is or was a  
6 high probability of the fact that patents existed that covered the use of citrulline as in  
7 the product that infringes the claimed methods, and that Defendant took deliberate  
8 actions to avoid confirming that fact. Defendant therefore willfully blinded itself to the  
9 infringing nature of its sales of the product that infringes the claimed methods. At a  
10 minimum, Plaintiff pleads that Defendant became aware of the '107 patent at the time  
11 of the filing of the initial Complaint in this matter and the issuance of a correspondence  
12 from Plaintiff's counsel regarding the suit. Defendant has not ceased its contributory  
13 infringement or inducement of infringements by end-users despite such knowledge.  
14 Defendant is therefore liable for induced infringement of one or more of claims of the  
15 '107 patent.

16 39. Defendant's activities have been without express or implied license by  
17 Plaintiff.

18 40. The infringement by Defendant has been and continues to be willful, since  
19 the infringement has not ceased, particularly after the filing of the initial suit in this  
20 matter.

21 41. As a result of Defendant's acts of infringement, Plaintiff has suffered and  
22 will continue to suffer damages in an amount to be proved at trial.

23 42. As a result of Defendant's acts of infringement, Plaintiff has been and will  
24 continue to be irreparably harmed by Defendant's infringement and inducement, which  
25 will continue unless Defendant is enjoined by this Court.

26 43. Plaintiff believes that Defendant's past infringement and/or continuing  
27 infringement has been deliberate and willful, and that this case is therefore an  
28

1 exceptional case, which warrants an award of treble damages and attorneys' fees in  
2 accordance with 35 U.S.C. § 285.

3 **VII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as  
5 follows:

6 1. A declaration that Defendant has infringed the '471 patent and the '107  
7 patent under 35 U.S.C. §§ 271 *et seq.*;

8 3. That injunctions, preliminary and permanent, be issued by this Court  
9 restraining Defendant, its respective officers, agents, servants, directors, and employees,  
10 and all persons in active concert or participation with each, from directly or indirectly  
11 infringing, or inducing or contributing to the infringement by others of, the '471 patent  
12 and the '107 patent;

13 4. That Defendant be required to provide to Plaintiff an accounting of all  
14 gains, profits, and advantages derived by Defendant's infringement of the '471 patent  
15 and the '107 patent, and that Plaintiff be awarded damages adequate to compensate  
16 Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. §  
17 284;

18 5. That the damages awarded to Plaintiff with regard to the '471 patent and  
19 the '107 patent be increased up to three times, in view of Defendant's willful  
20 infringement, in accordance with 35 U.S.C. § 284;

21 6. That this case be declared to be exceptional in favor of Plaintiff under 35  
22 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other  
23 expenses incurred in connection with this action;

24 7. That Plaintiff be awarded its interest and costs of suit incurred in this  
25 action;

26 8. Compensatory damages;


27 9. Punitive damages; and

28 ///

1 10. That Plaintiff be awarded such other and further relief as this Court may  
2 deem just and proper.

3  
4 Respectfully submitted,  
5 NEWPORT TRIAL GROUP  
6 A Professional Corporation

7 Dated: October 15, 2012

8   
By: Tyler J. Woods  
Attorneys for Plaintiff

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

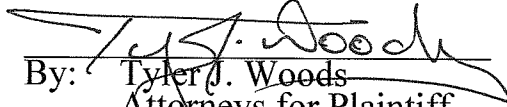


**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,  
NEWPORT TRIAL GROUP  
A Professional Corporation

Dated: October 15, 2012

  
By: Tyler J. Woods  
Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)

Tyler J Woods, Bar No. 232464  
Scott J Ferrell, Bar No. 202091  
NEWPORT TRIAL GROUP  
895 Dove Street, Suite 425, Newport Beach, CA 92660

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

THE TAWNSAURA GROUP, LLC

PLAINTIFF(S),

v.

SERIOUS NUTRITION SOLUTIONS,  
LLC

DEFENDANT(S).

CASE NUMBER

SACV12-1396 SJO(AGRx)

**PROOF OF SERVICE - ACKNOWLEDGMENT  
OF SERVICE**

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of ORANGE, State of California, and not a party to the above-entitled cause. On October 15, 2012, I served a true copy of FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

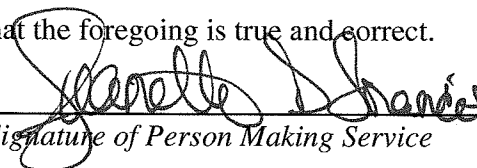
by personally delivering it to the person (s) indicated below in the manner as provided in FRCivP 5(b); by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: (list names and addresses for person(s) served. Attach additional pages if necessary.)

Place of Mailing: Steven Wood, agent, Serious Nutrition Solutions, LLC, 2965 Franklin Turnpike, Danville, VA 24540

Executed on October 15, 2012 at Newport Beach, California

Please check one of these boxes if service is made by mail:

- I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.
- I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
- I hereby certify under the penalty of perjury that the foregoing is true and correct.

  
Signature of Person Making Service

**ACKNOWLEDGEMENT OF SERVICE**

I, \_\_\_\_\_, received a true copy of the within document on \_\_\_\_\_.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Party Served*