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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 THERMOLIFE INTERNATIONAL, LLC, Case No. **'13CV0653 WQHBGS**

12 Plaintiff,

13 vs.

14 METABOLIC RESPONSE MODIFIERS,  
15 INC. d/b/a MRM; and ULTIMATE  
SPORT NUTRITION,

16 Defendants

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

1 Plaintiff Thermolife International, LLC ("Plaintiff") hereby alleges for its  
2 Complaint against Metabolic Response Modifiers, Inc. d/b/a MRM and Ultimate Sport  
3 Nutrition ("Defendants"), on personal knowledge as to its own activities and on  
4 information and belief as to the 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 Arizona, with a place of business at 1811 Ocean Front Walk in Venice,  
8 California, 90291.

9 2. Plaintiff is the exclusive licensee of the following United States Patents:

- 10 a. Patent No. 6,646,006, titled "Enhancement of Vascular Function By  
11 Modulation of Endogenous Nitric Oxide Production or Activity";  
12 b. Patent No. 6,117,872, titled "Enhancement of Exercise Performance by  
13 Augmenting Endogenous Nitric Oxide Production or Activity";  
14 c. Patent No. 5,891,459, titled "Enhancement of Vascular Function By  
15 Modulation of Endogenous Nitric Oxide Production or Activity"; and  
16 d. Patent No. 7,452,916, titled "Enhancement of Vascular Function By  
17 Modulation of Endogenous Nitric Oxide Production or Activity."

18 3. The above patents are owned by The Board of Trustees of the Leland  
19 Stanford Junior University ("Stanford University") and Plaintiff exclusively licenses  
20 the patents from Stanford University.

21 4. The above patents are referred to herein as the "patents in suit."

22 5. Plaintiff has been given the right by Stanford University to institute suit  
23 with respect to infringement of the patents in suit, including this suit against  
24 Defendants.

25 6. Metabolic Response Modifiers, Inc. d/b/a MRM is a corporation organized  
26 and existing under the laws of California with a principal place of business at 2665  
27 Vista Pacific Drive in Oceanside, California, 92056.

1           7.     Ultimate Sport Nutrition is an entity organized and existing under the laws  
2 of California with places of business at 7710 Balboa Avenue in San Diego, CA, 92111  
3 and at 310 3<sup>rd</sup> Avenue, Suite B10 in Chula Vista, CA, 91910.

## 4                               **II.     JURISDICTION AND VENUE**

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

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

9           10.    This Court has personal jurisdiction over Defendants. By way of example  
10 and without limitation, Defendants, directly or through intermediaries (including  
11 distributors, retailers, and others), make, manufacture, ship, distribute, advertise,  
12 market, offer for sale, and/or sell dietary supplement products that infringe on one or  
13 more claims of the patents in suit (hereinafter the “accused products”), which include  
14 without limitation products sold under the “Driven” brand name, in the United States,  
15 the State of California, and the Southern District of California.

16          11.    By way of further example and without limitation, Defendants’ principal  
17 places of business are in this District.

18          12.    By way of further example and without limitation, Defendants have  
19 purposefully and voluntarily placed the accused products into the stream of commerce  
20 with the expectation that they will be purchased in the Southern District of California,  
21 and the products are actually purchased in the Southern District of California.

## 22                               **III.   THE DEFENDANT’S INFRINGEMENTS**

23          13.    Defendants have committed the tort of patent infringement within the State  
24 of California, and more particularly, within the Southern District of California, by  
25 virtue of the fact that Defendants have formulated, made, manufactured, shipped,  
26 distributed, advertised, offered for sale, and/or sold the accused products in this District,  
27 and continue to do so.

1 **A. DIRECT INFRINGEMENTS**

2 14. Defendants' employees, agents, representatives and other persons  
3 sponsored by or who endorse Defendants and Defendants' products in advertising and  
4 marketing activities, have taken, used, and orally administered the accused products.

5 15. The accused products are formulated, made, manufactured, shipped,  
6 distributed, advertised, offered for sale, and sold by Defendants to include certain  
7 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
8 of one or more of the patents in suit.

9 16. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendants to include specific  
11 ingredients for certain purposes that, by virtue of their inclusion in the products for such  
12 purposes, infringe one or more claims of one or more of the patents in suit, and as a  
13 result, when Defendants' employees, agents, representatives and other persons  
14 sponsored by or who endorse Defendants and Defendants' products in advertising and  
15 marketing activities orally administer the accused products, they are practicing the  
16 methods disclosed in those claims.

17 17. These infringing ingredients, and/or combinations thereof, include, without  
18 limitation, Arginine Alpha-Keto-Glutarate and Citrulline Malate, as set forth on  
19 Defendants' labels for Driven.

20 18. The purposes for which these ingredients are included in the accused  
21 products are, without limitation, to enhance nitric oxide production, to improve nitric  
22 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to  
23 enhance physical performance.

24 19. For instance, as just as an example, the labels and/or advertisements for  
25 Driven states that it is formulated to "increase, energy, stamina, and endurance."

26 20. Defendants have encouraged and/or are aware of the fact that their  
27 employees, agents, representatives and other persons sponsored by Defendants or who  
28 endorse Defendants and Defendants' products in advertising and marketing activities

1 orally administer the accused products and practice the methods disclosed in one or  
2 more claim of one or more of the patents in suit, and these employees, agents,  
3 representatives and other persons sponsored by Defendants or who endorse Defendants  
4 and Defendants' products in advertising and marketing activities are acting under  
5 Defendants' direction and control when practicing those methods.

6 21. Therefore, Defendants are direct infringer of one or more claims of one or  
7 more of the patents in suit, and Defendants practice the methods as set forth in one or  
8 more claims of one or more of the patents in suit.

9 **B. INDIRECT INFRINGEMENTS**

10 22. End-users of Defendants' accused products are also direct infringers of one  
11 or more claims of one or more of the patents in suit.

12 23. End-users of Defendants' accused products have taken, used, and orally  
13 administered the accused products.

14 24. The accused products are formulated, made, manufactured, shipped,  
15 distributed, advertised, offered for sale, and/or sold by Defendants to include certain  
16 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
17 of one or more of the patents in suit.

18 25. The accused products are formulated, made, manufactured, shipped,  
19 distributed, advertised, offered for sale, and/or sold by Defendants to include specific  
20 ingredients for certain purposes that, because of their inclusion in the products for such  
21 purposes, infringe one or more claims of one or more of the patents in suit, and as a  
22 result, when end-users of Defendants' accused products orally administer the accused  
23 products, they are practicing the methods disclosed in those claims.

24 26. Defendants' labels and advertising for the accused products explain the  
25 elements and essential elements of one or more of the methods disclosed in the patents  
26 in suit, and those labels and advertising statements encourage, urge, and induce the  
27 accused products' end-users to purchase and orally ingest the products to practice those  
28 methods, and end-users do practice those methods.

1       27. Defendants have therefore specifically intended to cause these end-users to  
2 directly infringe the claimed methods of these patents, and have in fact urged them to  
3 do so.

4       28. The accused products are not suitable for non-infringing uses, and none of  
5 Defendants' labels or advertisements for the accused products disclose any uses for the  
6 products, nor for the compounds disclosed in the claimed methods of the patents in suit,  
7 that do not infringe upon such methods.

8       29. The inclusion of the specific infringing compounds in the products is  
9 material to practicing such methods.

10       30. Defendants have knowledge that the accused products are especially  
11 adapted by end-users of the products for the practicing of such methods, and, indeed,  
12 Defendants encourage, urge, and induce the accused products' end-users to purchase  
13 and orally administer the accused products to practice such methods, and have done so  
14 in the past.

15       31. Defendants have intentionally and knowingly induced, encouraged, and  
16 urged end-users of the accused products to purchase and orally administer the accused  
17 products for the purposes of practicing the claimed methods, by having them orally  
18 ingest the compounds disclosed in such claims.

19       32. Defendants have knowledge of the fact that the accused products,  
20 particularly as administered, infringe on one or more claims of the patents in suit.

21       33. Defendants have direct, firsthand knowledge of the patents in suit.

22       34. For example and without limitation, Defendants have had knowledge of  
23 the patents in suit since November 2006, when an ongoing settlement of a patent  
24 infringement case relating to at least some of the patents in suit against Herbalife, a  
25 well-known company in Defendants' industry, was announced in press releases issued  
26 in a highly publicized manner. Defendants' employees, agents, and representatives saw  
27 the press releases and were aware of the settlement and thus the patents in suit.  
28

1        35. By way of further example and without limitation, Defendant Ultimate  
2 Sport Nutrition offers to sell and sells products manufactured and sold by Vitality  
3 Research Labs which marks on its label the patents in suit. Thus, Defendant Ultimate  
4 Sport Nutrition has knowledge of the patents in suit.

5        36. By way of further example and without limitation, Defendant MRM has  
6 sold its products through retailers, including online retailers, and those retailers have  
7 sold other companies' products whose labels and/or advertisements have been  
8 prominently marked with one or more of the patents in suit, by patent number,  
9 including without limitation the products manufactured and sold by Herbalife, Daily  
10 Wellness, and Vitality Research Labs. Defendant MRM's employees, agents, and  
11 representatives have seen these labels and advertisements and, thus, Defendant MRM  
12 has knowledge of the patents in suit.

13        37. Defendants have brazenly and willfully decided to infringe the patents in  
14 suit despite knowledge of the patents' existence and their knowledge of the accused  
15 products' infringements of the patents.

16        38. At a minimum, and in the alternative, Plaintiff pleads that Defendants  
17 willfully blinded themselves to the infringing nature of the accused products' sales.

18        39. Defendants have not ceased their own direct infringements, nor their  
19 contributory infringements or inducements of infringements by end-users, despite their  
20 knowledge of the patents in suit and their infringing activities with respect to the  
21 patents in suit.

22        40. Plaintiff also believes Defendants, or one of them, are infringing on one or  
23 more claims of United States Patent No. 5,428,070 and Patent No. 5,945,452, patents  
24 which Defendants have had prior knowledge of and are also licensed exclusively to  
25 Plaintiff by Stanford University, to include the right to sue for infringement, and  
26 Plaintiff will seek to amend this Complaint once facts confirming that belief are  
27 ascertained.

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1 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
2 of United States Patent No. 6,646,006.

3 48. The accused products are formulated, made, manufactured, shipped,  
4 distributed, advertised, offered for sale, and sold by Defendants to include specific  
5 ingredients for purposes that, by their inclusion in the products for such purposes,  
6 infringe one or more claims of United States Patent No. 6,646,006, and as a result,  
7 when end-users of Defendants' accused products orally administer the accused  
8 products, they are practicing the methods disclosed in one or more claims of that patent.

9 49. Defendants' labels and advertising for the accused products explain the  
10 elements and essential elements of the methods disclosed in United States Patent No.  
11 6,646,006, and those labels and advertising statements encourage, urge, and induce the  
12 accused products' end-users to purchase and orally ingest the products to practice those  
13 methods, and end-users do practice those methods.

14 50. Defendants have therefore specifically intended to cause these end-users to  
15 directly infringe the claimed methods of United States Patent No. 6,646,006, and have  
16 in fact urged them to do so.

17 51. The accused products are not suitable for non-infringing uses, and none of  
18 Defendants' labels or advertisements for the accused products disclose any uses for the  
19 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
20 upon such methods.

21 52. The inclusion of these specific infringing compounds in the products is  
22 material to practicing such methods.

23 53. Defendants have knowledge that the accused products are especially  
24 adapted by end-users of the products for the practicing of such methods, and, indeed,  
25 Defendants encourage, urge, and induce the accused products' end-users to purchase  
26 and orally administer the accused products to practice such methods, and have done so  
27 in the past.

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1        54. Defendants have intentionally and knowingly induced, encouraged, and  
2 urged end-users of the accused products to purchase and orally administer the accused  
3 products for the purposes disclosed in one or more claims of United States Patent No.  
4 6,646,006, by having them orally ingest the compounds disclosed in such claims.

5        55. Defendants have knowledge of the fact that the accused products,  
6 particularly as administered, infringe on one or more claims of United States Patent No.  
7 6,646,006.

8        56. Defendants also have direct, firsthand knowledge of United States Patent  
9 No. 6,646,006.

10       57. Defendants' activities have been without express or implied license by  
11 Plaintiff.

12       58. As a result of Defendants' acts of infringement, Plaintiff has suffered and  
13 will continue to suffer damages in an amount to be proved at trial.

14       59. As a result of Defendants' acts of infringement, Plaintiff has been and will  
15 continue to be irreparably harmed by Defendants' infringements, which will continue  
16 unless Defendants are enjoined by this Court.

17       60. Defendants' past infringements and/or continuing infringements have been  
18 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
19 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

20                                    **V. SECOND CAUSE OF ACTION**

21                                    **Infringement of U.S. Patent No. 5,891,459**

22       61. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
23 of this Complaint as if fully set forth herein.

24       62. Defendants have in the past and still are literally and directly infringing or  
25 directly infringing under the doctrine of equivalents one or more claims of United  
26 States Patent No. 5,891,459 by making, using, selling, and offering for sale the accused  
27 products, and will continue to do so unless enjoined by this Court.

28       ///

63. In addition to the fact that Defendants make, use, sell, and offer for sale the accused products, further examples of Defendants' direct infringement include, without limitation, the fact that Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 5,891,459, and these employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities are acting under Defendants' direction and control when practicing those methods.

64. Defendants have encouraged and are aware of these persons' oral administration of the accused products for these purposes, these persons are acting under Defendants' direction and control, and therefore Defendants are directly practicing the methods disclosed in United States Patent No. 5,891,459.

65. End-users of Defendants' accused products are also direct infringers of one or more claims of United States Patent No. 5,891,459.

66. End-users of Defendants' accused products have taken, used, and orally administered the accused products.

67. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of United States Patent No. 5,891,459.

68. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for purposes that, by their inclusion in the products for such purposes, infringe one or more claims of United States Patent No. 5,891,459, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in one or more claims of that patent.

1           69. Defendants' labels and advertising for the accused products explain the  
2 elements and essential elements of the methods disclosed in United States Patent No.  
3 5,891,459, and those labels and advertising statements encourage, urge, and induce the  
4 accused products' end-users to purchase and orally ingest the products to practice those  
5 methods, and end-users do practice those methods.

6           70. Defendants have therefore specifically intended to cause these end-users to  
7 directly infringe the claimed methods of United States Patent No. 5,891,459, and have  
8 in fact urged them to do so.

9           71. The accused products are not suitable for non-infringing uses, and none of  
10 Defendants' labels or advertisements for the accused products disclose any uses for the  
11 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
12 upon such methods.

13           72. The inclusion of these specific infringing compounds in the products is  
14 material to practicing such methods.

15           73. Defendants have knowledge that the accused products are especially  
16 adapted by end-users of the products for the practicing of such methods, and, indeed,  
17 Defendants encourage, urge, and induce the accused products' end-users to purchase  
18 and orally administer the accused products to practice such methods, and have done so  
19 in the past.

20           74. Defendants have intentionally and knowingly induced, encouraged, and  
21 urged end-users of the accused products to purchase and orally administer the accused  
22 products for the purposes disclosed in one or more claims of United States Patent No.  
23 5,891,459, by having them orally ingest the compounds disclosed in such claims.

24           75. Defendants have knowledge of the fact that the accused products,  
25 particularly as administered, infringe on one or more claims of United States Patent No.  
26 5,891,459.

27           76. Defendants also have direct, firsthand knowledge of United States Patent  
28 No. 5,891,459.

1        77. Defendants' activities have been without express or implied license by  
2 Plaintiff.

3        78. As a result of Defendants' acts of infringement, Plaintiff has suffered and  
4 will continue to suffer damages in an amount to be proved at trial.

5        79. As a result of Defendants' acts of infringement, Plaintiff has been and will  
6 continue to be irreparably harmed by Defendants' infringements, which will continue  
7 unless Defendants are enjoined by this Court.

8        80. Defendants' past infringements and/or continuing infringements have been  
9 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
10 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

## 11                                    **VI. THIRD CAUSE OF ACTION**

### 12                                    **Infringement of U.S. Patent No. 7,452,916**

13        81. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
14 of this Complaint as if fully set forth herein.

15        82. Defendants have in the past and still are literally and directly infringing or  
16 directly infringing under the doctrine of equivalents one or more claims of United  
17 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused  
18 products, and will continue to do so unless enjoined by this Court.

19        83. In addition to the fact that Defendants make, use, sell, and offer for sale the  
20 accused products, further examples of Defendants' direct infringement include, without  
21 limitation, the fact that Defendants have encouraged and/or are aware of the fact that  
22 their employees, agents, representatives and other persons sponsored by or who endorse  
23 Defendants and Defendants' products in advertising and marketing activities orally  
24 administer the accused products and practice the methods disclosed in one or more  
25 claims of United States Patent No. 7,452,916, and these employees, agents,  
26 representatives and other persons sponsored by or who endorse Defendants and  
27 Defendants' products in advertising and marketing activities are acting under  
28 Defendants' direction and control when practicing those methods.

1       84. Defendants have encouraged and are aware of these persons' oral  
2 administration of the accused products for these purposes, these persons are acting  
3 under Defendants' direction and control, and therefore Defendants are directly  
4 practicing the methods disclosed in United States Patent No. 7,452,916.

5       85. End-users of Defendants' accused products are also direct infringers of one  
6 or more claims of United States Patent No. 7,452,916.

7       86. End-users of Defendants' accused products have taken, used, and orally  
8 administered the accused products.

9       87. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendants to include certain  
11 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
12 of United States Patent No. 7,452,916.

13       88. The accused products are formulated, made, manufactured, shipped,  
14 distributed, advertised, offered for sale, and sold by Defendants to include specific  
15 ingredients for purposes that, by their inclusion in the products for such purposes,  
16 infringe one or more claims of United States Patent No. 7,452,916, and as a result,  
17 when end-users of Defendants' accused products orally administer the accused  
18 products, they are practicing the methods disclosed in one or more claims of that patent.

19       89. Defendants' labels and advertising for the accused products explain the  
20 elements and essential elements of the methods disclosed in United States Patent No.  
21 7,452,916, and those labels and advertising statements encourage, urge, and induce the  
22 accused products' end-users to purchase and orally ingest the products to practice those  
23 methods, and end-users do practice those methods.

24       90. Defendants have therefore specifically intended to cause these end-users to  
25 directly infringe the claimed methods of United States Patent No. 7,452,916, and have  
26 in fact urged them to do so.

27       91. The accused products are not suitable for non-infringing uses, and none of  
28 Defendants' labels or advertisements for the accused products disclose any uses for the

1 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
2 upon such methods.

3 92. The inclusion of these specific infringing compounds in the products is  
4 material to practicing such methods.

5 93. Defendants have knowledge that the accused products are especially  
6 adapted by end-users of the products for the practicing of such methods, and, indeed,  
7 Defendants encourage, urge, and induce the accused products' end-users to purchase  
8 and orally administer the accused products to practice such methods, and have done so  
9 in the past.

10 94. Defendants have intentionally and knowingly induced, encouraged, and  
11 urged end-users of the accused products to purchase and orally administer the accused  
12 products for the purposes disclosed in one or more claims of United States Patent No.  
13 7,452,916, by having them orally ingest the compounds disclosed in such claims.

14 95. Defendants have knowledge of the fact that the accused products,  
15 particularly as administered, infringe on one or more claims of United States Patent No.  
16 7,452,916.

17 96. Defendants also have direct, firsthand knowledge of United States Patent  
18 No. 7,452,916.

19 97. Defendants' activities have been without express or implied license by  
20 Plaintiff.

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

23 99. As a result of Defendants' acts of infringement, Plaintiff has been and will  
24 continue to be irreparably harmed by Defendants' infringements, which will continue  
25 unless Defendants are enjoined by this Court.

26 100. Defendants' past infringements and/or continuing infringements have been  
27 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
28 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

1                                   **VII. FOURTH CAUSE OF ACTION**

2                                   **Infringement of U.S. Patent No. 6,117,872**

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

5           102. Defendants have in the past and still are literally and directly infringing or  
6 directly infringing under the doctrine of equivalents one or more claims of United  
7 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused  
8 products, and will continue to do so unless enjoined by this Court.

9           103. In addition to the fact that Defendants make, use, sell, and offer for sale the  
10 accused products, further examples of Defendants' direct infringement include, without  
11 limitation, the fact that Defendants have encouraged and/or are aware of the fact that  
12 their employees, agents, representatives and other persons sponsored by or who endorse  
13 Defendants and Defendants' products in advertising and marketing activities orally  
14 administer the accused products and practice the methods disclosed in one or more  
15 claims of United States Patent No. 6,117,872, and these employees, agents,  
16 representatives and other persons sponsored by or who endorse Defendants and  
17 Defendants' products in advertising and marketing activities are acting under  
18 Defendants' direction and control when practicing those methods.

19           104. Defendants have encouraged and are aware of these persons' oral  
20 administration of the accused products for these purposes, these persons are acting  
21 under Defendants' direction and control, and therefore Defendants are directly  
22 practicing the methods disclosed in United States Patent No. 6,117,872.

23           105. End-users of Defendants' accused products are also direct infringers of one  
24 or more claims of United States Patent No. 6,117,872.

25           106. End-users of Defendants' accused products have taken, used, and orally  
26 administered the accused products.

27           107. The accused products are formulated, made, manufactured, shipped,  
28 distributed, advertised, offered for sale, and sold by Defendants to include certain



1 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
2 of United States Patent No. 6,117,872.

3 108. The accused products are formulated, made, manufactured, shipped,  
4 distributed, advertised, offered for sale, and sold by Defendants to include specific  
5 ingredients for purposes that, by their inclusion in the products for such purposes,  
6 infringe one or more claims of United States Patent No. 6,117,872, and as a result,  
7 when end-users of Defendants' accused products orally administer the accused  
8 products, they are practicing the methods disclosed in one or more claims of that patent.

9 109. Defendants' labels and advertising for the accused products explain the  
10 elements and essential elements of the methods disclosed in United States Patent No.  
11 6,117,872, and those labels and advertising statements encourage, urge, and induce the  
12 accused products' end-users to purchase and orally ingest the products to practice those  
13 methods, and end-users do practice those methods.

14 110. Defendants have therefore specifically intended to cause these end-users to  
15 directly infringe the claimed methods of United States Patent No. 6,117,872, and have  
16 in fact urged them to do so.

17 111. The accused products are not suitable for non-infringing uses, and none of  
18 Defendants' labels or advertisements for the accused products disclose any uses for the  
19 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
20 upon such methods.

21 112. The inclusion of these specific infringing compounds in the products is  
22 material to practicing such methods.

23 113. Defendants have knowledge that the accused products are especially  
24 adapted by end-users of the products for the practicing of such methods, and, indeed,  
25 Defendants encourage, urge, and induce the accused products' end-users to purchase  
26 and orally administer the accused products to practice such methods, and have done so  
27 in the past.

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114. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 6,117,872, by having them orally ingest the compounds disclosed in such claims.

115. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 6,117,872.

116. Defendants also have direct, firsthand knowledge of United States Patent No. 6,117,872.

117. Defendants' activities have been without express or implied license by Plaintiff.

118. As a result of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

119. As a result of Defendants' acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendants' infringements, which will continue unless Defendants are enjoined by this Court.

120. Defendants' past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for entry of judgment against Defendants as follows:

1. A declaration that Defendants have infringed the patents in suit, under 35 U.S.C. §§ 271 *et seq.*;

3. That injunctions, preliminary and permanent, be issued by this Court restraining Defendants, their respective officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or

1 indirectly infringing, or inducing or contributing to the infringement by others of, the  
2 patents in suit;

3 4. That Defendants be required to provide to Plaintiff an accounting of all  
4 gains, profits, and advantages derived by Defendants' infringement of the patents in  
5 suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the  
6 wrongful infringing acts by Defendants, in accordance with 35 U.S.C. § 284;

7 5. That the damages awarded to Plaintiff with regard to the patents in suit be  
8 increased up to three times, in view of Defendants' willful infringement, in accordance  
9 with 35 U.S.C. § 284;

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

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

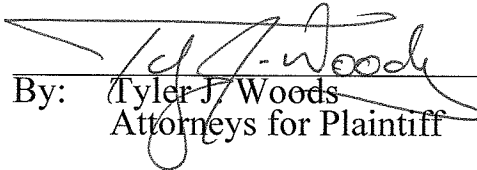
15 8. Compensatory damages;

16 9. Punitive damages; and

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

19 Respectfully submitted,  
20 NEWPORT TRIAL GROUP  
21 A Professional Corporation

22 Dated: March 19, 2013

23 By:   
24 Tyler J. Woods  
25 Attorneys for Plaintiff  
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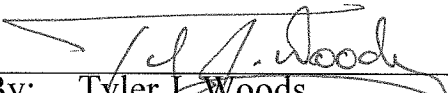
1 **DEMAND FOR JURY TRIAL**

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

4  
5 Respectfully submitted,

6 NEWPORT TRIAL GROUP  
A Professional Corporation

7  
8 Dated: March 19, 2013

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By: Tyler J. Woods  
Attorneys for Plaintiff