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

11 THERMOLIFE INTERNATIONAL, LLC,	Case No. <u>'13CV0826 GPC WMC</u>
12 Plaintiff,	COMPLAINT FOR PATENT
13 vs.	INFRINGEMENT
14 NATROL, INC.,	JURY TRIAL DEMANDED
15 Defendant	

1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its
2 Complaint against Natrol, Inc. (“Defendant”), on personal knowledge as to its own
3 activities and on information and belief as to the activities of others, as follows:

4 **I. THE PARTIES**

5 1. Plaintiff is a limited liability company organized and existing under the
6 laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,
7 California, 90291.

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

9 a. Patent No. 6,646,006, titled “Enhancement of Vascular Function By
10 Modulation of Endogenous Nitric Oxide Production or Activity”;

11 b. Patent No. 6,117,872, titled “Enhancement of Exercise Performance by
12 Augmenting Endogenous Nitric Oxide Production or Activity”;

13 c. Patent No. 5,891,459, titled “Enhancement of Vascular Function By
14 Modulation of Endogenous Nitric Oxide Production or Activity”; and

15 d. Patent No. 7,452,916, titled “Enhancement of Vascular Function By
16 Modulation of Endogenous Nitric Oxide Production or Activity.”

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

20 4. The above patents are referred to herein as the “patents in suit.”

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

23 6. Defendant is a corporation organized and existing under the laws of
24 California with a principal place of business at 21411 Prairie Street in Chatsworth,
25 California, 91311.

26 7. Defendant also does business as “MRI” and “Pro Lab.”

27 **II. JURISDICTION AND VENUE**

28 8. This is an action for patent infringement arising under the patent laws of

1 the United States, Title 35 of the United States Code. Accordingly, this Court has
2 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

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

4 10. This Court has personal jurisdiction over Defendant. By way of example
5 and without limitation, Defendant, directly or through intermediaries (including
6 distributors, retailers, and others), makes, manufactures, ships, distributes, advertises,
7 markets, offers for sale, and/or sells dietary supplement products that infringe on one or
8 more claims of the patents in suit (hereinafter the “accused products”), which include
9 without limitation products sold under the “L-Arginine 1000 mg,” “L-Arginine 3000
10 mg,” “NO2 Black Full Cycle,” “NO2 Red Hemo Surge,” “Black Powder,” “EO2
11 Edge,” “EO2 Vmax,” “NO2 Ripcuts,” “NO2 Black,” “Nitro Fire,” and “Quick Fire”
12 brand names, in the United States, the State of California, and the Southern District of
13 California.

14 11. By way of further example and without limitation, Defendant has
15 purposefully and voluntarily placed the accused products into the stream of commerce
16 with the expectation that they will be purchased in the Southern District of California,
17 and the products are actually purchased in the Southern District of California.

18 **III. THE DEFENDANT’S INFRINGEMENTS**

19 12. Defendant has committed the tort of patent infringement within the State
20 of California, and more particularly, within the Southern District of California, by
21 virtue of the fact that Defendant has formulated, made, manufactured, shipped,
22 distributed, advertised, offered for sale, and/or sold the accused products in this District,
23 and continues to do so.

24 **A. DIRECT INFRINGEMENTS**

25 13. Defendant’s employees, agents, representatives and other persons
26 sponsored by or who endorse Defendant and Defendant’s products in advertising and
27 marketing activities, have taken, used, and orally administered the accused products.

28 14. The accused products are formulated, made, manufactured, shipped,

1 distributed, advertised, offered for sale, and sold by Defendant to include certain
2 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
3 of one or more of the patents in suit.

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

12 16. These infringing ingredients, and/or combinations thereof, include, without
13 limitation, L-Arginine, Grape Skin Extract, Grape Seed Extract, Arginine AKG, L-
14 Citrulline Malate, L-Arginine AKG, L-Arginine HCl, L-Arginine Pyroglutamate,
15 Arginine Ketoisocaproate, ACTINOS, ACTINOS2, Beta-Alanine and L-Taurine, as set
16 forth on Defendant's labels for the accused products.

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

21 18. Defendant has encouraged and/or is aware of the fact that its employees,
22 agents, representatives and other persons sponsored by Defendant or who endorse
23 Defendant and Defendant's products in advertising and marketing activities orally
24 administer the accused products and practice the methods disclosed in one or more
25 claim of one or more of the patents in suit, and these employees, agents, representatives
26 and other persons sponsored by Defendant or who endorse Defendant and Defendant's
27 products in advertising and marketing activities are acting under Defendant's direction
28 and control when practicing those methods.

1 19. Therefore, Defendant is a direct infringer of one or more claims of one or
2 more of the patents in suit, and Defendant practices the methods as set forth in one or
3 more claims of one or more of the patents in suit.

4 **B. INDIRECT INFRINGEMENTS**

5 20. End-users of Defendant's accused products are also direct infringers of one
6 or more claims of one or more of the patents in suit.

7 21. End-users of Defendant's accused products have taken, used, and orally
8 administered the accused products.

9 22. The accused products are formulated, made, manufactured, shipped,
10 distributed, advertised, offered for sale, and/or sold by Defendant to include certain
11 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
12 of one or more of the patents in suit.

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

19 24. Defendant's labels and advertising for the accused products explain the
20 elements and essential elements of one or more of the methods disclosed in the patents
21 in suit, 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 25. Defendant has therefore specifically intended to cause these end-users to
25 directly infringe the claimed methods of these patents, and has in fact urged them to do
26 so.

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

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

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

5 28. Defendant has knowledge that the accused products are especially adapted
6 by end-users of the products for the practicing of such methods, and, indeed, Defendant
7 encourages, urges, and induces the accused products' end-users to purchase and orally
8 administer the accused products to practice such methods, and has done so in the past.

9 29. Defendant has intentionally and knowingly induced, encouraged, and
10 urged end-users of the accused products to purchase and orally administer the accused
11 products for the purposes of practicing the claimed methods, by having them orally
12 ingest the compounds disclosed in such claims.

13 30. Defendant has knowledge of the fact that the accused products, particularly
14 as administered, infringe on one or more claims of the patents in suit.

15 31. Defendant has direct, firsthand knowledge of the patents in suit.

16 32. For example and without limitation, Defendant has had knowledge of the
17 patents in suit since November 2006, when an ongoing settlement of a patent
18 infringement case relating to at least some of the patents in suit against Herbalife, a
19 well-known company in Defendant's industry, was announced in press releases issued
20 in a highly publicized manner. Defendant's employees, agents, and representatives saw
21 the press releases and were aware of the settlement and thus the patents in suit.

22 33. By way of further example and without limitation, Defendant has sold its
23 products through retailers, including online retailers, and those retailers have sold other
24 companies' products whose labels and/or advertisements have been prominently
25 marked with one or more of the patents in suit, by patent number, including without
26 limitation the products manufactured and sold by Herbalife, Daily Wellness, and
27 Vitality Research Labs. Defendant's employees, agents, and representatives have seen
28 these labels and advertisements and, thus, Defendant has direct knowledge of the

1 patents in suit.

2 34. Defendant has brazenly and willfully decided to infringe the patents in suit
3 despite knowledge of the patents' existence and its knowledge of the accused products'
4 infringements of the patents.

5 35. At a minimum, and in the alternative, Plaintiff pleads that Defendant
6 willfully blinded itself to the infringing nature of the accused products' sales.

7 36. Defendant has not ceased its own direct infringement, nor its contributory
8 infringement or inducement of infringement by end-users, despite its knowledge of the
9 patents in suit and the end-users' infringing activities with respect to the patents in suit.

10 37. Plaintiff also believes Defendant is infringing on one or more claims of
11 United States Patent No. 5,428,070 and Patent No. 5,945,452, patents which Defendant
12 has had prior knowledge of and are also licensed exclusively to Plaintiff by Stanford
13 University, to include the right to sue for infringement, and Plaintiff will seek to amend
14 this Complaint once facts confirming that belief are ascertained.

15 **IV. FIRST CAUSE OF ACTION**

16 **Infringement of U.S. Patent No. 6,646,006**

17 38. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
18 of this Complaint as if fully set forth herein.

19 39. Defendant has in the past and still is literally and directly infringing or
20 directly infringing under the doctrine of equivalents one or more claims of United
21 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
22 products, and will continue to do so unless enjoined by this Court.

23 40. In addition to the fact that Defendant makes, uses, sells, and offers for sale
24 the accused products, further examples of Defendant's direct infringements include,
25 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
26 that its employees, agents, representatives and other persons sponsored by or who
27 endorse Defendant and Defendant's products in advertising and marketing activities
28 orally administer the accused products and practice the methods disclosed in one or

1 more claims of United States Patent No. 6,646,006, and these employees, agents,
2 representatives and other persons sponsored by or who endorse Defendant and
3 Defendant's products in advertising and marketing activities are acting under
4 Defendant's direction and control when practicing those methods.

5 41. Defendant has encouraged and is aware of these persons' oral
6 administration of the accused products for these purposes, these persons are acting
7 under Defendant's direction and control, and therefore Defendant is directly practicing
8 the methods disclosed in United States Patent No. 6,646,006.

9 42. End-users of Defendant's accused products are also direct infringers of one
10 or more claims of United States Patent No. 6,646,006.

11 43. End-users of Defendant's accused products have taken, used, and orally
12 administered the accused products.

13 44. The accused products are formulated, made, manufactured, shipped,
14 distributed, advertised, offered for sale, and sold by Defendant to include certain
15 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
16 of United States Patent No. 6,646,006.

17 45. The accused products is formulated, made, manufactured, shipped,
18 distributed, advertised, offered for sale, and sold by Defendant to include specific
19 ingredients for purposes that, by their inclusion in the products for such purposes,
20 infringe one or more claims of United States Patent No. 6,646,006, and as a result,
21 when end-users of Defendant's accused products orally administer the accused
22 products, they are practicing the methods disclosed in one or more claims of that patent.

23 46. Defendant's labels and advertising for the accused products explain the
24 elements and essential elements of the methods disclosed in United States Patent No.
25 6,646,006, and those labels and advertising statements encourage, urge, and induce the
26 accused products' end-users to purchase and orally ingest the products to practice those
27 methods, and end-users do practice those methods.

28 47. Defendant has therefore specifically intended to cause these end-users to

1 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in
2 fact urged them to do so.

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

7 49. The inclusion of these specific infringing compounds in the products is
8 material to practicing such methods.

9 50. Defendant has knowledge that the accused products are especially adapted
10 by end-users of the products for the practicing of such methods, and, indeed, Defendant
11 encourages, urges, and induces the accused products' end-users to purchase and orally
12 administer the accused products to practice such methods, and have done so in the past.

13 51. Defendant has intentionally and knowingly induced, encouraged, and
14 urged end-users of the accused products to purchase and orally administer the accused
15 products for the purposes disclosed in one or more claims of United States Patent No.
16 6,646,006, by having them orally ingest the compounds disclosed in such claims.

17 52. Defendant has knowledge of the fact that the accused products, particularly
18 as administered, infringe on one or more claims of United States Patent No. 6,646,006.

19 53. Defendant also has direct, firsthand knowledge of United States Patent No.
20 6,646,006.

21 54. Defendant's activities have been without express or implied license by
22 Plaintiff.

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

25 56. As a result of Defendant's acts of infringement, Plaintiff has been and will
26 continue to be irreparably harmed by Defendant's infringements, which will continue
27 unless Defendant is enjoined by this Court.

28 57. Defendant's past infringements and/or continuing infringements have been

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

3 **V. SECOND CAUSE OF ACTION**

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

5 58. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
6 of this Complaint as if fully set forth herein.

7 59. Defendant has in the past and still is literally and directly infringing or
8 directly infringing under the doctrine of equivalents one or more claims of United
9 States Patent No. 5,891,459 by making, using, selling, and offering for sale the accused
10 products, and will continue to do so unless enjoined by this Court.

11 60. In addition to the fact that Defendant makes, uses, sells, and offers for sale
12 the accused products, further examples of Defendant's direct infringements include,
13 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
14 that its employees, agents, representatives and other persons sponsored by or who
15 endorse Defendant and Defendant's products in advertising and marketing activities
16 orally administer the accused products and practice the methods disclosed in one or
17 more claims of United States Patent No. 5,891,459, and these employees, agents,
18 representatives and other persons sponsored by or who endorse Defendant and
19 Defendant's products in advertising and marketing activities are acting under
20 Defendant's direction and control when practicing those methods.

21 61. Defendant has encouraged and is aware of these persons' oral
22 administration of the accused products for these purposes, these persons are acting
23 under Defendant's direction and control, and therefore Defendant is directly practicing
24 the methods disclosed in United States Patent No. 5,891,459.

25 62. End-users of Defendant's accused products are also direct infringers of one
26 or more claims of United States Patent No. 5,891,459.

27 63. End-users of Defendant's accused products have taken, used, and orally
28 administered the accused products.

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

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

11 66. Defendant's labels and advertising for the accused products explain the
12 elements and essential elements of the methods disclosed in United States Patent No.
13 5,891,459, and those labels and advertising statements encourage, urge, and induce the
14 accused products' end-users to purchase and orally ingest the products to practice those
15 methods, and end-users do practice those methods.

16 67. Defendant has therefore specifically intended to cause these end-users to
17 directly infringe the claimed methods of United States Patent No. 5,891,459, and has in
18 fact urged them to do so.

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

23 69. The inclusion of these specific infringing compounds in the products is
24 material to practicing such methods.

25 70. Defendant has knowledge that the accused products are especially adapted
26 by end-users of the products for the practicing of such methods, and, indeed, Defendant
27 encourages, urges, and induces the accused products' end-users to purchase and orally
28 administer the accused products to practice such methods, and have done so in the past.

1 71. Defendant has 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 5,891,459, by having them orally ingest the compounds disclosed in such claims.

5 72. Defendant has knowledge of the fact that the accused products, particularly
6 as administered, infringe on one or more claims of United States Patent No. 5,891,459.

7 73. Defendant also has direct, firsthand knowledge of United States Patent No.
8 5,891,459.

9 74. Defendant's activities have been without express or implied license by
10 Plaintiff.

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

13 76. As a result of Defendant's acts of infringement, Plaintiff has been and will
14 continue to be irreparably harmed by Defendant's infringements, which will continue
15 unless Defendant is enjoined by this Court.

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

19 **VI. THIRD CAUSE OF ACTION**

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

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

23 79. Defendant has in the past and still is literally and directly infringing or
24 directly infringing under the doctrine of equivalents one or more claims of United
25 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused
26 products, and will continue to do so unless enjoined by this Court.

27 80. In addition to the fact that Defendant makes, uses, sells, and offers for sale
28 the accused products, further examples of Defendant's direct infringements include,

1 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
2 that its employees, agents, representatives and other persons sponsored by or who
3 endorse Defendant and Defendant's products in advertising and marketing activities
4 orally administer the accused products and practice the methods disclosed in one or
5 more claims of United States Patent No. 7,452,916, and these employees, agents,
6 representatives and other persons sponsored by or who endorse Defendant and
7 Defendant's products in advertising and marketing activities are acting under
8 Defendant's direction and control when practicing those methods.

9 81. Defendant has encouraged and is aware of these persons' oral
10 administration of the accused products for these purposes, these persons are acting
11 under Defendant's direction and control, and therefore Defendant is directly practicing
12 the methods disclosed in United States Patent No. 7,452,916.

13 82. End-users of Defendant's accused products are also direct infringers of one
14 or more claims of United States Patent No. 7,452,916.

15 83. End-users of Defendant's accused products have taken, used, and orally
16 administered the accused products.

17 84. The accused products are formulated, made, manufactured, shipped,
18 distributed, advertised, offered for sale, and sold by Defendant to include certain
19 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
20 of United States Patent No. 7,452,916.

21 85. The accused products is formulated, made, manufactured, shipped,
22 distributed, advertised, offered for sale, and sold by Defendant to include specific
23 ingredients for purposes that, by their inclusion in the products for such purposes,
24 infringe one or more claims of United States Patent No. 7,452,916, and as a result,
25 when end-users of Defendant's accused products orally administer the accused
26 products, they are practicing the methods disclosed in one or more claims of that patent.

27 86. Defendant's labels and advertising for the accused products explain the
28 elements and essential elements of the methods disclosed in United States Patent No.

1 7,452,916, and those labels and advertising statements encourage, urge, and induce the
2 accused products' end-users to purchase and orally ingest the products to practice those
3 methods, and end-users do practice those methods.

4 87. Defendant has therefore specifically intended to cause these end-users to
5 directly infringe the claimed methods of United States Patent No. 7,452,916, and has in
6 fact urged them to do so.

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

11 89. The inclusion of these specific infringing compounds in the products is
12 material to practicing such methods.

13 90. Defendant has knowledge that the accused products are especially adapted
14 by end-users of the products for the practicing of such methods, and, indeed, Defendant
15 encourages, urges, and induces the accused products' end-users to purchase and orally
16 administer the accused products to practice such methods, and have done so in the past.

17 91. Defendant has intentionally and knowingly induced, encouraged, and
18 urged end-users of the accused products to purchase and orally administer the accused
19 products for the purposes disclosed in one or more claims of United States Patent No.
20 7,452,916, by having them orally ingest the compounds disclosed in such claims.

21 92. Defendant has knowledge of the fact that the accused products, particularly
22 as administered, infringe on one or more claims of United States Patent No. 7,452,916.

23 93. Defendant also has direct, firsthand knowledge of United States Patent No.
24 7,452,916.

25 94. Defendant's activities have been without express or implied license by
26 Plaintiff.

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

1 96. As a result of Defendant's acts of infringement, Plaintiff has been and will
2 continue to be irreparably harmed by Defendant's infringements, which will continue
3 unless Defendant is enjoined by this Court.

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

7 **VII. FOURTH CAUSE OF ACTION**

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

9 98. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
10 of this Complaint as if fully set forth herein.

11 99. Defendant has in the past and still is literally and directly infringing or
12 directly infringing under the doctrine of equivalents one or more claims of United
13 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused
14 products, and will continue to do so unless enjoined by this Court.

15 100. In addition to the fact that Defendant makes, uses, sells, and offers for sale
16 the accused products, further examples of Defendant's direct infringements include,
17 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
18 that its employees, agents, representatives and other persons sponsored by or who
19 endorse Defendant and Defendant's products in advertising and marketing activities
20 orally administer the accused products and practice the methods disclosed in one or
21 more claims of United States Patent No. 6,117,872, and these employees, agents,
22 representatives and other persons sponsored by or who endorse Defendant and
23 Defendant's products in advertising and marketing activities are acting under
24 Defendant's direction and control when practicing those methods.

25 101. Defendant has encouraged and is aware of these persons' oral
26 administration of the accused products for these purposes, these persons are acting
27 under Defendant's direction and control, and therefore Defendant is directly practicing
28 the methods disclosed in United States Patent No. 6,117,872.

1 102. End-users of Defendant's accused products are also direct infringers of one
2 or more claims of United States Patent No. 6,117,872.

3 103. End-users of Defendant's accused products have taken, used, and orally
4 administered the accused products.

5 104. The accused products are formulated, made, manufactured, shipped,
6 distributed, advertised, offered for sale, and sold by Defendant to include certain
7 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
8 of United States Patent No. 6,117,872.

9 105. The accused products is formulated, made, manufactured, shipped,
10 distributed, advertised, offered for sale, and sold by Defendant to include specific
11 ingredients for purposes that, by their inclusion in the products for such purposes,
12 infringe one or more claims of United States Patent No. 6,117,872, and as a result,
13 when end-users of Defendant's accused products orally administer the accused
14 products, they are practicing the methods disclosed in one or more claims of that patent.

15 106. Defendant's labels and advertising for the accused products explain the
16 elements and essential elements of the methods disclosed in United States Patent No.
17 6,117,872, and those labels and advertising statements encourage, urge, and induce the
18 accused products' end-users to purchase and orally ingest the products to practice those
19 methods, and end-users do practice those methods.

20 107. Defendant has therefore specifically intended to cause these end-users to
21 directly infringe the claimed methods of United States Patent No. 6,117,872, and has in
22 fact urged them to do so.

23 108. The accused products are not suitable for non-infringing uses, and none of
24 Defendant's labels or advertisements for the accused products disclose any uses for the
25 products, nor for the compounds disclosed in the claimed methods, that do not infringe
26 upon such methods.

27 109. The inclusion of these specific infringing compounds in the products is
28 material to practicing such methods.

1 110. Defendant has knowledge that the accused products are especially adapted
2 by end-users of the products for the practicing of such methods, and, indeed, Defendant
3 encourages, urges, and induces the accused products' end-users to purchase and orally
4 administer the accused products to practice such methods, and have done so in the past.

5 111. Defendant has intentionally and knowingly induced, encouraged, and
6 urged end-users of the accused products to purchase and orally administer the accused
7 products for the purposes disclosed in one or more claims of United States Patent No.
8 6,117,872, by having them orally ingest the compounds disclosed in such claims.

9 112. Defendant has knowledge of the fact that the accused products, particularly
10 as administered, infringe on one or more claims of United States Patent No. 6,117,872.

11 113. Defendant also has direct, firsthand knowledge of United States Patent No.
12 6,117,872.

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

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

17 116. As a result of Defendant's acts of infringement, Plaintiff has been and will
18 continue to be irreparably harmed by Defendant's infringements, which will continue
19 unless Defendant is enjoined by this Court.

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

23 **VIII. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as
25 follows:

26 1. A declaration that Defendant has infringed the patents in suit, under 35
27 U.S.C. §§ 271 *et seq.*;

28 2. That injunctions, preliminary and permanent, be issued by this Court

1 restraining Defendant, its officers, agents, servants, directors, and employees, and all
2 persons in active concert or participation with each, from directly or indirectly
3 infringing, or inducing or contributing to the infringement by others of, the patents in
4 suit;

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

9 4. That the damages awarded to Plaintiff with regard to the patents in suit be
10 increased up to three times, in view of Defendant's willful infringement, in accordance
11 with 35 U.S.C. § 284;

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

15 6. That Plaintiff be awarded its interest and costs of suit incurred in this
16 action;

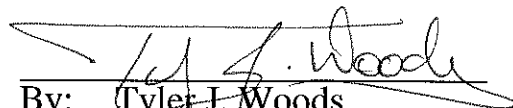
17 7. Compensatory damages;

18 8. Punitive damages; and

19 9. That Plaintiff be awarded such other and further relief as this Court may
20 deem just and proper.

21 Respectfully submitted,
22 NEWPORT TRIAL GROUP
23 A Professional Corporation

24 Dated: April 4, 2013

25 
26 By: Tyler J. Woods
27 Attorneys for Plaintiff
28

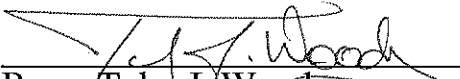
DEMAND FOR JURY TRIAL

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: April 4, 2013


By: Tyler J. Woods
Attorneys for Plaintiff

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