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8

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

11 THERMOLIFE INTERNATIONAL, LLC, Case No. '13CV0883 WQHRBB

12 Plaintiff,

13 vs.

14 MAXIMUM HUMAN PERFORMANCE,  
15 LLC,

16 Defendant

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its  
2 Complaint against Maximum Human Performance, LLC (“Defendant”), on personal  
3 knowledge as to its own activities and on information and belief as to the activities of  
4 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 Defendant.

24 6. Defendant is a company organized and existing under the laws of New  
25 Jersey with a principal place of business at 21 Dwight Place in Fairfield, New Jersey,  
26 07004.



1           13. 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 one or more of the patents in suit.

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

13           15. These infringing ingredients, and/or combinations thereof, include, without  
14 limitation, L-Arginine HCL, L-Arginine AKG, Citrulline Malate, and Beta Alanine, as  
15 set forth on Defendant's labels for the accused products.

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

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

28           18. Therefore, Defendant is a direct infringer of one or more claims of one or

1 more of the patents in suit, and Defendant practices the methods as set forth in one or  
2 more claims of one or more of the patents in suit.

3 **B. INDIRECT INFRINGEMENTS**

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

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

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

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

18 23. Defendant's labels and advertising for the accused products explain the  
19 elements and essential elements of one or more of the methods disclosed in the patents  
20 in suit, and those labels and advertising statements encourage, urge, and induce the  
21 accused products' end-users to purchase and orally ingest the products to practice those  
22 methods, and end-users do practice those methods.

23 24. Defendant has therefore specifically intended to cause these end-users to  
24 directly infringe the claimed methods of these patents, and has in fact urged them to do  
25 so.

26 25. The accused products are not suitable for non-infringing uses, and none of  
27 Defendant's labels or advertisements for the accused products disclose any uses for the  
28 products, nor for the compounds disclosed in the claimed methods of the patents in suit,

1 that do not infringe upon such methods.

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

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

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

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

14 30. Defendant has direct, firsthand knowledge of the patents in suit.

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

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



1 representatives and other persons sponsored by or who endorse Defendant and  
2 Defendant's products in advertising and marketing activities are acting under  
3 Defendant's direction and control when practicing those methods.

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

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

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

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

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

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

27 46. Defendant has therefore specifically intended to cause these end-users to  
28 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in



1 fact urged them to do so.

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

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

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

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

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

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

20 53. Defendant's activities have been without express or implied license by  
21 Plaintiff.

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

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

27 56. Defendant's past infringements and/or continuing infringements have been  
28 deliberate and willful, and this case is therefore an exceptional case, which warrants an

1 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

2 **V. SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

28 63. 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 United States Patent No. 5,891,459.

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

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

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

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

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

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

28 70. Defendant has intentionally and knowingly induced, encouraged, and

1 urged end-users of the accused products to purchase and orally administer the accused  
2 products for the purposes disclosed in one or more claims of United States Patent No.  
3 5,891,459, by having them orally ingest the compounds disclosed in such claims.

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

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

8 73. Defendant's activities have been without express or implied license by  
9 Plaintiff.

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

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

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

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

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

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

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

26 79. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
27 the accused products, further examples of Defendant's direct infringements include,  
28 without limitation, the fact that Defendant has encouraged and/or is aware of the fact

1 that its employees, agents, representatives and other persons sponsored by or who  
2 endorse Defendant and Defendant's products in advertising and marketing activities  
3 orally administer the accused products and practice the methods disclosed in one or  
4 more claims of United States Patent No. 7,452,916, and these employees, agents,  
5 representatives and other persons sponsored by or who endorse Defendant and  
6 Defendant's products in advertising and marketing activities are acting under  
7 Defendant's direction and control when practicing those methods.

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

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

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

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

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

26 85. Defendant's labels and advertising for the accused products explain the  
27 elements and essential elements of the methods disclosed in United States Patent No.  
28 7,452,916, and those labels and advertising statements encourage, urge, and induce the

1 accused products' end-users to purchase and orally ingest the products to practice those  
2 methods, and end-users do practice those methods.

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

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

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

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

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

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

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

24 93. Defendant's activities have been without express or implied license by  
25 Plaintiff.

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

28 95. As a result of Defendant's acts of infringement, Plaintiff has been and will

1 continue to be irreparably harmed by Defendant's infringements, which will continue  
2 unless Defendant is enjoined by this Court.

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

6 **VII. FOURTH CAUSE OF ACTION**

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

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

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

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

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

28 101. End-users of Defendant's accused products are also direct infringers of one

1 or more claims of United States Patent No. 6,117,872.

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

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

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

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

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

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

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

28 109. Defendant has knowledge that the accused products are especially adapted



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

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

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

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

12 113. Defendant's activities have been without express or implied license by  
13 Plaintiff.

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

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

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

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

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

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

27 3. That injunctions, preliminary and permanent, be issued by this Court  
28 restraining Defendant, its officers, agents, servants, directors, and employees, and all

1 persons in active concert or participation with each, from directly or indirectly  
2 infringing, or inducing or contributing to the infringement by others of, the patents in  
3 suit;

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

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

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

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

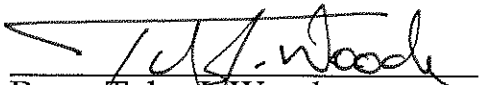
16 8. Compensatory damages;

17 9. Punitive damages; and

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

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

23 Dated: April 11, 2013

24   
25 By: Tyler J. Woods  
26 Attorneys for Plaintiff

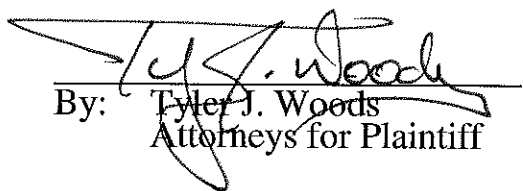
1 **DEMAND FOR JURY TRIAL**

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  
7 A Professional Corporation

8 Dated: April 11, 2013

9   
By: Tyler J. Woods  
Attorneys for Plaintiff