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7 Attorneys for Plaintiff

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

11 THERMOLIFE INTERNATIONAL, LLC,  
 12 Plaintiff,  
 13 vs.  
 14 UNIVERSAL NUTRITION, INC.,  
 15 Defendant

Case No. '13CV0887 LAB RBB

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its  
2 Complaint against Universal Nutrition, Inc. (“Defendant”), on personal knowledge as to  
3 its own 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 New  
24 Jersey with a principal place of business at 3 Terminal Road in New Brunswick, New  
25 Jersey, 08901.

26 **II. JURISDICTION AND VENUE**

27 7. This is an action for patent infringement arising under the patent laws of  
28 the United States, Title 35 of the United States Code. Accordingly, this Court has

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**II. JURISDICTION AND VENUE**

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

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

9. This Court has personal jurisdiction over Defendant. By way of example and without limitation, Defendant, directly or through intermediaries (including distributors, retailers, and others), makes, manufactures, ships, distributes, advertises, markets, offers for sale, and/or sells dietary supplement products that infringe on one or more claims of the patents in suit (hereinafter the “accused products”), which include without limitation products sold under the “Shock Therapy,” “NOX3,” “Animal Pump,” and “GH Max” brand names, in the United States, the State of California, and the Southern District of California.

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

**III. THE DEFENDANT’S INFRINGEMENTS**

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

**A. DIRECT INFRINGEMENTS**

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

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

9           15. These infringing ingredients, and/or combinations thereof, include, without  
10 limitation, L-Arginine, Arginine, Grapeseed Extract, Ornithine, L-Arginine AKG, L-  
11 Ornithine HCl, L-Tyrosine, and L-Lysine, as set forth on Defendant's labels for the  
12 accused products.

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

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

25           18. Therefore, Defendant is a direct infringer of one or more claims of one or  
26 more of the patents in suit, and Defendant practices the methods as set forth in one or  
27 more claims of one or more of the patents in suit.

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**B. INDIRECT INFRINGEMENTS**

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

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

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

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

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

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

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

28 26. The inclusion of the specific infringing compounds in the products is

1 material to practicing such methods.

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

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

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

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

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

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

27 33. Defendant has brazenly and willfully decided to infringe the patents in suit  
28 despite knowledge of the patents' existence and its knowledge of the accused products'

1 infringements of the patents.

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

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

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

12 **IV. FIRST CAUSE OF ACTION**

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

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

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

20 39. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
21 the accused products, further examples of Defendant's direct infringements include,  
22 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
23 that its employees, agents, representatives and other persons sponsored by or who  
24 endorse Defendant and Defendant's products in advertising and marketing activities  
25 orally administer the accused products and practice the methods disclosed in one or  
26 more claims of United States Patent No. 6,646,006, and these employees, agents,  
27 representatives and other persons sponsored by or who endorse Defendant and  
28 Defendant's products in advertising and marketing activities are acting under

1 Defendant's direction and control when practicing those methods.

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

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

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

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

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

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

25 46. Defendant has therefore specifically intended to cause these end-users to  
26 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in  
27 fact urged them to do so.

28 47. The accused products are not suitable for non-infringing uses, and none of



1 Defendant's labels or advertisements for the accused products disclose any uses for the  
2 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
3 upon such methods.

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

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

10 50. Defendant has 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 6,646,006, by having them orally ingest the compounds disclosed in such claims.

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

16 52. Defendant also has direct, firsthand knowledge of United States Patent No.  
17 6,646,006.

18 53. Defendant's activities have been without express or implied license by  
19 Plaintiff.

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

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

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

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1                                   **V.    SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

27           63.    The accused products are formulated, made, manufactured, shipped,  
28 distributed, advertised, offered for sale, and sold by Defendant 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. 5,891,459.

3 64. The accused products is formulated, made, manufactured, shipped,  
4 distributed, advertised, offered for sale, and sold by Defendant 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. 5,891,459, and as a result,  
7 when end-users of Defendant's accused products orally administer the accused  
8 products, they are practicing the methods disclosed in one or more claims of that patent.

9 65. Defendant's labels and advertising for the accused products explain the  
10 elements and essential elements of the methods disclosed in United States Patent No.  
11 5,891,459, 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 66. Defendant has therefore specifically intended to cause these end-users to  
15 directly infringe the claimed methods of United States Patent No. 5,891,459, and has in  
16 fact urged them to do so.

17 67. The accused products are not suitable for non-infringing uses, and none of  
18 Defendant's 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 68. The inclusion of these specific infringing compounds in the products is  
22 material to practicing such methods.

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

27 70. Defendant has intentionally and knowingly induced, encouraged, and  
28 urged end-users of the accused products to purchase and orally administer the accused

1 products for the purposes disclosed in one or more claims of United States Patent No.  
2 5,891,459, by having them orally ingest the compounds disclosed in such claims.

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

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

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

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

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

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

17 **VI. THIRD CAUSE OF ACTION**

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

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

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

25 79. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
26 the accused products, further examples of Defendant's direct infringements include,  
27 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
28 that its employees, agents, representatives and other persons sponsored by or who

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

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

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

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

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

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

25 85. Defendant's labels and advertising for the accused products explain the  
26 elements and essential elements of the methods disclosed in United States Patent No.  
27 7,452,916, and those labels and advertising statements encourage, urge, and induce the  
28 accused products' end-users to purchase and orally ingest the products to practice those

1 methods, and end-users do practice those methods.

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

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

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

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

15 90. Defendant has 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 disclosed in one or more claims of United States Patent No.  
18 7,452,916, by having them orally ingest the compounds disclosed in such claims.

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

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

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

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

27 95. As a result of Defendant's acts of infringement, Plaintiff has been and will  
28 continue to be irreparably harmed by Defendant's infringements, which will continue

1 unless Defendant is enjoined by this Court.

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

5 **VII. FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

27           109. Defendant has knowledge that the accused products are especially adapted  
28 by end-users of the products for the practicing of such methods, and, indeed, Defendant



1 encourages, urges, and induces the accused products' end-users to purchase and orally  
2 administer the accused products to practice such methods, and have done so in the past.

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

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

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

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

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

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

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

21 **VIII. PRAYER FOR RELIEF**

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

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

26 3. That injunctions, preliminary and permanent, be issued by this Court  
27 restraining Defendant, its officers, agents, servants, directors, and employees, and all  
28 persons in active concert or participation with each, from directly or indirectly

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

3 4. That Defendant be required to provide to Plaintiff an accounting of all  
4 gains, profits, and advantages derived by Defendant's infringement of the patents in  
5 suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the  
6 wrongful infringing acts by Defendant, 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 Defendant's 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;

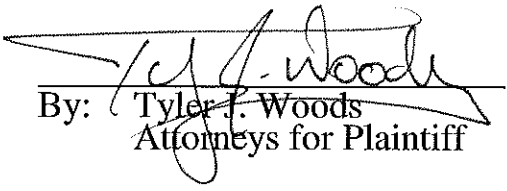
15 8. Compensatory damages;

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: April 12, 2013

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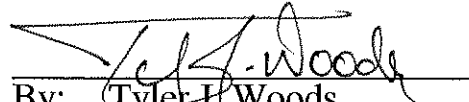
**DEMAND FOR JURY TRIAL**

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 12, 2013

  
By: Tyler J. Woods  
Attorneys for Plaintiff

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