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10 Attorneys for Plaintiff ThermoLife International LLC

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 ThermoLife International LLC, an
14 Arizona limited liability company,

15 Plaintiff,

16 v.

17 Pure Assay Ingredients Inc., a California
18 corporation,

19 Defendant.

Case No.

COMPLAINT

(Jury Trial Demanded)

20 Plaintiff ThermoLife International LLC, for its complaint against defendant Pure
21 Assay Ingredients Inc. (hereinafter “Pure Assay”), alleges upon personal knowledge with
22 respect to itself and its own acts, and upon information and belief with respect to all other
23 matters, as follows:

24 **NATURE OF ACTION**

25 1. Plaintiff ThermoLife International LLC (“ThermoLife”) brings claims for
26 patent infringement, inducement of patent infringement, and contributory patent
infringement against its competitor Pure Assay.

2. Pure Assay is openly violating ThermoLife’s U.S. Patent No. 7,777,074 (the
“ ‘074 Patent”), which protects an Amino Acid Compound consisting of essentially a

1 nitrate or nitrate of an Amino Acid selected from a group consisting of Beta Alanine,
2 Citulline, Leucine, and Isoleucine (hereinafter, this group of amino acids is collectively
3 referred to as the “Nitrates of Amino Acid”). As stated in the ‘074 Patent, the Nitrates of
4 Amino Acid effectively increase vasodilatation in humans, and are, therefore, desirable
5 additives to dietary supplements for athletes and others. A true and accurate copy of the
6 ‘074 Patent is attached as Exhibit A.

7 3. Competition in the dietary supplement industry is fierce, with each company
8 seeking to discover and market the next breakthrough product that will help build muscle
9 and/or decrease fat. Faced with stiff competition and the ever-increasing desire of the
10 market for the next great muscle building supplement, dietary supplement makers
11 frequently copy the successful products and ingredients offered by other makers, even if
12 protected by United States patent laws.

13 4. In this case, Pure Assay has copied ThermoLife’s products and ThermoLife’s
14 innovative technology. In direct infringement of the ‘074 Patent, Pure Assay sold and
15 marketed Citrulline Nitrate for use in dietary supplements.

16 5. ThermoLife brings this action to enjoin Pure Assay from continuing to
17 violate the ‘074 Patent and to recover a reasonable royalty and treble damages for its lost
18 sales resulting from defendant’s willful infringement. In addition, Pure Assay should be
19 made to disgorge its illegal profits made by violating ThermoLife’s valid patent.

20 **PARTIES, JURISDICTION AND VENUE**

21 6. Plaintiff ThermoLife is an Arizona limited liability company. ThermoLife’s
22 principal place of business is 3914 East Chandler Boulevard, Phoenix, Arizona 85048.

23 7. Pure Assay is a California corporation. Pure Assay’s principal place of
24 business is 4010 West Valley Boulevard, Suite 101, Walnut California, 91789.

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1 Often supplements are spiked with hidden ingredients and labeled incorrectly. Many were
2 ineffective.

3 16. At the time ThermoLife was established, few supplements were clinically
4 researched or field tested. Even today, relatively few supplements have been proven to
5 work as advertised.

6 17. In 1998, Kramer founded ThermoLife in order to provide the public with
7 quality proven supplements. ThermoLife is committed to selling only the purest, most
8 effective and innovative products.

9 18. By relying on supposedly proprietary formulas, supplement companies often
10 hide the ingredients in their products from consumers. Unlike other supplement
11 companies, ThermoLife develops unique and novel products and formulas that it fully
12 discloses to the public. In this way, ThermoLife allows consumers to know exactly what
13 products and raw materials they consume.

14 19. ThermoLife has been awarded patents on over twenty individual compounds.
15 These patents protect ThermoLife's innovative and proven products from being copied
16 by ThermoLife's competitors.

17 20. By fully disclosing its formulas and relying on scientifically proven and
18 protected formulas and ingredients, ThermoLife has taken a lead role in ending the
19 deceptive business practices that have plagued the supplement industry.

20 21. One of the patents owned by ThermoLife is U.S. Patent 7,777,074 (the "'074
21 Patent"). On August 17, 2010, the '074 Patent was duly and legally issued to Kramer, *et*
22 *al.* ThermoLife is the assignee of all rights in and title to the '074 Patent.

23 22. ThermoLife's supplements are sold nationwide on the internet and in vitamin
24 and dietary supplement stores such as The Vitamin Shoppe.

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1 **B. Pure Assay's Infringement**

2 23. Pure Assay's products are marketed and sold nationwide on the internet and
3 through resellers.

4 24. Pure Assay sells raw materials and formulated products to dietary
5 supplement companies for use in dietary supplements. Many of Pure Assay's products
6 are sold and marketed for use in other companies' dietary supplements that are sold to
7 consumers.

8 25. In early January 2012, ThermoLife's President Ron Kramer discovered that
9 dietary supplement company Vita of America sold a dietary supplement that listed
10 Citrulline Nitrate as an ingredient.

11 26. ThermoLife informed Vita of America that ThermoLife's '074 Patent
12 prohibited the sale of Citrulline Nitrate unless the product was sourced from ThermoLife.

13 27. Vita of America informed ThermoLife that it had obtained the Citrulline
14 Nitrate included in its products from Pure Assay.

15 28. Vita of America provided ThermoLife an invoice from Pure Assay for its
16 purchase of Citrulline Nitrate. A true and accurate copy of the invoice is attached as
17 Exhibit B.

18 29. The invoice attached as Exhibit B indicates that on September 22, 2011, Pure
19 Assay accepted, filled and shipped an order from Vita of America for 50 units of
20 Citrulline Nitrate.

21 30. Vita of America paid Pure Assay \$3,900.00 for 50 units of Citrulline Nitrate.

22 31. Upon information and belief, Pure Assay has sold Citrulline Nitrate to other
23 companies in the dietary supplement industry.

24 32. On or about January 10, 2012, Kramer contacted Pure Assay. Kramer
25 informed Pure Assay that its advertisement and sale of Citrulline Nitrate infringed the
26 '074 Patent.

1 imported, made, used, and/or sold Infringing Products in this country, and such Infringing
2 Products have been sold and used in this jurisdiction and district.

3 44. Defendant's infringing conduct is willful, intentional and unlawful and, upon
4 information and belief, will continue unless enjoined by this Court.

5 45. ThermoLife has no adequate remedy at law for the harm caused by
6 defendant's acts.

7 46. By reason of defendant's acts complained of herein, ThermoLife has suffered
8 monetary damages in an amount that has not yet been determined, but upon information
9 and belief, is substantially in excess of the sum or value of \$75,000, exclusive of interest
10 and costs.

11 47. Due to the intentional nature of defendant's acts, this is an exceptional case
12 in which ThermoLife is entitled to treble damages, attorneys' fees and costs pursuant to
13 35 U.S.C. §§284 and 285.

14 48. Pursuant to 35 U.S.C. §284, ThermoLife is entitled to: an accounting by Pure
15 Assay's funds comprising all revenues received through the commercial exploitation of
16 Infringing Products; the imposition of a constructive trust for the benefit of ThermoLife
17 for all such funds in the custody or control of Pure Assay; and to such other damages to
18 which ThermoLife may be determined to be entitled.

19 **COUNT II — INDUCEMENT OF PATENT INFRINGEMENT**

20 49. ThermoLife repeats and realleges each and every allegation contained in the
21 foregoing paragraph of this Complaint, as if fully set forth herein.

22 50. This cause of action arises under the Patent Laws of the United States, Title
23 35, United States Code, in particular under 35 U.S.C. §271(b).

24 51. The '074 Patent is a valid and enforceable patent.

25 52. Upon information and belief, Pure Assay, acting by and through its
26 respective officers and owners, have, in this country, actively and/or intentionally

1 induced others to use and/or sell Infringing Products, in direct infringement of the '074
2 Patent.

3 53. Pure Assay's infringing conduct is willful, intentional and unlawful and,
4 upon information and belief, will continue unless enjoined by this Court.

5 54. ThermoLife has no adequate remedy at law for the harm caused by Pure
6 Assay's acts.

7 55. By reason of Pure Assay's acts complained of herein, ThermoLife has
8 suffered monetary damages in an amount that has not yet been determined, but upon
9 information and belief, is substantially in excess of the sum or value of \$75,000,
10 exclusive of interest and costs.

11 56. Due to the intentional nature of Pure Assay's acts, this is an exceptional case
12 in which ThermoLife is entitled to treble damages, attorneys' fees and costs pursuant to
13 35 U.S.C. §§284 and 285.

14 57. Pursuant to 35 U.S.C. §284, ThermoLife is entitled to: an accounting by Pure
15 Assay's funds comprising all revenues received through the commercial exploitation of
16 Infringing Products; the imposition of a constructive trust for the benefit of ThermoLife
17 for all such funds in the custody or control of Pure Assay; and to such other damages to
18 which ThermoLife may be determined to be entitled.

19 **COUNT III — CONTRIBUTORY PATENT INFRINGEMENT**

20 58. ThermoLife repeats and realleges each and every allegation contained in the
21 foregoing paragraph of this Complaint, as if fully set forth herein.

22 59. This cause of action arises under the Patent Laws of the United States, Title
23 35, United States Code, in particular under 35 U.S.C. §271(c).

24 60. The '074 is a valid and enforceable patent.

25 61. Upon information and belief, Pure Assay is liable for contributory
26 infringement, pursuant to 35 U.S.C. §271(c), in that Pure Assay has imported, made,

1 and/or sold within the United States a component of a patented combination or
2 composition, consisting of a material part of the invention, knowing the same to be
3 especially made or adapted for use in the infringement of the '074 Patent and not a staple
4 article or commodity of commerce suitable for substantial non-infringing use.

5 62. Pure Assay's infringing conduct is willful, intentional and unlawful and,
6 upon information and belief, will continue unless enjoined by this Court.

7 63. ThermoLife has no adequate remedy at law for the harm caused by Pure
8 Assay's acts.

9 64. By reason of Pure Assay's acts complained of herein, ThermoLife has
10 suffered monetary damages in an amount that has not yet been determined, but upon
11 information and belief, is substantially in excess of the sum or value of \$75,000,
12 exclusive of interest and costs.

13 65. Due to the intentional nature of Pure Assay's acts, this is an exceptional case
14 in which ThermoLife is entitled to treble damages, attorneys' fees and costs pursuant to
15 35 U.S.C. §§284 and 285.

16 66. Pursuant to 35 U.S.C. §284, ThermoLife is entitled to: an accounting by Pure
17 Assay's funds comprising all revenues received through the commercial exploitation of
18 Infringing Products; the imposition of a constructive trust for the benefit of ThermoLife
19 for all such funds in the custody or control of Pure Assay; and to such other damages to
20 which ThermoLife may be determined to be entitled.

21 **JURY TRIAL DEMAND**

- 22 1. Plaintiff requests trial by jury on all aspects of the Complaint.
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PRAYER FOR RELIEF

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2 WHEREFORE, Plaintiff ThermoLife International LLC prays for relief and
3 judgment against Defendant Pure Assay as follows:

4 A. For a judicial determination and declaration that the '074 Patent is valid and
5 enforceable;

6 B. That a preliminary and permanent injunction issue against defendant, its
7 agents, officers, directors, employees, attorneys, successors and assigns, all parent and
8 subsidiary entities, and all those acting for or on the behalf of defendant, or in active
9 concert, participation, or combination with them, including customers and distributors,
10 prohibiting defendant from:

11 i. continuing acts of infringement of ThermoLife's '074 Patent;

12 ii. making, using, selling and/or importing Infringing Products, to include any
13 colorable imitation thereof; and

14 iii. otherwise infringing upon ThermoLife's patents.

15 C. That an Order issue from this Court requiring Pure Assay, its officers, agents,
16 servants and employees, to deliver up to this Court for destruction all articles and
17 materials infringing upon the rights of ThermoLife and all formulations and other matter
18 or materials for reproducing such Infringing Products;

19 D. That Pure Assay be required to file with the Court within thirty (30) days
20 after entry of an injunctive order or final judgment a written statement under oath setting
21 forth the manner in which Pure Assay has complied with the order or final judgment;

22 E. Awarding ThermoLife its damages sustained due to Pure Assay's
23 infringement of the '074 Patent;

24 F. In the alternative, ordering Pure Assay to pay ThermoLife all profits, gains,
25 and advantages Pure Assay has received or obtained from their unlawful conduct, in an
26 amount to be determined at trial;

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G. In the alternative, that a reasonable royalty for Pure Assay’s infringement be awarded to ThermoLife pursuant to 35 U.S.C. §284;

H. That, due to Pure Assay’s willful infringement of ThermoLife’s patent rights, Pure Assay be ordered to pay ThermoLife treble damages pursuant to 35 U.S.C. §284;

I. That, due to Pure Assay’s willful and flagrant disregard of ThermoLife’s patent rights, Pure Assay be ordered to pay ThermoLife’s reasonable attorneys’ fees and experts’ fees pursuant to 35 U.S.C. § 285;

J. An award of the costs of this action, including pre- and post-judgment interest, pursuant to 35 U.S.C. §284;

K. For punitive damages in an amount sufficient to deter Pure Assay from future wrongful and outrageous conduct;

L. For such other and further relief as this Court deems necessary, just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 20th day of January, 2012.

KERCSMAR & FELTUS PLLC

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