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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ThermoLife International, LLC, an
Arizona limited liability company,

Plaintiff,

v.

Sechel Holdings, Inc. d/b/a Ergogenix, a
Delaware corporation; 7129211 Canada,
Inc. d/b/a Ergogenix, a Canadian
corporation, SciLabs Nutraceuticals,
Inc., a California corporation,

Defendants.

No.

COMPLAINT

(Jury Trial Demanded)

Plaintiff ThermoLife International, LLC, for its complaint against defendants Sechel Holdings, Inc. d/b/a Ergogenix, 7129211 Canada, Inc. d/b/a Ergogenix, and SciLabs Nutraceuticals, Inc., alleges upon personal knowledge with respect to itself and its own acts, and upon information and belief with respect to all other matters, as follows:

NATURE OF ACTION

1. Plaintiff ThermoLife International, LLC (“ThermoLife”) brings claims for patent infringement, inducement of patent infringement, and contributory patent infringement against its competitors Sechel Holding Corp. d/b/a Ergogenix and 7129211

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1 Canada, Inc. d/b/a Ergogenix (together “Ergogenix”) and Ergogenix’s supplier, SciLabs
2 Nutraceuticals, Inc. (“SciLabs”). Ergogenix and SciLabs are openly violating
3 ThermoLife’s U.S. Patent No. 7,777,074 (the “’074 Patent”), which protects and covers
4 amino acid compounds including creatine nitrate. See Exhibit A. Creatine nitrate is a
5 powerful and effective compound for increasing vasodilatation in humans, and is therefore
6 a desirable additive to dietary supplements for athletes and others.

7 2. 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 3. In this case, Ergogenix and SciLabs have, together, violated and conspired to
14 violate ThermoLife’s ‘074 Patent by including creatine nitrate in Ergogenix’s product
15 ErgoPump NMT (“ErgoPump”).

16 4. Ergogenix’s own website touts ErgoPump as including creatine nitrate. See
17 Exhibit B.

18 5. Ergogenix purchases the creatine nitrate ingredient it includes in ErgoPump
19 from SciLabs.

20 6. ThermoLife brings this action to enjoin Ergogenix and SciLabs from
21 continuing to violate the ‘074 Patent and to recover a reasonable royalty and treble
22 damages for its lost sales resulting from defendants’ willful infringement. In addition,
23 Ergogenix and SciLabs should be made to disgorge their illegal profits made by violating
24 ThermoLife’s valid patent.

PARTIES, JURISDICTION AND VENUE

7. Plaintiff ThermoLife is an Arizona limited liability company. ThermoLife's principal place of business is 3914 E. Chandler Blvd, Phoenix, Arizona 85048.

8. Upon information and belief, defendant Sechel Holding Corp. does business as Ergogenix. Sechel Holding Corp. is a Delaware corporation. Its principal place of business is 11029 Olin Avenue, Omaha, Nebraska, 68144-4933.

9. Upon information and belief, defendant 7129211 Canada, Inc. also does business as Ergogenix. 7129211 Canada, Inc. does business in the United States. 7129211 Canada, Inc.'s principle place of business is 1320 State Route 9 #55202, Camplain, New York 12919.

10. Ergogenix ships and sells products nationwide, including in Arizona.

11. Ergogenix advertises its products nationwide, including in Arizona.

12. Defendant SciLabs is a California corporation. SciLab's principal place of business is 17809 Gillette Avenue, Irvine, California, 92614.

13. SciLabs ships and sells products nationwide, including in Arizona.

14. SciLabs advertises its products nationwide, including in Arizona.

15. The Court has jurisdiction over Plaintiff's federal claims under 28 U.S.C. §§ 1331 and 1338 because this action, at least in part, is for patent infringement and arises under the patent laws of the United States, Title 35, Section 271 *et seq.* of the United States Code. This Court has jurisdiction over any Arizona state law claims asserted by the parties under principles of pendent, ancillary, and supplemental jurisdiction, 28 U.S.C. §§ 1338(b) and 1367(a).

16. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because Ergogenix and SciLabs are diverse in citizenship from ThermoLife and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

1 17. Venue is proper in this District under 28 U.S.C. § 1391(b)-(c), because a
2 substantial part of the events or omissions giving rise to ThermoLife's claims occurred in
3 this District. Venue with respect to Ergogenix and SciLabs is also proper in this district
4 because both defendants are subject to personal jurisdiction in this district.

5 **FACTUAL ALLEGATIONS**

6 **A. ThermoLife**

7 18. Ron Kramer ("Kramer") founded ThermoLife in 1998. Prior to founding
8 ThermoLife, Kramer was a gym owner who had competed in bodybuilding and later
9 promoted professional bodybuilding competitions for the International Federation of
10 Bodybuilders.

11 19. Between 1994 and 1997, Kramer opened and operated a Gold's Gym in Santa
12 Cruz, California.

13 20. During his time as a bodybuilder, promoter, and gym owner, Kramer
14 discovered that many dietary supplements failed to meet any quality control standards.
15 Often supplements are spiked with hidden ingredients and labeled incorrectly. Many were
16 ineffective.

17 21. At the time ThermoLife was established, few supplements were clinically
18 researched or field tested. Even today, relatively few supplements have been proven to
19 work as advertised.

20 22. In 1998, Kramer founded ThermoLife in order to provide the public with
21 quality proven supplements. ThermoLife is committed to selling only the purest, most
22 effective and innovative products.

23 23. By relying on supposedly proprietary formulas, supplement companies often
24 hide the ingredients in their products from consumers. Unlike other supplement
25 companies, ThermoLife develops unique and novel products and formulas that it fully
26 discloses to the public. In this way, ThermoLife allows consumers to know exactly what

1 products and raw materials they consume.

2 24. ThermoLife has been awarded patents on thirteen individual compounds.
3 These patents protect ThermoLife's innovative and proven products from being copied by
4 ThermoLife's competitors.

5 25. By fully disclosing its formulas and relying on scientifically proven and
6 protected formulas and ingredients, ThermoLife has taken a lead role in ending the
7 deceptive business practices that have plagued the supplement industry.

8 26. One of the patents owned by ThermoLife is U.S. Patent 7,777,074 (the "'074
9 Patent"). On August 17, 2010, the '074 Patent was duly and legally issued to Kramer, *et*
10 *al.* ThermoLife is the assignee of all rights in and title to the '074 Patent. A true and
11 correct copy of the '074 Patent is attached as Exhibit A, and incorporated herein by this
12 reference.

13 27. ThermoLife's supplements are sold nationwide on the internet and in vitamin
14 and dietary supplement stores such as The Vitamin Shoppe.

15 **B. Defendants' Infringement**

16 28. Upon information and belief, Ergogenix started doing business in December
17 2008.

18 29. Ergogenix's products are marketed and sold nationwide on the internet and
19 through resellers such as bodybuilding.com.

20 30. As a member of the nutritional supplement and bodybuilding industries,
21 Ergogenix appreciates the scope of the '074 Patent, as well as the other patents assigned to
22 ThermoLife.

23 31. Notwithstanding Ergogenix's appreciation of the value and scope of the '074
24 Patent, Ergogenix has sold, manufactured, imported and/or used infringing creatine nitrate
25 compositions (referred to herein as "Infringing Products").
26

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1 32. Upon information and belief, Ergogenix has manufactured and sold, and
2 continues to manufacture and sell, Infringing Products at least under the product
3 designation of ErgoPump.

4 33. Ergogenix's Infringing Products have at least one compositional feature
5 corresponding to an Amino Acid Compound consisting essentially of a nitrate or nitrite of
6 an Amino Acid elected from the group consisting of Arginine Beta Alanine, Agmatine,
7 Citrulline, Creatine, Glutamine, L-Histidine, Isoleucine, Leucine, Norvaline, or Ornithine.

8 34. Ergogenix sells Infringing Products over the internet and elsewhere.
9 Ergogenix seeks generally to sell Infringing Products to retailers, distributors, dealers,
10 and/or the general public, including the general public in the State of Arizona and this
11 District. Ergogenix has sold Infringing Products in the State of Arizona and this District.

12 35. Ergogenix has been aware of its infringing activity no later than June 22,
13 2011, after Kramer spoke on the telephone to the owner of Ergogenix, wherein Kramer
14 described Ergogenix's infringement of the '074 Patent to Ergogenix.

15 36. Despite notice of its infringing activity, Ergogenix has continued and
16 continues the infringing activities to date.

17 37. The activities of Ergogenix with regard to its sales, importation, manufacture
18 and/or use of the Infringing Products are and have been without authorization from
19 Thermolife.

20 38. Upon information and belief, SciLabs started doing business in December
21 2008.

22 39. SciLabs is a nutraceutical manufacturer and distributor. On its website,
23 SciLabs purports to be an industry leader in nutritional science and manufacturing.
24 SciLabs boasts of having over thirty-five years of experience in the nutraceuticals
25 industry, including its manager, Brian Coy.

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1 40. As a member of the nutritional supplement and nutraceutical industries,
2 SciLabs appreciates the scope of the '074 Patent, as well as the other patents assigned to
3 ThermoLife.

4 41. Notwithstanding SciLabs' appreciation of the value and scope of the '074
5 Patent, SciLabs has sold, manufactured, imported and/or used infringing creatine nitrate
6 compositions. Upon information and belief, SciLabs has manufactured and sold, and
7 continues to manufacture and sell, Infringing Products.

8 42. SciLabs' Infringing Products have at least one compositional feature
9 corresponding to an Amino Acid Compound consisting essentially of a nitrate or nitrite of
10 an Amino Acid elected from the group consisting of Arginine Beta Alanine, Agmatine,
11 Citrulline, Creatine, Glutamine, L-Histidine, Isoleucine, Leucine, Norvaline, or Ornithine.

12 43. SciLabs sells Infringing Products to resellers and distributors of nutritional
13 supplements. SciLabs knows that its customers resell Infringing Products to retailers,
14 distributors, dealers, and/or the general public, including the general public in the State of
15 Arizona and this District. Accordingly, SciLabs has purposefully directed Infringing
16 Products to the State of Arizona and this District.

17 44. SciLabs has been aware of its infringing activity no later than on or about
18 June 23, 2011, after Kramer spoke on the telephone to the manager of SciLabs, Brian
19 Coy. Kramer described SciLabs' and Ergogenix's infringement of the '074 Patent to Mr.
20 Coy during that call.

21 45. Despite notice of its infringing activity, SciLabs has continued and continues
22 the infringing activities to date.

23 46. The activities of SciLabs with regard to its sales, importation, manufacture
24 and/or use of Infringing Products are and have been without authorization from
25 Thermolife.
26

COUNT I – PATENT INFRINGEMENT

47. ThermoLife repeats and realleges each and every allegation contained in Paragraphs 1 through 46 of this Complaint, as if fully set forth herein.

48. This cause of action arises under the Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(a).

49. The '074 Patent is a valid and enforceable patent.

50. Defendants, acting through and by its respective officers and owners, have, without authority, consent, right or license, and in direct infringement of the '074 Patent, imported, made, used, and/or sold Infringing Products in this country, and such Infringing Products have been sold and used in this jurisdiction and district.

51. Defendants' infringing conduct is willful, intentional and unlawful and, upon information and belief, will continue unless enjoined by this Court.

52. ThermoLife has no adequate remedy at law for the harm caused by defendants' acts.

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

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

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

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COUNT II INDUCEMENT OF PATENT INFRINGEMENT

56. ThermoLife repeats and realleges each and every allegation contained in Paragraphs 1 through 55 of this Complaint, as if fully set forth herein.

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

58. The '074 Patent is a valid and enforceable patent.

59. Upon information and belief, defendants, acting through and by their respective officers and owners, have, in this country, actively and/or intentionally induced others to use and/or sell Infringing Products, in direct infringement of the '074 Patent.

60. Defendants' infringing conduct is willful, intentional and unlawful and, upon information and belief, will continue unless enjoined by this Court.

61. ThermoLife has no adequate remedy at law for the harm caused by defendants' acts.

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

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

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

COUNT III – CONTRIBUTORY PATENT INFRINGEMENT

65. ThermoLife repeats and realleges each and every allegation contained in Paragraphs 1 through 64 of this Complaint, as if fully set forth herein.

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

67. The '074 is a valid and enforceable patent.

68. Upon information and belief, defendants are liable for contributory infringement, pursuant to 35 U.S.C. § 271(c), in that defendants have imported, made, and/or sold within the United States a component of a patented combination or composition, consisting of a material part of the invention, knowing the same to be especially made or adapted for use in the infringement of the '074 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

69. Defendants' infringing conduct is willful, intentional and unlawful and, upon information and belief, will continue unless enjoined by this Court.

70. ThermoLife has no adequate remedy at law for the harm caused by defendants' acts.

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

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

73. Pursuant to 35 U.S.C. § 284, ThermoLife is entitled to: an accounting by defendants of funds comprising all revenues received through the commercial exploitation of Infringing Products; the imposition of a constructive trust for the benefit of ThermoLife

1 for all such funds in the custody or control of defendants; and to such other damages to
2 which ThermoLife may be determined to be entitled.

3 **JURY TRIAL DEMAND**

4 74. Plaintiff requests a trial by jury on all aspects of the Complaint.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff ThermoLife International, LLC prays for relief and
7 judgment against Defendants Sechel Holdings, Inc. d/b/a Ergogenix, 7129211 Canada,
8 Inc. and SciLabs Nutraceuticals, Inc. as follows:

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

11 B. That a preliminary and permanent injunction issue against all defendants, their
12 agents, officers, directors, employees, attorneys, successors and assigns, all parent and
13 subsidiary entities, and all those acting for or on the behalf of defendants, or in active
14 concert, participation, or combination with them, including customers and distributors,
15 prohibiting defendants from:

- 16 i. continuing acts of infringement of ThermoLife's '074 Patent;
- 17 ii. making, using, selling and/or importing Infringing Products, to
18 include any colorable imitation thereof; and
- 19 iii. otherwise infringing upon ThermoLife's patents.

20 C. That an Order issue from this Court requiring all defendants, their officers,
21 agents, servants and employees, to deliver up to this Court for destruction all articles and
22 materials infringing upon the rights of ThermoLife and all formulations and other matter
23 or materials for reproducing such Infringing Products;

24 D. That defendants be required to file with the Court within thirty (30) days after
25 entry of an injunctive order or final judgment a written statement under oath setting forth
26 the manner in which defendants have complied with the order or final judgment;

1 E. Awarding ThermoLife its damages sustained due to defendants' infringement
2 of the '074 Patent;

3 F. In the alternative, ordering defendants to pay ThermoLife all profits, gains,
4 and advantages defendants have received or obtained from their unlawful conduct, in an
5 amount to be determined at trial;

6 G. In the alternative, that a reasonable royalty for defendants' infringement be
7 awarded to ThermoLife pursuant to 35 U.S.C. § 284;

8 H. That, due to defendants' willful infringement of ThermoLife's patent rights,
9 defendants be ordered to pay ThermoLife treble damages pursuant to 35 U.S.C. §284;

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

12 J. That, due to defendants' willful and flagrant disregard of ThermoLife's patent
13 rights, defendants be ordered to pay ThermoLife its reasonable attorneys' fees and
14 experts' fees pursuant to 35 U.S.C. § 285; and

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

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