

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Palm Beach Division

ACETO CORPORATION,  
a New York corporation,

Plaintiff,

CASE NO.: \_\_\_\_\_

vs.

THERAPEUTICSMD, INC.,  
a Nevada corporation,  
BOCAGREENMD, INC.,  
a Nevada corporation,

Defendants.  
\_\_\_\_\_ /

**COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF AND DEMAND FOR JURY TRIAL**

Plaintiff Aceto Corporation (“Aceto” or “Plaintiff”), by and through its attorneys,  
DLA PIPER LLP (US), hereby sues Defendants TherapeuticsMD, Inc.  
(“TherapeuticsMD”) and BocaGreenMD, Inc. (“BocaGreenMD”) (BocaGreenMD and  
TherapeuticsMD are collectively referred to as “Defendants”) and alleges as follows:

**NATURE AND BASIS OF ACTION**

1. This is an action for: (i) unfair competition and false designation of origin in violation of Section 43(a) of the federal Trademark Act of 1946, known as the Lanham Act, 15 U.S.C. § 1125(a) (the “Lanham Act”); (ii) false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iii) tortious interference with contractual relationships; (iv) unjust enrichment; (v) misappropriation and conversion; (vi) common law unfair competition; (vii) violation of Florida Statutes § 501.201 *et seq.*, commonly

known as the Florida Deceptive and Unfair Trade Practices Act; (viii) violation of Florida Statutes § 495.011 *et seq.*; and (ix) for declaratory relief and supplemental relief pursuant 28 U.S.C. §§ 2201, 2202. Aceto seeks equitable relief, injunctive relief, monetary damages, and declaratory and supplemental relief.

### **PARTIES**

2. Plaintiff Aceto is a corporation duly organized and existing under the laws of the State of New York, having its principal place of business in New York.

3. Aceto is an international marketing, sales and distribution company focused on the sourcing and distribution of human health products (including finished dosage form generics and nutritionals), pharmaceutical ingredients (including pharmaceutical intermediates and active pharmaceutical ingredients, and performance chemicals (including specialty chemicals and agricultural protection products).

4. Defendant TherapeuticsMD is a corporation organized and existing under the laws of the State of Nevada, having its principal place of business and headquarters at 951 Broken Sound Parkway, NW, Suite 320, Boca Raton, Florida 33487.

5. Defendant BocaGreenMD is a corporation organized and existing under the laws of the State of Nevada, having its principal place of business and headquarters at 951 Broken Sound Parkway, NW, Suite 320, Boca Raton, Florida 33487.

6. Upon information and belief, BocaGreenMD is a wholly owned and directly controlled subsidiary of TherapeuticsMD.

7. Defendants TherapeuticsMD and BocaGreenMD are currently engaged in the production, marketing, promotion and sale of a generic line of prenatal vitamins being

marketed and sold under the name “Prenal,” within this District and throughout this country, in violation of Aceto’s rights.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1337 and 1338, because this action arises under the Lanham Act, codified at 15 U.S.C. § 1051 *et seq.*, as hereinafter more fully demonstrated. This Court has supplemental jurisdiction over Aceto’s state law claims under 28 U.S.C. §§ 1338 and 1367, because those claims are joined with substantial and related claims under the Lanham Act.

9. This Court also has jurisdiction over this dispute based upon diversity of citizenship pursuant to 28 U.S.C. § 1332 because Plaintiff and Defendants are citizens of different states, and there is complete diversity, and this is an action for damages, equitable, declaratory and supplemental relief in which the amount in controversy, exclusive of costs, interest and attorneys’ fees, exceeds \$75,000.

10. This Court also has jurisdiction over this dispute under 28 U.S.C. §§ 2201 and 2202 regarding Aceto’s claim for declaratory judgment relief because an actual controversy within the jurisdiction of this Court exists among the parties.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Defendants reside in this judicial district and because a substantial part of the events and/or omissions giving rise to the claims in this case occurred in this judicial district.

12. Defendants are subject to personal jurisdiction in this Court and in this District because, among other things: (i) Defendants are engaged in substantial and not

isolated activity within Florida and within this District; (ii) Defendants are operating, conducting, engaging in, and carrying on a business in Florida and maintain their offices and headquarters in Boca Raton, Florida; (iii) Defendants have committed, or aided, abetted, contributed to or participated in the commission of unfair competition, improper acts of unauthorized and unlicensed use of proprietary trademarks for which Aceto is the exclusive licensee in the United States, and other tortious acts which have led to foreseeable harm and injury to Aceto in Florida and within this District; (iv) Defendants have induced and/or encouraged the breach of a contract in Florida; and (v) Defendants have systemic and continuous contacts with Florida.

13. This action arises out of the transaction of business, commission of tortious injury, unfair competition and other activities by Defendants within Florida, this District and elsewhere. Defendants have committed within this District the unlawful acts complained of herein.

#### **FACTS GIVING RISE TO THIS ACTION**

**A. *Aceto's Pharmaceutical Ingredient Distribution Business And Aceto's Exclusive License And Rights To The QUATREFOLIC PRODUCTS And The QUATREFOLIC MARK.***

14. Aceto is an established international marketing, sales and distribution company which is a global leader in the marketing, sales and distribution of human health, pharmaceutical ingredients and performance chemical products.

15. Aceto functions as a virtual manufacturing company, distributing more than 1,100 compounds used principally as raw materials in the production of pharmaceutical and chemical products.

16. Aceto is an industry leader in the pharmaceutical ingredient supply industry, and has a long established reputation for excellence in the industry. With respect to its business operations, Aceto has strategic relationships with manufacturers of pharmaceutical, nutraceutical, agricultural and specialty chemical products in the United States and internationally which serve as a valuable resource for Aceto's customers, enabling them to procure high-quality ingredients and vital chemical-based products necessary for their diverse and complex applications.

17. Among Aceto's multiple business segments, Aceto acquires and maintains certain exclusive marketing, sale, and distribution rights, including related patent rights and trademark rights for numerous active pharmaceutical ingredients ("APIs") and other high quality pharmaceutical and nutraceutical ingredients which Aceto supplies to its customers, including various pharmaceutical companies.

18. Aceto's ability to control properly the marketing, sales, and distribution strategies of its pharmaceutical/nutraceutical ingredient products is critical to the success of Aceto's business.

19. Likewise, Aceto's ability to ensure the quality and effectiveness of its products and pharmaceutical/nutraceutical ingredient products has developed substantial customer loyalty and customer goodwill which is critical to the success of Aceto's business.

20. Pursuant to an exclusive distribution and supply agreement with the product manufacturer, Gnosis S.P.A. of Milan, Italy ("Gnosis"), dated January 1, 2011, Aceto is the exclusive licensee in the United States to market, sell, and distribute a

patented pharmaceutical ingredient product manufactured by Gnosis, and known as QUATREFOLIC, which is a glucosamine salt (chemical name: N-[4-[[2-amino-5-methyl-1,4,5,6,7,8-hexahydro-4-oxo-(6S)pteridiny]methyl]amino]benzoyl]- L-glutamic acid glucosamine salt) powder (referred to herein as the “QUATREFOLIC PRODUCTS”).

21. Pursuant to its exclusive distribution agreement with Gnosis, for prescription (Rx) purposes Aceto has the exclusive license and rights within the United States to use, promote and sub-license the trademarks and trade-names associated with the QUATREFOLIC PRODUCTS, including but not limited to, the registered trademark QUATREFOLIC & Design, United States Trademark Registration No. 3,799,826 (collectively referred to herein as the “QUATREFOLIC MARK”). See A true and correct copy of United States Trademark Registration No. 3,799,826 attached hereto as **Exhibit A**. This United States Trademark Registration, attached hereto as **Exhibit A**, is valid and subsisting, and provides conclusive evidence of the right of Aceto, as exclusive licensee of Gnosis, to use the QUATREFOLIC MARK in commerce.

22. Pursuant to its exclusive distribution agreement with Gnosis, for prescription (Rx) purposes Aceto also has the exclusive license and rights within the United States to use, sell, offer for sale and import the patented QUATREFOLIC PRODUCTS under United States Patent No. 7,947,662, and the related pharmaceutical ingredient products.

23. The QUATREFOLIC MARK has been prominently utilized in connection with all aspects of the marketing, advertising, promotion and sale of the QUATREFOLIC

PRODUCTS, including product packaging, marketing brochures, websites, print advertising, informational materials and promotional materials printed and distributed in connection with the QUATREFOLIC PRODUCTS.

24. Aceto has continuously used the QUATREFOLIC MARK in connection with the marketing, promotion and advertising for the QUATREFOLIC PRODUCTS, as well as in connection with its relevant business transactions, throughout the United States.

25. Substantial monies and resources have been invested and utilized in connection with advertising and promoting the QUATREFOLIC MARK for the QUATREFOLIC PRODUCTS.

26. Aceto has sold and distributed the QUATREFOLIC PRODUCTS under the QUATREFOLIC MARK for sale and distribution throughout the United States.

27. As a result of the marketing and promotion efforts and product sales, the QUATREFOLIC MARK has come to be recognized by purchasers within the pharmaceutical and nutraceutical industry as identifying the high-quality and consistent QUATREFOLIC PRODUCTS.

28. Companies have come to trust the QUATREFOLIC MARK, and rely upon the quality, safety and effectiveness of products bearing the QUATREFOLIC MARK, and to associate the QUATREFOLIC MARK with the licensed and authorized sale and distribution of the QUATREFOLIC PRODUCTS by Aceto.

29. The QUATREFOLIC MARK has been continuously used by Aceto in marketing and promotional materials for the QUATREFOLIC PRODUCTS in interstate

commerce, and the QUATREFOLIC MARK has become, through widespread and favorable public acceptance and recognition, an asset of substantial value to Aceto as a symbol of goodwill and origin.

30. By virtue of Aceto's exclusive licensee rights, and its adoption and continuous use of the QUATREFOLIC MARK, Aceto is the exclusive licensee and owner of rights, title and interest in and to the QUATREFOLIC MARK in connection with the prescription (Rx) pharmaceutical ingredient industry in the United States.

***B. The Distribution Of The QUATREFOLIC PRODUCTS Through Pernix And Defendants' Improper Acquisition of QUATREFOLIC PRODUCTS And Improper Use of The QUATREFOLIC MARK***

31. In connection with the process for distribution of the QUATREFOLIC PRODUCTS throughout the United States, Aceto has entered into certain limited supply agreements, whereby Aceto provided companies with certain limited distribution rights and limited sub-licensing rights in connection with QUATREFOLIC PRODUCTS and the QUATREFOLIC MARK.

32. These limited supply agreements include express limitations and restrictions to ensure that Aceto can properly protect its critical legal rights and intellectual property rights relating to the QUATREFOLIC PRODUCTS and the QUATREFOLIC MARK, and to ensure that the Aceto can properly control the distribution and marketing strategy for the QUATREFOLIC PRODUCTS.

33. For one such limited supply agreement, Aceto and Pernix Therapeutics Holdings, Inc. ("Pernix") entered into the Semi-Exclusive Supply Agreement dated August 4, 2011 (the "Pernix Supply Agreement"), whereby Pernix agreed to purchase



exclusively the QUATREFOLIC PRODUCTS from Aceto, and whereby Pernix obtained certain other limited rights to sub-license the QUATREFOLIC PRODUCTS to third-parties under specific circumstances and subject to specific conditions. See Pernix Supply Agreement at §§ 2, 4.

34. With respect to Pernix's limited rights, Section 4(b) of the Pernix Supply Agreement expressly provides that:

Pernix shall be entitled to sub-license Product to one or more (as set forth on Appendix I) third parties ("Sub-Licensees"), provided, that (i) Pernix enters into written agreements with each such Sub-Licensee under terms consistent with this Agreement . . . , and (ii) **Aceto remains the direct supplier of Product to each such Sub-Licensee, such that the Products will be shipped by Aceto directly to such Sub-Licensee. Aceto shall have the right to review and approve all proposed sub-license agreements** . . .

See Pernix Supply Agreement at § 4(b) (emphasis added).

35. Based upon the superior quality, effectiveness and reputation of the QUATREFOLIC PRODUCTS, Defendants wanted to obtain the high-quality QUATREFOLIC PRODUCTS, and to promote, use and sell the QUATREFOLIC PRODUCTS in connection with a new line of prenatal vitamins, referred to as "Prena1" vitamins, that the Defendants intended to launch in interstate commerce and in the marketplace throughout the United States.

36. In furtherance of Defendants' plan to launch the new line of prenatal vitamins, Defendants evidently desired to become a "Sub-Licensee" with respect to the QUATREFOLIC PRODUCTS and the QUATREFOLIC MARK, so that Defendants could obtain, utilize and sell the patented QUATREFOLIC PRODUCTS in connection

with the Defendants' prenatal vitamin products, and so that Defendants' could use the QUATREFOLIC MARK in connection with the promotion, marketing, advertising and labeling for the Defendants' prenatal vitamin products.

37. With respect to any proposed sub-licenses relating to the QUATREFOLIC PRODUCTS, Defendants were expressly aware that "Aceto shall have the right to review and approve all proposed sub-license agreements," and that no proposed sub-license agreement could be legitimate or valid unless and until Aceto specifically approves such proposed sub-license agreement.

38. With respect to any proposed sub-licenses relating to the QUATREFOLIC PRODUCTS, Defendants were also expressly aware that Aceto is required to be the "direct supplier" of all QUATREFOLIC PRODUCTS to any and all proposed Sub-Licensees, and that all QUATREFOLIC PRODUCTS to be acquired by any Sub-Licensees must be "shipped by Aceto directly to such Sub-Licensee."

39. Defendants were also fully aware that Aceto had existing contractual rights under the Pernix Supply Agreement, including Aceto's contractual right to be the "direct supplier" and seller of all QUATREFOLIC PRODUCTS to the proposed Sub-Licensees, and the contractual right and requirement that all proposed sub-license agreements must be approved by Aceto.

40. Defendants were also fully aware that Aceto held the exclusive legal rights for the sale and distribution of the QUATREFOLIC PRODUCTS in the prescription (Rx) market in the United States, and for the use of the QUATREFOLIC MARK in the United States.

41. Defendants never obtained any valid or legitimate sub-license with respect to the use, promotion or sale of the QUATREFOLIC PRODUCTS, and Defendants never obtained any valid or legitimate sub-license to use the QUATREFOLIC MARK.

42. Specifically, Defendants never received authorization or approval from Aceto to obtain, utilize and sell the patented QUATREFOLIC PRODUCTS in connection with the Defendants' "Prenal" prenatal vitamin products which are being marketed as "authorized generics prescription prenats," and Defendants never received authorization or approval from Aceto to use the QUATREFOLIC MARK in connection with the promotion, marketing, advertising and labeling for the Defendants' "Prenal" generic prenatal vitamin product line.

43. Despite Defendants' knowledge regarding Aceto's contractual and legal rights relating to the QUATREFOLIC PRODUCTS and the QUATREFOLIC MARK, the Defendants are actively engaged in an on-going pattern of improperly obtaining, utilizing, marketing and distributing QUATREFOLIC PRODUCTS without any valid license or approval from Aceto. Defendants are also engaged in the improper and misleading use of the identical QUATREFOLIC MARK in connection with the promotion and advertising of their competitive "Prenal" vitamin product line.

44. Defendants have improperly obtained QUATREFOLIC PRODUCTS directly from Pernix in violation of and in circumvention Aceto's legal and contractual rights, and Defendants are actively marketing, promoting and distributing unlicensed QUATREFOLIC PRODUCTS and unlawfully using the QUATREFOLIC MARK in connection with Defendants' efforts to promote, market and sell their "Prenal" generic

prenatal vitamin products in the marketplace throughout the State of Florida and the United States.

45. Defendants have intentionally induced and caused Pernix to improperly supply Defendants with the QUATREFOLIC PRODUCTS in violation of Aceto's rights under the Pernix Supply Agreement.

46. Defendants are engaged in a pattern of unfair competition and other tortious activities in connection with Defendants' unlicensed and unauthorized use of the QUATREFOLIC MARK, and Defendants' unlicensed promotion, use and sale of the QUATREFOLIC PRODUCTS.

47. Among other things, in connection with Defendants' new prenatal vitamin product line known as "Prena1," the Defendants are improperly using the QUATREFOLIC MARK, and are actively marketing, promoting and distributing unlicensed QUATREFOLIC PRODUCTS in connection with and as a component and/or ingredient in their "Prena1" vitamin products. See Prena1 website, attached hereto as **Exhibit B.**

48. On the Prena1 website, Defendants expressly state that the "Prena1 with Quatrefolic®" is "The ONLY Authorized Generics Prescription Prenatals with Quatrefolic® and life's DHA™." Id.

49. The Defendants' website also includes an entire separate page with an unauthorized detailed description regarding the QUATREFOLIC PRODUCTS, and the website states that the "Prena1 prescription prenatal vitamins are available at most retail and mail order pharmacies." Id.

50. Defendants do not have any valid or legitimate sub-license or rights to use the QUATREFOLIC MARK or to use, sell and distribute the QUATREFOLIC PRODUCTS in connection with the “Prenal” generic prenatal vitamin product line. Aceto has not authorized Defendants to use the QUATREFOLIC MARK in connection with the “Prenal” generic prenatal vitamin product line, nor has Aceto authorized Defendants to use, sell and distribute the QUATREFOLIC PRODUCTS in connection with the “Prenal” vitamins.

51. Defendants’ repeated use of the QUATREFOLIC MARK on the “Prenal” website, on the product labeling and on the marketing materials is improper, unlicensed, unauthorized and misleading, and it falsely suggests an association and affiliation with Aceto.

52. Defendants’ use of the QUATREFOLIC PRODUCTS in connection with and as a component and ingredient of their “Prenal” product is improper, unlicensed and unauthorized, and it falsely suggests an association and affiliation with Aceto.

53. Defendants are improperly obtaining and selling the QUATREFOLIC PRODUCTS and using the QUATREFOLIC MARK in connection with their “Prenal” vitamin product line in a manner which is likely to cause confusion as to the source or sponsorship of the same.

54. Defendants are marketing and selling the QUATREFOLIC PRODUCTS as a component and active ingredient in their “Prenal” product line in order to unjustly obtain the benefits associated with the high quality QUATREFOLIC PRODUCTS, and to

imply improperly an association between the Defendants' new "Prenal" vitamin product line and Aceto's high-quality business and the QUATREFOLIC PRODUCTS.

55. Defendants' improper use of the identical QUATREFOLIC MARK is likely to cause confusion, mistake or deception as to the source or origin of their products in relation to pharmaceutical products of Aceto used in connection with the QUATREFOLIC MARK.

56. Actual confusion has already occurred among customers and pharmaceutical professionals in the marketplace, and in further efforts to cause confusion, Defendants have improperly selected and utilized the "Prenal" product line name which is substantially similar the brand name being utilized by a valid and authorized sub-licensee of the QUATREFOLIC PRODUCTS.

57. This unlicensed activity and improper conduct by Defendants is causing substantial irreparable harm and damage to Aceto, and is a direct violation of Aceto's legal and contractual rights.

**C. *Aceto's Request For Defendants to Cease And Desist Wrongful Conduct***

58. Defendants were informed and aware that Aceto did not support and/or authorize a strategy of marketing, promoting and/or selling a generic prenatal vitamin product line in connection with the QUATREFOLIC PRODUCTS or the QUATREFOLIC MARK, and that this was contrary to Aceto's strategic marketing plans for the QUATREFOLIC PRODUCTS.

59. After discovering Defendants' wrongful conduct and infringing activities, counsel for Aceto sent cease and desist correspondence to the Defendants notifying

Defendants regarding their wrongful conduct and expressly requesting that Defendants “immediately refrain from any further unauthorized promotion, use and distribution of QUATREFOLIC PRODUCTS, and that [Defendants] immediately remove the unauthorized ‘Prena1 website’ and remove all unauthorized references to QUATREFOLIC PRODUCTS on its marketing material, website and products. In addition, all QUATREFOLIC PRODUCTS and associated marketing, promotional and point of sale materials that have been distributed must be recalled.” See Aceto Cease and Desist Letter dated November 8, 2012, attached hereto as **Exhibit C**.

60. Despite Aceto’s demands in the cease and desist letter, Defendants have not ceased their improper conduct and Defendants continue the above alleged improper and unlicensed conduct.

61. Defendants have been made aware of their improper, unlicensed and unauthorized use of the QUATREFOLIC PRODUCT and the QUATREFOLIC MARK, but as of the date of this filing, Defendants have not stopped the infringing activities.

62. Aceto has been substantially damaged and continues to be damaged by Defendants’ wrongful activities described herein.

63. Aceto has satisfied all conditions precedent to bringing this action, or such conditions have been waived, excused or otherwise discharged.

64. Aceto has incurred attorneys’ fees in connection with this action, and Aceto is entitled to recover such attorneys’ fees.

**COUNT I**

**FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF  
ORIGIN AND FALSE AND MISLEADING REPRESENTATIONS**

65. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

66. This is an action for unfair competition and false designation of origin and false and misleading representations under the Lanham Act, 15 U.S.C. § 1125(a).

67. Defendants' use of the identical QUATREFOLIC MARK constitutes unfair competition and a false designation of origin or false or misleading description or representation of fact, which is likely to deceive customers and prospective customers into believing that the Defendants' goods offered in connection with its "Prena1" prenatal vitamin products and using the identical QUATREFOLIC MARK are those of Aceto in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

68. Defendants' actions cause or are likely to cause confusion or mistake among the public as to the true origin and sponsorship of the Defendants' "Prena1" goods offered for sale using the identical QUATREFOLIC MARK, and to confuse the public into believing that the Defendants' "Prena1" goods offered for sale using the identical QUATREFOLIC MARK have the approval of Aceto, or are otherwise affiliated, connected, associated with, or sponsored by Aceto, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

69. At all times material hereto, Aceto has enforceable trademark rights in the QUATREFOLIC MARK for the QUATREFOLIC PRODUCTS in the United States



70. Actual confusion has already occurred among customers and pharmaceutical professionals in the marketplace.

71. Aceto has no control over the nature and quality of Defendants' "Prenal" goods offered for sale using the identical QUATREFOLIC MARK. Any failure, neglect, or default of Defendants in providing goods will reflect adversely on Aceto.

72. Aceto is informed and believes and on that basis alleges that Defendants have derived unlawful gains and profits from their infringement of the QUATREFOLIC MARK. As a result of Defendants' infringement of the QUATREFOLIC MARK, Aceto has suffered loss, injury, and damages.

73. The goodwill of Aceto's business under the QUATREFOLIC MARK is of great value, and Aceto will suffer irreparable harm should Defendants' acts of unfair competition, and false representation and designations, be allowed to continue, to the detriment of the trade reputation and goodwill of Aceto for which damage Aceto cannot be adequately compensated at law.

74. Aceto has no control over the quality of the goods offered by Defendants. Thus, the value of the QUATREFOLIC MARK of Aceto is subject to damage by an entity and individuals it cannot control. Unless enjoined by this Court from so doing, Defendants will continue to engage in acts of unfair competition, false representation and designation, to the irreparable damage and injury of Aceto.

75. Upon information and belief, from the outset, Defendants have engaged in acts of unfair competition, false representation and designation, with knowledge of the exclusive rights of Aceto to the QUATREFOLIC MARK in connection with the identical

goods, and Defendants continue in such acts of unfair competition, intentional false representation and designation, thus entitling Aceto to an award of its actual damages, Defendants' profits, plus attorneys' fees and costs in bringing and maintaining this action, pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

**COUNT II**  
**FALSE ADVERTISING**

76. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

77. This is an action for false advertising under the Lanham Act, 15 U.S.C. § 1125(a).

78. The advertising and promotion of Defendants' "Prenal" prenatal vitamins using the QUATREFOLIC MARK, including on their website, product packaging, and marketing materials, is false and misleading.

79. Defendants' false and deceptive advertising has, upon information and belief, actually deceived or has the tendency to deceive a substantial portion of the public into believing that Defendants' "Prenal" products using the QUATREFOLIC MARK are affiliated with or sponsored by Aceto.

80. Defendants' advertising and promotional materials contain information about the QUATREFOLIC PRODUCT, and the products bearing the QUATREFOLIC MARK that is false, misleading and factually incorrect.

81. Defendants' deceptive advertising materially influences the purchasing decisions of purchasers and ultimate consumers, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

82. Defendants' false and deceptive advertising and their "Prenal" products have been advertised and traveled in interstate commerce.

83. Aceto has been injured as a result of Defendants' deceptive and false advertising in that it has suffered a loss of sales and a loss of goodwill directly as a result of Defendants' deceptive and false advertising, for which Aceto has no adequate remedy at law.

84. Aceto will continue to be irreparably injured unless and until this Court enjoins Defendants' misconduct.

**COUNT III**  
**COMMON LAW UNFAIR COMPETITION**

85. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

86. Defendants have engaged in competitive and deceptive conduct by using and continuing to use the identical QUATREFOLIC MARK and QUATREFOLIC PRODUCTS with the calculated purpose of passing off their goods as those of Aceto or those authorized by Aceto, of trading upon Aceto's significant goodwill and reputation symbolized by the QUATREFOLIC MARK, to unjustly receive the benefits of the superior and effective QUATREFOLIC PRODUCTS, and to deceive and mislead the public as to the true nature, characteristics and origin of Defendants' products, all to Defendants' profit and Aceto's damage.

87. Defendants' acts constitute unfair competition under the common law of the State of Florida and have caused, and unless restrained by this Court, will continue to cause, immediate and irreparable injury to Aceto's goodwill and reputation for which it has no adequate remedy at law.

#### **COUNT IV**

#### **FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

88. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

89. This is an action for violation of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201 *et seq.*

90. Defendants' improper and deceptive use of the identical QUATREFOLIC MARK and Defendants' improper use of the QUATREFOLIC PRODUCTS in connection with their "Prenal" vitamin product line constitutes deceptive and unfair trade practices under Florida Statutes § 501.201 *et seq.*, in that the Defendants have represented that their goods and products have qualities, characteristics, sponsorship, and/or approval that they do not have, and in that Defendants have disparaged the goods, products, services or business of Aceto by false or misleading representations of fact.

91. The public is likely to be substantially damaged as a result of Defendants' deceptive and unfair trade practices.

92. Such unfair trade practices are immoral, unethical, oppressive, unscrupulous and offend established public policy.

93. Aceto has suffered actual damages as a direct and proximate result of Defendants' wrongful, deceptive and unfair trade practices.

94. Defendants' wrongful, deceptive and unfair trade practices are causing Aceto to suffer irreparable harm, and irreparable harm will continue unless enjoined.

95. Unless permanently enjoined by this Court, Defendants will continue said deceptive and unfair trade practices, thereby deceiving the public and causing Aceto immediate and irreparable injury for which it has no adequate remedy at law.

### **COUNT V**

#### **STATUTORY INJURY TO BUSINESS REPUTATION AND DILLUTION**

96. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

97. This is an action for statutory injury to business reputation and dilution pursuant to Florida Statutes § 495.151.

98. Aceto, by virtue of its prior adoption and use in interstate commerce of the QUATREFOLIC MARK in connection with the pharmaceutical ingredient business in this District and elsewhere, has acquired, established, and maintains valuable rights in the said trademark.

99. Defendants' subsequent and continued infringing use of the identical QUATREFOLIC MARK and improper use of the QUATREFOLIC PRODUCT in connection with the "Prenal" vitamin product line constitutes an unauthorized and/or unlicensed use of the QUATREFOLIC MARK, falsely designates the origin of Defendants' products, has caused confusion, mistake and deception and is likely to cause further confusion, mistake or deception, and therefore is likely to injure the business reputation of Aceto in violation of Florida Statutes § 495.151.

100. Defendants' subsequent and continued infringing use of the identical QUATREFOLIC MARK and improper use of the QUATREFOLIC PRODUCT in connection with the "Prenal" vitamin product line constitutes an unauthorized and/or unlicensed use of the QUATREFOLIC MARK, is causing a likelihood of injury to Aceto's business reputation or of dilution to the distinctive quality of the QUATREFOLIC MARK.

101. Unless permanently enjoined by this Court, Defendants' continued advertising, offering for sale, selling, marketing and promoting of Defendants' products in connection with the identical QUATREFOLIC MARK and their unauthorized and unlicensed use of the QUATREFOLIC PRODUCT will continue to result in the likelihood of further dilution, confusion, mistake and deception by the public concerning the source or origin of the goods manufactured and offered for sale and sold by Defendants and produce the attendant irreparable injury and damage to Aceto and its goodwill and business reputation, for which Aceto has no adequate remedy at law.

## **COUNT VI**

### **COMMON LAW UNJUST ENRICHMENT**

102. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

103. Defendants' use of the infringing identical QUATREFOLIC MARK and the QUATREFOLIC PRODUCTS in connection with the advertising, promotion and sale of its products, from which Defendants have derived substantial profits, have unjustly enriched Defendants by enabling them to appropriate unfairly the benefit of Aceto's extensive use and promotion of the QUATREFOLIC MARK and the superior quality and

effectiveness of the QUATREFOLIC PRODUCTS in connection with Aceto's products and the goodwill associated therewith.

104. Defendants' use of the infringing identical QUATREFOLIC MARK and Defendants' unlicensed and unauthorized use of the QUATREFOLIC PRODUCTS are benefits conferred upon Defendants and Defendants have knowledge of such benefits.

105. Defendants have knowingly accepted and retained the benefits of their use of the QUATREFOLIC MARK and the QUATREFOLIC PRODUCTS.

106. Defendants have provided nothing of value to Aceto in connection with or return for their use of the QUATREFOLIC MARK and the QUATREFOLIC PRODUCTS.

107. The circumstances are such that it would be inequitable and unjust for Defendants to retain the benefits they have accepted and retained without paying the value thereof to Aceto.

108. By reason of the foregoing, Defendants has unjustly enriched themselves in an unknown amount, and Aceto is entitled to just compensation under the common law of the State of Florida.

109. Defendants' are continuing to earn revenues and profits to which they are not legally entitled, causing irreparable injury to Aceto by the aforesaid acts of Defendants for which Aceto has no adequate remedy at law.

## **COUNT VII**

### **MISAPPROPRIATION AND CONVERSION**

110. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

111. Defendants, through the infringing, unauthorized, and unlicensed use of the identical QUATREFOLIC MARK and the QUATREFOLIC PRODUCTS in connection with their “Prena1” vitamin product line, have misappropriated and converted Aceto’s rights (and goodwill) associated with its exclusive use and sub-licensing of the QUATREFOLIC MARK and the QUATREFOLIC PRODUCTS in connection with its pharmaceutical ingredient products.

112. Defendants have converted to their own use and exploited Aceto’s marks and Aceto’s products, thereby reaping for Defendants’ benefit the benefits of Aceto’s use, promotion of and the goodwill symbolized thereby, of the QUATREFOLIC MARK and the QUATREFOLIC PRODUCTS.

113. Defendant’s improper actions described herein are acts of dominion over Aceto’s property which are inconsistent with Aceto’s ownership therein.

**COUNT VIII**  
**TORTIOUS INTERFERENCE**

114. Aceto repeats and realleges the allegations of Paragraphs 1 through 64 as though fully set forth herein.

115. Aceto has an established contractual relationship with Pernix as evidenced by the Pernix Supply Agreement, including Aceto’s existing contractual rights relating to use, sale and distribution of the QUATREFOLIC PRODUCTS, and the rights relating to the sub-licensing of the QUATREFOLIC PRODUCTS and QUATREFOLIC MARK.



116. Defendants knew and were fully aware of Aceto's contractual relationship with Pernix, and Defendants knew or should have reasonably known of Aceto's contractual rights under such agreement.

117. Defendants intentionally committed multiple acts designed to interfere with and disrupt Aceto's contractual relationship with Pernix, and to cause Pernix to breach its obligations to Aceto.

118. Defendants intentionally interfered with Pernix's contractual relations with Aceto, by among other things, causing Pernix to breach its contractual obligations under the Pernix Supply Agreement, and by inducing Pernix to breach other contractual obligations to Aceto, and by benefiting from such breaches.

119. Defendants have intentionally caused and/or induced Pernix to directly supply Defendants with unauthorized QUATREFOLIC PRODUCTS in violation of Pernix's contractual obligations.

120. Defendants' acts have caused disruption and interference with Aceto's contractual and business relationships.

121. Defendants' methods of interference are improper and unjustified, and Defendant's motives for interference are improper.

122. Aceto has suffered damages as a direct result of Defendants' wrongful and intentional interference.

123. Defendants' wrongful interference is causing Aceto to suffer irreparable harm, and irreparable harm will continue unless enjoined.

124. Defendants' conduct is causing irreparable injury to Aceto, and Aceto is facing the threat of further imminent irreparable harm as long as Defendants continue their wrongful conduct.

125. Aceto has suffered harm and damages as a direct and proximate result of the breaches of the Pernix Supply Agreement and Defendants causing and/or inducing Pernix to breach the Pernix Supply Agreement.

126. The threat of further imminent irreparable injury to Aceto outweighs the threatened harm of the proposed injunctive relief against Defendants.

127. Any injunctive relief, if issued, will not disserve the public interest.

128. Unless Defendants are immediately enjoined from engaging in the wrongful conduct set forth herein, Aceto will continue to suffer irreparable injury and harm for which it has no adequate remedy at law.

**COUNT IX**  
**DECLARATORY AND SUPPLEMENTAL RELIEF**

129. Aceto repeats and realleges the allegations in Paragraphs 1 through 64 above as though fully set forth herein.

130. Aceto is seeking a declaration of its rights under 28 U.S.C. §§ 2201 and 2202.

131. As fully alleged above, the parties are in a dispute concerning Defendants' unauthorized and unlicensed use and sale of the QUATREFOLIC PRODUCTS, and Defendants unauthorized and unlicensed use of the identical QUATREFOLIC MARK.

132. This dispute represents a bona fide, actual, present and practical need for a declaration of the parties' respective rights and obligations.

133. An actual controversy within the jurisdiction of this Court exists among the parties for which Aceto seeks declaratory relief because of the dispute among the parties regarding Defendants' unauthorized and unlicensed use of the QUATREFOLIC PRODUCTS and the QUATREFOLIC MARK.

134. Aceto seeks a declaration by this Court that Defendants do not have any valid or proper sub-license and/or authorization to use, produce or offer for sale the QUATREFOLIC PRODUCTS, and a declaration that Defendants do not have any valid or proper license and/or authorization to use, promote and sub-license the QUATREFOLIC MARK.

135. Aceto is in doubt as to its rights and is directly and materially affected by the conduct complained of herein.

136. The declarations sought herein deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

137. Aceto's rights are dependent upon the facts or the law applicable to the facts.

138. Aceto and Defendants have an actual, present, adverse and antagonistic interest in the subject matter.

139. The antagonistic and adverse interests are all before the Court by proper process and the relief sought herein is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. Aceto is not seeking to obtain legal advice or legal opinions.

**JURY DEMAND**

140. Aceto demands a trial by jury of all issues raised in this Complaint.

**PRAYER FOR RELIEF**

WHEREFORE, by virtue of the unlawful misconduct of Defendants alleged in Counts I through IX above, Aceto prays that the Court enter judgment that:

A. Defendants have used false designations of origin, false descriptions, and false representations in violation of 15 U.S.C. § 1125(a);

B. Defendants have engaged in false advertising in violation of 15 U.S.C. § 1125(a);

C. Defendants have infringed Aceto's rights in the QUATREFOLIC MARK in violation of federal and state common law principles of unfair competition;

D. Defendants have engaged in deceptive and unfair trade practices in violation of Florida Statutes § 495.011 *et seq.* and Florida Statutes § 501.201 *et seq.*;

E. Defendants have been unjustly enriched in violation of Florida common law and have misappropriated and improperly converted to themselves revenues and property related to Aceto's rights with respect to the QUATREFOLIC MARK in violation of Florida common law;

F. Defendants, their divisions, related companies, officers, agents, servants, employees, attorneys and all persons acting in concert or participation with them who receive actual notice of the order, be permanently enjoined from:

(1) using the QUATREFOLIC MARK, in any form or in any manner, in connection with Defendants' prenatal vitamin products business or any

mark which is confusingly similar to the QUATREFOLIC MARK, in any form or in any manner;

- (2) committing any acts calculated to cause the public to believe that Defendants and/or any of Defendants' products are associated with, affiliated with or sponsored by Aceto or are authorized by Aceto, in whole or in part;
- (3) otherwise competing unfairly with Aceto in any manner, including without limitation, using a false designation of origin, false description or false representation which misrepresents the nature, characteristics or qualities, source or origin of Defendants' products; and
- (4) attempting, causing, or assisting others with any of the above-described acts;
- (5) engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of the QUATREFOLIC PRODUCT.
- (6) engaging in improper acts designed to interfere with Aceto's existing and established contractual relationships.

G. Pursuant to 15 U.S.C. § 1118, order Defendants and all related companies, divisions, officers, directors, agents, servants, employees, and those persons in active concert or participation with them, to deliver to Aceto for destruction all materials, samples or products which constitute and/or contain the QUATREFOLIC PRODUCT and all goods, advertising and promotional materials related to the goods, signs, displays,

stationery, and all other materials of any kind or nature bearing the infringing QUATREFOLIC MARK, as well as all plates, molds, matrices and other means for making or duplicating the same;

H. Defendants be required to account to Aceto for any and all profits, gains and advantage derived by, and all damages sustained by Aceto, by reason of Defendants' acts complained of herein and that such damages and profits be trebled and awarded to Aceto pursuant to 15 U.S.C. § 1117 on the ground that Defendants' misconduct has been willful, deliberate and in bad faith;

I. Aceto recover actual damages and punitive damages in an amount to be determined at trial for violation of Florida common law of misappropriation, conversion, unfair competition and tortious interference claims;

J. Aceto recover pre-judgment interest on the amount awarded and post-judgment interest until paid, to the maximum extent allowed by law;

K. Because Defendants have deliberately and in bad faith misappropriated the QUATREFOLIC MARK in connection with their prenatal vitamin products, Defendants have unfairly competed with Aceto and that Aceto be awarded its costs, attorneys' fees and expenses in this suit under 15 U.S.C. § 1117;

L. A declaration for the declaratory relief sought in the paragraphs above, and orders from this Court consistent with the relief sought; and

M. Aceto be awarded such other and further relief, at law or in equity, as the Court may deem just and proper.

Respectfully submitted this 13th day of November, 2012.

**DLA PIPER LLP (US)**

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