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AKESO HEALTH SCIENCES, LLC

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

**AKESO HEALTH SCIENCES, LLC,**

Plaintiff,

vs.

**UNITED NATURAL FOODS, INC.,  
and UNITED NATURAL FOODS  
WEST, INC.,**

Defendants.

Case No. 2:17-cv-01531

**COMPLAINT FOR WILLFUL  
PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff Akeso Health Sciences, LLC alleges as follows for its Complaint for Willful Patent Infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, against Defendant United Natural Foods West Inc. and United Natural Foods East Inc. (collectively, “Defendants”):

**THE PARTIES**

1. Plaintiff Akeso Health Sciences, LLC (“Akeso”) is a limited liability company organized and existing under the laws of the State of California, with a place of business located at 4607 Lakeview Canyon #561, Westlake Village, California.

2. Defendant United Natural Foods Inc. (“UNFI”) is a corporation

1 organized and existing under the laws of the State of Delaware with a principal  
2 place of business located at 313 Iron Horse Way, Providence, RI 02908. UNFI is  
3 registered to do business in the State of California.

4 3. Defendant United Natural Foods West Inc. (“UNFI West”) is a  
5 subsidiary of UNFI and is a corporation organized and existing under the laws of  
6 the State of California with a principal place of business located at 1101 Sunset  
7 Boulevard, Rocklin, CA 95765. UNFI and UNFI West are collectively referred to  
8 herein as “UNFI” or “Defendants”.

### 9 **JURISDICTION AND VENUE**

10 4. This Court has subject matter jurisdiction over this action pursuant to  
11 28 U.S.C. §§ 1331 and 1338(a).

12 5. Upon information and belief, this Court has specific personal  
13 jurisdiction over Defendants because Defendants have placed infringing goods into  
14 the stream of commerce with the expectation that they would be purchased in the  
15 State of California and/or otherwise has purposefully directed activities toward the  
16 State of California related to the sale of infringing goods.

17 6. Venue for this action is proper in the Central District of California  
18 pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

### 19 **PATENTS-IN-SUIT**

20 7. United States Patent Number 6,068,999 (“ ‘999 patent”) is titled  
21 “Dietary Supplement for Supporting Cerebrovascular Tone and Treating Migraine  
22 Headaches” and was duly and validly issued by the United States Patent and  
23 Trademark Office on May 30, 2000. A true and correct copy of the ‘999 patent is  
24 attached to and incorporated herein as Exhibit A.

25 8. United States Patent Number 6,500,450 (“ ‘450 patent”) is titled  
26 “Composition for Treating Migraine Headaches” and was duly and validly issued  
27 by the United States Patent and Trademark Office on December 31, 2002. A true  
28 and correct copy of the ‘450 patent is attached and incorporated herein as Exhibit B.

1 The '999 and '450 patents are referred to collectively herein as the "Patents-in-  
2 Suit".

3 9. The Patents-in-Suit each name Akeso's founder, Curt Hendrix, as the  
4 sole inventor.

5 10. Akeso is the owner by assignment of all right, title, and interest in the  
6 Patents-in-Suit, including all rights to sue and collect for past damages.

7 **AKESO'S PATENTED INVENTIONS**

8 11. The Patents-in-Suit relate to Mr. Hendrix's pioneering inventions for  
9 improving cerebrovascular tone and reducing the occurrence and severity of  
10 migraine headaches. While many compounds have been tried as remedies for  
11 migraine headaches, a major challenge in formulating an effective treatment for  
12 migraine headaches is combining the correct compounds at therapeutically effective  
13 dosages. The inventions claimed in Akeso's Patents-in-Suit overcame this  
14 challenge through novel and non-obvious proprietary combinations of feverfew  
15 plant extract (parthenolide), magnesium, and riboflavin.

16 12. Before the Patents-in-Suit, no known dietary supplement provided in a  
17 single treatment the wide range of therapeutic benefits that are provided by Akeso's  
18 patented inventions. In addition to improved cerebrovascular tone, patients  
19 receiving the preferred embodiment experienced significantly reduced occurrence  
20 of migraine headaches, decreased sensitivity to light and sound, reduced nausea,  
21 and increased mobility.

22 13. Akeso's MigreLief® products sold under the Patents-in-Suit  
23 succeeded in providing natural, drug-free relief for migraine headaches where  
24 others failed, meeting a long-felt but unresolved need. They have enjoyed great  
25 commercial success. And they have been widely copied in a variety of infringing  
26 products, including those sold by Defendants and many others.

27 14. Akeso makes and sells its patented MigreLief® products under the  
28 Patents-in-Suit. In accordance with 35 U.S.C. § 287(a), Akeso marks its

1 MigreLief® products with the number of the Patents-in-Suit.

2 **DEFENDANTS'S WILLFUL INFRINGEMENT**

3 15. Defendants have willfully infringed the Patents-in-Suit in connection  
4 with distribution of MigreLief® outside of authorized categories of trade.

5 16. Defendants's conduct in connection with making, using, selling,  
6 offering to sell and/or importing MigreLief® directly infringes at least one claim of  
7 the '999 patent and at least one claim of the '450 patent pursuant to 35 U.S.C.  
8 § 271(a).

9 17. In addition to direct infringement, Defendants are liable for  
10 inducement of infringement under 35 U.S.C. § 271(b).

11 18. Use of MigreLief® as directed on the product label constitutes direct  
12 infringement of at least claim 16 of the '450 patent and at least claim 9 of the '999  
13 patent. Defendants affirmatively direct and encourage users to directly infringe by  
14 administering the recommended daily dosage of a therapeutically effective amount  
15 of parthenolide, a magnesium salt and riboflavin, the magnesium salt being  
16 provided as a salt of an organic acid.

17 19. Akeso and its MigreLief® product are well known in the dietary  
18 supplement industry. Akeso's web site and every bottle of MigreLief® are marked  
19 with the numbers of the Patents-in-Suit. Upon information and belief, Defendants  
20 have actual and/or constructive knowledge of Akeso's MigreLief® product and of  
21 the Patents-in-Suit and of restrictions imposed by Akeso on categories of trade of  
22 Defendants's re-sales of MigreLief®.

23 20. Upon information and belief, Defendants knowingly induce  
24 infringement of the Patents-in-Suit and possess specific intent to encourage direct  
25 infringement by users of MigreLief®. Accordingly, Defendants are liable for  
26 inducing infringement of the Patents-in-Suit pursuant to 35 U.S.C. §271(b).

27 21. Defendants further are liable for contributory infringement pursuant to  
28 35 U.S.C. § 271(c).

22. MigreLief® is material to practicing the inventions of the Patents-in-Suit.

23. Administration of MigreLief® as directed on the label constitutes direct infringement of the Patents-in-Suit.

24. There are no substantial non-infringing uses of MigreLief®. On the contrary, the only known use, and the specific use directed on the product label, is to be administered for the purpose of reducing the symptoms of migraine headache in a directly infringing manner.

25. Upon information and belief, Defendants have knowledge of the Patents-in-Suit and of the fact that MigreLief® is especially made or adapted for use in infringement of the Patents-in-Suit.

26. Accordingly, Defendants are liable for contributory infringement of the Patents-in-Suit pursuant to 35 U.S.C. § 271(c).

27. Upon information and belief, Defendants have knowledge of the Patents-in-Suit and know or should know that their conduct in relation to MigreLief® infringes the Patents-in-Suit. Accordingly, Defendants' infringement is and has been willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, and/or characteristic of a pirate.

**FIRST CLAIM FOR RELIEF**

**(Infringement of U.S. Patent No. 6,068,999)**

28. Akeso repeats and realleges the allegations of the foregoing paragraphs 1 through 27 as if fully set forth herein.

29. Defendants have directly infringed at least one claim of the '999 patent under 35 U.S.C. §§271(a) literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering to sell MigreLief®.

30. Defendants have indirectly infringed at least one claim of the '999 patent by inducement under 35 U.S.C. §271(b) by instructing and encouraging end users and healthcare practitioners to directly infringe the '999 patent, literally

1 and/or under the doctrine of equivalents. Defendants did so with knowledge of the  
 2 '999 patent and specific intent to encourage end users and health care practitioners  
 3 to directly infringe, literally and/or under the doctrine of equivalents. End users and  
 4 health care practitioners directly infringed the '999 patent, literally and/or under the  
 5 doctrine of equivalents, in connection with MigreLief®.

6 31. Defendants have indirectly infringed at least one claim of the '999  
 7 patent contributorily under 35 U.S.C. § 271(c) by offering to sell and selling  
 8 MigreLief®, knowing the same to be especially made or especially adapted for use  
 9 in an infringement of the '450 patent, and not a staple article or commodity of  
 10 commerce suitable for substantial non-infringing use.

11 32. Defendants's infringement is and has been willful.

12 33. Akeso has been damaged, in an amount to be determined, as a direct and  
 13 proximate result of Defendants's infringement of the '999 patent.

#### 14 **SECOND CLAIM FOR RELIEF**

#### 15 **(Infringement of U.S. Patent No. 6,500,450)**

16 34. Akeso repeats and realleges the allegations of the foregoing  
 17 Paragraphs 1 through 33 as if fully set forth herein.

18 35. Defendants have directly infringed at least one claim of the '450 patent  
 19 under 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by  
 20 making, using, selling, and/or offering to sell MigreLief®.

21 36. Defendants have indirectly infringed at least one claim of the '450  
 22 patent by inducement under 35 U.S.C. § 271(b) by instructing and encouraging end  
 23 users and/or health care practitioners to directly infringe the '450 patent, literally  
 24 and/or under the doctrine of equivalents. Defendants do so with knowledge of the  
 25 '450 patent and specific intent to encourage end users and/or health care  
 26 practitioners to directly infringe, literally and/or under the doctrine of equivalents.  
 27 End users and health care practitioners directly infringe the '450 patent, literally  
 28 and/or under the doctrine of equivalents, in connection with MigreLief®.

1           37. Defendants have indirectly infringed at least one claim of the '450  
2 patent contributorily under 35 U.S.C. § 271(c) by offering to sell and selling  
3 MigreLief®, knowing the same to be especially made or especially adapted for use  
4 in an infringement of the '450 patent, and not a staple article or commodity of  
5 commerce suitable for substantial non-infringing use.

6           38. Defendants's infringement is and has been willful.

7           39. Akeso has been damaged, in an amount to be determined, as a direct  
8 and proximate result of Defendants's infringement of the '450 patent.

9                                   **PRAYER FOR RELIEF**

10           WHEREFORE, Akeso respectfully requests the Court to enter judgment in  
11 favor of Akeso and against Defendants as to all claims asserted herein as follows:

12           A. Granting a judgment that Defendants have directly infringed the  
13 Patents-in-Suit in violation of 35 U.S.C. § 271(a);

14           B. Granting a judgment that Defendants have indirectly infringed the  
15 Patents-in-Suit in violation of 35 U.S.C. §§ 271(b) and 271(c);

16           C. Ordering Defendants to pay to Akeso actual damages in the form of  
17 lost profits or, in the alternative, other damages adequate to compensate for  
18 the infringement, but in no event less than a reasonable royalty for the use  
19 made of the patented inventions by Defendants, together with pre-judgment  
20 and post-judgment interest and costs as fixed by the Court, in accordance  
21 with 35 U.S.C. § 284;

22           D. Granting a judgment that Defendants' infringement was willful and  
23 ordering Defendants to pay to Akeso increased damages of three times the  
24 compensatory damages, in accordance with 35 U.S.C. § 284;

25           E. Granting a judgment that this case is exceptional under 35 U.S.C. §285  
26 and ordering Defendants to pay to Akeso its reasonable attorney fees incurred  
27 in this action; and

28           F. Granting Akeso such other and further relief as this Court may deem

1 just and proper.

2 **JURY DEMAND**

3 Pursuant to Federal Rule of Civil Procedure 38 and Central District of  
4 California L.R. 38-1, Akeso demands a trial by jury on all issues so triable.

5  
6 Dated: February 24, 2017

NIXON PEABODY LLP

7 By: /s/ Shawn G. Hansen

8 *Attorneys for Plaintiff*  
9 AKESO HEALTH SCIENCES, LLC