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Attorneys for Plaintiffs RK Solutions, LLC, Axcess Global Sciences, LLC and Compound Solutions, Inc.

IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

RK SOLUTIONS, LLC, AXCESS GLOBAL SCIENCES, LLC, and COMPOUND SOLUTIONS, INC.

Plaintiffs,

v.

DOCKET

THE FULFILLMENT LAB, INC.,

Defendant,

Civil Action No.

COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

RK Solutions, LLC ("RK Solutions"), Axcess Global Sciences, LLC, ("AGS") and Compound Solutions, Inc. ("Compound Solutions") (collectively "Plaintiffs") file their Complaint in this patent and trademark infringement action against Defendant The Fulfillment Lab, Inc. ("Defendant" or "TFL").

PARTIES

1. Plaintiff RK Solutions, LLC is a Utah Limited Liability Company headquartered at 2040 East Holladay Rd, Suite 102, Holladay, UT 84117. RK Solutions is the exclusive licensee of U.S. Patent No. 6,613,356 ("the '356 Patent" or "Patent-in-Suit"), entitled "Patent for inventions covering weight loss medication and method" ("the '356 Patent," attached as Exhibit A).

Plaintiff Axcess Global Sciences, LLC is a Utah Limited Liability
Company with a principal place of business at 2040 East Murray Holladay Rd., Suite
Holladay, Utah 84117. AGS is the owner and licensor of the '356 Patent.

3. Plaintiff Compound Solutions, Inc. a California corporation with a principle place of business at 1930 Palomar Point Way, # 105, Carlsbad, CA 92008. Compound Solutions is the owner of U.S. Trademark Reg. No. 86834808 for the word mark GOBHB for use in nutritional or dietary supplements (the "GOBHB Mark"). A true and correct copy of the Registration Certificate for the GOBHB Mark is attached hereto as Exhibit B.

4. Defendant The Fulfillment Lab, Inc. is a Florida corporation headquartered at 5136 West Clifton St, Tampa, FL 33634. TFL may be served with

process by delivering a summons and a true and correct copy of this Complaint to its registered agent for receipt of service of process, Richard B. Nelson II, 5136 West Clifton St, Tampa, FL 33634.

JURISDICTION AND VENUE

5. This action arises under the patent and trademark laws of the United States, Titles 35 and 15 of the United States Code. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant has established minimum contacts with the forum state of Florida.

7. Venue is proper in this District under 28 U.S.C. §§ 1400(b) and 1391. Defendant has committed acts of patent and trademark infringement in this District, resides in this District, and has a regular and established place of business in this District located at 5136 West Clifton St, Tampa, FL 33634.

BACKGROUND

8. Plaintiffs RK Solutions and AGS have the right to assert all causes of action asserted herein arising under the '356 Patent and the right to remedies for infringement thereof.

9. The inventive concepts of the '356 Patent are generally directed to processes and compositions of matter for causing weight loss or avoidance of weight gain through oral administration of butyric acid or one or more enumerated pharmaceutically effective and acceptable salts or derivatives of butyric acid.

10. For example, the salts and derivates of butyric acid recited in the claims of the '356 Patent include sodium butyrate, calcium butyrate, potassium butyrate, magnesium butyrate, alphahydroxybutyric acid, sodium alphahydroxybutyrate, calcium alphahydroxybutyrate, potassium alphahydroxybutyrate, magnesium alphahydroxybutyrate, betahydroxybutyric acid, sodium betahydroxybutyrate, calcium betahydroxybutyrate, potassium betahydroxybutyrate, magnesium betahydroxybutyrate, and isobutyric acid, sodium isobutryate, calcium isobutyrate, potassium isobutyrate, and magnesium isobutyrate.

11. The compounds comprising alphahydroxybutyric acid, betahydroxybutyric acid, and isobutyric acid, are derivatives of butyric acid and not salts of butyric acid.

12. The remaining compounds consisting of sodium butyrate, calcium butyrate, potassium butyrate, magnesium butyrate, sodium alphahydroxybutyrate, calcium alphahydroxybutyrate, potassium alphahydroxybutyrate, magnesium alphahydroxybutyrate, betahydroxybutyric acid, sodium betahydroxybutyrate, calcium betahydroxybutyrate, potassium betahydroxybutyrate, magnesium betahydroxybutyrate, and magnesium isobutyrate are salts of butyric acid.

13. A compound cannot be a salt or derivative of itself.

14. A person of skill in the art would understand the term "salts or derivatives" of butyric acid to exclude butyric acid.

15. Claim 2 of the '356 Patent recites: "The process of claim 1, wherein said

<u>salts or derivatives</u> [of butyric acid] are administered orally to said mammal in a dissolvable tablet or capsule" (emphasis added).

16. Claim 2 is limited to the salts and derivatives of butyric acid and its scope does not include butyric acid.

17. Similarly, claims 3 and 4, which depend from claim 2, are limited to the salts and derivatives of butyric acid and their scope does not include butyric acid.

18. Claim 15 of the '356 Patent recites: "The composition of matter in claim 14, wherein the contents of the capsule further comprise sodium bicarbonate, calcium carbonate or potassium bicarbonate for producing carbon dioxide gas on contact with the stomach liquids of said mammal wherein the amount of sodium bicarbonate, calcium carbonate or potassium bicarbonate is sufficient to cause the breakup of the capsule or tablet thus releasing the salts or derivatives, but insufficient to cause distension of the stomach of the mammal."

19. Claim 15 is limited to the salts and derivatives of butyric acid and its scope does not include butyric acid.

20. Similarly, claim 16, which depends from claim 15, is limited to the salts and derivatives of butyric acid and its scope does not include butyric acid.

21. Claim 18 of the '356 Patent recites: "The composition of matter of claim 17, wherein the contents of said tablet further comprise sodium bicarbonate, calcium carbonate or potassium bicarbonate for producing carbon dioxide gas on contact with the stomach liquids of said mammal wherein the amount of sodium bicarbonate, calcium carbonate or potassium bicarbonate is sufficient to cause the breakup of the capsule or

DOCKET A L A R M



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