

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

OPTIGENEX INC.,

Plaintiff,

v.

JEUNESSE GLOBAL HOLDINGS, LLC,
JEUNESSE, LLC, VINCENT GIAMPAPA,
NATHAN NEWMAN and VITAQUEST
INTERNATIONAL, INC.

Defendants.

Civil Action No. 6:12-CV-573

DEMAND FOR JURY TRIAL

**OPTIGENEX INC.'S COMPLAINT FOR PATENT INFRINGEMENT, UNFAIR
COMPETITION, TRADEMARK INFRINGEMENT,
TRADEMARK DILUTION AND BREACH OF CONTRACT**

Optigenex Inc. (“Optigenex” or the “Company”), as and for its complaint against Jeunesse Global Holdings, LLC and Jeunesse, LLC (“Jeunesse”), Vincent Giampapa (“Giampapa”), Nathan Newman (“Newman”) and Vitaquest International, Inc. d/b/a Garden State Nutritionals, Inc. (“Vitaquest” and, collectively, “defendants”), states:

I. THE PARTIES

1. Optigenex is a Delaware corporation having a place of business located at 333 River Street, Suite 701, Hoboken, New Jersey 07030.
2. Upon information and belief, Jeunesse Global Holdings, LLC and Jeunesse, LLC are Florida limited liability companies having places of business located at 650 Douglas Avenue, Altamonte Springs, Florida 32714.

3. Giampapa is an individual who, upon information and belief, resides and has a place of business in Montclair, New Jersey, and is a medical advisor and spokesperson for Jeunesse.

4. Newman is an individual who, upon information and belief, resides and has a place of business in Beverly Hills, California, and is a medical advisor and spokesperson for Jeunesse.

5. Upon information and belief, Vitaquest is a New Jersey corporation having a place of business located at 8 Henderson Drive, West Caldwell, New Jersey 07006.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the United States patent laws, 35 U.S.C. § 101, *et seq.*, and the United States trademark laws, Section 43 of the Lanham Act, 15 U.S.C. § 1115 *et seq.* This Court has supplemental jurisdiction over the state law causes of action pursuant to 28 U.S.C. § 1367.

7. Upon information and belief, Jeunesse, Newman and Vitaquest are subject to this Court's personal jurisdiction because they regularly conduct business and/or solicit business, engage in other persistent courses of conduct and/or derive substantial revenue from goods and/or services sold to persons and/or entities in the State of Texas.

8. Upon information and belief, defendants directly infringed, and continue to infringe, and induced others to infringe, and continue to induce others to infringe, U.S. Patent Nos. 6,238,675 (the "675 patent"), 6,361,805 (the "805 patent"), 6,964,784 (the "784 patent"), 7,595,064 (the "064 patent"), 7,947,312 (the "312 patent") and 7,955,626 (the "626 patent" and, collectively, the "patents-in-suit") by making, using, selling and/or offering for sale, within the State of Texas and elsewhere throughout the United States, (a) topical creams and

supplements, including Luminesce advanced night repair, Luminesce essential body renewal, NutriGen AM Essentials and NutriGen PM Essentials (collectively, the “infringing products”), and/or (b) certain extracts of the plant species *Uncaria* (the “infringing extract” or “infringing extracts”) containing Optigenex’s patented, all-natural, thoroughly tested and safe cellular DNA repair ingredients.

9. Upon information and belief, defendants are subject to this Court’s personal jurisdiction in accordance with due process and/or the Texas long arm statute because they are conducting substantial business in the State of Texas. Defendants purposefully avail themselves of the benefits and protections of the State of Texas because they engaged in, and continue to engage in, *inter alia*, the marketing, advertising, making, using, selling and/or offering for sale of goods and products, including the infringing extracts and/or infringing products in the State of Texas.

10. Jeunesse has an interactive website, featuring Giampapa, on which it markets, advertises, sells and/or offers for sale the infringing products, which website is used, and/or accessible, in the State of Texas. In addition, upon information and belief, Jeunesse marketed, advertised, made, used, sold and/or offered for sale the infringing products at its Super Saturday regional event in Dallas, Texas on October 29, 2011.

11. Newman has an interactive website on which he markets, advertises, sells and/or offers for sale the infringing products, which website is used, and/or accessible, in the State of Texas.

12. Vitaquest engaged in, and continues to engage in, the marketing, advertising, making, using, selling and/or offering for sale the infringing extract, which infringing extract is manufactured and prepared in accordance with the claims of the patents-in-suit for use in, and with, the infringing products. Upon information and belief, Vitaquest has an

interactive website on which it markets, advertises, sells and/or offers for sale services and/or products that include manufacture and use of the infringing extracts, which website is used, and/or accessible, in the State of Texas, and conducts substantial business in the State of Texas.

13. Upon information and belief, Jeunesse and Giampapa made numerous false and misleading statements within the State of Texas that are false designations of origin and false descriptions of the infringing products in a manner constituting unfair competition. Such false and misleading statements constitute trademark infringement because they are likely to cause consumer confusion between the infringing products and Optigenex's products that are marketed, advertised, made, used, sold and/or offered for sale in association with Optigenex's world-famous AC-11 trademarks (the "AC-11 trademarks") and C-MED-100 trademark (the "C-MED-100 trademark" and, collectively, the "AC-11/C-MED-100 trademarks"). Such false and misleading statements also constitute trademark dilution because they dilute the quality of the AC-11/C-MED-100 trademarks by diminishing the capacity of the AC-11/C-MED-100 trademarks to be identified with, and to distinguish, Optigenex's goods and services from other goods and services unrelated to Optigenex.

14. Jeunesse has an interactive website on which it markets, advertises, sells and/or offers for sale the infringing products, which website is used, and/or accessible, in this judicial district.

15. Newman has an interactive website on which he markets, advertises, sells and/or offers for sale the infringing products, which website is used, and/or accessible, in this judicial district.

16. Vitaquest has an interactive website on which it markets, advertises, sells and/or offers for sale services and/or products that include the manufacture and use of dietary and nutritional supplements, which website is used, and/or accessible, in this judicial district.

17. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. Defendants are subject to personal jurisdiction in this judicial district in accordance with due process and/or the Texas long arm statute. Defendants engaged in, and continue to engage in, the marketing, advertising, making, using, selling and/or offering for sale of infringing products and/or infringing extracts in this judicial district. Therefore, the complained of acts of patent infringement, unfair competition, trademark infringement and trademark dilution occurred, and continue to occur, within this judicial district.

18. Upon information and belief, defendants induced, and continue to induce, infringement of the patents-in-suit by making, using, selling and/or offering for sale, and/or inducing others to make, use, sell and/or offer for sale, the infringing products and/or infringing extracts in this judicial district.

III. BACKGROUND

A. Nature of the Action

19. This action arises from defendants' infringement of the patents-in-suit. Next, this action also arises from Jeunesse's and Giampapa's unfair competition in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), unfair competition under the common laws of the State of Texas and other States, trademark infringement in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a) and trademark dilution in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(c). Finally, this action further arises from Giampapa's breach of an employment contract under the laws of the State of New Jersey.

B. Optigenex, its Patents, Trademarks and Goodwill

1. The Company, its Trademarks and Products

20. Optigenex is an applied sciences company dedicated to healthy age management. Optigenex markets, advertises, makes, uses, sells and/or offers for sale products

incorporating (a) Optigenex's patented, all-natural, thoroughly tested and safe cellular DNA repair ingredient, commercially known under the trade names AC-11 and C-MED-100 (the "AC-11/C-MED-100 extract"), and (b) isolated and purified carboxy alkyl esters, quinic acid alkyl esters and/or quinic acid derivatives of the AC-11/C-MED-100 extract, and/or salts or chelates thereof (these products are, collectively, referred to as the "AC-11/C-MED-100 products").

21. The AC-11/C-MED-100 extract and the AC-11/C-MED-100 products are manufactured using methods of preparation and ingredients claimed in the patents-in-suit and other Optigenex patents. The AC-11/C-MED-100 extract and the AC-11/C-MED-100 products are marketed in association with Optigenex's world-famous AC-11/C-MED-100 trademarks.

22. Optigenex is recognized, *inter alia*, as the preeminent global leader in all-natural, cellular DNA repair, anti-tumor, anti-inflammatory and immuno-enhancement technology. For over 15 years, through substantial investment, research and development, advertising, marketing and sales, Optigenex, and its predecessors-in-interest, Kronogen Sciences, Inc. ("Kronogen") and CampaMed, Corp. ("CampaMed") (the term "Optigenex," as used throughout, includes its predecessors-in-interest, Kronogen and CampaMed), took significant steps and expended substantial resources to protect and promote the AC-11/C-MED-100 extract, the AC-11/C-MED-100 products and the inventions of the patents-in-suit. Optigenex owns eight (8) U.S. patents, including the patents-in-suit, as well as numerous U.S. and foreign patent applications, directed to, *inter alia*, its innovative DNA repair, anti-tumor, anti-inflammatory and immuno-enhancement technology marketed under the AC-11/C-MED-100 trademarks.

23. The AC-11/C-MED-100 extract is an active ingredient in the AC-11/C-MED-100 products and is covered by the patents-in-suit. The AC-11/C-MED-100 extract is an all-natural, thoroughly tested and safe extract of the rainforest plant *Uncaria*, typically the *Uncaria tomentosa* species thereof. The AC-11/C-MED-100 products contain carboxy alkyl

esters, quinic acid alkyl esters and/or quinic acid derivatives, and/or the salts or chelates thereof, of the AC-11/C-MED-100 extract that are covered by the patents-in-suit. The AC-11/C-MED-100 products are manufactured using methods of preparation claimed in the patents-in-suit and other Optigenex patents. When ingested as a dietary supplement, or applied topically as a cosmeceutical, the AC-11/C-MED-100 products, *inter alia*, (a) promote DNA repair, including, for example, the repair of sun and environmental stress-related DNA damage; (b) induce apoptosis of white blood cells; (c) inhibit TNF- α production; and (d) enhance, or treat disorders associated with, the body's immuno and inflammatory response systems.

2. The Patents-In-Suit

a. The '675 Patent

24. On May 29, 2001, the United States Patent and Trademark Office (the "USPTO") duly and validly issued the '675 patent entitled "Method of Preparation and Composition of a Water Soluble Extract of the Plant Species *Uncaria* for Enhancing Immune, Anti-Inflammatory and Anti-Tumor Processes of Warm Blooded Animals," naming Ronald W. Pero ("Pero") as inventor and CampaMed as assignee. A copy of the '675 patent is attached as Exhibit A.

25. The '675 patent is a continuation of application no. 08/807,373, filed on February 27, 1997, now U.S. Patent No. 6,039,949. On November 6, 2003, the '675 patent was assigned to Optigenex, which assignment was recorded with the USPTO on January 3, 2005. A copy of the recorded assignment of the '675 patent is attached as Exhibit B. Optigenex is the sole owner of all right, title and interest in the '675 patent.

26. The '675 patent, generally, is directed to, *inter alia*, a water soluble extract of an *Uncaria* species having certain characteristics.

b. The '805 patent

27. On March 26, 2002, the USPTO duly and validly issued the '805 patent entitled "Method of Preparation and Composition of a Water Soluble Extract of the Plant Species *Uncaria* for Enhancing Immune, Anti-Inflammatory, Anti-Tumor and DNA Repair Processes of Warm Blooded Animals," naming Pero as inventor. A copy of the '805 patent is attached as Exhibit C.

28. The '805 patent is a continuation-in-part of application no. 09/440,881, filed on November 16, 1999, now the '675 patent. (*See* Exhibit A). On August 13, 2004, the '805 patent was assigned to Optigenex, which assignment was recorded with the USPTO on January 13, 2005. A copy of the recorded assignment of the '805 patent is attached as Exhibit D. Optigenex is the sole owner of all right, title and interest in the '805 patent.

29. The '805 patent, generally, is directed to, *inter alia*, a method for enhancing the DNA repair process of a mammal by administering a pharmaceutical composition comprising a pharmaceutically effective amount of a water soluble extract of an *Uncaria* species having, generally, the characteristics described in the '675 patent.

c. The '784 patent

30. On November 15, 2005, the USPTO duly and validly issued the '784 patent entitled "Method of Preparation and Composition of a Water Soluble Extract of the Bioactive Component of the Plant Species *Uncaria* for Enhancing Immune, Anti-Inflammatory, Anti-Tumor and DNA Repair Processes of Warm Blooded Animals," naming Pero as inventor and Optigenex as assignee. A copy of the '784 patent is attached as Exhibit E.

31. On June 21, 2004, the application that resulted in the '784 patent, and any divisions, continuations, continuation-in-parts, improvements, reexaminations, reissues or

extensions thereof, were assigned to Optigenex, which assignment was recorded with the USPTO on June 25, 2004. A copy of the recorded assignment is attached as Exhibit F. Optigenex is the sole owner of all right, title and interest in the '784 patent.

32. The '784 patent, generally, is directed to, *inter alia*, a method for enhancing the immune competency and/or the inflammatory responses of a mammal by inhibiting TNF- α production or inducing apoptosis of white blood cells, comprising administering a pharmaceutical composition comprising a pharmaceutically effective amount of a purified, isolated carboxy alkyl ester or quinic acid alkyl ester having certain characteristics, where such administration is other than topical.

d. The '064 Patent

33. On September 29, 2009, the USPTO duly and validly issued the '064 patent entitled "Method of Preparation and Composition of a Water Soluble Extract of the Bioactive Component of the Plant Species *Uncaria* for Enhancing Immune, Anti-Inflammatory, Anti-Tumor and DNA Repair Processes of Warm Blooded Animals," naming Pero as inventor and Optigenex as assignee. A copy of the '064 patent is attached as Exhibit G.

34. The '064 patent is a continuation-in-part of application no. 10/093,794, filed on March 2, 2002, now the '784 patent. (*See* Exhibit E). On June 21, 2004, the application that resulted in the '784 patent, and any divisions, continuations, continuation-in-parts, improvements, reexaminations, reissues or extensions thereof, including the '064 patent's application, were assigned to Optigenex, which assignment was recorded with the USPTO on June 25, 2004. (*See* Exhibit F). By virtue thereof, Optigenex is the sole owner of all right, title and interest in the '064 patent.

35. The '064 patent, generally, is directed to, *inter alia*, a method of preparing a quinic acid and/or quinic acid salt supplement comprising purifying and isolating a quinic acid

and/or quinic acid salt, from a water soluble extract of an *Uncaria* species, manufacturing a supplement containing quinic acid and/or quinic acid salt, wherein such quinic acid and/or quinic acid salt have certain characteristics and, in one embodiment, administering an effective amount of the supplement to enhance the DNA repair process of a mammal.

e. The '312 Patent

36. On May 24, 2011, the USPTO duly and validly issued the '312 patent entitled "Method of Preparation and Composition of a Water Soluble Extract of the Bioactive Component of the Plant Species *Uncaria* for Enhancing Immune, Anti-Inflammatory, Anti-Tumor and DNA Repair Processes of Warm Blooded Animals," naming Pero as inventor. A copy of the '312 patent is attached as Exhibit H.

37. The '312 patent is a continuation of application no. 10/970,144, filed on October 21, 2004, now the '064 patent, which is a continuation-in-part of application no. 10/093,794, filed on March 2, 2002, now the '784 patent. (*See* Exhibit E). On June 21, 2004, the application that resulted in the '784 patent, and any divisions, continuations, continuation-in-parts, improvements, reexaminations, reissues or extensions thereof, including the '312 patent's application, were assigned to Optigenex, which assignment was recorded with the USPTO on June 25, 2004. (*See* Exhibit F). By virtue thereof, Optigenex is the sole owner of all right, title and interest in the '312 patent.

38. The '312 patent, generally, is directed to, *inter alia*, a method for enhancing the DNA repair process of a mammal by administering a pharmaceutical composition consisting of quinic acid and/or quinic acid salt, having certain characteristics, in an amount effective to inhibit TNF- α production or to induce apoptosis of white blood cells, where such administration is other than topical.

f. The '626 Patent

39. On June 7, 2011, the USPTO duly and validly issued the '626 patent entitled "Method for Enhancing the DNA Repair Process, Treating Disorders Associated with the DNA Repair Process, Enhancing Anti-Tumor Response and Treating Disorders Associated with Anti-Tumor Response in Mammals by Administering Purified Quinic Acid and/or Carboxy Alkyl Ester," naming Pero as inventor. A copy of the '626 patent is attached as Exhibit I.

40. The '626 patent is a continuation of patent application no. 11/270,235, filed on November 9, 2005, now U.S. Patent No. 7,579,023, which is a division of patent application no. 10/093,794, filed on March 7, 2002, now the '784 patent. (*See* Exhibit E). On June 21, 2004, the application that resulted in the '784 patent, and any divisions, continuations, continuation-in-parts, improvements, reexaminations, reissues or extensions thereof, including the '626 patent's application, were assigned to Optigenex, which assignment was recorded with the USPTO on June 25, 2004. (*See* Exhibit F). By virtue thereof, Optigenex is the sole owner of all right, title and interest in the '626 patent.

41. The '626 patent, generally, is directed to, *inter alia*, a method for enhancing the DNA repair process of a mammal by administering a pharmaceutical composition consisting of a purified, isolated carboxy alkyl ester, or quinic acid alkyl ester, having certain characteristics, in an amount effective to inhibit TNF- α production or to induce apoptosis of white blood cells, where such administration is other than topical.

3. The C-MED-100 Trademark

42. Optigenex is the sole owner of all right, title and interest in the C-MED-100 trademark. The C-MED-100 trademark issued on January 19, 1999 as U.S. registration no. 2,219,362 on the principal register. A copy of the C-MED-100 trademark registration is attached as Exhibit J.

43. The C-MED-100 trademark was assigned to Optigenex on November 6, 2003, which assignment was recorded with the USPTO on June 4, 2004. A copy of the assignment of the C-MED-100 trademark to Optigenex is attached as Exhibit K.

44. The AC-11/C-MED-100 trademarks, and/or the C-MED-100 trademark alone, are referenced in numerous scientific and clinical research studies (the “scientific and clinical research studies” or “studies”) originating from and/or sponsored by Optigenex. These studies were conducted to support the claims of the patents-in-suit, to educate the public and to market and advertise the AC-11/C-MED-100 extract. Examples of the scientific and clinical research studies include “Comparison of a Broad Spectrum Anti-Aging Nutritional Supplement with and without the Addition of a DNA Repair Enhancing Cat’s Claw Extract” (the “Broad Spectrum study”) and “A Water Soluble Extract from *Uncaria tomentosa* (Cat’s Claw) is a Potent Enhancer of DNA Repair in Primary Organ Cultures of Human Skin” (the “Estee Lauder study” or “EL study”). Copies of the Broad Spectrum and the EL studies are attached as Exhibits L and M, respectively.

45. The scientific and clinical research studies refer extensively to the C-MED-100 trademark, which is used in association with the AC-11/C-MED-100 extract, the AC-11/C-MED-100 products and the manufacturing process therefor. These studies, including the Broad Spectrum study and the EL study, are central to Optigenex’s marketing of the AC-11/C-MED-100 extract and products. Accordingly, these studies are integral to the agreements whereby Optigenex sells the AC-11/C-MED-100 extract to its customers and licenses its customers to market, advertise, make, use, sell and/or offer for sale the AC-11/C-MED-100 products and any product containing the AC-11/C-MED-100 extract. More specifically, these studies are the focal point of Optigenex’s efforts to educate the relevant consuming public about DNA repair, and the role of the AC-11/C-MED-100 extract and products in assisting the body to,

inter alia, (a) promote DNA repair, including, for example, the repair of sun and environmental stress-related DNA damage; (b) induce apoptosis of white blood cells; (c) inhibit TNF- α production; and (d) enhance, or treat disorders associated with, the body's immuno and inflammatory response systems.

46. Among the numerous reasons why these scientific and clinical research studies play such a crucial role in the aforementioned efforts are (a) the studies specifically identify the AC-11/C-MED-100 extract, and/or the extract labeled with the C-MED-100 trademark, as the only commercially available embodiment of Optigenex's patented technology for its *Uncaria* extract; (b) the studies refer to Optigenex as the source of origin of the AC-11/C-MED-100 extract and/or the extract labeled with the C-MED-100 trademark; and (c) the results and conclusions in the studies fully substantiate, on the basis of verifiable empirical data subject to peer review by recognized academics and other professionals in the related sciences, the accuracy, completeness and validity of the unique marketing message associated with the AC-11/C-MED-100 extract.

47. Optigenex's licensed customers rely heavily upon the research contained in the aforementioned studies that was performed solely and specifically in connection with the AC-11/C-MED-100 extract to substantiate and validate the marketing of products containing the AC-11/C-MED-100 extract. Accordingly, the exclusive, proprietary nature of that research is an integral part of its value, not only to Optigenex, but to Optigenex's customers as well. The importance of these scientific and clinical research studies in the market positioning, promotion and sale of the AC-11/C-MED-100 extract is reflected in the employment agreements entered into between Optigenex and the employees of these companies. Specifically, Optigenex's contracts with any employee who may have had involvement, as part of their employment, with the development or conduct of the underlying research and/or with preparing or presenting

conclusions drawn from these studies and presented as part of the published results thereof, make clear that all intellectual property rights to the studies belong exclusively to Optigenex.

48. Internet searches of the formative C-MED-100 result in over 13,000 hits, a substantial number of which associate the C-MED-100 trademark with Optigenex, the AC-11/C-MED-100 extract, the AC-11 trademark and the AC-11/C-MED-100 products. Vendors, suppliers, licensees and consumers accordingly associate the C-MED-100 trademark with Optigenex and the AC-11/C-MED-100 extract and products.

49. The substantial goodwill, customer recognition and business reputation that Optigenex developed since 1997 is predicated largely on the quality (and quality control) of the AC-11/C-MED-100 extract and products being associated with the C-MED-100 trademark. Because of Optigenex's efforts, the C-MED-100 trademark enjoys a distinct association in the United States and worldwide with the AC-11 trademarks and the AC-11/C-MED-100 extract and products, which products are known to be the premier DNA repair products. Optigenex expended, and continues to expend, significant resources in maintaining control over the quality of the extract and products associated with the AC-11/C-MED-100 trademarks to ensure that they meet precise quality control standards and enhance the goodwill associated with the AC-11/C-MED-100 trademarks.

50. The C-MED-100 trademark, and the extract and products associated therewith, are recognized by the relevant consuming public as originating from Optigenex.

51. The C-MED-100 trademark is a famous mark, and meets the elements of a famous mark pursuant to 15 U.S.C. § 1125(c).

52. As a result of the above, the C-MED-100 trademark is recognized in the United States and in numerous countries around the world as being associated with the products

and the scientific literature (including the scientific and clinical research studies) originating from, and/or on behalf of, Optigenex.

4. The AC-11 Trademarks

53. Optigenex is the sole owner of all right, title and interest in the AC-11 word trademark (the “AC-11 word trademark”). The AC-11 word trademark issued on March 8, 2005 as U.S. registration no. 2,930,140 on the principal register. A copy of the AC-11 word trademark registration is attached as Exhibit N.

54. Optigenex is the sole owner of all right, title and interest in the AC-11 oval logo trademark (the “AC-11 oval logo trademark”). The AC-11 oval logo trademark issued on November 6, 2007 as U.S. registration no. 3,329,324 on the principal register. A copy of the AC-11 oval logo trademark registration is attached as Exhibit O.

55. Optigenex is the sole owner of all right, title and interest in the AC-11 rectangle logo trademark (the “AC-11 rectangle logo trademark”). The AC-11 rectangle logo trademark issued on February 26, 2008 as U.S. registration no. 3,388,037 on the principal register. A copy of the AC-11 rectangle logo trademark registration is attached as Exhibit P.

56. Trademarks for AC-11 are also pending trademark registration in numerous countries around the world, including, *inter alia*, Turkey (date of registration: Nov. 30, 2006; registration nos. 2006/58291, 2006/58292), Japan (date of registration: Aug. 21, 2009; registration no. 5,258,623), Mexico (date of registration: Feb. 8, 2012; registration no.: 1,265,709), Thailand (date of application: Sept. 20, 2011; application nos. 821,038, 821,039), Taiwan (date of application: Sept. 21, 2010; application no.: 099027961), Vietnam (date of application: Oct. 12, 2011; application no. 4-2011-21470) and Hong Kong (date of application: Nov. 11, 2011; application no. 302,044,629).

57. The AC-11/C-MED-100 products are sold under the AC-11 trademarks. The AC-11 trademarks appear on Optigenex's website and Optigenex's products sold directly by Optigenex or through Optigenex's distributors. Vendors, suppliers, licensees and consumers associate the AC-11 trademarks with Optigenex, the C-MED-100 trademark and the AC-11/C-MED-100 extract and products originating from Optigenex.

58. The substantial goodwill, customer recognition and business reputation that Optigenex developed since 1997 is predicated largely on the quality (and quality control) of the AC-11/C-MED-100 extract and products being associated with the AC-11 trademarks. Because of Optigenex's efforts, the AC-11 trademarks enjoy a distinct association in the United States and worldwide with the C-MED-100 trademark and the AC-11/C-MED-100 extract and products, which products are known to be the premier DNA repair products. Optigenex expended, and continues to expend, significant resources in maintaining control over the quality of the AC-11/C-MED-100 extract and products associated with the AC-11/C-MED-100 trademarks to ensure that they meet precise quality control standards and enhance the goodwill associated with the AC-11/C-MED-100 trademarks.

59. The AC-11 trademarks, and the extract and products associated therewith, are recognized by the relevant consuming public as originating from Optigenex.

60. The AC-11 trademarks are famous marks, and meet the elements of a famous mark pursuant to 15 U.S.C. § 1125(c).

61. As a result of the above, the AC-11 trademarks are recognized in the United States and in numerous countries around the world as being associated with the products and the scientific literature (including the scientific and clinical research studies) originating from, and/or on behalf of, Optigenex.

5. **bHIP Global**

62. bHIP Global, Inc. (“bHIP Global”) is a Texas corporation having a place of business located at 901 Sam Rayburn Highway, Melissa, Texas 75454. bHIP Global is an exclusive licensee of Optigenex for the AC-11/C-MED-100 extract in the United States. Optigenex sells the AC-11/C-MED-100 extract to bHIP Global, which uses the AC-11/C-MED-100 extract to market, advertise, make, use, sell and/or offer for sale the AC-11/C-MED-100 products manufactured in accordance with the claims of Optigenex’s patents, including the patents-in-suit. By utilizing Optigenex’s patented technology, bHIP Global manufactures end-user nutritional supplements that are marketed, advertised, made, used, sold and/or offered for sale in this judicial district, throughout the United States and elsewhere. bHIP Global developed, and continues to develop, a substantial market share in the field of DNA repair by marketing, advertising, making, using, selling and/or offering for sale the AC-11/C-MED-100 products.

63. Upon information and belief, as a result of defendants’ infringement of the patents-in-suit, as well as Jeunesse’s and Giampapa’s acts of unfair competition, trademark infringement and trademark dilution and Giampapa’s breach of an employment contract, bHIP Global’s sales of AC-11/C-MED-100 products suffered, and continue to suffer. Loss of sales by bHIP Global in turn substantially damaged, and continues to substantially damage, Optigenex.

C. **Jeunesse, Giampapa, Newman and Vitaquest**

1. **Jeunesse**

64. Upon information and belief, Jeunesse is a multi-level marketing company that markets, advertises, makes, uses, sells and/or offers for sale the infringing products through its internet web site at www.jeunesseglobal.com, via multi-level marketing distributors and/or at various informational and sales meetings, including its Super Saturday regional event that

occurred in Dallas, Texas on October 29, 2011. Copies of selected pages from the website are attached as Exhibit Q.

65. According to a May 11, 2012 press release (the “press release”) entitled “Jeunesse Global Earns Spot on Direct Selling News Global 100 Company List for 2011,” Jeunesse’s sales, including sales of the infringing products, at the retail level, are on track to exceed \$100 million in 2012. In the same press release, Jeunesse is described as “specializing in providing youth-enhancing solutions based on cutting-edge science, such as adult stem cell technology, DNA repair, and nutrigenomics.” A copy of the press release is attached as Exhibit R.

2. Giampapa

66. Upon information and belief, Giampapa is a spokesperson, paid consultant and advisory board member of Jeunesse. His activities and responsibilities include promoting the infringing products among Jeunesse’s distributors and purporting to educate the relevant consuming public about the infringing products and the properties of the *Uncaria* extract (i.e., the infringing extract) the infringing products contain.

67. Upon information and belief, Giampapa purchases, or has purchased, the infringing extracts and provides, or has provided, the infringing extracts to Vitaquest for the manufacture of the infringing products.

68. On Jeunesse’s web site, at http://jeunesseglobal.com/med_advisors.aspx, Giampapa boasts that he is one of the first certified anti-aging medical physicians in the world, and claims to be an expert in the field of anti-aging medicine.

69. Giampapa co-authored a number of books and articles pertaining to the AC-11/C-MED-100 extract, including *The Gene Makeover* (“The Gene Makeover”), published in 2007. In *The Gene Makeover*, Giampapa specifically states, acknowledges and concedes that

(a) the AC-11/C-MED-100 extract is a “proprietary extract” involving *Uncaria* that utilizes a water extraction process developed by Pero; (b) the AC-11/C-MED-100 extract is based on Pero’s research at the University of Lund in Sweden; (c) the AC-11/C-MED-100 extract is a proprietary *Uncaria* extract; and (d) the AC-11/C-MED-100 extract is known for its unique, patent-protected ability to promote DNA repair. Relevant excerpts from The Gene Makeover are attached as Exhibit S.

70. Upon information and belief, despite his name appearing on one or more publications related to the AC-11/C-MED-100 extract, and/or extracts of *Uncaria* in general, Giampapa conducted no published original research identifying, or in any way describing or advancing known science about, the modes of action and/or the nature of the bioactive components of the AC-11/C-MED-100 extract or any extract of *Uncaria* nor does he hold any patent directed to *Uncaria*. Giampapa’s work, if any, related to *Uncaria* is entirely derivative of the existing science and/or Optigenex’s research, development and patents.

71. The EL study, published in 2006, bears Giampapa’s name as a co-author; however, the underlying research for the report began in September 2001, and was complete when the report was internally completed and circulated by May 31, 2002. This date was almost a year before Giampapa commenced employment with Optigenex and was first introduced to the AC-11/C-MED-100 extract. At most, Giampapa’s contribution to the EL study in its 2006 published form was inconsequential.

72. On or about April 4, 2003, Giampapa and Kronogen entered into an employment contract (the “employment agreement”). Thereafter, on or about April 20, 2003, Giampapa and Kronogen entered into an intellectual property collective assignment (collectively, the “agreements”). Copies of the agreements are attached as Exhibit T. Giampapa’s affiliation with Optigenex ended in March 2005.

73. Section 5.4.2 of the employment agreement defines Intellectual Property Rights as, *inter alia*, all intellectual property rights including, without limitation, all patents and patent applications and all rights associated with works of authorship and trademarks.

74. Section 5.2 of the employment agreement states:

All rights (including without limitation, Intellectual Property Rights (defined below)), title, and interest in and to Improvements (defined below [defined in Section 5.4.2]) lie, upon creation, exclusively with the Company and Executive reserves no rights in any Improvements. To the extent that some or all rights (including without limitation, Intellectual Property Rights), title, and interest in and to the Improvements do not lie, upon creation, exclusively with the Company, Executive irrevocably sells, assigns, transfers, and sets over, upon creation, exclusively to the Company all rights (including without limitation, Intellectual Property Rights), title, and interest in and to such Improvements, and Executive reserves no rights in any such Improvements. If Executive has any such rights that cannot be assigned to the Company in accordance with this Section 5.2, then Executive grants to the Company an exclusive (even as to Executive), royalty-free, perpetual, irrevocable, transferable (including without limitation, sublicensing), unlimited license, throughout the universe, in all media, now existing or created in the future, for all versions and elements, and in all languages, to use, copy, distribute, create derivative works of, publicly perform, publicly display, digitally perform, make, have made, offer for sale and import, and sell, such Improvements for the entire duration of such rights. If Executive has any such rights that cannot be assigned or licensed to the Company in accordance with this Section 5.2, then Executive waives the enforcement of such rights. Executive shall, at the Company's expense, cooperate and take all steps reasonably requested by the Company to perfect, confirm, and protect the Company's rights (including without limitation, Intellectual Property Rights), title, and interest in and to the Improvements including without limitation, executing and delivering all documents, filing registration and assignment documents, and giving testimony.

75. In accordance with Section 5.2 of the employment agreement, Giampapa sold, assigned, transferred to Kronogen and its successors (i.e., Optigenex) full and exclusive right, title and interest in the Intellectual Property Rights.

76. In accordance with Section 5.2 of the employment agreement, Giampapa is prohibited from using, referring and/or exploiting the scientific and clinical research studies

for any commercial use, including marketing, advertising, making, using, selling and/or offering for sale the infringing products and/or the infringing extract.

77. Section 5.7 of the employment agreement provides, *inter alia*, that monetary damages alone for a breach of the employment agreement are inadequate because a breach of the employment agreement irreparably harms Optigenex, and Optigenex may obtain an immediate injunction for said breach.

78. Between approximately 2004 and 2006, Giampapa filed, in his own name as inventor, several patent applications in the United States and other countries. By their content, these applications fell squarely under Section 5.2 of the employment agreement in that the proposed inventions covered by the applications were part of the Intellectual Property Rights as defined by Section 5.4.2 of the employment agreement. Notwithstanding his obligations thereunder, Giampapa failed to voluntarily assign the applications to Optigenex. In fact, Giampapa and Optigenex's counsel, Melvin Silverman, attempted to prosecute these patents, in Giampapa's name without assignment to Optigenex, which utilized, and were based upon, Optigenex's AC-11/C-MED-100 extract and products and its Intellectual Property Rights. This failure forced Optigenex to incur expense on its own to record the assignments.

79. In 2008, Giampapa was affiliated with an entity known as Suracell Inc. ("Suracell"). Upon information and belief, Suracell violated Optigenex's intellectual property rights regarding the AC-11/C-MED-100 extract, the AC-11/C-MED-100 trademarks and the AC-11/C-MED-100 products by marketing various products containing an ingredient, which, as indicated on the product labels, purported to be the AC-11/C-MED-100 extract. Specifically, upon information and belief, the *Uncaria* extract used by Suracell was obtained for Suracell either from Giampapa directly or by Giampapa from one or more third party sources. Without Optigenex's authorization, the Suracell products in question carried the AC-11 word trademark

on the product labels and asserted Optigenex's proprietary "DNA repair" claims for the extract. After Optigenex notified Suracell of its infringement, Giampapa gave his assurance to Optigenex that Suracell ceased making, using, selling and/or offering for sale the products. Soon thereafter, Giampapa approached Optigenex for a license to Giampapa for manufacture of products containing the AC-11/C-MED-100 extract. However, no agreement was entered and no such rights were conferred.

80. Upon information and belief, Giampapa, in or about 2011, became a medical advisor and spokesperson for Jeunesse. At some point, Jeunesse and Giampapa began infringing the patents-in-suit, unfairly competing with Optigenex and infringing and diluting the AC-11/C-MED-100 trademarks. This also resulted in Giampapa's breach of the employment agreement.

3. Newman

81. Upon information and belief, Newman is a spokesperson, paid consultant and advisory board member of Jeunesse. Newman's responsibilities include, *inter alia*, promoting the infringing products among Jeunesse's distributors and educating the relevant consuming public about the infringing products.

82. Upon information and belief, Newman makes, uses, sells and/or offers for sale the infringing products, including Luminesce advanced night repair and Luminesce essential body renewal, in this judicial district, throughout the United States and elsewhere, through his internet website at <http://nathannewmanmd.com>.

83. Upon information and belief, Newman is a medical advisor and spokesperson for Jeunesse, and, with Giampapa, is exploiting confidential information and know-how belonging to Optigenex to assist Jeunesse in the making, using, selling and/or offering for sale the infringing products.

4. Vitaquest

84. Upon information and belief, Vitaquest is one of the largest custom contract manufacturers of nutritional supplements in the United States. Vitaquest's web site states that it is fully compliant with current good manufacturing practices ("cGMPs") as a manufacturing and packaging facility of nutritional or dietary supplements, and is duly licensed and regularly inspected by state and federal health authorities.

85. Upon information and belief, based upon communications with Vitaquest, Vitaquest is the manufacturer of NutriGen AM Essentials and NutriGen PM Essentials products for Jeunesse. That is, Vitaquest incorporates an extract of *Uncaria tomentosa* into caplets with other ingredients to yield an end-user caplet for oral administration that infringes the patents-in-suit.

86. As the manufacturer of NutriGen AM Essentials and NutriGen PM Essentials, Vitaquest is subject to the cGMPs promulgated by the U.S. Food and Drug Administration ("FDA") and effective for dietary supplements as of June 15, 2010.

87. Vitaquest's web site states, at <http://supplementmanufacturers.info/approvals-certifications/>, that Vitaquest is NSF GMP certified. Upon information and belief, this statement means that Vitaquest's contract manufacturing facilities are registered under the NSF GMP Registration Program sponsored by the National Sanitation Foundation International ("NSF International"). NSF International is an accredited, independent, not-for-profit organization that provides standards development, product certification, auditing and other services of a self-regulatory nature to the dietary supplement industry.

88. According to NSF International's published standards, NSF GMP certification constitutes recognition that the registered contract manufacturer is in compliance with cGMP requirements.

89. Under Subpart E, Section 111.55 of 21 C.F.R. Part 111, a dietary supplement manufacturer must establish and maintain a production and process control system covering all stages of manufacturing. Under Section 111.70 of the same subpart, compliance for each separate component ingredient of a dietary supplement requires establishment of both an “identity specification” and a “component specification.”

90. To establish an “identity specification” and a “component specification,” all component ingredients must be identified properly and meet the purity, strength and composition requirements of the dietary supplement into which it will be incorporated. If the component ingredient is considered a dietary ingredient by the FDA, as is a water soluble *Uncaria* extract, ingredient identification provisions require the manufacturer to conduct at least one discrete test or examination to confirm independently that the ingredient is, in fact, that which it purports to be. As to other components (i.e., non-dietary ingredients), the cGMP requires the manufacturer to “confirm the identity” of the component.

91. For all components incorporated into a dietary supplement, the manufacturer must conduct appropriate tests or examinations to determine if the component specifications are met. Instead of conducting its own tests or examinations, the manufacturer alternatively may rely on the supplier’s certificate of analysis, provided the supplier meets certain qualification requirements.

92. Under Subpart G, Section 111.180 and Subpart P, Section 111.605 of 21 C.F.R. Part 111, all relevant records showing compliance under the above sections, including, without limitation, component ingredient suppliers’ certificates of analysis, invoices and guarantees, must be retained by the dietary supplement manufacturer for a period of one (1) year beyond the shelf life date of the dietary supplement.

93. Optigenex previously engaged Vitaquest as a contract manufacturer of nutritional supplements containing the AC-11/C-MED-100 extract and/or patented derivatives thereof including, *inter alia*, carboxy alkyl esters and quinic acid. In connection with these engagements, Optigenex made technical presentations to Vitaquest covering, *inter alia*, a detailed description of the technology as well as Optigenex's patents in connection therewith.

94. Upon information and belief, based on its past manufacturing for Optigenex and the knowledge it gained through the Optigenex presentations, Vitaquest is familiar with the AC-11/C-MED-100 extract because Vitaquest (a) handled and examined certificates of analysis and other documentation for the AC-11/C-MED-100 extract provided to it by Optigenex; (b) handled and examined the AC-11/C-MED-100 extract itself; (c) is familiar with Optigenex's patents and the claims of the patents-in-suit; and (d) is aware of the identity of Optigenex's sole source supplier for, as well as the specifications of, the AC-11/C-MED-100 extract, insofar as that information was shown on the certificate of analysis accompanying every shipment of the AC-11/C-MED-100 extract delivered to Vitaquest for use in its manufacture of Optigenex's products.

95. When Optigenex became aware that Vitaquest was the manufacturer of the infringing NutriGen AM Essentials and NutriGen PM Essentials products for Jeunesse, Optigenex requested from Vitaquest either a sample of the *Uncaria* extract ingredient used in the infringing products or a copy of the certificate of analysis for that ingredient, or, alternatively, the information that Vitaquest would be required, under the cGMPs, to ascertain through testing or examination in the absence of a certificate of analysis or supplier qualifications that would allow Vitaquest to rely on the certificate. In response, Vitaquest stated that it did not have a sample or the documentation. Optigenex then requested the name of the component ingredient manufacturer and a sample of the ingredient from the supplier.

96. In making its requests, Optigenex explained to Vitaquest that it had good faith, patent-related concerns about the ingredient in question.

97. In response, Vitaquest initially assured Optigenex that it would provide what was being requested. Subsequently, however, Vitaquest advised that it had no samples or other information, and that the “sheet,” presumably a reference to some unspecified paperwork accompanying one or more shipments to Vitaquest of the ingredient in question, showed the material to be “a hot water extract,” but disclosed “no company name.”

98. In a later communication, Vitaquest advised Optigenex that the “hot water extract” was purchased for Jeunesse by Giampapa from Raintree Nutritionals, Inc. (“Raintree”).

99. In an inquiry made by Optigenex prior to its being aware that Vitaquest was Jeunesse’s contract manufacturer, and as part of an effort to determine sources of the *Uncaria* extract being used in the NutriGen AM Essentials and NutriGen PM Essentials products, Raintree advised that it does not sell extracts of *Uncaria tomentosa*.

100. Optigenex reiterated to Vitaquest its request for a sample of the ingredient from Raintree. Vitaquest responded that it would so provide. However, to date, it has not done so.

101. Optigenex conducted due diligence to obtain samples and/or written specification characteristics of the infringing extract used in the infringing products, but was unable to do so. As a result, Optigenex was compelled to conduct its own testing of the infringing products at significant expense.

102. Optigenex’s testing of the infringing products shows that the infringing products infringe the patents-in-suit. Likewise, through expert due diligence and testing, Optigenex confirmed that the infringing extract infringes the patents-in-suit.

D. Acts of Patent Infringement, Unfair Competition, Trademark Infringement and Trademark Dilution

1. Acts of Patent Infringement

a. Jeunesse and Giampapa

103. Upon information and belief, Jeunesse and Giampapa directly infringed, and continue to directly infringe, and induced others to infringe, and continue to induce others to infringe, the patents-in-suit by making, using, selling and/or offering for sale, in this judicial district, throughout the United States and elsewhere, products embodying the inventions claimed in the patents-in-suit. Jeunesse's and Giampapa's infringing activities are without consent, authority or license from Optigenex.

104. Upon information and belief, Giampapa is a medical advisor and spokesperson for Jeunesse, and is exploiting confidential and proprietary information and know-how belonging to Optigenex to assist Jeunesse in the making, using, selling and/or offering for sale the infringing products.

105. Upon information and belief, Giampapa knowingly and actively relied upon the patents-in-suit to aid and abet Jeunesse and others to infringe one or more claims of the patents-in-suit through his marketing, advertising and speaking on behalf of Jeunesse.

106. Upon information and belief, the labels, instructional materials and written, audio and video promotional materials produced by Jeunesse, as well as packaging of the infringing products developed by Jeunesse, direct and teach consumers and end users to administer the infringing products for DNA repair, to inhibit TNF- α production and/or to induce apoptosis of white blood cells, each of which are features of the claims of the patents-in-suit. (See Exhibit Q). In each of these respects, Jeunesse and Giampapa knowingly and actively induced, aided and abetted others to infringe the patents-in-suit.

107. The infringing products have been administered, and, upon information and belief, continue to be administered, to humans.

b. Newman

108. Upon information and belief, Newman directly infringed, and continues to directly infringe, and induced others to infringe, and continues to induce others to infringe, the patents-in-suit by making, using, selling and/or offering for sale, in this judicial district, throughout the United States and elsewhere, products embodying the inventions claimed in the patents-in-suit. Newman's infringing activities are without consent, authority or license from Optigenex.

109. Upon information and belief, Newman is a medical advisor and spokesperson for Jeunesse, and, with Giampapa, is exploiting confidential and proprietary information and know-how belonging to Optigenex to assist Jeunesse in the making, using, selling and/or offering for sale the infringing products.

110. Upon information and belief, the labels, instructional materials and written, audio and video promotional materials produced by Jeunesse, as well as packaging of the infringing products developed by Jeunesse direct and teach consumers and end users to administer the infringing products for DNA repair, to inhibit TNF- α production and/or to induce apoptosis of white blood cells, each of which are features of the claims of the patents-in-suit. (See Exhibit Q). In each of these respects, Jeunesse and Newman knowingly and actively induced, aided and abetted others to infringe the patents-in-suit.

c. Vitaquest

111. Upon information and belief, Vitaquest directly infringed, and continues to directly infringe, and induced others to infringe, and continues to induce others to infringe, the patents-in-suit by making, using, selling and/or offering for sale, in this judicial district,

throughout the United States and elsewhere, products embodying the inventions claimed in the patents-in-suit. Vitaquest's infringing activities are without consent, authority or license from Optigenex.

112. Upon information and belief, Vitaquest is familiar with the AC-11/C-MED-100 extract because Vitaquest (a) handled and examined certificates of analysis and other documentation for the AC-11/C-MED-100 extract; (b) handled and examined the AC-11/C-MED-100 extract itself; (c) is familiar with Optigenex's patent claims; and (d) is aware of the identity of Optigenex's sole source supplier of the extract, as well as the specifications of the AC-11/C-MED-100 extract, insofar as that information was shown on the certificate of analysis accompanying every shipment of the AC-11/C-MED-100 extract delivered to Vitaquest for use in its manufacture of Optigenex's products.

113. Upon information and belief, Vitaquest markets, advertises, sells and/or offers for sale services and/or products that include manufacture and use of the infringing extract to make, use, sell and/or offer for sale the infringing products, namely NutriGen AM Essentials and NutriGen PM Essentials. Upon information and belief, Vitaquest is either intentionally misrepresenting to Optigenex the name of its source of the infringing extract or failing to comply with cGMPs.

2. Acts of Unfair Competition, Trademark Infringement, Trademark Dilution and Breach of Contract

114. Giampapa appears as a spokesperson for Jeunesse in its instructional and marketing videos (collectively, the "instructional and marketing videos"). One such instructional and marketing video, entitled "The Science Behind AM & PM Essentials" (the "AM & PM Essentials video"), is accessible at <http://www.jeunesstraining.com/product->

training/nutrigen_training/. The instructional and marketing videos, including the AM & PM Essentials video, were, and are, used to market and advertise the infringing products.

115. Jeunesse and Giampapa, through the instructional and marketing videos, trade off Optigenex's goodwill for their commercial gain. Such use of the instructional and marketing videos creates a false impression, and causes a likelihood of consumer confusion, that the infringing products are predicated upon Optigenex's patented technology, are licensed and authorized by Optigenex, are supported by Optigenex's extensive and well-known quality control and outstanding business reputation and/or are otherwise associated or affiliated with Optigenex.

116. In the instructional and marketing videos, specifically the AM & PM Essentials video, Jeunesse and Giampapa improperly reference and materially misrepresent the Broad Spectrum study for their commercial gain and at the expense of Optigenex, thereby diluting the quality of the AC-11/C-MED-100 trademarks by diminishing the capacity of the AC-11/C-MED-100 trademarks to identify and distinguish the AC-11/C-MED-100 extract and/or the AC-11/C-MED-100 products. Such unlawful acts constitute acts of unfair competition, trademark infringement and trademark dilution by Jeunesse and Giampapa and a breach of the employment agreement by Giampapa.

117. Beginning at approximately the 27 minute mark of the AM & PM Essentials video, the Broad Spectrum study is displayed on the screen. Here, Giampapa specifically discusses "naturally occurring compounds" that, after 15 years of research, were found to "dramatically improve our body's ability to repair damage to DNA." In an excerpt from the AM & PM Essentials video, Giampapa states:

[W]e tried to look at combining the effects of this new DNA repair compound with a Broad Spectrum anti-oxidant, anti-inflammatory product that we created, and for the first time what we were able to show,...in

humans, that *we can dramatically decrease the amount of DNA damage, and even upregulate or improve our body's ability to repair DNA damage. We also were able to show for the first time that we can decrease inflammation.* And this compound was extremely safe to use over a long period of time. So this was the first time anyone had ever shown that a non-prescription compound could directly impact aging at the DNA and genetic level.

(emphases added). Giampapa clearly makes himself part of the scientific and clinical research studies and inventions owned by Optigenex and that name Pero as the inventor. Yet, Giampapa in fact was not an inventor of the patented technology. At best, he only participated in respect of the studies when employed by Optigenex, which employment was only after Pero's invention of the patents-in-suit.

118. The Broad Spectrum study displayed on the screen, and referred to by Giampapa, is directed specifically and exclusively to the AC-11/C-MED-100 extract, the AC-11/C-MED-100 products and carboxy alkyl esters and quinic acid derivatives manufactured, prepared and/or administered in accordance with the claims of the patents-in-suit. Again, the 15 years of research that Giampapa refers to was performed by Pero and others, not Giampapa. That research was sponsored and supported by Optigenex and was intended for use with Optigenex's products and/or on behalf of Optigenex.

119. Upon information and belief, Jeunesse and Giampapa knowingly and intentionally (a) reference Optigenex's research in association with the infringing products; (b) trade off Optigenex's goodwill for their commercial gain; (c) create a false impression that Jeunesse's products are predicated on Optigenex's patented technology, are licensed and authorized by Optigenex, are supported by Optigenex's extensive and well-known quality control and outstanding business reputation and/or are otherwise associated or affiliated with Optigenex; (d) create a likelihood of confusion among the relevant consuming public between the infringing products and the AC-11/C-MED-100 products; and (e) dilute the quality of the

AC-11/C-MED-100 trademarks by diminishing the capacity of the AC-11/C-MED-100 trademarks to identify and distinguish the AC-11/C-MED-100 extract and/or the AC-11/C-MED-100 products. Such unlawful acts constitute acts of unfair competition, trademark infringement and trademark dilution by Jeunesse and Giampapa and a breach of the employment agreement by Giampapa.

120. Specifically, through the tactic of falsely linking the infringing products with Optigenex's AC-11/C-MED-100 trademarks and related studies, and the likelihood of an inference favorable to Jeunesse being drawn from the "co-author's" endorsement of the infringing products, Giampapa creates the erroneous impression that the studies were prepared, and may be relied upon, for the purpose of substantiating the efficacy, safety and quality of the infringing products and of the infringing extract they contain.

121. In fact, the studies being misused by Giampapa neither examine, nor in any way analyze, relate or apply to, the infringing products or to the infringing extract of *Uncaria* they contain; rather, the studies, as Giampapa knows, relate solely to the proprietary AC-11/C-MED-100 extract. As to any work he might have done in connection with the studies during his time as an employee of Optigenex, Giampapa contractually is prohibited from exploiting same for his or anyone else's commercial benefit.

122. In this regard, even if the studies, as published, arguably could be deemed to reside in the public domain and, as such, constitute material freely available for purposes of education, research and other related uses, the specific use to which Giampapa employs them is to emphasize "his work" on the studies and his "co-authorship" on their publication. That is, Giampapa ties his credibility as a spokesman for Jeunesse to his purported expertise and to the work he claims to have done in connection with the studies. In doing so, Giampapa uses material specifically sponsored, prepared, supported and owned by an entity other than his

current employer in support of the commercial marketing of products containing an ingredient proprietary to such other entity, all for the express purpose of competing unfairly with such other entity.

123. In short, through Giampapa's selective filtration of the information he provides about the studies, Giampapa encourages viewers to draw an erroneous conclusion that the studies are Giampapa's own (and by extension Jeunesse's), which leads to the equally erroneous conclusion that the studies were prepared for the purpose of substantiating the efficacy and quality of the infringing products. As to each proposition, nothing could be further from the truth.

124. Giampapa appears as a spokesperson for Jeunesse in a webinar entitled "The Science of Youthful Aging" (the "webinar") at: http://www.instantpresenter.com/WebConference/RecordingDefault.aspx?c_psrId=E955DF80854E. The webinar is also one of the instructional and marketing videos available at: <http://www.jeunesstraining.com/product-training/advanced-night-repair/>. The webinar was, and is, used by Jeunesse and Giampapa to improperly market and advertise the infringing products; specifically, Jeunesse's advanced night repair topical skin cream.

125. Beginning at approximately the 07:22 minute mark of the webinar, Giampapa states:

[T]he main ingredient that *we* use for the DNA repair process is a *naturally occurring extract from a vine in South America*. Now, many people have heard of Cat's Claw. Ok, now, this is a vine that is indigenous to the Amazon area, and *we have been using this* for over 7 years, *published a number of articles* that document its ability to repair DNA. And, the interesting thing is, that Cat's Claw extract alone is not really the component that is responsible for the DNA repair process. It's a small sub-fraction of the Cat's Claw plant that is really the *key ingredient* here. So, using just Cat's Claw powder alone will not really create the efficacy or the effect that this special ingredient has. So...when *we* take *this compound and topically put it in specific delivery systems, like we*

have with Advanced Night Repair, the special ingredient can penetrate the skin, and what happens, it gets to the membrane of the cell where it actually stimulates a receptor. That receptor actually allows this compound to pass into the...cell, and inside the cell, this specific compound, called a carboxy alkyl ester, or the sub-fraction of Cat's Claw, actually interacts with a compound called NF kappa B, which is a very inflammatory compound. And, by inhibiting that inflammatory compound, there is a cascade of events that occur that actually then allow the nucleus, or trigger compounds in the nucleus, to actually increase the DNA repair process. I have actually published a number of chapters on this...The secret is that this DNA repair compound actually does get into the cell, does interact with key compounds inside the cell, which then turn on the DNA repair switch within that cell so it doesn't accumulate damage, and actually repairs the damage that it has been exposed to.

(emphases added).

126. In the aforementioned excerpt, Giampapa intentionally misleads viewers by implying that Jeunesse owns the rights to use carboxy alkyl ester for products that repair DNA; specifically, Jeunesse's advanced night repair topical skin cream.

127. The specific compound, carboxy alkyl esters, referred to by Giampapa in the webinar, is a component of the AC-11/C-MED-100 extract and the AC-11/C-MED-100 products. The manufacture and use of this isolated and purified compound, as well as quinic acid, for, *inter alia*, DNA repair, is protected by several Optigenex patents, including without limitation, the '626 patent, '064 patent and '312 patent.

128. By specifically referencing carboxy alkyl ester in connection with the infringing products, Giampapa and Jeunesse (a) trade off Optigenex's goodwill for their commercial gain; (b) create a false impression that the infringing products are predicated on Optigenex's patented technology, are licensed and authorized by Optigenex, are supported by Optigenex's extensive and well-known quality control and outstanding business reputation and/or are otherwise associated or affiliated with Optigenex; (c) create a likelihood of confusion among the relevant consuming public between the infringing products and the AC-11/C-MED-100 products; and (d) dilute the quality of the AC-11/C-MED-100 trademarks by diminishing the

capacity of the AC-11/C-MED-100 trademarks to identify and distinguish the AC-11/C-MED-100 extract and/or the AC-11/C-MED-100 products. Such unlawful acts constitute acts of unfair competition, trademark infringement and trademark dilution by Jeunesse and Giampapa and a breach of the employment agreement by Giampapa.

129. By alternating his use of the pronouns “we” and “I,” Giampapa creates a false impression that he participated in the scientific and clinical research studies that led to the patents-in-suit, and that he was in a position to introduce carboxy alkyl ester to Jeunesse. Giampapa was not involved in the scientific and clinical research studies pertaining to the use of carboxy alkyl esters for DNA repair, was not an inventor of the patents-in-suit related thereto and only became an employee of Optigenex after Pero invented the patents-in-suit related thereto.

130. Moreover, by representing the compound as a “secret” that he “published,” Giampapa intentionally misleads the relevant consuming public by creating a false impression that he participated in the scientific and clinical research studies that led to the patents-in-suit and/or that he was an inventor or owner of the AC-11/C-MED-100 extract. In fact, Pero was the sole inventor of the patents-in-suit. Giampapa does not own, and never owned, any interest in the patents-in-suit. None of Optigenex’s patents, including the patents-in-suit, named Giampapa as inventor.

131. As stated above, upon information and belief, and based upon a search conducted on the USPTO patent search web site, no application listing Giampapa as an inventor or co-inventor that purports to use the AC-11/C-MED-100 extract for any purpose or combine the AC-11/C-MED-100 extract with any other ingredient or composition ever issued as a patent in the United States.

132. Beginning at approximately the 14:55 minute mark of the webinar, Giampapa states:

[A]bout seven years ago, *we* did two independent studies, one with a very very big company, which I can't mention their name, but...the two letters begin with "E" and then "L." *We* did a joint study to document the effectiveness of this specific compound on DNA repair. Not only was it effective...but...this ingredient...was, at that time...considered to be one of the most important ingredients that could possibly have been discovered for skin repair.

(emphases added).

133. Upon information and belief, the company with the initials "E" and "L" that Giampapa refers to in the above excerpt, and states that he cannot mention by name, is Estee Lauder. The joint study that Giampapa refers to is the EL study, which is specifically and exclusively directed to the AC-11/C-MED-100 extract and the AC-11/C-MED-100 products manufactured in accordance with the claims of the patents-in-suit.

134. Jeunesse and Giampapa trade off Optigenex's outstanding business reputation, customer recognition of the AC-11/C-MED-100 trademarks and its associated goodwill by specifically referring to the scientific and clinical research studies and the AC-11/C-MED-100 extract. In doing so, Jeunesse and Giampapa create a false impression to the relevant consuming public that the infringing products are associated and/or sponsored by Optigenex and, therefore, predicated upon Optigenex's patented technology, authorized by Optigenex and/or are supported by Optigenex's quality control and outstanding business reputation.

135. Jeunesse and Giampapa create a likelihood of confusion among the relevant consuming public between the infringing products and the AC-11/C-MED-100 products. Jeunesse and Giampapa moreover dilute the quality of the AC-11/C-MED-100 trademarks by diminishing the capacity of the AC-11/C-MED-100 trademarks to identify and distinguish the AC-11/C-MED-100 extract and/or the AC-11/C-MED-100 products. The above acts by Giampapa constitute a breach of the employment agreement.

136. Giampapa appears as a spokesperson for Jeunesse in the instructional and marketing video entitled “Stem Cells, DNA and Telomeres [*sic*]” (the “Stem Cells, DNA & Telomeres video”) at <http://www.jeunessetraining.com/product-training/anti-aging-training/>. The Stem Cells, DNA & Telomeres video was, and is, used to market and advertise the infringing products through improper and misleading statements.

137. On the Stem Cells, DNA & Telomeres video, Giampapa discusses, *inter alia*, Jeunesse’s use of stem cells, specifically, according to the video, “secretions from stems cells,” to generate human growth factors in combination with the *Uncaria* extract, which extract is shown by Optigenex’s testing to infringe the patents-in-suit. Since Optigenex first started using the AC-11/C-MED-100 trademarks, it has never associated the marks or the AC-11/C-MED-100 products with any ingredient containing stem cells, secretions from stem cells and/or human growth factors. As such, Giampapa’s reference to stem cells creates a false impression among the relevant consuming public that Optigenex approves and/or sponsors the use of the AC-11/C-MED-100 extract and/or products with stem cells, secretions from stem cells and/or human growth factors.

138. Beginning at approximately the 17:31 minute mark of the Stem Cells, DNA & Telomeres video, Giampapa states “[t]he ingredients in this particular product [NutriGen AM Essentials and NutriGen PM Essentials] have been tested at the University of Lund in Sweden and a number of other very prestigious research facilities and universities throughout Europe and in the United States.”

139. At least one of the ingredients Giampapa refers to is the AC-11/C-MED-100 extract. The studies mentioned by Giampapa that were conducted at the University of Lund are the scientific and clinical research studies performed by Pero in Sweden. As previously discussed, the scientific and clinical research studies became, *inter alia*, the Broad Spectrum

study and the EL study that are specifically and exclusively directed to the AC-11/C-MED-100 extract and carboxy alkyl esters and quinic acid derivatives manufactured, prepared and/or administered in accordance with the claims of the patents-in-suit.

140. Jeunesse and Giampapa trade off Optigenex's outstanding business reputation, customer recognition of the AC-11/C-MED-100 trademarks and its associated goodwill by specifically referring to the scientific and clinical research studies and the AC-11/C-MED-100 extract. In doing so, Jeunesse and Giampapa create a false impression among the relevant consuming public that the infringing products are derived from Optigenex and, therefore, predicated upon Optigenex's patented technology, authorized by Optigenex and/or are backed by Optigenex's quality control and outstanding business reputation.

141. Jeunesse and Giampapa create a likelihood of confusion among the relevant consuming public between the infringing products and the AC-11/C-MED-100 products. Jeunesse and Giampapa dilute the quality of the AC-11/C-MED-100 trademarks by diminishing the capacity of the AC-11/C-MED-100 trademarks to identify and distinguish the AC-11/C-MED-100 extract and/or the AC-11/C-MED-100 products. Such unlawful acts constitute acts of unfair competition, trademark infringement and trademark dilution by Jeunesse and Giampapa and a breach of the employment agreement by Giampapa.

142. Giampapa consistently uses the pronoun "we" in the Stem Cells, DNA & Telomeres video to mislead the relevant consuming public about the scope of his contributions to the scientific and clinical research studies that led to the patents-in-suit. As stated above, Giampapa was not an inventor of the patents-in-suit and only participated in research when employed by Optigenex. Giampapa was not involved in the scientific and clinical research studies at the University of Lund.

143. Giampapa gives the false impression that the infringing products are endorsed and/or sponsored by Optigenex and that Optigenex authorized Jeunesse, Giampapa and Newman to use the scientific and clinical research studies in the marketing, advertising, making, using, selling and/or offering for sale the infringing products. The infringing products, however, do not derive or originate from, and are not otherwise associated with, Optigenex. Optigenex has not authorized Jeunesse, Giampapa and/or Newman to utilize the scientific and clinical research studies to promote the infringing products, and Optigenex has not authorized or licensed the patents-in-suit to Jeunesse, Giampapa or Newman.

144. As a result of the above, Jeunesse and Giampapa blur the distinction between the infringing extract and products and Optigenex's high quality, world-renowned AC-11/C-MED-100 extract and products, thereby causing a likelihood of confusion and misleading the relevant consuming public into falsely believing that the infringing products are the same or have the same characteristics as the AC-11/C-MED-100 extract and/or AC-11/C-MED-100 products.

145. As a result of the above, Jeunesse and Giampapa dilute the quality of the AC-11/C-MED-100 trademarks by diminishing the capacity of the AC-11/C-MED-100 trademarks to identify and distinguish the AC-11/C-MED-100 extract and/or the AC-11/C-MED-100 products from the infringing extract and products.

146. As a result of defendants' infringement of the patents-in-suit, as well as Jeunesse's and Giampapa's acts of unfair competition, trademark infringement and trademark dilution and Giampapa's breach of contract, Optigenex's sales of AC-11/C-MED-100 extract and products suffered, and continue to suffer, as do the sales of the AC-11/C-MED-100 products by Optigenex's customers, such as bHIP.

IV. CAUSES OF ACTION

A. Count One – Infringement of U.S. Patent No. 6,238,675

147. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-146 of this complaint as though fully set forth herein.

148. Optigenex owned the '675 patent throughout the period of defendants' infringing acts and still owns the '675 patent.

149. Defendants infringed, and continue to infringe, the '675 patent by making, using, selling and/or offering for sale the infringing extracts and/or the infringing products.

150. Without license, permission and/or authorization from Optigenex, defendants directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, and induced others to infringe, and continue to induce others to infringe, the claims of the '675 patent.

151. Upon information and belief, defendants are aware of Optigenex's patents directed to the AC-11/C-MED-100 extract, AC-11/C-MED-100 products, carboxy alkyl ester, quinic acid and other derivatives thereof, including the '675 patent.

152. Upon information and belief, defendants took active and deliberate steps to induce direct infringement of the '675 patent by advertising and instructing others to use the infringing extracts and/or infringing products, including showing the use of these extracts and/or these products on promotional literature, brochures and/or on websites.

153. Upon information and belief, defendants knew or should have known that their actions would induce actual infringement of the '675 patent.

154. Defendants are willfully and intentionally infringing the '675 patent.

155. Defendants' unlawful acts of infringement as described herein constitute a violation of 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(b).

156. As a direct and proximate consequence of defendants' direct and/or inducement of infringement of the '675 patent, Optigenex suffered and continues to suffer irreparable injury and monetary damages pursuant to 36 U.S.C. §§ 281, 283, 284, 285 and 287.

157. Upon information and belief, defendants direct infringement and/or inducement of infringement of the '675 patent will continue unless enjoined by this Court.

158. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining defendants from committing further acts of infringement of the '675 patent.

B. Count Two -- Infringement of U.S. Patent No. 6,361,805

159. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-158 of this complaint as though fully set forth herein.

160. Optigenex owned the '805 patent throughout the period of defendants' infringing acts and still owns the '805 patent.

161. Defendants infringed, and continue to infringe, the '805 patent by making, using, selling and/or offering for sale the infringing extracts and/or the infringing products.

162. Without license, permission and/or authorization from Optigenex, defendants directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, and induced others to infringe, and continue to induce others to infringe, the claims of the '805 patent.

163. Upon information and belief, defendants are aware of Optigenex's patents directed to the AC-11/C-MED-100 extract, AC-11/C-MED-100 products, carboxy alkyl ester, quinic acid and other derivatives thereof, including the '805 patent.

164. Upon information and belief, defendants took active and deliberate steps to induce direct infringement of the '805 patent by advertising and instructing others to use the

infringing extracts and/or infringing products, including showing the use of these extracts and/or these products on promotional literature, brochures and/or on websites.

165. Upon information and belief, defendants knew or should have known that their actions would induce actual infringement of the '805 patent.

166. Defendants are willfully and intentionally infringing the '805 patent.

167. Defendants' unlawful acts of infringement as described herein constitute a violation of 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(b).

168. As a direct and proximate consequence of defendants' direct and/or inducement of infringement of the '805 patent, Optigenex suffered and continues to suffer irreparable injury and monetary damages pursuant to 36 U.S.C. §§ 281, 283, 284, 285 and 287.

169. Upon information and belief, defendants direct infringement and/or inducement of infringement of the '805 patent will continue unless enjoined by this Court.

170. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining defendants from committing further acts of infringement of the '805 patent.

C. Count Three -- Infringement of U.S. Patent No. 6,964,784

171. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-170 of this complaint as though fully set forth herein.

172. Optigenex owned the '784 patent throughout the period of defendants' infringing acts and still owns the '784 patent.

173. Defendants infringed, and continue to infringe, the '784 patent by making, using, selling and/or offering for sale the infringing extracts and/or the infringing products, other than those products for topical use.

174. Without license, permission and/or authorization from Optigenex, defendants directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, and induced others to infringe, and continue to induce others to infringe, the claims of the '784 patent.

175. Upon information and belief, defendants are aware of Optigenex's patents directed to the AC-11/C-MED-100 extract, AC-11/C-MED-100 products, carboxy alkyl ester, quinic acid and other derivatives thereof, including the '784 patent.

176. Upon information and belief, defendants took active and deliberate steps to induce direct infringement of the '784 patent by advertising and instructing others to use the infringing extracts and/or the infringing products, other than those products for topical use, including showing the use of these extracts and/or these products, on promotional literature, brochures and/or on websites.

177. Upon information and belief, defendants knew or should have known that their actions would induce actual infringement of the '784 patent.

178. Defendants are willfully and intentionally infringing the '784 patent.

179. Defendants' unlawful acts of infringement as described herein constitute a violation of 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(b).

180. As a direct and proximate consequence of defendants' direct and/or inducement of infringement of the '784 patent, Optigenex suffered and continues to suffer irreparable injury and monetary damages pursuant to 36 U.S.C. §§ 281, 283, 284, 285 and 287.

181. Upon information and belief, defendants direct infringement and/or inducement of infringement of the '784 patent will continue unless enjoined by this Court.

182. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining defendants from committing further acts of infringement of the '784 patent.

D. Count Four -- Infringement of U.S. Patent No. 7,595,064

183. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-182 of this complaint as though fully set forth herein.

184. Optigenex owned the '064 patent throughout the period of defendants' infringing acts and still owns the '064 patent.

185. Defendants infringed, and continue to infringe, the '064 patent by making, using, selling and/or offering for sale the infringing extracts and/or the infringing products.

186. Without license, permission and/or authorization from Optigenex, defendants directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, and induced others to infringe, and continue to induce others to infringe, the claims of the '064 patent.

187. Upon information and belief, defendants are aware of Optigenex's patents directed to the AC-11/C-MED-100 extract, AC-11/C-MED-100 products, carboxy alkyl ester, quinic acid and other derivatives thereof, including the '064 patent.

188. Upon information and belief, defendants took active and deliberate steps to induce direct infringement of the '064 patent by advertising and instructing others to use the infringing extracts and/or the infringing products, including showing the use of these extracts and/or these products on promotional literature, brochures and/or on websites.

189. Upon information and belief, defendants knew or should have known that their actions would induce actual infringement of the '064 patent.

190. Defendants are willfully and intentionally infringing the '064 patent.

191. Defendants' unlawful acts of infringement as described herein constitute a violation of 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(b).

192. As a direct and proximate consequence of defendants' direct and/or inducement of infringement of the '064 patent, Optigenex suffered and continues to suffer irreparable injury and monetary damages pursuant to 36 U.S.C. §§ 281, 283, 284, 285 and 287.

193. Upon information and belief, defendants direct infringement and/or inducement of infringement of the '064 patent will continue unless enjoined by this Court.

194. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining defendants from committing further acts of infringement of the '064 patent.

E. Count Five -- Infringement of U.S. Patent No. 7,947,312

195. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-194 of this complaint as though fully set forth herein.

196. Optigenex owned the '312 patent throughout the period of defendants' infringing acts and still owns the '312 patent.

197. Defendants infringed, and continue to infringe, the '312 patent by making, using, selling and/or offering for sale the infringing extracts and/or the infringing products, other than those products for topical use.

198. Without license, permission and/or authorization from Optigenex, defendants directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, and induced others to infringe and continue to induce others to infringe the claims of the '312 patent.

199. Upon information and belief, defendants are aware of Optigenex's patents directed to the AC-11/C-MED-100 extract, AC-11/C-MED-100 products, carboxy alkyl ester, quinic acid and other derivatives thereof, including the '312 patent.

200. Upon information and belief, defendants took active and deliberate steps to induce direct infringement of the '312 patent by advertising and instructing others to use the infringing extracts and/or the infringing products, other than those products for topical use, including showing these extracts and/or these products, on promotional literature, brochures and/or on websites.

201. Upon information and belief, defendants knew or should have known that their actions would induce actual infringement of the '312 patent.

202. Defendants are willfully and intentionally infringing the '312 patent.

203. Defendants' unlawful acts of infringement as described herein constitute a violation of 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(b).

204. As a direct and proximate consequence of defendants' direct and/or inducement of infringement of the '312 patent, Optigenex suffered and continues to suffer irreparable injury and monetary damages pursuant to 36 U.S.C. §§ 281, 283, 284, 285 and 287.

205. Upon information and belief, defendants direct infringement and/or inducement of infringement of the '312 patent will continue unless enjoined by this Court.

206. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining defendants from committing further acts of infringement of the '312 patent.

F. Count Six -- Infringement of U.S. Patent No. 7,955,626

207. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-206 of this complaint as though fully set forth herein.

208. Optigenex owned the '626 patent throughout the period of defendants' infringing acts and still owns the '626 patent.

209. Jeunesse infringed, and continues to infringe, the '626 patent by making, using, selling and/or offering for sale the infringing extracts and/or the infringing products, other than those products for topical use.

210. Without license, permission and/or authorization from Optigenex, defendants directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, and induced others to infringe, and continue to induce others to infringe, the claims of the '626 patent.

211. Upon information and belief, defendants are aware of Optigenex's patents directed to the AC-11/C-MED-100 extract, AC-11/C-MED-100 products, carboxy alkyl ester, quinic acid and other derivatives thereof, including the '626 patent.

212. Upon information and belief, defendants took active and deliberate steps to induce direct infringement of the '626 patent by advertising and instructing others to use the infringing products, other than those products for topical use, including showing these extracts and/or these products, on promotional literature, brochures and/or on websites.

213. Upon information and belief, defendants knew or should have known that their actions would induce actual infringement of the '626 patent.

214. Defendants are willfully and intentionally infringing the '626 patent.

215. Defendants' unlawful acts of infringement as described herein constitute a violation of 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(b).

216. As a direct and proximate consequence of defendants' direct and/or inducement of infringement of the '626 patent, Optigenex suffered and continues to suffer irreparable injury and monetary damages pursuant to 36 U.S.C. §§ 281, 283, 284, 285 and 287.

217. Upon information and belief, defendants direct infringement and/or inducement of infringement of the '626 patent will continue unless enjoined by this Court.

218. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining defendants from committing further acts of infringement of the '626 patent.

G. Count Seven -- Unfair Competition under the Lanham Act

219. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-218 of this complaint as though fully set forth herein.

220. Jeunesse's and Giampapa's marketing, advertising, making, using, selling and/or offering for sale the infringing products in interstate commerce, through its internet website at www.jeunesseglobal.com, and/or through its multi-level marketing distributors, is likely to cause confusion and/or mistake as to the source, origin and/or sponsorship of the infringing products.

221. Upon information and belief, and by reason of the foregoing, Jeunesse's and Giampapa's marketing, advertising, making, using, selling and/or offering for sale the infringing products is intentional, willful, and malicious, and is calculated to specifically cause confusion, mistake or deception as to the source, origin or sponsorship of the infringing products, and to trade off the value, goodwill, consumer recognition and business reputation Optigenex developed by the making, using, selling and/or offering for sale its successful AC-11/C-MED-100 products and patented derivatives thereof.

222. Upon information and belief, Jeunesse's and Giampapa's are in direct competition with Optigenex by making, using, selling and/or offering for sale the infringing products in the same channels of trade and to the same and/or similar customers. By reason of

the foregoing, Jeunesse's and Giampapa's interfered with Optigenex's ability to conduct its business.

223. Upon information and belief, Jeunesse's and Giampapa's trading off the value, goodwill, consumer recognition and business reputation of Optigenex's AC-11/C-MED-100 products will continue unless enjoined by this Court.

224. Defendants' unlawful acts of unfair competition described herein constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

225. As a direct and proximate consequence of Jeunesse's and Giampapa's unlawful acts of unfair competition, Optigenex suffered and continues to suffer irreparable injury and monetary damages.

226. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining Jeunesse and Giampapa from committing further unlawful acts of unfair competition in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

H. Count Eight -- Common Law Unfair Competition

227. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-226 of this complaint as though fully set forth herein.

228. This cause of action arises under the common laws of the State of Texas and other States.

229. Upon information and belief, Jeunesse's and Giampapa's trading off the value, goodwill, consumer recognition and business reputation of Optigenex's AC-11/C-MED-100 products will continue unless enjoined by this Court.

230. Jeunesse's and Giampapa's unlawful acts of unfair competition described herein constitute violations of the common laws of the State of Texas and other States.

231. As a direct and proximate consequence of Jeunesse's and Giampapa's unlawful acts of unfair competition, Optigenex suffered and continues to suffer irreparable injury and monetary damages.

232. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining Jeunesse and Giampapa from committing unlawful acts of unfair competition in violation of the common laws of the State of Texas and other States.

I. Count Nine -- Trademark Infringement under the Lanham Act

233. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-232 of this complaint as though fully set forth herein.

234. This cause of action arises under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

235. Based upon the allegations set forth herein, Jeunesse and Giampapa infringe Optigenex's AC-11/C-MED-100 trademarks.

236. As a direct and proximate consequence of Jeunesse's and Giampapa's unlawful acts of trademark infringement, Optigenex suffered and continues to suffer irreparable injury and monetary damages.

237. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining Jeunesse and Giampapa from committing further unlawful acts of unfair competition in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

J. Count Ten -- Trademark Dilution under the Lanham Act

238. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-237 of this complaint as though fully set forth herein.

239. By virtue of Optigenex's efforts and investments in the AC-11/C-MED-100 trademarks, the AC-11/C-MED-100 trademarks possess the requisite degree of recognition of famous marks pursuant to 15 U.S.C. § 1125(c).

240. As a direct and proximate consequence of Jeunesse's and Giampapa's unlawful acts of trademark dilution, Optigenex suffered and continues to suffer irreparable injury and monetary damages.

241. By reason of the foregoing, Optigenex seeks damages and a trebling thereof and preliminary and permanent injunctions enjoining Jeunesse and Giampapa from committing further unlawful acts of trademark dilution in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(c).

K. Count Eleven -- Breach of Contract

242. Optigenex repeats and realleges each and every allegation contained in paragraphs 1-241 of this complaint as though fully set forth herein.

243. In accordance with Section 6 of the employment agreement, this cause of action arises under the laws of the State of New Jersey.

244. The employment agreement was duly executed by Giampapa and remains in effect for all relevant purposes herein.

245. Kronogen, now Optigenex, and Optigenex fully performed their duties under the employment agreement.

246. Upon information and belief, Giampapa exploited and continues to exploit, disclosed, and continues to disclose, intellectual property and other protected information in violation of the employment agreement that prohibits Giampapa from such exploitation and disclosure.

247. Giampapa breached, and continues to breach, his obligations under the employment agreement as a result of his infringement and inducement of infringement of the patents-in-suit, his statements, his acts of unfair competition, trademark infringement and trademark dilution.

248. As a direct and proximate consequence of Giampapa's breach of his obligations under the employment agreement, Optigenex suffered, and continues to suffer, irreparable injury and monetary damages.

249. Upon information and belief, Giampapa's breaches of his obligations under the employment agreement will continue unless enjoined by this Court.

250. By reason of the foregoing, in accordance with Section 5.7 of the employment agreement, Optigenex seeks monetary damages and preliminary and permanent injunctions enjoining Giampapa from continuing to breach his contractual obligations.

RESERVATION OF RIGHTS

251. The above allegations and claims are based upon information known to Optigenex, and/or upon Optigenex's information and belief at this time. Optigenex's discovery and investigation in this action is continuing and Optigenex reserves its right to supplement and/or amend such allegations and claims.

REQUEST FOR RELIEF

WHEREFORE, Optigenex prays for judgment and an order:

- a. preliminarily and permanently enjoining defendants and their respective officers, directors, agents, affiliates, subsidiaries, parents, employees, and those persons and entities in active concert therewith, from committing further acts of direct infringement and/or inducement of infringement of the patents-in-suit;
- b. preliminarily and permanently enjoining defendants and their respective officers, directors, agents, affiliates, subsidiaries, parents, employees and all persons and entities active in concert therewith, from directly or indirectly committing further actions of unfair competition pursuant to (i) Section 43 of the Lanham Act, 15 U.S.C. §§ 1125(a), 1125(c); (ii) the common laws of the State of Texas and other States, and (iii) from falsely associating Optigenex and Optigenex's products with Jeunesse and Jeunesse's products, including publicly displaying, selling, distributing, offering, marketing, advertising and/or promoting the infringing extracts and/or the infringing products;
- c. preliminarily and permanently enjoining Giampapa, and his respective agents, and all persons and entities active in concert therewith, from directly or indirectly violating Section 5.2 of the employment agreement;
- d. requiring defendants to undertake remedial action designed to correct the confusion caused by defendants, including, but not limited to:

- i. a formal retraction of all such false, misleading and confusing statements to be posted on the website www.jeunesseglobal.com for at least 12 months;
 - ii. a notification on the packaging of the infringing products that such products are not sponsored by Optigenex, do not contain AC-11 and stating that all prior statements to the contrary were false; and
 - iii. an offer to refund the purchase price for any infringing products and advising the purchaser that products containing the genuine AC-11/C-MED-100 extract may be purchased from Optigenex and/or its authorized sellers.
- e. awarding Optigenex damages for the defendants' infringement of the patents-in-suit pursuant to 35 U.S.C. § 284;
 - f. awarding Optigenex treble damages for defendants' willful and intentional infringement of the patents-in-suit pursuant to 35 U.S.C. § 284;
 - g. awarding Optigenex pre-judgment and post-judgment interest as applicable by law;
 - h. awarding Optigenex its costs incurred in this action;
 - i. declaring this case "exceptional" under 35 U.S.C. § 285, and awarding Optigenex its attorneys fees in this matter;
 - j. awarding Optigenex damages for Jeunesse's and Giampapa's unlawful acts of unfair competition under (i) Section 43 of the Lanham Act, 15 U.S.C. § 1125(a); and (ii) the common laws of the State of Texas and other States;

- k. awarding Optigenex damages for Jeunesse's and Giampapa's unlawful acts of trademark infringement and trademark dilution under Section 43 of the Lanham Act, 15 U.S.C. §§ 1125(a), 1125(c);
- l. awarding Optigenex damages for Giampapa's breach of the employment agreement in accordance with Section 5.7 of the employment agreement and under the law of the State of New Jersey;
- m. requiring Jeunesse to render an accounting to Optigenex for Jeunesse's profits or the value of the business opportunities received from the foregoing acts of patent infringement, false designation of origin and unfair competition, trademark infringement and trademark dilution; and
- n. granting Optigenex such other relief as this Court deems just and proper.

Dated: August 24, 2012

Respectfully submitted,

/s/ Andrew T. Gorham

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically on August 24, 2012 in compliance with Local Rule CV-5(a). As such, the within was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/Andrew T. Gorham

Andrew T. Gorham