

1 Jason M. Kerr
2 Nevada State Bar No. 7773
3 Email: jasonkerr@ppktrial.com
4 PRICE, PARKINSON & KERR
5 5742 W. Harold Gatty Drive
6 Salt Lake City, Utah 84116
7 Tel: 801-517-7088
8 Fax: 801-530-2932

9 *Attorneys for Plaintiff*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 EIGHT IP, LLC, a Delaware limited liability
13 company;

14 Plaintiff,

15 v.

16 ELEMENT NUTRITION, INC, an Ontario Canada
17 corporation, CANACCORD GENUITY CORP., an
18 Ontario Canada corporation, and STUART
19 LOWTHER, an individual;

20 Defendants.

COMPLAINT

Case No.

Judge:

21 Plaintiff EIGHT IP, LLC (“Eight IP” or “Plaintiff”) for its Complaint against Defendants
22 ELEMENT NUTRITION, INC. (hereinafter “Element”), CANACCORD GENUITY CORP.
23 (hereinafter “Canaccord”), and STUART LOWTHER (hereinafter “Lowther”) (collectively
24 “Defendants”), alleges and avers as follows:

25 **INTRODUCTION**

26 This is a dispute regarding Defendants’ infringement of patent rights exclusively licensed
to Plaintiff. Eight IP is the exclusive licensee with rights to sublicense of a patented
methodology for amino acid supplementation, as set forth in US Patent No. 9,364,463 (the “463

1 Patent”). The technology embodied in the 463 Patent is the use of specific amino acid
2 supplementation for improved muscle recovery. As the exclusive licensee to the 463 Patent,
3 Eight IP may issue sublicenses to the 463 Patent.

4 Eight IP entered into a sublicense agreement with Element effective October 27, 2020,
5 allowing Element to exclusively develop and market products in the adult nutrition channel of
6 trade, utilizing the technology embodied in the 463 Patent. Eight IP entered into another
7 sublicense agreement with Element effective December 14, 2021, allowing Element to
8 exclusively develop and market products in the sports channel of trade (the two sublicense
9 agreements referred herein collectively as the “Agreements”). Pursuant to the Agreements,
10 Element was to pay certain royalties to Eight IP, including minimum royalties in order to
11 maintain the sublicenses.
12

13 Element developed, marketed, and sold products pursuant to the licenses under the
14 Agreements. However, Element did not pay the royalties due to Eight IP under the Agreements.
15 Since the first quarter of 2022, Element has not paid any royalties to Eight IP. Due to Element’s
16 failure to pay royalties under the Agreements, Eight IP terminated the Agreements in May 2023
17 via written notice to Element and its CEO, Lowther. Under the Agreements, Element must
18 immediately cease selling the products, but Element continues to actively sell and market the
19 products based on the 463 Patent. Element’s CEO, Lowther, has regularly promised that the
20 royalties will be paid but instead, he directs that whatever funding Element has, via product sales
21 or investments, is paid out in salaries and professional fees where he personally benefits.
22

23 In addition to continuing to sell the products after Eight IP’s termination, Element has
24 raised significant funding falsely claiming that the licenses are still in effect. In July 2023,
25 Element completed a two-phase funding campaign of nearly \$2 million despite being in default
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1 of its royalty obligations to Eight IP and not having any rights to sell the only product lines it
2 offers. In order to raise this money, Element sought the assistance of Canaccord. In assisting
3 Element, Canaccord did not inquire with Eight IP to determine whether the licenses under the
4 Agreements are valid, whether Element has paid royalties to Eight IP, or whether Element has
5 any rights to sell its products. In raising funding for Element, Canaccord received payment for
6 its services to Element.

7 As the exclusive licensee of the 463 Patent, Eight IP has the right to prosecute
8 infringement claims. As the licensor under the Agreements, Eight IP has the right to pursue
9 unpaid royalties due under the Agreements. Accordingly, Eight IP brings causes of action for
10 Breach of Contract, Patent Infringement, and Intentional Interference with Economic
11 Relationships. Eight IP also sues Canaccord for Contributory Patent Infringement.

12
13 **PARTIES**

14 Plaintiff Eight IP, LLC is a limited liability company organized and existing under the laws of
15 the State of Delaware, with its principal place of business located in Delaware. Defendant
16 Element Nutrition, Inc. is, upon information and belief, a corporation organized and existing
17 under the laws of Ontario, Canada, with its principal place of business located in Burlington,
18 Ontario, Canada. Defendant Stuart Lowther is, upon information and belief, an individual
19 residing in Burlington, Ontario, Canada. Lowther is the founder, president, and chief executive
20 officer of Element. Defendant Canaccord Genuity Corp. is, on information and belief, a
21 corporation organized and existing under the laws of Ontario, Canada. Canaccord's principal
22 place of business is in Ontario, Canada. Canaccord maintains multiple offices in the United
23 States of America.
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JURISDICTION AND VENUE

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2 1. This action arises under the United States patent laws, 35 U.S.C. § 1, et seq.

3 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4 3. This Court has personal jurisdiction over Element because it consented to the
5 jurisdiction of this Court when it entered into the Agreements with Eight IP.

6 4. This Court has personal jurisdiction over Lowther as the founder, president, and
7 chief executive officer of Element who signed the Agreements. Lowther’s patent infringement
8 has occurred in this District.

9 5. This Court has personal jurisdiction over Canaccord because its contributory
10 infringement of the 463 Patent has occurred in this District. Moreover, Cannacord, with any
11 amount of due diligence would have read the Agreements and understood that it is subject to the
12 jurisdiction of this Court.

13 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Element
14 consented to personal jurisdiction of this Court and there is no other district where Eight IP could
15 have brought this action.

16 7. Venue is also proper in this District pursuant to 28 U.S.C. § 1400 because
17 infringement of the 463 Patent has occurred in this District.

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20 **FACTUAL ALLEGATIONS**

21 **THE PATENT SUBLICENSES**

22 8. Eight IP is the exclusive licensee of the 463 Patent.

23 9. The technology embodied in the 463 Patent is the use of specific amino acid
24 supplementation for improved muscle recovery.

1 10. As the exclusive licensee of the 463 Patent, Eight IP has the right to issue
2 sublicenses in different channels of trade and geographical areas.

3 11. Effective October 27, 2020, Eight IP and Element entered into a sublicense
4 agreement utilizing the technology embodied in the 463 Patent. A true and accurate copy of the
5 October 27, 2020 Sublicense Agreement is attached hereto as Exhibit 1.

6 12. Under the October 27, 2020 Sublicense Agreement, Element had the exclusive
7 right to develop and market products in the adult nutrition channel of trade worldwide, except in
8 the following countries: Malaysia, Singapore, Thailand, Brunei, Philippines, Cambodia,
9 Vietnam, Indonesia, Myanmar, Laos, Thailand, and Hong Kong, where it could market products
10 on a non-exclusive agreement. Moreover, under the terms of the October 27, 2020 Sublicense
11 Agreement, Element could only market products in the Peoples Republic of China with the
12 express written preapproval of Eight IP.
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14 13. The October 27, 2020 Sublicense Agreement requires Element to make minimum
15 purchases and quarterly royalty payments to Eight IP. If Element failed to make timely royalty
16 payments, Eight IP could terminate the October 27, 2020 Sublicense Agreement.
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18 14. Effective December 14, 2021, Eight IP and Element entered into another
19 sublicense agreement utilizing the technology embodied in the 463 Patent. A true and accurate
20 copy of the December 14, 2021 Sublicense Agreement is attached hereto as Exhibit 2.

21 15. Under the December 14, 2021 Sublicense Agreement, Element had the exclusive
22 right to develop and market products in the sports nutrition channel of trade in the United States
23 and Canada, and on a non-exclusive basis worldwide.

24 16. The December 14, 2021 Sublicense Agreement requires Element to make
25 minimum purchases and quarterly royalty payments to Eight IP. If Element failed to make
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1 timely royalty payments, Eight IP could terminate the December 14, 2021 Sublicense
2 Agreement.

3 17. Both the December 27, 2020 sublicense and the December 14, 2021 sublicense
4 were amended but not in an way material to this lawsuit.

5 **REJUVENATE AND PROMINO PRODUCTS**

6 18. Pursuant to the Agreements, Element developed and has marketed products using
7 the technology embodied in the 463 Patent.

8 19. For the adult nutrition channel of trade, Element developed, has marketed, and
9 has sold a product line called Rejuvenate. Element advertises that Rejuvenate is clinically
10 proven to support muscle recovery. Rejuventate contains the amino acid blend identified in the
11 463 Patent.

12 20. For the sports nutrition channel of trade, Element developed, has marketed, and
13 has sold a product called Promino under Element's JaktRX brand. Element advertises that
14 Promino is a patented muscle activator which builds muscle, increases strength, improves
15 performance, and speeds recovery. Promino contains the amino acid blend identified in the 463
16 Patent.

17 21. Element identifies the 463 Patent on the websites where it markets and sells the
18 Rejuvenate and Promino products.

19 22. Element identifies the 463 Patent on the packaging of the Rejuvenate and
20 Promino products.

21 23. On its website, www.elmtinc.com, Element promotes its Rejuvenate and JaktRX
22 brands and identifies retailers where its products can be purchased, including without limitation,
23 Amazon, Food Lion, Rexall, CVS, and Walgreens.
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1 nowhere in the consolidated financial statements does Element mention that it was in default of
2 these obligations and Eight IP terminated the Agreements and the associated sublicenses.

3 33. Element's same financial statements show it has spent millions in salaries and
4 professional fees since 2022, while not making any royalty payments under the Agreements.

5 **INFRINGEMENT OF THE 463 PATENT**

6 34. Despite Eight IP's termination of the Agreements and the associated sublicenses,
7 Element continues to market and sell the Rejuvenate and Promino products.

8 35. Element's continued marketing and sales of the Rejuvenate and Promino
9 products, without any right to do so since at least May 26, 2023 when it received Eight IP's
10 written termination, constitute infringement of the 463 Patent.

11 36. Element continues to market the Rejuvenate and Promino products identifying the
12 463 Patent on the product packaging and on websites operated by Element.

13 37. Despite receiving Eight IP's termination notice, Lowther has not caused Element
14 to cease its marketing and sale of the infringing products.

15 38. Element recently completed a two-phase funding event where it raised nearly
16 \$2,000,000 to support its operation. Despite not paying royalties owed under the Agreements
17 and Eight IP's termination, Element continued to raise funding. To support the fundraising
18 efforts, Element publicly represented that its products, specifically Rejuventate and Promino, are
19 proprietary patented products to support muscle recovery. The second phase of the fundraise
20 ended in July 2023, after Eight IP's termination of the Agreements and sublicenses, with
21 Element raising \$780,000.00 from private investors. A true and accurate copy of Element's
22 press release announcing completion of the funding event is attached hereto as Exhibit 5.
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1 39. On information and belief, Lowther approved Element’s fundraising event with
2 the knowledge that Element was in default of its royalty obligations to Eight IP.

3 40. On information and belief, Lowther approved Element’s completion of the second
4 phase of the fundraise event after he knew Eight IP had terminated the Agreements and
5 sublicenses to the 463 Patent.

6 41. On information and belief, Lowther approved the July 14, 2023 press release
7 where Element announced completion of the funding event and continued to publicly represent it
8 could rightfully sell the Rejuvenate and Promino products. Lowther’s name and contact
9 information is identified in the July 14, 2023 press release. *See* Exhibit 5.
10

11 42. On information and belief, Element engaged Canaccord to help it raise funding
12 for Element’s operations.

13 43. On information and belief, Canaccord received compensation for helping Element
14 raise funding.

15 44. On information and belief, Canaccord was previously aware that Element had
16 sublicenses from Eight IP to develop and market the Rejuvenate and Promino products based on
17 the 463 Patent. Throughout its engagement in helping Element raise funding, Canaccord did not
18 conduct due diligence to confirm whether Element was current on royalty payments to Eight IP
19 or whether sublicenses for the 463 Patent had been terminated.
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21 45. Element’s continued marketing and sales of the Rejuvenate and Promino products
22 is interfering with Eight IP’s ability to effectively market and issue new sublicenses as the
23 exclusive licensee of the 463 Patent.
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1 54. As a result of Element's infringement on Eight IP's exclusive rights to the 463
2 Patent, Element has violated 35 U.S.C. § 284. Eight IP has been and continues to be injured.
3 Eight IP's injuries include, but are not limited to, lost revenue and profits, a diminishing of Eight
4 IP's goodwill and reputation, lost sales, and damage to Eight IP's existing and potential business
5 relations. Eight IP is entitled to a full recovery of patent infringement damages against Element,
6 including special, indirect, incidental, and consequential damages.

7 55. As a result of Element's infringement on the Patent, Eight IP has been damaged
8 and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to
9 be determined at trial.

10 56. Eight IP is entitled to its attorney fees and costs as a result of Element's
11 infringement on Plaintiff's rights to the 463 Patent because this is an exceptional case under 35
12 U.S.C. § 285.

13 57. Eight IP is entitled to injunctive relief based on Element's infringement of the 463
14 Patent.
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16 **SECOND CAUSE OF ACTION**
17 **INFRINGEMENT OF PATENT RIGHTS (INDUCEMENT)**

18 58. Eight IP reasserts the allegations of the preceding paragraphs, as if set forth in full
19 herein.

20 59. Eight IP is the exclusive licensee to the 463 Patent. As the exclusive licensee of
21 the 463 Patent, Eight IP has the right to issue sublicenses to the 463 Patent.
22

23 60. Pursuant to the agreements, Eight IP issued sublicenses to Element in the adult
24 nutrition and sports nutrition channels of trade.

25 61. Element, however, failed to pay the required royalties to Eight IP under the
26 Agreements.

1 62. Eight IP rightfully terminated the Agreements and any sublicenses to the 463
2 Patent no later than May 26, 2023 when Eight IP’s written notice of termination was delivered to
3 Element.

4 63. Effective no later than May 26, 2023, Element no longer has any right to develop,
5 market, or sell any products based on the 463 Patent.

6 64. Lowther is aware that Eight IP rightfully terminated the Agreements and any
7 sublicenses to the 463 Patent no later than May 26, 2023.

8 65. Element’s continued marketing and sale of the Rejuvenate and Promino products
9 after May 26, 2023 constitute infringement of Eight IP’s rights as the exclusive licensee of the
10 463 Patent. These products, marketed as muscle recovery products, contain the amino acid
11 blend identified in the 463 Patent and reference the 463 Patent on their packaging.
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13 66. Lowther, Element’s founder and CEO, has not caused Element to cease marketing
14 and selling the Rejuventate and Promino products.

15 67. Loweever, Element’s founder and CEO, has actively induced Element to continue
16 marketing and selling the infringing products, furthering the infringement of Eight IP’s exclusive
17 rights to the 463 Patent.
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19 68. As a result of Lowther inducing Element to infringe Eight IP’s exclusive rights to
20 the 463 Patent, Lowther has violated 35 U.S.C. § 284(b). Eight IP has been and continues to be
21 injured. Eight IP’s injuries include, but are not limited to, lost revenue and profits, a diminishing
22 of Eight IP’s goodwill and reputation, lost sales, and damage to Eight IP’s existing and potential
23 business relations. Eight IP is entitled to a full recovery of patent infringement damages against
24 Lowther, including special, indirect, incidental, and consequential damages.
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1 78. On information and belief, Element engaged Canaccord to help it raise funding
2 for Element's operations.

3 79. On information and belief, Canaccord received compensation for helping Element
4 raise funding.

5 80. On information and belief, Canaccord was previously aware that Element had
6 sublicenses from Eight IP to develop and market the Rejuvenate and Promino products based on
7 the 463 Patent.

8 81. Throughout its engagement in helping Element raise funding, Canaccord did not
9 conduct due diligence to confirm whether Element was current on royalty payments to Eight IP
10 or whether sublicenses for the 463 Patent had been terminated.
11

12 82. On information and belief, Canaccord knew, or should have known, that Eight IP
13 had terminated the Agreements with Element and any sublicenses to the 463 Patent, and its
14 assistance in raising funding for Element would lead to continued infringement of the 463 Patent.

15 83. Element's continued marketing and sale of the Rejuvenate and Promino products
16 after May 26, 2023 constitute infringement of Eight IP's rights as the exclusive licensee of the
17 463 Patent. These products, marketed as muscle recovery products, contain the amino acid
18 blend identified in the 463 Patent and reference the 463 Patent on their packaging.
19

20 84. Element's July 14, 2023 press release, announcing completion of the second
21 phase of funding and continued infringing product sales, constitutes infringement of the 463
22 Patent.

23 85. Canaccord's assistance in raising funding for Element, with knowledge of Eight
24 IP's patent rights, constitutes contributory infringement of the 463 Patent.
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1 86. As a result of Canaccord's contributory infringement of Eight IP's exclusive
2 rights to the 463 Patent, Canaccord has violated 35 U.S.C. § 284(c). Eight IP has been and
3 continues to be injured. Eight IP's injuries include, but are not limited to, lost revenue and
4 profits, a diminishing of Eight IP's goodwill and reputation, lost sales, and damage to Eight IP's
5 existing and potential business relations. Eight IP is entitled to a full recovery of patent
6 infringement damages against Canaccord, including special, indirect, incidental, and
7 consequential damages.

8 87. As a result of Canaccord's contributory infringement on the Patent, Eight IP has
9 been damaged and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284,
10 in an amount to be determined at trial.

11 88. Eight IP is entitled to its attorney fees and costs as a result of Canaccord's
12 infringement on Eight IP's rights to the 463 Patent because this is an exceptional case under 35
13 U.S.C. § 285.

14 89. Eight IP is entitled to injunctive relief based on Canaccord's contributory
15 infringement of the 463 Patent.
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18 **FOURTH CAUSE OF ACTION**
INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS

19 90. Eight IP reasserts the allegations of the preceding Paragraphs as if set forth herein.

20 91. Element, Canaccord, and Lowther have knowledge that Eight IP terminated the
21 Agreements and any sublicenses to the 463 Patent no later than May 26, 2023.

22 92. Element, Canaccord, and Lowther have acted intentionally in a manner designed
23 to interfere with Eight IP's ability to market the 463 Patent and issue sublicenses. Element and
24 Lowther have continued to market and sell the infringing products, which adversely affects Eight
25

1 IP's ability issue exclusive sublicenses due to competing, infringing products on the market
2 utilizing the same technology embodied in the 463 Patent.

3 93. Element, Canaccord, and Lowther, in the July 14, 2023 press release, approved
4 and made public statements that Element is selling the Rejuvenate and Promino product based on
5 the patented formulation. These statements have adversely affected Eight IP's ability to market
6 and issue sublicenses to the 463 Patent.

7 94. Due to Element's, Canaccord's and Lowther's actions, Eight IP has been
8 damaged. Eight IP's damages include, but are not limited to, loss of exclusivity to the 463
9 Patent, lost sales, lost profits, and loss of goodwill.

10 95. As a result of Element's, Canaccord's and Lowther's intentional interference with
11 Eight IP's economic relationships, Eight IP has been harmed in an amount to be determined at
12 trial.
13

14 **FIFTH CAUSE OF ACTION**
15 **BREACH OF CONTRACT**

16 96. Eight IP reasserts the allegations of the preceding paragraphs, as if set forth in full
17 herein.

18 97. Eight IP and Element entered into valid, binding contracts when they entered into
19 the Agreements.

20 98. The Agreements require Element to pay minimum royalties in exchange for
21 sublicenses to the 463 Patent.

22 99. Eight IP has performed all of its obligations under the Agreements.

23 100. Element has not paid any royalties under the Agreements since the first quarter of
24 2022. Element's failure to pay any royalties since the first quarter of 2022 constitutes breaches
25 of the Agreements.
26

1 101. The royalties due and owing to Eight IP under the Agreements total at least
2 \$670,000.00.

3 102. Eight IP has been damaged in the amount of at least \$670,000.00 due to
4 Element's failure to pay the royalties under the Agreements.

5 WHEREFORE, Eight IP requests the following relief from the Court:

6 1. A judgment that Defendant Element Nutrition, Inc. has infringed the 463 Patent in
7 violation of 35 U.S.C. § 271.

8 2. A judgment that Defendant Stuart Lowther has induced infringement the 463
9 Patent in violation of 35 U.S.C. § 271.

10 3. A judgment that Defendant Canaccord Genuity Corp. has contributorily infringed
11 the 463 Patent in violation of 35 U.S.C. § 271.

12 4. A judgment and order requiring Defendants to pay damages resulting from
13 Defendants' infringement on Eight IP's rights to the 463 Patent including, but not limited to, lost
14 revenue and profits, the diminishment of Eight IP's goodwill and reputation, lost sales, and
15 damage to Eight IP's existing and potential business relations.

16 5. A judgment and order requiring Defendants to pay treble damages to Eight IP to
17 compensate for Defendants' willful and deliberate infringing acts in accordance with 35 U.S.C. §
18 284.

19 6. A judgment and order that this is an exceptional case requiring Defendants to pay
20 Eight IP's costs and attorney fees in bringing this action under 35 U.S.C. § 285.

21 7. Preliminary and permanent injunctive relief related to Defendants' infringement
22 of the 463 Patent.

