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14 Attorneys for Plaintiff/Counterdefendant
15 Marlyn Nutraceuticals, Inc. and Third Party Defendant Craig Knobloch

16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF ARIZONA**

18 MARLYN NUTRACEUTICALS, INC.,
19 an Arizona corporation,

20 Plaintiff,

21 vs.

22 WILLIAM WONG and JANE DOE WONG,
23 husband and wife; PATRICK BUEHL and
24 JANE DOE BUEHL, husband and wife;
25 WORLD NUTRITION, INC., an Arizona
26 corporation; ABC Corporations I-X; XYZ
27 Partnerships I-X; and JOHN DOES I-X and
28 JANE DOES I-X, husbands and wives,
respectively,

Defendants.

WORLD NUTRITION, INC., an Arizona
corporation,

Third Party Plaintiff/Counterclaimant/
Defendant,

vs.

MARLYN NUTRACEUTICALS, INC., an
Arizona corporation; and CRAIG
KNOBLOCH,

No. CIV 02-1876 PHX-HRH

**PLAINTIFF'S REPORT TO THE
COURT**

1
2 Counterdefendant/Plaintiff/Third
3 Party Defendant

4
5 Plaintiff, Marlyn Nutraceuticals, Inc. ("Marlyn"), by and through its
6 counsel undersigned, in response to the Court's June 11, 2008 Order, submits the
7 following Report.

8 1. Marlyn proposes a retrial to commence February 16, 2009.
9 Undersigned counsel will be involved in a trial starting Tuesday, October 14, 2008 and
10 will not be able to adequately prepare for another jury trial scheduled for the first two
11 weeks of November 2008. Therefore, undersigned counsel requests that the Court set
12 this matter for trial on February 16, 2009.
13

14 2. With respect to a retrial, counsel for Marlyn and World Nutrition
15 will have to work together regarding the witnesses to be called at trial concerning the
16 issue of damages. At a minimum, those witnesses will likely include World's President,
17 Ryuji Hirooka, and its expert, Leroy Gaintner. Other damages witnesses may also be
18 necessary.
19

20
21 Marlyn also seeks clarification of language contained in the Court's June
22 11, 2008 Order, at page 4, lines 4 – 6. In its Order, the Court states that "... plaintiff will
23 have to show damages from sales of Vitalzym to own customers as opposed to plaintiff's
24 customers." Undersigned counsel assumes that the Court means that "... plaintiff will
25 have to show damages from sales of Vitalzym to World Nutrition customers as opposed
26 to plaintiff's customers."
27
28

1 Marlyn reiterates that it will be virtually impossible for a jury to determine
2 the basis for an award of punitive damages since there will be no testimony regarding the
3 conduct and liability of World Nutrition and the jury will not have an opportunity to
4 review the credibility and demeanor of the witnesses. Nevertheless, counsel for Marlyn
5 proposes to review the testimony of the witnesses and provide a detailed summary of the
6 proposed statements to be read to the jury. The statements will be presented to counsel
7 for World Nutrition for his review. Marlyn proposes that those statements be presented
8 to World Nutrition's counsel 60 days prior to trial and that World Nutrition have 30 days
9 to respond.
10
11

12 All testimony and exhibits admitted at the first trial should be deemed
13 admissible on retrial, subject only to the Court's comments regarding retrial. In other
14 words, any evidence at the first trial should **NOT** be subject to any motions in Limine or
15 other motions.
16

17 3. Marlyn does not agree to conclude the District Court litigation as the
18 Court suggests, that is, with a Stipulated Judgment of \$6,185.65, plus some amount
19 between \$6,000.00 and \$54,000.00 for punitive damages.
20

21 **RESPECTFULLY SUBMITTED** this 10th day of July, 2008.

22 **McCARTHY** **HOLTHUS** **LEVINE**

23
24 /s/ Paul M. Levine
25 Paul M. Levine
26 3636 N. Central Ave., Suite 1050
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28 Attorneys for Plaintiff/Counterdefendant
and Third Party Defendant Craig
Knobloch

1 I hereby certify that on July 10, 2008,
2 I electronically transmitted the attached
3 Document to the Clerk's Office using the
4 CM/ECF System for filing and transmittal
5 Of a Notice of Electronic Filing to the following
6 CM/ECF registrants:

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/s/ Linda S. Ream