

ESTTA Tracking number: **ESTTA20254**

Filing date: **11/29/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Agrigenic Food Corporation		
Entity	Corporation	Citizenship	Nevada
Address	5152 Bolsa Avenue STE 101 Huntington Beach, CA 92649 UNITED STATES		

Correspondence information	Mr. Robert G. Kavanaugh President Agrigenic Food Corporation 5152 Bolsa Avenue STE 101 Huntington Beach, CA 92649 UNITED STATES robert_kavanaugh@hotmail.com Phone:714-899-3477
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Registration Subject to Cancellation

Registration No	2538488	Registration date	02/12/2002
Registrant	Viva Life Science, Inc. 1239 Victoria Street Costa Mesa, CA 92627 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 19991001, First Use In Commerce: 19991015 Goods/Services: Nutritional Supplements		

Related Proceedings	TTAB Cancellation Proceeding 92043119 for the mark "CELLGUARD" registration number 2779751. Status: Cancelled
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Attachments	Petition to Cancel Registration SelGuard.pdf (30 pages)
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Signature	/Robert G. Kavanaugh/
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Name	Mr. Robert G. Kavanaugh
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Date	11/29/2004
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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

3 In the matter of trademark Registration No. 2538488
4 for the mark " *SELGUARD* "
5 Date registered February 12, 2002

6 Agrigenic Food Corporation, d/b/a Biotec Foods
7 *Petitioner*

8 v.

9 VIVA LIFE SCIENCE INC.
10 *Registrant*

11 **PETITION TO CANCEL**

12 Agrigenic Food Corporation, a Nevada Corporation, [hereinafter Agrigenics or
13 Petitioner] with principle business offices located at 5152 Bolsa Avenue, Suite 101,
14 Huntington Beach, California, 92649-1047.

15 To the best of petitioner's knowledge, the name and address of the current owner
16 of the registration is: Viva Life Sciences, Inc., a Delaware Corporation, 1239
17 Victoria Street; Costa Mesa, California 92627.

18 The above-identified petitioner believes that it is being damaged by the above-
19 identified registration, and hereby petitions to cancel the same.

20
21 1. The grounds for cancellation are as follows:

- 22 a. The petitioner has a prior common law trademark interest to the " *Cell*
23 *Guard* " trademark pursuant to §37 CFR 2.38 and incorporates by
24 reference, the petitioner's prior trademark application(s) and related
25 predecessor corporation's trademark application(s) including image
file(s) as filed as serial number(s) 73739008 , 75102580 ,
78386001 .

- 1 b. The mark, "*Cell Guard*" was originally owned by Biotec Foods-Hawaii,
2 Ltd., a Hawaii Corporation, and has been in continuous use in
3 interstate commerce since October 11, 1971 according to a trademark
4 application serial number 73739008 filed July 11, 1988 by the
5 petitioner's predecessor corporation. [See §37 CFR 2.38].
- 6 c. The petitioner filed a federal trademark application which was
7 assigned serial number 75102580 on May 10, 1996, and incorporates
8 that applications image file herein. The application was abandoned
9 prior to registration, due to a question of title/ownership of the
10 trademark which was later addressed by a Hawaii State civil action as
11 well as a related trademark infringement suit filed in US District Court
12 as further explained below.
- 13 d. Finally, the petitioner filed a federal trademark application which was
14 assigned serial number 78386001 on March 17, 2004. That application
15 has been refused registration by USPTO examiners citing Reg. # 2538488.
- 16 e. The title/ownership of the petitioner's "*Cell Guard*" mark and
17 exclusive right to use that mark on the petitioner's brand of dietary
18 supplements was the subject of a Hawaii First Circuit Court proceeding
19 which resulted in the petitioner's "*Cell Guard*" mark being transferred
20 to the petitioner by Court Order. [See First Circuit Court for the State
21 of Hawaii documents at Exhibit B.] Subsequent to the conclusion of
22 that proceeding, a related trademark infringement lawsuit was
23 concluded in the United States District Court for the Central District of
24 California [SA CV 99-2283 CAS], which, inter alia , resolved the
25 title/ownership of the disputed mark(s) including the petitioner's "*Cell
Guard*" trademark. On November 17, 1999, the court entered default
judgment in favor of Agrigenic (the petitioner) and declaring, inter
alia, that Agrigenic was the owner of the trademark "*Cell Guard*."
[True and exact copies of the relevant US District Court and Hawaii
State Court Orders are attached to this petition as Exhibit A and
Exhibit B respectively.]
- f. During the prosecution of that (those) civil action(s), the petitioner's
"*Cell Guard*" trademark remained in continuous use in interstate
commerce. (Both Agrigenic and an un-named, third-party [e.g. not a
party to this petition to cancel a registration] claimed the exclusive
right to use the mark. The mark has been in continuous use by

1 Agrigenic and/or its predecessor-in-interest since October 11, 1971.

2 g. Extensive advertising of the petitioner's Biotec Foods branded "Cell
3 Guard" dietary supplement by direct mail marketing, in industry
4 magazines and at industry tradeshows, in addition to internet
5 websites has resulted in the petitioner's Biotec Foods "*Cell Guard*"
6 trademark becoming and continuing to be distinctive and generally
7 recognized throughout the dietary supplement industry. In addition to
8 industry recognition, several independent authors publishing health
9 and natural product related books [e.g. the best selling series of
10 "*Prescriptions for Nutritional Healing*" reference books] have
11 reference the petitioner's Biotec Foods brand of dietary supplements
12 as "*Cell Guard*" and continue to do so in updated publications. In
13 fact, anyone in the natural products industry, including dietary
14 supplement distributors, health food retail employees and
15 knowledgeable consumers recognize "*Cell Guard*" to mean the
16 petitioner's distinctive *Biotec Foods* brand of dietary supplements that
17 contain our unique antioxidant enzyme precursors. The petitioner
18 was denied registration of their "*Cell Guard*" mark citing respondent's
19 "SELGUARD" Registration # 2538488 as the basis for a Section 2(d) refusal.

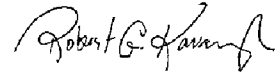
20 h. The continued registration of the Registrant's "SelGuard" mark under
21 this class of goods [e.g. G & S: 005 Nutritional Supplements] is therefore
22 damaging to the petitioner's senior common law trademark and is
23 the basis for a likelihood of confusion refusal. Agrigenic's senior
24 common law trademark rights are infringed. The petitioner is therefore
25 entitled to relief from the Trademark Trial and Appeals Board and
prays that the registrant's mark is cancelled.

i. No additional proceeding about the ownership of the petitioner's "*Cell
Guard*" mark is anticipated in the United States District
Court for the Central District of California case number SA CV 99-2283

1 CAS, attached as Exhibit C.]
2
3
4
5

6 Dated this 29^h day of November, 2004

7 By:



8 Robert G. Kavanaugh
9 President
10 Agrigenic Food Corporation
11 d/b/a Biotec Foods
12 5152 Bolsa Avenue, Suite 101
13 Huntington Beach, CA 92649

14 Email:
15 Robert_Kavanaugh@hotmail.com
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1 MICHAEL D. ROUNDS, State Bar No. 133972
The Law Offices of SKINNER, SUTTON & WATSON
2 A Professional Corporation
548 California Avenue
3 Reno, Nevada 89509
Telephone: (775) 324-4100
4 Facsimile: (775) 333-8171

5 Attorneys for Agrigenic Food Corporation, et al

ENTERED
CLERK, U.S. DISTRICT COURT
NOV 22 1999
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

ENT-NO JS6
ORIGINAL

FILED
CLERK, U.S. DISTRICT COURT
NOV 17 1999
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

LODGED
CLERK U.S. DISTRICT COURT
NOV 15 1999
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY
CENTRAL DISTRICT OF CALIFORNIA

11 BIOTEC FOODS CORPORATION, doing
12 business as BIOTEC FOODS, a
13 Hawaii corporation; PACIFIC
14 BOTANICALS CORPORATION, a
15 Delaware corporation,,
16

CASE NO. CV-99-2283 CAS (MANx)

(PROPOSED)
DEFAULT JUDGMENT

14 Plaintiffs,

15 -vs-

16 AGRIGENIC FOOD CORPORATION, a
17 Nevada corporation,
18 Defendant and Third-Party
19 Plaintiff,

19 -vs-

20 WILLIAM JAMES FAHEY,
21 individually and MARY JEAN FAHEY
22 aka MARY JEAN PEAKS,
23 individually, DOES 10 through
24 20,

23 Third-Party Defendants.

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE, MOST RECENT, ADDRESS OF
RECORD, IN THIS ACTION, ON THIS DATE
DATED: NOV 22 1999
DEPUTY CLERK

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

ENTERED ON CLERK'S
NOV 22 1999
CV

25 The Clerk having entered default against Defendants
26 Biotec Food Corporation and Pacific Botanicals Corporation as to
27 Counterclaimant Agrigeneec Food Corporation's counterclaim, and
having reviewed Agrigencics' Application for Default Judgment and
pleadings on file herein, IT IS HEREBY ORDERED AND ADJUDGED:

DOCS
MLD CO
MLD NO
JS-6

NOV 22 1999

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1. That judgment is entered for Counterclaimant Agrigenics Food Corporation and against Defendants Biotec Food Corporation and Pacific Botanicals Corporation on the counterclaim.

2. That Counterclaimant Agrigenics Food Corporation is the owner of the trade name and trademarks Biotec Foods, CellGuard, Extra-Energy Enzymes, Fiberzyme, Anti-stress Enzyme, Runners Edge, Jet Stress, Energy Health & Beauty, Ageless Beauty, Exercise Edge, Pacific Sea Plasma, Food Doctor and Biogestin.

3. That a permanent injunction is issued pursuant to 15 U.S.C. § 1116 enjoining Counter-Defendants and their agents, servants, employees and attorneys, and those persons in active concert or participation with them, from using any of the trade names or trademarks identified in paragraph 2, or any confusingly similar variations thereof.

4. That ~~the~~ ^A Attorney's fees ^{are denied without prejudice to} ~~in the amount of \$~~ ~~are awarded to~~ Agrigenics Food Corporation ^{demonstrating} pursuant to 15 U.S.C. § 1117 ^{its entitlement to such award through time records and appropriate declarations,} IT IS SO ORDERED.

Dated: Nov. 17, 1999

Christina A. Smyth
UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE

I am a citizen of the United States and employed in Washoe County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 548 California Avenue, Reno, Nevada 89509.

On this date, I served the foregoing document described as:

(PROPOSED) DEFAULT JUDGMENT

on the interested parties in the action by placing a true copy thereof, enclosed in a sealed envelope addressed as follows:

Pacific Botanicals Corporation	Biotec Food Corporation
940 Royal St.	940 Royal St.
New Orleans, LA 70116	New Orleans, LA 70116

William Fahey	Mary Jean Fahey
940 Royal St.	c/o William Fahey
New Orleans, LA 70116	940 Royal St.
	New Orleans, LA 70116

BY MAIL: I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Reno, Washoe County, Nevada.

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED: I caused such envelope with postage thereon fully prepaid to be sent via Certified Mail (Return Receipt Requested) and to be placed in the United States mail at Reno, Washoe County, Nevada.

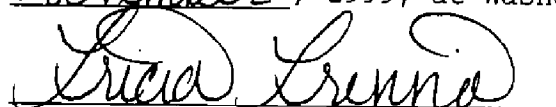
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office(s) of the addressee(s).

BY FACSIMILE: I caused such document to be sent via facsimile addressed to the facsimile machine in the office(s) of the addressee(s).

BY FEDERAL EXPRESS: I caused such envelope to be delivered to Federal Express for overnight courier service to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 12th day of November, 1999, at Washoe County, Nevada.


Tricia Trevino

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1997 SEP -3 AM 9:07

Of Counsel:
PAUL, JOHNSON, PARK & NILES
Attorneys at Law
A Law Corporation

R. HIGA
CLERK

SHERYL L. NICHOLSON 2998-0
WAYNE K. T. MAU 3455-0
1001 Bishop Street
Suite 1300, Pacific Tower
Honolulu, Hawaii 96813
Telephone No.: 524-1212

Attorneys for Plaintiff AGRIGENIC
FOOD CORPORATION AS ASSIGNEE FOR
CYANOTECH CORPORATION and NUTREX INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CYANOTECH CORPORATION and NUTREX)	CIVIL NO. 91-4257-12
INC. BY AGRIGENIC FOOD)	
CORPORATION, AS ASSIGNEE,)	ORDER CONFIRMING SHERIFF'S
) EKECUTION SALE AND DIRECTING	APPLICATION OF PROCEEDS
) FILED AUGUST 8, 1997; EXHIBIT	"A"
) vs.)	Hearing
) Date: August 22, 1997	
) Time: 9:00 a.m.	
BIOTEC FOODS-HAWAII, LTD., et) Judge Kevin S.C. Chang	
al.,)	
) Defendants.)	
))	
))	
))	

ORDER CONFIRMING SHERIFF'S EXECUTION SALE
AND DIRECTING APPLICATION OF PROCEEDS
FILED AUGUST 8, 1997

Plaintiff CYANOTECH CORPORATION and NUTREX, INC. by
AGRIGENIC FOOD CORPORATION's, as Assignee ("Plaintiff") Motion
for Order Confirming Sheriff's Execution Sale and Directing
Exhibit B. - Hawaii First Circuit Court Order(s)

Application of Proceeds came on for hearing on August 22, 1997 at 9:00 o'clock a.m. before the Honorable Kevin S.C. Chang. Wayne K. T. Mau, Esq. appeared on behalf of Plaintiff and Norman K. K. Lau, Esq. appeared on behalf of Biotec Foods, Inc. There were no other appearances.

The court having reviewed the pleadings, records and files herein, heard arguments of counsel and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Order Confirming Sheriff's Execution Sale and Directing Application of Proceeds filed herein on August 8, 1997 is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sale of the property identified in the attached Exhibit "A" is sold to AGRIGENIC FOOD CORPORATION for the purchase price of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) and is hereby confirmed. Upon payment of the sums provided herein, the Sheriff is authorized and directed to execute and deliver to AGRIGENIC FOOD CORPORATION documents conveying all right, title and interest of BIOTEC FOODS-HAWAII, LTD., if any, in and to the identified property, subject to any and all valid liens and encumbrances which existing at the time of conveyance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Sheriff is authorized and directed to disburse the sale proceeds relating to the Subject Property be applied against the outstanding indebtedness of AGRIGENIC FOOD CORPORATION under that

certain Final Judgment filed herein on May 5, 1997.

DATED: Honolulu, Hawaii SEP -3 1997

KEVIN S.C. CHANG
JUDGE OF THE ABOVE-ENTITLED COURT



APPROVED AS TO FORM:

N. K. Lau
NORMAN K. K. LAU
Attorney for Biotec Foods, Inc.

Cyanotech Corporation et al. v. Biotec Foods-Hawaii, Ltd. et al.;
Civil No. 91-4257-12; ORDER CONFIRMING SHERIFF'S EXECUTION SALE
AND DIRECTING APPLICATION OF PROCEEDS FILED AUGUST 8, 1997

EXHIBIT "A"

All assets and goodwill of Biotec Foods-Hawaii, Ltd., a liquidated Hawaii Corporation, and Biotec Foods-Hawaii, Ltd., a Hawaii Corporation, with the last known business address of 250 S. Hotel Street, Suite 200, Honolulu, Hawaii 96813, including but not limited to the interest in tangible personal property, real property, and intangible property, telecommunication rights, registered and unregistered trademarks, trade names, trade secrets and customer lists including but not limited to the following:

Telecommunication Rights: The rights to use and control the primary AT&T toll-free telephone numbers used by defendant Biotec Foods-Hawaii, Ltd.: (1) 800-468-7578, and (2) 800-331-5888.

Registered and Unregistered Trademarks and Trade Names:

- | | |
|--------------------------|----------------------------|
| 1. Cell Guard™ | 1. SOD/CAT™ |
| 2. Anti-Stress Enzymes™ | 2. GP/CAT™ |
| 3. Ageless Beauty™ | 3. Dismutase® |
| 4. Extra-Energy Enzymes™ | 4. Feline Support™ |
| 5. Runner's Edge™ | 5. Canine Support™ |
| 6. Exercise Edge™ | 6. Energy Health & Beauty™ |
| 7. Jet Stress® | 7. Food Doctor™ |
| 8. Pacific Sea Plasma™ | 8. Biotec Foods™ |
| 9. FiberZyme™ | 9. Biomed™ |
| 10. Biogestin™ | 10. Biovet International™ |
| 11. MET/CAT™ | |

behalf of Biotec Foods, Inc. and Wayne K. T. Mau, Esq. appeared on behalf of Agrigenic Food Corporation, as assignee. The court having reviewed the pleadings, records and files herein, and after hearing arguments of counsel, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that BIOTEC FOODS, INC.'s Motion for Stay of Sheriff's Sale on August 5, 1997 is hereby DENIED.

SEP - 5 1997

DATED: Honolulu, Hawaii

KEVIN S.C. CHANG



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

Norman K. Lau

NORMAN K. K. LAU
Attorney for Biotec Foods, Inc.

Cyanotech Corporation, et al. v. Biotec Foods-Hawaii, Ltd., et al.; Civil No. 91-4257-12; ORDER DENYING BIOTEC FOODS, INC.'S MOTION FOR STAY OF SHERIFF'S SALE ON AUGUST 5, 1997 FILED ON AUGUST 1, 1997

Exhibit B

Exhibit B - Hawaii First Circuit Court Order(s)

**U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:99cv02283**

Biotec Foods Corp, et al v. Agrigenic Food Corp, et al

Assigned to: Judge Christina A. Snyder

Referred to: Discovery Margaret A. Nagle

Demand: \$0

Lead Docket: None

Related Cases: None

Case in other court: INTRATRANS, 8:96-cv-00353

Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 04/12/96

Jury Demand: None

Nature of Suit: 840 Trademark

Jurisdiction: Federal Question

Plaintiff

**Biotec Foods Corporation, a
Hawaii corporation**

represented by **Rick A Schroeder**
Rick A Schroeder Law Offices
30141 West Agoura Rd
Suite 102
Agoura Hills, CA 91301
818-879-1943
TERMINATED: 07/07/1999
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

dba

Biotec Foods

**Pacific Botanicals Corporation,
a Delaware corporation**

represented by **Rick A Schroeder**
(See above for address)
TERMINATED: 07/07/1999
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Agrigenic Food Corp, a Nevada

represented by **Lars A Perry**

corporation

Skinner Sutton Watson & Rounds
548 California Ave
Reno, NV 89509
775-324-4100
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**Pulmuone USA Inc, a California
corporation**

represented by **Lars A Perry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael D Rounds
Skinner Sutton Watson & Rounds
548 California Ave
Reno, NV 89509
775-324-4100
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**KMC International, an entity
unknown**

represented by **Lars A Perry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael D Rounds
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**Megasource Concepts Inc, a
Hawaii corporation**

represented by **Lars A Perry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael D Rounds
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Threshold Enterprises Ltd, a

represented by **Lars A Perry**

Delaware corporation

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael D Rounds
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**Marshall Resources, an entity
unknown**

**Whole Foods Market Inc, a
Texas corporation**

dba
**Mrs Gooch's Natural Food
Markets**

**Awareness & Health Unlimited,
a Ohio corporation**

represented by **Lars A Perry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael D Rounds
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**Vitamin Shoppe Warehouse Inc,
A New Jersey corporation**

**L & H Vitamins Inc, a
corporation unknown**

represented by **A Brooks Gresham**
Quinn Emanuel Urquhart Oliver &
Hedges
865 S Figueroa St, 10th Fl
Los Angeles, CA 90017-2543
213-624-7707
TERMINATED: 02/03/1997

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Lars A Perry
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Michael D Rounds
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Does, 1 through 100 inclusive

V.

Intervenor Defendant

Robert G Kavanaugh

represented by **Robert G Kavanaugh**
AgriGenic Food Corp
1503 Landing Ave
Seal Beach, CA 90740
PRO SE

Michael D Rounds
Skinner Sutton Watson & Rounds
548 California Ave
Reno, NV 89509
775-324-4100
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Counter Claimant

AgriGenic Food Corp

represented by **Lars A Perry**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

V.

Counter Defendant

Biotec Foods Corporation

represented by **Rick A Schroeder**
(See above for address)
TERMINATED: 07/07/1999
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

dba

Biotec Foods

Pacific Botanicals Corporation

represented by **Rick A Schroeder**
(See above for address)
TERMINATED: 07/07/1999
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

Agrigenic Food Corp

represented by **Lars A Perry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William K Vogeler
Gruenbeck & Vogeler
Six Venture, Suite 270
Irvine, CA 92618
949-453-1874
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

William James Fahey,

represented by **William James Fahey**

EXHIBIT C – US District Court Docket

individually
TERMINATED: 07/26/2000

4900 Sun Circle
Sarasota, FL 34234
PRO SE

**Mary Jean Fahey, aka Mary
Jean Feaks, individually**
TERMINATED: 07/26/2000

aka
Mary Jean Feaks

Does, Does 10 through 20

Filing Date	#	Docket Text
04/12/1996	2	NOTICE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals of related cases. (yc) (Entered: 04/18/1996)
04/12/1996	1	COMPLAINT (Summons(es) issued) (referred to Discovery Elgin Edwards)JURY TRIAL REQUESTED (yc) (Entered: 04/18/1996)
04/23/1996	4	MINUTES: OSC Crt ord plf to show cause in writing by 4/29/96 why their suppl state law clms should not be dismiss & in any event plfs lack legal standing to sue by Judge Linda H. McLaughlin CR: n/a (tt) (Entered: 04/26/1996)
04/23/1996	3	ORDER by Judge Gary L. Taylor & Judge Linda H. McLaughlin purs GO 224, related case SACV 96-203-LHM(EE) Case reassigned to Judge Linda H. McLaughlin for all further proceedings (jd) (Entered: 04/23/1996)
04/29/1996	5	RESPONSE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals to [4-1] OSC (tt) (Entered: 05/02/1996)
05/08/1996	7	ORDER by Judge Linda H. McLaughlin re: meeting of cnsl, jt stat rpt & ntc of related actns due 5/17/96 (tt) (Entered: 05/08/1996)

EXHIBIT C – US District Court Docket

		05/14/1996)
05/08/1996	6	MINUTES: Pltfs supplemental state claims for Constructive Trust and Accounting are disp w/o prej by Judge Linda H. McLaughlin CR: none (ENT 5/13/96) mld cpys (vv) (Entered: 05/13/1996)
05/09/1996	8	MINUTES: 8/2/96 jt rpt to be fld reporting results of sttlmnt bfr Mag Judge Edwards on 7/31/96 by Judge Linda H. McLaughlin CR: n/a (tt) (Entered: 05/17/1996)
05/10/1996	10	PROOF OF SERVICE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals of ord re meeting of cnsl, jnt stat rpt, ntc of related actns upon all ptys of interest on 5/9/96. (am) (Entered: 05/20/1996)
05/10/1996	9	PROOF OF SERVICE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals of crts civil min of 5/8/96 disp of suppl state clms upon all ptys of interest on 5/9/96. (am) (Entered: 05/20/1996)
05/14/1996	34	DECLARATION of James C Fahey by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in suppt of pltfs' mtn for a prelim inj against dft Agrigenic Food Corp [11-1] (krpa) (Entered: 06/21/1996)
05/14/1996	18	DECLARATION of William J Fahey by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in suppt of pltf's mtn for prelim inj against dft Agrigenic Foods [11-1] (krpa) (Entered: 05/21/1996)
05/14/1996	17	RETURN OF SUMMONS and proof of service executed upon defendant Agrigenic Food Corp on 5/8/96 (krpa) (Entered: 05/21/1996)
05/14/1996	16	APPENDIX of evid filed by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in suppt of pla's mtn for prelim inj against dft Agrigenic Foods [11-1] (krpa) (Entered: 05/21/1996)
05/14/1996	15	REQUEST by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals for jud ntc in suppt of pltf's mtn for prelim inj against dft Agrigenic Foods (krpa) (Entered: 05/21/1996)

EXHIBIT C – US District Court Docket

05/14/1996	14	DECLARATION of Michael Kormanik by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in suppt of pltf's mtn for prelim inj against dfts Agrigenic Foods [11-1] (krpa) (Entered: 05/21/1996)
05/14/1996	13	DECLARATION of Rick A Schroeder by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in suppt of pltf's mtn for prelim inj against dft Agrigenic Food [11-1] (krpa) (Entered: 05/21/1996)
05/14/1996	12	MEMORANDUM of P/A by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in support of motion for preliminary injunction against dft Agrigenic Food Corp [11-1] (krpa) (Entered: 05/21/1996)
05/14/1996	11	NOTICE OF MOTION AND MOTION by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals for preliminary injunction against dft Agrigenic Food Corp LDGD ORD ; motion hearing set for 1:30 6/3/96 (krpa) (Entered: 05/21/1996)
05/15/1996	61	MINUTES: (1) vacating hearing re plf's motion for preliminary injunction against dft Agrigenic Food Corp [11-1], (2) BR SCHED: 6/3/96 dfts to fi fax & srv opp; 6/10/96 plf to fi fax & srv rply; (3) plfs are to srv this MO on all dfts NLT 5/20/96 & fil prfs of svc w/the crt by 6/24/96 by Linda H. McLaughlin CR: n/a (mrgo) (Entered: 03/23/1999)
05/20/1996	23	PROOF OF SERVICE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals of Crt's min ord etc. (tt) (Entered: 05/28/1996)
05/20/1996	22	SUPPLEMENT by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals re service [21-1] (tt) (Entered: 05/28/1996)
05/20/1996	21	PROOF OF SERVICE by plaintiffs of ntc & mot for prelim inj etc. (tt) (Entered: 05/28/1996)
05/23/1996	25	MINUTES: Plf are ord to fl & fax their opp if any by 6/3/96 to Robert Kavanaugh's ex parte mots, by Judge Linda H. McLaughlin CR: n/a (tt) (Entered: 05/31/1996)
05/23/1996	20	EXHIBITS in support of Exparte to Intervene (19) (jd) (Entered: 05/24/1996)

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05/23/1996	19	EX PARTE APPLICATION to intervene by Robert G. Kavanaugh , and for ord shortening time to file opposition ; motion hearing set for <date not set> (jd) (Entered: 05/24/1996)
05/29/1996	24	ANSWER by defendant Agrigenic Food Corp, defendant Pulmuone USA Inc, defendant KMC International, defendant Megasource Concepts, defendant Threshold Enterprise, defendant Awareness & Health to [1-1] (tt) (Entered: 05/31/1996)
05/31/1996	26	OPPOSITION by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals to Robert Kavanaugh's ex parte mtn to intervene; dec of Rick A Schroeder (krpa) (Entered: 06/06/1996)
06/04/1996	32	OPPOSITION by defendant Agrigenic Food Corp, defendant Pulmuone USA Inc, defendant KMC International, defendant Megasource Concepts, defendant Threshold Enterprise, defendant Awareness & Health motion for TRO against dft Agrigenic Food Corp [11-1] (krpa) (Entered: 06/21/1996)
06/06/1996	27	STIPULATION for dft L & H Vitamins Inc shall have to & includ 7-10-96 to ans move or otherwise resp to the cmp (krpa) (Entered: 06/18/1996)
06/07/1996	28	PROOF OF SERVICE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals of Crt's M/O of 5-23-96-req for opp re: Kavanaugh's ex parte mtn to intervene (krpa) (Entered: 06/18/1996)
06/10/1996	30	Addendum to dfts' opp to plas' mtn for restraining ord [26-1] (krpa) (Entered: 06/19/1996)
06/10/1996	29	BRIEF FILED IN RPLY by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals to dft Agrigenic's opp to mtn for prelim inj [26-1] (krpa) (Entered: 06/19/1996)
06/13/1996	36	ORDER removing case from active caseload; IT IS HEREBY ORDERED that this act is rmvd from this Crt's act caseload purs to the Stay-Minute Order entered 6/13/96 by Judge Linda H. McLaughlin MD JS 6 (ENT 6/24/96) mld cpys (vv) (Entered: 06/24/1996)
06/13/1996	35	MINUTES: The Crt stays all proceedings in the instant act and

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		reserves juris on the following conditions: (i) Either side may petn the Crt to lift the stay after all matters (incl all appeals to the USDC for the Dist of Hawaii and/or BAP pertaining to the reopened Bankruptcy Case No. 94-10132 or any related bankruptcy case) are final by Judge Linda H. McLaughlin CR: none (SEE DOCUMENT FOR FURTHER DETAILS) (ENT 6/24/96) mld cpys (vv) (Entered: 06/24/1996)
06/13/1996	33	NOTICE OF DISCREPANCY AND ORDER to fi & process the decl of James C Fahey by Judge Linda H. McLaughlin (cc: all counsel) (krpa) (Entered: 06/21/1996)
06/13/1996	31	NOTICE OF DISCREPANCY AND ORDER to fi & process the dft's opp to mtn for TRO by Judge Linda H. McLaughlin (cc: all counsel) (krpa) (Entered: 06/21/1996)
07/10/1996	37	NOTICE of assoc of cnsl by defendant L & H Vitamins Inc (krpa) (Entered: 07/11/1996)
07/11/1996	38	NOTICE OF DISCREPANCY AND ORDER to reject & rtn the ans of L & H Vitamins Idgd on 7-10-96 by Judge Linda H. McLaughlin (cc: all counsel) (krpa) (Entered: 07/16/1996)
08/22/1996	39	ATTORNEY SUBSTITUTION: terminating Mark Garscia and substituting attorney A Brooks Gresham by Judge Linda H. McLaughlin (krpa) (Entered: 08/26/1996)
01/10/1997	40	NOTICE OF DISCREPANCY AND ORDER by Judge Linda H. McLaughlin that jnt status report & motion for reconsideration red 1/10/97 are not to be filed but instead rejected & ordered ret to cnsl. (th) (Entered: 01/16/1997)
01/21/1997	44	NOTICE by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals of listed documents rejected by the court. (th) (Entered: 01/22/1997)
01/21/1997	43	REQUEST by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals for judicial notice in support of mot for lifting of cond stay of bankruptcy documents (th) (Entered: 01/22/1997)
01/21/1997	42	NOTICE OF MOTION AND MOTION by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals to lift conditional stay (th) (Entered: 01/22/1997)

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01/21/1997	41	NOTICE OF MOTION AND MOTION by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals for reconsideration of plaintiff's mot for p/i (th) (Entered: 01/22/1997)
01/21/1997	45	NOTICE OF DISCREPANCY AND ORDER by Judge Linda H. McLaughlin that status report rcd 1/21/97 is not to be filed but instead rejected & ordered ret to cnsl (th) (Entered: 01/24/1997)
02/03/1997	46	ATTORNEY SUBSTITUTION: terminating attorney A Brooks Gresham for L & H Vitamins Inc and substituting attorney Lars A Perry by Judge Linda H. McLaughlin (vv) (Entered: 02/05/1997)
02/13/1997	47	Joint STATUS REPORT by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals (th) (Entered: 02/18/1997)
04/07/1997	49	MINUTES: Court rejected original mot for various discrepancies; pla subsequently corrected these but did not serve a courtesy cpy on the court so the court was unaware it was done; the court now sets the following briefing schedule: dft to oppose by 4/14/97; pla to reply by 4/17/97 thereafter court will rule on papers submitted; vacating hearing re motion to lift conditional stay [42- 1] by Judge Linda H. McLaughlin CR: n/a (th) (Entered: 04/17/1997)
04/14/1997	48	Response by defendant Agrigenic Food Corp to motion to lift conditional stay [42-1] (th) (Entered: 04/16/1997)
04/21/1997	51	BRIEF FILED by plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals in Reply to Dft's Mot to Lift Conditional Stay (th) (Entered: 04/24/1997)
04/22/1997	52	MINUTES: Further briefing re mot to lift stay: dft is ordered to deliver to chambers of Judge McLaughlin all operative pleadings, final jgm, assignment of jgm, executed notice of sale, and other pertinent documents from 91-4257-12; dft shall also file a suppl br includ a clear explanation of the relationship of that case to the instant action, and explanation of relationship between Biotec Food Corp, Biotec Food-Hawaii Ltd and all other related entities; and legal authority to continue stay pending resolution of that case; dft's brief due 4/29/97; suppl brief by dft due 4/29/97; pla's rply due 5/6/97 by Judge Linda H. McLaughlin CR: n/a (th) (Entered: 04/24/1997)

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04/22/1997	50	NOTICE OF DISCREPANCY AND ORDER by Judge Linda H. McLaughlin that brief in reply rcd 4/21/97 is to be filed & processed. (th) (Entered: 04/24/1997)
04/29/1997	53	Suppl Response to opposition by defendant Agrigenic Food Corp to motion to lift conditional stay [42-1] (mrgo) (Entered: 05/05/1997)
05/07/1997	54	Brief in Reply to Suppl Response re opposition by plaintiff to motion to lift conditional stay [42-1] (th) (Entered: 05/13/1997)
05/08/1997	55	MINUTES: denying motion to lift conditional stay [42-1]; Court orders temp conditional stay & reserves jurisdiction, (a) any party may petition the court to lift the stay after all matters (incl all appeals) are final in Case #91-4257-12 1 st Circuit Hawaii, any party may petition the court to lift the stay if any significant development occurs impacting the instant action & (c) any petition to lift the stay must incl the history & current status of Case #91-4257-12; Ent 5/15/97 copies to parties. by Judge Linda H. McLaughlin CR: n/a (th) (Entered: 05/15/1997)
12/24/1998	56	MOTION by defendant Agrigenic Food Corp for leave to fi a 3 rd pty cmp & cntclm (no hrg set) (mrgo) (Entered: 01/06/1999)
12/24/1998	57	MOTION by defendant Agrigenic Food Corp to lift conditional stay (no hrg set) (mrgo) Modified on 01/06/1999 (Entered: 01/06/1999)
12/24/1998	58	REQUEST by defendant Agrigenic Food Corp for judicial notice re dft's motion to lift conditional stay [57-1] (mrgo) (Entered: 01/06/1999)
03/03/1999	59	NOTICE of Reassignment due to Unavailability of Judicial Officer. Purs to dir by Chief Judge, cs randomly reassigned to Judge Christina A Snyder for all fur proceedings. Discovery referred to Magistrate Judge Margaret A Nagle. NEW Cs #CV99-2283-CAS(MANx) (cc all cnsl.) (jd) (Entered: 03/04/1999)
03/03/1999	60	NOTICE RE INTRA-DISTRICT TRANSFER filed. Case reassigned to Western Division by Ntc of Reassign filed 3/3/99. New case no. CV 99-2283-CAS(MANx) assigned to Judge Christina A. Snyder for all further proceedings; all discovery matters are transferred to Discovery Margaret A. Nagle .

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		(Original file transferred.) (cc: all counsel) (jd) (Entered: 03/04/1999)
03/16/1999	62	COURT'S NOTICE TO COUNSEL (lc) (Entered: 03/23/1999)
04/06/1999	63	NOTICE OF CHANGE Of Address filed by atty Rick A Schroeder for plaintiff Biotec Foods Corp (lc) (Entered: 04/08/1999)
05/20/1999	<u>64</u>	MINUTES: setting hearing on motion to lift conditional stay [57-1] 10:00 7/12/99; dft Agrigenic Food Corp is directed in the interim to resolve any possible conflict of interest w/its present cnsl so tht Agrigenic will be represented by appro cnsl by Judge Christina A. Snyder CR: Carmelita Lee (el) (Entered: 05/24/1999)
05/28/1999	<u>65</u>	Amended MINUTES: Nunc Pro Tunc as of 5/20/99. The crt hereby sets the hearing date of Monday 7/12/99 at 10:00 am for the present motion to lift the conditional stay by Judge Christina A. Snyder CR: Carmelita Lee (bg) (Entered: 06/01/1999)
06/21/1999	66	NOTICE OF MOTION AND MOTION by cnsl for plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals to withdraw attorney ; hearing set for 10:00 7/12/99; PA in suppt; Decl of Rick A Schroeder (el) (Entered: 06/23/1999)
07/07/1999	<u>67</u>	MINUTES: by Judge Christina A. Snyder; granting motion to withdraw attorney [66-1] attorney Rick A Schroeder for Biotec Foods Corp, & Pacific Botanicals; cont defendant Agrigenic Food Corp hearing on motion for leave to fi a 3 rd pty cmp & cntclm [56-1] to 10:00 8/30/99 & motion to lift conditional [57-1] to 10:00 8/30/99 CR: Not Present (yc) (Entered: 07/09/1999)
07/29/1999	68	NOTICE by plaintiff Pacific Botanicals, plaintiff Biotec Foods Corp of ruling upon Motion for Lv to withdraw as cnsl for Pltfs Biotec Foods and Pacicif Botanicals Corp. (lk) (Entered: 07/30/1999)
08/03/1999	69	NOTICE of appearance of cnsl by dfts Agrigenic Food Corp, Pulmuone USA Inc, KMC International, Megasource Concepts, Threshold Enterprise, Awareness & Health, L & H Vitamins Inc (el) (Entered: 08/04/1999)

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08/06/1999	70	NOTICE of Lien by Rick A Schroeder (el) (Entered: 08/09/1999)
08/30/1999	<u>71</u>	MINUTES: Plfs are OSC in writing as to why this actn shd not be dismissed w/in 15 days of today's date by Judge Christina A. Snyder CR: Donna Fitzsimmons (el) (Entered: 09/01/1999)
09/07/1999	72	NOTICE of interested parties by defendant Agrigenic Food Corp (el) (Entered: 09/08/1999)
09/07/1999	73	COUNTERCLAIM by defendant Agrigenic Food Corp against plaintiff Biotec Foods Corp, plaintiff Pacific Botanicals ; summons not issued (el) (Entered: 09/08/1999)
09/07/1999	74	THIRD-PARTY COMPLAINT: by defendant Agrigenic Food Corp; adding William James Fahey, Mary Jean Fahey, Does; Summons issued (el) (Entered: 09/08/1999)
10/12/1999	<u>75</u>	MINUTES: In chambers: that the comp in this case by plf Biotec Foods Corp is dismissed for failure to comply w/LR 2.9.1, w/o prej.; fur, the cntclm dfts may have 30 days frm the date of this ord to bring on its mtn for dflt/dflt jgm on the cntclm. The 3dpty complainants are directed to fi its written prf of svc demonstrating its svc of process w/respect to said 3 rd pty comp, w/in 30 days of the date of this ord; fur ordered this this case shl be restored to the list of active cases Case reopened (MD JS-5) by Judge Christina A. Snyder CR: Not reported (ENT 10/13/99) mld cpys & ntd (el) (Entered: 10/13/1999)
11/15/1999	76	EX PARTE APPLICATION filed by defendant Agrigenic Food Corp for order for publication of summons Lodged ord (el) (Entered: 11/18/1999)
11/15/1999	77	EX PARTE APPLICATION filed by defendant Agrigenic Food Corp for default judgment Lodged prop dflt jgmt (el) (Entered: 11/18/1999)
11/15/1999	80	REQUEST by dft/counter-claimant Agrigenic Food Corp to enter dflt (el) (Entered: 11/24/1999)
11/15/1999	81	DEFAULT ENTERED as to counter-defendant Biotec Foods Corporation, counter-defendant Pacific Botanicals Corporation (cc: cntclmnt's counsel) (el) (Entered: 11/24/1999)

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11/17/1999	<u>78</u>	DEFAULT JUDGMENT by Judge Christina A. Snyder entered against Biotec Foods Corp, Pacific Botanicals on the counterclaim; that cntclmnt Agrigenics Food Corp is the owner of the trade name & TMs Biotec Foods, Runners Edge, Jet Stress, Energy Health & Beauty, Ageless Beauty (see doc for fur details); that permanent inj is issd enjoining cntdfts, etc frm using the trade names; Attys fees are denied w/o prej to Agrigenics Food Corp, demonstrating pur to 15 U.S.C. sec 1117 its entitlement to such award through time records & appro decls (ENT 11/22/99) mld cpys & nted (el) (Entered: 11/22/1999)
11/17/1999	79	ORDER by Judge Christina A. Snyder granting exparte motion for order for publication of summons [76-1] that the sms be srvd by pub in the LA Times, to be made once a week for 4 consec weeks; that a cpy of the Sms. the 3 rd pty cmp & of this ord be mailed to 3 rd pty dfts bfr expiration of the ti prescribed for pub of sms (el) (Entered: 11/23/1999)
12/09/1999	82	NOTICE TO COUNSEL RE Copyright, Patent and Trademark Reporting Requirements filed (jp) (Entered: 12/13/1999)
07/14/2000	<u>83</u>	MINUTES: The crt, on its own mot, hereby orders third party pla to show cause in writing nlt 7/26/00 why this actn should not be dismsd for lack of prosecution as to third party dfts William James Fahey, Mary Jean Fahey, Mary Jean Feaks, and does 10 through 20 by Judge Christina A. Snyder CR: N/A (see doc for details) (bp) (Entered: 07/17/2000)
07/26/2000	<u>84</u>	NOTICE OF DISMISSAL by plaintiffs of 3 rd pty complaint without prej., pursuant to FRCP 41a(1)as to third-party defendant William James Fahey, third-party defendant Mary Jean Fahey (ENT 7/27/2000) (el) (Entered: 07/27/2000)
08/01/2000	<u>85</u>	MINUTES: Case should have been closed on entry dated 7/26/00 terminating case (MD JS-6) (ENT 8/1/00) (sent) by Judge Christina A. Snyder CR: N/A (bp) (Entered: 08/02/2000)
08/01/2000	86	MAIL Returned [83-1] addressed to intervenor defendant Robert G Kavanaugh (el) (Entered: 08/08/2000)
11/05/2003	87	NOTICE OF CHANGE Of Address filed by William James Fahey. Change is as follows: James Fahey, 4900 Sun Circle, Sarasota, FL 34234. (bp) (Entered: 11/07/2003)

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02/24/2004	88	NOTICE OF DISCREPANCY AND ORDER: by Judge Christina A. Snyder, ORDERING Third Party Plaintiff Agrigenic Food Corp Notice of Application for Order to Show Cause submitted by Third-Party Plaintiff Agrigenic Food Corp received on 2/10/04 is not to be filed but instead rejected. Denial based on: Local Rule 6.1 Written Notice of motion lacking or timeliness of notice incorrect.(ir,) (Entered: 03/02/2004)
03/05/2004	89	NOTICE of Interested Parties filed by Third-Party Plaintiff Agrigenic Food Corporation. (ir,) (Entered: 03/09/2004)
03/05/2004		FAX number for Attorney William K Vogeler is 949-453-1875. (ir,) (Entered: 03/09/2004)
03/05/2004	90	APPLICATION for Order to Show Cause Regarding Why William James Fahey, Mary Jean J. Fahey, Joshua Fahey, James C. Fahey and William Fahey, Jr. should not be held in Contempt for willful disobedience of this Court's judgment and permanent injunction filed by Third party Plaintiff Agrigenic Food Corp. (yl,) (Entered: 03/15/2004)

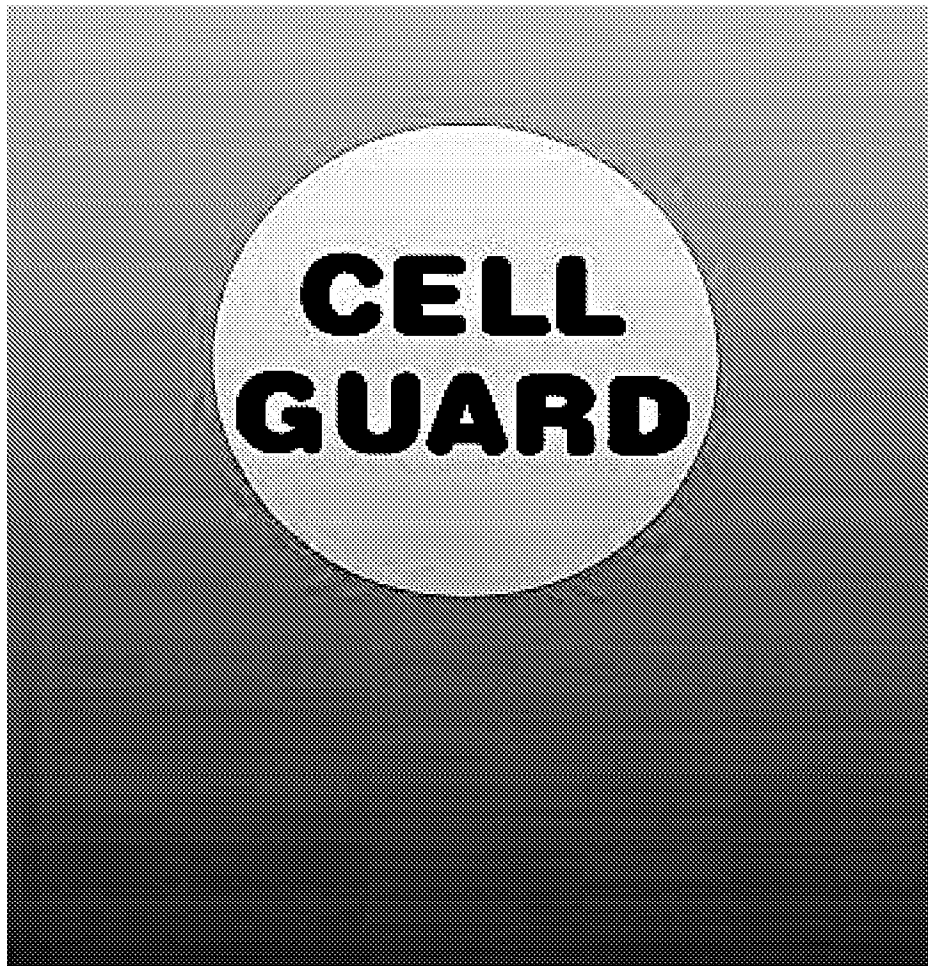


EXHIBIT D - CELL GUARD MARK