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[Your Name]

[Your Title]

[Your Company]

[Street Address, City, State ZIP]

May 14, 2026

[Opposing Counsel Name]

[Firm Name]

[Address]

**Re: U.S. Patent No. 12037567 — Response to Assertion of Infringement**

Dear Counsel,

We acknowledge receipt of your correspondence asserting infringement of U.S. Patent No. 12037567 (the "12037567 Patent"). After preliminary review, we have substantial concerns about the validity, enforceability, and scope of the asserted claims, summarized below. We reserve all rights and defenses.

## 1. Subject Patent — Summary

A concise summary of U.S. Patent 12,037,567, including its title, assignee, inventors, key dates, abstract, and a plain-language overview of its independent claims, is provided below.

Summary of U.S. Patent 12,037,567

Title: Functional beverage containing 1,3 butanediol

Assignee: Based on the patent documentation, the assignee is Ketoneaid Inc.

Inventors:

- Frank Borges Llosa
- Stephen Zarpas

Filing Date: July 11, 2023

Issue Date: July 16, 2024

Abstract:

The patent describes a beverage containing specific chemical compounds, including D-ethyl 3-hydroxybutyrate and D-1,3-butanediol, at a concentration of at least 0.5% by volume. The concentration of these compounds can range from 5%...

## 2. Validity Concerns under 35 U.S.C. § 102 — Prior Art

We have identified prior-art references that, in our preliminary view, anticipate one or more asserted claims of the 12037567 Patent:

Based on a technical analysis of the citations for US patent 12,037,567, the following prior art references are identified as most relevant for assessing the novelty of the patent's claims. The analysis focuses on the potential for these references to anticipate the claims under 35 U.S.C. § 102, which requires that a single prior art reference discloses every element of a claimed invention.

The independent claims of US patent 12,037,567 (claims 1 and 11) describe a method of increasing or maintaining ketone bodies in a subject's blood above 0.5 mmol/L. This is achieved by administering a beverage containing at least 0.5% by volume of D-1,3-butanediol with substantially no L-1,3-butanediol.

#### Key Prior Art References

Here are the most relevant prior art references cited during the patent's examination and an analysis of their potential impact on the claims.

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#### 1. U.S. Patent Application Publication No. US 2014/0308719 A1

- Full Citation: US 2014/0308719 A1
- Title: Process for producing (r)-3-hydroxybutyl (r)-3-hydroxybutyrate
- Publication Date: October 16, 2014
- Assignee:...

### **3. Obviousness under 35 U.S.C. § 103**

Independent of § 102, we believe the asserted claims are obvious in view of combinations of prior art that a person having ordinary skill in the art would have been motivated to combine:

#### Obviousness Analysis of U.S. Patent 12,037,567

This analysis examines the patentability of the claims in U.S. Patent 12,037,567 ("the '567 patent") in light of prior art, under the criteria of 35 U.S.C. § 103, which prohibits the patenting of an invention if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

#### 1. Understanding the Claims and the Person of Ordinary Skill in the Art

The independent claims of the '567 patent (Claims 1 and 11) are directed to a method of either increasing or maintaining ketone bodies in a subject by administering a beverage containing at least 0.5% by volume of D-1,3-butanediol, with no, or substantially no, L-1,3-butanediol. The claims also allow for the optional inclusion of other ketogenic compounds, such as D-ethyl 3-hydroxybutyrate, and beta-hydroxybutyrate salts, as well as ethanol. The stated goal is to achieve or maintain blood ketone levels above 0.5 mmol/L.

A person of ordinary...

### **4. Request**

In light of the foregoing, we request that your client (i) provide a detailed claim chart identifying each accused product or service and mapping every limitation of each asserted claim, (ii) identify any prior art known to your client, including any references cited during prosecution or reexamination, and (iii) substantiate the basis for any damages or licensing demand. We are prepared to discuss the matter further once we have received and reviewed the foregoing.

Sincerely,

[Your Name]

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