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11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 KATHLEEN SONNER on Behalf of
15 of Herself and All Others Similarly
16 Situated,

16 Plaintiff,

17 v.

18 SCHWABE NORTH AMERICA,
19 INC. and NATURE'S WAY
20 PRODUCTS, LLC,

20 Defendants.

Case No.

CLASS ACTION

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750, *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

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Case No.

CLASS ACTION COMPLAINT

1 Plaintiff Kathleen Sonner brings this action on behalf of herself and all
 2 others similarly situated against Defendants Schwabe North America, Inc.
 3 (“Schwabe”) and Nature’s Way Products, LLC (“Nature’s Way”) (collectively
 4 “Defendants”) and states:

5 NATURE OF ACTION

6 1. This is a consumer protection class action brought pursuant to Fed.
 7 R. Civ. Proc. 23 arising out of Defendants’ false advertising of their Ginkgold®
 8 Products. Defendants claim the Ginkgold Products provide actual, meaningful
 9 and significant health benefits for the memory, concentration, mental sharpness,
 10 and overall brain health of all consumers who ingest the Ginkgold Products’
 11 tablets. These claimed cognitive health and brain function benefits are the only
 12 reason a consumer would purchase the Ginkgold Products. Defendants’
 13 advertising claims, however, are false, misleading, and reasonably likely to
 14 deceive the public.

15 2. Defendants distribute, market and sell “Ginkgold® Advanced
 16 Ginkgo Extract” (“Ginkgold”) and “Ginkgold® Max Advanced Ginkgo Extract
 17 Max 120 mg” (Ginkgold Max”) (collectively, the “Ginkgold Products”).
 18 Through an extensive, integrated and widespread nationwide marketing
 19 campaign, Defendants claim the Ginkgold Products, ginkgo biloba-based herbal
 20 supplements, provide a variety of significant health benefits for improving
 21 memory and concentration, supporting mental sharpness, and supporting healthy
 22 brain activity of all consumers who ingest the Ginkgold Products.¹ Defendants
 23 represent that the active ingredient in their Ginkgold Products, ginkgo biloba
 24 extract, provides these significant health benefits.

25
 26 ¹ The Ginkgold Products at issue contain just one active ingredient, which is
 27 identical in each of the Ginkgold Products at issue: ginkgo biloba extract (leaf)
 28 standardized to 24%, ginkgo flavone glycosides and 6% terpene lactones. The
 Ginkgold Products’ packaging, labels, marketing messages and advertisements
 convey identical or nearly identical messages regarding the purported memory,
 concentration and brain-health related health benefits.

1 3. The same cognitive health and brain function promise is made on all
2 of the subject Ginkgold Products and throughout the Ginkgold Products'
3 marketing materials. For example, on the product packaging for the Ginkgold
4 Products, Defendants represent that the Ginkgold Products are "for MENTAL
5 SHARPNESS," "Memory & Concentration," and that consuming the products
6 provides "mental activity" and "cognitive function" benefits. *See* ¶¶25-29,
7 below (exemplar Ginkgold Product packaging and labeling). Further, to
8 deceptively imply scientific significance and credibility, the Ginkgold Products'
9 packaging has also stated that the Ginkgold Products contain "Advanced,
10 proprietary extract of premium Ginkgo biloba leaves" or substantively similar
11 statements, including "The World's Most Researched & Advanced Ginkgo
12 Extract," which has been "Used in over 400 studies," and is "Recommended by
13 health care professionals worldwide."

14 4. Defendants communicated the same substantive message throughout
15 their advertising and marketing for the Ginkgold Products, including at the point
16 of sale, on the front of Ginkgold Products' packaging: that the Ginkgold Products
17 will provide memory and concentration, mental sharpness, and brain function
18 benefits that are clinically meaningful to those who take Ginkgold. Each person
19 who has purchased the Ginkgold Products has been exposed to Defendants'
20 misleading advertising message multiple times. For example, the front of the
21 Ginkgold Products' label states in all capital letters, printed in large, bolded font,
22 that the Ginkgold Products are "for MENTAL SHARPNESS Memory &
23 Concentration." Throughout the front, side and back panels of the Ginkgold
24 Products' labeling, Defendants repeat and reinforce the false and deceptive brain
25 function and memory claims. The only reason that a consumer would purchase
26 the Ginkgold Products is to obtain the advertised cognitive health benefits and
27 brain function support, which the Ginkgold Products do not provide.

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1 Defendants have marketed, promoted, distributed, and sold the Ginkgold
2 Products in California and Defendants have sufficient minimum contacts with
3 this State and/or sufficiently avail themselves of the markets in this State through
4 their promotion, sales, distribution and marketing within this State to render the
5 exercise of jurisdiction by this Court permissible.

6 10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and
7 (b) because a substantial part of the events or omissions giving rise to Plaintiff's
8 claims occurred while she resided in this judicial district. Venue is also proper
9 under 18 U.S.C. § 1965(a) because Defendants transact substantial business in
10 this District.

11 PARTIES

12 11. Plaintiff Kathleen Sonner resides in Riverside County, California.
13 In early 2014, Plaintiff was exposed to and saw Defendants' representations
14 regarding the brain function and memory benefits of Ginkgold by reading the
15 Ginkgold product label in a Sprouts Farmers Market store in Temecula,
16 California. In reliance on the claims listed on the product label described here
17 and above, including those claims listed on the front and side of the product label
18 that Ginkgold will meaningfully improve "mental sharpness" and "memory and
19 concentration," Plaintiff purchased Ginkgold. Plaintiff estimates that she most
20 recently purchased the Ginkgold product at the Sprouts Farmers Market at 39606
21 Winchester Road, Temecula, California 92591 on or around August 15, 2014.
22 She paid approximately \$20.00 for a 150 count 60 mg tablet bottle of Ginkgold.
23 Plaintiff purchased Ginkgold believing it would provide the advertised brain
24 function and memory benefits. When purchasing Ginkgold, Plaintiff read and
25 relied upon the representations on the product label prior to purchasing it. As a
26 result of her purchases, Plaintiff suffered injury in fact and lost money. Had
27 Plaintiff known the truth about Defendants' misrepresentations and omissions,
28 she would not have purchased Ginkgold. Plaintiff is not claiming physical harm

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1 or seeking the recovery of personal injury damages.

2 12. Defendant Schwabe North America, Inc. f/k/a Nature's Way
3 Holding Company is organized and existing under the laws of the state of
4 Wisconsin. Schwabe's headquarters and principle place of business is at 825
5 Challenger Drive, Green Bay, Wisconsin 54311. Schwabe manufactures,
6 markets, sells, and distributes a variety of dietary supplements, plant-based
7 medicines, and other health-care products. Schwabe's brands include Nature's
8 Way's products.

9 13. Defendant Nature's Way Products, LLC f/k/a Nature's Way
10 Products, Inc., is organized and existing under the laws of the state of Wisconsin.
11 Nature's Way's headquarters and principle place of business is at 825 Challenger
12 Drive, Green Bay, Wisconsin 54311. Nature's Way is wholly-owned by
13 Schwabe North America, Inc. Nature's Way manufactures, markets, sells, and
14 distributes a variety of dietary supplements, plant-based medicines, and other
15 health-care products. Nature's Way's brands of products include Alive!®
16 multivitamins, Primadophilus® probiotics, Umcka ColdCare®, Wellesse®, and
17 the Ginkgold Products.

18 14. Defendants manufacture, advertise, market and distribute the
19 Ginkgold Products to thousands of customers across the country and in the State
20 of California.

21 15. Plaintiff is informed and believes, and thus alleges, that at all times
22 herein mentioned, each of the Defendants was the agent, employee,
23 representative, partner, joint venturer, and/or alter ego of the other Defendants
24 and, in doing the things alleged herein, was acting within the course and scope of
25 such agency, employment, representation, on behalf of such partnership or joint
26 venture, and/or as such alter ego, with the authority, permission, consent, and/or
27 ratification of the other Defendants.

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1 **FACTUAL ALLEGATIONS**

2 ***The Ginkgold Products***

3 16. For more than a decade, Defendants have distributed, marketed and
4 sold Ginkgold on a nationwide basis.

5 17. The Ginkgold Products are sold at a variety of grocery chains, retail
6 stores, online stores, pharmacies, and low cost retailers, including Sprouts
7 Farmers Market.

8 18. Defendants' Ginkgold Products include: (1) Ginkgold Max, which
9 bottles contain 30 or 60 tablets of 120 mg Ginkgold; and (2) Ginkgold, which
10 bottles contain 50, 75, 100, or 150 tablets of 60 mg Ginkgold.

11 19. According to Defendants, and as stated on the Ginkgold Products'
12 packaging and labeling, the active ingredient in all the Ginkgold Products is
13 identical: "Ginkgold® Ginkgo biloba extract (leaf), standardized to contain 24%
14 ginkgo flavone glycosides and 6% terpene lactones."

15 20. Ginkgo biloba is one of the oldest living tree species. Ginkgo
16 biloba extract like that found in Ginkgold is made from the dried green leaves of
17 the ginkgo tree.

18 ***Defendants' False and Deceptive Advertising of the Ginkgold Products***

19 21. Throughout their advertising of the Ginkgold Products, Defendants
20 have consistently advertised that consuming the Ginkgold Products will
21 meaningfully improve cognitive health and brain functioning. As more fully set
22 forth herein, the competent scientific evidence demonstrates that use of ginkgo
23 biloba does not provide the cognitive health and brain functioning benefits
24 represented by Defendants, and that the advertising claims are false and
25 misleading.

26 22. Since launching the Ginkgold Products, Defendants have
27 consistently conveyed their uniform, deceptive message to consumers throughout
28 the United States, including in California, that the Ginkgold Products provide

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1 significant cognitive health benefits and brain function support. This message
2 has been made and repeated across a variety of media including on Defendants'
3 websites and online promotional materials, and, most importantly, at the point of
4 purchase, on the front of the Ginkgold Products' packaging and labeling where it
5 cannot be missed by consumers. In truth, Defendants' cognitive health and brain
6 function health claims are false, misleading and deceptive.

7 23. Throughout the relevant time period, Defendants have packaged the
8 Ginkgold using substantially similar and deceptive packages and labels with the
9 cognitive health benefit advertising messaging at issue.

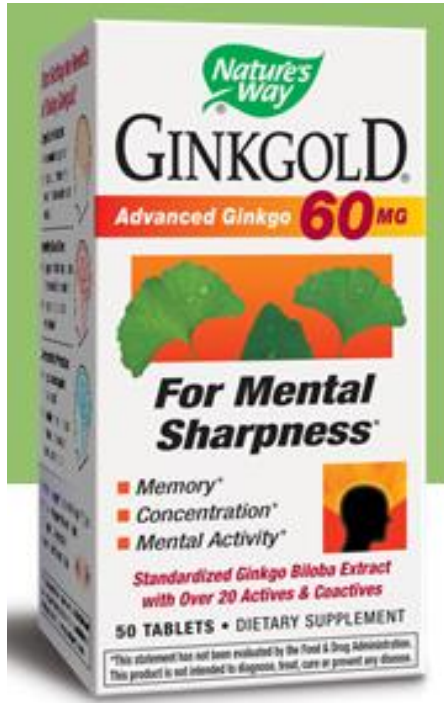
10 24. Throughout the relevant time period, the front of the Ginkgold
11 Products' packaging and labeling states in all capital letters, printed in large,
12 bolded font, that the Ginkgold Products are "for MENTAL SHARPNESS
13 Memory & Concentration."

14 25. The front panels for each package of Ginkgold and Ginkgold Max
15 appear substantially as follows:



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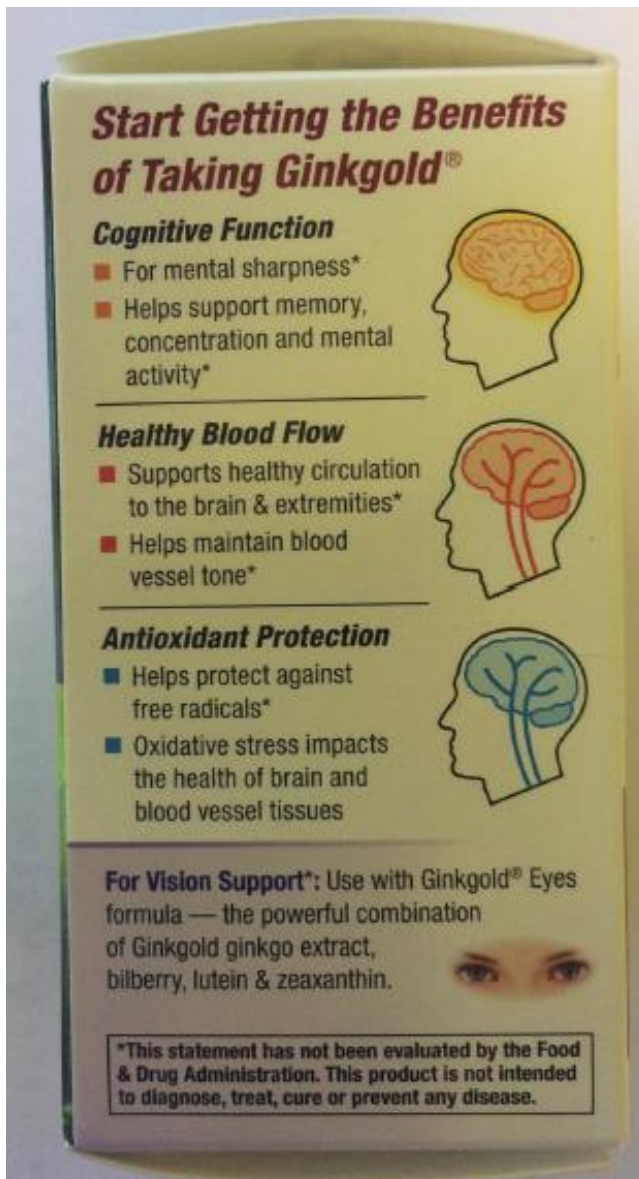
1 26. Throughout the other packaging panels of the Ginkgold Products'
 2 packaging, Defendants repeat and reinforce the false and deceptive cognitive
 3 health and brain functioning claims.

4 27. For example, up until 2013, the side-panel packaging reinforced the
 5 false and deceptive cognitive health and brain functioning claims including
 6 stating, "Start getting the clinical benefits of Ginkgold," followed by claims that
 7 the product "helps improve mental sharpness," "stimulates activity in all areas of
 8 the brain," "supports healthy circulation to the brain and extremities," "helps
 9 maintain blood vessel tone," "Ginkgold-the smarter choice for mental
 10 sharpness," and further warrants that in "head-to-head research against other
 11 ginkgo extracts *only Ginkgold*, 'increased activity in all areas of the brain,'
 12 'produced potent alpha enhancing effects,' and 'could be classified as a cognitive
 13 activator.'" In addition, the packaging includes three images of "brain scan"
 14 diagrams to support the claims of increased brain activity of the Ginkgold
 15 Products as compared to unidentified "Brand A" and "Brand B" ginkgo extract
 16 products. The diagrams include three brains, with the "Ginkgold brain" almost
 17 completely filled in white, demonstrating the "increased brain activity,"
 18 compared to the other two "brain scans," with the brains are only partially filled
 19 in white. That packaging side paneling appears substantially as follows:



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1 28. Similarly, from 2013 through the present, the side-paneling of the
2 packaging of Ginkgold and Ginkgold Max also repeats and reinforces the false
3 and deceptive cognitive health and brain functioning claims made on the front of
4 the packaging, including stating "Cognitive Function," "For mental sharpness,"
5 and "Helps support memory, concentration and mental activity." That packaging
6 side-paneling appears substantially as follows:



26 29. The labeling on the bottles of Ginkgold and Ginkgold Max also
27 contains the false and misleading cognitive health benefit advertising at issue,
28

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1 stating "Clinical Ginkgo Extract," "MENTAL SHARPNESS," and "Memory &
2 Concentration," and appear substantially as follows:



16 30. Defendants' marketing representations in other media repeat and
17 reinforce the false and misleading cognitive health benefit claims made on the
18 packaging and labeling for the Ginkgold Products. For example, on their
19 website, www.naturesway.com, Defendants make the false and misleading
20 cognitive health benefit advertising statements at issue. Defendants claim the
21 "Benefits of Ginkgold" are:

22 **Cognitive Function**

- 23 • For mental sharpness
- 24 • Helps support memory, concentration and mental activity

25 *Scientific Studies Confirm that the Ginkgold Products are Not Effective and*
26 *Defendants' Health Benefits Message is False and Deceptive*

27 31. Despite Defendants' representations, the Ginkgold Products and
28 their ginkgo biloba ingredient do not provide the advertised benefits.

1 32. Despite the competent scientific evidence demonstrating that ginkgo
2 biloba and the Ginkgold Products do not provide the advertised benefits,
3 Defendants continue to advertise that they do, leading Plaintiff and other
4 consumers to believe that Ginkgold Products actually provide the advertised
5 health benefits.

6 33. There is no scientifically credible, clinical study published in a
7 reputable peer-reviewed journal demonstrating that any ginkgo biloba product
8 can “help improve mental sharpness,” help with “memory and concentration,” or
9 otherwise provide the cognitive health and brain function benefits claimed by
10 Defendants throughout the Ginkgold Products’ advertising and labeling. To the
11 contrary, as numerous such studies have confirmed, ginkgo biloba does not
12 protect against cognitive decline or otherwise improve an individual’s cognitive
13 abilities or brain function.

14 34. The lead study was conducted using Ginkgold. It was published in
15 the Journal of the American Medical Association (“JAMA”) in 2009 and is
16 entitled *Ginkgo biloba for preventing cognitive decline in older adults: a*
17 *randomized trial*, 302(24) JAMA 2663-2670 (2009). This study, known as the
18 Ginko Evaluation of Memory or “GEM Study,” is the largest clinical study to
19 date testing the effectiveness of ginkgo biloba to improve cognitive health and
20 brain function. It was designed and funded by the federal government’s lead
21 agency for scientific research on complementary and integrative health practices,
22 the National Center for Complementary and Alternative Medicine (now known
23 as the National Center for Complementary and Integrative Health) (“NCCIH”),
24 an institute of the National Institutes of Health (“NIH”). The NCIH also
25 assisted with the analysis and interpretation of the data and the preparation and
26 approval of the GEM Study manuscript. The GEM Study was conducted over a
27 span of eight years and included 3,069 participants, aged 72-96 years, who did
28 not have dementia. Participants were randomized to twice-daily doses of 120 mg

1 of Ginkgold Max from Schwabe Pharmaceuticals (EGb 761) or an identical-
2 appearing placebo for an average duration of 6.1 years. The authors of the GEM
3 Study concluded that consumption of 240 mg daily of ginkgo biloba extract does
4 not result in less cognitive decline either on a global cognitive score basis or in
5 terms of any individual cognitive domains, including memory and attention, than
6 placebo. There were no differences in results by age, sex, race, education, or
7 baseline cognitive status.

8 35. In 2002, JAMA published a study by Solomon *et al.* entitled *Ginkgo*
9 *for memory enhancement: a randomized controlled trial* 288(7) JAMA 835-840
10 (2002), in which 203 participants, over the age of 60 and in generally good
11 health, were evaluated for six week periods, with half receiving 120 mg of
12 ginkgo and the other half a placebo control. Dr. Solomon and his co-authors
13 concluded that ginkgo biloba did not improve performance on standard neuro-
14 psychological tests that evaluated learning, memory, attention, and concentration.
15 There was no improvement on naming and verbal fluency. There was no
16 difference from the control group for those consuming ginkgo biloba on self-
17 reported memory function or on global rating by spouses, friends, and relatives.
18 According to Solomon *et al.*, “These data suggest that when taken following the
19 manufacturer’s instructions, ginkgo provides no measurable benefit in memory
20 or related cognitive function to adults with healthy cognitive function.”
21 Furthermore, the study authors also concluded that “[d]espite the manufacturer’s
22 claims of improved memory in healthy adults, we were unable to identify any
23 well-controlled studies that document this claim.”

24 36. Another well-conducted, clinical study, Carlson *et al.* (2007)
25 demonstrated that ginkgo biloba does not improve cognitive function in healthy
26 adults. *See Safety and efficacy of a Ginkgo biloba-containing dietary supplement*
27 *on cognitive function, quality of life, and platelet function in healthy, cognitively*
28 *intact older adults*, 107(3) J Am Diet Assoc 422-32 (2007). Carlson *et al.*,

1 performed a randomized, double-blind, placebo-controlled study involving 90
2 healthy, older adults (65-84 years old) who were randomly assigned to placebo
3 or 160 mg ginkgo biloba from Schwabe (EGb 761) daily for four months. After
4 four months of consuming either placebo or ginkgo, the subjects were analyzed
5 for cognitive and quality of life improvements. Using six standardized tests for
6 cognitive function, including tests analyzing memory, attention, and
7 concentration, the researchers found that consuming ginkgo was not effective
8 versus placebo based on any of the cognitive function tests. In fact, consuming
9 placebo was found more effective than ginkgo biloba for one of the cognitive
10 function tests, which was designed to measure delayed memory. Consumption
11 of ginkgo also did not result in improvement of quality of life measures over
12 placebo. The authors concluded their data demonstrate the “lack of an effect”
13 and “do not support the use of a commercial ginkgo biloba-containing
14 supplement to improve cognitive function or quality of life in healthy 65- to 85-
15 year-old cognitively intact healthy adults with average to above-average
16 cognitive function.”

17 37. Nathan *et al.* (2002), also demonstrates that consumption of ginkgo
18 biloba does not result in improvements of cognitive function, including memory
19 or concentration. *See The acute nootropic effects of Ginkgo biloba in healthy*
20 *older human subjects: a preliminary investigation*, 17(1) *Hum Psychopharmacol*,
21 45-49 (2002). Nathan *et al.* performed a double-blind, placebo-controlled trial
22 involving eleven healthy adults aged 50-72 who consumed 120 mg ginkgo biloba
23 and placebo at different times and separated by a washout period. The
24 researchers analyzed the acute cognitive effects of ginkgo biloba and placebo
25 consumption using multiple memory tests. The researchers concluded that
26 consumption of ginkgo did not improve cognitive function as measured by any
27 memory test: “The data revealed no evidence of acute effects of Ginkgo biloba
28 on cognitive functioning. The repeated measures ANOVA showed no significant

1 drug interactions for either the accuracy (%), response speed (ms) measure of
2 spatial working memory, numeric working memory, picture recognition, choice
3 reaction time or simple reaction time. Similarly no significant drug interactions
4 were found for the auditory verbal learning tests of verbal learning and short and
5 long-term memory.”

6 38. Another study, by Canter and Ernst (2007), is a systematic review
7 analyzing all randomized, placebo-controlled clinical trials of ginkgo biloba for
8 cognitive function carried out in healthy subjects less than 60 years of age. *See*
9 *Ginkgo biloba is not a smart drug: an updated systematic review of randomised*
10 *clinical trials testing the nootropic effects of G. biloba extracts in healthy people,*
11 *22(5) Hum Psychopharmacology. 265-278 (2007).* Their clinical study search
12 identified 43 potentially relevant articles from six databases. After excluding 9
13 randomized, controlled trials previously analyzed in their 2002 systematic review
14 (described below), Drs. Canter and Ernst reviewed the resulting 15 relevant
15 clinical trials. Noting that “[t]he negative conclusions drawn in [their] original
16 [2002] review are strengthened by the results of the newly added studies,” the
17 2007 study analysis concluded that evidence from clinical trials “provides no
18 convincing evidence that G. biloba extracts ingested either as a single dose or
19 over a longer period has a positive effect on any aspect of cognitive performance
20 in healthy people under the age of 60 years.”

21 39. The 2007 clinical study review discussed in the paragraph above
22 was an update of a 2002 review by Drs. Canter and Ernst similarly entitled
23 *Ginkgo biloba: a smart drug? A systematic review of controlled trials of the*
24 *cognitive effects of ginkgo biloba extracts in healthy people,* 36(3)
25 *Psychopharmacol Bull* 108-23 (2002). The 2002 review was based on an
26 analysis of all controlled clinical trials of ginkgo biloba for cognitive function in
27 healthy subjects with a mean age less than 60 years and published up to
28 November 2001. Based on their review, which included nine clinical studies,

1 Drs. Canter and Ernst concluded “these studies indicate no marked or consistent
2 positive effects of Ginkgo biloba on any particular objective measure of
3 cognitive function.”

4 40. A 2012 meta-analysis published in *Human Psychopharmacology:*
5 *Clinical and Experimental*, Laws *et al.* reported on the search of numerous
6 databases and recent qualitative reviews for randomized controlled trials
7 examining the effects of ginkgo biloba on cognitive function (memory, executive
8 function, and attention) in healthy people across all age groups. *See Is Ginkgo*
9 *biloba a cognitive enhancer in healthy individuals? A meta-analysis* 27(6)
10 *Human Psychopharmacology* 527-533 (2012). The study’s authors, Dr. Laws
11 and his co-researchers, who based their review and meta-analysis on thirteen
12 clinical studies that collectively involved over 2,500 healthy individuals,
13 concluded that ginkgo biloba had no ascertainable positive effects on the above-
14 mentioned cognitive functions in healthy individuals. The randomized,
15 controlled trials included in the meta-analysis included: Burns *et al.* (2006),
16 Carlson *et al.* (2007), Cieza *et al.* (2003), Elsabagh *et al.* (2005a), Elsabagh *et al.*
17 (2005b), Hartley *et al.* (2003), Mix and Crews (2000), Moulton *et al.* (2001), and
18 Solomon *et al.* (2002). According to the researchers, and based on their
19 scientific analysis of thirteen randomized, controlled trials, “[t]he key findings
20 from this meta-analysis are that *G. biloba* has no significant impact on memory,
21 executive function or attention with all effect sizes non-significant and
22 effectively at zero...Indeed, none of the 13 studies assessing memory revealed an
23 overall significant effect size.” Citing Canter and Ernst (2007), discussed above,
24 Laws *et al.* noted their conclusion was in “accord[] with the conclusions of
25 previous systematic qualitative reviews.” The authors also noted that they
26 contrasted the results of the clinical studies analyzing memory and attention
27 involving ginkgo biloba formulations from Schwabe (EGb 761) and the LI 1370
28 formulation “to show these did not differ significantly.”

1 41. Similarly, in a 2009 study performed in connection with the
2 internationally prestigious Cochrane Collaboration and entitled *Ginkgo biloba*
3 *for cognitive impairment and dementia*, researchers reviewed 36 trials, nine of
4 which were six months long (2016 participants total). *See Birks and Grimley,*
5 *Ginkgo biloba for cognitive impairment and dementia*, (1) Cochrane Database
6 Syst. Rev. Art. No. : CD003120 (2009). Most trials reviewed tested the same
7 ginkgo biloba preparation used by Schwabe (EGb761). According to the study
8 authors, in the more recent and more reliable trials, three out of four found no
9 benefits for cognitive decline. The researchers concluded that evidence that
10 ginkgo biloba has predictable and clinically significant benefit for people with
11 dementia or cognitive impairment is inconsistent and unreliable.

12 42. *Vellas et al.* (2012) presents the results from a randomized, double-
13 blind, placebo-controlled clinical trial known as the “GuidAge Study.” *See*
14 *Vellas et al., Long-term use of standardised ginkgo biloba extract for the*
15 *prevention of Alzheimer’s disease: a randomised placebo-controlled trial*, 11(10)
16 *Lancet Neurol* 851-859 (2012). The authors of the GuidAge Study analyzed
17 2,854 participants aged 70 or older who had reported memory complaints to their
18 primary care physicians. The study subjects were randomly allocated to groups
19 receiving either a twice daily dose of 120 mg of ginkgo biloba or placebo for a
20 five-year period, and underwent annual cognitive assessments. The study
21 authors concluded that long-term use of ginkgo biloba does not reduce the risk of
22 progression of Alzheimer’s disease.

23 43. *Franke et al.* (2014), examined the evidence from randomized
24 placebo-controlled trials testing the cognitive enhancement effects, including
25 attention, concentration and memory by healthy subjects, from various
26 substances, including ginkgo biloba. *See Substances used and prevalence rates*
27 *of pharmacological cognitive enhancement among healthy subjects*, 264 Suppl 1,
28 *Eur. Arch Psychiatry Clin. Neurosci.* 83-90 (Nov. 2014). *Franke et al.*,

1 concluded that ginkgo biloba does not provide cognitive health benefits for
2 healthy persons:

3 With respect to healthy subjects, large RCTs and meta-analyses have
4 shown that Ginkgo biloba has no cognitively enhancing effects
5 neither in younger nor in older healthy subjects: There are no
6 positive effects on vigilance, attention, reaction time or higher
7 cognitive functioning such as memory, no matter which amount of
8 Ginkgo was used or how frequently.

9 44. Plaintiff and the other Class members have been and will continue
10 to be deceived by Defendants' false and deceptive advertising claims about
11 Ginkgold's cognitive health benefits and brain functioning support. Plaintiff
12 read and considered these claims and then purchased Ginkgold during the Class
13 period. Defendants' advertising claims were a material factor in influencing
14 Plaintiff's decision to purchase Ginkgold. The only purpose for purchasing
15 Ginkgold is to obtain the represented cognitive health and brain function
16 benefits.

17 45. Defendants have reaped enormous profits from their false
18 advertising and sale of the Ginkgold Products.

19 **CLASS DEFINITION AND ALLEGATIONS**

20 46. Pursuant to Rule 23 of the Federal Rules of Civil Procedure,
21 Plaintiff brings this action for herself and all members of the following class of
22 similarly situated individuals and entities (the "Nationwide Class"):

23 All consumers who purchased Ginkgold or Ginkgold Max in the
24 United States. Excluded from this Class are Defendants and their
25 officers, directors and employees, and those who purchased
26 Ginkgold or Ginkgold Max for the purpose of resale.

27 47. Pursuant to Rule 23 of the Federal Rules of Civil Procedure,
28 Plaintiff also brings this action against Defendants for herself and all members of
the following sub-class of similarly situated individuals and entities (the
"California Sub-Class"):

1 All consumers who purchased Ginkgold or Ginkgold Max in the
 2 state of California. Excluded from this Class are Defendants and
 3 their officers, directors and employees, and those who purchased
 Ginkgold or Ginkgold Max for the purpose of resale.

4 48. **Numerosity.** On information and belief, the Nationwide Class and
 5 California Sub-Class (collectively, the “Class” or “Class Members”) are each so
 6 numerous that joinder of all members of the Class is impracticable. Plaintiff is
 7 informed and believes that the proposed Class contains thousands of purchasers
 8 of the Ginkgold Products who have been damaged by Defendants’ conduct as
 9 alleged herein. The precise number of Class members is unknown to Plaintiff.

10 49. **Existence and Predominance of Common Questions of Law and**
 11 **Fact.** This action involves common questions of law and fact, which
 12 predominate over any questions affecting individual Class members. These
 13 common legal and factual questions include, but are not limited to, the following:

14 (a) whether the claims discussed above are true, or are
 15 misleading, or objectively reasonably likely to deceive;

16 (b) whether Defendants’ alleged conduct violates public policy;

17 (c) whether the alleged conduct constitutes violations of the laws
 18 asserted;

19 (d) whether Defendants engaged in false or misleading
 20 advertising;

21 (e) whether Plaintiff and Class members have sustained monetary
 22 loss and the proper measure of that loss; and

23 (f) whether Plaintiff and Class members are entitled to other
 24 appropriate remedies, including corrective advertising and injunctive relief.

25 50. **Typicality.** Plaintiff’s claims are typical of the claims of the
 26 members of the Class because, *inter alia*, all Class members were injured
 27 through the uniform misconduct described above and were subject to
 28 Defendants’ deceptive cognitive health benefit claims that accompanied each and

1 every Ginkgold Product that Defendants sold. Plaintiff is advancing the same
2 claims and legal theories on behalf of herself and all members of the Class.

3 51. ***Adequacy of Representation.*** Plaintiff will fairly and adequately
4 protect the interests of the members of the Class. Plaintiff has retained counsel
5 experienced in complex consumer class action litigation, and Plaintiff intends to
6 prosecute this action vigorously. Plaintiff has no adverse or antagonistic
7 interests to those of the Class.

8 52. ***Superiority.*** A class action is superior to all other available means
9 for the fair and efficient adjudication of this controversy. The damages or other
10 financial detriment suffered by individual Class members is relatively small
11 compared to the burden and expense that would be entailed by individual
12 litigation of their claims against Defendants. It would thus be virtually
13 impossible for Plaintiff and Class members, on an individual basis, to obtain
14 effective redress for the wrongs done to them. Furthermore, even if Class
15 members could afford such individualized litigation, the court system could not.
16 Individualized litigation would create the danger of inconsistent or contradictory
17 judgments arising from the same set of facts. Individualized litigation would
18 also increase the delay and expense to all parties and the court system from the
19 issues raised by this action. By contrast, the class action device provides the
20 benefits of adjudication of these issues in a single proceeding, economies of
21 scale, and comprehensive supervision by a single court, and presents no unusual
22 management difficulties under the circumstances here.

23 53. The Class also may be certified because Defendants have acted or
24 refused to act on grounds generally applicable to the Class, thereby making
25 appropriate final declaratory and/or injunctive relief with respect to the members
26 of the Class as a whole.

27 54. Plaintiff seeks preliminary and permanent injunctive and equitable
28 relief on behalf of the entire Class, on grounds generally applicable to the entire

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1 Class, to enjoin and prevent Defendants from engaging in the acts described, and
2 requiring Defendants to provide full restitution to Plaintiff and Class members.

3 55. Unless a Class is certified, Defendants will retain monies received
4 as a result of its conduct that were taken from Plaintiff and Class members.
5 Unless a class wide injunction is issued, Defendants will continue to commit the
6 violations alleged, and the members of the Class and the general public will
7 continue to be misled.

8 **COUNT I**

9 **Violations of the Wisconsin Unfair Trade Practices Act**
10 **Wis. Stat. § 100.20 et seq.**

11 56. Plaintiff repeats and re-alleges the allegations contained in the
12 Paragraphs above, as if fully set forth herein.

13 57. Plaintiff brings this claim individually and on behalf of the
14 Nationwide Class.

15 58. This cause of action is brought pursuant to the Wisconsin Unfair
16 Trade Practices Act, Wis. Stat. § 100.20, et seq. (the “Wisconsin UTPA”). The
17 Wisconsin UTPA provides that “[u]nfair methods of competition in business and
18 unfair trade practices in business are hereby prohibited.”

19 59. Section 100.20(5) of the Wisconsin UTPA provides:
20 Any person suffering pecuniary loss because of a violation by any
21 other person of any order issued under this section may sue for
22 damages therefor in any court of competent jurisdiction and shall
23 recover twice the amount of such pecuniary loss, together with costs,
including a reasonable attorney’s fee.

24 60. Section 100.20(2) of the Wisconsin UTPA permits the Wisconsin
25 Department of Agriculture, Trade and Consumer Protection to “issue general
26 orders forbidding methods of competition in business or trade practices in
27 business which are determined by the department to be unfair.”
28

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1 61. Defendants' conduct described herein violated and continues to
2 violate § 90.02 of the Wisconsin Administrative Code, which is a general order
3 issued by the Wisconsin Department of Agriculture, Trade and Consumer
4 Protection under Wis. Stat. § 100.20.

5 62. Section 90.02 of the Wisconsin Administrative Code prohibits
6 declarations on consumer commodity packages identifying the commodity in the
7 package that are "false, deceptive or misleading." Section 90.02 further prohibits
8 "[i]ngredients or components that are not present in the commodity in substantial
9 or significantly effective amounts may not be featured in the declaration of
10 identity."

11 63. As described above, on the front panel of the packages of the
12 Ginkgold Products (the Products' "principal display panel"), Defendants identify
13 that "Clinical Ginkgo Extract" is contained in the Ginkgold Products. This
14 representation violates § 90.02's deceptive declaration prohibition.

15 64. The labeling of the Ginkgold Products as "Clinical Ginkgo Extract"
16 is false, deceptive or misleading for the reasons described herein and therefore
17 violates the Wisconsin UTPA.

18 65. Further, as described herein, because the Ginkgold Products do not
19 contain ginkgo biloba extract in a significantly effective amount, the labeling of
20 the Ginkgold Products as "Clinical Ginkgo Extract" also violates the Wisconsin
21 UTPA.

22 66. Plaintiff and members of the Nationwide Class have purchased the
23 Ginkgold Products and suffered pecuniary loss as a result of Defendants' unfair
24 conduct, including its false, deceptive or misleading representations about the
25 commodity contained in the Ginkgold Products as described herein.

26 67. Pursuant to § 100.20(5) of the Wisconsin UTPA, Plaintiff and
27 members of the Nationwide Class are entitled to recover twice the amount of
28 their damages, together with costs and attorneys' fees.

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COUNT II

**Violations of the Consumers Legal Remedies Act
Civil Code §1750 *et seq.*
(for Plaintiff and California Sub-Class Members)**

68. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as if fully set forth herein.

69. Plaintiff brings this claim individually and on behalf of the California Sub-Class.

70. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”). Plaintiff is a “consumer” as defined by California Civil Code § 1761(d). Defendants’ Ginkgold Products are “goods” within the meaning of the Act.

71. Defendants violated and continue to violate the Act by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Ginkgold Products:

(5) Representing that [the Ginkgold Products have] . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have

* * *

(7) Representing that [the Ginkgold Products are] of a particular standard, quality or grade . . . if [they are] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [the Ginkgold Products have] been supplied in accordance with a previous representation when [they have] not.

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1 72. Defendants violated the Act by representing and failing to disclose
2 material facts on the Ginkgold Products' labeling and packaging and associated
3 advertising, as described above, when they knew, or should have known, that the
4 representations were false and misleading and that the omissions were of
5 material facts they were obligated to disclose.

6 73. Pursuant to § 1782(d) of the Act, Plaintiff and the Class seek a court
7 order enjoining the above-described wrongful acts and practices of Defendants
8 and for restitution and disgorgement.

9 74. Pursuant to § 1782 of the Act, Plaintiff notified Defendants in
10 writing by certified mail of the particular violations of § 1770 of the Act and
11 demanded that Defendants rectify the problems associated with the actions
12 detailed above and give notice to all affected consumers of Defendants' intent to
13 so act.

14 75. A copy of the letter is attached hereto as Exhibit A.

15 76. Defendants have failed to rectify or agree to rectify the problems
16 associated with the actions detailed above and give notice to all affected
17 consumers within 30 days of the date of written notice pursuant to §1782 of the
18 Act. Therefore, Plaintiff further seeks claims for actual, punitive and statutory
19 damages, as appropriate.

20 77. Defendants' conduct is fraudulent, wanton and malicious.

21 78. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit B is the
22 affidavit showing that this action has been commenced in the proper forum.

23 **COUNT III**

24 **Violation of Business & Professions Code § 17200, et seq.**

25 **(for Plaintiff and California Sub-Class Members)**

26 79. Plaintiff repeats and re-alleges the allegations contained in the
27 Paragraphs above, as if fully set forth herein.

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1 80. Plaintiff brings this claim individually and on behalf of the
2 California Sub-Class.

3 81. Business & Professions Code § 17200 prohibits any “unlawful,
4 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
5 misleading advertising.” For the reasons discussed above, Defendants have
6 violated each of these provisions of Business & Professions Code § 17200.

7 82. In the course of conducting business, Defendants committed
8 unlawful business practices by, *inter alia*, making the representations (which also
9 constitute advertising within the meaning of § 17200) and omissions of material
10 facts, as set forth more fully herein, and violating Civil Code §§ 1572, 1573,
11 1709, 1711, 1770(a)(5), (7), (9) and (16) under the CLRA, Business &
12 Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, and the common law,
13 including breach of express warranty. Defendants’ above-described wrongful
14 acts and practices constitute actual and constructive fraud within the meaning of
15 Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil
16 Code §§ 1709 and 1711.

17 83. Plaintiff and the Class reserve the right to allege other violations of
18 law, which constitute other unlawful business acts or practices. Such conduct is
19 ongoing and continues to this date.

20 84. Defendants’ actions also constitute “unfair” business acts or
21 practices because, as alleged above, *inter alia*, Defendants engaged in false
22 advertising, misrepresented and omitted material facts regarding the Ginkgold
23 Products, and thereby offended an established public policy, and engaged in
24 immoral, unethical, oppressive, and unscrupulous activities that are substantially
25 injurious to consumers.

26 85. As stated in this complaint, Plaintiff alleges violations of consumer
27 protection, unfair competition and truth in advertising laws in California and
28 other states, resulting in harm to consumers. Defendants’ acts and omissions

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1 also violate and offend the public policy against engaging in false and misleading
2 advertising, unfair competition and deceptive conduct towards consumers. This
3 conduct constitutes violations of the unfair prong of Business & Professions
4 Code § 17200, *et seq.*

5 86. There were reasonably available alternatives to further Defendants'
6 legitimate business interests, other than the conduct described herein.

7 87. Business & Professions Code § 17200, *et seq.*, also prohibits any
8 "fraudulent business act or practice."

9 88. Defendants' actions, claims, nondisclosures and misleading
10 statements, as more fully set forth above, were also false, misleading and/or
11 likely to deceive the consuming public within the meaning of Business &
12 Professions Code § 17200, *et seq.*

13 89. Defendants' advertising, labeling and packaging as described
14 herein, also constitutes unfair, deceptive, untrue and misleading advertising.

15 90. Defendants' conduct caused and continues to cause substantial
16 injury to Plaintiff and the other Class members. Plaintiff has suffered injury in
17 fact and has lost money as a result of Defendants' unfair conduct.

18 91. As a result of its deception, Defendants have been able to reap
19 unjust revenue and profit.

20 92. Unless restrained and enjoined, Defendants will continue to engage
21 in the above-described conduct. Accordingly, injunctive relief is appropriate.

22 93. Plaintiff, on behalf of herself, all others similarly situated, and the
23 general public, seeks restitution of all money obtained from Plaintiff and the
24 members of the Class collected as a result of unfair competition, an injunction
25 prohibiting Defendants from continuing such practices, corrective advertising,
26 and all other relief this Court deems appropriate, consistent with Business &
27 Professions Code § 17203.

28 ///

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COUNT IV

Breach of Express Warranty

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3 94. Plaintiff repeats and re-alleges the allegations contained in the
4 Paragraphs above, as if fully set forth herein.

5 95. Plaintiff brings this claim individually and on behalf of the Class.

6 96. Section 2-313 of the Uniform Commercial Code provides that an
7 affirmation of fact or promise, including a description of the goods, becomes part
8 of the basis of the bargain and creates an express warranty that the goods shall
9 conform to the promise and to the description.

10 97. At all times, California and other states have codified and adopted
11 the provisions in the Uniform Commercial Code governing the express warranty
12 of merchantability.

13 98. Plaintiff, and each member of the Class, formed a contract with
14 Defendants at the time Plaintiff and the other members of the Class purchased
15 the Ginkgold Products. The terms of that contract include the cognitive health
16 benefit promises and affirmations of fact made by Defendants on the Ginkgold
17 Products' labels and packages as described above. These representations
18 constitute express warranties, became part of the basis of the bargain, and are
19 part of a standardized contract between Plaintiff and the members of the Class on
20 the one hand, and Defendants on the other.

21 99. All conditions precedent to Defendants' liability under this contract
22 have been performed by Plaintiff and the Class.

23 100. Defendants breached the terms of this contract, including the
24 express warranties, with Plaintiff and the Class by not providing the Ginkgold
25 Products that could provide the cognitive health and brain function benefits as
26 represented and described above.

27
28

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1 101. As a result of Defendants' breach of their warranty, Plaintiff and the
2 Class have been damaged in the amount of the purchase price of the Ginkgold
3 Products they purchased.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for a judgment:

- 6 A. Certifying the Class as requested herein;
- 7 B. Awarding Plaintiff and the proposed Class members damages;
- 8 C. Awarding restitution and disgorgement of Defendants' revenues to
9 Plaintiff and the proposed Class members;
- 10 D. Awarding declaratory and injunctive relief as permitted by law or
11 equity, including: enjoining Defendants from continuing the unlawful practices
12 as set forth herein, and directing Defendants to identify, with Court supervision,
13 victims of its conduct and pay them all money it is required to pay;
- 14 E. Ordering Defendants to engage in a corrective advertising
15 campaign;
- 16 F. Awarding attorneys' fees and costs; and
- 17 G. Providing such further relief as may be just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial by jury of all issues so triable.

20
21 Dated: July 7, 2015

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