

Alex R. Straus (SBN 321366)
GREG COLEMAN LAW PC
16748 McCormick Street
Los Angeles, CA 91436
T: 917-471-1894
alex@gregcolemanlaw.com

Attorneys for Plaintiff

[Names and addresses of additional Counsel for Plaintiffs on Signature Page]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS MATTHEWS, *individually and on behalf of all others similarly situated,*

Plaintiff,

v.

RECKITT BENCKISER LLC and
RB HEALTH (US) LLC,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Thomas Matthews (“Plaintiff”), by and through undersigned counsel, and on behalf of himself and all others similarly situated, alleges as follows against Defendants Reckitt Benckiser LLC and RB Health (US) LLC (collectively, “Defendants”), based upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys:

INTRODUCTION

1. Defendants Reckitt Benckiser LLC (“RB”) and RB Health (US) LLC (“RB Health”) designed and now manufacture, market, advertise, and sell Neuriva Original and Neuriva Plus, purported brain performance supplements.

1 2. It is no secret that brain health and cognitive performance are issues of concern to
2 consumers of all ages and are important public health issues. It is, therefore, no surprise that
3 products promising improved brain performance, including improved memory and focus, are
4 widely available in stores across the United States.¹

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6 3. In 2016, dietary supplements claiming to benefit the brain generated \$3 billion in
7 global sales.² Brain health supplements are forecast to increase to \$5.8 billion in sales by 2023.³

8 4. In order to capitalize on the ballooning and lucrative brain health supplement
9 market, Defendants raced to bring Neuriva Original and Neuriva Plus (collectively, “Neuriva” or
10 the “Neuriva Products”) to market in April 2019, promoting Neuriva to the public as a dietary
11 supplement that is “clinically proven” to fuel “brain performance.” Neither of these statements is
12 true. Defendants have engaged in such deceptive conduct in order to compete in the saturated brain
13 health supplement market, which is driven by consumers’ deep concern about this issue, which has
14 in turn increased demand for brain health supplements across the United States.

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16 5. In their efforts to exploit this market, Defendants have engaged in a uniformly
17 deceptive advertising and marketing campaign including the product label and packaging,
18 Defendants’ website, and other marketing materials, trumpeting that “science proved” that
19 Neuriva’s ingredients provide brain-performance benefits to all consumers who use them.
20 According to Defendants’ repeated statements in their advertising, marketing, and labeling,
21 Neuriva’s ingredients are “backed by science” and “clinically proven” to improve consumers’
22 focus, accuracy, memory, learning, and concentration.

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25 ¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7153641/>

26 ² *Global Council on Brain Health*, “The Real Deal on Brain Health Supplements: GCBH
27 Recommendations on Vitamins, Minerals, and Other Dietary Supplements,” p. 2 (2019) (“*Global
28 Council on Brain Health*”). Available at:

www.GlobalCouncilOnBrainHealth.org. DOI:<https://doi.org/10.26419/pia.00094.001>.

³ *Id.* p. 2.

1 6. In fact, on the front of the Neuriva Products’ packaging, Defendants tout that
2 Neuriva contains “Clinically Proven Natural Ingredients” that improve brain performance in the
3 areas of Focus, Memory, Learning, Accuracy, Concentration, and Reasoning.

4 7. Similarly, on the top label of the Neuriva Products’ packaging, Defendants state in
5 bold letters: “It’s time to brain better.” And, on the side of the product packaging, Defendants state:
6 “Nature made it. Science proved it. Brains love it. Our natural ingredients are GMO-free and
7 clinically proven to enhance brain performance.”
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9 8. To further promote their uniform message that Neuriva is clinically proven to
10 enhance brain performance, on the front of the Neuriva Product packages, Defendants include a
11 large picture of a brain, where it cannot be missed by consumers:
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9. Defendants’ representations are designed to induce consumers to believe that Neuriva has been proven as a matter of fact to provide meaningful brain performance benefits. And consumers purchase Neuriva solely for the purpose of obtaining these purported brain performance benefits.

10. The highly trumpeted active ingredients in Neuriva are Coffee Cherry Extract (also called “Neurofactor”) and Soy-based Sharp PS (Phosphatidylserine), both of which Defendants state are “clinically proven to enhance brain performance.”

11. In reality, Defendants have no scientific or clinical proof that Neuriva provides any benefit to the brain or that its key advertised ingredients can actually access the brain in sufficient amounts—or in *any* amount—to provide meaningful brain performance benefit. Defendants’ promises about Neuriva and their representations about Neuriva’s key ingredients are simply false or, in some instances, disturbingly misleading.

1 12. Indeed, as the Global Council on Brain Health, a blue-ribbon collaborative panel,
2 has emphasized: “Despite claims to the contrary, brain health supplements have not been
3 established to maintain thinking skills or improve brain function.”⁴

4 13. In an effort to achieve maximum profits, Defendants have capitalized on consumers’
5 focus on brain health and performance and fears of cognitive decline.

6 14. Plaintiff brings this action individually and on behalf of all other similarly situated
7 consumers to halt the dissemination of Defendants’ fraudulent and misleading representations, to
8 correct the false and misleading perceptions that Defendants have created in the minds of
9 consumers, and to obtain redress for those who have actually purchased Neuriva.
10

11 **PARTIES**

12 15. Plaintiff Thomas Matthews is a resident and citizen of Modesto, California in
13 Stanislaus County, California.

14 16. Defendants RB and RB Health are Delaware corporations with their principal places
15 of business located in Parsippany, New Jersey. Defendants’ corporate parent is a British
16 multinational company traded on the London Stock Exchange that reported net revenue of over
17 £12.8 billion in 2019 alone. Its brand portfolio includes, among others, Mucinex, Clearasil, Lysol,
18 Air Wick, and Woolite.
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20 17. In 2012, Defendant RB paid \$1.4 billion to merge with Schiff Nutrition
21 International, Inc. Schiff Nutrition was founded in 1936 as a small supplement company and grew
22 into a multimillion-dollar vitamin and nutritional supplement company. RB’s acquisition of Schiff
23 Nutrition allowed it to join the multibillion-dollar vitamins, minerals, and supplements market.
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⁴ *Id.* at 20.

1 18. Neuriva is a registered trademark of RB Health, and RB Health holds the copyrights
2 for the Neuriva Product labeling and for the website through which Neuriva is marketed. RB Health
3 also distributes the Neuriva Products and is identified as the manufacturer on Amazon.

4 19. Defendants manufacture, advertise, market, distribute, and/or sell the Neuriva
5 Products to consumers in California, the Eastern District of California, and throughout the United
6 States.
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8 **JURISDICTION & VENUE**

9 20. This Court has general personal jurisdiction over Defendants because Defendants
10 have purposefully availed themselves of the privilege of doing business within the State of
11 California, including within this District; have had continuous and systematic general business
12 contacts within the state, including within this District; and can be said to have reasonably
13 anticipated being haled into court in this forum.
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15 21. This Court has specific personal jurisdiction over Defendants because this action
16 arises out of and relates to Defendants' contacts with this forum. Specifically, Defendants
17 knowingly directed the Neuriva Products through the stream of commerce into this District.
18 Defendants have advertised and marketed within this District through the wires and mail and via e-
19 commerce websites through which residents of this state and District can purchase the Neuriva
20 Products. Further, Defendants knowingly direct electronic activity into this state and District with
21 the intent to engage in business interactions and have in fact engaged in such interactions.
22 Moreover, Defendants' website directs each consumer to purchase Neuriva "at your local retailer,"
23 including Walgreens, Walmart, CVS, Kroger, and Rite Aid, all of which have one or more locations
24 in this District.
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26 22. This Court has original subject matter jurisdiction over this action under 28 U.S.C.
27 § 1332(d), which provides for the original jurisdiction of the federal district courts over "any civil
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1 action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
2 interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a
3 citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). Plaintiff is diverse
4 from Defendants, and the matter in controversy exceeds \$5,000,000.00 in the aggregate, exclusive
5 of interest and costs. Finally, “the number of members of all proposed plaintiff classes in the
6 aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

8 23. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the
9 events or omissions giving rise to Plaintiff’s claims occurred within this District. Plaintiff purchased
10 Neuriva in this District and incurred losses in this District. Numerous other Class members also
11 purchased the Neuriva Products in this District. Defendants caused the Neuriva Products to be
12 offered for sale and sold to the public, including to Plaintiff, in this District.

14 24. Venue is proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court maintains
15 personal jurisdiction over Defendants.

16 **ADDITIONAL FACTUAL ALLEGATIONS**

17 **Sales of Neuriva Products**

18 25. Neuriva, which Defendants raced to market in only 12 months, is a growing leader
19 in the brain supplement industry. Neuriva is now an Amazon best seller.

21 26. The Neuriva Product line includes two formulas—Neuriva Original and Neuriva
22 Plus—both of which contain coffee fruit extract and soy-based phosphatidylserine as active
23 ingredients.

27. Neuriva Original contains the following ingredients:

Ingredients:
 Coffee Fruit Extract (Coffee arabica) - 100mg, Phosphatidylserine - 100mg. Other Ingredients: rice bran, capsule (hypromellose, carrageenan, titanium dioxide, pectin), microcrystalline cellulose, silicon dioxide

Our packaging and/or formulas change from time to time. Please refer to the actual packaging for current product information.

Supplement Facts		
Serving Size 1 Capsule		
	Amount Per Serving	% Daily Value
Coffee Fruit Extract (Coffea arabica)	100 mg	†
Phosphatidylserine	100 mg	†

†Daily Value not established.

28. Neuriva Plus contains the following ingredients:

Ingredients:
 Vitamin B6 (as pyridoxine hydrochloride) - 1.7mg, Folate - 680 mcg DFE (400 mcg folic acid), Vitamin B12 (as cyanocobalamin) - 2.4mcg, Coffee Fruit Extract (Coffea arabica) - 200mg, Phosphatidylserine - 100mg. Other Ingredients: capsule (hydroxypropyl methyl cellulose, titanium dioxide, carrageenan, pectin), microcrystalline cellulose, rice bran, silicon dioxide, magnesium stearate.

Our packaging and/or formulas change from time to time. Please refer to the actual packaging for current product information.

Supplement Facts		
Serving Size 1 Capsule		
	Amount Per Serving	% Daily Value
Vitamin B6 (as pyridoxine hydrochloride)	1.7 mg	100%
Folate (400 mcg folic acid)	680 mcg DFE	170%
Vitamin B12 (as cyanocobalamin)	2.4 mcg	100%
Coffee Fruit Extract (Coffea arabica)	200 mg	†
Phosphatidylserine	100 mg	†

†Daily Value not established.

29. Defendants sell Neuriva online through their website, schiffvitamins.com, and in stores nationwide, including Walgreens, Walmart, CVS, Rite Aid, Sam’s Club, Target, and others, as well as on Amazon.

30. Since Defendants first started selling Neuriva, they have uniformly and continuously represented, on both product packaging and in product advertising, that Neuriva enhances brain health and performance.

1 31. Defendants' representations appear, among other places, on the Neuriva Product
2 label and packaging; in television commercials; on Defendants' web pages; in other online vending
3 and marketing forums including sponsored videos on YouTube; and in product pamphlets and other
4 literature distributed by Defendants.

5 32. Although Neuriva comes in two formulas, each formula is substantially similar to
6 the other in form and in purported function and both are sold in substantially similar packages, with
7 similar labels, making similar claims and including similar instructions, as can be seen throughout
8 this Complaint.

9 33. The omissions and misrepresentations identified in this Complaint are virtually
10 identical across both formulations and the claims that form the basis of this action would be the
11 same in all essential respects regardless which formula is considered. That is to say, the formulas
12 are substantially similar and the means of deception is the same for both.

13 34. Defendants' misrepresentations fall into two categories: (1) Defendants make health
14 claims (e.g., enhanced brain performance) that are actually false, and (2) Defendants affirmatively
15 represent that Neuriva's purported beneficial effects are scientifically established (e.g., clinically
16 proven). Both categories of representations are false and/or misleading.

17 35. Defendants intend for consumers to rely upon Defendants' representations
18 concerning the Neuriva Products' brain health benefits and Defendants' claims that the Neuriva
19 Products' ingredients are scientifically and clinically proven.

20 36. It is reasonable for consumers to rely upon Defendants' representations concerning
21 the Neuriva Products when deciding to purchase Neuriva Products.

22 37. Defendants' representations concerning the Neuriva Products' brain health benefits
23 were developed with the intent to generate sales of the Neuriva Products.

Defendants’ Representations about the Neuriva Products

38. Defendants have made uniform, express and implied representations concerning the benefits of the Neuriva Products. These representations include claims that the Neuriva Products are scientifically and clinically proven to improve brain function in specified ways and that oral consumption of the Neuriva Products will result in improved brain function.

39. Defendants’ express and implied representations concerning the Neuriva Products’ brain performance capabilities are uniform and pervade Defendants’ marketing.

40. The exterior of the Neuriva Original packaging claims that it has “clinically proven natural ingredients” and claims that the supplement “Fuels 5 indicators of brain performance” and lists the following: Focus, Memory, Learning, Accuracy, and Concentration. The label on the bottle itself states that it is “CLINICALLY PROVEN.”




41. The side of the Neuriva Original packaging elaborates on what Defendants claim the supplement will do as a matter of fact: “Our natural ingredients are GMO-free and clinically

1 proven to enhance brain performance.” Regarding Neuriva Original’s first main active ingredient,
2 coffee cherry extract (which its ingredient list identifies as coffee fruit extract), Defendants claim
3 on their packaging that it is “clinically proven to increase levels of the vital neuroprotein BDNF,
4 known to strengthen connections between brain cells.” Regarding its second main active ingredient,
5 phosphatidylserine, Defendants claim on the packaging that “[t]hese plant-sourced phospholipids
6 make up the structure of neurons within the brain. Clinically proven to aid neuron health and fuel
7 memory and learning ability.” Defendants prominently display on the packaging Neuriva’s tagline:
8 “Nature made it. Science proved it. Brains love it.”
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**Nature made it.
Science proved it.
Brains love it.**


Our natural ingredients are GMO-free and clinically proven to enhance brain performance.* Disclaimer: **Neuriva®** won't make you a genius, but others might think you are.

 **NEUROFACTOR™
(COFFEE CHERRY)**

Made from the nutrient-rich fruit of the coffee cherry, this whole fruit extract is decaffeinated and clinically proven to increase levels of the vital neuroprotein BDNF, known to strengthen connections between brain cells.*

 **PLANT-SOURCED SHARP PS™
(PHOSPHATIDYLSERINE)**

These plant-sourced phospholipids make up the structure of neurons within the brain. Clinically proven to aid neuron health and fuel memory and learning ability.*

 **Neuriva is:**

- Decaffeinated
- GMO-Free
- Vegetarian

1 42. The exterior of the Neuriva Plus packaging also advertises that it has “clinically
2 proven natural ingredients” and claims that the supplement “Fuels 6 indicators of brain
3 performance” and lists the following: “Focus,” “Memory,” “Learning,” “Accuracy,”
4 “Concentration,” and “Reasoning.”
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20 43. The side of the Neuriva Plus packaging elaborates on what Defendants claim the
21 supplement will do as a matter of fact, which is identical to the claim made on the side panel of the
22 Neuriva Original packaging: “Our natural ingredients are GMO-free and clinically proven to
23 enhance brain performance.” Regarding the first main active ingredient, coffee cherry extract,
24 Defendants again claim that it is “clinically proven to increase levels of the vital neuroprotein
25 BDNF, known to strengthen connections between brain cells.” Regarding the second main active
26 ingredient, phosphatidylserine, Defendants again claim that “[t]hese plant-sourced phospholipids
27 make up the structure of neurons within the brain. Clinically proven to aid neuron health and fuel
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1 memory and learning ability.” As with Neuriva Original, Defendants prominently display
2 Neuriva’s tagline on the Neuriva Plus label: “Nature made it. Science proved it. Brains love it.”
3 With respect to B6, B12, and Folic Acid, which Neuriva Plus also contains, Defendants claim they
4 are “[k]ey nutrients to support brain health & cognitive function.”
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6 **Nature made it.**
7 **Science proved it.**
8 **Brains love it.**

9 Our natural ingredients are GMO-free
10 and clinically proven to enhance brain
11 performance.* Disclaimer: **Neuriva®**
12 won't make you a genius, but others
13 might think you are.

14  **NEUROFACTOR™
(COFFEE CHERRY)**
15 Made from the nutrient-rich fruit
16 of the coffee cherry, this whole
17 fruit extract is decaffeinated and
18 clinically proven to increase levels
19 of the vital neuroprotein BDNF,
20 known to strengthen connections
21 between brain cells.*

22  **PLANT-SOURCED SHARP PS™
(PHOSPHATIDYLSERINE)**
23 These plant-sourced phospholipids
24 make up the structure of neurons
25 within the brain. Clinically proven
26 to aid neuron health and fuel
27 memory and learning ability.*

28 **VITAMINS B6, B12 & FOLIC ACID**
Key nutrients to support brain
health & cognitive function*

 **Neuriva is:**
• Decaffeinated
• GMO-Free
• Vegetarian

26 44. Through the representations on Defendants’ exterior packaging, Defendants
27 represent to consumers that Neuriva improves focus, memory, learning, accuracy, concentration
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1 and, when they add vitamins B6, B12, and Folic Acid, reasoning. And Defendants further claim
2 that Neuriva’s efficacy is scientifically and clinically proven.

3 45. Defendants repeat and expand on these deceptive representations on their website,
4 www.SchiffVitamins.com. Their website includes the following representations, among others,
5 concerning the Neuriva Products:
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- 7 a. “Our new supplement combines the best of science and nature to help brains brain
8 better.”
- 9 b. “What makes our ingredients so special? Nature made it. Science proved it. Brains
10 love it.”
- 11 c. “Our natural ingredients are decaffeinated, GMO-free, gluten-free, and clinically
12 proven to support brain performance.”
- 13 d. “This extract is GMO-free and is decaffeinated, and it’s been shown to have
14 incredible brain-supporting properties.”
- 15 e. “We’ve studied this amazing superfruit [Coffee Cherry], and proven that it elevates
16 the body’s levels of the neuroprotein BDNF.”
- 17 f. “BDNF is vital neuroprotein that is known to strengthen connections between brain
18 cells, and help new connections flourish.”

19 20 46. If a consumer decides to buy Neuriva Original or Neuriva Plus on the Schiff website
21 and clicks on the product, the website then shows another summary of purported brain performance
22 benefits, which includes the claim that “Coffee Cherry Extract has been clinically proven to
23 increase BDNF levels in the brain.”
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1 47. Defendants also encourage readers of their website to “visit our science &
2 ingredients” webpage by asking: “What makes our ingredients so special?”



9 48. Under the title “Natural Ingredients Proven Through Science,” Defendants elaborate
10 on their claims that Neuriva is scientifically proven through a series of rotating slides. After a person
11 clicks on these slides, a pop-up window appears providing additional information:

- 12 a. After clicking the slide entitled “Tale of Two Neurons,” the pop-up window states:
13 “Your brain consists of approximately 86 billion neurons. And it does its work by
14 making connections between them. The two main ingredients in Neuriva have been
15 shown to support both; PSTM supports neuronal health, and coffee cherry
16 (Neurofactor) increases BDNF.”
- 17 b. After clicking the slide entitled “The Importance of BDNF,” the pop-up window
18 states: “[BDNF is] what your brain uses to strengthen connections between neurons,
19 and has been clinically shown to play a role in cognitive performance and higher
20 thinking. Maintaining higher levels of BDNF helps ensure maximum support for
21 your brain.”
- 22 c. After clicking the slide entitled Coffee Cherry,” the pop-up window states: “This
23 extract is GMO-free and is decaffeinated, and it’s been shown to have incredible
24 brain-supporting properties. We call it Neurofactor. We’ve studied this amazing
25 superfruit and proven that it elevates the body’s levels of neuroprotein BDNF.
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1 BDNF is a vital neuroprotein that is known to strengthen connections between brain
2 cells, and help new connections flourish.”

3 d. After clicking the slide entitled “Plant-Sourced Sharp PS™,” the pop-up window
4 states: “Dietary trends show that PS™ intake from food and diet alone has declined
5 over the years so PS™ supplementation is a great way to help support your brain
6 and cognitive function! Our Sharp PS™ is sourced from soybeans and the subject
7 of many clinical studies proving its effectiveness as a cognitive aid.”

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9 49. Defendants also create and post videos on their dedicated YouTube.com channel,
10 Neuriva Brain Performance, through which they market Neuriva. These videos are designed and
11 intended by Defendants to communicate claims about Neuriva’s brain performance capabilities.

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13 50. In the video entitled “What’s in Neuriva? Discover our natural ingredients to
14 support brain health,” Defendants ask: “What’s the not so secret secret behind Neuriva? Our
15 amazing clinically proven natural ingredients.” Defendants continue to discuss their “clinically
16 proven” ingredients. Regarding “Neurofactor” (a brand name for coffee cherry extract), Defendants
17 claim it “helps increase your brain’s natural levels of BDNF, a key neuroprotein crucial to your
18 overall brain health. Now what you really need to know is BDNF is known to support connections
19 between brain cells and help new connections flourish.” Regarding “Sharp PS”
20 (phosphatidylserine), Defendants claim it is “clinically proven to support memory and learning.
21 This is a no-brainer because lipids make up 60% of your brain and act as the main building blocks
22 of cell membranes. Healthy lipids enrich the brain making PS key for health cognitive functions.”
23 Putting the ingredients together, Defendants claim that both active ingredients carry the imprimatur
24 of science: “Neurofactor plus PS makes Neuriva an incredible brain support option. It combines
25 the best of science and nature to help your brain be there for you when you need it most, and fuel
26 key indicators of brain performance.”
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1 51. Defendants have extensively advertised Neuriva on television. A recent
2 advertisement stated: “Do you want to brain better? Unlike ordinary memory supplements, Neuriva
3 has clinically proven ingredients that fuel five indicators of brain performance: memory, focus,
4 accuracy, learning, and concentration. Try Neuriva for 30 days and see the difference.”

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6 52. Commercials have appeared on various popular networks.

7 53. Defendants also actively post marketing claims to an Instagram account. For
8 example, a March 17, 2020 post utilizes the Jeopardy game show to emphasize Defendants’ claim
9 that Neuriva is clinically proven.



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<p>THIS IS A KEY COMPONENT OF CHOOSING A BRAIN SUPPLEMENT</p>	<p>WHAT IS CLINICAL SUPPORT?</p>
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26 54. Another Instagram post by Defendants asked: “Did you know that nutrient-rich
27 coffee cherry (or Neurofactor) is proven to increase levels of BDNF in the brain?
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55. On Twitter, Defendants claim, among other claims: “Let’s talk about Phosphatidylserine. Sharp PS, has been proven to support memory and learning in multiple clinical studies.”

56. Defendants also include descriptions next to their videos to emphasize their central uniform marketing message. For example, Defendants attempt to set Neuriva apart from competitors as a better supplement based on its “clinically proven” ingredients:

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neuriva  We're not your ordinary memory supplement!  Neuriva's clinically proven ingredients work to fuel five indicators of  performance: focus, accuracy, memory, learning, and concentration.* Interested in how you can #BrainBetter? Check the link in our bio!

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57. The singular message throughout Defendants' marketing of Neuriva is that Neuriva is scientifically and clinically proven, as a matter of fact, to increase brain performance. This overriding message promoted by Defendants has been and will continue to be read, heard, and understood by consumers whether they see it on television; research the product online through Defendants' website or through another website (such as YouTube or Instagram); or read the Product packaging or labeling in a physical store, because this primary message is consistently repeated by Defendants across all utilized media.

Defendants' Representations are Deceptive and Misleading Because There is No Valid Scientific or Clinical Evidence Supporting Defendants' Representations

58. In order for a claim to be considered scientifically and clinically proven, as Defendants claim for Neuriva, the claim must be widely accepted in its applicable field and have overwhelming evidence supporting it. Moreover, there must be a consensus in the scientific community agreeing with the representations. Such consensus would require, at a minimum, sufficiently large, randomized, controlled, double-blind studies that have been scrutinized by peer review during the publication process and subjected to scholarly debate by diverse panels of scientific experts. Additionally, scientific consensus requires that published results be independently replicated by others using rigorous experimental design and data collection practices.

1 If specific representations do not meet these standards, they cannot be considered to be
2 “scientifically and clinically proven” nor can they be considered to have reached scientific
3 consensus.⁵

4 59. There is no scientific consensus or scientific or clinical evidence that Neuriva will
5 result in enhanced or increased brain performance or will otherwise support brain performance in
6 any way.

7 60. Neuriva has two main active ingredients to which Defendants attribute its purported
8 efficacy: coffee cherry extract and plant-sourced phosphatidylserine.

9 61. Both versions of the active ingredients that Defendants use in Neuriva are brand-
10 name versions. Defendants’ supplier of coffee cherry extract has named the ingredient
11 “Neurofactor,” while Defendants’ supplier of plant-sourced phosphatidylserine has named that
12 ingredient “Sharp PS.”

13 62. In order to cause any improvement in brain performance, Neuriva must first be
14 ingested. Then, its active ingredients must be absorbed into the bloodstream. From there, the active
15 ingredients must circulate in the bloodstream, without being broken down, and ultimately cross the
16 blood-brain barrier. Only after the active ingredients cross the blood-brain barrier can they
17 potentially cause any improvement whatsoever to brain performance.

18 63. As the Global Council on Brain Health has emphasized: “When researchers study
19 prescription drugs that have an effect on the brain, a key experiment that they perform is measuring
20 how much of the drug taken (orally or through other routes) gets into the brain. Not all substances
21 taken by mouth survive the strong stomach acid, and not all substances that persist beyond the
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27 ⁵ Bauchner H, Golub RM, Fontanarosa PB. Reporting and Interpretation of Randomized Clinical
28 Trials. *JAMA*. 2019;322(8):732-735; Kirman CR, Simon TW, Hays SM. Science Peer Review for
the 21st century: Assessing Scientific Consensus for Decision-making while Managing Conflict
of Interests, Reviewer and Process Bias. *Regul Toxicol Pharmacol*. 2019;103:73-85.

1 stomach get absorbed into the blood. Even after absorption into the blood, the liver can further
2 break down the substance, and the blood-brain barrier – the natural gatekeeper of the brain – may
3 keep out what is left. Usually it is not known how much – if any – of the supplement people take
4 gets into the brain.”⁶ Consequently, “a key step in using science to support any supplement’s
5 benefit on brain health would be to study how much of each nutrient gets to the brain.”⁷
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7 64. No valid scientific or clinical evidence exists regarding how much, if any, of
8 Neuriva’s key ingredients reaches the brain. Because of this lack of evidence, Defendants’ claims
9 that Neuriva’s ingredients are scientifically and clinically proven to benefit the brain are patently
10 false, as well as are Defendants’ claims that Neuriva is effective.

11 65. Instead of presenting actual scientific and clinical evidence giving rise to a scientific
12 consensus that coffee cherry extract and plant-based phosphatidylserine in fact impact brain
13 performance, Defendants created a deceptive and misleading infographic on their website that sets
14 out Defendants’ essential claims and purported scientific support for Neuriva and its active
15 ingredients but glosses over or misrepresents the lack of evidence that its active ingredients actually
16 reach the brain or impact the function of the brain:⁸
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27 ⁶ *Id.* at p. 20.

28 ⁷ *Id.*

⁸ *See* <https://www.schiffvitamins.com/blogs/health-wellness/ingredients-for-better-brain-health>.

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Ingredients for Better Brain Health: Rooted in Nature, Supported by Science

neuriva

Coffee fruit extract is made from the whole fruit of the common *Coffea arabica* plant, known as the coffee cherry. The coffee cherry surrounds and protects the coffee beans, which are roasted and processed to produce coffee.

Unlike coffee beans, coffee fruit extract contains a unique profile of polyphenols that have been shown in clinical studies to stimulate the production of Brain-Derived Neurotrophic Factor (BDNF).

Coffee cherries are sourced from farms, reinforcing a commitment to sustainability and better opportunities for farmers, their families and our planet.

BDNF has an important role in maintaining the health of existing brain cells, inducing the growth of new neurons and synapses, and supporting overall cognitive function, including memory and learning.*

Over 6000 articles on BDNF

2-3 coffee cherries produce enough extract for 100 mg. Clinical studies have shown that coffee cherries increase BDNF levels in 90 minutes.

Phosphatidylserine (PS) is a phospholipid nutrient present throughout the body, but especially concentrated in the brain's nerve cells.

PS has been heavily researched and is known to support proper functioning of the nerve cells in the brain and the communication between them.*


PS is derived from natural sources, including soybeans.

Dietary supplementation with soybean-derived PS has shown cognitive function benefits in humans of various age groups.

One clinical study showed that taking 100 mg/day of soy-derived PS supported memory functions, such as memorizing names and faces.*

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Expert Tips



Nigel Denby, RD
Registered Dietitian & Author

“When choosing a supplement be sure to look for those with research-backed ingredients. Choose a product that has demonstrated cognitive benefits in well-designed human clinical trials.”

“There's no such thing as a silver bullet. In addition to supplementation, sleep, diet, and exercises for the body and brain are all important to keeping your brain fit!”

***No Scientific or Clinical Evidence Exists
That Coffee Cherry Extract Supports Brain Performance***

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3 66. According to Defendants, coffee cherry extract is one of the ingredients that
4 “science proved,” “is clinically proven to increase levels of Brain-Derived Neurotrophic Factor
5 (BDNF),” and “is clinically proven to increase BDNF levels in the brain.”⁹ Also according to
6 Defendants, “[BDNF] has been widely studied and is known to support the survival of existing
7 neurons and encourage the growth of new neurons.”¹⁰

8
9 67. Defendants’ claims that coffee cherry extract (or Neurofactor) is scientifically and
10 clinically proven to improve brain performance and the implications in Defendant’s infographic
11 purporting to support those claims are deceptive and misleading because coffee cherry extract *does*
12 *not* and *cannot* increase BDNF levels in the brain.

13 68. Among other reasons that Defendants’ claims are false, BDNF cannot cross the
14 blood-brain barrier. Therefore, it is scientifically implausible that BDNF could survive circulation
15 in the bloodstream and be transported across the blood-brain barrier in a quantity sufficient to
16 provide any meaningful impact on brain performance.

17
18 69. The blood-brain barrier acts as a sort of security system for the brain. The blood-
19 brain barrier is highly selective and ensures that only specific substances are allowed to cross and
20 gain access to brain tissue. There is no evidence, let alone scientific or clinical proof, that any
21 increase of BDNF in the blood, such as may be caused by coffee cherry extract, will result in
22 measurable BDNF transport across the human blood-brain barrier and, subsequently, increase the
23 concentration of BDNF in brain tissue.
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27 ⁹ See <https://www.schiffvitamins.com/products/neuriva-original-brain-performance-clinically-proven-brain-supporting-supplement-with-natural-ingredients>.

28 ¹⁰ See *id.*

1 70. Consequently, there is no scientific or clinical evidence, let alone scientific or
2 clinical proof, that coffee cherry extract that is orally ingested will increase BDNF in the brain
3 and/or increase brain performance.

4 71. In addition to their false claims regarding coffee cherry extract, Defendants
5 intentionally mislead consumers by juxtaposing (a) assertions that clinical studies show that coffee
6 cherry extract stimulates the production of BDNF and can increase BDNF levels in the plasma in
7 90 minutes with (b) statements such as “BDNF has an important role in maintaining the health of
8 existing brain cells, inducing the growth of new neurons and synapses and **supporting overall**
9 **cognitive function, including memory and learning.**” (Bold original) A reasonable consumer
10 would erroneously understand this juxtaposition to mean that coffee cherry extract can improve
11 cognitive functions by increasing levels of BDNF in the blood when there is no scientific or clinical
12 evidence that increased plasma levels of BDNF can increase BDNF levels in the brain.

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14
15 *No Scientific or Clinical Proof*
16 *That Plant-Based Phosphatidylserine Supports Brain Performance*

17 72. Defendants’ claims that their second active ingredient, plant-sourced
18 phosphatidylserine, is scientifically and clinically proven to improve brain performance are also
19 deceptive and misleading.

20 73. First, no scientific consensus exists that there is clinical and scientific proof that the
21 soy-derived phosphatidylserine in Neuriva will in fact positively affect brain functions.
22 Defendants’ claims—such as the one on their website that “PS has been heavily researched and is
23 known to support **proper functioning of the nerve cells in the brain**” (bold original)—are
24 misleading. Soy-based phosphatidylserine, such as that used in Neuriva, has *not* been heavily
25 researched, and it has *not* been scientifically established that soy-based phosphatidylserine benefits
26 the brain.

1 74. Defendants fail to disclose to consumers that the “heavily researched” form of
2 phosphatidylserine is animal-derived phosphatidylserine, which is distinct from the soy-based
3 phosphatidylserine present in Neuriva. The molecular composition of soy-based
4 phosphatidylserine, the ingredient contained in Neuriva, is different from the molecular
5 composition of animal-derived phosphatidylserine, and research on animal-derived
6 phosphatidylserine cannot support any claim that soy-based phosphatidylserine will improve brain
7 performance.
8

9 75. There is no consensus in the scientific community, based on the limited and
10 inconclusive research to date, that soy-based phosphatidylserine can improve brain performance
11 generally, much less “Focus,” “Memory,” “Learning,” “Accuracy,” “Concentration,” and
12 “Reasoning.”
13

14 76. Defendants’ assertion that the phosphatidylserine in Neuriva has been clinically
15 proven to support memory and learning in multiple clinical studies is deceptive and misleading.
16

17 77. The Global Council on Brain Health, after reviewing the scientific literature, has
18 concluded: “There is not enough evidence for recommending the use of phosphatidylserine for
19 brain health, mental functioning, or prevention or treatment of Alzheimer’s disease.”
20

21 78. The United States Food and Drug Administration has taken the position that “there
22 is little scientific evidence supporting [the] claim” that “[c]onsumption of phosphatidylserine may
23 reduce the risk of cognitive dysfunction in the elderly.” Further, it is the FDA’s position that “there
24 is little scientific evidence supporting [the] claim” that “[c]onsumption of phosphatidylserine may
25 reduce the risk of dementia in the elderly.”
26

27 79. Even if there were evidence that soy-based phosphatidylserine in fact improves
28 brain function, which there is not, there is no scientific consensus and clinical studies have not
scientifically established that the amount of soy-based phosphatidylserine contained in Neuriva—

1 100mg—would be sufficient to provide any meaningful improvement in brain performance or that
2 taking Neuriva for 30 days, as advertised, can make any difference in brain function.

3
4 ***No Scientific or Clinical Evidence
Exists of Neuriva’s Effectiveness***

5 80. When a drug or supplement has more than one active ingredient, as Neuriva does,
6 all active ingredients must be studied in conjunction with one another in order to determine whether
7 the active ingredients in combination still provide the benefits stated in the specific claim or claims.
8 This is important because the active ingredients may diminish each other’s effectiveness or produce
9 unexpected consequences.
10

11 81. The FDA has emphasized that even if a manufacturer can point to a study
12 substantiating its claims as to one ingredient contained in its supplement, “[m]anufacturers should
13 be aware that other substances . . . included in the dietary supplement product itself might also
14 affect the dietary supplement’s performance or the study results.”¹¹

15 82. Neuriva has two active ingredients: coffee cherry extract and phosphatidylserine.
16 There is no valid scientific or clinical evidence that these two active ingredients, when combined,
17 improve brain function or are safe for concurrent consumption.
18

19 **Defendants’ Citation to Studies Purportedly Supporting Their Product Claims are**
20 **Deceptive and Misleading Statements**

21 83. On the Neuriva website, after repeatedly claiming that Neuriva’s ingredients are
22 scientifically and clinically proven, Defendants urge consumers “to do your research” and “[w]hen
23 choosing a supplement, look for products that have science backing their ingredients.” Defendants
24 then list the following five “[r]eferences” to scientific literature:¹²
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26

27 ¹¹ See https://www.fda.gov/regulatory-information/search-fda-guidance-documents/_guidance-industry-substantiation-dietary-supplement-claims-made-under-section-403r-6-federal-food.

28 ¹² See <https://www.schiffvitamins.com/blogs/health-wellness/ingredients-for-better-brain-health>.

1 **References:**

2 [1]Reyes-Izquierdo, T., Argumedo, R., Shu C., Nemzer B., & Pietrkowski, Z. (2013) Stimulatory Effect of Whole
3 Coffee Fruit Concentrate Powder on Plasma Levels of Total and Exosomal Brain-Derived Neurotrophic Factor in
Healthy

4 [2]Reyes-Izquierdo, T., Nemzer, B., Shu, C., Huynh, L., Argumedo, R., Keller, R., & Pietrkowski, Z. (2013).
5 Modulatory effect of coffee fruit extract on plasma levels of brain-derived neurotrophic factor in healthy subjects.
British Journal of Nutrition, 110(3), 420-425.

6 [3]Brambilla, R., Cunha, C., & Thomas, K.L. (2019). A simple role of BDNF in learning and memory? *Frontiers in
Molecular Neuroscience*, 3, 1.

7 [4]Crook T. Treatment of age-related decline in cognitive capacities The effects of phosphatidylserine. In: Katz, RM,
8 Goldman, eds. *Anti-Aging Medical Therapeutics*, 1998:20-28.

9 [5]Kim, H. Y., Huang, B. X., & Spector, A. A. (2014). Phosphatidylserine in the brain: metabolism and function.
10 *Progress in lipid research*, 56, 1-18.

11 84. By citing to purportedly scientific and/or clinical literature, Defendants intend to
12 communicate to consumers that Neuriva is scientifically and clinically proven by these five
13 scientific references to support brain performance. Defendants' implication that these references
14 support their claims is deceptive and misleading

15 85. The five cited references do not provide any scientific or clinical proof for
16 Defendants' claims. Rather, these references directly undermine Defendants' claim that Neuriva is
17 scientifically and clinically proven to improve brain function.

18 86. First, Defendants cite to a 2013 study conducted by employees of the company that
19 owns and sells Neurofactor (the coffee cherry extract) entitled "Stimulatory Effect of Whole Coffee
20 Fruit Concentrate Powder on Plasma Levels of Total and Exosomal Brain-Derived Neurotrophic
21 Factor in Healthy Subjects: An Acute Within-Subject Clinical Study."¹³ The conclusion reached in
22 this study was that "whole coffee fruit concentrate" increased BDNF in blood plasma. This study
23 did not show any increase in BDNF in the brain or provide any evidence that BDNF in blood plasma
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26 _____
¹³ See

27 https://www.researchgate.net/publication/260944035_Stimulatory_Effect_of_Whole_Coffee_Fruit_Concentrate_Powder_on_Plasma_Levels_of_Total_and_Exosomal_Brain-Derived_Neurotrophic_Factor_in_Healthy_Subjects_An_Acute_Within-Subject_Clinical_Study
28

1 could cross the blood-brain barrier and achieve concentrations in brain tissue that could improve
2 brain performance. The study also noted further research was necessary, which further shows that
3 Defendants' claim that coffee cherry extract is scientifically and clinically "proven" is false.¹⁴
4 Specifically, the studies' authors end the article with an explanation that "[f]urther studies are
5 needed" and that "it would be interesting to study the effect of [whole coffee fruit concentrate] on
6 BDNF-mediated brain functionalities such as cognitive activity..."¹⁵ In other words, the study
7 itself acknowledged that it did not address whether coffee cherry extract affects brain performance.
8 Accordingly, Defendants' citation of this study is deceptive and misleading.

10 87. Second, Defendants cite to a 2013 study entitled "Modulatory effect of coffee fruit
11 extract on plasma levels of brain-derived neurotrophic factor in healthy subjects," a study also
12 conducted by employees of the company that markets Neurofactor.¹⁶ The conclusion reached in
13 this study was again only that "whole coffee fruit concentrate" increased BDNF in blood plasma.
14 This study did not show any increase of BDNF in the brain or that an increase in blood plasma
15 BDNF results in enhanced BDNF delivery across the blood-brain barrier. Furthermore, this study
16 provided no data in support of the assertion that coffee fruit extract could provide beneficial effects
17 in the brain due to elevated BDNF plasma levels. This study also noted the need for "larger clinical
18 studies" simply "to support" a possibility that whole coffee fruit concentrate might be "used for
19 modulation of BDNF-dependent health conditions," without any reference to the brain.
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24 ¹⁴ *Id.*

25 ¹⁵ *Id.*

26 ¹⁶ *See*

27 https://www.cambridge.org/core/services/aop-cambridge-core/content/view/8B291E8D053143AA5A8D33B65496B034/S0007114512005338a.pdf/modulatory_effect_of_coffee_fruit_extract_on_plasma_levels_of_brainderived_neurotrophic_factor_in_healthy_subjects.pdf.

1 88. Third, Defendants cite to a 2019 literature review entitled “A simple role of BDNF
2 in learning and memory?”¹⁷ Far from supporting Defendants’ claim that Neuriva’s active
3 ingredients when orally ingested are scientifically and clinically proven to improve brain
4 performance, this review notes that “[l]ack of a precise knowledge about the mechanisms by which
5 BDNF influences higher cognitive functions and complex behaviors may constitute a severe
6 limitation in the possibility to devise BDNF-based therapeutics for human disorders of the CNS.”
7 Nothing in this recent review supports Defendants’ claim that coffee cherry extract (or Neurofactor)
8 can increase BDNF in the brain or affect brain performance.

10 89. Fourth, Defendants cite to an article entitled “Treatment of age-related decline in
11 cognitive capacities: The effects of phosphatidylserine” contained in a 1998 book that is now out
12 of print. The results of this study have been described as controversial, involved phosphatidylserine
13 dosages three times larger than contained in Neuriva, and looked at only at a limited population.
14 This article does not support Defendants’ claim that plant-derived phosphatidylserine is clinically
15 proven to improve brain performance or that Neuriva can increase brain performance.

17 90. Fifth, Defendants cite to a 2014 literature review entitled “Phosphatidylserine in the
18 brain: metabolism and function.”¹⁸ This review establishes, contrary to Defendants’ claims, that it
19 is far from clear whether soy-based phosphatidylserine can increase brain performance:
20 “[E]xperimental evidence indicating that orally or intravenously administered PS actually alters
21 neuronal membrane properties is lacking. How the administered PS is transported in the plasma,
22 how much enters the brain, whether it is taken up intact, and whether it is incorporated into neurons
23 or glia are not known.... These issues will have to be investigated in order to obtain some
24 mechanistic insight into how dietary or intravenously administered PS supplements function to
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27 ¹⁷ See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2821174/>

28 ¹⁸ See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4258547/>

1 produce cognitive improvement.” This literature review shows that Defendants’ claims of
2 scientific and clinical proof regarding the ability of soy-based phosphatidylserine to affect brain
3 performance are deceptive and misleading.

4 91. The lack of scientific and clinical support for Defendants’ claims regarding Neuriva
5 is hardly surprising to anyone versed in the science. As the Global Council on Brain Health
6 emphasized in a Consensus Statement: “Very few supplements have been carefully studied for their
7 effect on brain health. For the handful that have been researched, several well-designed studies of
8 supplements for brain health found no benefit in people with normal nutrient levels. It’s unclear
9 whether people with nutritional deficiencies can benefit their brains by taking a supplement because
10 the research is inconclusive.”¹⁹

11
12
13 **Defendant RB’s Chief Scientific Officer Admits**
Defendants’ Marketing is Deceptive and Misleading

14 92. Defendants’ persistent and uniform marketing message is that Neuriva is
15 scientifically and clinically proven to improve brain performance as a matter of fact. This message
16 conveys to consumers that scientists have reached a consensus through clinical research that
17 Neuriva’s ingredients will improve consumers’ brain performance. This message is deceptive and
18 misleading as implicitly acknowledged by Defendant RB’s Chief Scientific Officer, Dr. Dirk
19 Hondmann.
20

21 93. In Defendants’ press release dated April 24, 2019,²⁰ Dr. Hondmann claims only that
22 “Neuriva’s ingredients are supported by clinical studies”—as opposed to being proven—and also
23 acknowledges that the Products need more testing: “But this is just the beginning – the team is
24 committed to continuing to advance the education and science even further.”
25

26
27 ¹⁹ Global Council on Brain Health at p. 4.

28 ²⁰ See <https://www.prnewswire.com/news-releases/its-time-to-brain-better-rb-launches-neuriva-a-dietary-supplement-and-holistic-approach-to-support-brain-health-300837523.html>.

1 94. In addition, in an interview published on May 6, 2019, shortly after Defendants first
2 began marketing Neuriva, Dr. Hondmann said with regard to Neuriva’s ability to improve brain
3 function: “There are several studies supporting the effectiveness of the ingredients in Neuriva.
4 While both ingredients have similar mechanisms of action we are eager to continue to invest in
5 clinical research of the individual components and investigate studies on the complete product.”²¹

6
7 95. Dr. Hondmann’s more limited claim that there are only studies “supporting” the
8 effectiveness of the ingredients in improving brain function is deceptive in and of itself and is also
9 an acknowledgement that the effectiveness of the Neuriva ingredients has not yet been proven.
10 Scientifically, the mere existence of studies “supporting” the effectiveness of an ingredient does
11 not “prove” that the ingredient is effective, although this distinction is not readily apparent to the
12 average consumer, particularly when bombarded with marketing and label claims of clinical and
13 scientific proof.
14

15 96. Dr. Hondmann further acknowledged that the effectiveness of the ingredients had
16 not yet been proven—contrary to Defendants’ uniform marketing claims—by stating that
17 Defendants needed to fund further research on the ingredients.

18 97. Dr. Hondmann also acknowledged that the effectiveness of Neuriva itself had not
19 been proven—contrary to the implications of Defendants’ uniform marketing claims—because
20 clinical research needs to be done on Neuriva itself.

21
22 98. By acknowledging the need for further research on Neuriva’s core ingredients and
23 on Neuriva itself, Defendant RB’s Chief Scientific Officer admitted that Neuriva does not have the
24 consensus of the scientific community necessary to state that Neuriva is scientifically or clinically
25 “proven” to improve brain performance.
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²¹ See <https://www.nutraingredients-usa.com/Article/2019/05/06/Reckitt-Benckiser-throws-hat-in-nootropic-ring-with-Neuriva-launch#>.

Impact of Defendants' Wrongful Conduct

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2 99. As the manufacturer and distributor of Neuriva, Defendants possess exclusive and
3 specialized knowledge regarding Neuriva's content and the effects of its ingredients as well as the
4 state of scientific and clinical research regarding Neuriva's ingredients. As a result, Defendants are
5 in a superior position to know whether Neuriva works as they claim in their marketing on the
6 Products' packages and labels.
7

8 100. Defendants knew, but failed to disclose, or should have known, that Neuriva is not
9 scientifically or clinically proven to improve brain performance as advertised because Neuriva itself
10 has not been studied.
11

12 101. Defendants knew, but failed to disclose, or should have known that coffee cherry
13 extract (or Neurofactor) has not been scientifically or clinically proven to improve brain
14 performance and that even if orally-ingested coffee cherry extract increases levels of BDNF in the
15 blood plasma, BDNF *cannot* cross the blood-brain barrier and impact brain performance.
16

17 102. Defendants knew, but failed to disclose, or should have known, that soy-based
18 phosphatidylserine is not scientifically or clinically proven to improve brain performance as
19 advertised; that very little research has been done on soy-based phosphatidylserine; that soy-based
20 phosphatidylserine is molecularly different than animal-derived phosphatidylserine; that the
21 overwhelming bulk of the research has been done on animal-derived phosphatidylserine rather than
22 soy-based phosphatidylserine; and that even if soy-based phosphatidylserine could have an impact
23 on brain function, it would not show any brain impact within 30 days as advertised.
24

25 103. Defendants knew, but failed to disclose, that their five references to scientific
26 literature do not support, and in several cases directly refute, Defendants' assertions that Neuriva
27 and its ingredients are scientifically and clinically proven.
28

1 104. Defendants knew, but failed to disclose, that some of their cited studies are funded
2 by those who have a direct financial incentive in producing positive results.

3 105. Defendants affirmatively represented that there was scientific and clinical proof for
4 Neuriva's improved brain performance claims when there is no scientific or clinical consensus
5 regarding those claims.
6

7 106. Plaintiff and the class members have been and will continue to be deceived or misled
8 by Defendants' false, misleading, and deceptive brain performance representations.

9 107. Defendants' brain impact representations and omissions were a material factor in
10 influencing Plaintiff's and the class members' decision to purchase Neuriva. In fact, the only
11 purpose for purchasing Neuriva is to obtain the represented brain performance benefits.
12

13 108. Defendants market Neuriva solely for use as a supplement that improves brain
14 performance. Defendants' conduct has injured Plaintiff and the class members because Defendants'
15 Neuriva cannot support or benefit brain performance as advertised and is worthless.

16 109. Had Plaintiff and the class members known the truth about Defendants' Neuriva
17 products, they would not have purchased Neuriva and would not have paid the prices they paid for
18 Neuriva.

19 110. Plaintiff and each class member were harmed by purchasing Defendants' Neuriva
20 because Neuriva is not capable of providing the claimed benefits to the brain. Plaintiff and each
21 class member lost money and property as a result of purchasing Defendants' ineffective and
22 worthless products.
23

24 111. Plaintiff and each class member did not realize the benefit of the bargain and their
25 expectations were not met. And Plaintiff and each class member paid substantially more than the
26 market value represented by the price bargained for.
27
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1 112. By use of its misleading marketing and labeling, Defendants created increased
2 market demand for Neuriva and increased their market share relative to what the demand for
3 Neuriva and share would have been had Defendants marketed and labeled Neuriva truthfully.

4 113. Plaintiff and the class members lost money as a result of Defendants'
5 misrepresentations in that they did not receive what they reasonably believed they were paying for
6 based upon the misrepresentations while Defendants realized a commensurate unearned gain
7 because they did not deliver to Plaintiff and the class members what Defendants led Plaintiff and
8 the class members to believe they would receive.

9
10 **FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF**

11 114. Plaintiff purchased Neuriva Plus on Amazon. Prior to purchasing Neuriva Plus,
12 Plaintiff was exposed to and saw and relied upon Defendants' materially misleading representations
13 via television commercials, the internet, the Neuriva website, on Amazon's website, and the
14 Neuriva packaging, including Defendants' claims that Neuriva's ingredients have been clinically
15 and scientifically proven and that Neuriva has the ability to improve brain performance.

16 115. Plaintiff experienced no improvement in his brain performance as a result of taking
17 Neuriva.

18 116. Plaintiff's decision to buy Neuriva was directly impacted and caused by the
19 materially misleading representations that Defendants made regarding Neuriva's ingredients being
20 clinically and scientifically proven and Neuriva's ability to improve brain performance.

21 117. Had Plaintiff known the truth about Defendants' materially misleading
22 representations and omissions, he would not have purchased Neuriva.

23 118. By purchasing Defendants' falsely advertised Products, Plaintiff suffered injury in
24 fact and lost money.

Class Action Allegations

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2 119. Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure,
3 Plaintiff brings this action on behalf of a proposed National Class, Multi-State Class, and California
4 Class defined as follows:
5

6 **National Class**

7 All persons residing in the United States who purchased Neuriva
8 Original and/or Neuriva Plus for personal use and not for resale.

9 **Multi-State Class**

10 All persons residing in the states listed below who purchased Neuriva
11 Original and/or Neuriva Plus for personal use and not for resale.

12 **California Class**

13 All persons residing in the state of California who purchased Neuriva
14 Original and/or Neuriva Plus for personal use and not for resale.

15 120. Excluded from the National Class, the Multi-State Class, the California Class
16 (referred to collectively in this section as “the Class”) are: Defendants, Defendants’ board members,
17 executive level officers, and attorneys, and immediate family members of any of the foregoing;
18 governmental entities; the Court, the Court’s immediate family, and staff; and any person who
19 timely and properly excludes himself or herself from the Class.
20

21 121. Plaintiff reserves the right to alter the Class definition as necessary to the full extent
22 allowed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court
23 for the Eastern District of California, and applicable precedent.

24 122. Certification of Plaintiff’s claims for class-wide treatment is appropriate because
25 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence that
26 individual Class members would use to prove those elements in individual actions alleging the same
27 claims.
28

Numerosity, Rule 23(a)(1)

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2 123. The size of the Class is so large that joinder of all Class members is impracticable.
3 Plaintiff believes there are thousands or more members in the California Class geographically
4 dispersed throughout the State of California and tens of thousands or more Nationwide and Multi-
5 State Class members outside of California.
6

7 *Existence and Predominance of Common Questions of Law and Fact,*
8 *Rule 23(a)(2), (b)(3)*

9 124. There are questions of law and fact common to the Class. These questions
10 predominate over any questions that affect only individual Class members. Common legal and
11 factual questions/issues include but are not limited to:

- 12 a. what representations Defendants have made regarding Neuriva over time;
13 b. the state of scientific and industry knowledge, including Defendants' knowledge,
14 regarding the ability of coffee cherry extract and/or plant-based phosphatidylserine
15 to improve brain performance;
16 c. whether Neuriva has any of the beneficial effects on brain performance that
17 Defendants claim;
18 d. whether Neuriva is scientifically or clinically proven to have any of the beneficial
19 effects on brain performance that Defendants claim;
20 e. whether Defendants' representations and omissions regarding Neuriva are false
21 and/or misleading;
22 f. whether Defendants have engaged in false and/or misleading advertising, marketing,
23 packaging, and labelling in connection with Neuriva;
24 g. whether Defendants knew or reasonably should have known that their
25 representations regarding Neuriva are false and misleading;
26 h. whether Defendants' conduct was knowing and willful;
27
28

- 1 i. whether the Class members have been injured and the proper measure of their
2 damages as a result of their injuries; and
3 j. whether the Class members are entitled to other appropriate remedies, including
4 corrective advertising and injunctive relief.
5

6 125. Defendants engaged in a common course of conduct in contravention of the laws
7 Plaintiff seeks to enforce individually and on behalf of the Class members. Similar or identical
8 violations of law, business practices, and injuries are involved. Individual questions, if any, pale by
9 comparison, in both quality and quantity, to the numerous common questions that predominate this
10 action. Moreover, the common questions will yield common answers that will substantially advance
11 the resolution of the case.
12

13 ***Typicality, Rule 23(a)(3)***

14 126. Plaintiff's claims are typical of the claims of the Class members because, among
15 other things, Defendants injured all Class members through the uniform misconduct described
16 herein; all Class members suffered injury due to Defendants' misrepresentations; and Plaintiff seeks
17 the same relief as the Class members.
18

19 127. There are no defenses available to Defendants that are unique to the named Plaintiff.
20

21 ***Adequacy of Representation, Rule 23(a)(4)***

22 128. Plaintiff is a fair and adequate representative of the Class because Plaintiff's
23 interests do not conflict with the Class members' interests. Plaintiff will prosecute this action
24 vigorously and is highly motivated to seek redress against Defendants. Furthermore, Plaintiff has
25 retained competent counsel who are experienced in class action and other complex litigation.
26 Plaintiff and Plaintiff's counsel are committed to prosecuting this action vigorously on behalf of
27 the Class and have the resources to do so. The interests of the Class members will be fairly and
28 adequately protected by Plaintiff and his counsel.

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Declaratory and Injunctive Relief, Rule 23(b)(2)

129. Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief with respect to the Class as a whole.

Superiority, Rule 23(b)(3):

130. The class action mechanism is superior to other available means for the fair and efficient adjudication of this controversy for reasons including but not limited to the following:

- a. The damages individual Class members have suffered are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendants’ misconduct.
- b. It would be virtually impossible for the Class members individually to redress effectively the wrongs done to them. Even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would unnecessarily increase the delay and expense to all parties and to the court system and presents a potential for inconsistent or contradictory rulings and judgments. By contrast, the class action device presents far fewer management difficulties, allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.
- c. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendants.

1 137. Plaintiff and the other Class members paid for a valueless product that is not capable
2 of conferring the benefits promised. While Plaintiff and the other Class members were harmed,
3 Defendants were unjustly enriched by their false representations and omissions. As a result,
4 Defendants' conduct is "unfair" as it offended an established public policy. Defendants engaged in
5 immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to
6 consumers.
7

8 138. Further, Plaintiff alleges violations of consumer protection, unfair competition, and
9 truth in advertising laws in California and other states, resulting in harm to consumers. Defendants'
10 acts and omissions violate and offend the public policy against engaging in false and misleading
11 advertising, unfair competition, and deceptive conduct towards consumers. This conduct
12 constitutes violations of the unfair prong of the Business & Professions Code § 17200, *et seq.*
13

14 139. Defendants violated the fraudulent prong of the UCL by, among other things,
15 making the false representations and omissions of material facts regarding Neuriva in their uniform
16 advertising, including the packaging and labeling, as set forth more fully herein. In fact, Neuriva is
17 not capable of conferring the brain performance benefits Defendants promised and Defendants
18 falsely claimed Neuriva was scientifically and clinically proven when Defendants have no such
19 proof.
20

21 140. Defendants' actions, claims, omissions, and misleading statements, as more fully set
22 forth above, were false, misleading, and/or likely to deceive the consuming public within the
23 meaning of Business & Professions Code § 17200 *et seq.*

24 141. Plaintiff and the members of the Class have in fact been deceived as a result of their
25 reliance on Defendants' material misrepresentations and omissions, which are described above.
26 Plaintiff and the Class acted reasonably when they purchased Neuriva based on their belief that
27 Defendants' representations were true and lawful.
28

1 142. Plaintiff and the Class members have suffered injury in fact and lost money as a
2 result of their purchases of Defendants' Neuriva Products and Defendants' unlawful, unfair, and
3 fraudulent practices.

4 143. Defendants knew, or should have known, that they have no scientific evidence for
5 their claims of definitive scientific and clinical proof as set forth above. Defendants further knew,
6 or should have known, that their material misrepresentations and omissions would be likely to
7 deceive and harm the consuming public and result in consumers making payments to Defendants
8 for Neuriva which is valueless and incapable of actually supporting, maintaining, improving, or
9 benefiting brain performance.
10

11 144. As a result of their deception, Defendants were unjustly enriched by receiving
12 payments from Plaintiff and the Class for Neuriva when it cannot perform as advertised and when
13 there is no scientific or clinical evidence to support Defendants' claims of definitive scientific and
14 clinical "proof."
15

16 145. Unless restrained and enjoined, Defendants will continue to engage in the unlawful,
17 unfair, and fraudulent conduct described herein. Accordingly, injunctive relief is appropriate.
18

19 146. Plaintiff, individually and on behalf of all others similarly situated, and on behalf of
20 the general public, seeks restitution from Defendants of all money obtained from Plaintiff and the
21 other members of the Class collected as a result of Defendants' unfair competition, an injunction
22 prohibiting Defendants from continuing and further engaging in their unlawful, unfair, and
23 fraudulent conduct, requiring corrective advertising, and awarding all other relief this Court deems
24 appropriate.
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COUNT II

**Violation of the California Consumers Legal Remedies Act (“CLRA”)
Cal. Civ. Code §§ 1750, *et seq.*
(On behalf of Plaintiff individually and on behalf of the California Class)**

147. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

148. Plaintiff and California Class Members are consumers who purchased Neuriva for personal, family, or household purposes. Plaintiff and the Class have been at all relevant times “consumers” within the meaning of the CLRA, Cal. Civ. Code § 1761(a), (c), and (d).

149. Defendants are “persons” and Neuriva Products are “goods” within the meaning of the CLRA, Cal. Civ. Code § 1761(a), (c), and (d).

150. Defendants’ sale and advertisement of Neuriva constitute “transactions” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

151. The CLRA declares as unlawful the following unfair methods of competition and unfair or deceptive acts or practices when undertaken by any person in a transaction intended to result, or which results in the sale of goods to any consumer:

- a. “Representing that goods . . . have . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have” Cal. Civ. Code § 1770(a)(5).
- b. “Representing that goods . . . are of a particular standard, quality or grade . . . if they are of another.” *Id.* (a)(7).
- c. “Advertising goods . . . with intent not to sell them as advertised.” *Id.* (a)(9).
- d. “Representing that [goods] have been supplied in accordance with a previous representation when [they have] not.” *Id.* (a)(16).

152. Defendants violated and continue to violate the CLRA by engaging in the practices prohibited by Cal. Civ. Code § 1770(a)(5), (7), (9), and (16), which were intended to result in, and did result in, the sale of Neuriva.

1 153. Defendants' foregoing acts and practices, including their deceptive and fraudulent
2 misrepresentations and omissions in the conduct of trade or commerce, were directed at consumers,
3 including Plaintiff and California Class Members.

4 154. Defendants' violations of the CLRA proximately caused injury in fact to Plaintiff
5 and the Class.

6 155. Plaintiff and the Class members purchased Defendants' Neuriva on the belief that
7 they would receive the advertised benefits to the brain from Neuriva. Indeed, no consumer would
8 purchase a brain health supplement unless he or she believed it was capable of providing
9 meaningful benefits to the brain.

10 156. Defendants' Neuriva, however, is worthless and cannot provide the advertised
11 benefits. Because Neuriva lacks any value, Plaintiff and each Class member was injured by the
12 mere fact of their purchase.

13 157. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on behalf of the
14 other members of the Class, seeks a Court order enjoining the above-described wrongful acts and
15 practices of Defendants.

16 158. Pursuant to Cal. Civ. Code 1782(a), Plaintiff has notified Defendants in writing sent
17 by certified mail of the particular violations of Section 1770 of the CLRA, which notification
18 demanded that Defendants rectify the problems associated with the actions detailed above and give
19 notice to all affected consumers of Defendants' intent to so act. If Defendants fail to take corrective
20 action within 30 days of receipt of Plaintiff's letter, Plaintiff will amend this complaint to include
21 a request for damages as permitted by Cal. Civ. Code § 1782(d).

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

COUNT III

**Violation of the California False Advertising Law (“FAL”)
Cal. Bus. & Prof. Code §§ 17500, *et seq.***

(On behalf of Plaintiff individually and on behalf of the California Class)

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3
4 160. Plaintiff repeats and realleges the allegations in the preceding paragraphs as if fully
5 set forth herein.

6 161. The FAL, in relevant party, states that “[i]t is unlawful for ... any corporation ... with
7 intent ... to dispose of ... personal property ... to induce the public to enter into any obligation
8 relating thereto, to make or disseminate or cause to be made or disseminated ... from this state
9 before the public in any state, in any newspaper, or other publication, or any advertising device, or
10 by public outcry or proclamation, or in any other manner or means whatever, including over the
11 Internet, any statement ... which is untrue or misleading, and which is known or which by the
12 exercise of reasonable care should be known, to be untrue or misleading[.]” Cal. Bus. & Prof. Code
13 § 17500.
14

15 162. The required intent is the intent to dispose of property, not the intent to mislead the
16 public in the disposition of such property.
17

18 163. Defendants violated the FAL by making the untrue or misleading representations
19 described above, including that Neuriva delivers the benefits Defendants claim and that its ability
20 to deliver such benefits has been scientifically and clinically proven when, in reality, no scientific
21 and clinical proof of Neuriva’s advertised benefits exists.

22 164. As a direct and proximate result of Defendants’ untrue and misleading advertising,
23 Plaintiff and the Class members have suffered injury in fact and have lost money.
24

25 165. Accordingly, Plaintiff requests that the Court order Defendants to restore the money
26 Defendants have received from Plaintiff and members of the Class, and that the Court enjoin
27 Defendants from continuing their unlawful practices, and engage in corrective advertising.
28

1 **Count IV**
2 **Unjust Enrichment**
3 **(On behalf of Plaintiff individually and behalf of the Nationwide Class and/or California**
4 **Class and/or the Multi-State Class)**

4 166. Plaintiff repeats and realleges the allegations in the preceding paragraphs as if fully
5 set forth herein.

6 167. Plaintiff and Class Members conferred a monetary benefit on Defendants when they
7 purchased Neuriva.

8 168. By their wrongful acts and omissions described within this Complaint, including the
9 deceptive marketing, packaging, labeling, distribution, and sale of the Neuriva Products as
10 scientifically and clinically proven to improve brain performance, Defendants were unjustly
11 enriched at the expense of Plaintiff and Class Members.

12 169. Plaintiff and Class Members' detriment and Defendants' enrichment were related to
13 and flowed from the wrongful conduct challenged in this Complaint.

14 170. Defendants have profited from their unlawful, unfair, misleading, and deceptive
15 practices at the expense of Plaintiff and Class Members under circumstances in which it would be
16 unjust for Defendants to be permitted to retain the benefit. It would be inequitable for Defendants
17 to retain the profits, benefits, and other compensation obtained from their wrongful conduct as
18 described herein in connection with the deceptive marketing, packaging, labeling, distribution, and
19 sale of Neuriva.

20 171. Plaintiff and Class Members have been damaged as a direct and proximate result of
21 Defendants' unjust enrichment because they would not have purchased Neuriva had they known
22 that it was not scientifically and clinically proven to improve brain performance.

23 172. Defendants knew and intended that Plaintiff and Class Members would make
24 payments for Neuriva based on the belief that Neuriva was scientifically and clinically proven to
25 improve brain performance, as represented by Defendants in advertising and marketing, on
26

1 Defendants' website, and on the labels and packaging. It is inequitable for Defendants to retain the
2 benefit of payments obtained through false and misleading representations.

3 173. Plaintiff and Class Members are entitled to recover from Defendants all amounts
4 wrongfully collected and improperly retained by Defendants.

5 174. When required, Plaintiff and Class Members are in privity with Defendants because
6 Defendants' sale of Neuriva was either direct or through authorized sellers. Purchase through
7 authorized sellers is sufficient to create such privity because such authorized sellers are Defendants'
8 agents for the purpose of the sale of Neuriva.

9 175. As a direct and proximate result of Defendants' wrongful conduct and unjust
10 enrichment, Plaintiff and Class Members are entitled to restitution of, disgorgement of, and/or
11 imposition of a constructive trust upon all profits, benefits, and other compensation obtained by
12 Defendants for their inequitable and unlawful conduct.

13
14
15 **COUNT V**
16 **Violation of Various Consumer Protection Laws**
17 **(On Behalf of the Multi-State Class)**

18 176. Plaintiff repeats and realleges the allegations in the preceding paragraphs as if fully
19 set forth herein.

20 177. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices
21 in their marketing, advertising, and labeling of Neuriva.

22 178. Had Defendants not engaged in the false and deceptive conduct described above,
23 Plaintiff and the Class members would not have purchased Neuriva.

24 179. Defendants' false and deceptive representations and material omissions to
25 consumers and the public, including Plaintiff, constituted unfair and deceptive acts and practices in
26 violation of the state consumer protection statutes listed below:
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- a. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. § 45.50.471, et seq.;
- b. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44-1522, et seq.;
- c. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4-88-101, et seq.;
- d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6-1-105, et seq.;
- e. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 2-1 10a, et seq.;
- f. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code §§ 2511, et seq. and 2531, et seq.
- g. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28-3901, et seq.;
- h. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201 et seq.;
- i. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480-1, et seq.;
- j. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48-601, et seq.;
- k. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS §505/1, et seq.;
- l. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, et seq.;

- 1 m. Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Ky. Rev. Stat. § 367.170, et seq.;
- 3 n. Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of La. Rev. Stat. § 51:1401, et seq.;
- 5 o. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Md. Com. Law Code § 13-101, et seq.;
- 7 p. Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Mich. Comp. Laws Ann. § 445.90 1, et seq.;
- 9 q. Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Minn. Stat. §§ 325D.43, et seq.; 325 F.67, et seq.; and
11 325F.68 et seq.;
- 12 r. Defendants have engaged in unfair competition or unfair or deceptive acts or
13 practices in violation of Vernon’s Ann. Missouri Stat. § 407.010, et seq.;
- 14 s. Defendants have engaged in unfair competition or unfair or deceptive acts or
15 practices in violation of MT Code § 30-14-101 et seq.;
- 16 t. Defendants have engaged in unfair competition or unfair or deceptive acts or
17 practices in violation of Neb. Rev. Stat. § 59-1601, et seq.;
- 18 u. Defendants have engaged in unfair competition or unfair or deceptive acts or
19 practices in violation of Nev. Rev. Stat. Ann. § 598.0903, et seq.;
- 20 v. Defendants have engaged in unfair competition or unfair or deceptive acts or
21 practices in violation of N.H. Rev. Stat. § 358-A:1, et seq.;
- 22 w. Defendants have engaged in unfair competition or unfair or deceptive acts or
23 practices in violation of N.J. Rev. Stat. § 56:8-1, et seq.;
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- 1 x. Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of N.M. Stat. § 57-12-1, et seq.;
- 3 y. Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of N.Y. Gen. Bus. Law §§ 349 et seq. and 350-e, et seq.;
- 5 z. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of N.D. Cent. Code §§ 51-12-01, et seq., and 51-15-01, et seq.;
- 7
8 aa. Defendants have engaged in unfair competition or unfair or deceptive acts or
9 practices in violation of Okla. Stat. § 15 751, et seq.;
- 10 bb. Defendants have engaged in unfair competition or unfair or deceptive acts or
11 practices in violation of Or. Rev. Stat. § 6464.605, et seq.;
- 12 cc. Defendants have engaged in unfair competition or unfair or deceptive acts or
13 practices in violation of 73 Pa. Stat. § 201-1, et seq.;
- 14 dd. Defendants have engaged in unfair competition or unfair or deceptive acts or
15 practices in violation of R.I. Gen. Laws. § 6-13.1-1, et seq.;
- 16 ee. Defendants have engaged in unfair competition or unfair or deceptive acts or
17 practices in violation of S.C. Code Laws § 39-5-10, et seq.;
- 18 ff. Defendants have engaged in unfair competition or unfair or deceptive acts or
19 practices in violation of S.D. Codified Laws § 37-24-1, et seq.;
- 20 gg. Defendants have engaged in unfair competition or unfair or deceptive acts or
21 practices in violation of Tenn. Code Ann. § 47-18-101, et seq.;
- 22 hh. Defendants have engaged in unfair competition or unfair or deceptive acts or
23 practices in violation of Utah Code Ann. § 13-11-1, et seq.;
- 24 ii. Defendants have engaged in unfair competition or unfair or deceptive acts or
25 practices in violation of 9 Vt. § 2451, et seq.;
- 26
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1 1. Declaring that this action is a proper class action, certifying the Classes as requested
2 herein, designating Plaintiff as class representative, and appointing the undersigned counsel as class
3 counsel;

4 2. Ordering restitution and disgorgement of all profits and unjust enrichment that
5 Defendants obtained from Plaintiff and the Class members as a result of Defendants' unlawful,
6 unfair, and fraudulent business practices;

7 3. Ordering injunctive relief as permitted by law or equity, including enjoining
8 Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to
9 engage in a corrective advertising campaign;

10 4. Ordering damages for Plaintiff and the Class members;

11 5. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff and other
12 members of the Class;

13 6. Ordering Defendants to pay both pre- and post-judgment interest on any amounts
14 awarded; and

15 7. Ordering such other and further relief as may be just and proper.
16
17
18

19 Dated: June 19, 2020

Respectfully submitted,

20 By: /s/Alex R. Straus

21 Alex R. Straus (SBN 321366)
22 **GREG COLEMAN LAW PC**
23 16748 McCormick Street
24 Los Angeles, CA 91436
25 T: 917-471-1894
26 alex@gregcolemanlaw.com

27 Adam A. Edwards*
28 Rachel Soffin*
Jonathan B. Cohen*
William A. Ladnier (SBN 330334)
GREG COLEMAN LAW PC
First Tennessee Plaza

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800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Telephone: (865) 247-0080
Facsimile: (865) 522-0049
adam@gregcolemanlaw.com
rachel@gregcolemanlaw.com
jonathan@gregcolemanlaw.com
will@gregcolemanlaw.com

Daniel K. Bryson*
Martha A. Geer*
Patrick M. Wallace*
WHITFIELD BRYSON LLP
900 West Morgan Street
Raleigh, NC 27603
Telephone: (919) 600-5000
Facsimile: 919-600-5035
dan@whitfieldbryson.com
martha@whitfieldbryson.com
pat@whitfieldbryson.com

Matthew D. Schultz*
**LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY &
PROCTOR, PA**
316 S. Baylen St., Suite 600
Pensacola, FL 32502
Telephone: (850) 435-7140
Facsimile: (850) 436-6140
mschultz@levinlaw.com

Nick Suciu*
BARBAT, MANSOUR, & SUCIU PLLC
1644 Bracken Rd.
Bloomfield Hills, MI 48302
Telephone:(313) 303-3472
nicksuciu@bmslawyers.com

*Applications *pro hac vice* to be submitted

Attorneys for Plaintiff and the Class

EXHIBIT A

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF CALIFORNIA

3 THOMAS J. MATTHEWS, *individually*
4 *and on behalf of all others similarly*
5 *situated,*

Case No. _____

6 Plaintiff,

7 v.

8 RECKITT BENCKISER LLC and
9 RB HEALTH (US) LLC,

10 Defendants.

11 **DECLARATION OF THOMAS MATTHEWS**

12 I, Thomas J. Matthews, declare as follows:

13 1. I am a named plaintiff in the above-captioned litigation.

14 2. I have personal knowledge of the matters set forth below except to those matters
15 stated herein which are based on information and belief, which matters I believe to be true.

16 3. If called as a witness I could and would competently testify to the matters included
17 herein.

18 4. I reside in Modesto, California.

19 5. I am informed and believe that venue is proper in this Court under California Civil
20 Code 1780(d) because the Defendants are doing business in this District, and a substantial portion
21 of the transactions at issue occurred in this District.

22 I declare under penalty of perjury under the laws of California and the United States that the
23 foregoing is true and correct and that this declaration was executed on June 19, 2020 in Modesto,
24 California.

25 Thomas J. Matthews
26 Thomas J. Matthews (Jun 19, 2020 09:44 PDT)

27 Thomas J. Matthews
28

Matthews - CLRA Venue Declaration

Final Audit Report

2020-06-19

Created:	2020-06-19
By:	Jordon Crowe (jordon@whitfieldbryson.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAktyQADiQS7-x3XyJ4rbKVzBiZ3OVWuUc

"Matthews - CLRA Venue Declaration" History

-  Document created by Jordon Crowe (jordon@whitfieldbryson.com)
2020-06-19 - 4:41:35 PM GMT- IP address: 107.13.160.42
-  Document emailed to Thomas J Matthews (2myjm@comcast.net) for signature
2020-06-19 - 4:42:36 PM GMT
-  Email viewed by Thomas J Matthews (2myjm@comcast.net)
2020-06-19 - 4:42:59 PM GMT- IP address: 73.90.176.81
-  Document e-signed by Thomas J Matthews (2myjm@comcast.net)
Signature Date: 2020-06-19 - 4:44:27 PM GMT - Time Source: server- IP address: 73.90.176.81
-  Signed document emailed to Thomas J Matthews (2myjm@comcast.net), martha@whitfieldbryson.com and Jordon Crowe (jordon@whitfieldbryson.com)
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THOMAS J. MATTHEWS, on Behalf of Himself and Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff STANISLAUS (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Alex R. Straus GREG COLEMAN LAW PC 16748 McCormick Street, Los Angeles, CA 91436

DEFENDANTS

RECKITT BENCKISER LLC and RB HEALTH (US) LLC,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)

Brief description of cause: False advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 06/19/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Alex R. Straus

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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Case 2:20-at-00603 Document 1-2 Filed 06/19/20 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Neuriva Makers Have No Scientific, Clinical Proof Supplement Improves Brain Performance](#)
