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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PAIGE PETKEVICIUS, PETER  
RIPLEY on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

NBTY, Inc., a Delaware Corporation;  
NATURE'S BOUNTY, INC., a New  
York Corporation; REXALL  
SUNDOWN, INC., a Florida  
Corporation,

Defendants.

Case No. '17CV1152 JLS BGS

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF UNFAIR  
COMPETITION LAW, Business  
and Professions Code § 17200, *et*  
*seq.*;
2. VIOLATION OF UNFAIR  
COMPETITION LAW, Business  
and Professions Code § 17200, *et*  
*seq.*;
3. VIOLATION OF UNFAIR  
COMPETITION LAW, Business  
and Professions Code § 17200, *et*

*seq.*;

- 4. FALSE AND MISLEADING ADVERTISING, Business and Professions Code § 17500, *et seq.*;
- 5. VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT, Civil Code § 1750, *et seq.*;
- 6. BREACH OF CALIFORNIA EXPRESS WARRANTY;
- 7. VIOLATION OF NEW YORK GENERAL BUSINESS LAW, N.Y. Gen. Bus. Law § 349;
- 8. VIOLATION OF NEW YORK GENERAL BUSINESS LAW, N.Y. Gen. Bus. Law § 350; and
- 9. BREACH OF CALIFORNIA EXPRESS WARRANTY.

**DEMAND FOR JURY TRIAL**

Plaintiff Paige Petkevicius and Plaintiff Peter Ripley, individually and on behalf of all others similarly situated (hereinafter collectively “Plaintiffs” or the “Class”), bring this consumer class action against NBTY, Inc. (“NBTY”), Nature’s Bounty, Inc. (“Nature’s Bounty”), and Rexall Sundown, Inc. (“Sundown”) (hereinafter collectively “Defendants”), for unlawful, unfair, and deceptive business practices in violation of California Business & Professions Code Section 17200 *et seq.*, California Business & Professions Code Section 17500 *et seq.*, California Civil Code Section 1750 *et seq.*, Breach of California Express Warranty, violation of New York’s General Business Law Sections 349 & 3505, and Breach of New York’s Express Warranty and allege as follows:

**NATURE OF THE ACTION**

1  
2 1. Defendants distribute, market and sell:

- 3 a. "Nature's Bounty Double Strength Standardized Extract Ginkgo  
4 Biloba 120 mg" (100 Capsules);  
5 b. "Nature's Bounty Standardized Strength Ginkgo Biloba 60 mg"  
6 (200 Capsules);  
7 c. "Nature's Bounty Standardized Strength Ginkgo Biloba 60 mg"  
8 (60 Tablets); and  
9 d. "Nature's Bounty Whole Herb Ginkgo Biloba 400 mg plus 60  
10 mg Standardized Extract" (120 Tablets)

11 (collectively, "Nature's Bounty Products").

12 2. Additionally, Defendants distribute, market and sell:

- 13 a. "Sundown Naturals Ginkgo Biloba 60 mg" (200 Tablets);  
14 b. "Sundown Naturals Ginkgo Biloba 60 mg" (120 Tablets); and  
15 c. "Sundown Naturals Ginkgo Biloba 60 mg" (100 Tablets).

16 (collectively, "Sundown Naturals Products").

17 3. Defendants represent that the primary active ingredient in the Nature's  
18 Bounty and Sundown Naturals Products (collectively, the "Ginkgo biloba  
19 Products") is Ginkgo biloba extract.

20 4. Defendants advertise and market the Ginkgo biloba Product and their  
21 active ingredients as purportedly providing a variety of health benefits and relief  
22 from various symptoms. Specifically, through an extensive and uniform nationwide  
23 advertising campaign, Defendants make the following representations and  
24 warranties on the Ginkgo biloba Products' labels:

- 25 • "Supports Healthy Brain Function and Circulation"  
26 • "Supports Healthy Brain Function"  
27 • "Promotes Healthy Brain Function & Circulation"

- 1 • "helps support memory, especially occasional mild memory problems
- 2 associated with aging"
- 3 • "Clinically Studied Dosage for Brain Function"
- 4 • "Helps Support Mental Alertness"
- 5 • ". . . Ginkgo helps improve memory, *especially occasional mild memory*
- 6 *problems associated with aging*"
- 7 • "Promotes Healthy Brain Function" and
- 8 • "Helps Support Mental Alertness"

9 See Exs. A-G.

10 5. However, to the detriment of consumers, all available, reliable,  
11 scientific evidence demonstrates that the Ginkgo biloba Products have no efficacy  
12 at all, are ineffective in the improvement of cognitive health, and provide no benefits  
13 related to increasing the memory and healthy functioning of consumers' brains.  
14 Numerous scientifically valid studies, performed by independent researchers and  
15 published in reputable medical journals, have been conducted on the Ginkgo biloba  
16 Products, and they have universally demonstrated that the supplement has absolutely  
17 no scientific value in the improvement of brain function, treatment of memory  
18 problems or cognitive health.

19 6. Defendants convey their uniform, deceptive message to consumers  
20 through a variety of media including their website and online promotional materials,  
21 and at the point of purchase, on the Ginkgo biloba Products' packaging/labeling,  
22 where it cannot be missed by consumers. The only reason a consumer would  
23 purchase the Ginkgo biloba Products is to obtain the advertised cognitive health  
24 benefits and brain function support, which the Ginkgo biloba Products do not  
25 provide.

26 7. As a result of Defendants' deceptive advertising and false claims  
27 regarding the efficacy of the Ginkgo biloba Products, Plaintiffs and the proposed  
28

1 class have purchased products which do not perform as represented, and they have  
2 been harmed in the amount they paid for the Ginkgo biloba Products.

3 8. Plaintiffs bring this action on behalf of themselves and other similarly  
4 situated consumers who have purchased Defendants' Ginkgo biloba Products, to halt  
5 the dissemination of this false, misleading and deceptive advertising message; to  
6 correct the false and misleading perception Defendants have created and fostered in  
7 the minds of consumers; and to obtain redress for those who have purchased  
8 Defendants' Ginkgo biloba Products. Based on violations of California and New  
9 York state laws and Defendants' breaches of express warranties, Plaintiffs seek  
10 monetary relief for consumers who purchased the Ginkgo biloba Products.

11 **JURISDICTION**

12 9. This Court has subject matter jurisdiction under the Class Action  
13 Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving  
14 more than 100 class members; (2) Plaintiff Petkevicius is a citizen of the State of  
15 California, Plaintiff Ripley is a citizen of the State of New York, and Defendants are  
16 citizens of the States of Delaware, New York, and Florida; and (3) the amount in  
17 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

18 10. This Court has personal jurisdiction over Defendants because  
19 Defendants conduct business in California. Defendants have marketed, promoted,  
20 distributed, and sold the Ginkgo biloba Products in California, and Defendants have  
21 sufficient minimum contacts with this State and/or have sufficiently availed  
22 themselves of the markets in this State through their promotion, sales, distribution  
23 and marketing within this State to render the exercise of jurisdiction by this Court  
24 permissible.

25 **VENUE**

26 11. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
27 because a substantial part of the events or omissions giving rise to Plaintiffs' claims  
28

1 occurred while Plaintiff Petkevicius resided in this judicial district.

2 **PARTIES**

3 12. Plaintiff Paige Petkevicius is, and at all times relevant hereto was, an  
4 individual residing in San Diego County, California. Plaintiff Petkevicius purchased  
5 Nature's Bounty Products and Sundown Naturals Products in or about March 2014  
6 at the CVS pharmacy located at 8813 Via La Jolla Drive, La Jolla, California 92037.  
7 In doing so, Plaintiff Petkevicius relied upon Defendants' advertising and other  
8 promotional materials, including information on the Products' packaging,  
9 containing the misrepresentations alleged herein, including the claims that the  
10 Ginkgo biloba Products will promote, improve or support improved memory and  
11 brain functioning. Plaintiff Petkevicius consumed the Ginkgo biloba Products as  
12 directed by Defendants and did not receive any of the advertised benefits associated  
13 with the Ginkgo biloba Products. She would not have purchased the Ginkgo Biloba  
14 Products had she known Defendants' representations were false.

15 13. Plaintiff Peter Ripley is, and at all times relevant hereto was, an  
16 individual residing in Brooklyn, New York. Plaintiff Ripley most recently purchased  
17 Nature's Bounty Products in or about early May of 2017 from Amazon.com. In  
18 doing so, Plaintiff Ripley relied upon advertising and other promotional materials,  
19 including information on the Nature's Bounty Products' packaging, containing the  
20 misrepresentations alleged herein, including the claims the Nature's Bounty  
21 Products will promote, improve or support improved memory and brain functioning.  
22 Plaintiff Ripley consumed the Nature's Bounty Products as directed by Defendants  
23 and did not receive any of the advertised benefits associated with the Nature's  
24 Bounty Products. He would not have purchased the Nature's Bounty Products had  
25 he known Defendants' representations were false.

26 14. Defendant NBTY, Inc. is a corporation organized under the laws of  
27 Delaware with its principal place of business at 2100 Smithtown Avenue,  
28

1 Ronkonkoma, New York. NBTY manufactures vitamins and dietary supplements,  
2 including the Gingko Biloba Products, and markets its products under various name  
3 brands. NBTY created and/or authorized the false, misleading and deceptive  
4 advertisements and packaging of the Gingko Biloba Products. NBTY, directly and  
5 through its agents, has substantial contacts with and receives substantial benefits and  
6 income from and through the States of California and New York.

7 15. Defendant Nature's Bounty, Inc. ("Nature's Bounty") is a corporation  
8 organized under the laws of New York with its principal place of business at 2100  
9 Smithtown Avenue, Ronkonkoma, New York. Nature's Bounty manufactures the  
10 Nature's Bounty Products. Nature's Bounty created and/or authorized the false,  
11 misleading and deceptive advertisements and packaging of the Nature's Bounty  
12 Products. Nature's Bounty, directly and through its agents, has substantial contacts  
13 with and receives substantial benefits and income from and through the States of  
14 California and New York. On information and belief, Nature's Bounty is wholly  
15 owned by Defendant NBTY, Inc.

16 16. Defendant Rexall Sundown, Inc. ("Sundown") is a corporation  
17 organized under the laws of Florida with its principal place of business at 2100  
18 Smithtown Avenue, Ronkonkoma, New York. Sundown manufactures the Sundown  
19 Naturals Products. Sundown created and/or authorized the false, misleading and  
20 deceptive advertisements and packaging of the Sundown Naturals Products.  
21 Sundown, directly and through its agents, has substantial contacts with and receives  
22 substantial benefits and income from and through the States of California and New  
23 York. On information and belief, Sundown is wholly owned by Defendant NBTY,  
24 Inc.

25 17. Plaintiffs are informed and believe, and thus allege, that at all times  
26 herein mentioned, each of the Defendants was the agent, employee, representative,  
27 partner, joint venturer, and/or alter ego of the other Defendants and, in doing the  
28



1 things alleged herein, was acting within the course and scope of such agency,  
2 employment, or representation, on behalf of such partnership or joint venture, and/or  
3 as such alter ego, with the authority, permission, consent, and/or ratification of the  
4 other Defendants.

## 5 **SUBSTANTIVE ALLEGATIONS**

### 6 **A. Background**

7 18. Few things are more unnerving than memory lapses. According to a  
8 survey by the Marist Institute for Public Opinion, Alzheimer's is the most feared  
9 disease – more than cancer, stroke, heart disease or diabetes.<sup>1</sup>

10 19. A growing trend in the supplement industry is single ingredient dietary  
11 supplement products claiming to improve memory loss. Sales of these products have  
12 exploded in recent years due in large part to media reports of “miracle” memory loss  
13 and brain enhancing supplements.

14 20. Not surprisingly, this lucrative market has attracted a variety of  
15 hucksters seeking to “cash in” on America's fear of memory loss by hawking an  
16 array of products and services, many promising miraculous results.

17 21. Ginkgo biloba fossils date back 250 million years, and the use of  
18 Ginkgo biloba leaf extract as a folk medicine dates back centuries to traditional  
19 Chinese medicine. Today, Ginkgo biloba leaf extract is marketed in the United States  
20 as a dietary supplement, thereby escaping the United States Food and Drug  
21 Administration's (“FDA”) requirement for manufacturers to test the effectiveness of  
22 their products prior to their marketing and sale.

23 22. On information and belief, Defendants' market research shows that the  
24 number one reason consumers use Ginkgo biloba is for brain health, specifically for  
25

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26 <sup>1</sup> Marist Poll, Alzheimer's Most Feared Disease (Nov. 15, 2012), *available at*  
27 <http://maristpoll.marist.edu/1114-alzheimers-most-feared-disease/>.



1 memory and mental focus.

2 23. Defendants seek to take advantage of the public's desire for these  
3 "miracle" supplements by promising to elevate mental capacities.

4 24. Defendants manufacture, market and sell:

- 5 a. Nature's Bounty Ginkgo Biloba 120 mg (100 Capsules)
- 6 b. Nature's Bounty Ginkgo Biloba 60 mg (200 Capsules)
- 7 c. Nature's Bounty Ginkgo Biloba 60 mg (60 Tablets)
- 8 d. Nature's Bounty Ginkgo Biloba 400 mg plus 60 mg Standardized  
9 Extract (120 Tablets)
- 10 e. Sundown Naturals Ginkgo Biloba 60 mg (200 Tablets)
- 11 f. Sundown Naturals Ginkgo Biloba 60 mg (120 Tablets)
- 12 g. Sundown Naturals Ginkgo Biloba 60 mg (100 Tablets)

13 25. Defendants specifically target the elderly by claiming: "Ginkgo helps  
14 improve memory, especially occasional mild memory problems associated with  
15 aging." *See* Exs. A-G.

16 26. Unfortunately, the promise of enhanced mental acuity and prevention  
17 of memory loss is nothing but a sham.

18 27. Unbiased, randomized, double blind clinical human studies conclude  
19 that Ginkgo biloba supplements do not promote, improve, or support memory or  
20 cognitive function.

21 28. Throughout the liability period, as defined below, Defendants have  
22 engaged in advertising and marketing campaigns that utilize claims of improved  
23 memory and cognitive ability, conveying the message to consumers the Ginkgo  
24 biloba Products will provide health benefits, irrespective of whether the claims are  
25 factually and scientifically accurate.

26 29. As a result of these deceptive claims, Defendants sell hundreds of  
27 thousands of units of the Ginkgo biloba Products through stores such as Albertsons,  
28

1 Safeway, CVS Pharmacy, Walgreens, Whole Foods, and many other retail and on-  
2 line stores.

3 **B. Defendants’ Advertising and Marketing of the Products**

4 30. In the now ultra-competitive market for supplements, those who  
5 manufacture and sell such supplements, including Defendants, conduct extensive  
6 consumer research, upon which they base advertising claims they know will  
7 differentiate their products from others in the marketplace.

8 31. Upon information and belief, Defendants have expert knowledge of the  
9 consumer market for supplements and have designed coordinated, uniform  
10 advertising and marketing for the Ginkgo biloba Products using a variety of  
11 deceptive claims.

12 32. Since launching the Ginkgo biloba Products, Defendants have  
13 consistently conveyed the message to consumers throughout the United States,  
14 including California and New York, that the Ginkgo biloba Products provide  
15 cognitive health benefits, and/or memory benefits, and/or brain functioning support.

16 33. Defendants advertise their Nature’s Bounty Products will promote,  
17 improve or support memory and cognitive ability. Specifically:

18 a. Prior to 2012, the Nature’s Bounty Products’ labels contained the  
19 following representations:

- 20 i. “Promotes Healthy Brain Function & Circulation;”  
21 ii. “Helps Support Mental Alertness;” and  
22 iii. “Ginkgo helps improve memory, especially occasional  
23 mild memory problems associated with aging.”

24 b. From 2012 to 2015, the Nature’s Bounty Products’ labels  
25 contained the following representations:

- 26 i. “Supports Healthy Brain Function & Circulation;”  
27 ii. “Clinically Studied Dosage for Brain Function;” and  
28

1           iii. “Ginkgo helps support memory, especially occasional  
2           mild memory problems associated with aging.”

3           c. In 2016, Nature’s Bounty Ginkgo Biloba 60 mg (200 Capsules)  
4           Products’ labels were changed to state, “Supports Healthy Brain  
5           Function & Mental Alertness.”

6           d. In 2016, the Nature’s Bounty Ginkgo Biloba 120 mg (100  
7           Capsules) Products’ labels were changed to state, “Supports  
8           Healthy Brain Function & Circulation.”

9 *See Exs. A-D.*

10           34. Defendants advertise their Sundown Naturals Products similarly.

11 Specifically:

12           a. As late as 2009, the Sundown Naturals Products’ labels  
13           contained the following representations:

14           i. “Promotes Healthy Brain Function;”

15           ii. “Ginkgo helps improve memory, especially occasional  
16           mild memory problems associated with aging.”

17           b. From 2010 to 2015, the Sundown Naturals Products’ labels  
18           contained the following representations:

19           i. “Supports Healthy Brain Function;” and

20           ii. “Ginkgo helps support memory, especially occasional  
21           mild memory problems associated with aging.”

22           c. In 2016, all of the Sundown Naturals Products’ labels stated,  
23           “Supports Healthy Brain Function,” while the Sundown Naturals  
24           Ginkgo Biloba 60 mg (100 Tablets) also stated “Helps support  
25           memory, especially occasional mild memory problems  
26           associated with aging.”

27 *See Exs. E-G.*

1 35. The label on the bottle for Nature’s Bounty Ginkgo Biloba 120 mg (100  
2 Capsules) lists the sole active ingredient as “Ginkgo Biloba Extract (Ginkgo biloba)  
3 (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 28mg).” *See Ex.*  
4 *A.*

5 36. The label on the bottle for Nature’s Bounty Ginkgo Biloba 60 mg (200  
6 Capsules) lists the sole active ingredient as “Ginkgo Biloba Extract (Ginkgo biloba)  
7 (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4mg).” *See Ex.*  
8 *B.*

9 37. The label on the bottle for Nature’s Bounty Ginkgo Biloba 60 mg (60  
10 Tablets) lists the sole active ingredient as “Ginkgo Biloba Extract (Ginkgo biloba)  
11 (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4mg).” *See Ex.*  
12 *C.*

13 38. The label on the bottle for Nature’s Bounty Ginkgo Biloba 400 mg plus  
14 60mg Standardized Extract (120 Tablets) lists the active ingredients as “Ginkgo  
15 Biloba Extract (Ginkgo biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone  
16 Glycosides, 14.4mg)” and “Ginkgo Biloba (Ginkgo Biloba)(leaf).” *See Ex. D.*

17 39. The label on the bottle for Sundown Naturals Ginkgo Biloba 60 mg  
18 (200 Tablets) lists the sole active ingredient as “Ginkgo Biloba Extract (Ginkgo  
19 biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4mg).”  
20 *See Ex. E.*

21 40. The label on the bottle for Sundown Naturals Ginkgo Biloba 60 mg  
22 (120 Tablets) lists the sole active ingredient as “Ginkgo Biloba Extract (Ginkgo  
23 biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4mg).”  
24 *See Ex. F.*

25 41. The label on the bottle for Sundown Naturals Ginkgo Biloba 60 mg  
26 (100 Tablets) lists the sole active ingredient as “Ginkgo Biloba Extract (Ginkgo  
27 biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4mg).”  
28

1 *See* Ex. G.

2 42. Plaintiffs and members of the Class have been, and will continue to be,  
3 deceived or misled by Defendants' deceptive advertising claims. Each Class member  
4 purchased and consumed the Ginkgo biloba Products during the liability period and  
5 in doing so, read and considered the advertising claims on the Ginkgo biloba  
6 Products' labels and based their decisions to purchase the Ginkgo biloba Products  
7 on the advertising claims. Defendants' advertising claims were a material factor, and  
8 in fact, the only factor in influencing Plaintiffs' decisions to purchase and use the  
9 Ginkgo biloba Products. Plaintiffs and the Class members would not have purchased  
10 the Ginkgo biloba Products had they known that they did not provide the improved  
11 memory and brain function support as advertised.

12 43. Unfortunately for Plaintiffs and Class members, Defendants'  
13 advertising claims, in their entirety, are false and deceptive.

14 **C. Defendants' Advertising Claims for the Ginkgo biloba Products**  
15 **are False and Deceptive**

16 44. Despite Defendants' foregoing representations and warranties to the  
17 contrary, Ginkgo biloba does not promote, improve or support memory or mental  
18 acuity.

19 45. Independent scientific studies confirm that the advertising claims that  
20 Defendants made on the Ginkgo biloba Products' labels, and that Plaintiffs and the  
21 members of the Class relied upon in making their purchases, were false and  
22 misleading. Despite knowledge of these studies, Defendants continued to make the  
23 advertising claims, misleading Plaintiffs and members of the Class into believing the  
24 Ginkgo biloba Products had an efficacy and would provide the benefits described in  
25 their advertising.

26 46. Defendants knew or should have known that the Ginkgo biloba extract  
27 present in the Ginkgo biloba Products does not provide any of the warranted benefits  
28

1 as represented by Defendants' Ginkgo biloba Products' labels. To the contrary,  
2 competent and reliable scientific evidence has repeatedly demonstrated Ginkgo  
3 biloba supplements fail to show any improvement in mental cognition.

4 47. Three separate meta-studies on Ginkgo biloba published in 2002, 2007,  
5 and 2012 evaluated all known published credible human scientific studies.<sup>2</sup> The  
6 studies uniformly conclude Ginkgo biloba supplements have no positive effect on  
7 cognitive functions in healthy individuals.<sup>3</sup>

8 a. In 2002, PH Canter and E. Ernst published "Ginkgo biloba: a  
9 smart drug? A systematic review of controlled trials of the  
10 cognitive effects of ginkgo biloba extracts in healthy people" in  
11 the University of Exeter Psychopharmacology Bulletin.<sup>4</sup> The  
12 meta-study evaluates data in six computerized databases for  
13 placebo-controlled, double-blind trials of the effect of  
14 standardized Ginkgo biloba extracts on cognitive function in  
15 healthy subjects. The study concludes "[t]he use of Ginkgo  
16 biloba as a "smart" drug cannot be recommended on the basis of  
17 the evidence available to date, and there is a particular need for  
18 further long-term trials with healthy subjects."<sup>5</sup>

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19  
20 <sup>2</sup> A meta-analysis contrasts and combines results from different studies in an  
21 attempt to identify patterns among study results, sources of disagreement, and  
22 other relationships between the studies.

23 <sup>3</sup> K. R. Laws et al., UK, *Is Ginkgo biloba a cognitive enhancer in healthy*  
*individuals? A meta-analysis*, 27 *Human Psychopharmacology* 527, (2012),  
24 available at <http://dx.doi.org/10.1002/hup.2259>.

25 <sup>4</sup> PH Canter & E. Ernst, *Ginkgo biloba: a smart drug? A systematic review of*  
*controlled trials of the cognitive effects of ginkgo biloba extracts in healthy people*,  
26 36 *Psychopharmacol Bulletin* 108, (2002), available at  
<http://www.ncbi.nlm.nih.gov/pubmed/12473969>.

27 <sup>5</sup> *Id.*

- 1           b.     In 2007, PH Canter and E. Ernst published an update to their  
2                     2002 study titled, “Ginkgo biloba is not a smart drug: an updated  
3                     systematic review of randomized clinical trials testing the  
4                     nootropic effects of G. biloba extracts in healthy people.”<sup>6</sup> The  
5                     2007 meta-study reviews available research added to the then-  
6                     existing data set from the previous 2002 meta-study. Canter and  
7                     Ernst conclude; “[t]he collated evidence from 15 randomized  
8                     clinical trials provides no convincing evidence that G. biloba  
9                     extracts ingested either as a single dose or over a longer period  
10                    has a positive effect on any aspect of cognitive performance in  
11                    healthy people under the age of 60 years.”<sup>7</sup>
- 12           c.     In 2012, K. Laws, H. Sweetnam and T. Kondel published a meta-  
13                    study titled “*Is Ginkgo biloba a cognitive enhancer in healthy*  
14                    *individuals? A meta-analysis*” in the journal of Human  
15                    Psychopharmacology at the University of Hertfordshire, UK.<sup>8</sup>  
16                    This meta-study, similar to the aforementioned meta-studies of  
17                    2002 and 2007, gathered data from all relevant credible studies  
18                    on Ginkgo biloba’s effect as a cognitive enhancer. Here, the  
19                    authors emphasize, “[g]iven that G. biloba is marketed  
20                    worldwide as a memory enhancer or touted to at least ‘maintain  
21

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22  
23 <sup>6</sup> PH Canter & E. Ernst, *Ginkgo biloba is not a smart drug: an updated systematic*  
24 *review of randomized clinical trials testing the nootropic effects of G. biloba*  
25 *extracts in healthy people*, 22 Human Psychopharmacology 265, (2007), available at  
<http://dx.doi.org/10.1002/hup.843>.

26 <sup>7</sup> *Id.* at 277.

27 <sup>8</sup> Laws, et al., *supra* note 5.



1 memory’, it is crucial to establish the validity for such claims.”<sup>9</sup>  
2 This meta-study concludes “[g]. biloba has no significant impact  
3 on memory, executive function or attention with all effect sizes  
4 nonsignificant and effectively at zero.”<sup>10</sup> Further, “we found no  
5 evidence that G. biloba improves memory, executive or attention  
6 functioning in healthy individuals.”<sup>11</sup>

7 48. Overwhelmingly, the consensus of reliable scientific studies concludes  
8 Ginkgo biloba supplements do nothing to enhance or support memory or cognitive  
9 abilities in healthy adults.

10 a. A 2002 study conducted by P. Solomon, PhD and published in  
11 the Journal of the American Medical Association titled “*Ginkgo*  
12 *for Memory Enhancement*,” studied the effects of over-the-  
13 counter Ginkgo biloba products in 203 subjects in a six-week  
14 randomized, double-blind, placebo-controlled, parallel group  
15 trial.<sup>12</sup> Solomon and co-researchers conclude “[t]he results of this  
16 6-week study indicate that ginkgo did not facilitate performance  
17 on standard neuropsychological tests of learning, memory,  
18 attention and concentration or naming and verbal fluency in  
19 elderly adults without cognitive impairment.”<sup>13</sup> The authors  
20 found, “[t]he ginkgo group also did not differ from the control  
21

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22 <sup>9</sup> *Id.*

23 <sup>10</sup> *Id.*

24 <sup>11</sup> *Id.*

25 <sup>12</sup> P. R. Solomon et al., *Ginkgo for Memory Enhancement* 288 JAMA 835, (2002),  
available at

26 <http://jama.jamanetwork.com/article.aspx?articleid=195207>.

27 <sup>13</sup> *Id.*

1 group in terms of self-reported memory function or global rating  
2 by spouses, friends, and relatives. These data suggest that when  
3 taken following the manufacturer’s instructions, ginkgo provides  
4 no measurable benefit in memory or related cognitive function to  
5 adults with healthy cogitative function.”<sup>14</sup> Solomon notes,  
6 “[d]espite the manufacturer’s claims of improved memory in  
7 healthy adults, we were unable to identify any well-controlled  
8 studies that document this claim.”<sup>15</sup> Solomon further concludes  
9 “this study does not support the manufacture’s claims of the  
10 benefits of ginkgo on learning and memory.”<sup>16</sup>

11 b. In a 2002 article on the Cleveland Clinic Center for Continuing  
12 Education Pharmacotherapy Update, titled “*Ginkgo Biloba and*  
13 *Memory*,” the Department of Pharmacy observed, “[d]espite the  
14 lack of well-controlled studies to support the use of Ginkgo  
15 biloba leaf extract for prevention and treatment of memory  
16 impairment, ginkgo products continue to be heavily marketed  
17 and widely used.”<sup>17</sup> The article concludes “[t]he use of ginkgo  
18 biloba leaf extract for memory impairments marketed and  
19 targeted at the healthy adult that experiences forgetfulness.  
20 Currently, the claims that Ginkgo biloba has beneficial effects on  
21

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22  
23 <sup>14</sup> *Id.*

24 <sup>15</sup> *Id.*

25 <sup>16</sup> *Id.*

26 <sup>17</sup> A. Popa, Pharmacology Update, *Ginkgo Biloba and Memory*, available at  
27 [http://www.clevelandclinicmeded.com/medicalpubs/pharmacy/sep0ct02/ginkgo.ht](http://www.clevelandclinicmeded.com/medicalpubs/pharmacy/sep0ct02/ginkgo.htm)  
28 [m](http://www.clevelandclinicmeded.com/medicalpubs/pharmacy/sep0ct02/ginkgo.htm) (last visited Nov. 8, 2012).

1 learning and memory are not supported by the literature.”<sup>18</sup>

2 c. In 2009, the Journal of the American Medical Association  
3 published the largest study to date entitled “*Ginkgo biloba for*  
4 *preventing cognitive decline in older adults: a randomized*  
5 *trial.*”<sup>19</sup> The 8 year study included 3069 participants aged 72-96  
6 years. Researchers concluded that 240 mg of Ginkgo biloba  
7 extract did not result in less cognitive decline in older adults with  
8 normal cognition or with mild cognitive impairment than in the  
9 placebo control group.<sup>20</sup>

10 d. In the 2009 study “*Ginkgo biloba for cognitive impairment and*  
11 *dementia,*” researchers reviewed 36 trials, nine of which were six  
12 months long (2016 participants total).<sup>21</sup> In the more recent and  
13 more reliable trials, three out of four found no benefits for  
14 cognitive decline.<sup>22</sup> Researchers concluded that while Ginkgo  
15 biloba might be safe to ingest, “. . . evidence that [it] has  
16 predictable and clinically significant benefit for people with  
17 dementia or cognitive impairment is inconsistent and  
18 unreliable.”<sup>23</sup>

19 e. In 2013, the Support Care Cancer published “The use of Ginkgo  
20 biloba for the prevention of chemotherapy-related cognitive  
21

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22 <sup>18</sup> *Id.*

23 <sup>19</sup> B.E. Snitz et al, *Ginkgo biloba for preventing cognitive decline in older adults: a randomized trial*, 302 JAMA 2663 (2009).

24 <sup>20</sup> *Id.*

25 <sup>21</sup> Jacqueline Birks and John Grimley Evans, *Ginkgo biloba for cognitive impairment and dementia*, Cochrane Database Systematic Review, Jan. 21, 2009.

26 <sup>22</sup> *Id.*

27 <sup>23</sup> *Id.*

1 dysfunction in women receiving adjuvant treatment for breast  
2 cancer.”<sup>24</sup> Researchers found that in 166 women, 120 mg a day  
3 for up to 12 months did not provide any evidence that Ginkgo  
4 biloba can help prevent cognitive changes from chemotherapy.<sup>25</sup>

5 f. In 2014, the authors of “*Substances used and prevalence rates of*  
6 *pharmacological cognitive enhancement among healthy*  
7 *subjects*” studied 176 participants who ingested 120 mg daily of  
8 Ginkgo biloba over a six-month period.<sup>26</sup> The results indicated  
9 that there was no evidence that an average dose of Ginkgo biloba  
10 extract created any benefit in mild to moderate dementia.

11 49. To date, although there are some studies that purportedly support the  
12 notion that ingestion of Ginkgo biloba can provide cognitive health benefits, those  
13 studies suffer myriad fatal methodological deficiencies, including utilizing  
14 scientifically unreliable sample sizes, not utilizing scientifically sound testing  
15 procedures, and suffering from publication bias, i.e., the funding, publication or  
16 sponsorship of the study was provided by a party who stood to benefit from a positive  
17 finding. Or, alternatively, the studies used a larger supplementation of Ginkgo biloba  
18 than that provided by Defendants' suggested, or recommended consumption.

19 50. In contrast, Plaintiffs' allegations are based upon scientifically valid  
20 peer-reviewed studies, which have been published in independent, reputable  
21 scientific journals, and which conclusively demonstrate that the Ginkgo biloba  
22

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23 <sup>24</sup> Debra L. Barton et al., *The use of Ginkgo biloba for the prevention of*  
24 *chemotherapy-related cognitive dysfunction in women receiving adjuvant*  
*treatment for breast cancer*, 21 Support Care Cancer 1185 (2013).

25 <sup>25</sup> *Id.*

26 <sup>26</sup> AG Franke et al., *Substances used and prevalence rates of pharmacological*  
27 *cognitive enhancement among healthy subjects*, 264 Suppl 1, Eur. Arch Psychiatry  
28 Clin. Neurosci. 83-90 (2014).

1 Products do not provide the benefits advertised by Defendants and may even cause  
2 harm to consumers.

3 51. In addition to the lack of positive cognitive benefits, Ginkgo biloba may  
4 have negative carcinogenic effects. The National Toxicology Program ("NTP")  
5 studied the effects of Ginkgo biloba on rats and mice in small and large doses. In the  
6 *NTP Technical Report on the Toxicology and Carcinogenesis Studies of Ginkgo*  
7 *Biloba Extract in F344/N Rats and B6C3F1/N Mice*, researchers concluded that  
8 Ginkgo biloba extract causes cancers of the thyroid gland in male and female rats  
9 and male mice and cancers of the liver in male and female mice.<sup>27</sup>

10 52. As a result of the serious implications of the NTP study, and the lack of  
11 scientific evidence supporting safe use and positive effects of Ginkgo biloba, the  
12 Center for Science in the Public Interest addressed the director of the Food and Drug  
13 Administration ("FDA"), emphasizing that claims regarding Ginkgo biloba's  
14 supposed health benefits, including those related to memory and cognitive function,  
15 are false and should be stopped and imploring him to issue a directive that Ginkgo  
16 is no longer "Generally Recognized As Safe." *See* Ex. H.

17 53. The widespread popularity of Ginkgo biloba is simply a testament to  
18 the power of marketing rather than to any measurable brain benefits.<sup>28</sup>

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19  
20 <sup>27</sup> Nat'l Inst. Of Health, *Technical Report on the Toxicology and Carcinogenesis*  
21 *Studies of Ginkgo Biloba Extract in F344/N Rats and B6C3F1/N Mice*, NTP TR  
22 578, Publication No. 13-5920, available at  
[http://ntp.niehs.nih.gov/ntp/htdocs/lt\\_rpts/tr578\\_508.pdf](http://ntp.niehs.nih.gov/ntp/htdocs/lt_rpts/tr578_508.pdf).

23 <sup>28</sup> Kirk R. Daffner (ed.), Harvard Medical School, *Improving Memory –*  
24 *Understanding age-related memory loss*” (2012) (“Harvard Report”), at 46,  
25 available at [http://www.health.harvard.edu/special\\_health\\_reports/improving-](http://www.health.harvard.edu/special_health_reports/improving-memory?utm_source=promo&utm_medium=email&utm_content=body1b&utm_campaign=PA111812&j=29792816&e=wolchansky@halunenlaw.com&l=16223912_HTML&u=347687378&mid=148797&jb=0)  
26 [memory?utm\\_source=promo&utm\\_medium=email&utm\\_content=body1b&utm\\_ca](http://www.health.harvard.edu/special_health_reports/improving-memory?utm_source=promo&utm_medium=email&utm_content=body1b&utm_campaign=PA111812&j=29792816&e=wolchansky@halunenlaw.com&l=16223912_HTML&u=347687378&mid=148797&jb=0)  
27 [mpaign=PA111812&j=2979281](http://www.health.harvard.edu/special_health_reports/improving-memory?utm_source=promo&utm_medium=email&utm_content=body1b&utm_campaign=PA111812&j=29792816&e=wolchansky@halunenlaw.com&l=16223912_HTML&u=347687378&mid=148797&jb=0)  
28 [6&e=wolchansky@halunenlaw.com&l=16223912\\_HTML&u=347687378&mid=1](http://www.health.harvard.edu/special_health_reports/improving-memory?utm_source=promo&utm_medium=email&utm_content=body1b&utm_campaign=PA111812&j=29792816&e=wolchansky@halunenlaw.com&l=16223912_HTML&u=347687378&mid=148797&jb=0)  
[48797&jb=0](http://www.health.harvard.edu/special_health_reports/improving-memory?utm_source=promo&utm_medium=email&utm_content=body1b&utm_campaign=PA111812&j=29792816&e=wolchansky@halunenlaw.com&l=16223912_HTML&u=347687378&mid=148797&jb=0) (last visited Nov. 19, 2012).

1 54. Accordingly, Defendants' marketing is deceptive and misleading as the  
2 claims are specifically refuted by competent and reliable scientific evidence as set  
3 forth above.

4 55. As a result, Plaintiffs and the Class members have been damaged by  
5 their purchases of the Ginkgo biloba Products and have been deceived into  
6 purchasing a product that they believed, based on Defendants' representations,  
7 provided benefits when, in fact, they did not.

8 56. Defendants have reaped enormous profits from their false marketing  
9 and sale of the Ginkgo biloba Products.

10 **D. The Class' Claims are Subject to Equitable Tolling**

11 57. Plaintiff Petkevicius incorporates by reference and realleges all  
12 allegations set forth in the preceding paragraphs.

13 58. The statute of limitations applicable to Plaintiff Petkevicius's and the  
14 California Class's complaint should be tolled pursuant to the doctrine of equitable  
15 tolling.

16 59. Equitable tolling is a judge-created doctrine that suspends a statute of  
17 limitations to ensure fairness to litigants and avoid forfeiture of claims. The doctrine  
18 also extends to unnamed class members in class actions because without it,  
19 "potential class members would be induced to file protective actions to preserve their  
20 claims, thus depriving class actions of their ability to secure efficiency and economy  
21 of litigation." *Hatfield v. Halifax*, 564 F.3d 1177, 1187 (9th Cir. 2009) (internal  
22 citations and quotations omitted).

23 60. California's equitable tolling principles apply where there has been "(1)  
24 timely notice to the defendant in the filing of the first claim; (2) lack of prejudice to  
25 the defendant in gathering evidence to defend against the second claim; and (3) good  
26 faith and reasonable conduct by the plaintiff in filing the second claim." *Hatfield*,  
27 564 F.3d at 1185.





1 counsel for Plaintiffs and Defendants; and the judicial  
2 officer to whom this lawsuit is assigned.

3 B. The “New York Class,” which consists of: All consumers  
4 within the State of New York who purchased the Ginkgo  
5 biloba Products during the applicable liability period for  
6 their personal use, rather than for resale or distribution.  
7 Excluded from the New York Class are Defendants’  
8 current or former officers, directors, and employees;  
9 counsel for Plaintiffs and Defendants; and the judicial  
10 officer to whom this lawsuit is assigned.

(collectively the “Class”).

11 61. The requirements of Federal Rule of Civil Procedure 23 are satisfied  
12 because:

13 A. Numerosity: The members of each class are so numerous that  
14 joinder of all members is impracticable. While the exact number of class members  
15 is presently unknown to Plaintiffs, based on Defendants’ volume of sales, Plaintiffs  
16 estimate that each class numbers in the thousands.

17 B. Commonality: There are questions of law and fact that are  
18 common to the class members and that predominate over individual questions. These  
19 include the following:

- 20 i. Whether Defendants falsely advertise and misrepresent  
21 the benefits of the Ginkgo biloba Products;
- 22 ii. Whether Defendants’ mass media advertising and/or the  
23 packaging for the Ginkgo biloba Products is misleading  
24 and deceptive;
- 25 iii. Whether Defendants’ labeling and/or packaging for the  
26 Ginkgo biloba Products is misleading, false and/or illegal;
- 27 iv. Whether Defendants represent to consumers that the  
28 Ginkgo biloba Products have characteristics, uses,

1 benefits or qualities that the Ginkgo biloba Products do  
2 not have;

3 v. Whether Defendants knew or should have known that the  
4 Ginkgo biloba Products do not have the characteristics,  
5 uses, benefits or qualities for which Defendants advertised  
6 the Ginkgo biloba Products;

7 vi. Whether Defendants represented that the Ginkgo biloba  
8 Products are of a particular standard, quality, or grade,  
9 when they are of another;

10 vii. Whether Defendants advertised the Ginkgo biloba  
11 Products with intent to sell them not as advertised;

12 viii. Whether Defendants engaged in unfair, unlawful and/or  
13 fraudulent business practices in marketing and distributing  
14 the Ginkgo biloba Products;

15 ix. Whether Defendants engaged in false advertising with  
16 respect to the Ginkgo biloba Products;

17 x. The nature and extent of damages and other remedies to  
18 which the wrongful conduct of Defendants entitles the  
19 Class members;

20 xi. Whether Defendants' representations, concealments and  
21 non-disclosures concerning the Ginkgo biloba Products  
22 violate the CLRA, FAL and/or the UCL;

23 xii. Whether Defendants' representations, concealments and  
24 non-disclosures concerning the Ginkgo biloba Products  
25 violate the N.Y. Gen. Bus. Law §§ 349 & 3450;

26 xiii. Whether the Class is entitled to restitution; and

27 xiv. Whether Plaintiffs and the Class are entitled to attorneys'  
28

1 fees and expenses, and in what amount.

2 C. Typicality: Plaintiffs' claims are typical of the claims of the class  
3 members because Plaintiffs suffered the same injury as the class members—*i.e.*,  
4 Plaintiffs purchased the Ginkgo biloba Products based on Defendants' misleading  
5 advertising claims.

6 D. Adequacy: Plaintiffs will fairly and adequately represent and  
7 protect the interests of the members of each class. Plaintiffs do not have any interests  
8 that are adverse to those of the class members. Plaintiffs have retained competent  
9 counsel experienced in class action litigation and intend to prosecute this action  
10 vigorously.

11 E. Superiority: A class action is superior to other available methods  
12 for the fair and efficient adjudication of this controversy. Class action treatment will  
13 permit a large number of similarly situated persons to prosecute their common  
14 claims in a single forum simultaneously, efficiently, and without the unnecessary  
15 duplication of effort and expense that numerous individual actions would engender.  
16 Since the damages suffered by individual class members are relatively small, the  
17 expense and burden of individual litigation make it virtually impossible for the class  
18 members to seek redress for the wrongful conduct alleged, while an important public  
19 interest will be served by addressing the matter as a class action.

20 62. If necessary, notice of this action may be affected to the proposed  
21 class through publication.

22 63. Unless a Class is certified, Defendants will retain monies received as a  
23 result of its conduct that were taken from Plaintiffs and Class members.

24 **FIRST CAUSE OF ACTION**  
25 **VIOLATION OF UNFAIR COMPETITION LAW**  
26 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**  
27 **Unlawful Business Acts and Practices**

1           64. Plaintiff Petkevicius incorporates by reference and realleges all  
2 allegations set forth in the preceding paragraphs.

3           65. Plaintiff Petkevicius brings this claim individually and on behalf of the  
4 proposed California Class against Defendants.

5           66. As alleged herein, Plaintiff Petkevicius has standing to pursue this  
6 claim as Plaintiff Petkevicius has suffered injury in fact and has lost money or  
7 property as a result of Defendants' actions. Specifically, Plaintiff Petkevicius  
8 purchased the Ginkgo biloba Products for her own personal use. In so doing,  
9 Plaintiff Petkevicius relied upon the false representations that the Ginkgo biloba  
10 Products would cause or assist in improved memory and brain function as referenced  
11 above. Plaintiff Petkevicius used the Ginkgo biloba Products as directed and did not  
12 receive any of the advertised benefits. Plaintiff Petkevicius would not have  
13 purchased the Ginkgo biloba Products had she known Defendants' advertising  
14 claims were false.

15           67. The actions of Defendants, as alleged herein, constitute illegal and  
16 unlawful practices committed in violation of the Business & Professions Code  
17 §17200.

18           68. Defendants have unlawfully marketed and advertised the Ginkgo biloba  
19 Products because Defendants: (1) violate sections 1770(a)(5), 1770(a)(7) and  
20 1770(a)(9) of the CLRA, *Civil Code* § 1750, *et seq.*; (2) violate sections 17200 *et seq.*  
21 and 17500 *et seq.* of the Business & Professions Code; and (3) violate sections 111330  
22 and 111445 of the California Health & Safety Code.

23           69. Moreover, Defendants' manufacturing, marketing, advertising,  
24 packaging, labeling, distributing, and selling of the Ginkgo biloba Products violates  
25 California's Sherman Act, Cal. Health & Safety Code §109875, *et seq.* The Sherman  
26 Act defines a "person" as "any individual, firm, partnership, trust, corporation,  
27 limited liability company, company, estate, public or private institution, association,  
28

1 organization, group, city, county, city and county, political subdivision of this state,  
2 other governmental agency within the state, and any representative, agent, or agency  
3 of any of the foregoing.” *Cal. Health & Safety Code*, §109995. Defendants are  
4 corporations and, therefore, are “persons” within the meaning of the Sherman Act.

5 70. In relevant part, a drug is misbranded if its labeling is false or  
6 misleading in any particular way. *Cal. Health & Safety Code* §§111330, 111445.

7 71. Plaintiff Petkevicius and other California Class members were misled  
8 and, because the misrepresentations were uniform and material, believed that the  
9 Ginkgo biloba Products would provide cognitive benefits as advertised.

10 72. There were reasonably available alternatives to further Defendants  
11 legitimate business interests, other than the conduct described herein.

12 73. Plaintiff Petkevicius and the California Class reserve the right to allege  
13 other violations of law which constitute other unlawful business acts or practices.  
14 Such conduct is ongoing and continues to this date.

15 74. THEREFORE, Plaintiff Petkevicius prays for the relief as set forth  
16 below.

17 **SECOND CAUSE OF ACTION**  
18 **VIOLATION OF UNFAIR COMPETITION LAW**  
19 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**  
20 **Unfair Business Acts and Practices**

21 75. Plaintiff Petkevicius incorporates by reference and realleges all  
22 allegations set forth in the preceding paragraphs.

23 76. Plaintiff Petkevicius brings this claim individually and on behalf of the  
24 proposed California Class against Defendants.

25 77. As alleged herein, Plaintiff Petkevicius has standing to pursue this  
26 claim as Plaintiff Petkevicius has suffered injury in fact and has lost money or  
27 property as a result of Defendants’ actions. Specifically, Plaintiff Petkevicius  
28

1 purchased the Ginkgo biloba Products for her own personal use. In so doing, Plaintiff  
2 Petkevicius relied upon the false representations that the Ginkgo biloba Products  
3 would cause or assist in improved memory and brain function as referenced above.  
4 Plaintiff Petkevicius used the Ginkgo biloba Products as directed and did not receive  
5 any of the advertised benefits. Plaintiff Petkevicius would not have purchased the  
6 Ginkgo biloba Products had she known Defendants’ advertising claims were false.

7 78. California Business & Professions Code § 17200 prohibits any “unfair  
8 ... business act or practice.”

9 79. Defendants’ acts, misrepresentations and practices as alleged herein  
10 constitute “unfair” business acts and practices within the meaning of Business &  
11 Professions Code § 17200 *et seq.*, in that their conduct is substantially injurious to  
12 consumers, offends public policy, and is immoral, unethical, oppressive, and  
13 unscrupulous as the gravity of the conduct outweighs any alleged benefits  
14 attributable to such conduct.

15 80. There were reasonably available alternatives to further Defendants’  
16 legitimate business interests, other than the conduct described herein.

17 81. THEREFORE, Plaintiff Petkevicius prays for the relief as set forth  
18 below.

19 **THIRD CAUSE OF ACTION**  
20 **VIOLATION OF UNFAIR COMPETITION LAW**  
21 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**  
22 **Fraudulent Business Acts and Practices**

23 83. Plaintiff Petkevicius incorporates by reference and realleges all  
24 allegations set forth in the preceding paragraphs.

25 84. Plaintiff Petkevicius brings this claim individually and on behalf of the  
26 proposed California Class against Defendants.

27 85. As alleged herein, Plaintiff Petkevicius has standing to pursue this  
28 claim as Plaintiff Petkevicius has suffered injury in fact and has lost money or

1 property as a result of Defendants’ actions. Specifically, Plaintiff Petkevicius  
2 purchased the Ginkgo biloba Products for her own personal use. In so doing, Plaintiff  
3 Petkevicius relied upon the false representations that the Ginkgo biloba Products  
4 would cause or assist in improved memory and brain function as referenced above.  
5 Plaintiff Petkevicius used the Ginkgo biloba Products as directed and did not receive  
6 any of the advertised benefits. Plaintiff Petkevicius would not have purchased the  
7 Ginkgo biloba Products had she known Defendants’ advertising claims were false.

8 86. California Business & Professions Code § 17200 prohibits any  
9 “fraudulent business act or practice.”

10 87. Defendants’ claims, nondisclosures, and misleading statements with  
11 respect to the Ginkgo biloba Products, as more fully set forth above, were false,  
12 misleading, and/or likely to deceive the consuming public within the meaning of  
13 Business & Professions Code § 17200.

14 88. Defendants’ conduct caused and continues to cause injury to Plaintiff  
15 Petkevicius and the other California Class members. Plaintiff Petkevicius has  
16 suffered injury in fact and has lost money as a result of Defendants’ deceptive  
17 conduct.

18 89. THEREFORE, Plaintiff Petkevicius prays for the relief as set forth  
19 below.

20 **FOURTH CAUSE OF ACTION**  
21 **FALSE AND MISLEADING ADVERTISING**  
**(CAL. BUS. & PROF. CODE § 17500, *et seq.*)**

22 90. Plaintiff Petkevicius incorporates by reference and realleges all  
23 allegations set forth in the preceding paragraphs.

24 91. Plaintiff Petkevicius brings this claim individually and on behalf of the  
25 proposed California Class against Defendants.

26 92. As alleged herein, Plaintiff Petkevicius has standing to pursue this  
27  
28



1 claim as Plaintiff Petkevicius has suffered injury in fact and has lost money or  
2 property as a result of Defendants' actions. Specifically, Plaintiff Petkevicius  
3 purchased the Ginkgo biloba Products for her own personal use. In so doing, Plaintiff  
4 Petkevicius relied upon the false representations that the Ginkgo biloba Products  
5 would cause or assist in improved memory and brain function as referenced above.  
6 Plaintiff Petkevicius used the Ginkgo biloba Products as directed and did not receive  
7 any of the advertised benefits. Plaintiff Petkevicius would not have purchased the  
8 Ginkgo biloba Products had they known Defendants' advertising claims were false.

9 93. Defendants violated Business & Professions Code § 17500 by publicly  
10 disseminating false, misleading, and unsubstantiated advertisements regarding the  
11 Ginkgo biloba Products.

12 94. Defendants' false, misleading and unsubstantiated advertisements were  
13 disseminated to increase the sales of the Ginkgo biloba Products.

14 95. Defendants knew or should have known their advertisements for the  
15 Ginkgo biloba Products were false and misleading.

16 96. Plaintiff Petkevicius and the members of the California Class have  
17 suffered harm as a result of these violations of the FAL because they have incurred  
18 charges and/or paid monies for the Ginkgo biloba Products that they otherwise  
19 would not have incurred or paid.

20 97. Defendants are aware, or by the exercise of reasonable care should have  
21 been aware, that the representations were untrue or misleading.

22 98. Plaintiff Petkevicius and the members of the California Class have  
23 suffered injury in fact and have lost money as a result of Defendants' false  
24 representations and false advertising.

25 99. Plaintiff Petkevicius and the members of the California Class seek an  
26 order awarding Plaintiff Petkevicius and other members of the California Class  
27 restitution of the money wrongfully acquired by Defendants by means of  
28

1 responsibility attached to Defendants' failure to disclose the existence and  
2 significance of said misrepresentations.

3 100. THEREFORE, Plaintiff Petkevicius prays for the relief as set forth  
4 below.

5 **FIFTH CAUSE OF ACTION**  
6 **VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT**  
7 **(CAL. CIV. CODE § 1750, *et seq.*)**

8 101. Plaintiff Petkevicius incorporates by reference and realleges all  
9 allegations set forth in the preceding paragraphs.

10 102. Plaintiff Petkevicius brings this claim individually and on behalf of the  
11 proposed California Class against Defendants.

12 103. As alleged herein, Plaintiff Petkevicius have standing to pursue this  
13 claim as Plaintiff Petkevicius has suffered injury in fact and has lost money or  
14 property as a result of Defendants' actions. Specifically, Plaintiff Petkevicius  
15 purchased the Ginkgo biloba Products for her own personal use. In so doing, Plaintiff  
16 Petkevicius relied upon the material, false representations that the Ginkgo biloba  
17 Products would cause or assist in improved memory and brain functioning, as set  
18 forth above. Plaintiff Petkevicius used the Ginkgo biloba Products as directed and  
19 did not receive any of the advertised benefits. Plaintiff Petkevicius would not have  
20 purchased the Ginkgo biloba Products had she known Defendants' advertising  
21 claims were false.

22 104. Plaintiff Petkevicius has concurrently filed the declaration of venue  
23 required by Civil Code §1780(d) with this complaint.

24 105. Defendants have violated and continue to violate the CLRA by  
25 engaging in the following practices proscribed by California Civil Code §1770(a) in  
26 transactions with Plaintiff Petkevicius and the California Class, which were intended  
27 to result in, and did result in, the sale of the Ginkgo biloba Products:  
28

1 §1770(a) (5) Representing that [The Ginkgo biloba Products have] ...  
2 characteristics, ... uses [or] benefits ... which [they do] not have ... .

3 §1770(a) (7) Representing that [The Ginkgo biloba Products are] of a  
4 particular standard, quality or grade ... if [they are] of another.

5 §1770(a) (9) Advertising goods or services with intent not to sell them  
6 as advertised.

7 106. On information and belief, Defendants’ actions were willful, wanton,  
8 and fraudulent.

9 107. On information and belief, officers, directors, or managing agents at  
10 Defendants authorized the use of the misleading statements about the Ginkgo biloba  
11 Products.

12 108. CLRA SECTION 1782 NOTICE. On December 23, 2013, Plaintiff  
13 Petkevicius, through counsel, sent a CLRA demand letter to Defendants that  
14 provided notice of Defendants’ violation of the CLRA and demanded Defendants  
15 correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and deceptive  
16 practices complained of herein. The letter also stated that if Defendants refused to  
17 do so, Plaintiff Petkevicius would file a complaint seeking damages in accordance  
18 with the CLRA. Defendants failed to comply with the letter. For the foregoing  
19 reasons, pursuant to Civil Code section 1780(a)(3), Plaintiff Petkevicius,  
20 individually and on behalf of all other members of the California Class, seeks  
21 compensatory damages, punitive damages, and restitution of any ill-gotten gains due  
22 to Defendants’ acts and practices.

23 109. In addition, the CLRA has enhanced penalties for acts perpetrated  
24 against senior citizens and disabled persons. If the Defendants’ conduct is directed  
25 at a class of persons who are senior citizens and/or disabled, a \$5,000.00 civil penalty  
26 may be awarded to “each class member.” Civ. Code § 1780(b). A “disabled person”  
27 is someone who has a “physical or mental impairment which substantially limits one  
28

1 or more major life activities.” Civ. Code §1761(f), (g). Under California law,  
2 individuals suffering from Alzheimer’s are “disabled.” Defendants’ conduct is  
3 clearly directed at senior citizens and the disabled (i.e., those with Alzheimer’s), as  
4 Defendants represent and warrant that the Ginkgo biloba Products treat and/or  
5 prevent memory loss. Accordingly, the Court may award a civil penalty of up to  
6 \$5,000 for each class member.

7 110. Plaintiff Petkevicius engaged counsel to prosecute this action and is  
8 entitled to recover costs and reasonable attorney’s fees according to proof at trial.

9 111. THEREFORE, Plaintiff Petkevicius prays for the relief as set forth  
10 below.

11 **SIXTH CAUSE OF ACTION**  
12 **BREACH OF CALIFORNIA EXPRESS WARRANTY**  
13 **(CAL. COMM. CODE § 2313)**

14 110. Plaintiff Petkevicius incorporates by reference and realleges all  
15 allegations set forth in the preceding paragraphs.

16 111. Plaintiff Petkevicius brings this claim individually and on behalf of the  
17 proposed California Class against Defendants.

18 112. Plaintiff Petkevicius and the California Class members formed a  
19 contract with Defendants at the time they purchased the Ginkgo biloba Products. As  
20 part of that contract, Defendants represented that the Ginkgo biloba Products would  
21 cause or assist in improved memory and brain functioning, as described above.  
22 These representations constitute express warranties and became part of the basis of  
23 the bargain between Plaintiff Petkevicius and the California Class members, on the  
24 one hand, and Defendants, on the other.

25 113. Defendants made the above-described representations to induce  
26 Plaintiff Petkevicius and the California Class members to purchase the Ginkgo  
27 biloba Products, and Plaintiff Petkevicius and the California Class members relied  
28

1 on the representations in purchasing the Ginkgo biloba Products.

2 114. All conditions precedent to Defendants’ liability under the above-  
3 referenced contract have been performed by Plaintiff Petkevicius and the other  
4 California Class members.

5 115. Defendants breached their express warranties about the Ginkgo biloba  
6 Products because, as alleged above, the Ginkgo biloba Products do not cause or  
7 assist in improved memory or brain functioning. Consequently, Defendants  
8 breached California’s warranty laws. Cal. Comm. Code section 2313.

9 116. As a result of Defendants’ breaches of express warranty, Plaintiff  
10 Petkevicius and the other members of the California Class were damaged in the  
11 amount of the purchase price they paid for the Ginkgo biloba Products, in amounts  
12 to be proven at trial.

13 117. Within a reasonable time after they knew or should have known of such  
14 breach, Plaintiff Petkevicius, on behalf of herself and the other members of the  
15 California Class, placed Defendants on notice thereof.

16 118. THEREFORE, Plaintiff Petkevicius prays for the relief as set forth  
17 below.

18 **SEVENTH CAUSE OF ACTION**  
19 **VIOLATION OF NEW YORK GENERAL BUSINESS LAW**  
20 **(N.Y. GEN. BUS. LAW § 349)**

21 119. Plaintiff Ripley incorporates by reference and realleges all allegations  
22 set forth in the preceding paragraphs.

23 120. Plaintiff Ripley brings this claim individually and on behalf of the  
24 proposed New York Class against Defendants.

25 121. New York General Business Law Section 349 declares unlawful  
26 “[d]eceptive acts or practices in the conduct of any business, trade, or commerce or  
27 in the furnishing of any service in this state . . .”  
28

1           122. The conduct of Defendants alleged herein constitutes recurring,  
2 “unlawful” deceptive acts and practices in violation of New York General Business  
3 Law Section 349, and as such, Plaintiff Ripley and the New York Class members  
4 seek monetary damages.

5           123. There is no adequate remedy at law.

6           124. Defendants misleadingly, inaccurately and deceptively market the  
7 Ginkgo biloba Products to consumers.

8           125. Defendants’ improper consumer-oriented conduct—including labeling  
9 and advertising that the Ginkgo biloba Products would cause or assist in improved  
10 memory and brain functioning —is misleading in a material way in that it, *inter*  
11 *alia*, induced Plaintiff Ripley and the New York Class to purchase and/or pay a  
12 premium for Defendants’ Ginkgo biloba Products and to use Ginkgo biloba  
13 Products when they otherwise would not have.

14           126. Defendants made its illegal, untrue and/or misleading statements and  
15 representations willfully, wantonly, and with reckless disregard for the truth.

16           127. Plaintiff Ripley and the New York Class have been injured inasmuch  
17 as they purchased and/or paid a premium for Ginkgo biloba Products that were  
18 contrary to Defendants’ representations. Accordingly, Plaintiff Ripley and the New  
19 York Class members received less than what they bargained and/or paid for.

20           128. Defendants’ advertising and Ginkgo biloba Products’ packaging and  
21 labeling induced the Plaintiff Ripley and the New York Class members to buy  
22 Defendants’ Ginkgo biloba Products and/or to pay a premium price for them.

23           129. Defendants’ deceptive, illegal, and misleading practices constitute a  
24 deceptive act and practice in the conduct of business in violation of New York  
25 General Business Law §349(a) and Plaintiff Ripley and the New York Class have  
26 been damaged thereby.

27           130. As a result of Defendants’ recurring, unlawful deceptive acts and  
28

1 practices, Plaintiff Ripley and the New York Class are entitled to monetary,  
2 compensatory, treble and punitive damages, restitution and disgorgement of all  
3 moneys obtained by means of Defendants' unlawful conduct, interest, and attorneys'  
4 fees and costs.

5 131. THEREFORE, Plaintiff Ripley prays for the relief as set forth below.

6 **EIGHTH CAUSE OF ACTION**  
7 **VIOLATION OF NEW YORK GENERAL BUSINESS LAW**  
8 **(N.Y. GEN. BUS. LAW § 350)**

9 132. Plaintiff Ripley incorporates by reference and realleges all allegations  
10 set forth in the preceding paragraphs.

11 133. Plaintiff Ripley brings this claim individually and on behalf of the  
12 proposed New York Class against Defendants.

13 134. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

14 False advertising in the conduct of any business, trade or  
15 commerce or in the furnishing of any service in this state is  
hereby declared unlawful.

16 135. N.Y. Gen. Bus. Law § 350a(1) provides, in part, as follows:

17 The term 'false advertising, including labeling, of a commodity,  
18 or of the kind, character, terms or conditions of any employment  
19 opportunity if such advertising is misleading in a material  
20 respect. In determining whether any advertising is misleading,  
21 there shall be taken into account (among other things) not only  
22 representations made by statement, word, design, device, sound  
23 or any combination thereof, but also the extent to which the  
24 advertising fails to reveal facts material in the light of such  
25 representations with respect to the commodity or employment to  
26 which the advertising relates under the conditions proscribed in  
27 said advertisement, or under such conditions as are customary or  
28 usual . . .

136. Defendants' labeling and advertisements contain untrue, illegal, and  
materially misleading statements concerning Defendants' Ginkgo biloba Products



1 inasmuch as they misrepresent that the Ginkgo biloba Products would cause or  
2 assist in improved memory and brain functioning.

3 137. Plaintiff Ripley and the New York Class have been injured inasmuch  
4 as they relied upon the labeling, packaging and advertising and purchased and/or  
5 paid a premium for Ginkgo biloba Products that—contrary to Defendants’  
6 representations— do not cause or assist in improved memory and brain  
7 functioning. Accordingly, Plaintiff Ripley and the New York Class received less  
8 than what they bargained and/or paid for.

9 138. Defendants’ advertising, packaging and labeling induced Plaintiff  
10 Ripley and the New York Class to buy Defendants’ Ginkgo biloba Products.

11 139. Defendants made untrue and/or misleading statements and  
12 representations willfully, wantonly, and with reckless disregard for the truth.

13 140. Defendants’ conduct constitutes multiple, separate violations of N.Y.  
14 Gen. Bus. Law § 350.

15 141. Defendants made the material misrepresentations described in this  
16 Complaint in Defendants’ advertising, and on the Ginkgo biloba Products’  
17 packaging and labeling.

18 142. Defendants’ material misrepresentations were substantially uniform in  
19 content, presentation, and impact upon consumers at large. Moreover, all  
20 consumers purchasing the Ginkgo biloba Products were and continue to be  
21 exposed to Defendants’ material misrepresentations.

22 143. As a result of Defendants’ recurring, “unlawful” deceptive acts and  
23 practices, Plaintiff Ripley and the New York Class members are entitled to  
24 monetary, compensatory, treble and punitive damages, restitution and disgorgement  
25 of all moneys obtained by means of Defendants’ unlawful conduct, interest, and  
26 attorneys’ fees and costs.

27 144. THEREFORE, Plaintiff Ripley prays for the relief as set forth below.  
28



1 of the purchase price and/or premium they paid for the Ginkgo biloba Products, in  
2 amounts to be proven at trial.

3 152. Within a reasonable time after they knew or should have known of such  
4 breach, Plaintiff Ripley, on behalf of himself and the other members of the New  
5 York Class, placed Defendants on notice thereof.

6 153. THEREFORE, Plaintiff Ripley prays for the relief as set forth below.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
9 situated, pray for judgment against Defendants as follows:

10 A. For an order requiring Defendants to disgorge and make restitution of  
11 all monies Defendants acquired by means of the unlawful practices set forth above;

12 B. For an order declaring Defendants financially responsible for notifying  
13 the Class members of the pendency of this suit;

14 C. For compensatory damages according to proof;

15 D. For punitive damages according to proof;

16 E. For reasonable attorneys' fees and costs of suit;

17 F. For pre-judgment interest; and

18 G. For such other relief as the Court deems proper.

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial by jury on all claims so triable.

Date: June 8, 2017

Respectfully submitted,

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

/s/ Todd D. Carpenter

---

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13 ***ATTORNEYS FOR PLAINTIFFS***  
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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

PAIGE PETKEVICIUS, PETER RIPLEY on behalf of themselves and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Please see attachment.

DEFENDANTS

NBTY, Inc., a Delaware Corporation; NATURE'S BOUNTY, INC., a New York Corporation; REXALL SUNDOWN, INC., a Florida Corporation,

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)

'17CV1152 JLS BGS

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: 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)

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); 28 U.S.C. §1331

Brief description of cause: Violation of unfair competition law; False and Misleading Advertising; etc....

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Exceeds 5M CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/08/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**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. When the petition for removal is granted, check this box.
- 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.



**ATTACHMENT TO CIVIL COVER SHEET**

**I. (c)**

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***ATTORNEYS FOR PLAINTIFFS***

# **Exhibit A**

**Scientific research documents the ability of Ginkgo to maintain peripheral circulation to the arms, legs and brain.\* For additional, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\* Our Ginkgo Biloba consists of high-quality herbs standardized to contain 24% Ginkgo Flavone Glycosides.**

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

**0 74312 04544 8**

Nutrition Questions or Comments?  
Call 1-800-433-2990  
Mon. - Fri. 9 AM - 7 PM ET

For educational health tips and to join our money saving Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.

Prod. No. 4534 B454 07D


**NATURE'S BOUNTY.**

DOUBLE STRENGTH  
STANDARDIZED EXTRACT

# Ginkgo Biloba

120mg | Standardized to contain 24% Ginkgo Flavone Glycosides

**Promotes Healthy Brain Function & Circulation\***



Clinically Studied Does for Brain Function\*

**100 capsules** HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take one (1) capsule daily, preferably with a meal. Capsules may be opened and prepared as a tea.

Supplement Facts	
Serving Size 1 Capsule	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract 120 mg (Ginkgo biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 28 mg)	**
**Daily Value not established.	

Other Ingredients: Rice Flour, Gelatin, Vegetable Magnesium Stearate, Silica.

**WARNING:** If you are pregnant, nursing, taking any medications or planning any medical procedure, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store in a cool, dry place. Do not use if seal under cap is broken or missing.

Carefully Manufactured by NATURE'S BOUNTY, INC. Bohemia, NY 11716 U.S.A. © 2012 Nature's Bounty, Inc.

**Ginkgo Biloba provides you with the supplemental nutrition you need to support circulation to the extremities.\* In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo Biloba contains antioxidant properties that help fight free radicals in the body.\* Free radicals may contribute to the premature aging of cells.**

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

**0 74312 04544 8**

Nutrition Questions or Comments?  
Call 1-800-433-2990  
Mon. - Sat. 9 AM - 7 PM ET

For educational health tips and to join our money saving Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.

Prod. No. 4534 B454 08E


**NATURE'S BOUNTY.**

DOUBLE STRENGTH  
STANDARDIZED EXTRACT

# Ginkgo Biloba

120mg | Standardized to contain 24% Ginkgo Flavone Glycosides

**Supports Healthy Brain Function & Circulation\***



Helps Support Mental Alertness\*

**100 capsules** HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take one (1) capsule daily, preferably with a meal. Capsules may be opened and prepared as a tea.

Supplement Facts	
Serving Size 1 Capsule	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract 120 mg (Ginkgo biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 28 mg)	**
**Daily Value not established.	

Other Ingredients: Rice Flour, Gelatin, Vegetable Magnesium Stearate, Silica.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store at room temperature. Do not use if seal under cap is broken or missing.

Carefully Manufactured by NATURE'S BOUNTY, INC. Bohemia, NY 11716 U.S.A. © 2012 Nature's Bounty, Inc.

**OVER 40 YEARS OF TRUSTED QUALITY**

At Nature's Bounty, we are committed to your health. For over 40 years we have been making trusted products, backed by science, and made with only the purest ingredients... guaranteed. So you can get the most out of life every day.

- Helps Support Mental Alertness\*
- Guaranteed Quality
- Laboratory Tested

Non-GMO, No Artificial Color, No Artificial Flavor, No Artificial Sweetener, No Preservatives, No Sugar, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

Nutrition Questions or Comments?  
Call 1-800-433-2990  
Mon. - Sat. 9 AM - 7 PM ET

Join our Loyalty Program at [NaturesBountyRewards.com](http://NaturesBountyRewards.com)

Prod. No. 4644 B4544 11E

\*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.

**0 74312 04544 8**


**NATURE'S BOUNTY.**

# Ginkgo Biloba

120mg | Standardized Extract

**Supports Healthy Brain Function & Circulation\***

HERBAL HEALTH



**100 Capsules** HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take one (1) capsule daily, preferably with a meal. Capsules may be opened and prepared as a tea.

Supplement Facts	
Serving Size 1 Capsule	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract 120 mg (Ginkgo biloba) (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 28 mg) and 6% Tergitol Lecithin (2.2 mg)	**
**Daily Value not established.	

Other Ingredients: Rice Flour, Gelatin, Vegetable Magnesium Stearate, Silica.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store at room temperature. Do not use if seal under cap is broken or missing.

★ Made in The USA with select ingredients from around the world.

Carefully Manufactured by NATURE'S BOUNTY, INC. Bohemia, NY 11716 U.S.A. ©2012 Nature's Bounty, Inc.

# **Exhibit B**



VALUE SIZE • VALUE SIZE • VALUE SIZE • VALUE SIZE • VALUE SIZE • VALUE SIZE

Scientific research documents the ability of Ginkgo to maintain peripheral circulation to the arms, legs and brain. In addition, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\* Ginkgo contains antioxidant properties that help fight free radicals in the body.\* Free radicals may contribute to the premature aging of cells.\*



Questions? Call 1-800-433-2000  
Mon - Fri 9 AM - 7 PM ET

For educational health tips and to join our exciting Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.



Prod. No. 17243 B17242 002



STANDARDIZED EXTRACT

# Ginkgo Biloba

60mg per serving

Standardized to contain 24% Ginkgo Flavone Glycosides

Promotes Healthy Brain Function & Circulation\*



200 capsules

HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take two (2) capsules two times daily, preferably with meals.

### Supplement Facts

Serving Size 2 Capsules Servings Per Container 100	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (Ginkgo biloba) leaf	60 mg **
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	
**Daily Value not established.	

Other Ingredients: Rice Flour, Cellulose, Vegetable Magnesium Stearate.

No Artificial Colors, Flavors or Sweeteners. No Preservatives, No Sugar, No Salt, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

**WARNING:** If you are pregnant, nursing, taking any medications or planning any medical procedure, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store in a cool, dry place. Do not use if seal under cap is broken or missing.

Manufactured by NATURE'S BOUNTY, INC.  
Bohemia, NY 11716 U.S.A.  
© 2008 Nature's Bounty, Inc.



VALUE SIZE • VALUE SIZE • VALUE SIZE • VALUE SIZE • VALUE SIZE • VALUE SIZE

Ginkgo Biloba provides you with the supplemental nutrition you need to support circulation to the extremities. In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo Biloba contains antioxidant properties that help fight free radicals in the body.\* Free radicals may contribute to the premature aging of cells.\*



Questions? Call 1-800-433-2000  
Mon - Sat 9 AM - 7 PM ET

For educational health tips and to join our exciting Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.



Prod. No. 17243 B17242 002



STANDARDIZED EXTRACT

# Ginkgo Biloba

60mg per serving

Standardized to contain 24% Ginkgo Flavone Glycosides

Supports Healthy Brain Function & Circulation\*



200 capsules

HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take two (2) capsules two times daily, preferably with meals.

### Supplement Facts

Serving Size 2 Capsules Servings Per Container 100	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (Ginkgo biloba) leaf	60 mg **
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	
**Daily Value not established.	

Other Ingredients: Rice Flour, Cellulose, Vegetable Magnesium Stearate.

No Artificial Colors, Flavors or Sweeteners. No Preservatives, No Sugar, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

**WARNING:** If you are pregnant, nursing, taking any medications, stopping any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store at room temperature. Do not use if seal under cap is broken or missing.

Manufactured by NATURE'S BOUNTY, INC.  
Bohemia, NY 11716 U.S.A. © 2012 Nature's Bounty, Inc.

**OVER 40 YEARS OF TRUSTED QUALITY**

All Nature's Bounty, we are committed to your health. For over 40 years we have been making trusted products, backed by science, and made with only the purest ingredients...guaranteed. So you can get the most out of life every day.

- Guaranteed Quality
- Laboratory Tested

See GMO, No Artificial Colors, No Artificial Flavors, No Artificial Sweeteners, No Preservatives, No Sugar, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free

★ **Made in the USA** with select ingredients from around the world

Questions? Call 1-800-433-2000  
Mon - Sat 9 AM - 7 PM ET

Join our Loyalty Program at [NaturesBountyRewards.com](http://NaturesBountyRewards.com)

Prod. No. 17243 B17242 04E

\*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.



# Ginkgo Biloba

60mg per serving

Standardized to Contain 24% Ginkgo Flavone Glycosides

Supports Healthy Brain Function & Mental Alertness\*

HERBAL HEALTH



200 Capsules

HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take two (2) capsules two times daily, preferably with meals.

### Supplement Facts

Serving Size 2 Capsules Servings Per Container 100	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (Ginkgo biloba) leaf	60 mg **
(Standardized to contain 24% Ginkgo Flavone Glycosides [14.4 mg] and 6% Terpene Lactones [3.6 mg])	
**Daily Value not established.	

Other Ingredients: Rice Flour, Cellulose, Vegetable Magnesium Stearate.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical or surgical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store at room temperature. Do not use if seal under cap is broken or missing.

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# **Exhibit C**



**Ginkgo possesses antioxidant properties that help fight cell-damaging free radicals.\* Free radicals can contribute to oxidative stress, which in turn may contribute to the premature aging of cells.\*** Scientific research documents the ability of Ginkgo to maintain peripheral circulation to the arms, legs and brain.\* In addition, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\*

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

**Nutrition Questions or Comments?**  
Call 1-800-433-2990  
Mon. - Fri. 9 AM - 7 PM ET

For educational health tips and to join our money saving Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.



Prod. No. 7652 B7650 043

**NATURE'S BOUNTY**

STANDARDIZED EXTRACT

# Ginkgo Biloba

## 60mg

**Promotes Healthy Brain Function & Circulation\***



Clinically Studied Dosage for Brain Function\*

**60 tablets**      HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take one (1) tablet twice daily, preferably with meals.

**Supplement Facts**

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) 60 mg	**
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	

\*\*Daily Value not established.

**Other Ingredients:** Vegetable Cellulose, Dicalcium Phosphate, Silica, Vegetable Magnesium Stearate, Vegetable Stearic Acid.

Suitable for Vegetarians

**WARNING:** If you are pregnant, nursing, taking any medications, or planning any medical procedure, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store in a cool, dry place. Do not use if seal under cap is broken or missing.

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**Ginkgo Biloba provides you with the supplemental nutrients you need to support circulation to the extremities.\* In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo Biloba contains antioxidant properties that help fight free radicals in the body.\* Free radicals may contribute to the premature aging of cells.\***

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast, No Fish, Sodium Free.

**Nutrition Questions or Comments?**  
Call 1-800-433-2990  
Mon. - Sat. 9 AM - 7 PM ET

For educational health tips and to join our money saving Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.



Prod. No. 7652 B7650 05E

**NATURE'S BOUNTY**

STANDARDIZED EXTRACT

# Ginkgo Biloba

## 60mg

Standardized to contain 24% Ginkgo Flavone Glycosides

**Supports Healthy Brain Function & Circulation\***



Helps Support Mental Alertness\*

**60 tablets**      HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take one (1) tablet daily, preferably with meals.

**Supplement Facts**

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract 60 mg	**
(Ginkgo biloba) (leaf)	
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	

\*\*Daily Value not established.

**Other Ingredients:** Vegetable Cellulose, Dicalcium Phosphate. Contains <2% of: Silica, Vegetable Magnesium Stearate, Vegetable Stearic Acid.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store at room temperature. Do not use if seal under cap is broken or missing.

Suitable for Vegetarians

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# **Exhibit D**

**Scientific research documents the ability of Ginkgo to maintain peripheral circulation to the arms, legs and brain.\* In addition, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\* Ginkgo contains antioxidant properties that help fight free radicals in the body.\* Free radicals may contribute to the premature aging of cells.\* To enhance the bioactivity of the standardized Ginkgo, we've added 400 mg of Whole Herb Ginkgo per serving.**

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.


**Nutrition Questions or Comments?**  
Call 1-800-432-2880  
Mon. - Fri. 9 AM - 7 PM ET

For educational health tips and to join our money-saving Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.



Prod. No. 5644 812510 000




**WHOLE HERB**

# Ginkgo Biloba

**400 mg of Whole Herb | Plus 60 mg Standardized Extract**  
per serving

**Promotes Healthy Brain Function & Circulation\***



**COATED FOR EASY SWALLOWING**

**Clinically Studied Dosage for Brain Function**

**120 tablets**      HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take two (2) tablets two times daily, preferably with meals.

**Supplement Facts**

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf)†‡ 60 mg	**
<small>(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)</small>	
Ginkgo Biloba (leaf) 400 mg	**

†Daily Value not established.

**Other Ingredients:** Dicalcium Phosphate, Vegetable Cellulose, Silica, Vegetable Starch Acid, Vegetable Magnesium Stearate.

**Suitable for Vegetarians**

**WARNING:** If you are pregnant, nursing, taking any medications, or planning any medical procedure, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store in a cool, dry place. Do not use if seal under cap is broken or missing.

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**Ginkgo has the ability to help maintain peripheral circulation and blood flow, particularly in cerebral tissue.\* In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo contains antioxidant properties that help fight free radicals in the body.\* Free radicals may contribute to the premature aging of cells. Ginkgo Biloba contains 400 mg of Whole Herb Ginkgo per serving enhanced with 60 mg of standardized extract.**

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.


**Nutrition Questions or Comments?**  
Call 1-800-432-2880  
Mon. - Sat. 9 AM - 7 PM ET

For educational health tips and to join our money-saving Healthy Rewards™ program, visit [www.NaturesBounty.com](http://www.NaturesBounty.com)

\*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.



Prod. No. 5644 850932 09E




**WHOLE HERB**

# Ginkgo Biloba

**400 mg of Whole Herb† | Plus 60 mg Standardized Extract†**

**Supports Healthy Brain Function & Circulation\***



**COATED FOR EASY SWALLOWING**

**Helps Support Mental Alertness\***

**120 tablets**      HERBAL SUPPLEMENT

**DIRECTIONS:** For adults, take two (2) tablets two times daily, preferably with meals.

**Supplement Facts**

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (Ginkgo Biloba) (leaf) 60 mg	**
<small>(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)</small>	
Ginkgo Biloba (Ginkgo Biloba) (leaf) 400 mg	**

†Daily Value not established.

**Other Ingredients:** Dicalcium Phosphate, Vegetable Cellulose, Silica, Contains 2% of: Acacia Gum, Vegetable Magnesium Stearate, Vegetable Starch Acid.

**† per serving**

**Suitable for Vegetarians**

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store at room temperature. Do not use if seal under cap is broken or missing.

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# **Exhibit E**



**DIRECTIONS: FOR ADULTS, TAKE TWO (2) TABLETS TWO TIMES DAILY, PREFERABLY WITH MEALS.** As a reminder, discuss the supplements and medications you take with your health care providers.

Supplement Facts	
Serving Size 2 Tablets Servings Per Container 100	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) 60 mg (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	**
Ginkgo Biloba (leaf) 400 mg	**

\*\*Daily Value not established.

**Other Ingredients:** Dicalcium Phosphate, Vegetable Cellulose, Silica, Vegetable Stearic Acid, Vegetable Magnesium Stearate.

**No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.**

**KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.**

# Ginkgo Biloba plus

**60 MG EXTRACT PER SERVING** Standardized Extract

**Promotes Healthy Brain Function\***

VEGETARIAN FORMULA  
200 TABLETS HERBAL SUPPLEMENT

**Smart Facts** Ginkgo Biloba helps maintain healthy circulation.\* In addition, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\* Ginkgo also possesses antioxidant properties that may help fight free radicals in the body.\* To enhance the bioactivity of the standardized Ginkgo, we've added 400 mg of Ginkgo Leaf per serving.

\*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.

**WARNING:** If you are pregnant, nursing, taking any medications or planning any medical procedure, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

Manufactured by REXALL SUNDOWN, INC. Boca Raton, FL 33487 USA

Prod. No. 44976

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**DIRECTIONS: FOR ADULTS, TAKE TWO (2) TABLETS TWO TIMES DAILY, PREFERABLY WITH MEALS.** As a reminder, discuss the supplements and medications you take with your health care providers.

Supplement Facts	
Serving Size 2 Tablets Servings Per Container 100	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) 60 mg (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	**
Ginkgo Biloba (leaf) 400 mg	**

\*\*Daily Value not established.

**Other Ingredients:** Dicalcium Phosphate, Vegetable Cellulose, Silica. Contains <2% of Vegetable Magnesium Stearate, Vegetable Stearic Acid.

**No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.**

**KEEP OUT OF REACH OF CHILDREN. STORE AT ROOM TEMPERATURE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.**

# Ginkgo Biloba plus

**60 MG EXTRACT PER SERVING** Standardized Extract

**Supports Healthy Brain Function\***

VEGETARIAN FORMULA  
200 TABLETS HERBAL SUPPLEMENT

**Smart Facts** Ginkgo Biloba helps maintain healthy circulation.\* In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo also possesses antioxidant properties that may help fight free radicals in the body.\*

\*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.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

Manufactured by REXALL SUNDOWN, INC. Boca Raton, FL 33487 USA

Prod. No. 44976

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KAA 02011 0 30768 01880 1

**SMART FACTS**

- No Artificial Colors
- No Preservatives

\*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.

**KEEP OUT OF REACH OF CHILDREN. STORE AT ROOM TEMPERATURE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.**

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

★ Made in The USA with select ingredients from around the world.

Manufactured by REXALL SUNDOWN, INC. Boca Raton, FL 33487 USA

Prod. No. 65342

# STANDARDIZED GINKGO BILOBA

**60MG**

**Supports Healthy Brain Function\***

200 Tablets / Herbal Supplement

**100% PLANT-BASED**

**NO ARTIFICIAL FLAVORS**

**NO SUGAR**

**Certified Gluten-Free**

**DIRECTIONS: FOR ADULTS, TAKE ONE (1) TABLET TWICE DAILY, PREFERABLY WITH MEALS.** As a reminder, discuss the supplements and medications you take with your health care providers.

Supplement Facts	
Serving Size 1 Tablet	
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) 60 mg (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg) and 8% Terpine Lactones (3.6 mg)	**

\*\*Daily Value not established.

**Other Ingredients:** Vegetable Cellulose, Dicalcium Phosphate, Silica, Stearic Acid, Natural Plant Leaf Glycerin, vegetable Magnesium Stearate, Vegetable Stearic Acid.

**No-GMO, No Gluten, No Wheat, No Milk, No Lactose, No Artificial Colors, No Artificial Flavors, No Artificial Sweeteners, No Preservatives, No Sugar, No Soy, No Starch, No Yeast, No Fish, Sodium Free.**

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

# **Exhibit F**

**20% MORE FREE 20% MORE FREE 20% MORE FREE 20% MORE FREE 20% MORE FREE**

**Sundown  
Naturals**

# Ginkgo Biloba plus

**60 MG**  
EXTRACT PER SERVING

**Standardized  
Extract**

**Promotes Healthy Brain Function\***

VEGETARIAN FORMULA  
**100 120 TABLETS** HERBAL SUPPLEMENT

**DIRECTIONS: FOR ADULTS, TAKE TWO (2) TABLETS TWO TIMES DAILY, PREFERABLY WITH MEALS.** As a reminder, discuss the supplements and medications you take with your health care providers.

**Supplement Facts**

Serving Size 2 Tablets  
Servings Per Container 60

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf)	60 mg **
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	
Ginkgo Biloba (leaf)	400 mg **

\*\*Daily Value not established.

Other Ingredients: Dicalcium Phosphate, Vegetable Cellulose, Silica, Vegetable Stearic Acid, Vegetable Magnesium Stearate.

KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

Manufactured by REXALL SUNDOWN, INC. Boca Raton, FL 33487 USA

**Smart Facts**

Ginkgo Biloba helps maintain healthy circulation.\* In addition, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\* Ginkgo also possesses antioxidant properties that may help fight free radicals in the body.\* To enhance the bioactivity of the standardized Ginkgo, we've added 400 mg of Ginkgo Leaf per serving.

\*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.

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.

**WARNING:** If you are pregnant, nursing, taking any medications or observing any medical conditions, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

**100% ORGANIC**

104 B12510 KZJ 62009

Prod. No. 12508

0 30768 12508 0

**20% MORE FREE 20% MORE FREE 20% MORE FREE 20% MORE FREE 20% MORE FREE**

**Sundown  
Naturals**

# Ginkgo Biloba plus

**60 MG**  
EXTRACT PER SERVING

**Standardized  
Extract**

**Supports Healthy Brain Function\***

VEGETARIAN FORMULA  
**100 120 TABLETS** HERBAL SUPPLEMENT

**DIRECTIONS: FOR ADULTS, TAKE TWO (2) TABLETS TWO TIMES DAILY, PREFERABLY WITH MEALS.** As a reminder, discuss the supplements and medications you take with your health care providers.

**Supplement Facts**

Serving Size 2 Tablets  
Servings Per Container 60

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf)	60 mg **
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	
Ginkgo Biloba (leaf)	400 mg **

\*\*Daily Value not established.

Other Ingredients: Dicalcium Phosphate, Vegetable Cellulose, Silica, Vegetable Stearic Acid, Vegetable Magnesium Stearate.

KEEP OUT OF REACH OF CHILDREN. STORE AT ROOM TEMPERATURE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

Manufactured by REXALL SUNDOWN, INC. Boca Raton, FL 33487 USA

**Smart Facts**

Ginkgo Biloba helps maintain healthy circulation.\* In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo also possesses antioxidant properties that may help fight free radicals in the body.\*

\*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.

No Artificial Color, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.

**WARNING:** If you are pregnant, nursing, taking any medications or observing any medical conditions, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

**100% ORGANIC**

11K B50832 KAA 62001

Prod. No. 12508

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# **Exhibit G**

**Sundown Naturals**

**Ginkgo Biloba plus**

**60 MG** Standardized Extract  
EXTRACT PER SERVING

Promotes Healthy Brain Function\*

VEGETARIAN FORMULA  
100 TABLETS HERBAL SUPPLEMENT

**Smart Facts**  
Ginkgo Biloba helps maintain healthy circulation.\*\* In addition, Ginkgo helps improve memory, especially occasional mild memory problems associated with aging.\* Ginkgo also possesses antioxidant properties that may help fight free radicals in the body.\*\*

\*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.

No Artificial Colors, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.

**WARNING:** If you are pregnant, nursing, taking any medications or planning any medical procedures, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

Prod. No. 12508

0 30768 12508 0

**Supplement Facts**  
Serving Size 2 Tablets  
Servings Per Container 50

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	60 mg **
Ginkgo Biloba (leaf)	400 mg **

\*\*Daily Value not established.

Other Ingredients: Dicalcium Phosphate, vegetable Cellulose, Silica, Vegetable Stearic Acid, Vegetable Magnesium Stearate.

KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

PLEASE RECYCLE

Manufactured by  
REXALL SUNDOWN, INC.  
Boca Raton, FL 33487 USA

**Sundown Naturals**

**Ginkgo Biloba plus**

**60 MG** Standardized Extract  
EXTRACT PER SERVING

Supports Healthy Brain Function\*

VEGETARIAN FORMULA  
100 TABLETS HERBAL SUPPLEMENT

**Smart Facts**  
Ginkgo Biloba helps maintain healthy circulation.\*\* In addition, Ginkgo helps support memory, especially occasional mild memory problems associated with aging.\* Ginkgo also possesses antioxidant properties that may help fight free radicals in the body.\*\*

\*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.

No Artificial Colors, Flavor or Sweetener, No Preservatives, No Sugar, No Starch, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Fish, Sodium Free.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical procedures or have any medical conditions, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

Prod. No. 12508

0 30768 12508 0

**Supplement Facts**  
Serving Size 2 Tablets  
Servings Per Container 50

Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	60 mg **
Ginkgo Biloba (leaf)	400 mg **

\*\*Daily Value not established.

Other Ingredients: Dicalcium Phosphate, Vegetable Cellulose, Silica, Contains <2% of vegetable Magnesium Stearate, Vegetable Stearic Acid.

KEEP OUT OF REACH OF CHILDREN. STORE AT ROOM TEMPERATURE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

PLEASE RECYCLE

Manufactured by  
REXALL SUNDOWN, INC.  
Boca Raton, FL 33487 USA

**SMART FACTS**

- No Artificial Colors
- No Preservatives
- No Soy Support Memory, especially occasional mild memory problems associated with aging\*

\*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.

No-GMO, No Gluten, No Wheat, No Milk, No Lactose, No Nut For a Cream, No Artificial Flavors, No Nut For a Sweetener, No Preservatives, No Sugar, No Soy, No Starch, No Yeast, No Fish, Sodium Free.

KEEP OUT OF REACH OF CHILDREN. STORE AT ROOM TEMPERATURE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

Questions? Call toll free 1-888-VITAHELP (848-2435) or visit us at [www.sundownnaturals.com](http://www.sundownnaturals.com)

Made in the USA with select ingredients from around the world.

Manufactured by  
REXALL SUNDOWN, INC.  
Boca Raton, FL 33487 USA

Prod. No. 12508  
Label No. 92438

158 87650  
68216

**SUNDOWN NATURELS**

**STANDARDIZED GINKGO BILOBA 60MG**

Supports Healthy Brain Function\*

100 Tablets / Herbal Supplement

**100% FREE OF**

- ARTIFICIAL FLAVORS
- NUTRITIONAL ADDED
- NO-GMO

Contains GF Gluten-Free

**Supplement Facts**  
Serving Size: 1 Tablet

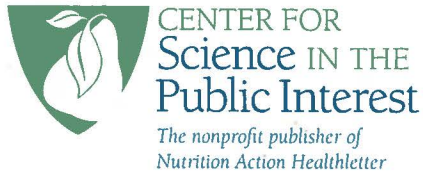
Amount Per Serving	%Daily Value
Ginkgo Biloba Extract (leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides [14.4 mg] and 6% Terpene Lactones [3.6 mg])	60 mg **

\*\*Daily Value not established.

Other Ingredients: Vegetable Cellulose, Dicalcium Phosphate, Silica, Contains <2% of Natural Palm Leaf Glaze, Vegetable Magnesium Stearate, Vegetable Stearic Acid.

**WARNING:** If you are pregnant, nursing, taking any medications, planning any medical or surgical procedure or have any medical condition, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

# **Exhibit H**



June 3, 2013

Mr. Michael M. Landa, J.D., Director  
Center for Food Safety and Applied Nutrition  
U.S. Food and Drug Administration  
5100 Paint Branch Parkway  
College Park, MD 20740

Dear Mr. Landa:

Extracts of the leaves from the *Ginkgo biloba* tree (“Ginkgo”) are widely used in dietary supplements, both in single-ingredient pills made by Natrol, GNC, Solaray, Now, Nature’s Way, Ginsana, and others, and in combination with other ingredients in products such as Bayer One-A-Day Women’s 50 Plus Advantage multivitamins. They are also used in some energy drinks, such as several Rockstar varieties, Hansen’s Energy Pro, Guru, and Steven Seagal’s Lightning Bolt. Yogi Tea’s Ginkgo Clarity has Ginkgo, and Redco Foods adds ginkgo to its Salada “Brain Boost” green tea. Companies portray Ginkgo as a substance that improves memory or concentration, but there is little supportive evidence.<sup>1</sup>

Claims regarding Ginkgo’s *supposed* health benefits (“memory” and “supports cognitive function”) are false and should be stopped, but Ginkgo hasn’t been thought to pose a serious health risk. That changed in March 2013 when the National Toxicology Program (“NTP”) of the National Institute for Environmental Health Sciences released the results of animal studies in which *Ginkgo biloba* extracts caused cancer.

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<sup>1</sup> “The evidence that *Ginkgo biloba* has predictable and clinically significant benefit for people with dementia or cognitive impairment is inconsistent and unreliable.” Cochrane Database Syst Rev. 2009 Jan 21;(1):CD003120. doi: 10.1002/14651858.CD003120.pub3. Ginkgo biloba for cognitive impairment and dementia. Birks J, Grimley Evans J. <http://www.ncbi.nlm.nih.gov/pubmed/19160216>

Also, “(W)e have found no convincing evidence from randomised clinical trials for a robust positive effect of *G. biloba* ingestion upon any aspect of cognitive function in healthy young people, after either acute or longer term administration.” Hum Psychopharmacol. 2007 Jul;22(5):265-78. Ginkgo biloba is not a smart drug: an updated systematic review of randomised clinical trials testing the nootropic effects of *G. biloba* extracts in healthy people. Canter PH, Ernst E. <http://www.ncbi.nlm.nih.gov/pubmed/17480002>





The NTP studies found “clear evidence” that Ginkgo caused liver cancer in male and female mice and “some evidence” that Ginkgo caused thyroid cancer in male and female rats.<sup>2</sup> In the high-dose groups of mice, the ingredient was no borderline carcinogen: it caused hepatocellular carcinomas in 94 percent of male mice (compared to 44 percent of the controls) and 96 percent of female mice (compared to 34 percent of the controls). The ingredient may also have caused other tumors as well. “In some instances, the number of cancers exceeded the numbers ever seen in mice in the lab, the investigators” told *The New York Times*.<sup>3</sup>

On the basis of the NTP studies, the FDA Seattle District office has already sent a warning letter to advise a beverage maker that one of its products is adulterated (and also misbranded for other reasons). On March 28, 2013, the FDA told Stewart Brothers, Inc., which makes SuperBerry Fruit Juice Drink Blend, that it knew of no basis for considering Ginkgo to be Generally Recognized As Safe (“GRAS”), especially in light of the NTP studies.<sup>4</sup> On May 23, 2012, even before there was evidence that Ginkgo caused cancer, the FDA’s New Orleans district office in Nashville, Tennessee, told Rockstar, Inc., that its Roasted Coffee & Energy products were adulterated because they contained the herbal ingredient:<sup>5</sup>

Any substance added to a conventional food, such as your Rockstar coffee products, must be used in accordance with a food additive regulation, unless the substance is the subject of a prior sanction or is generally recognized as safe (GRAS) among qualified experts for its use in foods [21 CFR 170.30(g)]. There is no food additive regulation which authorizes the use of Ginkgo. We are not aware of any information to indicate Ginkgo is the subject of a prior sanction [see 21 CFR 181]. As explained below, we are not aware of any basis to conclude that Ginkgo is GRAS for use in conventional foods.

We urge the FDA to take actions to protect consumers from this herbal ingredient that causes cancer in animals and presumably in people. Specifically, we ask the FDA to:

- Inform the food industry that Ginkgo is not GRAS, prior sanctioned, or an approved food additive and may not be used in any food. The FDA should give companies a reasonable time, such as 30 days, to recall their products from the marketplace, after which time it should seize any remaining products.

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<sup>2</sup> NTP technical report on the toxicology and carcinogenesis studies of *Ginkgo biloba* extract (CAS no. 90045-36-6) in F344/N rats and B6C3F1/N mice. March 2013. NTP TR 578. NIH Publication No. 13-5920.

<sup>3</sup> <http://well.blogs.nytimes.com/2013/04/29/new-doubts-about-ginkgo-biloba/>

<sup>4</sup> FDA Warning Letter SEA 13-15.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm346316.htm>; accessed April 26, 2013.

<sup>5</sup> FDA Warning Letter 2012-NOL-22.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm309080.htm>; accessed April 26, 2013.

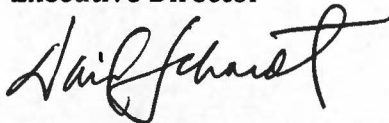
- Inform the dietary supplement industry that Ginkgo poses a substantial and unreasonable risk to consumers, provides no benefit to consumers, and must be removed from the market within a specified period of time.<sup>6</sup> FDA should take legal action if companies fail to stop marketing all of their products that contain Ginkgo.

The American Botanical Council has argued that the NTP used an extract of *Ginkgo biloba* that is not representative of Ginkgo supplements sold in the United States.<sup>7</sup> The Council claimed that the concentrations of three important constituents (flavonol glycosides, terpene lactones, and ginkgolic acids) of Ginkgo were significantly different in the NTP product from what is generally available in the marketplace. But the NTP maintains that the composition of the extract it tested falls within the range of what is available in the marketplace. Hence, the prudent course of action would be for the FDA to ensure that all products that contain extracts of *Ginkgo biloba* are removed from the marketplace.

Sincerely,



Michael F. Jacobson, Ph.D.  
Executive Director



David Schardt  
Senior Nutritionist

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<sup>6</sup> The standard for removing a dietary supplement from the marketplace was established in an appellate court's decision in a case involving ephedrine alkaloid dietary supplements ("EDS"). The court ruled that: In determining that EDS pose an "unreasonable risk of illness or injury," the FDA found that the weight loss and other health benefits possible from the use of EDS were dwarfed by the potential long-term harm to the user's cardiovascular system. The agency went on to enact a complete ban on the product after making a finding that any amount of EDS had negative ramifications on the cardiovascular system and, based on the FDA's analysis, EDS provided no benefits so great as to justify such risk.

In the present case, supplements containing *Ginkgo biloba* pose a risk of cancer to consumers, and that risk is not balanced by any demonstrated health benefits.

Appeal from the United States District Court for the District of Utah (D.C. No. 2:04-CV-00409-TC).

<http://www.casewatch.org/fda/court/ephedra/utah2.shtml>; accessed April 26, 2013.

<sup>7</sup>

[http://ntp.niehs.nih.gov/NTP/About\\_NTP/TRPanel/2012/February/PublicComm/Blumenthal20120125.pdf](http://ntp.niehs.nih.gov/NTP/About_NTP/TRPanel/2012/February/PublicComm/Blumenthal20120125.pdf)