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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PAIGE PETKEVICIUS on Behalf of  
Herself and All Others Similarly Situated,

Plaintiff,

vs.

REXALL SUNDOWN, INC. a Florida  
Corporation and Does 1-20,

Defendants.

Case No. '14CV2482 CAB RBB

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR JURY TRIAL**

1 Plaintiff PAIGE PETKEVICIUS brings this action on behalf of herself and all  
2 others similarly situated against Defendant REXALL SUNDOWN, INC. and Does, 1  
3 through 20 and states:

#### 4 NATURE OF ACTION

5 1. Defendant distributes, markets and sells “Sundown Naturals Ginkgo Biloba  
6 60 mg Standard Extract” (“Ginkgo Biloba”), a line of ginkgo biloba-based supplements  
7 that purportedly provide a variety of health benefits centered around improving mild  
8 memory problems and supporting healthy brain function. Defendant represents that the  
9 primary active ingredients in its Ginkgo Biloba products are ginkgo biloba extracts.  
10 Through an extensive and uniform nationwide advertising campaign, Defendant  
11 represents that Ginkgo Biloba “supports healthy brain function,” “helps support memory,  
12 especially occasional mild memory problems associated with aging,” and “helps maintain  
13 healthy circulation.” *See generally* Exhibit, “A;” Product Labels.

14 2. All available, reliable, scientific evidence demonstrates that the Ginkgo  
15 Biloba products have no efficacy at all, are ineffective in the improvement of cognitive  
16 health, and provide no benefits related to increasing the memory and healthy functioning  
17 of consumers’ brains. Numerous scientifically valid studies, performed by independent  
18 researchers, published in reputable medical journals have been conducted on Ginkgo  
19 Biloba, and they have universally demonstrated that the supplement has absolutely no  
20 scientific value in the improvement of brain function, treatment of memory problems or  
21 cognitive health.

22 3. Defendant represents that the active ingredients in Ginkgo Biloba products  
23 provide relief for many of these symptoms. The product labeling states that Ginkgo  
24 Biloba “helps maintain healthy circulation. In addition, Ginkgo helps support memory,  
25 *especially occasional memory problems associated with aging*. Ginkgo also possesses the  
26 antioxidant properties that may help fight free radicals in the body.” *See* product label,  
27 attached as Exhibit “A” (italics added). The product label further warrants that Ginkgo  
28 Biloba, “supports healthy brain function.”

1 4. Defendant conveys its uniform, deceptive message to consumers through a  
2 variety of media including their website and online promotional materials, and, most  
3 important, at the point of purchase, on the front of the Product’s packaging/labeling where  
4 it cannot be missed by consumers. The front of the Ginkgo Biloba product label states in  
5 bold print, in a different color from the Product name and strength, “Supports Healthy  
6 Brain Function.” The side label unambiguously states that “Ginkgo helps support  
7 memory, especially occasional mild memory problems associated The only reason a  
8 consumer would purchase Ginkgo Biloba is to obtain the advertised cognitive health  
9 benefits and brain function support, which the Ginkgo Biloba product does not provide.

10 5. As a result of Defendant’s deceptive advertising and false claims regarding  
11 the efficacy of the Ginkgo Biloba product, Plaintiff and the proposed class have purchased  
12 a product which does not perform as represented and they have been harmed in the  
13 amount they paid for the product, which, in the case of Plaintiff Paige Petkevicius, is  
14 approximately \$18.00 per 200 count 60 mg tablet bottle.

15 6. Plaintiff brings this action on behalf of herself and other similarly situated  
16 consumers who have purchased Defendant’s Ginkgo Biloba product to halt the  
17 dissemination of this false, misleading and deceptive advertising message, correct the  
18 false and misleading perception it has created in the minds of consumers, and obtain  
19 redress for those who have purchased these Products. Based on violations of state unfair  
20 competition laws and Defendant’s breach of express warranty, Plaintiff seeks injunctive  
21 and monetary relief for consumers who purchased the Ginkgo Biloba products.

22 **JURISDICTION AND VENUE**

23 7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The  
24 matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
25 \$5,000,000 and is a class action in which there are in excess of 100 class members and  
26 many members of the Class are citizens of a state different from Defendant.

27 8. This Court has personal jurisdiction over Defendant because Defendant is  
28 authorized to conduct and does conduct business in California. Defendant has marketed,

1 promoted, distributed, and sold the Ginkgo Biloba product in California and Defendant  
2 has sufficient minimum contacts with this State and/or sufficiently avails itself of the  
3 markets in this State through its promotion, sales, distribution and marketing within this  
4 State to render the exercise of jurisdiction by this Court permissible.

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

### 9 **PARTIES**

10 10. Plaintiff Paige Petkevicius resides in San Diego County, California. On  
11 separate occasions in the past two years, Plaintiff was exposed to and saw Defendant's  
12 representations regarding the cognitive health, brain function, and memory support of  
13 Ginkgo Biloba by reading the Ginkgo Biloba product label in a CVS pharmacy store near  
14 her home in San Diego. In reliance on the claims listed on the product label described  
15 herein and above, and particularly those claims listed on the front and side of the product  
16 label, that Ginkgo Biloba, "supports healthy brain function," and "helps support memory,  
17 especially occasional mild memory problems, associated with aging" Plaintiff estimates  
18 that she most recently purchased the Ginkgo Biloba product at a CVS pharmacy at 8813  
19 Via La Jolla Drive, La Jolla, California 92037 on or around July 15th of 2014. She paid  
20 approximately \$18.00 for the product.

21 11. At the time, Ms. Petkevicius, an avid fitness buff, was seeking a supplement  
22 to improve and/or maintain her cognitive function and to improve and/or maintain her  
23 memory. She purchased the product believing it would provide the advertised healthy  
24 brain function and memory support based upon the product's representations. She  
25 consumed the product in accordance with the directions on the bottle. Plaintiff made at  
26 least one additional purchase of the product during the proposed class period. She believes  
27 that purchase was made on or around March of 2014. On each occasion, she read and  
28 relied upon the representations on the product label prior to purchasing it. Plaintiff

1 consumed the product in accordance with the directions on the package. Plaintiff did not  
2 receive any of the advertised benefits. As a result, Plaintiff suffered injury in fact and lost  
3 money. Had Plaintiff known the truth about Defendant's misrepresentations and  
4 omissions, she would not have purchased the Ginkgo Biloba product. Had she known that  
5 Ginkgo Biloba may in fact actually be harmful or dangerous to her health (as more fully  
6 detailed in paragraph 25-26 below), including the possibility that it may cause liver  
7 damage or cancer, she would have never purchased the product. She does not intend to  
8 purchase it anymore.

9 12. Defendant Rexall Sundown, Inc., ("Rexall") is a Corporation organized and  
10 existing under the laws of the state of Florida. Rexall's headquarters and principle place  
11 of business is at 2100 Smithtown Avenue, Ronkonkoma, New York 11779.

12 13. Defendant Rexall manufacturers, advertises, markets and distributes the  
13 Ginkgo Biloba products to thousands of customers across the country.

14 14. Defendant Rexall also manufacturers, advertises, markets and distributes  
15 Ginkgo Biloba products, under separate, private labels sold at a variety of grocery stores,  
16 retail stores, and pharmacies across the country.

## 17 **FACTUAL ALLEGATIONS**

### 18 ***Ginkgo Biloba***

19 15. For more than a decade, Defendant has distributed, marketed and sold the  
20 Ginkgo Biloba product on a nation-wide basis. The Ginkgo Biloba product is sold at a  
21 variety of grocery chains, retail stores and pharmacies, and low cost retailers, including  
22 CVS pharmacy. The Ginkgo Biloba product is available in a 200-count and 100-count,  
23 60-mg tablet bottle. Plaintiff Paige Petkevicius purchased at least two 200-count 60-mg  
24 bottles during the class period. The Ginkgo Biloba product prominently advertises its only  
25 ingredient as: "Ginkgo Biloba Extract (Leaf) (Standardized to contain 24% Ginkgo  
26 Flavone Glycosides, 14.4 mg)."

27 16. Defendant has consistently advertised that Ginkgo Biloba "supports healthy  
28 brain function," that it "helps support memory, especially occasional mild memory

1 problems associated with aging,” *See* product labels, attached as Exhibit A. As more fully  
2 set forth herein, the scientific evidence regarding the use of Ginkgo biloba, does not  
3 provide any of the cognitive health benefits represented by Defendant.

4 17. Since launching the Ginkgo Biloba product, Defendant has consistently  
5 conveyed the message to consumers throughout the United States, including California,  
6 that the Ginkgo Biloba product provides superior cognitive health benefits, and/or  
7 memory benefits, and/or brain functioning support. It does not. Defendant’s superior  
8 cognitive health claims are false, misleading and deceptive.

9 18. Even though numerous clinical studies have found that Ginkgo biloba is  
10 ineffective, Defendant continues to state on the Product’s packaging and labeling that  
11 ginkgo biloba helps to, *inter alia*: support healthy brain function, support memory,  
12 especially occasional mild memory problems associated with aging.

13 19. Plaintiff and Class members have been and will continue to be deceived or  
14 misled by Defendant’s deceptive cognitive health benefit and brain functioning support  
15 claims. Each plaintiff purchased and consumed Ginkgo Biloba during the Class period  
16 and in doing so, read and considered the cognitive health benefit and brain functioning  
17 support representations on the Ginkgo Biloba product label and based their decisions to  
18 purchase the Ginkgo Biloba product on the cognitive health benefit and brain functioning  
19 support claims. Ms. Petkevicius based her purchase decision in large part on the  
20 representation that it would support healthy brain function and support her memory,  
21 including mild memory problems. Defendant’s joint health benefit claims were a material  
22 factor, in fact, the only factor in influencing Plaintiff’s decisions to purchase and use  
23 Ginkgo Bilboa. Plaintiff would not have purchased Ginkgo Biloba had she known that the  
24 Product does not provide the represented cognitive health benefit claims. Representative  
25 Product Packaging Labels are attached as Exhibit, “A”. The operative representations are  
26 identical on each bottle.

27 20. Independent scientific studies confirm that the representations made on the  
28 Ginkgo Biloba product label, relied upon by Plaintiff in making her purchase, are false

1 and misleading. Despite knowledge of these studies, Defendant continued to make the  
2 described representations, misleading Plaintiff and members of the class into believing the  
3 Ginkgo Biloba product had actual efficacy and would provide the benefits described in its  
4 advertising.

5 21. Defendant knew or should have known that the Ginkgo biloba extract present  
6 in Ginkgo Biloba has no actual medicinal value and does not provide any of the warranted  
7 benefits as represented by Defendant's Ginkgo Biloba product labels. In fact, there is no  
8 scientifically valid, clinical study, published in a reputable peer-reviewed journal  
9 demonstrating that any ginkgo biloba product can "support memory, especially occasional  
10 mild memory problems associated with aging" as claimed by the Ginkgo Biloba product  
11 label. To the contrary, as numerous such studies have confirmed, Ginkgo biloba does not  
12 actually improve cognitive decline.

13 22. For example, in 2009 The Journal of the American Medical Association  
14 (JAMA) published the largest study to date entitled *Ginkgo biloba for preventing*  
15 *cognitive decline in older adults: a randomized trial*, 302(24) JAMA 2663-2670  
16 (December 23, 2009). The study included 3069 participants aged 72-96 years, and was  
17 conducted over a span of eight years. Researchers found that 240 mg of Ginkgo biloba  
18 extract did not result in less cognitive decline in older adults with normal cognition or  
19 with mild cognitive impairment than the placebo control group.

20 23. In 2002, JAMA published Solomon et al. article *Ginkgo for memory*  
21 *enhancement: a randomized controlled trial* (288)(7) JAMA 835-840 (Aug. 21, 2002), in  
22 which 203 participants over the age of 60 in generally good health were evaluated for six  
23 week periods, with half receiving 120 mg of ginkgo to compare to a control group. The  
24 authors concluded that Ginkgo did not improve performance on standard  
25 neurophysiological tests that evaluated learning, memory, attention, and concentration.  
26 There was similarly no improvement on naming and verbal fluency, and the ginkgo group  
27 was no different from the control group on self-reported memory function. "These data  
28 suggest that when taken following the manufacturer's instructions, ginkgo provides no

1 measurable benefit in memory or related cognitive function to adults with healthy  
2 cognitive function.”

3 24. In 2007 a study entitled *Ginkgo biloba is not a smart drug: an updated*  
4 *systematic review of randomised clinical trials testing the nootropic effects of G. biloba*  
5 *extracts in healthy people*, (22)(5) *Hum Psychopharmacology*. 265-278 (July 2007) found  
6 that, in a review of clinical trials from six databases, there is no convincing evidence for a  
7 robust positive effect of ginkgo biloba ingestion upon any aspect of cognitive function in  
8 healthy, young people (age 60 and younger). The study’s authors concluded, “[We] have  
9 found no convincing evidence from randomized clinical trials for a robust positive effect  
10 of G. Biloba ingestion upon any aspect of cognitive function in healthy young people,  
11 after either acute or longer term administration.” *Id.* at 2007 July; 22[5]:265-278.

12 25. In a 2012 study published in *Human Psychopharmacology: Clinical and*  
13 *Experimental*, researchers searched databases and recent qualitative reviews for  
14 randomised controlled trials containing data on memory, executive function, and attention  
15 of over 2500 healthy individuals total. The results in *Is Ginkgo biloba a cognitive*  
16 *enhancer in healthy individuals? A meta-analysis* (27)(6) *Human Psychopharmacology*  
17 527-533 (Nov. 2012) stated that ginkgo biloba had no ascertainable positive effects on the  
18 above-mentioned cognitive functions in healthy individuals.

19 26. In addition to the lack of positive cognitive benefits, Ginkgo biloba may have  
20 negative carcinogenic effects. The National Toxicology Program (NTP) studied the  
21 effects of Ginkgo biloba on rats and mice in small and large doses. In the *NTP Technical*  
22 *Report on the Toxicology and Carcinogenesis Studies of Ginkgo Biloba Extract in F344/N*  
23 *Rats and B6C3F1/N Mice*, NTP TR 578, Publication No. 13-5920, researchers concluded  
24 that ginkgo biloba extract cause cancers of the thyroid gland in male and female rats and  
25 male mice and cancers of the liver in male and female mice.

26 27. As a result of the serious implications of the NTP study, and the lack of  
27 scientific evidence supporting safe use and positive effects of Ginkgo biloba, the Center  
28 for Science in the Public Interest addressed the director of the FDA, emphasizing that



1 claims regarding Ginkgo's supposed health benefits including those related to memory  
2 and cognitive function are false and should be stopped and imploring him to issue a  
3 directive that Ginkgo is no longer "Generally Recognized As Safe". See Exhibit B.

4 28. Additionally, studies testing the effect of Ginkgo Biloba consumption on  
5 Dementia and cognitively impaired subjects have a scientifically valid correlation to the  
6 claims made on Defendant's product label. The Mayo Clinic defines symptoms of  
7 dementia as including following:

- 8 • *Memory Loss*
- 9 • *Difficulty Communicating*
- 10 • *Difficulty with complex tasks*
- 11 • *Difficulty with planning and organizing*
- 12 • *Difficulty with coordination and motor functions*
- 13 • *Problems with disorientation, such as getting lost*
- 14 • *Inability to reason*

15 See [http://www.mayoclinic.org/diseases-](http://www.mayoclinic.org/diseases-conditions/dementia/basics/symptoms/con-)  
16 [conditions/dementia/basics/symptoms/con-](http://www.mayoclinic.org/diseases-conditions/dementia/basics/symptoms/con-) 20034399 (last viewed October 15,  
17 2014).

18 29. Defendant has drawn from these "symptoms" in the advertising of their  
19 product. While not directly marketing their product as a treatment for Dementia or other  
20 cognitive related deficiencies or illnesses, Defendant's representations explicitly and  
21 implicitly state that consumption of its Ginkgo Biloba supplement will improve symptoms  
22 relating to such conditions, including primarily that consumption of Ginkgo Biloba will  
23 improve a consumer's memory, "especially occasional mild memory problems associated  
24 with aging." The statement "Healthy Brain Function" is exactly inapposite of an  
25 individual suffering from a cognitive condition such as Dementia or memory loss. The  
26 findings of studies performed on individuals suffering from dementia or other cognitive  
27 impairment bear directly on the invalidity of Defendant's misleading marketing messages  
28

1 because these studies are performed on individuals who experiencing the very symptoms  
2 Defendant's product is advertised to improve.

3 30. For example, in the 2009 study *Ginkgo biloba for cognitive impairment and*  
4 *dementia*, (1) Cochrane Database Syst. Rev. (Jan. 21, 2009), researchers reviewed 36  
5 trials, nine of which were six months long (2016 participants). In the more recent and  
6 more reliable trials, three out of four found no benefits for cognitive decline. Researchers  
7 concluded that while Ginkgo biloba may be safe, evidence that it has predictable and  
8 clinically significant benefit for people with dementia or cognitive impairment is  
9 inconsistent and unreliable.

10 31. In 2013, the Support Care Cancer published *The use of Ginkgo biloba for the*  
11 *prevention of chemotherapy-related cognitive dysfunction in women receiving adjuvant*  
12 *treatment for breast cancer, N00C9*, (4) Support Care Cancer 1185-1192 (Apr. 2013).  
13 Researchers found that in 166 women, 120 mg a day for up to 12 months did not provide  
14 any evidence that Ginkgo biloba can help prevent cognitive changes from chemotherapy.

15 32. In 2014, the authors of *Substances used and prevalence rates of*  
16 *pharmacological cognitive enhancement among healthy subjects*, 264 Suppl 1, Eur. Arch  
17 Psychiatry Clin. Neurosci. 83-90 (Nov. 2014) studied 176 participants who ingested 120  
18 mg daily of Ginkgo biloba over a six-month period. The results indicated that there was  
19 no evidence that an average dose of Ginkgo biloba extract created any benefit in mild to  
20 moderate dementia.

21 33. To date, although there are some studies that purport to claim that the  
22 ingestion of Ginkgo biloba can provide cognitive health benefits, those studies suffer  
23 severe, unmitigated scientific deficiencies, including utilizing a scientifically unreliable  
24 sample size, not utilizing scientifically sound testing procedures, and suffering from  
25 publication bias, i.e. the funding, publication or sponsorship of the study was provided by  
26 a party who stood to benefit from a positive finding. Or, alternatively, used a larger  
27 supplementation of Ginkgo Biloba than that provided by Defendant's suggested, or  
28

1 recommended consumption<sup>1</sup>. Plaintiff's allegations are based upon scientifically valid  
2 studies, published in independent, reputable scientific journals which conclusively  
3 demonstrate that the Ginkgo Biloba supplement does not provide the benefits advertised  
4 by Defendant, and may even cause harm to consumers.

5 34. As a result, Plaintiff and the Class members have been damaged by their  
6 purchases of the Ginkgo Biloba product and have been deceived into purchasing a Product  
7 that they believed, based on Defendant's representations, provided cognitive health  
8 benefits and overall brain functioning support when, in fact, it did not.

9 35. Defendant has reaped enormous profits from its false marketing and sale of  
10 the Ginkgo Biloba product.

### 11 CLASS DEFINITION AND ALLEGATIONS

12 36. Plaintiff brings this action on behalf of herself and all other similarly situated  
13 Class members pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil  
14 Procedure and seeks certification of the following Class against Defendant:

#### 15 Multi-State Class Action

16 All consumers who purchased the Ginkgo Biloba product in the  
17 state of California and states with similar laws, within the  
18 applicable statute of limitations, for personal use until the date  
19 notice is disseminated<sup>2</sup>.

20 Excluded from this Class is Defendant and its officers, directors  
21 and employees, and those who purchased the Ginkgo Biloba  
22 product for the purpose of resale.

23 37. *Numerosity*. The members of the Class are so numerous that joinder of all  
24 members of the Class is impracticable. Plaintiff is informed and believes that the

25 <sup>1</sup> Rexall recommends one tablet be consumed, twice daily for a total of 120 mg. of Ginkgo  
26 Biloba.

27 <sup>2</sup> Plaintiff preliminarily avers that the other states with similar consumer fraud laws under  
28 the facts of this case include, but are not limited to: Arkansas, Colorado, Connecticut,  
Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Maine, Massachusetts,  
Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New  
Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South  
Dakota, Texas, Virginia, Washington, West Virginia and Wisconsin, (Collectively, the  
"Multi-State Class").

1 proposed Class contains thousands of purchasers of the Ginkgo Biloba product who have  
2 been damaged by Defendant's conduct as alleged herein. The precise number of Class  
3 members is unknown to Plaintiff.

4 38. ***Existence and Predominance of Common Questions of Law and Fact.*** This  
5 action involves common questions of law and fact, which predominate over any questions  
6 affecting individual Class members. These common legal and factual questions include,  
7 but are not limited to, the following:

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

10 (b) whether Defendant's alleged conduct violates public policy;

11 (c) whether the alleged conduct constitutes violations of the laws  
12 asserted;

13 (d) whether Defendant engaged in false or misleading advertising;

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

16 (f) whether Plaintiffs and Class members are entitled to other appropriate  
17 remedies, including corrective advertising and injunctive relief.

18 39. ***Typicality.*** Plaintiff's claims are typical of the claims of the members of the  
19 Class because, *inter alia*, all Class members were injured through the uniform misconduct  
20 described above and were subject to Defendant's deceptive cognitive health benefit claims  
21 that accompanied each and every Ginkgo Biloba product Defendant sold. Plaintiff is  
22 advancing the same claims and legal theories on behalf of herself and all members of the  
23 Class.

24 40. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the  
25 interests of the members of the Class. Plaintiff has retained counsel experienced in  
26 complex consumer class action litigation, and Plaintiff intends to prosecute this action  
27 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.  
28

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

15           42. The Class also may be certified because Defendant has acted or refused to act  
16 on grounds generally applicable to the Class, thereby making appropriate final declaratory  
17 and/or injunctive relief with respect to the members of the Class as a whole.

18           43. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
19 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin  
20 and prevent Defendant from engaging in the acts described, and requiring Defendant to  
21 provide full restitution to Plaintiff and Class members.

22           44. Unless a Class is certified, Defendant will retain monies received as a result  
23 of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide  
24 injunction is issued, Defendant will continue to commit the violations alleged, and the  
25 members of the Class and the general public will continue to be misled.

26 ///

27 ///

28 ///

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

1  
2  
3 45. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
4 above, as if fully set forth herein.

5 46. Plaintiff brings this claim on behalf of herself and on behalf of the Class. As  
6 alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result  
7 of Defendant's conduct because she purchased the Ginkgo Biloba product in reliance on  
8 Defendant's cognitive health benefit claims, including *inter alia*, that the Ginkgo Biloba  
9 product:

- 10
- "Supports healthy brain function;"
  - "helps support memory, especially occasional mild memory problems associated with aging;"
- 11  
12

13 (See Exhibit, "A") but Plaintiff did not receive any benefits.

14 47. Plaintiffs did not receive a product that provided any increased cognitive  
15 health benefits at all.

16 48. The Unfair Competition Law, Business & Professions Code §17200, et seq.  
17 ("UCL"), and similar laws in other states, prohibit any "unlawful," "fraudulent" or  
18 "unfair" business act or practice and any false or misleading advertising. In the course of  
19 conducting business, Defendant committed unlawful business practices by, *inter alia*,  
20 making the above referenced claims in paragraph 49 and as alleged throughout herein  
21 (which also constitutes advertising within the meaning of §17200) and omissions of  
22 material facts related to the numerous scientific studies which demonstrate no cognitive  
23 health benefits derived from the consumption of the ingredients present in Ginkgo Biloba,  
24 and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions  
25 Code §§17200, et seq., 17500, et seq., and the common law.

26 49. Plaintiff and the Class reserve the right to allege other violations of law,  
27 which constitute other unlawful business acts or practices. Such conduct is ongoing and  
28 continues to this date.

1 50. Defendant's actions also constitute "unfair" business acts or practices  
2 because, as alleged above, *inter alia*, Defendant engaged in false advertising,  
3 misrepresented and omitted material facts regarding the Ginkgo Biloba product, and  
4 thereby offended an established public policy, and engaged in immoral, unethical,  
5 oppressive, and unscrupulous activities that are substantially injurious to consumers.

6 51. As stated in this Complaint, Plaintiff alleges violations of consumer  
7 protection, unfair competition and truth in advertising laws in California and other states,  
8 resulting in harm to consumers. Defendant's acts and omissions also violate and offend  
9 the public policy against engaging in false and misleading advertising, unfair competition  
10 and deceptive conduct towards consumers. This conduct constitutes violations of the  
11 unfair prong of Business & Professions Code §17200, et seq.

12 52. There were reasonably available alternatives to further Defendant's  
13 legitimate business interests, other than the conduct described herein.

14 53. Business & Professions Code §17200, et seq. also prohibits any "fraudulent  
15 business act or practice."

16 54. Defendant's actions, claims, nondisclosures and misleading statements, as  
17 more fully set forth above, were also false, misleading and/or likely to deceive the  
18 consuming public within the meaning of Business & Professions Code §17200, et seq.

19 55. Plaintiff and other members of the Class have in fact been deceived as a  
20 result of their reliance on Defendant's material representations and omissions, which are  
21 described above. This reliance has caused harm to Plaintiff and other members of the  
22 Class who each purchased the Ginkgo Biloba product. Plaintiff and the other Class  
23 members have suffered injury in fact and lost money as a result of these unlawful, unfair,  
24 and fraudulent practices.

25 56. As a result of its deception, Defendant has been able to reap unjust revenue  
26 and profit.

27 57. Unless restrained and enjoined, Defendant will continue to engage in the  
28 above-described conduct. Accordingly, injunctive relief is appropriate.

1 58. Plaintiff, on behalf of herself, all others similarly situated, and the general  
2 public, seeks restitution and disgorgement of all money obtained from Plaintiff and the  
3 members of the Class collected as a result of unfair competition, an injunction prohibiting  
4 Defendant from continuing such practices, corrective advertising, and all other relief this  
5 Court deems appropriate, consistent with Business & Professions Code §17203.

6 **COUNT II**  
7 **Violations of the Consumers Legal Remedies Act –**  
8 **Civil Code §1750 *et seq.***

9 59. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
10 above, as if fully set forth herein.

11 60. Plaintiff brings this claim individually and on behalf of the Class.

12 61. This cause of action is brought pursuant to the Consumers Legal Remedies  
13 Act, California Civil Code §1750, *et seq.* (the “Act”) and similar laws in other states.  
14 Plaintiff is a “consumer” as defined by California Civil Code §1761(d). The Ginkgo  
15 Biloba product is a “good” within the meaning of the Act.

16 62. Defendant violated and continues to violate the Act by engaging in the  
17 following practices proscribed by California Civil Code §1770(a) in transactions with  
18 Plaintiff and the Class which were intended to result in, and did result in, the sale of the  
19 Ginkgo Biloba products:

20 (5) Representing that [the Product] has . . . approval, characteristics, . . . uses  
21 [and] benefits . . . which [it does] not have . . . .

22 \* \* \*

23 (7) Representing that [the Product] is of a particular standard, quality or  
24 grade . . . if [it is] of another.

25 \* \* \*

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

27 \* \* \*

28 (16) Representing that [the Product has] been supplied in accordance with a  
previous representation when [it has] not.



1 63. Defendant violated the Act by representing and failing to disclose material  
2 facts on the Ginkgo Biloba labeling and packaging and associated advertising, as  
3 described above, when it knew, or should have known, that the representations were false  
4 and misleading and that the omissions were of material facts it was obligated to disclose.

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

8 65. Pursuant to §1782 of the Act, Plaintiff Petkevicius notified Defendant Rexall  
9 Sundown in writing by certified mail of the particular violations of §1770 of the Act and  
10 demanded that Rexall Sundown rectify the problems associated with the actions detailed  
11 above and give notice to all affected consumers of Defendant's intent to so act. If Rexall  
12 Sundown does not respond to Plaintiff's letter or agree to rectify the problems associated  
13 with the actions detailed above and give notice to all affected consumers within 30 days of  
14 the date of written notice pursuant to §1782 of the Act, Plaintiff will amend her complaint  
15 to seek actual, punitive and statutory damages, as appropriate against Rexall Sundown.

16 66. A copy of the letter is attached hereto as Exhibit C.

17 67. If Defendant Rexall Sundown fails to rectify or agree to rectify the problems  
18 associated with the actions detailed above and give notice to all affected consumers within  
19 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend  
20 this complaint to add claims for actual, punitive and statutory damages, as appropriate.

21 68. Defendant's conduct is fraudulent, wanton and malicious.

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

24  
25 **COUNT III**  
**Breach of Express Warranty**

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

28 71. Plaintiff brings this claim individually and on behalf of the Class.



1 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff  
2 and the proposed Class members;

3 D. Awarding actual, punitive and statutory damages to Plaintiff and the  
4 proposed Class members;

5 E. Awarding declaratory and injunctive relief as permitted by law or equity,  
6 including: enjoining Defendant from continuing the unlawful practices as set forth herein,  
7 and directing Defendant to identify, with Court supervision, victims of its conduct and  
8 pay them all money it is required to pay;

9 F. Ordering Defendant to engage in a corrective advertising campaign;

10 G. Awarding attorneys' fees and costs;

11 H. Providing such further relief as may be just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by  
14 law.

15  
16 Dated: October 17, 2014

**CARPENTER LAW GROUP**

17  
18 By: /s/ Todd D. Carpenter

19 Todd D. Carpenter (CA 234464)  
20 402 West Broadway, 29th Floor  
21 San Diego, California 92101  
22 Telephone: 619.756.6994  
23 Facsimile: 619.756.6991  
24 [todd@carpenterlawyers.com](mailto:todd@carpenterlawyers.com)

25 **PATTERSON LAW GROUP**  
26 James R. Patterson (CA 211102)  
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Facsimile: 619.756.6991  
[jim@pattersonlawgroup.com](mailto:jim@pattersonlawgroup.com)

Attorneys for Plaintiff

**EXHIBIT A**

**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) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 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.

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

**NEW**  
Smaller  
Size

**Sundown  
Naturals**

**Ginkgo  
Biloba**

**60 MG** Standardized  
Extract

**Supports Healthy  
Brain Function\***

**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.

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.

**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.

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

**FREE OF  
Gluten &  
Wheat**

Prod. No. 44976



11L B7650  
DA4 ©2014



0 30768 01880 1

**Sundown  
Naturals**

**NEW**  
Smaller  
Size

# Ginkgo Biloba

**60 MG**

*Standardized  
Extract*

**Supports Healthy Brain Function\***

**VEGETARIAN FORMULA**

**100 TABLETS** HERBAL SUPPLEMENT

**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) (Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 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.

**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 Yeast, No Fish, Sodium Free.

**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.

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

**FREE OF  
Gluten &  
Wheat**

**Prod. No. 12508**



14M B7650  
DA4 ©2014



**EXHIBIT B**



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.

---

<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.

---

<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.

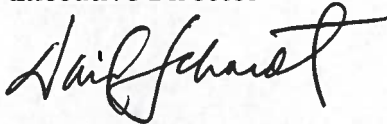
- Inform the dietary supplement industry that Ginkgo poses a substantial and unreasonable risk to consumers, provides no benefit to consumers, and must be removed from the market within a specified period of time.<sup>6</sup> FDA should take legal action if companies fail to stop marketing all of their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

---

<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)

**EXHIBIT C**



JAMES R. PATTERSON  
619.756.6993 direct  
jim@pattersonlawgroup.com

October 17, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Chief Executive Officer / President  
Rexall Sundown, Inc.  
2100 Smithtown Avenue  
Ronkonkoma, New York 11779

Re: Petkevicius v. Rexall Sundown, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Paige Petkevicius and all other similarly situated California Residents in an action against Rexall Sundown, Inc. arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Ginkgo Biloba line of dietary supplements:

- “Supports healthy brain function;”
- “Maintains healthy circulation;”
- “helps support memory, especially occasional mild memory problems associated with aging;”

As you are aware, Rexall Sundown, Inc. warranted on its product labeling that the claimed benefits can be received through the recommended consumption of its Ginkgo Biloba product. Ms. Petkevicius and others similarly situated purchased the Ginkgo Biloba products unaware that the representations found on the Products’ labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Ginkgo Biloba products and healthy brain function, circulation, or the improvement in memory function. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

October 17, 2014  
Page Two

Rexall Sundown's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Rexall Sundown with the intent to result in the sale of the Ginkgo Biloba products to the consuming public. The mental acuity, brain support and memory improvement representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Ginkgo Biloba has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

- (7) Representing that [Ginkgo Biloba is] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

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

\* \* \*

- (16) Representing that [Ginkgo Biloba has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Rexall Sundown's representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Rexall Sundown immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Rexall Sundown should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of

October 17, 2014  
Page Three

unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Rexall Sundown address this problem immediately.

Rexall Sundown must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Rexall Sundown will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Ginkgo Biloba purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving or maintaining healthy brain function, improving or maintaining memory function or improving or maintaining circulation when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

A handwritten signature in blue ink, appearing to read "James R. Patterson", is written over a light blue rectangular background.

James R. Patterson

Enclosure(s)

CC: Carpenter Law Group

**EXHIBIT D**

1 **CARPENTER LAW GROUP**

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3 402 West Broadway, 29th Floor  
4 San Diego, California 92101  
5 Telephone: 619.756.6994  
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9 James R. Patterson (CA 211102)  
10 402 West Broadway, 29th Floor  
11 San Diego, California 92101  
12 Telephone: 619.756.6990  
13 Facsimile: 619.756.6991  
14 [jim@pattersonlawgroup.com](mailto:jim@pattersonlawgroup.com)

15 Attorneys for Plaintiff

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 **PAIGE PETKEVICIUS** on Behalf of  
16 Herself and All Others Similarly Situated,

17 Plaintiff,

18 vs.

19 **REXALL SUNDOWN, INC.** a Florida  
20 Corporation and Does 1-20,

21 Defendants.

Case No.

**DECLARATION OF TODD D.  
CARPENTER IN SUPPORT OF  
JURISDICTION**





JS 44 (Rev. 12/12)

**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 on Behalf of Herself 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)  
 See Attachment

**DEFENDANTS**  
 REXALL SUNDOWN, INC. a Florida Corporation and  
 Does 1-20,  
 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) **14CV2482 CAB RBB**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)  
 1 U.S. Government Plaintiff  
 3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  
 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)  
 (For Diversity Cases Only)  

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	3 Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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

**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. Section 1332(d)(2)  
 Brief description of cause:  
Violation of the the Unfair Competition Law, Violation of the Consumers Legal Remedies Act, 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 October 17, 2014 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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**

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