

CARPENTER LAW GROUP

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6994
Facsimile: 619.756.6991
todd@carpenterlawyers.com

PATTERSON LAW GROUP

James R. Patterson (CA 211102)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6690
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

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.

NBTY, INC., a Delaware Corporation; and
NATURE'S BOUNTY, INC., a New York
Corporation and Does 1-20,

Defendants.

Case No. '14CV2616 JM WVG

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

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

DEMAND FOR JURY TRIAL

Plaintiff PAIGE PETKEVICIUS brings this action on behalf of herself and all
others similarly situated against Defendants NBTY, INC., NATURE'S BOUNTY, INC.
and Does, 1 through 20 and states:

NATURE OF ACTION

1
2 1. Defendants distribute, market and sell “Double Strength Standardized Extract
3 Ginkgo Biloba 120 mg” and an identical Ginkgo Biloba supplement, “Ginkgo Biloba 60
4 mg” (“Ginkgo Biloba”), Ginkgo biloba-based supplements that purportedly provide a
5 variety of health benefits centered around improving mild memory problems, supporting
6 mental alertness, and supporting healthy brain function. Defendants represent that the
7 primary active ingredient in their Ginkgo Biloba product is ginkgo biloba extract.
8 Through an extensive and uniform nationwide advertising campaign, Defendants
9 represent that Ginkgo Biloba “supports healthy brain function and circulation,” “helps
10 support memory, especially occasional mild memory problems associated with aging,”
11 and “helps support mental alertness.” *See generally* Exhibit, “A”; Product Labels.

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

20 3. Defendants represent that the active ingredient in the Ginkgo Biloba product
21 provides relief for many of these symptoms. The product labeling states that “Ginkgo
22 Biloba provides you with the supplemental nutrition you need to support circulation to the
23 extremities. In addition, Ginkgo helps support memory, *especially occasional mild*
24 *memory problems associated with aging*. Ginkgo Biloba contains antioxidant properties
25 that help fight free radicals in the body.” *See* product label, attached as Exhibit “A”
26 (italics added). The product label further warrants that Ginkgo Biloba, “supports healthy
27 brain function” and “helps support mental alertness.” *Id.*

28 4. Defendants convey their uniform, deceptive message to consumers through a

1 variety of media including their websites and online promotional materials, and, most
2 important, at the point of purchase, on the front of the Product's packaging/labeling where
3 it cannot be missed by consumers. The front of the Ginkgo Biloba product label states in
4 bold print, in a different color from the Product name and strength, "Supports Healthy
5 Brain Function." Directly next to that claim, the front of the product also states,
6 highlighted by a blue background that stands in contrast to the white label, "helps support
7 mental alertness." The side label unambiguously states that, "Ginkgo helps support
8 memory, especially occasional mild memory problems associated with aging." The only
9 reason a consumer would purchase the Ginkgo Biloba product is to obtain the advertised
10 cognitive health benefits and brain function support, which the Ginkgo Biloba product
11 does not provide.

12 5. As a result of Defendants' deceptive advertising and false claims regarding
13 the efficacy of their Ginkgo Biloba product, Plaintiff and the proposed class have
14 purchased a product which does not perform as represented and they have been harmed in
15 the amount they paid for the product, which, in the case of Plaintiff Paige Petkevicius, is
16 approximately \$18.00 per 100 count 120 mg tablet bottle.

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

24 **JURISDICTION AND VENUE**

25 7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
26 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
27 \$5,000,000 and is a class action in which there are in excess of 100 class members and
28 many members of the Class are citizens of a state different from Defendants.

1 period. She believes that purchase was made on or around March of 2014. On each
2 occasion, she read and relied upon the representations on the product label prior to
3 purchasing it. Plaintiff consumed the product in accordance with the directions on the
4 package. Plaintiff did not receive any of the advertised benefits. As a result, Plaintiff
5 suffered injury in fact and lost money. Had Plaintiff known the truth about Defendants'
6 misrepresentations and omissions, she would not have purchased the Ginkgo Biloba
7 product. Had she known that Ginkgo biloba may in fact actually be harmful or dangerous
8 to her health (as more fully detailed in paragraph 25-26 below), including the possibility
9 that it may cause liver damage or cancer, she would have never purchased the product.
10 She does not intend to purchase it anymore.

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

14 13. Defendant Nature's Bounty, Inc., ("Nature's Bounty") is a Corporation
15 organized and existing under the laws of the state of New York. Nature's Bounty's
16 headquarters and principle place of business is at 110 Orville Drive, Bohemia, New York
17 11716.

18 14. Defendants NBTY and Nature's Bounty manufacturer, advertise, market and
19 distribute the Ginkgo Biloba product to thousands of customers across the country.

20 15. Defendants NBTY and Nature's Bounty also manufacturer, advertise, market
21 and distribute the Ginkgo Biloba product, under separate, private labels sold at a variety
22 of grocery stores, retail stores, and pharmacies across the country.

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

FACTUAL ALLEGATIONS

Ginkgo Biloba

17. For more than a decade, Defendants have distributed, marketed and sold the Ginkgo Biloba product on a nation-wide basis. The Ginkgo Biloba product is sold at a variety of grocery chains, retail stores and pharmacies, and low cost retailers, including CVS pharmacy. The Ginkgo Biloba product is available in a 100-count, 120 mg bottle and a 200-count, 60-mg tablet bottle. Plaintiff Paige Petkevicius purchased one 200-count 60-mg bottles during the class period. The Ginkgo Biloba product prominently advertises its only ingredient as: “Ginkgo Biloba Extract (*Ginkgo biloba*) (Leaf) (Standardized to contain 24% Ginkgo Flavone Glycosides, 28 mg).”

18. Defendants have consistently advertised that their Ginkgo Biloba product “supports healthy brain function,” that it “helps support memory, especially occasional mild memory problems associated with aging,” and that it “helps support mental alertness.” See product labels, attached as Exhibit “A.” As more fully set forth herein, the scientific evidence regarding the use of Ginkgo biloba, does not provide any of the cognitive health benefits represented by Defendants.

19. Since launching the Ginkgo Biloba product, Defendants have consistently conveyed the message to consumers throughout the United States, including California, that the Ginkgo Biloba product provides superior cognitive health benefits, and/or memory benefits, and/or brain functioning support. It does not. Defendants’ superior cognitive health claims are false, misleading and deceptive.

20. Even though numerous clinical studies have found that Ginkgo biloba is ineffective, Defendants continue to state on the Product’s packaging and labeling that Ginkgo biloba helps to, inter alia: support healthy brain function, support memory, especially occasional mild memory problems associated with aging, and support mental alertness.

21. Plaintiff and Class members have been and will continue to be deceived or misled by Defendants’ deceptive cognitive health benefit and brain functioning support

1 claims. Each plaintiff purchased and consumed the Ginkgo Biloba product during the
2 Class period and in doing so, read and considered the cognitive health benefits and brain
3 functioning support representations on the Ginkgo Biloba product label and based their
4 decisions to purchase the Ginkgo Biloba product on the cognitive health benefits and
5 brain functioning support claims. Paige Petkevicius based her purchase decision in large
6 part on the representation that it would support healthy brain function and support her
7 memory, including mild memory problems. Defendants' cognitive health benefit claims
8 were a material factor, and in fact, the only factor in influencing Plaintiff's decisions to
9 purchase and use Ginkgo Biloba. Plaintiff would not have purchased the Ginkgo Biloba
10 product had she known that the Product does not provide the represented cognitive health
11 benefit claims. Representative Product Packaging Labels are attached as Exhibit, "A."
12 The operative representations are identical on each bottle.

13 22. Independent scientific studies confirm that the representations made on the
14 Ginkgo Biloba product label, relied upon by Plaintiff in making her purchase, are false
15 and misleading. Despite knowledge of these studies, Defendants continued to make the
16 described representations, misleading Plaintiff and members of the class into believing the
17 Ginkgo Biloba product had actual efficacy and would provide the benefits described in
18 their advertising.

19 23. Defendants knew or should have known that the Ginkgo biloba extract
20 present in the Ginkgo Biloba product has no actual medicinal value and does not provide
21 any of the warranted benefits as represented by Defendants' Ginkgo Biloba product
22 labels. In fact, there is no scientifically valid, clinical study, published in a reputable peer-
23 reviewed journal demonstrating that any Ginkgo biloba product can "support memory,
24 especially occasional mild memory problems associated with aging" as claimed by the
25 Ginkgo Biloba product label. To the contrary, as numerous such studies have confirmed,
26 Ginkgo biloba does not actually improve cognitive decline.

27 24. For example, in 2009 The Journal of the American Medical Association
28 ("JAMA") published the largest study to date entitled *Ginkgo biloba for preventing*

1 *cognitive decline in older adults: a randomized trial*, 302(24) JAMA 2663-2670
2 (December 23, 2009). The study included 3069 participants aged 72-96 years, and
3 researchers conducted the study over a span of eight years. Researchers found that 240
4 mg of Ginkgo biloba extract did not result in less cognitive decline in older adults with
5 normal cognition or with mild cognitive impairment than in the placebo control group.

6 25. In 2002, JAMA published the Solomon et al. article *Ginkgo for memory*
7 *enhancement: a randomized controlled trial* (288)(7) JAMA 835-840 (Aug. 21, 2002), in
8 which 203 participants, over the age of 60 and in generally good health, were evaluated
9 for six week periods, with half receiving 120 mg of ginkgo to compare to a control group.
10 The authors concluded that Ginkgo biloba did not improve performance on standard
11 neurophysiological tests that evaluated learning, memory, attention, and concentration.
12 There was similarly no improvement on naming and verbal fluency, and the ginkgo group
13 was no different from the control group on self-reported memory function. “These data
14 suggest that when taken following the manufacturer’s instructions, ginkgo provides no
15 measurable benefit in memory or related cognitive function to adults with healthy
16 cognitive function.”

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

26 27. In a 2012 study published in Human Psychopharmacology: Clinical and
27 Experimental, researchers searched databases and recent qualitative reviews for
28 randomised controlled trials containing data on memory, executive function, and attention

1 that evaluated over 2500 healthy individuals total. The results in *Is Ginkgo biloba a*
2 *cognitive enhancer in healthy individuals? A meta-analysis* (27)(6) Human
3 Psychopharmacology 527-533 (Nov. 2012) stated that Ginkgo biloba had no ascertainable
4 positive effects on the above-mentioned cognitive functions in healthy individuals.

5 28. In addition to the lack of positive cognitive benefits, Ginkgo biloba may have
6 negative carcinogenic effects. The National Toxicology Program (“NTP”) studied the
7 effects of Ginkgo biloba on rats and mice in small and large doses. In the *NTP Technical*
8 *Report on the Toxicology and Carcinogenesis Studies of Ginkgo Biloba Extract in F344/N*
9 *Rats and B6C3F1/N Mice*, NTP TR 578, Publication No. 13-5920, researchers concluded
10 that Ginkgo biloba extract causes cancers of the thyroid gland in male and female rats and
11 male mice and cancers of the liver in male and female mice.

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

19 30. Additionally, studies testing the effect of Ginkgo biloba consumption on
20 dementia and cognitively impaired subjects have a scientifically valid correlation to the
21 claims made on Defendants’ product label. The Mayo Clinic defines symptoms of
22 dementia as including following:

- 23 • ***Memory loss***
- 24 • ***Difficulty communicating***
- 25 • ***Difficulty with complex tasks***
- 26 • ***Difficulty with planning and organizing***
- 27 • ***Difficulty with coordination and motor functions***
- 28 • ***Problems with disorientation, such as getting lost***

1 • ***Inability to reason***

2 See [http://www.mayoclinic.org/diseases-](http://www.mayoclinic.org/diseases-conditions/dementia/basics/symptoms/con-)
 3 [conditions/dementia/basics/symptoms/con-](http://www.mayoclinic.org/diseases-conditions/dementia/basics/symptoms/con-) 20034399 (last viewed October 15,
 4 2014).

5 31. Defendants have drawn from these “symptoms” in the advertising of their
 6 product. While not directly marketing their product as a treatment for dementia or other
 7 cognitive related deficiencies or illnesses, Defendants’ representations explicitly and
 8 implicitly state that consumption of its Ginkgo Biloba supplement will improve symptoms
 9 relating to such conditions, including primarily that consumption of Ginkgo Biloba will
 10 improve a consumer’s memory, “especially occasional mild memory problems associated
 11 with aging.” The statement “Healthy Brain Function” is exactly inapposite of an
 12 individual suffering from a cognitive condition such as dementia or memory loss. The
 13 findings of studies performed on individuals suffering from dementia or other cognitive
 14 impairment bear directly on the invalidity of Defendants’ misleading marketing messages
 15 as these studies were performed on individuals experiencing the very symptoms
 16 Defendants’ product is advertised to improve.

17 32. For example, in the 2009 study *Ginkgo biloba for cognitive impairment and*
 18 *dementia*, (1) Cochrane Database Syst. Rev. (Jan. 21, 2009), researchers reviewed 36
 19 trials, nine of which were six months long (2016 participants total). In the more recent
 20 and more reliable trials, three out of four found no benefits for cognitive decline.
 21 Researchers concluded that while Ginkgo biloba might be safe to ingest, evidence that it
 22 has predictable and clinically significant benefit for people with dementia or cognitive
 23 impairment is inconsistent and unreliable.

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

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

35. To date, although there are some studies that purport to claim that the ingestion of Ginkgo biloba can provide cognitive health benefits, those studies suffer severe, unmitigated scientific deficiencies, including utilizing a scientifically unreliable sample size, not utilizing scientifically sound testing procedures, and suffering from publication bias, i.e. the funding, publication or sponsorship of the study was provided by a party who stood to benefit from a positive finding. Or, alternatively, the studies used a larger supplementation of Ginkgo biloba than that provided by Defendants' suggested, or recommended consumption¹. Plaintiff's allegations are based upon scientifically valid studies, published in independent, reputable scientific journals which conclusively demonstrate that the Ginkgo Biloba supplement does not provide the benefits advertised by Defendants, and may even cause harm to consumers.

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

37. Defendants have reaped enormous profits from its false marketing and sale of the Ginkgo Biloba product.

CLASS DEFINITION AND ALLEGATIONS

38. Plaintiff brings this action on behalf of herself and all other similarly situated Class members pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil

¹ Nature's Bounty recommends that adults consume one tablet daily for a total of 120 mg. of Ginkgo biloba.

Procedure and seeks certification of the following Class against Defendants:

Multi-State Class Action

All consumers who purchased the Ginkgo Biloba product in the state of California and states with similar laws, within the applicable statute of limitations, for personal use until the date notice is disseminated².

Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased the Ginkgo Biloba product for the purpose of resale.

39. *Numerosity*. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Ginkgo Biloba product who have been damaged by Defendants' conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

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

- (a) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (b) whether Defendants' alleged conduct violates public policy;
- (c) whether the alleged conduct constitutes violations of the laws asserted;
- (d) whether Defendants engaged in false or misleading advertising;

² Plaintiff preliminarily avers that the other states with similar consumer fraud laws under 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 (e) whether Plaintiff and Class members have sustained monetary loss and
2 the proper measure of that loss; and

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

5 41. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
6 Class because, *inter alia*, all Class members were injured through the uniform misconduct
7 described above and were subject to Defendants' deceptive cognitive health benefit claims
8 that accompanied each and every Ginkgo Biloba product Defendants sold. Plaintiff is
9 advancing the same claims and legal theories on behalf of herself and all members of the
10 Class.

11 42. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
12 interests of the members of the Class. Plaintiff has retained counsel experienced in
13 complex consumer class action litigation, and Plaintiff intends to prosecute this action
14 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

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

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

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

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

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

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

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

- "Supports healthy brain function;"
- "helps support memory, especially occasional mild memory problems associated with aging;" and
- "Helps support mental alertness"
- "Support[s] circulation to the extremities";

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

49. Plaintiff did not receive a product that provided any increased cognitive health benefits at all.

1 50. The Unfair Competition Law, Business & Professions Code §17200, et seq.
2 (“UCL”), and similar laws in other states, prohibit any “unlawful,” “fraudulent” or
3 “unfair” business act or practice and any false or misleading advertising. In the course of
4 conducting business, Defendants committed unlawful business practices by, *inter alia*,
5 making the above referenced claims in paragraph 49 and as alleged throughout herein
6 (which also constitutes advertising within the meaning of §17200) and omissions of
7 material facts related to the numerous scientific studies which demonstrate no cognitive
8 health benefits derived from the consumption of the ingredients present in the Ginkgo
9 Biloba product, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business &
10 Professions Code §§17200, et seq., 17500, et seq., and the common law.

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

14 52. Defendants’ actions also constitute “unfair” business acts or practices
15 because, as alleged above, *inter alia*, Defendants engaged in false advertising,
16 misrepresented and omitted material facts regarding the Ginkgo Biloba product, and
17 thereby offended an established public policy, and engaged in immoral, unethical,
18 oppressive, and unscrupulous activities that are substantially injurious to consumers.

19 53. As stated in this Complaint, Plaintiff alleges violations of consumer
20 protection, unfair competition and truth in advertising laws in California and other states,
21 resulting in harm to consumers. Defendants’ acts and omissions also violate and offend
22 the public policy against engaging in false and misleading advertising, unfair competition
23 and deceptive conduct towards consumers. This conduct constitutes violations of the
24 unfair prong of Business & Professions Code §17200, et seq.

25 54. There were reasonably available alternatives to further Defendants’
26 legitimate business interests, other than the conduct described herein.

27 55. Business & Professions Code §17200, et seq. also prohibits any “fraudulent
28 business act or practice.”

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

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

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

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

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

COUNT II

Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.*

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

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

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

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

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

* * *

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

* * *

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

* * *

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

65. Defendants violated the Act by representing and failing to disclose material facts on the Ginkgo Biloba labeling and packaging and associated advertising, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

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

67. Pursuant to §1782 of the Act, Plaintiff notified Defendants NBTY and Nature's Bounty in writing by certified mail of the particular violations of §1770 of the Act and demanded that NBTY and Nature's Bounty rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act. If NBTY or Nature's Bounty do not respond to Plaintiff's letters or agree to

1 rectify the problems associated with the actions detailed above and give notice to all
 2 affected consumers within 30 days of the date of written notice pursuant to §1782 of the
 3 Act, Plaintiff will amend her complaint to seek actual, punitive and statutory damages, as
 4 appropriate against NBTY and/or Nature's Bounty.

5 68. A copy of the letters are attached hereto as Exhibit "C."

6 69. If Defendants NBTY and Nature's Bounty fail to rectify or agree to rectify
 7 the problems associated with the actions detailed above and give notice to all affected
 8 consumers within 30 days of the date of written notice pursuant to §1782 of the Act,
 9 Plaintiff will amend this complaint to add claims for actual, punitive and statutory
 10 damages, as appropriate.

11 70. Defendants' conduct is fraudulent, wanton and malicious.

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

14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

COUNT III
Breach of Express Warranty

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

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

74. The Uniform Commercial Code section 2-313 provides that an affirmation of
 fact or promise, including a description of the goods, becomes part of the basis of the
 bargain and creates an express warranty that the goods shall conform to the promise and
 to the description.

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

76. As discussed above, Defendants expressly warranted on each and every
 Product label of the Ginkgo Biloba product that the product lived up to the represented
 cognitive health benefits described herein and listed on the product label. The cognitive

1 health benefit claims made by Defendants are affirmations of fact that became part of the
 2 basis of the bargain and created an express warranty that the goods would conform to the
 3 stated promise. Plaintiff placed importance on Defendants' representations.

4 77. All conditions precedent to Defendants' liability under this contract have
 5 been performed by Plaintiff and the Class.

6 78. Defendants were provided notice of these issues by, *inter alia*, the instant
 7 Complaint.

8 79. Defendants breached the terms of this contract, including the express
 9 warranties, with Plaintiff and the Class by not providing a Product that provided cognitive
 10 health and/or supporting healthy brain function and/or supporting memory, especially
 11 occasional mild memory problems, as represented.

12 80. As a result of Defendants' breach of their contract, Plaintiff and the Class
 13 have been damaged in the amount of the price of the Products they purchased.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff prays for a judgment:

- 16 A. Certifying the Class as requested herein;
- 17 B. Awarding Plaintiff and the proposed Class members damages;
- 18 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff
- 19 and the proposed Class members;
- 20 D. Awarding actual, punitive and statutory damages to Plaintiff and the
- 21 proposed Class members;
- 22 E. Awarding declaratory and injunctive relief as permitted by law or equity,
- 23 including: enjoining Defendants from continuing the unlawful practices as set forth
- 24 herein, and directing Defendants to identify, with Court supervision, victims of its
- 25 conduct and pay them all money it is required to pay;
- 26 F. Ordering Defendants to engage in a corrective advertising campaign;
- 27 G. Awarding attorneys' fees and costs;
- 28

1 H. Providing such further relief as may be just and proper.
2

3 **DEMAND FOR JURY TRIAL**

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

6
7 Dated: November 3, 2014

CARPENTER LAW GROUP

8
9 By: /s/ Todd D. Carpenter

10 Todd D. Carpenter (CA 234464)
11 402 West Broadway, 29th Floor
12 San Diego, California 92101
Telephone: 619.756.6994
Facsimile: 619.756.6991
todd@carpenterlawyers.com

13 **PATTERSON LAW GROUP**
14 James R. Patterson (CA 211102)
15 402 West Broadway, 29th Floor
16 San Diego, California 92101
Telephone: 619.756.6990
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

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18 Attorneys for Plaintiff
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Exhibit A

VALUE SIZE • 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.

[Nutrition Questions or Comments?
Call 1-800-433-2980
Mon. - Sat. 9 AM - 7 PM ET

For educational health tips and to join our money saving Healthy Rewards™ program, visit
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 03D



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 (<i>Ginkgo biloba</i>) (leaf)	60 mg **
(Standardized to contain 24% Ginkgo Flavone Glycosides, 14.4 mg)	

**Daily Value not established.

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

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.



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.

C 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

*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. 4544 B4544 08E



DOUBLE STRENGTH
STANDARDIZED EXTRACT

Ginkgo Biloba

120mg | Standardized to contain
24% Ginkgo Flavone Glycosides

**Supports Healthy
Brain Function &
Circulation***



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.



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.¹

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.

¹ "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.² 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*.³

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.⁴ 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:⁵

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.

² 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.

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

⁴ FDA Warning Letter SEA 13-15.

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

⁵ FDA Warning Letter 2012-NOL-22.

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

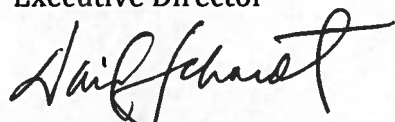
- Inform the dietary supplement industry that Ginkgo poses a substantial and unreasonable risk to consumers, provides no benefit to consumers, and must be removed from the market within a specified period of time.⁶ FDA should take legal action if companies fail to stop marketing all of their products 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.⁷ 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

⁶ 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.

⁷

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

November 3, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

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

Re: Paige Petkevicius v. NBTY, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represent Paige Petkevicius and all other similarly situated California Residents in an action against NBTY, Inc. arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Nature's Bounty Ginkgo Biloba supplement:

- "Supports healthy brain function";
- "Support[s] circulation to the extremities";
- "helps support memory, especially occasional mild memory problems associated with aging";
- "Helps support mental alertness";

As you are aware, NBTY, 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 product unaware that the representations found on the Product's 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 and mental alertness. 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.

NBTY, Inc.
November 3, 2014
Page Two

NBTY's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by NBTY with the intent to result in the sale of the Ginkgo Biloba product 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).

NBTY'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 NBTY 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, NBTY should offer to refund the purchase price to all consumer purchasers of this Product, 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 unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to

NBTY, Inc.
November 3, 2014
Page Three

avoid further litigation, it is in the interest of all parties concerned that NBTY address this problem immediately.

NBTY 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, NBTY 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 purchasers of the Ginkgo Biloba product 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

CC: Carpenter Law Group



JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

November 3, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Nature's Bounty, Inc.
110 Orville Drive
Bohemia, New York 11716

Re: Paige Petkevicius v. Nature's Bounty, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represent Paige Petkevicius and all other similarly situated California Residents in an action against Nature's Bounty, Inc. arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Nature's Bounty Ginkgo Biloba supplement:

- "Supports healthy brain function";
- "Support[s] circulation to the extremities";
- "helps support memory, especially occasional mild memory problems associated with aging";
- "Helps support mental alertness";

As you are aware, Nature's Bounty, 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 product unaware that the representations found on the Product's 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 and mental alertness. 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.

Nature's Bounty, Inc.
November 3, 2014
Page Two

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

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- (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).

Nature's Bounty'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 Nature's Bounty 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, Nature's Bounty should offer to refund the purchase price to all consumer purchasers of this Product, 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 unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to

Nature's Bounty, Inc.
November 3, 2014
Page Three

avoid further litigation, it is in the interest of all parties concerned that Nature's Bounty address this problem immediately.

Nature's Bounty 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, Nature's Bounty 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 purchasers of the Ginkgo Biloba product 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

CC: Carpenter Law Group

Exhibit D

CARPENTER LAW GROUP

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6994
Facsimile: 619.756.6991
todd@carpenterlawyers.com

PATTERSON LAW GROUP

James R. Patterson (CA 211102)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6690
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

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.

NBTY, INC., a Delaware Corporation; and
NATURE'S BOUNTY, INC., a New York
Corporation and Does 1-20,

Defendants.

Case No. '14CV2616 JM WVG

**DECLARATION IN SUPPORT OF
JURISDICTION**

I, Todd D. Carpenter, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am the principle and owner of the Carpenter Law Group, and the counsel of record for plaintiffs in the above-entitled action

2. Defendants NBTY, Inc. and Nature's Bounty, Inc., have done and are doing business in the Southern District of California. Such business includes the marketing,

1 distributing and sale of their Ginkgo Biloba supplements.

2 3. Plaintiff Doe purchased the Ginkgo Biloba product in San Diego, California.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Executed this 3rd Day of November, 2014 in San Diego, California.

6
7 /s/ Todd D. Carpenter

8 Todd D. Carpenter
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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

NBTY, INC. a Delaware Corporation; and NATURE'S
BOUNTY, INC., a New York 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)

'14CV2616 JM WVG

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)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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); **28:1331 - Federal Question**

Brief description of cause:

Violation of 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
November 3, 2014

SIGNATURE OF ATTORNEY OF RECORD
/s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Civil Cover Sheet

Todd D. Carpenter (CA 234464)

CARPENTER LAW GROUP

402 West Broadway, 29th Floor

San Diego, California 92101

Telephone: 619.756.6994

Facsimile: 619.756.6991

todd@carpenterlawyers.com

James R. Patterson (CA 211102)

PATTERSON LAW GROUP

402 West Broadway, 29th Floor

San Diego, CA 92101

Telephone: 619.756.6990

Facsimile: 619.756.6991

jim@pattersonlawgroup.com

Attorneys for Plaintiff and the Class