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12 Attorneys for Plaintiff

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

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

17 Plaintiff,

18 v.

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

21 Defendants.

Case No. 5:15-cv-01358-VAP (SPx)

CLASS ACTION

**STIPULATION OF CLASS ACTION
SETTLEMENT**

USDJ: Virginia A. Phillips
 Courtroom: 8A, 8th Fl., 1st Street-LA
 USMJ: Sheri Pym
 Courtroom: 3 or 4, 3rd Fl., R'side

Date Filed: July 7, 2015
 Trial Date: November 3, 2020

DEMAND FOR JURY TRIAL

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement, including its attached Exhibits, which are incorporated by this reference (the “Agreement”), is entered into by and between plaintiff Kathleen Sonner, individually, and in her representative capacity on behalf of the Settlement Class (defined, *infra*), on the one hand, and defendants Nature’s Way Products, LLC (“Nature’s Way”) and Schwabe North America, Inc. (“Schwabe North America”) (collectively, Nature’s Way and Schwabe North America shall be referred to as “Schwabe”), on the other hand. Ms. Sonner and Schwabe are jointly referred to herein as the “Parties.” Capitalized terms used herein are defined in Section 1 herein or indicated in parentheses elsewhere in the Agreement.

RECITALS

- A. **WHEREAS**, on July 7, 2015, Plaintiff filed a class action complaint in the United States District Court for the Central District of California entitled *Kathleen Sonner v. Schwabe North America, Inc., et al.*, Case No. 5:15-cv-01358-VAP-SP (the “Federal Court Action”), in which she stated claims against Schwabe for violations of California’s Consumers Legal Remedies Act (“CLRA”), California’s Unfair Competition Law (“UCL”), Wisconsin’s Unfair Trade Practices Act, and for Breach of Express Warranty on behalf of herself and all other similarly situated consumers, with respect to Schwabe’s advertising of its Ginkgold and Ginkgold Max *Ginkgo biloba* products (collectively, “Ginkgold”).
- B. **WHEREAS**, after the Court’s ruling granting in part and denying in part Schwabe’s motion to dismiss, Schwabe answered the class action complaint and asserted various affirmative defenses on November 30, 2015.
- C. **WHEREAS**, on February 2, 2017, the Court granted Schwabe’s Motion for Summary Judgment, dismissing the Federal Court Action with prejudice and denying Plaintiff’s motion for class certification as moot.
- D. **WHEREAS**, Plaintiff appealed the Court’s summary judgment ruling except for her cause of action for breach of the Wisconsin Unfair Trade Practices Act.
- E. **WHEREAS**, the Ninth Circuit reversed the Court’s ruling as to the UCL, CLRA and Breach of Warranty claims, and remanded the case to the Court for further proceedings on December 26, 2018.
- F. **WHEREAS**, after remand, the Court certified a class of California consumers on July 2, 2019.
- G. **WHEREAS**, on June 1, 2020, Plaintiff filed a class action complaint for injunctive relief in the Superior Court of California, Riverside County, entitled *Kathleen Sonner v. Schwabe North America, Inc., et al.*, Case No. RIC 2001771 (the “State Court Action”). The Federal Court Action and State Court Action are together referred to as the “Actions.”
- H. **WHEREAS** prior to and during the course of the Federal Court Action and prior to the State Court Action, Schwabe made changes to its Ginkgold labels, including removing from the labels images of brain scans and graphics of a human head and brain, and the following phrases: “Ginkgold® — the Smarter Choice”; “In head-to-head research

against other Ginkgo biloba extracts, only Ginkgold: ☐ Increased activity in all areas of the brain ☐ Produced potent alpha enhancing effects ☐ Could be classified as a cognitive activator, The World's Most Researched & Advanced Ginkgo Extract"; "Used in over 400 studies"; "Recommended by health care professionals worldwide"; "in their clinically proven ratios"; and "Produced potent alpha enhancing effects"; "Start Getting the Clinical Benefits of Ginkgold."

- I. **WHEREAS** the Parties conducted a factual investigation, including document and deposition discovery, and analyzed the relevant legal issues with regard to the claims in, and potential defenses to, the Federal and State Court Actions. Plaintiff and her counsel contend that the claims asserted in the Actions have merit, and that she and other purchasers of Ginkgold are entitled to restitution, damages, and injunctive relief. Schwabe contends the claims asserted in the Actions do not have merit, that Schwabe has substantial defenses that could eliminate or reduce liability and monetary recovery in this case, and that neither Plaintiff nor the putative class have been damaged in any sum whatsoever.
- J. **WHEREAS**, the Parties recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, possible appeals, and ancillary actions. The Parties also have taken into account the uncertain outcome and the risk of continued litigation, especially in multi-party and multi-court actions such as this, as well as the difficulties and delays inherent in such litigations.
- K. **WHEREAS** the Parties engaged in arms-length negotiations and participated in three different mediation sessions, one with Hon. Edward A. Infante (Ret.), and two with Scott Marcus, Esq. Mr. Marcus assisted the Parties in reaching the principal terms of a settlement, which are embodied in this Agreement;
- L. **WHEREAS** the Parties understand, acknowledge, and agree that the execution of this Agreement constitutes settlement and compromise of disputed claims. This Agreement is inadmissible as evidence except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

NOW THEREFORE, subject to Court approval, as hereinafter provided, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Approval Order and the occurrence of the Final Effective Date, the Actions, including the claims asserted by Plaintiff, individually and on behalf of the Settlement Class Members as defined herein, shall be settled and compromised upon the terms and conditions contained herein.

1. DEFINITIONS

In addition to the terms defined above, the below-listed terms shall be defined for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section.

1.1. "Agreement" means this Settlement Agreement and Release, including all Exhibits hereto.

1.2. “**Settlement Administrator**” means or refers to JND Legal Administration and any necessary successors chosen to effectuate the Agreement.

1.3. “**Settlement Class**” or “**Settlement Class Members**” means:

1.3.1. All people who purchased in California Ginkgold or Ginkgold Max from July 7, 2011 through to the date of the Preliminary Approval Order and all people who purchased in the United States other than in California Ginkgold or Ginkgold Max from January 1, 2016 through to the date of the Preliminary Approval Order.

1.3.2. Excluded from the Settlement Class are: (a) Schwabe, their officers, directors and employees, affiliates and affiliates’ officers, directors and employees; (b) Class Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; (d) persons or entities who purchased Ginkgold or Ginkgold Max for resale; and (e) persons who timely and properly exclude themselves from the Settlement Class as provided in the Agreement.

1.4. “**Class Representative**” means plaintiff Kathleen Sonner in her representative capacity on behalf of the Settlement Class.

1.5. “**Claims Deadline**” means the date by which all claim forms must be postmarked or submitted online to the Settlement Administrator to be considered timely. The Claims Deadline shall be stated in the Full Class Notice, the Settlement Website, and on the claim form, and shall be thirty (30) days after the date first set by the Court for the Fairness Hearing.

1.6. “**Class Counsel**” means:

Paula R. Brown, Esq.
Timothy G. Blood, Esq.
Blood Hurst & O’Reardon, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
P | (619) 338-1100
F | (619) 338-1101

1.7. “**Court**” means the United States District Court for the Central District of California in which the Federal Court Action is pending.

1.8. “**Settlement Fund**” means a qualified settlement fund (QSF) formed solely for purposes of effectuating this Agreement.

1.9 “**Schwabe’s Counsel**” or “**Defendants’ Counsel**” means:

Kevin W. Alexander, Esq.
Thomas R. Watson, Esq.
Michael Bryant, Esq.

Gordon Rees Scully Mansukhani, LLP

633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
P | (213) 576-5000
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Jan M. Conlin, Esq.
Katie Crosby Lehmann, Esq.

Ciresi Conlin LLP

225 S. 6th St., Suite 4600
Minneapolis, MN 55402
P | (612) 361-8200

1.10 “Ginkgold” means the Ginkgold 60 mg 50 tabs, Ginkgold 60 mg 100 tabs, Ginkgold Max 120 mg 30 tabs, Ginkgold Max 120 mg 60 tabs, Ginkgold 60 mg 75 tabs, and Ginkgold 60 mg 150 tabs manufactured and distributed by Schwabe.

1.11 “Fairness Hearing” means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable, and adequate.

1.12 “Final Approval Order” means the Court order finally certifying the Settlement Class for settlement purposes only and approving the settlement, as contemplated in this Agreement, substantially in the form attached as **Exhibit F**. “Final Approval” occurs on the date the Court enters, without material change, the Final Approval Order.

1.13 “Final Effective Date” shall be (a) the date a judgment in the Federal Court Action becomes final and non-appealable, plus five (5) business days, or (b) an earlier date agreed to by Class Counsel and Schwabe’s Counsel.

1.14 “Full Class Notice” means the legal notice of the terms of the proposed Settlement, as approved by Class Counsel, Defendants’ Counsel, and the Court, to be distributed according to a Notice Plan approved by the Court. The Full Class Notice shall be substantially in the form attached as **Exhibit A** hereto, and/or any different or additional notice that might be ordered by the Court.

1.15 “Notice Date” means the date by which the Settlement Administrator shall commence dissemination of the Full Class Notice, which shall be no later than fourteen (14) calendar days after entry of the Preliminary Approval Order.

1.16 “Notice Plan” means the plan for notice as described **Exhibit B** hereto.

1.17 “Preliminary Approval Order” means the order substantially similar to **Exhibit E** attached: (1) provisionally certifying the Settlement Class for settlement purposes only and determining that the proposed settlement is within the range for final approval; (2) determining that Ms. Sonner adequately represents the Settlement Class and shall be its class representative; (3) appointing Class Counsel as counsel for the Settlement Class; (4) approving the Notice Plan; and (5) setting a date for the Fairness Hearing, as contemplated in this Agreement.

1.18 “Product” means any Ginkgold, as defined above, purchased by any Settlement Class Member.

1.19 “Released Parties” means Nature’s Way and Schwabe North America, and each of their respective parents, sister and subsidiary corporations, affiliated entities, predecessors, successors and assigns, and any of their present and former directors, officers, employees, shareholders, agents, partners, licensors, privies, representatives, attorneys, accountants, insurers, manufacturers, retailers, distributors or any of them.

1.20 “Request for Exclusion” means any Settlement Class Member’s request to be excluded from the terms of this Agreement, by way of the procedures set forth in Section 3.6 herein.

1.21 “Riverside Court” means the Superior Court of California, County of Riverside, in which the State Court Action is pending

1.22 “Settlement” means the settlement into which the Parties have entered to resolve the Actions, which are set forth in this Agreement and the attached exhibits.

1.23 “Settlement Website” means the website established by the Settlement Administrator to aid in the administration of the Settlement.

2. SETTLEMENT TERMS

2.1. Certification of the Settlement Class and Filing of First Amended Complaint.

(a) For the purposes of Settlement and the proceedings contemplated herein only, and subject to Court approval, the Parties stipulate and agree that the Settlement Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23 in accordance with the definition contained herein, that Ms. Sonner shall represent the Settlement Class for settlement purposes and shall be the Class Representative, and that Class Counsel shall be appointed as counsel for the Settlement Class.

(b) As soon as reasonably practicable, Plaintiff will seek certification of the Settlement Class as part of the Motion for Preliminary Approval Order, as provided in this Agreement.

(c) Plaintiff shall file a First Amended Complaint that will be substantially in the form of the operative class action complaint with the exception that it will contain a new class definition to conform to this Agreement.

2.2 Settlement Fund for Class. As full and complete monetary consideration for the Settlement, Schwabe will establish a non-reversionary Settlement Fund. Within fourteen (14) days following the date of the Preliminary Approval Order, Schwabe will pay the \$3,375,000 comprising the Settlement Fund to the Settlement Administrator. The Settlement Fund shall be used to pay Class Monetary Relief, notice, administration, attorneys’ fees, costs and expenses, and a Plaintiff incentive award (the “Settlement Fund”). After notice, administration, attorneys’ fees, costs and expenses, and a Plaintiff incentive award are paid from the Settlement Fund, the

remaining Net Settlement Fund will be used to fund the Class Monetary Relief as provided in paragraph 2.2.1.

2.2.1 Settlement Monetary Relief: Money from the Net Settlement Fund shall be used to pay Settlement Class Members who submit a valid claim for a cash refund for purchases of Ginkgold or Ginkgold Max made in California from July 7, 2011 through to the date of the Preliminary Approval Order, or anywhere else in the United States from January 1, 2020 through to the date of the Preliminary Approval Order. Settlement Class Members shall be entitled to reimbursement based on the following blended average retail price for each qualifying unit of Ginkgold or Ginkgold Max purchased: \$18.00 for Ginkgold Max 30 tabs, Ginkgold 50 tabs and Ginkgold 75 tabs; and \$33.00 for Ginkgold 150 tabs, Ginkgold 100 tabs and Ginkgold Max 60 tabs. Settlement Class Members are entitled to reimbursements for all qualifying purchases for which they can provide proof of purchase; otherwise, Settlement Class Members can claim up to 3 reimbursements for their qualifying Ginkgold purchases by filling out a simple claim form, substantially similar to **Exhibit D**, and declaring under penalty of perjury the Settlement Class Member actually made the claimed purchase(s). Claim forms must be submitted by the Claims Deadline. If the amount of the Net Settlement Fund exceeds the aggregate of the valid claims, each claim will be increased by up to five (5) times the submitted amount.

2.2.2 To be eligible to receive reimbursement pursuant to this Agreement, each claimant must submit a valid and timely claim form. Claim forms may be obtained through the Settlement Website or by contacting the Settlement Administrator and can be submitted either electronically on the Settlement Website or by mailing them to the Settlement Administrator before the Claims Deadline.

2.2.3 If the aggregate of the valid claims exceeds the Net Settlement Fund, each claim shall be reduced on a *pro rata basis*.

2.2.4 Any funds remaining in the Net Settlement Fund after distribution of all valid Settlement Class Member claims shall be paid pursuant to the *cy pres* doctrine to the American Brain Foundation.

2.3 Release of Settlement Funds. Within seven (7) days following the entry of a Final Approval Order, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys' fees and costs awarded by the Court, provided, however, that Class Counsel shall be obligated to return to the Settlement Fund any fees if the amount is reduced prior to the Final Effective Date. On the Final Effective Date, the remaining funds in the Settlement Fund will become available to pay any Court-approved incentive award, and shall be dispersed by the Settlement Administrator to pay Settlement Class Members' valid claims. In the event that the Agreement does not result in a Final Approval Order from the Court, all amounts remaining in the Settlement Fund shall be remitted back to Schwabe within five (5) business days following event triggering non-approval, termination, cancellation or failure to become effective.

2.4 Attorneys' Fees and Expenses, and Incentive Award. No later than twenty-eight (28) days before the Fairness Hearing, or at such other time as required by the Court, the Class Representative and Class Counsel shall apply to the Court for an award of attorneys' fees and expenses of up to 33% of the Settlement Fund incurred in prosecuting the Actions, and an

incentive award for the Class Representative up to \$5,000. The Parties have not agreed to any particular amounts that the Class Representative or Class Counsel may seek. Schwabe is not obligated to respond, but may respond to Class Counsel's fee motion and the Class Representative's motion for an incentive award in whatever manner it deems appropriate. Any Court-approved award of attorneys' fees and costs and incentive award will be paid from the Settlement Fund in accordance with the provisions of paragraph 2.2. In the event the Court does not approve the attorneys' fees and costs requested by Class Counsel, or the Court awards fees and costs in an amount less than that requested by Class Counsel, such award shall not be a basis for rendering the entire Settlement null, void or unenforceable, provided however, that Class Counsel retains the right to appeal any decision by the Court regarding the Court's award of attorneys' fees and costs.

2.5 Dismissal of State Court Action. Plaintiff shall dismiss the State Court Action by the Final Effective Date. Before the Final Effective date, Plaintiff shall not seek Schwabe's default in the State Court Action and will work with Schwabe to apprise the Riverside Court of this Settlement and to jointly seek a stay of the State Court Action pending the Court's Final Approval of this Settlement. Schwabe shall retain all rights, remedies, and defenses to the State Court Action.

3. CLASS SETTLEMENT PROCEDURES

3.1. Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall prepare and file an application seeking the following orders from the Court: (1) preliminarily approving this Agreement as fair, reasonable, and adequate; (2) preliminarily determining that the Settlement Class meets all applicable requirements of Federal Rule of Civil Procedure 23, and conditionally certifying the Settlement Class for purposes of the Agreement under Rule 23 for settlement purposes only; (3) approving and appointing the Settlement Administrator; (4) approving the form, manner, and content of the Notice Plan described in Section 3.2 and Exhibit B; (5) setting the date and time of the Fairness Hearing and related proceedings; and (6) appointing Plaintiff as Class Representative, and Plaintiff's counsel as Class Counsel for settlement purposes only.

3.2. Settlement Administrator.

- i. The Settlement Administrator will administer the Settlement, including the notice, administration, and distribution process, in accordance with the terms and conditions of the Settlement and orders of the Court.
- ii. Full Class Notice. Subject to Court approval as provided in Section 3.1, the Parties agree that no later than fourteen (14) days after entry of the Preliminary Approval Order, the Settlement Administrator will begin dissemination of the Full Class Notice in the forms substantially similar to **Exhibit A** and in a manner consistent with the Notice Plan (**Exhibit B**), including any amendments made by the Court. At or prior to the Fairness Hearing, the Settlement Administrator shall provide the Court with a declaration attesting that Full Class Notice was provided in accordance with the Court's Preliminary Approval Order.
- iii. Settlement Website. The Settlement Administrator will establish the Settlement Website with a URL that logically relates to the settlement (e.g.

“GinkgoldSettlement”). The Full Class Notice will direct Settlement Class Members with questions about the Settlement to the Settlement Website and toll-free automated telephone hotline. Relevant pleadings (*e.g.*, the complaint) and settlement documents (*e.g.*, the Full Class Notice, Agreement, and orders regarding settlement) will be available to view and download from the Settlement Website. The Settlement Website shall also support submission of online claim forms. The costs of notice pursuant to the Notice Plan and outreach and settlement administration will be paid from the Settlement Fund.

- iv. **Review of Claims.** The Settlement Administrator will review and validate all claims submitted by potential Settlement Class Members by employing standard and adequate anti-fraud measures. The Settlement Administrator shall have the right to contact potential Settlement Class Members to validate claims. Failure to provide all information requested on the claim form will not automatically result in nonpayment of the claim. Instead, the Settlement Administrator will take all adequate and customary steps to determine the Settlement Class Member’s eligibility for payment and the amount of payment based on the information contained in the claim form, and such other reasonably available information from which eligibility for payment can be determined. As applicable, within thirty (30) days after the Final Effective Date, the Settlement Administrator shall send a letter to any claimant whose claim was rejected, explaining the reason for rejection, and the process to appeal eligibility. Any claimant who believes his or her claim was improperly rejected may appeal the rejection by sending written notice of his or her appeal to the Settlement Administrator. The Settlement Administrator shall decide the appeal. The decision of the Settlement Administrator shall be final. All appeals shall be decided, and any distributions awarded pursuant to such appeals no later than ninety (90) days after the Effective Date. Class Counsel and Schwabe’s Counsel shall have the right to seek the review of any claim handled by the Settlement Administrator.
- v. **Distribution of Settlement Funds for Valid Claims.** Payments to Settlement Class Members for valid claim shall be mailed by the Settlement Administrator within thirty (30) days after the Final Effective Date. The Settlement Administrator shall mail, by first class mail, to the mailing address provided by the Settlement Class Member on his or her claim form a check calculated pursuant to Section 2.2.1. above, to each eligible Settlement Class Member who submitted a valid claim. Checks will be valid for ninety (90) days after the date of the check. The amounts of any checks that are returned as undeliverable or that remain uncashed more than ninety (90) days after the date on the check will remain in the Net Settlement Fund for purposes of *cy pres* distribution pursuant to Section 2.2.4 above.

3.3. Objections. Any Settlement Member who wishes to object to the Settlement must file a signed, written objection with the Court, and serve copies on Class Counsel and Defendants’ Counsel, no later than twenty-one (21) days before the date first set for the Fairness Hearing (or other date required by the Court). Written objections must set forth the following:

- i. The name of this Federal Court Action (“*Sonner v. Schwabe North America, Inc., et al.*,” Case No. 5:15-cv-01358-VAP-SP”);
- ii. The full name, address, and telephone number of the person objecting;

- iii. The word “Objection” at the top of the document;
- iv. An explanation of the basis upon which the person claims to be a Settlement Class Member;
- v. In clear and concise terms, the legal and factual arguments supporting the objection;
- vi. The identity (name, address, and telephone number) of any counsel representing the person and whether they will appear at the Fairness Hearing; and
- vii. The person’s signature and date of signature.

Settlement Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections, whether by a subsequent objection, intervention, appeal, or any other process. Unless otherwise permitted by the Court, Settlement Class Members shall not be entitled to speak at the Fairness Hearing unless they have complied with paragraph 3.3 and 3.4.

3.4. Intention to Appear at Fairness Hearing. Any Settlement Class Member who wishes to be heard at the Fairness Hearing must file a signed, written Notice of Intention to Appear with the Court and serve copies on Class Counsel and Defendants’ Counsel no later than twenty-one days (21) days before the date first set for the Fairness Hearing (or other date required by the Court). The Notice of Intention to Appear must set forth the following:

- i. The name of this Federal Court Action (“*Sonner v. Schwabe North America, Inc., et al.*,” Case No. 5:15-cv-01358-VAP-SP”);
- ii. The full name, address, and telephone number of the person intending to appear at the Fairness Hearing;
- iii. The words “Notice of Intention to Appear” at the top of the document; and
- iv. The identity (name, address, and telephone number) of any counsel who will speak on the person’s behalf.

3.5. Requests for Exclusion/Opt Outs. Any Settlement Class Member who wishes to be excluded from (or “opt out” of) the Settlement Class must submit a written, signed Request for Exclusion to the Settlement Administrator no later than twenty-one (21) days before the date first set for the Fairness Hearing (or other date required by the Court) (the “Opt-Out Deadline”). Request for Exclusion forms will be available for download on the Settlement Website, in substantially the form attached as **Exhibit C** hereto, or can be submitted by way of letter. Requests for Exclusion must be personally signed by the Settlement Class Member who seeks to opt out. No Settlement Class Member may opt out by having a request to opt out submitted by an actual or purported agent or attorney acting on behalf of the Settlement Class Member. No opt out request may be made on behalf of a group of Settlement Class Members—i.e., so called “mass” or “class” opt outs are not allowed. Each Settlement Class Member who does not, on or before the Opt-Out Deadline, submit a Request for Exclusion substantially in compliance with this Section, shall be deemed to participate in the Settlement and all releases provided in this Agreement. For purposes of determining timeliness, Requests for Exclusion shall be deemed to have been submitted on the date postmarked by the postal service or other expedited delivery service. Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Actions relating to the

Settlement; (b) be entitled to any Settlement relief; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Agreement. The Settlement Administrator shall provide Class Counsel and Schwabe's Counsel with a final list of all timely Requests for Exclusion within five (5) days of the Opt-Out Deadline. Schwabe's Counsel shall file with the Court the final list of all timely Requests for Exclusion prior to or at the Fairness Hearing.

3.6. CAFA NOTICE. Schwabe, either directly or through the Settlement Administrator (though not with funds from the Settlement Fund), shall send all notices and information required by 28 U.S.C. Sec 1715 to the appropriate federal and state public officials in accordance with the time requirements set forth therein.

3.7. Motion for Final Approval. No later than twenty-eight (28) days before the Fairness Hearing, or at such other time required by the Court, Plaintiff shall move the Court for final approval of the Settlement.

4. FINAL APPROVAL ORDER AND RELEASES.

4.1. Approval of This Agreement. As soon as practicable after execution of this Agreement, counsel for all Parties will take all necessary and appropriate steps to secure the Court's approval of this Agreement as set forth herein.

4.2. Final Approval Order. This agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Settlement Class for the purposes of settlement only, and grants final approval of the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' perforce of their continuing rights and obligations hereunder.

4.3. Release of Nature's Way and Schwabe North America by Plaintiff and All Settlement Class Members. Upon the Final Effective Date, Plaintiff and each member of the Settlement Class, on behalf of themselves and any other legal or natural persons who may claim by, through or under them ("Releasing Parties"), agree to fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, injunctions, and damages of any kind and/or type regarding the claims asserted in the Actions, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, or any other source, that relate to any claims raised in the Actions ("Released Claims"). Notwithstanding the foregoing, the Releasing Parties are not releasing claims for personal injury or wrongful death involving Ginkgold or Ginkgold Max.

4.4. Waiver of California Civil Code section 1542. In addition, with respect to the Released Claims, Plaintiff expressly acknowledges and affirmatively waives California Civil Code section 1542 to the fullest extent permitted by law, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff hereby waives any and all federal and state statutes similar in substance, meaning, or application to California Civil Code section 1542.

4.5. Covenant Not To Sue. Upon the Final Effective Settlement Date, Plaintiff and each Settlement Class Member shall be deemed to have given and will be bound by the Covenant Not To Sue in favor of each Released Party. “Covenant Not To Sue” means for and in consideration of the Settlement, each Settlement Class Member shall be deemed to have covenanted that he or she will not in the future assert any Released Claim against any Released Party in any court or other forum.

4.6. In consideration for the Agreement, Defendants and their past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released Class Counsel and Plaintiff from any and all causes of action that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Actions.

5. TERMINATION

5.1 This Agreement is being entered into only for the purpose of settlement. In the event that (a) the Court does not enter a Final Approval Order confirming in material respects to Exhibit F, or if entered, such Final Approval Order is reversed, vacated, or modified in any material respect by another court, or (b) if the number of Class Members who exercise their rights to opt out under the terms of this Agreement exceeds 250, then either Party may declare void ab initio the Agreement, and all of their provisions shall be vacated by its own terms. The terminating party must exercise its right to terminate the Agreement in writing within ten (10) days of the triggering event. With regard to Settlement Class Member exclusions, the triggering event is receipt of the complete list of all Requests for Exclusion from the Settlement Administrator. Upon termination, the Federal Court Action shall revert to the status that existed prior to the execution date of this Agreement and no term of this Agreement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties’ settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Actions, or in any other proceeding. In addition, if the Agreement is declared void ab initio, then Schwabe shall have 30 days thereafter to file its response to the State Court Action, including by way of demurrer.

6. ADDITIONAL PROVISIONS.

6.1 No Admission of Liability / For Settlement Purposes Only.

A. This Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of, or any provision contained in this Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Plaintiff, or of any defense asserted by Schwabe, in the Actions or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on part of any Party, Defendant, Released Party, or their respective counsel.

B. The Agreement is without prejudice to the rights of each Released Party to the extent permitted under applicable law to: (a) seek decertification of the California class in the Federal Court Action should the Agreement not be finally approved or implemented for any reason; (b) oppose class certification in any other action, or (c) use the certification of the Settlement Class to oppose certification of any other proposed or existing class arising out of the facts or claims asserted in the Actions.

6.2 Fair, Adequate, and Reasonable Settlement. The Parties believe this Settlement is fair, adequate, and reasonable, and the Parties arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential.

6.3 Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and notices of hearings are subject to approval and change by the Court or by the written agreement of counsel for the Parties, without notice to the Settlement Class.

6.4 Real Parties in Interest. In executing this Agreement, the Parties warrant and represent that they, including Plaintiff in her representative capacity on behalf of the Class, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Actions, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

6.5 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

6.6 Binding on Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

6.7 Parties Represented by Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

6.8 Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

6.9 Entire Agreement. This Agreement and Exhibits attached hereto contain the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein.

6.10 Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

6.11 Headings. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

6.12 Exhibits. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement. The Parties contemplate that certain of the Exhibits relating to Full Class Notice may be modified by subsequent agreement of Class Counsel and Schwabe's Counsel prior to dissemination to Settlement Class Members.

6.13 Modifications and Amendments. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties and approved by the Court, except as otherwise expressly provided herein. However, after entry of the Final Approval Order and Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits thereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Final Approval Order and so not limit the rights of Settlement Class Members under this Agreement.

6.14 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws.

6.15 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of his or her or its obligations hereunder to carry out the express intent of the Parties hereto.

6.16 Agreement Constitutes a Complete Defense. To the extent permitted by law this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

6.17 Execution Date. This Agreement shall be deemed executed upon the last date of execution of all of the undersigned.

6.18 Continuing Jurisdiction. The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to approve awards of attorneys' fees and costs pursuant hereto, and to supervise the administration of and the distribution of money funded pursuant to this Agreement.

6.19 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages will be collected and annexed to one or more documents to form a complete counterpart. Photocopies or "pdfs" of executed copies of signatures shall have the same force and effect as originals.

6.20 Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court.

6.21 Severability. Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of the Agreement.

6.22 Confidentiality of Documents and Information. All orders, agreements and designations regarding the confidentiality of documents and information remain in effect, and all Parties and counsel remain bound to comply with them. The Parties agree to comply with Paragraph 14 of the Order Governing the Disclosure of Privileged Information (ECF No. 38), which controls the return or destruction of certain material upon the final disposition of the Federal Court Action.

**PLEASE READ THIS DOCUMENT CAREFULLY. THIS AGREEMENT
CONTAINS A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN
CLAIMS.**

**IN WITNESS WHEREOF, the Parties hereto, acting by and through their
respective counsel of record, have so agreed.**

Dated: 8-25-20

Kathleen Sonner
Plaintiff Kathleen Sonner

Dated: _____

Defendants Nature's Way, LLC and
Schwabe North America, Inc.
By: Michael P. Devereux, CEO

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**IN WITNESS WHEREOF, the Parties hereto, acting by and through their
respective counsel of record, have so agreed.**

Dated: _____

Dated: 8/24/2020

Plaintiff Kathleen Sonner



Defendants Nature's Way, LLC and
Schwabe North America, Inc.
By: Michael P. Devereux, CEO

Dated: _____

8/21/20



Paula R. Brown, Class Counsel

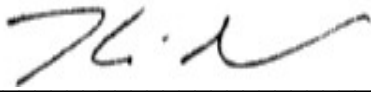
Dated: _____

Kevin Alexander, Counsel for Defendants
Nature's Way, LLC and Schwabe North
America, Inc.

Dated: _____

Paula R. Brown, Class Counsel

Dated: 8-24-20 _____



Kevin Alexander, Counsel for Defendants
Nature's Way, LLC and Schwabe North
America, Inc.