1 2 3 4 5 6	PACIFIC TRIAL ATTORNEYS A Professional Corporation Scott J. Ferrell, Bar No. 202091 sferrell@pacifictrialattorneys.com Victoria C. Knowles, Bar No. 277231 vknowles@pacifictrialattorneys.com 4100 Newport Place Drive, Ste. 800 Newport Beach, CA 92660 Tel: (949) 706-6464 Fax: (949) 706-6469 Attorneys for Plaintiffs	FILED Superior Court of California County of Los Angeles 04/03/2023  David W. Stayton, Executive Officer / Clerk of Court  By: K. Martinez Deputy	
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	SUPERIOR COURT FOR THE STATE OF CALIFORNIA		
9	COUNTY OF I	LOS ANGELES	
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11 12	GENEVA GONZALES and RUTH MARTIN, individuals and on behalf of all others similarly situated,	Case No. 23STCV05927	
13	Plaintiffs,	FIRST AMENDED CLASS ACTION	
14	V.	COMPLAINT FOR VIOLATIONS OF THE	
15	SYNERGY CHC CORP., a Nevada corporation;	CONSUMER LEGAL REMEDIES ACT	
16	and DOES 1 through 10, inclusive,		
17	Defendants.		
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### I. <u>INTRODUCTION</u>

Defendant sells a line of supplements known as "FocusFactor" (the "Product") by falsely claiming that it will improve "memory, concentration, and focus." In reality, Defendant's claims have been proven false by overwhelming scientific evidence.

## II. <u>JURISDICTION AND VENUE</u>

- 1. This Court has jurisdiction over all causes of action asserted herein.
- 2. Venue is proper in this County in accordance with <u>California Code of Civil Procedure</u> Section 394(b) because "none of the defendants reside in the state." As such, venue is proper "in any county that the plaintiff may designate in his or her complaint."
- 3. Defendant is subject to jurisdiction under California's "long-arm" statute found at California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant is not "inconsistent with the Constitution of this state or the United States." Indeed, Plaintiffs believe that Defendant generates a minimum of eight percent of its national website sales to Californians, such that the website "is the equivalent of a physical store in California." Since this case involves false representations made in part on Defendant's website, California courts can "properly exercise personal jurisdiction" over the Defendant in accordance with the Court of Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

# III. PARTIES

- 4. Plaintiffs are individuals and consumer advocates who are residents of California.
- 5. Defendant is a Nevada company with its principal place of business in Maine that develops, manufactures, promotes, markets, distributes and/or sells the Product to consumers nationwide. In a filing with the SEC, Defendant generally describes its business model: "An increased focus on health, beauty and wellness by consumers has served as a tailwind for our brands. The nutritional supplement market has experienced significant growth across a range of areas including immune health, brain health, heart health, sleep/stress, and overall nutrition and wellness as a result of an aging population, increased obesity, pandemic concerns and a desire for more natural solutions and treatments."

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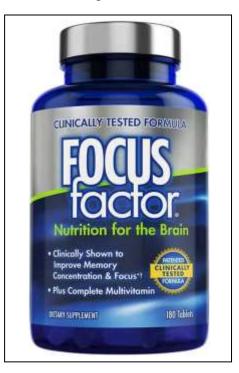
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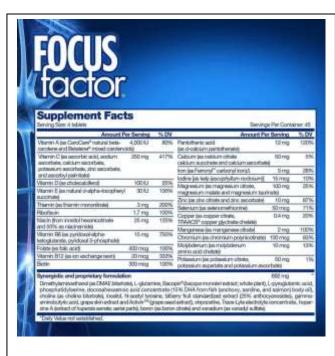
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6. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Plaintiffs will amend the Complaint to reflect the true names of the DOE Defendants when such identities become known.

#### IV. **FACTS**

- 7. Plaintiffs are consumer advocates with dual motivations for purchasing the Product. First, Plaintiffs were genuinely interested in using the product as directed and obtaining the promised results, and Plaintiffs' desire to obtain the advertised benefits of the Product was a substantial, meaningful factor in Plaintiffs' decisions to purchase the product. Second, Plaintiffs are "testers" who work to ensure that companies abide by the obligations imposed by California law. As persons who advance important public interests at the risk of vile personal attacks, Plaintiffs should be "praised rather than vilified." Murray v. GMAC Mortgage Corp., 434 F.3d 948, 954 (7th Cir. 2006).
  - 8. An example of the front and back labels of the Product are as follows:





9. The accompanying marketing materials of the Product found at <a href="https://www.focusfactor.com">www.focusfactor.com</a> claim that the Product is "NUTRITION FOR THE BRAIN" that will "Improve memory, concentration & focus", that has been "America's brain health supplement brand for over 20 years", and consists of "Patented and clinically tested formulas."

- 10. Defendant's efficacy claims are not simply unsubstantiated, they have been proven to false by the overwhelming weight of scientific evidence. Numerous scientific studies conclusively prove that the ingredients in the Product do not and cannot the promised benefits.
- 11. If and when the Court deems it appropriate (and subject to any required protective order), Plaintiffs will submit a non-exhaustive list of clinical studies demonstrating the falsity of Defendant's efficacy claims, along with a brief summary of the key findings of each study.
- 12. Plaintiffs purchased the Product in substantial part based upon the above-referenced efficacy claims. Plaintiffs used the Product as directed but did not experience any of the benefits promised by the Product.
  - 13. The "Who, What, When, Where, and How of the misconduct" is as follows:
    - a. **The "Who":** The party responsible for promulgating the false efficacy claims is Defendant Synergy CHC Corp. based in Maine.
    - b. **The "What":** The claims on the label of Defendant's product and accompanying marketing materials that the product will "Improve memory, concentration & focus."
    - c. **The "When":** The false claims were made throughout the class period, and Plaintiffs purchased the product in 2022;
    - d. The "Where": Plaintiff Gonzales purchased the product at CVS in Los Angeles County, California, and Plaintiff Martin purchased the product at CVS in Fresno County, California.
    - e. **The "How":** By making demonstrably false claims that its product provides memory benefits that it does not and cannot provide, Defendant has illegally collected millions of dollars from unsuspecting consumers.

### V. CLASS ALLEGATIONS

14. Plaintiffs brings this action individually and on behalf of all others similarly situated (the "Class") defined as follows:

### All persons within the United States who purchased the Product for personal 1 use during the Class Period. 2 NUMEROSITY: Plaintiffs do not know the number of Class Members but believes the 3 A. number to be in the thousands, if not more. The exact identities of Class Members may be ascertained 4 5 by the records maintained by Defendant and its authorized retailers. В. COMMONALITY: Common questions of fact and law exist as to all class members, and 6 predominate over any questions affecting only individual members of the Class. Such common legal 7 and factual questions, which do not vary between Class members, and which may be determined without 8 reference to the individual circumstances of any Class Member, include but are not limited to the 9 10 following: i. Whether Defendant violated the law; 11 ii. The amount of damages; and 12 iii. The proper injunctive relief. 13 C. TYPICALITY: As a person who purchased the product for personal use and used it as 14 directed, Plaintiffs are asserting claims that are typical of the Class. 15 D. ADEQUACY: Plaintiffs will fairly and adequately protect the interests of the members 16 of The Class. Plaintiffs have retained attorneys experienced in the class action litigation. All individuals 17 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion 18 would otherwise be improper are excluded. 19 20 E. SUPERIORITY: A class action is superior to other available methods of adjudication because individual litigation of the claims of all Class Members is impracticable and inefficient. Even 21 if every Class Member could afford individual litigation, the court system could not. It would be unduly 22 burdensome to the courts in which individual litigation of numerous cases would proceed. 23 /// 24 25 /// /// 26 /// 27 /// 28

### 1 VI. **CAUSES OF ACTION FIRST CAUSE OF ACTION** 2 Violations of the Consumer Legal Remedies Act, 3 Cal. Civ. Code §§ 1750 et seq. 4 5 15. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein. 6 16. California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et seq., 7 prohibits deceptive practices in connection with the conduct of a business that provides goods, property, 8 9 or services primarily for personal, family, or household purposes. 17. 10 Defendant's false and misleading labeling and advertising was designed to, and did, induce the purchase and use of the Product for personal, family, or household purposes by Plaintiffs and 11 Class Members, and violated and continue to violate the following sections of the CLRA: 12 i. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do 13 not have; and 14 15 ii. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another. 16 18. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised 17 Product to unwary consumers. Defendant's wrongful business practices constituted, and constitute, a 18 continuing course of conduct in violation of the CLRA. 19 20 19. Contemporaneous with the filing of this Complaint, Plaintiffs provided notice in accordance with section 1782 of the CLRA and demanded that Defendant rectify the actions described 21 22 above. 23 VII. PRAYER FOR RELIEF Wherefore, Plaintiffs pray for judgment against Defendant for: 24 i. Appropriate class certification and management orders; 25 ii. Actual, statutory and punitive damages; 26 iii. An award of attorneys' fees and costs; and 27

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1	iv. All other relief at law or in equity as may be proper.	
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3	Dated: March 31, 2023	PACIFIC TRIAL ATTORNEYS, APC
4		By: Settemble
5		Scott. J. Ferrell
6		Attorneys for Plaintiffs
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