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 7 SPORTS RESEARCH CORPORATION

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 FRANK CAPACI and CYNTHIA
 12 FORD on behalf of themselves, all
 13 others similarly situated, and the general
 public,

14 Plaintiffs,

15 v.

16 SPORTS RESEARCH
 CORPORATION, a California
 17 Corporation.

18 Defendant.

Case No. 2:19-cv-03440-FMO-FFM

**DEFENDANT SPORTS RESEARCH
 CORPORATION'S ANSWER TO
 SECOND AMENDED CLASS
 ACTION COMPLAINT**

1 Defendant Sports Research Corporation (“SR” or “Defendant”) hereby state
2 their answers and affirmative defenses to the Second Amended Complaint (“SAC”)
3 filed herein by plaintiffs Frank Capaci and Cynthia Ford, on behalf of themselves, all
4 others similarly situated, and the general public (“Plaintiffs”), as follows:

5
6 **I. INTRODUCTION**

7 1. SR admits that it manufactures and sells a Garcinia Cambogia product
8 (the “Product”), which contains Hydroxycitric Acid (“HCA”) and extra virgin organic
9 coconut oil. SR otherwise denies the allegations in Paragraph 1.

10 2. SR currently lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 2 and, on that basis, denies such
12 allegations.

13 3. SR admits that Plaintiffs bring this action alleging violations of the
14 CLRA, UCL, FAL, and express and implied warranties under state law. SR admits
15 that Plaintiffs had previously brought claims under New Jersey’s Consumer Fraud Act
16 and TCCWNA before the Court dismissed Plaintiff Capaci’s individual claims,
17 including the New Jersey Consumer Fraud Act and TCCWNA claims, in its July 15,
18 2020 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff
19 Capaci from this action. SR otherwise denies the allegations in Paragraph 3.

20 4. SR admits that the SAC prays for injunctive relief, damages, and punitive
21 damages but denies that it is in any way liable to Plaintiffs or that Plaintiffs are
22 entitled to such relief.

23
24 **II. JURISDICTION AND VENUE**

25 5. The allegations in Paragraph 5 are legal conclusions to which no
26 response is required. To the extent a response is required, SR denies the allegations in
27 Paragraph 5.
28

1 12. SR admits the quoted language is contained in the transcript of the
2 referenced hearing. SR currently lacks knowledge or information sufficient to form a
3 belief as to the allegations in Paragraph 12, including those allegations containing in
4 the quoted language, and, on that basis, denies the allegations in Paragraph 12.

5 13. SR currently lacks knowledge or information sufficient to form a belief
6 as to whether or not Plaintiffs and the proposed Class members are all purchasers of
7 SR's Product and, on that basis, denies such allegations in Paragraph 13. SR admits
8 that its Product contains Garcinia Cambogia extract, standardized to Total
9 Hydroxycitric Acid (HCA), but denies Plaintiffs' allegations regarding the Product.
10 SR denies the remaining allegations in Paragraph 13.

11 14. SR admits that it manufactures and sells the Product in the United States,
12 including California and New Jersey. SR otherwise denies the remaining allegations
13 in Paragraph 14.

14 15. SR currently lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations in Paragraph 15 and, on that basis, denies such
16 allegations.

17 16. SR admits that it manufactures the Product in 90-count and 180-count
18 bottles of liquid softgels. SR currently lacks knowledge or information sufficient to
19 form a belief as to the truth of the remaining allegations in Paragraph 16 and, on that
20 basis, denies such allegations.

21 17. SR denies the allegations in Paragraph 17.

22 18. The allegations in Paragraph 18 do not require a response. To the extent
23 a response is required, SR denies that any statements constitute an express or implied
24 warranty.

25 19. The allegations in Paragraph 19 do not require a response. To the extent
26 a response is required, SR admits that Plaintiffs allege that quoted statements form the
27 basis of their consumer fraud and misrepresentation causes of action. SR otherwise
28 denies the allegations in Paragraph 19.

1 20. SR admits that the pictures contained in Paragraph 20 are one version of
2 the front, side and back labels of a 90-count bottle of SR’s Product. SR currently
3 lacks knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations in Paragraph 20, and, on that basis, denies such allegations.

5 21. SR admits that the label on the bottle displayed in the first picture in
6 Paragraph 20 states that it is “garcinia cambogia” and is “made with 65% HCA &
7 coconut oil.” SR denies the remaining allegations in Paragraph 21.

8 22. SR admits that the label on the bottle displayed in the second picture in
9 Paragraph 20 states “Sports Research Garcinia Cambogia with Coconut Oil is
10 standardized to 65% Hydroxycitric acid (HCA) – the active component in Garcinia
11 Cambogia studied for its potential to suppress appetite.*” SR denies the remaining
12 allegations in Paragraph 22.

13 23. SR admits that the label on the bottle displayed in the second picture in
14 Paragraph 20 states “Along with diet and exercise, Garcinia Cambogia is a great way
15 to support your overall weight management plan.” SR denies the remaining
16 allegations in Paragraph 23.

17 24. SR admits that the label on the bottle displayed in the second picture in
18 Paragraph 20 states “Supports Appetite Control*” in yellow. SR denies the remaining
19 allegations in Paragraph 24.

20 25. The allegations in Paragraph 25 are legal conclusions to which no
21 response is required. To the extent that a response required, SR denies the allegations
22 in Paragraph 25.

23 26. Paragraph 26 contains legal conclusions to which no response is required.
24 To the extent a response is required, SR denies the allegations in Paragraph 26.

25 27. Paragraph 27 contains legal conclusions to which no response is required.
26 To the extent a response is required, SR denies the allegations in Paragraph 27.

27
28

1 **B. The Deceptive Labeling of the Product**

2 28. SR denies the allegations in Paragraph 28.

3 29. SR admits that the Heymsfield study was published in the *Journal of the*
4 *American Medical Association* in 1998. SR lacks currently lacks knowledge or
5 information sufficient to form a belief as to the truth of the allegations regarding the
6 Heymsfield study's duration and size in Paragraph 29 and, on that basis, denies such
7 allegations. SR denies the remaining allegations in Paragraph 29.

8 30. SR denies the allegations in Paragraph 30 and footnote 3 thereto, because
9 Plaintiffs misconstrue the findings of the study as they may apply to SR's Product.

10 31. The allegations in Paragraph 31 do not require a response, as they are not
11 factual allegations but Plaintiffs' subjective interpretation of why the Heymsfield
12 study was included in the later meta-analysis in the Onakpoya study. To the extent a
13 response is required, SR only admits that the Heymsfield study was included in the
14 Onakpoya study. SR lacks sufficient knowledge or information to form a belief as to
15 the truth of the remaining allegations in Paragraph 31 and on that basis, denies such
16 allegations.

17 32. SR admits that Max Pittler and Edzard Ernst published a study in *The*
18 *American Journal of Clinical Nutrition* in 2004. SR otherwise denies the allegations
19 in Paragraph 32, because Plaintiffs grossly mischaracterize the study cited.

20 33. SR denies the allegations in Paragraph 33, because Plaintiffs misconstrue
21 the study's findings as they may apply to SR's Product.

22 34. SR denies the allegations in Paragraph 34, because Plaintiffs misconstrue
23 the study's findings as they may apply to SR's Product.

24 35. SR denies the allegations in Paragraph 35.

25 36. SR denies the allegations in Paragraph 36, because Plaintiffs misconstrue
26 the studies' findings as they may apply to SR's Product.

27 37. SR denies the allegations in Paragraph 37, because Plaintiffs misconstrue
28 the study's findings as they may apply to SR's Product.

1 38. SR denies the allegations in Paragraph 38, because Plaintiffs misconstrue
2 the study's findings as they may apply to SR's Product.

3 39. SR denies the allegations in Paragraph 39, because Plaintiffs misconstrue
4 the study's findings as they may apply to SR's Product.

5 40. SR denies the allegations in Paragraph 40, because Plaintiffs misconstrue
6 the study's findings as they may apply to SR's Product.

7 41. SR denies the allegations in Paragraph 41, because Plaintiffs misconstrue
8 the study's findings as they may apply to SR's Product.

9 42. SR denies the allegations in Paragraph 42, because Plaintiffs misconstrue
10 the study's findings as they may apply to SR's Product.

11 43. SR denies the allegations in Paragraph 43.

12 44. SR denies the allegations in Paragraph 44, because Plaintiffs misconstrue
13 the FDA's findings as they may apply to SR's Product.

14 45. SR denies the allegations in Paragraph 45, because Plaintiffs misconstrue
15 the Mayo Clinic's findings as they may apply to SR's Product.

16

17 **C. The Labeling of the Product Violates California and Federal Statutes**
18 **and Regulations**

19 *i. Any Violation of Federal Food Labeling Statutes or Regulations is a*
20 *Violation of California Law*

21 46. The allegations in Paragraph 46 are legal conclusions to which no
22 response is required. To the extent a response is required, SR lacks knowledge or
23 information sufficient to form a belief as to the truth of the allegations in Paragraph 46
24 and, on that basis, denies such allegations.

25 47. The allegations in Paragraph 47 are legal conclusions to which no
26 response is required. To the extent a response is required, SR lacks knowledge or
27 information sufficient to form a belief as to the truth of the allegations in Paragraph 47
28 and, on that basis, denies such allegations.

1 48. The allegations in Paragraph 48 are legal conclusions to which no
2 response is required. To the extent a response is required, SR lacks knowledge or
3 information sufficient to form a belief as to the truth of the allegations in Paragraph 48
4 and, on that basis, denies such allegations.

5 49. The allegations in Paragraph 49 are legal conclusions to which no
6 response is required. To the extent a response is required, SR lacks knowledge or
7 information sufficient to form a belief as to the truth of the allegations in Paragraph 49
8 and, on that basis, denies such allegations.

9
10 ***ii. The Product’s False and Misleading Labeling Claims Render it***
11 ***Misbranded Under California and Federal Law***

12 50. The allegations in Paragraph 50 are legal conclusions to which no
13 response is required. To the extent a response is required, SR lacks knowledge or
14 information sufficient to form a belief as to the truth of the allegations in Paragraph 50
15 and, on that basis, denies such allegations.

16 51. The allegations in the first sentence of Paragraph 51 are legal conclusions
17 to which no response is required. To the extent a response is required, SR lacks
18 knowledge or information sufficient to form a belief as to the truth of the allegations
19 in the first sentence of Paragraph 51 and, on that basis, denies the allegations
20 contained therein. SR denies the allegations in the second sentence of Paragraph 51,
21 because Plaintiffs misconstrue the findings of the referenced trials as they may apply
22 to SR’s Product.

23 52. The allegations in Paragraph 52 are legal conclusions to which no
24 response is required. To the extent a response is required, SR lacks knowledge or
25 information sufficient to form a belief as to the truth of the allegations in Paragraph 52
26 and, on that basis, denies such allegations.

27 53. The allegations in Paragraph 53 are legal conclusions to which no
28 response is required. To the extent a response is required, SR lacks knowledge or

1 information sufficient to form a belief as to the truth of the allegations in Paragraph 53
2 and, on that basis, denies such allegations.

3 54. The allegations in the first sentence of Paragraph 54 are legal conclusions
4 to which no response is required. To the extent a response is required, SR lacks
5 knowledge or information sufficient to form a belief as to the truth of the allegations
6 in the first sentence of Paragraph 54 and, on that basis, denies the allegations
7 contained therein. SR denies the allegations in the second sentence of Paragraph 54.
8

9 **D. Plaintiffs' Purchases, Reliance, and Injury**

10 55. The Court dismissed Plaintiff Capaci's individual claims in its July 15,
11 2020 order on the parties' joint stipulation filed July 14, 2020 dismissing Plaintiff
12 Capaci from this action. Therefore, no response to the allegations in Paragraph 55 is
13 required.

14 56. SR currently lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations in Paragraph 56 and, on that basis, denies such
16 allegations.

17 57. SR currently lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 57 and, on that basis, denies such
19 allegations.

20 58. SR currently lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations in Paragraph 58 and, on that basis, denies such
22 allegations.

23 59. As to Plaintiff Ford, SR denies the allegations in Paragraph 59. SR
24 otherwise currently lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations in Paragraph 59 and, on that basis, denies such allegations.

26 60. SR currently lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations in Paragraph 60 and, on that basis, denies such
28 allegations.

1 61. SR currently lacks knowledge or information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 61 and, on that basis, denies such
3 allegations.

4 62. The allegations in Paragraph 62 are legal conclusions to which no
5 response is required. To the extent a response is required, SR denies the allegations in
6 Paragraph 62.

7 63. SR currently lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations in Paragraph 63 and, on that basis, denies such
9 allegations.

10 64. The Court dismissed Plaintiff Capaci's individual claims in its July 15,
11 2020 order on the parties' joint stipulation filed July 14, 2020 dismissing Plaintiff
12 Capaci from this action. Therefore, no response to the allegations in Paragraph 64 is
13 required.

14 65. SR denies the allegations in Paragraph 65.

15 66. SR denies the allegations of Paragraph 66.

16 67. SR currently lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations in Paragraph 67 regarding when or if Plaintiffs
18 exercised reasonable diligence and, on that basis, denies such allegations. SR
19 otherwise denies the remaining allegations in Paragraph 67.

20 68. SR denies the allegations in Paragraph 68.

21 69. The allegations in Paragraph 69 are legal conclusions to which no
22 response is required. To the extent a response is required, SR denies the allegations in
23 Paragraph 69.

24 70. The allegations in Paragraph 70 contain legal conclusions to which no
25 response is required. To the extent a response is required, SR currently lacks
26 knowledge or information sufficient to form a belief as to the truth of the allegations
27 in Paragraph 70 and, on that basis, denies such allegations.

28 71. SR denies the allegations of Paragraph 71.

1 82. The allegations in Paragraph 82 do not require a response. To the extent
2 a response is required, SR denies the allegations in Paragraph 82 and denies that a
3 class should be certified.

4 83. The allegations in Paragraph 83 contain legal conclusions to which no
5 response is required. To the extent a response is required, SR denies the allegations in
6 Paragraph 83 and denies that a class should be certified.

7 84. The allegations in Paragraph 84 contain legal conclusions to which no
8 response is required. To the extent a response is required, SR denies the allegations in
9 Paragraph 84 and denies that a class should be certified.

10 85. The allegations in Paragraph 85 contains legal conclusions to which no
11 response is required. To the extent a response is required, SR denies the allegations in
12 Paragraph 85 and denies that a class should be certified.

13 86. The allegations in Paragraph 86 contain legal conclusions to which no
14 response is required. To the extent a response is required, SR denies the allegations in
15 Paragraph 86 and denies that a class should be certified.

16 87. The allegations in Paragraph 87 do not require a response. To the extent
17 a response is required, SR currently lacks knowledge or information sufficient to form
18 a belief as to the truth of the allegations in Paragraph 87 and, on that basis, denies
19 such allegations and denies that a class should be certified.

20 88. SR denies the allegations in Paragraph 88 that Plaintiffs, or proposed
21 class members, have suffered any harm. The remaining allegations about the policy
22 purposes behind class actions do not require a response, but to the extent a response is
23 required, SR denies such allegations and denies that a class should be certified.

24 89. The allegations in Paragraph 89 contain legal conclusions to which no
25 response is required. To the extent a response is required, SR denies the allegations in
26 Paragraph 89 and denies that a class should be certified.

27
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1 96. The allegations in Paragraph 96 contain legal conclusions to which no
2 response is required. To the extent a response is required, SR denies the allegations in
3 Paragraph 96.

4 97. The allegations in Paragraph 97 contain legal conclusions to which no
5 response is required. To the extent a response is required, SR denies the allegations in
6 Paragraph 97.

7 98. The allegations in Paragraph 98 contain legal conclusions to which no
8 response is required. To the extent a response is required, SR admits that the SAC
9 prays for injunctive relief but denies that it is in any way liable to Plaintiffs or that
10 Plaintiffs are entitled to such relief.

11 99. The allegations in Paragraph 99 contain legal conclusions to which no
12 response is required. To the extent a response is required, SR admits that the SAC
13 prays for disgorgement and restitution but denies that it is in any way liable to
14 Plaintiffs or that Plaintiffs are entitled to such relief.

15

16

Unlawful

17 100. The allegations in Paragraph 100 contain legal conclusions to which no
18 response is required. To the extent a response is required, SR denies the factual
19 allegations in Paragraph 100.

20 101. SR denies the allegations in Paragraph 101.

21 102. The allegations in Paragraph 102 do not require a response. To the extent
22 a response is required, SR denies that it is in any way liable to Plaintiffs. SR reserves
23 the right to respond to any additional allegations Plaintiffs may assert in this action.

24 103. The allegations in Paragraph 103 contain legal conclusions to which no
25 response is required. To the extent a response is required, SR denies the factual
26 allegations in Paragraph 103.

27

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1 104. The allegations in Paragraph 104 contain legal conclusions to which no
2 response is required. To the extent a response is required, SR denies the factual
3 allegations in Paragraph 104.

4 105. SR denies the allegations in Paragraph 105.

5 106. The allegations in Paragraph 106 contain legal conclusions to which no
6 response is required. To the extent a response is required, SR denies the allegations in
7 Paragraph 106.

8 107. The allegations in Paragraph 107 contain legal conclusions to which no
9 response is required. To the extent a response is required, SR denies the allegations in
10 Paragraph 107.

11 108. SR denies the allegations in Paragraph 108.

12
13 **SECOND CAUSE OF ACTION**

14 **Violations of the False Advertising Law,**

15 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

16 ***(by the Nationwide Class and California Class)***

17 109. SR repeats and incorporates by reference in this paragraph each and
18 every response contained in this Answer as though fully set forth herein.

19 110. The allegations in Paragraph 110 contain legal conclusions to which no
20 response is required. To the extent a response is required, SR currently lacks
21 knowledge or information sufficient to form a belief as to the truth of the allegations
22 in Paragraph 110, and on that basis, denies such allegations.

23 111. The allegations in Paragraph 111 contain legal conclusions to which no
24 response is required. To the extent a response is required, SR currently lacks
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 in Paragraph 111, and on that basis, denies such allegations.

27 112. SR denies the allegations in Paragraph 112.
28

1 120. The allegations in Paragraph 120 contain legal conclusions to which no
2 response is required. To the extent a response is required, SR denies the factual
3 allegations in Paragraph 120.

4 121. The allegations in Paragraph 121 contain legal conclusions to which no
5 response is required. To the extent a response is required, SR denies the allegations in
6 Paragraph 121.

7 122. The allegations in Paragraph 122 contain legal conclusions to which no
8 response is required. To the extent a response is required, SR denies the allegations in
9 Paragraph 122.

10 123. SR admits that Plaintiff’s counsel sent a letter purporting to constitute
11 notice under Section 1782 of the CLRA. SR denies that a copy of Plaintiff Capaci’s
12 CLRA letter is attached to the SAC as Exhibit 1. Whether that letter was sufficient
13 notice under the CLRA is a legal conclusion to which no response is required. To the
14 extent a response is required, SR denies that it is in any way liable to Plaintiffs.

15 124. SR admit that the SAC prays for injunctive relief, damages, restitution,
16 and attorneys’ fees and costs but denies that SR is in any way liable to Plaintiffs or
17 that Plaintiffs are entitled to such relief.

18

19

FOURTH CAUSE OF ACTION

20

Breach of Express Warranties,

21

Cal. Com. Code § 2313(1)

22

(by the Nationwide Class and California Class)

23

24 125. SR repeats and incorporates by reference in this paragraph each and
every response contained in this Answer as though fully set forth herein.

25

26

27 126. The allegations in Paragraph 126 contain legal conclusions to which no
response is required. To the extent a response is required, SR denies the factual
allegations in Paragraph 126.

28

1 127. The allegations in Paragraph 127 contain legal conclusions to which no
2 response is required. To the extent a response is required, SR denies the allegations in
3 Paragraph 127.

4 128. SR currently lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations in Paragraph 128 and, on that basis, denies such
6 allegations.

7 129. SR currently lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations in Paragraph 129 that Plaintiffs and the Class
9 members relied on any representations made on the Product's label when purchasing
10 the Product and, on that basis, denies such allegations. SR otherwise denies the
11 remaining allegations in Paragraph 129.

12 130. The allegations in Paragraph 130 contain legal conclusions to which no
13 response is required. To the extent a response is required, SR denies the allegations in
14 Paragraph 130.

15 131. The allegations in Paragraph 131 contain legal conclusions to which no
16 response is required. To the extent a response is required, SR denies the allegations in
17 Paragraph 131.

18

19

FIFTH CAUSE OF ACTION

20

Breach of Implied Warranties,

21

Cal. Com. Code § 2314

22

(by the Nationwide Class and California Class)

23

132. SR repeats and incorporates by reference in this paragraph each and
24 every response contained in this Answer as though fully set forth herein.

25

133. SR denies the allegations in Paragraph 133.

26

27

134. SR currently lacks knowledge or information sufficient to form a belief
as to the truth of the allegations in Paragraph 134 and, on that basis, denies such
28 allegations.

1 135. SR currently lacks knowledge or information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 135 and, on that basis, denies such
3 allegations.

4 136. The allegations in Paragraph 136 contain legal conclusions to which no
5 response is required. To the extent a response is required, SR denies the allegations in
6 Paragraph 136.

7 137. The allegations in Paragraph 137 contain legal conclusions to which no
8 response is required. To the extent a response is required, SR denies the allegations in
9 Paragraph 137.

10 138. The allegations in Paragraph 138 contain legal conclusions to which no
11 response is required. To the extent a response is required, SR denies the allegations in
12 Paragraph 138.

13

14

SIXTH CAUSE OF ACTION

15

Claim for Negligent Misrepresentation

16

(on behalf of all Classes)

17 139. SR repeats and incorporates by reference in this paragraph each and
18 every response contained in this Answer as though fully set forth herein.

19 140. The allegations in Paragraph 140 contain legal conclusions to which no
20 response is required. To the extent a response is required, SR currently lacks
21 knowledge or information sufficient to form a belief as to the truth of the allegations
22 in Paragraph 140 and, on that basis, denies such allegations.

23 141. The allegations in Paragraph 141 contain legal conclusions to which no
24 response is required. To the extent a response is required, SR denies the allegations in
25 Paragraph 141.

26 142. The allegations in Paragraph 142 contain legal conclusions to which no
27 response is required. To the extent a response is required, SR denies the allegations in
28 Paragraph 142.

1 143. SR denies the allegations in Paragraph 143.

2 144. SR currently lacks knowledge or information sufficient to form a belief
3 as to the truth of the allegations in Paragraph 144 regarding Plaintiffs and the Class
4 Members' awareness and, on that basis, denies such allegations. SR otherwise denies
5 the remaining allegations in Paragraph 144.

6 145. SR currently lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations in Paragraph 145 and, on that basis, denies such
8 allegations.

9

10

SEVENTH CAUSE OF ACTION

11

Violation of New Jersey's Consumer Fraud Act

12

N.J.S.A. § 56:8-1, *et seq.*

13

(by the New Jersey Class)

14

146. The Court dismissed Plaintiff Capaci's individual claims, including
15 Plaintiffs' seventh cause of action for violation of New Jersey's Consumer Fraud Act,
16 in its July 15, 2020 order on the parties' joint stipulation filed July 14, 2020
17 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
18 in Paragraph 146 is required.

19

147. The Court dismissed Plaintiff Capaci's individual claims, including
20 Plaintiffs' seventh cause of action for violation of New Jersey's Consumer Fraud Act,
21 in its July 15, 2020 order on the parties' joint stipulation filed July 14, 2020
22 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
23 in Paragraph 147 is required.

24

148. The Court dismissed Plaintiff Capaci's individual claims, including
25 Plaintiffs' seventh cause of action for violation of New Jersey's Consumer Fraud Act,
26 in its July 15, 2020 order on the parties' joint stipulation filed July 14, 2020
27 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
28 in Paragraph 148 is required.

1 149. The Court dismissed Plaintiff Capaci’s individual claims, including
2 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
3 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
4 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
5 in Paragraph 149 is required.

6 150. The Court dismissed Plaintiff Capaci’s individual claims, including
7 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
8 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
9 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
10 in Paragraph 150 is required.

11 151. The Court dismissed Plaintiff Capaci’s individual claims, including
12 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
13 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
14 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
15 in Paragraph 151 is required.

16 152. The Court dismissed Plaintiff Capaci’s individual claims, including
17 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
18 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
19 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
20 in Paragraph 152 is required.

21 153. The Court dismissed Plaintiff Capaci’s individual claims, including
22 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
23 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
24 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
25 in Paragraph 153 is required.

26 154. The Court dismissed Plaintiff Capaci’s individual claims, including
27 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
28 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020

1 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
2 in Paragraph 154 is required.

3 155. The Court dismissed Plaintiff Capaci’s individual claims, including
4 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
5 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
6 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
7 in Paragraph 155 is required.

8 156. The Court dismissed Plaintiff Capaci’s individual claims, including
9 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
10 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
11 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
12 in Paragraph 156 is required.

13 157. The Court dismissed Plaintiff Capaci’s individual claims, including
14 Plaintiffs’ seventh cause of action for violation of New Jersey’s Consumer Fraud Act,
15 in its July 15, 2020 order on the parties’ joint stipulation filed July 14, 2020
16 dismissing Plaintiff Capaci from this action. Therefore, no response to the allegations
17 in Paragraph 157 is required.

18

19

EIGHTH CAUSE OF ACTION

20

VIOLATIONS OF THE NEW JERSEY TRUTH-IN-CONSUMER

21

CONTRACT, WARRANTY AND NOTICE ACT “TCCWNA,”

22

New Jersey Stat. §§ 56:12-14 to 56:12-18

23

(by the New Jersey Class)

24

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258. The Court dismissed Plaintiff Capaci’s individual claims, including
Plaintiffs’ eighth cause of action for violations of the New Jersey Truth-in-Consumer
Contract, Warranty and Notice Act (“TCCWNA”), in its July 15, 2020 order on the
parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci from this
action. Therefore, no response to the allegations in Paragraph 158 is required.

1 159. The Court dismissed Plaintiff Capaci’s individual claims, including
2 Plaintiffs’ eighth cause of action for violations of the TCCWNA, in its July 15, 2020
3 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
4 from this action. Therefore, no response to the allegations in Paragraph 159 is
5 required.

6 160. The Court dismissed Plaintiff Capaci’s individual claims, including
7 Plaintiffs’ eighth cause of action for violations of the TCCWNA, in its July 15, 2020
8 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
9 from this action. Therefore, no response to the allegations in Paragraph 160 is
10 required.

11 161. The Court dismissed Plaintiff Capaci’s individual claims, including
12 Plaintiffs’ eighth cause of action for violations of the TCCWNA, in its July 15, 2020
13 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
14 from this action. Therefore, no response to the allegations in Paragraph 161 is
15 required.

16 162. The Court dismissed Plaintiff Capaci’s individual claims, including
17 Plaintiffs’ eighth cause of action for violations of the TCCWNA, in its July 15, 2020
18 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
19 from this action. Therefore, no response to the allegations in Paragraph 162 is
20 required.

21 163. The Court dismissed Plaintiff Capaci’s individual claims, including
22 Plaintiffs’ eighth cause of action for violations of the TCCWNA, in its July 15, 2020
23 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
24 from this action. Therefore, no response to the allegations in Paragraph 163 is
25 required.

26 164. The Court dismissed Plaintiff Capaci’s individual claims, including
27 Plaintiffs’ eighth cause of action for violations of the TCCWNA, in its July 15, 2020
28 order on the parties’ joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci

1 from this action. Therefore, no response to the allegations in Paragraph 164 is
2 required.

3 165. The Court dismissed Plaintiff Capaci's individual claims, including
4 Plaintiffs' eighth cause of action for violations of the TCCWNA, in its July 15, 2020
5 order on the parties' joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
6 from this action. Therefore, no response to the allegations in Paragraph 165 is
7 required.

8 166. The Court dismissed Plaintiff Capaci's individual claims, including
9 Plaintiffs' eighth cause of action for violations of the TCCWNA, in its July 15, 2020
10 order on the parties' joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
11 from this action. Therefore, no response to the allegations in Paragraph 166 is
12 required.

13 167. The Court dismissed Plaintiff Capaci's individual claims, including
14 Plaintiffs' eighth cause of action for violations of the TCCWNA, in its July 15, 2020
15 order on the parties' joint stipulation filed July 14, 2020 dismissing Plaintiff Capaci
16 from this action. Therefore, no response to the allegations in Paragraph 167 is
17 required.

18
19 **VI. PRAYER FOR RELIEF**

20 168. Paragraph 168 constitutes Plaintiffs' request for remedies and prayer for
21 relief to which no answer is required. To the extent Paragraph 168 purports to state
22 any factual allegations, SR denies them. All allegations in the SAC that SR has not
23 expressly admitted are denied. SR denies the validity of all claims, denies any
24 liability for any purported injury alleged in the SAC, denies that this action is a proper
25 class action, and denies that Plaintiffs or the proposed class are entitled to the relief or
26 judgment requested in Paragraph 168, including all subparts thereof.

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SR's AFFIRMATIVE DEFENSES

As separate defenses to the SAC, and to each and every purported claim therein, SR alleges the following defenses. By setting forth a defense in this pleading, SR does not concede that it bears the burden of proof or persuasion as to such a defense. SR expressly reserves the right to amend its Answer and affirmative defenses and plead additional affirmative defenses supported by facts learned through discovery or as may be necessitated by the filing of any amended complaint by Plaintiffs. SR also specifically reserves all separate or affirmative defenses that it may have against each proposed class member. It is not necessary at this time for SR to delineate such defenses against the proposed class members because no class has been certified and the proposed class members are not parties to the litigation.

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs' SAC, and each and every claim alleged therein, fails to state facts sufficient to state a cause of action or claim upon which relief can be granted against SR.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs' SAC, and each and every claim alleged therein, is barred in whole or in part, by the doctrine of laches, because, among other things, Plaintiffs waited an unreasonable amount of time before bringing suit against SR.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' SAC, and each and every claim alleged therein, is barred in whole or in part by the applicable statute of limitations, including but not limited to Cal. Civ. Code § 1783, Cal. Code Civ. Proc. § 338, Cal. Com. Code § 2725, and Cal. Bus. & Prof. Code § 17208.

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FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs and some or all proposed class members lack standing to assert some or all of the alleged claims to relief asserted in the SAC.

FIFTH AFFIRMATIVE DEFENSE

5. The claims of some or all proposed class members are barred, in whole or in part, by the doctrine of third-party standing, because, among other things, such proposed class members have not suffered any injury and thus would not have standing to bring suit in their own names.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs and some or all proposed class members lack standing to assert their claims, because Plaintiffs have made inconsistent allegations, namely that the Product is worthless and that they would like to purchase the Product again.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs’ SAC, and each and every claim alleged therein, is barred in whole or in part because the state law safe harbors in California shield SR from liability for undertaking action specifically authorized by federal or state regulatory bodies.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs’ SAC, and each and every claim alleged therein, is barred in whole or in part because Plaintiffs failed to give SR timely notice of any alleged failures.

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NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs’ SAC, and each and every claim alleged therein, is barred in whole or in part by the voluntary payment doctrine because Plaintiffs and proposed class members voluntarily paid for SR’s Product about which they now complain with full knowledge of the facts and circumstances pursuant to which such amounts were paid.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiffs’ SAC, and each and every claim alleged therein, is barred in whole or in part by the doctrine of accord and satisfaction to the extent that Plaintiffs and/or proposed class members sought and received a refund of their purchase price.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs and the proposed class members are not entitled to equitable relief because there is an adequate remedy at law, including SR’s 90-day Satisfaction Guarantee.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiffs’ SAC, and each and every claim alleged therein, is barred in whole or in part because SR’s conduct is protected commercial speech and/or to the extent that relief sought would violate the protection thereof by the First Amendment to the Constitution of the United States.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiffs’ SAC, and each and every claim alleged therein, is barred in whole or in part insofar as it is preempted under federal law, including 21 U.S.C. §§ 343(r)(1), 343(r)(6), and 343-1(a)(5). *See also Stanley v. Bayer Healthcare LLC*, No. 110862, 2012 WL 1132920, at *3 (S.D. Cal. Apr. 3, 2012); *Chavez v. Nestle USA*,

1 *Inc.*, No. 09-9192, 2011 WL 2150128, at *5 (C.D. Cal. May 19, 2011); *Fraker v.*
2 *Bayer Corp.*, No. 08-1564, 2009 WL 5865687, at *8 (E.D. Cal. Oct. 6, 2009).

3
4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 14. To the extent that the claims of Plaintiffs and the proposed class members
6 are predicated on violations of the federal Food, Drug, and Cosmetic Act, such claims
7 are barred because they are the primary jurisdiction of the Food and Drug
8 Administration.

9
10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 15. Plaintiffs and the proposed class members would be unjustly enriched if
12 they received from SR any of the relief sought in the SAC or obtained the declaration
13 of rights they seek, because, among other things, Plaintiffs and the proposed class
14 members did not pay a price premium for the contested statements on the Product's
15 label. The amount of value Plaintiffs and the proposed class members received from
16 the Product greatly exceeds the amount of damages Plaintiffs seek in the SAC.
17 Therefore, SR is not liable to Plaintiffs or any proposed class members under the SAC
18 or any cause of action alleged therein.

19
20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 16. Without peril to SR's denial of the existence of every alleged claim and
22 purported damages, SR alleges that Plaintiffs and the proposed class members, while
23 knowing of the purported damages complained of, failed to mitigate such damages
24 and/or increased such damages, if any there be, and accordingly, to the extent of such
25 Plaintiffs and/or the proposed class members suffered any damages proximately
26 caused by SR, which SR expressly denies, such damages should have been mitigated
27 by reasonable efforts on the part of Plaintiffs and the proposed class members.

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SEVENTEENTH AFFIRMATIVE DEFENSE

17. The claims of Plaintiffs and the proposed class members are barred, in whole or in part, because they may have relied upon third party resources, including blog posts, social media accounts and posts, articles, publications, radio show programs, product reviews, studies, advertisements, and other material not created or published by SR in deciding whether to purchase SR’s Product.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. The claims of Plaintiffs and the proposed class members are barred, in whole or in part, by the doctrine of estoppel, because, among other things, they never complained to SR about any products they ordered and received and never took advantage of SR’s 90-day Satisfaction Guarantee.

NINETEENTH AFFIRMATIVE DEFENSE

19. The claims of Plaintiffs and the proposed class members are barred, in whole or in part, by the doctrine of waiver, because, among other things, they accepted any Products they ordered and received, never complained to SR about such Products, failed to take advantage of SR’s 90-day Satisfaction Guarantee, and/or may have already received a refund for any Products they purchased.

TWENTIETH AFFIRMATIVE DEFENSE

20. The claims of Plaintiffs and the proposed class members fail because they lack standing, as SR did not engage in a widespread campaign of promotion or utilize pervasive advertisements.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. The claims of Plaintiffs and the proposed class members fail, because to the extent Plaintiffs and the proposed class members relied on any material prepared

1 by SR, such as material on SR’s website, such material contains factual statements or
2 general, subjective, and non-actionable puffery.

3
4 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

5 22. The claims of Plaintiffs and the proposed class members are barred,
6 because at all relevant times, SR acted in good faith.

7
8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 23. Without peril to SR’s denial of the existence of every alleged claim and
10 purported damages, the claims of Plaintiffs and the proposed class members are
11 barred, because any purported damages sustained by Plaintiffs and/or the proposed
12 class members were proximately caused by the acts, omissions, negligence, and/or
13 fault of Plaintiffs and/or the proposed class members.

14
15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 24. Without peril to SR’s denial of the existence of every alleged claim and
17 purported damages, SR alleges that any purported damages sustained by Plaintiffs
18 and/or the proposed class members were caused by the acts, omissions, negligence,
19 and/or fault of third persons or entities which operated as the superseding, intervening,
20 and proximate cause of the damages allegedly sustained by Plaintiffs and/or the
21 proposed class members.

22
23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 25. Without peril to SR’s denial of the existence of every alleged claim and
25 purported damages, SR alleges that any purported damages sustained by Plaintiffs
26 and/or the proposed class members should be offset under the doctrine of betterment
27 and other related doctrines based upon the amount of value received from SR’s
28 Product they allegedly purchased and received.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. To the extent any of the individual Plaintiffs or proposed class members re-sold any Products they purchased and received, they are barred, in whole or in part, from recovery.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Plaintiffs and the proposed class members cannot obtain disgorgement of profits as a remedy under any of the claims they have asserted, because such a remedy is not authorized under these claims and as confirmed by cases, including *Wood v. Midland Credit Mgmt.*, No. CV 05-3881 FMC (MANx), 2005 WL 3159639, at *5 (C.D. Cal. July 29, 2005); *Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal. App. 4th 997, 1013 (2005); and *Vasic v. PatentHealth, L.L.C.*, 171 F. Supp. 3d 1034, 1041 (S.D. Cal. 2016).

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. Plaintiffs and the proposed class members lack standing under Article III of the United States Constitution to pursue injunctive relief, because, among other things, they do not intend to purchase SR’s Product in the immediate future, they do not intent to purchase products with Garcinia Cambogia extract or Hydroxycitric Acid or coconut oil, and if they do intend to purchase products with Garcinia Cambogia extract or Hydroxycitric Acid or coconut oil, they may purchase products from companies other than SR, and as such, Plaintiffs and the proposed class members cannot demonstrate that they are likely to suffer future injury from SR’s alleged conduct.

TWENTY-NINTH AFFIRMATIVE DEFENSE

29. The claims of Plaintiffs and the proposed class members and the remedies they seek, including monetary damages, are barred, because the corrections,

1 repairs, replacements, and other remedies requested in the pre-litigation notice were
2 made/provided by SR, to the extent practicable and applicable.

3
4 **THIRTIETH AFFIRMATIVE DEFENSE**

5 30. The claims of Plaintiffs and the proposed class members and the
6 remedies they seek, including monetary damages, are barred, in whole or in part,
7 because SR, in response to pre-litigation notice, took further steps to ensure that it was
8 not engaging in any of the methods, acts, or practices alleged in the notice.

9
10 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

11 31. SR alleges that Plaintiffs and the proposed class members, or third parties
12 acting at their direction, negligently or intentionally failed to secure, maintain, or
13 preserve evidence that is the subject of, or related to this lawsuit, and such evidence
14 would have assisted SR in defending against this lawsuit. Such intentional and/or
15 negligent spoliation of evidence bars or diminishes recovery by Plaintiffs and/or the
16 proposed class members.

17
18 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

19 32. This action is not appropriate for class treatment, because Plaintiffs
20 cannot satisfy the numerosity requirement, because, among other things, the proposed
21 classes are so numerous that joinder of all members is impracticable.

22
23 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

24 33. This action is not appropriate for class treatment, because the claims of
25 the individual Plaintiffs are not typical of the claims of the proposed class members.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. This action is not appropriate for class treatment, because Plaintiffs cannot satisfy the commonality requirement.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. This action is not appropriate for class treatment, because Plaintiffs will not fairly or adequately protect the interests of the proposed class members.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

36. This action is not appropriate for class treatment, because Plaintiffs cannot satisfy the predominance requirement, because, among other things, individual issues as to reliance, causation, injury, and damages, predominate over any issues common to the proposed classes.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

37. This action is not appropriate for class treatment, because the proposed class definitions are overbroad, there is no objective method to ascertain class members, and proper classes cannot be ascertained.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. This action is not appropriate for class treatment, because a class action is not superior to other available methods for fairly and efficiently adjudicating the controversy.

THIRTY-NINTH AFFIRMATIVE DEFENSE

39. This action is not appropriate for class treatment, because the claims in the SAC necessarily revolve around the individual knowledge of each Plaintiff and each proposed class member, as well as the history and extent of each individual's

1 knowledge of Garcinia Cambogia extract or Hydroxycitric Acid and coconut oil and
2 alleged purported benefits of such ingredients, and individual preferences concerning
3 such ingredients, including whether individuals buy products containing such
4 ingredients, and whether the presence or lack thereof of such ingredients factors into
5 their purchasing decision in any material way.

6
7 **FORTIETH AFFIRMATIVE DEFENSE**

8 40. The SAC fails to adequately define any class of persons who could
9 properly prosecute this action as a class action, fails to allege any claim that can be
10 prosecuted as a class action, and otherwise fails to satisfy the requirements of class
11 certification.

12
13 **FORTY-FIRST AFFIRMATIVE DEFENSE**

14 41. This action is barred by the judicial abstention doctrine, because, among
15 other things, granting the requested relief would require the trial court to assume the
16 functions of an administrative agency, or to interfere with the functions of an
17 administrative agency, and would be unnecessarily burdensome for the trial court to
18 monitor and enforce given the availability of more effective means of redress, and the
19 lawsuit involves determining complex policy issues, which are best handled by the
20 state legislatures and/or Food & Drug Administrations.

21
22 **FORTY-SECOND AFFIRMATIVE DEFENSE**

23 42. Plaintiffs' negligent misrepresentation claims are barred by the economic
24 loss rule, because Plaintiffs have not alleged personal injury or damages to property
25 other than the Product itself. *See Resnick v. Hyundai Motor Am., Inc.*, No. CV-16-
26 00593-BRO (PJWx), 2017 WL 1531192, at *10 (C.D. Cal. Apr. 13, 2017).

