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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 \_\_\_\_\_, Individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 GINKGO BIOWORKS HOLDINGS, INC.  
16 F/K/A SOARING EAGLE ACQUISITION  
17 CORP., HARRY E. SLOAN, JASON KELLY,  
18 and MARK DMYTRUK,

19 Defendants.

**Case No:**

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

20 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other persons  
21 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants  
22 (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s  
23 own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation  
24 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of  
25 the defendants’ public documents, conference calls and announcements made by defendants,  
26 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases  
27 published by and regarding Ginkgo Bioworks Holdings, Inc. f/k/a Soaring Eagle Acquisition Corp.  
28 (“Ginkgo” or the “Company”), analysts’ reports and advisories about the Company, and other

1 information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support  
2 will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### 3 **NATURE OF THE ACTION**

4 1. This is a federal securities class action on behalf of a class consisting of all persons  
5 and entities other than Defendants who purchased or otherwise acquired the publicly traded  
6 securities of Ginkgo between May 11, 2021 and October 6, 2021, both dates inclusive (the “Class  
7 Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the  
8 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities  
9 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.  
10

### 11 **JURISDICTION AND VENUE**

12 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the  
13 Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated thereunder by the SEC  
14 (17 C.F.R. §240.10b-5).

15 3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.  
16 §1331 and §27 of the Exchange Act.

17 4. Venue is proper in this District pursuant to §27 of the Exchange Act (15 U.S.C.  
18 §78aa) and 28 U.S.C. §1391(b) as the alleged misstatements entered and the subsequent damages  
19 took place in this judicial district. Further, the Company maintains an office within this judicial  
20 district.

21 5. In connection with the acts, conduct and other wrongs alleged in this Complaint,  
22 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,  
23 including but not limited to, the United States mail, interstate telephone communications and the  
24 facilities of the national securities exchange.  
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1 **PARTIES**

2 6. Plaintiff, as set forth in the accompanying Certification, purchased the Company’s  
3 securities at artificially inflated prices during the Class Period and was damaged upon the revelation  
4 of the alleged corrective disclosure.

5 7. Defendant Ginkgo purportedly operates a horizontal platform for cell programming,  
6 designed to enable biological production of products as diverse as novel therapeutics, key food  
7 ingredients, and chemicals currently derived from petroleum. Before the merger with special  
8 purpose acquisition company (“SPAC”) Soaring Eagle Acquisition Corp. (“Soaring Eagle”), the  
9 Company was known as Ginkgo Bioworks, Inc.

10 8. The Company is incorporated in Delaware with its headquarters in Boston,  
11 Massachusetts. Ginkgo maintains an office in Emeryville, California. Shares of Ginkgo’s common  
12 stock have been listed on the New York Stock Exchange (“NYSE”) under the ticker symbol “DNA”  
13 since September 17, 2021. Prior to the merger, the Company’s ordinary shares traded on the  
14 NASDAQ under the ticker symbol “SRNG.”

15 9. Defendant Harry E. Sloan (“Sloan”) is and was at all pertinent times the Chief  
16 Executive Officer (“CEO”) and Chairman of Soaring Eagle. Since the merger, Sloan has served as a  
17 Director of Ginkgo.

18 10. Defendant Jason Kelly (“Kelly”) is one of Ginkgo’s founders. He is and was at all  
19 pertinent times the CEO of Ginkgo, as well as a Director of the Company.

20 11. Defendant Mark Dmytruk (“Dmytruk”) is and was at all pertinent times the Chief  
21 Financial Officer (“CFO”) of Ginkgo.

22 12. Defendants Sloan, Kelly, and Dmytruk are sometimes referred to herein as the  
23 “Individual Defendants.”

24 13. Each of the Individual Defendants:

25 (a) directly participated in the management of the Company;

26 (b) was directly involved in the day-to-day operations of the Company at the highest  
27 levels;

- 1 (c) was privy to confidential proprietary information concerning the Company and its  
2 business and operations;
- 3 (d) was directly or indirectly involved in drafting, producing, reviewing and/or  
4 disseminating the false and misleading statements and information alleged herein;
- 5 (e) was directly or indirectly involved in the oversight or implementation of the  
6 Company's internal controls;
- 7 (f) was aware of or recklessly disregarded the fact that the false and misleading  
8 statements were being issued concerning the Company; and/or
- 9 (g) approved or ratified these statements in violation of the federal securities laws.

10 14. The Company is liable for the acts of the Individual Defendants and its employees  
11 under the doctrine of *respondeat superior* and common law principles of agency because all of the  
12 wrongful acts complained of herein were carried out within the scope of their employment.

13 15. The scienter of the Individual Defendants and other employees and agents of the  
14 Company is similarly imputed to the Company under *respondeat superior* and agency principles.

15 16. The Company and the Individual Defendants are referred to herein, collectively, as  
16 the "Defendants."

## 17 SUBSTANTIVE ALLEGATIONS

### 18 Materially False and Misleading Statements

19 17. On May 11, 2021, the Company issued a Press Release, attached to Soaring Eagle's  
20 Form 8-K filing with the SEC that same day, entitled "Ginkgo Bioworks to Become a Public  
21 Company and Expand its Leading Platform for Cell Programming." The press release announced  
22 that Ginkgo Bioworks, Inc. had entered into a definitive business combination with Soaring Eagle  
23 that would result in Ginkgo Bioworks, Inc. becoming a publicly-listed company via SPAC merger.  
24 The press release stated that "[t]he *transaction implies a pre-money equity valuation for Ginkgo*  
25 *of \$15.0 billion*, and is expected to provide up to \$2.5 billion of gross cash proceeds." (Emphasis  
26 added).  
27  
28

1 18. On May 14, 2021, Soaring Eagle filed with the SEC a prospectus on Form S-4  
2 signed by Defendants Sloan and Kelly. On June 28, 2021, July 16, 2021, August 4, 2021, and  
3 August 9, 2021, Soaring Eagle filed revised versions of the prospectus for the merger on Forms S-  
4 4/A, which was declared effective on August 11, 2021. On August 13, 2021, Soaring Eagle issued  
5 a Proxy Statement with the SEC on Form 424(b)(3) which was signed by Defendants Sloan and  
6 Kelly. The Proxy Statement stated the following, in pertinent part, about the Company's business  
7 model:

8  
9 Our business model mirrors the structure of our platform and we are compensated  
10 in two primary ways. First, we charge usage fees for Foundry services, in much  
11 the same way that cloud computing companies charge usage fees for utilization of  
12 computing capacity or contract research organizations (CROs) charge for  
13 services. The total addressable market (TAM) for our Foundry revenue includes  
14 the market for biotech labor and tools, which industry sources estimate will be  
15 approximately \$40 billion in 2021 and which is expected to grow at a CAGR of  
16 approximately 20% from 2021 to 2023. *Foundry revenue was \$59.2 million for  
17 the year ended December 31, 2020 and \$22.5 million for the three months  
18 ended March 31, 2021. Additionally, we negotiate a value share with our  
19 customers (typically in the form of royalties, milestones, and/or equity interests)  
20 in order to align our economics with the success of the programs enabled by  
21 our platform. As we add new programs, our portfolio of programs with this  
22 "downstream" value potential grows.* Through these value shares, we are tapping  
23 into what industry sources expect to be a \$2 to \$4 trillion market for  
24 bioengineered products.

25 \* \* \*

26 Our cell programming platform is a key enabling technology and source of  
27 intellectual property for our customers' products. We earn both Foundry revenue  
28 for our research and development ("R&D") services as well as a share of the  
value of products created using our platform.

\* \* \*

Downstream value share arrangements which involve equity interests fall into two  
categories: Platform Ventures and Structured Partnerships.

(Emphasis added).

19. The Proxy Statement stated the following, in pertinent part, about the Company's  
Foundry revenue:

1 We generate Foundry revenue through the execution of license and collaboration  
2 agreements whereby customers obtain license rights to our proprietary technology  
3 and intellectual property for use in the development and commercialization of  
4 engineered organisms and derived products. Under these agreements, we typically  
5 provide R&D services for cell programming with the goal of producing an  
6 engineered cell that meets a mutually agreed specification. Our customers obtain  
7 license rights to the output of our services, which are primarily the optimized  
8 strains or cell lines, in order to manufacture and commercialize products derived  
9 from that licensed strain or cell line. Generally, the terms of these agreements  
10 provide that we receive some combination of (i) upfront payments upon  
11 consummation of the agreement that are recognized over our period of  
12 performance, (ii) reimbursement for costs incurred for R&D services, (iii)  
13 milestone payments upon the achievement of specified technical and/or  
14 commercial criteria, (iv) royalties on sales of products from or comprising  
15 engineered organisms arising from the license and collaboration agreement and  
16 (v) royalties related to cost of goods sold reductions realized by our customers.  
17 For the three months ended March 31, 2021 and 2020 and the years ended  
18 December 31, 2020 and 2019, royalties did not comprise a material amount of our  
19 revenue.

20 *Foundry revenue includes transactions with Platform Ventures (Motif, Joyn,*  
21 *Allonnia and Kalo) as well as other Structured Partnerships (Genomatica and*  
22 *Synlogic) where, as part of these transactions, we received an equity interest in*  
23 *such entities. Specifically related to the Platform Ventures, in these*  
24 *transactions, we received upfront non-cash consideration in the form of*  
25 *common equity interests in these entities, while the Platform Ventures each*  
26 *received cash equity investments from industry-leading strategic partners and*  
27 *financial investors. We view the upfront non-cash consideration as prepayments*  
28 *for licenses which will be granted in the future as we complete mutually agreed*  
*upon technical development plans. In these instances, we also receive cash*  
*payments for our costs incurred for the R&D services performed by us, plus a*  
*margin. We are not compensated through additional milestone or royalty*  
*payments under these arrangements. Our transactions with Genomatica and*  
*Synlogic included the purchase of equity securities and the provision of R&D*  
*services. As we perform R&D services under the mutually agreed upon*  
*development plans, we recognize a reduction in the prefunded obligation based on*  
*a cost incurred, plus margin. **Because of our equity holdings in these entities,***  
***each is considered as a related party.** These arrangements are further described in*  
*Notes 8, 17 and 21 of our audited consolidated financial statements and in Notes*  
*7, 8, 15 and 17 of our unaudited condensed consolidated financial statements*  
*included elsewhere in this proxy statement/prospectus.*

Downstream value share in the form of equity interest appreciation is not  
recognized as revenue but is expected to contribute to future cash flows upon  
liquidation, the amount and timing of which is inherently unpredictable. Equity

1 investees are accounted for as equity method investments or cost method  
2 investments.

3 (Emphasis added).

4 20. The Proxy Statement reported the following revenue from related parties:

5 **21. Related Parties**

6 Related party transactions included in the Consolidated Balance Sheets, excluding the Company's investments and equity method investments, are summarized below (in thousands):

	<u>Joyn</u>	<u>Motif</u>	<u>Genomatica</u>	<u>Allonnia</u>	<u>Synlogic</u>	<u>Total</u>
<b>Balances as of December 31, 2020</b>						
Accounts receivable, net	\$ —	\$ 2,403	\$ 1,500	\$ 1,309	\$ —	\$ 5,212
Prepaid expenses and other current assets	\$ 24	\$ 232	\$ —	\$ 13	\$ —	\$ 269
Deferred revenue, current and non-current	\$ 9,862	\$ 53,952	\$ 30,128	\$ 26,064	\$ 72	\$ 120,078
<b>Balances as of December 31, 2019</b>						
Accounts receivable, net	\$ 163	\$ 4,054	\$ —	\$ —	\$ —	\$ 4,217
Deferred revenue, current and non-current	\$ 17,135	\$ 62,513	\$ 38,059	\$ 24,480	\$ 144	\$ 142,331

7 Related party transactions included in the Consolidated Statements Operations and Comprehensive Loss, excluding the losses on the Company's  
8 investments and equity method investments, are summarized below (in thousands):

	<u>Joyn</u>	<u>Motif</u>	<u>Genomatica</u>	<u>Allonnia</u>	<u>Synlogic</u>	<u>Glycosyn</u>	<u>Total</u>
<b>For the Year Ended December 31, 2020</b>							
Foundry revenue	\$ 7,273	\$ 20,798	\$ 9,431	\$ 4,960	\$ 73	\$ —	\$ 42,535
Other income, net	\$ 407	\$ 314	\$ —	\$ —	\$ —	\$ —	\$ 721
<b>For the Year Ended December 31, 2019</b>							
Foundry revenue	\$ 9,349	\$ 18,986	\$ 6,248	\$ —	\$ 17	\$ 668	\$ 35,268
Interest income	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 163	\$ 163
Other income, net	\$ 222	\$ 42	\$ —	\$ —	\$ —	\$ 1,530	\$ 1,794

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16 21. In the months leading up to the IPO, the Company announced a flurry of new R&D  
17 partners. For example, on August 12, 2021, the Company issued a press release announcing a  
18 partnership with Antheia to “accelerate the development and production of essential medicines.”  
19 According to the press release, “Antheia plans to leverage Ginkgo’s high throughput enzyme  
20 design and screening capabilities to broaden its pipeline of critical active pharmaceutical  
21 ingredients (APIs) and key starting materials (KSMs).” However, the press release does not  
22 mention that Ginkgo’s largest investor, Viking Global Opportunities Illiquid Investments Sub-  
23 Master LP, had just led Antheia’s \$73 million financing a few weeks prior to the partnership  
24 announcement.

25  
26 22. Shortly thereafter, the Company announced a similar partnership agreement with  
27 Tantu, a company that engineers living biotherapeutic products to treat gastrointestinal diseases.  
28 On September 7, 2021, the Company issued a press release stating, in pertinent part, that “Tantu

1 will leverage Ginkgo’s foundries to accelerate strain construction as a key step toward human  
2 clinical trials.” The press release went on to state:

3 Tantu is working to create an orally administered, living biotherapeutic that will  
4 produce and apply anti-inflammatory therapeutic proteins directly into diseased  
5 sites in the gut, resulting in improved gut barrier function and faster mucosal  
6 healing in patients where systemic anti-inflammatory therapies are not enough.  
7 Ginkgo plans to apply its automated foundry to accelerate the traditionally slow  
8 steps of candidate strain construction and genomic integration and validation with  
9 the aim of accelerating Tantu's first program and potentially helping them reach  
10 clinical proof of concept in patients faster.

11 23. The statements referenced in ¶¶17-22 above were materially false and/or misleading  
12 because they misrepresented and failed to disclose the following adverse facts pertaining to the  
13 Company’s business which were known to Defendants or recklessly disregarded by them.  
14 Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1)  
15 the Company’s failure to derive real revenue from third-party customers left it almost completely  
16 dependent on related parties; (2) as a result, most, if not all, of the Company’s revenue came from  
17 related parties the Company created, funded, or controlled through its ownership and board seats;  
18 (3) the Company was misclassifying and underreporting related party revenue in order to conceal  
19 the Company’s near total-dependence on related parties; (4) many of the Company’s new R&D  
20 partners are undisclosed related parties and/or façades; (5) as a result, the Company’s valuation was  
21 significant less than Defendants disclosed to investors; and (6) as a result, Defendants’ public  
22 statements were materially false and/or misleading at all relevant times.

### 23 **The Truth Emerges**

24 24. On October 6, 2021, market researcher Scorpion Capital released a 175-page report  
25 alleging that Ginkgo is a “colossal scam,” and describing the Company as a “shell game” whose  
26 revenue is highly dependent on related party transactions. The report alleges that Ginkgo is a  
27 “Frankenstein mash-up of the worst frauds of the last 20 years” and “one of the most brazen frauds  
28 of the last 20 years.”



1           25.     The report was based on an “intensive investigation into Ginkgo’s business model  
2 and practices, with a particular focus on the related-party entities that drive the bulk of its revenue.”  
3 As part of this investigation, Scorpion Capital “completed 21 research interviews, encompassing a  
4 broad sample of former employees and executives of Ginkgo, as well as individuals who are  
5 currently employed at its related-party “customers.”

6           26.     The Scorpion Capital report stated the following, in pertinent part, about related  
7 party transactions:

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9           *. . . The majority of [Ginkgo’s] foundry revenue, an absurd 72% in 2020, and  
10 essentially 100% of its deferred revenue are derived from related-party  
11 “customers” it created, funded, controls, or influences via its ownership  
12 position and board seats.* Investments into these entities by Ginkgo and its largest  
13 investors are recycled back to Ginkgo and recorded as deferred or current  
14 revenue. The scheme reflects its woeful, decade-long failure to derive real  
15 revenue from third-party customers, forcing it to cover it up with a ploy that we  
16 believe to be enabled by its largest holders.

17           **[] We believe that Ginkgo is concealing the true extent of its dependence on  
18 related party revenue** and that it is far greater than it reports. We have  
19 uncovered a smoking gun that indicates that *essentially ALL of its foundry  
20 revenue is derived from related parties, suggesting that Ginkgo has engaged in  
21 a brazen effort to misclassify and misreport related party revenue and deceive  
22 investors with phony accounting.* Our interviews with ex-employees indicated  
23 fear inside Ginkgo that its related-party model would fail regulatory scrutiny and  
24 derail an IPO, which we believe has prompted a cover-up of its magnitude.

25           . . . Ginkgo is opaque about the percent of its revenue and deferred revenue which  
26 is cash versus non-cash. Based on interviews with its related-party “customers,”  
27 **we believe that at least half of Ginkgo’s reported foundry revenue is  
28 phantom – that is, non-cash and pure accounting hocus-pocus.** We spoke with  
one of its largest such customers, from whom Ginkgo reported \$38MM and  
\$30MM of deferred revenue in 2019 and 2020. A senior employee there stated  
unequivocally that they have never paid Ginkgo cash for foundry services and are  
merely using “free” R&D credits following investments by Ginkgo and Viking.  
Giving away the essence of the scam, the customer stated they would not use  
Ginkgo if they had to pay cash, dismissing them as a failed contract research  
organization (CRO) that they neither trust to deliver nor could justify except  
under a round-tripping deal.

(Emphasis added).

27. The Scorpion Capital report claimed that Ginkgo underreported its related party transactions in order to go public, stating in pertinent part:

We noted earlier that the majority of Ginkgo’s foundry revenue comes from related party entities: 65% in 2019, 72% in 2020, and 56% in 2021. **We believe that the actual figure is essentially 100%, and think that Ginkgo is misclassifying and underreporting related party revenue.** While the reported 60-70% percentage is bad enough and indicative of a broken, hocus-pocus business model, it’s still better than 100%. Ginkgo can claim that at least 30-40% of foundry revenue comes from third parties, and that its reliance decreased in Q1 2021 to “only” 56%. Ex-employees indicated **fear inside Ginkgo that its related party model doesn’t stand up to regulatory scrutiny and could prevent it from going public – hence, we believe, an effort to fake the reported figure.**

(in thousands) Year Ended December 31,  
2020      2019  
 Foundry revenue (includes related party revenue of \$42,535 and \$35,268, respectively) \$ 59,221    \$ 54,184

in millions USD	2019	2020	Q1 2021
<b>Foundry revenue by related party</b>			
Joyn	9,349	7,273	1,598
Motif	18,986	20,798	5,492
Genomatica	6,248	9,431	3,298
Allonnia		4,960	2,266
Synlogic	17	73	6
Glycosyn	668	-	-
Kalo	-	-	-
<b>Total</b>	<b>35,268</b>	<b>42,535</b>	<b>12,660</b>
<b>Total foundry revenue</b>	<b>54,184</b>	<b>59,221</b>	<b>22,504</b>
<b>Related parties as % of total foundry revenue</b>	<b>65%</b>	<b>72%</b>	<b>56%</b>

Reported related party foundry revenues totaled 65% in 2019 and 72% in 2020

Source: Soaring Eagle Acquisition Corp prospectus 8/13/2021, <https://www.sec.gov/Archives/edgar/data/0001830214/000119312521246097/d177007d424b3.htm>; Scorpion Capital analysis and estimates

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28. The Scorpion Capital report highlighted one related party, Synlogic, to show how Ginkgo was underreporting its related party revenue. The report explained:

**As we examined Ginkgo’s related party disclosures, we noted a major anomaly:** Ginkgo invested \$80MM in Synlogic in 2018, but disclosed almost no revenue from it in 2019 and 2020 in the footnotes. Similarly, it reported a minimal deferred revenue balance with Synlogic, in Note 21 in the SPAC prospectus. **In every other case, Ginkgo aggressively booked revenue and deferred revenue from related parties** in which it invested.

\* \* \*

**As Synlogic is a publicly-traded microcap (ticker: SYBX) with \$150MM market cap, we examined its SEC filings.** We were amused, but not surprised, to discover that Synlogic’s 2020 10K, under Note 16 for Related-Party

1 Transactions, disclosed that Synlogic “used \$13.6 million of the pre-paid  
 2 research and development expenses” in 2020. This is in stark contrast to  
 3 Ginkgo’s related party disclosure, which reports only \$73K of foundry  
 4 revenue from Synlogic.

5 \* \* \*

6 Synlogic’s disclosures suggest that Ginkgo has misclassified Synlogic’s R&D  
 7 spend in order to conceal its near-total dependence on parties it finances. Had  
 8 Ginkgo included Synlogic’s foundry spend of \$13.6MM, related party revenues as  
 9 a percent of total would have jumped from 72% to 95% - that is, Ginkgo would  
 10 have had to admit that its foundry is a flop and that it can’t get customers unless it  
 11 gives them cash and round-trips the proceeds.

12 **Related party revenue as reported**

In millions USD	2020
<b>Foundry revenue by related party</b>	
Joyn	7,273
Motif	20,798
Genomatica	9,431
Allonnia	4,960
Synlogic	73
Glycosyn	-
Kalo	-
<b>Total</b>	<b>42,535</b>
<b>Total foundry revenue</b>	<b>59,221</b>
<b>Related parties as % of total foundry revenue</b>	<b>72%</b>

13 **Adjusted to include Synlogic revenue**

In millions USD	2020
<b>Foundry revenue by related party</b>	
Joyn	7,273
Motif	20,798
Genomatica	9,431
Allonnia	4,960
Synlogic	13,600
Glycosyn	-
Kalo	-
<b>Total</b>	<b>56,062</b>
<b>Total foundry revenue</b>	<b>59,221</b>
<b>Related parties as % of total foundry revenue</b>	<b>95%</b>

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 18 29. The Scorpion Capital report also alleged that in the months leading up to the SPAC  
 19 merger, “Ginkgo has announced a flurry of new R&D partners, a dog whistle that the scam is  
 20 about to hit overdrive. We believe these ‘partners’ are undisclosed related parties and fronts.

21 Without proliferating new round-tripping arrangements, Ginkgo can’t show ‘growth’ in Q3 and  
 22 coming quarters.” The report further alleged:

23  
 24 The number of new “partners” announced in the last few weeks just prior to  
 25 the first day of trading on Sep 17th is stunning. The partnerships are for  
 26 everything under the sun: GI drugs, probiotics, herbal medicines and  
 27 nutraceuticals, “biomaterials,” dyes, a material inspired by spiders with “silk-like  
 28 softness.” Notably, not one of the releases below discloses a deal size – and all are  
silent on the critical question of whether they are undisclosed related parties  
– that is, whether Ginkgo or its investors like Viking are investors in the  
entities or are providing proceeds that will be round-tripped back to Ginkgo

1 as “revenue” in coming quarters. We shortly reveal a smoking gun that  
2 exposes the rig as exactly that.

3 30. For example, the report explains that “The press release for Ginkgo’s Antheia  
4 partnership on Aug 12, 2021 makes no mention of the fact that Viking led Antheia’s \$73MM  
5 financing a few weeks prior to the Ginkgo announcement.”

6 31. Similarly, weeks after the Antheia partnership announcement, Ginkgo announced a  
7 partnership with Tantu. However, according to the Scorpion Capital report, this partnership was a  
8 concealed related party transaction and front:

9 The Tantu partnership announced less than a week after Cambium is particularly  
10 grandiose: “Tantu will leverage Ginkgo’s foundries to accelerate strain  
11 construction as a key step toward human clinical trials.” Clinical trials  
12 presume an advanced program, typically after tens or hundreds of millions spent  
13 on R&D. Imagine our surprise after discovering that **Tantu appears to have no**  
14 **full-time employees. It doesn’t even appear to be a company, nor even a**  
15 **project – merely an idea.** Co-founder Neel Joshi is a full time associate professor  
16 at Northeastern; a second co-founder is currently CEO of another startup; a third  
17 was a post-doc in Joshi’s lab until August, when she took another job.

18 \* \* \*

19 Similar to Cambium, we suspected that Tantu is also an undisclosed related-party  
20 in which Ginkgo has or will make an investment which will be recycled back as  
21 “revenue.” We spoke with an individual closely involved with Tantu, who  
22 indicated that Tantu has raised \$50k to date via a university grant – “just enough  
23 to get a website and stuff like that and incorporate.” The individual stated that  
24 Tantu “doesn’t have money to pay” Ginkgo for R&D services, so “the deal  
25 ended up being like a deferred loan, essentially, for the work they are going  
26 to do.” The individual did not disclose the amount of funding Ginkgo  
27 provided, but indicated it was similar in magnitude to a Series A round.

28 32. The Scorpion Capital report also alleged that “[a]side from its ‘customers’ being  
related parties and effectively fake, we believe that Ginkgo takes the scam into even more  
aggressive territory by booking revenue from them that is simply fictitious, overstated, and/or based  
on overcharging.” For example, the report stated:

We begin with two observations: 1) the R&D and G&A services fees that Ginkgo  
charges these “customers” and books as revenue and/or deferred revenue **bears**  
**no plausible relationship to their size, suggesting they are fraudulent; 2) the**



1           38. Plaintiff's claims are typical of the claims of the members of the Class as all  
2 members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal  
3 law that is complained of herein.

4           39. Plaintiff will fairly and adequately protect the interests of the members of the Class  
5 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has  
6 no interests antagonistic to or in conflict with those of the Class.

7           40. Common questions of law and fact exist as to all members of the Class and  
8 predominate over any questions solely affecting individual members of the Class. Among the  
9 questions of law and fact common to the Class are:

- 10           • whether the federal securities laws were violated by Defendants' acts as alleged  
11           herein;
- 12           • whether statements made by Defendants to the investing public during the Class  
13           Period misrepresented material facts about the financial condition, business,  
14           operations, and management of the Company;
- 15           • whether Defendants' public statements to the investing public during the Class  
16           Period omitted material facts necessary to make the statements made, in light of the  
17           circumstances under which they were made, not misleading;
- 18           • whether the Individual Defendants caused the Company to issue false and misleading  
19           SEC filings and public statements during the Class Period;
- 20           • whether Defendants acted knowingly or recklessly in issuing false and misleading  
21           SEC filings and public statements during the Class Period;
- 22           • whether the prices of the Company's securities during the Class Period were  
23           artificially inflated because of the Defendants' conduct complained of herein; and
- 24           • whether the members of the Class have sustained damages and, if so, what is the  
25           proper measure of damages.

26           41. A class action is superior to all other available methods for the fair and efficient  
27 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
28 damages suffered by individual Class members may be relatively small, the expense and burden of

1 individual litigation make it impossible for members of the Class to individually redress the wrongs  
2 done to them. There will be no difficulty in the management of this action as a class action.

3 42. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-  
4 on-the-market doctrine in that:

- 5 • Defendants made public misrepresentations or failed to disclose material facts during  
6 the Class Period;
- 7 • the omissions and misrepresentations were material;
- 8 • the Company's securities are traded in efficient markets;
- 9 • the Company's securities were liquid and traded with moderate to heavy volume  
10 during the Class Period;
- 11 • the Company traded on the NYSE or the NASDAQ, and was covered by multiple  
12 analysts;
- 13 • the misrepresentations and omissions alleged would tend to induce a reasonable  
14 investor to misjudge the value of the Company's securities; and
- 15 • Plaintiff and members of the Class purchased and/or sold the Company's securities  
16 between the time the Defendants failed to disclose or misrepresented material facts  
17 and the time the true facts were disclosed, without knowledge of the omitted or  
18 misrepresented facts.

19 43. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a  
20 presumption of reliance upon the integrity of the market.

21 44. Alternatively, Plaintiff and the members of the Class are entitled to the presumption  
22 of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*  
23 *States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their  
24 Class Period statements in violation of a duty to disclose such information, as detailed above.

### 25 **COUNT I**

#### 26 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5** 27 **Against All Defendants**

28 45. Plaintiff repeats and realleges each and every allegation contained above as if fully  
set forth herein.

1           46.     This Count is asserted against the Company and the Individual Defendants and is  
2 based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
3 thereunder by the SEC.

4           47.     During the Class Period, the Company and the Individual Defendants, individually  
5 and in concert, directly or indirectly, disseminated or approved the false statements specified above,  
6 which they knew or deliberately disregarded were misleading in that they contained  
7 misrepresentations and failed to disclose material facts necessary in order to make the statements  
8 made, in light of the circumstances under which they were made, not misleading.

9           48.     The Company and the Individual Defendants violated §10(b) of the 1934 Act and  
10 Rule 10b-5 in that they:

- 11           •     employed devices, schemes and artifices to defraud;
- 12           •     made untrue statements of material facts or omitted to state material facts necessary  
13           in order to make the statements made, in light of the circumstances under which they  
14           were made, not misleading; or
- 15           •     engaged in acts, practices and a course of business that operated as a fraud or deceit  
16           upon plaintiff and others similarly situated in connection with their purchases of the  
17           Company's securities during the Class Period.

18           49.     The Company and the Individual Defendants acted with scienter in that they knew  
19 that the public documents and statements issued or disseminated in the name of the Company were  
20 materially false and misleading; knew that such statements or documents would be issued or  
21 disseminated to the investing public; and knowingly and substantially participated, or acquiesced in  
22 the issuance or dissemination of such statements or documents as primary violations of the  
23 securities laws. These defendants by virtue of their receipt of information reflecting the true facts of  
24 the Company, their control over, and/or receipt and/or modification of the Company's allegedly  
25 materially misleading statements, and/or their associations with the Company which made them  
26 privy to confidential proprietary information concerning the Company, participated in the  
27 fraudulent scheme alleged herein.

28







