

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 10 2015

JAMES W. MCCORMACK, CLERK
By: *[Signature]*

Karen Jones, on Behalf of Herself and all
Others Similarly Situated,

Plaintiff,

v.

WAL-MART STORES, INC., and DOE
DEFENDANTS 1-10,

Defendants.

Case No. *4:15cv85-SWW*

CLASS ACTION COMPLAINT

This case assigned to District Judge *[Signature]*
and to Magistrate Judge *[Signature]*

JURY TRIAL DEMANDED

Plaintiff Karen Jones (“Plaintiff”), by her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge.

NATURE OF ACTION

1. This is a consumer class action against Wal-Mart Stores, Inc. (“Wal-Mart”) and Doe Defendants 1-10 (collectively, “Wal-Mart” or “Defendant”) for false and misleading statements in connection with the sale of its “Spring Valley™” brand herbal supplements, including ginkgo biloba, St. John’s wort, ginseng, garlic, echinacea, and saw palmetto (the “Mislabelled Products” or the “Products”).

2. Recent testing of the Mislabelled Products using modern DNA barcoding analysis reveals that the Products contain little or none of the substance indicated on the label. Moreover, the testing reveals that the Mislabelled Products

are contaminated with various filler ingredients that were not listed on the label including ingredients that are dangerous to some consumers, such as wheat or gluten.

3. On February 2, 2015, Wal-Mart received a cease and desist letter from the New York Attorney General requiring that it remove certain products identified by lot number from its shelves. However, Wal-Mart continues to sell in its stores and on its website the same Mislabeled Products bearing lot numbers other than those specifically identified by the New York Attorney General.

4. As a direct and proximate result of Defendant's false and misleading advertising claims and marketing practices, Plaintiff and the members of the Class, as defined herein, purchased one or more of the Mislabeled Products. Plaintiff and members of the Class have been injured in fact because the Mislabeled Products did not contain the ingredients that they paid for. Plaintiff and Class Members have suffered an ascertainable and out-of-pocket loss. Plaintiff and members of the Class seek a refund and/or rescission of the transaction and all further equitable and injunctive relief as provided by applicable law.

5. Plaintiff seeks relief in this action individually and on behalf of all purchasers of the Mislabeled Products for breach of express warranty, breach of implied warranty of merchantability, negligent misrepresentation, and unjust enrichment.

THE PARTIES

6. Plaintiff Karen Jones is a resident of Okolona, Mississippi. She regularly purchased Wal-Mart's Spring Valley™ Ginseng, Ginkgo Biloba, Saw Palmetto and St. John's Wort products at a Wal-Mart store in Tupelo, Mississippi. She purchased Wal-Mart's Spring Valley™ Ginseng approximately once per month from 2007 until approximately early 2014. She purchased Wal-Mart's

Spring Valley™ St. John's Wort approximately once per month from 2007 until approximately early 2015. She purchased Wal-Mart's Spring Valley™ Saw Palmetto approximately three times per year from 2007- 2013. She purchased Wal-Mart's Spring Valley™ Ginkgo Biloba approximately once every two months from 2007 - 2013.

7. Plaintiff purchased these Wal-Mart's Spring Valley™ Products based on claims on the product label, including, but not limited to, claims that that the products actually contained the labeled ingredients in the concentrations indicated on the label. At the time of her purchase, she believed that the products actually contained the labeled ingredients in the concentrations indicated on the packaging and believed that the Products were not contaminated with filler ingredients that were not listed on the product label. She would not have purchased Wal-Mart's Spring Valley™ Products, if she had known that the products did not contain the ingredients listed on the product labels and instead were contaminated with filler ingredients.

8. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Wal-Mart is the world's largest retailer, and operates more than 4,100 retail stores in the United States. Wal-Mart manufactures and sells its own line of dietary supplements under the Spring Valley™ brand name.

9. Doe Defendants 1-10 are individuals and corporate, whose true names are presently unknown to Plaintiff, who participated in the mislabeling of the Mislabeled Products.

10. Collectively Wal-Mart and the Doe Defendants are referred to as "Wal-Mart" or Defendant.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 Class Members, the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

12. The Court has personal jurisdiction over the Defendant because Wal-Mart maintains its corporate headquarters within the State, and it sold the Mislabeled Products within this State.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Wal-Mart maintains its corporate headquarters in this state, and the Products are sold extensively in this District.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. The Mislabeling of Dietary Supplements

14. The dietary supplement industry generates approximately \$32 billion in annual revenue and the industry is projected to take in \$60 billion per year by 2021.

15. Unlike prescription and over the counter drugs, dietary supplements are largely unregulated. Neither the U.S. Food and Drug Administration (“FDA”) nor any other federal or state agency routinely tests dietary supplements for quality, purity and strength prior to sale.

16. With respect to the purity of their product ingredients, the industry essentially operates on an honor system. While there are more than 85,000 dietary supplement products on the market, the FDA only inspects approximately 600 facilities a year. According to a joint statement from the American College of

Medical Toxicology and the American Academy of Clinical Toxicology, “there is a lack of stringent quality control of the ingredients present in many herbal and dietary supplements.”

17. The lack of oversight in an expanding lucrative market has led some industry players to commit massive widescale fraud, misrepresenting the ingredients in the products and substituting them with cheap, abundant and sometimes dangerous filler ingredients. Indeed, the World Health Organization has determined that the adulteration of consumer products is a threat to consumer safety.

18. Consumers have no way of knowing that the products they purchase actually contain the ingredients on their labels or if they are mislabeled.

B. DNA Bar Coding

19. In the fight against product mislabeling, DNA barcoding has become an invaluable tool. DNA barcoding tests have been recognized as a robust, rapid, cost-effective and broadly applicable approach to accurate species identification.

20. DNA barcoding is a taxonomic method that uses a short genetic marker in an organism’s DNA to identify it as belonging to a particular species.

21. DNA barcoding tests examine the sequence variation within a short standardized region of the genome that is known to have a high variability between different species. The sequence is then compared to a database of known species to identify the species to which the sample belongs.

22. DNA barcoding has been used to identify species since at least 2003. In recent years, the technique has been used to determine the accuracy of herbal product labels. The results indicate that many products do not contain the

ingredients listed on their labels and often contain filler ingredients dangerous to some consumers.

23. In 2010, the PBS News Hour featured an exposé on the herbal supplement industry titled, *What's Really In Herbal Supplements*. PBS commissioned a series of DNA barcoding tests on popular dietary supplements and concluded that 38% of the 16 supplements samples tested were found to be “suspect or outright frauds.”

24. A DNA bar coding study published in 2011 noted that a large percentage of herbal teas generated DNA identifications not found on the product labels.

25. Similarly, the results of a 2012 DNA barcoding study from Stonybrook University found that of the 36 samples of commercial black cohosh dietary supplements purchased online and at retail stores, one-quarter contained no black cohosh DNA whatsoever.

26. In a 2013 study of commercial dietary supplements sold in the United States and Canada, researchers also found rampant mislabeling. Specifically, the results revealed the following:

- echinacea supplements were found to include ground up bitter weed, which has been linked to rashes, nausea and flatulence;
- several St. John’s wort samples contained no St. John’s wort DNA, and instead included rice or Alexandria senna, a powerful laxative;
- ginkgo biloba supplements, promoted as memory enhancers, were mixed with fillers and black walnut, a potentially deadly hazard for people with nut allergies; and

- numerous products tested positive for undisclosed fillers such as rice, soybeans and wheat, “which is a health concern for people allergic to these plants, as well as people seeking gluten free products.”

27. Dr. David A. Baker, author of the black cohosh study commented to the New York Times for an article concerning the state of supplement regulation in 2013. He describe it as the “the Wild West” and said consumers had no idea how few safeguards were in place. Dr. Baker further stated:

If you had a child who was sick and three out of 10 penicillin pills were fake, everybody would be up in arms. But it’s O.K. to buy a supplement where three out of 10 pills are fake. I don’t understand it. Why does this industry get away with that?

C. The Mislabeled Products

28. Wal-Mart is the world’s largest retailer which operates more than 4,100 retail stores in the United States. Wal-Mart is also a major online retailer, which sells a wide variety of products on www.walmart.com.

29. On March 2, 1999, the United States Patent and Trademark Office registered the trademark for Spring Valley to Wal-Mart.

30. Spring Valley™ brand is Wal-Mart’s store brand, under which it markets and sells in its retail and online stores a wide variety of vitamins, minerals and dietary supplements, including the Mislabeled Products.

31. Wal-Mart maintains a dedicated portion of its online retail stores to its line of Spring Valley™ products. *Accessible from* www.walmart.com/springvalley.

a. Saw Palmetto

32. Wal-Mart sells saw palmetto capsules under its Spring Valley™ brand. According to the product labels, saw palmetto products are sold for “Prostate Health,” and “are a source of fatty acids and sterols [that have] traditionally been used to support prostate and urinary health.”



33. The labels on the saw palmetto products indicate that their only ingredients are: saw palmetto, pumpkin seed, nettle root, beta sitosterol, lycopene, gelatin and vegetable magnesium stearate. Wal-Mart further represents on the product label that the saw palmetto products contain no wheat and no gluten.

34. Wal-Mart sells bottles of 100 purported 450 mg capsules of saw palmetto for approximately \$10.74. A bottle of 100 purported 160 mg capsules of saw palmetto sells for approximately \$6.98.

b. Ginkgo Biloba

35. Wal-Mart sells ginkgo biloba tablets under its Spring Valley™ brand. According to the product labels, they are sold for “memory support.”

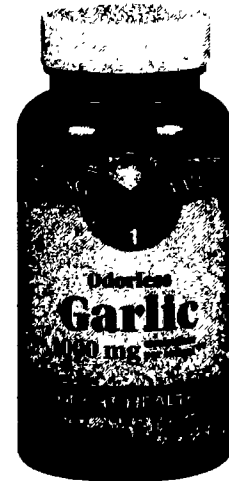
36. Wal-Mart’s ginkgo biloba product labels list only the following ingredients: ginkgo biloba, rice powder, gelatin, and vegetable magnesium stearate. Wal-Mart further represents on the product label that the ginkgo biloba products contain no wheat and no gluten.

37. Wal-Mart sells bottles of 240 purported 60 mg ginkgo biloba tablets for approximately \$10.74. A bottle of 90 purported 120 mg ginkgo biloba tablets sells for approximately \$8.34.

c. Garlic

38. Wal-Mart sells garlic capsules under its Spring Valley™ brand. According to the product labels, they are sold for “Heart Health.”

39. The product labels lists only the following ingredients: Allium Sativum (garlic), soybean oil, gelatin and glycerin. Wal-Mart further represents on the product label that the garlic products contain no wheat and no gluten.



40. Wal-mart sells twin packs of bottles containing 120 purported 1000 mg garlic capsules for approximately \$6.00.

d. St. John's Wort

41. Wal-Mart sells St. John's wort capsules under its Spring Valley™ brand. According to the product labels, they are sold for “Mood Health” and the product “is a source of nutrients that support mood health and emotional balance.”

42. The labels on the St. John's wort products indicate that their only ingredients are: hypericum perforatum (St. John's wort), maltodextrin, gelatin, magnesium silicate, silica, and vegetable magnesium stearate.

43. Wal-Mart sells bottles of 100 purported 150 mg St. John's Wort capsules for approximately \$3.98. The product is also sold in purported 300 mg capsules.

e. Echinacea

44. Wal-Mart sells echinacea capsules under its Spring Valley™ brand. According to the product labels, they are sold for “Immune Health.”

45. The labels on the echinacea products list only the following ingredients: echinacea, gelatin, dicalcium phosphate, microcrystalline cellulose, silicon dioxide, magnesium stearate, and stearic acid.



46. Wal-Mart sells bottles of 150 purported 100 mg echinacea capsules sells for approximately \$9.44.

f. Ginseng

47. Wal-Mart sells ginseng capsules under its Spring Valley™ brand. According to the product labels, they are sold for “General Wellness.”

48. The labels on the ginseng products list only the following ingredients: ginseng, maltodextrin, gelatin, cellulose, silica, and vegetable magnesium stearate. The labels further provide that the products contain no gluten and no wheat.

49. A bottle of 60 purported 100 mg ginseng capsules sells for approximately \$4.50. A 150-capsule bottle sells for approximately \$9.44.

D. Wal-Mart’s Bait and Switch

50. In 2015, the Office of the Attorney General of New York conducted an investigation of Wal-Mart’s practices with respect to the mislabeling and contamination of Wal-Mart’s Spring Valley™ Dietary Supplements.

51. The investigation included a DNA barcode analysis of six Wal-Mart Spring Valley™ products: ginkgo biloba, St. John’s wort, ginseng, garlic, echinacea and saw palmetto.

52. The results showed that only four percent (4%) of ninety tests yielded DNA for plants consistent with the product label. Even those tests which produced positive results revealed that the listed ingredients did not predominate. More than half of the tests (56%) yielded no plant DNA at all.

53. With respect to the testing of Wal-Mart's Spring Valley™ ginkgo biloba products, *no ginkgo biloba DNA was identified*. Despite Wal-Mart's representation on the product label that the products contain no wheat or gluten, several of the ginkgo biloba tests revealed *the presence of wheat*. Some of the tests revealed the presence of other filler ingredients, while other tests revealed no plant DNA whatsoever.

54. With respect to the testing of Wal-Mart's Spring Valley™ ginseng products, *no ginseng DNA was identified*. Despite Wal-Mart's representation on the product label that the products contain no wheat or gluten, one or more of the tests revealed *the presence of wheat*. Some of the tests revealed the presence of other filler ingredients, while other tests revealed no plant DNA whatsoever.

55. With respect to the testing of Wal-Mart's Spring Valley™ echinacea products, *no echinacea DNA was identified*. In fact, the fifteen tests identified no plant genetic material whatsoever.

56. With respect to the testing of Wal-Mart's Spring Valley™ garlic products, *no garlic DNA was identified in fourteen of the fifteen tests*. Moreover, the one test that did indicate the presence of garlic also showed that the ingredient did not predominate. Despite Wal-Mart's representation on the product label that the products contain no wheat or gluten, one or more of the tests revealed *the presence of wheat*. Some of the tests revealed the presence of other filler ingredients, while ten of the tests revealed no genetic material whatsoever.

57. With respect to the testing of Wal-Mart's Spring Valley™ saw palmetto products, *no saw palmetto DNA was identified in twelve of the fifteen tests*. Moreover, tests that did indicate the presence of saw palmetto also showed that the ingredient did not predominate. Some of the tests revealed the presence of other filler ingredients including allium (garlic), while four of the tests revealed no plant DNA whatsoever.

58. Incredibly, the results revealed that a consumer would be three times more likely to receive garlic by purchasing Wal-Mart's Spring Valley™ saw palmetto product than she would be by purchasing Wal-Mart's Spring Valley™ garlic product.

59. On February 2, 2015, the Office of the Attorney General of the State of New York issued a letter to Wal-Mart's President and CEO, Doug McMillon demanding that Wal-Mart "cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements" and to immediately stop the sale of certain lots of the Mislabeled Products. A copy of the Attorney General's letter is annexed hereto as **Exhibit A**.

60. In connection with the action, New York Attorney General Eric Schneiderman said:

This investigation makes one thing abundantly clear: the old adage 'buyer beware' may be especially true for consumers of herbal supplements ... The DNA test results seem to confirm long-standing questions about the herbal supplement industry. Mislabeling, contamination, and false advertising are illegal. They also pose unacceptable risks to New York families—especially those with allergies to hidden ingredients. At the end of the day, American corporations must step up to the plate and ensure that their customers

are getting what they pay for, especially when it involves promises of good health.

61. Dr. Arthur P. Grollman, Professor of Pharmacological Sciences at Stonybrook University, praised the study's methodology, noting, "[t]his study undertaken by Attorney General Schneiderman's office is a well-controlled, scientifically-based documentation of the outrageous degree of adulteration in the herbal supplement industry."

62. Wal-Mart has continued to sell other lots of the Mislabeled Products, which upon information and belief, remain available online and at Wal-Mart locations throughout the United States.

CLASS REPRESENTATION ALLEGATIONS

63. Plaintiff seeks to represent a class defined as all persons in the United States who purchased the Mislabeled Products, excluding those that made such purchase for purpose of resale (the "Class").

64. Excluded from the Class are Wal-Mart and the Doe Defendants, their current and former officers and directors, members of their immediate families, their legal representatives, heirs, successors, or assigns and any entity in which Wal-Mart or the Doe Defendants has a controlling interest. Also excluded from the Class are any person or entity who exclude themselves by requesting exclusion from the Class in accordance with requirements to be approved by the Court.

65. Wal-Mart sells the Mislabeled Products online and in its retail stores across the United States. Plaintiff estimates that there are millions of prospective class members. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined

through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Wal-Mart.

66. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- a. whether the Mislabeled Products actually contain the ingredients indicated on the product labels;
- b. whether the Mislabeled Products actually contain the ingredients indicated on the product labels in the concentrations indicated on the product labels;
- c. whether Defendant made any express warranties in connection with the sale of the Mislabeled Products;
- d. whether Defendant breached any of those express warranties in connection with the sale of the Mislabeled Products;
- e. whether Defendant breached an implied warranty of merchantability in connection with the sale of the Mislabeled Products;
- f. whether Defendant was unjustly enriched by its conduct; and
- g. whether defendant was negligent in making any misrepresentations about the ingredients and concentrations of ingredients in the Mislabeled Products.

67. The claims of the named Plaintiff are typical of the claims of the Class in that Plaintiff was exposed to Wal-Mart's false, misleading and misbranded labels, purchased the Mislabeled Products, and suffered losses as a result of those purchases.

68. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to

represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

69. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

Breach Of Express Warranty

70. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

71. Plaintiff brings this Count individually and on behalf of the members of the Class.

72. In connection with the sale of the Mislabeled Products, Wal-Mart issued express warranties concerning the ingredients in the Products, the concentrations of those ingredients and the products' effects.

73. Defendant's affirmations of fact and promises made to Plaintiff and the Class on the Product labels and packaging materials, became part of the basis of the bargain between Wal-Mart and Plaintiff and the Class Members, thereby creating express warranties that the Products would conform to Wal-Mart affirmations of fact, representations, promises, and descriptions.

74. Wal-Mart breached the written warranties because each of the express warranties is provably false and misleading. The Mislabeled Products do not include ingredients listed on the labels in the concentrations on the labels.

75. Plaintiff and the Class Members were injured as a direct and proximate result of Wal-Mart's breach because: (a) they would not have purchased the Mislabeled Products if they had known the truth about those products; (b) they paid for the Products due to the false and misleading labeling; and (c) the Products did not have the quality, effectiveness, or value as promised. As a result, Plaintiff and the Class have been damaged in the full amount of the purchase price of the Products.

COUNT II

Breach of Implied Warranty of Merchantability

76. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

77. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Wal-Mart.

78. The Mislabeled Products are unmerchantable because they do not contain the ingredients or concentrations of ingredients as indicated on the product labels and as a result do not have the pharmacological effects that Wal-Mart maintains on the labeling for the Mislabeled Products.

79. The Mislabeled Products were unmerchantable at the time they left the location where they were created, and remained unmerchantable at all times after that. This unmerchantability is inherent in the products.

80. Plaintiff notified Wal-Mart of the acts constituting breach of the implied warranty of merchantability, both for herself and the Class. Plaintiff and other Class members suffered injury as a result of these breaches of warranty, for which Plaintiff hereby prays, because they paid for and received the Mislabeled Products that were not fit for sale in the marketplace.

COUNT III

Negligent Misrepresentation

81. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

82. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Wal-Mart.

83. To make a claim for negligent misrepresentation, Plaintiff must show the following: 1) Defendant made representations in the course of their business; 2) Defendant supplied “false information” for the guidance of others in their business; 3) Defendant did not exercise reasonable care or competence in obtaining or communicating the information; and 4) Plaintiff suffered pecuniary loss by justifiably relying on the misrepresentation.

84. All of these factors exist here. Defendant advertised and made false, misleading, and deceptive claims about the Mislabeled Products. Namely, Defendant claimed that the Mislabeled Products contained labeled ingredients in specific concentrations

85. Defendant's representations were not true, and Wal-Mart did not exercise reasonable care or competence in obtaining or communicating this information.

86. Plaintiff and the Class relied on Defendant's representation in purchasing the Mislabeled Products. There would be no other reason to purchase a dietary supplement in specific concentrations, if the product did not contain those ingredients in those concentrations. As a result, Plaintiff and the Class were damaged by their purchase of the Mislabeled Products.

87. Plaintiff and the class suffered pecuniary loss in the amount of the purchase price of the Mislabeled Products.

COUNT IV

(Unjust Enrichment)

88. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

89. Plaintiff brings this cause of action individually and on behalf of the members of the Class.

90. "Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state." *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), quoting *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

91. Plaintiff and Class members conferred a benefit on Wal-Mart by purchasing the Mislabeled Products.

92. Wal-Mart has been unjustly enriched in retaining the revenues derived from Class members' purchases of the Mislabeled Products retention under these circumstances is unjust and inequitable because the products did not contain the ingredients indicated on the their product labels in the concentrations indicated on the labels.

93. Because Wal-Mart's retention of the non-gratuitous benefit conferred on them by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a properly maintainable as a class action and certifying Plaintiff as Class representative and appointing her counsel as Counsel for the Class;

B. For an order declaring that the Defendant's conduct violates the statutes referenced herein;

C. Awarding compensatory and punitive damages in favor of Plaintiff, members of the Class against Wal-Mart for all damages sustained as a result of the Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

D. Awarding injunctive relief against Defendant to prevent it from continuing its ongoing unfair, unconscionable, and/or deceptive acts and practices;

E. For an order of restitution and/or disgorgement and all other forms of equitable monetary relief;

F. Awarding Plaintiff and members the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

G. Awarding such other and further equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable in this action.

Dated: February 10, 2015

Respectfully submitted,

Carney Bates & Pulliam PLLC



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Counsel for Plaintiff

EXHIBIT A



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL AFFAIRS

February 2, 2015

Doug McMillon, President/CEO
Wal-Mart Stores, Inc.
702 SW 8th Street
Bentonville, Arkansas 72716

Certified—Return Receipt Requested

Re: **CEASE & DESIST NOTIFICATION**
Spring Valley—Walmart Distributed Herbal Dietary Supplements

Dear Mr. McMillon:

This letter constitutes a demand to cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements, and in particular to immediately stop the sale of six “Spring Valley” dietary supplements as identified by lot number in the exhibit annexed hereto.

Be advised that the Attorney General is authorized by Executive Law § 63(12) to investigate allegations and prosecute businesses which perpetuate fraud upon consumers or engage in illegality in their business practices. General Business Article 22-b further authorizes this office to redress deceptive business acts and practices and false advertising. Of late, the topic of purity (or lack thereof) in popular herbal dietary supplements has raised serious public health and safety concerns,¹ and also caused this office to take steps to independently assess the validity of industry representations and advertising.

In an investigation recently conducted by the Attorney General’s Office, six popular Walmart “Spring Valley” brand dietary supplement products were purchased at three different New York State locations and were then genetically tested five times per sample, yielding 90 results. The supplements tested included Ginkgo Biloba, St. John’s Wort, Ginseng, Garlic, Echinacea, and Saw Palmetto. By using established DNA barcoding technology, analytic testing disclosed that all of the tested dietary supplement products were either unrecognizable or a substance other than what they claimed to be, and therefore fairly constitute contaminated or substituted products. Four (4) percent of the tests yielded DNA matching the product label; 40% tested for botanical material other than what was on the label; and 56% yielded no plant DNA at all.

¹See, e.g., Newmaster, et al., “DNA Barcoding Detects Contamination and Substitution in North American Herbal Products,” *BMC Medicine*, 2013, 11:222 (<http://www.biomedcentral.com/1741-7015/11/222>).

Contamination, substitution and falsely labeling herbal products constitute deceptive business practices and, more importantly, present considerable health risks for consumers. The Attorney General's testing upon the products purchased revealed the following:

Ginkgo Biloba. Negative. No ginkgo biloba DNA was identified. The only DNA identified was "oryza" (commonly known as rice) in 6 of the fifteen tests, with other tests identifying dracaena (a tropical houseplant), mustard, wheat, and radish. Four of the tests revealed no plant DNA whatsoever.

St. John's Wort. Negative. No St. John's Wort DNA was identified. Of the 15-tests performed, only four identified any DNA, and it included allium, oryza (x2), and cassava (garlic, rice, and a tropical root crop).

Ginseng: Negative. No ginseng DNA was identified. The testing yielded identification of oryza, dracaena, pinus strobus, wheat/grass, and citrus spp., with 10 of the tests identifying no genetic material at all.

Garlic: Qualified negative. While one of 15 tests did identify the presence of allium, it was clearly not predominate. The other tests identified oryza (x6), and pinus spp. Genetic material of palm, dracaena, wheat, and oryza was located, with only 1/15 of the tests identifying allium as present in the product. Ten of the 15-tests showed no identifiable genetic plant material.

Echinacea: Negative. No plant genetic material of any sort was identified in the product labeled Echinacea.

Saw Palmetto: Qualified negative. Three of 15 tests did identify the presence of saw palmetto, but it did not predominate. Three tests identified allium DNA, and six other tests identified the presence of oryza. Four tests were unable to identify any botanic DNA in the samples.

Studies conducted by the Centre for Biodiversity Genomics at the University of Guelph and others have previously alerted the dietary supplement industry to the fact that it is not providing the public with authentic products without substitution, contamination or fillers. It is disappointing that over a year later the Attorney General's researcher reached similar conclusions, demonstrating that the industry has failed to clean up its practices.

To assist in the Attorney General's ongoing investigation of this matter, and pursuant to the above authority, kindly supply the following information:

1. The name of the manufacturer and the location of the production of each of the herbal products identified above.
2. A listing of any DNA testing or any other analytic testing for content and quality (including but not limited to chemical composition) of the herbal products listed above and copies of such testing results.
3. Copies of all licensing and production contracts with any party involved in the production and distribution of the herbal products identified above.

4. A listing of all ingredients used in the products identified above and a measurement of the amount of each ingredient in each of the herbal products identified above.
5. Identify the standards or procedures followed to authenticate the content of the herbal products listed above.
6. Produce the relevant Bioterrorism Registration documentation for the manufacturer of dietary supplements.
7. Articulate the acquisition, production protocol, and quality assurance measures undertaken by the manufacturer of the products tested, including all such protocols undertaken to comply with current Dietary Supplement Current Good Manufacturing Practices (CGMPs) for quality control.
8. Produce any and all serious adverse event reports associated with use of any Walmart herbal dietary supplement in the United States

Please provide the requested information to me at the following address: NYS Attorney General's Office, Dulles State Office Building, 317 Washington Street, Watertown, New York 13601. Kindly respond on or before 5:00 P.M. on February 9, 2015. If you have any questions, you may contact Assistant Attorney General Deanna R. Nelson at 315-785-2444.

The foregoing shall not constitute a waiver of or limitation on the Attorney General's authority to issue subpoenas or take enforcement action pursuant to applicable law.

Thank you for your anticipated cooperation.

Very truly yours,

MARTIN J. MACK
Executive Deputy Attorney General
In Charge of Regional Affairs

Enc.

Supplements by Lot #: As a courtesy, store location for the tested supplement is also listed. Kindly remove all of the supplements identified below which may bear the lot number indicated no matter the store location.

OAG #	Product	Address	Lot #
Bu-Wm-1	Gingko Biloba	WalMart, 4975 Transit Road, Lancaster, NY 14086	897204-03
Bu-Wm-2	St. John's Wort	WalMart, 4975 Transit Road, Lancaster, NY 14086	214185088
Bu-Wm-3	Ginseng	WalMart, 4975 Transit Road, Lancaster, NY 14086	761948-10
Bu-Wm-4	Garlic	WalMart, 4975 Transit Road, Lancaster, NY 14086	900872-02
Bu-Wm-5	Echinacea	WalMart, 4975 Transit Road, Lancaster, NY 14086	214093742
Bu-Wm-6	Saw Palmetto	WalMart, 4975 Transit Road, Lancaster, NY 14086	410683-03
We-Wm-1	Gingko Biloba	WalMart #3441, 275 Main Street, White Plains, NY 10601	900362-02
We-Wm-2	St. John's Wort	WalMart #3441, 275 Main Street, White Plains, NY 10601	770912-04
We-Wm-3	Ginseng	WalMart #2531, 3133 East Main Street, Mohegan Lake, NY 10547	761948-12
We-Wm-4	Garlic	WalMart #3441, 275 Main Street, White Plains, NY 10601	901904-01
We-Wm-5	Echinacea	WalMart #3441, 275 Main Street, White Plains, NY 10601	2140937-42
We-Wm-6	Saw Palmetto	WalMart #3441, 275 Main Street, White Plains, NY 10601	775547-03
U-Wm-1	Gingko Biloba	WalMart, 710 Horatio Street, Utica, NY 13502	897204-03
U-Wm-2	St. John's Wort	WalMart, 710 Horatio Street, Utica, NY 13502	214215441
U-Wm-3	Ginseng	WalMart, 710 Horatio Street, Utica, NY 13502	761948-10
U-Wm-4	Garlic	WalMart, 710 Horatio Street, Utica, NY 13502	891564-01
U-Wm-5	Echinacea	WalMart, 710 Horatio Street, Utica, NY 13502	214164762
U-Wm-6	Saw Palmetto	WalMart, 710 Horatio Street, Utica, NY 13502	410683-03

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Karen Jones, on Behalf of herself and all Others Similarly Situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Chickasaw County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Randall K. Pulliam Carney Bates & Pulliam, PLLC 11311 Arcade Drive, Suite 200, Little Rock, AR 72212 / 501-312-8500 (Tel)</p>	<p>DEFENDANTS Wal-Mart Stores, Inc., and DOE DEFENDANTS 1-10</p> <p>County of Residence of First Listed Defendant <u>Benton County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)

Brief description of cause:
Consumer class action for false and misleading statements related to sale of herbal supplements


VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: February 10, 2015

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE