

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

GEORGE J. MARSHALL and SCOTT  
DAHLIN, individually and on behalf of  
all others similarly situated,

*Plaintiffs,*

v.

WAL-MART STORES, INC.,

*Defendant.*

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CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiffs, George J. Marshall and Scott Dahlin (collectively, “**Plaintiffs**”), individually and on behalf of all others similarly situated, sue Defendant, Wal-Mart Stores, Inc. (“**Defendant**” or “**Wal-Mart**”), and state as follows:

**NATURE OF THE ACTION**

1. This action involves Defendant’s uniform deceptive sales practices with respect to certain herbal supplements it sells to consumers throughout the United States. Wal-Mart is a retail chain with more than 4,000 locations across the country and more than 250 locations in the state of Florida. At each of its stores, Wal-Mart offers for sale a variety of herbal supplements under its own private label, “Spring Valley,” including, but not limited to, Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto (collectively, “**Herbal Supplements**”). “Spring Valley” brand products are exclusively sold at Wal-Mart stores. As alleged herein, Defendant’s labeling, marketing and sale of these Herbal Supplements is deceptive and misleading to consumers. Upon information and belief, the Herbal Supplements are uniformly mislabeled because each lacks the integral ingredient listed on the

product label. Instead, each contains contaminants, substitutes and fillers that are not identified on the product label.

2. The contamination, substitution, and false labeling of the Herbal Supplements constitute a deceptive business practice.

### **PARTIES, JURISDICTION AND VENUE**

3. Plaintiff, George J. Marshall, is a resident of Venice, Sarasota County, Florida.

4. Plaintiff, Scott Dahlin, is a resident of Corpus Christi, Nueces County, Texas.

5. Defendant, Wal-Mart Stores, Inc., is incorporated in Arkansas with its principal place of business in Bentonville, Benton County, Illinois.

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) in that the matter in controversy, exclusive of interest and costs, exceeds the sum of value of \$5,000,000 and is a class action in which Plaintiffs are citizens of states different from Defendant. This Court also has federal question jurisdiction under 28 U.S.C. § 1331.

### **GENERAL ALLEGATIONS**

7. Defendant conducts business throughout the United States and operates more than 4,000 stores in all 50 states, including more than 250 stores in the state of Florida.

8. In addition to selling products manufactured by others, Defendant also markets and sells hundreds of its own private-label products at its stores across the United States and in Florida.

9. The present complaint concerns “Spring Valley” branded Herbal Supplements, including Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto.

10. “Spring Valley” is Defendant’s house brand of Herbal Supplements, which Wal-Mart offered exclusively at Wal-Mart stores throughout the United States.

11. Defendant represented on the labels of these Herbal Supplements that they contained Ginkgo Biloba, St. John's Wort, Ginseng, Echinacea, and Saw Palmetto, respectively. Contrary to their labeling, tests have revealed that the above products do not contain these herbs. In particular, testing revealed that Defendant's "Ginkgo Biloba" contained no Ginkgo Biloba and instead contained oryza (rice), dracaena (a tropical houseplant), mustard, wheat and radish; Defendant's "St. John's Wort" contained no St. John's Wort and instead contained allium (garlic), oryza and cassava (a tropical root crop); Defendant's "Ginseng" contained no Ginseng and instead contained oryza, dracaena, pinus strobus (pine tree), wheat grass and citrus; Defendant's "Echinacea" contained no Echinacea and no genetic plant material; Defendant's "Saw Palmetto" contained no Saw Palmetto in 12 of 15 tests. In the three tests that identified the presence of Saw Palmetto, it was not the predominant ingredient, and other tests confirmed that "Saw Palmetto" contained allium and oryza. These undisclosed contaminants, substitutes and fillers are known allergens and, as a result, it is imperative that their inclusion in the above-listed products be disclosed to consumers.

12. While plants have been used for medicinal purposes for thousands of years, the use of herbal supplements has increased dramatically in the United States over the last several decades. Indeed, herbal supplements are more popular today than ever before, and plants of all kinds are currently being studied for their health benefits. It is widely accepted that herbal supplements can be effective treatments for a variety of conditions. As a result, consumers who purchase such products reasonably expect that they will actually contain the herbs identified and listed as ingredients on the label. In other words, reasonable consumers who purchased Defendant's "Spring Valley" branded Ginkgo Biloba, St. John's Wort, Ginseng, Echinacea,

Echinacea-Golden Seal Complex, and Saw Palmetto believed these products actually contain the herbs as labeled.

13. In short, consumers who purchased Defendant's Herbal Supplements were duped. Instead of receiving "Spring Valley" branded Ginkgo Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto, consumers received worthless products that did not match the ingredients listed on their labels.

14. On February 3, 2015, the New York Attorney General served Wal-Mart with a "Cease and Desist Notification," indicating that an investigation and testing conducted on behalf of the Attorney General's Office found that Wal-Mart's "Spring Valley" branded Ginkgo Biloba, St. John's Wort, Ginseng, Echinacea, and Saw Palmetto did not contain these herbs, as listed on the product labels. Rather, these products contained undisclosed substances or substances other than what was represented on their labels. In the Notification, attached hereto as "Exhibit A," the New York Attorney General affirmed that only 4% of Defendant's products that were tested yielded DNA matching the product labels. The Attorney General also indicated in the Notification that contamination, substitution and falsely labeled herbal products constituted deceptive business practices and presented considerable health risks for consumers.

15. Plaintiffs and Class Members did not know or have reason to know that Defendant's Herbal Supplements did not contain the herbal ingredients listed on their labels. Plaintiffs and any other consumers acting reasonably in the same circumstances likely would be deceived and believe that the "Spring Valley" branded Ginkgo Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto contained the listed ingredients.

16. Plaintiffs and Class Members relied upon the representations on Defendant's product labels to their detriment. Plaintiffs and Class Members acting reasonably in the same

circumstances would not have purchased these products had they known they were not actually Gingko Biloba, St. John's Wort, Ginseng, Echinacea, and Saw Palmetto. Plaintiffs and Class Members have been damaged by Defendants' deceptive and misleading labeling of these worthless products, and they are entitled to a refund of the purchase price of the products.

**PLAINTIFF MARSHALL'S PURCHASE OF DEFENDANT'S PRODUCTS**

17. At all relevant times, Plaintiff Marshall was an individual residing in the state of Florida. He is a "consumer" as defined by the Florida Deceptive and Unfair Trade Practices Act, §501.203(7), Florida Statutes.

18. Over the past six years, Plaintiff Marshall has regularly purchased "Spring Valley" branded Echinacea-Golden Seal Complex from Wal-Mart stores located at 4150 South Tamiami Trail, Venice, Florida 34293, and 13140 South Tamiami Trail, Osprey, Florida 34229. Most recently, Plaintiff Marshall purchased this product from one of the above stores between December 2014 and January 2015.

19. Before purchasing this product, Plaintiff Marshall reviewed the product label, which expressly claimed that it contained Echinacea. When Plaintiff Marshall purchased the product, he reasonably believed that it contained Echinacea, and that it did not contain any additional undisclosed ingredients.

20. Unbeknownst to Plaintiff Marshall and Class Members, the product that Plaintiff purchased did not include the ingredients identified on the label. Upon information and belief, the Echinacea-Golden Seal Complex does not contain any Echinacea. As described above, testing confirmed that Defendant's "Spring Valley" branded Echinacea does not contain any Echinacea or other genetic plant material.

21. Had Plaintiff Marshall known that the Echinacea-Golden Seal Complex did not actually contain Echinacea and that it contained undisclosed contaminants, substitutes, and fillers, he would not have purchased this product.

22. As a result of the foregoing, Plaintiff Marshall and Class Members have suffered damages.

**PLAINTIFF DAHLIN'S PURCHASE OF DEFENDANT'S PRODUCTS**

23. At all relevant times, Plaintiff Dahlin was an individual residing in the state of Texas.

24. For at least the past four years, Plaintiff Dahlin has regularly purchased "Spring Valley" branded Echinacea from a Wal-Mart store located in Corpus Christi, Texas. Most recently, Plaintiff Dahlin purchased the product in or around August 2014.

25. Before purchasing this product, Plaintiff Dahlin reviewed the product label, which expressly claimed that the product contained Echinacea. When Plaintiff Dahlin purchased the product, he reasonably believed that it contained Echinacea, and that the product did not contain any additional undisclosed ingredients.

26. Unbeknownst to Plaintiff Dahlin and putative Class Members, the aforementioned product that Plaintiff Dahlin purchased did not include the ingredients identified on the label. As described above, Defendant's "Echinacea" does not contain Echinacea. The referenced testing confirmed that Defendant's "Spring Valley" branded "Echinacea" contained no Echinacea and no genetic plant material.

27. Had Plaintiff Dahlin known that this product did not actually contain Echinacea, and that it contained undisclosed contaminants, substitutes, and fillers, he would not have purchased the product.

28. As a result of the foregoing, Plaintiff Dahlin and Class Members have suffered damages.

### **CLASS ACTION ALLEGATIONS**

29. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3) and as detailed in the individual counts below, Plaintiffs bring this action on behalf of themselves and all others similarly situated. Specifically, Plaintiffs seek to represent the following persons (“**the Class**” or “**Class Members**”):

All persons within the United States who, between February 6, 2011 and the present, purchased “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto from Wal-Mart Stores, Inc.

Plaintiff Marshall also seek to represent the following persons (“**the Sub-Class**” or “**Sub-Class Members**”):

All persons in the state of Florida who, between February 6, 2011 and the present, purchased “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto from Wal-Mart Stores, Inc.

The Class and Sub-Class definitions are subject to amendment as needed.

30. Excluded from the Class and Sub-Class are Defendant, its employees, agents, and assigns, and any members of the judiciary to whom this case is assigned, their Court staff, and Plaintiffs’ counsel.

31. Also excluded from this action are any claims for personal injury, wrongful death and/or emotional distress.

### **Numerosity**

32. At the time of filing, Plaintiffs do not know the exact number of putative Class Members. However, the thousands of Wal-Mart store locations throughout the United States,

coupled with the popularity of the Herbal Supplements, affirms that Class Members likely number in the tens or hundreds of thousands, and are geographically dispersed throughout the country.

33. The alleged size and geographic disbursement of the putative Class, and relatively modest value of each individual claim, makes joinder of all Class Members impracticable or impossible.

**Predominance of Common Questions of Law and Fact**

34. This action involves common questions of law and fact, which predominate over any questions affecting only individual Class Members. The common legal and factual questions include, but are not limited to, the following:

- a. whether the product labeled as “Spring Valley” brand Gingko Biloba contains Gingko Biloba;
- b. whether the product labeled as “Spring Valley” brand Gingko Biloba contains undisclosed contaminants, substitutes or fillers;
- c. whether the product labeled as “Spring Valley” brand St. John’s Wort contains St. John’s Wort;
- d. whether the product labeled as “Spring Valley” brand St. John’s Wort contains undisclosed contaminants, substitutes or fillers;
- e. whether the product labeled as “Spring Valley” brand Ginseng contains Ginseng;
- f. whether the product labeled as “Spring Valley” brand Ginseng contains undisclosed contaminants, substitutes or fillers;
- g. whether the product labeled as “Spring Valley” brand Echinacea contains Saw Palmetto;



- h. whether the product labeled as “Spring Valley” brand Echinacea contains undisclosed contaminants, substitutes or fillers;
- i. whether the product labeled as “Spring Valley” brand Echinacea-Golden Seal Complex contains Echinacea;
- j. whether the product labeled as “Spring Valley” brand Echinacea-Golden Seal Complex contains undisclosed contaminants, substitutes or fillers;
- k. whether Defendant mislabeled the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto;
- l. whether Defendant’s mislabeling of the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto constitutes a deceptive trade practice in violation of the Florida Deceptive and Unfair Trade Practices Act, §501.203(7), Florida Statutes;
- m. whether Defendant’s mislabeling of the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto constitutes a breach of express warranty;
- n. whether Defendant’s mislabeling of the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto constitutes a breach of implied warranty of merchantability;
- o. whether Defendant’s mislabeling of the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto constitutes a breach of implied warranty of fitness for a particular purpose;

- p. whether Defendant was unjustly enriched by Plaintiffs and Class Members who purchased the mislabeled Herbal Supplements;
- q. whether Plaintiffs and Class Members have sustained damages as a result of the conduct alleged herein and, if so, what is the proper measure of such damages; and
- r. whether Plaintiffs and Class Members are entitled to injunctive or other equitable relief.

#### **Typicality**

35. Plaintiffs' claims are typical of the claims of the Class Members, as Plaintiffs and Class Members have been injured by Defendant's uniform misconduct – the mislabeling, marketing and selling of “Spring Valley” branded Ginkgo Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto that does not actually contain the listed ingredients, but rather contains undisclosed contaminants and fillers that are not identified on the product labels.

36. Plaintiffs share the aforementioned facts and legal claims and questions with all putative Class Members. Further, a sufficient relationship exists between Defendant's uniform misconduct and the damages sustained by Plaintiffs and putative Class Members.

#### **Adequacy**

37. Plaintiffs will fairly and adequately protect the interests of the Class and are committed to the vigorous prosecution of this action. Plaintiffs have retained counsel experienced in complex consumer class action litigation and matters specifically involving consumer labeling claims. Plaintiffs have no interests adverse or antagonistic to those of the Class.

**Superiority**

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members' claims is impracticable or impossible for at least the following reasons:

- a. The Class claims predominate over any questions of law or fact (if any) affecting only individual Class Members;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendant's illegal conduct will continue without remedy;
- c. Given the size of individual Class Members' claims, few (if any) putative Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed and continues to commit against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts, while also increasing the delay and expense to all parties and the courts. Comparatively, the class action device provides economies of scale and allows Class Members' claims to be comprehensively administered and uniformly adjudicated in a single proceeding;
- e. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and determined uniformly by the Court;
- f. No difficulty impedes the action's management by the Court as a class action, which is the best available means by which Plaintiffs and Class Members can seek redress for the damages caused to them by Defendant's uniform misconduct;

- g. The litigation and trial of Plaintiffs' claims are manageable;
- h. Defendant has acted and/or refused to act on grounds generally applicable to Plaintiffs and the Class by mislabeling and selling "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto that do not actually contain the named ingredients, but do contain undisclosed contaminants and fillers, rendering just and appropriate final injunctive relief for the Class; and
- i. Because Plaintiffs seek injunctive relief and corresponding equitable relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, and establishing incompatible standards of conduct for Defendant. Additionally, bringing individual claims would burden the courts and result in an inefficient method of resolving this action. As a practical matter, adjudications with respect to individual Class Members would be dispositive of the interests of other Class Members who are not parties to the adjudication and may impair or impede their ability to protect their respective interests. Consequently, class treatment is a superior method for adjudication of the issues in this case.

#### **Fraudulent Concealment**

39. Throughout the Class period, Defendant knew and affirmatively concealed from Plaintiffs and Class Members that, contrary to its labelling, the "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw

Palmetto did not actually contain the named ingredients, but rather contained undisclosed contaminants, substitutes and fillers.

40. Defendant had a duty to disclose to Plaintiffs and Class Members the actual ingredients of the above-described Herbal Supplements. Notwithstanding its duty, Defendant never disclosed to Plaintiffs and Class Members that “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto does not contain the named ingredients, but rather contains undisclosed contaminants, substitutes and fillers.

41. Despite exercising reasonable diligence, Plaintiffs and Class Members could not have discovered Defendant’s affirmative concealment and mislabeling of the Herbal Supplements. Thus, running of the statute of limitations has been tolled with respect to any claims that Plaintiffs or Class Members have brought or could have brought as a result of the uniform unlawful conduct described herein.

42. Defendant is further estopped from asserting any statute of limitations defense to the claims alleged herein by virtue of their acts of fraudulent concealment.

**COUNT I - BREACH OF EXPRESS WARRANTY**

43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 above as if fully set forth herein.

44. Plaintiffs bring this claim individually and on behalf of Class Members.

45. Defendant, as the marketer, seller and distributor, expressly warranted that the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products contained Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, and Saw Palmetto.

46. In fact, the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto were adulterated and, rather than including the actual herbs listed on the product labels, these products contained contaminants, substitutes and fillers not listed on the product labels.

47. As a direct and proximate cause of Defendant’s breach of express warranty, Plaintiffs and Class Members have been injured because they would not have purchased the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products had they known that they did not contain the ingredients listed on the product labels.

**COUNT II – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

48. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 above as if fully set forth herein.

49. Plaintiffs bring this claim individually and on behalf of Class Members.

50. Defendant, as the marketer, seller and distributor, impliedly warranted that the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products contained Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, and Saw Palmetto.

51. Defendant breached the warranty implied in the contract for the sale of “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto because these products could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex,

and Saw Palmetto are adulterated products that do not contain the listed herbs and, instead, contain contaminants, substitutes and fillers not listed on the product labels. As a result, Plaintiffs and Class Members did not receive the goods as impliedly warranted by Defendant to be merchantable.

52. Plaintiffs and Class Members purchased “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products in reliance upon Defendant’s skill and judgment, and the implied warranties of fitness for the purpose.

53. “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products were not altered by Plaintiffs or Class Members.

54. “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products were defective when they left the exclusive control of Defendant.

55. Defendant knew that its “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products would be purchased and used without additional testing by Plaintiffs and Class Members.

56. “Spring Valley” Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products were defectively designed and unfit for their intended purpose, and Plaintiffs and Class Members did not receive the goods as warranted.

57. As a direct and proximate cause of Defendant’s breach of implied warranty, Plaintiffs and Class Members have been injured because they would not have purchased the “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-

Golden Seal Complex, and Saw Palmetto products had they known that they did not contain the ingredients listed on the product labels.

**COUNT III – BREACH OF IMPLIED WARRANTY OF FITNESS FOR  
A PARTICULAR PURPOSE**

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 above as if fully set forth herein.

59. Plaintiffs bring this claim individually and on behalf of Class Members.

60. Defendant marketed, distributed and sold “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products with implied warranties that these products were fit for their intended purposes and that they contained Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, and Saw Palmetto. At the time that “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products were sold, Defendant knew or had reason to know that Plaintiffs and Class Members were relying on Defendant’s skill and judgment to select or furnish products that were suitable for sale.

61. Plaintiffs and Class Members purchased “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products in reliance upon Defendant’s implied warranties.

62. Defendant’s “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products were not altered by Plaintiffs or Class Members.

63. As a direct and proximate cause of Defendant’s breach of implied warranty, Plaintiffs and Class Members have been injured because they would not have purchased the “Spring Valley” branded Ginkgo Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-



Golden Seal Complex, and Saw Palmetto products had they known that they did not contain the ingredients listed on the product labels.

**COUNT IV - VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,  
15 U.S.C. § 2301**

64. Plaintiffs reallege and incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

65. Plaintiffs bring this claim individually and on behalf of Class Members.

66. Plaintiffs make this claim under state express warranty law, as allowed under Section 2301(d)(1)(B) of the Magnuson-Moss Warranty Act (“MMWA”). Plaintiffs incorporate by reference each and every allegation in their first (Breach of Express Warranty), second (Breach of Implied Warranty of Merchantability) and third (Breach of Implied Warranty of Fitness for a Particular Purpose) Causes of Action as though fully set forth herein.

67. “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products are “consumer products,” as defined in 15 U.S.C. §2301(1).

68. Plaintiffs and Class Members are “consumers,” as defined in 15 U.S.C. §2301(3).

69. Defendant is a “supplier” and “warrantor,” as defined in 15 U.S.C. §§ 2301(4) and (5).

70. In connection with the sale of “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products, Defendant issued written warranties within the meaning of 15 U.S.C. § 2301(6), which warranted that the Herbal Supplements contained Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, and Saw Palmetto.

71. In fact, Defendant's "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products are adulterated products that contain contaminants, substitutes and fillers, as alleged herein.

72. Defendant's breach of the express warranty deprived Plaintiffs and Class Members of the benefit of their bargain.

73. By reason of Defendant's breach of warranty, Defendant violated the statutory rights due to Plaintiffs and Class Members pursuant to the MMWA, thereby damaging Plaintiffs and Class Members.

74. Plaintiffs and Class Members were injured as a direct and proximate result of Defendant's breach because they would not have purchased the mislabeled Herbal Supplements had they known that the Supplements did not contain the herbs identified on their labels.

75. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs and Class Members sustained damages and other losses in an amount to be determined at trial.

76. Plaintiffs and Class Members are entitled to revoke their acceptance of the "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products to obtain damages and equitable relief, and to obtain attorney fees and costs under 15 U.S.C. § 2301.

#### **COUNT V – NEGLIGENT MISREPRESENTATION**

77. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 above as if fully set forth herein.

78. Plaintiffs bring this claim individually and on behalf of Class Members.

79. As described herein, Defendant represented that its “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products contained Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, and Saw Palmetto. However, Defendant failed to disclose that these products were actually adulterated products that do not contain the listed herbs and, instead, contain contaminants, substitutes and fillers not listed on the product labels. Defendant had a duty to disclose this information.

80. At the time Defendant made these representations, Defendant knew or should have known that these representations were false or made without knowledge of their truth or veracity.

81. At an absolute minimum, Defendant negligently misrepresented and/or negligently omitted material facts about its “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products.

82. Defendant’s negligent misrepresentations and omissions, upon which Plaintiffs and Class Members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class Members to purchase “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products.

83. Plaintiffs and Class Members would not have purchased “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto if they had known the true facts.

84. The negligent actions of Defendant caused damage to Plaintiffs and Class Members who are entitled to damages and other legal and equitable relief as a result.

**COUNT VI - FRAUD**

85. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 above as if fully set forth herein.

86. Plaintiffs bring this claim individually and on behalf of Class Members.

87. As described herein, Defendant provided Plaintiffs and Class Members with false or misleading material information and failed to disclose material facts about its “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products, including, but not limited to, the fact that these products were actually adulterated products that do not contain the listed herbs and, instead, contain contaminants, substitutes and fillers not listed on the product labels.

88. The misrepresentations and omissions made by Defendant, upon which Plaintiffs and Class Members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class Members to purchase “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products.

89. The fraudulent actions of Defendant caused damage to Plaintiffs and Class Members who are entitled to damages and other legal and equitable relief as a result.

**COUNT VII – VIOLATION OF THE FLORIDA UNFAIR  
AND DECEPTIVE TRADE PRACTICES ACT  
(Plaintiff Marshall individually and on behalf of the Florida Class)**

90. Plaintiff Marshall realleges and incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

91. Plaintiff Marshall brings this claim individually and on behalf of Class Members.

92. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, section 501.201, Fla. Stat., *et seq.* (“**FDUTPA**”).

93. Plaintiff Marshall and Class Members are “consumers” as defined by Florida Statute §501.203(7), and the subject transactions are “trade or commerce” as defined by Florida Statute §501.203(8).

94. Defendant markets, distributes and sells the “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products. These products are “goods” within the meaning of FDUTPA.

95. FDUPTA was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

96. For the reasons discussed herein, Defendant violated and continues to violate FDUPTA by engaging in the herein described unconscionable, deceptive, unfair acts or practices proscribed by Florida Statute § 501.201, *et seq.* Defendant’s affirmative misrepresentations, omissions and practices described herein were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

97. For the reasons discussed herein, Defendant violated and continues to violate FDUPTA by engaging in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

98. Defendant misrepresented and omitted material facts regarding its “Spring Valley” branded Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products by failing to disclose that the products did not contain the listed herbs and, instead, contained contaminants, substitutes and fillers not listed on the product labels.

99. Defendant's practices regarding the mislabeled "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products were likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

100. Defendant's unconscionable, deceptive and unfair acts and practices caused actual damages to Plaintiff Marshall and Class Members who were unaware of the fact that Defendant's "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products did not contain the listed herbs and, instead, contained contaminants, substitutes and fillers not listed on the product labels.

101. Plaintiff Marshall and Class Members have been aggrieved by Defendant's unfair and deceptive acts and practices in that they paid for "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products that did not contain the listed herbs and, instead, contained contaminants, substitutes and fillers not listed on the product labels.

102. The harm suffered by Plaintiff Marshall and Class Members was directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as more fully described herein. Plaintiff Marshall and Class Members would not have purchased the "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products had they known that the products did not contain the listed herbs and, instead, contain contaminants, substitutes and fillers not listed on the product labels.

103. Pursuant to section 501.211(1), Fla. Stat., Plaintiff Marshall and Class Members seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Defendant, and for restitution and disgorgement.

104. Additionally, pursuant to sections 501.211(2) and 501.2105, Fla. Stat., Plaintiff Marshall and Class Members make claims for damages, attorneys' fees and costs.

105. Plaintiff Marshall and Class Members reserve the right to allege other violations of FDUPTA as Defendant's conduct is ongoing.

### **COUNT VIII - UNJUST ENRICHMENT**

106. Plaintiffs restate and reallege the allegations of paragraphs 1 through 42 as if fully stated herein.

107. Plaintiffs assert this cause of action individually and on behalf of Class Members.

108. Plaintiffs and Class Members have conferred a benefit upon Defendant by purchasing "Spring Valley" branded Gingko Biloba, St. John's Wort, Ginseng, Echinacea, Echinacea-Golden Seal Complex, and Saw Palmetto products.

109. By its deceptive, misleading and unlawful conduct alleged herein, Defendant has unjustly received and retained a benefit at the expense of Plaintiffs and Class Members.

110. Under principles of equity and good conscience, Defendant should not be permitted to retain money belonging to Plaintiffs and Class Members that it unjustly received as a result of its deceptive, misleading and unlawful conduct alleged herein without providing compensation to Plaintiffs and Class Members.

111. Plaintiffs and Class Members have suffered financial loss as a direct result of Defendant's misconduct.

112. Plaintiffs and Class Members are entitled to restitution of, disgorgement of, or the imposition of a constructive trust upon all profits, benefits and other compensation obtained by Defendant, and for such other relief that this Court deems proper, as a result of their deceptive, misleading and unlawful conduct.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests that the Court grant Plaintiffs and all putative Class Members the following relief against Defendant:

A. An order certifying this matter as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), certifying the Class defined herein, appointing Plaintiffs as Representatives of the Class, and/or Plaintiff Marshall as Representative of the Sub-Class, and appointing Plaintiffs' counsel as Class Counsel; and

B. An award of compensatory damages against Defendant in favor of Plaintiffs and Class Members for damages sustained as a result of Defendant's wrongdoing;

C. An award of restitution and disgorgement of Defendant's revenues to Plaintiffs and Class Members;

D. An award of pre- and post-judgment interest;

E. Injunctive relief prohibiting future statutory violations;

F. An award of attorney fees and costs to Plaintiffs and Class Members; and

G. An award of such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all counts triable by jury.

Dated: February 6, 2015

Respectfully submitted,

**MORGAN & MORGAN  
COMPLEX LITIGATION GROUP**

/s/ John A. Yanchunis

John A. Yanchunis (Florida Bar No. 324681)  
Jonathan B. Cohen (Florida Bar No. 0027620)  
Rachel Soffin (Florida Bar No. 018054)  
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\* *Pending pro hac vice admission*

*Attorneys for Plaintiffs*



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL AFFAIRS

February 2, 2015

Michael G. Archbold, CEO  
GNC Holdings, Inc.  
300 Sixth Avenue  
Pittsburgh, Pennsylvania 15222

Certified—Return Receipt Requested

Re: **CEASE & DESIST NOTIFICATION**  
*Herbal Plus—GNC Distributed Herbal Dietary Supplements*

Dear Mr. Archbold:

**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 five “Herbal Plus” 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,<sup>1</sup> 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 GNC “Herbal Plus” brand dietary supplement products were purchased at four different New York State locations and were then genetically tested five times per sample, yielding 120 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 5 out of 6 types of dietary supplement products tested were either unrecognizable or a substance other than what they claimed to be, and therefore constitute contaminated or substituted products. Twenty-two (22) percent of the tests yielded DNA matching the product label; 33% tested for botanical material other than what was on the label; and 45% yielded no plant DNA at all.

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<sup>1</sup>See, 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 allium (x5), "oryza"(x4)(commonly known as rice), spruce, and asparagaceae. Nine of the tests revealed no plant DNA whatsoever.

**St. John's Wort.** Negative. No St. John's Wort DNA was identified. Of the 20-tests performed, only three identified any DNA, and it included allium, oryza, and dracaena (tropical houseplant).

**Ginseng:** Negative. No ginseng DNA was identified. The testing yielded identification of oryza, dracaena, pinus strobus, wheat/grass, and citrus spp., with 15 of the tests identifying no genetic material at all.

**Garlic:** Positive. All 20 tests yielded DNA from allium.

**Echinacea:** Negative. Five tests identified oryza DNA, one other yielded the DNA of pinus or ranunculacae. Fourteen tests detected no plant DNA of any sort in the product labeled Echinacea.

**Saw Palmetto:** Qualified negative. Only 6 of 20 tests did identify the presence of saw palmetto, but the positive results were principally from one sample. The results did not replicate in the three other samples. One sample demonstrated no plant DNA, another revealed the presence of asparagaceae, and oryza, while a fourth was positive for DNA from the primrose family as well as saw palmetto.

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, please supply the following information as it pertains to the identified lot numbers, as well as for all companies presently producing these product lines:

1. The name of the manufacturer and the location of the production of each of the herbal products identified.
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 the 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 GNC 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.

<b>OAG #</b>	<b>Product</b>	<b>Address</b>	<b>Lot #</b>
Bi-G-1	Ginkgo Biloba	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	4783GM1834
Bi-G-2	St. John's Wort	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	6736JN1945
Bi-G-3	Ginseng	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	8173LN3748
Bi-G-5	Echinacea	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	8273LN1987
Bi-G-6	Saw Palmetto	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	2660DN3972
Su-G-1	Ginkgo Biloba	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	0624AN1834
Su-G-2	St. John's Wort	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	0822BN1945
Su-G-3	Ginseng	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	1376BN3748
Su-G-5	Echinacea	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	1985CO1987
Su-G-6	Saw Palmetto	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	2617DO3972
H-G-1	Ginkgo Biloba	GNC #09903, 121 West 125th Street, New York, NY 10027	2447DO1947
H-G-2	St. John's Wort	GNC #09903, 121 West 125th Street, New York, NY 10027	1930DO1945
H-G-3	Ginseng	GNC #09903, 121 West 125th Street, New York, NY 10027	2096DO3747
H-G-5	Echinacea	GNC #09903, 121 West 125th Street, New York, NY 10027	1247BO1941
PI-G-1	Ginkgo Biloba	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	2447DO1947
PI-G-2	St. John's Wort	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	1930DO1945
PI-G-3	Ginseng	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	2096DO3747
PI-G-5	Echinacea	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	1985CO1987
PI-G-6	Saw Palmetto	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	0256AO3972



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL AFFAIRS

February 2, 2015

Brian C. Cornell, CEO  
Target Corporation  
1000 Nicollet Mall  
Minneapolis, Minnesota 55403

*Certified—Return Receipt Requested*

Re: **CEASE & DESIST NOTIFICATION**  
*Up & Up—Target Distributed Herbal Dietary Supplements*

Dear Mr. Cornell:

**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 three “Up & Up” 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,<sup>1</sup> 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 Target “Up & Up” 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, Valerian Root, Garlic, Echinacea, and Saw Palmetto. By using established DNA barcoding technology, analytic testing disclosed that 3 out of 6 types of dietary supplement products tested were either unrecognizable or a substance other than what they claimed to be, and therefore constitute contaminated or substituted products. Forty-one (41) percent of the tests yielded DNA matching the product label; 21% tested for botanical material other than what was on the label; and 38% yielded no DNA at all.

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<sup>1</sup>See, 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 purchase revealed the following:

**Ginkgo Biloba.** Negative. No ginkgo biloba DNA was identified. The only DNA identified was allium (x2), "oryza"(x2)(commonly known as rice), mung/French bean. Ten 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 three identified any DNA, and it included allium, oryza, and dracaena (tropical houseplant).

**Garlic:** Positive. Fourteen of fifteen tests yielded DNA from allium. One test identified no DNA.

**Echinacea:** Qualified Positive. Eleven of 15 tests identified Echinacea DNA, 3 tests located no genetic evidence of Echinacea, and 1 test identified oryza DNA.

**Saw Palmetto:** Qualified positive. Twelve of 15 tests identified the presence of saw palmetto, with 3 tests not identifying any genetic evidence of plant material of any type.

**Valerian Root:** Negative. No Valerian root DNA was identified. The testing did, however, yield identification of allium (x4), phasolus/beans; asparagacea, pea family DNA, oryza (x2), and phaseolus fabacaeae, wild carrot, and saw palmetto genetic material, with 3 of the tests identifying no genetic material at all.

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 the 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 Target 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.

<b>OAG #</b>	<b>Product</b>	<b>Address</b>	<b>Lot #</b>
Po-T-1	Gingko Biloba	Target, Poughkeepsie Galleria, 2001 South Road, Poughkeepsie, NY 12601	4CN1978
Po-T-2	St. John's Wort	Target, Poughkeepsie Galleria, 2001 South Road, Poughkeepsie, NY 12601	4CN1557
Po-T-7	Valerian Root	Target, Poughkeepsie Galleria, 2001 South Road, Poughkeepsie, NY 12601	4EN1858
N-T-1	Gingko Biloba	Target, 999 Corporate Drive, Westbury, NY 11590	4FN1313
N-T-2	St. John's Wort	Target, 999 Corporate Drive, Westbury, NY 11590	4EN1223
N-T-7	Valerian Root	Target, 999 Corporate Drive, Westbury, NY 11590	4EN1497
Sy-T-1	Gingko Biloba	Target, 3657 W. Genesee Street, Syracuse, NY 13219	4EN1222
Sy-T-2	St. John's Wort	Target, 3657 W. Genesee Street, Syracuse, NY 13219	4DN1794
Sy-T-7	Valerian Root	Target, 3657 W. Genesee Street, Syracuse, NY 13219	4DN1774



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL AFFAIRS

February 2, 2015

Alexander Gourlay, President  
Walgreens  
200 Wilmot Road  
Deerfield, Illinois 60015

Certified—Return Receipt Requested

Re: **CEASE & DESIST NOTIFICATION**  
*Finest Nutrition—Walgreen Distributed Herbal Dietary Supplements*

Dear Mr. Gourlay:

**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 five “Finest Nutrition” 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,<sup>1</sup> 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 Walgreen “Finest Nutrition” 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 5 of the 6 types of dietary supplement products tested were either unrecognizable or a substance other than what they claimed to be, and therefore fairly constitute contaminated or substituted products. Eighteen (18) percent of the tests yielded DNA matching the product label; 45% tested for botanical material other than what was on the label; and 37% yielded no plant DNA at all.

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<sup>1</sup>See, 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. The only DNA identified was "oryza", commonly known as rice. No ginkgo biloba DNA was identified.

**St. John's Wort.** Negative. Of the 15-tests performed, only three identified any DNA, and it was not of St. John's Wort. The DNA positively identified included allium, oryza, and dracaena (garlic, rice, tropical houseplant). No St. John's Wort was identified in the product.

**Ginseng:** Negative. Fifteen tests yielded identification of allium (x2) and oryza (x6), but no genetic material from ginseng.

**Garlic:** Negative. 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. The testing revealed 5-positive identification of allium, 5-positive findings of oryza, and one for DNA material originating in the daisy family. No DNA from Echinacea was identified.

**Saw Palmetto:** Positive. All fifteen tests yielded genetic material of the saw palmetto plant.

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 the 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 Walgreen 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.

<b>OAG #</b>	<b>Product</b>	<b>Address</b>	<b>Lot #</b>
Br-Wg-1	Gingko Biloba	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	885709-02
Br-Wg-2	St. John's Wort	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	443071-09
Br-Wg-3	Ginseng	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	761948-04
Br-Wg-4	Garlic	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	902192-02
Br-Wg-5	Echinacea	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	770813-01
R-Wg-1	Gingko Biloba	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	889588-02
R-Wg-2	St. John's Wort	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	764386-03
R-Wg-3	Ginseng	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	761948-04
R-Wg-4	Garlic	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	902192-02
R-Wg-5	Echinacea	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	748376-01
Wa-Wg-1	Gingko Biloba	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	885768-01
Wa-Wg-2	St. John's Wort	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	491668-10
Wa-Wg-3	Ginseng	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	500472-03
Wa-Wg-4	Garlic	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	881647-02
Wa-Wg-5	Echinacea	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	752900-02



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 8<sup>th</sup> 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,<sup>1</sup> 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.

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<sup>1</sup>See, 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.

<b>OAG #</b>	<b>Product</b>	<b>Address</b>	<b>Lot #</b>
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