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Plaintiff Linda Boss

9
10 **IN THE UNITED STATES DISTRICT COURT FOR THE**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 LINDA BOSS, individually and on behalf of all
others similarly situated,

14
15 Plaintiff,
vs.

16 TARGET CORPORATION and TARGET
17 BRANDS, INC.,

18 Defendant.

Case No. 3:15-cv-00855

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Linda Boss, on behalf of herself and all others similarly situated, alleges the following
2 against Defendants Target Corporation and Target Brands, Inc. (collectively, “Target”).

3 **SUMMARY OF THE CASE**

4 1. As the second-largest discount retailer in the United States, Target has sold supplements
5 under its store brand “up & up” for years. In the case of at least three of these products, however—
6 Ginkgo biloba, St. John’s wort, and valerian root—Target has not been selling the supplement listed on
7 the packages’ label. Instead, the packages contain fillers that are not believed to have the same
8 properties or provide the same benefits as the marketed herbal supplements.

9 2. Recent DNA testing by the New York Attorney General’s office confirmed that Target’s
10 labeling, marketing, and sale of these three products (hereafter referred to collectively as the “Herbal
11 Supplements”) lacks the key ingredient listed on the product labels. For example, no St. John’s wort
12 was found in Target’s “up & up” St. John’s wort. Instead of the herbal supplements advertised, testing
13 detected undisclosed substitutes like garlic, rice, beans, and asparagus. Target’s labels for these products
14 nevertheless claim the products are comprised of the herbal supplements and do not disclose that the
15 products are actually comprised of other ingredients.

16 3. Target knows that typical consumers cannot discern that these Herbal Supplements are
17 not comprised of their advertised ingredients and that Plaintiff and other consumers would have
18 purchased the Herbal Supplements had Target not misstated their true composition. Target’s conduct
19 thus constitutes a deceptive business practice, false advertising, breach of the implied warranty of
20 merchantability, and negligence. Plaintiff and the proposed Class of Herbal Supplement purchasers (as
21 further defined below) are therefore entitled to monetary damages and injunctive relief, including a full
22 return of the purchase price.

23 **PARTIES**

24 4. Plaintiff Linda Boss is a resident of Manteca, San Joaquin County, California.

25 5. Defendant Target Corporation is a Minnesota corporation that maintains its principal
26 place of business at 1000 Nicollet Mall in Minneapolis, Minnesota.

27 6. Target Corporation conducts substantial business in the Northern District of California.
28 There are 1,793 Target stores in the United States and 262 in California alone, representing Target’s

1 largest United States presence. California has approximately 100 more Target stores and approximately
2 15 million more square feet of Target retail space than any other state. As Target disclosed in its Form
3 10-K Annual Report for 2013, a “significant portion” of its sales are derived from stores located in
4 California, “resulting in [Target’s] further dependence on local economic conditions”

5 7. Defendant Target Brands, Inc. is a Minnesota corporation that maintains its principal
6 place of business in Minneapolis, Minnesota. Target Brands, Inc. is owned by Target Corporation and it
7 owns the trademark on many of Target’s private brands, including its “up & up” line of herbal
8 supplements. Target Brands, Inc. also holds the copyright for Target’s retail website, Target.com.

9 **JURISDICTION AND VENUE**

10 8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28
11 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Defendants; there are
12 more than 100 Class members; and the aggregate amount in controversy exceeds \$5,000,000, exclusive
13 of interest and costs.

14 9. The Court has personal jurisdiction over Defendants because they conduct substantial
15 business in this District.

16 10. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants reside in this
17 District and a substantial part of the events and omissions giving rise to Plaintiff Boss’s claims occurred
18 here.

19 **FACTUAL ALLEGATIONS**

20 **Target and the Herbal Supplement Industry**

21 11. Target conducts business throughout the United States and operates 1,793 stores and 38
22 distribution centers in all 50 states.

23 12. In addition to selling products from other brands, Target also markets and sells hundreds
24 of its own privately branded products at its stores across the country.

25 13. This action concerns three specific Target “up & up” Herbal Supplements: Ginkgo
26 biloba, St. John’s wort, and valerian root.

27 14. According to a recent study by the American Botanical Council, sales of herbal dietary
28 supplements in the United States increased by 7.9% in 2013 “reaching a total estimated figure of \$6

1 billion for the first time.” A separate study found that there are currently more than 1,000 companies
2 producing medicinal plant products with global annual revenues in excess of \$60 billion dollars. In the
3 United States alone, “medicinal herbs now constitute the most rapidly growing segment of the North
4 American alternative medicine market, with over 29,000 herbal substances generating billions of dollars
5 of trade.”

6 15. Certain manufacturers of herbal supplements seek to capitalize on the “global aging
7 population,” noting that “people over the age of 60 consume” these types of products at 2.7 times the
8 rate of younger people.

9 16. The herbal supplement market is not highly regulated. According to Dr. Steven G.
10 Newmaster, a biology professor and botanical director of the Biodiversity Institute of Ontario at the
11 University of Guelph, regulators like the Food and Drug Administration (“FDA”) and Canadian Food
12 Inspection Agency “may not have the resources to adequately monitor the dietary supplement
13 manufacturers and their advertising claims, and there are concerns that the current regulatory system is
14 not effective in protecting consumers from the risks associated with certain herbal products.”

15 17. Target maintains several private brands, including “up & up,” the brand under which
16 Target markets Herbal Supplements. According to Target’s Form 10-K Annual Report for 2013, “[a]
17 significant portion” of its sales derive from privately branded merchandise and in 2013, such sales
18 constituted “[a]pproximately one-third” of its total sales.

19 **Target Mislabeled its “up & up” Herbal Supplements**

20 18. Plaintiff Boss purchased what she believed was St. John’s wort from Target repeatedly
21 during the last four years. In doing so, Ms. Boss relied on Target’s representations on the product’s “up
22 & up” label, which stated, among other things, that the product contained St. John’s wort and that
23 Target’s “up & up” St. John’s wort “helps maintain a healthy emotional balance” and “helps support a
24 positive mood.”¹

25 19. According to the National Institute of Health, Dietary Supplement Label Database, the
26 label on Target’s “up & up” St. John’s wort states that each caplet contains 300.0 milligrams of St.
27 John’s wort. The label states that the product contains “[n]o yeast, wheat, gluten, milk or milk
28

¹ The product label for Target “up & up” St. John’s wort is attached hereto as Exhibit 1.

1 derivatives, lactose, sugar, preservatives, soy, artificial color, [or] artificial flavor.” Other ingredients
2 listed on the label include dicalcium phosphate, maltodextrin, microcrystalline cellulose, croscarmellose
3 sodium, tricalcium phosphate, stearic acid, magnesium stearate, hypromellose, hydroxypropyl cellulose,
4 and polyethylene glycol.

5 20. Contrary to the label’s representations, recent testing establishes that Target’s “up & up”
6 Herbal Supplements do not contain the key ingredients they purport to—for example, testing found no
7 DNA from St. John’s wort, Ginkgo biloba, or valerian root in Target’s Herbal Supplements labeled as
8 St. John’s wort, Ginkgo biloba, and valerian root.

9 21. On February 2, 2015, New York Attorney General Eric T. Schneiderman sent a letter to
10 Target’s Chief Executive Officer Brian C. Cornell, demanding that Target “cease and desist engaging in
11 the sale of adulterated and/or mislabeled herbal dietary supplements, and in particular to immediately
12 stop the sale of three ‘up & up’ dietary supplements.”² The “three ‘up & up’ dietary supplements” that
13 Attorney General Schneiderman singled out were Ginkgo biloba, St. John’s wort, and valerian root.

14 22. Attorney General Schneiderman’s demand letter followed testing of the Herbal
15 Supplements by an expert in DNA barcoding technology—Dr. James A. Schulte II of Clarkson
16 University in Potsdam, New York.—“using established DNA barcoding technology [and] analytic
17 testing”

18 23. DNA barcodes are short genetic markers that can identify the species of organism.
19 According to a press release from the New York Attorney General’s Office, “[b]arcodes provide an
20 unbiased, reproducible method of species identification. Barcodes can be used to determine the exact
21 plant species being tested.” The Canadian Center for DNA Barcoding describes the technology as
22 follows:

23 An innovative combination of taxonomy, genetics and computer science that automates the
24 process of obtaining expert species identification. The process is similar to Human Criminal
25 Forensic DNA Fingerprinting techniques in that a standardized battery of genetic markers is used
26 to identify unknown samples. The novelty of barcoding is that it is used to tell species apart.
27 For example, we can detect the presence of undeclared ingredients such as horsemeat which
28 illegally entered the United Kingdom’s food supply chain in early 2013.

² See Attorney General Schneiderman’s February 2, 2015 letter, attached hereto as Exhibit 2.

1 24. Dr. Schulte’s testing was performed on three to four samples of each of the herbal
2 supplements purchased and each sample “was tested with five distinct sequence runs, meaning each
3 sample was tested five times. Three hundred and ninety tests involving 78 samples were performed
4 overall.”

5 25. According to Dr. Schulte’s testing, “up & up” Ginkgo biloba, St. John’s wort, and
6 valerian root did not reveal DNA from the labeled herb—instead, the Herbal Supplements contained
7 “contaminants” like allium, French bean, asparagus, pea, wild carrot and saw palmetto.

8 26. Regarding Target’s “up & up” St. John’s wort—the product Plaintiff purchased—the
9 testing results indicate:

10 Negative. No St. John’s wort DNA was identified. Of the 15-tests performed, only three
11 identified any DNA, and it included allium, oryza, and Dracaena (tropical houseplant).

12 For Target “up & up” Ginkgo biloba, the testing results indicate:

13 Negative. No Ginkgo biloba was identified. The only DNA identified was allium (x2), “oryza”
14 (x2) (commonly known as rice), mung/French bean. Ten of the tests revealed no plant DNA
15 whatsoever.

16 And for Target “up & up” valerian root, the testing results indicate:

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

21 27. None of the contaminants identified by the New York Attorney General’s DNA testing—
22 allium (garlic), oryza (rice), Dracaena (tropical houseplant), mung (french bean), asparagacea, pea,
23 phaseolus fabacaea, wild carrot, and saw palmetto—are listed as ingredients on Target’s “up & up”
24 Ginkgo biloba, St. John’s wort, or valerian root.

25 28. Attorney General Schneiderman therefore asked Target to: (1) provide detailed
26 information relating to the production, processing, and testing of Herbal Supplements sold at their
27 stores; (2) identify and enumerate Target’s protocol for authenticating the content of the Herbal
28 Supplements; (3) “[p]roduce the relevant Bioterrorism Registration documentation for the manufacturer
of the dietary supplements;” (4) enumerate the quality assurance measures undertaken by the

1 manufacturer of the Herbal Supplements; and, (5) provide all adverse event reports associated with the
2 use of Target “up & up” Herbal Supplements in the United States.

3 29. Attorney General Schneiderman also admonished Target that “contamination,
4 substitution and falsely labeling herbal products constitute deceptive business practices and, more
5 importantly, present considerable health risks to consumers.” The World Health Organization similarly
6 found that product adulteration and ingredient substitution is a threat to consumer safety.

7 30. Moreover, the herbal supplement industry was on notice about mislabeling and
8 contaminant concerns and the accompanying dangers to consumers. Attorney General Schneiderman
9 cited to an October 2013 study conducted by the Centre for Biodiversity Genomics at the University of
10 Guelph³ and others (the “Guelph Study”) that “previously alerted the dietary supplement industry to the
11 fact that it is not providing the public with authentic products without substitution, contamination or
12 fillers.”

13 31. In the Guelph Study, Canadian research scientists tested 44 bottles of herbal supplements
14 sold by 12 companies using the DNA barcoding method. They found that many supplements were not
15 what they claimed to be—pills labeled as popular herbs were often diluted or replaced entirely by cheap
16 fillers like soybean, wheat and rice. The research scientists who conducted the Guelph Study focused in
17 part on St. John’s wort—the supplement Plaintiff purchased here—and found that the bottles labeled as
18 St. John’s wort contained none of the herb and instead contained rice and *Senna alexandrina*—an
19 Egyptian shrub often taken as a laxative.

20 32. In a press release relating to the Herbal Supplement investigation, Attorney General
21 Schneiderman concluded:

22 This investigation makes one thing abundantly clear: the old adage ‘buyer beware’ may be
23 especially true for consumers of herbal supplements The DNA test results seem to confirm
24 long-standing questions about the herbal supplement industry. Mislabeling, contamination, and
25 false advertising are illegal. They also pose unacceptable risks to New York families—
26 especially those with allergies to hidden ingredients. At the end of the day, American
27 corporations must step up to the plate and ensure that their customers are getting what they pay
28 for, especially when it involves promises of good health.

³ Steven G. Newmaster et al., *DNA Barcoding Detects Contamination and Substitution in North American Herbal Products*, BMC Medicine (Oct. 11, 2013), <http://www.biomedcentral.com/1741-7015/11/222>.

1 33. According to Arthur P. Grollman, M.D., Professor of Pharmacological Sciences at Stony
2 Brook University, “this study undertaken by Attorney General Schneiderman’s office is a well-
3 controlled, scientifically-based documentation of the outrageous degree of adulteration in the herbal
4 supplement industry.”

5 34. According to the New York Attorney General’s “well controlled, scientifically-based”
6 study, Target’s Herbal Supplements: (1) are not what they purport to be; and (2) present potentially
7 serious health dangers to consumers with food allergies or who take medication for unrelated illnesses.

8 **The Effects and Dangers of Mislabeling, Contaminating, and Adulterating Herbal Supplements**

9 35. The research scientists involved with the Guelph Study found that several of the products
10 they tested were contaminated with plants that have “known toxicity, side effects and/or negatively
11 interact with other herbs, supplements, or medications.” For example, the St. John’s wort supplement
12 that was tested contained *Senna alexandrina* (and contained no St. John’s wort). Thus, the St. John’s
13 wort supplement tested posed “a serious health risk as senna is a FDA-approved non-prescription herbal
14 laxative, which is not for prolonged use as it can cause adverse side effects such as chronic diarrhea,
15 cathartic colon, liver damage, abdominal pain, epidermal breakdown and blistering.” Moreover, the
16 tested Ginkgo biloba supplement was contaminated with black walnut which is particularly dangerous
17 for consumers with nut allergies. Lastly, the research scientists who conducted the Guelph study
18 concluded that unlabeled plant fillers pose health concerns for people allergic to the plants and to those
19 seeking gluten free products.

20 36. Plaintiff and other consumers did not know or have reason to know that Target’s Herbal
21 Supplements did not contain the herbal ingredients listed on their labels. Plaintiff and other consumers
22 acting reasonably were thus deceived and led to falsely believe that the Target “up & up” Ginkgo biloba,
23 St. John’s wort, and valerian root contain the listed ingredients. Plaintiff and other consumers thus
24 relied upon Target’s false representations to their detriment, as they would not have purchased the
25 Herbal Supplements had they known the truth.

26 37. Upon learning the results of the New York Attorney General’s investigation, Target
27 issued a statement that it would remove Target “up & up” Ginkgo biloba, St. John’s wort, and valerian
28 root “in all of [its] stores nationwide and on Target.com.”

1 38. Target’s misrepresentations caused Plaintiff and thousands of others to purchase the
2 products at issue.

3 39. Plaintiff and Class members have been damaged by Target’s deceptive and misleading
4 labeling of the Herbal Supplements, and they are entitled to damages, a refund of the purchase price of
5 the products, and injunctive relief.

6 **PLAINTIFF’S HERBAL SUPPLEMENT PURCHASES**

7 40. Ms. Boss has taken St. John’s wort for years. For the past few years, Ms. Boss regularly
8 purchased Target “up & up” St. John’s wort from a Target store in Manteca, California, with the last
9 such purchase occurring in approximately December 2014.

10 41. Before purchasing “up & up” St. John’s wort, Ms. Boss reviewed the product label,
11 which claimed that the product contained St. John’s wort. She chose to purchase Target’s “up & up”
12 brand instead of competing products due in part to the ingredients listed on Target’s label. Thus, Ms.
13 Boss reasonably believed at the point of sale that her purchase contained St. John’s wort, and that it did
14 not contain any undisclosed ingredients.

15 42. Had Ms. Boss known that the Target “up & up” St. John’s wort did not actually contain
16 St. John’s wort and that it contained undisclosed contaminants, substitutes, and fillers, she would not
17 have purchased the product.

18 **CLASS ACTION ALLEGATIONS**

19 43. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action
20 on behalf of herself and a proposed nationwide class (“Class”) initially defined as:

21 All persons who purchased, other than for purposes of resale, Target “up & up” Ginkgo biloba,
22 St. John’s wort, or valerian root in the United States.

23 44. Excluded from the proposed Class are Target Corporation, Target Brands, Inc., and any
24 parent, affiliate, or subsidiary of Target Corporation or Target Brands, Inc.; any entity in which Target
25 Corporation or Target Brands, Inc. has a controlling interest; any of Target Corporation or Target
26 Brands, Inc.’s officers or directors; any successor or assign of Target Corporation or Target Brands, Inc.;
27 anyone employed by counsel for Plaintiff; any Judge to whom this case is assigned, his or her spouse,
28 and all persons within the third degree of relationship to either of them.

1 45. Numerosity of the Class – Fed. R. Civ. P. 23(a)(1). In 2013, Ginkgo biloba sales totaled
2 approximately \$11.5 million; St. John’s wort sales totaled approximately \$6 million; and, valerian root
3 sales totaled approximately \$23 million. As the nation’s second largest retailer, Target’s “up & up”
4 Herbal Supplements presumably comprised a significant portion of those sales, entailing that there are
5 many thousand members of the proposed Class. Class members are thus far too numerous to practically
6 join in a single action.

7 46. Existence and Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3).
8 Common questions of law and fact exist as to all Class members and predominate over questions
9 affecting only individual Class members. These common questions include the following:

- 10 a. Whether Target marketed, labeled, and otherwise represented its Herbal Supplements as
11 containing Ginkgo biloba, St. John’s wort, and valerian root;
- 12 b. Whether Target’s representations regarding the Herbal Supplements were false;
- 13 c. Whether Target knew, or in the exercise of reasonable diligence should have known, that
14 its representations regarding the Herbal Supplements were false or deceptive;
- 15 d. Whether Target’s representations regarding the Herbal Supplements would deceive a
16 reasonable consumer;
- 17 e. Whether Target’s conduct with regard to the marketing and sale of the Herbal
18 Supplements constitutes unfair, deceptive, untrue, or misleading advertising;
- 19 f. Whether Target profited from mislabeling the Herbal Supplements;
- 20 g. Whether Target violated the California Unfair Competition Law, the California False
21 Advertising Law, the Consumers Legal Remedies Act, and the Song-Beverly Consumer Warranty Act;
22 and
- 23 h. Whether Target acted negligently in mislabeling the Herbal Supplements or by failing to
24 detect that the Herbal Supplements did not contain the ingredients they were marketed as containing.

25 47. Typicality – Fed. R. Civ. P. 23(a)(3). Plaintiff’s claims are typical of the claims of the
26 Class because, among other things, she purchased a Target “up & up” Herbal Supplement due to
27 Target’s unlawful conduct and lost money as a result.
28

1 53. Plaintiff and members of the Class qualify as a “consumers” under the California
2 Business and Professions Code, §§ 17200, et seq.

3 54. Target’s acts and practices, as alleged in this complaint, constitute unlawful, unfair and/or
4 fraudulent business practices, in violation of the Unfair Competition Law, Cal. Bus & Prof. Code §§
5 17200, et seq.

6 55. Target violated the Unfair Competition Law by mislabeling the ingredients on the Herbal
7 Supplements, by failing to implement adequate mechanisms for quality control of the Herbal
8 Supplements, by failing to disclose that the Herbal Supplements were mislabeled and may pose a public
9 health danger, and by continuing to profit from the sale of the Herbal Supplements.

10 56. Target engaged in unlawful business practices by violating the Consumers Legal
11 Remedies Act, Cal. Civ. Code §§ 1750, et seq. Target mislabeled the contents of Herbal Supplements
12 and in doing so, employed the following unfair or deceptive acts or practices in violation of the
13 Consumers Legal Remedies Act: (1) Target made deceptive representations about the Herbal
14 Supplements; (2) Target represented that the Herbal Supplements have characteristics, ingredients, uses,
15 benefits, or quantities which they do not have; and, (3) Target represented that the Herbal Supplements
16 were of a particular standard, quality, or grade when they are of another.

17 57. Target engaged in unlawful business practices by violating California’s False Advertising
18 Law, Cal. Bus. & Prof. Code §§ 17500 et seq. By mislabeling the contents of the Herbal Supplements,
19 Target made untrue or misleading statements that they knew or by the exercise of reasonable care should
20 have known were untrue or misleading in violation of California’s False Advertising Law.

21 58. Target engaged in unlawful business practices by engaging in conduct that violated the
22 Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790, et seq. By selling mislabeled Herbal
23 Supplements as described above, Target breached the implied warranty of merchantability, thereby
24 violating the Song-Beverly Consumer Warranty Act.

25 59. Target also engaged in unfair business practices by, among other things:

26 a. Engaging in conduct where the utility of that conduct is outweighed by the gravity
27 of the consequences to Plaintiff and other members of the Class;
28

1 garlic, rice, and tropical plants in the Herbal Supplements; and, (3) falsely advertised that the mislabeled
2 Herbal Supplements would cause positive health effects.

3 67. Target’s false advertising, misrepresentations, and material omissions were and are likely
4 to deceive a reasonable consumer.

5 68. As a direct and proximate result of Target’s false advertising, Plaintiff and Class
6 members have suffered injury in fact and lost money or property, in that they purchased Herbal
7 Supplements when they otherwise would not have. Meanwhile, Target has sold more Herbal
8 supplements than it otherwise would have, unjustly enriching itself.

9 69. Plaintiff and Class members are entitled to equitable relief, including restitution of all
10 amounts paid for the Herbal Supplements, restitutionary disgorgement of all profits accruing to
11 Defendants because of their unfair and fraudulent practices, attorney’s fees and costs, declaratory relief,
12 and a permanent injunction enjoining Defendants from their unfair and fraudulent activity.

13 **THIRD CAUSE OF ACTION**

14 **(For Violation of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq.)**

15 70. Plaintiff, on behalf of herself and the Class, realleges as if fully set forth, each and every
16 allegation set forth herein.

17 71. Each Defendant is a “person” within the meaning of Civil Code §§ 1761(c) and 1770, and
18 provided “goods” within the meaning of Civil Code §§ 1761(a) and 1770.

19 72. Plaintiff and members of the Class are “consumers” within the meaning of Civil Code §§
20 1761(d) and 1770, and each has engaged in a “transaction” within the meaning of Civil Code §§ 1761(e)
21 and 1770.

22 73. Target’s acts and practices, as alleged in this complaint, violate the Consumers Legal
23 Remedies Act, Cal. Civ. Code §§ 1750, et seq. because, by mislabeling the Target “up & up” Herbal
24 Supplements, failing to implement adequate mechanisms for quality control, and engaging in the other
25 conduct alleged herein Target engaged in several of the “proscribed practices” enumerated in Cal. Civ.
26 Code § 1770. Specifically, Target (1) made deceptive representations about the Herbal Supplements;
27 (2) represented that the Herbal Supplements had characteristics, ingredients, uses, benefits, or quantities
28

1 which they do not have; and, (3) represented that the Herbal Supplements were of a particular standard,
2 quality, or grade when they are of another.

3 74. As a direct and proximate result of Target's unlawful, deceptive, and fraudulent business
4 practices as alleged herein, Plaintiff and Class members have suffered injury in fact and lost money or
5 property, in that they purchased Target "up & up" Herbal Supplements that they otherwise would not
6 have, and because the Herbal Supplements are valueless and potentially hazardous to Plaintiff and Class
7 members' health. Meanwhile, Target has generated more revenue than it otherwise would have and
8 charged inflated prices for valueless products, unjustly enriching itself.

9 75. Plaintiff and Class members are entitled to equitable relief, including restitutionary
10 disgorgement of all profits accruing to Target because of their unlawful, unfair, fraudulent, and
11 deceptive practices, attorney's fees and costs, declaratory relief, and a permanent injunction enjoining
12 Target from its unlawful, fraudulent, and deceitful activity.

13 76. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will send a notice letter
14 to Defendants to provide them with the opportunity to correct their business practices. If Defendants do
15 not thereafter correct their business practices, Plaintiff will amend (or seek leave to amend) the
16 complaint to add claims for actual damages under the Consumers Legal Remedies Act.

17 **FOURTH CAUSE OF ACTION**

18 **(For Violation of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790, et seq.)**

19 77. Plaintiff, on behalf of herself and the Class, realleges as if fully set forth, each and every
20 allegation set forth herein.

21 78. Target "up & up" Herbal Supplements are "consumer goods" under Cal. Civ. Code §
22 1791(a).

23 79. Plaintiff and Class members are "buyers" or "retail buyers" under Cal. Civ. Code §
24 1791(b).

25 80. Defendants are "manufacturers," "distributors," and/or "retail sellers" under Cal. Civ.
26 Code §§ 1791(e), (j), and (l).

27 81. The implied warranty of merchantability included with each sale of the Herbal
28 Supplements means that Target warranted that such Herbal Supplements (a) would pass without

1 objection in the trade under the contract description; (b) were fit for the ordinary purposes for which
2 Herbal Supplements are used; (c) were adequately contained, packaged, and labeled; and, (d) conformed
3 to the promises or affirmations of fact made on the container or label. Cal. Civ. Code § 1791.1(a).

4 82. The written express warranty included with each sale of Target “up & up” Herbal
5 Supplements warranted that such Herbal Supplements (a) contained the key ingredients Ginkgo biloba,
6 St. John’s Wort, and valerian root; and, (2) would result in positive health effects—for example by
7 helping “maintain a healthy emotional balance.” Cal. Civ. Code § 1791.2.

8 83. Target breached the implied warranty of merchantability and thereby violated the Song-
9 Beverly Consumer Warranty Act by the Herbal Supplements in two ways: (1) Target represented that
10 the Herbal Supplements contained key ingredients that they did not; and, (2) Target included—but failed
11 to disclose on the label—contaminants like garlic, rice, and tropical plants in the Herbal Supplements.

12 84. Target breached an express warranty to Plaintiff and the Class because the Herbal
13 Supplements did not contain the key ingredients, Ginkgo biloba, St. John’s Wort, and valerian root and
14 therefore were not capable of delivering the promised positive health effects associated with such key
15 ingredients.

16 85. Plaintiff and the Class members have been damaged by Target’s breach of the implied
17 warranty of merchantability and breach of express warranty and therefore seek damages, other legal and
18 equitable relief, and an award of attorneys’ fees, costs, and expenses. Cal. Civ. Code § 1794(a) and (d).

19 **FIFTH CAUSE OF ACTION**
20 **(Negligence)**

21 86. Plaintiff, on behalf of herself and the Class, realleges as if fully set forth, each and every
22 allegation set forth herein.

23 87. Target owed Plaintiff and Class members a duty to provide an accurate list of ingredients
24 in its Herbal Supplements, to disclose all contaminants in order to protect against adverse health effects,
25 and to exercise adequate quality control over the Herbal Supplements prior to offering them to the public
26 for purchase. Target also owed Plaintiff and Class members a duty, once they discovered that the
27 Herbal Supplements were mislabeled, to ensure that an appropriate quality control procedure to guard
28 against future mislabeling was developed and immediately implemented.

1 88. Target owed a duty to Plaintiff and Class members not to engage in fraudulent or
2 deceptive conduct, including the omission of material information such as (1) the lack of the key
3 ingredients in the Herbal Supplements; and, (2) the presence of undisclosed, potentially hazardous,
4 contaminants in such supplements.

5 89. Target also owed an independent duty to Plaintiff and Class members to accurately
6 characterize the ingredients, uses, benefits, or quantities of the Herbal Supplements under the
7 Consumers Legal Remedies Act, Cal. Civ. Code. §§ 1750 et. seq.

8 90. A finding that Target owed a duty to Plaintiff and Class members would not impose a
9 significant burden. Target has the means to accurately apprise the public of the ingredients in its Herbal
10 Supplements by ensuring that adequate quality control mechanisms are in place and followed by
11 affected employees and/or vendors. The cost borne by Target for these efforts is insignificant in light of
12 the public health dangers posed to Plaintiff and Class members by the failure to take steps toward
13 ensuring that consumers are apprised of the ingredients in the Herbal Supplements they purchase.

14 91. As recently established by the testing commissioned by the New York Attorney General,
15 Target mislabeled the ingredients on the Herbal Supplements by: (1) failing to disclose that there were
16 no traces of the key ingredient in the Herbal Supplements; and, (2) failing to disclose certain
17 contaminants that adulterated the Herbal Supplements. In doing so, Target departed from the reasonable
18 standard of care and breached their duties to Plaintiff and other purchasers of the Herbal Supplements.

19 92. As a direct, reasonably foreseeable, and proximate result of Target's failure to exercise
20 reasonable care, provide accurate label information, disclose all contaminants, exercise adequate quality
21 control, and characterize the ingredients, uses, benefits, or quantities of the Herbal Supplements in an
22 accurate manner, Plaintiff and Class members have suffered damages because they spent more money
23 on Herbal Supplements than they otherwise would have.

24 93. Plaintiff and Class members could not have prevented these damages through the
25 exercise of reasonable diligence. Neither Plaintiff nor other Class members contributed to Target's
26 mislabeling of the Herbal Supplements.

27 94. Plaintiff and Class members seek to recover their damages caused by Target.
28

JURY DEMAND

Plaintiff demands a trial by jury.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment as follows:

- a. For an order certifying the Class and appointing Plaintiff and her counsel to represent the Class;
- b. For an order awarding Plaintiff and the members of the Class monetary damages;
- c. For an order awarding Plaintiff and Class members restitution, disgorgement, or other equitable relief as the Court deems proper;
- d. For an order enjoining Defendants from continuing to engage in unlawful business practices as alleged herein and ordering Defendants to engage in corrective action;
- e. For an order awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest;
- f. For an order awarding Plaintiff and the members of the Class reasonable attorney’s fees and costs of suit, including expert witness fees; and
- g. For an order awarding such other and further relief as this Court may deem just and proper.

DATED: February 25, 2015

Respectfully submitted,

GIRARD GIBBS LLP

By: /s/ Daniel C. Girard
Daniel C. Girard

Daniel C. Girard
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Adam E. Polk
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San Francisco, California 94104
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Attorney for Individual and Representative
Plaintiff Linda Boss

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EXHIBIT 1

up&up(TM) - st. john's wort 300 mg

The information provided about this dietary supplement product is a complete representation of the manufacturer's label contents on the date that the data was entered on **May 24, 2013**. The DSLD includes all information available on the product label. "NP" indicates that the information is "not provided on label". NP does not imply that a product label is lacking information required by the U.S. Government.



General Information	
DSLID ID:	20197
Product Name:	up&up(TM) - st. john's wort 300 mg
Brand:	up&up(TM) Products by this Brand
Product Trademark/ Copyright Symbol:	TM
SKU:	0 70030 62522 1
Outer Packaging:	Not Present
Statement of Identity:	DIETARY SUPPLEMENT
Serving Information	
Serving Size:	1.0 Caplet(s)
Suggested Use:	Suggested Use: As a dietary supplement for adults, take one caplet three times daily.
Net Contents Quantity:	120.0 Caplet(s)
Tracking Information	
Date - Entered into DSLD:	May 24, 2013

NP not provided on label



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up&up(TM) - st. john's wort 300 mg

The information provided about this dietary supplement product is a complete representation of the manufacturer's label contents on the date that the data was entered on **May 24, 2013**. The DSLD includes all information available on the product label. "NP" indicates that the information is "not provided on label". NP does not imply that a product label is lacking information required by the U.S. Government.



Attributes, including intended target group(s) [?]
Dairy Free
Gluten Free
Sugar Free
Adult (18 - 50 Years)
Brand Intellectual Property (IP) Statement Information [?]
(C) 2012 Target Brands, Inc.
FDA Disclaimer Statement [?]
These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.
FDA Statement of Identity [?]
DIETARY SUPPLEMENT
Formulation [?]
This formula is standardized to contain 0.3% hypericin.
GLUTEN FREE
No yeast, wheat, gluten, milk or milk derivatives, lactose, sugar, preservatives, soy, artificial color, artificial flavor.
Other [?]
094 02 2194 ID482463
ACTUAL SIZE
BALANCE** St. john's wort helps maintain a healthy emotional balance.**
EXP10/15 3AN1408 : 2F976 UW F1
helps support a positive mood**
standardized extract
Used as a supplement, st. john's wort helps support a positive mood.**
Precautions [?]
Limit exposure to natural or artificial sunlight as St. John's Wort may cause skin to be extra sensitive to sunlight. Discontinue use if any adverse or allergic reaction occurs.
Keep out of reach of children.
CAUTION: If you take a prescription medication or plan to have surgery, consult a physician before taking this product.
If you are pregnant or nursing a baby, ask a doctor before using this product.
Product Specific Information [?]
Store at room temperature (59(0)-86(0)F).
Seals/Symbols [?]
BALANCE**
up&up(TM)
Suggested/Recommended/Usage/Directions [?]

Suggested Use: As a dietary supplement for adults, take one caplet three times daily.

NP not provided on label



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Version 5.9.2 - December 2014 - Rev 1005 (6172048a41d0)

up&up(TM) - st. john's wort 300 mg

The information provided about this dietary supplement product is a complete representation of the manufacturer's label contents on the date that the data was entered on **May 24, 2013**. The DSLD includes all information available on the product label. "NP" indicates that the information is "not provided on label". NP does not imply that a product label is lacking information required by the U.S. Government.

[Download](#)**Suggested/Recommended/Usage/Directions:** [?]

Suggested Use: As a dietary supplement for adults, take one caplet three times daily.

Supplement Facts [?]

Serving size: 1.0 Caplet(s)

Servings per Container: 0

Serving(s) ▼

Dietary Ingredient (Synonym/Source) [?]	DSLID Ingredient Categories [?]	Amount Per Caplet [?]	% Daily Value per Serving [?]
St. John's Wort (Hypericum perforatum) (aerial parts) (Standardized extract)		300.0 mg	Daily Value not established

Footnote: NP

Other Ingredients:

Dicalcium Phosphate, Maltodextrin, Microcrystalline Cellulose, Croscarmellose Sodium, Tricalcium Phosphate, Stearic Acid, Magnesium Stearate, Hypromellose, Hydroxypropyl Cellulose, Polyethylene Glycol

NP not provided on label

[Download](#)

up&up(TM) - st. john's wort 300 mg

The information provided about this dietary supplement product is a complete representation of the manufacturer's label contents on the date that the data was entered on **May 24, 2013**. The DSLD includes all information available on the product label. "NP" indicates that the information is "not provided on label". NP does not imply that a product label is lacking information required by the U.S. Government.



Distributor [?]	Distributed by Target Corporation Products by this Contact Minneapolis, MN 55403
Other [?]	Shop Target.com
Other [?]	Questions? Call 1-800-910-6874

NP not provided on label



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PDF documents are best viewed with the free [Adobe® Reader](#)



standardized extract
st. john's wort
300 mg

helps support a positive mood**



120 CAPLETS
DIETARY SUPPLEMENT

**These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.



ACTUAL SIZE

Supplement Facts

Serving Size 1 Caplet

Amount Per Caplet	% Daily Value
St. John's Wort (<i>Hypericum perforatum</i>) (aerial parts) Standardized extract (0.3% hypericin) 300 mg	*

*Daily Value not established.

OTHER INGREDIENTS: Dicalcium Phosphate, Maltodextrin, Microcrystalline Cellulose, Croscarmellose Sodium, Tricalcium Phosphate, Stearic Acid, Magnesium Stearate, Hypromellose, Hydroxypropyl Cellulose, Polyethylene Glycol.

No yeast, wheat, gluten, milk or milk derivatives, lactose, sugar, preservatives, soy, artificial color, artificial flavor.

GLUTEN FREE

Questions? Call 1-800-910-6874

094 02 2194 ID482463

Distributed by Target Corporation
Minneapolis, MN 55403

© 2012 Target Brands, Inc.
Shop Target.com

BALANCE**

St. john's wort helps maintain a healthy emotional balance. ** This formula is standardized to contain 0.3% hypericin. Used as a supplement, st. john's wort helps support a positive mood. **

Suggested Use: As a dietary supplement for adults, take one caplet three times daily.

If you are pregnant or nursing a baby, ask a doctor before using this product.

CAUTION: If you take a prescription medication or plan to have surgery, consult a physician before taking this product. Limit exposure to natural or artificial sunlight as St. John's Wort may cause skin to be extra sensitive to sunlight. Discontinue use if any adverse or allergic reaction occurs.

Keep out of reach of children.

Store at room temperature (59°-86°F).

****These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.**

**EXP 10/15
3AN1408
: 2F976 UW F1**

EXHIBIT 2



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,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 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.

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 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.

OAG #	Product	Address	Lot #
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

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.)

I. (a) PLAINTIFFS

Linda Boss, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Joaquin, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel C. Girard and Eric H. Gibbs Girard Gibbs LLP - 601 California Street, 14th Floor San Francisco, Ca 94108 (415) 981-4800

DEFENDANTS

Target Corporation and Target Brands, Inc.

County of Residence of First Listed Defendant Hennepin, MN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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, 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): Cal. Bus. & Prof. Code §§ 17200, et seq. and 17500, et seq.; Cal. Civ. Code §§ 1750, et seq. and 1790, et seq. Brief description of cause: Violations of California statutes related to unfair competition, false advertising, breach of warranty; and negligence.

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 See Attachment A DOCKET NUMBER See Attachment A

DATE 02/25/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel C. Girard

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

Attachment A

Case Name	Case Number	Judge
Taketa v. Wal-Mart Stores, Inc.	4:15-cv-00542	Magistrate Judge Donna M. Ryu
De La Torre et al v. Wal-Mart, Inc.	5:15-cv-00557	Magistrate Judge Nathaniel M. Cousins
De La Torre et al v. Target Corp.	5:15-cv-00559	Magistrate Howard R. Llyod
De La Torre et al v. GNC Holdings, Inc. et al	5:15-cv-00561	Magistrate Judge Howard R. Llyod
Barber v. Target Corporation	3:15-cv-00568	Magistrate Judge Jacqueline Scott Corley
Farrell v. Target Corporation	3:15-cv-00635	Magistrate Judge Maria-Elena James