

1 Ben F. Pierce Gore (SBN 128515)  
2 PRATT & ASSOCIATES  
3 1871 The Alameda, Suite 425  
4 San Jose, CA 95126  
5 Telephone: (408) 429-6506  
6 Fax: (408) 369-0752  
7 pgore@prattattorneys.com

8 *Attorneys for Plaintiffs*

9 [Additional counsel on signature page]

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PAUL DE LA TORRE and JOSHUA  
OGDEN, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

WALGREEN CO. ,

Defendant.

**CLASS ACTION AND REPRESENTATIVE  
ACTION**

**COMPLAINT FOR DAMAGES,  
EQUITABLE AND INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

Plaintiffs Paul de la Torre and Joshua Ogden (“Plaintiffs”), through their undersigned attorneys, bring this lawsuit against Walgreen Co. (hereinafter “Walgreen” or “Defendant”) as to their own acts upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendant’s illegal conduct, which has resulted in unjust profits, Plaintiffs bring this action on behalf of California consumers specifically defined herein, who purchased either:

- (a) Walgreen “Finest Nutrition” Ginkgo Biloba
- (b) Walgreen “Finest Nutrition” St. John's Wort
- (c) Walgreen “Finest Nutrition” Ginseng
- (d) Walgreen “Finest Nutrition” Echinacea

**INTRODUCTION**

1  
2  
3           1.       On February 2, 2015, New York Attorney General Eric T. Schneiderman sent a  
4 demand letter to Walgreen Co. President Alexander Gourlay, ordering Walgreen Co. to  
5 immediately cease and desist engaging in the sale of adulterated and mislabeled herbal dietary  
6 supplements. These products included various Walgreen “Finest Nutrition” supplements,  
7 including Walgreen “Finest Nutrition” Gingko Biloba, Walgreen “Finest Nutrition” St. John’s  
8 Wort, Walgreen “Finest Nutrition” Ginseng, and Walgreen “Finest Nutrition” Echinacea (“the  
9 Misbranded Walgreen “Finest Nutrition” Products”) that either could not be verified to contain the  
10 labeled substance, or which were found to contain ingredients not listed on the labels.  
11

12           2.       Attorney General Schneiderman requested that Walgreen Co. provide detailed  
13 information relating to the production, processing and testing of herbal supplements sold at their  
14 stores, as well as set forth a thorough explanation of quality control measures in place.  
15

16           3.       The Attorney General’s letter expressly warned Defendant that, “contamination,  
17 substitution and falsely labeling herbal products constitute deceptive business practices and, more  
18 importantly, present considerable health risks for consumers.” (Exhibit 1, Attorney General Letter  
19 to Walgreen Co.).

20           4.       The letter came as DNA testing, performed as part of an ongoing investigation by  
21 the Attorney General’s Office, revealed that all of the products purchased by Plaintiffs in this  
22 cause tested negative for the ingredient listed on the front of the package.  
23

24           5.       An expert in DNA barcoding technology, Dr. James A. Schulte II of Clarkson  
25 University in Potsdam, N.Y., was hired by the Attorney General’s office to perform the testing.  
26

27           6.       DNA barcodes are short genetic markers in an organism’s DNA and are used to  
28 identify it as belonging to a particular species. Barcodes provide an unbiased, reproducible

1 method of species identification. Barcodes can be used to determine the exact plant species being  
2 tested.

3 7. All of the Misbranded Walgreen “Finest Nutrition” Products tested negative for the  
4 advertised package contents. In reality, they contained garlic, rice or material originating from the  
5 daisy family, and *none* of the ginkgo biloba, St. John's wort, ginseng, or echinacea claimed on the  
6 products’ labels.

8 8. Plaintiffs relied on Defendant’s representations that the Misbranded Walgreen  
9 “Finest Nutrition” Products were what they purported to be: supplements containing ginkgo  
10 biloba, St. John's wort, ginseng, or echinacea. Plaintiffs did not purchase Defendant’s supplement  
11 to ingest garlic, rice or material originating from the daisy family.

12 9. Studies conducted by the Centre for Biodiversity Genomics at the University of  
13 Guelph and others have previously alerted the dietary supplement industry to the fact that it is not  
14 providing the public with authentic products without substitution, contamination or fillers.

15 (Exhibit 1)

16 10. According to Attorney General Schneiderman:

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

24 11. According to Arthur P. Grollman, M.D., Professor of Pharmacological Sciences at  
25 Stony Brook University, “this study undertaken by Attorney General Schneiderman’s office is a  
26 well-controlled, scientifically-based documentation of the outrageous degree of adulteration in the  
27 herbal supplement industry.”  
28

1           12.     Using DNA barcoding technology to examine the contents of herbal supplements,  
2 the Attorney General focused on what appears to be Defendant's practice of substituting  
3 contaminants and fillers in the place of authentic product.

4           13.     The testing revealed that all of the retailers were selling a large percentage of  
5 supplements for which modern DNA barcode technology could not detect the labeled botanical  
6 substance.

7           14.     If the producers of herbal supplements fail to identify all the ingredients on a  
8 product's label, a consumer with food allergies, or who is taking medication for an unrelated  
9 illness, is taking a potentially serious health risk every time a contaminated herbal supplement is  
10 ingested.

11           15.     Plaintiffs did not purchase Defendant's supplements to assume these risks and  
12 would not have purchased Defendant's products if they had known they were contaminated and  
13 potentially dangerous.

14           16.     The Misbranded Walgreen "Finest Natural" Products were and are worthless as a  
15 matter of law, failing to contain any of the advertised ingredients. A full return of the purchase  
16 price is warranted for the purchase of these supplements.

17  
18  
19  
20                                   **PARTIES**

21           17.     Plaintiff Paul de la Torre is a resident of Los Gatos, California, who purchased  
22 Defendant's misbranded and adulterated products in California during the four (4) years prior to  
23 the filing of this Complaint (the "Class Period"). Specifically, Plaintiff purchased the following of  
24 Defendant's misbranded and adulterated products: Walgreen "Finest Nutrition" Gingko Biloba,  
25 Walgreen "Finest Nutrition" St. John's Wort, Walgreen "Finest Nutrition" Ginseng, and Walgreen  
26 "Finest Nutrition" Echinacea.  
27  
28



1 24. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28  
2 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is  
3 between citizens of different states.

4 25. The Court has personal jurisdiction over Defendant because a substantial portion of  
5 the wrongdoing alleged in this Complaint occurred in California, Defendant is authorized to do  
6 business in California, has sufficient minimum contacts with California, and otherwise intentionally  
7 avails itself of the markets in California through the promotion, marketing and sale of merchandise,  
8 sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of  
9 fair play and substantial justice.

10 26. Because a substantial part of the events or omissions giving rise to these claims  
11 occurred in this District and because the Court has personal jurisdiction over Defendant, venue is  
12 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).  
13  
14

15 **FACTUAL ALLEGATIONS**

16 27. Plaintiffs Paul de la Torre and Joshua Ogden regularly purchased Walgreen “Finest  
17 Nutrition” Gingko Biloba, Walgreen “Finest Nutrition” St. John’s Wort, Walgreen “Finest  
18 Nutrition” Ginseng and Walgreen “Finest Nutrition” Echinacea products during the past four years.

19 28. In so doing, Plaintiffs reasonably relied on the labels of the Misbranded Walgreen  
20 “Finest Nutrition” Products. That is, when Plaintiffs purchased, for example, Walgreen “Finest  
21 Nutrition” Gingko Biloba, they believed they were purchasing a product containing nothing but  
22 gingko biloba.  
23

24 29. In reality, however, recent testing has revealed that Defendant’s herbal supplements  
25 are not what they purport to be.  
26

27 30. Specifically, Walgreen “Finest Nutrition” Gingko Biloba contains no gingko biloba,  
28 but instead contains oryza (rice); Walgreen “Finest Nutrition” St. John’s Wort product contains no

1 St. John's Wort, but instead contains oryza, allium (garlic), and dracaena (a tropical house plant);  
2 Walgreen "Finest Nutrition" Ginseng contains no ginseng, but instead contains allium and oryza;  
3 and Walgreen "Finest Nutrition" Echinacea contains no echinacea, but instead contains allium and  
4 oryza.

5  
6 31. In other words, while Defendant purports to sell its customers herbal supplements, the  
7 supplements are a sham, containing none of the active ingredient promised in the product's name  
8 and on the label.

9 32. The adulterated and misbranded Walgreen "Finest Nutrition" Products are worthless.

10 33. A reasonable purchaser would believe that Defendant's products did in fact contain  
11 the ingredients listed on the labels.

12 34. A reasonable purchaser would believe that Defendant's Walgreen "Finest Nutrition"  
13 Ginkgo Biloba actually contained ginkgo biloba.

14 35. A reasonable purchaser would believe that Defendant's Walgreen "Finest Nutrition"  
15 St. John's Wort actually contained St. John's wort.

16 36. A reasonable purchaser would believe that Defendant's Walgreen "Finest Nutrition"  
17 Ginseng actually contained ginseng.

18 37. A reasonable purchaser would believe that Defendant's Walgreen "Finest Nutrition"  
19 Echinacea actually contained echinacea.

20 38. Plaintiffs reasonably relied on Defendant's package labeling of its Misbranded  
21 Walgreen "Finest Nutrition" Products.

22 39. At point of sale, Plaintiffs did not know, and had no reason to know, that Defendant's  
23 Misbranded Walgreen "Finest Nutrition" Products were misbranded and adulterated as set forth  
24 herein. Plaintiffs would not have bought the Misbranded Walgreen "Finest Nutrition" Products had  
25 they known the truth that the products contained none of the ingredients listed on the front of  
26  
27  
28

1 package label.

2 40. As a result of Defendant's misrepresentations of content, Plaintiffs and thousands of  
3 others in California purchased the products at issue.

4 41. Defendant's labeling as alleged herein is false and misleading and designed to  
5 increase sales of the products at issue.  
6

7 **CLASS ACTION ALLEGATIONS**

8 42. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil  
9 Procedure 23(b)(2) and 23(b)(3) on behalf of the following classes:

10 **California Class:** All persons in the state of California who, within the  
11 last four years, purchased any of Defendant Walgreen "Finest  
Nutrition" products including:

- 12
- 13 (a) Walgreen "Finest Nutrition" Gingko Biloba
  - 14 (b) Walgreen "Finest Nutrition" St. John's Wort
  - 15 (c) Walgreen "Finest Nutrition" Ginseng
  - 16 (d) Walgreen "Finest Nutrition" Echinacea

17 43. The following persons are expressly excluded from the Class: (1) Defendant and its  
18 subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the  
19 proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its  
staff.

20 44. This action can be maintained as a class action because there is a well-defined  
21 community of interest in the litigation and the proposed Class is easily ascertainable.

22 45. **Numerosity:** Based upon Defendant's publicly available sales data with respect to  
23 the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that  
24 joinder of all Class members is impracticable.

25 46. **Common Questions Predominate:** This action involves common questions of law  
26 and fact applicable to each Class member that predominate over questions that affect only  
27 individual Class members. Thus, proof of a common set of facts will establish the right of each  
28



1 Class member to recover. Questions of law and fact common to each Class member include, for  
2 example:

3 a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by  
4 failing to properly package and label its Misbranded Walgreen “Finest Nutrition” Products  
5 sold to consumers;

6 b. Whether the Misbranded Walgreen “Finest Nutrition” Products are worthless;

7 c. Whether Plaintiffs and the Class are entitled to equitable and/or injunctive relief;

8 d. Whether Defendant’s unlawful, unfair and/or deceptive practices harmed Plaintiffs  
and the Class; and

9 e. Whether Defendant was unjustly enriched by its deceptive practices.

10 47. Typicality: Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs  
11 bought Defendant’s Misbranded Walgreen “Finest Nutrition” Products during the Class Period.  
12 Defendant’s unlawful, unfair, and/or fraudulent actions concern the same business practices  
13 described herein irrespective of where they occurred or were experienced. Plaintiffs and the Class  
14 sustained similar injuries arising out of Defendant’s conduct in violation of California law. The  
15 injuries of each member of the Class were caused directly by Defendant’s wrongful conduct. In  
16 addition, the factual underpinning of Defendant’s misconduct is common to all Class members and  
17 represents a common thread of misconduct resulting in injury to all members of the Class.  
18 Plaintiffs’ claims arise from the same practices and course of conduct that give rise to the claims of  
19 the Class members and are based on the same legal theories.

20 48. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class.  
21 Neither Plaintiffs nor Plaintiffs’ counsel have any interests that conflict with or are antagonistic to  
22 the interests of the Class members. Plaintiffs have retained highly competent and experienced class  
23 action attorneys to represent their interests and those of the members of the Class. Plaintiffs and  
24 Plaintiffs’ counsel have the necessary financial resources to adequately and vigorously litigate this  
25 class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class  
26 members and will diligently discharge those duties by vigorously seeking the maximum possible  
27 recovery for the Class.  
28

1           49.     Superiority: There is no plain, speedy, or adequate remedy other than by  
2 maintenance of this class action. The prosecution of individual remedies by members of the Class  
3 will tend to establish inconsistent standards of conduct for Defendant and result in the impairment  
4 of Class members' rights and the disposition of their interests through actions to which they were  
5 not parties. Class action treatment will permit a large number of similarly situated persons to  
6 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
7 unnecessary duplication of effort and expense that numerous individual actions would engender.  
8 Further, as the damages suffered by individual members of the Class may be relatively small, the  
9 expense and burden of individual litigation would make it difficult or impossible for individual  
10 members of the Class to redress the wrongs done to them, while an important public interest will be  
11 served by addressing the matter as a class action. Class treatment of common questions of law and  
12 fact would also be superior to multiple individual actions or piecemeal litigation in that class  
13 treatment will conserve the resources of the Court and the litigants, and will promote consistency  
14 and efficiency of adjudication.

15           50.     The prerequisites to maintaining a class action for injunctive or equitable relief  
16 pursuant to FED. R. CIV. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds  
17 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief  
18 with respect to the Class as a whole.

19           51.     The prerequisites to maintaining a class action pursuant to FED. R. CIV. P. 23(b)(3)  
20 are met as questions of law or fact common to class members predominate over any questions  
21 affecting only individual members, and a class action is superior to other available methods for  
22 fairly and efficiently adjudicating the controversy.

23           52.     Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are likely to be  
24 encountered in the management of this action that would preclude its maintenance as a class action.

25           53.     For each of the nine cause of actions herein alleged *infra*, Plaintiffs hereby reallege  
26 and incorporate the foregoing paragraphs.  
27  
28

1 **FIRST CAUSE OF ACTION**  
2 **Business and Professions Code § 17200, et seq.**  
3 **Unlawful Business Acts and Practices**

4 54. Defendant's business practices as described herein are unlawful under § 17200, *et*  
5 *seq.* by virtue of Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code §  
6 1750, *et seq.*

7 55. Plaintiffs and the Class were injured as a result of Defendant's unlawful acts and  
8 practices.

9 56. Defendant sold to Plaintiffs and the Class products that were not capable of being  
10 sold legally, and which have no economic value.

11 57. Plaintiffs and the Class paid for worthless products they otherwise would not have  
12 bought.

13 58. As a result of Defendant's unlawful business practices, Plaintiffs and the Class,  
14 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such  
15 future conduct and such other orders and judgments which may be necessary to disgorge  
16 Defendant's ill-gotten gains and to restore to any Class member any money paid for the  
17 Misbranded Walgreen "Finest Nutrition" Products.  
18

19 **SECOND CAUSE OF ACTION**  
20 **Business and Professions Code § 17200, et seq.**  
21 **Unfair Business Acts and Practices**

22 59. Defendant's conduct as set forth herein constitutes unfair business acts and  
23 practices.

24 60. As set forth above, Defendant engaged in deceptive marketing, advertising,  
25 packaging, and labeling of the Misbranded Walgreen "Finest Nutrition" Products

26 61. Plaintiffs and the Class were injured as a result of Defendant's unfair acts and  
27 practices.  
28

1           62. Defendant sold to Plaintiffs and the Class products that were not capable of being  
2 legally sold and that have no economic value.

3           63. Plaintiffs and the Class who purchased the Misbranded Walgreen “Finest  
4 Nutrition” Products had no way of reasonably knowing that the products were misbranded and  
5 were not properly labeled, and thus could not have reasonably avoided injury.  
6

7           64. A reasonable consumer would have relied on Defendant’s representations.

8           65. The consequences of Defendant’s conduct outweigh any justification, motive or  
9 reason therefor.

10           66. As a result of Defendant’s conduct, Plaintiffs and the Class, pursuant to Business  
11 and Professions Code § 17203, are entitled to an order enjoining such future conduct by  
12 Defendant, and such other orders and judgments which may be necessary to disgorge  
13 Defendant’s ill-gotten gains and restore any money paid for the Misbranded Walgreen “Finest  
14 Nutrition” Products.  
15

16  
17                                   **THIRD CAUSE OF ACTION**  
18                                   **Business and Professions Code § 17200, *et seq.***  
19                                   **Fraudulent Business Acts and Practices**

20           67. Defendant’s conduct as set forth herein constitutes fraudulent business practices  
21 under California Business and Professions Code § 17200, *et seq.*

22           68. Defendant’s misleading packaging and labeling of the Misbranded Walgreen  
23 “Finest Nutrition” Products were likely to deceive reasonable consumers.

24           69. As set forth above, Plaintiffs and members of the Class were deceived.

25           70. As set forth above, Defendant engaged in fraudulent business acts and practices.

26           71. Plaintiffs and the Class were injured by Defendant’s fraudulent acts and practices.  
27  
28

1           72. Defendant's fraud and deception caused Plaintiffs and the Class to purchase  
2 Misbranded Walgreen "Finest Nutrition" Products that they would otherwise not have purchased  
3 had they known the true nature of these products.

4           73. As a result of Defendant's conduct as set forth herein, Plaintiffs and the Class,  
5 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such  
6 future conduct by Defendant, and such other orders and judgments which may be necessary to  
7 disgorge Defendant's ill-gotten gains and restore any money paid for the Misbranded Walgreen  
8 "Finest Nutrition" Products by Plaintiffs and the Class.

10                                   **FOURTH CAUSE OF ACTION**  
11                                   **Business and Professions Code § 17500, *et seq.***  
12                                   **Misleading and Deceptive Advertising**

13           74. Plaintiffs asserts this cause of action for violations of California Business and  
14 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

15           75. As set forth above, Defendant engaged in a scheme of offering Misbranded  
16 Walgreen "Finest Nutrition" Products for sale to Plaintiffs and members of the Class by way of  
17 product labeling.

18           76. As set forth above, these materials misrepresented and/or omitted the true  
19 contents and nature of Misbranded Walgreen "Finest Nutrition" Products.

20           77. Defendant's labeling inducements were made within California and come within  
21 the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in  
22 that such product labeling was intended as inducements to purchase Misbranded Walgreen  
23 "Finest Nutrition" Products and are statements disseminated by Defendant to Plaintiffs and the  
24 Class that were intended to reach members of the Class.

25           78. Defendant knew, or in the exercise of reasonable care, should have known, that  
26 these statements were misleading and deceptive as set forth herein.  
27  
28

1           79. Defendant prepared and distributed within California via product labeling  
2 statements that misleadingly and deceptively represented the composition and nature of  
3 Misbranded Walgreen “Finest Nutrition” Products.

4           80. Plaintiffs and the Class were the intended targets of such representations.

5           81. Plaintiffs and the Class reasonably relied on Defendant’s representations.

6           82. Defendant’s conduct in disseminating misleading and deceptive statements in  
7 California Plaintiffs and the Class was and is likely to deceive reasonable consumers by  
8 obscuring the true composition and nature of Misbranded Walgreen “Finest Nutrition” Products  
9 in violation of the “misleading prong” of California Business and Professions Code § 17500, *et*  
10 *seq.*

11           83. Plaintiffs and the Class were injured as a result of Defendant’s acts and practices.

12           84. As a result of Defendant’s violations of the “misleading prong” of California  
13 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the  
14 expense of Plaintiffs and the Class.

15           85. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are  
16 entitled to an order enjoining such future conduct by Defendant, and such other orders and  
17 judgments which may be necessary to disgorge Defendant’s ill-gotten gains and restore any  
18 money paid for Misbranded Walgreen “Finest Nutrition” Products by Plaintiffs and the Class.

19  
20  
21  
22   **FIFTH CAUSE OF ACTION**  
23   **Business and Professions Code § 17500, *et seq.***  
24   **Untrue Advertising**

25           86. Plaintiffs assert this cause of action against Defendant for violations of California  
26 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

27           87. Defendant offered its Misbranded Walgreen “Finest Nutrition” Products for sale  
28 to Plaintiffs and the Class by way of labeling.

1           88.     As set forth above, these materials misrepresented or omitted the true contents  
2 and nature of the Misbranded Walgreen “Finest Nutrition” Products.

3           89.     Defendant’s labeling inducements were made in California and come within the  
4 definition of advertising contained in Business and Professions Code §17500, *et seq.* where the  
5 product labels are intended as inducements to purchase the Misbranded Walgreen “Finest  
6 Nutrition” Products, and are statements disseminated by Defendant to Plaintiffs and the Class.

7           90.     Defendant knew, or in the exercise of reasonable care, should have known, that  
8 these statements were untrue and/or misleading.

9           91.     As set forth above, Defendant prepared and distributed in California via product  
10 packaging and labeling, statements that falsely advertise the composition of the Misbranded  
11 Walgreen “Finest Nutrition” Products, and falsely misrepresented the nature of the Misbranded  
12 Walgreen “Finest Nutrition” Product.

13           92.     Plaintiffs and the Class were the intended targets of such representations.

14           93.     Defendant’s conduct in disseminating untrue label advertising throughout  
15 California deceived Plaintiffs and members of the Class by obfuscating the contents, nature and  
16 quality of the Misbranded Walgreen “Finest Nutrition” Products in violation of the “untrue  
17 prong” of California Business and Professions Code § 17500.

18           94.     Plaintiffs and the Class reasonably relied on Defendant’s representations.

19           95.     As set forth herein, a reasonable consumer would have relied on Defendant’s  
20 representations.

21           96.     Plaintiffs and the Class were injured as a result of Defendant’s acts and practices.

22           97.     As a result of Defendant’s violations of the “untrue prong” of California Business  
23 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of  
24 Plaintiffs and the Class.  
25  
26  
27  
28

1 98. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are  
2 entitled to an order enjoining such future conduct by Defendant, and such other orders and  
3 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any  
4 money paid for Misbranded Walgreen "Finest Nutrition" Products by Plaintiffs and the Class.  
5

6 **SIXTH CAUSE OF ACTION**  
7 **Consumer Legal Remedies Act, Cal. Civ. Code §1750, et seq.**

8 99. Defendant's actions, representations, and conduct have violated, and continue to  
9 violate the CLRA, because they extend to transactions that are intended to result, or which have  
10 resulted, in the sale of goods or services to consumers.

11 100. Defendant sold Misbranded Walgreen "Finest Nutrition" Products in California  
12 during the Class Period.

13 101. Plaintiffs and members of the Class are "consumers" as that term is defined by the  
14 CLRA in Cal. Civ. Code §1761(d).

15 102. Misbranded Walgreen "Finest Nutrition" Products are "goods" within the  
16 meaning of Cal. Civ. Code §1761(a).

17 103. By engaging in the conduct set forth herein, Defendant violated and continues to  
18 violate Section 1770(a)(5), of the CLRA, because Defendant's conduct constitutes unfair  
19 methods of competition and unfair or fraudulent acts or practices in that they misrepresent the  
20 particular ingredients, characteristics, uses, benefits and quantities of the goods.  
21

22 104. By engaging in the conduct set forth herein, Defendant violated and continues to  
23 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair  
24 methods of competition and unfair or fraudulent acts or practices in that it misrepresents the  
25 particular standard, quality or grade of the goods.  
26

27 105. By engaging in the conduct set forth herein, Defendant violated and continues to  
28 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair



1 methods of competition and unfair or fraudulent acts or practices in that it advertises goods with  
2 the intent not to sell the goods as advertised.

3 106. By engaging in the conduct set forth herein, Defendant has violated and continue  
4 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair  
5 methods of competition and unfair or fraudulent acts or practices in that it represents that a  
6 subject of a transaction has been supplied in accordance with a previous representation when  
7 they have not.  
8

9 107. Plaintiffs and the Class were injured as a result of Defendant's acts and practices.

10 108. Plaintiffs request that the Court enjoin Defendant from continuing to employ the  
11 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2).  
12

13 109. If Defendant is not restrained from engaging in these practices in the future,  
14 Plaintiffs and the Class will continue to suffer harm.

15 110. In this Complaint, Plaintiffs are not seeking damages pursuant to the CLRA.  
16 Plaintiffs will amend this Complaint to request damages, after providing Defendant with notice  
17 pursuant to Cal. Civ. Code § 1782.  
18

19 **SEVENTH CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability**

20 111. Implied in the purchase of Misbranded Walgreen "Finest Nutrition" Products by  
21 Plaintiffs and the Class is the warranty that the purchased products are legal and can be lawfully  
22 resold.  
23

24 112. Defendant knowingly and intentionally misbranded and adulterated the  
25 Misbranded Walgreen "Finest Nutrition" Products.

26 113. Defendant knew or should have known that those Misbranded Walgreen "Finest  
27 Nutrition" Products were illegal.  
28

1 114. When Defendant sold those products they impliedly warranted that the products  
2 were legal and could be lawfully resold.

3 115. Plaintiffs would not have knowingly purchased products that were illegal and  
4 unsellable and which subjected Plaintiffs to criminal prosecution.

5 116. No reasonable consumer would knowingly purchase products that are illegal and  
6 unsellable and subject a consumer to criminal prosecution.

7 117. The purchased Misbranded Walgreen “Finest Nutrition” Products were unfit for  
8 the ordinary purpose for which Plaintiffs and the Class purchased them.

9 118. In fact, these Misbranded Walgreen “Finest Nutrition” Products were  
10 economically worthless.

11 119. As a result, Plaintiffs and the Class were injured through their purchase of an  
12 unsuitable, useless, illegal, and unsellable product.

13 120. By reason of the foregoing, Plaintiffs and the Class were damaged in the amount  
14 they paid for Misbranded Walgreen “Finest Nutrition” Products.

15  
16  
17 **EIGHTH CAUSE OF ACTION**

18 **Breach of Express Warranty**

19  
20 121. Plaintiffs repeat and reallege each of the above allegations as if fully set forth  
21 herein.

22 122.. Defendant provided Plaintiffs and other members of the Class with written  
23 express warranties, including warranties that its Misbranded Walgreens “Finest Nutrition”  
24 Products contained ginkgo biloba, St. John's wort, ginseng, or echinacea.

25 123. Defendant breached these warranties by providing Misbranded Walgreens “Finest  
26 Nutrition” Products to Plaintiffs and members of the Class that contained no such ingredients  
27 and did not otherwise conform to Defendant’s warranties.  
28

1 124. These breaches resulted in damages to Plaintiffs and other members of the Class  
2 who bought Misbranded Walgreens “Finest Nutrition” Products but did not receive the good as  
3 warranted.

4 125. As a proximate cause of Defendant’s breaches of warranties, Plaintiffs and the  
5 other Class members have suffered damages in an amount to be determined at trial.  
6

7  
8 **NINTH CAUSE OF ACTION**  
9 **Unjust Enrichment**

10 126. Plaintiffs repeat and reallege each of the above allegations as if fully set forth herein.

11 127. As a result of Defendant’s unlawful and deceptive actions described above,  
12 Defendant was unjustly enriched at the expense of Plaintiffs and the Class through the payment of  
13 the purchase price for the Misbranded Walgreens “Finest Nutrition” Products.

14 128. Under the circumstances, it would be against equity and good conscience to  
15 permit Defendant to retain the ill-gotten benefits that it received from Plaintiffs and the Class.  
16

17 **JURY DEMAND**

18 Plaintiffs hereby demand a trial by jury of their claims.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, and on  
21 behalf of the general public, pray for judgment against Defendant as follows:

22 A. For an order certifying this case as a class action and appointing Plaintiffs and their  
23 counsel to represent the Class;

24 B. For an order awarding, as appropriate, damages, restitution or disgorgement to  
25 Plaintiffs and the Class for all causes of action;

26 C. For an order requiring Defendant to immediately cease and desist from selling its  
27 Misbranded Walgreen “Finest Nutrition” Products in violation of law; enjoining Defendant from  
28 continuing to manufacture, label, market, advertise, distribute, and sell these products in the

1 unlawful manner described herein; and ordering Defendant to engage in corrective action;

- 2 D. For all injunctive relief pursuant to Cal. Civ. Code § 1780;
- 3 E. For an order awarding attorneys' fees and costs;
- 4 F. For an order awarding punitive damages;
- 5 G. For an order awarding pre-and post-judgment interest; and
- 6 H. For an order providing such further relief as this Court deems proper.
- 7

8 Dated: February 4, 2015

9 Respectfully submitted,

10 By: /s/ Pierce Gore  
11 Ben F. Pierce Gore (SBN 128515)  
12 PRATT & ASSOCIATES  
13 1871 The Alameda, Suite 425  
14 San Jose, CA 95126  
15 Telephone: (408) 429-6506  
16 Fax: (408) 369-0752  
17 pgore@prattattorneys.com

18 Charles J. LaDuca  
19 CUNEO GILBERT & LADUCA, LLP  
20 8120 Woodmont Avenue, Suite 810  
21 Bethesda, MD 20814  
22 Telephone: 202-789-3960  
23 Facsimile: 202-589-1813  
24 charles@cuneolaw.com

25 Taylor Asen  
26 CUNEO GILBERT & LADUCA, LLP  
27 16 Court Street, Suite 1012  
28 Brooklyn, NY 11241  
Telephone: 202-789-3960  
Facsimile: 202-589-1813  
tasen@cuneolaw.com

Dewitt M. Lovelace  
Valerie Lauro Nettles  
LOVELACE AND ASSOCIATES, PA  
12870 U.S. Hwy 98 West, Suite 200  
Miramar Beach, FL 32550  
Telephone: (850) 837-6020  
Facsimile: (850) 837-4093  
[dml@lovelacelaw.com](mailto:dml@lovelacelaw.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Richard R. Barrett  
LAW OFFICE OF RICHARD R. BARRETT, PLLC  
2086 Old Taylor Road  
Suite 1011  
Oxford, Mississippi 38655  
Telephone: 662-380-5018  
Fax: 866-430-5459  
rrb@rrblawfirm.net

Don Barrett  
DON BARRETT, P.A.  
P.O. Box 927  
404 Court Square North  
Lexington, MS 39095  
Telephone: (662) 834-2488  
Toll Free: (877) 816-4443  
Fax: (662) 834-2628  
donbarrettpa@gmail.com

Kenneth R. Shemin  
SHEMIN LAW FIRM, PLLC  
3333 Pinnacle Hills Parkway, Suite 603  
Rogers, AR 72758  
Telephone: (479) 250-4764  
Facsimile: (479) 845-2198

Thomas P. Thrash  
THRASH LAW FIRM, P.A.  
1101 Garland Street  
Little Rock, AR 72201  
Telephone: (501) 374-1058  
Facsimile: (501) 374-2222

*Attorneys for Plaintiffs*