

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

JEFFREY GREENFIELD, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

**CLASS ACTION
JURY DEMAND**

TARGET CORPORATION and NBTY, INC.,

Defendants.

_____ /

CLASS ACTION COMPLAINT

Plaintiff JEFFREY GREENFIELD files this class action complaint on behalf of himself and all others similarly situated against TARGET CORPORATION (“Target”) and NBTY, INC. (“NBTY”) (collectively, “Defendants”) and states as follows.

INTRODUCTION

1. For years, some of the world’s largest retailers have been deceiving the American public into purchasing expensive products passed off as “healthy” herbal supplements. The retailers promoted the herbal supplements as, not only containing the ingredients that were listed, but also as a product that could make the consumers, and their families, healthier. These statements, relied upon by millions of consumers, were simply false. It has now come to light, after extensive testing by New York government authorities, that in most cases, these products had absolutely none of the herbal ingredients that the retailers listed on the product and were essentially worthless.

2. The retailers further failed to disclose that these expensive products also contained unlisted “fillers” such as rice, beans, garlic, wheat, citrus, and house plants — unlisted

ingredients that can pose serious health risks. This was all done to generate hundreds of millions of dollars in profits. This case is brought specifically on behalf of those nationwide consumers that bought these worthless products to prevent Defendants from continuing these fraudulent practices.

3. When a retailer labels its proprietary brand herbal supplement as containing certain specific ingredients, that supplement should in fact contain those ingredients. Defendants have been knowingly violating this basic tenet. As a result, health and cost-conscious consumers across the nation have been walking into retail stores every day and buying bottles purporting to be “herbal supplements” that were labeled one way, but filled another – rendering them worthless.

4. Target is one of the largest retailers in the world. It sells various herbal supplements under its own proprietary brand known as “Up & Up.” In the United States, Target operates over 1,900 stores and, in 2013, generated \$24 billion in sales from its own proprietary brands.¹ “Up & Up” is an important part of Target’s business because it differentiates Target from other retailers and generally carries higher margins than equivalent national brand products.

5. Target offers its customers, referred to as “guests,” everyday essentials and differentiated merchandise at discounted prices. On its corporate website, Target guests are assured of the following:

We have tools and processes in place to ensure product safety and quality at every stage of production. Before production starts, we audit the factory and meet with the vendor and manufacturer. We require vendors to test Target-brand products at third-party laboratories throughout production. A product must pass all testing before it’s approved for shipment.²

¹ See Target’s Annual Report on Form 10-K for the Fiscal Year Ended February 1, 2014.

² See <https://corporate.target.com/corporate-responsibility/responsible-sourcing/product-safety->

6. A recent investigation by the New York Attorney General proves that this statement is false.

7. This case involves Defendants' systematic prioritization of profits over honest labeling and consumer safety in an attempt to take advantage of the rapidly increasing number of U.S. consumers who take herbal supplements to improve their general health and wellness.

Background of Herbal Supplements

8. Botanicals and herbals have been used in medicine for over a thousand years. The tradition of using herbal remedies to treat various health problems dates back to Egyptian and Chinese civilizations practicing herbal therapy to treat various afflictions and ailments.

9. Plant-based medicines were the primary forms of medicines used by western countries up until World War II, after which modern medicines and synthetic drugs began to dominate the market.

10. Later in the 20th century, however, there was a reemergence of herbal remedies in the market in the form of herbal supplements.

11. Herbal supplements are non-food, non-pharmaceutical herbs derived from plant-based substances, and are primarily consumed for improving general health and wellness.

12. These herbal remedies exist as a supplement to modern medicine and are exhibiting a strong growth rate as consumers look towards natural remedies that are marketed as safer, healthier, and gentler than modern pharmaceuticals.

13. Today, herbal supplements account for approximately 30% of the global supplements market,³ and the World Health Organization estimates that 80% of people

quality-assurance, (last visited Feb. 26, 2015).

³ Herbal supplements make up a significant part of the broader supplements market, which

worldwide rely on herbal medicines for some part of their primary health care.

14. The number of consumers taking herbal supplements is increasing at a rapid pace in the United States and worldwide. At the end of 2013, more than 36 million people in the U.S. confirmed the use of herbal supplements to support a healthy lifestyle. The market for herbal supplements in the U.S. alone is estimated to be over \$7 billion in 2015 and to rise to over \$9 billion by 2020.

15. Further, the global market for herbal supplements and remedies this year is expected to exceed \$85 billion, increasing from an estimated \$80 billion in 2014.

16. The herbal supplement market has thrived here because U.S. consumers have become increasingly aware of the importance of preventive health care. The growth in this market is attributed to several factors including:

- a. growing awareness with regard to preventive health and wellness among consumers;
- b. the increasing proportion of elderly people among the general population;
- c. the lack of harmful side effects caused by herbal supplements; and
- d. clinical research and scientific studies indicating the benefits of these products in preventing and alleviating symptoms of certain diseases.

17. Many consumers turn to these products because of the high cost of modern medicine. Medical expenses can present a huge burden for people and they seek out herbal supplements as a cheaper alternative to treat various ailments in trying to maintain a healthy lifestyle and support themselves and their families.

18. NBTY manufactures and sells herbal supplement products. It sells these products

includes vitamins, minerals, meal supplements, sports nutrition, and specialty supplements.

directly to consumers through its Vitamin World retail stores and through its website. It also sells the supplements wholesale to major retailers in the United States, including Costco, CVS, Walgreens, Kroger, Target, and Wal-Mart.⁴

19. Target purchases supplements from NBTY, and then sells these supplements to consumers under its private label, “Up & Up.”

20. Gingko Biloba, St. John’s Wort, and Valerian Root, all sold under the Target “Up & Up” brand, are some of the most popular herbal supplements marketed and sold in the United States today.

21. Target markets and sells these products through its retail stores and on its website. For example, on the label of “Up & Up” Gingko Biloba, Target states that the product is a “standardized extract” that “helps support memory, concentration and circulation.”

22. What Target does not disclose is that its “Up & Up” products do not actually contain the labeled ingredients.

23. Target advertises each of its other mislabeled “Up & Up” herbal supplements in the same manner. For example, it asserts on the label of its “Up & Up” St. John’s Wort that the product “helps support a positive mood.”

24. However, testing has revealed that the “Up & Up” Gingko Biloba, St. John’s Wort, and Valerian Root do not contain *any* of the touted herbal ingredients.

25. Moreover, many of the tests revealed that the “Up & Up” products also contained other ingredients that were not identified on the label, such as allium, rice, and dracaena (a tropical houseplant).

⁴ See NBTY, Inc. Annual Report on the Form 10-K for the Fiscal Year Ended September 30, 2014.

26. On behalf of themselves and all others similarly situated, Plaintiff brings this action to put an end to Defendants' deceptive and unfair practices and to seek relief for the injuries caused by Defendants' common practice.

PARTIES

Plaintiff

27. Plaintiff JEFFREY GREENFIELD is a citizen of the State of Florida who purchased Defendants' mislabeled "Up & Up" Gingko Biloba and Valerian Root. He is a natural person over the age of 21 and otherwise *sui juris*.

Defendants

28. Defendant TARGET CORPORATION is a Minnesota corporation operating in the State of Florida with its principal place of business in Minneapolis, Minnesota.

29. Target operates a network of approximately 1,915 locations in the United States and Canada.

30. Target markets itself as "delivering outstanding value, continuous innovation and exceptional guest experiences by consistently fulfilling [its] Expect More. Pay Less.[®] brand promise."⁵ Target's net sales in the United States for the 2014 fiscal year were \$71.3 billion.⁶ Proprietary brands, like "Up & Up," accounted for approximately 33% of Target's net sales in the United States.⁷

31. Defendant NBTY, Inc., is a Delaware corporation with its principal place of business in Ronkonkoma County, New York.

⁵ See <https://corporate.target.com/about/mission-values>, (last visited Feb. 26, 2015).

⁶ See Target's Annual Report on Form 10-K for the Fiscal Year Ended February 1, 2014.

⁷ *Id.*

32. NBTY is one of the largest retailers, manufacturers, and distributors of vitamins, nutritional supplements, and related products in the United States, with operations throughout the world.⁸

33. NBTY's facilities include administration, manufacturing, warehousing, packaging, and distribution facilities located in Pompano Beach, Deerfield Beach, Naples, and Boca Raton, Florida. It also operates retail locations throughout the United States.⁹

34. NBTY describes its mission as follows: "To enhance the well-being of our customers globally by delivering the highest quality, best value nutritional supplements and wellness products."¹⁰ Its website states that it has a "significant presence in virtually every major vitamin, mineral, herb and supplement product category and in multiple key distribution channels."¹¹

35. In 2014, NBTY's net sales for its wholesale segment totaled \$1.88 billion.¹²

JURISDICTION AND VENUE

36. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.).

37. Plaintiff is a citizen of the State of Florida. Defendant Target is a citizen of the state of Minnesota but is registered to do business in Florida. Defendant NBTY is a citizen of the

⁸ See NBTY Annual Report on Form 10-K for the Fiscal Year Ended September 30, 2014.

⁹ *Id.*

¹⁰ See <http://www.nbty.com/OurCompany/MissionAndValues>, (last viewed on February 17, 2015).

¹¹ See <http://www.nbty.com/OurBrands/VitaminsSupplements>(last viewed on February 17, 2015).

¹² See NBTY Annual Report on Form 10-K for the Fiscal Year Ended September 30, 2014.

state of Delaware but is registered to do business in Florida. The amount in controversy exceeds \$5,000,000 and there are at least one hundred members of the putative class.

38. This Court has jurisdiction over Defendants because they are foreign corporations authorized to conduct business in Florida, are continuously doing business in Florida and have registered with the Florida Secretary of State, or do sufficient business in Florida, have sufficient minimum contacts with Florida, or otherwise intentionally avail themselves of the Florida consumer market through the promotion, marketing, sale, and service of the aforementioned herbal supplements including the supplements purchased by Plaintiff. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants and their affiliated or related entities permissible under traditional notions of fair play and substantial justice.

39. In addition, this Court has subject-matter jurisdiction under CAFA because the amount in controversy exceeds \$5 million and diversity exists between Plaintiff and Defendants. 28 U.S.C. § 1332(d)(2). In determining whether the \$5 million amount in controversy requirement of 28 U.S.C. § 1332(d)(2) is met, the claims of the putative class members are aggregated. 28 U.S.C. § 1332(d)(6).

40. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants transact business and may be found in this District. Venue is also proper here because at all times relevant hereto, Plaintiff resided in the Southern District of Florida and a substantial portion of the practices complained of herein occurred in the Southern District of Florida.

41. All conditions precedent to this action have occurred, have been performed, or have been waived.

FACTUAL ALLEGATIONS

42. NBTY manufactures and sells herbal supplements to Target.¹³ Target markets, distributes, and sells herbal supplements to consumers under its proprietary brand, “Up & Up.”

43. The Up & Up brand includes “Up & Up Gingko Biloba,” “Up & Up St. John’s Wort,” and the “Up & Up Valerian Root” product (collectively, the “Up & Up Supplements”) purchased by Plaintiff and the class members.

44. Target represents that it has tested and stands by its products and its marketing.

45. The labeling on every Up & Up Supplement conspicuously shows the “Supplement Facts,” and identifies the primary herbal ingredient as the advertised herb. Contrary to these representations, the Up & Up Supplements are not what they purport to be.

46. On February 2, 2015, New York Attorney General Eric Schneiderman sent a letter to Target ordering it to immediately “cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements” and to “immediately stop the sale of three ‘Up & Up’ dietary supplements.”¹⁴

47. The cease and desist letter was the result of an investigation by the N.Y. Attorney General’s office that used established DNA barcoding technology to examine the contents of herbal supplements and was focused on Defendants’ practice of substituting contaminants and fillers in place of the authentic product.

48. DNA barcodes are short genetic markers in an organism’s DNA and are used to identify it as belonging to a particular species. Barcodes provide an unbiased, reproducible method of species identification. The barcodes can be used to determine the exact plant species

¹³ *Id.*

¹⁴ Similar cease and desist letters were sent to GNC, Wal-Mart, and Walgreens relating to their proprietary brands of certain herbal supplements.

being tested.

49. The DNA testing revealed that three of the six supplements were “either unrecognizable or a substance other than what they claimed to be and therefore constitute contaminated or substituted products.”

50. According to Arthur P. Grollman, M.D., Professor of Pharmacological Sciences at Stony Brook University, “[t]his study undertaken by Attorney General Schneiderman’s office is a well-controlled, scientifically-based documentation of the outrageous degree of adulteration in the herbal supplement industry.”

51. Indeed, testing on the “Up & Up Valerian Root” product revealed that “[n]o *Valerian root DNA was identified*” in any of the samples. Instead, the testing yielded identifications of the following: allium; phasolus/beans; asparagacea; pea family DNA; oryza; phaseolus fabacaeae; wild carrot; and saw palmetto genetic material. Three of the tests identified no genetic material at all.

52. Similar results were yielded for the other Up & Up Supplements.

53. Defendants knew that the Up & Up Supplements contained various inexpensive fillers and contaminants; but, knowing that U.S. consumers were increasingly purchasing these products for a healthier lifestyle, Defendants put their pursuit of profits above all else.

54. According to Attorney General Schneiderman:

“This investigation makes one thing abundantly clear: the old adage ‘buyer beware’ may be especially true for consumers of herbal supplement. The DNA test results seem to confirm long-standing questions about the herbal supplement industry. Mislabeling, contamination, and false advertising are illegal At the end of the day, American corporations must step up to the plate and ensure that their customers are getting what they pay for, especially when it involves promises of good health.”

55. Target’s mislabeling of its proprietary Up & Up Supplements constitutes unfair

and deceptive business practices and, just as importantly, poses serious health risks to consumers.

56. Consumers, such as Plaintiff and the class members here, purchased this product trusting that (i) it contains the amount of herbal substance that is identified on the label and that (ii) all ingredients contained in the product are identified.

57. Because of Target's intentional mislabeling of the ingredients in the Up & Up Supplements, a consumer with food allergies, or a consumer who takes medication for an unrelated illness, is assuming a potentially serious health risk each time the contaminated herbal supplement is ingested.

58. Plaintiff and the putative class members did not purchase the Up & Up Supplements to assume these risks and would not have purchased the product had they known that there was no trace of the herbal ingredient contained therein, but instead the product was contaminated and potentially dangerous.

Plaintiff Jeffrey Greenfield

59. Plaintiff Jeffrey Greenfield learned of certain health benefits from taking ginkgo biloba and valerian root.

60. As to ginkgo biloba, Mr. Greenfield learned that the herbal supplement may improve memory and yield other cognitive benefits.

61. In seeking a remedy for his insomnia, he learned that valerian root could be used as an effective sleep aid.

62. In 2011, after learning of the various health benefits of these herbal supplements, Mr. Greenfield began purchasing the Up & Up brand of each of the supplements. He used the Up & Up Ginkgo Biloba and Valerian Root daily, in accordance with the instructions on the label.

63. Mr. Greenfield paid approximately \$4-8 per bottle for the Up & Up Supplements.

64. The Up & Up Supplements are mass-produced products, and there are no material differences between the bottles that Plaintiff purchased and those purchased by members of the putative class. As with all other putative class members, Target deceptively labeled the bottle that Plaintiff purchased as purporting to contain a certain amount of the advertised herbal ingredient.

65. On the contrary, the products that Plaintiff and the putative class purchased did not contain *any* of the advertised herbal ingredients, but instead had certain fillers and contaminants such as rice, allium, mustard, and radish. None of these substances are identified in the list of ingredients on the Up & Up Supplements.

66. Had Plaintiff – or any reasonable consumer – known that the products they were purchasing were not the advertised herbal products, but instead various filler products, they would not have made the purchase.

67. As with all other putative class members, Defendants accepted payment for the purported herbal supplements despite the fact that they knew or should have known that the products did not actually contain any of the advertised herbal supplements.

68. There are no material differences between Defendants' actions and practices directed to Plaintiff and their actions and practices directed to any members of the putative class.

CLASS ALLEGATIONS

A. Class Definitions

69. Plaintiff brings this action against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other persons similarly situated. Plaintiff seeks to represent the following classes:

Nationwide class:

All persons who, within the applicable statutes of limitation, purchased Target Up & Up Ginkgo Biloba, St. John's Wort, and Valerian Root in the United States. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

Florida Subclass as to Count II – Florida Deceptive and Unfair Practices Act

All persons who, within the applicable statute of limitation, purchased Target Up & Up Ginkgo Biloba, St. John's Wort, and Valerian Root in the State of Florida. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

70. Plaintiff reserves the right to modify or amend the definitions of the proposed classes before the Court determines whether certification is appropriate.

71. Defendants subjected Plaintiff and the respective class members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner.

B. Numerosity

72. The proposed classes are so numerous that joinder of all members would be impracticable. Defendants sell and promote the Up & Up Supplements, at thousands of stores in Florida as well as nationwide. Although the number of class members is not presently known, the classes will likely be composed of thousands of consumers. The numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiff does not anticipate any difficulties in the management of the action as a class action.

C. Commonality

73. There are questions of law and fact that are common to Plaintiff and class members' claims. Common questions of law and fact exist because, *inter alia*, Plaintiff and all

class members purchased the Up & Up Supplements from Target that were deceptively labeled as containing an herbal ingredient when instead they contained various fillers and contaminants and not the as-labeled herbal products.

74. These common questions predominate over any questions that go particularly to any individual member of the Class and include but are not limited to the following:

- a. Whether Defendants engaged in unlawful, unfair, or deceptive business practices by failing to properly label the Up & Up Supplements they sold to Plaintiff and the putative class members;
- b. Whether Defendants deceptively or misleadingly misrepresented the ingredients contained in the Up & Up Supplements sold to consumers;
- c. Whether Defendants' misrepresentations and omissions are likely to deceive a reasonable consumer;
- d. Whether and to what extent the Defendants have been unjustly enriched at the expense of Plaintiff and the class;
- e. Whether Defendants violated Florida's Deceptive and Unfair Trade Practices Act;
- f. Whether Plaintiff and the class members are entitled to compensatory damages including actual damages plus interest and/or monetary restitution;
- g. Whether Defendants' conduct warrants punitive damages; and
- h. Whether an injunction is appropriate in order to prevent Defendants from continuing to engage in their unfair, deceptive, and unlawful conduct.

D. Typicality

75. Plaintiff is a member of the Class he seeks to represent. Plaintiff's claims are typical of the respective classes' claims because Plaintiff and each class member purchased the Up & Up Supplements which were deliberately misrepresented as containing specific herbal ingredients when in fact they contained only various fillers. Thus, Plaintiff's claims are typical due to the similarity, uniformity, and common purpose of the Defendants' unlawful conduct.

Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiff as a result of Defendants' wrongful conduct.

E. Adequacy of Representation

76. Plaintiff is an adequate representative of the classes he seeks to represent and will fairly and adequately protect the interests of the class. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel, experienced in litigation of this nature, to represent him. Plaintiff has no adverse or antagonistic interest to those of the unnamed class members. Plaintiff is willing and prepared to serve the Court and the class in a representative capacity with all of the obligations and duties material thereto.

77. To prosecute this case, Plaintiff has chosen the undersigned law firms, which are very experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

78. This action is appropriate as a class action pursuant to Fed. R. Civ. P. 23(b)(3) because questions of law or fact common to Plaintiff and each class member's claims predominate over any questions of law or fact affecting only individual members of the class.

79. All claims by Plaintiff and the unnamed class members are based on the purchase of the deceptively labeled Up & Up Supplements.

80. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

81. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

82. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

(a) Joinder of all class members would create extreme hardship and inconvenience for the affected customers as they reside all across the states;

(b) Individual claims by class members are impractical because the costs to pursue individual claims exceed the value of what any one class member has at stake. As a result, individual class members have no interest in prosecuting and controlling separate actions;

(c) There are no known individual class members who are interested in individually controlling the prosecution of separate actions;

(d) The interests of justice will be well-served by resolving the common disputes of potential class members in one forum;

(e) Individual suits would not be cost-effective or economically maintainable as individual actions; and

(f) The action is manageable as a class action.

83. Plaintiff does not anticipate and is unaware of any difficulties that would be encountered in the management of this class action.

H. Requirements of Fed. R. Civ. P. 23(b)(1) & (2)

84. Prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party or parties opposing the class.

85. Defendants have acted or failed to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I

UNJUST ENRICHMENT
(Nationwide Class)

86. Plaintiff re-alleges and incorporates paragraphs 1-85 above as if fully set forth herein and further alleges as follows.

87. Defendants acted to mislead consumers into believing that the Up & Up Supplements actually contained the specified herbal ingredients by labeling the products sold to consumers in that manner.

88. Defendants received from Plaintiff and the class members benefits in the form of profits related to the misrepresentation that the Up & Up Supplements actually contained the specified herbs.

89. Defendants received payments from Plaintiff and all class members for what they believed to be particular herbs. In fact, however, the Up & Up Supplements did not contain any of the specified herbs but instead contained various inexpensive fillers and contaminants.

90. Defendants had knowledge of these benefits and voluntarily accepted and retained the benefits conferred on them.

91. Defendants will be unjustly enriched if they are allowed to retain the aforementioned benefits, and each class member is entitled to recover the amount by which the Defendants were unjustly enriched at his or her expense.

WHEREFORE, Plaintiff, on behalf of himself and all similarly situated Class members, demands an award against Defendants in the amounts by which Defendants have been unjustly enriched at Plaintiff's and the class members' expense, and such other relief as this Court deems just and proper.

COUNT II

**VIOLATION OF THE FLORIDA DECEPTIVE
AND UNFAIR TRADE PRACTICES ACT**
(on behalf of the Florida subclass)

92. Plaintiff re-alleges and incorporates paragraphs 1-85 above as if fully set forth herein and further allege as follows.

93. FDUTPA, section 501.201, et seq., Florida Statutes, prohibits “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” § 501.204, Fla. Stat.

94. Plaintiff and the Florida Subclass are “consumers” as that term is defined in section 501.203(7), Florida Statutes.

95. Plaintiff and all Class members are “aggrieved” persons under § 501.211, Fla. Stat., and so have standing to pursue this claim.

96. Plaintiff has standing to pursue this claim as he has suffered injury in fact and has lost money or property as a result of Defendants’ actions as set forth above.

97. Defendants have engaged in, and continue to engage in, unconscionable acts or practices and used unfair or deceptive acts in conduct of their trade or commerce in the State of Florida.

98. Defendants’ business practices, as alleged herein, are “unfair” because they offend established public policy and are immoral, unethical, unscrupulous, and substantially injurious to their customers. Additionally, Defendants’ conduct is unfair because it violates the legislatively declared policies of FDUTPA. Defendants misled consumers into believing that its products contained the amount of herb identified on the label, when in fact they contained only inexpensive fillers, and Defendants concealed this fact from consumers.

99. Furthermore, Defendants' business practices, as alleged herein, are "deceptive" because they are likely to deceive consumers, including Plaintiff and the members of the Florida Subclass, into believing that they are purchasing the product indicated on the label.

100. The policies, acts, and practices alleged herein were intended to result and did result in payment to Defendants for a product they misrepresented to be a particular herb, which in turn was intended to generate unlawful or unfair compensation for Defendants.

101. Specifically, Defendants misled consumers into believing that the Up & Up Supplements contained specified herbs, when in fact, they contained only certain fillers and contaminants.

102. Plaintiffs and the Florida Subclass have sustained actual damages as a direct and proximate result of Defendants' unfair and unconscionable practices in that they spent money on the Up & Up Supplements, misbranded and worthless products, that they would not have otherwise purchased and did not receive value for.

103. Section 501.211(2), Florida Statutes, provides Plaintiff and the Florida Subclass a private right of action against Defendants to recover their actual damages, plus attorneys' fees and costs.

104. Plaintiff and the Florida Subclass have suffered and will continue to suffer irreparable harm if Defendants continue to engage in such deceptive, unfair, and unreasonable practices.

WHEREFORE, Plaintiff, on behalf of himself and the Florida Subclass, demands judgment against Defendants for damages, pre- and post-judgment interest, attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all similarly situated individuals, demands judgment against Defendants as follows:

(1) Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs and their counsel to be representatives of the Class and the Florida Subclass;

(2) Enjoining Defendants from continuing the acts and practices described above;

(3) Awarding damages sustained by Plaintiff and the classes as a result of Defendants' conduct, together with pre-judgment interest;

(4) Finding that Defendants have been unjustly enriched and requiring Defendants to refund all unjust benefits to Plaintiff and the nationwide class, together with pre-judgment interest;

(5) Awarding Plaintiff and the Class costs and disbursements and reasonable allowances for the fees of Plaintiff's and the Class's counsel and experts, and reimbursement of expenses;

(6) Awarding Plaintiff and the Florida Subclass actual damages, injunctive relief, declaratory relief, attorneys' fees and costs under FDUTPA;

(7) Awarding the nationwide class damages, injunctive relief, declaratory relief, attorneys' fees, and costs; and

(8) Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted this 9th day of March, 2015.

By: /s/ Adam M. Moskowitz

<p>Adam M. Moskowitz, Esq. amm@kttlaw.com Thomas A. Tucker Ronzetti, Esq. tr@kttlaw.com Robert J. Neary, Esq. rn@kttlaw.com Tal J. Lifshitz, Esq. tjl@kttlaw.com Monica McNulty, Esq. mmculty@kttlaw.com KOZYAK, TROPIN & THROCKMORTON LLP 2525 Ponce de Leon Blvd., 9th Floor Coral Gables, FL 33134 Telephone: (305) 372-1800 Facsimile: (305) 372-3508 <i>Counsel for Plaintiff</i></p>	<p>Jack Scarola, Esq. JSX@SearcyLaw.com SEARCY DENNEY SCAROLA BARNHART & SHIPLEY 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 Telephone: (561) 686-6300 Facsimile: (561) 383-9451 (fax) <i>Counsel for Plaintiff</i></p>
<p>Steven C. Marks, Esq. smarks@podhurst.com PODHURST ORSECK, P.A. 25 West Flagler Street Suite 800 Miami, FL 33130 Telephone: (305) 358-2800 <i>Counsel for Plaintiff</i></p>	<p>Lance A. Harke, Esq. lharke@harkeclasby.com Sarah Engel, Esq. sengel@harkeclasby.com Howard M. Bushman, Esq. hbushman@harkeclasby.com HARKE CLASBY & BUSHMAN LLP 9699 NE Second Avenue Miami Shores, Florida 33138 Telephone: (305) 536-8220 Facsimile: (305) 536-8229 <i>Counsel for Plaintiff</i></p>
<p>Patrick Spellacy, Esq. Spellacy@kirwanspellacy.com KIRWAN, SPELLACY & DANNER, P.A. 200 South Andrews Avenue, 8th Floor Fort Lauderdale, FL 33301 Telephone: (954) 463-3008 Facsimile: (954) 463-3010 <i>Counsel for Plaintiff</i></p>	

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

JEFFREY GREENFIELD, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kozyak Tropin & Throckmorton, 2525 Ponce de Leon Blvd,
9th Floor, Miami, Florida 33134; 305-372-1800

DEFENDANTS

TARGET CORPORATION and NBTY, INC.

County of Residence of First Listed Defendant Hennepin County
(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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

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

Brief description of cause:

Florida Deceptive and Unfair Trade Practices Act; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

0:15-cv-60354 (S.D. Fla.)
(See instructions):

JUDGE James I. Cohn

DOCKET NUMBER MDL 2622

DATE

March 9, 2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

' I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

' I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

' I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

' I returned the summons unexecuted because _____; or

' Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: