

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAGODA JEDRYCHOWSKI, individually  
and on behalf of all others similarly situated

Plaintiff,

v.

GNC HOLDINGS, INC.; TARGET  
CORPORATION; WALGREEN CO.; and  
WAL-MART STORES, INC.

Defendants.

Hon.:  
Case No.:

Jury Trial Demanded

**CLASS ACTION COMPLAINT**

Plaintiff Jagoda Jedrychowski (“Plaintiff”), individually and on behalf of a proposed class (the “Class”) of all those similarly situated, upon personal knowledge as to facts pertaining to Plaintiff and upon information and belief as to all other matters, based on the investigation of her counsel, brings this action against Defendants GNC Holdings, Inc., Target Corporation, Walgreen Co., and Wal-Mart Stores, Inc. (collectively, “Defendants”), stating as follows:

**I. INTRODUCTION**

1. When a retailer represents to the public that its nutritional supplements contain certain ingredients, the retailer’s supplements should in fact contain those ingredients. This case arises from the Defendants’ repeated and systematic false representations to the consuming public that their store brand herbal supplements contained certain primary ingredients. Not only did the Defendants’ herbal supplements fail to contain the ingredients they were represented to contain, they in fact contained a variety of other materials that were not disclosed by the Defendants, thus, putting the health of their customers at risk.

2. Herbal supplements are dietary supplements that are believed to possess certain therapeutic or other health benefits. Such supplements are derived from plants, flowers, roots and the like, and come in many different dosages and forms, such as capsules or liquid. The Defendants manufacture and sell a variety of Herbal Supplements under their own private labels.<sup>1</sup>

3. On February 2, 2015, the New York Attorney General (“NYAG”) sent Cease and Desist Letters to the CEOs of the Defendants, demanding that they stop selling certain store brand Herbal Supplements that fail to contain advertised ingredients or that contain other substances not disclosed on the packaging.

4. In particular, the NYAG stated that it had obtained random samples of store brand Herbal Supplements from several different locations of each Defendant. The NYAG then conducted specific genetic testing on each of the samples, finding that the overwhelming majority of Herbal Supplements tested failed to contain any of the primary ingredients they were represented to contain, and in many cases, contained ingredients that do not match what is on the label.

5. On behalf of herself and the Class, Plaintiff seeks relief from the Defendants for injuries caused by their common practice between February 2, 2009 and the present (the “Class Period”), including: (a) an order certifying this case as a class action and ordering Plaintiff and her counsel to represent the Class; (b) restitution; (c) compensatory damages; (d) punitive, statutory, and/or treble damages; (e) attorneys’ fees; (f) costs of this suit; (g) pre- and post-

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<sup>1</sup> For purposes of this complaint, the term “Herbal Supplements” shall include the following Defendants’ store brand supplements: Aloe Vera, Bilberry, Black Cohosh, Cat’s Claw, Chasteberry, Cranberry, Dandelion, Echinacea, Ephera, Evening Primrose Oil, Feverfew, Flaxseed/Flaxseed Oil, Garlic, Ginger, Ginkgo (Ginkgo Biloba), Ginseng, Goldenseal, Green Tea, Hawthorn, Horse Chestnut, Kava, Licorice Root, Milk Thistle, Mistletoe, Red Clover, Saw Palmetto, St. John’s Word, and Valerian. *See* <http://www.nutrition.gov/dietary-supplements/herbal-supplements>.

judgment interest; and (h) such other and further relief as this Court may deem necessary or proper.

## **II. PARTIES**

6. Plaintiff Jagoda Jedrychowski is an individual residing in Chicago, Illinois. Plaintiff purchased Herbal Supplements from the Defendants during the Class Period. Plaintiff incurred losses and/or damages as a result of the activities alleged herein and suffered injury-in-fact for which she is entitled to seek monetary damages.

7. Defendant GNC Holdings, Inc. (“GNC”) is a Delaware Corporation with its principal place of business at 300 Sixth Avenue, Pittsburgh, Pennsylvania. GNC manufactures and sells its own line of Herbal Supplements under a single brand name of “Herbal Plus.” GNC’s Herbal Supplements are available in various dosages, and in different forms such as soft gelatin capsule form, liquid, or tea form. GNC has been and still is engaged in the business of manufacturing and selling Herbal Supplements in the United States.

8. Defendant Target Corporation (“Target”) is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, Minnesota. Target manufactures and sells its own line of Herbal Supplements under the brand name “up & up.” Target has been and still is engaged in the business of manufacturing and selling Herbal Supplements in the United States.

9. Defendant Walgreen Co. (“Walgreens”) is an Illinois corporation with its principal place of business at 108 Wilmott Road, Deerfield, Illinois. Walgreens manufactures and sells its own line of Herbal Supplements under the brand name “Finest Nutrition.” Walgreens has been and still is engaged in the business of manufacturing and selling Herbal Supplements in the United States.

10. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is a Delaware corporation with its principal place of business at 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas. Defendant Wal-Mart manufactures and sells its own line of Herbal Supplements under the brand name “Spring Valley.” Wal-Mart has been and still is engaged in the business of manufacturing and selling Herbal Supplements in the United States.

### **III. JURISDICTION AND VENUE**

11. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(d) because this is a class action in which the aggregate amount in controversy exceeds \$5,000,000 and at least one member of the putative Class is a citizen of a state different from that of the one of the Defendants.

12. This Court has personal jurisdiction over the Defendants because they are authorized to do business and in fact do business in this District and have sufficient minimum contacts with this District, and/or each Defendant otherwise intentionally avails itself of the markets in this state through the promotion, marketing and sale of its Herbal Supplements in this District, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

13. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Illinois because one of the Defendants, Walgreens is located in this District, and a substantial part of the events underlying Plaintiff’s claims occurred in this District.

### **IV. HERBAL SUPPLEMENTS**

#### **A. Background on Herbal Supplements**

14. Herbal Supplements, also known as “botanicals,” are one of the most commonly consumed nutritional supplements in the United States. Herbal Supplements are a type of dietary

supplement that contains herbs or part of a plant used for its flavor, scent, or potential therapeutic properties or other health benefits. Herbal Supplements may include flowers, leaves, bark, fruit, seeds, stems, and roots, either on their own, or in mixtures. Primitive and ancient civilizations relied on herbs for healing, as do many contemporary cultures throughout the world. In fact, the World Health Organization has estimated that 80% of the world's population continues to use traditional therapies, a major part of which are derived from plants.<sup>2</sup>

15. As of 2013, it is estimated that approximately 36 million adults in the United States consume Herbal Supplements.<sup>3</sup> This figure represents an increase in consumption of over 33% since 2011.<sup>4</sup> Herbal Supplement sales in the United States in 2013 were estimated to be \$6 billion.<sup>5</sup> It is also estimated that the global Herbal Supplements market is a \$100 billion annual market.<sup>6</sup>

16. There are at least fifty different types of Herbal Supplements manufactured and sold in the United States.

17. Herbal Supplements are not regulated by the United States Food and Drug Administration ("FDA"). Pursuant to the Dietary Supplement Health and Education Act of 1994, Herbal Supplements are considered "dietary supplements" and therefore fall outside the purview of the FDA.

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<sup>2</sup> <http://www.helpguide.org/articles/healthy-eating/dietary-supplements.htm>

<sup>3</sup> <http://www.nutraingredients-usa.com/Markets/Future-looks-increasingly-bright-for-herbal-supplementsmarket-researcher-says>

<sup>4</sup> *Id.*

<sup>5</sup> [http://cms.herbalgram.org/press/2014/2013\\_Herb\\_Market\\_Report.html?ts=1423064157&signature=c178d1d1f807b7078647474baea0e9c9](http://cms.herbalgram.org/press/2014/2013_Herb_Market_Report.html?ts=1423064157&signature=c178d1d1f807b7078647474baea0e9c9)

<sup>6</sup> <http://www.nutraingredients-usa.com/Markets/Herbal-supplement-sales-to-hit-93.15-billion-by-2015-Report>.

## **B. The New York Attorney General's Investigation of Defendants**

18. As a result of its ongoing investigation into the Herbal Supplements industry, on February 2, 2015, the NYAG sent cease and desist letters to the Defendants, demanding that they remove certain of their store brand Herbal Supplements from their shelves and otherwise cease selling such products.

### **1) Cease and Desist Letter to GNC**

19. In the February 2 letter to GNC's CEO, Michael Archbold, the NYAG stated that it had purchased six Herbal Plus Herbal Supplements from four different New York state GNC locations. The Herbal Supplements purchased were ginkgo biloba, St. John's wort, ginseng, garlic, echinacea, and saw palmetto. The NYAG then conducted genetic testing on each bottle, yielding 120 results.

20. In testing the samples, the NYAG used "DNA barcoding technology." DNA barcoding technology is a highly reliable means of testing the genetic composition of herbal supplements. Barcoding uses state-of-the-art biotechnology to help identify plant material based on short, standardized gene sequences.<sup>7</sup>

21. The results of the genetic testing showed that 45% of the samples contained no plant DNA whatsoever. Further, 33% of the samples contained botanical material other than what appeared on the label. And finally, a mere 22% of the sample set yielded DNA that matched the contents of the product label.

22. For example, with respect to the Herbal Plus Ginkgo Biloba tested by the NYAG, none of the samples contained any ginkgo whatsoever, and many of the samples tested showed no presence of any plant material at all. Several of the tests revealed the presence of rice, spruce,

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<sup>7</sup> <http://www.biomedcentral.com/1741-7015/11/222>

and asparagaceae, materials that are not related to ginkgo, The presence of these ingredients was not disclosed on the Herbal Plus Ginkgo Biloba packaging.

23. With respect to the Herbal Plus St. John's Wort, none of the samples tested contained any St. John's wort. A few of the samples contained other substances such as rice, allium and dracaena. The presence of these three ingredients was not disclosed on the Herbal Plus St. John's Wort packaging.

24. With respect to echinacea, none of the samples tested by the NYAG contained any echinacea. Some of the samples contained rice, pinus, or ranunculaceae. The presence of these ingredients was not disclosed on the Herbal Plus Echinacea packaging.

25. Even in cases where the genetic tests on one of the Herbal Plus Herbal Supplements revealed the presence of the correct ingredient, many of the tests revealed the complete absence of the ingredient on the same product, thus, leaving a consumer completely unsure whether they purchased one of the bottle's that contained the proper ingredients.

## **2) Cease and Desist Letter to Target**

26. In a February 2, 2015 letter to Target's CEO, Brian Cornell, the NYAG stated that it purchased six "up & up" Herbal Supplements from three different New York state Target locations. The Herbal Supplements purchased were ginkgo biloba, St. John's wort, valerian root, garlic, echinacea, and saw palmetto. The NYAG then conducted genetic testing on each bottle, which yielded 90 results.

27. The results of the genetic testing showed that 38% of the samples contained no plant DNA whatsoever. Further, 21% of the samples contained botanical material other than what appeared on the label. And finally, a mere 41% of the sample set yielded DNA that matched the contents of the product label.

28. For example, with respect to the up & up Ginkgo Biloba, none of the sample tested contained any ginkgo. A few of the samples contained other substances such as rice, allium, and mung bean. The presence of these three ingredients was not disclosed on the up & up Ginkgo Biloba packaging.

29. With respect to the up & up St. John's Wort tested by the NYAG, none of the samples contained any St. John's wort whatsoever, and many of the samples tested showed no presence of any plant material at all. Several of the tests revealed the presence of rice, allium, and dracaena, all of which are unrelated to St. John's wort. The presence of these ingredients was not disclosed on the up & up St. John's wort packaging.

30. With respect to the up & up Valerian Root tested by the NYAG, none of the samples contained any valerian root whatsoever, and many of the samples tested showed no presence of any plant material at all. Several of the tests revealed the presence of allium, phaseolus/beans, rice, asparagaceae, peas, wild carrot, saw palmetto, and phaseolus fabaceae, all of which are unrelated to Valerian Root. The presence of these ingredients was not disclosed on the up & up Valerian Root packaging.

31. Even in cases where the genetic tests on one of the up & up Herbal Supplements revealed the presence of the correct ingredient, many of the tests revealed the complete absence of the ingredient on the same product, thus, leaving a consumer completely unsure whether they purchased one of the bottle's that contained the proper ingredients.

### **3) Cease and Desist Letter to Walgreens**

32. In a February 2, 2015 letter to Walgreens' President, Alexander Gourlay, the NYAG stated that it purchased six Walgreens brand "Finest Nutrition" Herbal Supplements from three different New York state Walgreens locations. The Walgreens Herbal Supplements



purchased were ginkgo biloba, St. John's wort, ginseng, garlic, echinacea, and Saw Palmetto. The NYAG then conducted genetic testing on each bottle, which yielded 90 results.

33. The results of the genetic testing showed that 37% of the samples contained no plant DNA whatsoever. Further, 45% of the samples contained botanical material other than what appeared on the label. And finally, a mere 18% of the sample set yielded DNA that actually matched the contents of the product label.

34. For example, with respect to the Finest Nutrition Ginkgo Biloba, none of the samples tested contained any ginkgo. The only botanical material that was found in the ginkgo samples was rice. The presence of the rice was not disclosed on the Finest Nutrition packaging.

35. With respect to the Finest Nutrition St. John's Wort tested by the NYAG, none of the samples contained any St. John's wort whatsoever, and many of the samples tested showed no presence of any plant material at all. Several of the tests revealed the presence of rice, allium, and dracaena, all of which are unrelated to St. John's wort. The presence of these ingredients was not disclosed on the Finest Nutrition St. John's Wort Packaging.

36. With respect to the Finest Nutrition Echinacea tested by the NYAG, none of the samples contained any echinacea whatsoever, and many of the samples tested showed no presence of any plant material at all. Several of the tests revealed the presence of allium, oryza, and daisy, all of which are unrelated to echinacea. The presence of these ingredients was not disclosed on the Finest Nutrition Echinacea packaging.

37. Even in the cases where none of the genetic tests on one of the Finest Nutrition Herbal Supplements revealed the presence of the correct ingredient, many of the tests revealed the complete absence of the ingredient on the same product, thus, leaving a consumer completely unsure whether they purchased one the bottle's that contained the proper ingredients.

**4) Cease and Desist Letter to Wal-Mart**

38. In a February 2, 2015 letter to Wal-Mart's President and CEO, Doug McMillon, the NYAG stated that it purchased six Wal-Mart brand "Spring Valley" Herbal Supplements from three different New York state Wal-Mart locations. The Spring Valley Herbal Supplements purchased were Ginkgo Biloba, St. John's Wort, Ginseng, Garlic, Echinacea, and Saw Palmetto. The NYAG then conducted genetic testing on each bottle, which yielded 90 results.

39. The results of the genetic testing showed that 56% of the samples contained no plant DNA whatsoever. Further, 40% of the samples contained botanical material other than what appeared on the label. And finally, a mere 4% of the sample set yielded DNA that actually matched the contents of the product label.

40. For example, with respect to the Spring Valley Ginkgo Biloba, none of the samples tested contained any Ginkgo. Some samples revealed the presence of rice, dracaena, mustard, wheat, and radish. The presence of these ingredients was not disclosed on the Spring Valley packaging.

41. With respect to the Spring Valley St. John's Wort tested by the NYAG, none of the samples contained any St. John's Wort whatsoever, and many of the samples showed no presence of any plant material at all. Several of the tests revealed the presence of rice, allium, and cassava, all of which are unrelated to St. John's Wort. The presence of these ingredients was not disclosed on the Spring Valley St. John's Wort packaging.

42. With respect to the Spring Valley Echinacea tested by the NYAG, none of the samples contained any Echinacea whatsoever, and none of the samples contained any botanical material of any kind.

43. Even in cases where the genetic tests on one of the Spring Valley Herbal Supplements revealed the presence of the correct ingredient, many of the tests revealed the complete absence of the ingredient on the same product, thus, leaving a consumer completely unsure whether they purchased one of the bottle's that contained the proper ingredients.

**V. CLASS ACTION ALLEGATIONS**

44. Plaintiff brings this action pursuant to Rule 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and the members of the following Class:

All persons and entities that purchased GNC "Herbal Plus," Target "up & up," Walgreens "Finest Nutrition," and Wal-Mart "Spring Valley" brand herbal nutritional supplements during the period February 2, 2009 through the present.

45. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest in a Defendant, and Defendants' legal representatives, predecessors, successors, assigns, and employees, as well as governmental entities.

46. The definition of the Class is unambiguous. Plaintiff is a member of the Class she seeks to represent members of the Class can be identified using Defendants' records and other information that is kept by Defendants in the usual course of business and/or in the control of Defendants. Records kept by the Defendants identify the members of the Class who purchased the Herbal Supplements. The members of the Class can be notified of the Class Action through publication and direct mailings to address lists maintained in the usual course of business by Defendants.

47. Pursuant to Rule 23(a)(1), members of the Class are so numerous that their individual joinder is impracticable. The precise number of members of the Class is unknown to Plaintiff, but that number greatly exceeds the number to make joinder possible.

48. Pursuant to Rule 23(a)(2) and (b)(3), questions of fact and law, except as to the amount of damages each member of the Class sustained, are common to the Class. Common questions of law and fact predominate over the questions affecting only individual members of the Class. Some of the common legal and factual questions include:

- a. Whether Defendants manufactured and/or sold the Herbal Supplements which failed to contain the ingredients advertised;
- b. Whether Defendants manufactured and/or sold the Herbal Supplements which contained ingredients not disclosed on the packaging;
- c. Whether Defendants' conduct violated the consumer fraud laws of various states;
- d. Whether Defendants were unjustly enriched by selling the Herbal Supplements that failed to contain the primary ingredients as advertised;
- e. Whether Defendants defrauded Plaintiff and members of the Class; and
- f. The nature and extent of damages and other remedies to which the conduct of Defendants entitles Plaintiff and the members of the Class.

49. Each Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff and the members of the Class. Individual questions, if any, pale by comparison to the numerous common questions that dominate.

50. The injuries sustained by the members of the Class flow, in each instance, from a common nucleus of operative facts, each Defendants' misconduct. Each member of the Class purchased an Herbal Supplement that failed to contain the primary ingredient listed on the label.

51. Pursuant to Rule 23(a)(3), Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff, like other members of the Class, purchased an Herbal Supplement that failed to contain the primary ingredients that such supplements were supposed to contain. Plaintiff was subject to, and was financially harmed by, a common policy and practice applied by each Defendant to all members of the Class.

52. Pursuant to Rule 23(a)(4) and (g)(1), Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is familiar with the basic facts that form the bases of the members of the Class' claims. Plaintiff's interests do not conflict with the interests of the other members of the Class that she seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation and intends to prosecute this action vigorously.

53. Pursuant to Rules 23(b)(3), a class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members of the Class is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action would achieve substantial economies of time, effort, and expense, and would assure uniformity of decision as to person similarly situated without sacrificing procedural fairness.

54. Individual litigation of the legal and factual issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single uniform adjudication, economies of scale, and comprehensive supervision by a single court.

## **VI. TOLLING OF STATUTE OF LIMITATIONS**

55. Any applicable statute of limitations has been tolled by the Defendants' knowing and active concealment of their deceptive practices. Plaintiff and members of the Class could not have reasonably discovered the true extent of the Defendants' deception with regard to their Herbal Supplements, until the NYAG disclosed the results of its studies on the Defendants' Herbal Supplements.

56. As a result of the active concealment by the Defendants, any all applicable statutes of limitations otherwise applicable to the allegations herein have tolled.

**COUNT 1**  
**VIOLATIONS OF THE ALASKA UNFAIR TRADE PRACTICES**  
**AND CONSUMER PROTECTION ACT**  
**(Alaska Stat. § 45.50.471, et seq.)**

57. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

58. Alaska's Unfair Trade Practices And Consumer Protection Act ("AUTPCPA") declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(8) advertising goods or services with intent not to sell them as advertised"; "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged"; and "(14) representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve, or which are prohibited by law." ALASKA STAT. § 45.50.471.

59. In the course of the Defendants' business, each Defendant willfully failed to disclose and actively concealed that their Herbal Supplements failed to contain the primary ingredient they represented were contained in their Herbal Supplements and/or contained ingredients that were not disclosed on the packaging of the Herbal Supplement. Accordingly, the Defendants engaged in unlawful trade practices, including misrepresenting the ingredients contained in the Herbal Supplements; and omitting material facts in describing their Herbal Supplements.

60. Defendants' misrepresentations and omissions described herein have the capacity or tendency to deceive. As a result of these unlawful trade practices, Plaintiff and members of the Class have suffered ascertainable loss.

61. Plaintiff and the Class suffered ascertainable loss caused by the Defendants' failure to disclose material information. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

62. Plaintiff is entitled to recover the greater of three times the actual damages or \$500, pursuant to ALASKA STAT. § 45.50.531(a). Attorneys' fees may also be awarded to the prevailing party pursuant to ALASKA STAT. § 45.50.531(g).

**COUNT 2**  
**VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**  
**(Arizona Rev. Statute § 44-1521, *et seq.*)**

63. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

64. Plaintiff, members of the Class, and Defendants are each "persons" as defined by ARIZ. REV. STAT. § 44-1521(6). The Herbal Supplements sold to Plaintiff and the Class are "merchandise" as defined by ARIZ. REV. STAT. § 44-1521(5).

65. The Arizona Consumer Fraud Act ("ACFA") proscribes "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false

promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby.” ARIZ. REV. STAT. § 44-1522(A).

66. In, the course of the Defendants’ business, each Defendant willfully failed to disclose and actively concealed that their Herbal Supplements failed to contain the primary ingredient they represented were contained in their Herbal Supplements and/or contained ingredients that were not disclosed on the packaging of the Herbal Supplement. Accordingly, the Defendants engaged in unlawful trade practices, including misrepresenting the ingredients contained in the Herbal Supplements; and omitting material facts in describing their Herbal Supplements. By concealing and omitting material information from Plaintiff and the Class and by making affirmative misrepresentations as described above, the Defendants engaged in deceptive business practices prohibited by the ACFA, ARIZ. REV. STAT. § 44-1522(A). The Defendants’ material omissions and misrepresentations were made with the intent that Plaintiff and the Class would rely upon them, and Plaintiff and the Class did in fact rely upon those material omissions and misstatements.

67. The Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and members of the Class. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients



they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

68. Plaintiff and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the ACFA.

69. Plaintiff also seeks court costs and attorneys' fees as a result of Defendants' violation of the ACFA as provided in ARIZ. REV. STAT. § 12-341.01.

**COUNT 3**  
**VIOLATIONS OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT**  
**(ARK. CODE ANN. § 4-88-101 *et seq.*)**

70. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

71. Plaintiff, members of the Class, and Defendants are each "persons" as defined by ARK. CODE ANN. § 4-88-102(5). The Herbal Supplements the Defendants sold to Plaintiff and the Class are "Goods" as defined by ARK. CODE ANN. § 4-88-102(4).

72. The Arkansas Deceptive Trade Practices Act proscribes ("ADTPA") "[d]eceptive and unconscionable trade practices," and "[t]he act, use or employment by any person of any deception, fraud or false pretense" or the "concealment, suppression or omission of any material fact with intent that others rely upon the concealment, suppression or omission" when done "in connection with the sale or advertisement of any goods ...." ARK. CODE ANN. §§ 4-88-107, 108.

73. In the course of the Defendants' business, each Defendant willfully failed to disclose and actively concealed that their Herbal Supplements failed to contain the primary ingredient they represented were contained in their Herbal Supplements and/or contained ingredients that were not disclosed on the packaging of the Herbal Supplement. Accordingly, the

Defendants engaged in unlawful trade practices, including misrepresenting the ingredients contained in the Herbal Supplements; and omitting material facts in describing their Herbal Supplements. By concealing and omitting material information from Plaintiff and the Class and by making affirmative misrepresentations as described above, the Defendants engaged in deceptive business practices prohibited by the ADTPA, ARK. CODE ANN. § 4-88-101, *et seq.* The Defendants' material omissions and misrepresentations were made with the intent that Plaintiff and the Class would rely upon them, and Plaintiff and the Class did in fact rely upon those material omissions and misstatements.

74. The Defendants unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

75. Plaintiff and the Class sustained actual damages or injury as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the ADTPA.

76. Plaintiff also seeks court costs and attorneys' fees as a result of the Defendants' violation of the ADTPA as provided in ARK. CODE ANN. § 4-88-113(f).

**COUNT 4**  
**VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**  
**(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

77. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

78. The California Unfair Competition Law (“CUCL”) prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.” CAL BUS. & PROF. CODE § 17200.

79. The Defendants have engaged in unfair competition and unfair, unlawful or fraudulent business practices by their conduct, statements, and omissions described above.

80. The acts engaged in by the Defendants are fraudulent and show a pattern of untruthful statements, false representations, concealment, intent to mislead, and a conspiracy to defraud that were all part of a scheme to mislead.

81. These acts and practices have deceived Plaintiff and are likely to deceive the public. The Defendants’ violations of the CUCL caused injuries to Plaintiff and members of the Class.

82. The injuries suffered by Plaintiff and members of the Class are greatly outweighed by any potential countervailing benefit to consumers or to competition. Nor are there injuries that Plaintiff and members of the Class should have or could have reasonably avoided.

83. The Defendants’ representations and acts as set out above induced Plaintiff and members of the Class to purchase the Herbal Supplements. Plaintiff reserves the right to identify additional violations by the Defendants as may be established through discovery.

84. As a direct and legal result of their unlawful, unfair, and fraudulent conduct described above, the Defendants have been unjustly enriched. Specifically, the Defendants have

been unjustly enriched by the receipt of large sums of ill-gotten gains from the deceptive and excessive monthly charges they have levied on customers.

85. Pursuant to California Business and Professions Code section 17203, Plaintiff seeks an order of this Court:

a. Compelling the Defendants to make restitution to the general public for all funds unlawfully, unfairly, or fraudulently obtained by the Defendants as a result of their violations of California Business and Professions Code section 17200 *et seq.*; and

b. Declaring that the Defendants have violated the provisions of California Business & Professions Code section 17200, and California Business and Professions Code section 17500, and any other statutory violations.

86. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks to recover attorney fees under (i) section 1021.5 of the Code of Civil Procedure and/or (ii) the “common fund” doctrine available to a prevailing plaintiff who wins restitutionary relief for the general public.

**COUNT 5**  
**VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
**(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)**

87. Plaintiff realleges and incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

88. California Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever,

including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

89. The Defendants caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to the Defendants, to be untrue and misleading to Plaintiff and the other members of the Class.

90. The Defendants have violated § 17500 because of their misrepresentations and omissions regarding the contents of the Herbal Supplements were material and likely to deceive a reasonable consumer.

91. Plaintiff and the other members of the Class have suffered an injury in fact, including the loss of money or property, as a result of the Defendants unfair, unlawful, and/or deceptive practices. In choosing to purchase the Herbal Supplements, Plaintiff and the other members of the Class relied on the misrepresentations and/or omissions of the Defendants with respect to the content of the Herbal Supplements. Had Plaintiff and the other members of the Class known the true facts, they would not have purchased the Herbal Supplements from the Defendants. Accordingly, Plaintiff and the other members of the Class overpaid and did not receive the benefit of their bargain.

92. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants’ business. The Defendants’ wrongful conduct is part of a pattern or generalized course of conduct that was perpetuated and repeated, both in the State of California and nationwide.

**COUNT 6**  
**VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**  
**(COLO. REV. STAT. § 6-1-101, *et seq.*)**

93. Plaintiff realleges and incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

94. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes making "false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions." COLO. REV. STAT. § 6-1-105(1)(b), (e). The CCPA further prohibits "represent[ing] that goods ... are of a particular standard, quality, or grade ... if he knows or should know that they are of another," and "advertis[ing] goods ... with intent not to sell them as advertised," and failing "to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction." COLO. REV. STAT. § 6-1-105(1)(l),(u).

95. The Defendants are "persons" within the meaning of COLO. REV. STAT. § 6-1-102(6).

96. In the course of the Defendants' business, they made false and misleading statements concerning the content of the Herbal Supplements. The Defendants also willfully misrepresented, failed to disclose, and actively concealed material information concerning the content of the Herbal Supplements they sold, and otherwise engaged in conduct likely to deceive. Accordingly, the Defendants engaged in unlawful trade practices prohibited by the Colorado Consumer Protection Act.

97. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

98. The Defendants' conduct proximately caused injuries to Plaintiff and the other members of the Class. The Defendants' material misstatements and omissions were intended to, and had the capacity to deceive consumers, to attract consumer's to the Defendants' Herbal Supplements, and to induce a party to act or refrain from acting. Plaintiff and members of the Class were induced to act or refrain from acting by the Defendants' false and misleading statements and omissions. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

99. Plaintiff and the members of the Class were injured as a result of the Defendants' conduct in that Plaintiff and the Class overpaid for the Herbal Supplements and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

**COUNT 7**  
**VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT**  
**(Conn. Gen. Stat. Ann. § 42-110A, *et seq.*)**

100. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

101. Plaintiff, members of the Class, and Defendants are “persons” as defined by CONN. GEN. STAT. ANN. § 42-110a(3).

102. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. CONN. GEN. STAT. ANN. § 42-110b(a). The CUTPA further provides a private right of action under CONN. GEN. STAT. ANN. § 42-110g(a).

103. In the course of the Defendants’ business, each Defendant willfully failed to disclose and actively concealed that their Herbal Supplements failed to contain the primary ingredient they represented were contained in their Herbal Supplements and/or contained ingredients that were not disclosed on the packaging of the Herbal Supplement. Accordingly, the Defendants engaged in unlawful trade practices, including misrepresenting the ingredients contained in the Herbal Supplements; and omitting material facts in describing their Herbal Supplements. By concealing and omitting material information from Plaintiff and the Class and by making affirmative misrepresentations as described above, the Defendants engaged in deceptive business practices prohibited by the CUTPA. The Defendants’ material omissions and misrepresentations were made with the intent that Plaintiff and the Class would rely upon them, and Plaintiff and the Class did in fact rely upon those material omissions and misstatements.

104. The Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and members of the Class. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients



they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

105. Plaintiff and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

106. Plaintiff also seeks court costs and attorneys' fees as a result of the Defendants' violation of the CUTPA as provided in CONN. GEN. STAT. ANN. § 42-110g(d). A copy of this Complaint is being mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with CONN. GEN. STAT. ANN. § 42-110g(c).

**COUNT 8**  
**VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT**  
**(6 DEL. CODE § 2513, *et seq.*)**

107. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

108. The Delaware Consumer Fraud Act ("DCFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 DEL. CODE § 2513(a).

109. The Defendants are persons within the meaning of 6 DEL. CODE § 2511(7).

110. In the course of the Defendants' business, each Defendant willfully failed to disclose and actively concealed that the their Herbal Supplements failed to contain the primary ingredient they represented were contained in their Herbal Supplements and/or contained

ingredients that were not disclosed on the packaging of the Herbal Supplement. Accordingly, the Defendants engaged in unlawful trade practices, including misrepresenting the ingredients contained in the Herbal Supplements; and omitting material facts in describing their Herbal Supplements. By concealing and omitting material information from Plaintiff and the Class and by making affirmative misrepresentations as described above, the Defendants engaged in deceptive business practices prohibited by the DCFA.

111. The Defendants material omissions and misrepresentations were made with the intent that Plaintiff and the Class would rely upon them, and Plaintiff and the Class did in fact rely upon those material omissions and misstatements. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

112. The Defendants actions as set forth above occurred in the conduct of trade or commerce

113. The Defendants' conduct proximately caused injuries to Plaintiff and the Class.

114. Plaintiff is entitled to recover damages, as well as costs and reasonable attorney fees as provided by the DCFA.

**COUNT 9**  
**VIOLATIONS OF THE DELAWARE DECEPTIVE TRADE PRACTICES ACT**  
**(6 DEL. CODE § 2532, *et seq.*)**

115. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

116. Delaware's Deceptive Trade Practices Act ("DDTPA") prohibits a person from engaging in a "deceptive trade practice," which includes: "(9) Advertis[ing] goods or services with intent not to sell them as advertised;" "(11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions," or "(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."

117. The Defendants are persons within the meaning of 6 DEL. CODE § 2531(5).

118. The Defendants willfully failed to disclose and actively concealed material facts regarding the contents of their Herbal Supplements. Accordingly, the Defendants engaged in deceptive trade practices, including advertising their Herbal Supplements, with the intent not to sell them as advertised; omitting material facts in describing their Herbal Supplements, making false and misleading statements of fact regarding the contents of their Herbal Supplements, and otherwise engaging in conduct which created a likelihood of confusion or misunderstanding.

119. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

120. The Defendants' conduct proximately caused injuries to Plaintiff and the Class.

121. Plaintiff seeks injunctive relief and, if awarded damages under Delaware common law or DCFA, treble damages pursuant to 6 DEL. CODE § 2533(c).

**COUNT 10**  
**VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR**  
**TRADE PRACTICES ACT**  
**(FLA. STAT. § 501.201, et seq.)**

122. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

123. As amended by the Florida Legislature in 2001, a “person” who has suffered a loss as a result of a violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) has standing to sue under that statute. *See* FLA. STAT. § 501.211(2). This 2001 amendment replaced the word “consumer” with “person.” Plaintiff and members of the Class are “persons” within the meaning of the FDUTPA.

124. As set forth herein, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the FDUTPA.

125. The Defendants’ conduct caused Plaintiff and members of the Class to suffer actual damages.

**COUNT 11**  
**VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT**  
**(IDAHO CIV. CODE § 480, et seq.)**

126. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

127. Defendants, members of the Class, and Plaintiff are “persons” under IDAHO CIVIL CODE § 48-602(1).

128. Defendants engaged in unfair methods and practices in the conduct of their trade or commerce in violation of the Idaho Consumer Protection Act (“ICPA”), IDAHO CIV. CODE § 48-603, including “(9) Advertising goods or services with intent not to sell them as

advertised,” “(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions,” “(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer,” or “Engaging in any unconscionable method, act or practice in the conduct of trade or commerce.”

129. As set forth herein, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the ICPA. The Defendants willfully failed to disclose and actively concealed material facts regarding the contents of the Herbal Supplements they sold. Accordingly, the Defendants engaged in deceptive trade practices and otherwise engaged in conduct which created a likelihood of confusion or misunderstanding.

130. The Defendants’ misleading, false, or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and members of the Class. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer’s decision to purchase the Defendants’ Herbal Supplements.

131. As a result of their violations of the ICPA detailed above, the Defendants caused actual damage and ascertainable loss to Plaintiff members of the Class.

132. The Defendants’ deliberate, widespread and systematic fraud was so egregious and carried out with such willful and conscious disregard of the rights of their customers that their sales conduct would outrage or offend the public conscience, and is therefore an

unconscionable method, act or practice under the ICPA as provided in IDAHO CIVIL CODE § 48-603C.

133. Plaintiff seeks punitive damages against the Defendants because their violations were repeated and flagrant, conducted over the course of many years, with knowledge of the illegality of the conduct, and therefore warrants the imposition of punitive damages under IDAHO CIVIL CODE § 48-608(1).

134. Plaintiff further seeks an order enjoining the Defendants' unfair or deceptive acts or practices, punitive damages, costs of Court, attorney's fees under IDAHO CIVIL CODE § 48-608, and any other just and proper relief available under the ICPA.

**COUNT 12**  
**VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS**  
**PRACTICES ACT, 815 ILCS § 505/1, *et seq.*,**  
**AND ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT, 815 ILCS § 510/2**

135. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

136. The Defendants engaged in an unfair or deceptive act or practice by selling Herbal Supplements that failed to contain the ingredients they were represented to contain. The Defendants knew this practice was illegal, but nevertheless continued to sell the Herbal Supplements to the Plaintiff and members of the Class.

137. The Defendants further engaged in unfair or deceptive acts or practices by knowingly or willfully concealing, suppressing or omitting material facts from Plaintiff and members of the Class and by making affirmative misrepresentations in order to induce Plaintiff and members of the Class to purchase the Herbal Supplements. The Defendants' material misstatements and omissions were likely to and did in fact deceive reasonable customers,

including Plaintiff and members of the Class, about the content of the Herbal Supplements sold by the Defendants.

138. The Defendants' practice offended public policy, was immoral, unethical, oppressive, and unscrupulous, and caused substantial injury to consumers.

139. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

140. The Defendants intended that Plaintiff and members of the Class would rely on their misrepresentations as well as the material facts that they concealed, suppressed and omitted, as described above. Among other things, the Defendants intended that Plaintiff and members of the Class rely upon their representations that their Herbal Supplements contained the primary ingredient they were advertised to contain, when, in fact, they did not. Plaintiff and members of the Class relied upon Defendants' fraudulent and misleading statements, concealments, suppressions, and omissions, and as a result paid higher fees than they would have absent the Defendants' wrongful conduct.

141. The Defendants' conduct is a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2. As a violation of Section 2 of the Illinois Uniform Deceptive Trade Practices Act, the Defendants' conduct is a violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2.

142. The Defendants' unfair or deceptive act or practice occurred in the course of conduct involving trade or commerce, and was directed to the market in general. The complained-of conduct in this case implicates consumer protection concerns.

143. The Defendants' unfair or deceptive acts or practices proximately caused injury and ascertainable loss to Plaintiff and members of the Class.

144. Plaintiff and the Class are entitled to actual damages, punitive damages, and reasonable attorneys' fees and costs, as well as any other relief the Court deems proper.

**COUNT 13**  
**VIOLATIONS OF THE PRIVATE RIGHT OF ACTION FOR**  
**CONSUMER FRAUDS ACT**  
**(IOWA CODE §§ 714H.1, *et seq.*)**

145. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

146. Defendants are a "person" under Iowa Code § 714H.2(7).

147. Plaintiff and members of the Class are a "consumer," as defined by Iowa Code § 714H.2(3), who purchased Herbal Supplements from the Defendants.

148. Defendants participated in unfair or deceptive acts or practices that violated Iowa's Private Right of Action for Consumer Fraud Act ("ICFA"), Iowa Code § 714H.1, *et seq.*, as described herein. Defendants are directly liable for these violations of law.

149. In the course of the Defendants' business, each Defendant willfully failed to disclose and actively concealed that their Herbal Supplements failed to contain the primary ingredient they represented were contained in their Herbal Supplements and/or contained ingredients that were not disclosed on the packaging of the Herbal Supplement. Accordingly, the Defendants engaged in unlawful trade practices, including misrepresenting the ingredients contained in the Herbal Supplements; and omitting material facts in describing their Herbal



Supplements. By concealing and omitting material information from Plaintiff and the Class and by making affirmative misrepresentations as described above, the Defendants engaged in deceptive business practices prohibited by the ICFA.

150. As alleged above, Defendants made numerous material statements about the contents of their Herbal Supplements that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants' unlawful advertising and representations as a whole.

151. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and members of the Class, about the contents of their Herbal Supplements. A buyer such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

152. As a result of their violations of the ICFA detailed above, the Defendants caused actual damage to Plaintiff and members of the Class and, if not stopped, will continue to harm Plaintiff and the Class.

153. Plaintiff and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the Iowa Code. Because Defendants' conduct was committed willfully, Plaintiff and members of the Class seek treble damages as provided in Iowa Code § 714H.5(4).

154. Plaintiff also seek court costs and attorneys' fees as a result of Defendants' violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

**COUNT 14**  
**VIOLATIONS OF THE MASSACHUSETTS**  
**CONSUMER PROTECTION ACT**  
**(MASS. GEN. LAWS CH. 93A, *et seq.*)**

155. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

156. Plaintiff intends to assert a claim under the Massachusetts Consumer Protection Act ("MCPA"), which makes it unlawful to engage in any "[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce." MASS. GEN. LAWS CH. 93A, § 2(1). Plaintiff will make a demand in satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3), and may amend this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

**COUNT 15**  
**VIOLATIONS OF THE MINNESOTA PREVENTION OF**  
**CONSUMER FRAUD ACT**  
**(MINN. STAT. § 325F.68-70)**

157. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

158. Plaintiff, members of the Class, and the Defendants are each "persons" as defined by the Minnesota Prevention of Consumer Fraud Act ("MPCFA"), MINN. STAT. § 325F.68(2). The Herbal Supplements sold by Defendants to Plaintiff and the Class are "Merchandise" as defined by MINN. STAT. § 325F.68(2).

159. The MPCFA makes unlawful, “[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby.” MINN. STAT. § 325F.69(1). The MPCFA further provides that “any person injured by a violation of [the MPCFA] may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.” MINN. STAT. § 8.31(3a).

160. The Defendants willfully failed to disclose and actively concealed material facts regarding the contents of their Herbal Supplements. Accordingly, the Defendants engaged in unlawful trade practices, including advertising the contents of their Herbal Supplements, with the intent to sell them without the contents they represented their supplements contain. By concealing and omitting material information from Plaintiff and the Class and by making affirmative misrepresentations as described above, the Defendants engaged in deceptive business practices prohibited by the MPCFA. The Defendants’ material omissions and misrepresentations were made with the intent that Plaintiff and the Class would rely upon them, and Plaintiff and the Class did in fact rely upon those material omissions and misstatements.

161. The Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and members of the Class.

162. Plaintiff and the Class sustained damages as a result of the Defendants’ unlawful acts and are, therefore, entitled to damages and other relief as provided under the MPCFA.

**COUNT 16**  
**VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT**  
**(M.S. § 407.20 *et seq.*)**

163. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

164. The Defendants, by the actions complained of herein have violated the Missouri Merchandising Practices Act, § 407.020 R.S. Mo. *et seq.* (“MCPA”) entitling Plaintiff and the members of the Class to damages and relief under the MCPA. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer’s decision to purchase the Defendants’ Herbal Supplements.

165. The Defendants used deception, false pretense, misrepresentation, and omitted key facts to entice their Herbal Supplements customers to purchase their Herbal Supplements.

166. The Defendants’ conduct as set forth herein occurred in the course of trade or commerce as defined by the MCPA.

167. The Defendants’ conduct as set forth herein affects the public interest because it was part of a generalized course of conduct affecting numerous customers throughout the country.

168. Plaintiff and members of the Class inherently relied on the representations the Defendants made regarding the contents of their Herbal Supplements.

169. The Defendants’ conduct as set forth herein proximately caused injury in fact to the business or property of Plaintiff and members of the Class.

170. The Defendants are liable to Plaintiff and the members of the Class for damages in an amount to be determined at trial, including attorneys' fees, costs and statutory damages, and should be enjoined from continuing to engage in these unlawful, deceptive, unreasonable and unlawful practices as alleged herein.

**COUNT 17**  
**VIOLATIONS OF THE NEBRASKA CONSUMER PROTECTION ACT**  
**(NEB. REV. STAT. § 87-301, *et seq.*)**

171. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

172. The Nebraska Consumer Protection Act ("NCPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce."

173. "Trade or commerce" means "the sale of assets or services and any commerce directly or indirectly affecting the people of the State of Nebraska."

174. The Defendants engaged in unfair methods and practices in the conduct of their trade or commerce in violation of the NCPA, under which a person commits a violation when it "(9) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person," "(11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions," or "(15) Uses any scheme or device to defraud by means of: (i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises."

175. As set forth herein, the Defendants engaged in unlawful deceptive trade practices in the conduct of trade or commerce in violation of the NCPA. The Defendants willfully failed to disclose and actively concealed material facts regarding the contents of their Herbal Supplements.

176. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

177. The Defendants' actions impact the public interest because Plaintiff was deceived, misled, and injured in exactly the same way as thousands of other of the Defendants' Herbal Supplements customers, and because the cost of Herbal Supplements and the contents such supplements, impacts the cost of healthcare, and the public interest in maintaining affordable access to health services. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants' business.

178. Plaintiff and the Class were injured in their business or property as a result of Defendants' conduct.

179. The Defendants' conduct proximately caused the injuries to Plaintiff and the Class, who are entitled to recover actual damages, as well as enhanced damages pursuant to § 59-1609.

**COUNT 18**  
**VIOLATIONS OF THE NEW HAMPSHIRE CONSUMER PROTECTION ACT**  
**(N.H. REV. STAT. § 358-A:1, *et seq.*)**

180. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

181. The New Hampshire Consumer Protection Act ("NHCPA") prohibits "any unfair or deceptive act or practice in the conduct of any trade or commerce."

182. "Trade or commerce" includes "the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state."

183. The Defendants engaged in unfair methods and practices in the conduct of their trade or commerce in violation of the NHCPA, including the following prohibited conduct: “(IX) Advertising goods or services with intent not to sell them as advertised,” and “(XI) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.”

184. As set forth herein, the Defendants willfully failed to disclose and actively concealed material facts regarding the contents of their Herbal Supplements. Accordingly, the Defendants engaged in unlawful trade practices, including advertising the contents of their Herbal Supplements, with the intent to sell them without the contents they represented their supplements contain.

185. The Defendants’ actions as set forth above occurred in the conduct of trade or commerce, and were committed willfully or knowingly.

186. The Defendants’ conduct proximately caused damage to Plaintiff and the Class. Plaintiff and the Class seek the recovery of actual damages, costs and attorney’s fees pursuant to N.H. REV. STAT. § 358-A:10-a.

**COUNT 19**  
**VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT**  
**(N.J. STAT. ANN. § 56-8-19, *et seq.*)**

187. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

188. The New Jersey Consumer Fraud Act (“NJCFA”) makes unlawful “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or

omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby..." N.J. STAT. ANN. § 56:8-2.

189. The Defendants are persons within the meaning of the NJCFA. N.J. STAT. ANN. § 56:8-1(d).

190. In the course of the Defendants' business, they willfully failed to disclose and actively concealed material facts regarding the contents of their Herbal Supplements. Accordingly, the Defendants engaged in unlawful trade practices, including advertising the contents of their Herbal Supplements, with the intent to sell them without the contents they represented their supplements contain. The Defendants knew or should have known that their conduct violated the NJCFA.

191. The Defendants engaged in an unlawful practice under the NJCFA when they failed to disclose material information concerning the content of their Herbal Supplements. The Defendants deliberately withheld the information regarding the content of their Herbal Supplements to induce customers to purchase their Herbal Supplements. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

192. The Defendants' unlawful practices caused substantial injury to consumers.



193. Plaintiff and the Class suffered ascertainable loss of money or property caused by the Defendants' unlawful practices. Plaintiff and members of the Class overpaid for the Herbal Supplements they purchased and did not receive the benefit of their bargain.

194. Plaintiff and members of the Class entitled to recover legal and/or equitable relief, treble damages, and reasonable attorneys' fees pursuant to N.J. STAT. ANN. § 56:8-19.

195. Pursuant to N.J. STAT. ANN. § 56:8-20, Plaintiff will mail a copy of this First Amended Consolidated Complaint to New Jersey's Attorney General within ten (10) days of filing it with the Court.

**COUNT 20**  
**VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT**  
**(N.M. STAT. ANN. § 57-12-1, *et seq.*)**

196. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

197. The New Mexico Unfair Trade Practices Act, N.M. STAT. ANN. §§ 57-12-1, *et seq.* ("NMUTPA") makes unlawful any "[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce." N.M. STAT. ANN. § 57:12-3. Trade or commerce includes the "sale or distribution of any services." N.M. STAT. ANN. § 57-12-2(C).

198. The Defendants engaged in unfair methods and practices in the conduct of their trade or commerce in violation of the NMUTPA, including the following prohibited conduct: "(11) making false or misleading statements of fact concerning the price of goods or services ... or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction" and "(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to

state a material fact if doing so deceives or tends to deceive,” and “(15) stating that a transaction involves rights, remedies or obligations that it does not involve.”

199. The Defendants are persons within the meaning of the NMUTPA. N.M. STAT. ANN. § 57:12-2(A).

200. In the course of the Defendants’ business, they knowingly failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of their Herbal Supplements.

201. The Defendants took advantage of the lack of knowledge, ability, experience, and capacity of Plaintiff and the Class to a grossly unfair degree. The Defendants’ actions resulted in a gross disparity between the value received and the price paid by Plaintiff and the Class. The Defendants’ actions constitute unconscionable actions under § 57-12-2(E) of the NMUTPA.

202. Plaintiff and the Class lost money and sustained damages as a result of the Defendants’ unlawful acts and are, therefore, entitled to damages and other relief provided for under § 57-12-10 of the NMUTPA. Because the Defendants’ conduct was committed willfully, Plaintiff and the Class seek treble damages, along with court costs and attorneys’ fees.

**COUNT 21**  
**VIOLATIONS OF THE NEW YORK GENERAL BUSINESS LAW**  
**(N.Y. GEN. BUS. LAW § 349)**

203. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

204. The Defendants’ business acts and practices alleged herein constitute deceptive acts or practices under the New York General Business Law, Deceptive Acts and Practices, N.Y. GEN. BUS. LAW § 349 (“NYGBL”).

205. At all relevant times, Plaintiff and members of the Class were consumers of the Defendants' Herbal Supplements. The challenged behavior of the Defendants was consumer-oriented within the meaning of the NYGBL.

206. The practices of the Defendants, as alleged herein, violated the NYGBL for, *inter alia*, one or more of the following reasons:

a. The Defendants engaged in deceptive, unfair and unconscionable commercial practices which did, or tended to, mislead Plaintiff and members of the Class about facts that could not reasonably be known by them;

b. The Defendants caused Plaintiff and members of the Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through their conduct;

c. The Defendants failed to reveal material facts to Plaintiff and the members of the Class;

d. The Defendants made material representations and statements of fact to Plaintiff and the members of the Class; and

e. Under all of the circumstances, the Defendants conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

207. The Defendants' violations of the NYGBL caused injuries to Plaintiff and members of the Class.

**COUNT 22**  
**VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE**  
**TRADE PRACTICES ACT**  
**(N.C. GEN. STAT. § 75-1.1, *et seq.*)**

208. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

209. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. §§ 75-1.1, *et seq.* ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. GEN. STAT. § 75-16.

210. The Defendants' acts and practices complained of herein were performed in the course of their trade or business and thus occurred in or affected "commerce," which includes the Defendants' Herbal Supplements as defined in N.C. GEN. STAT. § 75-1.1(b).

211. In the course of the Defendants' business, it knowingly failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of their Herbal Supplements.

212. Plaintiff and members of the Class relied upon the Defendants' false and misleading representations and omissions in deciding whether to purchase the Defendants' Herbal Supplements. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this

information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

213. The Defendants' conduct proximately caused injuries to Plaintiff and the Class.

214. Plaintiff and the other members of the Class were injured as a result of the Defendants' conduct in that Plaintiff and the other members of the Class overpaid for the Herbal Supplements they purchased and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

215. Plaintiff, individually and on behalf of the other members of the Class, seek treble damages pursuant to N.C. GEN. STAT. § 75-16, and an award of attorneys' fees pursuant to N.C. GEN. STAT. § 75-16.1.

**COUNT 23**  
**VIOLATIONS OF THE NORTH DAKOTA CONSUMER FRAUD ACT**  
**(N.D. CENT. CODE § 51-15-01, *et seq.*)**

216. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

217. North Dakota's Consumer Fraud Act, N.D. CENT. CODE §§ 51-15-01, *et seq.* ("NDCFA"), prohibits a person from engaging in "any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." N.D. CENT. CODE § 51-15-02. The Defendants' Herbal Supplements constitutes "merchandise" as defined by the NDCFA. N.D. CENT. CODE § 51-15-02(3).

218. The NDCFA provides a private right of action against any person who has acquired money or property “by means of any practice declared to be unlawful” by the NDCFA. N.D. CENT. CODE § 51-15-09.

219. In the course of the Defendants’ business, they knowingly failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of their Herbal Supplements.

220. Plaintiff and members of the Class relied upon the Defendants’ false and misleading representations and omissions in deciding whether to purchase the Defendants’ Herbal Supplements. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer’s decision to purchase the Defendants’ Herbal Supplements.

221. The Defendants’ conduct proximately caused injuries to Plaintiff and the Class.

222. Plaintiff and the other members of the Class suffered a loss of money or property and were injured as a result of the Defendants’ conduct in that Plaintiff and the other members of the Class overpaid for the Herbal Supplements they purchased and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of the Defendants’ misrepresentations and omissions.

223. The Defendants knowingly committed the conduct described above, and thus, under N.D. CENT. CODE § 51-15-09, are liable to Plaintiff and the Class for treble damages, as well as attorneys' fees, costs, and disbursements.

**COUNT 24**  
**VIOLATIONS OF THE OKLAHOMA CONSUMER PROTECTION ACT**  
**(OKLA. STAT. TIT. 15 § 751, *et seq.*)**

224. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

225. Oklahoma's Consumer Protection Act ("OCA"), OKLA. STAT. TIT. 15 § 751, *et seq.*, makes it unlawful to commit unfair or deceptive trade practices. A deceptive trade practice "means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral." OKLA. STAT. TIT. 15 § 752(13). An unfair trade practice "means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." OKLA. STAT. TIT. 15 § 752(14).

226. In the course of the Defendants' business, they knowingly failed to disclose and actively concealed material facts and made false and misleading statements regarding the content of their Herbal Supplements.

227. The Defendants' misrepresentations could reasonably be expected to deceive or mislead a person to their detriment, and actually did deceive Plaintiff and members of the Class. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the

ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

228. The Defendants' conduct described above offends established public policy and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers and affect the public interest because Plaintiff and members of the Class were injured in the same way as thousands of others through the Defendants' generalized course of deception.

229. The Defendants' conduct proximately caused injuries to Plaintiff and the Class. Plaintiff and the other members of the Class suffered a loss of money or property and were injured as a result of the Defendants' conduct in that Plaintiff and the other members of the Class overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of the Defendants misrepresentations and omissions.

230. The Defendants are liable to Plaintiff and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

**COUNT 25**  
**VIOLATIONS OF THE OKLAHOMA CONSUMER DECEPTIVE**  
**TRADE PRACTICES ACT**  
**(OKLA. STAT. TIT. 78 § 51-55, et seq.)**

231. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

232. Oklahoma's Deceptive Trade Practices Act, OKLA. STAT. TIT. 78 § 51-55, *et seq.* ("ODTPA"), makes it unlawful to engage deceptive trade practices in the course of a business, vocation or occupation. A person commits a deceptive trade practice when, he "Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions." OKLA. STAT. TIT. 78 § 53.



233. In the course of the Defendants' business, they knowingly failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of their Herbal Supplements.

234. The Defendants' actions as set forth above occurred in the conduct of trade or commerce, and constitute deceptive trade practices under the ODTPA.

235. The Defendants' actions impact the public interest because Plaintiff was injured in exactly the same way as thousands of others purchasing the Defendants' Herbal Supplements as a result of the Defendants' generalized course of deception.

236. Plaintiff and the Class were injured as a result of the Defendants' conduct, and suffered actual monetary loss. Plaintiff overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain.

237. Plaintiff seeks an award of actual damages, attorney's fees and costs as permitted by the ODTPA.

**COUNT 26**  
**VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**  
**(S.C. CODE ANN. § 39-5-10, *et seq.*)**

238. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

239. The South Carolina Unfair Trade Practices Act ("SCUTP") prohibits "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. CODE ANN. § 39-5-20(a). The Defendants are persons within the meaning of S.C. CODE ANN. § 39-5-10(a).

240. Trade or commerce as defined by the SCUTP includes "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real,

personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” S.C. CODE ANN. § 39-5-10(b). The Defendants’ Herbal Supplements at issue in this case are an “article, commodity or thing of value” under the SCUTP and affect the people of South Carolina directly and indirectly.

241. In the course of the Defendants’ business, they knowingly and willfully failed to disclose and actively concealed material facts and made false and misleading statements regarding the content of the Herbal Supplements they sold.

242. The Defendants’ actions as set forth above occurred in the conduct of trade or commerce, and constitute deceptive trade practices under the SCUTP.

243. Plaintiff and the Class were injured as a result of the Defendants’ conduct, and suffered ascertainable monetary loss. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer’s decision to purchase the Defendants’ Herbal Supplements. Plaintiff and members of the class overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain.

244. Plaintiff seeks an award of actual damages, treble damages, attorney’s fees and costs and permitted by the SCUTP. S.C. CODE ANN. § 39-5-140.

**COUNT 27**  
**VIOLATIONS OF THE SOUTH DAKOTA DECEPTIVE TRADE PRACTICES AND**  
**CONSUMER PROTECTION ACT**  
**(S.D. CODE ANN. § 39-5-10, *et seq.*)**

245. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

246. The South Dakota Deceptive Trade Practices and Consumer Protection Act (“SDCPA”) makes it an unlawful, deceptive act or practice to “[k]nowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.” S.D. CODIFIED LAWS § 37-24-6.

247. The Defendants Herbal Supplements at issue in this case are “merchandise” under the SDCPA. S.D. CODIFIED LAWS § 37-24-1.

248. In the course of the Defendants’ business, they knowingly and intentionally failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of their Herbal Supplements.

249. The Defendants’ actions as set forth above occurred in the conduct of trade or commerce, and constitute deceptive trade practices under the SDCPA.

250. Plaintiff and the Class were injured as a result of the Defendants’ conduct, and suffered ascertainable monetary loss. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants’ Herbal Supplements failed to contain the ingredients they were supposed to contain and this

information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements. Plaintiff and members of the Class overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain.

251. The Plaintiff seeks an award of actual damages, attorney's fees and costs as permitted by the SDCPA. S.C. CODE ANN. § 39-5-140

**COUNT 28**  
**VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT**  
**(TENN. CODE ANN. § 47-18-101, *et seq.*)**

252. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

253. The Tennessee Consumer Protection Act ("TCPA") makes unlawful to commit unfair or deceptive acts or practices "affecting the conduct of any trade or conduct. TENN. CODE. ANN. § 47-18-104(b). Unfair or deceptive practices under the TCPA include "(9) Advertising goods or services with intent not to sell them as advertised," and "(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions." TENN. CODE ANN. § 47-18-104(b).

254. The Defendants' Herbal Supplements at issue in this case constitute "goods" under the TCPA. TENN. CODE ANN. § 47-18-103(18).

255. In the course of the Defendants' business, they knowingly, willfully and intentionally failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of their Herbal Supplements.

256. The Defendants' actions as set forth above occurred in the conduct of trade or commerce, and constitute unfair or deceptive trade practices under the TCPA.

257. Plaintiff and the Class were injured as a result of the Defendants' conduct, and suffered ascertainable monetary loss. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements. Plaintiff and members of the Class overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain.

258. Plaintiff seeks an award of actual damages, treble damages, attorney's fees and costs as permitted by the TCPA. TENN. CODE ANN. § 47-18-109

**COUNT 29**  
**VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**  
**(TEX. BUS. & COM. CODE § 17.41, *et seq.*)**

259. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

260. Plaintiff intends to assert a claim under the Texas Deceptive Trade Practices Act ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." TEX. BUS. & COM. CODE § 17.46. Plaintiff will make a demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the TDTPA.

**COUNT 30**  
**VIOLATIONS OF THE VERMONT CONSUMER FRAUD ACT**  
**(VT. STAT. ANN. § 2451, *et seq.*)**

261. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

262. The Vermont Consumer Fraud Act (“VCPA”) makes unlawful to commit “Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” VT. STAT. ANN. § 2453(a). The VCPA provides a private right of action for “[a]ny consumer who contracts for goods or services in reliance upon false or fraudulent representations or practices ... or who sustains damages or injury as a result of any false or fraudulent representations or practices” prohibited by the VCPA. VT. STAT. ANN. § 2461(b).

263. Plaintiff and members of the Class are considered a “consumer” as defined by VT. STAT. ANN. § 2451a(a). The Defendants’ Nutritional Supplements are “goods” under VT. STAT. ANN. § 2451a(b).

264. In the course of the Defendants’ business, they knowingly and intentionally failed to disclose and actively concealed material facts and made false and misleading statements regarding the content of the Herbal Supplements they sold.

265. The Defendants’ actions as set forth above occurred in the conduct of trade or commerce, and constitute unfair or deceptive trade practices under the VCPA.

266. Plaintiff and the Class relied upon and were deceived by the Defendants’ unfair and deceptive misrepresentations of material fact in deciding whether to purchase the Defendants’ Herbal Supplements. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the

Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

267. Plaintiff and the Class were injured as a result of the Defendants' conduct, and suffered ascertainable monetary loss. Plaintiff and members of the Class overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain.

268. Plaintiff seeks an award of actual damages, treble damages, attorney's fees and costs as permitted by the VCPA. VT. STAT. ANN. § 2461(b).

**COUNT 31**  
**VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**  
**(REV. CODE WASH. ANN. § 19.86.010, *et seq.*)**

269. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

270. The Washington Consumer Protection Act ("WCPA") makes unlawful to commit "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." REV. CODE WASH. ANN. § 19.86.020. The WCPA provides a private right of action for "[a]ny person who is injured in his or her business or property" by violations of the Act. REV. CODE WASH. ANN. 19.86.090.

271. In the course of the Defendants' business, they knowingly and intentionally failed to disclose and actively concealed material facts and made false and misleading statements regarding the contents of the Herbal Supplements they sold to Plaintiff and members of the Class.

272. The Defendants' actions as set forth above occurred in the conduct of trade or commerce, and constitute unfair or deceptive trade practices under the WCPA. The Defendants' actions impact the public interest because Plaintiff was injured in exactly the same way as thousands of others purchasing the Defendants' Herbal Supplements as a result of the Defendants' generalized course of deception. The Defendants' conduct has the capacity to, and has actually caused injury not only to Plaintiff, but to thousands of other the Defendants' Herbal Supplement customers in Washington and around the country.

273. Plaintiff and the Class relied upon and were deceived by the Defendants' unfair and deceptive misrepresentations of material fact in deciding to continue doing business with the Defendants. Buyers such as Plaintiff and members of the Class would have acted differently knowing that the Defendants were selling Herbal Supplements that did not contain the very ingredients they were represented to contain. Plaintiff and members of the Class would have wanted to know, as would any reasonable person, that the Defendants' Herbal Supplements failed to contain the ingredients they were supposed to contain and this information would have changed their and any reasonable customer's decision to purchase the Defendants' Herbal Supplements.

274. Plaintiff and the Class were injured as a result of the Defendants' conduct, and suffered ascertainable monetary loss. Plaintiff and members of the Class overpaid for the Herbal Supplements they purchased from Defendants and did not receive the benefit of their bargain.

275. Plaintiff seeks an award of actual damages, treble damages, attorney's fees and costs as permitted by the WCPA. REV. CODE WASH. ANN. § 19.86.090.

276. Pursuant to WASH. REV. CODE. ANN. § 19.86.095, Plaintiff will serve the Washington Attorney General with a copy of this complaint as Plaintiff seeks injunctive relief.



**COUNT 32**  
**UNJUST ENRICHMENT**

277. Plaintiff realleges and incorporates by reference the preceding allegations as if fully set forth above.

278. Defendants have unjustly retained a benefit to the detriment of Plaintiff and members of the Class. The Defendants sold Herbal Supplements to Plaintiff and the Class, that failed to contain the ingredients that the Defendants represented such supplements contain. In addition, the supplements purchased by Plaintiff and the Class contained numerous other ingredients that were not disclosed on the packaging of the supplements. The Defendants continue to possess money paid by Plaintiff and the Class to which they are not entitled.

279. The Defendants' retention of the benefit violates the fundamental principles of justice, equity and good conscience. The Defendants did not disclose to Plaintiff and the Class that many of the Herbal Supplements failed to contain the ingredients they represented such supplements contain, or, contained other materials not disclosed on the packaging of the Herbal Supplements.

280. As a direct and proximate result of the Defendants' misrepresentations and/or omissions with respect to the content of their Herbal Supplements, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against the Defendants including the following:

A. Declaring that this action may be maintained as a class action pursuant to Federal Rules of Civil Procedure, Rule 23, and for an order certifying this case as a class action and appointing Plaintiff as a Class representative;

- B. Declaring that the Defendants' practice of advertising and selling Herbal Supplements that fail to contain the ingredients advertised, was wrongful and unfair;
- C. Restitution of all purchases of Herbal Supplements by Plaintiff and the Class, in an amount to be determined at trial;
- D. Disgorgement of the ill-gotten gains derived by the Defendants from their misconduct;
- E. Actual damages in an amount according to proof;
- F. Punitive damages;
- G. Compensatory damages caused by the Defendants' unfair or deceptive practices; along with exemplary damages to Plaintiff and each member of the Class for each violation;
- H. A permanent injunction requiring the Defendants to cease selling Herbal Supplements that fail to contain the advertised ingredients;
- I. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- J. An order awarding Plaintiff and the Class their attorney's fees and costs, and expenses incurred in connection with this action; and
- K. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

April 2, 2015

Respectfully submitted

/s/ Douglas A. Millen

Douglas A. Millen

Robert J. Wozniak

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