

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY LINSALATA, DAVID FENSTERSTOCK and
JASON BIRNHAK, individually and on behalf of all others
similarly situated,

Plaintiffs,

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

Defendants.

**CLASS ACTION
COMPLAINT
AND JURY DEMAND**

Plaintiffs, by their attorneys, **DOUGLAS & LONDON, P.C. and EDELMAN, KRASIN & JAYE, PLLC**, upon information and belief, at all times hereinafter mentioned, alleges as follows:

NATURE OF THE CASE

1. This is a class action brought by Plaintiffs, ANTHONY LINSALATA, DAVID FENSTERSTOCK and JASON BIRNHAK, individually and on behalf of all other similarly situated individuals, who were damaged and/or injured as a result of the actions of Defendants, WALGREEN CO., GNC HOLDINGS, INC., TARGET CORPORATION, and WAL-MART STORES, INC. (“Defendants”), as set forth herein.

2. Defendants are entities that were and/or are responsible for, among other things, the design, research, manufacturing, testing, marketing, promotion, advertising, distribution and/or sale of store-brand herbal supplements. These store-brand herbal supplements are sold at their respective retail stores throughout the United States.

3. At all relevant times and during the Class Period, Defendants represented to the Plaintiffs, the proposed class and the public at large that their store-brand herbal supplements contained the herbs identified on their products' labels.

4. Defendants' representations were false, misleading, deceptive and/or otherwise unlawful because Defendants' store-brand herbal supplements did not contain the herbs identified on their products' labels.

5. At all relevant times and during the Class Period, Defendants represented to the Plaintiffs, the proposed class and the public at large that their herbal supplements contained only the ingredients identified on their products' labels.

6. Defendants' representations were false, misleading, deceptive and/or otherwise unlawful because Defendants' store-brand herbal supplements contained a variety of other ingredients, materials and/or contaminants not identified on their products' labels.

7. Defendants failed to disclose to the Plaintiffs, the proposed class and/or the public at large that their store-brand herbal supplements contained a variety of other ingredients, materials and/or contaminants not identified on their products' labels, thus risking the health and safety of their consumers.

8. Plaintiffs and the proposed class are individuals who purchased store-brand herbal supplements from Defendants, and who did not receive what they paid for.

9. As a result, Plaintiffs and the proposed class have been damaged.

10. Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals who purchased store-brand herbal supplements from Defendants, and who did not receive what they paid for.

11. Defendants are liable to Plaintiffs and the proposed class for damages under theories of consumer fraud, breach of implied warranty and unjust enrichment.

JURISDICTION

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d), because at least one member of the Class is a citizen of a different State than the Defendants, there are 100 or more class members, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and cost.

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the amount in controversy as to the Plaintiffs exceeds \$75,000.00, exclusive of interest and costs, and because Defendants are incorporated and have their principal places of business in states or countries other than the state in which the named individual and representative Plaintiffs reside.

PARTY PLAINTIFFS

14. Plaintiff DAVID FENSTERSTOCK is a natural person and resident of the State of New York.

15. Plaintiff DAVID FENSTERSTOCK purchased the herbal supplement Echinacea from Defendant GNC HOLDINGS, INC. during the Class Period.

16. Plaintiff DAVID FENSTERSTOCK has been injured, damaged and/or has incurred losses as a result of the behavior of the Defendants as set forth herein.

17. Plaintiff JASON BIRNHAK is a natural person and resident of the State of New York.

18. Plaintiff JASON BIRNHAK purchased the herbal supplement Echinacea from Defendant TARGET CORPORATION during the Class Period.

19. Plaintiff JASON BIRNHAK has been injured, damaged and/or has incurred losses as a result of the behavior of the Defendants as set forth herein.

20. Plaintiff ANTHONY LINSALATA is a natural person and resident of the State of New York.

21. Plaintiff ANTHONY LINSALATA purchased the herbal supplements, Gingko and Garlic, from Defendant WAL-MART STORES, INC. during the Class Period.

22. Plaintiff ANTHONY LINSALATA has been injured, damaged and/or has incurred losses as a result of the behavior of the Defendants as set forth herein.

PARTY DEFENDANTS

23. Defendant GNC HOLDINGS, INC., is a corporation organized under the laws of Pennsylvania with its principal place of business located in Pittsburgh, Pennsylvania.

24. Defendant GNC HOLDINGS, INC., has transacted and conducted business in the State of New York.

25. Defendant GNC HOLDINGS, INC., has derived substantial revenue from goods, products and services used in the State of New York.

26. Defendant GNC HOLDINGS, INC., expected or should have expected its acts to have consequences within the State of New York, and derives substantial revenue from the State of New York.

27. At all relevant times and during the Class Period, Defendant GNC HOLDINGS, INC., designed, researched, manufactured, tested, marketed, promoted, advertised, distributed and/or sold herbal supplements with the store-brand "Herbal Plus."

28. Defendant TARGET CORPORATION is a corporation organized under the laws of Minnesota with its principal place of business located in Minneapolis, Minnesota.

29. Defendant TARGET CORPORATION has transacted and conducted business in the State of New York.

30. Defendant TARGET CORPORATION has derived substantial revenue from goods, products and services used in the State of New York.

31. Defendant TARGET CORPORATION expected or should have expected its acts to have consequences within the State of New York, and derives substantial revenue from the State of New York.

32. At all relevant times and during the Class Period, Defendant TARGET CORPORATION., designed, researched, manufactured, tested, marketed, promoted, advertised, distributed and/or sold herbal supplements with the store-brand “Up & Up.”

33. Defendant WALGREEN CO., is a corporation organized under the laws of Illinois with its principal place of business located in Deerfield, Illinois.

34. Defendant WALGREEN CO., has transacted and conducted business in the State of New York.

35. Defendant WALGREEN CO., has derived substantial revenue from goods, products and services used in the State of New York.

36. Defendant WALGREEN CO., expected or should have expected its acts to have consequences within the State of New York, and derives substantial revenue from the State of New York.

37. At all relevant times and during the Class Period, Defendant WALGREEN CO., designed, researched, manufactured, tested, marketed, promoted, advertised, distributed and/or sold herbal supplements with the store-brand “Finest Nutrition.”

38. Defendant WAL-MART STORES, INC is a corporation organized under the laws of Delaware with its principal place of business located in Bentonville, Arkansas.

39. Defendant WAL-MART STORES, INC has transacted and conducted business in the State of New York.

40. Defendant WAL-MART STORES, INC has derived substantial revenue from goods, products and services used in the State of New York.

41. Defendant WAL-MART STORES, INC expected or should have expected its acts to have consequences within the State of New York, and derives substantial revenue from the State of New York.

42. At all relevant times and during the Class Period, Defendant WAL-MART STORES, INC. designed, researched, manufactured, tested, marketed, promoted, advertised, distributed and/or sold herbal supplements with the store-brand "Spring Valley."

FACTUAL BACKGROUND

Herbal Supplements

43. Defendants are manufacturers, marketers, promoters, advertisers, distributors and/or sellers of, among other things, store-brand herbal supplements.

44. Herbal supplements (also referred to as botanicals) are a type of dietary supplement that contain herb plants and/or parts of a plant.

45. Herbal supplements are ingested into the body and considered to have therapeutic properties.

46. As relevant here:

- a. the herbal supplement Echinacea is used to fight infections and prevent colds;
- b. the herbal supplement Ginkgo Biloba is used to improve memory;

- c. the herbal supplement St. John's Wort is used to lessen depression and induce sleep;
- d. the herbal supplement Valerian Root is used to induce sleep;
- e. the herbal supplement Garlic is used for a variety of health conditions, including but not limited to those related to the heart and blood;
- f. the herbal supplement Saw Palmetto is used to treat enlarged prostate; and
- g. the herbal supplement Ginseng is used for a variety of health conditions, including but not limited to boosting the immune system and lowering blood sugar.

47. Manufacturers of herbal supplements do not have to receive approval from the Food and Drug Administration ("FDA") before placing their herbal supplements on the market. Thus, herbal supplements are not subject to as rigorous scientific scrutiny and/or are not as strictly regulated as prescription and/or non-prescription drugs.

48. The herbal supplement industry is a continuously growing, billion-dollar industry.

49. According to a 2012 market report, the total estimated sales of herbal supplements between 2000 to 2012 were as follows:

- a. 2000 - \$4.230 Billion
- b. 2001 - \$4.356 Billion
- c. 2003 - \$4.146 Billion
- d. 2004 - \$4.288 Billion
- e. 2005 - \$4.378 Billion
- f. 2006 - \$4.558 Billion
- g. 2007 - \$4.756 Billion
- h. 2008 - \$4.800 Billion
- i. 2009 - \$5.037 Billion

j. 2010 - \$5.049 Billion

k. 2011 - \$5.301 Billion

l. 2012 - \$5.592 Billion

50. In 2013, sales of herbal supplements were estimated at \$6.0 billion.

New York Attorney General's 2014 Investigation

51. In or about 2014, the New York Attorney General began investigating Defendants' store-brand herbal supplements.

52. The New York Attorney General's investigation began following the October 2013 release of a study out of the University of Guelph in Canada in which the study's authors found that the herbal supplements they tested as part of their study were of poor quality and involved considerable product substitution, contamination and use of fillers. The study was entitled "*DNA barcoding detects contamination and substitution in North American herbal products.*"

53. The focus of the New York Attorney General's 2014 investigation was to determine whether contaminants and fillers were being substituted in the place of authentic herbal supplements.

54. The results of the New York Attorney General's investigation revealed that Defendants' store-brand herbal supplements did not contain DNA from the plants listed on the products' labels, were contaminated with other plant material and/or were found to have ingredients not identified on the products' labels.

55. As a result of its investigation, on February 2, 2015, the New York Attorney General Eric Schneiderman sent cease and desist letters to Defendants demanding that they immediately stop the sale of certain of their herbal supplements.

56. In his February 2, 2015 letter, Attorney General Schneiderman further requested that Defendants provide detailed information relating to the production, processing and testing of their herbal supplements, as well as a thorough explanation of quality control measures in place.

57. Regarding the results of his office's investigation, Attorney General Schneiderman stated:

The DNA tests results seem to confirm long-standing questions about the herbal supplement industry. Mislabeling, contamination and false advertising are illegal. They also pose unacceptable risks to New York families – especially those with allergies to hidden ingredients. At the end of the day, American corporations must step up to the plate and ensure that their customers are getting what they pay for, especially when it involves promises of good health.

58. Regarding Defendant GNC HOLDINGS, INC., as part of its investigation, the New York Attorney General's office purchased from representative stores within the state of New York the following herbal supplements with the store-brand name "Herbal Plus:" Gingko Biloba, St. John's Wort, Ginseng, Garlic, Echinacea and Saw Palmetto.

59. Regarding Defendant GNC HOLDINGS, INC., as part of its investigation, the New York Attorney General's office tested the products purchased in paragraph 58, and analyzed the data which revealed that:

- a. only one supplement – Garlic – consistently tested for its labeled contents;
- b. only one bottle of Saw Palmetto tested positive for containing DNA from the saw palmetto plant, while three others did not;
- c. the remaining four supplement types yielded mixed results, but none revealed DNA from the labeled herb;
- d. of 120 DNA tests run on 24 bottles of the herbal products purchased, DNA matched label identification only 22% of the time; and
- e. contaminants were contained within the herbal supplements, including asparagus, rice, primrose, alfalfa/clover, spruce, ranunculi, houseplant, allium, legume, saw palmetto and Echinacea.

60. Regarding Defendant TARGET CORPORATION as part of its investigation, the New York Attorney General purchased from representative stores within the state of New York the following herbal supplements with the store-brand name “Up & Up:” Gingko Biloba, St. John’s Wort, Valerian Root, Garlic, Echinacea and Saw Palmetto.

61. Regarding Defendant TARGET CORPORATION as part of its investigation, the New York Attorney General tested the products purchased in paragraph 60, and analyzed the data which revealed that:

- a. three supplements – Echinacea, Garlic and Saw Palmetto – showed consistent presence of their labeled contents;
- b. the remaining three supplement types did not reveal DNA from the labeled herb;
- c. of 90 DNA tests run on 18 bottles of the herbal products purchased, DNA matched label identification only 41% of the time; and
- d. contaminants were contained within the herbal supplements, including allium, French bean, asparagus, pea, wild carrot and saw palmetto.

62. Regarding Defendant WALGREEN CO., as part of its investigation, the New York Attorney General purchased from representative stores within the state of New York the following herbal supplements with the store-brand name “Finest Nutrition:” Gingko Biloba, St. John’s Wort, Ginseng, Garlic, Echinacea and Saw Palmetto.

63. Regarding Defendant WALGREEN CO., as part of its investigation, the New York Attorney General tested the products purchased in paragraph 62, and analyzed the data which revealed that:

- a. only one supplement – Saw Palmetto – consistently tested for its labeled contents;

- b. the remaining five supplements yielded mixed results, with one sample of garlic showing appropriate DNA and the other bottles yielding no DNA from the labeled herb types;
- c. of 90 DNA tests run on 18 bottles of the herbal products purchased, DNA matched label identification only 18% of the time; and
- d. contaminants were contained within the herbal supplements, including allium, rice, wheat, palm, daisy, and dracaena (houseplant).

64. Regarding Defendant WAL-MART STORES, INC as part of its investigation, the New York Attorney General purchased from representative stores within the state of New York the following herbal supplements with the store-brand name Spring Valley: Gingko Biloba, St. John's Wort, Ginseng, Garlic, Echinacea and Saw Palmetto.

65. Regarding Defendant WAL-MART STORES, INC as part of its investigation, the New York Attorney General tested the products purchased in paragraph 64, and analyzed the data which revealed:

- a. none of the supplements tested consistently revealed DNA from the labeled herb;
- b. one bottle of Garlic had a minimal showing of garlic DNA as did one bottle of Saw Palmetto. All remaining bottles failed to produce DNA verifying the labeled herb;
- c. of 90 DNA tests run on 18 bottles of the herbal products purchased, DNA matched label identification only 4% of the time; and
- d. contaminants were contained within the herbal supplements, including allium, pine, wheat/grass, rice mustard, citrus, dracaena (houseplant), and cassava (tropical tree root)

66. The seven herbal supplements purchased, tested and/or analyzed by the New York Attorney General's office are among the top-selling herbal supplements on the market.

67. Defendants' representations to Plaintiffs, the proposed class and the public at large – that their store-brand herbal supplements contained the stated herb - were false, deceptive, misleading and otherwise unlawful.

68. Defendants' failure to disclose to the Plaintiffs, the proposed class and/or the public at large that their store-brand herbal supplements contained a variety of other ingredients and/or materials not identified on their respective product labels was also deceptive, misleading and otherwise unlawful.

69. As a result of Defendants' behavior, Plaintiffs and the proposed Class were damaged.

70. Defendants have violated the consumer protection laws of various states, including the District of Columbia.

71. Defendants have breached the implied warranty laws of various states, including the District of Columbia, with respect to their store-brand herbal supplements because their store-brand herbal supplements were not merchantable when they were sold to Plaintiffs and/or the proposed class.

72. Defendants have been unjustly enriched because they earned profits, revenues, benefits and/or enrichments at the expense of the Plaintiffs and the proposed class.

CLASS ACTION ALLEGATIONS

73. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure Rule 23 on behalf of themselves, and all others similarly situated, including the classes and subclasses defined as follows:

74. Class Definition

All persons and entities that purchased “Herbal Plus” herbal supplements from Defendant GNC HOLDINGS, INC., “Up & Up” herbal supplements from Defendant TARGET CORPORATION, “Finest Nutrition” herbal supplements from Defendant WALGREEN CO. and “Spring” Valley” herbal supplements from Defendant WALMART STORES, INC.

Collectively, all of these persons shall be referred to as the “proposed class.”

75. Excluded from the proposed class are the Defendants herein, any entity in which the Defendants have a controlling interest, and officers, directors and/or employees of the Defendants, and the legal representatives, heirs, successors, and assignees of the Defendants, and/or its officers, directors, and/or employees.

76. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of the provisions of Federal Rules of Civil Procedure Rule 23.

77. This action is properly maintainable as a class action.

78. Defendants engaged in conduct and/or behavior giving rise to the legal rights sought to be enforced by Plaintiffs and the proposed class.

79. All Defendants sold store-brand herbal supplements to Plaintiffs and the proposed class and made substantially similar representations regarding the herbs contained within said herbal supplements. All Defendants failed to disclose to Plaintiffs and the proposed class that their store-brand herbal supplements contained ingredients, materials and/or contaminants not identified on their products’ labels.

80. In selling their store-brand herbal supplements to Plaintiffs and the proposed class, all Defendants entered into contracts with them and warranted that the store-brand herbal

supplements were merchantable. All Defendants breached said warranties because their store-brand herbal supplements were not of merchantable quality.

81. All Defendants were unjustly enriched at the expense of the Plaintiffs and the proposed class and said unjust enrichment was based upon substantially similar, if not identical, background facts.

82. The proposed class is so numerous that individual joinder of all their members, in this or any action, is impracticable. The exact number and identification of members of each Plaintiffs Class are presently unknown to Plaintiffs, but upon information and belief the proposed classes is believed to include tens of thousands members, if not more.

83. Common questions of fact and law exist as to all members of the proposed class, which predominate over any questions affecting only individual members of each proposed class, including, *inter alia*:

- a. Whether Defendants' store-brand herbal supplements contained the advertised herbal ingredients;
- b. Whether Defendants were aware that their store-brand herbal supplements did not contain the advertised herbal ingredients, and, if so, when did they become aware;
- c. Whether Defendants designed, researched, manufactured, tested, marketed, advertised, promoted, distributed and/or sold their store-brand herbal supplements to Plaintiffs and the proposed class with knowledge that their store-brand herbal supplements did not contain the advertised herbal ingredients;
- d. Whether Defendants' store-brand herbal supplements contained ingredients, materials and/or contaminants not identified and/or disclosed on their products' labels;
- e. Whether Defendants were aware that their store-brand herbal supplements contained ingredients, materials and/or contaminants not identified and/or disclosed on their products' labels;

- f. Whether Defendants designed, researched, manufactured, tested, marketed, advertised, promoted, distributed and/or sold their store-brand herbal supplements to Plaintiffs and the proposed class with knowledge that their store-brand herbal supplements contained ingredients, materials and/or contaminants not identified and/or disclosed on their products' labels;
- g. Whether Defendants' behavior violated the consumer fraud laws of various states, including the District of Columbia;
- h. Whether Defendants breached the implied warranty of merchantability under the laws of various states, including the District of Columbia;
- i. Whether Defendants were unjustly enriched by selling their store-brand herbal supplements without the advertised herbal ingredients; and
- j. The nature and extent of damages and other remedies to which the conduct of Defendants entitles Plaintiffs and the proposed class members.

84. Plaintiffs' claims are typical of the claims of the members of the proposed class in that they and each member of the proposed class purchased store-brand herbal supplements from Defendants and did not receive what they paid for. Plaintiffs and the proposed class were injured by a common practice engaged in by the Defendants.

85. Plaintiffs are adequate representatives of the proposed class because they are members of the proposed class and their interests do not conflict with the interests of the members of the proposed class they seek to represent.

86. A class action is superior to other available methods for the efficient adjudication of this litigation since individual litigation of Plaintiffs class members' claims is impractical. It would be unduly burdensome to the Courts in which individual litigation on the facts of tens of thousands of cases would proceed. Further, individual litigation presents the potential for inconsistent or contradictory judgments. Individual litigation increases the delay and expense to all parties and the Courts in resolving the legal and factual issues of these cases, and has the potential for inconsistent or contradictory judgments. By contrast, the class action device

presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single Court.

87. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs are adequate representatives of the proposed class.

88. Defendants have acted on grounds generally applicable to, and causing injury to, the proposed class, and, therefore, relief on behalf of the proposed class as a whole is appropriate.

TOLLING OF THE STATUTE OF LIMITATIONS

89. Any and all applicable statutes of limitations have been tolled because of Defendants' knowing and active concealment of its fraudulent, misleading, deceptive and/or otherwise unlawful behavior as set forth herein.

90. Plaintiffs and the proposed class could not have reasonably discovered the true extent of the Defendants' deception with regard to their store-brand herbal supplements until the New York Attorney General's office disclosed the results of its 2014 investigation of Defendants' store-brand herbal supplements in February 20015.

FIRST CAUSE OF ACTION (VIOLATION OF CONSUMER PROTECTION STATUTES)

91. Plaintiffs repeat and reallege each and every allegation asserted above with the same force and effect as if fully set forth at length herein.

92. Defendants engaged in commercial conduct by selling their store-brand herbal supplements to the public.

93. Defendants made fraudulent, deceptive, misleading and/or otherwise unlawful representations regarding their store-brand herbal supplements.

94. Defendants fraudulently, deceptively, misleadingly and/or otherwise unlawfully represented to the Plaintiffs, the proposed class and/or the public at large that their store-brand herbal supplements contained the advertised herbs.

95. Defendants fraudulently, deceptively, misleadingly and/or otherwise unlawfully represented to the Plaintiffs, the proposed class and/or the public at large that their store-brand herbal supplements did not contain ingredients, materials and/or contaminants not identified on the products' labels.

96. Defendants failed to disclose that their store-brand herbal supplements contained ingredients, materials and/or contaminants not identified on the products' labels.

97. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of their store-brand herbal supplements.

98. New York state and a majority of other states throughout the country, including the District of Columbia have enacted statutes to protect consumers from deceptive, fraudulent, deceptive, unconscionable and/or otherwise unlawful trade and business practices.

99. Defendants violated these statutes by knowingly, falsely, deceptively, misleadingly and/or otherwise unlawfully representing that their store-brand herbal supplements contained the advertised herbs.

100. Defendants violated these statutes by knowingly, falsely, deceptively, misleadingly and/or otherwise unlawfully representing that their store-brand herbal supplements

did not contain any other ingredients, materials and/or contaminants other than those identified on their products' labels.

101. Defendants violated these statutes by failing to disclose and/or identify added ingredients, materials and/or contaminants on their products' labels.

102. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ALASKA STAT. § 45.50.471, *et seq.*

103. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ARIZ. REV. STAT. § 44-1522, *et seq.*

104. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of ARK. CODE ANN. § 4-88-107, *et seq.*

105. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of CAL. BUS. & PROF. CODE § 17200, *et seq.*

106. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of CAL. BUS. & PROF. CODE § 17500, *et seq.*

107. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or have made false representations in violation of COLO. REV. STAT. § 6-1-101, *et seq.*

108. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of CONN. GEN. STAT. § 42-110b, *et seq.*

109. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of DEL. CODE ANN. tit. 6, § 2511, *et seq.*

110. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of DEL. CODE ANN. tit. 6, § 2532, *et seq.*

111. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of D.C. CODE ANN. § 28-3901, *et seq.*

112. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of FLA. STAT. ANN. § 501.201, *et seq.*

113. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of IDAHO CODE § 48-601, *et seq.*

114. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILL. COMP. STAT. 505/2, *et seq.*

115. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714H.1, *et seq.*,

116. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation MASS. GEN. LAWS ch. 93A, §1, *et seq.*

117. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MINN. STAT. § 8.31, *et seq.*

118. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MO. REV. STAT. § 407.010, *et seq.*

119. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of NEB. REV. STAT. § 59-1601, *et seq.*

120. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. REV. STAT. ANN. § 358-A:1, *et seq.*

121. Defendants have engaged in unfair competition or deceptive acts or practices in violation of N.J.S.A. § 56:8-1, *et seq.*

122. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. STAT. ANN. § 57-12-1, *et seq.*

123. 200. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. GEN. BUS. LAW § 349, *et seq.*

124. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. GEN. STAT. § 75-1.1, *et seq.*

125. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. CENT. CODE § 51-15-01, *et seq.*

126. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of OKLA. STAT. TIT. 78 § 51-55, *et seq.*

127. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of OKLA. STAT. tit. 15, § 751, *et seq.*

128. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. CODE ANN. § 39-5-10, *et seq.*

129. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. CODIFIED LAWS § 37-24-1, *et seq.*

130. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of TENN. CODE ANN. § 47-18-101, *et seq.*

131. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.*

132. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of VT. STAT. ANN. tit. 9, § 2451, *et seq.*

133. Defendants have engaged in unfair competition or unfair, deceptive or fraudulent acts or practices in violation of WASH. REV. CODE § 19.86.010, *et seq.*

134. Defendants engaged in the deceptive acts and practices alleged herein in order to sell their store-brand herbal supplements to the Plaintiffs, the proposed class and/or the public at large.

135. Plaintiffs and the proposed class purchased Defendants' store-brand herbal supplements believing that they contained the advertised herbs.

136. Plaintiffs and the proposed class purchased Defendants' store-brand herbal supplements believing that they contained only the ingredients on the products' labels.

137. As a direct and proximate result of Defendants' violations, Plaintiffs and the proposed class have suffered damages, both general and special, including economic damages. Plaintiffs and the proposed class are entitled to compensatory damages, statutory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

SECOND CAUSE OF ACTION
(BREACH OF WARRANTIES)

138. Plaintiffs repeat and reallege each and every allegation asserted above with the same force and effect as if fully set forth at length herein.

139. At all times herein mentioned, Defendants designed, researched, manufactured, tested, tested, advertised, promoted, distributed and/or sold their respective store-brand herbal supplements.

140. At the time Defendants designed, researched, manufactured, tested, tested, advertised, promoted, distributed and/or sold their respective store-brand herbal supplements use by Plaintiffs and the proposed class, Defendants knew of the use for which their store-brand herbal supplements were intended and expressly and/or impliedly warranted their store-brand

herbal supplements to be of merchantable quality and safe and fit for such use.

141. Defendants expressly and impliedly represented and warranted to the Plaintiffs, the proposed class and/or the public that their store-brand herbal supplements were safe and of merchantable quality and fit for the ordinary purpose for which said products were to be used.

142. Defendants expressly and/or impliedly represented and warranted to the Plaintiffs, the proposed class and/or the public that their store-brand herbal supplements contained the advertised herbs.

143. Defendants expressly and/or impliedly represented and warranted to the Plaintiffs, the proposed class and/or the public that their store-brand herbal supplements did not contain ingredients, materials and/or contaminants not identified on the products' labels.

144. That said aforementioned representations and warranties were false, deceptive, misleading, and/or otherwise inaccurate in that their store-brand herbal supplements were not of merchantable quality, were not fit for their ordinary purpose for which they were to be used, were unreasonably dangerous and were defective.

145. That said aforementioned representations and warranties were false, deceptive, misleading, and/or otherwise inaccurate in that their store-brand herbal supplements did not contain the advertised herbs.

146. That said aforementioned representations and warranties were false, deceptive, misleading, and/or otherwise inaccurate in that their store-brand herbal supplements contained ingredients, materials and/or contaminants not identified on the products' labels.

147. Plaintiffs and the proposed class did rely on Defendants' aforementioned express and/or implied representations and/or warranties.

148. Plaintiffs and the proposed class relied upon the skill and judgment of Defendants

as to whether their store-brand herbal supplements were of merchantable quality, safe and fit for their intended use.

149. Defendants' store-brand herbal supplements were injected into the stream of commerce by Defendants in a defective, unsafe, and inherently dangerous condition and the products were expected to and did reach users, handlers, and persons coming into contact with them without substantial change in the condition in which they were sold.

150. Defendants herein breached the aforesaid express and/or implied warranties they made to Plaintiffs and the proposed class.

151. As a direct and proximate result of Defendants' breach, Plaintiffs and the proposed class have suffered damages, both general and special, including economic damages. Plaintiffs and the proposed class are entitled to compensatory damages, statutory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

THIRD CAUSE OF ACTION – UNJUST ENRICHMENT

152. Plaintiffs repeat and reallege each and every allegation asserted above with the same force and effect as if fully set forth at length herein.

153. As a result of Defendants' wrongdoing as set forth herein, Defendants profited, benefited and were otherwise enriched from payments that Plaintiffs and the proposed class made to them for the purchase of their store-brand herbal supplements.

154. In exchange for their payments, Plaintiffs and the proposed class reasonably expected that the store-brand herbal supplements they purchased from Defendants contained the advertised herbs.

155. In exchange for their payments, Plaintiffs and the proposed class reasonably expected that the store-brand herbal supplements they purchased from Defendants would not contain ingredients, materials and/or contaminants not identified on the products' labels.

156. Defendants voluntarily accepted and retained these payments with knowledge and/or awareness that Plaintiffs and the proposed class believed that their store-brand herbal supplements contained the advertised herbs.

157. Defendants voluntarily accepted and retained these payments with knowledge and/or awareness that Plaintiffs and the proposed class believed that the store-brand herbal supplements they purchased from Defendants contained only those ingredients identified and/or disclosed on the products' labels.

158. As a result of Defendants' fraudulent, deceptive, misleading and/or otherwise unlawful behavior, Plaintiffs and the proposed class did not receive what they paid for.

159. It is against equity and good conscience to permit Defendants to retain their profits, revenues, benefits and/or enrichments they earned at the expense of Plaintiffs and the proposed class.

160. Plaintiffs and the proposed class are entitled in equity to seek restitution of Defendants' wrongful profits, revenues, benefits and/or enrichments to the extent and in the amount deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendants' unjust enrichment.

161. As a direct and proximate result of the foregoing acts and/or omissions, the Plaintiffs and the proposed class have suffered damages, both general and special, including economic damages. Plaintiffs and the proposed class are entitled to compensatory damages,

statutory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs and the proposed class demand judgment against Defendants as follows:

- i. An order certifying the Class, appointing Plaintiffs as class representatives, and appointing the undersigned counsel as counsel to the Class;
- ii. Equitable, injunctive and declaratory relief, including enjoining their store-brand herbal supplements;
- iii. Damages in an amount to be determined at trial;
- iv. Pre judgment and post judgment interest at the maximum rate allowable at law;
- v. Statutory, treble, exemplary, and/or punitive damages in an amount to be determined at trial;
- vi. The costs and disbursements incurred by Plaintiffs and the proposed class in connection with this action, including reasonable attorneys' fees;
- vii. Disgorgement of Defendants' profits from the sale of their store-brand herbal supplements; and
- viii. Such other and further relief under all applicable state or federal law and any relief the Court deems just and appropriate.

Dated: New York, New York
March 5, 2015

Respectfully submitted,

/s/ Virginia E. Anello
Michael A. London, Esq.
Virginia E. Anello, Esq.
DOUGLAS & LONDON, P.C.
59 Maiden Lane, 6th Floor
New York, NY 10038
Phone: 212-566-7500
Fax: 212-566-7501
Email: mlondon@douglasandlondon.com
vanello@douglasandlondon.com

-and-

Lawrence P. Krasin
EDELMAN, KRASIN & JAYE, PLLC
One Old Country Road, Ste 210
Carle Place, NY 11514
Phone: 516-742-9200
Fax: 516-742-7622
Email: LKrasin@ekjlaw.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANTHONY LINSALATA, et al.

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

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

Douglas & London, P.C., 59 Maiden Lane, 6th Floor, New York, NY 10038, 212-566-7500

DEFENDANTS

WALGREEN CO., et al.

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332

Brief description of cause: Consumer Fraud, Breach of Warranty and Unjust Enrichment relating to sale of Defendants' herbal supplements

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 50,000,000.00 per cause JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 3/5/15 SIGNATURE OF ATTORNEY OF RECORD s/ Virginia E. Anello

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Virginia E. Anello, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: s/ Virginia E. Anello

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

ANTHONY LINSALATA, et al.

Plaintiff(s)

v.

WALGREEN CO., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) See attached rider.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Douglas & London, P.C.
59 Maiden Lane, 6th Floor
New York, New York 10038

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____ .

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY LINSALATA, DAVID FENSTERSTOCK and
JASON BIRNHAK, individually and on behalf of all others
similarly situated,

Plaintiffs,

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

Defendants.

CASE NUMBER:

RIDER TO SUMMONS

Defendants' Addresses:

WALGREEN CO.
C/o Corporation Service Company
80 State Street
Albany, NY 12207-2543

GNC HOLDINGS, INC.
300 6th Ave
Pittsburgh, PA, 15222

TARGET CORPORATION
1000 Nicollet Mall
Minneapolis, Minnesota 55403

WAL-MART STORES, INC
C/o CT Corporation System
111 Eighth Avenue
New York, NY 10011