

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

ROSALYND LUGO, on behalf of herself)
 and others similarly situated,)
)
 Plaintiff,)
)
 vs.)
)
 WAL-MART STORES, INC., and DOE)
 DEFENDANTS 1-10,)
)
 Defendants.)
 _____)

Case No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

PLAINTIFF’S CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Rosalynd Lugo (“Plaintiff”), on behalf of herself and all others similarly situated, filing Plaintiff’s Original Class Action Complaint against Defendants Wal-Mart Stores, Inc., and Doe Defendants 1-10 (collectively “Defendants” or “Wal-Mart”). Plaintiff seeks certification of her claims against Defendants as a class action. Plaintiff alleges, based upon personal knowledge as to Defendants’ action and upon information and belief as to all other matters, as follows:

I. NATURE OF ACTION

1. This is a consumer class action against Wal-Mart Stores, Inc. (“Wal-Mart”) and Doe Defendants 1-10 (collectively, “Wal-Mart” or “Defendants”) for deceptive acts and omissions, unfair practices, and/or false or misleading advertisements (or other statements) in connection with the sale of its “Spring Valley™” brand herbal supplements, including ginkgo biloba, St. John’s wort, ginseng, garlic, echinacea, and saw palmetto (the “Misabeled Products” or the “Products”).

2. Recent testing of the Mislabeled Products using modern DNA barcoding analysis reveals that the Products contain little or none of the substance indicated on the label. Moreover, the testing reveals that the Mislabeled Products are contaminated with various filler ingredients that were not listed on the label including ingredients that are dangerous to some consumers, such as wheat or gluten.

3. On February 2, 2015, Wal-Mart received a cease and desist letter from the New York Attorney General requiring that it remove certain products identified by lot number from its shelves. However, Wal-Mart continues to sell in its stores and on its website the same Mislabeled Products bearing lot numbers other than those specifically identified by the New York Attorney General.

4. As a direct and proximate result of Defendants' deceptive acts, unfair acts, and false and misleading advertising claims and marketing practices, Plaintiff and the members of the Class, as defined herein, purchased one or more of the Mislabeled Products. Plaintiff and members of the Class have been injured in fact because the Mislabeled Products did not contain the ingredients that they paid for. Plaintiff and Class Members have suffered an ascertainable and out-of-pocket loss.

5. Plaintiff seeks relief in this action individually and on behalf of all purchasers of the Mislabeled Products for violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* ("FDUTPA") and Florida's Misleading Advertising Law, Fla. Stat. § 817.40, *et seq.*

II. PARTIES

6. Plaintiff Rosalynd Lugo is a resident of Miami, Florida. She regularly (during the

Class Period) purchased Wal-Mart's Spring Valley™ supplements at various stores in Miami, Florida, including but not limited to the Echinacea product.

7. Plaintiff was exposed to the misrepresentations and false advertising discussed herein (as to the Mislabeled Products' ingredients and/or amounts thereof).

8. Plaintiff purchased these Wal-Mart's Spring Valley™ products based on claims on the product label, including, but not limited to, claims that that the Products actually contained the labeled ingredients in the concentrations indicated on the label. At the time of her purchases, she believed that the products actually contained the labeled ingredients in the concentrations indicated on the packaging and believed that the Products were not contaminated with filler ingredients that were not listed on the product label. She would not have purchased Wal-Mart's Spring Valley™ Products, if she had known that the products did not contain the ingredients listed on the product labels, did not contain the amounts listed on the product labels, and/or were contaminated with filler ingredients.

9. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Wal-Mart is the world's largest retailer, and operates more than 4,100 retail stores in the United States. Wal-Mart manufactures and sells its own line of dietary supplements under the Spring Valley™ brand name.

10. Doe Defendants 1-10 are individuals and corporate entities, whose true names are presently unknown to Plaintiff, who participated in the mislabeling of the Mislabeled Products.

11. Collectively Wal-Mart and the Doe Defendants are referred to as "Wal-Mart" or "Defendants."

III. JURISDICTION AND VENUE

12. This Court has jurisdiction over Defendants since at all relevant times Defendants have regularly and systematically transacted business within the State of Florida through the marketing, providing, offering, distributing, and selling of the Mislabeled Products. Defendants derive substantial revenue from Florida residents.

13. This Court has subject matter jurisdiction over this class action under the Class Action Fairness Act (“CAFA”) because there are more than one-hundred class members, all of the members of the class are citizens of a state (Florida) different from that of Defendants (Arkansas), and the aggregate of class members’ claims is more than \$5 million. 28 U.S.C. § 1332(d). Notably, in addition to FDUTPA claims (which in and of themselves likely reach the \$5 million threshold), Plaintiffs seek punitive damages for violations of Florida’s Misleading Advertising Law.

14. Venue is proper in this Court because a substantial part of the events or omissions giving rise to the claim occurred in this district and a the sale of the Mislabeled Products to Plaintiff—that is the subject of the action—occurred in this district. Plaintiff is a resident of this district and Defendants have received substantial compensation from sales in this district.

IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. The Mislabeling of Dietary Supplements

15. The dietary supplement industry generates approximately \$32 billion in annual revenue and the industry is projected to take in \$60 billion per year by 2021.

16. Unlike prescription and over the counter drugs, dietary supplements are largely unregulated. Neither the U.S. Food and Drug Administration (“FDA”) nor any other federal or

state agency routinely tests dietary supplements for quality, purity and strength prior to sale.

17. With respect to the purity of their product ingredients, the industry essentially operates on an honor system. While there are more than 85,000 dietary supplement products on the market, the FDA only inspects approximately 600 facilities a year. According to a joint statement from the American College of Medical Toxicology and the American Academy of Clinical Toxicology, “there is a lack of stringent quality control of the ingredients present in many herbal and dietary supplements.”

18. The lack of oversight in an expanding lucrative market has led some industry players to commit massive wide scale fraud, misrepresenting the ingredients in the products and substituting them with cheap, abundant and sometimes dangerous filler ingredients. Indeed, the World Health Organization has determined that the adulteration of consumer products is a threat to consumer safety.

19. Consumers have no way of knowing that the products they purchase actually contain the ingredients on their labels or if they are mislabeled.

B. DNA Bar Coding

20. In the fight against product mislabeling, DNA barcoding has become an invaluable tool. DNA barcoding tests have been recognized as a robust, rapid, cost-effective and broadly applicable approach to accurate species identification.

21. DNA barcoding is a taxonomic method that uses a short genetic marker in an organism’s DNA to identify it as belonging to a particular species.

22. DNA barcoding tests examine the sequence variation within a short standardized region of the genome that is known to have a high variability between different species. The

sequence is then compared to a database of known species to identify the species to which the sample belongs.

23. DNA barcoding has been used to identify species since at least 2003. In recent years, the technique has been used to determine the accuracy of herbal product labels. The results indicate that many products do not contain the ingredients listed on their labels and often contain filler ingredients dangerous to some consumers.

24. In 2010, the PBS News Hour featured an exposé on the herbal supplement industry entitled, *What's Really In Herbal Supplements*. PBS commissioned a series of DNA barcoding tests on popular dietary supplements and concluded that 38% of the 16 supplements samples tested were found to be “suspect or outright frauds.”

25. A DNA bar coding study published in 2011 noted that a large percentage of herbal tests generated DNA identifications not found on the product labels.

26. Similarly, the results of a 2012 DNA barcoding study from Stonybrook University found that of the 36 samples of commercial black cohosh dietary supplements purchased online and at retail stores, one-quarter contained no black cohosh DNA whatsoever.

27. In a 2013 study of commercial dietary supplements sold in the United States and Canada, researchers also found rampant mislabeling. Specifically, the results revealed the following:

- a. echinacea supplements were found to include ground up bitter weed, which has been linked to rashes, nausea and flatulence;
- b. several St. John's wort samples contained no St. John's wort DNA, and instead included rice or Alexandria senna, a powerful laxative;

- c. ginkgo biloba supplements, promoted as memory enhancers, were mixed with fillers and black walnut, a potentially deadly hazard for people with nut allergies; and
- d. numerous products tested positive for undisclosed fillers such as rice, soybeans and wheat, “which is a health concern for people allergic to these plants, as well as people seeking gluten free products.”

28. Dr. David A. Baker, author of the black cohosh study commented to the New York Times for an article concerning the state of supplement regulation in 2013. He described it as the “the Wild West” and said consumers had no idea how few safeguards were in place. Dr. Baker further stated:

If you had a child who was sick and three out of 10 penicillin pills were fake, everybody would be up in arms. But it’s O.K. to buy a supplement where three out of 10 pills are fake. I don’t understand it. Why does this industry get away with that?

C. The Mislabeled Products

29. Wal-Mart is the world’s largest retailer which operates more than 4,100 retail stores in the United States. Wal-Mart is also a major online retailer, which sells a wide variety of products on www.walmart.com.

30. On March 2, 1999, the United States Patent and Trademark Office registered the trademark for Spring Valley to Wal-Mart.

31. Spring Valley™ brand is Wal-Mart’s store brand, under which it markets and sells in its retail and online stores a wide variety of vitamins, minerals and dietary supplements, including the Mislabeled Products.

32. Wal-Mart maintains a dedicated portion of its online retail stores to its line of

Spring Valley™ products. *Accessible from* www.walmart.com/springvalley.

1. Saw Palmetto

33. Wal-Mart sells saw palmetto capsules under its Spring Valley™ brand. According to the product labels, saw palmetto products are sold for “Prostate Health,” and “are a source of fatty acids and sterols [that have] traditionally been used to support prostate and urinary health.”

34. The labels on the saw palmetto products indicate that their only ingredients are: saw palmetto, pumpkin seed, nettle root, beta sitosterol, lycopene, gelatin and vegetable magnesium stearate. Wal-Mart further represents on the product label that the saw palmetto products contain no wheat and no gluten.

35. Wal-Mart sells bottles of 100 purported 450 mg capsules of saw palmetto for approximately \$10.74. A bottle of 100 purported 160 mg capsules of saw palmetto sells for approximately \$6.98.

2. Gingko Biloba

36. Wal-Mart sells gingko biloba tablets under its Spring Valley™ brand. According to the product labels, they are sold for “memory support.”

37. Wal-Mart’s gingko biloba product labels list only the following ingredients: gingko biloba, rice powder, gelatin, and vegetable magnesium stearate. Wal-Mart further represents on the product label that the gingko biloba products contain no wheat and no gluten.

38. Wal-Mart sells bottles of 240 purported 60 mg gingko biloba tablets for approximately \$10.74. A bottle of 90 purported 120 mg gingko biloba tablets sells for approximately \$8.34.

3. **Garlic**

39. Wal-Mart sells garlic capsules under its Spring Valley™ brand. According to the product labels, they are sold for “Heart Health.”

40. The product labels list only the following ingredients: Allium Sativum (garlic), soybean oil, gelatin and glycerin. Wal-Mart further represents on the product label that the garlic products contain no wheat and no gluten.

41. Wal-Mart sells twin packs of bottles containing 120 purported 1000 mg garlic capsules for approximately \$6.00.

4. **St. John’s Wort**

42. Wal-Mart sells St. John’s wort capsules under its Spring Valley™ brand. According to the product labels, they are sold for “Mood Health” and the product “is a source of nutrients that support mood health and emotional balance.”

43. The labels on the St. John’s wort products indicate that their only ingredients are: hypericum perforatum (St. John’s wort), maltodextrin, gelatin, magnesium silicate, silica, and vegetable magnesium stearate.

44. Wal-Mart sells bottles of 100 purported 150 mg St. John’s wort capsules for approximately \$3.98. The product is also sold in purported 300 mg capsules.

5. **Echinacea**

45. Wal-Mart sells echinacea capsules under its Spring Valley™ brand. According to the product labels, they are sold for “Immune Health.”

46. The labels on the echinacea products list only the following ingredients: echinacea, gelatin, dicalcium phosphate, microcrystalline cellulose, silicon dioxide, magnesium

stearate, and stearic acid.

47. Wal-Mart sells bottles of 150 purported 100 mg echinacea capsules sells for approximately \$9.44.

6. Ginseng

48. Wal-Mart sells ginseng capsules under its Spring Valley™ brand. According to the product labels, they are sold for “General Wellness.”

49. The labels on the ginseng products list only the following ingredients: ginseng, maltodextrin, gelatin, cellulose, silica, and vegetable magnesium stearate. The labels further provide that the products contain no gluten and no wheat.

50. A bottle of 60 purported 100 mg ginseng capsules sells for approximately \$4.50. A 150-capsule bottle sells for approximately \$9.44.

D. Wal-Mart’s Bait and Switch

51. In 2015, the Office of the Attorney General of New York conducted an investigation of Wal-Mart’s practices with respect to the mislabeling and contamination of Wal-Mart’s Spring Valley™ Dietary Supplements.

52. The investigation included a DNA barcode analysis of six Wal-Mart Spring Valley™ products: ginkgo biloba, St. John’s wort, ginseng, garlic, echinacea and saw palmetto.

53. The results showed that only four percent (4%) of ninety tests yielded DNA for plants consistent with the product label. Even those tests which produced positive results revealed that the listed ingredients did not predominate. More than half of the tests (56%) yielded no plant DNA at all.

54. With respect to the testing of Wal-Mart’s Spring Valley™ ginkgo biloba

products, *no ginkgo biloba DNA was identified*. Despite Wal-Mart's representation on the product label that the products contain no wheat or gluten, several of the ginkgo biloba tests revealed *the presence of wheat*. Some of the tests revealed the presence of other filler ingredients, while other tests revealed no plant DNA whatsoever.

55. With respect to the testing of Wal-Mart's Spring Valley™ ginseng products, *no ginseng DNA was identified*. Despite Wal-Mart's representation on the product label that the products contain no wheat or gluten, one or more of the tests revealed *the presence of wheat*. Some of the tests revealed the presence of other filler ingredients, while other tests revealed no plant DNA whatsoever.

56. With respect to the testing of Wal-Mart's Spring Valley™ echinacea products, *no echinacea DNA was identified*. In fact, the fifteen tests identified no plant genetic material whatsoever.

57. With respect to the testing of Wal-Mart's Spring Valley™ garlic products, *no garlic DNA was identified in fourteen of the fifteen tests*. Moreover, the one test that did indicate the presence of garlic also showed that the ingredient did not predominate. Despite Wal-Mart's representation on the product label that the products contain no wheat or gluten, one or more of the tests revealed *the presence of wheat*. Some of the tests revealed the presence of other filler ingredients, while ten of the tests revealed no genetic material whatsoever.

58. With respect to the testing of Wal-Mart's Spring Valley™ saw palmetto products, *no saw palmetto DNA was identified in twelve of the fifteen tests*. Moreover, tests that did indicate the presence of saw palmetto also showed that the ingredient did not predominate. Some of the tests revealed the presence of other filler ingredients including allium (garlic), while

four of the tests revealed no plant DNA whatsoever.

59. Incredibly, the results revealed that a consumer would be three times more likely to receive garlic by purchasing Wal-Mart's Spring Valley™ saw palmetto product than she would be by purchasing Wal-Mart's Spring Valley™ garlic product.

60. On February 2, 2015, the Office of the Attorney General of the State of New York issued a letter to Wal-Mart's President and CEO, Doug McMillon demanding that Wal-Mart "cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements" and to immediately stop the sale of certain lots of the Mislabeled Products. A copy of the Attorney General's letter is annexed hereto as **Exhibit "A."**

61. In connection with the action, New York Attorney General Eric Schneiderman said:

This investigation makes one thing abundantly clear: the old adage 'buyer beware' may be especially true for consumers of herbal supplements . . . The DNA test 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.

62. Dr. Arthur P. Grollman, Professor of Pharmacological Sciences at Stonybrook University, praised the study's methodology, noting, "[t]his study undertaken by Attorney General Schneiderman's office is a well-controlled, scientifically-based documentation of the outrageous degree of adulteration in the herbal supplement industry."

63. Wal-Mart has continued to sell other lots of the Mislabeled Products, which upon information and belief, remain available online and at Wal-Mart locations throughout the United

States including Florida.

V. CLASS ACTION ALLEGATIONS

64. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs brings this action for themselves and on behalf of a class defined as:

All natural persons residing in the State of Florida who after March 27, 2011, purchased one or more of the Mislabeled Products for personal use and not for resale.

65. Specifically excluded from the Class are: (a) all federal court judges who preside over this case and their spouses; (b) all persons who elect to exclude themselves from the Class; (c) all persons who have previously executed and delivered to Defendants releases for all of their Class claims; and (d) Defendants' employees, officers, directors, agents, and representatives and their family members.

A. Rule 23(a) Prerequisites

66. **Numerosity.** Wal-Mart sells the Mislabeled Products online and in its retail stores across the United States. Plaintiff estimates that there are thousands if not hundreds of thousands of prospective class members in the State of Florida. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Wal-Mart.

67. **Commonality.** Common questions of law and fact predominate over individual issues. There is a well-defined community of interest in the questions of law and fact involved affecting members of the Class. The questions of law and fact common to the Class predominate

over questions affecting only individual Class members, and include, but are not limited to, the following:

- a. Whether the Mislabeled Products actually contain the ingredients indicated on the product labels;
- b. Whether the Mislabeled Products actually contain the ingredients indicated on the product labels in the concentrations indicated on the product labels;
- c. Whether Defendants' deceptive conduct regarding the Mislabeled Products' ingredients and/or amount of ingredients would deceive an objective consumer acting reasonably in the circumstances;
- d. Whether Defendants' uniform representations and omissions constituted deceptive acts in violation of FDUTPA;
- e. Whether Defendants' sale and marketing of the Mislabeled Products constituted an unfair practice in violation of FDUTPA;
- f. Whether Defendants' uniform advertisements (product packaging) violated Florida's Misleading Advertising Law, Fla. Stat. 817.41;
- g. Whether Defendants' purported violation of Florida's Misleading Advertising Law constitutes a *per se* violation of FDUTPA;
- h. Whether Plaintiff and the Class Members are entitled to damages, and what is the proper measure of Plaintiff's and the Class Members' loss;
- i. Whether Plaintiff and the Class Members are entitled to an award of punitive damages; and
- j. Whether Plaintiff and the Class Members are entitled to injunctive relief, and if so, the nature of that relief.

68. **Typicality.** Plaintiff's claims are typical of the other Class Members' claims. As described above, Defendants engage in a pervasive advertising scheme, including most importantly the use of common and uniform product packaging, resulting in substantially uniform misrepresentation and/or omissions regarding the ingredients (and/or amounts thereof) in the Mislabeled Products (misrepresentation), and the failure to disclose the actual ingredients

(or amounts thereof) in the Mislabeled Products (omission).

69. **Adequacy.** Plaintiff is an adequate representative of the Class because she fits within the class definition and her interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiff will prosecute this action vigorously for the benefit of the entire Class. Plaintiff is represented by experienced and able attorneys. Class counsel have litigated numerous class actions and complex cases, and Plaintiff's counsel intend to prosecute this action vigorously for the benefit of the entire Class. Plaintiff and class counsel can and will fairly and adequately protect the interests of all of the members of the Class.

B. Rule 23(b) Prerequisites

70. Questions of law and fact common to the Class predominate over questions affecting only individual Members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for the members of the Class to effectively redress the wrongs done to them on an individual basis. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the courts.

71. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by Defendants' conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in just one case.

VI. CAUSES OF ACTION

A. First Cause of Action: Violations of Florida's Deceptive and Unfair Trade Practices Act

72. Plaintiff incorporates by reference each other allegation set forth in this Complaint.

73. Plaintiff and the Class are “consumers” within the meaning of Part II of Chapter 501, Florida Statutes, relating to Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”).

74. Pursuant to FDUTPA, unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

75. Within four years prior to the filing of this complaint and continuing to the present, Defendants, in the course of trade and commerce, engaged in unconscionable, unfair, and/or deceptive acts or practices harming Plaintiff and the Class, as described herein.

76. Plaintiff and the Class Members purchased the Mislabeled Products as part of a consumer transaction.

77. ***Violation One: Deceptive Acts.*** Defendants violated FDUTPA by engaging in deceptive acts against Plaintiff and the Class. Namely:

a. Defendants’ representations and omissions the ingredients in the Mislabeled Products (and/or amounts thereof) are representations and/or omissions that are likely to mislead consumers acting reasonably in the circumstances, to the consumer’s detriment.

b. Clearly, reasonable consumers would, as a result of Defendants’ misrepresentations and omissions, be misled and believe that the Mislabeled Products contain the

ingredients listed on the label and/or amounts of the ingredients listed on the label; neither of which is true.

c. Defendants' affirmations of fact and promises made to Plaintiff and the Class on the Product labels and packaging materials, became part of the basis of the bargain between Wal-Mart and Plaintiff and the Class Members.

d. It is highly probable that these representations and omissions (regarding ingredients and/or amounts thereof) is likely to cause injury to a reasonable consumer, and Defendants' misrepresentations and omissions are likely to mislead consumers.

e. In this case, claims regarding the ingredients and/or amounts thereof were the integral part of Defendant's marketing scheme, and the primary reason consumers purchased their product.

78. ***Violation Two: Unfair Practices.*** Defendants further violated FDUTPA by engaging in unfair practices against Plaintiff and the Class. Namely:

a. Given the considerable cost of the Mislabeled Products and that their consumers are seeking health benefits, Defendants' sale of the product (which does not contain the ingredients and/or amount of ingredients listed on the label), especially accompanied by the misrepresentations and omissions described herein, is a practice this is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers.

b. These practices also offend established public policy regarding the protection of consumers.

c. The practices complained of herein are not limited to a single instance but is rather done pervasively and uniformly at all times as against Plaintiff and the Class.

79. ***Violation Three: Misleading Advertising.*** Defendants further violated FDUTPA by violating a “statute...which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” Fla. Stat. 501.203(3)(c). Here, Defendants violated Florida’s Misleading Advertising Law (Fla. Stat. 817.41), as described in the “Second Cause of Action” portion of this Complaint.

80. Defendants’ misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, as described herein as violating FDUTPA, would deceive an objectively reasonable consumer.

81. As a result of Defendants’ misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, Plaintiff and the Class Members suffered actual damages by losing money. Plaintiff and the Class Members (a) would not have purchased the Mislabeled Products if they had known the truth about those products; (b) they paid for the Mislabeled Products due to the false and misleading labeling (and omissions by the Defendants); and (c) the Mislabeled Products did not have the quality, effectiveness, and/or value as promised. As a result, Plaintiff and the Class have been damaged in the full amount of the purchase price of the Mislabeled Products.

82. As a result of these FDUTPA violations, Plaintiff and the Class Members are entitled to actual damages, attorneys’ fees, costs, declaratory relief, and injunctive relief.

B. Second Cause of Action: Misleading Advertising

83. Plaintiff incorporates by reference each other allegation set forth in this Complaint.

84. Through the misrepresentations and omissions made in Defendants’ product

packaging regarding the ingredients (and/or the amounts thereof) contained in the Mislabeled Products, Defendants unlawfully disseminated or caused to be made misleading advertisements in Florida, in violation of Fla. Stat. 817.41.

85. Though described above, Plaintiff reiterates the specific circumstances surrounding Defendants' misleading advertising:

a. **Who.** Defendants made (or caused to be made) the material misrepresentations and omissions described herein. Plaintiff is unaware, and therefore unable to identify, the true names and identities of those individuals at Wal-Mart (or at DOES 1-10) who are responsible for the false or misleading advertisements.

b. **What.** As noted above, Defendants' product packaging made material misrepresentations regarding: (1) the ingredients in the Mislabeled Products; (2) the amounts of ingredients in the Mislabeled Products; and (3) (in some instances), that the Mislabeled Product contains no wheat or gluten. Defendants' advertising was further misleading in that it failed to disclose other filler ingredients, including ingredients that were potentially harmful to some consumers.

c. **Where.** The false advertising occurred on Defendants' product packaging which were (upon information and belief) transmitted and/or displayed throughout the State of Florida.

d. **When.** Defendants engaged in the false advertising detailed herein continuously during the Class Period.

e. **Why.** Defendants made the false advertisements with the intent to induce Plaintiff and the Class to rely upon them and purchase the Mislabeled Products.

86. The misrepresentations and omissions as to the Mislabeled Products' ingredients (and/or amounts thereof) are material to Plaintiff, the Class Members, and average consumers.

87. Defendants knew or should have known (through the exercise of reasonable care or investigation) that the advertisements were false, untrue, or misleading.

88. Defendants' misrepresentations and omissions were designed and intended, either directly or indirectly, for obtaining money from Plaintiff and the Class Members under false pretenses by inducing them to purchase Defendants' Mislabeled Products. Defendants intended that the representation would induce Plaintiff and the Class Members to rely upon it and purchase Defendants' Mislabeled Products.

89. Plaintiff and the Class Members relied to their detriment on Defendants' false advertising, by purchasing a product that they would not otherwise have purchased.

90. Plaintiff and the Class Members suffered injury in justifiable reliance on Defendants' false advertising; namely they lost money by purchasing a product that they would not otherwise (but for the false advertising) have purchased.

91. Pursuant to Fla. Stat. 817.41, Plaintiff and the Class Members are entitled to costs, reasonable attorney's fees, actual damages, and punitive damages

92. Punitive damages are appropriate here, given (upon information and belief) that Defendants knowingly misled consumers including Plaintiff and the Class and engaged in the willful, wanton, and/or reckless conduct described herein. Here, Defendants engaged in intentional misconduct (or alternatively, gross negligence) as to the misrepresentations and omissions concerning the Mislabeled Products' ingredients (and/or the amounts thereof) that form the heart of Plaintiff's claims.

C. Third Cause of Action: Unjust Enrichment

93. Plaintiff incorporates by reference each other allegation set forth in this Complaint.

94. At all relevant times, Defendants promoted, marketed, and/or sold the Mislabeled Products.

95. Plaintiff and Members of the Class conferred upon Defendants non-gratuitous payments for the Mislabeled Products.

96. Defendants in turn accepted and/or retained the non-gratuitous benefits conferred upon them by Plaintiff and the Class, aware that as a result of Defendants' deceptive statements / omissions, Plaintiff and the Class were not receiving products of the quality, nature, fitness or value that had been represented by Defendants and reasonable consumers would have expected.

97. Defendants profited from their unlawful, unfair, misleading, and/or deceptive practices and advertising at the expense of Plaintiff and the Class, under circumstances in which it would be unjust for Defendants to retain said benefit.

98. Because Defendants' retention of the non-gratuitous benefits conferred by Plaintiff and the Class is unjust in inequitable, Plaintiff and the Class are entitled to, and hereby seek disgorgement and restitution of Defendants' wrongful profits, revenue, and benefits in a manner established by the Court.

99. As there is no written contract between the parties, Plaintiff and the Class do not have an adequate remedy at law to recover the non-gratuitous benefits conferred on Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment in favor of herself and the Class for the

following:

- a. That the Court determines that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure; that Plaintiff is a proper class representative; and that the best practicable notice of this action be given to members of the Class represented by Plaintiff;
- b. That judgment be entered against Defendants and in favor of Plaintiff and the Class on the Plaintiff's FDUTPA claim, for actual and consequential damages, equitable relief, including restitution and restitutionary disgorgement;
- c. That judgment be entered against Defendants and in favor of Plaintiff and the Class on Plaintiff's Misleading Advertising claim, for actual and punitive damages;
- d. That Defendant be permanently enjoined from its unfair, fraudulent and deceitful activity;
- e. That judgment be entered imposing interest on damages;
- f. That judgment be entered imposing litigation costs and attorneys' fees;
and
- g. For all other and further relief, including equitable relief, as this Court may deem necessary and appropriate.

JURY TRIAL DEMANDED

March 27, 2015

Respectfully submitted,

KU & MUSSMAN, PA

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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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS ROSALYND LUGO

DEFENDANTS WAL-MART STORES, INC.

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Ku & Mussman, P.A., 6001 NW 153rd Street, Suite 100 Miami Lakes, FL 33014 Tel: (305) 891-1322; Fax: (305) 891-4512

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

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 [X] 1
Citizen of Another State [] 2
Citizen or Subject of a Foreign Country [] 3
Incorporated or Principal Place of Business In This State [] 1
Incorporated and Principal Place of Business In Another State [] 2
Foreign Nation [] 3
PTF DEF
PTF DEF
PTF DEF

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.

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

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment
8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions):

a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Fla. Stat. § 501.201, et seq. ("FDUTPA") and Florida's Misleading Advertising Law, Fla. Stat. § 817.40, et seq. LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X] DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

March 27, 2015

/s/ Brian T. Ku

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFF JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ROSALYND LUGO

Plaintiff(s)

v.

WAL-MART STORES, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

WAL-MART STORES, INC.

By Serving Registered Agent:

C T CORPORATION SYSTEM

1200 SOUTH PINE ISLAND ROAD

PLANTATION, FL 33324

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:

Brian T, Ku, Esq.

Louis I. Mussman, Esq.

Ku & Mussman, P.A.

6001 NW 153rd Street, Suite 100, Miami Lakes, Florida 33014

Tel: 305-891-1322; Fax: 305-891-4512

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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: