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JUDGE BRODERICK 15 CV 10163

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

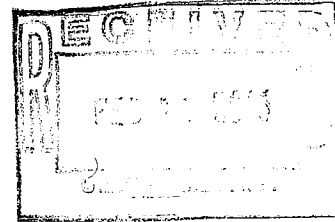
RUSSELL MARKS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

WALGREEN CO., an Illinois Corporation,
DUANE READE INC., a Delaware
Corporation, and "JOHN DOE"
DEFENDANTS 1-100, names and
addresses unknown,

Defendants.



CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Russell Marks ("Plaintiff" or "Marks"), individually and on behalf of all others similarly situated against Defendants WALGREEN CO., an Illinois Corporation, and DUANE READE INC., a Delaware Corporation, and, in the alternative "JOHN DOE" DEFENDANTS 1-100 (collectively, "DEFENDANTS"). All allegations made in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff, which are based on personal knowledge, and facts that are a matter of public record. Each allegation in this Complaint either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the Federal Rules of

CLASS ACTION COMPLAINT

1 Civil Procedure, is likely to have evidentiary support after a reasonable opportunity for
2 further investigation or discovery.
3

4 **NATURE OF CLAIM**

5 1. This is a consumer class action lawsuit brought on behalf of Plaintiff,
6 individually, and on behalf of all other individuals, against Defendants for misbranding
7 some of their “Finest Nutrition” supplements by not accurately identifying all
8 ingredients in the product or giving the amount of such ingredients.
9

10 2. On February 2, 2015, the New York State Attorney General’s office
11 released test results of DNA testing it recently performed on several brands of popular
12 herbal dietary supplements.¹ The purpose of the Attorney General’s investigation was
13 to determine whether contaminants and fillers had been substituted for authentic
14 product.
15

16 3. One brand of herbal supplements subject to testing by the Attorney
17 General was the “Finest Nutrition” brand of dietary supplement products sold and
18 distributed exclusively by Defendants. The particular types of “Finest Nutrition”
19 supplements tested included Gingko Biloba, St. John’s Wort, Ginseng, and Echinacea.
20 The Attorney General’s tests revealed that the contents of the dietary supplements
21 were consistently either unrecognizable or a substance other than what they claimed to
22 be. Based on these findings, the Attorney General concluded that the “Finest
23
24
25
26

27 ¹ See [http://www.ag.ny.gov/press-release/ag-schneiderman-asks-major-retailers-halt-sales-certain-](http://www.ag.ny.gov/press-release/ag-schneiderman-asks-major-retailers-halt-sales-certain-herbal-supplements-dna-tests)
28 [herbal-supplements-dna-tests](http://www.ag.ny.gov/press-release/ag-schneiderman-asks-major-retailers-halt-sales-certain-herbal-supplements-dna-tests) (last accessed Feb 11, 2015).

1 Nutrition” brand of Ginkgo Biloba, St. John’s Wort, Ginseng, and Echinacea
2 constituted “contaminated” and/or “substituted products” (the “Misbranded
3 Supplements”).
4

5 4. Plaintiff has purchased one of the Misbranded Supplements, specifically
6 Echinacea. In doing so, Plaintiff reasonably relied on Defendants’ representations that
7 the Misbranded Supplements were what they purported to be – herbal dietary
8 supplements containing the ingredients reflected on the label. Instead, Plaintiff
9 purchased a worthless product made up of such useless substances as allium, oryza
10 (rice) and daisy. According to the New York Attorney General’s report, “[n]o DNA
11 from Echinacea was identified.”²
12
13

14 5. Plaintiff brings this proposed class action for damages and injunctive
15 relief on behalf of himself and all other persons and entities nationwide who purchased
16 the Misbranded Supplements from Defendants.
17

18 PARTIES

19 6. Marks is an adult individual who is a resident of New York, New York.
20

21 7. Defendant WALGREEN CO. (“Walgreens”) is a foreign business
22 corporation organized and existing under the laws of Illinois, and is registered with the
23 New York State Secretary of State to do business in New York, with its principal place
24 of business in Deerfield, Illinois.
25

26
27 ² A copy of the New York Attorney General’s February 2, 2015 cease and desist letter is attached as
28 Exhibit “A.”

1 8. Defendant DUANE READE INC. (“Duane Reade”) is a foreign business
2 corporation organized and existing under the laws of Delaware, and is registered with
3 the New York State Secretary of State to do business in New York, with its principal
4 place of business in Deerfield, Illinois.
5

6 9. In the alternative, Plaintiff alleges that “JOHN DOE” DEFENDANTS 1-
7 100 manufacture and label the “Finest Nutrition” brand of herbal dietary supplements.
8 “John Doe” Defendants 1-100, names and addresses unknown, include the
9 manufacturers of the “Finest Nutrition” brand herbal dietary supplements.
10
11

12 **JURISDICTION AND VENUE**

13 10. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). In
14 the aggregate, Plaintiff’s claims and the claims of the other members of the Classes
15 exceed \$5,000,000 exclusive of interest and costs, and there are numerous class
16 members who are citizens of states other than Defendants’ states of citizenship, which
17 are Illinois and Delaware.
18
19

20 11. This Court has personal jurisdiction over Walgreens and Duane Reade
21 because both are authorized to do and actually do business in the State of New York.
22

23 12. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a
24 substantial part of the acts and transactions giving rise to the claims occurred in this
25 District.
26
27
28

FACTUAL ALLEGATIONS

13. On February 2, 2015, New York Attorney General Eric T. Schneiderman sent a demand letter to Walgreens ordering it to immediately cease and desist engaging in the sale of the Misbranded Supplements.³ These Misbranded Supplements include “Finest Nutrition” brand Gingko Biloba, St. John’s Wort, Ginseng, and Echinacea supplements.

14. An expert in DNA barcoding technology, Dr. James A. Schulte II of Clarkson University in Potsdam, N.Y., was hired by the Attorney General’s office to perform the testing. DNA barcodes are short genetic markers in an organism’s DNA and are used to identify it as belonging to a particular species. Barcodes provide an unbiased, reproducible method of species identification. Barcodes can be used to determine the exact plant species being tested.

15. By using DNA barcoding technology, Dr. Schulte was able to determine that all of the Misbranded Supplements contained substances that were either unrecognizable or a substance other than what they claimed to be. Of the 90 DNA tests run on 18 bottles of herbal products purchased, DNA matched label representation 18% of the time. Contaminants identified included allium, rice, wheat, palm, daisy, and dracaena (houseplant).

16. Based on Dr. Schulte’s test results, the Attorney General concluded that

³ See Exhibit “A.”

1 the supplement products constituted contaminated and/or substituted products.
2 Because contamination, substitution, and falsely labeling herbal products constitutes
3 deceptive business practices and poses a considerable health risk to consumers, the
4 Attorney General demanded that Defendants cease selling the Misbranded
5 Supplements in New York State.
6

7
8 17. In 2014, Plaintiff purchased Finest Nutrition Brand Echinacea from the
9 Duane Reade store located at 1279 Third Avenue, New York, New York.⁴ In making
10 this purchase, Plaintiff reasonably relied on Defendants' representations that the
11 Echinacea was what it was purported to be – an herbal dietary supplement containing
12 the ingredients reflected on the label. Had Defendants correctly identified the contents
13 of the Echinacea (e.g., allium, rice and daisy), Plaintiff would not have made the
14 purchase.
15
16

17 18. The Misbranded Supplements were and are worthless as a matter of law,
18 because they fail to contain the advertised ingredients. Accordingly, Plaintiff and the
19 class members he seeks to represent are entitled to full return of the purchase price.
20
21
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27
28 ⁴ See Exhibit "B" – a photograph of Plaintiff's bottle of Echinacea he purchased.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated pursuant to Fed. R. Civ. P. 23. Plaintiff seeks to represent a nationwide class (the “Nationwide Class”) defined as follows:

During the fullest period allowed by law, all persons and entities nationwide who have purchased “Finest Nutrition” brand Gingko Biloba, St. John’s Wort, Ginseng, or Echinacea.

Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; and the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants.

20. Plaintiff also seeks to represent a New York consumer subclass (“NY Subclass,” or collectively with the Nationwide Class, the “Classes”) defined as follows:

During the fullest period allowed by law, all consumers in the State of New York that purchased “Finest Nutrition” brand Gingko Biloba, St. John’s Wort, Ginseng, or Echinacea.

Excluded from the NY Subclass are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; and the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants.

21. As used herein, “Class Members” shall mean and refer to the members of the Nationwide Class and/or the members of the NY Subclass, including Plaintiff.

22. The Class Members are so numerous that the joinder of all members is impractical. While the exact number of Class Members is unknown to Plaintiff at this time, based on information and belief, it is in the thousands.

1 23. There is a well-defined community of interest among the Class Members
2 because common questions of law and fact predominate, Plaintiff's claims are typical
3 of the Class Members, and Plaintiff can fairly and adequately represent the interests of
4 the Classes.
5

6 24. This action satisfies the requirements of Federal Rule of Civil Procedure
7 23(b)(3) because it involves questions of law and fact common to the member of the
8 Classes that predominate over any questions affecting only individual members,
9 including, but not limited to:
10

- 11 a. whether the Misbranded Supplements' labels misstate the
12 packages' actual contents;
13
- 14 b. whether Defendants knew that the Misbranded Supplements
15 contained inaccurate labels when they manufactured, processed,
16 packaged, distributed, and/or sold them;
17
- 18 c. whether Defendants concealed the actual contents of the
19 Misbranded Supplements;
20
- 21 d. whether Defendants breached a contract with Plaintiff and the Class
22 Members;
23
- 24 e. whether Defendants breached an express warranty with Plaintiff
25 and the Class Members;
26
- 27 f. whether Defendants breached an implied warranty of
28 merchantability with Plaintiff and the Class Members;

- g. whether Defendants were unjustly enriched by their actions;
- h. whether Defendants' conduct was negligent;
- i. whether Defendants' actions violate New York consumer protection statutes and/or New York deceptive business practices statutes;
- j. whether Plaintiff and the Class Members have suffered damages as a result of the conduct alleged herein, and if so, the measure of such damages; and
- k. whether Plaintiff and the Class Members are entitled to injunctive relief.

25. Plaintiff's claims are typical of the claims of the Class Members whom he seeks to represent because Plaintiff and each Class Member purchased the same Misbranded Supplements.

26. Plaintiff will fairly and accurately represent the interests of the Classes. Plaintiff has retained competent and capable attorneys with significant experience in complex and class action litigation, including consumer class actions. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Classes and have the financial resources to do so. Neither Plaintiff nor his counsel has interests that are contrary to or that conflict with those of the proposed Classes.

27. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual

1 Class Members, which would establish incompatible standards of conduct for
2 Defendants and would lead to repetitive adjudication of common questions of law and
3 fact. Accordingly, class treatment is superior to any other method for adjudicating the
4 controversy. Plaintiff knows of no difficulty that will be encountered in the
5 management of this litigation that would preclude its maintenance as a class action
6 under Rule 23(b)(3).
7

8
9 28. Damages for any individual class member are likely insufficient to justify
10 the cost of individual litigation, so that in the absence of class treatment, Defendants'
11 violations of law inflicting substantial damages in the aggregate would go un-remedied
12 without certification of the Classes.
13

14 29. Defendants have acted or refused to act on grounds that apply generally to
15 the Classes, as alleged above, and certification is proper under Rule 23(b)(2).
16

17 30. In recognition of the services Plaintiff has rendered and will continue to
18 render to the Classes, Plaintiff will request payment of a service award upon resolution
19 of the action.
20

21 **FIRST CAUSE OF ACTION**

22 **Breach of Contract**

23 **(Brought on behalf of Plaintiff and the Nationwide Class)**

24 31. Plaintiff realleges and incorporates by reference all paragraphs alleged
25 herein.
26

27 32. Defendants, through their product labels, packaging, advertisements,
28 websites, and other marketing materials, made uniform representations and offers

1 regarding the contents of the Misbranded Supplements.

2 33. Plaintiff and the members of the Nationwide Class, by purchasing the
3 Misbranded Supplements, accepted Defendants' offer and paid considerations by way
4 of paying the purchase price.
5

6 34. Defendants, Plaintiff, and the members of the Nationwide Class had the
7 legal capacity to enter into such contracts.
8

9 35. Defendants breached the contracts by not upholding their end of the
10 bargain, namely by providing a product that does not contain the represented contents.
11

12 36. As a direct and proximate cause of Defendants' breach, Plaintiff and the
13 members of the Nationwide Class were deprived of the benefit of the bargain and were
14 damaged in an amount that will be proven at trial.
15

16 **SECOND CAUSE OF ACTION**

17 **Breach of Express Warranty**

18 **(Brought on behalf of Plaintiff and the Nationwide Class)**

19 37. Plaintiff realleges and incorporates by reference all paragraphs alleged
20 herein.

21 38. In designing, packaging, importing, marketing, distributing, and/or selling
22 the Misbranded Supplements, Defendants made express representations to Plaintiff and
23 the members of the Nationwide Class that the Misbranded Supplements contained the
24 ingredients stated on the product labels.
25

26 39. These representations were aimed at consumers, including Plaintiff and
27 the members of the Nationwide Class, and Plaintiff and the members of the
28

1 Nationwide Class purchased the Misbranded Supplements based on the reasonable
2 expectation that the Misbranded Supplements would contain the represented contents.
3

4 40. Because the Misbranded Supplements do not contain the ingredients
5 Defendants represented them to contain, Plaintiff and the members of the Nationwide
6 Class have been injured, and these injuries were directly and proximately caused by
7 Defendants' false representations.
8

9 41. Accordingly, Plaintiff and the members of the Nationwide Class are
10 entitled to recover damages they suffered as a result Defendants' actions.
11

12 **THIRD CAUSE OF ACTION**
13 **Breach of Implied Warranty of Merchantability**
14 **(Brought on behalf of Plaintiff and the Nationwide Class)**

15 42. Plaintiff realleges and incorporates by reference all paragraphs alleged
16 herein.

17 43. In designing, packaging, marketing, distributing, and/or selling the
18 Misbranded Supplements, Defendants warranted that the Misbranded Supplements
19 contained the ingredients reflected on the product labels.
20

21 44. Defendants breached the warranty implied in the contract for the sale of
22 the Misbranded Supplements because the Misbranded Supplements could not pass
23 without objection in the trade under the label description, the goods were not of fair
24 average quantity within the description, and the goods were unfit for their intended and
25 ordinary purpose. Accordingly, Plaintiff and the members of the Nationwide Class did
26 not receive goods as impliedly warranted by Defendants to be merchantable.
27
28

1 45. Plaintiff and the members of the Nationwide Class purchased the
2 Misbranded Supplements in reliance upon Defendants' skill and judgment and the
3 implied warranties of fitness for the purpose.
4

5 46. The Misbranded Supplements were not altered by the Plaintiff or the
6 members of the Nationwide Class.
7

8 47. The Misbranded Supplements were defective when they left the exclusive
9 control of the Defendants.
10

11 48. Defendants knew that the Misbranded Supplements would be purchased
12 and consumed without additional testing by Plaintiff and the members of the
13 Nationwide Class.
14

15 49. The Misbranded Supplements were defectively designed and unfit for
16 their intended purpose, and Plaintiff and the members of the Nationwide Class did not
17 receive the goods as warranted.
18

19 50. As a direct and proximate cause of Defendants' breach of the implied
20 warranty, Plaintiff and the members of the Nationwide Class have been injured and
21 harmed because (i) they would not have purchased the Misbranded Supplements on the
22 same terms if they had known the products' true contents; (ii) they paid a price
23 premium for the Misbranded Supplements based on Defendants' representations that
24 they contained the labeled contents; and (iii) the Misbranded Supplements did not have
25 the characteristics, ingredients, uses, benefits, or quantities promised.
26
27
28

FOURTH CAUSE OF ACTION

**Unjust Enrichment / Common Law Claim for Restitution
(Brought on behalf of Plaintiff and the Nationwide Class)**

51. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

52. Because of their wrongful acts and omissions, Defendants charged a higher price for the Misbranded Supplements than the products' true value and Defendants obtained monies which rightfully belong to Plaintiff and the members of the Nationwide Class.

53. Defendants enjoyed the benefit of increased financial gains, to the detriment of Plaintiff and the members of the Nationwide Class. It would be inequitable and unjust for Defendants to retain these wrongfully obtained profits.

54. Plaintiff, therefore, seeks an order requiring Defendants to make restitution to them and the Class Members.

FIFTH CAUSE OF ACTION

**Negligent Misrepresentation
(Brought on behalf of Plaintiff and the Nationwide Class)**

55. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

56. Defendants made representations to Plaintiff and the members of the Nationwide Class regarding the contents of the Misbranded Supplements that were not true.

57. Defendants had no reasonable grounds for believing these representations

1 were true when they made them, yet they intended that Plaintiff and the members of
2 the Nationwide Class would rely on these representations.
3

4 58. Plaintiff reasonably relied on Defendants' representations and as a result
5 Plaintiff and members of the Nationwide Class were harmed.
6

7 **SIXTH CAUSE OF ACTION**
8 **Breach of GBL § 349 and the Various Analogous State Consumer Laws**
9 **(Brought on behalf of Plaintiff and the NY Subclass)**

10 59. Plaintiff realleges and incorporates by reference all paragraphs alleged
11 herein.

12 60. Defendants' transactions with Plaintiff and the members of the NY
13 Subclass as described herein constitute the "conduct of any trade or commerce" within
14 the meaning of NYS GBL § 349.
15

16 61. Further, Defendants' transactions with Plaintiff and the members of the
17 NY Subclass as described herein constitute "unfair or deceptive acts or practices in the
18 conduct of any trade or commerce" between a business and consumers within the
19 meaning of NYS GBL § 349.
20

21 62. In designing, packaging, marketing, distributing, and/or selling the
22 Misbranded Supplements, Defendants misrepresented the ingredients reflected on their
23 product labels.
24

25 63. The foregoing acts and conduct of Defendants are deceptive in that they
26 represented to Plaintiff and the members of the NY Subclass that the Misbranded
27 Supplements contained the ingredients reflected on their product labels when
28

1 Defendants knew this was false.

2 64. Defendants' failure to disclose information concerning the true
3 ingredients of the Misbranded Supplements directly and promptly to affected
4 consumers, constitutes a fraudulent act or practice in violation NYS GBL § 349.
5

6 65. Plaintiff and the members of the NY Subclass suffered damages as a
7 result of Defendants' conduct.
8

9 66. Plaintiff seeks restitution and injunctive relief on behalf of the NY
10 Subclass.
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE Plaintiff, on behalf of himself and members of the proposed
14 Classes, prays for judgment as follows:
15

16 A. For an Order certifying this action as a class action pursuant to Federal
17 Rule of Civil Procedure 23, and appointing Plaintiff and his Counsel to represent the
18 Classes;
19

20 B. Compensatory and other damages identified herein;

21 C. Awarding restitution and disgorgement of Defendants' revenues or profits
22 to Plaintiff and the members of the proposed Classes as permitted by applicable law;
23

24 D. An Order requiring Defendants to cease and desist from engaging in its
25 wrongful conduct and to engage in a corrective advertising campaign;
26

27 E. Statutory pre-judgment and post-judgment interest on any amounts;

28 F. Payment of reasonable attorneys' fees and recoverable litigation expenses

1 as may be allowable under applicable law;

2 G. Payment of a reasonable service award to Plaintiff, in recognition of the
3 services he has and will continue to render to the Rule 23 Class; and
4

5 H. Such other and further relief as this court may deem just and proper.
6

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial of their claims to the extent authorized by
9 law.

10 RESPECTFULLY SUBMITTED AND DATED this 11th day of February,
11 2015.
12

13
14
15
16 By: 

Joseph A. Fitapelli

17 **FITAPELLI & SCHAFFER, LLP**

18 Joseph A. Fitapelli

19 Brian S. Schaffer

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21 Telephone: (212) 300-0375

22 *Attorneys for Plaintiff and the Proposed Classes*
23
24
25
26
27
28

EXHIBIT “A”



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL AFFAIRS

February 2, 2015

Alexander Gourlay, President
Walgreens
200 Wilmot Road
Deerfield, Illinois 60015

Certified—Return Receipt Requested

Re: **CEASE & DESIST NOTIFICATION**
Finest Nutrition—Walgreen Distributed Herbal Dietary Supplements

Dear Mr. Gourlay:

This letter constitutes a demand to cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements, and in particular to immediately stop the sale of five “Finest Nutrition” dietary supplements as identified by lot number in the exhibit annexed hereto.

Be advised that the Attorney General is authorized by Executive Law § 63(12) to investigate allegations and prosecute businesses which perpetuate fraud upon consumers or engage in illegality in their business practices. General Business Article 22-b further authorizes this office to redress deceptive business acts and practices and false advertising. Of late, the topic of purity (or lack thereof) in popular herbal dietary supplements has raised serious public health and safety concerns,¹ and also caused this office to take steps to independently assess the validity of industry representations and advertising.

In an investigation recently conducted by the Attorney General’s Office, six popular Walgreen “Finest Nutrition” brand dietary supplement products were purchased at three different New York State locations and were then genetically tested five times per sample, yielding 90 results. The supplements tested included Ginkgo Biloba, St. John’s Wort, Ginseng, Garlic, Echinacea, and Saw Palmetto. By using established DNA barcoding technology, analytic testing disclosed that 5 of the 6 types of dietary supplement products tested were either unrecognizable or a substance other than what they claimed to be, and therefore fairly constitute contaminated or substituted products. Eighteen (18) percent of the tests yielded DNA matching the product label; 45% tested for botanical material other than what was on the label; and 37% yielded no plant DNA at all.

¹See, e.g., Newmaster, et al., “DNA Barcoding Detects Contamination and Substitution in North American Herbal Products,” *BMC Medicine*, 2013, 11:222 (<http://www.biomedcentral.com/1741-7015/11/222>).

Contamination, substitution and falsely labeling herbal products constitute deceptive business practices and, more importantly, present considerable health risks for consumers. The Attorney General's testing upon the products purchased revealed the following:

Ginkgo Biloba. Negative. The only DNA identified was "oryza", commonly known as rice. No ginkgo biloba DNA was identified.

St. John's Wort. Negative. Of the 15-tests performed, only three identified any DNA, and it was not of St. John's Wort. The DNA positively identified included allium, oryza, and dracaena (garlic, rice, tropical houseplant). No St. John's Wort was identified in the product.

Ginseng: Negative. Fifteen tests yielded identification of allium (x2) and oryza (x6), but no genetic material from ginseng.

Garlic: Negative. Genetic material of palm, dracaena, wheat, and oryza was located, with only 1/15 of the tests identifying allium as present in the product. Ten of the 15-tests showed no identifiable genetic plant material.

Echinacea: Negative. The testing revealed 5-positive identification of allium, 5-positive findings of oryza, and one for DNA material originating in the daisy family. No DNA from Echinacea was identified.

Saw Palmetto: Positive. All fifteen tests yielded genetic material of the saw palmetto plant.

Studies conducted by the Centre for Biodiversity Genomics at the University of Guelph and others have previously alerted the dietary supplement industry to the fact that it is not providing the public with authentic products without substitution, contamination or fillers. It is disappointing that over a year later the Attorney General's researcher reached similar conclusions, demonstrating that the industry has failed to clean up its practices.

To assist in the Attorney General's ongoing investigation of this matter, and pursuant to the above authority, kindly supply the following information:

1. The name of the manufacturer and the location of the production of each of the herbal products identified above.
2. A listing of any DNA testing or any other analytic testing for content and quality (including but not limited to chemical composition) of the herbal products listed above and copies of such testing results.
3. Copies of all licensing and production contracts with any party involved in the production and distribution of the herbal products identified above.
4. A listing of all ingredients used in the products identified above and a measurement of the amount of each ingredient in each of the herbal products identified above.
5. Identify the standards or procedures followed to authenticate the content of the herbal products listed above.

6. Produce the relevant Bioterrorism Registration documentation for the manufacturer of the dietary supplements.
7. Articulate the acquisition, production protocol, and quality assurance measures undertaken by the manufacturer of the products tested, including all such protocols undertaken to comply with current Dietary Supplement Current Good Manufacturing Practices (CGMPs) for quality control.
8. Produce any and all serious adverse event reports associated with use of any Walgreen herbal dietary supplement in the United States

Please provide the requested information to me at the following address: NYS Attorney General's Office, Dulles State Office Building, 317 Washington Street, Watertown, New York 13601. Kindly respond on or before 5:00 P.M. on February 9, 2015. If you have any questions, you may contact Assistant Attorney General Deanna R. Nelson at 315-785-2444.

The foregoing shall not constitute a waiver of or limitation on the Attorney General's authority to issue subpoenas or take enforcement action pursuant to applicable law.

Thank you for your anticipated cooperation.

Very truly yours,

MARTIN J. MACK
Executive Deputy Attorney General
In Charge of Regional Affairs

Enc.

Supplements by Lot #: As a courtesy, store location for the tested supplement is also listed. Kindly remove all of the supplements identified below which may bear the lot number indicated no matter the store location.

OAG #	Product	Address	Lot #
Br-Wg-1	Gingko Biloba	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	885709-02
Br-Wg-2	St. John's Wort	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	443071-09
Br-Wg-3	Ginseng	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	761948-04
Br-Wg-4	Garlic	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	902192-02
Br-Wg-5	Echinacea	Walgreens #04362, 520 Atlantic Avenue, Brooklyn, NY 11217	770813-01
R-Wg-1	Gingko Biloba	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	889588-02
R-Wg-2	St. John's Wort	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	764386-03
R-Wg-3	Ginseng	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	761948-04
R-Wg-4	Garlic	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	902192-02
R-Wg-5	Echinacea	Walgreens #09584, 1650 Elmwood Avenue, Rochester, NY 14620	748376-01
Wa-Wg-1	Gingko Biloba	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	885768-01
Wa-Wg-2	St. John's Wort	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	491668-10
Wa-Wg-3	Ginseng	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	500472-03
Wa-Wg-4	Garlic	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	881647-02
Wa-Wg-5	Echinacea	Walgreens #10219, 929 Arsenal Street, Watertown, NY 13601	752900-02

EXHIBIT “B”

