

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

**CASE NO.** \_\_\_\_\_

LOUISE WILLIAMS and MARIA VALDEZ  
RODRIGUEZ, on behalf of themselves and all  
others similarly situated,

Plaintiff,

v.

**CLASS ACTION  
JURY DEMAND**

WAL-MART STORES, INC. and NBTY, Inc.,

Defendants.

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**CLASS ACTION COMPLAINT**

Plaintiffs LOUISE WILLIAMS and MARIA VALDEZ RODRIGUEZ file this class action complaint on behalf of themselves and all others similarly situated against WAL-MART STORES, INC. (“Wal-Mart”) and NBTY, INC. (“NBTY”) (collectively, “Defendants”) and state as follows:

**INTRODUCTION**

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

2. The retailers further failed to disclose that these expensive products also contained unlisted “fillers” such as rice, beans, garlic, wheat, citrus, and house plants — unlisted ingredients that can pose serious health risks. This was all done to generate hundreds of millions of dollars in profits. This case is brought specifically on behalf of those nationwide consumers that bought these worthless products to prevent Defendants from continuing these fraudulent practices.

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

4. Wal-Mart is one of the largest retailers in the world. In the United States, Wal-Mart operates over 4,300 stores, which do business in six “strategic merchandise units.” The “health and wellness” unit comprised 10% of Wal-Mart’s 2014 net sales in the United States. In this segment, Wal-Mart sells various herbal supplements under its own proprietary brand known as “Spring Valley.”

5. Wal-Mart purchases the Spring Valley herbal supplements from NBTY, which manufactures, distributes and sells a variety of vitamins and nutritional supplements in the United States and throughout the world.

6. Wal-Mart’s annual report asserts:

**Wal-Mart Stores, Inc. helps people around the world save money and live better . . . We earn the trust of our customers every day by providing a broad assortment of quality**

**merchandise and services at everyday low prices.<sup>1</sup>**

7. A recent investigation by the New York Attorney General proves this statement to be simply false.

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

**Background of Herbal Supplements**

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

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

11. Later in the 20<sup>th</sup> century, however, there was a reemergence of herbal remedies in the market in the form of herbal supplements.

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

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

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<sup>1</sup> See Wal-Mart Annual Report on Form 10-4 for the Fiscal Year Ended January 31, 2014.

14. Today, herbal supplements account for approximately 30% of the global supplements market,<sup>2</sup> and the World Health Organization estimates that 80% of people worldwide rely on herbal medicines for some part of their primary health care.

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

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

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

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

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

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<sup>2</sup> Herbal supplements make up a significant part of the broader supplements market, which includes vitamins, minerals, meal supplements, sports nutrition, and specialty supplements.

lifestyle and support themselves and their families.

19. NBTY manufactures and sells herbal supplement products. It sells these products directly to consumers through its Vitamin World retail stores and website. It also sells the supplements wholesale to major retailers in the United States, including Wal-Mart, Costco, CVS, Walgreens, Kroger, and Target.<sup>3</sup>

20. Wal-Mart purchases supplements from NBTY through purchase orders placed by Wal-Mart.<sup>4</sup> Wal-Mart then sells these supplements to consumers under its private label, Spring Valley.

21. Ginkgo Biloba, Ginseng, Echinacea, and St. John's Wort, all sold under the Wal-Mart Spring Valley brand, are some of the most popular herbal supplements marketed and sold in the United States today.

22. Wal-Mart markets and sells these products through its retail stores and on its website. For example, in advertising Spring Valley Ginkgo Biloba on its website, Wal-Mart states,

Scientific Research Documents The Ability of Ginkgo to Maintain Peripheral Circulation to The Arms, Legs and Brain. In addition Ginkgo Helps Improve Memory, Especially Occasional Mild Memory Problems Associated with Aging. Ginkgo Also Possesses Antioxidant Properties That May Help Neutralize Cell-Damaging Free Radicals.<sup>5</sup>

23. What Wal-Mart does not disclose is that its ginkgo biloba product does not actually contain the labeled ginkgo biloba ingredient.

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<sup>3</sup> See NBTY, Inc. Annual Report on the Form 10-K for the Fiscal Year Ended September 30, 2014.

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

<sup>5</sup> See <http://www.walmart.com/ip/Spring-Valley-Ginkgo-Biloba-Capsules-120mg-90count/10325000>, (last viewed February 17, 2015).

24. Wal-Mart advertises each of the other mislabeled Spring Valley herbal supplements in the same manner. For Echinacea, it asserts that the supplement supports “immune health.”<sup>6</sup> For ginseng, it proclaims that the product supports “general wellness,” further explaining that a “bottle of Korean Supplemental Ginseng will keep you going with a combination of natural chemicals, which work together to bolster your body in a variety of ways.”<sup>7</sup> For St. John’s Wort, Wal-Mart’s website states, “Spring Valley Standardized Extract St. John’s Wort Herbal Supplement Capsules help promote a positive mood and a healthy emotional balance.”<sup>8</sup>

25. However, testing has revealed that none of these Spring Valley products contained any of the touted herbal ingredients.

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

## **PARTIES**

### **Plaintiff**

27. Plaintiff MARIA VALDEZ RODRIGUEZ is a citizen of the State of Florida who purchased Defendant’s mislabeled Wal-Mart Spring Valley Echinacea and St. John’s Wort. She is a natural person over the age of 21 and otherwise *sui juris*.

28. Plaintiff LOUISE WILLIAMS is a citizen of the State of Florida who purchased

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<sup>6</sup> See <http://www.walmart.com/ip/Spring-Valley-ECHINACEA-250CT/10416573>, (last viewed February 17, 2015).

<sup>7</sup> See <http://www.walmart.com/ip/Spring-Valley-Herbal-Supplement-Korean-Ginseng-60-Ct/10324966>, (last viewed February 17, 2015).

<sup>8</sup> See <http://www.walmart.com/ip/Spring-Valley-Standardized-Extract-St.-John-s-Wort-Herbal-Supplement-Capsules-300mg-per-serving-100-count/10324965>, (last viewed February 17, 2015).

Defendants' mislabeled Wal-Mart Spring Valley Ginkgo Biloba, Ginseng, St. John's Wort, and Echinacea products. She is a natural person over the age of 21 and otherwise *sui juris*.

**Defendants**

29. Defendant WAL-MART STORES, INC. is a Delaware corporation operating in the State of Florida with its principal place of business in Bentonville, Arkansas.

30. Wal-Mart operates a network of approximately 11,270 locations in the United States and internationally.

31. Wal-Mart markets itself as "help[ing] people around the world save money and live better."<sup>9</sup> Wal-Mart's net sales in the United States for the 2014 fiscal year were \$279.4 billion.<sup>10</sup> Health and wellness items accounted for approximately 10% of Wal-Mart's net sales in the United States.<sup>11</sup>

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

33. NBTY is one of the largest retailers, manufacturers, and distributors of vitamins, nutritional supplements and related products in the United States, with operations throughout the world.<sup>12</sup>

34. NBTY's facilities include administration, manufacturing, warehousing, packaging and distribution facilities located in Pompano Beach, Deerfield Beach, Naples, and Boca Raton,

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<sup>9</sup> See <http://corporate.walmart.com/our-story/>, (last viewed on February 17, 2015).

<sup>10</sup> See Wal-Mart Annual Report on Form 10-4 for the Fiscal Year Ended January 31, 2014.

<sup>11</sup> *Id.*

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

Florida. It also operates retail locations throughout the United States.<sup>13</sup>

35. NBTY describes its missions as follows: “To enhance the well-being of our customers globally by delivering the highest quality, best value nutritional supplements and wellness products.”<sup>14</sup> Its website states that it has a “significant presence in virtually every major vitamin, mineral, herb and supplement product category and in multiple key distribution channels.”<sup>15</sup>

36. In 2014, NBTY’s net sales for its wholesale segment totaled \$1.88 billion.<sup>16</sup> Sales to Wal-Mart constituted 19% of this amount, and 11% of NBTY’s sales across all segments.<sup>17</sup>

### **JURISDICTION AND VENUE**

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

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

39. This Court has jurisdiction over Defendants because they are foreign corporations authorized to conduct business in Florida, are continuously doing business in Florida and have registered with the Florida Secretary of State, or do sufficient business in Florida, have sufficient

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<sup>13</sup> *Id.*

<sup>14</sup> See <http://www.nbty.com/OurCompany/MissionAndValues>, (last viewed on February 17, 2015).

<sup>15</sup> See <http://www.nbty.com/OurBrands/VitaminsSupplements>(last viewed on February 17, 2015).

<sup>16</sup> See NBTY Annual Report on Form 10-K for the Fiscal Year Ended September 30, 2014.

<sup>17</sup> *Id.*



minimum contacts with Florida, or otherwise intentionally avail themselves of the Florida consumer market through the promotion, marketing, sale, and service of the aforementioned herbal supplements including the supplements purchased by Plaintiffs. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants and their affiliated or related entities permissible under traditional notions of fair play and substantial justice.

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

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

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

### **FACTUAL ALLEGATIONS**

43. NBTY manufactures and sells herbal supplements to Wal-Mart through purchase orders placed by Wal-Mart.<sup>18</sup> Wal-Mart markets, distributes, and sells these supplements to consumers under its proprietary brand, Spring Valley.

44. The Spring Valley brand includes “Spring Valley Gingko Biloba,” “Spring

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<sup>18</sup> *Id.*

Valley Echinacea,” “Spring Valley Korean Panax Ginseng,” and “Spring Valley St. John’s Wort” product (collectively, the “Spring Valley Supplements”) purchased by Plaintiffs and the class members.

45. Wal-Mart represents that it has tested and stands by its products and its marketing.

46. The labeling on every Wal-Mart Spring Valley Gingko Biloba product conspicuously shows the “Supplement Facts” and identifies the primary herbal ingredient as “Gingko Biloba Extract.” *See e.g.* ¶ 70 *infra*. Each of the other Spring Valley Supplements has the same labeling, which identifies the advertised herbal ingredient as the primary ingredient. Contrary to these representations, the Spring Valley Supplements are not what they purport to be.

47. On February 2, 2015, New York Attorney General Eric Schneiderman sent a letter to Wal-Mart ordering it to immediately “cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements” and to “immediately stop the sale of six ‘Spring Valley’ dietary supplements.”<sup>19</sup>

48. The Spring Valley Supplements were among those six supplements.<sup>20</sup>

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

50. 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

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<sup>19</sup> Similar cease and desist letters were sent to GNC, Target, and Walgreens relating to their proprietary brands of certain herbal supplements.

<sup>20</sup> The cease and desist letter was also directed to sale of the Wal-Mart Spring Valley Garlic and Saw Palmetto.

method of species identification. The barcodes can be used to determine the exact plant species being tested.

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

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

53. Indeed, testing on the Spring Valley Gingko Biloba product revealed that “*no gingko biloba DNA was identified.*” Instead, six of the fifteen tests identified DNA for oryza (commonly known as rice), with other tests identifying dracaena (a tropical houseplant), mustard, wheat, and radish. Four of the fifteen tests revealed no plant DNA whatsoever.

54. Similar results were yielded for each of the other Spring Valley Supplements.

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

56. According to Attorney General Schneiderman:

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

57. Wal-Mart’s mislabeling of its proprietary Spring Valley Supplements constitutes

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

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

59. Because of Wal-Mart's intentional mislabeling of the ingredients in the Spring Valley Supplements, a consumer with food allergies, or who is taking medication for an unrelated illness, is assuming a potentially serious health risk each time the contaminated herbal supplement is ingested.

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

**Plaintiff Maria Valdez Rodriguez**

61. Ms. Rodriguez, a sufferer of joint related health issues, learned of certain benefits from taking Echinacea, including relief from joint pain.

62. Wary of the side effects and costs of prescription products, Ms. Rodriguez has purchased Spring Valley Echinacea from one of Wal-Mart's retail stores since approximately 2005. She has used Spring Valley Echinacea consistently in hopes of boosting her immune system and, in turn, alleviating her joint issues without resort to prescription medication.

63. Ms. Rodriguez paid approximately \$5-7 per bottle every two months for the Spring Valley Echinacea product.

64. In addition, Ms. Rodriguez learned that St. John's Wort could be used as an

effective treatment for depression.

65. Based upon this information, Ms. Rodriguez purchased Spring Valley St. John's Wort over a period of approximately one year to help alleviate her symptoms of depression.

66. Ms. Rodriguez paid approximately \$5-7 per bottle for the Spring Valley St. John's Wort product.

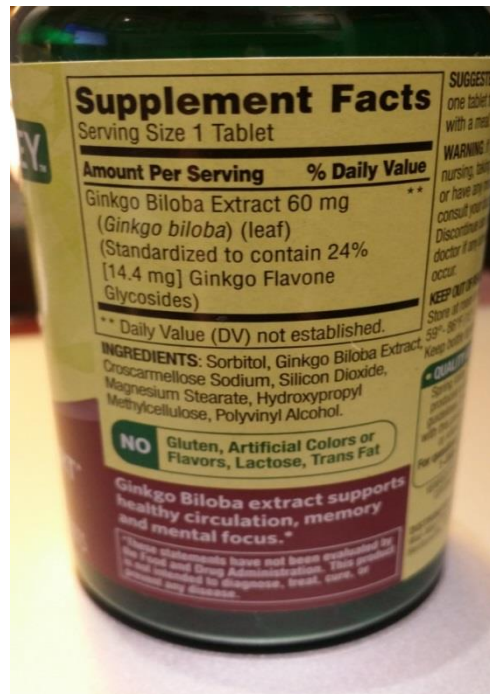
**Plaintiff Louise Williams**

67. Plaintiff Louise Williams began using Spring Valley Supplements to improve and maintain her health shortly after she experienced menopause. Ms. Williams has used Spring Valley Ginkgo Biloba, St. John's Wort, Echinacea, and Korean Panax Ginseng.

68. Ms. Williams is now 70 years of age, and has been using the Spring Valley Supplements for a period of approximately 15 years.

69. Aware of friends who have experienced various ailments and diseases, including Alzheimer's disease, Ms. Williams used the Spring Valley Supplements in an effort to maintain her good health and prevent the onset of similar diseases.

70. Bottles purchased by Ms. Williams are pictured below:





71. The Spring Valley Supplements are mass-produced products and there are no material differences between the bottles that Plaintiffs purchased and those purchased by

members of the putative class. As with all other putative class members, Wal-Mart deceptively labeled the bottle that Plaintiffs purchased as purporting to contain a certain amount of the advertised herbal ingredient.

72. On the contrary, the product that Plaintiffs and the putative class purchased did not contain *any* of the advertised herbal ingredient but instead had certain fillers and contaminants such as rice, allium, mustard, and radish. None of these substances are identified in the list of ingredients on the Spring Valley Supplements.

73. Had Plaintiffs – or any reasonable consumer – known that the product they were purchasing was not the advertised herbal product but instead various filler products they would not have made the purchase.

74. As with all other putative class members, Wal-Mart and NBTY accepted payment for the purported herbal supplements despite the fact that it knew or should have known that they did not actually contain any of the advertised herbal supplements.

75. There are no material differences between Defendants' actions and practices directed to Plaintiffs and its actions and practices directed to any members of the putative class.

### **CLASS ALLEGATIONS**

#### **A. Class Definitions**

76. Plaintiffs bring this action against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated.

Plaintiffs seek to represent the following classes:

#### **Nationwide class:**

All persons who, within the applicable statutes of limitation, purchased Wal-Mart Spring Valley Ginkgo Biloba, St. John's Wort, Ginseng, or Echinacea in the United States. Excluded from this class are Defendants, their affiliates, subsidiaries, agents,

board members, directors, officers, and/or employees

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

All persons who, within the applicable statute of limitation, purchased Wal-Mart Spring Valley Ginkgo Biloba, St. John's Wort, Ginseng, or Echinacea in the state of Florida. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

77. Plaintiffs reserve the right to modify or amend the definitions of the proposed classes before the Court determines whether certification is appropriate.

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

**B. Numerosity**

79. The proposed classes are so numerous that joinder of all members would be impracticable. Defendants sell and promote the Spring Valley products, including Ginkgo Biloba, St. John's Wort, Ginseng, and Echinacea, at thousands of stores in Florida as well as nationwide. Although the number of class members is not presently known the classes will likely be composed of thousands of consumers. The numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

**C. Commonality**

80. There are questions of law and fact that are common to Plaintiffs' and class members' claims. Common questions of law and fact exist because, *inter alia*, Plaintiffs and all class members purchased the Spring Valley Supplements from Wal-Mart that were deceptively labeled as containing an herbal ingredient when instead it contained various fillers and



contaminants and not the as-labeled herbal product.

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

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

**D. Typicality**

82. Plaintiffs are a member of the Class they seek to represent. Plaintiffs' claims are typical of the respective classes' claims because Plaintiffs and each class member purchased the Spring Valley Supplements which were deliberately misrepresented as containing specific herbal ingredients when in fact they contained only various fillers. Thus, Plaintiffs' claims are typical due to the similarity, uniformity, and common purpose of the Defendants' unlawful conduct. Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiffs as a result of Defendants' wrongful conduct.

**E. Adequacy of Representation**

83. Plaintiffs are an adequate representative of the classes they seek to represent and will fairly and adequately protect the interests of the class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. Plaintiffs have no adverse or antagonistic interests to those of the unnamed class members. Plaintiffs are willing and prepared to serve the Court and the class in a representative capacity with all of the obligations and duties material thereto.

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

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

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

86. All claims by Plaintiffs and the unnamed class members are based on the purchase of the deceptively labeled Spring Valley Supplements.

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

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

**G. Superiority**

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

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

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

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

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

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

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

90. Plaintiffs do not anticipate and are unaware of any difficulties that would be encountered in the management of this class action.

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

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

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

**COUNT I**

**UNJUST ENRICHMENT**  
**(Nationwide Class)**

93. Plaintiffs re-allege and incorporate paragraphs 1-92 above as if fully set forth herein and further allege as follows.

94. Defendants acted to mislead consumers into believing that the Spring Valley Supplements actually contained the specified herbal ingredient by labeling the product sold to consumers in that manner.

95. Defendants received from Plaintiffs and the class members benefits in the form of profits related to the misrepresentation that the Spring Valley Supplements actually contained the specified herb.

96. Defendants received payments from Plaintiffs and all class members for what they believed to be a particular herb. In fact, however, the Spring Valley Supplements did not contain any of the specified herb but instead contained various inexpensive fillers and contaminants.

97. Defendants had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on it.

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

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

**COUNT II**

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

99. Plaintiffs re-allege and incorporate paragraphs 1-92 above as if fully set forth herein and further allege as follows.

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

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

102. Each Plaintiff and Class member is an “aggrieved” person under §501.211, Fla. Stat. and so has standing to pursue this claim.

103. Plaintiffs have standing to pursue this claim as they have suffered injury in fact and have lost money or property as a result of Defendants’ actions as set forth above.

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

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

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

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

108. Specifically, Defendants misled consumers into believing that the Spring Valley Supplements contained the specified herb, when in fact, they contained only certain fillers and contaminants.

109. Plaintiffs and the Florida Subclass have sustained actual damages as a direct and proximate result of Wal-Mart's unfair and unconscionable practices in that they spent money on the Spring Valley Supplements, a misbranded and worthless product, that they would not have otherwise purchased and did not receive value for.

110. Section 501.211(2), Florida Statutes, provides Plaintiffs and the Florida Subclass a private right of action against Wal-Mart to recover their actual damages, plus attorneys' fees and costs.

111. Plaintiffs and the Florida Subclass have suffered and will continue to suffer irreparable harm if Wal-Mart continues to engage in such deceptive, unfair, and unreasonable practices.

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

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and all similarly situated individuals, demand judgment against Defendants as follows:

- (1) Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs and their counsel to be representatives of the Class and the Florida Subclass;
- (2) Enjoining Defendants from continuing the acts and practices described above;
- (3) Awarding damages sustained by Plaintiffs and the classes as a result of Defendants' conduct, together with pre-judgment interest;
- (4) Finding that Defendants have been unjustly enriched and requiring Defendants to refund all unjust benefits to Plaintiffs and the nationwide class, together with pre-judgment interest;
- (5) Awarding Plaintiffs and the Class costs and disbursements and reasonable allowances for the fees of Plaintiffs' and the Class's counsel and experts, and reimbursement of expenses;
- (6) Awarding Plaintiffs and the Florida Subclass actual damages, injunctive relief, declaratory relief, attorneys' fees and costs under FDUTPA;
- (7) Awarding the nationwide class damages, injunctive relief, declaratory relief, attorneys' fees, and costs; and
- (8) Awarding such other and further relief the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

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

Respectfully submitted this 19<sup>th</sup> day of February, 2015.

By: /s/ Adam M. Moskowitz

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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 LOUISE WILLIAMS and MARIA VALDEZ RODRIGUEZ, on behalf of similarly situated DEFENDANTS WAL-MART STORES, INC. and NBTY, Inc.

(b) County of Residence of First Listed Plaintiff Broward County, FL (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant Benton County, AR (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Koyzak, Tropin & Throckmorton, 2525 Ponce de Leon Blvd., 9th Floor, Miami, Florida, 33134; 305-372-1800 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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

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

Grid for Basis of Jurisdiction and Citizenship of Principal Parties with checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State/Another State/Foreign Country, and PTF/DEF boxes for incorporated/principal place of business.

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

Large grid for Nature of Suit with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and 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 NO b) Related Cases YES NO JUDGE DOCKET NUMBER MDL No. 2620

VII. CAUSE OF ACTION Florida Deceptive and Unfair Trade Practices Act; Unjust Enrichment LENGTH OF TRIAL via 10 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 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: YES No

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

DATE February 19, 2015

Signature: Adam M. Moskowitz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFF JUDGE MAG JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

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