

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

CASE NO. _____

VARONICA BEAL and LOIS
WALKER, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

**CLASS ACTION
JURY DEMAND**

WALGREEN CO. and NBTY, Inc.,

Defendants.

_____ /

CLASS ACTION COMPLAINT

Plaintiffs VARONICA BEAL and LOIS WALKER file this class action complaint on behalf of themselves and all others similarly situated against Defendants WALGREEN CO. (“Walgreens”) 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 consumers, 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, for reimbursement, and to prevent Defendants from continuing these fraudulent practices.

3. When a retailer labels its proprietary brand herbal supplement as containing certain specific ingredients, that supplement should in fact contain those ingredients. 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. Walgreens, together with its subsidiaries, operates the largest drugstore chain in the United States with net sales of \$76.4 billion in the fiscal year ended August 31, 2014. It sells various herbal supplements under its own proprietary brand known as “Finest Nutrition.” In the United States, Walgreens operates over 8,200 drugstores. According to Walgreens, its private brand products offer value to customers at each price point and typically provide higher gross margins than comparable national brand products sold in its stores.

5. Walgreens purchases the Finest Nutrition 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. As of August 2014, approximately 76% of the United States population lived within five miles of a Walgreens, and an average of 6.2 million shoppers visited its stores daily. In addition to store traffic, Walgreens’ websites, including Walgreens.com and drugstore.com,

received an average of approximately 59.7 million visits per month in fiscal 2014. Walgreens' loyalty program, Balance ® Rewards, had 82 million active members as of August 31, 2014.

7. Prescription drugs represent Walgreens' largest product class, followed by general merchandise and non-prescription drugs. In fiscal 2014, general merchandise generated 26% of total sales, and non-prescription drugs accounted for 10% of total sales.

8. Walgreens' annual report asserts:

We plan to continue pursuing our goal to become a global leader in pharmacy, health and well-being solutions and the first choice for health and daily living in communities we serve, all designed to help our customers get, stay and live well. Our strategies are designed to further transform our traditional drugstore into a "retail health and daily living" store, creating community-centric healthcare integration with expanded pharmacy, health and wellness solutions.

[...]

Maintaining consistent product quality, competitive pricing, and availability of our private brand offerings for our customers is important in developing and maintaining customer loyalty.¹

9. A recent investigation by the New York Attorney General proves these statements to be simply false.

10. This case involves Walgreens' 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

11. 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

¹ See Walgreens' Annual Report on Form 10-K for the Fiscal Year Ended August 31, 2014.

Egyptian and Chinese civilizations practicing herbal therapy to treat various afflictions and ailments.

12. 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.

13. Later in the 20th century, however, there was a reemergence of herbal remedies in the market in the form of herbal supplements.

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

15. 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.

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

17. 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.

18. 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.

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

19. The herbal supplement market has thrived here because U.S. consumers have become increasingly aware of the importance of preventive health care. 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.

20. 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 lifestyle and support themselves and their families.

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

22. Walgreens purchases supplements from NBTY. Walgreens then sells these supplements to consumers under its private label, Finest Nutrition.

23. Echinacea, Gingko Biloba, Ginseng, Garlic, and St. John's Wort, all sold under the Walgreens Finest Nutrition brand, are some of the most popular herbal supplements marketed

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

and sold in the United States today.

24. Walgreens markets and sells these products through its retail stores and on its website. For example, in advertising Finest Nutrition Echinacea on its website, Walgreens stated, “Echinacea is a great natural way to support immune system health. Standardized extract...100% satisfaction guaranteed.”⁴

25. In advertising its Finest Nutrition Ginseng, Walgreens’ website stated that the product “promotes physical endurance” and “revitalizes and rejuvenates the body.”⁵ For Finest Nutrition St. John’s Wort, Walgreens asserted that the product “supports a positive mood” and “supports a healthy emotional balance.”⁶ It goes on to state that, “three servings of this product can support a healthy emotional balance.”

26. Walgreens advertised its Finest Nutrition Garlic and Gingko Biloba herbal supplements in the same manner.

27. However, testing has revealed that none of these Finest Nutrition Supplements contain any of the touted herbal ingredients.

28. 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 Defendants’ common practice.

⁴ See <https://web.archive.org/web/20141120043714/http://www.walgreens.com/store/c/finest-nutrition-echinacea-125-mg-dietary-supplement-tablets/ID=prod6109067-product>, (last visited Mar. 2, 2015).

⁵ See <https://web.archive.org/web/20141120044648/http://www.walgreens.com/store/c/finest-nutrition-ginseng-100-mg%2c-capsules/ID=prod6109155-product> (last visited Mar. 2, 2015).

⁶ See <https://web.archive.org/web/20130122045648/http://www.walgreens.com/store/c/finest-nutrition-st.-john%27s-wort-300-mg-dietary-supplement-capsules/ID=prod6109129-product> (last visited Mar. 2, 2015).

PARTIES

Plaintiffs

29. Plaintiff VARONICA BEAL is a citizen of the State of Florida who purchased Defendants' mislabeled Walgreens Finest Nutrition Echinacea. She is a natural person over the age of 21 and otherwise sui juris.

30. Plaintiff LOIS WALKER is a citizen of the State of Florida who purchased Defendants' mislabeled Walgreens Finest Nutrition Ginseng and Echinacea. She is a natural person over the age of 21 and otherwise sui juris.

Defendants

31. Defendant WALGREEN CO. is an Illinois corporation operating in the State of Florida with its principal place of business in Deerfield, Illinois.

32. Walgreens operates a network of approximately 8,207 locations in the United States, the District of Columbia, Puerto Rico, and U.S. Virgin Islands.

33. Walgreens markets itself as being "at the corner of HAPPY & HEALTHY"⁷ and, in fiscal year 2015, plans to pursue strategies designed to create a "Well Experience" that will further transform its traditional drugstores to "retail health and daily living" stores while continuing to deliver an outstanding customer experience.⁸

34. Walgreens asserts that it has "stringent requirements" and proactively works with vendors "to ensure the quality and safety" of its owned-brand products.⁹

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

⁷ See <http://www.walgreens.com/>, (last visited Mar. 1, 2015).

⁸ See Walgreens' Annual Report on Form 10-K for the Fiscal Year Ended August 31, 2014.

⁹ See http://www.walgreens.com/topic/sr/sr_product_integrity_home.jsp, (last visited Mar. 1, 2015).

36. 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.¹⁰

37. NBTY's facilities include administration, manufacturing, warehousing, packaging, and distribution facilities located in Pompano Beach, Deerfield Beach, Naples, and Boca Raton, Florida. It also operates retail locations throughout the United States.¹¹

38. NBTY describes its mission as follows: "To enhance the well-being of our customers globally by delivering the highest quality, best value nutritional supplements and wellness products."¹² 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."¹³

39. In 2014, NBTY's net sales for its wholesale segment totaled \$1.88 billion.¹⁴

JURISDICTION AND VENUE

40. 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.).

41. Plaintiffs are citizens of the State of Florida. Defendant Walgreens is a citizen of the state of Illinois but is registered to do business in Florida. Defendant NBTY is a citizen of the

¹⁰ See NBTY Annual Report on Form 10-K for the Fiscal Year Ended September 30, 2014.

¹¹ *Id.*

¹² See <http://www.nbty.com/OurCompany/MissionAndValues>, (last viewed on February 17, 2015).

¹³ See <http://www.nbty.com/OurBrands/VitaminsSupplements>(last viewed on February 17, 2015).

¹⁴ See NBTY Annual Report on Form 10-K for the Fiscal Year Ended September 30, 2014.

state of Delaware but is 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.

42. 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 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.

43. In addition, this Court has subject-matter jurisdiction under CAFA because the amount in controversy exceeds \$5 million and diversity exists between Plaintiffs and Defendants. 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).

44. 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, Plaintiff Beal resided in the Southern District of Florida and a substantial portion of the practices complained of herein occurred in the Southern District of Florida.

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

FACTUAL ALLEGATIONS

46. NBTY manufactures and sells herbal supplements to Walgreens. In turn,

Walgreens markets, distributes, and sells herbal supplements to consumers under its proprietary brand, Finest Nutrition.

47. The Finest Nutrition brand includes “Finest Nutrition Echinacea,” “Finest Nutrition Garlic,” “Finest Nutrition Ginkgo Biloba,” “Finest Nutrition Gingseng,” and “Finest Nutrition St. John’s Wort” (collectively, the “Finest Nutrition Supplements”) purchased by Plaintiffs and the class members.

48. Walgreens represents that it has tested and stands by its products and its marketing.

49. The labeling on every Finest Nutrition Echinacea product conspicuously shows the “Supplement Facts,” and identifies the primary herbal ingredient as “Echinacea Extract.” Each of the other Finest Nutrition Supplements has the same labeling, which identifies the advertised herbal ingredient as the primary ingredient. Contrary to these representations, the Finest Nutrition Supplements are not what they purport to be.

50. On February 2, 2015, New York Attorney General Eric Schneiderman sent a letter to Walgreens 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 five ‘Finest Nutrition’ dietary supplements.”¹⁵

51. 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.

¹⁵ Similar cease and desist letters were sent to GNC, Wal-Mart, and Target relating to their proprietary brands of certain herbal supplements.

52. 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. The barcodes can be used to determine the exact plant species being tested.

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

54. 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."

55. Indeed, testing on the Finest Nutrition Echinacea product revealed that "[n]o DNA from Echinacea was identified." Instead, the testing revealed five positive identifications of allium, five positive findings of oryza (commonly known as rice), and one for DNA material originating in the daisy family.

56. Similar results were yielded for each of the other Finest Nutrition Supplements.

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

58. 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.”

59. Walgreens’ mislabeling of its proprietary Finest Nutrition Supplements constitutes unfair and deceptive business practices and, just as importantly, poses serious health risks to consumers.

60. Consumers, such as Plaintiffs and the class members here, purchases 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.

61. Because of Walgreens’ intentional mislabeling of the ingredients in the Finest Nutrition Supplements, a consumer with food allergies, or a consumer who takes medication for an unrelated illness, is assuming a potentially serious health risk each time the contaminated herbal supplement is ingested.

62. Plaintiffs and the putative class members did not purchase the Finest Nutrition 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 Lois Walker

63. Plaintiff Lois Walker began taking herbal supplements approximately five years ago. Ms. Walker felt that it was important for her health to ensure that she was getting necessary nutrients as she grew older.

64. Ms. Walker learned that ginseng could be an effective energy booster, and that echinacea could improve the immune system to help ward off colds and other illnesses.

65. Throughout the last five years, Ms. Walker has purchased Finest Nutrition

Ginseng and Echinacea from Walgreens. She took each supplement daily, in accordance with the instructions on the label.

66. Ms. Walker paid approximately \$5-10 per bottle of Finest Nutrition Ginseng and Echinacea.

Plaintiff Varonica Beal

67. In 2005, Plaintiff Varonica Beal sought to learn more about the health benefits of various herbal supplements. At that time, she learned that echinacea can be used to boost the immune system and ward off the common cold.

68. Since 2005, Ms. Beal has purchased Finest Nutrition Echinacea from Walgreens and has used the product anytime she felt that she may be getting sick. In addition, she has shared the product with her son whenever she became aware that he was not feeling well.

69. Ms. Beal paid approximately \$5-10 per bottle for Finest Nutrition Echinacea.

70. A bottle of Finest Nutrition Echinacea purchased by Ms. Beal is pictured below:



71. The Finest Nutrition 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, Walgreens 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 ingredients but instead had certain fillers and contaminants such as rice, allium, dracaena (a tropical houseplant), wheat, and palm. None of these substances are identified in the list of ingredients on the Finest Nutrition Supplements.

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

74. As with all other putative class members, Walgreens and NBTY accepted payment for the purported herbal supplements despite the fact that they knew or should have known that the products 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 their 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 Walgreens Finest Nutrition Echinacea, Garlic, Gingko Biloba, Gingseng, or St. John's Wort 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 Walgreens Finest Nutrition Echinacea, Garlic, Gingko Biloba, Gingseng, or St. John's Wort 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 Finest Nutrition products, including Echinacea, Gingko Biloba, Ginseng, Garlic, Saw Palmetto, and St. John's Wort, 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 Finest Nutrition Supplements from Walgreens that were deceptively labeled as containing an herbal ingredient when instead they 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 Finest Nutrition Supplements they sold to Plaintiffs and the putative class members;
- b. Whether Defendants deceptively or misleadingly misrepresented the ingredients contained in the Finest Nutrition 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 members of the Class they seek to represent. Plaintiffs' claims are typical of the respective classes' claims because Plaintiffs and each class member purchased the Finest Nutrition 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 adequate representatives 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 her. Plaintiffs have no adverse or antagonistic interest 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. P. 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 Finest Nutrition 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 or parties 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 Finest Nutrition Supplements actually contained the specified herbal ingredients by labeling the products 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 Finest Nutrition Supplements actually contained the specified herbs.

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

97. Defendants had knowledge of these benefit and voluntarily accepted and retained the benefits conferred on them.

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, demand 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 each Class member is an "aggrieved" person under § 501.211, Fla. Stat., and so have 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 violates the legislatively declared policies of FDUTPA. Defendants misled consumers into believing that its 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 Subclass, 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 Finest Nutrition Supplements contained specified herbs, 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 Defendants' unfair and unconscionable practices in that they spent money on the Finest Nutrition Supplements, misbranded and worthless products, 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 Defendants 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 Defendants continue 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 9th day of March, 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.)

I. (a) PLAINTIFFS VERONICA BEAL and LOIS WALKER, on behalf of themselves and all others similarly situated
(b) County of Residence of First Listed Plaintiff Broward
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS WALGREEN CO. and NBTY, Inc.
County of Residence of First Listed Defendant Lake County, Illinois
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

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

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

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause: Florida Deceptive and Unfair Trade Practices Act; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
0:15-cv-60354 (S.D. Fla.)
JUDGE James I. Cohn DOCKET NUMBER MDL 2619

DATE March 9, 2015 SIGNATURE OF ATTORNEY OF RECORD /s/Adam M. Moskowitz

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP 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.Cv.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; **NOTE: 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 clerk(s) 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 six 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.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 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.
- VI. 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
- VII. 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 actual dollar amount 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.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

VERONICA BEAL and LOIS WALKER,
on behalf of themselves and all others similarly situated,

Plaintiff(s)

v.

WALGREEN CO. and NBTY, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Walgreen Co.
By Serving Registered Agent: Prentice-Hall Corporation System, Inc.
1201 Hays Street
Suite 105
Tallahassee, Florida 32301

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:

Monica M. McNulty, Esquire
KOZYAK TROPIN & THROCKMORTON LLP
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, Florida 33134
Telephone: 305-372-1800
Fax: 305-372-3508

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:

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

UNITED STATES DISTRICT COURT

for the Southern District of Florida

VERONICA BEAL and LOIS WALKER, on behalf of themselves and all others similarly situated,

Plaintiff(s)

v.

WALGREEN CO. and NBTY, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) NBTY, Inc. By Serving Registered Agent: Corporation Service Company 1201 Hays Street Tallahassee, Florida 32301-2525

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:

Monica M. McNulty, Esquire KOZYAK TROPIN & THROCKMORTON LLP 2525 Ponce de Leon Blvd., 9th Floor Coral Gables, Florida 33134 Telephone: 305-372-1800 Fax: 305-372-3508

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: