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9 Attorneys for Plaintiff
10 Stephanie Hirmez, and on Behalf
11 of All Others Similarly Situated,

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 STEPHANIE HIRMEZ,
15 Individually and on Behalf of All
16 Others Similarly Situated,

Case No. '13CV1828 BEN JMA

17 Plaintiff,

**CLASS ACTION
COMPLAINT**

18
19 v.

1. VIOLATIONS OF
BUSINESS & PROFESSIONS
CODE SECTION 17200 ET
SEQ.

22 GNC HOLDINGS, INC.;
23 GENERAL NUTRITION CORP,
24 d/b/a/ GNC; and
25 GENERAL NUTRITION CENTERS, INC.;

2. VIOLATIONS OF
CALIFORNIA CIVIL CODE
SECTION 1750 ET SEQ.

26 Defendants.

3. VIOLATIONS OF THE
FALSE ADVERTISING LAW,
CALIFORNIA

1 BUSINESS & PROFESSIONS
2 CODE SECTION 17500 ET
3 SEQ.

4 4. BREACH OF EXPRESS
5 WARRANTY

6 **DEMAND FOR JURY**
7 **TRIAL**

8
9
10 **CLASS ACTION COMPLAINT**

11 NOW COMES Plaintiff STEPHANIE HIRMEZ, (“Plaintiff”), by and
12 through her attorneys OLIVER LAW GROUP, P.C., individually and on behalf of
13 all others similarly situated, alleges the following:
14

15 **NATURE OF THE ACTION**

- 16
- 17 1. This is a civil class action brought individually by Plaintiff and on behalf of
18 a class of persons similarly situated, (“Class Members”), who purchased the
19 dietary supplements GNC Pro Performance Rapid Drive Arginine 5000, L-
20 Arginine 5000, L-Arginine 1000 and L-Arginine 500 (collectively referred
21 to as the “Products”).
22
 - 23 2. The class members are all persons located within the state of California and
24 the United States who purchased the Products.
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- 1 3. Defendants advertise, manufacture, market, sell and distribute the Products,
2 as well as many other dietary and sports supplements to allegedly promote
3 health and increase athletic performance.
- 4
5 4. The Products are generally categorized as Nitric Oxide products which
6 falsely claim to provide increased formation of Nitric Oxide in the blood,
7 maintain blood vessel tone, increase circulation of oxygen and nutrients,
8 enhance athletic performance, increase lean muscle mass, and provide
9 muscle “pumps”.
- 10
11 5. L-Arginine is an amino acid found naturally in the body and is known to
12 metabolize into Nitric Oxide (NO). Once this NO is formed in the body it
13 plays a critical role in expanding blood vessels, thus increasing blood flow.
14 Defendants incorrectly base their labeling and marketing claims on the
15 assumption that because naturally produced L-Arginine effects blood flow,
16 that when supplemented orally, L-Arginine will produce the same results.
- 17
18 6. As referenced throughout Plaintiff’s Complaint, L-Arginine oral
19 supplementation does not produce the same results. Instead, it has been
20 found numerous times in reliable scientific studies that L-Arginine
21 supplements, when taken orally, only increase plasma arginine levels and do
22 not metabolize into NO or induce vasodilation (blood flow).
- 23
24 7. Nitric Oxide products are a growing and substantial segment of the sports
25 (bodybuilding) supplement segment of the dietary supplement market.
- 26
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- 1 8. Defendants have complete control and authority over the labeling and
2 marketing language used for the Products.
3
- 4 9. By Defendants' unfair, deceptive, fraudulent, unfair and misleading
5 practices, Plaintiff and Class Members have been unfairly deceived into
6 purchasing the Products.
7
- 8 10. Plaintiff brings this action challenging Defendants' claims relating to the
9 Products on behalf of themselves and all others similarly situated, under
10 California's Unfair Competition Law, False Advertising Law, Consumer
11 Legal Remedies Act, Breach of Express Warranty, and Unjust Enrichment.
12
- 13 11. Plaintiff seeks an order compelling Defendants to (1) cease marketing the
14 Products using the misleading tactics complained of herein, (2) conduct a
15 corrective advertising campaign, (3) restore the amounts by which
16 Defendants have been unjustly enriched, and (4) destroy all misleading and
17 deceptive materials.
18
19

20 **JURISDICTION AND VENUE**

- 21 12. This Court has jurisdiction over all causes of action asserted herein.
22
- 23 13. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332(d), because
24 there are at least 100 Class Members in the proposed Class, the combined
25 claims of proposed Class Members exceed \$5,000,000 exclusive of interest
26 and costs, and at least one Class Member is a citizen of a state other than
27 Defendants' state of citizenship.
28

1 14.Plaintiff will likely have evidentiary support after a reasonable opportunity
2 for further investigation or discovery regarding Defendants’ sales of the
3 Products during the class period.
4

5 15.Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part
6 of the events giving rise to the claims asserted herein occurred in this
7 District. Venue is proper pursuant to 28 U.S.C. § 1391(c) because
8 Defendants conduct substantial business in this District, have sufficient
9 minimum contacts with this District, and otherwise purposely avail
10 themselves of the markets in this District, through the promotion, sale, and
11 marketing of their Products in this District.
12
13

14 16.Defendants and other out-of-state participants can be brought before this
15 Court pursuant to state and federal law.
16

17 **THE PARTIES**

18 17.During the Class period, Plaintiff and Class Members purchased the Product
19 through Defendants’ website and/or several different GNC brick/mortar
20 retail outlets throughout California and the United States. Plaintiff and Class
21 Members suffered an injury in fact caused by the false, fraudulent, unfair,
22 deceptive and misleading practices set forth in this Complaint.
23
24

25 18.Plaintiff Hirmez is a resident of the County of San Diego, State of
26 California, and the events set forth in this Complaint took place therein,
27 who, on or about May, 2013, purchased the product GNC Pro Performance
28

1 Rapid Drive Arginine 5000 (“Product”) for her own use, and not for resale,
2 from the GNC retail outlet store 01809 located at 78-670 Hwy 111, La
3 Quinta, CA 92263.
4

5 19.GNC Holdings, Inc. is a Pennsylvania Corporation operating in California
6 with a principal place of business at 300 Sixth Ave., Pittsburgh, PA 15222.
7

8 20.General Nutrition Corporation, doing business as GNC, is a Pennsylvania
9 Corporation operating in California with a principal place of business at 300
10 Sixth Ave., Pittsburgh, PA 15222.
11

12 21.General Nutrition Centers, Inc. is a Pennsylvania Corporation operating in
13 California with a principal place of business at 300 Sixth Ave., Pittsburgh,
14 PA 15222.
15

16 **FACTUAL ALLEGATIONS**

17 22.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
18

19 23.Plaintiff reviewed the Product’s label, as well as Defendants’ website prior
20 to purchasing the Product from the GNC retail store referenced above.
21

22 24.Plaintiff reasonably relied on the information provided by Defendants when
23 making the decision to purchase the Product.
24

25 25.Defendants’ claims are false and misleading.
26

27 26.Defendants market the product GNC Pro Performance RapidDrive Arginine
28 5000 towards athletes or people involved in fitness activities.

1 27. Defendants had access, but knowingly and/or recklessly ignored all
2 competent and reliable scientific evidence regarding the Products.

3
4 28. The sole ingredient in the Products, which is at issue regarding the false,
5 misleading, unfair and deceptive claims, is L-Arginine (“Arginine”).

6
7 29. This compound is allegedly supposed to induce the release of nitric oxide
8 into the blood, however, it does not.

9
10 30. Nitric oxide is a gaseous signaling molecule known to contribute to the
11 control of vascular tone, and is considered to play a role in the vasodilatation
12 of muscle resistance vessels during exercise.

13
14 31. Muscle “Pump” refers to increased blood flow to the muscles, which in turn
15 is supposed to increase the size of the muscles.

16 32. “NOS” refers to nitric oxide.

17
18 33. L-arginine (2-amino-5-guanidino-pentanoic acid) is a conditionally-
19 essential, proteinogenic amino acid and a natural constituent of dietary
20 proteins.

21
22 34. L-arginine-enhanced vasodilation and blood flow to working muscles during
23 resistance exercise is alleged to provide an even greater impetus for
24 increasing muscle strength and hypertrophy than exercise alone.

1 35.However, it has been shown that L-arginine supplementation does not
2 increase muscle blood flow¹.

3
4 36.Presently, there are several studies involving an L-arginine-based approach
5 to increase circulating nitric oxide in humans; however, none of the studies
6 have demonstrated any positive results that would justify the claims made by
7
8 Defendants.

9 37.Defendants make the following false, fraudulent, misleading, and deceptive
10 label claims regarding the Products:
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17 ¹ See Tang J, Lysecki P, Manolakos J, Tarnopolsky M, Phillips S. Bolus arginine
18 supplementation affects neither muscle blood flow nor muscle protein synthesis
19 in young men at rest or after resistance exercise. *Journal of Nutrition*, 141:195-
20 200, 2011; See also Willoughby DS, Boucher T, Reid J, Skelton G, Clark M.
21 Effects of 7 days of arginine-alpha-ketoglutarate supplementation on blood flow,
22 plasma L-arginine, nitric oxide metabolites, and asymmetric dimethyl arginine
23 after resistance exercise. *International Journal of Sport Nutrition and Exercise*
24 *Metabolism*, 21:291-99, 2011.
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1 “Maximized Nitric Oxide Production with Premium, Micronized Arginine”
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14 “Arginine is an essential precursor of nitric oxide which helps maintain blood
15 vessel tone.”
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“Essential precursor to nitric oxide”



“Helps maintain blood vessel tone”



1 38. Defendants use the following false, fraudulent, misleading, unfair and
2 deceptive claims at the point of purchase for the Product GNC Pro
3 Performance Rapid Drive Arginine 5000 on their website www.gnc.com
4 (Exhibit A):
5

- 6 a) “Maximizes N.O. Production and Nutrient Delivery”;
7
8 b) “Fuels Muscle Pumps and Blood Flow”; and
9
10 c) “Arginine is a crucial part of the nitric oxide pathway which helps to
11 maintain blood vessel tone”.

12 ***Defendants’ Claims Regarding the Product’s Ability to Produce Nitric Oxide,
13 Induce Vasodilation and Increase Blood Flow***

14 39. A number of studies have been conducted on L-arginine and L-arginine-
15 containing supplements to assess the effectiveness in which they increase the
16 levels of nitric oxide in the blood.
17

18 40. It should be noted that nitric oxide is very difficult to measure in circulation
19 due to its relative instability and short half-life.

20 41. Therefore, the metabolites nitrate and nitrite (NOX) are most often
21 measured.
22

23 42. The available published data on this issue has clearly indicated that these so-
24 called nitric oxide inducing supplements which contain Arginine are
25 ineffective in inducing increases in circulating nitric oxide.
26
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1 43. For example, a single oral dose of Arginine provided at 0.1 gram/kg was in
2 ineffective at increasing NOX in the blood².

3
4 44. Arginine provided orally at 6 g/day for three days was shown to have no
5 effect on plasma NOX metabolite levels in well-trained male athletes³.

6 45. More specifically, it has been shown that alleged “nitric oxide inducing”
7 supplements were ineffective at increasing circulating NOX levels and
8 muscle tissue oxygenation in response to resistance exercise⁴.

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10
11 ² Tsai PH, Tang TK, Juang CL, Chen KW, Chi CA, Hsu MC. Effects of arginine
12 supplementation on post-exercise metabolic responses. *Chinese Journal of*
13 *Physiology*, 52:136-42, 2009.

14
15 ³ Liu T, Wu C, Chiang C, Lo Y, Tseng H, Chang C. No effect of short-term
16 arginine supplementation on nitric oxide production, metabolism and
17 performance in intermittent exercise in athletes. *Journal of Nutritional*
18 *Biochemistry*, 20:462-68, 2009.

19
20
21 ⁴ See Bloomer RJ, Williams SA, Canale RE, Farney TM, Kabir MM. Acute effect
22 of nitric oxide supplement on blood nitrate/nitrite and hemodynamic variables in
23 resistance trained men. *Journal of Strength and Conditioning Research*, 24:2587-
24 92, 2010.; See also Bloomer R, Farney T, Trepanowski J, McCarthy C, Canale R,
25 Schilling B. Comparison of pre-workout nitric oxide stimulating dietary
26 supplements on skeletal muscle oxygen saturation, blood nitrate/nitrite, lipid
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1 46. Additionally, the provision of 12 grams/day of Arginine for seven days
2 significantly increased plasma Arginine levels but had no significant effect
3 on circulating NOX or blood flow, either at rest or in response to resistance
4 exercise⁵.

6 47. Based on this premise, hemodynamic function (heart rate and blood
7 pressure) would increase to justify the increased blood flow, ultimately
8 improving cardiovascular function.

10 48. In a study examining the effects of acute Arginine supplementation and
11 resistance exercise on arterial function in young men, there was no
12 significant change in blood flow and hemodynamic and vascular responses
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19 peroxidation, and upper body exercise performance in resistance training men.

20 *Journal of the International Society of Sport Nutrition*, 7:16-30, 2010.

21 ⁵ Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days of
22 arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-arginine,
23 nitric oxide metabolites, and asymmetric dimethyl arginine after resistance
24 exercise. *International Journal of Sport Nutrition and Exercise Metabolism*,
25 21:291-99, 2011.
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1 when 7 grams of L-arginine was given immediately before resistance
2 exercise⁶.

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4 49. It has been shown that single doses of alleged “nitric oxide inducing”
5 supplements were ineffective at increasing blood flow in response to
6 resistance exercise⁷.

7
8 50. It has also been shown that 6 grams of L-arginine delivered either
9 intravenously or orally⁸ and 12 grams/day for 7 days⁹ did not result in any
10 significant changes in blood pressure, heart rate, or cardiac output.
11

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14 ⁶ Fahs C, Heffernan K, Fernhall B. Hemodynamic and vascular response to
15 resistance exercise with L-arginine. *Medicine and Science in Sports and*
16 *Exercise*, 41:773-79, 2009.

17
18 ⁷ See Bloomer RJ, Williams SA, Canale RE, Farney TM, Kabir MM. Acute effect
19 of nitric oxide supplement on blood nitrate/nitrite and hemodynamic variables in
20 resistance trained men. *Journal of Strength and Conditioning Research*, 24:2587-
21 92, 2010.; See also Bloomer R, Farney T, Trepanowski J, McCarthy C, Canale R,
22 Schilling B. Comparison of pre-workout nitric oxide stimulating dietary
23 supplements on skeletal muscle oxygen saturation, blood nitrate/nitrite, lipid
24 peroxidation, and upper body exercise performance in resistance training men.
25 *Journal of the International Society of Sport Nutrition*, 7:16-30, 2010.
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1 51. In assessing the effects of high (5.7 grams) and low (2.8 grams) doses of L-
2 arginine supplementation for 4 weeks in endurance-trained male athletes,
3 there was no improvement in physical performance as measured by run time
4 to exhaustion¹⁰.

5
6 52. In addition, no improvement in the time required to run 31 km was observed
7 after 14 days of Arginine supplementation at a dose of 15 grams/day¹¹.

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9
10 ⁸ Bode-Boger S, Boger R, Galland A, Tsikas D, Frolich J. L-arginine-induced
11 vasodilation in healthy humans: pharmacokinetic-pharmacodynamic
12 relationship. *British Journal of Clinical Pharmacology*, 46:489-97, 1998.

13
14 ⁹ Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days of
15 arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-arginine,
16 nitric oxide metabolites, and asymmetric dimethyl arginine after resistance
17 exercise. *International Journal of Sport Nutrition and Exercise Metabolism*,
18 21:291-99, 2011.

19
20 ¹⁰ Abel T, Knechtle B, Perret C, Esser P, von Arx P, Knecht H. Influence of
21 chronic supplementation of arginine aspartate in endurance athletes on
22 performance and substrate metabolism - a randomized, double-blind, placebo-
23 controlled study. *International Journal of Sports Medicine*, 26:344-49, 2005.

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25
26 ¹¹ Colombani PC, Bitzi R, Frey-Rindova P, Frey W, Arnold M, Langhans W,
27 Wrenk C. Chronic arginine aspartate supplementation in runners reduces total
28

Conclusion

1
2 53. Arginine supplementation, at the levels present in the Products and at the
3 recommended doses, have been shown to be ineffective at increasing
4 circulation of nitric oxide, causing vasodilatation and increasing blood flow.
5

6 54. Plaintiff and the Classes paid more for the Products, and would have been
7 unwilling to purchase the Products at all, absent the false and misleading
8 labeling complained of herein. Plaintiff and the Classes would not have
9 purchased the Products absent these claims and advertisements.
10

11 55. For these reasons, the Products were worth less, if it is worth anything at all,
12 than what Plaintiff and Classes paid for them.
13

14 56. Instead of receiving a product that had actual and substantiated healthful or
15 other beneficial qualities, the Products Plaintiff and the Classes received
16 were ones that did not provide any of the claimed benefits.
17

18 57. Plaintiff and the Classes lost money as a result of Defendants' deceptive
19 claims and practices in that she did not receive what they paid for when
20 purchasing the Product.
21

22 58. Plaintiff and the Classes altered their position to their detriment and suffered
23 damages in an amount equal to the amount they paid for the Product.
24

25
26 plasma amino acid level at rest and during a marathon run. *European Journal of*
27 *Nutrition*, 38:263-70, 1999.
28

1 59. In sum, Defendants' claims regarding the Products are false and misleading,
2 arbitrarily chosen to deceive Plaintiff and Class Members into purchasing
3 otherwise useless and valueless products.
4

5 **CLASS ALLEGATIONS**
6

7 60. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

8 61. Plaintiff brings this action on their own behalf and as a Class Action
9

10 Pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks
11 certification of the following Classes:

12 **California Class:** All Persons in the State of California who have spent
13 money purchasing the Products from Defendants from four years from the
14 first-filed complaint in this action until the final disposition of this and any
15 and all related cases.

16 **National Class:** All Persons in the United States who have spent money
17 purchasing the Products from Defendants from four years from the first-filed
18 complaint in this action until the final disposition of this and any and all
19 related cases.

20 62. The abundance of Class Members renders joinder of all Class members
21 individually, in one action or otherwise, impractical.

22 63. This action involves questions of law and fact common to Plaintiff and Class
23 Members including:

24 (a) Whether Defendants violated the California Civil Code Section 1750 *et*
25 *seq.*;

26 (b) Whether Defendants violated the California Business & Professions Code
27 Section 17200 *et seq.*;
28

1 (c) Whether Defendants violated the False Advertising Law, Cal. Bus. &
2 Prof. Code Section 17500 *et seq.*;

3
4 (d) Whether Defendants breached an express warranty; and

5 (e) Whether Plaintiff and Class Members sustained damages and, if so, the
6 proper measure of damages, restitution, equitable or other relief, and the
7 amount and nature of such relief.
8

9 Excluded from the Classes are: (a) any Judge or Magistrate presiding over this
10 action and members of their families; (b) Defendants and any entity in which
11 Defendants have a controlling interest or which has a controlling interest in
12 Defendants and its legal representatives, assigns and successors of Defendants; and
13 (c) all persons who properly execute and file a timely request for exclusion from
14 the Classes.
15
16

17 64. *Numerosity*: The Classes are composed of thousands of persons
18 geographically dispersed throughout the State of California and Nationwide,
19 the joinder of whom in one action is impractical. Moreover, upon
20 information and belief, the Classes are ascertainable and identifiable from
21 Defendants' records.
22
23

24 65. *Commonality*: Questions of law and fact common to the Classes exist as to
25 all members of the Class and predominate over any questions affecting only
26 individual members of the Classes. These common legal and factual issues
27
28

1 include, but are not limited to the following:

2 (a) Whether Defendants violated the California Civil Code Section 1750 *et*
3 *seq.*;

4
5 (b) Whether Defendants violated the California Business & Professions Code
6 Section 17200 *et seq.*;

7
8 (c) Whether Defendants violated the False Advertising Law, Cal. Bus. &
9 Prof. Code Section 17500 *et seq.*;

10 (d) Whether Defendants breached an express warranty; and

11 (e) Whether Plaintiff and Class Members sustained damages and, if so, the
12 proper measure of damages, restitution, equitable or other relief, and the
13 amount and nature of such relief.
14

15
16 66. *Typicality*: Plaintiff's claims are typical of the claims of the members of the
17 Classes, as all such claims arise out of Defendants' conduct in
18 manufacturing, marketing, advertising, warranting and selling the Products,
19 Defendants' conduct in concealing material facts regarding the Products,
20 Defendants' false, fraudulent, unfair and misleading claims and Plaintiff's
21 and Class Members' purchasing of the Products.
22

23
24 67. *Adequate Representation*: Plaintiff will fairly and adequately protect the
25 interests of the members of the Classes and have no interests antagonistic to
26 those of the Class. Plaintiff has retained counsel experienced in the
27 prosecution of complex class actions, including consumer class actions
28

1 involving false and misleading advertising, product liability and product
2 design defects.

3
4 *68.Predominance and Superiority:* This class action is appropriate for
5 certification because questions of law and fact common to the members of
6 the Classes predominate over questions affecting only individual members,
7 and a Class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy, since individual joinder of all
9 members of the Classes is impracticable. Should individual Class Members
10 be required to bring separate actions, this Court and Courts throughout
11 California and the United States would be confronted with a multiplicity of
12 lawsuits burdening the court system while also creating the risk of
13 inconsistent rulings and contradictory judgments. In contrast to proceeding
14 on a case-by-case basis, in which inconsistent results will magnify the delay
15 and expense to all parties and the court system, this class action presents far
16 fewer management difficulties while providing unitary adjudication,
17 economies of scale and comprehensive supervision by a single Court.
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CHOICE OF LAW

California’s Substantive Law Applies to the Nationwide Class

69. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

70. California’s substantive laws apply to the proposed National Class, as set forth in this complaint, because Plaintiff properly brings this action in this District. A United States District Court sitting in diversity presumptively applies the substantive law of the State in which it sits.

71. The Court may constitutionally apply California’s substantive laws to Plaintiff and Class Members’ claims under the Due Process Clause of the Fourteenth Amendment, § 1, and the Full Faith and Credit Clause, Art. IV, § 1, of the United States Constitution. The claims asserted by Plaintiff contain significant contact, or significant aggregation of contacts, to ensure an adequate state interest and supports the choice of California state law as just and reasonable.

72. Defendants conduct substantial business in California providing California with an interest in regulating Defendants’ conduct under California laws. Defendants’ decision to regularly conduct business and headquarter themselves in California and avail themselves of California’s laws render the application of California law to the claims at hand constitutionally permissible.

1 73.The injury to the Plaintiff and a significant number of proposed Class
2 Members by virtue of the misconduct alleged, occurred in California.
3
4 Plaintiff resides in California and purchased Defendants’ Product in
5 California.

6 74.The application of California’s laws to the proposed Class Members is also
7
8 appropriate under California’s choice of law rules because California has
9 significant contacts to the claims of the Plaintiff and the Class Members.

10
11 **CAUSES OF ACTION**

12 **COUNT I**

13 **Violations of California Business and Professions**

14 **Code § 17200 *et seq.***

15 **(On Behalf of Plaintiff and the Classes Against Defendants)**

16 75.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

17 76.Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or
18 fraudulent business act or practice.”

19 77.The acts, omissions, misrepresentations, practices, and non-disclosures of
20 Defendants as alleged herein constitute “unlawful” business acts and
21 practices in that Defendants’ conduct violates the False Advertising Law and
22 the Consumer Legal Remedies Act.
23

24 78.Defendants’ conduct is further “unlawful” because it violates the Federal
25 Food, Drug, and Cosmetic Act and its implementing regulations in at least
26 the following ways:
27
28

1 (1) Defendants’ deceptive statements violate 21 U.S.C. § 343(a), which
2 deems food (including nutritional supplements) misbranded when the
3 label contains a statement that is “false or misleading in any particular”;

4 (2) Defendants’ deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i),
5 which mandates “substances” in dietary supplements consumed must
6 contribute and retain “nutritional value” as defined under 21 C.F.R. §
7 101.14(a)(2)(3) when consumed at levels necessary to justify a claim.

8 79. Defendants’ conduct is further “unlawful” because it violates The California
9 Sherman Food, Drug, and Cosmetic Law, which incorporates the provisions
10 of the Federal Food, Drug and Cosmetic Act.
11

12 80. The acts, omissions, misrepresentations, practices, and non-disclosures of
13 Defendants as alleged herein also constitute “unfair” business acts and
14 practices under the UCL in that Defendants’ conduct is immoral,
15 unscrupulous, and offends public policy. Further, the gravity of Defendants’
16 conduct outweighs any conceivable benefit of such conduct.
17

18 81. The acts, omissions, misrepresentations, practices, and non-disclosures of
19 Defendants as alleged herein also constitute “fraudulent” business acts and
20 practices under the UCL in that Defendants’ claims are false, misleading,
21 and have a tendency to deceive the Class and the general public.
22

23 82. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
24 enjoining Defendants from continuing to conduct business through unlawful,
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1 unfair, and/or fraudulent acts and practices, and to commence a corrective
2 advertising campaign.

3
4 83.Plaintiff further seeks an order for the disgorgement and restitution of all
5 monies from the sale of the Defendants' Products, which were acquired
6 through acts of unlawful, unfair, and/or fraudulent competition.
7

8 **COUNT II**

9 **Violations of California Legal Remedies Act**

10 **Cal. Civ. Code § 1750 *et seq.***

11 **(On Behalf of Plaintiff and the Classes Against Defendants)**

12 84.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

13 85.Plaintiff has standing to pursue this claim as Plaintiff has suffered injuries in
14 fact and has lost money or property as a result of Defendants' actions as set
15 forth herein.
16

17 86.This cause of action is brought on behalf of all people of the State of
18 California in accordance with the provisions of the California Legal
19 Remedies Act (California Civil Code section 1770). Class members have
20 lost money or property as a result of Defendants' actions as set forth herein.
21

22 87.Defendants' wrongful business practices constituted, and constitute, a
23 continuing course of conduct of violation of the California Legal Remedies
24 Act since Defendants are still representing that the Products have
25 characteristics and abilities which are false and misleading.
26
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28

1 88. Defendants' wrongful business practices have caused injury to Plaintiff and
2 the Class.

3
4 89. Pursuant to section 1770 of the California Civil Code, Plaintiff and the Class
5 seek an order of this Court enjoining Defendants from continuing to engage
6 in unlawful, unfair, or deceptive business practices and any other act
7 prohibited by law, including those set forth in this Complaint.
8

9 90. As a result, Plaintiff, the Class, and the general public are entitled to
10 injunctive and equitable relief, restitution, and an order for the disgorgement
11 of the funds by which Defendants were unjustly enriched.
12

13 91. Plaintiff and the Class also seek Punitive Damages since Defendants were
14 put on notice of its violations of the California Legal Remedies Act and took
15 no remedial actions.
16

17 **COUNT III**

18 **Violations of the False Advertising Law, Business and Professions**

19 **Code Sections 17500 *et seq.***

20 **(On Behalf of Plaintiff and the Classes Against Defendants)**

21 92. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
22

23 93. In violation of Cal. Bus. & Prof. Code § 17500 *et seq.*, the advertisements,
24 labeling, policies, acts, and practices described herein were designed to, and
25 did, result in the purchase and use of the Product.
26

27 94. Defendants knew and reasonably should have known that the advertising,
28 marketing and labeling of the Products was untrue and/or misleading.

1 95.As a result, Plaintiff, the Class, and the general public are entitled to
2 injunctive and equitable relief, restitution, and an order for the disgorgement
3 of the funds by which Defendants were unjustly enriched.
4

5 **COUNT IV**

6 **Breach of Express Warranty**

7 **(On Behalf of Plaintiff and the Classes Against Defendants)**

8 96.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
9

10 97.Defendants made several different express warranties upon which Plaintiff
11 relied in making her purchase, including the false and misleading claims
12 contained herein.
13

14 98.In fact, there is no competent and reliable scientific evidence that support
15 any of Defendants' claims, and actually there is competent and reliable
16 scientific evidence refuting those claims.
17

18 99.Plaintiff received a product that did not meet any of the efficacy claims
19 made by Defendants, resulting in Plaintiff purchasing a useless product.
20

21 100. These facts constitute breaches of all applicable express warranties as
22 alleged in this Complaint.
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members demand judgment in their favor against the Defendants, jointly and severally, as follows:

- a. A determination that this action proceed as a class action and Plaintiff adequately represent the Classes;
- b. An Order requiring Defendants to bear the cost of class notice;
- c. For compensatory, consequential and special damages in amounts proved, as well as statutory damages, including a return of all amounts paid for the Product sold by the Defendants to the Plaintiff and the Class Members;
- d. For interest thereon, in the maximum amount allowable under applicable law;
- e. For delay damages thereon, in the maximum amount allowable under applicable law;
- f. For costs of suit, in the maximum amount allowable under applicable law;
- g. For punitive damages, to the maximum amount permitted under applicable law;
- h. For an award of attorneys' fees and costs, to the maximum amount permitted under applicable law;
- i. For injunctive relief, restraining and enjoining the Defendants from continuing to use these deceptive sales tactics;

- 1 j. For restitution of the funds which were unjustly enriched by Defendants, at
2 the expense of the Plaintiff and Class Members; and
3
4 k. For such other and further relief for the Plaintiff as this Honorable Court
5 shall deem just.
6
7

8 DATED: August 7, 2013

9 Respectfully submitted,

10
11 By: /s/ Brian Tomina
12 BRIAN TOMINA, Bar No. 255386
13 5900 Wilshire Blvd., Suite 2600
14 Los Angeles, CA 90036
15 Telephone: (248) 327-6556
16 Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

17
18 /s/ Nick Suciu III
19 NICK SUCIU III (*Pro Hac Vice*
20 *Forthcoming*)
21 OLIVER LAW GROUP, P.C.
22 950 W. University Drive, Suite 200
23 Rochester, MI 48307
24 Telephone: (248) 327-6556
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notifications@oliverlg.com
www.legalactionnow.com

26 Attorneys for Plaintiff
27 Stephanie Hirmez, and on Behalf
28 of All Others Similarly Situated

DEMAND FOR JURY TRIAL

1
2 Plaintiffs and the Class Members demand trial by jury as to all matters and issues
3 triable.
4

5
6 DATED: August 7, 2013

7 Respectfully submitted,

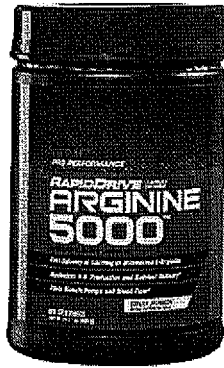
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25 Stephanie Hirmez, and on Behalf
26 of All Others Similarly Situated
27
28

EXHIBIT A

Home / Shop By Brand / GNC Pro Performance® RapidDrive Arginine 5000- Fruit Punch



GNC Pro Performance® RapidDrive Arginine 5000- Fruit Punch

1.76 lb(s).
351188
Price: \$39.99

Member Price: \$23.97
[Become a Member](#)

Buy One Get One 50% Off, Mix and Match! [Details](#)

\$1 Flat Rate Shipping! [Details](#)

[Read 21 Reviews](#) | [Write a Review](#)

Recommend 29 people recommend this. Be the first of your friends.

Receive Thursday - Order within 2hr 3min
FREE 2-Day Shipping [learn more](#) | [sign in](#)

QTY: 1

[Learn More](#)

AVAILABILITY: In stock, Ships in 1-2 full bus. days. [Details](#)

Ships only to US customers

[Share](#) | [Share](#) | [Share](#)

PEOPLE WHO BUY THIS ALSO BUY:



GNC Pro Performance®
RapidDrive BCAA 5000 - Fruit
Punch

Price: \$37.99



GNC Mega Men® Sport

Price: \$20.99



GNC Pro Performance®
RapidDrive Glutamine 5000-
Fruit Punch

Price: \$31.99

DESCRIPTION	SUPPLEMENT FACTS	HEALTH NOTES	LABEL	RATINGS AND REVIEWS	ASK A QUESTION
-------------	------------------	--------------	-------	---------------------	----------------

- Dietary Supplement
- Fast Delivery of 5000mg of Micronized L-Arginine
 - Maximizes N.O. Production and Nutrient Delivery
 - Fuels Muscle Pumps and Blood Flow

Pro Performance RapidDrive Arginine 5000 features our most advanced RapidDrive Amino Acid Technology. This formula have been scientifically designed to provide your body with 5000mg of Arginine that has been pulverized, or "micronized," from large molecules into smaller particles that are easier to absorb and deliver fast fuel for powerful performance. Arginine is a crucial part of the nitric oxide pathway which helps to maintain blood vessel tone. This key amino acid is also used by the body to make creatine and fuel the muscles.

GNC's Product Development Scientists were challenged to create an advanced delivery form of amino acid supplements, a critical sports nutrition component that can be used in the regimen of top athletes. The result of these research efforts led to the creation of the RapidDrive Amino Series, a core group of superior and fast-absorbing amino acids for rapid muscle fueling results. This unique technology is much more advanced compared to regular amino acids. Because our team is dedicated to continually improving sports nutrition products, the Pro Performance RapidDrive Amino Series helps you, the athlete, get fast fuel for your muscles.

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained here in 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

Stephanie Hirmez,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Brian Tomina (Bar No. 285388), Oliver Law Group PC
5900 Wilshire Blvd., Suite 2800, Los Angeles, CA 90036
248-327-6556

DEFENDANTS

GNC Holdings, Inc.; General Nutrition Corp., d/b/a GNC; and
General Nutrition Centers, Inc.;

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

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

Attorneys (If Known)

'13CV1828 BEN JMA

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

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

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

- | | | | | | |
|---|---|--------------------------------|---|--------------------------------|---|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 | DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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 (specify)
 - 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

Brief description of cause:
Consumer Protection

VII. 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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 08/07/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Brian Tomina

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____