

1 LIONEL Z. GLANCY (#134180)  
MARC L. GODINO (#182689)  
2 CASEY E. SADLER (#274241)  
**GLANCY BINKOW & GOLDBERG LLP**  
3 1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
4 Telephone: (310) 201-9150  
Facsimile: (310) 201-9160  
5 E-mail: info@glancylaw.com

6 *Attorneys for Plaintiff Gabe Watkins*

2013 SEP -3 PM 3: 37  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: *AS*

FILED

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

GABE WATKINS, on Behalf of Himself )  
and All Other Persons Similarly Situated, )  
Plaintiff, )  
v. )  
VITAL PHARMACEUTICALS, INC., )  
and GENERAL NUTRITION CENTERS, )  
INC., )  
Defendants. )

CASE NO.: CV12-9374 SJO (JCx)  
Judge: Hon. S. James Otero  
**AMENDED CLASS ACTION  
COMPLAINT**  
**JURY TRIAL DEMANDED**

**ORIGINAL**

1 Plaintiff Gabe Watkins (“Plaintiff”), by his attorneys, alleges upon personal  
2 knowledge as to his own acts, and as to all other matters upon information and belief  
3 based upon, *inter alia*, the investigation made by and through his attorneys.  
4

### 5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and a class of all  
7 consumers in the United States who purchased Vital Pharmaceuticals, Inc.’s (“VPX”)  
8 Subject Bars as defined herein (the “Class”).

9 2. Plaintiff and the Class have been harmed by VPX’s misleading and  
10 improper marketing of its ZERO IMPACT High Protein Mealbars (the “Subject  
11 Bars”).<sup>1</sup> In particular, and as alleged in greater detail below, while VPX and General  
12 Nutrition Centers, Inc. (“GNC”) (collectively “Defendants”) brazenly market and  
13 advertise the Subject Bars as “ZERO IMPACT,” “High Protein Meal Bar[s],” in  
14 oversize bold print that covers the entire face of each Subject Bar, on the back of the  
15 packaging, in fine print, they admit and concede that their “ZERO IMPACT”  
16 marketing scheme is simply not true. As Defendants are well aware, the Subject Bars  
17 certainly have an *impact* on consumers’ carbohydrate, sugar and overall caloric  
18 intake, and to claim otherwise is simply false and misleading. As such, Plaintiff seeks  
19 damages, equitable relief and/or disgorgement for Defendants’ illegal conduct.

20 3. Plaintiff asserts claims individually and on behalf of all others similarly  
21 situated under the Unfair Competition Law, California *Business and Professions Code*  
22 §§ 17200, *et seq.* (“UCL” or “Section 17200”) and the Consumers Legal Remedies  
23 Act, California *Civil Code* §§ 1750 *et seq.* (the “CLRA”).  
24  
25

26 <sup>1</sup> The Subject Bars include VPX’s German Chocolate, Peanut Butter & Jelly, Pumpkin  
27 Supreme, and Chocolate Peanut Butter flavored ZERO IMPACT High Protein  
28 Mealbars.

1  
2 **JURISDICTION AND VENUE**

3 4. This Court has subject matter jurisdiction over this action pursuant to 28  
4 U.S.C. § 1332(d)(2), because the matter in controversy, upon information and belief,  
5 exceeds \$5,000,000, exclusive of interests and costs, and this matter is a class action  
6 in which class members are citizens of a different state than that of Defendants. As  
7 such, the amount in controversy exceeds the jurisdictional minimum of this Court.

8 5. This Court also has jurisdiction over Defendants because they do  
9 sufficient business in California, and have sufficient minimum contacts with  
10 California or otherwise intentionally avail themselves of the markets within California  
11 through sales and marketing, to render the exercise of jurisdiction by this Court  
12 permissible under traditional notions of fair play and substantial justice.

13 6. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391, because  
14 the acts of Defendants occurred in this Judicial District. Moreover, the misconduct at  
15 issue had effects in this County. Venue is also proper in this County because Plaintiff  
16 resides in Los Angeles, California, VPX sells and distributes the Subject Bars to  
17 consumers within this County, and Defendant GNC sells and distributes the Subject  
18 Bars to consumers through its numerous retail stores within this County.

19 **THE PARTIES**

20 7. Plaintiff Gabe Watkins purchased the Subject Bars and was damaged by  
21 Defendants' mislabeling and improper marketing of the Subject Bars as alleged  
22 herein. Plaintiff Gabe Watkins is currently a resident of Los Angeles, California.

23 8. Defendant Vital Pharmaceuticals, Inc. ("VPX"), which distributes sports  
24 supplements under the brand name VPX, is a sports nutrition corporation located in  
25 Florida, United States. Among VPX's better-known products are Redline, Black  
26 Pearl, and the ZERO IMPACT and ZERO CARB dietary supplements. VPX's  
27 principle executive offices are located at 1600 North Park Drive, Weston, Florida  
28 33326-3210.

1 9. Defendant General Nutrition Centers, Inc. (“GNC”) is a Delaware  
2 corporation with its principle executive offices located at 300 Sixth Avenue,  
3 Pittsburgh, Pennsylvania 15222.<sup>2</sup> According to its website ([www.gnc.com](http://www.gnc.com)), GNC is a  
4 leading global specialty retailer of health and wellness products, including vitamins,  
5 minerals, and herbal supplement products, sports nutrition products and diet products.  
6 As of March 31, 2013, GNC had more than 8,200 locations, of which more than 6,200  
7 retail locations are in the United States (including 958 franchise and 2,190 Rite Aid  
8 franchise store-within-a-store locations) and franchise operations in 55 countries  
9 (including distribution centers where retail sales are made). GNC purports to be  
10 dedicated to helping consumers Live Well – has a diversified, multi-channel business  
11 model and derives revenue from product sales through company-owned retail stores,  
12 domestic and international franchise activities, third party contract manufacturing, e-  
13 commerce and corporate partnerships. According to GNC, it has a broad and deep  
14 product mix, which is focused on high-margin, premium, value-added nutritional  
15 products, and is sold under GNC proprietary brands, including Mega Men®, Ultra  
16 Mega®, Total Lean™, Pro Performance®, Pro Performance® AMP, Beyond Raw®,  
17 and under nationally recognized third party brands.

18 **CLASS ACTION ALLEGATIONS**

19 10. Plaintiff brings this lawsuit, both individually and as a class action on  
20 behalf of similarly situated customers of VPX, pursuant to *Federal Rule of Civil*  
21 *Procedure* 23(a) and (b). The proposed “Class” consists of:

22 All individuals in the United States who purchased the Subject Bars. Excluded  
23 from the proposed Class are Defendants, their respective officers, directors, and  
24 employees, and any entity that has a controlling interest in Defendants. Plaintiff  
25 reserves the right to amend the Class definition as necessary.

26 \_\_\_\_\_  
27 <sup>2</sup> General Nutrition Centers, Inc., is a wholly owned subsidiary of GNC Holdings,  
28 Inc.

1           11. **Numerosity:** Upon information and belief, the Class comprises  
2 thousands of consumers throughout the United States and is so numerous that joinder  
3 of all members of the Class is impracticable. While the exact number of Class  
4 members is presently unknown and can only be ascertained through discovery,  
5 Plaintiff reasonably believes that there are at least tens of thousands of Class  
6 members.

7           12. **Common Question of Law and Fact Predominate:** There are  
8 questions of law and fact common to the Class, which predominate over any  
9 individual issues, including, but not limited to:

- 10                   (A) Whether Defendants engaged in the conduct alleged herein;  
11                   (B) Whether Defendants' practices were deceptive, unfair, improper  
12                   and/or misleading;  
13                   (C) Whether Defendants' conduct as alleged herein violated the UCL,  
14                   California *Business & Professions Code* §§ 17200 *et seq.*;  
15                   (D) Whether Defendants' conduct violated the CLRA, California *Civil*  
16                   *Code* §§ 1750 *et seq.*;  
17                   (E) Whether Plaintiff and Class members have sustained monetary loss  
18                   and the proper measure of that loss; and  
19                   (F) Whether Plaintiff and Class members are entitled to declaratory  
20                   and injunctive relief.

21           13. **Typicality:** Plaintiff's claims are typical of the claims of the members of  
22 the Class. Plaintiff and all members of the Class have been similarly affected by  
23 Defendants' common course of conduct since they all relied on Defendants'  
24 representations concerning their products and purchased the products based on those  
25 representations.

26           14. **Adequacy of Representation:** Plaintiff will fairly and adequately  
27 represent and protect the interest of the Class. Plaintiff has retained counsel with  
28

1 substantial experience in handling complex class action litigation. Plaintiff and his  
2 counsel are committed to prosecuting this action vigorously on behalf of the Class and  
3 have the financial resources to do so.

4       15. **Superiority of the Class Action:** A class action is superior to all other  
5 available methods for the fair and efficient adjudication of this lawsuit, because  
6 individual litigation of the claims of all Class members is economically unfeasible and  
7 procedurally impracticable. While the aggregate damages sustained by the Class are  
8 likely in the millions of dollars, the individual damages incurred by each Class  
9 member resulting from Defendants' wrongful conduct are too small to warrant the  
10 expense of individual suits. The likelihood of individual Class members prosecuting  
11 their own separate claims is remote, and even if every Class member could afford  
12 individual litigation, the court system would be unduly burdened by individual  
13 litigation of such cases. Individual members of the Class do not have a significant  
14 interest in individually controlling the prosecution of separate actions, and  
15 individualized litigation would also present the potential for varying, inconsistent, or  
16 contradictory judgments, and would magnify the delay and expense to all of the  
17 parties and to the court system because of multiple trials of the same factual and legal  
18 issues. Plaintiff knows of no difficulty to be encountered in the management of this  
19 action that would preclude its maintenance as a class action. In addition, Defendants  
20 have acted or refused to act on grounds generally applicable to the Class and, as such,  
21 final injunctive relief or corresponding declaratory relief with regard to the members  
22 of the Class as a whole is appropriate.

23       16. Unless a class is certified, Defendants will retain monies they took from  
24 Plaintiff and the proposed Class by means of their unlawful conduct. Unless an  
25 injunction is issued, Defendants will continue to commit the alleged violations, and  
26 the members of the Class and the general public will continue to be misled.

1  
2 **FACTUAL ALLEGATIONS**

3 17. According to VPX, it was founded in 1993 with one goal in mind: “To  
4 produce the highest-grade, university proven sports nutrition supplements and  
5 performance beverages in the world.” VPX’s website further states in pertinent part:

6 VPX delivered on its promise by funding over 15 landmark studies at the  
7 top universities in the country including, UCLA. Florida State, Baylor,  
8 University of Southern Maine and Memphis Universities et al. VPX  
9 continues to update and release new nutrition products, proudly  
10 maintaining its distinction as the “Frontrunner in Sports Nutrition.” VPX  
11 is orchestrated by the world’s leading authority, author and developer of  
12 performance enhancing supplementation and physique-altering nutrition,  
13 Founder and CEO, Jack Owoc.<sup>3</sup>

14 18. In pursuit of its mantra, VPX makes numerous products with a variety of  
15 stated health purposes. For example, the Subject Bars are marketed and sold as “High  
16 Protein Meal Bars,” with “30g High Grade Protein” per bar, that are name branded as  
17 having “ZERO IMPACT.” Further, this misleading marketing of the Subject Bars as  
18 having “ZERO IMPACT,” consumes the entire front packaging of each product.

19 19. However, the Subject Bars *do not* have “ZERO IMPACT” on individuals  
20 that ingest them which makes such advertising false and misleading on its face. In  
21 fact, in small print on the back of each Subject Bar, which is often located under the  
22 fold of the packaging making it difficult to see and read, it is clear that each Subject  
23 Bar has a significant amount of calories as well as material amounts of fat and  
24 carbohydrates, which includes sugars. Moreover, while each Subject Bar constitutes  
25 one serving and weighs 100 grams, when the grams on each product label are totaled  
26 *almost 20% of each Subject Bar* is unaccounted for. As such, since consumers have

27 <sup>3</sup> See <http://www.vpxsports.com/our-company/>.

1 no idea what constitutes these missing grams, they have no idea what *impact* each  
2 Subject Bar truly has on their system.

3 20. It is also important to note that on the back of the Subject Bars'  
4 packaging, in very small print (which practically requires a magnifying glass to read),  
5 VPX *admits* the following:

6 Every effort has been made to make sure that the sugars contained in this  
7 bar have a *minimal impact* on blood sugar and insulin. Consequently, the  
8 majority of sugars contained in the ZERO IMPACT® High Protein, Meal  
9 Replacement Bar (MRB™) are low DE (Dextrose Equivalent) and,  
10 therefore, have significantly *less impact* on blood sugar and glycemic  
11 index than most whole grain carbohydrates. This innovation incorporates  
12 the use of low glycemic carbohydrates, fiber, high-grade proteins, and  
13 naturally occurring essential fats from nuts, seeds, milk proteins and  
14 grains. The ZERO IMPACT BAR also contains CLA and Sesamin to  
15 maintain healthy blood sugar and insulin levels and reduce body fat. I  
16 Jack Owoc, CEO and Chief of Research and Development at VPX, have  
17 invested 3.5 years into creating the most scientifically advanced and  
18 healthy Protein Bar on the planet. The ZERO IMPACT® MRB™ is a  
19 key food source for the ZERO IMPACT Diet™. Mark my word. The  
20 ZERO IMPACT dietary concepts are going to be the 21st Century's  
21 dominant school of thought regarding rapid fat loss and lean muscle  
22 accrual!<sup>4</sup>

23 21. As such, Defendants admit that the Subject Bars do in fact have an  
24 *impact* on blood sugar, insulin, and glycemic index. In other words, Defendants  
25

26  
27 <sup>4</sup> This information can also be found on VPX's website at  
28 <http://www.vpxsports.com/muscle-building-supplements/zero-impact-protein-bars>.



1 concede that their advertising of the Subject Bars as “ZERO IMPACT” is patently  
2 false.

3 22. For these reasons, Defendants knowingly and purposefully violated  
4 applicable laws and regulations in the sale of the Subject Bars.

5 **Plaintiff’s Purchase of the Subject Bars**

6 23. Plaintiff Gabe Watkins repeatedly purchased the Subject Bars because of  
7 their “ZERO IMPACT” marketing and advertising. For example, on August 1, 2012,  
8 Plaintiff Gabe Watkins purchased one of the Subject Bars from one of GNC’s stores  
9 located in Sherman Oaks, California.

10 24. Had the Subject Bars been accurately and properly represented to the  
11 consuming public, he would not have bought the Subject Bars.

12 25. Thus, since VPX misrepresented and failed to disclose the true nature of  
13 the Subject Bars, and GNC sold the misleading Subject Bars, Defendants have  
14 improperly deprived Plaintiff of funds thereby causing him to suffer damages and  
15 injury in fact.

16 **FIRST CAUSE OF ACTION**

17 **Unfair Business Practices Act**

18 ***California Business & Professions Code §§ 17200 et seq.***

19 26. Plaintiff, on behalf of himself and on behalf of all others similarly  
20 situated, realleges and incorporates herein by reference each of the foregoing  
21 paragraphs.

22 27. The Unfair Business Practices Act defines unfair business competition to  
23 include any “unfair,” “unlawful,” or “fraudulent” business or practice. Cal. Bus. &  
24 Prof. Code §§ 17200, *et seq.* Unfair competition also includes “unfair, deceptive,  
25 untrue or misleading advertising.” The Act also provides for injunctive relief and  
26 restitution for violations.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

28. Throughout the relevant time period, Defendants committed acts of unfair competition, as defined by *Business & Professions Code* §§ 17200, *et seq.*, by falsely labeling the Subject Bars.

29. Defendants' conduct is unfair in that the harm to Plaintiff and the Class arising from it outweighs the utility, if any, of those practices.

30. Defendants' conduct was fraudulent and likely to deceive reasonable consumers in that Defendants omitted and/or failed to disclose material facts regarding the Subject Bars. Defendants' failure to properly and adequately disclose the true nature of its Subject Bars constitutes deception by omission. Defendants had a duty to disclose these material facts.

31. The facts concealed and omitted are material facts in that a reasonable consumer would have considered them important in deciding whether or not to purchase the Subject Bars.

32. As a result of Defendants' practices, Plaintiff suffered injury in fact and lost money or property. As a direct and proximate result of the acts and practices alleged above, pursuant to California *Business & Professions Code* §17203, Plaintiff and the Class are therefore entitled to: (a) an Order requiring Defendants to cease the acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendants as a result of its deceptive practices, including, but not limited to, disgorgement of all profits derived from the sale of the Subject Bars; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California *Code of Civil Procedure* §1021.5.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND CAUSE OF ACTION**

**Deceptive Practices**

**Consumers Legal Remedies Act, California Civil Code §§ 1750 et seq.**

33. Plaintiff, on behalf of himself and on behalf of all others similarly situated, realleges and incorporates herein by reference each of the foregoing paragraphs.

34. At all relevant times, Plaintiff and each proposed Class member was a “consumer,” as that term is defined in Civil Code § 1761(d).

35. At all relevant times, the Subject Bars constituted “goods,” as that term is defined in Civil Code § 1761(a).

36. At all relevant times, VPX and GNC were “persons,” as that term is defined in Civil Code § 1761(c).

37. At all relevant times, Plaintiff’s and each proposed Class Member’s purchase of a Subject Bar constituted a “transaction,” as that term is defined in Civil Code § 1761(e).

38. Defendants’ practices, acts, policies, and course of conduct violated the CLRA in that Defendants’ represented that its Subject Bars have characteristics, uses and benefits which they do not have, in violation of § 1770(a)(5) of the CLRA.

39. Defendants’ practices, acts, policies, and course of conduct violated the CLRA in that Defendants improperly represented that its Subject Bars were of a particular standard, quality, or grade, in violation of § 1770(a)(7) of the CLRA.

40. Defendants’ practices, acts, policies, and course of conduct violated the CLRA in that Defendants represented that its goods had characteristics with the intent not to sell them as advertised, in violation of § 1770(a)(9) of the CLRA.

41. Defendants’ practices, acts, policies, and course of conduct violated the CLRA in that Defendants represented that a transaction confers or involves rights,

1 remedies, or obligations which it does not have, in violation of § 1770(a)(14) of the  
2 CLRA.

3 42. Plaintiff seeks restitution of all monies received by Defendants as a result  
4 of its improper sale of the misleading Subject Bars as provided in California Civil  
5 Code § 1780. Plaintiff is informed and believes that the amount of said restitution is  
6 unknown at this time, but will seek relief to amend this complaint at the time of trial  
7 when the same has been ascertained.

8 43. Plaintiff seeks injunctive relief and damages for the CLRA claims alleged  
9 in this Amended Complaint. Plaintiff's counsel served on Defendants,  
10 contemporaneously with the filing of the original Complaint, a CLRA notice letter in  
11 accordance with California Civil Code § 1782(a). To date, Defendants have not  
12 rectified the issues complained of herein.

13  
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests on behalf of himself and other members of  
16 the Class, for judgment against Defendants as follows:

- 17 1. For preliminary and permanent injunctive relief enjoining Defendants,  
18 their agents, servants and employees, and all persons acting in concert with the  
19 Defendants, from engaging in, and continuing to engage in, the unfair, unlawful  
20 and/or fraudulent business practices alleged above and that may yet be discovered in  
21 the prosecution of this action;
- 22 2. For certification of the putative Class;
- 23 3. For damages, restitution and disgorgement of all money or property  
24 wrongfully obtained by Defendants by means of their herein-alleged unlawful, unfair,  
25 and fraudulent business practices;
- 26 4. Recovery of the amounts by which Defendants have been unjustly  
27 enriched;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. For an accounting by Defendants for any and all profits derived by Defendants from their herein-alleged unlawful, unfair and/or fraudulent conduct and/or business practices;

6. For attorneys' fees and expenses pursuant to all applicable laws including, without limitation, California *Code of Civil Procedure* § 1021.5 and the common law private attorney general doctrine; and

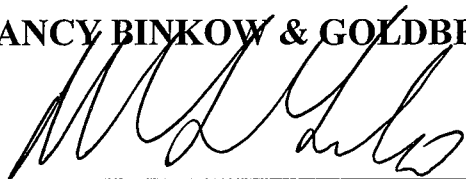
7. For costs of suit; and for such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: September 3, 2013

**GLANCY BINKOW & GOLDBERG LLP**

By:   
\_\_\_\_\_  
Marc L. Godino

Lionel Z. Glancy (#134180)  
Marc L. Godino (#182689)  
Casey E. Sadler (#274241)  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Telephone: (310) 201-9150  
Facsimile: (310) 201-9160  
E-mail: info@glancylaw.com

*Attorneys for Plaintiff Gabe Watkins*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE VIA U.S. MAIL AND ELECTRONIC MAIL**

I, the undersigned, say:

I am a citizen of the United States and am over the age of 18 and not a party to the within action. My business address is 1925 Century Park East, Suite 2100, Los Angeles, California 90067.

On September 3, 2013, I served the following document:

**AMENDED CLASS ACTION COMPLAINT**

on counsel for the parties in this action, addressed as stated below:

Alan J. Droste  
King Parret & Droste LLP  
450 Newport Center Drive, Suite 500  
Newport Beach, CA 92660  
Email: adroste@kpdlex.com

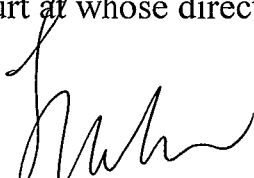
*Counsel for Defendants Vital Pharmaceuticals, Inc.  
and General Nutritions Centers, Inc.*

**By U.S. Mail:** By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service that same day.

**By E-Mail:** By emailing a true and correct copy of the document to counsel listed above on September 3, 2013 at approximately 12:00 p.m.

Executed on September 3, 2013, at Los Angeles, California.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
\_\_\_\_\_  
Tia Reiss