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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

29 YVONNE BROWN, individually  
30 and on Behalf of All Others  
31 Similarly Situated,

32 Plaintiff,

33 V.

34 GNC CORPORATION, a Delaware  
35 corporation,

36 Defendants.

Case No.

C13-5890

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

37 Plaintiff Yvonne Brown, by and through her attorneys, brings this action on  
38 behalf of herself and all others similarly situated against Defendant GNC  
39 Corporation ("GNC" or "Defendant") and state:

**FILED**  
DEC 19 2013  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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## NATURE OF ACTION

1. GNC markets, sells and distributes a line of joint health dietary supplements under its “TriFlex” brand name. All three products bear the name TriFlex in bold, large letters, prominently at the top front of each label. The primary purported active ingredients in all of GNC’s TriFlex Products are glucosamine hydrochloride and chondroitin sulfate. Through an extensive, widespread, comprehensive and uniform nationwide marketing campaign, GNC promises that its maximum, clinical strength TriFlex Products will help promote mobility and flexibility, improve joint comfort and cushion joints. For example, on each and every TriFlex Fast-Acting Triple Strength Product label, Defendant states that the Product’s “maximum”, “clinical strength” formula supports “joint comfort,” improves joint flexibility and “joint cushioning,” and helps to “regenerate cartilage and lubricate joints thus supporting joint health integrity and function.” Similar statements are made on the other TriFlex Products, in that the labeling and packaging states that the Products help to “promote joint mobility and flexibility” and “joint cushioning” and “protects joints from wear and tear” (collectively, the “joint health benefit representations”).

2. Furthermore, the representations that Defendant makes on the TriFlex

1 Products labels with respect to improving mobility and flexibility, helping with  
2 joint discomfort and cushioning joints are clearly directed at and, as a result, the  
3 majority of persons who purchase the TriFlex Products are persons suffering from  
4 osteoarthritis. For example, the University of Chicago Medicine web site describes  
5 the symptoms of osteoarthritis as a breakdown of joint cartilage which in turn  
6 interferes with joint mobility and causes joint pain and stiffness<sup>2</sup> – these are almost  
7 verbatim the symptoms that Defendant represents the TriFlex Products will relieve.  
8 Thus, Defendant’s representations, at a minimum, implicitly claim, using lay  
9 terminology, that the TriFlex Products have a positive effect on the characteristic  
10 symptoms of arthritis.  
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15 3. In truth, the TriFlex Products do not promote flexibility or mobility,  
16 relieve joint discomfort, or cushion joints. Clinical studies have proven that the  
17 primary active ingredients in the TriFlex Products, glucosamine and chondroitin,  
18 are ineffective, taken alone or in combination with the other ingredients in the  
19 Products, with regard to the purported joint health benefits represented on the  
20 Products’ packaging and labeling. As a large scale study sponsored and conducted  
21 by the National Institute of Health (“NIH”) concluded: “The analysis of the  
22 primary outcome measure did not show that [glucosamine and chondroitin], alone  
23 or in combination, was efficacious. . . .” Clegg, D., et al., Glucosamine,  
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1 Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis,  
2 354 New England J. of Med. 795, 806 (2006) ("2006 GAIT Study"). While most  
3 of the clinical studies finding a lack of efficacy (using the same amounts of the  
4 ingredients as are in Defendant's TriFlex Products) were performed on subjects  
5 with arthritis, some were performed on "healthy" subjects. Moreover, experts in  
6 the field deems the arthritis clinical studies finding the ingredients to be  
7 inefficacious to be proxies for whether the ingredients are effective for both  
8 arthritic and non-arthritic users of these ingredients. As a result, in addition to  
9 affirmatively misrepresenting the joint health benefits of the TriFlex Products,  
10 Defendant's failure to disclose the facts regarding these studies also constitutes  
11 deception by omission or concealment. Thus, Defendant's joint health benefit  
12 representations and omissions are false, misleading and reasonably likely to  
13 deceive the public.

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15 4. Despite the deceptive nature of Defendant's representations, Defendant  
16 conveys its uniform, deceptive message to consumers through a variety of media  
17 including its website and online promotional materials, and, most important, at the  
18 point of purchase, on the front of the Products' packaging and/or labeling where it  
19 cannot be missed by consumers. The only reason a consumer would purchase the  
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1 TriFlex Products is to obtain the advertised joint health benefits, which the  
2 Products do not provide.

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4 5. As a result of Defendant's deceptive joint health benefit representations,  
5 consumers – including Plaintiff and members of the proposed class – have  
6 purchased Products that do not perform as advertised.  
7

8 6. Plaintiff bring this action on behalf of themselves and all other similarly  
9 situated consumers to halt the dissemination of this false and misleading  
10 advertising message, correct the false and misleading perception it has created in  
11 the minds of consumers, and obtain redress for those who have purchased the  
12 TriFlex Products. Based on violations of California state unfair competition laws  
13 and breach of express warranties, Plaintiff seeks injunctive and monetary relief for  
14 consumers who purchased the Products.  
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## 18 JURISDICTION AND VENUE

19 7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d) (2).  
20 The matter in controversy, exclusive of interest and costs, exceeds the sum or value  
21 of \$5,000,000 and is a class action in which there are in excess of 100 class  
22 members and many members of the class are citizens of a state different from  
23 Defendant.  
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1 8. This Court has personal jurisdiction over GNC because GNC is  
2 authorized to do and does business in California. GNC has marketed, promoted,  
3 distributed, and sold its TriFlex Products in California and GNC has sufficient  
4 minimum contacts with this State and/or sufficiently avails itself of the markets in  
5 this State through its promotion, sales, distribution and marketing within this State  
6 to render the exercise of jurisdiction by this Court permissible.  
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10 9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
11 because a substantial part of the events or omissions giving rise to Plaintiff  
12 Brown's claims occurred while he resided in this judicial district. Venue is also  
13 proper under 18 U.S.C. §1965(a) because GNC transacts substantial business in  
14 this District.  
15

## 16 **PARTIES**

17  
18 10. Plaintiff Yvonne Brown resides in Alameda County, California and is a  
19 resident of California. In or around October 2012, she was exposed to and saw  
20 GNC's representations by reading the label of TriFlex Fast-Acting at a GNC store  
21 in Oakland, California. In reliance on the joint health benefit representations on the  
22 front, back and sides of the label, Plaintiff purchased TriFlex Fast-Acting and paid  
23 approximately \$20.00 for the bottle. Had Plaintiff Brown known the truth about  
24 Defendant's misrepresentations and omissions, including that the scientific  
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evidence demonstrated that the Product was not effective as represented by Defendant, Plaintiff Brown would not have purchased TriFlex Fast-Acting. Plaintiff Brown used TriFlex Fast Acting as directed and, consistent with the scientific evidence that the Product was not effective, the Product did not work. As a result, Plaintiff Brown suffered injury in fact and lost money.

11. Defendant GNC Corporation is a corporation organized and existing under the laws of the state of Delaware, and is headquartered in Pittsburgh, Pennsylvania. GNC operates more than 4,800 retail locations throughout the United States, including California, and specializes in the sale of and advice to consumers about nutritional supplements. GNC is the nation's largest retailer of its kind. Upon information and belief, from its Regional Office in California, GNC promoted, marketed and sold the TriFlex products throughout the United States, including California.

## FACTUAL ALLEGATIONS

### *The TriFlex Products*

12. GNC is the largest supplement retailer in the United States, operating over 4,800 retail locations where it sells retail goods, and gnc.com. This lawsuit concerns three of those products: (1) GNC TriFlex; (2) GNC TriFlex Fast-Acting;

1 and (3) GNC TriFlex Sport. The TriFlex products are available in 60, 120, and 240  
2 count bottles.  
3

4 13. Since the Products' launch, GNC has consistently conveyed the message  
5 to consumers throughout the United States, including California that the TriFlex  
6 Products, with their "maximum", "clinical" strength formulas, help to promote  
7 mobility and flexibility, improve "joint comfort," and cushion joints simply by  
8 taking the recommended number of tablets each day. They do not. GNC's joint  
9 health benefit representations are false, misleading, and reasonably likely to  
10 deceive the public.  
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14 14. The primary active ingredients in all the TriFlex Products are  
15 glucosamine hydrochloride and chondroitin sulfate. As more fully set forth below,  
16 the scientific evidence is that glucosamine and chondroitin, taken alone or in  
17 combination, do not provide the joint health benefits represented by GNC.  
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20 15. In addition to the primary active ingredients, Defendant's TriFlex  
21 Products contain lesser amounts of other ingredients, including:  
22 methylsulfonylmethane ("MSM"); hyaluronic acid; "a joint cushioning sports  
23 blend" (consisting of white willow bark, boswellia serrate, MSM, hyaluronic acid  
24 and hops cones extract); "a fast-acting comfort blend" (consisting of Chinese  
25 skullcap root extract and clutch tree wood & bark extract). As more fully  
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discussed below, these ingredients are also not effective in providing the joint health benefits represented by Defendant.

16. The TriFlex Fast-Acting bottle references one study purportedly supporting Defendant's "Clinical Strength" representation. No information is included to enable consumers to locate and review the study. But by making this representation Defendant is falsely representing that the scientific/clinical evidence supports the representations that it makes about its Products. Likewise, the TriFlex Fast-Acting bottle also represents that "[s]cientific research" has shown that glucosamine and chondroitin "help to support the body's natural ability to regenerate cartilage and lubricate joints thus supporting joint health integrity and function" without reference to any specific scientific research. By making references to clinical strength and that "scientific research" supports Defendant's joint health benefit claims, the burden is on Defendant to provide what it cannot – proof that these Products work as represented. But, since the vast weight of competent and reliable scientific evidence is that the ingredients in Defendant's Products do not work as represented, these representations are false.

17. Even though numerous clinical studies and the vast weight of competent clinical evidence have found that the primary ingredients in GNC's TriFlex Products, glucosamine and chondroitin, alone or in combination, are ineffective,

1 GNC continues to state on the Products' packaging and labeling that the TriFlex  
2 Products, with their "maximum", "clinical" strength formulas, help to, *inter alia*:  
3 promote mobility and flexibility, improve "joint comfort," and cushion joints.  
4

5 Copies of the TriFlex labels are attached hereto as Exhibit A.  
6

7 ***Scientific Studies Confirm The TriFlex Products Are Not Effective***

8 18. At least as early as 2004, clinical studies have found that glucosamine  
9 and chondroitin, alone or in combination, are not effective in providing the  
10 represented joint health benefits.  
11

12 19. For example, a 2004 study by McAlindon et al., entitled Effectiveness of  
13 Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-  
14 Based Randomized Double-Blind Controlled Trial, 117(9) Am. J. Med. 649 (Nov.  
15 2004), concluded that glucosamine was no more effective than placebo in treating  
16 the symptoms of knee osteoarthritis – in short, it was ineffective.  
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19 20. Also as early as 2004, many studies confirmed there is a significant  
20 "placebo" effect with respect to consumption of products represented to be  
21 effective in providing joint health benefits such as Defendant's Products – 30%  
22 and more of persons who took placebos in these studies believed that they were  
23 experiencing joint health benefits when all they were taking was a placebo. In this  
24 regard, a 2004 study by Cibere et al., entitled Randomized, Double-Blind, Placebo-  
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1 Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis, 51(5)  
2 Arthritis Care & Research 738-45 (Oct. 15, 2004), studied users of glucosamine  
3 who had claimed to have experienced at least moderate improvement after starting  
4 glucosamine. These patients were divided into two groups – one that continued  
5 using glucosamine and one that was given a placebo. For six months, the primary  
6 outcome observed was the proportion of disease flares in the glucosamine and  
7 placebo groups. A secondary outcome was the time to disease flare. The study  
8 results reflected that there were no differences in either the primary or  
9 secondary outcomes for glucosamine and the placebo. The authors concluded that  
10 the study provided no evidence of symptomatic benefit from continued use of  
11 glucosamine – in other words, any prior perceived benefits were due to the placebo  
12 effect and not glucosamine.  
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18 21. In the 2006 GAIT Study, the study authors rigorously evaluated the  
19 effectiveness of glucosamine and chondroitin, alone and in combination, on  
20 osteoarthritis for six months. According to the study's authors, "The analysis of the  
21 primary outcome measure did not show that either supplement, alone or in  
22 combination, was efficacious. .." 2006 GAIT Study at 806.<sup>5</sup> Subsequent GAIT  
23 studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild  
24 cartilage<sup>6</sup> and were otherwise ineffective –even in patients with moderate to severe  
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1 knee pain for which the 2006 GAIT study reported results were inconclusive. *See*  
2 Sawitzke, A.D., et al., The Effect of Glucosamine and/or Chondroitin Sulfate on  
3 the Progression of Knee Osteoarthritis: A GAIT Report, 58(10) J. Arthritis Rheum.  
4 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of  
5 Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo  
6 Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8)  
7 Ann Rheum. Dis. 1459-64 (Aug. 2010).

11 22. The GAIT studies are consistent with the reported results of prior and  
12 subsequent studies. For example, a study by Rozendaal et al., entitled Effect of  
13 Glucosamine Sulfate on Hip Osteoarthritis, 148 Ann. of Intern. Med. 268-77  
14 (2008), assessing the effectiveness of glucosamine on the symptoms and structural  
15 progression of hip osteoarthritis during 2 years of treatment, concluded that  
16 glucosamine was no better than placebo in reducing symptoms and progression of  
17 hip osteoarthritis.

21 23. A 2010 meta-analysis by Wandel et al. entitled Effects of Glucosamine,  
22 Chondroitin, Or Placebo in Patients with Osteoarthritis or Hip or Knee: Network  
23 Meta-Analysis, BMJ 341:c4675 (2010), examined prior studies involving  
24 glucosamine and chondroitin, alone or in combination, and whether they relieved  
25 the symptoms or progression of arthritis of the knee or hip. The study authors  
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1 reported that glucosamine and chondroitin, alone or in combination, did not reduce  
2 joint pain nor have an impact on the narrowing of joint space: “Our findings  
3 indicate that glucosamine, chondroitin, and their combination do not result in a  
4 relevant reduction of joint pain nor affect joint space narrowing compared with  
5 placebo.” *Id.* at 8. The authors went as far to say, “We believe it unlikely that  
6 future trials will show a clinically relevant benefit of any of the evaluated  
7 preparations.” *Id.*

11 24. On July 7, 2010, Wilkens et al., reported that there was no difference  
12 between placebo and glucosamine for the treatment of low back pain and lumbar  
13 osteoarthritis and that neither glucosamine nor placebos were effective in reducing  
14 pain related disability. The researchers also stated that, “Based on our results, it  
15 seems unwise to recommend glucosamine to all patients” with low back pain and  
16 lumbar osteoarthritis. Wilkens et al., Effect of Glucosamine on Pain-Related  
17 Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar  
18 Osteoarthritis, 304(1) JAMA 45-52 (July 7, 2010).

22 25. In 2011, Miller and Clegg, after surveying the clinical study history of  
23 glucosamine and chondroitin reported that, “The cost-effectiveness of these dietary  
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1 supplements alone or in combination in the treatment of OA have not been  
2 demonstrated in North America.” Miller, K. and Clegg, D., Glucosamine and  
3 Chondroitin Sulfate, Rheum. Dis. Clin. N. Am. 37 (2011) 103-118.  
4

5 26. Scientific studies also confirm that the other ingredients in the TriFlex  
6 Products are ineffective. For MSM, a number of studies have either demonstrated  
7 no benefit in pain relief or other symptom benefits (e.g., a lack of efficacy). *See,*  
8 *e.g.*, S. Brien, *et. al.*, Systematic Review Of The Nutritional Supplements (DMSO)  
9 And Methylsulfonylmethane (MSM) In The Treatment Of Osteoarthritis (Apr. 17,  
10 2008) (concluding that there is no “definitive evidence that MSM is superior to  
11 placebo in the treatment of mild to moderate OA of the knee”); *see also* Debbie,  
12 E., et al., Efficacy Of Methylsulfonylmethane Supplementation On Osteoarthritis  
13 Of The Knee: A Randomized Controlled Study, 11.50 BMC Complementary and  
14 Alternative Medicine (2011); Randomized, Double-Blind, Parallel, Placebo-  
15 Controlled Study of Oral Glucosamine, Methylsulfonylmethane and their  
16 Combination in Osteoarthritis, 24 Clinical Drug Investigation 353-63 (2004).  
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22 27. White willow bark is also not effective in providing any of the purported  
23 joint relief benefits. In one study by Bigert et al<sup>7</sup> of 127 people, after 6 weeks of  
24 treatment, white willow bark provided no joint pain relief and was similar to a  
25 placebo while low dose diclofenac, a common non-steroidal anti-inflammatory  
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1 drug, gave statistically better pain relief. In Schmid et al, 78 people were evaluated  
2 repeatedly over 2 weeks for joint pain, function and stiffness. All these parameters  
3 were not statistically different from placebo at one week, and only joint pain  
4 reached statistical significance at 2 weeks, while joint stiffness and joint function  
5 remained similar to placebo.  
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7  
8 28. When injected into the joint, several preparations of hyaluronic acid have  
9 been approved by regulatory agencies, including the FDA, for pain relief in knee  
10 osteoarthritis. By contrast, oral hyaluronic acid preparations do not show joint  
11 health benefits because it is rapidly degraded during digestion to its constituents,  
12 two common sugars available in our normal diet. Therefore, its use in the TriFlex  
13 products will not provide any of the joint health benefits claimed.  
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16  
17 29. Only small amounts of *Boswellia Serrata* are absorbed after ingestion  
18 and thus not effective in providing any joint health benefit. See, e.g., Abdel-Tawb,  
19 M., et al., *Boswellia Serrata: An Overall Assessment of in Vitro, Preclinical,*  
20 *Pharmacokinetic and Clinical Data*, 50 Clin Pharmacokinet. 349-69 (2011).  
21

22 30. Chinese skullcap and black catechu do not have a scientific relationship  
23 to joint health in that they are used variously as a food additive, astringent, tannin,  
24 and dye. In short their only use has and still is as a food flavoring and dye.  
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26  
27 ***The Impact of GNC's Wrongful Conduct***  
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1 31. Despite the vast weight of scientific evidence and clinical studies that  
2 definitively show the ingredients in the TriFlex Products are ineffective, Defendant  
3 conveyed and continues to convey one uniform message: TriFlex Products, with  
4 their “maximum”, “clinical” strength formulas help to promote mobility and  
5 flexibility, improve “joint comfort,” and cushion joints.  
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8 32. As the manufacturer and/or distributor of the TriFlex Products,  
9 Defendant possesses specialized knowledge regarding the content and effects of  
10 the ingredients contained in its Products and is in a superior position to learn of the  
11 effects – and has learned of the effects, or lack thereof – its Products have on  
12 consumers.  
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15 33. Specifically, Defendant knew, but failed to disclose, that the TriFlex  
16 Products do not provide the joint health benefits represented and that well-  
17 conducted, clinical studies have found the ingredients in the TriFlex Products to be  
18 ineffective in providing the joint health benefits represented by Defendant.  
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21 34. Plaintiff and class members have been and will continue to be deceived  
22 or misled by Defendant’s deceptive joint health benefit representations. Plaintiff  
23 purchased and consumed TriFlex Products during the class period and in doing so,  
24 read and considered the Products’ label and based their decision to purchase the  
25 Products on the joint health benefit representations on the Products’ packaging.  
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1 Defendant's joint health benefit representations and omissions were a material  
2 factor in influencing Plaintiff's decision to purchase and consume the TriFlex  
3 Products.  
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5 35. The only purpose behind purchasing the TriFlex Products is to obtain  
6 some or all of the represented joint health benefits. There is no other reason for  
7 Plaintiff and the class to have purchased the Products as the Products are not  
8 represented to provide any other benefits and Plaintiff and the class would not have  
9 purchased the Products had they known Defendant's joint health benefit statements  
10 were false and misleading and that clinical cause and effect studies have found the  
11 ingredients to be ineffective for the represented joint health benefits.  
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15 36. As a result, Plaintiff and the class members have been injured in fact in  
16 their purchases of the TriFlex Products in that they were deceived into purchasing  
17 Products that do not perform as advertised.  
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19 37. Defendant, by contrast, reaped enormous profit from its false marketing  
20 and sale of the TriFlex Products.  
21

## 22 **CLASS DEFINITION AND ALLEGATIONS**

23 38. Plaintiff Brown brings this action on behalf of himself and all other  
24 similarly situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of  
25 the Federal Rules of Civil Procedure and seeks certification of the following class:  
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**California-Only Class**

All consumers who, within the applicable statute of limitations period, purchased GNC's TriFlex Products in California.

Excluded from the class are GNC, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the TriFlex Products for resale.

39. In the alternative, Plaintiff bring this action on behalf of themselves and all other similarly situated class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seek certification of the following class against GNC for violation of California law:

**Multi-State Class**

All consumers who, within the applicable statute of limitations, purchased GNC's TriFlex Products in California or states with similar laws.

Excluded from the class are GNC, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the TriFlex Products for resale.

40. **Numerosity.** The members of the class are so numerous that joinder of all members of the class is impracticable. Plaintiff is informed and believes that the proposed class contains thousands of purchasers of the TriFlex Products who have been damaged by GNC's conduct as alleged herein. The precise number of class members is unknown to Plaintiff.

41. **Existence and Predominance of Common Questions of Law and Fact.** This action involves common questions of law and fact, which predominate

1 over any questions affecting individual class members. These common legal and  
2 factual questions include, but are not limited to, the following:

3  
4 (1) whether the claims discussed above are true, or are misleading, or objectively  
5 reasonably likely to deceive;

6  
7 (2) whether GNC's alleged conduct violates public policy;

8  
9 (3) whether the alleged conduct constitutes violations of the laws asserted;

10  
11 (4) whether GNC engaged in false or misleading advertising;

12  
13 (5) whether Plaintiff and class members have sustained monetary loss  
14 and the proper measure of that loss; and

15  
16 (6) whether Plaintiff and class members are entitled to other appropriate  
17 remedies, including corrective advertising and injunctive relief.

18  
19 42. **Typicality.** Plaintiff's claims are typical of the claims of the members of  
20 the classes because, inter alia, all class members were injured through the uniform  
21 misconduct described above, were subject to GNC's deceptive joint health benefit  
22 representations including the representations that accompanied each and every box  
23 of the TriFlex Products. Plaintiff is advancing the same claims and legal theories  
24 on behalf of themselves and all members of the class.

25  
26 43. **Adequacy of Representation.** Plaintiff will fairly and adequately  
27 protect the interests of the members of the class. Plaintiff has retained counsel

1 experienced in complex consumer class action litigation, and Plaintiff intends to  
2 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests  
3 to those of the class.  
4

5       **44. Superiority.** A class action is superior to all other available means for  
6 the fair and efficient adjudication of this controversy. The damages or other  
7 financial detriment suffered by individual class members is relatively small  
8 compared to the burden and expense that would be entailed by individual litigation  
9 of their claims against GNC. It would thus be virtually impossible for the class, on  
10 an individual basis, to obtain effective redress for the wrongs done to them.  
11 Furthermore, even if class members could afford such individualized litigation, the  
12 court system could not. Individualized litigation would create the danger of  
13 inconsistent or contradictory judgments arising from the same set of facts.  
14 Individualized litigation would also increase the delay and expense to all parties  
15 and the court system from the issues raised by this action. By contrast, the class  
16 action device provides the benefits of adjudication of these issues in a single  
17 proceeding, economies of scale, and comprehensive supervision by a single court,  
18 and presents no unusual management difficulties under the circumstances here.  
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25       **45.** Plaintiff seek preliminary and permanent injunctive and equitable relief  
26 on behalf of the entire class, on grounds generally applicable to the entire class, to  
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1 enjoin and prevent GNC from engaging in the acts described, and requiring GNC  
2 to provide full restitution to Plaintiff and class members.  
3

4 46. Unless a class is certified, GNC will retain monies received as a result of  
5 its conduct that were taken from Plaintiff and class members. Unless a class-wide  
6 injunction is issued, GNC will continue to commit the violations alleged, and the  
7 members of the class and the general public will continue to be deceived.  
8

9 47. GNC has acted and refused to act on grounds generally applicable to the  
10 class, making appropriate final injunctive relief with respect to the class as a  
11 whole.  
12

### 13 **COUNT I**

#### 14 **Violation of Business & Professions Code §17200, et seq.** 15 **(Multi-State or, in the Alternative, California-only Class)**

16 48. Plaintiff repeats and re-alleges the allegations contained in the  
17 paragraphs above, as if fully set forth herein.  
18

19 49. Plaintiff Brown brings this claim individually and on behalf of the class.  
20

21 50. As alleged herein, Plaintiff Brown has suffered injury in fact and lost  
22 money or property as a result of GNC's conduct because he purchased a TriFlex  
23 Product in reliance on GNC's joint health benefit statements detailed above, but  
24 did not receive a product that provided the represented joint health benefits.  
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1           51. The Unfair Competition Law, Business & Professions Code § 17200, et  
2 seq. ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or  
3 practice and any false or misleading advertising.  
4

5           52. In the course of conducting business, GNC committed "unlawful"  
6 business practices by, inter alia, making the joint health benefit representations  
7 (which also constitute advertising within the meaning of § 17200) and omissions of  
8 material facts, as set forth more fully herein, and violating Civil Code §§ 1572,  
9 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code  
10 §§ 17200, et seq. Plaintiff Brown and the class reserve the right to allege other  
11 violations of law, which constitute other unlawful business acts or practices. Such  
12 conduct is ongoing and continues to this date.  
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16           53. In the course of conducting business, GNC committed "unfair" business  
17 practices by, inter alia, making the joint health benefit representations (which also  
18 constitute advertising within the meaning of § 17200) and omissions of material  
19 facts regarding the TriFlex Products in its advertising campaign, including the  
20 Products' packaging, as set forth more fully herein. There is no societal benefit  
21 from false advertising, only harm. Plaintiff Brown and other class members paid  
22 money for promised joint health benefits which they did not receive. While  
23 Plaintiff Brown and class members were harmed, GNC was unjustly enriched by  
24  
25  
26  
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28

1 its false joint health benefits misrepresentations and omissions. Because the utility  
2 of GNC's conduct (zero) is outweighed by the gravity of the harm Plaintiff Brown  
3 and class members suffered, GNC's conduct is "unfair" having offended an  
4 established public policy. Further, GNC engaged in immoral, unethical,  
5 oppressive, and unscrupulous activities that are substantially injurious to  
6 consumers.  
7  
8

9 54. Further, as stated in this Complaint, Plaintiff Brown alleges violations of  
10 consumer protection, unfair competition and truth in advertising laws, resulting in  
11 harm to consumers. GNC's acts and omissions also violate and offend the public  
12 policy against engaging in false and misleading advertising, unfair competition and  
13 deceptive conduct towards consumers. This conduct constitutes violations of the  
14 unfair prong of Business & Professions Code § 17200, et seq.  
15  
16

17 55. There were reasonably available alternatives to further GNC's legitimate  
18 business interests, other than the conduct described herein.  
19  
20

21 56. Business & Professions Code § 17200, et seq., also prohibits any  
22 "fraudulent business act or practice."  
23

24 57. In the course of conducting business, GNC committed "fraudulent  
25 business act or practices" by, inter alia, making the joint health benefit  
26 representations (which also constitute advertising within the meaning of § 17200)  
27  
28

1 and omissions of material facts regarding the TriFlex Products in its advertising  
2 campaign, including the Products' packaging, as set forth more fully herein. GNC  
3 misrepresented on each and every TriFlex Product bottle/box that its TriFlex  
4 Products, with their "maximum", "clinical" strength formulas help to promote  
5 mobility and flexibility, improve "joint comfort," and cushion joints when, in fact,  
6 the competent scientific evidence is that the ingredients in the TriFlex Products are  
7 not efficacious and do not work as represented.  
8  
9  
10

11 58. GNC's actions, claims, omissions and misleading statements, as more  
12 fully set forth above, were also false, misleading and/or likely to deceive the  
13 consuming public within the meaning of Business & Professions Code § 17200, et  
14 seq.  
15  
16

17 59. Plaintiff Brown and other members of the class have in fact been  
18 deceived by GNC's material joint health benefit representations and omissions.  
19 GNC's deception has caused harm to Plaintiff Brown and other members of the  
20 class who purchased the TriFlex Products. Plaintiff Brown and the other class  
21 members have suffered injury in fact and lost money as a result of these unlawful,  
22 unfair, and fraudulent practices.  
23  
24

25 60. GNC knew, or should have known, that its material representations and  
26 omissions would be likely to deceive the consuming public and result in consumers  
27  
28



1 purchasing GNC's TriFlex Products and, indeed, intended to deceive consumers.

2 61. As a result of its deception, GNC has been able to reap unjust revenue  
3 and profit.

4 62. Unless restrained and enjoined, GNC will continue to engage in the  
5 above described conduct. Accordingly, injunctive relief is appropriate.

6 63. Plaintiff Brown, on behalf of himself and all others similarly situated,  
7 and the general public, seeks restitution of all money obtained from Plaintiff  
8 Brown and the members of the class collected as a result of unfair competition, an  
9 injunction prohibiting GNC from continuing such practices, corrective advertising  
10 and all other relief this Court deems appropriate, consistent with Business &  
11 Professions Code §17203.  
12  
13  
14  
15

16 **COUNT II**  
17 **Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.***  
18 **(Multi-State or, in the Alternative, California-only Class)**

19 64. Plaintiff repeats and re-alleges the allegations contained in the  
20 paragraphs above, as if fully set forth herein.

21 65. Plaintiff Brown brings this claim individually and on behalf of the class.

22 66. This cause of action is brought pursuant to the Consumers Legal  
23 Remedies Act, California Civil Code §1750, *et seq.* (the "Act"), and similar laws in  
24  
25  
26  
27  
28

1 other states. Plaintiff Brown is a "consumer" as defined by California Civil Code  
 2 §1761(d). The TriFlex Products are "goods" within the meaning of the Act.

3  
 4 67. GNC violated and continues to violate the Act by engaging in the  
 5 following practices proscribed by California Civil Code §1770(a) in transactions  
 6 with Plaintiff Brown and the class which were intended to result in, and did result  
 7 in, the sale of the TriFlex Products:

8 (5) Representing that [the TriFlex Products have] . . . approval,  
 9 characteristics . . . uses [and] benefits . . . which [they do] not have . . . .

10  
 11 \* \* \*

12  
 13 (7) Representing that [the TriFlex Products are] of a particular standard,  
 14 quality or grade . . . if [it is] of another.

15  
 16 \* \* \*

17  
 18 (9) Advertising goods . . . with intent not to sell them as advertised.

19 (16) Representing that [the TriFlex Products have] been supplied in  
 20 accordance with a previous representation when [they have] not.

21  
 22 68. GNC violated the Act by representing and failing to disclose material  
 23 facts in its advertising campaign including the TriFlex Products labels and  
 24 packaging, as described above, when it knew, or should have known, that the  
 25  
 26  
 27  
 28

1 representations were false and misleading and that the omissions were of material  
2 facts it was obligated to disclose.  
3

4 69. Pursuant to California Civil Code §1782(d), Plaintiff Brown and the  
5 class seek a Court order enjoining the above-described wrongful acts and practices  
6 of GNC and for restitution and disgorgement.  
7

8 70. Pursuant to §1782 of the Act, on April 18, 2013, Plaintiff Brown notified  
9 GNC in writing by certified mail of the particular violations of §1770 of the Act  
10 and demanded that GNC rectify the problems associated with the actions detailed  
11 above and give notice to all affected consumers of GNC's intent to so act.  
12

13 71. GNC failed to rectify or agree to rectify the problems associated with the  
14 actions detailed above and give notice to all affected consumers within 30 days of  
15 the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff Brown  
16 further seeks actual, punitive and statutory damages, as appropriate.  
17

18  
19  
20 **COUNT III**  
21 **Breach of Express Warranty**  
22 **(Multi-State or, in the Alternative, California-only Class)**

23 72. Plaintiff repeats and re-alleges the allegations contained in the  
24 paragraphs above, as if fully set forth herein.

25 73. Plaintiff Brown brings this claim individually and on behalf of the class.  
26

1           74. The Uniform Commercial Code Section 2-313 provides that an  
2 affirmation of fact or promise, including a description of the goods, becomes part  
3 of the basis of the bargain and creates an express warranty that the goods shall  
4 conform to the promise and to the description.  
5

6  
7           75. At all times, California and similar state laws have codified and adopted  
8 the provisions the Uniform Commercial Code governing the express warranty of  
9 merchantability.  
10

11           76. GNC expressly warranted in its advertising campaign, including, *inter*  
12 *alia*, on each and every box of the TriFlex Products that the Products with their  
13 “maximum”, “clinical” strength formulas help to promote mobility and flexibility,  
14 improve “joint comfort,” and cushion joints. These joint health benefit  
15 representations made by GNC are affirmations of fact that became part of the basis  
16 of the bargain and created an express warranty that the goods would conform to the  
17 stated promises. Plaintiff Brown placed importance on GNC’s joint health benefit  
18 representations.  
19  
20  
21

22           77. All conditions precedent to GNC’s liability under this contract have been  
23 performed by Plaintiff Brown and the class.  
24

25           78. GNC was provided notice of these issues by, *inter alia*, Plaintiff  
26 Brown’s April 18, 2013 letter and the instant Complaint.  
27  
28

1 79. GNC breached the terms of this contract, including the express  
2 warranties, with Plaintiff Brown and the class by not providing Products that  
3 would promote mobility or flexibility, improve joint comfort or cushion joints as  
4 represented.  
5

6  
7 80. As a result of GNC's breach of its contract, Plaintiff Brown and the class  
8 have been damaged in the amount of the price of the Product they purchased.  
9

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for a judgment:

12 A. Certifying the class as requested herein;

13  
14 B. Awarding Plaintiff and the proposed class members' damages;

15 C. Awarding restitution and disgorgement of GNC's revenues to Plaintiff  
16 and the proposed class members;  
17

18 D. Awarding injunctive relief as permitted by law or equity, including  
19 enjoining GNC from continuing the unlawful practices as set forth herein, and  
20 directing GNC to identify, with Court supervision, victims of its conduct and pay  
21 them all money it is required to pay;  
22

23  
24 E. Ordering GNC to engage in a corrective advertising campaign;

25 F. Awarding statutory and punitive damages, as appropriate;

26  
27 G. Awarding attorneys' fees and costs; and  
28

1 H. Providing such further relief as may be just and proper.

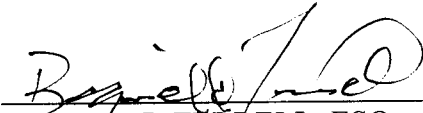
2 **DEMAND FOR JURY TRIAL**

3  
4 Plaintiff hereby demands a trial of her claims by jury to the extent authorized  
5 by law.

6  
7 Respectfully submitted,

8 Dated: November 23, 2013

LAW OFFICES OF SYDNEY J. HALL  
THE TERRELL LAW GROUP

9  
10   
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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

YVONNE BROWN, individually and on Behalf of All Others  
Similarly Situated

## DEFENDANTS

GNC CORPORATION, a Delaware corporation

(b) County of Residence of First Listed Plaintiff Alameda

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

REGINALD TERRELL, THE TERRELL LAW GROUP  
P. O. BOX 13315, PMB #148, Oakland, CA 94661 510-237-9700

## 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)

- |                                         | PTF                                   | DEF                                   |                                                               | PTF                        | DEF                        |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" 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)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<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 (Excludes 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	<b>PERSONAL INJURY</b> <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 - Medical Malpractice	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input 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 <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management 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 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 checked="" 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <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			

## 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

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

## VI. CAUSE OF ACTION

Brief description of cause  
Unfair business practice, breach of warranty

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

11/25/2013

SIGNATURE OF ATTORNEY OF RECORD

## IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA