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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL LERMA and JEREMY
GAATZ, On Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

GNC CORPORATION, a Delaware
corporation,

Defendant.

Case No.: 13CV0933 CAB KSC

**FIRST AMENDED CLASS
ACTION COMPLAINT**

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*;
3. VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT, 815 Ill. Comp. Stat. 502/1 *et seq.*; and
4. BREACH OF EXPRESS WARRANTY

DEMAND FOR JURY TRIAL

1 Plaintiffs Michael Lerma and Jeremy Gaatz, by and through their attorneys, bring
 2 this action on behalf of themselves and all others similarly situated against Defendant
 3 GNC Corporation (“GNC” or “Defendant”) and state:

4 **NATURE OF ACTION**

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

20 2. Furthermore, the representations that Defendant makes on the TriFlex
 21 Products labels with respect to improving mobility and flexibility, helping with joint
 22 discomfort and cushioning joints are clearly directed at and, as a result, the majority of
 23 persons who purchase the TriFlex Products are persons suffering from osteoarthritis. For
 24 example, the University of Chicago Medicine web site describes the symptoms of
 25 osteoarthritis as a breakdown of joint cartilage which in turn interferes with joint mobility

26 ¹ The TriFlex Products include, but are not limited to: (1) GNC TriFlex; (2) GNC
 27 TriFlex Fast-Acting; and (3) GNC TriFlex Sport (collectively, “the TriFlex Products” or
 28 “the Products”). Plaintiffs reserve the right to include other Products upon completion of
 discovery.

1 and causes joint pain and stiffness² – these are almost verbatim the symptoms that
2 Defendant represents the TriFlex Products will relieve. Thus, Defendant’s
3 representations, at a minimum, implicitly claim, using lay terminology, that the TriFlex
4 Products have a positive effect on the characteristic symptoms of arthritis.

5 3. In truth, the TriFlex Products do not promote flexibility or mobility, relieve
6 joint discomfort, or cushion joints. Clinical studies have proven that the primary active
7 ingredients in the TriFlex Products, glucosamine and chondroitin, are ineffective, taken
8 alone or in combination with the other ingredients in the Products, with regard to the
9 purported joint health benefits represented on the Products’ packaging and labeling. As a
10 large scale study sponsored and conducted by the National Institute of Health (“NIH”) concluded: “The analysis of the primary outcome measure did not show that
11 [glucosamine and chondroitin], alone or in combination, was efficacious. . . .” Clegg,
12 D., et al., Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful
13 Knee Osteoarthritis, 354 New England J. of Med. 795, 806 (2006) (“2006 GAIT
14 Study”). While most of the clinical studies finding a lack of efficacy (using the same
15 amounts of the ingredients as are in Defendant’s TriFlex Products) were performed on
16 subjects with arthritis, some were performed on “healthy” subjects. Moreover, experts in
17 the field deem the arthritis clinical studies finding the ingredients to be inefficacious to
18 be proxies for whether the ingredients are effective for both arthritic and non-arthritic
19 users of these ingredients. As a result, in addition to affirmatively misrepresenting the
20 joint health benefits of the TriFlex Products, Defendant’s failure to disclose the facts
21 regarding these studies also constitutes deception by omission or concealment. Thus,
22 Defendant’s joint health benefit representations and omissions are false, misleading and
23 reasonably likely to deceive the public.

24
25 4. Despite the deceptive nature of Defendant’s representations, Defendant
26 conveys its uniform, deceptive message to consumers through a variety of media
27

28 ² See <http://www.uchospitals.edu/online-library/content=P00061>.

1 including its website and online promotional materials, and, most important, at the point
2 of purchase, on the front of the Products' packaging and/or labeling where it cannot be
3 missed by consumers. The only reason a consumer would purchase the TriFlex
4 Products is to obtain the advertised joint health benefits, which the Products do not
5 provide.

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

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

16 **JURISDICTION AND VENUE**

17 7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
18 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
19 \$5,000,000 and is a class action in which there are in excess of 100 class members and
20 many members of the Class are citizens of a state different from Defendant.

21 8. This Court has personal jurisdiction over GNC because GNC is authorized
22 to do and does business in California. GNC has marketed, promoted, distributed, and
23 sold its TriFlex Products in California and GNC has sufficient minimum contacts with
24 this State and/or sufficiently avails itself of the markets in this State through its
25 promotion, sales, distribution and marketing within this State to render the exercise of
26 jurisdiction by this Court permissible.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff Lerma's claims occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because GNC transacts substantial business in this District.

PARTIES

10. Plaintiff Michael Lerma resides in El Centro, California and is a resident of California. In or around October 2012, Plaintiff Lerma was exposed to and saw GNC's representations by reading the label of TriFlex Fast-Acting at a GNC store in El Centro, California. In reliance on the joint health benefit representations on the front, back and sides of the label, Plaintiff purchased TriFlex Fast-Acting and paid approximately \$20.00 for the bottle. Had Plaintiff Lerma known the truth about Defendant's misrepresentations and omissions, including that the scientific evidence demonstrated that the Product was not effective as represented by Defendant, Plaintiff Lerma would not have purchased TriFlex Fast-Acting. Plaintiff Lerma 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 Lerma suffered injury in fact and lost money.

11. Plaintiff Jeremy Gaatz resides in Cook County, Illinois and is a resident of Illinois. In or around January 2013, Plaintiff Gaatz was exposed to and saw GNC's representations by reading the label of TriFlex Sport at a GNC store at 1228 S. Canal, in Chicago, Illinois. In reliance on the joint health benefit representations on the front, back and sides of the label, Plaintiff Gaatz purchased TriFlex Sport. Had Plaintiff Gaatz known the truth about Defendant's misrepresentations and omissions, including that the scientific evidence demonstrated that the Product was not effective as represented by Defendant, Plaintiff would not have purchased TriFlex Sport. Plaintiff Gaatz used TriFlex Sport as directed and, consistent with the scientific evidence that the

Product was not effective, the Product did not work. As a result, Plaintiff Gaatz suffered injury in fact and lost money.

12. 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

13. 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; and (3) GNC TriFlex Sport.³ The TriFlex products are available in 60, 120, and 240 count bottles. Screen shots of the TriFlex Products appear as follows:



³ Plaintiffs reserve the right to include other products upon completion of discovery.

1 14. Since the Products' launch, GNC has consistently conveyed the message to
2 consumers throughout the United States, including California, that the TriFlex Products,
3 with their "maximum", "clinical" strength formulas, help to promote mobility and
4 flexibility, improve "joint comfort," and cushion joints simply by taking the
5 recommended number of tablets each day. They do not. GNC's joint health benefit
6 representations are false, misleading, and reasonably likely to deceive the public.

7 15. The primary active ingredients in all the TriFlex Products are glucosamine
8 hydrochloride and chondroitin sulfate. As more fully set forth below, the scientific
9 evidence is that glucosamine and chondroitin, taken alone or in combination, do not
10 provide the joint health benefits represented by GNC.

11 16. In addition to the primary active ingredients, Defendant's TriFlex Products
12 contain lesser amounts of other ingredients, including: methylsulfonylmethane ("MSM");
13 hyaluronic acid; "a joint cushioning sports blend" (consisting of white willow bark,
14 boswellia serrata, MSM, hyaluronic acid and hops cones extract); "a fast-acting comfort
15 blend" (consisting of Chinese skullcap root extract and clutch tree wood & bark extract).⁴
16 As more fully discussed below, these ingredients are also not effective in providing the
17 joint health benefits represented by Defendant.

18 17. The TriFlex Fast-Acting bottle references one study purportedly supporting
19 Defendant's "Clinical Strength" representation. No information is included to enable
20 consumers to locate and review the study. But by making this representation Defendant
21 is falsely representing that the scientific/clinical evidence supports the representations
22 that it makes about its Products. Likewise, the TriFlex Fast-Acting bottle also represents
23 that "[s]cientific research" has shown that glucosamine and chondroitin "help to support
24 the body's natural ability to regenerate cartilage and lubricate joints thus supporting joint
25 health integrity and function" without reference to any specific scientific research. By
26 making references to clinical strength and that "scientific research" supports Defendant's
27

28 ⁴ Clutch tree wood & bark extract is also known as black catechu.

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.

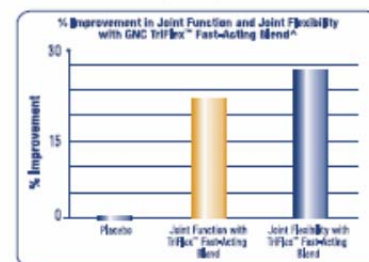
18. Even though numerous clinical studies and the vast weight of competent clinical evidence have found that the primary ingredients in GNC’s TriFlex Products, glucosamine and chondroitin, alone or in combination, are ineffective, GNC continues to state on the Products’ packaging and labeling that the TriFlex Products, with their “maximum”, “clinical” strength formulas, help to, *inter alia*: promote mobility and flexibility, improve “joint comfort,” and cushion joints. Front and side shots of a representative TriFlex Fast-Acting label appear as follows:



Side

Joint comfort in days with GNC TriFlex™ Fast-Acting. This premium formula combines the full, clinically-tested amounts of glucosamine (1500 mg) and chondroitin (1200 mg) with a proprietary Fast-Acting Blend plus MSM to support joint comfort and flexibility and hyaluronic acid to help cushion joints.*

- Clinically studied doses of glucosamine and chondroitin combined with MSM and a proprietary herbal blend, which is shown to improve joint comfort and function!^



- Glucosamine and Chondroitin are natural building block components found in connective tissues and joint cartilage. Scientific research has shown that these building block compounds help to support the body's natural ability to regenerate cartilage and lubricate joints thus supporting joint health integrity and function.*
- Hyaluronic acid is an important structural component of body tissue, including the fluids surrounding the joints and collagen. Hyaluronic acid has the capacity to hold water, cushion joints and maintain the elastic integrity of skin.*
- Vitamin C is involved in the synthesis of collagen.

^In a 12 week multi-center, randomized, double-blind, placebo controlled study of 60 adults, subjects taking 250 mg/day of the GNC TriFlex™ Fast-Acting Blend showed statistically significant improvements in measures of joint function and joint flexibility within 30 days compared to subjects on placebo.

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

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

3 19. At least as early as 2004, clinical studies have found that glucosamine and
4 chondroitin, alone or in combination, are not effective in providing the represented joint
5 health benefits.

6 20. For example, a 2004 study by McAlindon et al., entitled Effectiveness of
7 Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based
8 Randomized Double-Blind Controlled Trial, 117(9) Am. J. Med. 649 (Nov. 2004),
9 concluded that glucosamine was no more effective than placebo in treating the symptoms
10 of knee osteoarthritis – in short, it was ineffective.

11 21. Also as early as 2004, many studies confirmed there is a significant
12 “placebo” effect with respect to consumption of products represented to be effective in
13 providing joint health benefits such as Defendant’s Products – 30% and more of persons
14 who took placebos in these studies believed that they were experiencing joint health
15 benefits when all they were taking was a placebo. In this regard, a 2004 study by Cibere
16 et al., entitled Randomized, Double-Blind, Placebo-Controlled Glucosamine
17 Discontinuation Trial In Knee Osteoarthritis, 51(5) Arthritis Care & Research 738-45
18 (Oct. 15, 2004), studied users of glucosamine who had claimed to have experienced at
19 least moderate improvement after starting glucosamine. These patients were divided into
20 two groups – one that continued using glucosamine and one that was given a placebo.
21 For six months, the primary outcome observed was the proportion of disease flares in the
22 glucosamine and placebo groups. A secondary outcome was the time to disease flare.
23 The study results reflected that there were no differences in either the primary or
24 secondary outcomes for glucosamine and the placebo. The authors concluded that the
25 study provided no evidence of symptomatic benefit from continued use of glucosamine –
26 in other words, any prior perceived benefits were due to the placebo effect and not
27 glucosamine.

22. In the 2006 GAIT Study, the study authors rigorously evaluated the effectiveness of glucosamine and chondroitin, alone and in combination, on osteoarthritis for six months. According to the study's authors, "The analysis of the primary outcome measure did not show that either supplement, alone or in combination, was efficacious. . . ." 2006 GAIT Study at 806.⁵ Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage⁶ and were otherwise ineffective – even in patients with moderate to severe knee pain for which the 2006 GAIT study reported results were inconclusive. *See* Sawitzke, A.D., et al., The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report, 58(10) J. Arthritis Rheum. 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8) Ann Rheum. Dis. 1459-64 (Aug. 2010).

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

24. A 2010 meta-analysis by Wandel et al. entitled Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-Analysis, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and chondroitin, alone or in combination, and whether they relieved the symptoms or

⁵ The 2006 GAIT Study was funded by the National Center for Complementary & Alternative Medicine and the National Institute of Arthritis and Musculoskeletal and Skin Diseases, two components of NIH.

⁶ To a similar effect a study by Kwok, et al., entitled The Joints On Glucosamine (JOG) Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural Benefit Of Glucosamine In Knee Osteoarthritis Based On 3T MRI, 60 Arthritis Rheum 725 (2009), concluded that glucosamine was not effective in preventing the worsening of cartilage damage.

1 progression of arthritis of the knee or hip. The study authors reported that glucosamine
2 and chondroitin, alone or in combination, did not reduce joint pain nor have an impact on
3 the narrowing of joint space: “Our findings indicate that glucosamine, chondroitin, and
4 their combination do not result in a relevant reduction of joint pain nor affect joint space
5 narrowing compared with placebo.” *Id.* at 8. The authors went as far to say, “We believe
6 it unlikely that future trials will show a clinically relevant benefit of any of the evaluated
7 preparations.” *Id.*

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

16 26. In 2011, Miller and Clegg, after surveying the clinical study history of
17 glucosamine and chondroitin reported that, “The cost-effectiveness of these dietary
18 supplements alone or in combination in the treatment of OA has not been demonstrated
19 in North America.” Miller, K. and Clegg, D., Glucosamine and Chondroitin Sulfate,
20 Rheum. Dis. Clin. N. Am. 37 (2011) 103-118.

21 27. Scientific studies also confirm that the other ingredients in the TriFlex
22 Products are ineffective. For MSM, a number of studies have either demonstrated no
23 benefit in pain relief or other symptom benefits (e.g., a lack of efficacy). *See, e.g.,* S.
24 Brien, *et. al.*, Systematic Review Of The Nutritional Supplements (DMSO) And
25 Methylsulfonylmethane (MSM) In The Treatment Of Osteoarthritis (Apr. 17, 2008)
26 (concluding that there is no “definitive evidence that MSM is superior to placebo in the
27 treatment of mild to moderate OA of the knee”); *see also* Debbie, E., et al., Efficacy Of
28

1 Methylsulfonylmethane Supplementation On Osteoarthritis Of The Knee: A Randomized
 2 Controlled Study, 11.50 BMC Complementary and Alternative Medicine (2011);
 3 Randomised, Double-Blind, Parallel, Placebo-Controlled Study of Oral Glucosamine,
 4 Methylsulfonylmethane and their Combination in Osteoarthritis, 24 Clinical Drug
 5 Investigation 353-63 (2004).

6 28. White willow bark is also not effective in providing any of the purported
 7 joint relief benefits. In one study by Bigert et al.⁷ of 127 people, after 6 weeks of
 8 treatment, white willow bark provided no joint pain relief and was similar to a placebo
 9 while low dose diclofenac, a common non-steroidal anti-inflammatory drug, gave
 10 statistically better pain relief. In Schmid et al.,⁸ 78 people were evaluated repeatedly over
 11 2 weeks for joint pain, function and stiffness. All these parameters were not statistically
 12 different from placebo at one week, and only joint pain reached statistical significance at
 13 2 weeks, while joint stiffness and joint function remained similar to placebo.

14 29. When injected into the joint, several preparations of hyaluronic acid have
 15 been approved by regulatory agencies, including the FDA, for pain relief in knee
 16 osteoarthritis. By contrast, oral hyaluronic acid preparations do not show joint health
 17 benefits because it is rapidly degraded during digestion to its constituents, two common
 18 sugars available in our normal diet. Therefore, its use in the TriFlex products will not
 19 provide any of the joint health benefits claimed.

20 30. Only small amounts of *Boswellia Serrata* are absorbed after ingestion and
 21 thus not effective in providing any joint health benefit. See, e.g., Abdel-Tawb, M., et al.,
 22 *Boswellia Serrata: An Overall Assessment Of In Vitro, Preclinical, Pharmacokinetic And*
 23 *Clinical Data*, 50 Clin Pharmacokinet. 349-69 (2011).

25 ⁷ Biegert C et al., Efficacy and safety of willow bark extract in the treatment of
 26 osteoarthritis and rheumatoid arthritis: results of 2 randomized double-blind controlled
 27 trials, Journal of Rheumatology. 31.11 (2004):2121-30.

28 ⁸ Schmid B et al., Efficacy and tolerability of a standardized willow bark extract in
 patients with osteoarthritis: randomized placebo-controlled, double blind clinical trial,
 Phytotherapy Research. 15.4 (2001) 344-50.

1 31. Chinese skullcap and black catechu do not have a scientific relationship to
2 joint health in that they are used variously as a food additive, astringent, tannin, and
3 dye. In short their only use has and still is as a food flavoring and dye.

4 ***The Impact of GNC's Wrongful Conduct***

5 32. Despite the vast weight of scientific evidence and clinical studies that
6 definitively show the ingredients in the TriFlex Products are ineffective, Defendant
7 conveyed and continues to convey one uniform message: TriFlex Products, with their
8 “maximum”, “clinical” strength formulas help to promote mobility and flexibility,
9 improve “joint comfort,” and cushion joints.

10 33. As the manufacturer and/or distributor of the TriFlex Products, Defendant
11 possesses specialized knowledge regarding the content and effects of the ingredients
12 contained in its Products and is in a superior position to learn of the effects – and has
13 learned of the effects, or lack thereof – its Products have on consumers.

14 34. Specifically, Defendant knew, but failed to disclose, that the TriFlex
15 Products do not provide the joint health benefits represented and that well-conducted,
16 clinical studies have found the ingredients in the TriFlex Products to be ineffective in
17 providing the joint health benefits represented by Defendant.

18 35. Plaintiffs and Class members have been and will continue to be deceived or
19 misled by Defendant's deceptive joint health benefit representations. Plaintiffs purchased
20 and consumed TriFlex Products during the Class period and in doing so, read and
21 considered the Products' label and based their decision to purchase the Products on the
22 joint health benefit representations on the Products' packaging. Defendant's joint health
23 benefit representations and omissions were a material factor in influencing Plaintiffs'
24 decision to purchase and consume the TriFlex Products.

25 36. The only purpose behind purchasing the TriFlex Products is to obtain some
26 or all of the represented joint health benefits. There is no other reason for Plaintiffs and
27 the Class to have purchased the Products as the Products are not represented to provide
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any other benefits and Plaintiffs and the Class would not have purchased the Products had they known Defendant's joint health benefit statements were false and misleading and that clinical cause and effect studies have found the ingredients to be ineffective for the represented joint health benefits.

37. As a result, Plaintiffs and the Class members have been injured in fact in their purchases of the TriFlex Products in that they were deceived into purchasing Products that do not perform as advertised.

38. Defendant, by contrast, reaped enormous profit from its false marketing and sale of the TriFlex Products.

CLASS DEFINITION AND ALLEGATIONS

39. Plaintiff Lerma brings this action on behalf of himself and all other similarly situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

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.

40. Plaintiff Gaatz brings this action on behalf of himself and all other similarly situated Illinois consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

Illinois-Only Class

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

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

41. In the alternative, Plaintiffs 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 violations of California and Illinois law:

Multi-State Class

All consumers who, within the applicable statute of limitations, purchased GNC's TriFlex Products in California or Illinois or states with similar laws.⁹

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

42. **Numerosity.** The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiffs are informed and believe 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 Plaintiffs.

43. **Existence and Predominance of Common Questions of Law and Fact.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (1) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (2) whether GNC's alleged conduct violates public policy;
- (3) whether the alleged conduct constitutes violations of the laws asserted;
- (4) whether GNC engaged in false or misleading advertising;

⁹ While discovery may alter the following, Plaintiffs preliminarily aver that other states with similar consumer fraud laws under the facts of this case include, but are not limited to: Arkansas, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Vermont and/or Washington.

1 (5) whether Plaintiffs and Class members have sustained monetary loss
2 and the proper measure of that loss; and

3 (6) whether Plaintiffs and Class members are entitled to other appropriate
4 remedies, including corrective advertising and injunctive relief.

5 44. **Typicality.** Plaintiffs' claims are typical of the claims of the members of
6 the Class because, inter alia, all Class members were injured through the uniform
7 misconduct described above, were subject to GNC's deceptive joint health benefit
8 representations including the representations that accompanied each and every box of the
9 TriFlex Products. Plaintiffs are advancing the same claims and legal theories on behalf
10 of themselves and all members of the Class.

11 45. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect
12 the interests of the members of the Class. Plaintiffs have retained counsel experienced in
13 complex consumer class action litigation, and Plaintiffs intend to prosecute this action
14 vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Class.

15 46. **Superiority.** A class action is superior to all other available means for the
16 fair and efficient adjudication of this controversy. The damages or other financial
17 detriment suffered by individual Class members is relatively small compared to the
18 burden and expense that would be entailed by individual litigation of their claims against
19 GNC. It would thus be virtually impossible for the Class, on an individual basis, to
20 obtain effective redress for the wrongs done to them. Furthermore, even if Class
21 members could afford such individualized litigation, the court system could not.
22 Individualized litigation would create the danger of inconsistent or contradictory
23 judgments arising from the same set of facts. Individualized litigation would also
24 increase the delay and expense to all parties and the court system from the issues raised
25 by this action. By contrast, the class action device provides the benefits of adjudication
26 of these issues in a single proceeding, economies of scale, and comprehensive
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1 supervision by a single court, and presents no unusual management difficulties under the
2 circumstances here.

3 47. Plaintiffs seek preliminary and permanent injunctive and equitable relief on
4 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
5 and prevent GNC from engaging in the acts described, and requiring GNC to provide full
6 restitution to Plaintiffs and Class members.

7 48. Unless a Class is certified, GNC will retain monies received as a result of its
8 conduct that were taken from Plaintiffs and Class members. Unless a Class-wide
9 injunction is issued, GNC will continue to commit the violations alleged, and the
10 members of the Class and the general public will continue to be deceived.

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

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

15 50. Plaintiffs repeat and re-allege the allegations contained in the paragraphs
16 above, as if fully set forth herein.

17 51. Plaintiff Lerma brings this claim individually and on behalf of the Class.

18 52. As alleged herein, Plaintiff Lerma has suffered injury in fact and lost money
19 or property as a result of GNC's conduct because he purchased a TriFlex Product in
20 reliance on GNC's joint health benefit statements detailed above, but did not receive a
21 product that provided the represented joint health benefits.

22 53. The Unfair Competition Law, Business & Professions Code § 17200, et seq.
23 ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and
24 any false or misleading advertising.

25 54. In the course of conducting business, GNC committed "unlawful" business
26 practices by, inter alia, making the joint health benefit representations (which also
27 constitute advertising within the meaning of § 17200) and omissions of material facts, as
28

1 set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711,
2 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§ 17200, et seq. Plaintiff
3 Lerma and the Class reserve the right to allege other violations of law, which constitute
4 other unlawful business acts or practices. Such conduct is ongoing and continues to this
5 date.

6 55. In the course of conducting business, GNC committed “unfair” business
7 practices by, inter alia, making the joint health benefit representations (which also
8 constitute advertising within the meaning of § 17200) and omissions of material facts
9 regarding the TriFlex Products in its advertising campaign, including the Products’
10 packaging, as set forth more fully herein. There is no societal benefit from false
11 advertising, only harm. Plaintiff Lerma and other Class members paid money for
12 promised joint health benefits which they did not receive. While Plaintiff Lerma and
13 Class members were harmed, GNC was unjustly enriched by its false joint health benefits
14 misrepresentations and omissions. Because the utility of GNC’s conduct (zero) is
15 outweighed by the gravity of the harm Plaintiff Lerma and Class Members suffered,
16 GNC’s conduct is “unfair” having offended an established public policy. Further, GNC
17 engaged in immoral, unethical, oppressive, and unscrupulous activities that are
18 substantially injurious to consumers.

19 56. Further, as stated in this Complaint, Plaintiff Lerma alleges violations of
20 consumer protection, unfair competition and truth in advertising laws, resulting in harm
21 to consumers. GNC’s acts and omissions also violate and offend the public policy
22 against engaging in false and misleading advertising, unfair competition and deceptive
23 conduct towards consumers. This conduct constitutes violations of the unfair prong of
24 Business & Professions Code § 17200, et seq.

25 57. There were reasonably available alternatives to further GNC’s legitimate
26 business interests, other than the conduct described herein.

1 58. Business & Professions Code § 17200, et seq., also prohibits any “fraudulent
2 business act or practice.”

3 59. In the course of conducting business, GNC committed “fraudulent business
4 act or practices” by, inter alia, making the joint health benefit representations (which also
5 constitute advertising within the meaning of § 17200) and omissions of material facts
6 regarding the TriFlex Products in its advertising campaign, including the Products’
7 packaging, as set forth more fully herein. GNC misrepresented on each and every
8 TriFlex Product bottle/box that its TriFlex Products, with their “maximum”, “clinical”
9 strength formulas help to promote mobility and flexibility, improve “joint comfort,” and
10 cushion joints when, in fact, the competent scientific evidence is that the ingredients in
11 the TriFlex Products are not efficacious and do not work as represented.

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

15 61. Plaintiff Lerma and other members of the Class have in fact been deceived
16 by GNC’s material joint health benefit representations and omissions. GNC’s deception
17 has caused harm to Plaintiff Lerma and other members of the Class who purchased the
18 TriFlex Products. Plaintiff Lerma and the other Class members have suffered injury in
19 fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

20 62. GNC knew, or should have known, that its material representations and
21 omissions would be likely to deceive the consuming public and result in consumers
22 purchasing GNC’s TriFlex Products and, indeed, intended to deceive consumers.

23 63. As a result of its deception, GNC has been able to reap unjust revenue and
24 profit.

25 64. Unless restrained and enjoined, GNC will continue to engage in the above-
26 described conduct. Accordingly, injunctive relief is appropriate.

65. Plaintiff Lerma, on behalf of himself and all others similarly situated, and the general public, seeks restitution of all money obtained from Plaintiff Lerma and the members of the Class collected as a result of unfair competition, an injunction prohibiting GNC from continuing such practices, corrective advertising and all other relief this Court deems appropriate, consistent with Business & Professions Code § 17203.

COUNT II

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

66. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

67. Plaintiff Lerma brings this claim individually and on behalf of the Class.

68. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the “Act”), and similar laws in other states. Plaintiff Lerma is a “consumer” as defined by California Civil Code §1761(d). The TriFlex Products are “goods” within the meaning of the Act.

69. GNC violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff Lerma and the Class which were intended to result in, and did result in, the sale of the TriFlex Products:

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

* * *

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

* * *

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

* * *

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

3 70. GNC violated the Act by representing and failing to disclose material facts
4 in its advertising campaign including the TriFlex Products labels and packaging, as
5 described above, when it knew, or should have known, that the representations were false
6 and misleading and that the omissions were of material facts it was obligated to disclose.

7 71. Pursuant to California Civil Code §1782(d), Plaintiff Lerma and the Class
8 seek a Court order enjoining the above-described wrongful acts and practices of GNC
9 and for restitution and disgorgement.

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

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

18 **COUNT III**

19 **Violations of the Illinois Consumer Fraud Act** 20 **(Multi-State or, in the Alternative, Illinois-only Class)**

21 74. Plaintiffs repeat and re-allege the allegations contained in the paragraphs
22 above, as if fully set forth herein.

23 75. Plaintiff Gaatz brings this claim individually and on behalf of the Class.

24 76. In Illinois, the "Consumer Fraud and Deceptive Business Practices Act" 815
25 Ill. Comp. Stat. 502/1, et seq. ("the Act"), like the consumer fraud acts of other states
26 across the nation, prohibits deceptive acts or practices in the sale of such products as
27 GNC's TriFlex Products.
28

1 bargain and creates an express warranty that the goods shall conform to the promise and
2 to the description.

3 88. At all times, California and similar state laws have codified and adopted the
4 provisions the Uniform Commercial Code governing the express warranty of
5 merchantability.

6 89. GNC expressly warranted in its advertising campaign, including, *inter alia*,
7 on each and every box of the TriFlex Products that the Products with their “maximum”,
8 “clinical” strength formulas help to promote mobility and flexibility, improve “joint
9 comfort,” and cushion joints. These joint health benefit representations made by GNC
10 are affirmations of fact that became part of the basis of the bargain and created an
11 express warranty that the goods would conform to the stated promises. Plaintiff Lerma
12 placed importance on GNC’s joint health benefit representations.

13 90. All conditions precedent to GNC’s liability under this contract have been
14 performed by Plaintiff Lerma and the Class.

15 91. GNC was provided notice of these issues by, *inter alia*, Plaintiff Lerma’s
16 April 18, 2013 letter and the instant Complaint.

17 92. GNC breached the terms of this contract, including the express warranties,
18 with Plaintiff Lerma and the Class by not providing Products that would promote
19 mobility or flexibility, improve joint comfort or cushion joints as represented.

20 93. As a result of GNC’s breach of its contract, Plaintiff Lerma and the Class
21 have been damaged in the amount of the price of the Product they purchased.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs pray for a judgment:

- 24 A. Certifying the Class as requested herein;
25 B. Awarding Plaintiffs and the proposed Class members damages;
26 C. Awarding restitution and disgorgement of GNC’s revenues to Plaintiffs and
27 the proposed Class members;
28

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

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

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

7 G. Awarding attorneys' fees and costs; and

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

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by
11 law.

12 DATED: May 20, 2013

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& BALINT, P.C.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 20, 2013.

/s/ Patricia N. Syverson

Patricia N. Syverson

EXHIBIT A

For more information: 1-888-462-2548

SHOP NOW @ GNC.COM

Distributed by:
General Nutrition Corporation
Pittsburgh, PA 15222

ACTUAL SIZE

GNC QUALITY COMMITMENT

GNC, the leader in the development and manufacture of dietary supplements, is committed to producing the highest quality products available. This commitment begins with quality designed supplement formulations. Every raw material that goes into a GNC supplement is guaranteed as to quality and potency. Each product is dated and then shipped immediately to our stores, so you can be sure you are purchasing the freshest supplements available. At GNC, we extend our quality commitment to you by offering our money-back guarantee.

GNC GUARANTEE

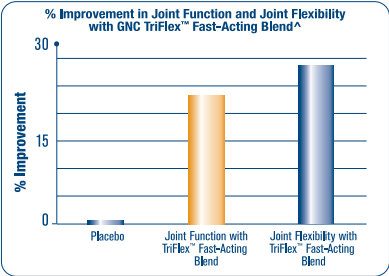
Use any GNC supplement for as little as 10 days. If you are not 100% completely satisfied, return the unused portion of the product with proof of purchase to your GNC store for a complete refund of your purchase price. No questions asked!



Please recycle this box.

Joint comfort in days with GNC TriFlex™ Fast-Acting. This premium formula combines the full, clinically-tested amounts of glucosamine (1500 mg) and chondroitin (1200 mg) with a proprietary Fast-Acting Blend plus MSM to support joint comfort and flexibility and hyaluronic acid to help cushion joints.*

- Clinically studied doses of glucosamine and chondroitin combined with MSM and a proprietary herbal blend, which is shown to improve joint comfort and function!^



- Glucosamine and Chondroitin are natural building block components found in connective tissues and joint cartilage. Scientific research has shown that these building block compounds help to support the body's natural ability to regenerate cartilage and lubricate joints thus supporting joint health integrity and function.*
- Hyaluronic acid is an important structural component of body tissue, including the fluids surrounding the joints and collagen. Hyaluronic acid has the capacity to hold water, cushion joints and maintain the elastic integrity of skin.*
- Vitamin C is involved in the synthesis of collagen.

^In a 12 week multi-center, randomized, double-blind, placebo controlled study of 60 adults, subjects taking 250 mg/day of the GNC TriFlex™ Fast-Acting Blend showed statistically significant improvements in measures of joint function and joint flexibility within 30 days compared to subjects on placebo.

* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

GNC

NEW AND IMPROVED

TRIFLEX™

FAST-ACTING

Glucosamine • Chondroitin • MSM

Plus Fast-Acting Comfort Blend

Now with a joint cushioning blend including hyaluronic acid and vitamin C*

Maximum strength, fast-acting support - works in days^

Clinical strength for daily long-term use



60 CAPLETS

CODE 281422

KLG

Directions: As a dietary supplement, take four caplets daily preferably with meals.

Supplement Facts

Serving Size Four Caplets
Servings Per Container 60

| Amount Per Serving | % Daily Value | |
|--|---------------|-----|
| Vitamin C (as Ascorbic Acid) | 30 mg | 50% |
| Sodium | 130 mg | 5%† |
| Glucosamine Hydrochloride | 1500 mg | * |
| Chondroitin Sulfate, Sodium | 1200 mg | * |
| MSM (Methylsulfonyl-methane) | 250 mg | * |
| Fast-Acting Comfort Blend | 250 mg | * |
| Cutch Tree Wood & Bark Extract (<i>Acacia catechu</i>), Chinese Skullcap Root Extract (<i>Scutellaria baicalensis</i>) | | |
| Hyaluronic Acid (HA)(as Sodium Hyaluronate) | 5 mg | * |

† Percent Daily value based on a 2,000 calorie diet.
* Daily Value not established.

Other Ingredients: Cellulose, Titanium Dioxide (Natural Mineral Whitener), Vegetable Acetoglycerides, Natural Vanilla Flavor, Riboflavin, Sucralose.

CONTAINS: Crustaceans (Shrimp).

WARNING: Consult your physician prior to using this product if you are pregnant, nursing, taking medication, or have a medical condition. Discontinue use two weeks prior to surgery.

Conforms to USP <2091> for weight.
Meets USP <2040> disintegration.

No Sugar, No Artificial Colors, No Artificial Flavors,
No Preservatives, No Wheat, No Gluten, No Soy, No Dairy,
Yeast Free.

KEEP OUT OF REACH OF CHILDREN.
Store in a cool, dry place.

KEEP OUT OF REACH
OF CHILDREN.
Store in a cool, dry place.

For more information:
1-888-462-2548

SHOP NOW @ GNC.COM

Distributed by:
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ACTUAL SIZE

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48107 10135
0



Glucosamine • Chondroitin • MSM

Plus Joint Cushioning Sports Blend

- Protects joints from wear and tear of exercise*
- Maximum strength joint comfort for active individuals*
- Clinical strength for daily long-term use*

120 CAPLETS

CODE 281512

Directions: As a dietary supplement, take four caplets daily.

Supplement Facts

Serving Size Four Caplets
Servings Per Container 30

| Amount Per Serving | % Daily Value | |
|--|---------------|------|
| Vitamin C (as Ascorbic Acid) | 120 mg | 200% |
| Sodium | 130 mg | 5%† |
| Glucosamine HCl | 1500 mg | * |
| Chondroitin Sulfate, Sodium | 1200 mg | * |
| Joint Cushioning Sports Blend | 955 mg | * |
| White Willow Bark Extract (15% Salicin = 120 mg) | | |
| Hops Cones Extract (alpha & Iso-alpha Acids)(<i>Humulus lupulus</i>) | | |
| Boswellia serrata Gum Extract | | |
| MSM (Methylsulfonyl-methane) | | |
| Hyaluronic Acid (as Sodium Hyaluronate) | | |

† Percent Daily Value based on a 2,000 calorie diet.

* Daily Value not established.

Other Ingredients: Cellulose, Titanium Dioxide (Natural Mineral Whitener), Natural Vanilla Flavor, Vegetable Acetoglycerides, Caramel Color, Ethyl Vanillin, Sucralose.

CONTAINS: Crustaceans (Shrimp).

WARNING: Consult your physician prior to using this product if you are pregnant, nursing, taking medication, or have a medical condition. Discontinue use two weeks prior to surgery.

Conforms to USP <2091> for weight.
Meets USP <2040> disintegration.

No Artificial Colors, No Wheat, No Gluten, No Soy, No Dairy, Yeast Free.

* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Lot No./Best By:

KEEP OUT OF
REACH OF CHILDREN.
Store in a cool, dry place.

For more information:
1-888-462-2548

SHOP NOW @ GNC.COM

Distributed by:
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Pittsburgh, PA 15222

ACTUAL SIZE

0 48107 09729 5



Maximum strength now
with hyaluronic acid

Promotes joint
mobility & flexibility*

Glucosamine

Chondroitin

MSM

60 CAPLETS

CODE 281312
Directions: As a dietary supplement, take three
caplets daily preferably with meals.

Supplement Facts

Serving Size Three Caplets
Servings Per Container 20

| Amount Per Serving | % Daily Value | |
|---|---------------|-----|
| Vitamin C (as Ascorbic Acid) | 30 mg | 50% |
| Sodium | 130 mg | 5%† |
| Glucosamine HCl | 1500 mg | * |
| Chondroitin Sulfate, Sodium | 1200 mg | * |
| MSM (Methylsulfonyl-methane) | 900 mg | * |
| Hyaluronic Acid (as Sodium Hyaluronate) | 5 mg | * |

† Percent Daily Value based on a 2000 calorie diet.
* Daily Value not established.

Other Ingredients: Cellulose, Titanium Dioxide (Natural Mineral Whitener), Vegetable Acetoglycerides.

CONTAINS: Crustaceans (Shrimp).

Conforms to USP <2091> for weight.
Meets USP <2040> disintegration.

No Sugar, No Starch, No Artificial Colors, No Artificial Flavors,
No Preservatives, No Wheat, No Gluten, No Corn, No Soy,
No Dairy, Yeast Free.

*This statement has not been evaluated by the Food and Drug Administration.
This product is not intended to diagnose, treat, cure, or prevent any disease.

Lot No./Best By: