0 FOR THE NORTHERN DISTRICT OF CALIFORNIA 1 SAN JOSE DIVISION 2 PAUL DE LA TORRE and JOSHUA 0GDEN, individually and on behalf of all CLASS ACTION AND REPRESENTATIVE 0GDEN, individually and on behalf of all CLMSS ACTION 0diters similarly situated, Plaintiffs, v. GNC HOLDINGS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION CENTERS, INC., Defendants. 9 Defendants. 9 Plaintiffs Paul de la Torre and Joshua Ogden ("Plaintiffs"), through their undersigned attorneys, bring this lawsuit against GNC Holdings, Inc., General Nutrition Corporation, and General Nutrition Centers, Inc. (hereinafter "GNC" or "Defendants") as to their own acts upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendants' illegal conduct, which has resulted in unjust profits, Plaintiffs bring this action on behalf of California consumers specifically defined herein, who purchased either:		Case5:15-cv-00561-HRL Document1	Filed02/05/15 Page1 of 21
 PAUL DE LA TORRE and JOSHUA OGDEN, individually and on behalf of all others similarly situated, Plaintiffs, v. GNC HOLDINGS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION CENTERS, INC., Defendants. Plaintiffs Paul de la Torre and Joshua Ogden ("Plaintiffs"), through their undersigned attorneys, bring this lawsuit against GNC Holdings, Inc., General Nutrition Corporation, and General Nutrition Centers, Inc. (hereinafter "GNC" or "Defendants") as to their own acts upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendants' illegal conduct, which has resulted in unjust profits, Plaintiffs bring this action on behalf of California consumers specifically defined herein, who purchased either: (a) GNC "Herbal Plus" Gingko Biloba 	2 3 4 5 6 7	PRATT & ASSOCIATES 1871 The Alameda, Suite 425 San Jose, CA 95126 Telephone: (408) 429-6506 Fax: (408) 369-0752 pgore@prattattorneys.com <i>Attorneys for Plaintiffs</i> [Additional counsel on signature page] IN THE UNITED ST FOR THE NORTHERN	DISTRICT OF CALIFORNIA
 attorneys, bring this lawsuit against GNC Holdings, Inc., General Nutrition Corporation, and General Nutrition Centers, Inc. (hereinafter "GNC" or "Defendants") as to their own acts upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendants' illegal conduct, which has resulted in unjust profits, Plaintiffs bring this action on behalf of California consumers specifically defined herein, who purchased either: (a) GNC "Herbal Plus" Gingko Biloba 	 11 12 13 14 15 16 17 18 19 	PAUL DE LA TORRE and JOSHUA OGDEN, individually and on behalf of all others similarly situated, Plaintiffs, v. GNC HOLDINGS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION CENTERS, INC.,	CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF
-1-	21 22 23 24 25 26 27	attorneys, bring this lawsuit against GNC Hold General Nutrition Centers, Inc. (hereinafter "G personal knowledge, and as to all other matters harm arising from Defendants' illegal conduct, this action on behalf of California consumers s	lings, Inc., General Nutrition Corporation, and ENC" or "Defendants") as to their own acts upon information and belief. In order to remedy the , which has resulted in unjust profits, Plaintiffs bring specifically defined herein, who purchased either:
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(b) GNC "Herbal Plu	is" St. John's Wort

- (c) GNC "Herbal Plus" Ginseng
- (d) GNC "Herbal Plus" Echinacea

INTRODUCTION

1. On February 2, 2015, New York Attorney General Eric T. Schneiderman sent a 5 demand letter to GNC Holdings, Inc.'s CEO Michael G. Archbold, ordering GNC to immediately 6 cease and desist engaging in the sale of adulterated and mislabeled herbal dietary supplements. 7 8 These products included various GNC "Herbal Plus" supplements, including GNC "Herbal Plus" 9 Gingko Biloba, GNC "Herbal Plus" St. John's Wort, GNC "Herbal Plus" Ginseng, and GNC "Herbal Plus" Echinacea ("the Misbranded GNC "Herbal Plus" Products") that either could not be verified to contain the labeled substance, or which were found to contain ingredients not listed on the labels. 2. Attorney General Schneiderman requested that GNC provide detailed information relating to the production, processing and testing of herbal supplements sold at their stores, as well as set forth a thorough explanation of quality control measures in place. 3. The Attorney General's letter expressly warned Defendants that, "contamination, substitution and falsely labeling herbal products constitute deceptive business practices and, more importantly, present considerable health risks for consumers." (Exhibit 1, Attorney General Letter to GNC). 4. The letter came as DNA testing, performed as part of an ongoing investigation by the Attorney General's Office, revealed that all of the products purchased by Plaintiffs in this cause tested negative for the ingredient listed on the front of the package. 5. An expert in DNA barcoding technology, Dr. James A. Schulte II of Clarkson 26 University in Potsdam, N.Y., was hired by the Attorney General's office to perform the testing. 27 28 -2-

1	6. DNA barcodes are short genetic markers in an organism's DNA and are used to
2	identify it as belonging to a particular species. Barcodes provide an unbiased, reproducible
3	method of species identification. Barcodes can be used to determine the exact plant species being
4	tested.
5	7. All of the Misbranded GNC "Herbal Plus" Products tested negative for the
6 7	advertised package contents. In reality, they contained garlic, rice, pine or material originating
8	from the daisy or buttercup families, and <i>none</i> of the gingko biloba, St. John's wort, ginseng, or
9	echinacea claimed on the products' labels.
10	8. Plaintiffs relied on Defendants' representations that the Misbranded GNC "Herbal
11	Plus" Products were what they purported to be: supplements containing gingko biloba, St. John's
12	
13	wort, ginseng, or echinacea. Plaintiffs did not purchase Defendants' supplement to ingest garlic,
14	rice or material originating from the daisy family.
15	9. Studies conducted by the Centre for Biodiversity Genomics at the University of
16	Guelph and others have previously alerted the dietary supplement industry to the fact that it is not
17	providing the public with authentic products without substitution, contamination or fillers.
18	10. According to Attorney General Schneiderman:
19 20	"this investigation makes one thing abundantly clear: the old adage 'buyer beware' may
20 21	be especially true for consumers of herbal supplements," "The DNA test results seem to confirm long-standing questions about the herbal supplement industry. Mislabeling,
21 22	contamination, and false advertising are illegal. They also pose unacceptable risks to New York families—especially those with allergies to hidden ingredients. At the end of the day,
23	American corporations must step up to the plate and ensure that their customers are getting what they pay for, especially when it involves promises of good health."
24	11. According to Arthur P. Grollman, M.D., Professor of Pharmacological Sciences at
25	Stony Brook University, "this study undertaken by Attorney General Schneiderman's office is a
26	well-controlled, scientifically-based documentation of the outrageous degree of adulteration in the
27	
28	herbal supplement industry."
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1	12. Using DNA barcoding technology to examine the contents of herbal supplements,
2	the Attorney General focused on what appears to be Defendants' practice of substituting
3	contaminants and fillers in the place of authentic product.
4 5	13. The testing revealed that all of the retailers were selling a large percentage of
6	supplements for which modern DNA barcode technology could not detect the labeled botanical
7	substance.
8	14. If the producers of herbal supplements fail to identify all the ingredients on a
9	product's label, a consumer with food allergies, or who is taking medication for an unrelated
10	illness, is taking a potentially serious health risk every time a contaminated herbal supplement is
11	ingested.
12 13	15. Plaintiffs did not purchase Defendants' supplements to assume these risks and
14	would not have purchased Defendants' products if they had known they were contaminated and
15	potentially dangerous.
16	16. The Misbranded GNC "Herbal Plus" Products were and are worthless as a matter
17	of law, failing to contain any of the advertised ingredients. A full return of the purchase price is
18	warranted for the purchase of these supplements.
19 20	
	PARTIES
21	17. Plaintiff Paul de la Torre is a resident of Los Gatos, California, who purchased
22 23	Defendants' misbranded and adulterated products in California during the four (4) years prior to
23 24	the filing of this Complaint (the "Class Period"). Specifically, Mr. de la Torre purchased the
25	following of Defendants' misbranded and adulterated products: GNC "Herbal Plus" Gingko
26	Biloba, GNC "Herbal Plus" St. John's Wort, GNC "Herbal Plus" Ginseng, and GNC "Herbal
27	Plus" Echinacea.
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1 18. Plaintiff Joshua Ogden is a resident of San Jose, California, who purchased 2 Defendants' misbranded and adulterated products in California during the Class Period. 3 Specifically, Mr. Ogden purchased the following of Defendants' misbranded and adulterated 4 products: GNC "Herbal Plus" Gingko Biloba, GNC "Herbal Plus" St. John's Wort, GNC "Herbal 5 Plus" Ginseng, and GNC "Herbal Plus" Echinacea. 6 19. Defendant General Nutrition Centers, Inc. is a Pennsylvania Corporation operating 7 8 in California with a principal place of business at 300 Sixth Ave., Pittsburgh, PA 15222. 9 Defendant General Nutrition Corporation, doing business as GNC, is a Pennsylvania Corporation 10 operating in California with a principal place of business at 300 Sixth Ave., Pittsburgh, PA 15222. 11 Defendant GNC Holdings, Inc. is a Pennsylvania Corporation operating in California with a 12 principal place of business at 300 Sixth Ave., Pittsburgh, PA 15222. 13 20. California law applies to all claims set forth in this Complaint because Plaintiffs live 14 in California and purchased Defendants' products here. Also, Defendants sell products in 15 16 California. The misconduct alleged herein was implemented in California and has a shared nexus 17 with California. The formulation and execution of the unlawful practices alleged herein occurred 18 in, or emanated from, California. Accordingly, California has significant contacts and/or a 19 significant aggregation of contacts with the claims asserted by Plaintiffs and all Class members. 20 JURISDICTION AND VENUE 21 21. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) 22 because this is a class action in which: (1) there are over 100 members in the proposed class; 23 24 (2) members of the proposed class have a different citizenship from Defendant; and (3) the claims 25 of the proposed class members exceed \$5,000,000 in the aggregate. 26 22. The Court has jurisdiction over the federal claim alleged herein pursuant to 28 U.S.C. 27 § 1331, because it arises under the laws of the United States. 28 -51

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23. The Court has jurisdiction over the California claims alleged herein pursuant to 28 U.S.C. § 1367, because they form part of the same case or controversy under Article III of the United States Constitution.

24. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is between citizens of different states.

8 25. The Court has personal jurisdiction over Defendants because a substantial portion of
 9 the wrongdoing alleged in this Complaint occurred in California, Defendants are authorized to do
 10 business in California, have sufficient minimum contacts with California, and otherwise
 11 intentionally avail themselves of the markets in California through the promotion, marketing and
 12 sale of merchandise, sufficient to render the exercise of jurisdiction by this Court permissible under
 14

15 26. Because a substantial part of the events or omissions giving rise to these claims
16 occurred in this District and because the Court has personal jurisdiction over Defendants, venue is
17 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

FACTUAL ALLEGATIONS

20 27. Plaintiffs Paul de la Torre and Joshua Ogden regularly purchased GNC "Herbal Plus"
21 Gingko Biloba, GNC "Herbal Plus" St. John's Wort, GNC "Herbal Plus" Ginseng and GNC
22 "Herbal Plus" Echinacea products during the past four years.

28. In so doing, Plaintiffs reasonably relied on the labels of the Misbranded GNC "Herbal
Plus" Products. That is, when Plaintiffs purchased, for example, GNC "Herbal Plus" Gingko
Biloba, they believed they were purchasing a product containing nothing but gingko biloba.

27 29. In reality, however, recent testing has revealed that Defendants' herbal supplements
28 are not what they purport to be.

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1	30. Specifically, GNC "Herbal Plus" Gingko Biloba contains no gingko biloba, but	
2	instead contains oryza (rice) and/or allium (garlic), among other substances; GNC "Herbal Plus" St.	
3	John's Wort product contains no St. John's Wort, but instead contains oryza, allium, and/or	
4	dracaena (a tropical house plant); GNC "Herbal Plus" Ginseng contains no ginseng, but instead	
5 6	contains, among other substances, oryza, dracaena, and/or pinus strobus (white pines); and GNC	
7	"Herbal Plus" Echinacea contains no echinacea, but instead contains pine and/or ranunculaceae	
8	(flowering plans from the buttercup family), or no plant substances at all .	
9	31. In other words, while Defendants purport to sell their customers herbal supplements,	
10	the supplements are a sham, containing none of the active ingredient promised in the product's	
11	name and on the label.	
12	32. The adulterated and misbranded GNC "Herbal Plus" Products are worthless.	
13 14	33. A reasonable purchaser would believe that Defendants' products did in fact contain	
14	the ingredients listed on the labels.	
16	34. A reasonable purchaser would believe that Defendants' GNC "Herbal Plus" Gingko	
17	Biloba actually contained gingko biloba.	
18	35. A reasonable purchaser would believe that Defendants' GNC "Herbal Plus" St.	
19	John's Wort actually contained St. John's wort.	
20	36. A reasonable purchaser would believe that Defendants' GNC "Herbal Plus" Ginseng	
21	actually contained ginseng.	
22 23	37. A reasonable purchaser would believe that Defendants' GNC "Herbal Plus"	
24	Echinacea actually contained echinacea.	
25	38. Plaintiffs reasonably relied on Defendants' package labeling of its Misbranded GNC	
26	"Herbal Plus" Products.	
27	39. At point of sale, Plaintiffs did not know, and had no reason to know, that Defendants'	
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1	Misbranded GNC "Herbal Plus" Products were misbranded and adulterated as set forth herein.
2	Plaintiffs would not have bought the Misbranded GNC "Herbal Plus" Products had they known the
3	truth that the products contained none of the ingredients listed on the front of package label.
4	40. As a result of Defendants' misrepresentations of content, Plaintiffs and thousands of
5 6	others in California purchased the products at issue.
7	41. Defendants' labeling as alleged herein is false and misleading and designed to
8	increase sales of the products at issue.
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10	CLASS ACTION ALLEGATIONS
11	42. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
12	Procedure 23(b)(2) and 23(b)(3) on behalf of the following classes:
12	California Class: All persons in the state of California who, within the last four years, purchased any of Defendants' GNC "Herbal Plus"
14	products including:
15	(a) GNC "Herbal Plus" Gingko Biloba
16	 (b) GNC "Herbal Plus" St. John's Wort (c) GNC "Herbal Plus" Ginseng
17	(d) GNC "Herbal Plus" Echinacea
18	43. The following persons are expressly excluded from the Class: (1) Defendants and
19	their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the
20	proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its
21	staff.
22	44. This action can be maintained as a class action because there is a well-defined
23	community of interest in the litigation and the proposed Class is easily ascertainable.
24	45. <u>Numerosity</u> : Based upon Defendants' publicly available sales data with respect to
25	the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that
26	joinder of all Class members is impracticable.
27	46. <u>Common Questions Predominate</u> : This action involves common questions of law
28	and fact applicable to each Class member that predominate over questions that affect only
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1 individual Class members. Thus, proof of a common set of facts will establish the right of each 2 Class member to recover. Questions of law and fact common to each Class member include, for 3 example: 4 a. Whether Defendants engaged in unlawful, unfair or deceptive business practices 5 by failing to properly package and label its Misbranded GNC "Herbal Plus" Products sold to consumers; 6 b. Whether the Misbranded GNC "Herbal Plus" Products are worthless; 7 c. Whether Plaintiffs and the Class are entitled to equitable and/or injunctive relief; 8 d. Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiffs 9 and the Class; and 10 e. Whether Defendants were unjustly enriched by its deceptive practices. 11 47. <u>Typicality</u>: Plaintiffs' claims are typical of the claims of the Class because Plaintiffs 12 bought Defendants' Misbranded GNC "Herbal Plus" Products during the Class Period. 13 Defendants' unlawful, unfair, and/or fraudulent actions concern the same business practices 14 described herein irrespective of where they occurred or were experienced. Plaintiffs and the Class 15 sustained similar injuries arising out of Defendants' conduct in violation of California law. The 16 injuries of each member of the Class were caused directly by Defendants' wrongful conduct. In 17 addition, the factual underpinning of Defendants' misconduct is common to all Class members and 18 represents a common thread of misconduct resulting in injury to all members of the Class. 19 Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of 20 the Class members and are based on the same legal theories. 21 48. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. 22 Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to 23 the interests of the Class members. Plaintiffs have retained highly competent and experienced class 24 action attorneys to represent their interests and those of the members of the Class. Plaintiffs and 25 Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this 26

27 28 class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class

members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

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49. There is no plain, speedy, or adequate remedy other than by Superiority: maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendants and result in the impairment 6 of Class members' rights and the disposition of their interests through actions to which they were 7 not parties. Class action treatment will permit a large number of similarly situated persons to 8 prosecute their common claims in a single forum simultaneously, efficiently, and without the 9 unnecessary duplication of effort and expense that numerous individual actions would engender. 10 Further, as the damages suffered by individual members of the Class may be relatively small, the 11 expense and burden of individual litigation would make it difficult or impossible for individual 12 members of the Class to redress the wrongs done to them, while an important public interest will be 13 served by addressing the matter as a class action. Class treatment of common questions of law and 14 fact would also be superior to multiple individual actions or piecemeal litigation in that class 15 treatment will conserve the resources of the Court and the litigants, and will promote consistency 16 and efficiency of adjudication. 17

50. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to FED. R. CIV. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

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The prerequisites to maintaining a class action pursuant to FED. R. CIV. P. 23(b)(3) 51. are met as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

52. Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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53. For each of the nine cause of actions herein alleged <i>infra</i> , Plaintiffs hereby realle and incorporate the foregoing paragraphs.
FIRST CAUSE OF ACTION Business and Professions Code § 17200, <i>et seq.</i> <u>Unlawful Business Acts and Practices</u>
54. Defendants' business practices as described herein are unlawful under § 17200, <i>et</i>
seq. by virtue of Defendants' violations of the Consumers Legal Remedies Act, Cal. Civ. Code §
1750, et seq.
55. Plaintiffs and the Class were injured as a result of Defendants' unlawful acts and
practices.
56. Defendants sold to Plaintiffs and the Class products that were not capable of
being sold legally, and which have no economic value.
57. Plaintiffs and the Class paid for worthless products they otherwise would not have
bought.
58. As a result of Defendants' unlawful business practices, Plaintiffs and the Class,
pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such
future conduct and such other orders and judgments which may be necessary to disgorge
Defendants' ill-gotten gains and to restore to any Class member any money paid for the
Misbranded GNC "Herbal Plus" Products.
SECOND CAUSE OF ACTION Business and Professions Code § 17200, <i>et seq.</i> <u>Unfair Business Acts and Practices</u>
59. Defendants' conduct as set forth herein constitutes unfair business acts and
practices.
60. As set forth above, Defendants engaged in deceptive marketing, advertising,
packaging, and labeling of the Misbranded GNC "Herbal Plus" Products
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	61.	Plaintiffs and the Class were injured as a result of Defendants' unfair acts and
practio	ces.	
	62.	Defendants sold to Plaintiffs and the Class products that were not capable of
being	legally	sold and that have no economic value.
	63.	Plaintiffs and the Class who purchased the Misbranded GNC "Herbal Plus"
Produ	cts had	I no way of reasonably knowing that the products were misbranded and were not
		eled, and thus could not have reasonably avoided injury.
FF	64.	A reasonable consumer would have relied on Defendants' representations.
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	65.	The consequences of Defendants' conduct outweigh any justification, motive or
reason	n theref	
	66.	As a result of Defendants' conduct, Plaintiffs and the Class, pursuant to Business
and Professions Code § 17203, are entitled to an order enjoining such future conduct by		
Defendants, and such other orders and judgments which may be necessary to disgorge		
Defendants' ill-gotten gains and restore any money paid for the Misbranded GNC "Herbal Plus"		
Produ	cts.	
		THIRD CAUSE OF ACTION Business and Professions Code § 17200, <i>et seq.</i> <u>Fraudulent Business Acts and Practices</u>
	67.	Defendants' conduct as set forth herein constitutes fraudulent business practices
under	Califor	rnia Business and Professions Code § 17200, et seq.
	68.	Defendants' misleading packaging and labeling of the Misbranded GNC "Herbal
Plus"	Produc	ts were likely to deceive reasonable consumers.
	69.	As set forth above, Plaintiffs and members of the Class were deceived.
	70.	As set forth above, Defendants engaged in fraudulent business acts and practices.
	71.	Plaintiffs and the Class were injured by Defendants' fraudulent acts and practices.
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1	72. Defendants' fraud and deception caused Plaintiffs and the Class to purchase	
2	Misbranded GNC "Herbal Plus" Products that they would otherwise not have purchased had	
3	they known the true nature of these products.	
4	73. As a result of Defendants' conduct as set forth herein, Plaintiffs and the Class,	
5	pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such	
6		
7	future conduct by Defendants, and such other orders and judgments which may be necessary to	
8	disgorge Defendants' ill-gotten gains and restore any money paid for the Misbranded GNC	
9	"Herbal Plus" Products by Plaintiffs and the Class.	
10	FOURTH CAUSE OF ACTION	
11	Business and Professions Code § 17500, <i>et seq.</i> <u>Misleading and Deceptive Advertising</u>	
12	74. Plaintiffs asserts this cause of action for violations of California Business and	
13	Professions Code § 17500, et seq. for misleading and deceptive advertising against Defendant.	
14 15	75. As set forth above, Defendants engaged in a scheme of offering Misbranded GNC	
15 16	"Herbal Plus" Products for sale to Plaintiffs and members of the Class by way of product	
10	labeling.	
17		
10	76. As set forth above, these materials misrepresented and/or omitted the true	
20	contents and nature of Misbranded GNC "Herbal Plus" Products.	
20	77. Defendants' labeling inducements were made within California and come within	
21	the definition of advertising as contained in Business and Professions Code §17500, et seq. in	
23	that such product labeling was intended as inducements to purchase Misbranded GNC "Herbal	
24	Plus" Products and are statements disseminated by Defendants to Plaintiffs and the Class that	
25	were intended to reach members of the Class.	
26	78. Defendants knew, or in the exercise of reasonable care, should have known, that	
27	these statements were misleading and deceptive as set forth herein.	
28	these statements were misleading and deceptive as set forth herein.	
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1	79.	Defendants prepared and distributed within California via product labeling
2	statements that	at misleadingly and deceptively represented the composition and nature of
3	Misbranded G	NC "Herbal Plus" Products.
4 5	80.	Plaintiffs and the Class were the intended targets of such representations.
6	81.	Plaintiffs and the Class reasonably relied on Defendants' representations.
7	82.	Defendants' conduct in disseminating misleading and deceptive statements in
8	California was	and is likely to deceive reasonable consumers by obscuring the true composition
9	and nature of 1	Misbranded GNC "Herbal Plus" Products, in violation of the "misleading prong"
10	of California B	Susiness and Professions Code § 17500, et seq.
11	83.	Plaintiffs and the Class were injured as a result of Defendants' acts and practices.
12 13	84.	As a result of Defendants' violations of the "misleading prong" of California
14	Business and I	Professions Code § 17500, et seq., Defendants have been unjustly enriched at the
15	expense of Pla	intiffs and the Class.
16	85.	Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are
17	entitled to an	order enjoining such future conduct by Defendants, and such other orders and
18	judgments wh	ich may be necessary to disgorge Defendants; ill-gotten gains and restore any
19 20	money paid for	r Misbranded GNC "Herbal Plus" Products by Plaintiffs and the Class.
20		FIFTH CAUSE OF ACTION
22		Business and Professions Code § 17500, <i>et seq.</i> <u>Untrue Advertising</u>
23	86.	Plaintiffs assert this cause of action against Defendants for violations of
24		
25		iness and Professions Code § 17500, et seq., regarding untrue advertising.
26	87.	Defendants offered their Misbranded GNC "Herbal Plus" Products for sale to
27	Plaintiffs and t	he Class by way of labeling.
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1	88.	As set forth above, these materials misrepresented or omitted the true contents
2	and nature of t	he Misbranded GNC "Herbal Plus" Products.
3	89.	Defendants' labeling inducements were made in California and come within the
4	definition of a	dvertising contained in Business and Professions Code §17500, et seq. where the
6	product labels	are intended as inducements to purchase the Misbranded GNC "Herbal Plus"
7	Products, and	are statements disseminated by Defendants to Plaintiffs and the Class.
8	90.	Defendants knew, or in the exercise of reasonable care, should have known, that
9	these statemen	ts were untrue and/or misleading.
10	91.	As set forth above, Defendants prepared and distributed in California via product
11	packaging and	l labeling, statements that falsely advertise the composition of the Misbranded
12 13	GNC "Herbal	Plus" Products, and falsely misrepresented the nature of the Misbranded GNC
13	"Herbal Plus" Product.	
15	92.	Plaintiffs and the Class were the intended targets of such representations.
16	93.	Defendants' conduct in disseminating untrue label advertising throughout
17	California dec	eived Plaintiffs and members of the Class by obfuscating the contents, nature and
18	quality of the	Misbranded GNC "Herbal Plus" Products in violation of the "untrue prong" of
19 20	California Bus	iness and Professions Code § 17500.
20 21	94.	Plaintiffs and the Class reasonably relied on Defendants' representations.
22	95.	As set forth herein, a reasonable consumer would have relied on Defendants'
23	representations	S.
24	96.	Plaintiffs and the Class were injured as a result of Defendants' acts and practices.
25	97.	As a result of Defendants' violations of the "untrue prong" of California Business
26	and Profession	as Code § 17500, et seq., Defendants have been unjustly enriched at the expense of
27	Plaintiffs and the Class.	
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1	98. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are	
2	entitled to an order enjoining such future conduct by Defendants, and such other orders and	
3	judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any	
4	money paid for Misbranded GNC "Herbal Plus" Products by Plaintiffs and the Class.	
5		
6	SIXTH CAUSE OF ACTION <u>Consumer Legal Remedies Act, Cal. Civ. Code §1750, <i>et seq.</i></u>	
7	99. Defendants' actions, representations, and conduct have violated, and continue to	
8	violate the CLRA, because they extend to transactions that are intended to result, or which have	
9	resulted, in the sale of goods or services to consumers.	
10	100 Defendents sold Michaended CNC "Herhel Dive" Products in California during	
11	100. Defendants sold Misbranded GNC "Herbal Plus" Products in California during	
12	the Class Period.	
13	101. Plaintiffs and members of the Class are "consumers" as that term is defined by the	
14	CLRA in Cal. Civ. Code §1761(d).	
15	102. Misbranded GNC "Herbal Plus" Products are "goods" within the meaning of Cal.	
16	Civ. Code §1761(a).	
17	103. By engaging in the conduct set forth herein, Defendants violated and continue to	
18	violate Section 1770(a)(5), of the CLRA, because Defendants' conduct constitutes unfair	
19		
20	methods of competition and unfair or fraudulent acts or practices in that they misrepresent the	
21	particular ingredients, characteristics, uses, benefits and quantities of the goods.	
22	104. By engaging in the conduct set forth herein, Defendants violated and continue to	
23	violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair	
24	methods of competition and unfair or fraudulent acts or practices in that it misrepresents the	
25	particular standard, quality or grade of the goods.	
26	105. By engaging in the conduct set forth herein, Defendants violated and continue to	
27		
28	violate Section 1770(a)(9) of the CLRA, because Defendants' conduct constitutes unfair	
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methods of competition and unfair or fraudulent acts or practices in that it advertises goods with 2 the intent not to sell the goods as advertised.

3 106. By engaging in the conduct set forth herein, Defendants have violated and 4 continue to violate Section 1770(a)(16) of the CLRA, because Defendants' conduct constitutes 5 unfair methods of competition and unfair or fraudulent acts or practices in that it represents that a 6 subject of a transaction has been supplied in accordance with a previous representation when 7 8 they have not. 9 107. Plaintiffs and the Class were injured as a result of Defendants' acts and practices. 10 108. Plaintiffs request that the Court enjoin Defendants from continuing to employ the 11 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). 12 109. If Defendants are not restrained from engaging in these practices in the future, 13 Plaintiffs and the Class will continue to suffer harm. 14 In this Complaint, Plaintiffs are not seeking damages pursuant to the CLRA. 110. 15 16 Plaintiffs will amend this complaint to request damages, after providing Defendants with notice 17 pursuant to Cal. Civ. Code § 1782. 18 SEVENTH CAUSE OF ACTION **Breach of Implied Warranty of Merchantability** 19 20 111. Implied in the purchase of Misbranded GNC "Herbal Plus" Products by Plaintiffs 21 and the Class is the warranty that the purchased products are legal and can be lawfully resold. 22 112. Defendants knowingly and intentionally misbranded and adulterated the 23 Misbranded GNC "Herbal Plus" Products. 24 25 113. Defendants knew or should have known that those Misbranded GNC "Herbal 26 Plus" Products were illegal. 27 28 -17-

1	114. When Defendants sold those products they impliedly warranted that the products	
2	were legal and could be lawfully resold.	
3	115. Plaintiffs would not have knowingly purchased products that were illegal and	
4	unsellable and which subjected Plaintiffs to criminal prosecution.	
5	116. No reasonable consumer would knowingly purchase products that are illegal and	
6 7	unsellable and subject a consumer to criminal prosecution.	
8	117. The purchased Misbranded GNC "Herbal Plus" Products were unfit for the	
9	ordinary purpose for which Plaintiffs and the Class purchased them.	
10		
11		
12	worthless.	
13	119. As a result, Plaintiffs and the Class were injured through their purchase of an	
14	unsuitable, useless, illegal, and unsellable product.	
15	120. By reason of the foregoing, Plaintiffs and the Class were damaged in the amount	
16	they paid for Misbranded GNC "Herbal Plus" Products.	
17	EIGHTH CAUSE OF ACTION	
18	Breach of Express Warranty	
19	121 Departific report and reallage each of the above allogations as if fully set forth	
20	121. Plaintiffs repeat and reallege each of the above allegations as if fully set forth	
21	herein.	
22	122 Defendants provided Plaintiffs and other members of the Class with written	
23	express warranties, including warranties that its Misbranded GNCs "Herbal Plus" Products	
24 25	contained gingko biloba, St. John's wort, ginseng, or echinacea.	
25 26	123. Defendants breached these warranties by providing Misbranded GNCs "Herbal	
20	Plus" Products to Plaintiffs and members of the Class that contained no such ingredients and did	
28	not otherwise conform to Defendants' warranties.	
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1	124. These breaches resulted in damages to Plaintiffs and other members of the Class	
2	who bought Misbranded GNCs "Herbal Plus" Products but did not receive the good as	
3	warranted.	
4	125. As a proximate cause of Defendants' breaches of warranties, Plaintiffs and the	
5	other Class members have suffered damages in an amount to be determined at trial.	
6		
7 8	NINTH CAUSE OF ACTION <u>Unjust Enrichment</u>	
	<u>Onjust Emicinient</u>	
9 10	126. Plaintiffs repeat and reallege each of the above allegations as if fully set forth herein.	
10	127. As a result of Defendants' unlawful and deceptive actions described above,	
12	Defendants were enriched at the expense of Plaintiffs and the Class through the payment of the	
13	purchase price for the Misbranded GNCs "Herbal Plus" Products.	
14	128. Under the circumstances, it would be against equity and good conscience to	
15	permit Defendants to retain the ill-gotten benefits that they received from Plaintiffs and the	
16	Class.	
17		
18	JURY DEMAND	
19	Plaintiffs hereby demand a trial by jury of their claims.	
20	PRAYER FOR RELIEF	
21	WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, and on	
22	behalf of the general public, pray for judgment against Defendants as follows:	
23	A. For an order certifying this case as a class action and appointing Plaintiffs and their	
24	counsel to represent the Class;	
25	B. For an order awarding, as appropriate, damages, restitution or disgorgement to	
26	Plaintiffs and the Class for all causes of action;	
27	C. For an order requiring Defendants to immediately cease and desist from selling their	
28	Misbranded GNC "Herbal Plus" Products in violation of law; enjoining Defendants from	
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1	continuing t	o manufacture, label, market, advertise, distribute, and sell these products in the
2		
3		nner described herein; and ordering Defendants to engage in corrective action;
4	D.	For all injunctive relief pursuant to Cal. Civ. Code § 1780;
5	E.	For an order awarding attorneys' fees and costs;
6	F.	For an order awarding punitive damages;
7	G.	For an order awarding pre-and post-judgment interest; and
8	H.	For an order providing such further relief as this Court deems proper.
9		Dated: February 4, 2015
10		Respectfully submitted,
11		By: <u>/s/ Pierce Gore</u>
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