

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.** \_\_\_\_\_

GRETCHEN DORE,  
on behalf of herself and all others  
similarly situated,

Plaintiff,

v.

**CLASS ACTION  
JURY DEMAND**

GNC HOLDINGS, INC.,  
GENERAL NUTRITION  
CORPORATION, GENERAL  
NUTRITION CENTERS, INC.,

Defendants.

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**CLASS ACTION COMPLAINT**

Plaintiff GRETCHEN DORE files this class action complaint on behalf of herself and all others similarly situated against GNC HOLDINGS, INC., GENERAL NUTRITION CORPORATION, and GENERAL NUTRITION CENTERS, INC., (together “GNC” or “Defendants”) and states as follows:

**INTRODUCTION**

1. For years, some of the world’s largest retailers have been deceiving the American public into purchasing expensive products passed off as “healthy” herbal supplements. The retailers promoted the herbal supplements as, not only containing the ingredients that were listed, but also as a product that could make the consumer, and their families, healthier. These statements, relied upon by millions of consumers, were simply false. It has now come to light, after extensive testing by New York government authorities, that in most cases, these products had absolutely none of the herbal ingredients that the retailers listed on the product and were

essentially worthless.

2. The retailers further failed to disclose that these expensive products also contained unlisted “fillers” such as rice, beans, garlic, wheat, citrus, and house plants — unlisted ingredients that can pose serious health risks. This was all done to generate hundreds of millions of dollars in profits. This case is brought specifically on behalf of those nationwide consumers that bought these worthless products, for reimbursement, and to prevent these companies from continuing these fraudulent practices.

3. It is axiomatic that when a retailer labels its proprietary brand herbal supplement as containing certain specific ingredients, that supplement should in fact contain those ingredients. We now know that these four retailers have been knowingly violating this basic tenet. As a result, health and cost conscious consumers across the nation have been walking into retail stores every day and buying bottles purporting to be “herbal supplements” that were labeled one way, but filled another – rendering them worthless.

4. GNC is one of the largest retailers of herbal supplements in the world. They sell various herbal supplements under their own proprietary brand known as “GNC Herbal Plus.” GNC’s website boasts to consumers that:

**“When you read a GNC label, you know exactly what you’re getting in that product. It’s all part of our truth in labeling policy.”<sup>1</sup>**

5. A recent investigation by the New York Attorney General proves this statement to be simply false.

6. This case involves GNC’s systematic prioritization of profits over honest labeling and consumer safety in an attempt to take advantage of the rapidly increasing number of U.S.

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<sup>1</sup> See <http://gnc.mediaroom.com/index.php?s=27059>, (last viewed February 15, 2015).

consumers who take herbal supplements to improve their general health and wellness.

### **Background of Herbal Supplements**

7. Botanicals and herbals have been used in medicine for over a thousand years. The tradition of using herbal remedies to treat various health problems dates back centuries to Egyptian and Chinese civilizations practicing herbal therapy to treat various afflictions and ailments.

8. Plant-based medicines were the primary forms of medicines used by western countries up until the Second World War. After World War II, modern medicines and synthetic drugs began to dominate the market.

9. Later in the 20<sup>th</sup> century, however, there was a reemergence of herbal remedies in the market in the form of herbal supplements.

10. Herbal supplements are non-food, non-pharmaceutical herbs derived from plant-based substances, and are primarily consumed for improving general health and wellness.

11. These herbal remedies exist as a supplement to modern medicine and are exhibiting a strong growth rate as consumers look towards natural remedies that are marketed as safer, healthier, and gentler than modern pharmaceuticals.

12. Today, herbal supplements account for approximately 30% of the global supplements market,<sup>2</sup> and the World Health Organization estimates that 80% of people worldwide rely on herbal medicines for some part of their primary health care.

13. The number of consumers taking herbal supplements is increasing at a rapid pace in the United States and worldwide. At the end of 2013, more than 36 million people in the U.S. confirmed the use of herbal supplements to support a healthy lifestyle. The market for herbal

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<sup>2</sup> Herbal supplements make up a significant part of the broader supplements market, which includes vitamins, minerals, meal supplements, sports nutrition, and specialty supplements.

supplements in the U.S. alone is estimated to be over \$7 billion in 2015 and to rise to over \$9 billion by 2020.

14. Further, the global market for herbal supplements and remedies this year is expected to exceed \$85 billion, increasing from an estimated \$80 billion in 2014.

15. The herbal supplement market has thrived here because U.S. consumers have become increasingly aware of the importance of preventative healthcare. The growth in this market is attributed to several factors including:

- a. growing awareness with regard to preventive health and wellness among consumers;
- b. the increasing proportion of elderly people among the general population;
- c. the lack of harmful side effects caused by herbal supplements; and
- d. clinical research and scientific studies indicating the benefits of these products in preventing and alleviating symptoms of certain diseases.

16. Many consumers turn to these products because of the high cost of modern medicine. Medical expenses can present a huge burden for people and they seek out herbal supplements as a cheaper alternative to treat various ailments in trying to maintain a healthy lifestyle and support themselves and their families.

17. Ginkgo Biloba, Ginseng, Echinacea, and St. John's Wort, all sold under the GNC Herbal Plus brand, are some of the most popular herbal supplements marketed and sold in the United States today.

18. GNC markets and sells these products through its retail stores and on its website. For example, GNC advertises ginkgo biloba on its website as used in connection with certain

“health goals” including “Healthy Aging,” “Heart and Circulatory Health,” and “Brain Health.”<sup>3</sup>

19. What GNC does not disclose is that its ginkgo biloba product does not actually contain the labeled ginkgo biloba ingredient.

20. On behalf of herself and all others similarly situated, Plaintiff brings this action to put an end to Defendants’ deceptive and unfair practices and to seek relief for the injuries caused by their common practice.

### **PARTIES**

#### **Plaintiff**

21. Plaintiff GRETCHEN DORE is a citizen of the State of Florida who purchased Defendants’ mislabeled GNC Herbal Plus Ginkgo Biloba product. She is a natural person over the age of 21 and otherwise *sui juris*.

#### **Defendants**

22. Defendant GNC HOLDINGS, INC. is a Pennsylvania corporation operating in the State of Florida with its principal place of business in Pittsburgh, Pennsylvania.

23. Defendant GENERAL NUTRITION CENTERS, INC. is a Pennsylvania corporation operating in the State of Florida with its principal place of business in Pittsburgh, Pennsylvania.

24. Defendant GENERAL NUTRITION CORPORATION, doing business as GNC, is a Pennsylvania corporation operating in the State of Florida with its principal place of business in Pittsburgh, Pennsylvania.

25. Defendants operate a network of approximately 8,500 locations in the United States and internationally.

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<sup>3</sup> See <http://www.gnc.com/GNC-Herbal-Plus-Ginkgo-Biloba-60-MG/product.jsp?productID=195>, (last viewed February 14, 2015).

26. GNC markets itself as “a leading global specialty retailer of health and wellness products including vitamins, minerals, and herbal supplement products.”<sup>4</sup> GNC’s net income for the 2014 year was \$255.9 million.<sup>5</sup> Vitamins, minerals, and herbal supplements account for approximately 38% of GNC’s total revenue.<sup>6</sup>

### **JURISDICTION AND VENUE**

27. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.).

28. Plaintiff is a citizen of the State of Florida. Defendants are citizens of the state of Pennsylvania but are registered to do business in Florida. The amount in controversy exceeds \$5,000,000 and there are at least one hundred members of the putative class.

29. This Court has jurisdiction over Defendants because they are foreign corporations authorized to conduct business in Florida, are continuously doing business in Florida and have registered with the Florida Secretary of State, or do sufficient business in Florida, have sufficient minimum contacts with Florida, or otherwise intentionally avail themselves of the Florida consumer market through the promotion, marketing, sale, and service of the aforementioned herbal supplements including the ginkgo biloba supplement purchased by Plaintiff. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants and their affiliated or related entities permissible under traditional notions of fair play and substantial

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<sup>4</sup> See <http://phx.corporate-ir.net/phoenix.zhtml?c=88669&p=irol-investorhome>, last viewed on February 14, 2015.

<sup>5</sup> *Id.*

<sup>6</sup> See, Joseph Cacinga, “GNC has been beaten down, but it’s still a good investment” found at <http://www.fool.com/investing/general/2014/06/25/gnc-has-been-beaten-down-but-its-still-a-good-inve.aspx>, June 25, 2014.

justice.

30. In addition, this Court has subject-matter jurisdiction under CAFA because the amount in controversy exceeds \$5 million and diversity exists between Plaintiff and the Defendants. 28 U.S.C. § 1332(d)(2). In determining whether the \$5 million amount in controversy requirement of 28 U.S.C. § 1332(d)(2) is met, the claims of the putative class members are aggregated. 28 U.S.C. § 1332(d)(6).

31. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants transact business and may be found in this District. Venue is also proper here because at all times relevant hereto, Plaintiff Dore resided in the Southern District of Florida and a substantial portion of the practices complained of herein occurred in the Southern District of Florida.

32. All conditions precedent to this action have occurred, been performed, or have been waived.

### **FACTUAL ALLEGATIONS**

33. GNC markets, distributes, and sells various herbal supplements under its proprietary brand known as “GNC Herbal Plus,” including the “GNC Herbal Plus Ginkgo Biloba” product purchased by Plaintiff and the class members.

34. GNC represents that it has tested and stands by its products and its marketing.

35. The labeling on every GNC Herbal Plus Ginkgo Biloba product conspicuously shows the “Supplement Facts” and identifies the primary herbal ingredient as “Ginkgo Biloba Leaf Extract.” *See e.g.* ¶ 51 *infra*. Contrary to this representation, GNC Herbal Plus products, including its ginkgo biloba product, are not what they purport to be.

36. On February 2, 2015, New York Attorney General Eric Schneiderman sent a cease and desist letter to GNC ordering Defendants to immediately “cease and desist engaging in

the sale of adulterated and/or mislabeled herbal dietary supplements” and to “immediately stop the sale of five ‘Herbal Plus’ dietary supplements.”<sup>7</sup>

37. GNC Herbal Plus Gingko Biloba was one of those five supplements.<sup>8</sup>

38. The cease and desist letter was the result of an investigation by the N.Y. Attorney General’s office that used established DNA barcoding technology to examine the contents of herbal supplements and was focused on what appears to be Defendants’ practice of substituting presumably cheaper contaminants and fillers in the place of the authentic product.

39. DNA barcodes are short genetic markers in an organism’s DNA and are used to identify it as belonging to a particular species. Barcodes provide an unbiased, reproducible method of species identification. The barcodes can be used to determine the exact plant species being tested.

40. The DNA testing revealed that the five supplements were “either unrecognizable or a substance other than what they claimed to be and therefore constitute contaminated or substituted products.”

41. According to Arthur P. Grollman, M.D., Professor of Pharmacological Sciences at Stony Brook University, “[t]his study undertaken by Attorney General Schneiderman’s office is a well-controlled, scientifically-based documentation of the outrageous degree of adulteration in the herbal supplement industry.”

42. Indeed, testing on the GNC Herbal Plus Gingko Biloba product revealed that “*no gingko biloba DNA was identified.*” Instead, the tests identified DNA for allium, rice, spruce,

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<sup>7</sup> Similar cease and desist letters were sent to Wal-Mart, Target, and Walgreens relating to their proprietary brands of certain herbal supplements.

<sup>8</sup> The cease and desist letter was also directed to sale of the GNC Herbal Plus St. John’s Wort, Ginseng, Echinacea, and Saw Palmetto.



and asparagus.

43. Defendants knew that their Herbal Plus products, including the ginkgo biloba product, contained these various inexpensive fillers and contaminants; but knowing that U.S. consumers were increasingly purchasing these products for a healthier lifestyle, put their pursuit of profits above all else.

44. According to Attorney General Schneiderman:

“This investigation makes one thing abundantly clear: the old adage ‘buyer beware’ may be especially true for consumers of herbal supplement. The DNA test results seem to confirm long-standing questions about the herbal supplement industry. Mislabeling, contamination, and false advertising are illegal . . . . At the end of the day, 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.”

45. GNC’s mislabeling of its proprietary Herbal Plus brand ginkgo biloba constitutes unfair and deceptive business practices and just as importantly poses serious health risks to consumers.

46. Consumers, such as Plaintiff and the class members here, purchase this product trusting that (i) it contains the amount of ginkgo biloba (or other herbal substance) that is identified on the label and that (ii) all ingredients contained in the product were identified.

47. Because of GNC’s intentional mislabeling of the ingredients in its Herbal Plus products, a consumer with food allergies, or who is taking medication for an unrelated illness, is assuming a potentially serious health risk each time the contaminated herbal supplement is ingested.

48. Plaintiff and the putative class members did not purchase GNC’s Herbal Plus Ginkgo Biloba to assume these risks and would not have purchased the product had they known that there was no trace of the ginkgo biloba plant contained therein but instead the product was

contaminated and potentially dangerous.

**Plaintiff Gretchen Dore**

49. Ms. Dore learned of certain health benefits of taking Ginkgo Biloba including such cognitive effects as increased memory and brain functions.

50. Desiring to take advantage of these benefits, Ms. Dore purchased two bottles of GNC Herbal Plus 120 mg Ginkgo Biloba from one of Defendants' retail stores in December 2014.

51. Ms. Dore paid approximately twenty dollars per bottle for GNC Herbal Plus Ginkgo Biloba product.

52. One of the bottles that Ms. Dore purchased is pictured here:





53. GNC's Herbal Plus Gingko Biloba is a mass-produced product and there are no material differences between the bottles that Plaintiff purchased and those purchased by members of the putative class. As with all other putative class members, GNC deceptively labeled the bottle that Ms. Dore purchased as purporting to contain a certain amount of ginkgo biloba.

54. On the contrary, the product that Ms. Dore and the putative class purchased did not contain *any* ginkgo biloba but instead had certain fillers and contaminants such as allium, rice, spruce, or asparagus. None of these substances are identified in the list of ingredients on the GNC Herbal Plus Gingko Biloba product.

55. Had Ms. Dore – or any reasonable consumer – known that the product she was

purchasing was not Gingko Biloba but instead various filler products she would not have made the purchase.

56. As with all other putative class members, GNC accepted payment for the purported Gingko Biloba supplement despite the fact that it knew or should have known that it did not actually contain any of the Gingko Biloba supplement.

57. There are no material differences between Defendants' actions and practices directed to Ms. Dore and their actions and practices directed to any members of the putative class.

### **CLASS ALLEGATIONS**

#### **A. Class Definitions**

58. Plaintiff brings this action against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all other persons similarly situated. Plaintiff seeks to represent the following classes:

##### Nationwide class:

All persons who, within the applicable statutes of limitation, purchased GNC Herbal Plus Gingko Biloba in the United States. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees

##### Florida Subclass as to Count II – Florida Deceptive and Unfair Practices Act

All persons who, within the applicable statute of limitation, purchased GNC Herbal Plus Gingko Biloba in the state of Florida. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

59. Plaintiff reserves the right to modify or amend the definitions of the proposed classes before the Court determines whether certification is appropriate.

60. Defendants subjected Plaintiff and the respective class members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner.

**B. Numerosity**

61. The proposed classes are so numerous that joinder of all members would be impracticable. Defendants sell and promote their GNC Herbal Plus products, including ginkgo biloba, at thousands of stores in Florida as well as nationwide. Although the number of class members is not presently known the classes will likely be comprised of thousands of consumers. The numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiff does not anticipate any difficulties in the management of the action as a class action.

**C. Commonality**

62. There are questions of law and fact that are common to Plaintiff's and class members' claims. Common questions of law and fact exist because, *inter alia*, Plaintiff and all class members purchased the GNC Herbal Plus Ginkgo Biloba product from Defendants that was deceptively labeled as containing ginkgo biloba when instead it contained various fillers and contaminants and not the as-labeled ginkgo biloba product.

63. These common questions predominate over any questions that go particularly to any individual member of the Class and include but are not limited to the following:

- a. Whether Defendants engaged in unlawful, unfair, or deceptive business practices by failing to properly label the GNC Herbal Plus Ginkgo Biloba product it sold to Plaintiff and the putative class members;
- b. Whether Defendants deceptively or misleadingly misrepresented the ingredients contained in the GNC Herbal Plus Ginkgo Biloba product it sold to consumers;
- c. Whether Defendants' misrepresentations and omissions are likely to deceive a reasonable consumer;

- d. Whether and to what extent the Defendants have been unjustly enriched at the expense of Plaintiff and the class;
- e. Whether Defendants violated Florida's Deceptive and Unfair Trade Practices Act;
- f. Whether Plaintiff and the class members are entitled to compensatory damages including actual damages plus interest and/or monetary restitution;
- g. Whether Defendants' conduct warrants punitive damages; and
- h. Whether an injunction is appropriate in order to prevent Defendants from continuing to engage in its unfair, deceptive, and unlawful conduct.

**D. Typicality**

64. Plaintiff is a member of the Class she seeks to represent. Plaintiff's claims are typical of the respective classes' claims because Plaintiff and each class member purchased the GNC Herbal Plus Gingko Biloba product which was deliberately misrepresented as containing Gingko Biloba when in fact it contained only various fillers. Thus, Plaintiff's claims are typical due to the similarity, uniformity, and common purpose of the Defendants' unlawful conduct. Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiff as a result of Defendants' wrongful conduct.

**E. Adequacy of Representation**

65. Plaintiff is an adequate representative of the classes she seeks to represent and will fairly and adequately protect the interests of the class. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel, experienced in litigation of this nature, to represent her. Plaintiff has no adverse or antagonistic interests to those of the unnamed class members. Plaintiff is willing and prepared to serve the Court and the class in a representative capacity with all of the obligations and duties material thereto.

66. To prosecute this case, Plaintiff has chosen the undersigned law firms, which are very experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

**F. Requirements of Fed. R. Civ. P. 23(b)(3)**

67. This action is appropriate as a class action pursuant to Fed. R. Civ. Proc. 23(b)(3) because questions of law or fact common to Plaintiff's and each class member's claims predominate over any questions of law or fact affecting only individual members of the class.

68. All claims by Plaintiff and the unnamed class members are based on the purchase of the deceptively labeled GNC Herbal Plus Ginkgo Biloba product.

69. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

70. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

**G. Superiority**

71. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

(a) Joinder of all class members would create extreme hardship and inconvenience for the affected customers as they reside all across the states;

(b) Individual claims by class members are impractical because the costs to pursue individual claims exceed the value of what any one class member has at stake. As a result, individual class members have no interest in prosecuting and controlling separate actions;

(c) There are no known individual class members who are interested in individually controlling the prosecution of separate actions;

(d) The interests of justice will be well served by resolving the common disputes of potential class members in one forum;

(e) Individual suits would not be cost effective or economically maintainable as individual actions; and

(f) The action is manageable as a class action.

72. Plaintiff does not anticipate and is unaware of any difficulties that would be encountered in the management of this class action.

**H. Requirements of Fed. R. Civ. P. 23(b)(1) & (2)**

73. Prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.

74. Defendants have acted or failed to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

**COUNT I**

**UNJUST ENRICHMENT**  
**(Nationwide Class)**

75. Plaintiff re-alleges and incorporates paragraphs 1- 73 above as if fully set forth herein and further alleges as follows.

76. GNC acted to mislead consumers into believing that their GNC Herbal Plus Gingko Biloba product actually contained the Gingko Biloba herbal ingredient by labeling the product sold to consumers in that manner.

77. GNC received from Plaintiff and the class members benefits in the form of profits related to the misrepresentation that the GNC Herbal Plus Gingko Biloba actually contained the Gingko Biloba herb.



78. GNC received payments from Plaintiff and all class members for what they believed to be Gingko Biloba. In fact, however, the GNC Herbal Plus supplement did not contain any Gingko Biloba but instead contained various inexpensive fillers and contaminants.

79. GNC had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on it.

80. GNC will be unjustly enriched if it is allowed to retain the aforementioned benefits, and each class member is entitled to recover the amount by which these Defendants were unjustly enriched at his or her expense.

**WHEREFORE**, Plaintiff, on behalf of herself and all similarly situated Class members, demands an award against Defendants in the amounts by which Defendants have been unjustly enriched at Plaintiff's and the class members' expense, and such other relief as this Court deems just and proper.

## **COUNT II**

### **VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (on behalf of the Florida subclass)**

81. Plaintiff re-alleges and incorporates paragraphs 1-73 above as if fully set forth herein and further alleges as follows.

82. FDUTPA, section 501.201, et seq., Florida Statutes, prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204, Fla. Stat.

83. Plaintiff and the Florida Subclass are "consumers" as that term is defined in section 501.203(7), Florida Statutes.

84. Plaintiff has standing to pursue this claim as she has suffered injury in fact and

has lost money or property as a result of Defendants' actions as set forth above.

85. Defendants have engaged in, and continue to engage in, unconscionable acts or practices and used unfair or deceptive acts in conduct of its trade or commerce in the State of Florida.

86. Defendants' business practices, as alleged herein, are "unfair" because they offend established public policy and are immoral, unethical, unscrupulous, and substantially injurious to their customers. Additionally, Defendants' conduct is unfair because it violated the legislatively declared policies of FDUTPA. Defendants misled consumers into believing that their product contained the amount of Gingko Biloba identified on the label, when in fact it contained only inexpensive fillers, and Defendants concealed this fact from consumers.

87. Furthermore, Defendants' business practices, as alleged herein, are "deceptive" because they are likely to deceive consumers, including Plaintiff and the members of the Florida class, into believing that they are purchasing the product indicated on the label.

88. The policies, acts, and practices alleged herein were intended to result and did result in payment to Defendants for a product they misrepresented to be Gingko Biloba, which in turn was intended to generate unlawful or unfair compensation for Defendants.

89. Specifically, Defendants misled consumers into believing that the GNC Herbal Plus Gingko Biloba contained Gingko Biloba, when in fact, it contained only certain fillers and contaminants.

90. Plaintiff and the Florida Subclass have sustained actual damages as a direct and proximate result of GNC's unfair and unconscionable practices in that they spent money on the GNC Herbal Plus Gingko Biloba, a misbranded and worthless product, that they would not have otherwise purchased and did not receive value for.

91. Section 501.211(2), Florida Statutes, provides Plaintiff and the Florida Subclass a private right of action against GNC them to recover their actual damages, plus attorneys' fees and costs.

92. Plaintiff and the Florida Subclass have suffered and will continue to suffer irreparable harm if GNC continues to engage in such deceptive, unfair, and unreasonable practices.

**WHEREFORE**, Plaintiff, on behalf of herself and the Florida Subclass, demands judgment against GNC for damages, pre- and post-judgment interest, attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and all similarly situated individuals, demands judgment against Defendants as follows:

- (1) Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiff and their counsel to be representatives of the Class and the Florida Subclass;
- (2) Enjoining Defendants from continuing the acts and practices described above;
- (3) Awarding damages sustained by Plaintiff and the classes as a result of Defendants' conduct, together with pre-judgment interest;
- (4) Finding that Defendants have been unjustly enriched and requiring GNC to refund all unjust benefits to Plaintiff and the nationwide class, together with pre-judgment interest;
- (5) Awarding Plaintiff and the Class costs and disbursements and reasonable allowances for the fees of Plaintiffs' and the Class's counsel and experts, and reimbursement of

expenses;

(6) Awarding Plaintiff and the Florida Subclass actual damages, injunctive relief, declaratory relief, attorneys’ fees and costs under FDUTPA;

(7) Awarding the nationwide class damages, injunctive relief, declaratory relief, attorneys’ fees, and costs; and

(8) Awarding such other and further relief the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted this 16<sup>th</sup> day of February, 2015.

By: /s/ Adam M. Moskowitz

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JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS** Gretchen Dore on behalf of similarly situated

**DEFENDANTS** GNC Holdings, Inc., General Nutrition Corp.,  
General Nutrition Centers, Inc.

**(b)** County of Residence of First Listed Plaintiff Palm Beach  
(EXCEPT IN U.S. PLAINTIFF CASES)

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

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

Kozyak Tropin & Throckmorton,  
2525 Ponce de Leon Blvd. 9th FL

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

Attorneys (If Known)

**(d)** Check County Where Action Arose:  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE  HIGHLANDS

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

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

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

- Citizen of This State  1 PTF  1 DEF
- Citizen of Another State  2 PTF  2 DEF
- Citizen or Subject of a Foreign Country  3 PTF  3 DEF
- Incorporated or Principal Place of Business In This State  4 PTF  4 DEF
- Incorporated and Principal Place of Business In Another State  5 PTF  5 DEF
- Foreign Nation  6 PTF  6 DEF

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

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

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding  2 Removed from State Court  3 Re-filed (See VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment  8 Remanded from Appellate Court

**VI. RELATED/RE-FILED CASE(S)** (See instructions):

a) Re-filed Case  YES  NO b) Related Cases  YES  NO

JUDGE Ungaro

DOCKET NUMBER 1:15cv20513

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

**VII. CAUSE OF ACTION** Violation of FL Deceptive and Unfair Trade Practices Act  
LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE February 17, 2015 SIGNATURE OF ATTORNEY OF RECORD

Adam M. Moskowitz

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.