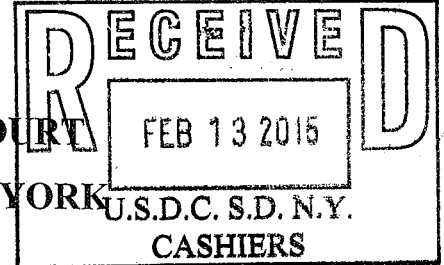


JUDICIAL REPORT

15 CV 01020

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
U.S.D.C. S.D. N.Y.
CASHIERS



KATHLEEN A. SHARKEY, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

GNC HOLDINGS, INC., a Delaware
Corporation, and **"JOHN DOE"**
DEFENDANTS 1-100, names and
addresses unknown,

Defendants.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Kathleen A. Sharkey ("Plaintiff" or "Sharkey"), individually and on behalf of all others similarly situated against Defendants GNC HOLDINGS, INC., a Delaware Corporation and, in the alternative, "JOHN DOE" DEFENDANTS 1-100 (collectively, "DEFENDANTS"). All allegations made in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff, which are based on personal knowledge, and facts that are a matter of public record. Each allegation in this Complaint either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the Federal Rules of Civil Procedure, is likely to have evidentiary

CLASS ACTION COMPLAINT

1 support after a reasonable opportunity for further investigation or discovery.

2
3 **NATURE OF CLAIM**

4 1. This is a consumer class action lawsuit brought on behalf of Plaintiff,
5 individually, and on behalf of all other individuals, against Defendants for misbranding
6 some of their “Herbal Plus” supplements by not accurately identifying all ingredients
7 in the product or giving the amount of such ingredients.
8

9 2. On February 2, 2015, the New York State Attorney General’s office
10 released test results of DNA testing it recently performed on several brands of popular
11 herbal dietary supplements.¹ The purpose of the Attorney General’s investigation was
12 to determine whether contaminants and fillers had been substituted for authentic
13 product.
14
15

16 3. One brand of herbal supplements subject to testing by the Attorney
17 General was the “Herbal Plus” brand of dietary supplement products sold and
18 distributed exclusively by Defendants. The particular types of “Herbal Plus”
19 supplements tested included Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, and
20 Saw Palmetto. The Attorney General’s tests revealed that the contents of the dietary
21 supplements were consistently either unrecognizable or a substance other than what
22 they claimed to be. Based on these findings, the Attorney General concluded that the
23
24 “Herbal Plus” brand of Gingko Biloba, St. John’s Wort, Ginseng, Echinacea, and Saw
25
26

27 ¹ See [http://www.ag.ny.gov/press-release/ag-schneiderman-asks-major-retailers-halt-sales-certain-](http://www.ag.ny.gov/press-release/ag-schneiderman-asks-major-retailers-halt-sales-certain-herbal-supplements-dna-tests)
28 [herbal-supplements-dna-tests](http://www.ag.ny.gov/press-release/ag-schneiderman-asks-major-retailers-halt-sales-certain-herbal-supplements-dna-tests) (last accessed Feb 11, 2015).

1 Palmetto (collectively, the “Misbranded Supplements”) constituted “contaminated”
2 and/or “substituted products.”
3

4 4. Plaintiff has purchased one of the Misbranded Supplements, specifically
5 Ginkgo Biloba (“Ginkgo”). In doing so, Plaintiff reasonably relied on Defendants’
6 representations that the Misbranded Supplements were what they purported to be –
7 herbal dietary supplements containing the ingredients reflected on the label. Instead,
8 Plaintiff purchased a worthless product made up of useless substances such as allium,
9 oryza (rice), spruce, and asparagaceae. According to the New York State Attorney
10 General’s report, “[n]o ginkgo biloba DNA was identified” in the product.
11

12 5. Plaintiff brings this proposed class action for damages and injunctive
13 relief on behalf of herself and all other persons and entities nationwide who purchased
14 the Misbranded Products from Defendants.
15
16

17 PARTIES

18 6. Sharkey is an adult individual who is a resident of New York.
19

20 7. Defendant GNC HOLDINGS, INC. (“GNC”) is a foreign business
21 corporation organized and existing under the laws of Delaware with its principal place
22 of business in Pittsburgh, Pennsylvania.
23

24 8. In the alternative, Plaintiff alleges that “JOHN DOE” DEFENDANTS 1-
25 100 manufacture and label the “Herbal Plus” brand of herbal dietary supplements.
26 “John Doe” Defendants 1-100, names and addresses unknown, include the
27 manufacturers of the “Herbal Plus” brand herbal dietary supplements.
28

JURISDICTION AND VENUE

9. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). In the aggregate, Plaintiff's claims and the claims of the other members of the Classes exceed \$5,000,000 exclusive of interest and costs, and there are numerous class members who are citizens of states other than Defendants' state of citizenship, which is Delaware.

10. This Court has personal jurisdiction over GNC because the alleged wrongdoing occurred in New York and because Defendants have sufficient minimum contacts with New York and have otherwise intentionally availed themselves of the markets in New York.

11. Venue is proper in this Court pursuant to 28 U.S.C. §1391 (b)-(c) because Defendants are corporate entities that are deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced, and because Defendants operate many stores in this District.

FACTUAL ALLEGATIONS

12. On February 2, 2015, New York Attorney General Eric T. Schneiderman sent a demand letter to GNC ordering it to immediately cease and desist engaging in the sale of the Misbranded Supplements.² These Misbranded Supplements include the "Herbal Plus" brand Gingko Biloba, St. John's Wort, Ginseng, Echinacea, and Saw

² A copy of the New York Attorney General's February 2, 2015 cease and desist letter is attached as Exhibit "A".

1 Palmetto supplements.

2
3 13. An expert in DNA barcoding technology, Dr. James A. Schulte II of
4 Clarkson University in Potsdam, N.Y., was hired by the Attorney General's office to
5 perform the testing. DNA barcodes are short genetic markers in an organism's DNA
6 and are used to identify it as belonging to a particular species. Barcodes provide an
7 unbiased, reproducible method of species identification. Barcodes can be used to
8 determine the exact plant species being tested.
9

10
11 14. By using DNA barcoding technology, Dr. Schulte was able to determine
12 that all of the Misbranded Supplements contained substances that were either
13 unrecognizable or a substance other than what they claimed to be. Of the 120 DNA
14 tests run on 24 bottles of herbal products purchased, DNA matched the label's
15 representation 22% of the time. Contaminants identified included allium, rice, wheat,
16 spruce, asparagaceae, pinus strobus, citruss spp., ranunculaceae, and dracaena
17 (houseplant).
18
19

20 15. Based on Dr. Schulte's test results, the Attorney General concluded that
21 the supplement products constituted contaminated and/or substituted products.
22 Because contamination, substitution, and falsely labeling herbal products constitute
23 deceptive business practices and pose a considerable health risk to consumers, the
24 Attorney General demanded that Defendants cease selling the Misbranded
25 Supplements in New York State.
26
27

28 16. In 2014, Plaintiff purchased Gingko from a GNC store located at 600

1 Hempstead Turnpike, Elmont, New York 11003.³ In making this purchase, Plaintiff
 2 reasonably relied on Defendants' representations that the Gingko was what it was
 3 purported to be – an herbal dietary supplement containing the ingredients reflected on
 4 the label. Had Defendants correctly identified the contents of the Gingko (e.g., allium,
 5 rice, spruce, and asparagaceae), Plaintiff would not have made the purchase.
 6
 7

8 17. The Misbranded Supplements were and are worthless as a matter of law
 9 because they fail to contain the advertised ingredients. Accordingly, Plaintiff and the
 10 Class Members she seeks to represent are entitled to full return of the purchase price.
 11

12 CLASS ACTION ALLEGATIONS

13 18. Plaintiff brings this action on behalf of herself and on behalf of all other
 14 persons similarly situated pursuant to Fed. R. Civ. P. 23. Plaintiff seeks to represent a
 15 nationwide class (the "Nationwide Class") defined as follows:
 16

17 During the fullest period allowed by law, all persons and entities
 18 nationwide who have purchased the "Herbal Plus" brand Gingko
 19 Biloba, St. John's Wort, Ginseng, Echinacea, or Saw Palmetto.

20 Excluded from the Class are Defendants; officers, directors, and
 21 employees of Defendants; any entity in which Defendants have a
 22 controlling interest; and the affiliates, legal representatives, attorneys,
 heirs, and assigns of the Defendants.

23 19. Plaintiff also seeks to represent a New York consumer subclass ("NY
 24 Subclass," or collectively with the Nationwide Class, the "Classes") defined as
 25 follows:
 26

27
 28 ³ See Exhibit "B" – a photograph of Plaintiff's bottle of Gingko she purchased.

1 During the fullest period allowed by law, all consumers in the State of New
2 York that purchased the “Herbal Plus” brand Gingko Biloba, St. John’s Wort,
3 Ginseng, Echinacea, or Saw Palmetto.

4 Excluded from the NY Subclass are Defendants; officers, directors, and
5 employees of Defendants; any entity in which Defendants have a controlling
6 interest; and the affiliates, legal representatives, attorneys, heirs, and assigns of
the Defendants.

7 20. As used herein, “Class Members” shall mean and refer to the members of
8 the Nationwide Class and/or the members of the NY Subclass, including Plaintiff.
9

10 21. The Class Members are so numerous that the joinder of all members is
11 impractical. While the exact number of Class Members is unknown to Plaintiff at this
12 time, based on information and belief, it is in the thousands.
13

14 22. There is a well-defined community of interest among the Class Members
15 because common questions of law and fact predominate, Plaintiff’s claims are typical
16 of the Class Members, and Plaintiff can fairly and adequately represent the interests of
17 the Classes.
18

19 23. This action satisfies the requirements of Federal Rule of Civil Procedure
20 23(b)(3) because it involves questions of law and fact common to the member of the
21 Classes that predominate over any questions affecting only individual members,
22 including, but not limited to:
23

- 24
- 25 a. whether the Misbranded Supplements’ labels misstate the
26 packages’ actual contents;
 - 27 b. whether Defendants knew that the Misbranded Supplements
28 contained inaccurate labels when they manufactured, processed,
packaged, distributed, and/or sold them;

- c. whether Defendants concealed the actual contents of the Misbranded Supplements;
- d. whether Defendants breached a contract with Plaintiff and the Class Members;
- e. whether Defendants breached an express warranty with Plaintiff and the Class Members;
- f. whether Defendants breached an implied warranty of merchantability with Plaintiff and the Class Members;
- g. whether Defendants were unjustly enriched by their actions;
- h. whether Defendants' conduct was negligent;
- i. whether Defendants' actions violate New York consumer protection statutes and/or New York deceptive business practices statutes;
- j. whether Plaintiff and the Class Members have suffered damages as a result of the conduct alleged herein, and if so, the measure of such damages; and
- k. whether Plaintiff and the Class Members are entitled to injunctive relief.

24. Plaintiff's claims are typical of the claims of the Class Members whom she seeks to represent because Plaintiff and each Class Member purchased the same Misbranded Supplements.

25. Plaintiff will fairly and accurately represent the interests of the Classes. Plaintiff has retained competent and capable attorneys with significant experience in complex and class action litigation, including consumer class actions. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Classes

1 and have the financial resources to do so. Neither Plaintiff nor her counsel has
2 interests that are contrary to or that conflict with those of the proposed Classes.
3

4 26. The prosecution of separate actions by individual members of the Classes
5 would create a risk of inconsistent or varying adjudications with respect to individual
6 Class Members, which would establish incompatible standards of conduct for
7 Defendants and would lead to repetitive adjudication of common questions of law and
8 fact. Accordingly, class treatment is superior to any other method for adjudicating the
9 controversy. Plaintiff knows of no difficulty that will be encountered in the
10 management of this litigation that would preclude its maintenance as a class action
11 under Rule 23(b)(3).
12
13

14 27. Damages for any individual class member are likely insufficient to justify
15 the cost of individual litigation, so that in the absence of class treatment, Defendants'
16 violations of law inflicting substantial damages in the aggregate would go un-remedied
17 without certification of the Classes.
18
19

20 28. Defendants have acted or refused to act on grounds that apply generally to
21 the Classes, as alleged above, and certification is proper under Rule 23(b)(2).
22

23 29. In recognition of the services Plaintiff has rendered and will continue to
24 render to the Classes, Plaintiff will request payment of a service award upon resolution
25 of the action.
26
27
28

FIRST CAUSE OF ACTION

Breach of Contract

(Brought on behalf of Plaintiff and the Nationwide Class)

30. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

31. Defendants, through their product labels, packaging, advertisements, websites, and other marketing materials, made uniform representations and offers regarding the contents of the Misbranded Supplements.

32. Plaintiff and the members of the Nationwide Class, by purchasing the Misbranded Supplements, accepted Defendants' offer and paid consideration by way of paying the purchase price.

33. Defendants, Plaintiff, and the members of the Nationwide Class had the legal capacity to enter into such contracts.

34. Defendants breached the contracts by not upholding their end of the bargain, namely by providing a product that does not contain the represented contents.

35. As a direct and proximate cause of Defendants' breach, Plaintiff and the members of the Nationwide Class were deprived of the benefit of the bargain and were damaged in an amount that will be proven at trial.

SECOND CAUSE OF ACTION

**Breach of Express Warranty
(Brought on behalf of Plaintiff and the Nationwide Class)**

36. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

37. In designing, packaging, importing, marketing, distributing, and/or selling the Misbranded Supplements, Defendants made express representations to Plaintiff and the members of the Nationwide Class that the Misbranded Supplements contained the ingredients stated on the product labels.

38. These representations were aimed at consumers, including Plaintiff and the members of the Nationwide Class, and Plaintiff and the members of the Nationwide Class purchased the Misbranded Supplements based on the reasonable expectation that the Misbranded Supplements would contain the represented contents.

39. Because the Misbranded Supplements do not contain the ingredients Defendants represented them to contain, Plaintiff and the members of the Nationwide Class have been injured, and these injuries were directly and proximately caused by Defendants' false representations.

40. Accordingly, Plaintiff and the members of the Nationwide Class are entitled to recover damages they suffered as a result Defendants' actions.

THIRD CAUSE OF ACTION

**Breach of Implied Warranty of Merchantability
(Brought on behalf of Plaintiff and the Nationwide Class)**

41. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

42. In designing, packaging, marketing, distributing, and/or selling the Misbranded Supplements, Defendants warranted that the Misbranded Supplements contained the ingredients reflected on the product labels.

43. Defendants breached the implied warranty of merchantability in the contract for the sale of the Misbranded Supplements because the Misbranded Supplements could not pass without objection in the trade under the label description, the goods were not of fair average quantity within the description, and the goods were unfit for their intended and ordinary purpose. Accordingly, Plaintiff and the members of the Nationwide Class did not receive goods as impliedly warranted by Defendants to be merchantable.

44. Plaintiff and the members of the Nationwide Class purchased the Misbranded Supplements in reliance upon Defendants' skill and judgment and the implied warranties of fitness for the purpose.

45. The Misbranded Supplements were not altered by the Plaintiff or the members of the Nationwide Class.

46. The Misbranded Supplements were defective when they left the exclusive control of the Defendants.

1 47. Defendants knew that the Misbranded Supplements would be purchased
2 and consumed without additional testing by Plaintiff and the members of the
3 Nationwide Class.
4

5 48. The Misbranded Supplements were defectively designed and unfit for
6 their intended purpose, and Plaintiff and the members of the Nationwide Class did not
7 receive the goods as warranted.
8

9 49. As a direct and proximate cause of Defendants' breach of the implied
10 warranty, Plaintiff and the members of the Nationwide Class have been injured and
11 harmed because (i) they would not have purchased the Misbranded Supplements on the
12 same terms if they had known the products' true contents; (ii) they paid a price
13 premium for the Misbranded Supplements based on Defendants' representations that
14 they contained the labeled contents; and (iii) the Misbranded Supplements did not have
15 the characteristics, ingredients, uses, benefits, or quantities promised.
16
17
18

19 **FOURTH CAUSE OF ACTION**

20 **Unjust Enrichment / Common Law Claim for Restitution**
21 **(Brought on behalf of Plaintiff and the Nationwide Class)**

22 50. Plaintiff realleges and incorporates by reference all paragraphs alleged
23 herein.

24 51. Because of their wrongful acts and omissions, Defendants charged a
25 higher price for the Misbranded Supplements than the products' true value and
26 Defendants obtained monies which rightfully belong to Plaintiff and the members of
27 the Nationwide Class.
28

1 52. Defendants enjoyed the benefit of increased financial gains, to the
2 detriment of Plaintiff and the members of the Nationwide Class. It would be
3 inequitable and unjust for Defendants to retain these wrongfully obtained profits.
4

5 53. Plaintiff, therefore, seeks an order requiring Defendants to make
6 restitution to them and the Class Members.
7

8 **FIFTH CAUSE OF ACTION**
9 **Negligent Misrepresentation**
10 **(Brought on behalf of Plaintiff and the Nationwide Class)**

11 54. Plaintiff realleges and incorporates by reference all paragraphs alleged
12 herein.

13 55. Defendants made representations to Plaintiff and the members of the
14 Nationwide Class regarding the contents of the Misbranded Supplements that were not
15 true.
16

17 56. Defendants had no reasonable grounds for believing these representations
18 were true when they made them, yet they intended that Plaintiff and the members of
19 the Nationwide Class would rely on these representations.
20

21 57. Plaintiff reasonably relied on Defendants' representations and as a result
22 Plaintiff and members of the Nationwide Class were harmed.
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

**Breach of GBL § 349 and the Various Analogous State Consumer Laws
(Brought on behalf of Plaintiff and the NY Subclass)**

58. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

59. Defendants' transactions with Plaintiff and the members of the NY Subclass as described herein constitute the "conduct of any trade or commerce" within the meaning of NYS GBL § 349.

60. Further, Defendants' transactions with Plaintiff and the members of the NY Subclass as described herein constitute "unfair or deceptive acts or practices in the conduct of any trade or commerce" between a business and consumers within the meaning of NYS GBL § 349.

61. In designing, packaging, marketing, distributing, and/or selling the Misbranded Supplements, Defendants misrepresented the ingredients reflected on their product labels.

62. The foregoing acts and conduct of Defendants are deceptive in that they represented to Plaintiff and the members of the NY Subclass that the Misbranded Supplements contained the ingredients reflected on their product labels when Defendants knew this was false.

63. Defendants' failure to disclose information concerning the true ingredients of the Misbranded Supplements directly and promptly to affected consumers, constitutes a fraudulent act or practice in violation NYS GBL § 349.

1 64. Plaintiff and the members of the NY Subclass suffered damages as a
2 result of Defendants' conduct.

3
4 65. Plaintiff seeks restitution and injunctive relief on behalf of the NY
5 Subclass.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiff, on behalf of herself and members of the proposed
9 Classes, prays for judgment as follows:

10 A. For an Order certifying this action as a class action pursuant to Federal
11 Rule of Civil Procedure 23, and appointing Plaintiff and her Counsel to represent the
12 Classes;
13

14 B. Compensatory and other damages identified herein;

15 C. Awarding restitution and disgorgement of Defendants' revenues or profits
16 to Plaintiff and the members of the proposed Classes as permitted by applicable law;
17

18 D. An Order requiring Defendants to cease and desist from engaging in its
19 wrongful conduct and to engage in a corrective advertising campaign;
20

21 E. Statutory pre-judgment and post-judgment interest on any amounts;

22 F. Payment of reasonable attorneys' fees and recoverable litigation expenses
23 as may be allowable under applicable law;
24

25 G. Payment of a reasonable service award to Plaintiff, in recognition of the
26 services she has and will continue to render to the Classes; and
27

28 H. Such other and further relief as this court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of their claims to the extent authorized by law.

RESPECTFULLY SUBMITTED AND DATED this 13th day of February, 2015.

By: 

Brian S. Schaffer

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Telephone: (212) 300-0375

Attorneys for Plaintiff and the Proposed Classes

EXHIBIT “A”



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL AFFAIRS

February 2, 2015

Michael G. Archbold, CEO
GNC Holdings, Inc.
300 Sixth Avenue
Pittsburgh, Pennsylvania 15222

Certified—Return Receipt Requested

Re: **CEASE & DESIST NOTIFICATION**
Herbal Plus—GNC Distributed Herbal Dietary Supplements

Dear Mr. Archbold:

This letter constitutes a demand to cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements, and in particular to immediately stop the sale of five “Herbal Plus” dietary supplements as identified by lot number in the exhibit annexed hereto.

Be advised that the Attorney General is authorized by Executive Law § 63(12) to investigate allegations and prosecute businesses which perpetuate fraud upon consumers or engage in illegality in their business practices. General Business Article 22-b further authorizes this office to redress deceptive business acts and practices and false advertising. Of late, the topic of purity (or lack thereof) in popular herbal dietary supplements has raised serious public health and safety concerns,¹ and also caused this office to take steps to independently assess the validity of industry representations and advertising.

In an investigation recently conducted by the Attorney General’s Office, six popular GNC “Herbal Plus” brand dietary supplement products were purchased at four different New York State locations and were then genetically tested five times per sample, yielding 120 results. The supplements tested included Gingko Biloba, St. John’s Wort, Ginseng, Garlic, Echinacea, and Saw Palmetto. By using established DNA barcoding technology, analytic testing disclosed that 5 out of 6 types of dietary supplement products tested were either unrecognizable or a substance other than what they claimed to be, and therefore constitute contaminated or substituted products. Twenty-two (22) percent of the tests yielded DNA matching the product label; 33% tested for botanical material other than what was on the label; and 45% yielded no plant DNA at all.

¹See, e.g., Newmaster, et al., “DNA Barcoding Detects Contamination and Substitution in North American Herbal Products,” *BMC Medicine*, 2013, 11:222 (<http://www.biomedcentral.com/1741-7015/11/222>).

Contamination, substitution and falsely labeling herbal products constitute deceptive business practices and, more importantly, present considerable health risks for consumers. The Attorney General's testing upon the products purchased revealed the following:

Ginkgo Biloba. Negative. No ginkgo biloba DNA was identified. The only DNA identified was allium (x5), "oryza"(x4)(commonly known as rice), spruce, and asparagaceae. Nine of the tests revealed no plant DNA whatsoever.

St. John's Wort. Negative. No St. John's Wort DNA was identified. Of the 20-tests performed, only three identified any DNA, and it included allium, oryza, and dracaena (tropical houseplant).

Ginseng: Negative. No ginseng DNA was identified. The testing yielded identification of oryza, dracaena, pinus strobus, wheat/grass, and citrus spp., with 15 of the tests identifying no genetic material at all.

Garlic: Positive. All 20 tests yielded DNA from allium.

Echinacea: Negative. Five tests identified oryza DNA, one other yielded the DNA of pinus or ranunculaceae. Fourteen tests detected no plant DNA of any sort in the product labeled Echinacea.

Saw Palmetto: Qualified negative. Only 6 of 20 tests did identify the presence of saw palmetto, but the positive results were principally from one sample. The results did not replicate in the three other samples. One sample demonstrated no plant DNA, another revealed the presence of asparagaceae, and oryza, while a fourth was positive for DNA from the primrose family as well as saw palmetto.

Studies conducted by the Centre for Biodiversity Genomics at the University of Guelph and others have previously alerted the dietary supplement industry to the fact that it is not providing the public with authentic products without substitution, contamination or fillers. It is disappointing that over a year later the Attorney General's researcher reached similar conclusions, demonstrating that the industry has failed to clean up its practices.

To assist in the Attorney General's ongoing investigation of this matter, and pursuant to the above authority, please supply the following information as it pertains to the identified lot numbers, as well as for all companies presently producing these product lines:

1. The name of the manufacturer and the location of the production of each of the herbal products identified.
2. A listing of any DNA testing or any other analytic testing for content and quality (including but not limited to chemical composition) of the herbal products listed above and copies of such testing results.
3. Copies of all licensing and production contracts with any party involved in the production and distribution of the herbal products identified above.
4. A listing of all ingredients used in the products identified above and a measurement of the amount of each ingredient in each of the herbal products identified above.

5. Identify the standards or procedures followed to authenticate the content of the herbal products listed above.
6. Produce the relevant Bioterrorism Registration documentation for the manufacturer of the dietary supplements.
7. Articulate the acquisition, production protocol, and quality assurance measures undertaken by the manufacturer of the products tested, including all such protocols undertaken to comply with current Dietary Supplement Current Good Manufacturing Practices (CGMPs) for quality control.
8. Produce any and all serious adverse event reports associated with use of any GNC herbal dietary supplement in the United States

Please provide the requested information to me at the following address: NYS Attorney General's Office, Dulles State Office Building, 317 Washington Street, Watertown, New York 13601. Kindly respond on or before 5:00 P.M. on February 9, 2015. If you have any questions, you may contact Assistant Attorney General Deanna R. Nelson at 315-785-2444.

The foregoing shall not constitute a waiver of or limitation on the Attorney General's authority to issue subpoenas or take enforcement action pursuant to applicable law.

Thank you for your anticipated cooperation.

Very truly yours,

MARTIN J. MACK
Executive Deputy Attorney General
In Charge of Regional Affairs

Enc.

Supplements by Lot #: As a courtesy, store location for the tested supplement is also listed. Kindly remove all of the supplements identified below which may bear the lot number indicated no matter the store location.

OAG #	Product	Address	Lot #
Bi-G-1	Ginkgo Biloba	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	4783GM1834
Bi-G-2	St. John's Wort	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	6736JN1945
Bi-G-3	Ginseng	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	8173LN3748
Bi-G-5	Echinacea	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	8273LN1987
Bi-G-6	Saw Palmetto	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	2660DN3972
Su-G-1	Ginkgo Biloba	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	0624AN1834
Su-G-2	St. John's Wort	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	0822BN1945
Su-G-3	Ginseng	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	1376BN3748
Su-G-5	Echinacea	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	1985CO1987
Su-G-6	Saw Palmetto	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	2617DO3972
H-G-1	Ginkgo Biloba	GNC #09903, 121 West 125th Street, New York, NY 10027	2447DO1947
H-G-2	St. John's Wort	GNC #09903, 121 West 125th Street, New York, NY 10027	1930DO1945
H-G-3	Ginseng	GNC #09903, 121 West 125th Street, New York, NY 10027	2096DO3747
H-G-5	Echinacea	GNC #09903, 121 West 125th Street, New York, NY 10027	1247BO1941
Pl-G-1	Ginkgo Biloba	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	2447DO1947
Pl-G-2	St. John's Wort	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	1930DO1945
Pl-G-3	Ginseng	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	2096DO3747
Pl-G-5	Echinacea	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	1985CO1987
Pl-G-6	Saw Palmetto	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	0256AO3972

EXHIBIT “B”

