IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

EDWARD SHEN and YING KONG, individually and on behalf of all others similarly situated, Plaintiffs, vs. GNC HOLDINGS, INC., Defendant.	No. 15-cv-0984 CLASS ACTION COMPLAINT FOR EQUITABLE, DECLARATORY AND INJUNCTIVE RELIEF DEMAND FOR JURY TRIAL

Plaintiffs Edward Shen and Ying Kong ("Plaintiffs") allege the following based upon personal knowledge as to themselves and their own acts, and upon information and belief and the investigation by Plaintiffs' counsel, which included, among other things, a review of public documents, marketing materials, and announcements made by GNC Holdings, Inc. ("Defendant" or "GNC"), as to all other matters. Plaintiffs believe that substantial additional evidentiary support exists for the allegations set forth herein and will be available after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This action seeks to remedy the misleading and deceptive business practices of Defendant with respect to the marketing, advertising, labeling, and sales of GNC Herbal Plus Standardized St. John's Wort (the "Product").

2. Since as early as 2009 through the present ("Class Period"), Defendant has manufactured, distributed, and sold the Product and has uniformly and prominently marketed, advertised, and labeled the Product as a dietary supplement containing the primary labeled ingredient St. John's wort.

3. Defendant's labeling, advertising, and marketing campaign is false and misleading because the Product in fact does not contain the primary labeled ingredient St. John's wort. Moreover, the Product contains other ingredients that are not identified on the label.

4. Indeed, the Attorney General for the State of New York has served upon Defendant a Cease and Desist Notification demanding that Defendant immediately stop the sale of the Product, among other specified dietary supplement products.

5. Plaintiffs relied on Defendant's representation that the Product was what it was purported to be: an herbal dietary supplement containing St. John's wort. Plaintiffs did not purchase the Product with the intent not to receive the represented herbal dietary supplement.

6. Consumers purchase products containing St. John's wort, such as Defendant's Product, for its purported health-related benefits – that is, as a dietary herbal supplement that is used in the treatment of depression, inflammation, and other conditions. To the extent that the Product does not contain St. John's wort it does not and cannot provide the intended health-related benefits.

7. Defendant's failure to identify all the ingredients on the label of the Product also exposes consumers with food allergies, or who are taking medication for an unrelated illness, to potentially serious health risk every time the consumer ingests the contaminated herbal dietary supplement.

8. Plaintiffs and the Class were injured as they did not get what they paid for. Plaintiffs and the Class did not receive a dietary supplement that contains St. John's wort; rather, they received a product that does not contain St. John's wort, and contains other ingredients not identified on the label, in contradiction to Defendant's representations. Plaintiffs would not have purchased the Product had they known the truth. Plaintiffs and the Classes suffered an injury in that the Product they purchased is, in fact, worthless as a product because it is misbranded and unable to provide the intended health-related benefit, as promised.

9. Defendant's conduct of falsely marketing, advertising, labeling, and selling the Product as containing St. John's wort, which it did not have, (a) constitutes misleading and deceptive conduct; (b) is likely to mislead members of the public; and (c) is substantially injurious to consumers. As such, Plaintiffs seek relief in this action individually and as a class action on behalf of all purchasers in the United States of the Product (the "Class"). Plaintiffs

also seek relief in this action individually and as a class action on behalf of a subclass of all purchasers in New York of the Product (the "New York Class").

JURISDICTION AND VENUE

10. This Court has original jurisdiction over the claims asserted herein individually and on behalf of the Class pursuant to 28 U.S.C. §1332, as amended in February 2005 by the Class Action Fairness Act. Subject matter jurisdiction is proper because: (1) the amount in controversy in this class action exceeds five million dollars, exclusive of interest and costs; and (2) a substantial number of the members of the proposed classes are citizens of a state different from that of Defendant. Personal jurisdiction is proper as Defendant has purposefully availed itself of the privilege of conducting business activities within this District.

11. Defendant, a citizen of Pennsylvania, has distributed, marketed, advertised, labeled, and sold the Product, which is the subject of the present complaint, in this District. Venue is proper in this judicial district under 28 U.S.C. §1391(b)(2) because Defendant conducts business in this District and a substantial part of the acts or omissions giving rise to the claims set forth herein occurred in this District.

PARTIES

12. Plaintiff Edward Shen is a citizen of New York and an individual consumer. During the Class Period, Plaintiff purchased Defendant's Product from the GNC website on multiple occasions during 2013 and 2014. Prior to purchasing the Product, Plaintiff read and relied upon false and misleading statements that were prepared by and/or approved by Defendant and its agents and disseminated through the packaging of the Product. At the time of purchase, Plaintiff believed that he was paying for a dietary supplement containing St. John's wort and was deceived when he received a product that did not contain St. John's wort. But for Defendant's misrepresentations, Plaintiff would not have purchased the Product. Plaintiff thus was damaged by Defendant's practice.

13. Plaintiff Ying Kong is a citizen of New York and an individual consumer. During the Class Period, Plaintiff purchased Defendant's Product from the GNC website on multiple

occasions during 2013 and 2014. Prior to purchasing the Product, Plaintiff read and relied upon false and misleading statements that were prepared by and/or approved by Defendant and its agents and disseminated through the packaging of the Product. At the time of purchase, Plaintiff believed that she was paying for a dietary supplement containing St. John's wort and was deceived when she received a product that did not contain St. John's wort. But for Defendant's misrepresentations, Plaintiff would not have purchased the Product. Plaintiff thus was damaged by Defendant's practice.

14. Defendant is a Pennsylvania corporation with its headquarters located at 300 Sixth Avenue, Pittsburgh, PA 15222. Defendant distributes, markets, advertises, and sells the Product throughout the United States. GNC, together with its subsidiaries, operates a network of retail stores, selling health, wellness and performance products, including vitamins, minerals and herbal supplement products, sports nutrition products and diet products, throughout the world. As of February 17, 2015, it operated more than 8,900 locations worldwide and sold its products through online channels.

ALLEGATIONS OF FACT

A. Defendant's False and Misleading Statements

15. Defendant manufactures, distributes, and sells its private label dietary supplements nationwide. The Product is uniformly and prominently marketed, advertised, and labeled as a dietary supplement containing the primary labeled ingredient St. John's wort. Defendant also represents in the nutrition panel on the label of the Product that the Product contains only the ingredients listed and no others.

16. Consumers purchase products with St. John's wort for its purported health-related benefits – that is, as a dietary supplement that helps with depression, inflammation, and other conditions.

17. Because Defendant's Product does not contain St. John's wort, it does not and cannot provide the intended health-related benefits.

B. The Product Does Not Contain the Labeled Ingredient St. John's Wort and Contains Other Ingredients Not Identified on the Label

18. Defendant's labeling, advertising, and marketing campaign is false and misleading because the Product does not contain the primary labeled ingredient, St. John's wort. Moreover, the Product contains other ingredients that are not identified on the label.

19. On February 2, 2015, the Attorney General of the State of New York sent GNC a cease and desist letter demanding that GNC stop selling adulterated and mislabeled herbal supplements. GNC was notified that 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. Defendant's Product is one of the dietary supplements identified by the New York Attorney General as adulterated and misbranded. A copy of the Cease and Desist Notification is attached hereto as Exhibit A.

20. With regard to Defendant's Product, the New York Attorney General concluded that it tested "[n]egative" for containing the labeled ingredient St. John's wort because "[n]o St. John's Wort DNA was identified." GNC was further informed that the testing revealed positive identification of allium, oryza, and dracaena – none of which are disclosed as ingredients on the label.

21. The New York Attorney General's findings support what consumer advocacy groups have been saying for years about herbal supplements such as the Product – major retailers like GNC are "not providing the public with authentic products without substitution, contamination or fillers." *See* Exhibit A at 2.

22. The New York Attorney General's testing is consistent with the results of prior research on whether herbal dietary supplements actually contain the primary labeled ingredients. A November 3, 2013 New York Times article reported:

> DNA tests show that many pills labeled as healing herbs are little more than powdered rice and weeds. Using a test called DNA barcoding, a kind of genetic fingerprinting that has also been used to help uncover labeling fraud in the commercial seafood industry, Canadian researchers tested 44 bottles of popular supplements sold by 12 companies. They found that many were not what they claimed to be, and that pills labeled as popular herbs were often diluted – or replaced entirely – by cheap fillers like soybean, wheat and rice.

> Consumer advocates and scientists say the research provides more evidence that the herbal supplement industry is riddled with questionable practices.

Anahad O'Connor, *Herbal Supplements Are Often Not What They Seem*, THE NEW YORK TIMES, Nov. 3, 2013 (available at: http://www.nytimes.com/2013/11/05/science/herbal-supplements-are-often-not-what-they-seem.html?pagewanted=all&_r=0 (last accessed February 22, 2015)).

23. Throughout the Class Period, Defendant engaged in, and Plaintiffs and members of the Classes were exposed to, a uniform message displayed on the label of the Product. This message, ***at a minimum***, is conveyed at the point of purchase on the packaging and labeling of the Product. Thus, all consumers are exposed to the same message on the label.

24. Plaintiffs and the Classes reasonably understood the packaging of the Product to mean that the Product is an herbal dietary supplement that contains the labeled ingredient St. John's wort, having specified health-related attributes, and does not contain other ingredients not identified on the label. Plaintiffs and the Classes relied on such representations in making their purchases of the Product.

C. Consumers Desire Accurately Labeled Products

25. As more and more consumers realize the value of good health, interest in herbal dietary supplements has risen. Consumers are increasingly looking for alternative remedies to cure what ails them and to help them stay healthy well into their later years. Heightened consumer awareness regarding preventative healthcare and an aging population has fueled a thriving consumer market in herbal dietary supplements.

26. Americans spend an estimated $6 billion a year[1] on herbal dietary supplements that promise a spectrum of health-related benefits, from fighting off colds to boosting memory.

[1] *See* American Botanical Council, *Herbal Dietary Supplement Retail Sales Up 7.9% in 2013, HerbalGram Herb Market Report Marks a Decade of Rising Sales*, Sept. 3, 2014 (available at: http://cms.herbalgram.org/press/2014/2013_Herb_Market_Report.html?ts=1423515683&signature=f627c4281d78cf20ac0334cd04991e22 (last accessed February 11, 2015)).

27. As American consumers look for products that help them maintain a healthy lifestyle, product package labels are vehicles that convey quality, nutrition, and ingredient information to consumers that they can and do use to make purchasing decisions.

28. Defendant realizes that consumers are increasingly interested in herbal dietary supplements. Indeed, Defendant claims to be "the leading global specialty retailer of health, wellness and performance products, including vitamins, minerals and herbal supplement products ("VMHS"), sports nutrition products and diet products." *See* Form 10-K filed with the SEC February 17, 2015. Further, GNC has stated, "We believe that the strength of our GNC brand, which is distinctively associated with health and wellness, combined with our stores and online channels, gives us broad access to consumers and uniquely positions us to benefit from the favorable trends driving growth in the nutritional supplements industry and the broader health and wellness sector." *Id.* Thus, Defendant unquestionably understands the importance and value of descriptors and labels that convey to consumers that a product contains the labeled ingredients and thus has certain attributes and benefits associated with it.

29. A reasonable consumer understands that a product contains the labeled ingredients, and conversely, should not contain any other ingredients not identified on the label.

30. Consumers lack the meaningful ability to test or independently ascertain the truthfulness of product labeling at the point of sale. Consumers would not know the true nature of the ingredients merely by reading the ingredient label; its discovery requires investigation beyond the grocery store and knowledge of food chemistry beyond that of the average consumer. Thus, reasonable consumers must and do rely on companies such as Defendant to honestly report the nature of a product's ingredients, and companies such as Defendant intend and know that consumers rely upon labeling statements in making their purchasing decisions. Such reliance by consumers is also eminently reasonable, since companies are prohibited from making false or misleading statements on their dietary supplement products under federal law.

31. Defendant unscrupulously capitalizes on consumers' heightened demand for health-related herbal dietary supplement products by deceptively labeling, advertising, and marketing the Product.

DAMAGES TO PLAINTIFFS AND THE CLASSES

32. Plaintiffs purchased the Product based on Defendant's labeling, advertising, and marketing that the Product is an herbal dietary supplement containing St. John's wort.

33. Defendant manufactured, distributed, and sold the Product, which is misbranded. Misbranded products cannot be legally manufactured, distributed, sold, or held, and have no economic value and are legally worthless as a matter of law.

34. Moreover, the Product does not and cannot provide the intended health-related benefits because it does not contain the labeled ingredient, St. John's wort, and thus is worthless.

TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT CONCEALMENT, EQUITABLE TOLLING, AND CONTINUING VIOLATIONS

35. Plaintiffs did not discover and could not have discovered through the exercise of reasonable diligence the existence of the claims sued upon herein until immediately prior to commencing this civil action.

36. Any applicable statutes of limitation have been tolled by Defendant's affirmative acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above reveal.

37. Because of the self-concealing nature of Defendant's actions and its affirmative acts of concealment, Plaintiffs and the Classes assert the tolling of any applicable statutes of limitations affecting the claims raised herein.

38. Defendant continues to engage in the deceptive practice, and consequently, unwary consumers are injured on a daily basis by Defendant's unlawful conduct. Therefore, Plaintiffs and the Classes submit that each instance that Defendant engaged in the conduct complained of herein and each instance that a member of any Class purchased the Product

constitutes part of a continuing violation and operates to toll the statutes of limitation in this action.

39. Defendant is estopped from relying on any statute of limitations defense because of its unfair or deceptive conduct.

40. Defendant's conduct was and is, by its nature, self-concealing. Still, Defendant, through a series of affirmative acts or omissions, suppressed the dissemination of truthful information regarding its illegal conduct, and actively has foreclosed Plaintiffs and the Classes from learning of its illegal, unfair, and/or deceptive acts. These affirmative acts included concealing that the Product does not contain the labeled ingredient, St. John's wort, and contains other ingredients not identified on the label.

41. By reason of the foregoing, the claims of Plaintiffs and the Classes are timely under any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling doctrine, and fraudulent concealment.

CLASS ACTION ALLEGATIONS

42. Plaintiffs bring this action individually and as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of herself and the Classes defined as follows:

NATIONWIDE CLASS:

All persons in the United States who purchased the Product during the applicable statute of limitations period for personal or household use, and not for resale or distribution purposes. Specifically excluded from this Class are Defendant; the officers, directors, or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of Defendant. Also excluded are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

NEW YORK CLASS:

All consumers in New York who purchased the Product during the applicable statute of limitations period for personal or household use, and not for resale or distribution purposes. Specifically excluded from this Class are Defendant; the officers, directors, or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of Defendant. Also excluded are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding

over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

43. Plaintiffs also bring this action individually and as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons located within his/her respective home state of New York and on behalf of all persons located within the states with similar consumer protection laws, breach of express warranty laws and breach of implied warranty laws.

44. The Classes are sufficiently numerous, as each includes thousands of persons who have purchased the Product. Thus, joinder of such persons in a single action or bringing all members of the Classes before the Court is impracticable for purposes of Rule 23(a)(1). The question is one of a general or common interest of many persons and it is impractical to bring them all before the Court. The disposition of the claims of the members of the Classes in this class action will substantially benefit both the parties and the Court.

45. There are questions of law and fact common to each Class for purposes of Rule 23(a)(2), including whether Defendant's labels and packaging include uniform misrepresentations that misled Plaintiffs and the other members of the Classes to believe the Product is a dietary supplement that contains the labeled ingredient having specific health-related attributes. The members of each Class were and are similarly affected by having purchased the Product for the intended and foreseeable purpose as promoted, marketed, advertised, packaged, and labeled by Defendant as set forth in detail herein, and the relief sought herein is for the benefit of Plaintiffs and other members of the Classes. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

46. Plaintiffs assert claims that are typical of the claims of each respective Class for purposes of Rule 23(a)(3). Plaintiffs and all members of each respective Class have been subjected to the same wrongful conduct because they have purchased the Product, which does not contain the labeled ingredient, St. John's wort. Plaintiffs and the members of each Class have thus all overpaid for the Product, which is worthless because it does not contain St. John's wort.

47. Plaintiffs will fairly and adequately represent and protect the interests of the other members of each respective Class for purposes of Rule 23(a)(4). Plaintiffs have no interests antagonistic to those of other members of each respective Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel experienced in litigation of this nature to represent her. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

48. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted on grounds that apply generally to each Class, so that final injunctive relief or corresponding declaratory relief, is appropriate respecting each Class as a whole. Defendant made uniform misrepresentations on the labels of the Product that misled Plaintiffs and the other members of each Class.

49. Class certification is appropriate under Rule 23(b)(3) because common questions of law and fact substantially predominate over any questions that may affect only individual members of each Class. Among these common questions of law and fact are:

a. whether Defendant misrepresented or omitted material facts in connection with the promotion, marketing, advertising, packaging, labeling, and sale of the Product;

b. whether Defendant's labeling of the Product is likely to deceive the members of each Class;

c. whether Defendant represented that the Product has characteristics, benefits, uses, or qualities that it does not have;

d. whether Defendant's acts and practices in connection with the promotion, marketing, advertising, packaging, labeling, distribution, and sale of the Product violated the laws alleged herein;

e. whether Plaintiffs and members of the Classes are entitled to injunctive and other equitable relief; and

f. whether Defendant was unjustly enriched by its conduct.

50. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the members of each respective Class. Similar or identical statutory and common law violations and deceptive business practices are involved. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

51. The injuries sustained by Plaintiffs and the members of each Class flow, in each instance, from a common nucleus of operative facts – Defendant's misconduct.

52. Plaintiffs and the members of each Class have been damaged by Defendant's misconduct. The members of each Class have paid for a product that would not have been purchased in the absence of Defendant's deceptive scheme.

53. Proceeding as a class action provides substantial benefits to both the parties and the Court because this is the most efficient method for the fair and efficient adjudication of the controversy. Members of each Class have suffered and will suffer irreparable harm and damages as a result of Defendant's wrongful conduct. Because of the nature of the individual claims of the members of each Class, few, if any, could or would otherwise afford to seek legal redress against Defendant for the wrongs complained of herein, and a representative class action is therefore the appropriate, superior method of proceeding and essential to the interests of justice insofar as the resolution of claims of the members of each Class is concerned. Absent a representative class action, members of each Class would continue to suffer losses for which they would have no remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by individual members of each Class, the resulting multiplicity of lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well as create a risk of inconsistent rulings, which might be dispositive of the interests of the other members of each Class who are not parties to the adjudications and/or may substantially impede their ability to protect their interests.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF
Unjust Enrichment on Behalf of the Nationwide Class

54. Plaintiffs reallege each and every allegation contained above as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

55. Plaintiffs bring this claim individually, as well as on behalf of members of the nationwide Class under New York law. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from which class members will be drawn, New York law applies to the claims of the Class.

56. At all times relevant hereto, Defendant deceptively labeled, marketed, advertised, and sold the Product to Plaintiffs and the Class.

57. Plaintiffs and members of the Class conferred upon Defendant non-gratuitous payments for the Product that they would not have due to Defendant's deceptive labeling, advertising, and marketing. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiffs and members of the Class, with full knowledge and awareness that, as a result of Defendant's deception, Plaintiffs and members of the Class were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendant and reasonable consumers would have expected.

58. Defendant has been unjustly enriched in retaining the revenues derived from purchases of the Product by Plaintiffs and members of the Class, which retention under these circumstances is unjust and inequitable because Defendant misrepresented that the Product

contains the labeled ingredient St. John's wort, which caused injuries to Plaintiffs and members of the Class because they did not get what they paid for.

59. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiffs and members of the Class under these circumstances made Defendant's retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to Plaintiffs and members of the Class for its unjust enrichment, as ordered by the Court.

SECOND CLAIM FOR RELIEF
Violation of New York General Business Law §349 on Behalf of the New York Class

60. Plaintiffs reallege each and every allegation contained above as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

61. Plaintiffs bring this claim individually and on behalf of members of the New York Class under New York law.

62. Plaintiffs and the New York Class bring their statutory claims pursuant to N.Y. Gen. Bus. Law §349, *et seq.*, which was enacted and designed to protect consumers against misleading and deceptive business practices.

63. Plaintiffs and the New York Class are "persons" within the meaning of GBL §349(h).

64. GBL §349 provides: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

65. Defendant's marketing, advertising, and labeling of the Product as containing the labeled ingredient St. John's wort is an act or practice in the conduct of trade or commerce.

66. The marketing, advertising, and labeling of dietary supplements, such as the Product, as having the labeled ingredient St. John's wort, which the Product does not have and thus cannot provide the health-related benefits attributable to that labeled ingredient, impacts the public interest.

67. As is detailed above, Defendant's marketing, advertising, and labeling of the Product is deceptive because Defendant states that the Product has St. John's wort, which the

Product does not have, and because Defendant failed to indicate that the Product contains other ingredients that are not identified on the label.

68. By engaging in the conduct alleged in this Complaint, Defendant engaged in misleading and deceptive acts and practices in that its conduct had a tendency and likelihood to, and did in fact, deceive Plaintiffs and the New York Class, the persons to whom such conduct was and is targeted.

69. Defendant's misleading and deceptive acts and practices adversely impacted Plaintiffs and the New York Class, who are consumers of dietary supplements, such as the Product, and therefore constitute consumer-oriented conduct under GBL §349 that resulted in actual and direct harm to Plaintiffs and members of the New York Class.

70. Plaintiffs and members of the New York Class suffered economic injury as a direct and proximate result of Defendant's misleading and deceptive acts and practices by paying for the Product, which did not contain the labeled ingredient St. John's wort and thus could not and did not provide the relevant health-related benefits attributable to that labeled ingredient, due to the false and misleading advertising, and marketing of the Product and Defendant's failure to disclose the true nature of the Product.

71. Defendant's violations of GBL §349(a) have directly, foreseeably, and proximately caused damages and injury to Plaintiffs and the New York Class. Absent Defendant's misleading and deceptive acts and practices, Plaintiffs and New York Class members would not have purchased the Product had they known the truth – that the Product did not contain the labeled ingredient St. John's wort and contained other ingredients not identified on the label.

THIRD CLAIM FOR RELIEF
Breach of Express Warranty

72. Plaintiffs reallege each and every allegation contained above as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

73. Defendant's representations, as described herein, are affirmations by Defendant that the Product contains the labeled ingredient St. John's wort and does not contain other ingredients not identified on the label. Defendant's representations regarding the Product are made to Plaintiffs and the members of the Class at the point of purchase and are part of the description of the goods. Those promises constituted express warranties and became part of the basis of the bargain, between Defendant on the one hand, and Plaintiffs and the Class on the other.

74. In addition, or in the alternative, Defendant made each of its above-described representations to induce Plaintiffs and the Class to rely on such representations, and they each did so rely on Defendant's representations as a material factor in their decisions to purchase the Product. Plaintiffs and other members of the Class would not have purchased the Product but for these representations and warranties.

75. The Product did not, in fact, meet the representations Defendant made about the Product, as described herein.

76. At all times relevant to this action, Defendant falsely represented that the Product contained the labeled ingredient St. John's wort, when in fact the Product does not contain the labeled ingredient, and that the Product did not contain any ingredients other than those identified on the label, when in fact that Product does contain other ingredients not identified on the label.

77. At all times relevant to this action, Defendant made false representations in breach of the express warranties and in violation of state express warranty laws and/or the UCC.

78. Plaintiffs and the members of the Class purchased the Product directly from Defendant, satisfying any privity requirement.

79. As a proximate result of this breach of warranty by Defendant, Plaintiffs and other members of the Class have been damaged in an amount to be determined at trial because the Product did not have the composition, attributes, characteristics, nutritional value, health qualities, or value promised.

80. Concurrently with the filing of this Complaint, Plaintiffs will make a demand upon Defendant to change its practices and refund the loss experienced by the Class. Moreover, Defendant had actual knowledge that the Product did not contain the labeled ingredients and thus did not comply with the Product's warranties and Plaintiffs therefore were not required to notify Defendant of its breach.

81. Wherefore, Plaintiffs and the Class demand judgment against Defendant for compensatory damages, plus interest, costs, and such additional relief as the Court may deem appropriate or to which Plaintiffs and the Class may be entitled.

FOURTH CLAIM FOR RELIEF
Breach of Implied Warranties

82. Plaintiffs reallege each and every allegation contained above as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

83. As the developer, manufacturer, producer, advertiser, marketer, seller and/or distributor of the Product, Defendant is a "merchant" within the meaning of implied warranty law.

84. The Product can be classified as "goods" within the meaning of implied warranty law.

85. Plaintiffs and the members of the Class purchased the Product directly from Defendant, satisfying any privity requirement under implied warranty law.

86. The Uniform Commercial Code §2-314 provides that unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. This implied warranty of merchantability acts as a guarantee by the seller that his goods are fit for the ordinary purposes for which they are to be used.

87. At the time that Defendant developed, manufactured, sold, and/or distributed the Product, Defendant knew the purpose for which the Product was intended and impliedly

warranted that the Product was of merchantable quality – that is, that the Product is legal and can be lawfully sold and possessed.

88. Defendant reasonably knew or should have known that the Product is adulterated and misbranded, and thus was unlawful for sale and economically worthless.

89. No reasonable consumer would knowingly purchase a product that is illegal to own or possess.

90. The Product also was unfit for the ordinary purpose for which it was intended.

91. Thus, Plaintiffs and the Class were injured through their purchase of the Product, which was unsuitable, useless, illegal, unsellable, and worthless.

92. The Uniform Commercial Code §2-315 provides that unless excluded or modified, a warranty that the goods shall be fit for a particular purpose is implied in a contract for their sale if the seller has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods.

93. Defendant developed, manufactured, advertised, marketed, sold, and/or distributed the Product and represented that the Product were fit for a particular use, specifically that the Product could be used as a dietary supplement to obtain the benefits attributed to the labeled ingredient St. John’s wort and that the Product does not contain any ingredients other than those identified on the label. Contrary to such representations, Defendant failed to disclose that the Product does not contain the labeled ingredient St. John’s wort, as promised, and, in fact, does contain other ingredients not identified on the label.

94. Further, Defendant is a merchant with respect to the Product. Defendant developed, manufactured, produced, advertised, marketed, sold, and/or distributed the Product and represented to Plaintiffs and the Class that it developed the Product as a dietary supplement that contains the labeled ingredient St. John’s wort in order to attain the benefits attributed to that labeled ingredient. Further, Defendant, by selling the Product to Plaintiffs and the Class has held itself out as a retailer of the Product that could be used as a dietary supplement that contains the

labeled ingredient St. John's wort in order to attain the benefits attributed to that labeled ingredient and, in fact, has derived a substantial amount of revenues from the sale of the Product.

95. As a merchant of the Product, Defendant knew that purchasers relied upon them to develop, manufacture, produce, sell, and distribute a product that could be used as a dietary supplement that contains the labeled ingredient St. John's wort in order to attain the benefits attributed to that labeled ingredient, as promised. Moreover, Defendant knew that purchasers relied upon them to develop, manufacture, produce, sell, and distribute a product that could be used as a dietary supplement that does not contain any ingredients other than those identified on the label.

96. Defendant developed, manufactured, produced, sold, and distributed the Product to consumers such as Plaintiffs and the Class. It knew that the Product would be used as a dietary supplement that contains the labeled ingredient St. John's wort in order to attain the benefits attributed to that labeled ingredient, as promised, and that does not contain any ingredients other than those identified on the label.

97. Defendant specifically represented in its labeling of the Product that it is a dietary supplement that contains the labeled ingredient St. John's wort, as described herein. Defendant also represented that the Product does not contain any ingredients other than those identified on the label.

98. Defendant breached its implied warranties in connection with the sale of the Product to Plaintiffs and members of the Class. The Product was not fit for its ordinary purposes and/or for its particular purpose as a dietary supplement that contains the labeled ingredient St. John's wort in order to attain the benefits attributed to that labeled ingredient, because the Product does not contain the labeled ingredient and contains ingredients other than those identified on the label.

99. Concurrently with the filing of this Complaint, Plaintiffs will make a demand upon Defendant to change its practices and refund the loss experienced by the Class. Moreover, Defendant had actual knowledge that the Product did not contain the labeled ingredients and thus

was not fit for its ordinary purpose and Plaintiffs therefore were not required to notify Defendant of its breach.

100. As a direct and proximate result of Defendant's breach of implied warranties, Plaintiffs and other members of the Class have been injured. Plaintiffs and the other members of the Class would not have purchased the Product but for Defendant's representations and warranties. Defendant misrepresented the character of the Product, which caused injuries to Plaintiffs and the other members of the Class because they purchased products that were not of a character and fitness as promised and therefore had no value to Plaintiffs and the other members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief against Defendant as follows:

A. that the Court certify the nationwide Class and the New York Class under Rule 23 of the Federal Rules of Civil Procedure and appoint Plaintiffs as Class Representatives and their attorneys as Class Counsel to represent the members of the Classes;

B. that the Court declare that Defendant's conduct violates the statutes referenced herein;

C. that the Court preliminarily and permanently enjoin Defendant from conducting its business through the deceptive business acts or practices, untrue and misleading labeling and marketing and other violations of law described in this Complaint;

D. that the Court order Defendant to conduct a corrective advertising and information campaign advising consumers that the Product does not have the characteristics, uses, benefits, and quality Defendant has claimed;

E. that the Court order Defendant to implement whatever measures are necessary to remedy the deceptive business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;

F. that the Court order Defendant to notify each and every individual and/or business who purchased the Product of the pendency of the claims in this action in order to give such individuals and businesses an opportunity to obtain restitution from Defendant;

G. that the Court order Defendant to pay restitution to restore to all affected persons all funds acquired by means of any act or practice declared by this Court to be a deceptive business act or practice, untrue or misleading labeling, advertising, and marketing, plus pre- and post-judgment interest thereon;

H. that the Court order Defendant to disgorge all monies wrongfully obtained and all revenues and profits derived by Defendant as a result of its acts or practices as alleged in this Complaint;

I. that the Court award damages to Plaintiffs and the Classes;

J. that the Court grant Plaintiffs their reasonable attorneys' fees and costs of suit pursuant to the common fund doctrine, and/or any other appropriate legal theory; and

K. that the Court grant such other and further relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

DATED: February 25, 2015

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

/s/ Joseph P. Guglielmo

Joseph P. Guglielmo
Joseph D. Cohen
The Chrysler Building
405 Lexington Avenue, 40th Floor
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212-223-6444
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ecomite@scott-scott.com

Counsel for Plaintiffs

JS 44 (Rev. 1/2013)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

EDWARD SHEN and YING KONG, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Queens County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Scott+Scott, Attorneys at Law, LLP
The Chrysler Building, 405 Lexington Ave., 40th Floor
New York, NY 10174 212-223-6444

DEFENDANTS

GNC HOLDINGS, INC.

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

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

Attorneys *(If Known)*

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

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 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)*

(For Diversity Cases Only)

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

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

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

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

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. §1332

Brief description of cause:
Action for breach of warranties, deceptive trade practices and unjust enrichment

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
02/25/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Joseph P. Guglielmo

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Joseph P. Guglielmo, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☐ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: No

2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? No.

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: /s/ Joseph P. Guglielmo

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

EDWARD SHEN and YING KONG, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

GNC HOLDINGS, Inc.,

Defendant(s)

Civil Action No. 15-cv-0984

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* GNC HOLDINGS, Inc.
300 Sixth Avenue
Pittsburgh, PA 15222

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Joseph P. Guglielmo
Scott+Scott, Attorneys at Law, LLP
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, NY 10174

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 15-cv-0984

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

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.

[1] *See, 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:

Gingko Biloba. Negative. No gingko 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 ranunculacae. 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	Gingko 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	Gingko 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	Gingko 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	Gingko 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