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10 *and all others similarly situated*

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MELISSA SANTICH and KEITH
BLACKMER, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GNC HOLDINGS, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT

Plaintiffs, Melissa Santich ("Santich") and Keith Blackmer ("Blackmer") (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, by and through their attorneys, allege, on personal knowledge as to all facts related to themselves and upon information and belief (based on the investigation of counsel) as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Defendant, GNC Holdings, Inc. ("Defendant" or "GNC"), is in the business of selling nutritional supplements. In so doing, it oversees the operation of hundreds of stores throughout the United States, including numerous stores throughout California.

2. For a number of years, GNC offered customers the opportunity to join its Gold Card Program ("Program"). In exchange for an annual payment of \$15, Program members received a Gold Card, which entitled them to receive a substantial discount on the purchase of in-store items for a one-year period. The Program was very popular with GNC's customers, with more than 7 million individuals participating in the Program nationwide. In December 2016, GNC unilaterally discontinued the Program, resulting in Plaintiffs, and millions of other members of the Class (defined below), being unable to receive the benefits of the Program for the full one-year period contemplated when they paid to join the Program.

3. Plaintiffs and the members of the Class have been damaged and suffered an ascertainable loss as a result of GNC's conduct.

4. As set forth more fully below, GNC's conduct constitutes a breach of contract, as well as violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL") and the California Legal Remedies Act, Cal., Civ. Code §§1750-1784 ("CLRA").

5. Though this action, Plaintiffs seek actual damages, statutory damages, attorneys' fees and costs, and all other relief available to the Class as a result of GNC's unlawful conduct.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which Class members and the Defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Santich resides in this District and GNC transacts substantial business in this District and, thus, is subject to personal jurisdiction in this District. Additionally, GNC has advertised in this District and sold Gold Cards through the Program in this District such that a substantial part of the events and/or omissions giving rise to the claims occurred within this District.

8. This Court has personal jurisdiction over Defendant. Defendant owns and operates stores in this District and sold thousands of Gold Cards in this District,

1 including to Santich. As such, Defendant has conducted substantial business in this
2 District.
3

4 **THE PARTIES**

5 9. Santich is a resident and citizen of Lakeside, San Diego County,
6 California.

7 10. Blackmer is a resident and citizen of Sherman Oaks, Los Angeles
8 County, California.
9

10 11. GNC is a Delaware corporation which maintains its headquarters and
11 principal place of business in Pittsburgh, Pennsylvania. GNC, thus, is a citizen of
12 both Delaware and Pennsylvania. GNC holds itself out as being the largest
13 supplement provider in the world.
14

15 **STATEMENT OF FACTS**

16 12. This class action is brought against GNC for the benefit and protection
17 of Program members, who did not receive the full one-year benefit of their Gold
18 Card at the time GNC discontinued its Program in December 2016.

19 13. GNC holds itself out as being a leading global specialty retailer of
20 health and wellness products, including vitamins, minerals, herbal supplement
21 products, sports nutrition products and diet products. GNC trades on the New York
22 Stock Exchange and oversees the operation of thousands of stores nationwide.
23

24 14. For many years, GNC offered customers the opportunity to join its
25 Program, which provided them with a Gold Card entitling them to receive a
26 substantial discount on the purchase of in-store items. In order to join the Program,
27 customers were required to pay \$15 for an annual membership. The Program was
28

1 successful and well received by GNC customers, with millions of Program
2 members actively participating nationwide.
3

4 15. In December 2016, GNC unilaterally discontinued the Program,
5 resulting in Plaintiffs and millions of other members of the Class being unable to
6 receive the benefits of the Program for the full one-year period contemplated when
7 they purchased their Gold Cards.
8

9 16. Remarkably, GNC continued to sell Gold Cards until just a few weeks
10 prior to the discontinuation of the Program, while having full knowledge that
11 purchasers would not receive the benefit of the Program.
12

12 **Plaintiffs' Experiences**

13 17. Santich has been purchasing nutritional supplements from GNC on a
14 regular basis for at least the last 5 years.
15

16 18. In or about 2015, Santich was made aware of GNC's Program. The
17 Program was of interest to Santich because she determined that the substantial
18 discount she would receive on purchases would more than make up for the \$15
19 annual cost to join the Program.
20

21 19. In or about May 2016, Santich decided to purchase a Program
22 membership and paid \$15 for a Gold Card purchased through GNC's website.
23

24 20. Blackmer has been purchasing nutritional supplements from GNC on a
25 regular basis since approximately 2012.
26

27 21. In or about 2012, Blackmer was made aware of GNC's Program. The
28 Program was of interest to Blackmer because he determined that the substantial
29

1 discount he would receive on purchases would more than make up for the \$15
2 annual cost to join the Program.

3
4 22. In or about May 2016, Blackmer decided to purchase a Program
5 membership and paid \$15 for a Gold Card at the GNC store in the Westfield
6 Fashion Square Mall in Sherman Oaks, CA.

7
8 23. In December 2016, GNC unilaterally discontinued the Program,
9 resulting in Plaintiffs not having the benefit of their Gold Cards for approximately
10 five months, or approximately 40% of their annual membership period.

11 24. When they purchased their Gold Card in May 2016, Plaintiffs
12 understood that GNC had promised that their membership in the Program would be
13 valid for a full one-year period, and they relied on that representation. Furthermore,
14 GNC's representations regarding the length of the membership was material to
15 Plaintiffs, as it would be to any reasonable consumer when determining to purchase
16 a membership.

17
18 25. As a result of GNC's unilateral discontinuance of the Program,
19 Plaintiffs suffered actual damages and loss, at a minimum, for the *pro rata* portion
20 of their memberships that they were unable to use.

21 CLASS ACTION ALLEGATIONS

22 26. Plaintiffs bring this action on behalf of themselves and all other
23 persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil
24 Procedure, on behalf of the following classes (collectively, the "Class"):

25 Nationwide Class:

26 All persons who purchased a GNC Program membership in the United States
27 after December 1, 2015.
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3 **California Class:**

4 All persons who purchased a GNC Program membership in California after
5 December 1, 2015.

6 27. Specifically excluded from the Class are: (a) Defendant, its officers,
7 directors, agents, trustees, corporations, trusts, representatives, employees,
8 principals, partners, joint ventures, or entities controlled by Defendant; (b) any
9 person who has suffered personal injury or is alleged to have suffered personal
10 injury as a result of the purchase of a Program membership; (c) Plaintiffs' counsel;
11 and (d) the Judge to whom this case is assigned.

12 28. **Numerosity/Impracticability of Joinder.** The members of the Class
13 are so numerous that joinder of all members is impracticable. The proposed Class
14 includes millions of members. The precise number of Class members can be
15 ascertained by reviewing documents in Defendant's possession, custody, and
16 control, or otherwise obtained through reasonable means.

17 29. **Typicality.** The representative Plaintiffs' claims are typical of the
18 claims of the members of the Class they seek to represent. Plaintiffs and all
19 members of the Class purchased Program memberships and did not receive the
20 benefit of the one-year membership they were promised. Plaintiffs and all members
21 of the Class, thus, have sustained damages arising out of the same wrongful course
22 of conduct. Plaintiffs' claims arise from the same practices and course of conduct
23 that give rise to the claims of the Class members and are based on the same legal
24 theories.
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1 30. **Commonality and Predominance.** Common questions of law and
2 fact exist as to all members of the Class and predominate over any questions solely
3 affecting individual Class members. These common legal and factual questions
4 include, but are not limited to, the following:
5

- 6 a. Whether GNC represented that the Program membership would
7 be for a period of one year;
8 b. Whether GNC, as to Plaintiffs and the Class, discontinued the
9 Program prior to the expiration of a one-year period.
10 c. Whether GNC breached its contracts with Plaintiffs and the
11 Class;
12 d. Whether GNC engaged in a pattern of fraudulent, deceptive, and
13 misleading conduct targeting the public through the marketing,
14 advertising and sale of memberships to the Program;
15 e. Whether Defendant made material misrepresentations of fact or
16 omitted to state material facts to Plaintiffs and the Class regarding the
17 marketing, advertising and sale of memberships to the Program;
18 f. Whether GNC's false and misleading statements of fact and
19 concealment of material facts regarding membership to the Program
20 were intended to deceive the public;
21 g. Whether Plaintiffs and the members of the Class have sustained
22 loss and incurred damages as a result of Defendant's acts and
23 omissions, and the proper measure thereof; and
24 h. Whether such conduct violates statutory and common law
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1 prohibitions against such conduct, as detailed more fully below.

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3 31. **Adequacy.** Plaintiffs will fairly and adequately represent and protect
4 the interests of the members of the Class. Plaintiffs have retained counsel highly
5 experienced in complex consumer class action litigation and intends to prosecute
6 this action vigorously. Plaintiffs are members of the Class and do not have interests
7 antagonistic to, or in conflict with, the other members of the Class.

8
9 32. **Superiority.** A class action is superior to all other available methods
10 for the fair and efficient adjudication of this controversy since, among other things,
11 individual litigation and/or joinder of all members of the Class is economically
12 unfeasible and procedurally impracticable. While the aggregate damages sustained
13 by the Class are likely in the millions of dollars, the individual damages incurred by
14 individual Class members as a result of Defendant's wrongful conduct alleged
15 herein are too small to warrant the expense of individual litigation. The likelihood
16 of individual Class members prosecuting their own separate claims is remote and,
17 even if every Class member could afford individual litigation, the court system
18 would be unduly burdened by individual litigation of such cases. Individual
19 members of the Class do not have a significant interest in individually controlling
20 the prosecution of separate actions and individualized litigation would present the
21 potential for varying, inconsistent, or contradictory judgments and would magnify
22 the delay and expense to all of the parties and to the court system because of
23 multiple trials of the same factual and legal issues. Plaintiffs do not foresee any
24 difficulty in the management of this litigation that would preclude its maintenance
25 as a class action. In addition, Defendant has acted or refused to act on grounds
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1 generally applicable to the Class and, as such, final injunctive relief or
2 corresponding declaratory relief with regard to the members of the Class as a whole
3 is appropriate.
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5 33. Adequate notice can be given to Class members by directly using
6 information maintained in Defendant's records, or through notice by publication.

7 **COUNT I**

8 **Asserted on Behalf of the Nationwide Class and, Alternatively,**
9 **the California Class**
10 **(Breach of Contract)**

11 34. Plaintiffs repeat and reallege the allegations above as if fully set forth
12 herein.

13 35. GNC entered into a contract with Plaintiffs and the members of the
14 Class when it sold Gold Cards to enrollees of the Program.

15 36. Plaintiffs and the members of the Class complied with all of their
16 obligations under the terms of the contract.

17 37. A material term of that contract was that the Program membership
18 would be valid for a one-year period.

19 38. GNC breached its contract with Plaintiffs and the members of the
20 Class when it discontinued the Program prior to the expiration of the one-year
21 membership period.

22 39. As a result of GNC's breach, Plaintiffs and the members of the Class
23 have been damaged.
24

25 **COUNT II**

26 **Violation of the California Unfair Competition Law,**
27 **Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL")**
28 **(On Behalf of the California Class)**

1 40. Plaintiffs repeat and reallege the allegations above as if fully set forth
2 herein.

3
4 41. Plaintiffs bring this claim on behalf of themselves and the California
5 Class.

6 42. The UCL proscribes acts of unfair competition, including “any
7 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
8 or misleading advertising.”

9
10 43. Defendant’s conduct, as described herein, was and is in violation of the
11 UCL. Defendant’s conduct violates the UCL in at least the following way, by
12 representing that the Program membership term was valid for a one-year period.

13 44. Defendant’s misrepresentations and omissions alleged herein caused
14 Plaintiffs and the California Class to make their purchases of Defendant’s Program.
15 Absent those misrepresentations and omissions, Plaintiffs and the California Class
16 would not have purchased Defendant’s Program.

17
18 45. Defendant has deceived Plaintiffs and the California Class.

19 46. Plaintiffs and the California Class have suffered injury in fact
20 including lost money or property as a result of Defendant’s misrepresentations and
21 omissions.

22 47. By engaging in the above described acts and practices, Defendant has
23 committed one or more acts of unfair competition within the meaning of the UCL.
24 Specifically, by failing to disclose and concealing that the Program term was to be
25 unilaterally cancelled before the completion of the one-year period, Defendant has
26 engaged in unfair conduct within the meaning of the UCL. Moreover, the nature of
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1 Defendant's misconduct has been consistently recognized as unfair conduct within
2 the meaning of the UCL as it offends established public policy and/or is immoral,
3 unethical, oppressive, unscrupulous and injurious to consumers.
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5 48. Defendant's business acts and practices are fraudulent within the
6 meaning of the UCL. Specifically, as an entity with exclusive knowledge regarding
7 the Program terms, Defendant had a duty to disclose material facts regarding the
8 Program memberships; namely, that they would not be valid for a one-year period.
9 Plaintiff and the California Class reasonably expected that Defendant would
10 disclose any material facts that a reasonable consumer would consider important in
11 deciding whether to purchase the Program membership. Plaintiffs and the
12 California Class also reasonably expected that Defendant would not sell a Program
13 with a one-year membership terms that was, in fact, less than one year in length.
14 By failing and refusing to disclose this material information regarding the Program
15 membership term, Defendant has engaged in actionable, fraudulent conduct within
16 the meaning of the UCL.
17

18 49. Plaintiffs request that this Court enter such orders or judgments as may
19 be necessary to restore to Plaintiffs and the California Class any money GNC
20 acquired by unfair competition, including restitution and/or restitutionary
21 disgorgement, as provided in Cal. Bus. & Prof. Code § 17203.
22

23 **COUNT III**

24 **Violation of California Consumers Legal Remedies Act ("CLRA"),** 25 **Cal. Civ. Code §§ 1750, *et seq.*** 26 **(On behalf of the California Class)**

27 50. Plaintiffs repeat and reallege the allegations above as if fully set forth
28 herein.

1 51. Plaintiffs bring their claims on behalf of themselves and the members
2 of the California Class who are “consumers” as defined in the CLRA.

3
4 52. The CLRA proscribes “unfair methods of competition and unfair or
5 deceptive acts or practices undertaken by any person in a transaction intended to
6 result or which results in the sale or lease of goods or services to any consumer.”

7 53. Defendant’s Program is a “good” as defined in Cal. Civ. Code §
8 1761(a).

9
10 54. As alleged herein, Defendant made numerous representations and
11 omissions concerning the Program.

12 55. In purchasing the Program, Plaintiffs and the California Class were
13 deceived by Defendant’s failure to disclose that the membership term would not be
14 valid for the one-year period.

15 56. Defendant’s conduct, as described herein, was and is in violation of the
16 CLRA. Defendant’s conduct violates at least the following enumerated CLRA
17 provisions:
18

19 (a) California Civil Code Section 1770(a)(5), in that Defendant
20 represented that its Program had characteristics, uses, or benefits which
21 it does not have; and

22 (b) California Civil Code Section 1770(a)(9), in that Defendant
23 advertised its Program with the intent not to sell them as advertised.
24

25 57. Plaintiffs and the California Class have suffered injury in fact and
26 actual damages resulting from Defendant’s material omissions and
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1 misrepresentations, including paying for a one-year membership that was not valid
2 for a one-year period.

3
4 58. The facts concealed and omitted by Defendant are material in that a
5 reasonable consumer, like Plaintiffs and the members of the California Class,
6 would have considered the facts regarding the Program membership; namely, that
7 they would not be valid for the one-year period.

8
9 59. In accordance with Cal. Civ. Code § 1780(a), Plaintiffs and the
10 California Class seek injunctive relief for Defendant's violations of the CLRA.

11 60. In accordance with Cal. Civ. Code § 1782(a) & (d), Plaintiffs are
12 serving Defendant with a notice and demand contemporaneous with the filing of
13 this Complaint. Plaintiffs reserve the right to amend and seek damages under the
14 CLRA in the future. Attached as Exhibit A is Plaintiffs' CLRA notice letter.

15
16 **COUNT IV**

17 **False and Misleading Advertising,**
18 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
19 **(On behalf of the California Class)**

20 61. Plaintiffs repeat and reallege the allegations above as if fully set forth
21 herein.

22 62. Plaintiffs bring this claim on behalf of themselves and the California
23 Class for violations of the California Business & Professions Code § 17500, which
24 states in relevant part:

25 It is unlawful for any . . . corporation . . . with intent directly
26 or indirectly to dispose of real or personal property . . . to
27 induce the public to enter into any obligation relating
28

1 thereto, to make or disseminate or cause to be made or
2 disseminated before the public in this state, or to make or
3 disseminate or cause to be made or disseminated from this
4 state before the public in any state, in any newspaper or
5 other publication, or any advertising device, or . . . any
6 other manner or means whatever, including over the
7 Internet, any statement . . . which is untrue or misleading,
8 and which is known, or which by the exercise of reasonable
9 care should be known, to be untrue or misleading, . . . or .
10 . . . not to sell that personal property . . . as so advertised.

11 Cal. Bus. & Prof. Code § 17500.

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14
15 63. Defendant has engaged in the advertising and marketing alleged herein
16 with an intent to directly or indirectly induce consumers' to purchase Gold Cards.

17 64. Defendant's representations regarding the characteristics, uses and
18 benefits of the Program were false, misleading and deceptive.

19 65. The false and misleading representations were intended to, and did,
20 deceive reasonable consumers, including Plaintiffs and the California Class.

21 66. The false and misleading misrepresentations and omissions were
22 material to Plaintiffs and the California Class in connection with their respective
23 decisions to purchase Gold Cards.

24
25 67. Plaintiffs and the California Class relied on the false and misleading
26 representations and omissions, which played a substantial part in influencing their
27 decision to purchase Gold Cards.
28

1 68. At the time it made and disseminated the representations alleged
2 herein, Defendant knew, or should have known, that the statements were untrue or
3 misleading, and acted in violation of California Business and Professions Code §§
4 17500, *et seq.*

5
6 69. Plaintiffs, on behalf of themselves and the California Class, seek
7 restitution, disgorgement, injunctive relief, and all other relieved provided under §§
8 17500, *et seq.*

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the
12 members of the Class, pray for judgment and relief as follows for the above causes
13 of action:

- 14 A. An Order certifying this case as a class action and appointing Plaintiffs
15 and their counsel to represent the Class;
16 B. All recoverable compensatory and other damages sustained by
17 Plaintiffs and the Class;
18 C. Actual and/or statutory damages for injuries suffered by Plaintiffs and
19 the Class and in the maximum amount permitted by applicable law;
20 D. Statutory pre-judgment and post-judgment interest on any amounts;
21 E. Payment of reasonable attorneys' fees and costs; and
22 F. Such other and further relief as the Court may deem necessary or
23 appropriate.
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26 **JURY DEMAND**

27 Plaintiffs hereby demand a trial by jury.
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4 Dated: March 17, 2017

Respectfully submitted,

5 By: /s/ Chiharu Sekino

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