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6 Attorneys for Defendants  
 7 General Nutrition Centers, Inc.  
 8 and General Nutrition Corporation

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

GRADY JACKSON and KELLEY  
 ALEXANDER, in their representative capacity  
 pursuant to Cal. Bus. & Prof. Code §§ 17203,  
 17535 and Cal. Code Civ. Proc. §§ 382, 1021.5,  
 Plaintiffs,  
 v.  
 BALANCED HEALTH PRODUCTS, INC., a  
 Delaware Corporation, NIKKI HASKELL, an  
 individual, GENERAL NUTRITION  
 CORPORATION, a Pennsylvania Corporation,  
 and VITAMIN SHOPPE INDUSTRIES, INC.,  
 a New York Corporation, inclusive,  
 Defendants.

CASE NO. C 08-05584-CW

**JOINT STIPULATION FOR DISMISSAL;  
~~PROPOSED~~ ORDER**

1 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs Grady Jackson and  
2 Kelley Alexander in their individual capacities and as putative class representatives (collectively  
3 “Plaintiffs”), and Defendants, Nikki Haskell (“Haskell”), Balanced Health Products, Inc. (“BHP”),  
4 General Nutrition Corporation and General Nutrition Centers Inc. (“GNC”), and Vitamin Shoppe  
5 Industries, Inc. (“VS”) (collectively “Defendants”) hereby stipulate as follows:

6 WHEREAS, Plaintiffs brought this action against Defendants in the Superior Court of  
7 State of California, County of Alameda, and Defendants removed the action to the United States  
8 District Court for the Northern District of California (the “Action”);

9 WHEREAS, the Action involved individual and class allegations related to the purchase  
10 and sale of Starcaps, (the “Product”);

11 WHEREAS, the Parties engaged in an exchange of information regarding the distribution  
12 and sale of the Product;

13 WHEREAS, Defendants filed a Rule 12(b) motion to dismiss which was denied in part and  
14 granted in part by the Court;

15 WHEREAS, a class certification motion has not been filed;

16 WHEREAS, the Parties disagree as to whether a class can be certified in this Action;

17 WHEREAS, the Parties also disagree on whether liability can be established against each  
18 of the Defendants;

19 WHEREAS, the Parties also disagree on the injury, if any, suffered by anyone who  
20 purchased or used the Product;

21 WHEREAS, the Parties also disagree on the entitlement of any claimant to any remedies in  
22 the Action;

23 WHEREAS, the Parties have engaged in multiple settlement discussions by telephone, e-  
24 mail, and in person in which the facts and issues were explored and discussed;

25 WHEREAS, Defendants have engaged in direct settlement discussions under the mediated  
26 guidance of Magistrate Judge Joseph C. Spero on April 1-2, 2009 and August 26, 2009;

27 WHEREAS, the principle terms of settlement were agreed upon on August 26, 2009 before  
28 and with the assistance of Magistrate Judge Joseph C. Spero;

WHEREAS, the Parties have memorialized the terms of the settlement achieved before

1 Magistrate Judge Joseph C. Spero and entered into a settlement agreement (the “Settlement  
2 Agreement”);

3 NOW, THEREFORE the Parties stipulate and agree as follows:

4 1. The parties, by their respective counsel, hereby stipulate to the dismissal, with  
5 prejudice, of all claims asserted by Plaintiff Kelley Alexander in her individual capacity and as a  
6 putative class representative, against Defendants.

7 2. The parties, by their respective counsel, hereby stipulate to the dismissal, without  
8 prejudice, of all claims asserted by Plaintiff Grady Jackson in his individual capacity and as a  
9 putative class representative, against Defendants.

10 3. GNC and VS agree to issue twenty-five dollar (\$25.00) discount coupons (the  
11 “Discount Coupons”) which may be used in conjunction with a purchase of one hundred dollar  
12 (\$100.00) or more from the issuing company’s store or internet site.

13 a. The Discount Coupons will be issued to Affinity Cardholders of GNC and  
14 VS who purchased the Product during the period from December 1, 2007 and November  
15 30, 2008 (“Covered Purchase Period”) and to direct internet customers of BHP who  
16 purchased the Product during the Covered Purchase Period. “Affinity Cardholders” shall  
17 mean members of the loyalty program of the particular company. The individuals to  
18 whom Discount Coupons are issued are referred to herein as “Discount Coupon Holders.”

19 b. Only those GNC and VS Affinity Cardholders who have valid current U.S.  
20 mail or e-mail addresses (registered with their affinity card company) and who purchased  
21 the Product during the Covered Purchase Period will receive a Discount Coupon.

22 c. Only BHP customers who purchased through BHP’s direct internet sites  
23 and have a valid U.S. mail or e-mail address (registered with BHP) and who purchased the  
24 Product during the Covered Purchase Period (according to BHP’s records) will receive a  
25 Discount Coupon.

26 d. GNC and VS may restrict the use of the Discount Coupons so that they may  
27 not be used in conjunction with any other coupon, promotion, sale, or discount.

28 e. The Discount Coupons shall be valid only for 90 days from the date of their  
issue to each Discount Coupon Holder.

1           4.       GNC will issue one (1) Discount Coupon to GNC Affinity Cardholders for every  
2 bottle of Product purchased by the GNC Affinity Cardholder (according to the records of GNC)  
3 during the Covered Purchase Period, up to a maximum of four (4) coupons per Affinity  
4 Cardholder.

5           5.       VS will issue one (1) Discount Coupon to VS Affinity Cardholders for every bottle  
6 of Product purchased by the VS Affinity Cardholder (according to the records of VS) during the  
7 Covered Purchase Period, up to a maximum of four (4) coupons per Affinity Cardholder.

8           6.       Persons who purchased directly from BHP's internet sites and who have valid  
9 current U.S. mail or e-mail addresses registered with BHP will receive one Discount Coupon  
10 (issued by either GNC or VS) for every bottle of Product purchased in an internet sale directly  
11 from the BHP website during the Covered Purchase Period up to a maximum of four (4) coupons  
12 per purchaser.

13           a.       GNC and VS will each issue one half (50%) of the total number of Discount  
14 Coupons to be issued to BHP Product purchasers.

15           b.       Each direct internet BHP Product purchaser will receive Discount Coupons  
16 from either GNC or VS, but not from both.

17           c.       GNC and VS will work with BHP to divide BHP's direct internet Product  
18 purchaser list in a way that effectively causes GNC and VS to each issue 50% of the total  
19 Discount Coupons issued to BHP's direct internet Product purchasers.

20           7.       A notice sent with the Discount Coupon will expressly provide that the use of any  
21 Discount Coupon will release all of the Defendants from any and all liability to the person to  
22 whom the Discount Coupon was issued, arising out of the facts and circumstances described in the  
23 Action.

24           8.       Individual Incentive Award. Plaintiff Kelley Alexander will receive \$2,500 as an  
25 individual incentive award for her services as a putative class representative.

26           9.       Charitable Contribution. GNC and VS will each make a charitable contribution of  
27 \$5,000 to the University of California at Los Angeles Center for Human Nutrition.  
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1           10. Attorneys Fees/Costs – GNC and VS. Defendants GNC and VS will each pay  
2 sixty-two thousand five hundred (\$62,500) to Plaintiffs’ counsel for attorneys fees and costs in the  
3 following manner:

- 4           a. Upon dismissal of this Action, VS will pay \$62,500 to Plaintiffs’ counsel.
- 5           b. Upon dismissal of this Action, GNC will pay \$62,500 to Plaintiffs’ counsel.

6           11. Attorneys Fees/Costs – Haskell and BHP. Defendants Haskell and BHP will pay  
7 Plaintiffs’ counsel for attorneys fees and costs in the following manner:

8           a. Upon execution of this Agreement, Haskell and BHP will pay \$25,000 to  
9 Plaintiffs attorneys to be held in their attorney client trust account. If and when Judge  
10 Wilken approves and enters the dismissal such funds may be distributed to Plaintiffs  
11 Attorneys. If Judge Wilken denies the dismissal, Plaintiffs attorneys shall return the  
12 moneys held in the trust account within five business days.

13           b. On or before December 1, 2009, Haskell and BHP will pay an additional  
14 \$25,000 directly to Plaintiffs’ counsel if this Action has been dismissed or into the same  
15 escrow account at the direction of Plaintiffs’ counsel which shall be distributed to  
16 Plaintiffs’ counsel upon the dismissal of this Action.

17           c. Defendants Haskell and BHP each individually and jointly agree to secure  
18 their payment of attorneys’ fees by a stipulated judgment in favor of Plaintiffs’ attorneys.

19           12. Release – Named Putative Class Representative Plaintiffs. Except for the rights  
20 and obligations contained in or arising out of the Settlement Agreement entered into between the  
21 parties, the named putative class representative Plaintiff Kelley Alexander releases Defendants and  
22 their respective attorneys, insurers, parent companies, affiliates, subsidiaries, related companies,  
23 directors, officers, shareholders, owners, employees, agents, representatives, successors and  
24 assigns, from any and all claims, whether known or unknown, suspected or not, arising out of the  
25 facts described in the Action.

26           13. Release – Discount Coupon Holders. Except for the rights and obligations  
27 contained in or arising out of the Settlement Agreement entered into between the parties, Discount  
28 Coupon Holders who use or allow another to use the Discount Coupons will, by such use of the  
Discount Coupons, release Defendants, their respective attorneys, insurers, parent companies,

1 affiliates, subsidiaries, related companies, directors, officers, shareholders, owners, employees,  
2 agents, representatives, successors and assigns, from any and all claims, whether known or  
3 unknown, suspected or not, arising out of the facts described in the Action.

4 14. This stipulation is electronically signed on behalf of all parties who have appeared  
5 in this action. Except as provided in the Settlement Agreement and this Joint Stipulation for  
6 Dismissal, each party shall bear its own costs, attorney's fees and expenses.

7 **SO STIPULATED:**

8 PINNACLE LAW GROUP, LLP

FARBER & COMPANY ATTORNEYS

9 By: /s/ Andrew A. August  
10 Andrew A. August  
11 Attorneys for Plaintiffs  
12 GRADY JACKSON and KELLY  
ALEXANDER

By: /s/ Eric J. Farber  
Eric J. Farber  
Attorneys for Plaintiffs  
GRADY JACKSON and KELLY  
ALEXANDER

13 LAW OFFICES OF DAVID GERNSBACHER

MCGUIRE WOODS LLP

14 By: /s/ David Gernsbacher  
15 David Gernsbacher  
16 Attorney for Defendants  
17 BALANCED HEALTH PRODUCTS,  
INC. and NIKKI HASKELL

By: /s/ Sidney K. Kanazawa  
Sidney K. Kanazawa  
Attorneys for Defendants  
GENERAL NUTRITION  
CORPORATION and GENERAL  
NUTRITION CENTERS, INC.

18 HOLME, ROBERTS & OWEN LLP

19 By: /s/ Roger R. Myers  
20 Roger R. Myers  
21 Adam Brezine  
22 Attorneys for Defendant  
23 VITAMIN SHOPPE INDUSTRIES INC.

24 **IT IS SO ORDERED.**

25 DATED: 10/27/09



26  
27 Hon. Claudia Wilken  
UNITED STATES DISTRICT JUDGE

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**ATTESTATION OF CONCURRENCE IN FILING**

Pursuant to N.D. Cal. General Order 45 section 45X(B), Sidney K. Kanazawa hereby attests that concurrence in the filing of this stipulation and proposed order has been obtained from counsel for the non-filing parties.

/S/ Sidney K. Kanazawa  
Sidney K. Kanazawa  
Attorneys for Defendants General Nutrition  
Centers and General Nutrition Corporation

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**CERTIFICATE OF SERVICE**

I, Sidney K. Kanazawa, certify that on October 23, 2009, the foregoing **JOINT STIUPLATION FOR DISMISSAL; [PROPOSED] ORDER** was filed electronically in the Court's ECF; thereby upon completion the ECF system automatically generated a "Notice of Electronic Filing" ("NEF") as service through CM/ECF to registered e-mail addresses of parties of record in the case, in particular on the following:

Andrew A. August aaugust@pinnaclelawgroup.com	Attorneys for Plaintiffs Grady Jackson and Kelly Alexander
Eric J. Farber Eric.Farber@farberandco.com	Attorneys for Plaintiffs Grady Jackson and Kelly Alexander
David L. Gernsbacher dgernsbacher@dlglaw.com	Attorneys for Defendants Balanced Health Products, Inc. and Nikki Haskell
Roger R. Myers Roger.Myers@hro.com	Attorneys for Defendant Vitamin Shoppe Industries, Inc.

/s/ Sidney K. Kanazawa  
Sidney K. Kanazawa