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GENERAL NUTRITION CORPORATION

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 NORMA ROTHMAN, individually, and  
15 on behalf of all others similarly situated,  
Plaintiff,

16 v.

17  
18 GENERAL NUTRITION  
19 CORPORATION a Pennsylvania  
20 corporation, and DOES 1-500,  
Defendants.

Case No.: 2:11-CV-03617-SJO-RZ

**DEFENDANT GENERAL  
NUTRITION CORPORATION'S  
BRIEF IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
CLASS CERTIFICATION**

Hearing Date: November 14, 2011

Time: 10:00 a.m.

Courtroom: 1

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1 **I. INTRODUCTION**

2 Plaintiff's Motion for Class Certification ("Motion") recites the requirements  
3 of Rule 23, but fails to provide the requisite evidence in support of the Motion, and  
4 simply disregards the substantial burden she bears.

5 Several problems plague Plaintiff's attempt to obtain certification. The  
6 putative class is overbroad and not ascertainable. No common questions of law or  
7 fact exist and class certification will not produce any common answer. The claims  
8 are not typical because they are subject to individual, rather than common, proof.  
9 Individual issues predominate because each putative class member's claim would  
10 rest on the facts surrounding the consumer's purchase, including the purchaser's  
11 state of mind, which will vary with each transaction and treating this case as a class  
12 action would effectively deprive GNC of its right to raise those individual defenses.  
13 Furthermore, the class action is not superior to individual adjudication. Finally, the  
14 Plaintiff has not made any attempt to demonstrate that she would be an adequate  
15 representative, and in fact the evidence is to the contrary, demonstrating that  
16 Plaintiff is nothing more than a shill for the law firm that initiated this action. For  
17 each of the foregoing reasons, addressed in detail below, the Motion should be  
18 denied.

19 **II. FACTS RELATED TO THIS ACTION**

20 **A. Plaintiff's Experience at a GNC Franchise Store in May 2010**

21 Plaintiff alleges that on May 17, 2010 she purchased items from GNC with  
22 her credit card. During the transaction, a sales clerk allegedly requested<sup>1</sup> that  
23 \_\_\_\_\_

24 <sup>1</sup> In her Second Amended Complaint, Rothman alleges that GNC "requested and/or  
25 required" her to provide her ZIP code. (Second Amended Complaint, Dkt. 13-1, ¶  
26 22). In the Motion, counsel contends that Plaintiff was required to provide her ZIP  
27 code and other personal identification information. (Motion, Dkt. 25 at 4:16-17).  
28 However, Ms. Rothman testified that the (zip code) information was requested and  
she believed it was required. (Declaration of Norma Rothman, Dkt. 25-5, ¶ 2).

1 Plaintiff provide her five digit ZIP code.<sup>2</sup> Based on this transaction, Plaintiff asserts  
2 that GNC violated the Song-Beverly Act reflected in California *Civil Code* §  
3 1747.08 (the “Act”) and that she can seek class-wide relief.

4 **B. The Law Related to the Song-Beverly Act**

5 The California legislature enacted the relevant portions of the Act in 1990 to  
6 protect consumer privacy and prevent fraud or identity theft. Specifically, it is  
7 improper for a party who accepts credit cards from doing the following: “Request,  
8 or require as a condition to accepting the credit card as payment in full or in part for  
9 goods or services, the cardholder to provide personal identification information,  
10 which the person, firm, partnership, association, or corporation accepting the credit  
11 card writes, causes to be written, or otherwise records upon the credit card  
12 transaction form or otherwise.” *See* Cal. Civ. Code § 1747.08(a)(2). Under the Act,  
13 “personal identification information” includes the cardholder’s address or telephone  
14 number. Significantly, a request for personal identification information constitutes a  
15 violation only where a consumer would perceive the request as being a condition to  
16 processing the transaction. Cal. Civ. Code § 1747.08(a)(2); *Florez v. Linens 'N*  
17 *Things, Inc.*, 108 Cal. App. 4th 447, 451 (2003). In addition, the Act provides  
18 several exceptions, allowing businesses to request personal identification  
19 information in certain circumstances. Specifically, the prohibition on requesting  
20 information does not apply where the card is being used as a deposit to secure

21 \_\_\_\_\_  
22 <sup>2</sup> Plaintiff seeks to represent a class of “California credit card holders from  
23 whom, within one year of the filing date of this action to the present, Defendant  
24 requested and recorded personal identification information in the course of a credit  
25 card transaction.” (Motion, Dkt. 25, 2). As an initial matter, while Plaintiff  
26 specifically alleges that her ZIP code was requested, she seeks to represent a broader  
27 class encompassing any personal identification information. However, Plaintiff  
28 must present evidence that GNC has requested personal identification information  
(other than ZIP code information). She does not do this. Thus, assuming there is a  
claim, it must be limited to requests for ZIP code information.

1 payment, during a cash advance transaction, where contractual obligations requires  
2 that the credit card holder provide personal identification information, or where the  
3 information is required for a special purpose incidental to the transaction (i.e. for  
4 shipping or warranty). Cal. Civ. Code § 1747.08(c).

5 In *Party City Corp. v. Superior Court*, 169 Cal. App. 4th, 519-20 (2008), the  
6 court held that ZIP codes did not constitute personal identification information as  
7 defined under the Act. However, recently the California Supreme Court reversed  
8 course and held that ZIP codes fall within the definition of personal identification  
9 information. See *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524, 532  
10 (2011). As a result of the decision in *Pineda*, well over 150 lawsuits have been filed  
11 against California retailers. See *Developments In ZIP Code Litigation Against*  
12 *Retailers*, Law360, [http://www.law360.com/articles/270854/developments-in-zip-](http://www.law360.com/articles/270854/developments-in-zip-code-litigation-against-retailers)  
13 [code-litigation-against-retailers](http://www.law360.com/articles/270854/developments-in-zip-code-litigation-against-retailers).

14 **C. GNC's Actual Processes Related to the Collection of Zip Codes**

15 In her Motion, Plaintiff mischaracterizes GNC's position in this matter. In  
16 that regard, Plaintiff claims that "GNC does not dispute that it collected and stored  
17 ZIP codes in connection with the approximately 798,000 credit card transactions"  
18 citing the Declaration of Philip W. Engel (filed in support of GNC's Notice of  
19 Removal). (Motion, Dkt. 25, 4:16-19). However, nothing in Mr. Engel's  
20 declaration stated that GNC collected and stored ZIP codes in connection with *any*  
21 credit card transactions, let alone every credit card transaction in California. The  
22 declaration merely states that approximately 798,000 credit card transactions  
23 *occurred* in California during the one year period. GNC had (and still has) no way  
24 of determining whether a ZIP code was requested and provided (and such  
25 information was certainly not required) with each of these transactions – let alone  
26 whether any of these transactions are actionable under the Act. See Declaration of  
27 Mark Sigmund ("Sigmund Decl."), ¶¶ 4-6. Plaintiff also ignores the fact that many  
28 of those credit card transactions, approximately 40%, include transactions by

1 customers who have previously (and voluntarily) provided their personal  
2 identification information, including ZIP codes, to GNC as part of their Gold Card  
3 Membership. Declaration of Paul Katz (“Katz Decl.”), ¶ 3-5.

4       Rather, since at least January of 2009, more than a year before the period  
5 referenced by Ms. Rothman, GNC has not enforced a policy at the corporate store  
6 level of requesting customer ZIP code information in connection with a sales  
7 transaction. In fact, the Retail Operations Division of GNC does not track whether  
8 sales associates (at GNC owned stores) request customer ZIP code information in  
9 connection with a sales transaction as one of the metrics upon which performance is  
10 judged. Katz Decl., ¶ 8. In that regard, in approximately 9 out of 10 transactions  
11 (which could be a cash or a credit card transaction) sales associates would not  
12 request a ZIP code from the customer. Instead, if the employee is prompted to enter  
13 a ZIP code by the POS system, the employee typically bypasses the ZIP code  
14 prompt by either pressing the ESCAPE button or entering some generic numbers  
15 such as “99999” or the store’s ZIP code. Katz Decl., ¶¶ 9,10.

16       The store where Ms. Rothman made her purchase in 2010 was not a corporate  
17 owned store, but rather is one of the 126 franchise stores located in California. Each  
18 of the franchise stores are independently owned and operated. While franchise  
19 locations in theory operate in the same manner as GNC corporate owned stores, the  
20 only way to determine what each franchisee was doing as it relates to the collection  
21 of zip codes in 2010 would be to inquire on a store-by-store basis. Katz Decl., ¶ 11.

22       As explained below, and for multiple reasons, Plaintiff has failed to meet her  
23 burden of demonstrating that class certification is proper.

### 24 **III. LEGAL ARGUMENT**

25       A class action is “an exception to the usual rule that litigation is conducted by  
26 and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v.*  
27 *Dukes*, 131 S. Ct. 2541, 2551-2552 (2011) (quoting *Califano v. Yamasaki*, 442 U.S.  
28 682, 700-701 (1979)). To certify a class action, plaintiff must first establish that *all*

1 of the requirements of Rule 23(a) have been met: (1) numerosity, (2) commonality,  
2 (3) typicality, and (4) adequacy of representation. Fed. R. Civ. P. 23(a)(1)-(4);  
3 *Dukes*, 131 S. Ct. at 2548; *Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 161 (1982);  
4 *Valentino v. Carter-Wallace Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Once each of  
5 these requirements has been met, plaintiff must further establish that (1) the  
6 questions of law or fact common to the class members predominates over questions  
7 affecting only individual members, and (2) that a class action is the superior method  
8 of adjudication. Fed. R. Civ. P. 23(b)(3).

9       These requirements are not easily satisfied. The Court must apply a strict  
10 burden of proof and conduct a “rigorous analysis” to conserve judicial resources,  
11 protect defendants, and safeguard the interests of absent class members whose  
12 claims the named plaintiffs seek to litigate. *Falcon*, 457 U.S. at 157 n.13. Failure to  
13 prove any one of Rule 23(a)’s requirements bars class certification. *Falcon*, 457  
14 U.S. at 160 (“actual, not presumed, conformance with Rule 23(a) remains ...  
15 indispensable.”) Mere allegations that plaintiffs have satisfied Rule 23(a) are  
16 insufficient. *Id.* at 156-59. Rather, Rule 23 requires the party seeking class  
17 certification to “affirmatively demonstrate...compliance with the rule – that is, he  
18 must be prepared to prove that there are *in fact* sufficiently numerous parties,  
19 common questions of law or fact, etc.” *Dukes*, 131 S. Ct. at 2551.

20       The burden rests with the plaintiff to provide sufficient facts to satisfy these  
21 requirement; “simply repeating the language of the rules in its moving papers is  
22 insufficient.” *Spikings v. Cost Plus, Inc.*, No. CV 06-8125-JFW, 2007 U.S. Dist.  
23 LEXIS 44214, at \*6-7 (C.D. Cal. May 25, 2007) (citing *Doninger v. Pacific*  
24 *Northwest Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977)). In the cursory  
25 conclusions advanced in the Motion, which is absolutely devoid of evidence,  
26 Plaintiff has failed to carry the burden of demonstrating that class treatment is  
27 appropriate. As such, Plaintiff’s Motion must be denied.

28

1           **A. The Proposed Class Definition Is Overbroad and Not**  
 2           **Ascertainable.**

3           As an initial matter, Plaintiff’s class definition is overbroad because it would  
 4 include consumers who have not suffered a violation of the Act. Specifically, the  
 5 proposed class would include all California credit card holders from whom GNC has  
 6 requested and recorded personal identification information. However, the Act  
 7 expressly excludes requests made under certain circumstances. *See* Cal. Civ. Code  
 8 § 1747.08(c)-(d). In addition, the class would include persons who have waived  
 9 privacy rights under the Act by expressly providing GNC with their personal  
 10 identification information in connection with a GNC loyalty program membership  
 11 card. Katz Decl., ¶ 3. It is fundamental that the proposed class members must  
 12 “have all suffered a...statutory violation warranting some relief.” *Adashunas v.*  
 13 *Negley*, 626 F.2d 600, 604 (7th Cir. 1980) (denying class certification where it was  
 14 not clear that all proposed class members had suffered a violation).

15           In addition, Plaintiff bears the burden of establishing the existence of an  
 16 “ascertainable” class. *See, e.g., East Texas Motor Freight Sys., Inc. v. Rodriguez*,  
 17 431 U.S. 395, 403 (1977); *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507,  
 18 512 (9th Cir. 1978); *Colapinto v. Esquire Deposition Servs., LLC*, No. CV 09-07584  
 19 SJO, 2011 U.S. Dist. LEXIS 30814, at \*11-12 (C.D. Cal. Mar. 8, 2011) (“the  
 20 proponent must establish that a class does in fact exist”). “A class definition should  
 21 be precise, objective, and *presently* ascertainable.” *Colapinto*, No. CV 09-07584  
 22 SJO, 2011 U.S. Dist. LEXIS 30814, at \*11-12 (quoting *O’Connor v. Boeing N. Am.,*  
 23 *Inc.*, 180 F.R.D. 359, 367 (C.D. Cal. 1997)) (emphasis added). Where individual  
 24 inquiries are necessary to determine whether a person is qualified for membership in  
 25 the class, class certification is improper. *See, e.g., Perez v. Metabolife Int’l, Inc.*,  
 26 218 F.R.D. 262, 269 (S.D. Fla. 2003) (“the only evidence likely to be offered in  
 27 many instances will be the putative class members’ uncorroborated  
 28 claim....Therefore, individualized mini-trials would be required even on the limited

1 issue of class membership.”).

2 Here, Plaintiff has failed to demonstrate, or even address, how the proposed  
3 class is ascertainable. In fact, individual inquiries would be necessary to determine  
4 whether an individual consumer was even requested to provide a zip code during a  
5 credit card transaction, as well as the circumstances surrounding each request.  
6 Specifically, as noted above, a claim under the Act exists only where the request is a  
7 *condition* of the credit card payment. Cal. Civ. Code § 1747.08(a)(2); *Florez v.*  
8 *Linens 'N Things, Inc.*, 108 Cal. App. 4th 447, 451 (2003); *see also Absher v.*  
9 *AutoZone, Inc.*, 164 Cal. App. 4th 332, 342-43 (2008). In *Absher*, the court held  
10 that a “request” for personal identification information must be a *condition* of credit  
11 card payment in order for it to be a violation of the statute. 164 Cal. App. 4th at  
12 342-44. In order to prevent retailers from evading the Act’s prohibitions by merely  
13 claiming that the request for personal identification information was not a condition  
14 to accepting credit card payment, the court in *Florez* explained that “the retailer’s  
15 request for personal identification information must be viewed from the customer’s  
16 standpoint.” 108 Cal. App. 4th at 451. Thus, liability rests on “whether a consumer  
17 would *perceive* the store’s ‘request’ for information as a ‘condition’ of the use of a  
18 credit card.” *Id*; *see also Pineda*, 51 Cal. 4th at 528 (noting that the plaintiff alleged  
19 that the cashier asked her for her ZIP code and, “*believing she was required to*  
20 *provide the requested information to complete the transaction*, plaintiff provided  
21 it.”).<sup>3</sup>

22 \_\_\_\_\_  
23 <sup>3</sup> The Act does not require a consumer to plead a subjective belief that a request was  
24 a condition to credit card payment. *See Korn v. Polo Ralph Lauren Corp.*, 644 F.  
25 Supp. 2d 1212, 1216 (E.D. Cal. 2008) (“plaintiff need not *expressly allege* that he  
26 believed such information was necessary to complete the transaction). Instead,  
27 courts apply an objective standard in determining whether a request would be  
28 perceived as being a condition of credit card payment. *Florez*, 108 Cal. App. 4th at  
451. Under this standard, courts must assess the facts surrounding the transaction.

1           Several individual factors will affect whether a consumer would perceive that  
2 a request was “required” to process the credit card transaction – including how the  
3 request was made (assuming a request was even made), the timing of the request  
4 during the transaction, and whether the sales associate informed the customer that  
5 providing the information was voluntary. These factors will vary with each  
6 customer’s transaction. A retailer’s statement that the information is not required to  
7 process the transaction undoubtedly impacts the consumer’s perception of whether  
8 the request is a condition of credit card payment. *See Florez*, 108 Cal. App. 4th at  
9 451 (explaining that “the retailer’s *unannounced* subjective intent is irrelevant”  
10 because it could not impact the consumer’s perception of the request).

11           Accordingly, whether a request is actionable – and therefore whether a  
12 consumer qualifies for class membership – can only be determined by individual  
13 proof. GNC’s due process rights necessitate individual testimony by putative class  
14 members on the issue of class membership. *See Sanchez v. Wal-Mart Stores, Inc.*,  
15 No. Civ. 2:06-CV-02573, 2009 U.S. Dist. LEXIS 48428, at \*8 (E.D. Cal. May 28,  
16 2009); *Perez*, 218 F.R.D. at 269 (“Although Plaintiffs suggested that class  
17 membership could be determined through affidavits and fact sheets, allowing such  
18 uncorroborated and self-serving evidence without giving Defendant an opportunity  
19 to challenge the class member’s evidentiary submissions would likely implicate  
20 Defendant’s due process rights.”). Class certification is improper where individual  
21 inquiries are necessary to determine the members of the class. *See, e.g., Rodriguez*  
22 *v. Gates*, No. CV 99-13190, 2002 U.S. Dist. LEXIS 10654, at \*32-35 (C.D. Cal.  
23 May 30, 2002) (finding that class definition required the court to determine the  
24 merits of every individual’s claim to determine if they are within the class). There is  
25 no evidence submitted by Plaintiff in this regard.<sup>4</sup> Accordingly, Plaintiff has failed  
26

27 \_\_\_\_\_  
28 <sup>4</sup> Plaintiff references GNC’s credit card records, however, Plaintiff advances no

1 to meet her burden of establishing an ascertainable class, and such a failure warrants  
2 denial of her Motion. *See Colapinto*, 2011 U.S. Dist. LEXIS 30814, at \*11-12.

3 **B. Plaintiff Cannot Satisfy the Commonality Requirement.**

4 Commonality requires a plaintiff to show that “there are questions of law or  
5 fact common to the class.” Fed. R. Civ. P. 23(a)(2); *Dukes*, 131 S. Ct. at 2551. The  
6 plaintiff must demonstrate that the class members have suffered the same injury –  
7 not “merely that they have all suffered a violation of the same provision of law.”  
8 *Dukes*, 131 S. Ct. at 2551. The class claim must rest upon a common contention,  
9 and that contention “must be of such a nature that is capable of classwide resolution  
10 – which means that determination of its truth or falsity will resolve an issue that is  
11 central to the validity of each one of the claims in one stroke.” *Id.*

12 What matters to class certification ... is not the raising of  
13 common ‘questions’ – even in droves – but, rather the capacity of a  
14 classwide proceeding to generate common *answers* apt to drive the  
15 resolution of the litigation. Dissimilarities within the proposed class  
16 are what have the potential to impede the generation of common  
17 answers.

18 *Id.* (quoting Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N. Y.  
19 U. L. Rev. 97, 132 (2009)).

20 “A party seeking class certification must affirmatively demonstrate his  
21 compliance with [Rule 23] – that is, he must be prepared to prove that there are *in*

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22 evidence suggesting that GNC’s records would show whether an individual  
23 customer transaction involved a request for ZIP code information (or any other  
24 personal identification information). Rather, evidence shows that zip code  
25 information was requested in less than 20% of all transactions (cash and credit card).  
26 Katz Decl., ¶¶ 9, 10. GNC verified that all California stores were not requesting zip  
27 code information on or about February 17, 2011. Katz Decl., ¶ 12. In addition,  
28 GNC’s individual transaction records are maintained for a total of 15 weeks.  
Sigmund Decl., ¶ 4. Moreover, the transaction records would not reflect whether a  
consumer was requested to provide a ZIP code and would certainly not reflect  
whether a consumer would have perceived that the ZIP code was required to process  
the transaction. Sigmund Decl., ¶ 5-6.

1 *fact* sufficiently numerous parties, common questions of law or fact, etc.” *Id.* In  
2 *Dukes*, the Supreme Court held that class certification was improper because the  
3 plaintiffs could not establish common questions that would be resolved through the  
4 litigation. *Id.* at 2554-55. The Court explained that the plaintiffs failed to provide  
5 convincing proof of a company-wide discriminatory pay and promotion policy. *Id.*  
6 at 2556-57. Moreover, the nature of the plaintiffs’ proof would be subject to  
7 individual defenses. *Id.* at 2555; *see id.* at 2554 (“demonstrating the invalidity of  
8 one manager’s use of discretion will do nothing to demonstrate the invalidity of  
9 another’s.”). A court must “consider dissimilarities not in order to determine (as  
10 Rule 23(b)(3) requires) whether common questions *predominate*, but in order to  
11 determine (as Rule 23(a)(2) requires) whether there is ‘[e]ven a single [common]  
12 question.’” *Id.* at 2556.<sup>5</sup>

13 In her Motion, Plaintiff asserts that GNC has a common policy or practice of  
14 requesting personal identification information during credit card transactions – yet  
15 she has no evidence of this common practice. Plaintiff cannot merely rest on the  
16 allegations in the Complaint. *Id.* at 2551 (“Rule 23 does not set forth a mere  
17 pleading standard.”). However, a review of the Motion establishes that there is no  
18 evidence. (Motion, Dkt. 25, 9:1-8) (“Plaintiff *submits* that this illegal  
19 conduct...applied uniformly”; “Plaintiff *believes* that each of the thousands of  
20 illegal transactions occurred in an identical manner that did not deviate from  
21 consumer to consumer”; “Plaintiff *alleges* that the PII was uniformly collected and  
22 recorded by [sic] during each transaction.”) (emphasis added). A court may not  
23

24 <sup>5</sup> In her Motion, Plaintiff ignores the U.S. Supreme Court’s recent decision in  
25 *Dukes*. Instead, she claims that commonality is to be “liberally and permissively  
26 construed,” relying on the Ninth Circuit’s opinion in *Dukes v. Wal-Mart Stores, Inc.*,  
27 509 F.3d 1168, which was explicitly overturned by the Supreme Court. In fact, the  
28 Supreme Court re-emphasized that a court must conduct a “rigorous analysis” prior  
to certifying any class. *Dukes*, 131 S. Ct. at 2551.

1 certify an improper class “on the basis of a speculative possibility that it may later  
2 meet the requirements.” *See Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975)  
3 (citing *In re Hotel Telephone Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). To  
4 demonstrate commonality Plaintiff must submit “evidence convincingly  
5 establishing” this purported common policy – she cannot merely allege a common  
6 policy. *Dukes*, 131 S. Ct. at 2554. Plaintiff has failed to meet her burden to  
7 establish commonality.

8       Moreover, the evidence is that as of 2009, GNC did not enforce any policy in  
9 California which would have mandated the collection of zip codes. Katz Decl., ¶ 8.  
10 Plaintiff will not be able to establish commonality because there is no way to  
11 determine whether individual stores collecting zip code information. *Arrunategui v.*  
12 *ConocoPhillips Co.*, CV 09-01008 SJO, 2010 U.S. Dist. LEXIS 142237, 14-16  
13 (C.D. Cal. 2010) (finding that the plaintiff provide insufficient evidence to prove  
14 that the company’s policies were implemented uniformly). Second, even if the  
15 Court were to assume that a request was made for every credit card transaction,  
16 Plaintiff has not and cannot demonstrate that the request was *perceived* as a  
17 condition to accepting the credit card as payment. *See Florez*, 108 Cal. App. 4th at  
18 451; *Absher*, 164 Cal. App. 4th at 342-43. Several factors would form the basis of a  
19 consumer’s perception of whether a request was “required” to process the credit  
20 card transaction – including how the request was made, the timing of the request  
21 during the transaction, and whether the sales associate informed the customer that  
22 providing the information was voluntary. These factors will vary with each  
23 customer’s transaction. *Colapinto*, 2011 U.S. Dist. LEXIS 30814, at \*14-15  
24 (finding no common questions of law or fact existed where the claims would vary  
25 based on the class members interactions with the defendant). Finally, claims under  
26 Section 1747.08 are subject to several defenses provided by the statute that would  
27 vary with each particular transaction. *See Cal. Civ. Code* § 1747.08(c)-(d). These  
28 transaction-based defenses are not common to the class or subject to common proof.

1 The sole question that Plaintiff asserts is common to the class is “whether  
2 Defendant unlawfully requested and recorded consumers’ [personal identification  
3 information] in connection with credit card transactions.”<sup>6</sup> (Dkt. 25, 8:27-9:1).  
4 However, as explained above, the *answer* to this question will depend on the  
5 circumstances of the individual consumer’s transaction. Thus, even if Plaintiff’s  
6 proposed class could be ascertained – no common question would be answered.  
7 *Dukes*, 131 S. Ct. at 2551. Instead, individual mini-trials would be required to  
8 determine the nature of the request (i.e. whether a consumer would “perceive” that  
9 the request was required to process the transaction) and whether the class member is  
10 subject to any of the several defenses under the statute. Thus, the *dissimilarities*  
11 within the class would impede the generation of common answers. *Id.*  
12 Accordingly, Plaintiff has failed to establish that common questions of fact or law  
13 exist within the proposed class. As such, her Motion must be denied.

14 **C. Plaintiff Has Failed To Demonstrate That Her Claim Is Typical of**  
15 **the Putative Class Claim.**

16 Under Rule 23, the Court must find that the claims or defenses of the  
17 representative parties are typical of the claims or defenses of the class. *See* Fed. R.  
18 Civ. P. 23(a)(3). Where the substantive claims depend on “individual permutations”  
19 of facts, the named plaintiff’s claim will not satisfy typicality. *Gartin v. S & M*  
20  
21  
22

23 <sup>6</sup> Notably in *Dukes*, the Supreme Court rejected the proposition that “common  
24 questions” of this type are sufficient to establish commonality. 131 S. Ct. at 2551.  
25 Specifically, the Court found that reciting questions such as “Is that an unlawful  
26 employment practice?” is not sufficient to obtain class certification. Here,  
27 Plaintiff’s question asks essentially the same thing – whether the defendant acted  
28 unlawfully. Applying the Supreme Court’s reasoning, this question clearly fails to  
satisfy the commonality requirement.

1 *Nutec LLC*, 254 F.R.D. 429, 434 (C.D. Cal. 2007).<sup>7</sup> Where the evidence needed to  
2 prove the named plaintiff's claim is not probative of other class members' claims,  
3 the typicality requirement is not met. *Wiener v. Dannon Co.*, 255 F.R.D. 658, 665  
4 (C.D. Cal. 2009).

5 Here, Plaintiff has not submitted any evidence regarding typicality – that  
6 alone justifies the denial of the Motion. In addition, Plaintiff's claim and the  
7 putative class members' claims are not subject to common proof. A claim under  
8 Section 1747.08 requires that a customer perceive the request for information as  
9 necessary for the transaction to be processed. *See Florez*, 108 Cal. App. 4th at 451;  
10 *Absher*, 164 Cal. App. 4th at 342-43. This creates a fact-intensive inquiry into  
11 whether a consumer for a particular transaction would have perceived the request as  
12 being a condition to payment. Many factors and variables would affect the  
13 consumer's perception of the request (assuming, *arguendo*, such a request was even  
14 made), including the timing of the request, the wording of the request, or whether  
15 the clerk disclosed the nature of the request (i.e. stated that providing the  
16 information was voluntary, not required to complete the transaction and that it may  
17 be used for marketing or other purposes). *See Florez*, 108 Cal. App. 4th at  
18 451(indicating that the retailer's announced use of the information would be  
19 relevant); *Korn*, 644 F. Supp. 2d at 1216 (noting that the retailer did not inform the  
20 plaintiff of the consequences of not providing the requested information). To  
21 establish her claim, Plaintiff will have to testify about her individual transaction. At  
22 most this testimony would demonstrate that *she* was asked to provide her ZIP code  
23 by *one* of the sales associates at *one* of GNC's stores. However, it would disregard  
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25 <sup>7</sup> The Court “must understand the claims, defenses, relevant facts, and  
26 applicable substantive law in order to make a meaningful determination of the  
27 certification issues,” *Cole v. Gen. Motors Corp.*, 484 F.3d 717, 724 (5th Cir. 2007)  
28 (internal citations and quotations omitted).

1 the permutations surrounding all of the putative class members' transactions.

2 In addition, contrary to Plaintiff's unsupported assertion, class members'  
3 claims *are* subject to individual defenses. As explained above, the statute expressly  
4 provides that a request for personal identification information is permitted for  
5 certain transactions. *See* Cal. Civ. Code § 1747.08(c)-(d). These defenses, by their  
6 very nature, rest on the facts of each customer's transaction. Furthermore, many of  
7 GNC's customers have already voluntarily provided GNC with their personal  
8 identification information in connection with their Gold Card Membership. Katz  
9 Decl., ¶¶ 3-4. The purpose of the Act is to protect consumers from unwittingly  
10 providing personal identification information, not protect them where they have  
11 already voluntarily provided that information to the retailer. Accordingly, GNC's  
12 Gold Card Members have waived any protections offered by the statute.

13 Plaintiff cannot demonstrate that the class claims are subject to common  
14 proof. Rather, a class member's claim will depend on the facts surrounding the  
15 credit card transaction. As such, Plaintiff has failed to establish typicality.

16 **D. Plaintiff and Class Counsel Fail to Demonstrate That They Will**  
17 **Adequately Represent the Class**

18 Plaintiff also fails to demonstrate that she or class counsel can adequately  
19 represent the class. Class representatives must "fairly and adequately protect the  
20 interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy of class  
21 representatives is a question of fact, and courts look to whether the interests of the  
22 representatives conflict with those of the class. *Social Serv. Union, Local 535 v.*  
23 *County of Santa Clara*, 609 F.2d 944, 947 (9th Cir. 1979). To meet the adequacy  
24 requirement, the named plaintiff and her counsel must demonstrate that they will  
25 "prosecute the action vigorously on behalf of the class." *Hanlon v. Chrysler Corp.*,  
26 150 F.3d 1011, 1020 (9th Cir. 1998).

27 The mere regurgitation of Rule 23 standards in lieu of providing any  
28 supporting evidence demonstrates the lack of motivation to vigorously prosecute the

1 class claim. In addition, nothing in Rothman's declaration indicates that she  
2 understands the responsibilities she would bear as class representative. She has the  
3 burden to demonstrate that she understands and can meet those obligations and has  
4 failed to submit any evidence in that regard.<sup>8</sup>

5 Evidence submitted by Plaintiff's counsel (in their efforts to show that  
6 counsel has the requisite experience to serve as class counsel) demonstrates that  
7 Plaintiff has filed four putative class action complaints within the past year based  
8 upon claimed violations of the Act. (Declaration of Christopher Ridout, Dkt. 25-2,  
9 5:21-26). However, at her deposition, Plaintiff testified that she had only filed **two**  
10 complaints, the instant action against GNC and a claim against Justice Retail Stores  
11 (the "Justice Action") Germaise Decl., ¶¶ 4, 7.

12 With respect to the complaint, against Justice, Plaintiff settled on a single  
13 plaintiff basis. In that regard, Plaintiff testified as follows:

14 Q: DID YOU RECEIVE ANY MONEY IN SETTLEMENT OF  
15 THAT LAWSUIT?

15 A: YES.

16 Q: HOW MUCH?

16 A: IT'S CONFIDENTIAL.

17 Q: ARE YOU REFUSING TO ANSWER?

17 A: IT'S CONFIDENTIAL.

18 Q: DO YOU KNOW IF YOUR LAWYERS HAVE RECEIVED  
18 ANY MONEY IN CONNECTION WITH THAT LAWSUIT?

19 A: NO, I DON'T.

19 Q: DID YOU BRING THAT LAWSUIT ON BEHALF OF A  
20 CLASS OF OTHER PEOPLE OTHER THAN YOURSELF?

20 A: THAT ONE I BELIEVE SO.

21 Q: DO YOU KNOW IF ANYBODY OTHER THAN YOURSELF  
21 GOT ANY MONEY IN THAT LAWSUIT?

22 A: NO.

22 Q: YOU DON'T KNOW OR DID ANYBODY?

23 \_\_\_\_\_  
24 <sup>8</sup> Plaintiff cannot now submit evidence since Plaintiff elected not to submit any  
25 evidence in connection with the effort to seek certification. The rule that a moving  
26 party must present all of its evidence or raise all of its legal arguments in a  
27 substantive brief, rather than in reply, is rooted in the notion of fairness between  
28 parties. *See Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993)  
(finding that new information submitted with reply brief was improper and striking  
the same).

1 A: I DON'T KNOW.

2 Germaise Decl., ¶ 5.

3  
4 Ms. Rothman also testified that in subsequent visits to the Justice clothing  
5 stores, she was still being requested to provide personal identification information,  
6 which means that in addition to getting paid an undisclosed amount to drop her  
7 lawsuit (and abandon the class), she did not even ensure that the conduct she  
8 complained of stopped. Germaise Decl., ¶ 6. The resolution of the Justice Action  
9 and Plaintiff's own testimony demonstrates that she (and her counsel) are interested  
10 only in vindicating her individual rights, not the rights of the putative class  
11 members. This is not prosecuting an action vigorously on behalf of the class,  
12 demonstrating that Plaintiff is not an adequate representative.

13 In addition, and as set forth above, Plaintiff testified that she had only filed  
14 **two** complaints:

15 Q: OTHER THAN THIS LEGAL ACTION, HAVE YOU EVER  
16 BEEN A PARTY TO A LAWSUIT?

17 A: IS THAT ONE WE SPOKE OF BEFORE? IS THAT  
18 CONSIDERED ONE?

19 Q: YES.

20 A: YES.

21 Q: CAN YOU TELL ME WHAT LAWSUIT?

22 A: JUST ONE, THE DEFENDANT WAS JUSTICE  
23 CORPORATION CLOTHING STORE.

24 \* \* \*

25 Q: HAVE YOU FILED ANY OTHER LAWSUITS?

26 A: NO.

27 Germaise Decl., ¶ 7.

28 Notwithstanding the fact that Plaintiff had no idea that she had even filed  
lawsuits other than against Justice and GNC, documents filed in those cases would  
evidence that Plaintiff complained of the same conduct by two other retailers but

1 then elected to dismiss those claims later, and was involved in the decision to  
2 dismiss those claims. Germaise Decl., ¶ 8. Either Plaintiff is simply lending her  
3 name to counsel to file these class actions (her “good friend” Julie is a paralegal at  
4 Plaintiff counsel’s law firm (Germaise Decl., ¶ 9)), or she has absolutely no  
5 understanding of what is occurring in legal actions where she is the purported  
6 representative. Either scenario demonstrates that she is not an adequate  
7 representative.

8 Furthermore, Rothman’s Motion is nothing more than a generic motion for  
9 class certification that is in no way tailored to the facts of this case. Notably,  
10 throughout the Motion counsel relies on the Ninth Circuit’s decision in *Dukes v.*  
11 *Wal-Mart*, which, as is widely known, was overruled by the Supreme Court. This  
12 undoubtedly raises questions as to counsel’s adequacy. *See Wrighten v.*  
13 *Metropolitan Hospitals, Inc.*, 726 F.2d 1346, 1352 (9th Cir. 1984) (affirming denial  
14 of class certification where the trial court found that the proposed class counsel’s  
15 “pleadings and interrogatories had an ‘assembly line’ quality that suggested  
16 something less than the forthright and vigorous approach required of counsel in  
17 class actions.”); *Sweet v. Pfizer*, 232 F.R.D. 360, 370 (C.D. Cal. 2005) (finding the  
18 plaintiffs’ counsel inadequate where they failed to apply the correct law, failed to  
19 comply with the federal rules and submitted new information in their reply brief).

20 **E. Individual Questions Predominate Over Common Questions**

21 In addition to meeting the requirements of Rule 23(a), Plaintiff bears the  
22 burden of showing that common questions of law or fact predominate. *Zinser v.*  
23 *Accufix Research Institute, Inc.*, 253 F.3d 1180, 1188-89 (9th Cir. 2001). Where  
24 individual factual issues predominate class certification is inappropriate. *Id.* at  
25 1192; *see, e.g., Poulos v. Caesars World, Inc.*, 379 F.3d 654, 665 (9th Cir. 2004).  
26 While Plaintiff has submitted *no evidence* with the Motion, GNC submits that  
27 individual questions overwhelm common questions, thereby making class  
28 certification inappropriate.

1           Because Plaintiff has failed to establish *any* common questions, it is  
2 indisputable that the individual issues would predominate. *Colapinto*, 2011 U.S.  
3 Dist. LEXIS 30814, at \*23 (“Plaintiffs cannot meet this [predominance] requirement  
4 if common issues are lacking at the outset”). Moreover, the nature of the claim  
5 necessitates evaluation of individual issues. Again, whether a consumer has a claim  
6 under Section 1747.08 depends on whether a consumer for a particular transaction  
7 was even asked to provide personal identifying information. Assuming such a  
8 request was made, the next inquiry would be whether the consumer would have  
9 perceived the request as being a condition to payment. This issue will vary with the  
10 circumstances surrounding the credit card transaction. *See Colapinto*, 2011 U.S.  
11 Dist. LEXIS 30814, at \*24 (finding typicality was not met because the court would  
12 have to determine specific facts surrounding each putative class member’s  
13 agreement). Thus, individualized proof will be required as to each putative class  
14 member’s claim. In addition, GNC’s defenses would require an analysis of the facts  
15 surrounding each transaction. As a result, individual mini-trials would be required  
16 to determine whether the consumer “perceived” that the request was required to  
17 process the transaction and whether the class member is subject to any of the several  
18 defenses under the statute.

19           Plaintiff has utterly failed to introduce any evidence as to this issue. Instead,  
20 she incorrectly asserts that *alleging* a common course of conduct is sufficient to  
21 establish predominance, ignoring *Dukes*’ clear mandate that Rule 23 is not merely a  
22 pleading requirement. 131 S. Ct. at 2551. In addition, Plaintiff asserts that her  
23 claim rests on “uniform theories of liability and arises from a common and uniform  
24 set of facts” and that “[r]esolution of Defendant’s liability to one class member will  
25 provide resolution for all class members.” (Dkt. 25, 11:28-12:2). This is simply  
26 incorrect. Presuming that GNC cannot contradict Plaintiff’s allegation that she was  
27 asked to provide her ZIP code during a credit card transaction in May 2010, that she  
28 believed that she was required to do so as a condition of the transaction, and that the

1 facts surrounding her transaction do not give rise to any exceptions under the Act or  
2 defenses, Plaintiff's claim would succeed. However, these facts, specific to  
3 Plaintiff's transaction *have no bearing* on GNC's alleged liability with any other  
4 customer. As explained above, a class member's claim will rest on the facts specific  
5 to his or her transaction, including that individual's perception. Thus, the individual  
6 issues predominate, rendering class certification improper.

7 **F. Class Treatment is Not the Superior Method of Adjudicating the**  
8 **Claims.**

9 The individualized issues that destroy predominance also diminish the utility  
10 of the class action model and fatally undermine superiority. *Zinser*, 253 F.3d at  
11 1192 ("If each class member has to litigate numerous and substantial separate issues  
12 to establish his or her right to recover individually, a class action is not 'superior.'").  
13 In determining whether a class action is the superior method of adjudication, courts  
14 should consider: (1) the interest of class members in individually controlling the  
15 prosecution of separate actions; (2) the extent and nature of any litigation already  
16 commenced by class members; (3) the desirability or undesirability of concentrating  
17 the litigation in the particular forum; and (4) the difficulties likely to be encountered  
18 in the management of the class action. Fed. R. Civ. P. 23(b)(3); *Legge v. Nextel*  
19 *Communs., Inc.*, No. CV 02-8676, 2004 U.S. Dist. LEXIS 30333, at \*42-43 (C.D.  
20 Cal. June 25, 2004). "If the main issues in a case require the separate adjudication  
21 of each class member's individual claim or defense, a Rule 23(b)(3) action would be  
22 inappropriate." *Zinser*, 253 F.3d at 1189. Plaintiff fails to demonstrate that a class  
23 action is *the superior method* for resolving the dispute.

24 Again, Plaintiff's effort to establish superiority is merely to restate the rule  
25 and provide conclusions without any factual support. Contrary to Plaintiff's  
26 unsupported assertion, claims do not rest on common proof nor would they require  
27 expert testimony. Rather, each customer's claim would rest on individual proof.  
28 The time and expense of proving the individual issues – whether there even was a

1 request, or whether the customer perceived a request as required to process the  
2 transaction, whether the transaction involved one of the Act’s stated exceptions –  
3 overwhelm the limited “benefits” of class adjudication in this case. *See, e.g., Abed*  
4 *v. A.H. Robins Co.*, 693 F.2d 847, 856 (9th Cir. 1982) (explaining that the greater  
5 the number of individual issues to be litigated, the more difficult it will be for the  
6 court to manage the class action); *Hadjavi v. CVS Pharm., Inc.*, No. CV 10-04886  
7 SJO, 2011 U.S. Dist. LEXIS 86341, 23-25 (C.D. Cal. July 25, 2011); *Colapinto*,  
8 2011 U.S. Dist. LEXIS 30814, at \*23-26 (finding the case unmanageable because of  
9 the individual issues involved in each claim). Even if the class was certified, these  
10 issues would have to be resolved in mini-trials (much like a small claims court  
11 proceeding). Therefore, a certified class gains no advantage over individual  
12 litigation. A class cannot be certified merely because the class proceeding would  
13 have some benefits, but rather it must be *the superior method* for resolving the  
14 dispute. *Rutledge v. Elec. Hose & Rubber Co.*, 511 F.2d 668, 673 (9th Cir. 1975)  
15 (explaining that the class action must be “superior to, and not just as good as, other  
16 available methods for handling the controversy”).

17 In addition, another factor that may impact the superiority analysis is the  
18 proportionality of the defendant’s liability to the harm suffered by the plaintiff. *See*  
19 *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1255 (11th Cir. 2003) (explaining  
20 that although the economic harm to the defendant was not an element of the alleged  
21 statutory violation, courts can consider it in analyzing superiority); *Newton v.*  
22 *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 167 n.8 (3d Cir. 2001)  
23 (finding that the proportionality of damages should weigh in on certification because  
24 of the potential abuse of class certification); *Kline v. Coldwell Banker & Co.*, 508  
25 F.2d 226 (9th Cir. 1974) (decertifying class because of the potential economic harm  
26 to the defendant as a result of the class size); *Wilcox v. Commerce Bank of Kansas*  
27 *City*, 474 F.2d 336, 341-47 (10th Cir. 1973) (affirming the trial court’s decision  
28 declining to certify a class of approximately 180,000 persons alleging TILA

1 violations, where class members were not harmed but statutory damages ranged  
2 between \$100 and \$1000 per person); *Legge*, 2004 U.S. Dist. LEXIS 30333, at \*45-  
3 46 (finding that allowing the case to proceed as a class action would have  
4 “potentially ruinous results -- without concomitant benefit to the class”).<sup>9</sup>

5 Courts analyzing the proportionality factor look to several facts, including (1)  
6 whether the damages sought are grossly disproportionate to any harm suffered, (2)  
7 the defendant subsequently complied with the statute (3) certification would create  
8 potential for attorney abuse,<sup>10</sup> and (4) individual class members could bring their  
9 own actions. *See Saunders v. Trattoria*, No. CV 07-1060 SJO, 2007 U.S. Dist.  
10 LEXIS 97193, at \*4 (C.D. Cal. Oct. 23, 2007); *Spikings*, 2007 U.S. Dist. LEXIS  
11 44214, at \*9-16. In making this analysis, courts use the broad discretion granted  
12 them in determining whether class certification is proper. *See Stillmock v. Weis*  
13 *Mkts., Inc.*, 385 Fed. Appx. 267, 278 (4th Cir. 2010) (Wilkinson, J. concurring)  
14 (explaining that within a court’s discretion “is the attaching of determinative weight  
15 to the reality that if class action treatment were applied in this case where the  
16

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17  
18 <sup>9</sup> While the 9th Circuit recently overruled a line of cases that had declined  
19 certification based on the proportionality factor, that holding is limited to class  
20 actions brought under the Fair and Accurate Credit Transaction Act (“FACTA”).  
21 *See Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 715 (9th Cir. 2010).  
22 Specifically, the court found that Congress’ intent under FACTA was controlling in  
23 determining whether a court could consider the proportionality of the damages  
24 under Rule 23’s superiority analysis, and it found no such intent. *Id.* Moreover, the  
25 court explained that proportionality could not be the *only* factor analyzed in making  
the certification decision, but it did not prohibit courts from addressing  
proportionality along with the other factors listed under the rule. *Id.*; *see also*  
*Legge*, 2004 U.S. Dist. LEXIS 30333, at \*54 (“Financial impact on a defendant,  
while not grounds to deny a motion, is certainly a consideration”).

26 <sup>10</sup> The Court should take in to account the fact that Ms. Rothman’s attorneys filed  
27 four actions in her name and her sworn testimony was that she had only filed actions  
28 against GNC and Justice, and the Justice Action was settled on an individual basis.

1 complaint contains no indication of any actual damages in substantial or provable  
2 amount, this aggregated relief would be oppressive in consequence and difficult to  
3 justify.”); *Kamm v. California City Development Co.*, 509 F.2d 205, 212 (9th Cir.  
4 1975) (explaining that many factors other than the ones espoused in Rule 23(b)(3)  
5 may be considered in determining whether class treatment is the superior approach  
6 to the litigation).

7 Here, all of these factors weigh in favor of denying certification. Plaintiff  
8 seeks the maximum penalties allowed under the statute (\$250 for the first violation  
9 and \$1000 for each subsequent violation), yet there is no discernible harm to the  
10 class or a purported member who might have provided a ZIP code in connection  
11 with a transaction. Moreover, prior to the Supreme Court of California’s decision in  
12 *Pineda*, California caselaw had held that ZIP codes were not personal identification  
13 information. *Pineda* was decided on February 10, 2011. Within one week of that  
14 decision at least twenty class action lawsuits were filed<sup>11</sup> and within one month over  
15 100 class action lawsuits were filed against retailers in California,<sup>12</sup> demonstrating  
16 the potential for abuse. In addition, within one week of the issuance of the *Pineda*  
17 decision, GNC affirmatively issued instructions to its California retail operations  
18 that such information could not be collected. Katz Decl., ¶ 12. This was more than  
19 a month *prior* to the date that Plaintiff filed her complaint.<sup>13</sup> See *Spikings*, 2007

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21  
22 <sup>11</sup> See CA Credit Card Decision Kicks off Lawsuits, <http://banktime.com/credit-cards/ca-credit-card-decision-kicks-off-lawsuits/2085/> (February 17, 2011)

23 <sup>12</sup> Retroactive ZIP code ruling incites flurry of class-actions,  
24 [https://www.privacyassociation.org/publications/retroactive\\_ZIP\\_code\\_ruling\\_incites\\_flurry\\_of\\_class-actions/](https://www.privacyassociation.org/publications/retroactive_ZIP_code_ruling_incites_flurry_of_class-actions/) (Mar. 7, 2011)

25 <sup>13</sup> Plaintiff has filed at least four class action complaints and her counsel has filed at  
26 least five class actions alleging similar violations against other retailers. See  
27 Declaration of Christopher Ridout, Dkt. 25-2, 5:21-26, 6:3-4). “Courts should be  
28 wary of parties utilizing class actions as a mechanism to ‘benefit . . . a few lawyers

1 U.S. Dist. LEXIS 44214, at \*14 (finding defendant immediately complied after the  
2 lawsuit was filed and this lessened the benefits of class certification). Finally,  
3 nothing would prevent putative class members from being able to seek individual  
4 relief. “Courts bear a significant responsibility to insure that the great power  
5 wielded by plaintiffs (or more accurately their counsel) carrying the cudgel of a  
6 class action is used only in appropriate cases.” *Legge*, 2004 U.S. Dist. LEXIS  
7 30333, at \*46.

8 **IV. CONCLUSION**

9 Plaintiff has completely failed to meet her burden in seeking certification. In  
10 addition to that failure, evidence provided by GNC demonstrates that certification is  
11 improper for a myriad of reasons. For the foregoing reasons, the Motion for Class  
12 Certification should be denied.

13  
14 DATED: October 24, 2011

Respectfully submitted,

MCGUIREWOODS LLP

17 By: /s/ Susan L. Germaise

18 Susan L. Germaise

19 Attorneys for Defendant GENERAL  
20 NUTRITION CORPORATION

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25 ready and willing to promote such cases.” *Saunders*, 2007 U.S. Dist. LEXIS  
26 97193, at \*5 n.5 (quoting *Rodriguez v. Family Publ’ns Serv. Inc.*, 57 F.R.D. 189,  
27 195 (C.D. Cal. 1972)).  
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