

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN HETZEL and
MARY HETZEL, his wife,

Plaintiffs,

vs.

ADAPTIVE HEALTH, LLC,
DIRECT DIGITAL, LLC and
XTREME SPORTS NUTRITION,

Defendants.

CIVIL ACTION-LAW

Case No.: G.D. 19-

ELECTRONICALLY FILED

Pleading Type:

COMPLAINT

Filed on behalf of the Plaintiffs
John Hetzel and Mary Hetzel, his wife

Counsel of Record for this Party:
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“JURY TRIAL DEMANDED”

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NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER (OR CANNOT AFFORD ONE), GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW (TO FIND OUT WHERE YOU CAN GET LEGAL HELP). THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral Service
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555**

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CIVIL DIVISION

JOHN HETZEL and)	CIVIL ACTION-LAW
MARY HETZEL, his wife,)	
)	Civil Action No.: G.D. 19-
Plaintiffs,)	
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ADAPTIVE HEALTH, LLC, DIRECT)	
DIGITAL, LLC and XTREME SPORTS)	
NUTRITION,)	
)	
)	
Defendants.)	

COMPLAINT

AND NOW, come the Plaintiffs, John Hetzel and Mary Hetzel, his wife, by and through their attorneys and file the within Complaint:

1. Plaintiffs, John Hetzel and Mary Hetzel, are married individuals who reside in Butler County, Pennsylvania.
2. Defendant, Adaptive Health, LLC (referred to as “Adaptive Health”), is a foreign corporation with headquarters located at 615 South College Street, Suite 1300, Charlotte, North Carolina 28202.
3. Adaptive Health regularly conducts business within Allegheny County, Pennsylvania.
4. Defendant, Direct Digital, LLC (referred to as “Direct Digital”), is a foreign corporation with headquarters located at 615 South College Street, Suite 1300, Charlotte, North Carolina 28202.
5. Direct Digital regularly conducts business within Allegheny County, Pennsylvania.
6. Defendant, Xtreme Sports Nutrition, is a foreign corporation with headquarters located at 3725 Swenson Avenue, St. Charles, Illinois 60174.

7. Xtreme Sports Nutrition regularly conducts business within Allegheny County, Pennsylvania.
8. It is believed and therefore averred that Direct Digital was “rebranded” in July, 2018 and became known as Adaptive Health.
9. Adaptive Health and Direct Digital design, manufacture and distribute nutritional supplements and products, including Nugenix.
10. Nugenix is a dietary supplement.
11. Adaptive Health and Direct Digital advertise Nugenix as a free testosterone booster and claim that Nugenix helps to “feel stronger”, “increase sex drive” and “boost free testosterone.”
12. Nugenix has never been tested, evaluated and/or approved by the US Food and Drug Administration (“FDA”).
13. The “Usage” instructions that come with Nugenix state “Take 3 capsules daily with water on an empty stomach.”
14. The “Precautions” that come with Nugenix state “Use only as directed. Consult a health care practitioner if you have a serious medical condition or use any medications. This product should not be used by women. For adult use only.”
15. An active component of Nugenix includes Testofen.
16. Testofen contains herbal compounds that cause liver toxicity and/or liver damage.
17. Nugenix also contains Pyridine which causes liver toxicity and/or liver damage.
18. On June 28, 2017, John Hetzel purchased a 90 count bottle of Nugenix.
19. Defendant, Xtreme Sports Nutrition, sold the Nugenix to John Hetzel.
20. Shortly after receiving the Nugenix, John Hetzel began taking 3 capsules of Nugenix on an empty stomach daily.

21. At the time, John Hetzel did not use any medications and did not have any serious medical conditions.

22. After taking the same dosage of Nugenix for approximately 7 days, John Hetzel developed jaundice (yellowing) of his skin, sclera icterus (yellowing of the eyes) fatigue, joint pain, muscle aches, nausea, headaches and sought medical treatment.

23. On July 26, 2017, John Hetzel was diagnosed with an acute liver injury caused by the use of Nugenix.

24. As a result of the damage to his liver from Nugenix, John Hetzel was required to undergo a liver transplant and removal of his gallbladder.

25. As a direct and proximate result of ingesting Nugenix, John Hetzel suffered the following injuries:

- a. Acute liver injury - requiring liver transplant;
- b. Acute liver damage - requiring liver transplant;
- c. Generalized trauma, injury and damage to his digestive system;
- d. Fever, fatigue, arthralgia, myalgia and jaundice;
- e. Hiatal hernia as a result of abdominal surgery;
- f. Shock and injury to the nerves and nervous system; and
- g. Nervousness, emotional tension and anxiety.

26. As a direct and proximate result of his injuries, John Hetzel has sustained the following damages:

- a. Medical expenses – past and future;
- b. Loss of earnings and lost earning capacity – past and future;
- c. Pain and suffering – past and future;
- d. Embarrassment and humiliation – past and future;

- e. Loss of enjoyment of life's pleasures – past and future; and
- f. Disfigurement.

27. As a result of the injuries to her husband, Mary Hetzel has lost the society, comfort, services and support of her spouse.

COUNT I – STRICT LIABILITY
Plaintiffs v. Adaptive Health and Direct Digital

28. Each of the above paragraphs are incorporated by reference.

29. Defendants' product, Nugenix, was defective in the following particulars:

- a. It failed to contain each and every element necessary to make it safe for its intended use, including ingredients that do not cause liver toxicity and/or liver damage;
- b. It contained Testofen, which contains herbal extracts that cause liver toxicity and/or liver damage;
- c. It contained Pyridine, which causes liver toxicity and/or liver damage;
- d. It was defectively designed because it contained ingredients that are known to cause liver toxicity and/or liver damage;
- e. It was defectively manufactured because it contained ingredients that are known to cause liver toxicity and/or liver damage; and
- f. It was not accompanied by proper warnings and instructions concerning its use, including warnings that the product contained ingredients that cause liver toxicity and/or liver damage and/or that consuming alcohol while taking Nugenix may increase the risk of liver toxicity and/or liver damage.

30. In addition to the above, Defendants, Adaptive Health and Direct Digital are strictly liable to Plaintiffs because they misrepresented the following material facts:

- a. Nugenix was safe to use as directed;
- b. Nugenix helps to feel stronger;
- c. Nugenix helps to increase sex drive; and
- d. Nugenix helps to boost free testosterone.

31. Plaintiff, John Hetzel, relied on the misrepresentations in using Nugenix and as a result, Plaintiffs suffered the injuries and damages set forth above.

32. As a direct and proximate result of the defective condition of Nugenix, Plaintiffs suffered the injuries and damages set forth above.

33. In the alternative and/or in addition to the above, the Nugenix malfunctioned because it caused liver toxicity and/or liver damage during normal use.

34. As a result of the malfunction, Plaintiffs suffered the injuries and damages set forth above.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants, Adaptive Health and Direct Digital, jointly and severally, in an amount in excess of the jurisdictional arbitration limit, plus interest and costs.

JURY TRIAL DEMANDED.

COUNT II – STRICT LIABILITY
Plaintiffs v. Xtreme Sports Nutrition

35. Each of the above paragraphs are incorporated by reference.

36. Xtreme Sports Nutrition is liable to Plaintiffs for selling a defective product, Nugenix, as more specifically described in paragraph 29(a) (f) and paragraph 33, to Plaintiff, John Hetzel.

37. As a result of the sale of the defective product to Plaintiff, John Hetzel, Plaintiffs suffered the injuries and damages set forth above.

WHEREFORE, Plaintiffs request judgment against Defendant, Xtreme Sports Nutrition, in an amount in excess of the jurisdictional arbitration limit, plus interest and costs.

JURY TRIAL DEMANDED.

COUNT III – NEGLIGENCE
Plaintiffs v. Adaptive Health and Direct Digital

38. Each of the above paragraphs are incorporated by reference.

39. Defendants, Adaptive Health and Direct Digital were negligent in the following particulars:

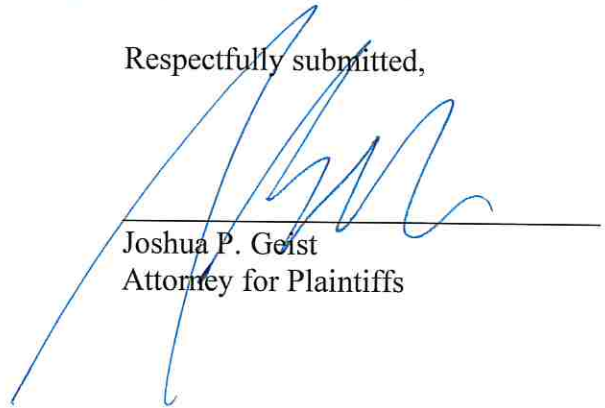
- a. In designing a product that contained ingredients that cause liver toxicity and/or liver damage;
- b. In manufacturing a product that contained ingredients that cause liver toxicity and/or liver damage;
- c. In marketing a product that contained ingredients that cause liver toxicity and/or liver damage;
- d. In selling a product that contained ingredients that cause liver toxicity and/or liver damage;
- e. In failing to research the ingredients of Nugenix;
- f. In failing to test the ingredients of Nugenix;
- g. In failing to monitor and/or assess the side-effects of Nugenix and/or the ingredients in Nugenix;
- h. In failing to establish policies, procedures and/or protocols regarding the researching, testing and/or monitoring of its products, including Nugenix;
- i. In failing to know whether its products, including Nugenix, are safe for consumption;
- j. In failing to obtain FDA approval of its products, including Nugenix;
- k. In failing to warn consumers, including John Hetzel, that Nugenix contained ingredients that cause liver toxicity and/or liver damage;
- l. In failing to warn consumers, including John Hetzel, that consumers should not consume alcohol while taking Nugenix; and
- m. In failing to warn consumers, including John Hetzel, that Nugenix has not been approved for human consumption by the FDA and/or any regulatory agency.

40. As a direct and proximate result of the negligence of Defendants, Adaptive Health and Direct Digital, Plaintiffs suffered the injuries and damages set forth above.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants, Adaptive Health and Direct Digital, jointly and severally, in an amount in excess of the jurisdictional arbitration limit, plus interest and costs.

JURY TRIAL DEMANDED.

Respectfully submitted,



Joshua P. Geist
Attorney for Plaintiffs

VERIFICATION

I, John Hetzel, hereby certify that the facts alleged in the above Complaint are true and correct to the best of my knowledge. This statement is made subject to the penalties of 18 Pa.C.S.A. 4904, relating to unsworn falsifications to authorities.

Date: 3/19/19

John Hetzel
John Hetzel

VERIFICATION

I, Mary Hetzel, hereby certify that the facts alleged in the above Complaint are true and correct to the best of my knowledge. This statement is made subject to the penalties of 18 Pa.C.S.A. 4904, relating to unsworn falsifications to authorities.

Date: 3/19/2019


Mary Hetzel