

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
GENEREX BIOTECHNOLOGY CORPORATION, :

Plaintiff, :

- against - :

ADAM FEUERSTEIN and THESTREET.COM, INC., :

Defendants. :
-----X

Date Purchased:

Index No. _____

16104433

SUMMONS

Plaintiff designates New
as the place for trial

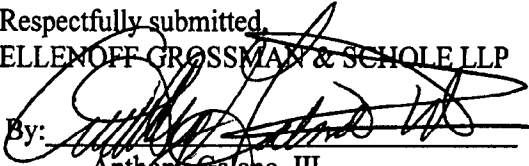
The basis for venue is the
location of the defendants'
principal place of business
located at 14 Wall Street, New
York, New York 10005

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 5, 2010

Respectfully submitted,
ELLENOFF GROSSMAN & SCHOLE LLP

By: 
Anthony Galano, III,
Irwin Wertz
150 East 42nd Street, 11th Floor
New York, New York 10017
Tel. 212-370-1300

FILED
APR 06 2010
COUNTY CLERK'S OFFICE
NEW YORK

To: Adam Feuerstein and TheStreet.Com
14 Wall Street, 15th Floor
New York, New York 10005

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GENEREX BIOTECHNOLOGY CORPORATION,

Index No.

Plaintiff,

COMPLAINT

-against-

ADAM FEUERSTEIN and THESTREET.COM, INC.,

16104433

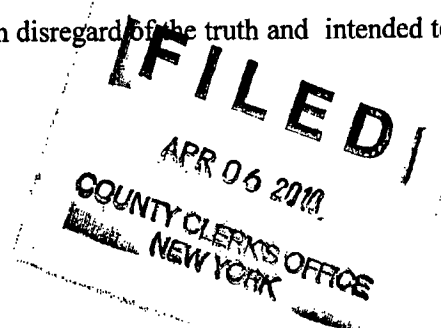
Defendants.
-----X

Plaintiff Generex Biotechnology Corporation (“Plaintiff” or “Generex”), by and through its attorneys Ellenoff Grossman & Schole LLP, as and for its Complaint against Defendants Adam Feuerstein and TheStreet.Com, Inc., state and allege as follows:

INTRODUCTION

1. This is an action for damages for Libel, Libel Per Se, Product Disparagement and Injurious Falsehood arising from: (i) the publication of a Libelous article entitled “Biotech Stock Mailbag: Generex,” written by Adam Feuerstein (“Feuerstein”) and initially published, sponsored and distributed by TheStreet.Com, Inc. (“TheStreet”) (collectively, “Defendants”) on March 19, 2010; and (ii) the subsequent article published, sponsored and distributed by the TheStreet on March 26, 2010 and authored by Feuerstein labeling Generex a “modern day snake oil salesmen of the biotech age. . .” and containing other false and defamatory statements of fact. True and correct copies of the articles are annexed hereto as Exhibits A (the “March 19 Article”) and B (the “March 26 Article”). Both articles contain numerous false and defamatory factual accusations about Generex, made in wanton disregard of the truth and intended to convey

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the overall false impression that the company is little more than a marketing ploy, a hoax and a criminal enterprise.

2. On the day of the initial publication of the March 19 Article, and as a direct result of the libelous statements contained therein, shares of Generex's publicly-traded stock plummeted nearly eight percent (8%). As a result, Generex's market capitalization dropped by more than twelve million dollars (\$12,000,000.00). Additionally, due to the publication of both articles, Generex has now been irreversibly damaged in connection with its extant and prospective relationships with third parties, including extant and prospective partners, licensees, and buyers. Indeed, since Generex is a developmental stage company it is wholly reliant upon the capital markets for the funding necessary to pursue its business plan and Defendants have severely damaged Generex in this respect. By reason of the foregoing, Plaintiff seeks damages against Defendants as a result of their libelous accusations of fact.

THE PARTIES

3. Plaintiff Generex Biotechnology Corporation ("Plaintiff" or "Generex" or "the company") is a Delaware corporation with its principal place of business located in Toronto. Generex is a publicly-traded company whose shares trade under the symbol "GNBT" on the NASDAQ Capital Market. It is engaged in the research, development and commercialization of drug delivery systems and technologies, including products related to diabetes.

4. Generex has developed a proprietary platform technology for the delivery of drugs into the human body through the oral cavity (with no deposit in the lungs). The company's proprietary liquid formulations allow drugs typically administered by

injection to be absorbed into the body by the lining of the inner mouth using the company's proprietary RapidMist™ device.

5. Generex's flagship product, Generex Oral-lyn™, is a buccal insulin spray product currently in a global, pivotal Phase III clinical trial for the treatment of Type-1 and Type-2 diabetes.

6. Upon information and belief, defendant Feuerstein is a natural person residing in Boston, Massachusetts and, upon information and belief, who maintains his principal place of business at 14 Wall Street, New York, New York. At all times relevant to this action, Feuerstein has been a Senior Columnist and a "biotech columnist" at the TheStreet and holds himself out to the public as a sophisticated and knowledgeable reporter and journalist concerning the biotechnology industry and the capital markets.

7. Defendant TheStreet is a Delaware corporation duly authorized to do business in the State of New York and maintains its principal place of business at 14 Wall Street, New York, New York. TheStreet is an American financial news and services website. It was founded in 1996 by Jim Cramer, is a registrant with the Securities and Exchange Commission, and its common stock is listed on the NASDAQ Global Market.

JURISDICTION AND VENUE

8. Jurisdiction over Defendants in the Supreme Court of the State of New York is proper pursuant to CPLR 301 and 302(a) because, among other things, the Defendants are domiciled in New York and/or transact business in New York.

9. Venue is proper in Supreme Court of the State of New York, County of New York pursuant to CPLR 503 because TheStreet and Feuerstein are and have been

residents and/or operate their business in the County of New York at all times relevant to this action.

FACTUAL BACKGROUND

10. On March 19, 2010, TheStreet published the March 19 Article written by Feuerstein entitled "Biotech Stock Mailbag: Generex."

11. The article begins with the following question - - "Do diabetics hate insulin injections so much that a more convenient alternative to needle sticks could be commercially lucrative?" Defendants initially make statements about the products of two other companies which developed inhaled insulin devices.

12. After making statements about inhaled insulin devices Defendants pose the following questions - - "If the utility of inhaled insulin is still in doubt, what about an orally-delivered insulin? Why can't diabetics simply pop an insulin pill or spray some insulin in their mouth?" In response, Defendants' answers to these questions contain false and defamatory factual statements about Generex and its flagship product Generex Oral-lyn™.

13. Defendants' malice is apparent at the outset of their discussion of Generex. They begin their discussion by falsely asserting that "Generex is a total bust," and falsely conclude that:

Nifty technology, except none of the Oral-Lyn data collected by Generex has been peer-reviewed in credible medical journals, nor has it been presented at the top-flight diabetes meetings.

Common sense should tell you that an insulin spray like Oral-Lyn is more fiction than science. If Oral-Lyn was real, Big Pharma would have snatched up the technology a long time ago.

* * *

Generex shares trade for around 60 cents. I know that looks cheap but don't bother with an oral insulin delivery technology that's not going anywhere.

14. Defendants statements of fact are false. Generex's Oral-lyn™ (which Defendants misspell as "Oral-Lyn") is in a global, pivotal Phase III trial (which includes sites in the United States). The United States Food and Drug Administration (the "FDA") has permitted Generex to proceed with a Treatment Investigational New Drug (IND) program, which is an expanded access to the product for treatment use. The FDA medical staff considered and evaluated Generex Oral-lyn™'s safety and efficacy profile during the review of the company's Treatment IND request. The positive outcome of the FDA's decision clearly demonstrated the potential benefits of the treatment use of Generex Oral-lyn™. In fact, the Treatment IND for Generex Oral-lyn™ was the first awarded by the FDA for diabetes mellitus. This information is readily available from public sources, including Generex's public filings with the Securities and Exchange Commission. Indeed, by simply accessing the United States National Institutes of Health website and accessing the clinical trials tab any person could easily access the information about the Treatment IND approval for Oral-lyn™: www.nih.gov (click on "health" and then you are directed to clinical trials www.ClinicalTrials.gov). A true and correct copy of notice of the clinical trial as it appears on that website is annexed hereto as Exhibit C. Defendants intentionally and maliciously omitted, and failed to disclose this information in the articles in order to convey to their audience that Generex is a criminal enterprise.

15. Moreover, a number of independent peer-reviewed studies of Generex Oral-lyn™ have been published in scientific journals, including *Diabetes Care*, published by the American Diabetes Association. The independent peer-reviewed studies were, at all relevant times, publicly available via a link on Generex's website.

16. In response to Generex's protests about the falsity of the March 19 Article, Feuerstein wrote, and TheStreet published, a follow up on March 26, 2010 that was ostensibly supposed to correct the prior false statements of fact, but instead added new false and libelous statements of fact. As a postscript to the March 26 Article, TheStreet indicated that "[i]t should be noted that Oral-lyn has been discussed in medical journals and presented at medical association meetings over the last ten years." This "correction," as the TheStreet calls it, does not cure the damage that the libelous March 19 Article caused to Generex because the March 19 Article expressly states that "none of the Oral-lyn data collected by Generex has been peer-reviewed in *credible* medical journals." The "correction," which is not prominently displayed, obliquely states that "Oral-lyn has been discussed in medical journals". The necessary implication of the initial false statement, juxtaposed with the supposed "correction,," is that while Generex Oral-lyn™ may have been "discussed" in medical journals, it has never been "peer-reviewed" and that in any event, the journals that discussed Generex Oral-lyn™ were not "credible."

17. Thus, both articles remain factually inaccurate because Generex Oral-lyn™ data has been published in many peer-reviewed and credible medical journals over the years such as in the following:

- a. *Diabetes/Metabolism Research and Reviews*, Vol. 18, Suppl 1, 2002;

- b. *Clinical Therapeutics*, Vol. 26, No. 12, 2004, authored by a team from the Diabetes Unit, Department of Internal Medicine, Hadassah-Hebrew University Hospital, Jerusalem, Israel (Professor Itamar Raz is an internationally renowned endocrinologist) – a press release announcing the publication was issued on January 12, 2005;
- c. *Diabetes/Metabolism Research and Reviews*, Vol. 20, Issue 6, 2004, authored by a team from the Institute of Endocrinology IEMIR, Quito, Ecuador – a press release announcing the publication was issued on November 30, 2004;
- d. *Diabetes Technology and Therapeutics*, Vol. 6, No. 1, 2004, authored by the IEMIR team – a press release announcing the publication was issued on March 8, 2004;
- e. *Diabetes Care*, Vol. 28, No. 6, June 2005, authored by the Dr. Raz team – a press release announcing the publication was issued on June 7, 2006;
- f. *Metabolism Clinical and Experimental*, 2005, authored by a team from the Department of Endocrinology and Diabetes, University Campus Bio-Medico, Rome, Italy (Professor Paolo Pozzilli is an internationally renowned endocrinologist). – a press release announcing the publication was issued on April 19, 2005;
- g. *Expert Opinion*, 2008, authored by Dr. Gerald Bernstein, Generex's Vice-President for Medical Affairs and a former President of the American Diabetes Association; and
- h. *Diabetes, Obesity and Metabolism*, 2009, authored by Professor Pozilli and Dr. Philip Raskin (Department of Internal Medicine, Southwestern Medical Center at Dallas, Dallas, Texas) – a press release announcing the publication was issued on December 2, 2009.

True and correct copies of these publications are annexed hereto as Exhibit D.

18. In addition, Generex Oral-lyn™ trial data has been presented in podium presentations and poster presentations at annual scientific meetings of the American Diabetes Association (“ADA”), The Endocrine Society, the European Association for the Study of Diabetes, and the International Diabetes Federation, among others, on a regular basis for the past decade. Significantly, Generex Oral-lyn™ data was selected for a prestigious podium presentation at last year’s ADA Annual Scientific Sessions. True and

correct copies of the press releases with respect to the presentations of Generex Oral-lyn™ data at the ADA are annexed hereto as Exhibit E. Generex routinely presents Generex Oral-lyn™ data at major international diabetes scientific symposia. The “correction” in the March 26 Article simply states that Generex Oral-lyn™ “has been presented at medical association meetings over the last ten years.”

19. Both articles further conceal from the reader that Generex’s management includes a prominent and respected doctor specializing in diabetes treatments. Dr. Gerald Bernstein is the Vice President, Medical Affairs at Generex. Dr. Bernstein previously served as President of the American Diabetes Association (and served on several ADA committees and the Board of Directors of the ADA’s Research Foundation). As a past president of the ADA, Dr. Bernstein remains an occasional “thought leader” at the ADA. Additionally, the March 19 Article further fails to reveal that Generex’s Medical Director is Dr. Jamie A. Davidson, a former Clinical Associate Professor of Internal Medicine at the University of Texas Southwestern Medical School specializing in Endocrinology and Diabetes.

20. In the March 26 Article, Feuerstein is culpable for even more egregious libel (in bold) against Generex and its Generex Oral-lyn™ product in that he states the following:

For a veteran reporter and columnist like myself who enjoys nothing more than exposing the modern day snake oil salesmen of the biotech age, Generex’s all-bluster no-bite protestations are a huge red flag.

As I burrow into Generex it becomes apparent almost immediately that the company is using science and the quest to develop an alternative insulin delivery method not to actually help diabetics but as a ruse to perpetuate a

15 year-long stock promotion scheme. In the process, investors are getting fleeced while Generex management earns millions of dollars in compensation.

* * *

Generex isn't interested in seriously developing an oral insulin spray. That should be clear to anyone who watches the company pass off studies conducted in Ecuador on less than two-dozen patients as clinically meaningful science. Nonsense!

A phase III study of Oral-lyn is underway that is supposed to enroll 750 diabetic patients and might offer a clearer picture of the product's efficacy and safety. **Yet even here, Generex plays stupid games aimed at misleading investors, something that totally undermines the legitimacy of the study. On March 10, 2009, Generex issued a press release announcing "successful phase III study data" for Oral-lyn, even though the study enrolled only 300 patients, just 60 of which had been on treatment for the requisite six months called for in the study's design.**

On past conference calls Generex has claimed it will file for Oral-lyn's approval with the U.S. Food and Drug Administration as long as the outcome of this single phase III study is positive.

Good luck with that. Never mind that the FDA almost always requires a minimum of two positive phase III studies for drug approvals; in diabetes, the regulatory bar is usually much higher.

Consider MannKind (MNKD), which conducted 44 studies of its inhaled insulin device Afrezza before seeking FDA approval. MannKind tested Afrezza in 5,300 patients total, including multiple phase III studies enrolling hundreds of patients each. Amylin Pharmaceuticals' (AMLN) phase III program for long-acting diabetes medicine Bydureon consists of six studies that enrolled more than 2,300 patients.

And Generex thinks it's going to get the FDA to review Oral-lyn based on some shifty Ecuadorian studies and a single phase III study?

21. In the March 26 Article it is clear that Feuerstein does not acknowledge that the March 19 Article contained false factual conclusions. The March 26 Article actually states a false legal conclusion that Generex has committed securities fraud under

the Federal Securities Laws, when Feuerstein states **“Yet even here, Generex plays stupid games aimed at misleading investors, something that totally undermines the legitimacy of the study.”** Using the word “misleading” is not an opinion in this context but a conclusion that an SEC standard of fraud has been violated. Feuerstein references a March 10, 2009 press release as the basis for his blatant accusation of securities fraud and/or criminal activity yet the Generex press release contains an accurate and truthful public disclosure about the status of enrollment of the Phase III data for Generex Oral-lyn™. The fact that Generex had not enrolled the full 750 diabetic patients as of the date of the press release, which was accurately disclosed, is not evidence of a “modern day snake oil salesman.” A true and correct copy of press release is annexed hereto as Exhibit F. Additionally, it is public record that the Generex President & Chief Executive Officer, Anna Gluskin, and the Generex Chief Financial Officer & Chief Operating Officer, Rose Perri, have never sold a single share of stock, and Generex’s public securities filings demonstrate that the vast majority of money raised by Generex has been expended on the company’s research and development initiatives.

22. Further proof that Feuerstein and TheStreet maliciously disregarded the truth in order to libel Generex is that statement that MannKind tested its inhaled insulin product, Afrezza, on 5,300 patients in total. That is patently false: the public record shows that Mannkind's study population only has 2,450 test subjects. Mannkind submitted a NDA for Afrezza "inhalable" insulin to the FDA based on testing in 2,450 subjects with Type 1 or Type 2 diabetes who were randomly assigned to treatment with their inhalable powder insulin.

23. Furthermore, the article proffers a false equivalency between Afrezza and Generex Oral-lyn™. An ostensibly experienced pharmaceutical writer like Feuerstein knows, but does not state, that Afrezza is an “inhaled” insulin, whereas Generex Oral-lyn™ is a buccal delivery insulin with no pulmonary deposition. Because of the safety concerns attendant to the pulmonary absorption of Afrezza, the FDA has subjected the product to more stringent regulatory hurdles than those faced by Generex Oral-lyn™. Similarly, Feuerstein is aware, but also fails to disclose, that Biodel (BIOD) recently submitted a New Drug Application to the FDA for ViaJect injectable human insulin with less patient testing than Generex currently has recorded for Generex Oral-lyn™.

24. In the March 26 Article Feuerstein also asks his readers to review the article written by two independent researchers who are studying Generex Oral-lyn™, Dr. P. Raskin and Dr. P. Pozzilli. He further states that an “abstract is available for free here but it’s best to purchase the entire article, lest you succumb to spin jobs from Generex supporters...” Later in the March 26 Article, Feuerstein notes Dr. Raskin and Dr. Pozzilli have indicated that, because of the small number of subjects studied in previous trials, it is too early to make generalizations. However, Feuerstein fails to state that Dr. Raskin and Dr. Pozzilli go on to note in their article:

To address this need, a large, randomized clinical trial (NCT00668850) is currently underway to compare the efficacy of oral insulin spray and standard regular human insulin therapy as measured by A1C in subjects with T1DM in twice daily (basal) intermediate-acting insulin therapy[24]. The study will also evaluate the safety, tolerability and satisfaction with the oral insulin spray formula and its delivery.

See Exhibit D, *Diabetes, Obesity and Metabolism*, 2009, authored by Professor Pozilli and Dr. Philip Raskin, at p. 7 (last article in the compilation of articles that makes up Exhibit D).

25. Feuerstein correctly notes Dr. Raskin and Dr. Pozzilli have indicated that “[a] key limitation to this review is the lack of studies that compare oral insulin spray with rapid-acting analogue insulin; none of the studies (to date) have provided this comparison.” Feuerstein fails to state that Dr. Raskin and Dr. Pozzilli go on note in their article:

However, it is important to note the growing trend back to the use of regular insulin in T2DM. In many countries, such as Canada and Germany, healthcare coverage for insulin analogues in T2DM has been reduced or eliminated. Thus, comparison with regular insulin in subjects with T2DM does provide meaningful clinical information.

See id. at p. 6.

26. Feuerstein makes two additional false and defamatory statements of fact in the March 26 Article that are false that have seriously harmed the business reputation of Generex:

Generex has conducted clinical studies of Oral-lyn, but most, if not all, of these were poorly designed and enrolled just a handful of patients. .

..

Nowhere in the article do Raskin and Pozzilli conclude that Oral-lyn is safe or effective

27. Feuerstein does not state the basis for these statements and they are contradicted by the fact that in all of the studies that have discussed Generex Oral-lyn™, the results show that buccal insulin spray is absorbed in direct relation to the amount given and it has a quicker onset, and a shorter duration of, action when compared with

subcutaneously injected regular insulin. This fact has been supported by Dr. Raskin and Dr. Pozzilli who state that the buccal insulin spray formulation was as effective as the subcutaneously injected regular insulin in lowering blood glucose levels in patients with Type 1 diabetes.

28. There is ample data that is publicly available that also confirms that, in all of the studies conducted of Generex Oral-lyn™, the buccal insulin spray was well tolerated. There were no changes in vital signs, laboratory readings or physical examination notes.

FIRST CAUSE OF ACTION
(Libel Against Defendants)

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 28 hereof with the same force and effect as if fully set forth herein.

30. TheStreet holds itself out as a financial reporting news organization. TheStreet's Form 10-K Annual Report filed with the SEC on March 30, 2010 states, *inter alia*: "Our goal is to be the primary independent source of reliable and actionable investing ideas, news and analysis, financial data and analytical tools for a growing audience of self-directed investors, as well as to assist advertisers desiring to connect with our passionate, affluent audience." Feuerstein holds himself out as a knowledgeable reporter concerning the biotechnology industry and the capital markets. He is described on TheStreet's website as "our biotech columnist" and as a "senior columnist".

31. An ordinary person would find the statements of fact about Generex and Generex Oral-lyn™ in the articles reasonably susceptible of a defamatory connotation and these statements of fact injured Generex in its profession, trade and/or business by

imputing to Generex and its management criminality, fraud, dishonesty, misconduct, incapacity or unfitness.

32. Defendants' statements are defamatory because, among other things, they convey to the reader that Generex is a hoax (a term expressly used by Feuerstein), a fraud, a criminal enterprise and a disreputable company.

33. Defendants' statements were published with actual malice, that is, with actual knowledge of falsity or with reckless disregard for the truth or falsity. The malicious nature of the libel is clear from. Among other things, Defendants' intentional and knowing failure to set forth the facts concerning the FDA's Treatment IND approval for Generex Oral-lyn™, the independent peer-reviewed studies published in reputable scientific journals, the presentations of Generex Oral-lyn™ data at prestigious scientific symposia, the accolades, and the prominent figures at Generex or to properly and fully correct their false and defamatory statements when brought to their attention.

34. Defendants have no factual basis for the false factual accusations contained in the March 19 and March 26 Articles.

35. Simply put, Defendants' March 19 and March 26 Articles are false and defamatory hatchet-jobs on Generex that were maliciously published in order to cause substantial harm to the company. In fact, in addition to causing the substantial drop in common stock price of Generex that caused Generex to lose a market capitalization of approximately \$12,000,000.00, the article has caused other significant reputational damage to Generex. Generex has also been damaged its bargaining position with extant and prospective relationships with third parties, including extant and prospective partners, licensees, and buyers. To that end, Generex's ability to raise money from the only real

source available to it at this stage, the capital markets, has been severely damaged by Defendants.

36. On March 22, 2010, Generex delivered a letter to the General Counsel of TheStreet advising it of the false and defamatory accusations contained in the March 19 Article and demanded a retraction. Instead of printing a retraction to the March 19 Article, Defendants published the March 26 Article that actually amplified the harm that had been done by the March 19 Article. The "correction" that appears on the bottom of the very last page of the March 26 Article does not even come close to the necessary retraction demanded and, given the aforementioned spin, clearly demonstrates the Defendants' malice. In addition, a reasonable reader of the article and the articles would conclude that the publications were conveying facts about Generex and its flagship product. There is simply no privilege for the defamatory accusations or any authorization for the same.

37. As a result of the publication of the March 19 and March 26 Articles, Generex has suffered actual, special and consequential damages in an amount to be determined at trial but believed to be no less than \$250,000,000.00.

38. By reason of the foregoing, Generex is entitled to a judgment against Defendants, jointly and severally, in a sum to be determined at trial, but estimated to exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees.

SECOND CAUSE OF ACTION
(Libel Per Se Against Defendants)

39. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 38 hereof with the same force and effect as if fully set forth herein.

40. By the publication of the March 19 and the March 26 Articles, Defendants wrongfully published to third persons false and defamatory statements of and concerning Generex that severely injured its business reputation and stated that it is a criminal enterprise.

41. Many persons or entities reading the March 19 and March 26 Articles would have no basis to understand that they contain the aforementioned false statements of fact and would understand only that Generex has engaged and is currently engaging in criminal, fraudulent and misleading behavior that is incompatible with the proper exercise of Generex's business, trade and professional duties.

42. Defendants also impugn on the basic integrity honesty and creditworthiness of Generex in that Feuerstein, as set forth above, calls Generex, among other things, a "snake oil salesman," that Generex's management is wrongfully enriching themselves the expense of shareholders and that Generex **"is using science and the quest to develop an alternative insulin delivery method not to actually help diabetics but as a ruse to perpetuate a 15 year-long stock promotion scheme."**

43. Consequently, the March 19 and March 26 Articles contain statements that are defamatory per se.

44. As a result of the publication of the March 19 and March 26 Articles, Generex has suffered actual, special and consequential damages in an amount to be determines at trial but believed to be no less than \$250,000,000.00.

45. By reason of the foregoing, Generex is entitled to a judgment against Defendants, jointly and severally, in a sum to be determined at trial, but estimated to

exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees.

46. Alternatively, since the March 19 and March 25 Articles contain libel per se, Generex is entitled to a judgment against Defendants, jointly and severally, for general damages in a sum to be determined at trial, but estimated to exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees.

THIRD CAUSE OF ACTION
(Injurious Falsehood Against Defendants)

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 46 hereof with the same force and effect as if fully set forth herein.

48. Defendants published the March 19 Article and the March 26 Article (despite knowing about Generex's position contained in its March 22, 2010 letter) that were false and defamatory to Generex's business and calculated to prevent other persons and/or entities from dealing with or investing in Generex to its detriment.

49. Defendants published the March 19 and March 26 Articles with actual malice, that is, with actual knowledge of falsity, or with reckless disregard for the truth or falsity of purportedly factual statements contained therein and Generex suffered the actual damages set forth above in connection with its significant drop in its market cap and in connection with its negotiating position for the purchase of Generex or the purchase of some of its technology.

50. These articles were the material and substantial cause in Generex losing market capitalization value and compromised or interfered with its economic and legal relationships.

51. As a result of the publication of the March 19 and March 26 Articles, Generex has suffered actual, special and consequential damages in an amount to be determined at trial but believed to be no less than \$250,000,000.00.

52. By reason of the foregoing, Generex is entitled to a judgment against Defendants, jointly and severally, in a sum to be determined at trial, but estimated to exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees.

FOURTH CAUSE OF ACTION
(Product Disparagement)

53. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 52 hereof with the same force and effect as if fully set forth herein.

54. Based on the foregoing, Defendants are also liable Generex for product disparagement in connection with their libelous statements of fact made about Generex Oral-lyn™ in the March 19 and the March 26 Articles.

55. As a result of the publication of the March 19 and March 26 Articles, Generex has suffered actual, special and consequential damages in an amount to be determined at trial but believed to be no less than \$50,000,000.00.

56. By reason of the foregoing, Generex is entitled to a judgment against Defendants, jointly and severally, in a sum to be determined at trial, but estimated to

exceed \$50,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees.

WHEREFORE, Plaintiff demands Judgment against Defendants, as follows:

A. On the First Cause of Action of the Complaint, awarding judgment in favor of Plaintiff and against Defendants, jointly and severally, in a sum to be determined at trial, but estimated to exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, applicable attorneys' fees and the costs and disbursements of this action.

B. On the Second Cause of Action of the Complaint, awarding judgment in favor of Plaintiff against Defendants, jointly and severally, in a sum to be determined at trial, but estimated to exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, applicable attorneys' fees and the costs and disbursements of this action and, alternatively, a judgment in favor of Plaintiff and against Defendants, jointly and severally, for general damages in a sum to be determined at trial, but estimated to exceed \$250,000,000.00, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees.

C. On the Third Cause of Action of the Complaint, awarding judgment in favor of Plaintiff and against Defendants, against jointly and severally, in a sum to be determined at trial, but estimated to exceed \$250,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, applicable attorneys' fees and the costs and disbursements of this action.

D. On the Fourth Cause of Action of the Complaint, awarding judgment in favor of Plaintiff and against Defendants, jointly and severally, in a sum to be determined

at trial, but estimated to exceed \$50,000,000.00 and punitive damages, to be determined by a jury, together with applicable interest, costs and applicable attorneys' fees and the costs and disbursements of this action.

E. For any other and further relief in favor of plaintiff which the Court may deem just and proper.

Dated: New York, New York
April 6, 2010

Respectfully submitted,
ELLENOFF GROSSMAN & SCHOLE LLP

By: 

Anthony Galano, III,
Irwin Wertz,
150 East 42nd Street, 11th Floor
New York, New York 10017
Tel. 212-370-1300

GENEREX BIOTECHNOLOGY CORPORATION,

Plaintiff,

-against -

ADAM FEUERSTEIN and THESTREET.COM, INC.,

Defendants.

Summons and Complaint

ELLENOFF GROSSMAN & SCHOLE LLP

Attorneys for

Plaintiff

150 EAST 42ND STREET

NEW YORK, NEW YORK 10017

(212) 370-1300

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated:

Signature

Print Signer's Name

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. _____, one of the judges of the within-named Court,
at _____
on _____ 20____, at _____ M.

Dated:

ELLENOFF GROSSMAN & SCHOLE LLP

Attorneys for

150 EAST 42ND STREET

NEW YORK, NEW YORK 10017

(212) 370-1300

To:

Attorney(s) for