

1 **KAZEROUNI LAW GROUP, APC**  
2 Abbas Kazerounian, Esq. (SBN: 249203)  
3 ak@kazlg.com  
4 Nicholas Barthel, Esq. (SBN: 319105)  
5 nicholas@kazlg.com  
6 245 Fischer Avenue, Unit D1  
7 Costa Mesa, CA 92626  
8 Telephone: (800) 400-6808  
9 Facsimile: (800) 520-5523

7 **KAZEROUNI LAW GROUP, APC**  
8 Jason A. Ibey, Esq. (SBN: 284607)  
9 jason@kazlg.com  
10 321 N Mall Drive, Suite R108  
11 St. George, Utah 84790

11 *Attorneys for Plaintiffs*

12 **SUPERIOR COURT OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO**  
14 **NORTH COUNTY DIVISION**

15 **MARK HINKLE and DANIEL**  
16 **ROSSI, Individually and On**  
17 **Behalf of All Others Similarly**  
18 **Situated,**

18 **Plaintiffs,**

19 **v.**

20 **SPORTS RESEARCH**  
21 **CORPORATION**

22 **Defendant.**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**01/09/2020** at 08:15:52 PM  
Clerk of the Superior Court  
By Gregory Homick, Deputy Clerk

Case No.: 37-2020-00001422-CU-NP-NC

**CLASS ACTION COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF FOR VIOLATIONS OF:**

- 1) **CAL. CIVIL CODE §§ 1750, *ET SEQ.***
- 2) **CALIFORNIA BUS. & PROF. §§  
17200, *ET SEQ.*;**
- 3) **CALIFORNIA BUS. & PROF. §§  
17500, *ET SEQ.*;**
- 4) **NEGLIGENT  
MISREPRESENTATION; AND**
- 5) **INTENTIONAL  
MISREPRESENTATION.**

**JURY TRIAL DEMANDED**

INTRODUCTION

1. This is a California statewide Class Action Complaint brought by MARK HINKLE (“Hinkle”) and DANIEL ROSSI (“Rossi”) (collectively the “Plaintiffs”), individually and on behalf of all others similarly situated, to challenge the actions of defendant SPORTS RESEARCH CORPORATION (“Defendant” or “SRC”) with regard to Defendant’s false and misleading promotion sale of its Premium MCT Oil (“MCT Product”) and its “Turmeric Curcumin C3 Complex” (“Turmeric Product”) (collectively the “Products”).
2. The MCT Product is advertised by SRC as containing “healthy fats” or “beneficial fats”; as being “healthy”; as being “a natural sustained energy”; and as containing “anti-bacterial,” “anti-microbial” and “anti-viral properties”.
3. The Turmeric Product is advertised as containing “anti-inflammatory,” and “anti-oxidant benefits”.
4. Despite these representations, the Products do not contain these benefits and, thus, cannot be represented as having such benefits.
5. The nationwide advertising, promotion, marketing, packaging and selling of the Products constitute violations of the following: (a) California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; (b) California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*; (c) California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*; intentional misrepresentation; and negligent misrepresentation. This conduct caused Plaintiffs and those similarly situated, damages and requires restitution and injunctive relief to remedy and/or prevent further damages.
6. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs,

1 successors, assigns, principals, trustees, sureties, subrogees, representatives  
2 and insurers of the named Defendant.

3 7. Plaintiff alleges as follows upon personal knowledge as to themselves and  
4 their own acts and experiences, and as to all other matters, upon information  
5 and belief, including investigation conducted by their attorneys.

6 **JURISDICTION AND VENUE**

7 8. Venue is proper in the Superior Court of California in the County of San  
8 Diego for the following reasons: (i) Plaintiff Hinkle resides in the City of  
9 Encinitas, State of California, which is within this county; (ii) the conduct  
10 complained of herein occurred within this county; and, (iv) many of the acts  
11 and transactions giving rise to this action occurred within this county  
12 because Defendant:

- 13 (a) is authorized to conduct business in this county and has  
14 intentionally availed itself of the laws and markets within this  
15 county;
- 16 (b) does substantial business within this county;
- 17 (c) is subject to personal jurisdiction in this county because it has  
18 availed itself of the laws and markets within this county; and,
- 19 (d) the harm to Plaintiff Hinkle occurred within this county.

20 **PARTIES**

21 9. Plaintiff Hinkle is, and at all times relevant was, a natural person residing in  
22 the State of California, County of San Diego.

23 10. Plaintiff Rossi is, and at all times relevant was, a natural person residing in  
24 the State of California, County of Los Angeles.

25 11. Plaintiffs are informed and believe, and thereon allege, that Defendant is a  
26 corporation with its principal place of business in San Pedro, California.

1 12. Defendant has and continues to manufacture, distribute, advertise, and sell  
2 the Products within the State of California, via its online website and brick  
3 and mortar stores.

4 **NATURE OF THE CASE**

5 13. At all times relevant, SRC has made and continues to make affirmative  
6 misrepresentations and/or omissions regarding the Products.

7 14. Specifically, SRC makes the representation that its MCT Product contains  
8 “healthy fats” and “beneficial fats”; and SRC makes the representation that  
9 the MCT Product is “healthy”. However, the total saturated fat content  
10 within the MCT Product renders it inherently unhealthy as it contains 14  
11 grams of saturated fat per serving. Thus, the MCT Product does not meet the  
12 saturated fat requirement in Code of Federal Regulations (C.F.R.), Title 21,  
13 Section 101.65(d)(2)(i)(F). Similarly, under 21 C.F.R. § 101.14(a)(4), any  
14 food or supplement containing more than 13g of fat per serving is  
15 disqualified from making any health claim, despite this, you make a health  
16 claim regarding a product which contains 14g of fat per serving. As a result,  
17 the use of a ‘healthy’ term renders MCT Product misbranded.

18 15. Additionally, SRC advertises that the MCT Product will provide “a natural  
19 sustained energy”, but it is widely known that the raw coconut materials go  
20 through a heavy and lengthy processing in order to become MCT Oil and as  
21 such cannot be considered “natural”.

22 16. Lastly, SRC makes the representation that its MCT Product contains “anti-  
23 bacterial,” “anti-microbial” and “anti-viral properties”. Similarly, SRC  
24 represents that the Turmeric Product contains “anti-inflammatory,” and  
25 “anti-oxidant benefits”.

26 17. However, each of these claims are drug claims under section 201(g)(1) of  
27 the FD&C Act (21 U.S.C. § 321(g)(1)), because said claims are intended for  
28 use in the diagnosis, cure, mitigation, treatment, or prevention of disease

1 and/or because they are intended to affect the structure or function of the  
2 body. As such, these claims may not be made on the label of Supplements  
3 and are thus false and misleading.

4 18. As a consequence of Defendant's unfair and deceptive practices, Plaintiffs  
5 and other consumers similarly situated purchased the Products under the  
6 false impression that by consuming these Products, they would be enjoying  
7 the healthful and nutritional benefits associated with the Products as  
8 advertised. Had Plaintiffs and other consumers similarly situated been made  
9 aware that the advertised benefits of the Products were false, they would not  
10 have purchased the Products, would have paid less for them, or purchased a  
11 different nutritional supplement altogether.

12 19. Each consumer, including Plaintiffs, were exposed to virtually the same  
13 material misrepresentations and/or omissions, which are prominently stated  
14 on the Defendant's labels, Defendant's website, Amazon.com and in the  
15 Defendant's literature for the Products.

16 20. As a result of Defendant's false and misleading statements, failures to  
17 disclose, and other conduct described herein, Plaintiffs and other consumers  
18 similarly situated purchased thousands, if not hundreds of thousands of  
19 units of the Products, and have suffered and continue to suffer injury in fact.

20 21. Defendant's conduct as alleged herein violates several California State  
21 laws, as alleged more fully herein.

22 22. This action seeks, among other things, equitable and injunctive relief;  
23 restitution of all amounts illegally retained by Defendant; and disgorgement  
24 of all ill-gotten profits from Defendant's wrongdoing alleged herein.

25 **FACTUAL ALLEGATIONS**

26 23. Plaintiffs re-allege and incorporate by reference all of the above paragraphs  
27 of this Complaint as though fully stated herein.  
28

1 24. Defendant marketed, and continues to market, and represent to the general  
2 public via its product literature and website that its Products contain several  
3 beneficial characteristics that they do not in fact have.

4 25. As such, Defendant concealed the material facts at issue in this matter by  
5 misrepresenting to the general public the benefits and characteristics of the  
6 offending product. Defendant possessed superior knowledge of the true  
7 facts, which it did not disclose, thereby tolling the running of any applicable  
8 statute of limitations.

9 26. Consumers are particularly vulnerable to these deceptive and fraudulent  
10 practices. Most consumers possess limited knowledge as to whether a  
11 product contains natural ingredients, or whether a product is has drug quality  
12 side effects.

13 27. Due to Defendant's representations to the market, members of the general  
14 public were induced into purchasing Defendant's Products at inflated prices.

15 28. On information and belief, Defendant charged excess monies for its Products  
16 in comparison to Defendant's competitors during the entirety of the relevant  
17 four-year statutory time period, based on the false designations alleged  
18 herein.

19 29. California laws are designed to protect consumers from such false  
20 representations and predatory conduct. Defendant's actions for its own self-  
21 interest and monetary gain is ongoing and consumers will continue to be  
22 victimized daily for the foreseeable future unless and until there is judicial  
23 intervention.

24 30. In August of 2017, Plaintiff Hinkle purchased Defendant's MCT Product  
25 from Amazon.com for approximately \$27.95 before taxes using his credit  
26 card.

27 31. On Amazon.com page for the MCT Product, Defendant represented that the  
28 product contained "healthy fats" and on the bottle itself Defendant claimed

1 the MCT Product was “packed with beneficial fats.” Moreover, on both the  
2 bottle and Amazon.com page, Defendant represented that the product had  
3 sustained “Natural” energy. Moreover, on the Amazon page, Defendant  
4 represented that the MCT Product contained “anti-bacterial,” “anti-  
5 microbial” and “anti-viral properties”.

6 32. In September of 2018, Plaintiff Rossi purchased Defendant’s Turmeric  
7 Product from Amazon.com for approximately \$29.95 before taxes.

8 33. On Amazon.com and the label of the Turmeric Product, Defendant  
9 represents that the Turmeric Product contains “anti-inflammatory,” and  
10 “anti-oxidant benefits”.

11 34. In making the decision to purchase Defendant’s Products, Plaintiffs relied  
12 upon the advertising and/or other promotional materials prepared and  
13 approved by Defendant and its agents, and disseminated through its website  
14 and in the literature packaged with its Products, which contained the  
15 misrepresentations alleged herein.

16 35. Had Plaintiffs been made aware that the Products contained unnatural  
17 ingredients not approved for commercial sale in the United States, and that  
18 Defendant’s claims regarding the Products’ cognitive benefits had not been  
19 substantiated, Plaintiffs would not have purchased these Products. In other  
20 words, Plaintiffs would not have purchased Defendant’s Products but for the  
21 representations on Defendant’s website and in its literature.

22 36. When Plaintiffs and each of the putative Class members purchased the  
23 Defendant’s Products, they relied upon Defendant’s representations in their  
24 purchasing decision, which is typical of most U.S. consumers.  
25 Consequently, they were deceived as a result of Defendant’s actions.  
26 Plaintiffs and the putative Class members believed at the time they  
27 purchased the Products that they were purchasing a product that would  
28

1 provide the health effects as advertised, and that these Products were of  
2 superior quality as compared to Defendant’s competitors.

3 37. On information and belief, Defendant’s Products are not worth the purchase  
4 price paid by Plaintiff and the putative Class members. The precise amount  
5 of damages will be proven at the time of trial, in large part, by expert  
6 testimony.

7 38. Plaintiffs each suffered an “injury in fact” because Defendant received  
8 Plaintiffs’ money as a result of Defendant’s false designations set forth in  
9 the advertising for Defendant’s Products.

10 39. Plaintiffs and the putative Class members were injured as a result of  
11 Defendant’s false representations at issue in this matter.

12 **CLASS ACTION ALLEGATIONS**

13 40. Plaintiffs re-allege and incorporate by reference all of the above paragraphs  
14 of this Complaint as though fully stated herein.

15 41. Plaintiffs bring this action individually and on behalf of all others similarly  
16 situated against Defendant, pursuant to California Code of Civil Procedure  
17 Section 378.

18 42. Plaintiffs represent, and are each a member of the class (“the Class”),  
19 consisting of:

20 All persons within the United States who purchased  
21 Sports Research Corporation’s Premium MCT Oil or  
22 Turmeric Curcumin C3 Complex from Defendant within  
23 the four years prior to the filing of this Complaint.

24 43. Excluded from the Class are Defendant and any of its officers, directors, and  
25 employees and the judge to which this case is assigned and the judge’s staff.  
26 Plaintiffs reserve the right to modify or amend the Class definition before  
27 the Court determines whether certification is appropriate.  
28



1 44. The “Class Products” include Defendant’s Premium MCT Oil and Turmeric  
2 Curcumin C3 Complex products, which make several false representations  
3 as described herein.

4 45. The “Class Period” means four years prior to the filing of the Complaint in  
5 this action.

6 46. Ascertainability. Plaintiffs do not know the number of members in the Class,  
7 but Plaintiffs currently believe that there are several thousand, if not more,  
8 members of the Class within the United States.

9 47. Upon information and belief, Defendant and Defendant’s distributors keep  
10 detailed and accurate records of distribution in order to accurately and  
11 effectively execute a recall if so ordered by the FDA, Consumer Product  
12 Safety Commission or any other organization. Therefore, the members of the  
13 Class are ascertainable through Defendant’s records and/or Defendant’s  
14 agents’ records regarding online sales, as well as through public notice. This  
15 matter should therefore be certified as a Class action to assist in the  
16 expeditious litigation of this matter.

17 48. Numerosity. The members of the Class are so numerous and geographically  
18 disbursed throughout the state of California that joinder of all Class  
19 members is impractical, and the disposition of their claims in the Class  
20 action will provide substantial benefits both to the parties and to the court.

21 49. Existence and Predominance of Common Questions of Law and Fact. There  
22 is a well-defined community of interest in the questions of law and fact  
23 involved and affecting the parties to be represented. Common questions of  
24 law and fact exist in this matter, which predominate over questions that may  
25 affect individual Class members, including but not limited to the following:

- 26 a. whether Defendant committed the wrongful conduct alleged herein;
- 27 b. whether the Products’ representations are false or misleading;
- 28 c.

- 1 d. whether Defendant’s conduct violates California Civil Code §§ 1750,  
2 *et seq.*;
- 3 a. whether Defendant’s advertising is false, untrue, or misleading within  
4 the meaning of California Business & Professions Code §§ 17500, *et*  
5 *seq.*;
- 6 b. whether Defendant’s conduct is an unfair, fraudulent, or unlawful act  
7 or practice within the meaning of California Business & Professions  
8 Code §§ 17200, *et seq.*;
- 9 c. whether Defendant’s advertising is unfair, deceptive, untrue or  
10 misleading within the meaning of California Business & Professions  
11 Code §§ 17200, *et seq.*;
- 12 d. whether Defendant acted negligently or intentionally in making the  
13 misrepresentations contained on the Product’s label and Defendant’s  
14 website;
- 15 e. whether Defendant, through its conduct, received money that, in  
16 equity and good conscience, belongs to Plaintiffs and members of the  
17 Class;
- 18 f. whether the members of the Class sustained and/or continue to sustain  
19 damages attributable to Defendant’s conduct, and, if so, the proper  
20 measure and appropriate formula to be applied in determining such  
21 damages; and
- 22 g. whether the members of the Class are entitled to injunctive and/or any  
23 other equitable relief.

24 50. Typicality. As persons who purchased the Class Products, which contained  
25 the advertisements alleged herein, Plaintiffs are asserting claims that are  
26 typical of the Class. Plaintiffs’ claims involve the same violations of law by  
27 Defendant as other Class members’ claims. Plaintiffs and members of the  
28

1 Class also sustained damages arising out of the common course of conduct  
2 complained of herein. Accordingly, typicality is satisfied.

3 51. Adequacy of Representation. Plaintiffs will fairly and adequately represent  
4 and protect the interests of other members of the Class in that Plaintiffs have  
5 no interests antagonistic to any member of the Class. Further, Plaintiffs have  
6 retained counsel experienced in handling class action claims, claims  
7 involving violations of the consumer laws, and specifically violations of the  
8 California Business and Professions Code.

9 52. Superiority. A class action is superior to all other available means for the fair  
10 and efficient adjudication of this controversy. Individualized litigation would  
11 create the danger of inconsistent and/or contradictory judgments arising  
12 from the same set of facts. Individualized litigation would also increase the  
13 delay and expense to all parties and court system and the issues raised by  
14 this action. The damages or other financial detriment suffered by individual  
15 Class members may be relatively small compared to the burden and expense  
16 that would be entailed by individual litigation of the claims against the  
17 Defendant. The injury suffered by each individual member of the proposed  
18 class is relatively small in comparison to the burden and expense of  
19 individual prosecution of the complex and extensive litigation necessitated  
20 by Defendant's conduct. It would be virtually impossible for members of the  
21 proposed Class to individually redress effectively the wrongs to them. Even  
22 if the members of the proposed Class could afford such litigation, the court  
23 system could not. Individualized litigation increases the delay and expense  
24 to all parties, and to the court system, presented by the complex legal and  
25 factual issues of the case. By contrast, the class action device presents far  
26 fewer management difficulties, and provides the benefits of single  
27 adjudication, economy of scale, and comprehensive supervision by a single  
28 court. Therefore, a class action is superior.

1 53.Plaintiffs anticipate providing notice to the Class Members by direct mail  
2 notice, publication and other reasonable means.

3 54.Unless the Class is certified, Defendant will retain monies received as a  
4 result of the unlawful and deceptive conduct alleged herein. Unless a class-  
5 wide injunction is issued, Defendant will also likely continue to, or allow its  
6 resellers to advertise, market, promote and package Defendant’s Products in  
7 an unlawful and misleading manner, and members of the Class will continue  
8 to be misled, harmed, and denied their rights under California law.

9 55.Defendant has acted or refused to act on grounds that are generally  
10 applicable to the Class so that declaratory and injunctive relief is appropriate  
11 to the Class as a whole, making class certification appropriate pursuant to  
12 California Code of Civil Procedure § 378.

13  
14 **FIRST CAUSE OF ACTION**  
15 **VIOLATIONS OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT**  
16 **CAL. CIV. CODE §§ 1750, ET SEQ.**

17 56.Plaintiffs re-allege and incorporate by reference all of the above paragraphs  
18 of this Complaint as though fully stated herein.

19 57.California Civil Code Section 1750, *et seq.*, entitled the Consumers Legal  
20 Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive”  
21 practices in a “transaction” relating to the sale of “goods” or “services” to a  
22 “consumer.” The Legislature’s intent in promulgating the CLRA is  
23 expressed in Civil Code Section 1760, which provides, *inter alia*, that its  
24 terms are to be:

25           Construed liberally and applied to promote its underlying  
26           purposes, which are to protect consumers against unfair  
27           and deceptive business practices and to provide efficient  
28           and economical procedures to secure such protection.

58.Defendant’s Products each constitute a “good” as defined pursuant to Civil  
Code Section 1761(a).

1 59. Plaintiffs and the putative Class members are each a “consumer” as defined  
2 pursuant to Civil Code Section 1761(d).

3 60. Plaintiffs and each of the putative Class members’ purchase of Defendant’s  
4 Product constitutes a “transaction” as defined pursuant to Civil Code Section  
5 1761(e).

6 61. Civil Code Section 1770(a)(2), (5), (7) and (9) provide that:

7 The following unfair methods of competition and unfair  
8 or deceptive acts or practices undertaken by any person  
9 in a transaction intended to result or which results in the  
10 sale or lease of goods or services to any consumer are  
11 unlawful:

12 (2) [m]isrepresenting the source, sponsorship, approval, or  
13 certification of goods or services;

14 (5) [r]epresenting that goods or services have sponsorship,  
15 approval, characteristics, ingredients, uses, benefits,  
16 or quantities which they do not have . . . ;

17 (7) [r]epresenting that goods or services are of a particular  
18 standard, quality, or grade . . . if they are of another;  
19 [and]

20 (9) [a]dvertising goods or services with intent not to sell  
21 them as advertised.”

22 62. Defendant violated Civil Code Section 1770(a)(2), (5), (7) and (9) by  
23 marketing and representing its Products as containing various characteristics,  
24 despite the Products not having the advertised benefits, as detailed above.

25 63. On information and belief, Defendant’s violations of the CLRA, as set forth  
26 herein, were done with awareness of the fact that the conduct alleged was  
27 wrongful and was motivated solely by Defendant’s self-interest, monetary  
28 gain, and increased profit. Plaintiffs further allege that Defendant committed  
these acts knowing the harm that would result to Plaintiffs and Defendant  
engaged in such unfair and deceptive conduct notwithstanding such  
knowledge.

1 64. Plaintiffs suffered an “injury in fact” because Plaintiffs’ money was taken by  
2 Defendant as a result of Defendant’s false representations set forth on  
3 Defendant’s actual Product label.

4 65. As a direct and proximate result of Defendant’s violations of the CLRA,  
5 Plaintiffs and members of the putative Class are entitled to a declaration that  
6 Defendant violated the Consumer Legal Remedies Act.

7 66. As of the filing of this Complaint, Defendant have not complied with  
8 Plaintiffs’ demand letter pursuant to California Civil Code § 1782, which  
9 was served on Defendant on or about October 26, 2018, by certified U.S.  
10 mail.

11 67. Attached hereto as Exhibit A is the affidavit of Plaintiff Hinkle pursuant to  
12 Cal. Civ. Code § 1780(d).

13 68. Plaintiffs and the putative Class are also entitled to, and seek, injunctive  
14 relief prohibiting such conduct in the future and to recover money damages.

15 **SECOND CAUSE OF ACTION**  
16 **VIOLATION OF THE BUSINESS & PROFESSIONS CODE**  
17 **BUS. & PROF. CODE, §§ 17500 *ET SEQ.***

18 69. Plaintiffs re-allege and incorporate by reference all of the above paragraphs  
19 of this Complaint as though fully stated herein.

20 70. Plaintiffs bring this claim individually and on behalf of all others similarly  
21 situated for Defendant’s violations of California’s False Advertising Law  
22 (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

23 71. Under the FAL, the State of California makes it “unlawful for any person to  
24 make or disseminate or cause to be made or disseminated before the public  
25 in this state . . . in any advertising device . . . or in any other manner or  
26 means whatever, including over the Internet, any statement, concerning . . .  
27 personal property or services, professional or otherwise, or performance or  
28 disposition thereof, which is untrue or misleading and which is known, or

1 which by the exercise of reasonable care should be known, to be untrue or  
2 misleading.”

3 72. Defendant offered misbranded products for sale to the Plaintiffs and Class  
4 Members by way of advertising the Products as having various beneficial  
5 characteristics, that the Products did not in fact have.

6 73. Such practice misrepresented the nature of the ingredients and capabilities of  
7 the Products. Defendant’s advertisements were made in California and come  
8 within the definition of advertising as contained in Bus. & Prof Code §§  
9 17500, *et seq.* in that the Products’ branding and advertising was intended to  
10 induce consumers to purchase the Products. Defendant knew or should have  
11 known its conduct was unauthorized, inaccurate, and misleading.

12 74. Defendant violated Cal. Bus. & Prof. Code §§ 17500, *et seq.* by misleading  
13 Plaintiffs and the Class to believe that the Products contained various  
14 beneficial characteristics that they did not in fact have, as detailed above.

15 75. As a result, purchasers were likely misled and deceived by Defendant’s  
16 website and literature, and reasonably expected that the Products consisted  
17 of the benefits as advertised.

18 76. Defendant knew or should have known, through the exercise of reasonable  
19 care, that its Products were and continue to be misbranded, and that its  
20 representations about the ingredients and effectiveness of its Products were  
21 false and/or misleading.

22 77. Plaintiffs and the Class Members lost money or property as a result of  
23 Defendant’s FAL violations because (a) they would not have purchased the  
24 Products on the same terms absent Defendant’s illegal conduct as set forth  
25 herein, or if the true facts were known concerning Defendant’s  
26 representations; (b) they paid a price premium for the Products due to  
27 Defendant’s misrepresentations; and (c) the Products did not have the  
28

1 benefits as promised. As a result, the class is entitled to monetary and  
2 injunctive relief.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF THE BUSINESS & PROFESSIONS CODE**

5 **BUS. & PROF. CODE, §§ 17200, *ET SEQ.***

6 78. Plaintiffs re-allege and incorporate by reference all of the above paragraphs  
7 of this Complaint as though fully stated herein.

8 79. Plaintiffs and Defendant are each “person[s]” as defined by California  
9 Business and Professions Code section 17201. California Business and  
10 Professions Code section 17204 authorizes a private right of action on both  
11 an individual and representative basis.

12 80. “Unfair competition” is defined by Business and Professions Code section  
13 17200 as encompassing several types of business “wrongs,” four of which  
14 are at issue here: (1) an “unlawful” business act or practice, (2) an “unfair”  
15 business act or practice, (3) a “fraudulent” business act or practice, and (4)  
16 “unfair, deceptive, untrue or misleading advertising.” The definitions in  
17 section 17200 are drafted in the disjunctive, meaning that each of these  
18 “wrongs” operates independently from the others.

19 81. By and through Defendant’s conduct alleged in further detail herein,  
20 Defendant engaged in conduct that constitutes unlawful, unfair, and/or  
21 fraudulent business practices and advertising as prohibited by Bus. & Prof.  
22 Code §§ 17200, *et seq.*

23 **A. “Unlawful” Prong**

24 82. Beginning at a date currently unknown and continuing through the time of  
25 this Complaint, Defendant committed acts of unfair competition, including  
26 those described above, by engaging in a pattern of “unlawful” business  
27 practices, within the meaning of Bus. & Prof. Code §§ 17200, *et seq.*, by  
28 falsely representing that its Products had various benefits that they in fact



1 did not have. This amounts to negligent misrepresentations as alleged in  
2 further detail above and herein, in violation of Bus. & Prof. Code §§ 17500,  
3 *et seq.* and other laws.

4 **B. “Unfair” Prong**

5 83. Defendant has engaged in a pattern of “unfair” business practice in violation  
6 of Bus. & Prof. Code §§ 17200, *et seq.*, by advertising its Products contained  
7 beneficial characteristics that they in fact did not have, resulting in a  
8 competitive disadvantage to other businesses that have not violated the law  
9 in this regard. Cal. Civ. Code §§ 1750, *et seq.*

10 84. Defendant’s actions and representations also constitute an “unfair” business  
11 act or practice under section 17200, in that Defendant knowingly and/or  
12 negligently represented to the consuming public, including Plaintiffs, that its  
13 Products have benefits and characteristics when such claims are  
14 unsubstantiated or do not exist. The gravity of those misrepresentations  
15 outweighs any alleged benefits attributable to such conduct; and such  
16 conduct is “unfair” because it offends established public policy and/or is  
17 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious  
18 to consumers in that consumers are led to believe that Defendant’s Products  
19 have qualities and benefits which those Products do not have.

20 85. Defendant’s actions are unlawful when: (1) the injury to the consumer was  
21 substantial in that consumers paid a premium for the Products in reliance on  
22 Defendant’s representations; (2) the injury was not outweighed by any  
23 countervailing benefits to consumers or competitors; and (3) the injury was  
24 not of the kind that consumers themselves could have reasonably avoided  
25 because most consumers are unable to decipher whether certain ingredients  
26 are naturally derived, and cannot reasonably verify the benefits advertised.

27 //

28 //

**C. “Fraudulent” Prong**

1  
2 86.Beginning at a date currently unknown and continuing through the time of  
3 this Complaint, Defendant engaged in acts of unfair competition, including  
4 those described herein, by engaging in a pattern of “fraudulent” business  
5 practices within the meaning of Bus. & Prof. Code §§ 17200, *et seq.*, by  
6 manufacturing, distributing, and/or marketing Defendant’s Products in  
7 violation of the CLRA, by falsely representing that the Products had certain  
8 characteristics in order to capitalize on consumers’ preference for higher  
9 quality products.

10 87.Plaintiffs reserve the right to allege further conduct that constitutes other  
11 fraudulent business acts or practices. Such conduct is ongoing and continues  
12 to this date.

**D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

13  
14 88.Defendant’s advertising is unfair, deceptive, untrue or misleading in that  
15 consumers are led to believe that Defendant’s Products have certain  
16 characteristics and benefits, as alleged herein.

17 89.Plaintiffs, as reasonable consumers, and the public, which would likely be  
18 and in fact was deceived and misled by Defendant’s advertising, interpreted  
19 the representation in accord with its ordinary usage, which is that  
20 Defendant’s Products had the advertised benefits.

21 90.Defendant’s unlawful, unfair, and fraudulent business practices, and unfair,  
22 deceptive, untrue and/or misleading advertising presents a continuing threat  
23 to the public in that Defendant continues to engage in unlawful conduct  
24 resulting in harm to consumers.

25 91.Defendant engaged in these unlawful, unfair, and fraudulent business  
26 practices, which were motivated solely by Defendant’s self-interest with the  
27 primary purpose of collecting unlawful and unauthorized monies from  
28

1 Plaintiffs and all others similarly situated, thereby unjustly enriching  
2 Defendant.

3 92. Such acts and omissions by Defendant are unlawful and/or unfair and/or  
4 fraudulent, and constitute violations of the Bus. & Prof. Code §§ 17200, *et*  
5 *seq.* Plaintiffs reserve the right to identify additional violations by Defendant  
6 as may be established through discovery.

7 93. As a direct and proximate result of the aforementioned acts and  
8 representations described above and herein, Defendant received and  
9 continues to receive unearned commercial benefits at the expense of its  
10 competitors and the public.

11 94. As a direct and proximate result of Defendant's unlawful, unfair, and  
12 fraudulent conduct described herein, Defendant has been and will continue  
13 to be unjustly enriched by the receipt of ill-gotten gains from customers,  
14 including Plaintiffs, who unwittingly provided money to Defendant as a  
15 result of Defendant's fraudulent representations.

16 95. Plaintiffs have suffered an "injury in fact" because Defendant received  
17 Plaintiffs' money as a result of Defendant's false representations set forth on  
18 Defendant's website and in its product literature.

19 96. In prosecuting this action for the enforcement of important rights affecting  
20 the public interest, Plaintiffs seek the recovery of attorneys' fees, which are  
21 available to prevailing plaintiffs in class action cases such as this.

22 **FOURTH CAUSE OF ACTION**  
23 **NEGLIGENT MISREPRESENTATION**

24 97. Plaintiffs repeat, re-allege and incorporate by reference, the above  
25 allegations, as if fully stated herein.

26 98. Defendant has continuously represented to the public, including Plaintiffs,  
27 through its website and by other means, that Defendant's Products contain as  
28 "healthy fats" or "beneficial fats"; as being "healthy"; as being "a natural

1 sustained energy”; and as containing “anti-bacterial,” “anti-microbial” and  
2 “anti-viral properties”. The Turmeric Product is advertised as containing  
3 “anti-inflammatory,” and “anti-oxidant benefits”.

4 99. As explained above, the each of these representations are either false or  
5 misleading.

6 100. Defendant made those representations alleged herein with the intent to  
7 induce the public, including Plaintiffs and the putative class members, to  
8 purchase Defendant’s Products.

9 101. Plaintiffs and other similarly situated persons in California, saw, believed,  
10 and relied upon Defendant’s advertising representations, and purchased  
11 Defendant’s Products as a result of such reliance.

12 102. At all times relevant, Defendant made those representations alleged herein  
13 when Defendant knew or should have known such representations were  
14 false, and Defendant had no reasonable basis to believe the representations  
15 were true.

16 103. As a proximate result of Defendant’s negligent misrepresentations, Plaintiffs  
17 and other consumers similarly situated were induced to purchase, purchase  
18 more of, or pay more for Defendant’s Products, due to the unlawful acts of  
19 Defendant, in an amount to be determined at trial, during the Class Period.

20 **FIFTH CAUSE OF ACTION**  
21 **INTENTIONAL MISREPRESENTATION**

22 104. Plaintiff repeats, re-alleges, and incorporates herein by reference the above  
23 allegations as if fully stated herein.

24 105. Beginning at a date currently unknown and continuing to the time of the  
25 filing of this Complaint, Defendant intentionally represented to Plaintiff and  
26 others similarly situated, through product packaging and advertising  
27 materials, that Defendant’s Product contained a certain daily value  
28 percentage of protein, and that the product assisted in muscle recovery.

1 106. Defendant acted intentionally by willfully and purposefully printing  
2 advertisements on its label and Amazon.com.

3 107. However, as described above, these advertisements are false and misleading.

4 108. Defendant knew or had reason to know such representations were false, and  
5 continued to label its Product in a false or misleading way.

6 109. Defendant further knew that retailers were advertising its Product as in false  
7 or misleading ways, because Defendant designed, manufactured, and affixed  
8 the product labeling to its Products before supplying the Products to the  
9 retailers.

10 110. Plaintiff and the putative Class members saw, believed, and relied upon  
11 Defendant's representations in making the decision to purchase Defendant's  
12 Product.

13 111. As a proximate result of Defendant's intentional misrepresentations, Plaintiff  
14 and the putative Class members were damaged in an amount to be  
15 determined at trial.

16 112. Plaintiff alleges the "who, what, when, where, and how" of the alleged  
17 deception by Defendant as follows:

18 i. The "who" is Defendant;

19 ii. The "what" is the representation that Defendant's Products as  
20 containing "healthy fats" or "beneficial fats"; as being "healthy"; as  
21 being "a natural sustained energy"; and as containing "anti-bacterial,"  
22 "anti-microbial" and "anti-viral properties"; as containing "anti-  
23 inflammatory," and "anti-oxidant benefits".

24 iii. The "when" is the date Plaintiff purchased the Product, and the Class  
25 Period of four years prior to the filing of this Complaint;

26 iv. The "where" is in Defendant's product labeling, advertisements, and  
27 online marketing; and  
28

1 v. The “how” is the allegation that Defendant did not disclose that its  
2 Products in fact do not provide the benefits or characteristics as  
3 advertised.

4 113. By engaging in the acts described above, Defendant is guilty of malice,  
5 oppression, and fraud, and Plaintiffs and the putative Class are therefore  
6 entitled to recover exemplary or punitive damages.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs respectfully request the Court grant Plaintiffs and  
9 the Class members the following relief against Defendant:

- 10 • that the Court determine this action may be maintained as a Class Action  
11 by certifying this case as a class action;
- 12 • that the Court certify the Plaintiffs as the Class Representatives in this  
13 matter;
- 14 • that Defendant’s wrongful conduct alleged herein be adjudged and  
15 decreed to violate the consumer protection statutory claims asserted  
16 herein;
- 17 • An order requiring imposition of a constructive trust and and/or  
18 disgorgement of Defendant’s ill-gotten gains and to pay restitution to  
19 Plaintiffs and all members of the Class and to restore to the plaintiff and  
20 members of the class all funds acquired by means of any act or practice  
21 declared by this court to be an unlawful, fraudulent or unfair business act  
22 or practice, in violation of laws, statutes or regulations, or constituting  
23 unfair competition;
- 24 • Distribution of any monies recovered on behalf of members of the Class  
25 via fluid recovery or *cy pres* recovery were necessary and as applicable, to  
26 prevent Defendant from retaining the benefits of their wrongful conduct;
- 27 • that Plaintiffs and each of the other members of the Class recover the  
28 amounts by which Defendant has been unjustly enriched;

- A temporary, preliminary and/or permanent order for injunctive relief requiring Defendant to: (i) discontinue its false and/or misleading statement/s; and (ii) undertake an immediate public information campaign to inform members of the proposed class as to their prior practices;
- Pre-judgment interests from the date of filing of this suit;
- that Plaintiffs and each of the other members of the Class recover their costs of suit;
- that Plaintiffs recovery their reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5 and the UCL, and the common fund doctrine;
- that Plaintiffs and the members of the Class be granted any other relief the Court may deem just and proper.

**TRIAL BY JURY**

114. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand a trial by jury.

Dated: January 9, 2020

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By: \_\_\_\_\_

ABBAS KAZEROUNIAN, ESQ.  
AK@KAZLG.COM  
ATTORNEY FOR PLAINTIFFS