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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
12

13 DEANA LOZANO, *individually and on* )  
14 *behalf of all those similarly situated,* )  
15 )  
16 *Plaintiff,* )

No. \_\_\_\_\_

v. )

**CLASS ACTION COMPLAINT**

17 ALDI USA, INC, *an Illinois corporation,* )  
18 )  
19 *Defendant.* )  
20 )  
21 )  
22 )

**JURY TRIAL DEMANDED**

23 \_\_\_\_\_  
24 Deana Lozano (“Plaintiff”), individually and on behalf of all other California consumers  
25 similarly situated, by and through undersigned counsel, hereby brings this action against Aldi  
26 USA, Inc. (“Aldi”), alleging that several flavors of its Millville Fruit and Grain Bars (“the  
27 Products”), which are soft baked breakfast bars manufactured, packaged, labeled, advertised,  
28 distributed, and sold by Defendant, are misbranded and falsely advertised, and upon information  
and belief and investigation of counsel alleges as follows:

**PARTIES**

1. Plaintiff Deana Lozano is and at all times relevant was a citizen of the state of  
California, domiciled in Los Angeles, California.



1 wires and mails, both directly and through electronic and print publications that are directed to  
2 commercial and individual consumers in this district.

3 10. Defendant knowingly directs electronic activity and ships the Products into this  
4 district with the intent to engage in business interactions for profit, and it has in fact engaged in  
5 such interactions, including the sale of the Products to Plaintiff.  
6

7 11. Plaintiff's losses and those of other Class members were sustained in this district.

8 12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of  
9 the events or omissions giving rise to Plaintiff's claims occurred within this district.

10 13. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court  
11 maintains personal jurisdiction over Defendant.  
12

### 13 **FACTUAL ALLEGATIONS**

#### 14 **A. Consumers Pay A Premium for "Clean Labels."**

15 14. Across the globe, consumers are increasingly attuned to claims that foods are "all-  
16 natural," minimally processed, or otherwise free of artificial flavors and preservatives.

17 15. For example, a 2018 survey by L.E.K. Consulting found that overwhelming  
18 numbers of consumers were committed or casual adherents to so-called "clean label" food  
19 attributes: "No artificial ingredients" (69 percent); "No preservatives" (67 percent); or "All-  
20 natural" (66 percent). These were the three most attractive attributes in the consumer survey.  
21 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for "clean  
22 label" foods. *See* <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.  
23

24 16. This consumer preference has led to an explosion in the category of "clean label"  
25 foods and beverages. Leading analyst Allied Market Research estimated that the "natural foods  
26 and drinks" category would grow by an estimated compound annual growth rate of 13.7 percent  
27 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. *See*  
28 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.

1           17. On or about February 11, 2023, Ms. Lozano purchased Millville Fruit and Grain  
2 bars, blueberry flavor, from an Aldi grocery store on Century Boulevard in Inglewood,  
3 California.

4           18. Ms. Lozano is a health care administrator and amateur athlete who eats with  
5 intentionality and for health. She carefully reviews labels, including the Products' labels, to  
6 ensure that she consumes only natural ingredients and avoids artificial flavors and ingredients.  
7

8 **B. Defendant's Use of Synthetic Flavorings and Deceptive Labels.**

9           19. Defendant Aldi formulates, manufactures, and sells soft baked breakfast bars in  
10 multiple flavors under the brand name "Millville," its in-house brand.

11           20. The front label (or "principal display panel") of the Products (both the box and the  
12 individually wrapped items contained therein) prominently state they are "Naturally Flavored"  
13 and contain "No Artificial Flavors," with attention drawn to the claim through depictions of  
14 fruits:  
15



1           21. These natural flavoring claims are false. The Products (blueberry, strawberry,  
2 mixed berry, and apple cinnamon flavors) are flavored using an artificial flavoring, DL malic  
3 acid, that is derived from petrochemicals.

4           22. The Products state, on the back label, that they contain “malic acid.”

5           23. While there is a naturally occurring form of malic acid, it is extremely expensive  
6 to formulate in large quantities and is almost never used in mass-produced food products.  
7 Instead, testing by an independent third-party laboratory has confirmed that the malic acid that  
8 Defendant uses in these Products is DL malic acid, a synthetic substance derived from  
9 petrochemicals.<sup>1</sup>

10           24. This type of malic acid is manufactured in petrochemical plants from benzene or  
11 butane—components of gasoline and lighter fluid, respectively—through a series of chemical  
12 reactions, some of which involve highly toxic chemical precursors and byproducts.

13           25. Fruit flavors in a food are imparted by the interactions between sugars, acids,  
14 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined  
15 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic  
16 acid.

17           26. The quality and consumer acceptability of fruit flavors is based on their perceived  
18 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such  
19 as blueberries have their own natural ratio of sugars and acids.

20           27. The DL malic acid used in the Products is used to create, simulate, and/or reinforce  
21 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.  
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<sup>1</sup> DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1           28. Defendant uses the petrochemical-derived DL malic acid in its Products to create  
2 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,  
3 misbranding the Products and deceiving consumers.

4           29. The ingredients on the Products' label are declared in a way that is misleading and  
5 contrary to law, because Defendant designates the ingredient by its generic name, "malic acid,"  
6 instead of by its specific name, "DL malic acid."  
7

8           **C. Requirements for Labelling**

9           30. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act  
10 ("FDCA") require that a food's label accurately describe the nature of the food product and its  
11 characterizing flavors. 21 C.F.R. § 102.5(a).

12           31. Artificial flavor is defined as "any substance, the function of which is to impart  
13 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible  
14 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy  
15 products, or fermentation products thereof." 21 C.F.R § 101.22(a)(1).  
16

17           32. Natural flavor is defined as "essential oil, oleoresin, essence or extractive, protein  
18 hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the  
19 flavoring constituents" from fruits or vegetables, "whose significant function in food is flavoring  
20 rather than nutritional." 21 C.F.R § 101.22(a)(3).  
21

22           33. Any recognizable primary flavor identified directly or indirectly on the front label  
23 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to  
24 as a "characterizing flavor." 21 C.F.R. § 101.22.

25           34. Here, the Products' labels both state the characterizing flavors and reinforce the  
26 claim that this characterizing flavor is achieved by using only natural flavors through use of  
27 depictions of fruits.  
28

1           35. If a food product’s characterizing flavor is not created exclusively by the named  
2 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or  
3 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present  
4 which “simulates, resembles or reinforces” the characterizing flavor, the front label must  
5 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §  
6 101.22(i)(2).  
7

8           36. A food product’s label also must include a statement of the “presence or absence  
9 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such  
10 ingredient(s) or component(s) in the food has a material bearing on price or consumer  
11 acceptance . . . and consumers may otherwise be misled about the presence or absence of the  
12 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.  
13

14           37. Such statement must be in boldface print on the front display panel and of  
15 sufficient size for an average consumer to notice.

16           38. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §  
17 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.

18           39. By changing the ratio between sugars and acids that is naturally found in fruits,  
19 the DL malic acid used in the Products reinforces, simulates, or creates the characterizing  
20 flavors, regardless of any other effect it may have or purpose for which it was included.  
21

22           40. DL malic acid is not a “natural flavor” as this term is defined by federal and state  
23 regulations and is not derived from a fruit or vegetable or any other natural source. The Products  
24 therefore contain artificial flavorings.

25           41. Because the Products contain artificial flavoring, California law requires the  
26 Products to display both front- and back-label disclosures to inform consumers that the Products  
27 are artificially flavored.  
28

1           42. The Products have none of the required disclosures regarding the use of artificial  
2 flavors.

3           43. Plaintiff reserves the right to amend this Complaint to add further products that  
4 contain similar label misrepresentations as testing continues.

5           49. Labels are the chief means by which food product manufacturers convey critical  
6 information to consumers, and consumers have been conditioned to rely on the accuracy of the  
7 claims made on these labels. As the California Supreme Court stated in a case involving alleged  
8 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based  
9 on the premise that labels matter, that consumers will choose one product over another similar  
10 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

11           50. Plaintiff reviewed the labels on the Products prior to her purchase, and reviewed  
12 the natural flavoring claims being made on those labels. Consumers such as Plaintiff who viewed  
13 the Products’ labels reasonably understood Defendant’s “Naturally Flavored” and “No Artificial  
14 Flavors” statements, as well as its failure to disclose the use of artificially derived malic acid, to  
15 mean that the Products contain only natural flavorings. This representation was also false.  
16

17           51. Consumers including Plaintiff reasonably relied on Defendant’s statements such  
18 that they would not have purchased the Products from Defendant if the truth about the Products  
19 was known, or would have only been willing to pay a substantially reduced price for the Products  
20 had they known that Defendant’s representations were false and misleading.  
21

22           52. In the alternative, because of its deceptive and false labelling statements,  
23 Defendant was enabled to charge a premium for the Products relative to key competitors’  
24 products, or relative to the average price charged in the marketplace.  
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1 predominate over any questions that affect only individual Class members. Common legal and  
2 factual questions and issues include but are not limited to:

- 3 a. Whether the marketing, advertising, packaging, labeling, and other  
4 promotional materials for Defendant's Products is misleading and deceptive;  
5  
6 b. Whether a reasonable consumer would understand Defendant's natural  
7 flavorings claims to indicate that the Products contained only natural  
8 flavorings, and reasonably relied upon those representations;  
9  
10 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and  
11 Class members;  
12  
13 d. the proper amount of damages and disgorgement or restitution;  
14  
15 e. the proper scope of injunctive relief; and  
16  
17 f. the proper amount of attorneys' fees.

18  
19 61. Defendant engaged in a common course of conduct in contravention of the laws  
20 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations  
21 of law, business practices, and injuries are involved. Individual questions, if any, pale by  
22 comparison, in both quality and quantity, to the numerous common questions that predominate  
23 this action. The common questions will yield common answers that will substantially advance  
24 the resolution of the case.

25 62. In short, these common questions of fact and law predominate over questions that  
26 affect only individual Class members.

27 63. **Typicality – Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the Class  
28 members because they are based on the same underlying facts, events, and circumstances  
relating to Defendant's conduct.

1           64. Specifically, all Class members, including Plaintiff, were harmed in the same way  
2 due to Defendant's uniform misconduct described herein; all Class members suffered similar  
3 economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as  
4 the Class members.

5           65. There are no defenses available to Defendant that are unique to the named  
6 Plaintiff.

7           49. These Products are formulated into different flavors, but each is derived from a  
8 base formulation that is substantially similar across all the Products.

9           50. The Products all make the same natural flavorings claim, which is deceptive in the  
10 same way across all of the Products because it relates to a single flavoring, DL malic acid.

11           51. The Products are also priced and packaged similarly.

12           52. Because of these similarities, the resolution of the asserted claims will be identical  
13 as between purchased and unpurchased Products.

14           53. Because both the products and alleged misrepresentations are substantially  
15 similar, Plaintiff's claims related to the Products that she purchased are typical of the claims  
16 available to all purchasers of the Products. As such, Plaintiff is an adequate class representative  
17 for a class of purchasers of all of the Products, regardless whether Plaintiff purchased every  
18 flavor of the Products.

19           54. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate  
20 representative of the Class because Plaintiff's interests do not conflict with the Class members'  
21 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress  
22 against Defendant.

1           55. Furthermore, Plaintiff has selected competent counsel who are experienced in  
2 class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to  
3 prosecuting this action vigorously on behalf of the Class and have the resources to do so.

4           56. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other  
5 available means for the fair and efficient adjudication of this controversy for at least the  
6 following reasons

- 7
- 8           a. the damages individual Class members suffered are small compared to the  
9 burden and expense of individual prosecution of the complex and extensive  
10 litigation needed to address Defendant's conduct such that it would be  
11 virtually impossible for the Class members individually to redress the wrongs  
12 done to them. In fact, they would have little incentive to do so given the  
13 amount of damage each member has suffered when weighed against the costs  
14 and burdens of litigation;
  - 15           b. the class procedure presents fewer management difficulties than individual  
16 litigation and provides the benefits of single adjudication, economies of scale,  
17 and supervision by a single Court;
  - 18           c. the prosecution of separate actions by individual Class members would create  
19 a risk of inconsistent or varying adjudications, which would establish  
20 incompatible standards of conduct for Defendant; and
  - 21           d. the prosecution of separate actions by individual Class members would create  
22 a risk of adjudications with respect to them that would be dispositive of the  
23 interests of other Class members or would substantively impair or impede their  
24 ability to protect their interests.  
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- 1           b. Defendant misrepresented that its Products are of a particular standard, quality,  
2           and/or grade, when they are of another;
- 3           c. Defendant's acts and practices constitute the advertisement of goods, without the  
4           intent to sell them as advertised;
- 5           d. Defendant's acts and practices fail to represent that transactions involving its  
6           Products involve actions that are prohibited by law, particularly the use of  
7           misleading nutritional labelling; and
- 8           e. Defendant's acts and practices constitute representations that its Products have  
9           been supplied in accordance with previous representations when they were not.

10           110. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,  
11           entitling them to injunctive relief, disgorgement, and restitution.

12           111. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the  
13           particular violations of the CLRA described herein and demanded Defendant rectify the actions  
14           described above by providing complete monetary relief, agreeing to be bound by their legal  
15           obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this  
16           notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.

17           112. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled  
18           to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such  
19           damages include, without limitation, monetary losses and actual, punitive, and consequential  
20           damages, in an amount to be proven at trial.

21           113. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin  
22           publication of misleading and deceptive nutritional labels on Defendant's Products and to  
23           recover reasonable attorneys' fees and costs.

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**COUNT 6**  
**UNJUST ENRICHMENT**

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3 114. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
4 extent necessary, pleads this cause of action in the alternative.

5 115. Defendant, through its marketing and labeling of the Products, misrepresented and  
6 deceived consumers regarding the flavoring in the Products.

7 116. Defendant did so for the purpose of enriching itself and it in fact enriched itself  
8 by doing so.

9  
10 117. Consumers conferred a benefit on Defendant by purchasing the Products,  
11 including an effective premium above their true value. Defendant appreciated, accepted, and  
12 retained the benefit to the detriment of consumers.

13 118. Defendant continues to possess monies paid by consumers to which Defendant is  
14 not entitled.

15 119. Under the circumstances it would be inequitable for Defendant to retain the benefit  
16 conferred upon it and Defendant's retention of the benefit violates fundamental principles of  
17 justice, equity, and good conscience.

18  
19 120. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of  
20 Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed  
21 appropriate by the Court, and such other relief as the Court deems just and proper to remedy  
22 Defendant's unjust enrichment.

23 121. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
24 a result of Defendant's actions as set forth above.  
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1 **COUNT 7**  
2 **BREACH OF EXPRESS WARRANTY**

3 122. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
4 extent necessary, pleads this cause of action in the alternative.

5 123. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,  
6 expressly warranted that the Products were “Naturally Flavored” and contain “No Artificial  
7 Flavors.”

8 124. Defendant’s express warranties, and its affirmations of fact and promises made to  
9 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain  
10 between Defendant and Plaintiff and the Class, which creates an express warranty that the  
11 Products would conform to those affirmations of fact, representations, promises, and  
12 descriptions.  
13

14 125. The Products do not conform to the express warranty that the Products are  
15 “Naturally Flavored” and contain “No Artificial Flavors,” because they are flavored by and  
16 contain ingredients that are unnatural and synthetic, *i.e.*, DL malic acid.  
17

18 126. As a direct and proximate cause of Defendant’s breach of express warranty,  
19 Plaintiff and Class members have been injured and harmed because: (a) they would not have  
20 purchased the Products on the same terms if they knew the truth about the Products’ unnatural  
21 ingredients; (b) they paid a price premium based on Defendant’s express warranties; and (c) the  
22 Products do not have the characteristics, uses, or benefits that were promised.  
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff respectfully request the Court grant the following relief against  
26 Defendant:

- 27 a. Certifying the Class;  
28 b. Declaring that Defendant violated the CLRA, UCL, and FAL;

- 1 c. Awarding actual and other damages as permitted by law, and/or ordering an  
2 accounting by Defendant for any and all profits derived by Defendant from the  
3 unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;  
4  
5 d. Ordering an awarding of injunctive relief as permitted by law or equity, including  
6 enjoining Defendant from continuing the unlawful practices as set forth herein, and  
7 ordering Defendant to engage in a corrective advertising campaign;  
8  
9 e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;  
10  
11 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts  
12 awarded; and  
13  
14 g. Such other relief as the Court may deem just and proper.

15 TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

16 Respectfully submitted,

17 /s/ Charles C. Weller  
18 Charles C. Weller (Cal. SBN: 207034)  
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25 May 30, 2023  
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