¢	ase 2:23-cv-08696 Document 1 Filed 10/16/23 Page 1 of 21 Page ID #:1	
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7		
8	IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA	
9		
10	DEANA LOZANO, individually and on ) behalf of all those similarly situated, )	
11	) Plaintiff, ) No	
12 13	) v. ) CLASS ACTION COMPLAINT	
14	) SPORTS RESEARCH CORPORATION, a ) Galifornia composation	
15	California corporation,	
16	)	
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18 19	Deana Lozano ("Plaintiff"), individually and on behalf of all other consumers in the	
20	United States similarly situated, by and through undersigned counsel, hereby brings this action	
21	against Sports Research Corporation ("Sports Research"), alleging that its Keto+ dietary	
22	supplement, raspberry lemonade flavor ("the Products"), which are manufactured, packaged,	
23	labeled, advertised, distributed, and sold by Defendant, are misbranded and falsely advertised,	
24	and upon information and belief and investigation of counsel alleges as follows:	
25 26	PARTIES	
20	1. Plaintiff Deana Lozano is and at all times relevant was a citizen of the state of California dominiation Los Angeles California	
28	California, domiciled in Los Angeles, California.	
	-1- CLASS ACTION COMPLAINT	

1	2. Defendant Sports Research Corporation is a California corporation with its
2	principal place of business and headquarters in San Pedro, California.
3	JURISDICTION AND VENUE
4	3. This Court has subject matter jurisdiction over this action pursuant to the Class
5	Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the
6	United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original
7 8	jurisdiction of the federal district courts over "any civil action in which the matter in controversy
o 9	exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class
10	action in which any member of a class of plaintiffs is a citizen of a State different from any
11	defendant." 28 U.S.C. § 1332(d)(2)(A).
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13	4. Plaintiff seeks to represent Class members who are citizens of states or countries
14	different from the Defendant.
15	5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate,
16	exclusive of interests and costs.
17	6. In addition, "the number of members of all proposed plaintiff classes in the
18	aggregate" is greater than 100. See 28 U.S.C. § 1332(d)(5)(B).
19	7. This Court has personal jurisdiction over Defendant because this action arises out
20	of and relates to Defendant's contacts with this forum.
21	8. Those contacts include but are not limited to sales of the Products directly to
22 23	commercial and individual consumers located in this district, including Plaintiff; shipping the
23 24	Products to commercial and individual consumers in this district, including Plaintiff; knowingly
25	directing advertising and marketing materials concerning the Products into this district through
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27	wires and mails, both directly and through electronic and print publications that are directed to
28	commercial and individual consumers in this district; and operating an e-commerce web site
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	CLASS ACTION COMPLAINT

that offers the Products for sale to commercial and individual consumers in this district, as well as offering the Products for sale through third-party e-commerce websites, through both of which commercial and individual consumers residing in this district have purchased the Products.

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

9 10. Defendant also sells the Products to retailers and wholesalers in this district for
10 the purpose of making the Products available for purchase by individual consumers in this
11 district.

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

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

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

### FACTUAL ALLEGATIONS

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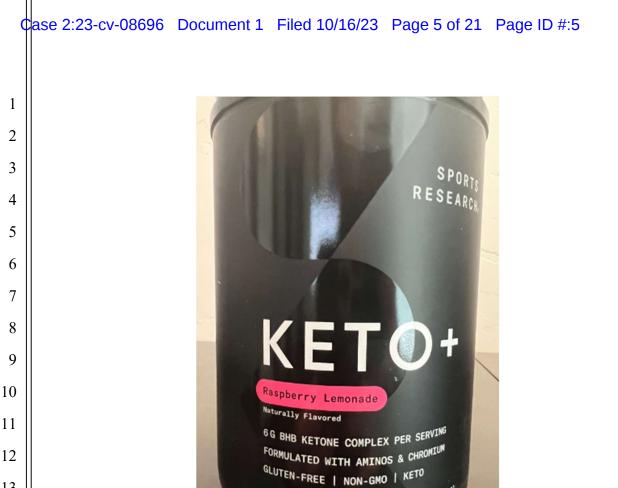
## Consumers Pay A Premium for "Clean Labels."

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

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

CLASS ACTION COMPLAINT

1	16. This consumer preference has led to an explosion in the category of "clean label"
2	foods and beverages. Leading analyst Allied Market Research estimated that the "natural foods
3	
4	and drinks" category would grow by an estimated compound annual growth rate of 13.7 percent
5	from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See
6	https://www.alliedmarketresearch.com/natural-food-and-drinks-market.
7	17. Ms. Lozano purchased the Products (raspberry lemonade flavor) from
8	Amazon.com on or about May 18, 2023.
9	18. Ms. Lozano is a health care administrator who eats with intentionality and for
10	health. She carefully reviews labels, including the Products' labels, because she prefers to
11	consume natural ingredients and avoid artificial flavors and ingredients.
12	B. Defendant's Use of Synthetic Flavorings and Deceptive Labels.
13 14	19. Defendant Sports Research formulates, manufactures, and sells ketogenic dietary
14	supplements in multiple flavors under the brand name Keto+.
16	20. The front label (or "principal display panel") of the Products prominently state
17	they are "Naturally Flavored":
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	CLASS ACTION COMPLAINT



21. These natural flavoring claims are false. The Products are flavored using an artificial flavoring, DL malic acid, that is derived from petrochemicals.

Dietary Supplement | Net Wt 11.202 (313)

22. The Products state, on the back label, that they contain "malic acid."

23. While there is a naturally occurring form of malic acid, it is extremely expensive to formulate in large quantities and is almost never used in mass-produced food products. Instead, testing conducted by an independent third-party laboratory confirmed the presence of the "D" isomer in the malic acid used in the Products. These testing results confirm that the malic acid that Defendant uses in these Products is DL malic acid, a synthetic substance derived from petrochemicals.<sup>1</sup> The DL malic acid in the Products was found in concentrations that indicate the purpose of the DL malic acid is for flavoring and not any other purpose. This method

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<sup>1</sup> DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1	of testing for the "D" isomer is an industry-standard method for determining whether malic acid	
2	used in food products is natural or artificial.	
3 4 5	24. This type of malic acid is manufactured in petrochemical plants from benzene or	
4	butane—components of gasoline and lighter fluid, respectively—through a series of chemical	
	reactions, some of which involve highly toxic chemical precursors and byproducts.	

7 25. Federal regulations note explicitly that "DL-malic acid does not occur naturally."
8 21 C.F.R. § 184.1069(a).

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

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27. The quality and consumer acceptability of fruit flavors is based on their perceived
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28. The DL malic acid used in the Products is used to create, simulate, and/or reinforce the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.

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

### C. Requirements for Labelling

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

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

hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the
flavoring constituents" from fruits or vegetables, "whose significant function in food is flavoring
rather than nutritional." 21 C.F.R § 101.22(a)(3).

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

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34. Here, the Products' labels both state the characterizing flavors.

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

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

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1	37. Such statement must be in boldface print on the front display panel and of	
2	sufficient size for an average consumer to notice.	
3	38. California's Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §	
4 5	109875, et seq., incorporates all food flavoring and additive regulations of the FDCA, enacting	
6	them independently as substantive requirements of state law.	
7	39. By changing the ratio between sugars and acids that is naturally found in fruits,	
8	the DL malic acid used in the Products reinforces, simulates, or creates the characterizing	
9	flavors, regardless of any other effect it may have or purpose for which it was included.	
10	40. DL malic acid is not a "natural flavor" as this term is defined by federal and state	
11	regulations and is not derived from a fruit or vegetable or any other natural source. The Products	
12 13	therefore contain artificial flavorings.	
14	41. Because the Products contain artificial flavoring, California law requires the	
15	Products to display both front- and back-label disclosures to inform consumers that the Products	
16	are artificially flavored.	
17	42. The Products have none of the required disclosures regarding the use of artificial	
18	flavors.	
19	43. Plaintiff reserves the right to amend this Complaint to add further products that	
20 21	contain similar label misrepresentations as testing continues.	
21	49. Labels are the chief means by which food product manufacturers convey critical	
23	information to consumers, and consumers have been conditioned to rely on the accuracy of the	
24	claims made on these labels. As the California Supreme Court stated in a case involving alleged	
25	violations of the UCL and FAL, "Simply stated: labels matter. The marketing industry is based	
26	on the premise that labels matter, that consumers will choose one product over another similar	
27	product based on its label." Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 328 (2011).	
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50. Plaintiff reviewed the labels on the Products prior to her purchase, and reviewed
the natural flavoring claims being made on those labels. Consumers such as Plaintiff who viewed
the Products' labels reasonably understood Defendant's "No Artificial Flavors" statement, as
well as its failure to disclose the use of artificially derived malic acid, to mean that the Products
contain only natural flavorings. This representation was also false.

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

52. In the alternative, because of its deceptive and false labelling statements, Defendant was enabled to charge a premium for the Products relative to key competitors' products, or relative to the average price charged in the marketplace.

53. Consumers including Plaintiff especially rely on label claims made by food
product manufacturers such as Sports Research, as they cannot confirm or disprove those claims
simply by viewing or even consuming the Products.

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 54. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive
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 conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and
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## **CLASS ACTION ALLEGATIONS**

55. Plaintiff brings this action individually and as representative of all those similarly
situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the United
States who purchased the Products within four years prior to the filing of this Complaint.

1	56. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,	
2	employees, officers, agents, and directors. Also excluded are any judicial officers presiding over	
3	this matter and the members of their immediate families and judicial staff.	
4	57. Plaintiff reserves the right to alter the Class definition, and to amend this	
5	Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.	
6 7	58. Certification of Plaintiff's claims for class-wide treatment is appropriate because	
8	Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as	
9	individual Class members would use to prove those elements in individual actions alleging the	
10	same claims.	
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12	59. Numerosity – Rule $23(a)(1)$ : The size of the Class is so large that joinder of all	
13	Class members is impracticable. Plaintiff believes and avers there are thousands of Class	
14	members geographically dispersed throughout the United States.	
15	60. Existence and Predominance of Common Questions of Law and Fact – Rule	
16	23(a)(2), (b)(3): There are questions of law and fact common to the Class. These questions	
17	predominate over any questions that affect only individual Class members. Common legal and	
18	factual questions and issues include but are not limited to:	
19	a. Whether the marketing, advertising, packaging, labeling, and other promotional	
20 21	materials for Defendant's Products is misleading and deceptive;	
21	b. Whether a reasonable consumer would understand Defendant's natural flavorings	
23	claim to indicate that the Products contained only natural flavorings, and	
24	reasonably relied upon those representations;	
25	c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class	
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27	members;	
28	d. the proper amount of damages and disgorgement or restitution;	
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	CLASS ACTION COMPLAINT	

- e. the proper scope of injunctive relief; and
  - f. the proper amount of attorneys' fees.

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

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

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

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

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

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

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Furthermore, Plaintiff has selected competent counsel who are experienced in 68. class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to prosecuting this action vigorously on behalf of the Class and have the resources to do so.

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

the damages individual Class members suffered are small compared to the burden 8 a. 9 and expense of individual prosecution of the complex and extensive litigation 10 needed to address Defendant's conduct such that it would be virtually impossible 11 for the Class members individually to redress the wrongs done to them. In fact, 12 they would have little incentive to do so given the amount of damage each member 13 has suffered when weighed against the costs and burdens of litigation; 14

# b. the class procedure presents fewer management difficulties than individual litigation and provides the benefits of single adjudication, economies of scale, and supervision by a single Court;

the prosecution of separate actions by individual Class members would create a c. risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant; and

d. the prosecution of separate actions by individual Class members would create a 22 risk of adjudications with respect to them that would be dispositive of the interests 24 of other Class members or would substantively impair or impede their ability to 25 protect their interests.

26 70. Unless the Class is certified, Defendant will retain monies received as a result of 27 its unlawful and deceptive conduct alleged herein. 28

1	71. Unless a class-wide injunction is issued, Defendant will likely continue to	
2	advertise, market, promote, and sell its Products in an unlawful and misleading manner, as	
3	described throughout this Complaint, and members of the Class will continue to be misled,	
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5	harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products'	
6	advertising or labeling in the future, and so will not purchase the Products or other food products	
7	produced by Defendant although she would like to.	
8	72. Ascertainability. To the extent ascertainability is required, the Class members are	
9	readily ascertainable from Defendant's records and/or its agents' records of retail and online	
10	sales, as well as through public notice.	
11	73. Defendant has acted on grounds applicable to the Class as a whole, thereby	
12	making appropriate final injunctive and declaratory relief concerning the Class as a whole.	
13	COUNT 1	
14 15	VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 et seq. — "UNFAIR" CONDUCT	
16	74. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the	
17	extent necessary, pleads this cause of action in the alternative.	
18	75. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as	
19	a result of Defendant's actions as set forth herein.	
20	76. Defendant's actions as alleged in this Complaint constitute "unfair" conduct	
21	within the meaning of California Business and Professions Code Section 17200, et seq.	
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24	disclose accurately the synthetic flavoring used in the Products and mispresents the flavoring on	
25	the Product's labels.	
26	78. As a result of this "unfair" conduct, Plaintiff expended money and engaged in	
27	activities it would not otherwise have spent or conducted.	
28	-13-	
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1	79. Defendant's wrongful business practices alleged herein constituted, and continue	
2	to constitute, a continuing course of unfair competition since it continues to market and sell its	
3	products in a manner that offends public policy and/or in a fashion that is immoral, unethical,	
4	oppressive, unscrupulous and/or substantially injurious to its customers.	
5 6	80. Defendant publicly disseminated untrue or misleading representations regarding	
7	the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care	
8	should have known, were untrue or misleading.	
9	81. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order	
10	of this court enjoining Defendant from continuing to engage in "unfair" business practices and	
11	any other act prohibited by law, including those acts set forth in this Complaint, and further seek	
12	all other relief allowable under Business and Professions Code Section 17200, et seq.	
13 14	COUNT 2	
15	VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 et seq. — "FRAUDULENT" CONDUCT	
16	82. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the	
17	extent necessary, plead this cause of action in the alternative.	
18	83. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as	
19	a result of Defendant's actions as set forth above.	
20	84. Defendant's actions as alleged in this Complaint constitute "fraudulent" conduct	
21 22	within the meaning of California Business and Professions Code Section 17200 et seq.	
23	85. Defendant's business practices, as alleged herein, are "fraudulent" because it fails	
24	to disclose accurately the synthetic flavoring used in the Products and mispresents the flavoring	
25	on the Product's labels.	
26	86. As a result of this "fraudulent" conduct, Plaintiff expended money and engaged in	
27	activities it would not otherwise have spent or conducted.	
28	-14-	
	CLASS ACTION COMPLAINT	

87.	Defendant's wrongful business practices alleged herein constituted, and continue
to constitute	e, a continuing course of unfair competition since it continues to market and sell its
products in	a manner that offends public policy and/or in a fashion that is immoral, unethical,
oppressive,	unscrupulous and/or substantially injurious to its customers.
88.	Defendant publicly disseminated untrue or misleading representations regarding
the flavorin	g label claims of its Products, which it knew, or in the exercise of reasonable care
should have	e known, were untrue or misleading.
89.	Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an
order of thi	s Court enjoining Defendant from continuing to engage in "fraudulent" business
practices an	d any other act prohibited by law, including those acts set forth in this Complaint,
and further	seeks all other relief allowable under Business and Professions Code Section 17200,
et seq.	
VI	COUNT 3 IOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 et seq. — "UNLAWFUL" CONDUCT
90.	Plaintiff reallege the preceding paragraphs as if fully set forth herein and, to the
extent neces	ssary, pleads this cause of action in the alternative.
91.	Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
a result of I	Defendant's actions as set forth above.
92.	Defendant's actions as alleged in this Complaint constitute "unlawful" conduct
within the n	neaning of California Business and Professions Code Section 17200, et seq.
93.	Defendant's business practices, as alleged herein, are "unlawful" because it fails
disclose acc	curately the synthetic flavoring used in the Products and mispresents the flavoring on
the Product	's labels.
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activities she would not otherwise have spent or conducted.	
95. Defendant's business practices alleged herein constituted, and continue to	
constitute, a continuing course of unfair competition since it continues to market and sell its	
products in a manner that offends public policy and/or in a fashion that is immoral, unethical,	
oppressive, unscrupulous and/or substantially injurious to its customers.	
96. Defendant publicly disseminated untrue or misleading representations regarding	
the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care	
should have known, were untrue or misleading.	
97. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order	
of this court enjoining Defendant from continuing to engage in "unlawful" business practices	
COUNT 4 VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17500 <i>et seq</i> .	
98. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the	
extent necessary, pleads this cause of action in the alternative.	
99. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as	
100. Defendant engaged in advertising and marketing to the public and offered for sale	
advertising services on a nationwide basis, including in California.	
101. Defendant engaged in the advertising and marketing alleged herein with the intent	
to directly or indirectly induce the sale of the Products to consumers.	
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	<ul> <li>95. Defendant's business practices alleged herein constituted, and continue to constitute, a continuing course of unfair competition since it continues to market and sell its products in a manner that offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to its customers.</li> <li>96. Defendant publicly disseminated untrue or misleading representations regarding the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care should have known, were untrue or misleading.</li> <li>97. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order of this court enjoining Defendant from continuing to engage in "unlawful" business practices and any other act prohibited by law, including those acts set forth in this Complaint, and further seeks all other relief allowable under Business and Professions Code Section 17200, <i>et seq</i>.</li> <li><b>COUNT 4 VIOLATION OF CALIFORNIA BUSINESS &amp; PROFESSIONS CODE SECTION 17500</b> <i>et seq</i>.</li> <li>98. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.</li> <li>99. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant engaged in advertising and marketing to the public and offered for sale advertising services on a nationwide basis, including in California.</li> <li>101. Defendant engaged in the advertising and marketing alleged herein with the intent to directly or indirectly induce the sale of the Products to consumers.</li> </ul>

1	102. Defendant's advertisements and marketing representations regarding the
2	characteristics of the Products were false, misleading, and deceptive as set forth above.
3	103. At the time it made and disseminated the statements alleged herein, Defendant
4 5	knew or should have known that the statements were untrue or misleading, and acted in violation
6	of Business and Professions Code Section 17500, et seq.
7	104. Plaintiff seeks injunctive relief and all other relief allowable under Business and
8	Professions Code Section 17500, et seq.
9	COUNT 5
10	VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CIVIL CODE § 1750 et seq.
11	105. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
12	extent necessary, pleads this cause of action in the alternative.
13 14	106. Plaintiff is a "consumer" within the meaning of the Consumer Legal Remedies
14	Act ("CLRA"), Cal. Civ. Code § 1761(d).
16	107. The sale of Defendant's Products to Plaintiff and Class members was a
17	"transaction" within the meaning of the CLRA, Cal. Civ. Code § 1761(e).
18	108. The Products purchased by Plaintiff and Class members are "goods" within the
19	meaning of the CLRA, Cal. Civ. Code § 1761(a).
20	109. As alleged herein, Defendant's business practices are a violation of the CLRA
21	because Defendant deceptively failed to reveal facts that are material in light of the flavoring
22	representations that were made by Defendant on the labels of its Products.
23 24	110. Defendant's ongoing failure to provide material facts about its Products on its
24	
26	labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:
27	a. Defendant's acts and practices constitute misrepresentations that its Products have
28	characteristics, benefits, or uses which they do not have;
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	CLASS ACTION COMPLAINT

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		
8	misleading nutritional labelling; and	
9	e. Defendant's acts and practices constitute representations that its Products have	
10	been supplied in accordance with previous representations when they were not.	
11	111. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,	
12 13	entitling them to injunctive relief, disgorgement, and restitution.	
13	112. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the	
15	particular violations of the CLRA described herein and demanded Defendant rectify the actions	
16	described above by providing complete monetary relief, agreeing to be bound by their legal	
17	obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this	
18	notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.	
19 20	113. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled	
20 21	to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such	
21	damages include, without limitation, monetary losses and actual, punitive, and consequential	
23	damages, in an amount to be proven at trial.	
24	114. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin	
25	publication of misleading and deceptive nutritional labels on Defendant's Products and to	
26		
27	recover reasonable attorneys' fees and costs.	
28		
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1	COUNT 6
2	UNJUST ENRICHMENT
3	115. 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	116. Defendant, through its marketing and labeling of the Products, misrepresented and
6	deceived consumers regarding the flavoring in the Products.
7	117. Defendant did so for the purpose of enriching itself and it in fact enriched itself
8	by doing so.
9 10	118. 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	119. Defendant continues to possess monies paid by consumers to which Defendant is
14	not entitled.
15	120. 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 18	justice, equity, and good conscience.
19	121. 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	122. 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.
25	
26	
27 28	
20	-19-
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## COUNT 8 BREACH OF EXPRESS WARRANTY

123. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the 3 extent necessary, pleads this cause of action in the alternative. 4 5 124. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, 6 expressly warranted that the Products are "Naturally Flavored." 7 125. Defendant's express warranties, and its affirmations of fact and promises made to 8 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain 9 between Defendant and Plaintiff and the Class, which creates an express warranty that the 10 Products would conform to those affirmations of fact, representations, promises, and 11 descriptions. 12 13 126. The Products do not conform to the express warranty that the Products are 14 "Naturally Flavored," because they are flavored by and contain ingredients that are unnatural 15 and synthetic, *i.e.*, DL malic acid. 16 127. As a direct and proximate cause of Defendant's breach of express warranty, 17 Plaintiff and Class members have been injured and harmed because: (a) they would not have 18 purchased the Products on the same terms if they knew the truth about the Products' unnatural 19 20 ingredients; (b) they paid a price premium based on Defendant's express warranties; and (c) the 21 Products do not have the characteristics, uses, or benefits that were promised. 22 **PRAYER FOR RELIEF** 23 WHEREFORE, Plaintiff respectfully request the Court grant the following relief against 24 Defendant: 25 a. Certifying the Class; 26 b. Declaring that Defendant violated the CLRA, UCL, and FAL and/or was unjustly 27 enriched and/or breached an express warranty; 28 -20-CLASS ACTION COMPLAINT

<ul> <li>c. Awarding actual and other damages as permitted by law or equity;</li> <li>d. Ordering an awarding of injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;</li> <li>e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;</li> <li>f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and</li> <li>g. Such other relief as the Court may deem just and proper.</li> </ul>
<ul> <li>enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;</li> <li>e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;</li> <li>f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and</li> <li>g. Such other relief as the Court may deem just and proper.</li> </ul>
<ul> <li>ordering Defendant to engage in a corrective advertising campaign;</li> <li>e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;</li> <li>f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and</li> <li>g. Such other relief as the Court may deem just and proper.</li> </ul>
<ul> <li>e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;</li> <li>f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and</li> <li>g. Such other relief as the Court may deem just and proper.</li> </ul>
<ul><li>f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and</li><li>g. Such other relief as the Court may deem just and proper.</li></ul>
<ul><li>f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and</li><li>g. Such other relief as the Court may deem just and proper.</li></ul>
awarded; and g. Such other relief as the Court may deem just and proper.
g. Such other relief as the Court may deem just and proper.
TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.
Respectfully submitted,
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October 16, 2023
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