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

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

No. _____

16 v.)

CLASS ACTION COMPLAINT

17 SPORTS RESEARCH CORPORATION, *a*)
18 *California corporation,*)
19)
20 *Defendant.*)

JURY TRIAL DEMANDED

21 _____
22 Deana Lozano (“Plaintiff”), individually and on behalf of all other consumers in the
23 United States similarly situated, by and through undersigned counsel, hereby brings this action
24 against Sports Research Corporation (“Sports Research”), alleging that its Keto+ dietary
25 supplement, raspberry lemonade flavor (“the Products”), which are manufactured, packaged,
26 labeled, advertised, distributed, and sold by Defendant, are misbranded and falsely advertised,
27 and upon information and belief and investigation of counsel alleges as follows:

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

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

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

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

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

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

18 **FACTUAL ALLEGATIONS**

19 **A. Consumers Pay A Premium for "Clean Labels."**

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

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

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 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent
4 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. *See*
5 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.
6

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

13 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

14 19. Defendant Sports Research formulates, manufactures, and sells ketogenic dietary
15 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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21. These natural flavoring claims are false. The Products are flavored using an artificial flavoring, DL malic acid, that is derived from petrochemicals.

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.¹ 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

¹ 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 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
5 reactions, some of which involve highly toxic chemical precursors and byproducts.
6

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
11 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic
12 acid.
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14 27. The quality and consumer acceptability of fruit flavors is based on their perceived
15 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits have
16 their own natural ratio of sugars and acids.

17 28. The DL malic acid used in the Products is used to create, simulate, and/or reinforce
18 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.

19 29. Defendant uses the petrochemical-derived DL malic acid in its Products to create
20 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,
21 misbranding the Products and deceiving consumers.
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23 **C. Requirements for Labelling**

24 30. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act
25 (“FDCA”) require that a food’s label accurately describe the nature of the food product and its
26 characterizing flavors. 21 C.F.R. § 102.5(a).
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1 31. Artificial flavor is defined as “any substance, the function of which is to impart
2 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible
3 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy
4 products, or fermentation products thereof.” 21 C.F.R § 101.22(a)(1).

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

9 33. Any recognizable primary flavor identified directly or indirectly on the front label
10 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to
11 as a “characterizing flavor.” 21 C.F.R. § 101.22.
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13 34. Here, the Products’ labels both state the characterizing flavors.

14 35. If a food product’s characterizing flavor is not created exclusively by the named
15 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or
16 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present
17 which “simulates, resembles or reinforces” the characterizing flavor, the front label must
18 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §
19 101.22(i)(2).
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21 36. A food product’s label also must include a statement of the “presence or absence
22 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such
23 ingredient(s) or component(s) in the food has a material bearing on price or consumer
24 acceptance . . . and consumers may otherwise be misled about the presence or absence of the
25 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 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA, enacting
5 them independently as substantive requirements of state law.
6

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 therefore contain artificial flavorings.
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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 contain similar label misrepresentations as testing continues.
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22 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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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 58. Certification of Plaintiff's claims for class-wide treatment is appropriate because
7 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
8 individual Class members would use to prove those elements in individual actions alleging the
9 same claims.

10 59. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
11 Class members is impracticable. Plaintiff believes and avers there are thousands of Class
12 members geographically dispersed throughout the United States.

13 60. **Existence and Predominance of Common Questions of Law and Fact – Rule**
14 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
15 predominate over any questions that affect only individual Class members. Common legal and
16 factual questions and issues include but are not limited to:

- 17 a. Whether the marketing, advertising, packaging, labeling, and other promotional
18 materials for Defendant's Products is misleading and deceptive;
- 19 b. Whether a reasonable consumer would understand Defendant's natural flavorings
20 claim to indicate that the Products contained only natural flavorings, and
21 reasonably relied upon those representations;
- 22 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class
23 members;
- 24 d. the proper amount of damages and disgorgement or restitution;
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- 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.

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

63. **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.

67. **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.

1 68. 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 69. **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 burden
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
15 litigation and provides the benefits of single adjudication, economies of scale, and
16 supervision by a single Court;
 - 17 c. the prosecution of separate actions by individual Class members would create a
18 risk of inconsistent or varying adjudications, which would establish incompatible
19 standards of conduct for Defendant; and
 - 20 d. the prosecution of separate actions by individual Class members would create a
21 risk of adjudications with respect to them that would be dispositive of the interests
22 of other Class members or would substantively impair or impede their ability to
23 protect their interests.

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

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

12 112. 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.

17 113. 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.

21 114. 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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3 115. 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.

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

12 119. Defendant continues to possess monies paid by consumers to which Defendant is
13 not entitled.

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

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

21 122. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
22 a result of Defendant's actions as set forth above.
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1 **COUNT 8**
2 **BREACH OF EXPRESS WARRANTY**

3 123. 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.

5 124. 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.
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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 ingredients; (b) they paid a price premium based on Defendant’s express warranties; and (c) the
20 Products do not have the characteristics, uses, or benefits that were promised.
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22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully request the Court grant the following relief against
24 Defendant:

- 25 a. Certifying the Class;
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27 b. Declaring that Defendant violated the CLRA, UCL, and FAL and/or was unjustly
28 enriched and/or breached an express warranty;

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

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

10 Respectfully submitted,

11 /s/ Charles C. Weller
12 Charles C. Weller (Cal. SBN: 207034)
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19 October 16, 2023

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