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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
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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
23 **FOURTH CAUSE OF ACTION**
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: _____

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EXHIBIT A

