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6 **UNITED STATES DISTRICT COURT**
7
8 **DISTRICT OF ARIZONA**

9 Nature's Formula, LLC, a Nevada limited
10 liability company,

11 Plaintiff,

12 v.

13 Longevity Plus, LLC, d/b/a Longevity Plus
14 RNA, an Arizona limited liability company,

15 Defendant.

No.

COMPLAINT

(Jury Trial Requested)

15 Plaintiff Nature's Formula, LLC ("Nature's Formula") hereby alleges for its
16 Complaint against Longevity Plus, LLC d/b/a Longevity Plus RNA ("LP RNA") as
17 follows:

18 **NATURE OF THE ACTION**

19 1. This is a civil action for breach of contract for which Nature's Formula
20 seeks an accounting, monetary relief, costs and attorneys' fees and, pursuant to the
21 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, an action for a declaration that
22 Nature's Formula does not owe LP RNA any compensation under the terms of a
23 distribution agreement nor has it otherwise breached the terms of a distribution
24 agreement.
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PARTIES, JURISDICTION AND VENUE

2. Plaintiff Nature’s Formula is a Nevada limited liability company with its principal place of business in Bethel, Maine.

3. Upon information and belief, Defendant LP RNA is an Arizona limited liability company with its principal place of business in Payson, Arizona.

4. The amount in controversy in this action exceeds \$75,000, exclusive of interest and costs, and is between citizens of different States. Thus, this Court has diversity jurisdiction over this action under 28 U.S.C. § 1332.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) and (2) because Defendant LP RNA resides in this District and a substantial part of the events giving rise to this action occurred in this District.

GENERAL ALLEGATIONS

A. Nature’s Formula and LP RNA entered into a distribution agreement.

6. At all times relevant to this action, Nature’s Formula was the exclusive licensee to all rights in a line of proprietary RNA-based health supplements (“RNA Supplements”), including the right to manufacture and distribute the RNA Supplements and the right to sublicense others to facilitate the same.

7. In 2004, Nature’s Formula entered into an oral distribution agreement with LP RNA with respect to the proprietary RNA Supplements.

8. Nature’s Formula arranged to have RNA Food Technologies, Inc. (“RNA Food Tech”), a Maine corporation owned by principals of both Nature’s Formula and LP RNA, sell RNA Supplements to LP RNA on a credit or installment basis. LP RNA would then resell the RNA Supplements for a profit. The profit derived from the sale of the RNA Supplements by LP RNA would be split evenly between LP RNA and Nature’s Formula.

1 9. The oral agreement, corroborated by the parties' course of dealing over
2 approximately a three-year period, defined the terms of this agreement.

3 10. Specifically, under the terms of the agreement, LP RNA would submit an
4 order for RNA Supplements to RNA Food Tech. Using pre-bottled product provided by
5 Nature's Formula, RNA Food Tech would, in turn, bottle, cap, label and box the product
6 for shipment to LP RNA.

7 11. At the time of shipping the RNA Supplements, RNA Food Tech billed LP
8 RNA \$10 per unit of RNA Supplement.

9 12. For each unit of RNA Supplement sold by LP RNA, LP RNA would retain
10 \$10 to cover its costs and operating expenses and remit \$10 to RNA Food Tech. The
11 remainder of the gross revenue generated by the sale would be split 50/50 between LP
12 RNA and Nature's Formula.

13 13. LP RNA paid Nature's Formula its share of the revenue in the form of a
14 royalty on a biweekly basis.

15 14. In addition, the parties agreed to a minimum quantity and pricing structure
16 for both retail and wholesale sales of the RNA Supplements.

17 15. The parties further agreed that any reduction to the minimum quantity and
18 pricing structure could only be made with Nature's Formula's prior approval.

19 16. The parties operated successfully under the terms of the distribution
20 agreement for a period of almost three years, selling several million dollars worth of
21 proprietary RNA Supplements.

22 **B. LP RNA breached the distribution agreement.**

23 17. In or about November or December 2005, LP RNA began offering RNA
24 Supplements to doctors at a reduced wholesale price below the agreed upon minimum
25 quantity and pricing structure, without Nature's Formula's knowledge or approval.
26

1 18. In late December 2006, LP RNA paid November royalties to Nature's
2 Formula. However, after that time, LP RNA stopped making biweekly royalty payments
3 to Nature's Formula for the sale of RNA Supplements as called for by the terms of the
4 distribution agreement.

5 19. On January 11, 2007, Don Slaughter, LP RNA's Executive Vice President,
6 called Mr. Ed Yasko, President of Nature's Formula. Mr. Slaughter alleged that Nature's
7 Formula owed LP RNA money for overpayment of royalties and indicated that LP RNA
8 was in the process of conducting a forensic accounting of LP RNA's records to determine
9 the exact amount allegedly owed to LP RNA.

10 20. On January 18, 2007, Mr. Slaughter called Mr. Yasko again regarding the
11 alleged overpaid royalties. During this conversation, Mr. Yasko demanded payment for
12 the royalties LP RNA owed to Nature's Formula for December sales of RNA
13 Supplements, and Mr. Slaughter indicated those royalties would be forthcoming.
14 However, Nature's Formula never received the royalties.

15 21. By letter dated January 24, 2007, a copy of which is attached hereto as
16 **Exhibit A**, Mr. Yasko followed up with Mr. Slaughter and again demanded prompt
17 payment of past due royalties. Mr. Yasko also demanded that LP RNA resume making
18 its biweekly royalty payments to Nature's Formula from that point forward.

19 22. By letter dated January 31, 2007, a copy of which is attached hereto as
20 **Exhibit B**, Mr. Slaughter responded to Mr. Yasko. Mr. Slaughter again alleged that LP
21 RNA had "possibly" overpaid royalties to Nature's Formula, this time alleging that such
22 overpayment amounted to \$470,000.00. Mr. Slaughter also repeated that LP RNA was
23 conducting a forensic accounting to establish the exact amount of the alleged
24 overpayment.

25 23. In response to LP RNA's allegations, Nature's Formula denied that it owed
26 any amount of money to LP RNA.

1 31. Pursuant to the terms of the distribution agreement, LP RNA agreed not to
2 sell any RNA Supplements below the minimum quantity and pricing structure agreed to
3 by the parties without prior approval from Nature's Formula.

4 32. LP RNA breached its agreement with Nature's Formula by selling RNA
5 Supplements to doctors at a reduced wholesale price below the minimum quantity and
6 pricing structure, without Nature's Formula's knowledge or approval.

7 33. Further pursuant to the terms of the distribution agreement, LP RNA agreed
8 to pay biweekly royalties to Nature's Formula on all sales of RNA Supplements in an
9 amount equal to 50% of the revenue remaining from the sale of the RNA Supplement
10 after \$20 (\$10 each) for operating costs and expenses for LP RNA and RNA Food
11 Technologies, Inc. were subtracted.

12 34. In late December 2006, LP RNA paid Nature's Formula its November
13 royalties, but ceased making the required biweekly royalty payments to Nature's Formula
14 after that. LP RNA has not remitted any royalties to Nature's Formula for sales of RNA
15 Supplements made from December 2006 to the present date.

16 35. Upon information and belief, LP RNA sold significant quantities of RNA
17 Supplements from December 2006 to the present date, without paying royalties to
18 Nature's Formula, in breach of the distribution agreement.

19 36. Upon further information and belief, despite termination of the distribution
20 agreement, LP RNA currently sells RNA Supplements out of its inventory, without
21 payment of royalties to Nature's Formula, in further breach of the agreement.

22 37. Upon information and belief, LP RNA has underpaid royalties owed to
23 Nature's Formula over the term of the agreement.

24 38. LP RNA's actions have caused and will continue to cause Nature's
25 Formula damage.

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RESPECTFULLY SUBMITTED this 9th day of March, 2007.

GALLAGHER & KENNEDY, P.A.

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