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17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 KAY ECKLER, On Behalf of Herself and
20 All Others Similarly Situated,

21 Plaintiff,

22 v.

23 WAL-MART STORES, INC., a Delaware
24 corporation,

25 Defendant.

Case No.: 3:12-cv-00727-LAB-MDD

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code § 17200 *et seq.*;
2. VIOLATION OF THE FALSE
ADVERTISING LAW, Business and
Professions Code § 17500 *et seq.*; and
3. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§ 1750 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Kay Eckler brings this action on behalf of herself and all others similarly
2 situated against Defendant Wal-Mart Stores, Inc. and states:

3 **NATURE OF ACTION**

4 1. Wal-Mart markets, sells and distributes Equate Glucosamine Chondroitin
5 MSM Advanced Triple Strength, a joint health dietary supplement (“Equate
6 Glucosamine” or “the Product”). The purported primary active ingredient in Equate
7 Glucosamine is glucosamine hydrochloride. Through an extensive, widespread,
8 comprehensive and uniform nationwide marketing campaign, Wal-Mart promises
9 consumers that Equate Glucosamine is formulated to help rebuild cartilage, lubricate
10 joints and support joint comfort. On the front of each and every Equate Glucosamine box,
11 where consumers cannot miss it, Wal-Mart claims that the Product is “formulated to
12 help” “support joint comfort,” “rebuild cartilage” and “lubricate joints” (collectively, “the
13 joint health benefit representations”).

14 2. Defendant’s Equate Glucosamine label contains a “disclaimer” on the
15 bottom front, back and side of the box stating: “These statements have not been evaluated
16 by the Food and Drug Administration. This product is not intended to diagnose, treat,
17 cure, or prevent any disease.” This disclaimer language is required by Federal law and
18 FDA regulations (21 C.F.R. § 101.93) where a dietary supplement manufacturer makes
19 “structure or function” statements about its product. Under applicable Federal
20 Regulations, the “structure and function” statements accompanied by the disclaimer
21 language must still be limited to describing how the dietary ingredient is “intended to
22 affect the structure or function in humans.” *See* 21 U.S.C. § 343(r)(6).

23 3. Furthermore, in order to make any such “structure function” claims, “the
24 manufacturer of the dietary supplement [must have] substantiation that such statement is
25 truthful and not misleading.” *Id.* As alleged herein, Defendant does not have competent
26 scientific substantiation for its joint health benefit representations; in fact, the competent

1 scientific evidence affirmatively establishes that the ingredients in the same amounts
2 found in Equate Glucosamine are not efficacious and do not work as represented. As a
3 result, Defendant's marketing and sale of Equate Glucosamine is in violation of applicable
4 Federal law and regulations.

5 4. Defendant's marketing and sale of Equate Glucosamine further violates
6 applicable Federal law and regulations because, pursuant to 21 C.F.R. § 101.93, in making
7 any "structure function" claims a dietary supplement manufacturer is prohibited from
8 making "disease claims." Disease claims are defined as statements that claim to diagnose,
9 mitigate, treat, cure or prevent disease where the statement(s) "claims, explicitly or
10 *implicitly*, that the product . . . has an effect on the characteristic signs or symptoms of a
11 specific disease or class of diseases, using scientific or lay terminology." *Id.* (emphasis
12 added). The representations Defendant makes on the labels of Equate Glucosamine that it
13 rebuilds cartilage, lubricates joints and helps with joint discomfort are clearly directed at
14 persons suffering from osteoarthritis, who as a result, are the majority of persons who
15 purchase Defendant's Product. For example, the University of Chicago Medicine website
16 describes the symptoms of osteoarthritis as a breakdown of joint cartilage which in turn
17 interferes with joint mobility and causes joint pain and stiffness¹ – almost verbatim the
18 symptoms that Defendant promises that Equate Glucosamine will relieve. On January 9,
19 2002, the FDA in a published guidance to the dietary supplement industry, which remains
20 on the FDA Web Site to this date, set forth guidance on what constitutes an impermissible
21 implied disease claim and specifically used the example of "improves joint mobility and
22 reduces inflammation" as an example of an impermissible disease claim. Thus,
23 Defendant's representations, at a minimum, implicitly claim in lay terminology that
24 Equate Glucosamine has an effect on the characteristic symptoms of arthritis. As such,
25

26 ¹ See <http://www.uchospitals.edu/online-library/content=P00061>.

1 Defendant makes disease claims that render the “disclaimer” language false, misleading,
2 and, at a minimum, likely to confuse consumers purchasing its Product.

3 5. Where disease claims like those Defendant has made on its Product are
4 made about a dietary supplement, the supplement is subject to regulation as a drug (21
5 C.F.R. § 101.93) and the manufacturer must submit and obtain approval from the FDA for
6 a New Drug Application (“NDA”) to market the product as a new drug. The sale of a new
7 drug without an approved NDA constitutes misbranding and false and misleading
8 conduct.

9 6. Defendant did not obtain a NDA for Equate Glucosamine. Accordingly,
10 under the applicable Federal law and regulations, Defendant has been marketing and
11 selling misbranded drug products and engaging in false and misleading conduct.

12 7. While Plaintiff does not seek to state a claim under the FDCA for
13 Defendant’s violations of applicable Federal law and regulations, these violations are:
14 (1) further evidence of Defendant’s false and misleading conduct in the context of
15 Plaintiff’s and the Class’ consumer fraud claims; (2) render the purported “disclaimer”
16 language on Defendant’s packaging a legal nullity; and false and misleading as a matter of
17 law.

18 8. Moreover, no limitations accompany Defendant’s joint health benefit
19 representations. The take-away is that Equate Glucosamine will provide these specific
20 joint related benefits for all joints in the human body, for adults of all ages and for all
21 manner and stages of joint related ailments. In this vein, every Equate Glucosamine
22 product label depicts a person running and has circles or highlighting around a variety of
23 joints including the runner’s elbows, shoulders, hips, knees and wrists.

24 9. In truth, Equate Glucosamine does not rebuild cartilage, lubricate joints or
25 improve joint comfort. Clinical cause and effect studies found that the primary active
26 ingredient in the Product, glucosamine, when taken alone or in combination with other

1 ingredients, does not provide the purported joint health benefits represented on the
2 Equate Glucosamine packaging and labeling. As a recent study sponsored by the National
3 Institute of Health (“NIH”) concluded: “The analysis of the primary outcome measure did
4 not show that either [glucosamine or chondroitin], alone or in combination, was
5 efficacious. . . .” Clegg, D., *et al.*, Glucosamine, Chondroitin Sulfate, and the Two in
6 Combination for Painful Knee Osteoarthritis, 354 *New England J. of Med.* 795, 806
7 (2006) (“2006 GAIT Study”). While most of the clinical studies finding a lack of efficacy
8 (using the same amounts of the ingredients as are in Defendant’s Product) were performed
9 on subjects with arthritis, some were performed on “healthy” subjects. Moreover, experts
10 in the field deem the arthritis clinical studies finding the ingredients to be inefficacious to
11 be proxies for whether the ingredients are effective for both arthritic and non-arthritic
12 users of these ingredients. As a result, in addition to affirmatively misrepresenting the
13 joint health benefits of its Equate Glucosamine product, Wal-Mart’s failure to disclose
14 facts regarding these studies also constitutes deception by omission or concealment.
15 Thus, Wal-Mart’s joint health benefit representations and omissions are false, misleading
16 and reasonably likely to deceive the public.

17 10. Despite the deceptive nature of Wal-Mart’s representations, Wal-Mart
18 conveys its uniform, deceptive message to consumers through a variety of media
19 including its website and online promotional materials, and, most important, at the point
20 of purchase, on the front of the Product’s packaging/labeling where it cannot be missed
21 by consumers. The only reason a consumer would purchase Equate Glucosamine is to
22 obtain the advertised joint health benefits, which Equate Glucosamine does not provide.

23 11. As a result of Wal-Mart’s deceptive claims, consumers – including Plaintiff
24 and the proposed Class – have purchased a product that does not perform as advertised.

25 12. Plaintiff brings this action on behalf of herself and all other similarly
26 situated consumers to halt the dissemination of this false and misleading advertising

1 message, correct the false and misleading perception it has created in the minds of
2 consumers, and obtain redress for those who have purchased the Equate Glucosamine
3 product. Based on violations of state unfair competition laws, Plaintiff seeks injunctive
4 and monetary relief for consumers who purchased Equate Glucosamine.

5 **JURISDICTION AND VENUE**

6 13. The Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).
7 The matter in controversy, exclusive of interest and costs, exceeds the sum or value of
8 \$5,000,000 and is a class action in which there are in excess of 100 Class members
9 and some of the members of the Class are citizens of states different from Defendant.

10 14. This Court has jurisdiction over Defendant because Defendant is
11 authorized to conduct and does business in California. Defendant has promoted,
12 marketed, distributed and sold Equate Glucosamine in California and Defendant has
13 sufficient minimum contacts with this State and/or sufficiently avails itself of the
14 markets in this State through its promotion, sales, distribution and marketing within this
15 State to render the exercise of jurisdiction by this Court permissible.

16 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that many
17 of the Plaintiff's claims occurred while she resided in this judicial district. Venue is also
18 proper under 18 U.S.C. § 1965(a) because Wal-Mart transacts substantial business in this
19 District.

20 **PARTIES**

21 16. Plaintiff Kay Eckler resides in San Diego County, California. In
22 approximately December 2011, Plaintiff Eckler was exposed to and saw Wal-Mart's
23 joint health benefit representations by reading the packaging and labeling of Equate
24 Glucosamine. Plaintiff Eckler then purchased Equate Glucosamine at a Wal-Mart
25 store in Oceanside, California relying on Wal-Mart's joint health benefit
26 representations. She paid approximately \$14.00 for one bottle of the Product.

1 Plaintiff Eckler used the Product for approximately two months hoping it would
2 alleviate stiffness and pain in her shoulder, neck and right wrist. However, the Equate
3 Glucosamine Plaintiff Eckler purchased did not rebuild her cartilage, lubricate her
4 joints or improve her joint comfort as represented. As a result, Plaintiff Eckler
5 suffered an injury in fact and lost money. Had Plaintiff Eckler known the truth about
6 Wal-Mart’s misrepresentations and omissions, she would not have purchased Equate
7 Glucosamine.

8 17. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is one of the world’s largest
9 retailers with \$401 billion in sales for the 2008 fiscal year. Wal-Mart operates Wal-Mart
10 Discount Stores, Wal-Mart Supercenters, Sam’s Club warehouse stores, Neighborhood
11 Markets, walmartstores.com, and walmart.com. Wal-Mart is a Delaware corporation with
12 its corporate headquarters located at 702 SW 8th Street, Bentonville, Arkansas 72716.
13 Wal-Mart distributes, markets, and sells Equate Glucosamine to tens of thousands of
14 consumers nationwide, including in California.

15 **FACTUAL ALLEGATIONS**

16 ***The Equate Glucosamine Product***

17 18. Since 2009, Wal-Mart has distributed, marketed, and sold Equate
18 Glucosamine nationwide. Equate Glucosamine is sold in every Wal-Mart store and
19 on Defendant’s website – walmart.com. An 80-count bottle of Equate Glucosamine
20 retails for approximately \$14.00. The following is a screen shot of the Product:

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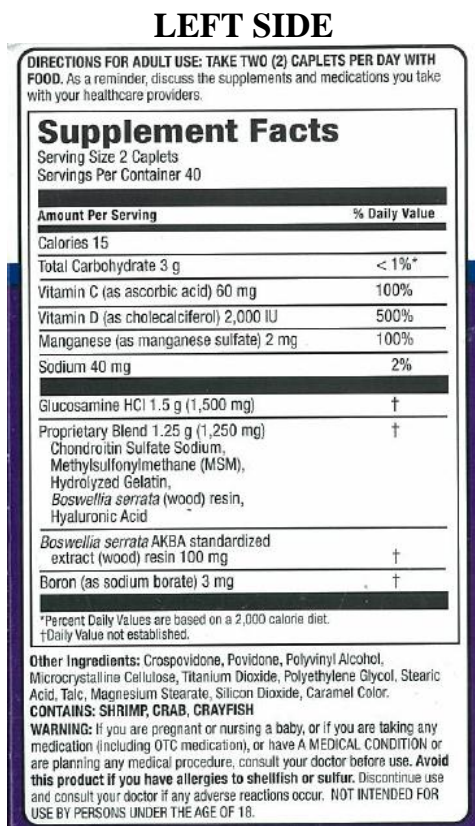
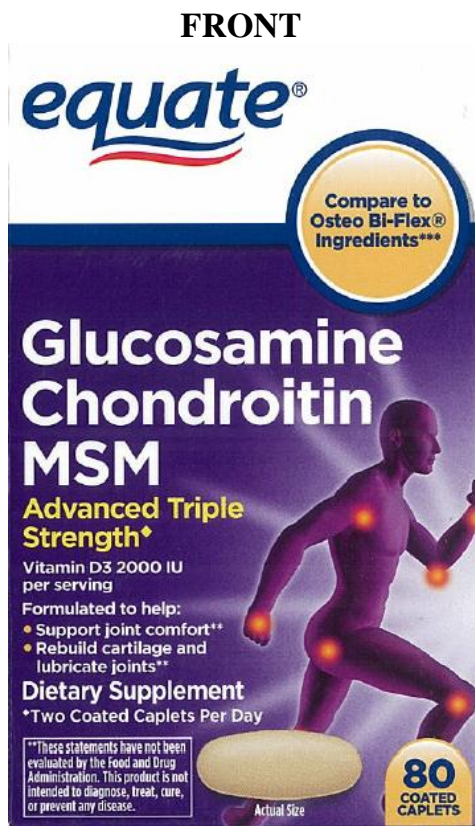
19. Since the Product's launch, Wal-Mart has consistently conveyed the message to consumers throughout the United States, including California, that Equate Glucosamine helps to "rebuild cartilage," "lubricate joints" and "support[s] joint comfort," simply by taking the recommended number of tablets each day. It does not. Defendant's joint health benefit representations and omissions are false, misleading, and deceptive.

20. The first identified primary active ingredient in Equate Glucosamine is glucosamine hydrochloride. As more fully set forth below, the scientific evidence is that glucosamine, taken alone or in combination with other ingredients, does not provide the joint health benefits represented by Defendant.

21. In addition to glucosamine, which Defendant prominently promotes as being the primary active ingredient that provides the purported joint health benefits and from which the Product derives its name "Equate Glucosamine," Defendant's Product also contains a Proprietary Blend consisting of chondroitin sulfate; methylsulfonylmethane ("MSM"); hyaluronic acid; hydrolyzed gelatin and *Boswellia Serrata*. As more fully discussed below, these minor ingredients are also not effective in providing the joint health benefits represented by Defendant, but the focus of this action is on the uniform

1 false and deceptive representations and omissions that Defendant makes about
 2 glucosamine on the package labeling of Equate Glucosamine.

3 22. Even though numerous clinical studies have found that the primary
 4 ingredient in Defendant's Product, glucosamine, alone or in combination with other
 5 ingredients, is ineffective, Wal-Mart continues to state on the Product's packaging and
 6 labeling that Equate Glucosamine helps to, *inter alia*: "rebuild cartilage," "lubricate
 7 joints" and "support joint comfort," without any limitation on which joints (in fact
 8 highlighting six key joint areas), for adults of *all* ages stating only that the Product is
 9 "not intended for use for persons under the age of 18" and without any limitation on what
 10 stages of joint related ailments. Front, back, and side shots of a representative Equate
 11 Glucosamine label appear as follows:



BACK

KEEP OUT OF THE REACH OF CHILDREN.
 STORE AT ROOM TEMPERATURE (59°-86°F).
 *Triple Strength refers to the number of caplets required per serving size.

This product is formulated with a proprietary blend containing *Boswellia serrata* extract. As a key ingredient of the formulation, *Boswellia serrata* extract may help with knee comfort.**

Glucosamine Chondroitin Complex is a synergistic combination of the latest in joint health ingredients, specifically designed for those individuals who are serious about protecting and maintaining their joint health.**

Vitamin D to support bone strength and mineralization**

**These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Questions or comments? 1-888-287-1915

 Satisfaction guaranteed - Or we'll replace it or give you your money back. For questions or comments or to report an undesired reaction or side effect, please call **1-888-287-1915**.

Distributed by: Wal-Mart Stores, Inc., Bentonville, AR 72716.
 © Wal-Mart Stores, Inc.
 ***This product is not manufactured or distributed by Rexall Sundown, Inc., manufacturer of Osteo Bi-Flex®.

RIGHT SIDE

Overexertion, the natural aging process and everyday wear and tear can take their toll. **Glucosamine Chondroitin Complex** has a proprietary blend of ingredients that support healthy joints.**

The "Advanced" Choice in Joint Health**

Glucosamine Chondroitin Complex is an advanced formula that contains *Boswellia serrata* extract.

Boswellia serrata extract's mechanism of action supports cartilage by guarding against the action of enzymes that affect joint health.** Additionally, **Glucosamine Chondroitin Complex** helps protect cartilage and helps maintain the cellular components within joints.**



**These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Scientific Studies Confirm That Equate Glucosamine Is Not Effective

23. Independent studies published, at least as early as 2004, have found that glucosamine, alone or in combination with other ingredients, is not effective in providing the represented joint health benefits.²

24. For example, a 2004 study by McAlindon, *et al.*, entitled Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From Internet-Based Randomized Double-Blind Controlled Trial, 117(9) *Am. J. Med.* 649-9 (Nov. 2004),

² Many of these studies focus on patients with osteoarthritis and osteoarthritis of the knee, because the vast majority of purchasers of glucosamine products, including Equate Glucosamine, buy these products for relief of the symptoms of osteoarthritis and osteoarthritis of the knee is the most common arthritic condition. Moreover, studies involving patients with osteoarthritis and patients with osteoarthritis of the knee are deemed, by experts in the field, to be a proxy for whether these products provide any of the represented joint health benefits, regardless of whether or not a consumer may have osteoarthritis.

1 concluded that glucosamine was no more effective than placebo in treating the symptoms
2 of knee osteoarthritis – in short, it was ineffective.

3 25. Also as early as 2004, many studies confirmed there is a significant
4 “placebo” effect with respect to consumption of products represented to be effective in
5 providing joint health benefits such as Defendant’s Product – 30% and more of persons who
6 took placebos in these studies believed that they were experiencing joint health benefits when
7 all they were taking was a placebo. In this regard, a 2004 study by Cibere, *et al.*, entitled
8 Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In
9 Knee Osteoarthritis, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004), studied
10 users of glucosamine who had claimed to have experienced at least moderate
11 improvement after starting glucosamine. These patients were divided into two groups –
12 one that continued using glucosamine and one that was given a placebo. For six months,
13 the primary outcome observed was the proportion of disease flares in the glucosamine
14 and placebo groups. A secondary outcome was the time to disease flare. The study
15 results reflected that there were no differences in either the primary or secondary
16 outcomes for the glucosamine and placebo groups. The authors concluded that the study
17 provided no evidence of symptomatic benefit from continued use of glucosamine – in
18 other words, any prior perceived benefits were due to the placebo effect and not
19 glucosamine.

20 26. In the 2006 Gait Study, the study authors rigorously evaluated the
21 effectiveness of glucosamine hydrochloride and chondroitin, alone and in
22 combination, on osteoarthritis for six months. According to the study’s authors,
23 “The analysis of the primary outcome measure did not show that either supplement,
24 alone or in combination, was efficacious. . .” 2006 GAIT Study at 806.³ Subsequent

25 ³ The 2006 Gait Study was funded by the National Center for Complementary & Alternative
26 Medicine and the National Institute of Arthritis and Musculoskeletal and Skin Diseases, two
27 components of NIH.

1 GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not
2 rebuild cartilage⁴ and were otherwise ineffective – even in patients with moderate to
3 severe knee pain for which the 2006 reported results were inconclusive. *See*
4 Sawitzke, A.D., *et al.*, The Effect of Glucosamine and/or Chondroitin Sulfate on the
5 Progression of Knee Osteoarthritis: A GAIT Report, 58(10) J. Arthritis Rheum. 3183–91
6 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of Glucosamine, Chondroitin
7 Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of
8 The Knee: 2-Year Results From GAIT, 69(8) Ann Rhem. Dis. 1459-64 (Aug. 2010).

9 27. The GAIT studies are consistent with the reported results of prior and
10 subsequent studies. For example, the National Collaborating Centre for Chronic
11 Conditions (“NCCCC”) reported “the evidence to support the efficacy of glucosamine
12 hydrochloride as a symptom modifier is poor” and the “evidence for efficacy of
13 chondroitin was less convincing.” NCCCC, Osteoarthritis National Clinical Guideline
14 for Care and Management of Adults, Royal College of Physicians, London 2008.
15 Consistent with its lack of efficacy findings, the NCCCC Guideline did not recommend
16 the use of glucosamine or chondroitin for treating osteoarthritis. *Id.* at 33.

17 28. A study by Rozendaal, *et al.*, entitled Effect of Glucosamine Sulfate on
18 Hip Osteoarthritis, 148 Ann. of Intern. Med. 268-77 (2008), assessing the effectiveness of
19 glucosamine on the symptoms and structural progression of hip osteoarthritis during 2
20 years of treatment, concluded that glucosamine was no better than placebo in reducing
21 symptoms and progression of hip osteoarthritis.

22 29. A 2010 meta-analysis by Wandel, *et al.* entitled Effects of Glucosamine,
23 Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-

24 _____
25 ⁴ To a similar effect a study by Kwok, *et al.*, entitled The Joints On Glucosamine (JOG) Study: A
26 Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural Benefit Of
27 Glucosamine In Knee Osteoarthritis Based On 3T MRI, 60 J. Arthritis Rheum. 725 (2009),
28 concluded that glucosamine was not effective in preventing the worsening of cartilage damage.

1 Analysis, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and
2 chondroitin, alone or in combination, and whether they relieved the symptoms or
3 progression of arthritis of the knee or hip. The study authors reported that glucosamine
4 and chondroitin, alone or in combination, did not reduce joint pain or have an impact on
5 the narrowing of joint space: “Our findings indicate that glucosamine, chondroitin, and
6 their combination do not result in a relevant reduction of joint pain nor affect joint space
7 narrowing compared with placebo.” *Id.* at 8. The authors went as far to say, “We
8 believe it unlikely that future trials will show a clinically relevant benefit of any of the
9 evaluated preparations.” *Id.*

10 30. On July 7, 2010, Wilkens, *et al.*, reported that there was no difference
11 between placebo and glucosamine for the treatment of low back pain and lumbar
12 osteoarthritis and that neither glucosamine nor placebo were effective in reducing pain
13 related disability. The researchers also stated that, “[b]ased on our results, it seems
14 unwise to recommend glucosamine to all patients” with low back pain and lumbar
15 osteoarthritis. Wilkens, *et al.*, Effect of Glucosamine on Pain-Related Disability in
16 Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis, 304(1)
17 JAMA 45-52 (July 7, 2010).

18 31. In 2011, Miller and Clegg, after surveying the clinical study history of
19 glucosamine and chondroitin reported that, “[t]he cost-effectiveness of these dietary
20 supplements alone or in combination in the treatment of OA has not been demonstrated in
21 North America.” Miller, K. and Clegg, D., Glucosamine and Chondroitin Sulfate, *Rheum.*
22 37 Dis. I. N. Am. 103-118(2011).

23 32. Scientific studies also confirm that the other ingredients in Equate
24 Glucosamine are ineffective. *See, e.g.,* S. Brien, *et al.*, Systematic Review of the
25 Nutritional Supplements (DMSO) and Methylsulfonylmethane (MSM) in the Treatment
26 of Osteoarthritis (Apr. 17, 2008) (concluding that there is no “definitive evidence that
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1 MSM is superior to placebo in the treatment of mild to moderate OA of the knee”).

2 33. While hyaluronic acid has been proven to be effective when directly injected
3 into joints, due to its high molecular weight, when taken orally, it cannot be absorbed into
4 the human bloodstream let alone beneficially affect joints.

5 34. *Boswellia Serrata* is essentially a witch doctor potion and is not effective
6 in providing any joint health benefits.

7 ***The Impact of Wal-Mart's Wrongful Conduct***

8 35. Despite clinical studies that show the ingredients in Wal-Mart's Equate
9 Glucosamine product are ineffective, Wal-Mart conveyed and continues to convey one
10 uniform message: Equate Glucosamine helps to “rebuild cartilage,” “lubricate joints”
11 and improve “joint comfort” in all joints in the human body, for adults of all ages and for
12 all manner and stages of joint related ailments.

13 36. As the distributor of Equate Glucosamine, Wal-Mart possesses specialized
14 knowledge regarding the content and effects of the ingredients contained in its Product
15 and Wal-Mart is in a superior position to learn of the effects – and has learned of the
16 effects, or lack thereof, – its Product has on consumers.

17 37. Specifically, at least as early as 2009 when it began selling Equate
18 Glucosamine, Wal-Mart knew, but failed to disclose, that the Product does not provide
19 the joint health benefits represented and that well-conducted, clinical studies have
20 found the ingredients in the same amounts as in Equate Glucosamine to be ineffective in
21 providing the joint health benefits represented by Wal-Mart. Plaintiff and Class members
22 have been and will continue to be deceived or misled by Wal-Mart's deceptive joint
23 health benefit representations. Plaintiff purchased and consumed Equate Glucosamine
24 during the Class period and in doing so, read and considered the Product's label and based
25 her decision to purchase the Product on the joint health benefit representations on the
26 Product packaging. Wal-Mart's joint health benefit representations and omissions were a

1 material factor in influencing Plaintiff's decision to purchase and consume the Product.

2 38. The only purpose behind purchasing Equate Glucosamine is to obtain
3 some or all of the represented joint health benefits. There is no other reason for
4 Plaintiff and the Class to have purchased the Product and Plaintiff and the Class would
5 not have purchased the Product had they known Defendant's joint health benefit
6 statements were false and misleading and that clinical cause and effect studies have
7 found the ingredients to be ineffective for the represented joint health benefits.

8 39. As a result, Plaintiff and the Class members have been injured-in-fact in
9 their purchases of Equate Glucosamine in that they were deceived into purchasing a
10 Product that does not perform as advertised.

11 40. Wal-Mart, by contrast, reaped enormous profits from its false marketing and
12 sale of Equate Glucosamine.

13 **CLASS ALLEGATIONS**

14 41. Plaintiff brings this action on behalf of herself and all other similarly
15 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of
16 Civil Procedure and seeks certification of the following Class against Wal-Mart for
17 violations of California state laws and similar laws in other states:

18 All persons who, within the applicable statute of limitations
19 under their respective state's consumer fraud act, purchased
20 Equate Glucosamine.

21 Excluded from the Class are Defendant, its parents,
22 subsidiaries, affiliates, officers and directors, and those who
23 purchased Equate Glucosamine for the purpose of resale.

24 42. In the alternative, Plaintiff brings this action on behalf of herself and all
25 other similarly situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of
26 the Federal Rules of Civil Procedure and seeks certification of the following Class:

27 All California residents who, within the applicable statute of
28 limitations, purchased Equate Glucosamine.

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Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, and those who purchased Equate Glucosamine for the purpose of resale.

43. Members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff.

44. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

- (1) Whether the representations discussed herein that Defendant made about its Equate Glucosamine product were or are misleading, or likely to deceive;
- (2) Whether Plaintiff and the Class members were deceived by Defendant's joint health benefit representations and omissions;
- (3) Whether the alleged conduct constitutes violations of the laws asserted herein;
- (4) Whether Plaintiff and Class members have been injured and the proper measure of their losses as a result of those injuries; and
- (5) Whether Plaintiff and the Class are entitled to injunctive, declaratory or other equitable relief.

45. Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above, including being subject to Defendant's deceptive joint health benefit representations, which accompanied each and every box of Equate Glucosamine. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

46. A class action is superior to other available methods for the fair and

1 efficient adjudication of this controversy. The expense and burden of individual litigation
2 would make it impracticable or impossible for proposed Class members to prosecute their
3 claims individually. It would thus be virtually impossible for the members of the Class,
4 on an individual basis, to obtain effective redress for the wrongs done to them.
5 Furthermore, even if Class members could afford such individualized litigation, the
6 court system could not. Individualized litigation would create the danger of inconsistent
7 or contradictory judgments arising from the same set of facts. Individualized litigation
8 would also increase the delay and expense to all parties and the court system from the
9 issues raised by this action. By contrast, the class action device provides the benefits of
10 adjudication of these issues in a single proceeding, economies of scale, and
11 comprehensive supervision by a single court, and presents no unusual management
12 difficulties under the circumstances here.

13 47. In the alternative, the Class also may be certified because Defendant has
14 acted or refused to act on grounds generally applicable to the Class thereby making
15 appropriate final declaratory and/or injunctive relief with respect to the members of the
16 Class as a whole.

17 48. Plaintiff seeks preliminary and permanent injunctive and equitable relief
18 on behalf of the entire Class, on grounds generally applicable to the entire Class, to
19 enjoin and prevent Defendant from engaging in the acts described, and requiring
20 Defendant to provide full restitution to Plaintiff and Class members. Unless a Class is
21 certified, Defendant will retain monies received as a result of its conduct that were
22 taken from Plaintiff and Class members. Unless a Class-wide injunction is issued,
23 Defendant will continue to commit the violations alleged, and the members of the Class
24 and the general public will continue to be misled.

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COUNT I

**Violation of Business & Professions Code § 17200, *et seq.*
(Applicable to a Multi-State or California-Only Class)**

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3 49. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
4 above, as if fully set forth herein.

5 50. Plaintiff brings this claim individually and on behalf of the Class.

6 51. As alleged herein, Plaintiff has suffered injury in fact and lost money or
7 property as a result of Wal-Mart's conduct because she purchased Equate Glucosamine
8 in reliance on Wal-Mart's joint health benefit statements detailed above, but did not
9 receive a product that provided the represented joint health benefits.

10 52. The Unfair Competition Law, Business & Professions Code § 17200,
11 *et seq.* ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent" or
12 "unfair" business act or practice and any false or misleading advertising.

13 53. In the course of conducting business, Wal-Mart committed "unlawful"
14 business practices by, *inter alia*, making the joint health benefit representations (which
15 also constitute advertising within the meaning of § 17200) and omissions of material
16 facts, as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711,
17 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§ 17200, *et seq.* Wal-
18 Mart also violated federal law, including 21 U.S.C. § 343(r)(6) and 21 C.F.R. § 101.93, in
19 that it does not have the required substantiation for its joint health benefit representations
20 and makes unlawful disease claims without the required NDA for Equate Glucosamine.
21 Plaintiff and the Class reserve the right to allege other violations of law, which constitute
22 other unlawful business acts or practices. Such conduct is ongoing and continues to this
23 date.

24 54. In the course of conducting business, Wal-Mart committed "unfair"
25 business practices by, *inter alia*, making the joint health benefit representations (which
26 also constitute advertising within the meaning of § 17200) and omissions of material
27

1 facts regarding Equate Glucosamine in its advertising campaign, including the Product's
2 packaging, as set forth more fully herein. There is no societal benefit from false
3 advertising, only harm. Plaintiff and other Class members paid money for promised joint
4 health benefits which they did not receive. While Plaintiff and Class members were
5 harmed, Wal-Mart was unjustly enriched by its false joint health benefits
6 misrepresentations and omissions. Because the utility of Wal-Mart's conduct (zero) is
7 outweighed by the gravity of the harm Plaintiff and Class Members suffered, Wal-Mart's
8 conduct is "unfair" having offended an established public policy. Further, Wal-Mart
9 engaged in immoral, unethical, oppressive, and unscrupulous activities that are
10 substantially injurious to consumers.

11 55. Further, as stated in this Complaint, Plaintiff alleges violations of
12 consumer protection, unfair competition and truth in advertising laws, resulting in harm to
13 consumers. Wal-Mart's acts and omissions also violate and offend the public policy
14 against engaging in false and misleading advertising, unfair competition and deceptive
15 conduct towards consumers. This conduct constitutes violations of the unfair prong of
16 Business & Professions Code § 17200, *et seq.*

17 56. There were reasonably available alternatives to further Wal-Mart's
18 legitimate business interests, other than the conduct described herein.

19 57. Business & Professions Code § 17200, *et seq.*, also prohibits any
20 "fraudulent business act or practice."

21 58. In the course of conducting business, Wal-Mart committed "fraudulent
22 business act or practices" by, *inter alia*, making the joint health benefit representations
23 (which also constitute advertising within the meaning of § 17200) and omissions of
24 material facts regarding Equate Glucosamine in its advertising campaign, including the
25 Product's packaging, as set forth more fully herein. Wal-Mart misrepresented on each
26 and every Equate Glucosamine box that its Product is "formulated to help" "support joint
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1 comfort, “rebuild cartilage” and “lubricate joints,” when, in fact, the competent scientific
2 evidence is that the ingredients in Equate Glucosamine are not efficacious and do not
3 work as represented.

4 59. Wal-Mart’s actions, claims, omissions and misleading statements, as more
5 fully set forth above, were also false, misleading and/or likely to deceive the consuming
6 public within the meaning of Business & Professions Code § 17200, *et seq.*

7 60. Plaintiff and other members of the Class have in fact been deceived by
8 Wal-Mart’s material joint health benefit representations and omissions. Wal-Mart’s
9 deception has caused harm to Plaintiff and other members of the Class who each
10 purchased Equate Glucosamine. Plaintiff and the other Class members have suffered
11 injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

12 61. Wal-Mart knew, or should have known, that its material representations
13 and omissions would be likely to deceive the consuming public and result in consumers
14 purchasing Wal-Mart’s Equate Glucosamine Product and, indeed, intended to deceive
15 consumers.

16 62. As a result of its deception, Wal-Mart has been able to reap unjust
17 revenue and profit.

18 63. Unless restrained and enjoined, Wal-Mart will continue to engage in the
19 above-described conduct. Accordingly, injunctive relief is appropriate.

20 64. Plaintiff, on behalf of herself and all others similarly situated, and the
21 general public, seeks restitution of all money obtained from Plaintiff and the members of
22 the Class collected as a result of unfair competition, an injunction prohibiting Wal-Mart
23 from continuing such practices, corrective advertising and all other relief this Court
24 deems appropriate, consistent with Business & Professions Code § 17203.

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COUNT II

**Violation of Business & Professions Code § 17500, et seq.
(Applicable to a Multi-State or California-Only Class)**

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3 65. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
4 above, as if fully set forth herein.

5 66. Plaintiff brings this claim individually and on behalf of the Class.

6 67. Wal-Mart falsely advertised the joint health benefits of its Product by,
7 *inter alia*, misrepresenting on each and every Equate Glucosamine box that the Product is
8 “formulated to help” “support joint comfort,” “rebuild cartilage” and “lubricate joints,”
9 when, in fact, the competent scientific evidence is that Equate Glucosamine is not
10 efficacious and does not work as represented.

11 68. Wal-Mart violated Cal. Bus. & Prof. Code § 17500, and similar laws in
12 other states, as these statements and representations, made solely to induce Plaintiff and
13 other members of the Class to purchase its Equate Glucosamine were untrue and
14 misleading when made, and Wal-Mart knew or should have known that these statements
15 were untrue or misleading when made.

16 69. Plaintiff and other members of the Class have in fact been deceived by
17 Wal-Mart’s material joint health benefit representations and omissions. This deception
18 has caused harm to Plaintiff and other members of the Class who each purchased Equate
19 Glucosamine. Plaintiff and the other Class members have suffered injury in fact and lost
20 money as a result of these unlawful, unfair, and fraudulent practices.

21 70. Wal-Mart knew, or should have known, that its material joint health
22 benefit misrepresentations and omissions would be likely to deceive the consuming
23 public and result in consumers purchasing Wal-Mart’s Equate Glucosamine product and,
24 indeed, intended to deceive consumers.

25 71. As a result of its deception, Wal-Mart has been able to reap unjust
26 revenue and profit.

1 72. Unless restrained and enjoined, Wal-Mart will continue to engage in the
2 above-described conduct. Accordingly, injunctive relief is appropriate.

3 73. Plaintiff, on behalf of herself and all others similarly situated, and the
4 general public, seeks restitution of all money obtained from Plaintiff and the members of
5 the Class collected as a result of Wal-Mart’s false and misleading advertising, an
6 injunction prohibiting Wal-Mart from continuing such practices, corrective advertising
7 and all other relief this Court deems appropriate, consistent with Business & Professions
8 Code § 17535.

9 **COUNT III**

10 **Violations of the Consumers Legal Remedies Act – Civil Code § 1750, et seq.**
11 **(Applicable to a Multi-State or California-Only Class)**

12 74. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
13 above, as if fully set forth herein.

14 75. Plaintiff brings this claim individually and on behalf of the Class.

15 76. This cause of action is brought pursuant to the Consumers Legal
16 Remedies Act, California Civil Code §1750, et seq. (the “Act”), and similar laws in
17 other states. Plaintiff is a “consumer” as defined by California Civil Code §1761(d).
18 Wal-Mart’s Equate Glucosamine is a “good” within the meaning of the Act.

19 77. Wal-Mart violated and continues to violate the Act by engaging in the
20 following practices proscribed by California Civil Code §1770(a) in transactions with
21 Plaintiff and the Class which were intended to result in, and did result in, the sale of
22 Equate Glucosamine:

23 (5) Representing that [Equate Glucosamine has] . . .approval,
24 characteristics, . . .uses [and] benefits. . .which [it does] not have. . . .

25 * * *

26 (7) Representing that [Equate Glucosamine is] of a particular standard,
27 quality or grade . . . if [it is] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [Equate Glucosamine has] been supplied in accordance with a previous representation when [it has] not.

78. Wal-Mart violated the Act by representing in its advertising campaign including the Equate Glucosamine label and packaging that Equate Glucosamine helps to “rebuild cartilage,” “lubricate joints,” and improve “joint comfort” when the credible scientific evidence establishes that none of the ingredients in Equate Glucosamine provide any of these represented joint health benefits. Wal-Mart knew, or should have known, that the representations were false and misleading and that the omissions were of material facts it was obligated to disclose because Plaintiff and Class Members had no knowledge of the scientific evidence disproving the joint health benefit representations.

79. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Wal-Mart and for restitution.

80. Pursuant to §1782 of the Act, by letter dated April 19, 2012, Plaintiff notified Wal-Mart in writing by certified mail of the particular violations of §1770 of the Act and demanded that Wal-Mart rectify the problems associated with the actions detailed above and give notice to all affected consumers of Wal-Mart’s intent to so act.

81. Wal-Mart failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks actual, punitive and statutory damages.

82. Wal-Mart’s conduct is fraudulent, wanton and malicious.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

- A. Certifying the Class either as a multi-state class or as a California-only class;
- B. Awarding restitution to Plaintiff and the proposed Class members;
- C. Awarding injunctive relief as permitted by law or equity, including enjoining Wal-Mart from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;
- D. Awarding statutory and punitive damages, as appropriate;
- E. Ordering Wal-Mart to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs; and
- G. Providing such further relief as may be just and proper.

Dated: November 15, 2012

BONNETT, FAIRBOURN, FRIEDMAN
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