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*To be admitted Pro Hac Vice*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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ROQUE HERNANDEZ and JOHN DOES 1-100,  
on behalf of themselves and others similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC.,  
WAL-MART STORES EAST, INC.,  
WAL-MART STORES EAST, LP, and  
WAL-MART.COM USA, LLC.,

Defendants,

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Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs, ROQUE HERNANDEZ and JOHN DOES 1-100 (hereinafter, "Plaintiffs"), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, as and for their Complaint against the Defendants, allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, respectfully allege, upon information and belief, as follows (Plaintiffs believe that substantial

evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

**NATURE OF THE ACTION**

1. This is a class action seeking redress for Defendants' deceptive practices in their marketing, advertising and promotion of the Arm & Hammer Fresh-N-Natural Baking Soda, 1lb package (hereinafter the "Product"). As alleged with specificity herein, through an extensive, widespread, comprehensive and uniform marketing campaign, Defendants have engaged in, and continues to engage in, unconscionable business practices and deceptive acts in connection with the marketing and sale of the Product, which has injured Plaintiffs and the putative class.

2. Defendants intend to create customer confusion by marketing the Product on their website as a "3 Pack." *See* EXHIBIT A. Defendants led reasonable customers to believe that the item they would receive is a bundled package of three of the Product when the package only includes a single item.

3. Plaintiffs and the members of the proposed Class reviewed Defendants' misleading marketing, reasonably relied in substantial part on the marketing and were thereby deceived in deciding to purchase the Product for a premium price.

4. Plaintiffs brings this proposed consumer class action on behalf of themselves and all other persons nationwide, who, from the applicable limitations period up to and including the present (the "Class Period"), purchased for consumption and not resale, the Product.

5. During the Class Period, Defendants marketed, advertised and promoted throughout the United States. Defendants purposefully misrepresented and continue to misrepresent to consumers that the item is a bundled package of three of the Product when buyers only receive one of the Product.

6. Defendants' actions constitute violations of the Federal Food Drug & Cosmetic Act ("FDCA") Section 403(a)(1) (21 U.S.C. 343(a)(1)) and New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8, as well those similar deceptive and unfair practices and/or consumer protection laws in other states and the District of Columbia.

7. Defendants violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak\_ Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;

- t.* Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u.* Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v.* Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w.* Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x.* Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y.* Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z.* Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa.* Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb.* Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc.* Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd.* New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- ee.* New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff.* New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- gg.* New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh.* North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- ii.* North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj.* Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk.* Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll.* Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm.* Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- nn.* Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo.* South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp.* South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq.* Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr.* Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act
- ss.* Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt.* Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu.* Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- vv.* Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.*;
- ww.* West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx.* Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- yy.* Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

8. Defendants' misbranding is intentional. Defendants have collected millions of dollars from the sale of the Product that they would not have earned if it were not for misrepresenting the quantity sold per box.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this class action under 28 U.S.C. §1332(d), which, under the provisions of the Class Action Fairness Act ("CAFA"), provides federal courts original jurisdiction over any class action in which any member of a class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5 million, exclusive of interest and costs. Plaintiffs seek certification of a class of all persons who purchased Arm & Hammer Fresh-N-Natural Baking Soda within the Class Period. Such persons reside in the 50 United States and the District of Columbia. Defendant is a citizen of New Jersey and/or Delaware. The amount in controversy, exclusive of interest and costs, exceeds \$5 million.

10. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

11. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

12. This court has personal jurisdiction over Defendants because their Product is marketed, advertised and sold throughout New Jersey; Defendants are authorized to do business in New Jersey; and Defendant has sufficient minimum contacts with New Jersey and/or otherwise have intentionally availed itself of the markets in New York State, rendering the exercise of

jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New Jersey.

13. Venue is proper in the Southern District pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events giving rise to Plaintiff's claims occurred in this District and Defendants are subject to personal jurisdiction in this District. Plaintiffs purchased Defendants' Product in New Jersey.

### **PARTIES**

14. Plaintiff ROQUE HERNANDEZ is a citizen of the State of New Jersey and resides in Bergen County. In 2014, Plaintiff was exposed to Defendants' Arm & Hammer advertisements online at [www.walmart.com](http://www.walmart.com). In reliance on the advertisement's claims, Plaintiff purchased the Product for personal consumption. The retail purchase price was \$2.00 for one 3-Pack of baking soda. Had Plaintiff known the truth about Defendants' misrepresentations and omissions, he would not have purchased the premium priced Product, but would have purchased a less expensive alternative.

15. Plaintiffs JOHN DOES are, and at all relevant times hereto are citizens of various states of the United States and the District of Columbia. Plaintiffs JOHN DOES have purchased the Products for personal consumption. Plaintiffs JOHN DOES purchased the Products at a premium price and were financially injured as a result of Defendants' deceptive conduct as alleged herein.

16. Defendant WAL-MART STORES, INC. is a corporation organized under the laws of Delaware and a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716-8611. WAL-MART STORES, INC. is authorized to conduct business as a foreign corporation in the State of New Jersey and with an address for service of process located at Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

17. Defendant WAL-MART STORES EAST, INC. is a corporation organized under the laws of Delaware and a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716-8611. The sole shareholder of WAL-MART STORES EAST, INC. is WAL-MART STORES, INC., a Delaware corporation. Defendant WAL-MART STORES EAST, INC. is authorized to conduct business as a foreign corporation in the State of New Jersey.

18. Defendant WAL-MART STORES EAST, LP is a limited partnership organized under the laws of Delaware and a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716-8611. WAL-MART STORES EAST, LP operates as a subsidiary of WAL-MART STORES, INC. and is authorized to conduct business as a foreign corporation in the State of New Jersey. WAL-MART STORES EAST, LP owns and operates retail stores, discount stores, and supermarkets.

19. Defendant WAL-MART.COM USA, LLC is a limited liability company organized under the laws of California and a principal place of business located at 850 Cherry Avenue, San Bruno, California 94066 and with an address for service of process located at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. WAL-MART.COM USA, LLC is authorized to conduct business as a foreign corporation in the State of New Jersey. WAL-MART.COM USA, LLC offers online retail services.

20. Upon information and belief, Defendants WAL-MART STORES, INC., WAL-MART STORES EAST, INC., WAL-MART STORES EAST, LP, WAL-MART.COM USA, LLC operate as a single integrated and common enterprise. Together, Defendants marketed, advertised and sold the Product with misleading packaging representations on their website to hundreds of thousands of consumers nationwide.

## FACTUAL ALLEGATIONS

### **Defendants**

21. Defendants operate retail stores throughout New Jersey and the country, totaling over 4,000 locations, with over 50 in New Jersey alone. Defendants distribute, advertise, market and sell their products throughout New Jersey and online at Wal-Mart.com.

### **Arm & Hammer Baking Soda**

22. Defendants market and sell Arm & Hammer Fresh-N-Natural Baking Soda (the “Product”), a cleaning and odor-eliminating product. The Product retails for \$2.00. Pictures of the Product as advertised on the Wal-Mart.com website are shown below:





The screenshot displays the Walmart.com product page for Arm & Hammer Fresh-N-Natural Baking Soda, 1 Lb. At the top, the Walmart logo and navigation menu are visible. A search bar is present with the text 'All Search'. Below the navigation, there are links for 'All Departments', 'My Local Store', 'Trending', 'Value of the Day', and 'Holiday Hub'. A section titled 'Other items purchased by customers who viewed this item' shows a carousel of related products like 'Arm & Hammer Fridge Fresh Air Filter', 'Arm & Hammer Pure Baking Soda, 4 lb', 'ARM & HAMMER Pure Baking Soda, 5 lb', 'Arm & Hammer Baking Soda, 192 oz', 'Arm And Hammer Fridge-n-Freezer Pack...', and 'Clorox Scented Bleach, Concentrated...'. The main product is 'Arm & Hammer: Fresh-N-Natural Baking Soda, 1 Lb' with a '3 pack' badge. The price is \$2.00. The page also features a 'Savings Catcher' banner and a 'Share this' section.

As appeared on <http://www.walmart.com/ip/Arm-Hammer-Fresh-N-Natural-Baking-Soda-1-Lb/22002506> on December 10, 2014.

23. Defendants deceptively advertise and market the Product. Defendants have consistently conveyed the message that the Product offered to consumers on the Walmart.com website is a “3 Pack,” commonly interpreted as a bundled package of three of a standard sized product. Defendants’ graphic, which prominently displays the words “3 Pack” next to the Product, is designed to suggest to the reasonable consumer that “3 Pack” is a quantitative modifier of the displayed product, a 1 lb. box, and that they will receive a bundle totaling 3 lbs.

24. Plaintiff HERNANDEZ purchased the Arm & Hammer from the Wal-Mart.com website and received only a single 1 lb. box. When any customer calls Walmart customer service, they are informed that the purchase price of \$2.00 only relates to a single 1lb. package, not the 3 pack, even though the 3 pack photo of the Product is displayed prominently with the purchase price of \$2.00 on the website.

25. Defendants mislead consumers into paying a premium price for a Product that does not satisfy the minimum standards established by federal or state laws for that product. As a result of Defendants' deceptions, consumers, including Plaintiffs and members of the proposed Class, have purchased a product in reliance upon inaccurate claims of quantity.

26. Through the deceptive practice of marketing and selling their Product as a bundled package of three, Defendants have shortchanged Plaintiffs and Class members by two 1 lb. boxes for a fair market value of \$4.00 for each purchase of the Product.

27. The types of misrepresentations made herein would be considered by a reasonable consumer when deciding to purchase the Product.

28. Plaintiffs did not know, and had no reason to know, that Defendants' Products were deceptive, and were marketed with fraudulent and misleading claims.

29. For these reasons, Defendants' claims at issue in this Complaint are misleading and in violation of FDA guidelines and consumer protection laws of each of the fifty states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States.

**Plaintiffs Were Injured as a Result of Defendants' Misleading and Deceptive Conduct**

30. Defendants' marketing and advertising as alleged herein is false and misleading and was designed to increase sales of the Product at issue. Defendant's misrepresentations are part of its systematic sales practice.

31. Plaintiffs and Class members were exposed to Defendants' extensive marketing campaign. At the time of purchase, Plaintiffs read Defendants' online representation regarding the quantity being sold, which was a material factor in Plaintiffs and Class members' decision to purchase the Product on the Walmart website.

32. Plaintiffs and Class members would not have purchased the Product for a premium price had they known they would only receive 1 lb. of the Product.

33. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Product.

34. Defendants' advertising and marketing as alleged herein is false and misleading and designed to increase sales of the Products. Defendants' misrepresentations are part of an extensive advertising and marketing campaign, and a reasonable person would attach importance to Defendants' representations in determining whether to purchase the Product at issue. Plaintiffs and Class members would not have purchased Defendants' misbranded products had they known it was misbranded.

35. Plaintiffs and the Class have been damaged by Defendants' deceptive and unfair conduct in that they paid prices they otherwise would not have paid had Defendants not misrepresented their Products' quantity.

**CLASS ACTION ALLEGATIONS**

36. Plaintiffs bring this action as a class action pursuant Rule 23 of the Federal Rules of Civil

Procedure on behalf of the following class (the “Class”):

All persons or entities in the United States who made online retail purchases of the Product during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant’s legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

37. Plaintiffs bring this action as a class action pursuant Rule 23 of the Federal Rules of Civil

Procedure on behalf of the following subclass (the “ New Jersey Class”):

All New Jersey residents who made online retail purchases of the Product during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant’s legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

38. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

39. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

40. Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. Whether Defendants' marketing, promotion, advertising and sale of the Product is and was a deceptive act or practice in the conduct of business directed at consumers, giving rise to a violation of the New Jersey Consumer Fraud Act;
- b. whether Defendants misrepresented or omitted material facts in connection with the promotion, marketing, advertising and sale of the Product;
- c. whether Defendants represented the Product has characteristics, benefits, uses or qualities that it does not have;
- d. whether Defendants' acts and practices in connection with the promotion, marketing, advertising, distribution and sale of the Product violated the New Jersey Consumer Fraud Act;
- e. whether Defendants' acts and practices in connection with the promotion, marketing, advertising and sale of the Product breached their express and implied warranties to Plaintiffs and the Class;
- f. Whether Defendants have breached warranties made to the consuming public about their Product;
- g. Whether Plaintiffs and members of the Class sustained injuries or damages as a result of Defendants' false advertising of the Product;
- h. Whether Defendants' conduct constitutes unjust enrichment, and whether equity calls for disgorgement of unjustly obtained or retained funds, restitution to, or other remedies for the benefit of the Class; and

- i. Whether Plaintiffs and members of the Class are entitled to equitable relief and prospective injunctive relief enjoining Defendants from continuing to engage in the fraudulent, deceitful, unlawful and unfair common scheme as alleged in this Complaint.

41. Plaintiff's claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs purchased Defendants' Product during the Class Period and sustained similar injuries arising out of Defendants' conduct in violation of New York State law. Defendants' unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendants' wrongful misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

42. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and has retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of her claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs has retained highly competent and experienced class action attorneys to represent her interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary

responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

44. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

45. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

46. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

47. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants'

systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

**CAUSES OF ACTION**

**COUNT I**  
**VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT,**  
**N.J.S.A. 56: 8-1 *et seq.***

48. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 47 of this Complaint, as if fully set forth herein.

49. The New Jersey Consumer Fraud Act prohibits, *inter alia*:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of any merchandise. . . .

N.J.S.A. § 56:8-1(d).

50. Defendants conduct a significant amount of trade and commerce in New Jersey. Each Defendant is in its capacity as marketer, advertiser, promoter and seller of the Product, a “person” as defined in the New Jersey Consumer Fraud Act. N.J.S.A. § 56:8-1(d).

51. The Product is “merchandise” within the meaning of the Consumer Fraud Act § 56:8-1(c).

52. As described herein, Defendants’ policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and violated and continue to violate the following sections of the New Jersey Consumer Fraud Act, which prohibits, in connection with the sale or advertisement of merchandise, the act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact . . . .”



53. Defendants' misrepresentations and false, deceptive, and misleading statements with respect to the quantity of the Product, as described above, constitute affirmative misrepresentations in connection with the marketing, advertising, promotion, and sale of the Product, in violation of the New Jersey Consumer Fraud Act.

54. Defendants' false, deceptive, and misleading representations was material to Plaintiffs and would have been material to any potential consumer's decision to purchase the Product.

55. Moreover, Defendants made such false, deceptive, and misleading statements about the Product with the intent that others rely upon such statements and purchase the Product.

56. Plaintiffs and the other Class members purchased the Product for personal use and suffered ascertainable loss as a direct and proximate result of Defendants' actions in violation of the New Jersey Consumer Fraud Act.

57. Had Defendants disclosed all material information regarding the Product in their advertising and marketing, Plaintiffs and the Class would not have purchased the Product or would have paid less for it.

58. As a consequence of Defendants' wrongful actions, Plaintiffs and the other Class members suffered an ascertainable loss in the form of, inter alia, monies spent to purchase the Product that they otherwise would not have spent, the amount of such loss to be determined at trial.

59. By reason of the foregoing, Defendants are liable to Plaintiffs and other Class members for trebled compensatory damages, including but not limited to payment of a sum equal to treble the amount of a refund of all monies acquired by reason of Defendants' marketing, advertising, promotion, or sale of the Product – plus reasonable attorneys' fees, filing fees, and costs of suit. N.J.S.A. §§ 56:8-2.11, 8-2.12, 8-19.

60. Defendants' conduct was intentional, wanton, willful, malicious, and in blatant disregard of, or grossly negligent and reckless with respect to, the life, health, safety, and well-being of Plaintiffs and other Class members. Defendants are therefore additionally liable for punitive damages, in an amount to be determined at trial.

**COUNT II**  
**BREACH OF EXPRESS WARRANTY**

61. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 60 of this Complaint, as if fully set forth herein.

62. Beginning at an exact date unknown to Plaintiffs, but at least since three years prior to the filing date of this action, and as set forth herein, Defendants made representations to the public, including Plaintiffs, by their advertising and marketing that the item they would receive is a bundled package of three of the Product when the package only includes a single item.

63. . That promise became part of the basis of the bargain between the parties and thus constituted an express warranty.

64. Thereon, Defendants sold the goods to Plaintiffs and other Class members, who bought the goods from Defendants.

65. However, Defendants breached the express warranty in that the goods were in fact not a "3 Pack," as set forth in detail herein. As a result of this breach, Plaintiffs and other Class members in fact did not receive goods as warranted by Defendants.

66. Defendants made such express warranty as part of their marketing campaign; on their website, described herein.

67. The Product does not conform to the express warranty made by Defendants and does not conform to Defendants' promises, descriptions, or affirmations of fact. The Product, therefore, was not adequately marketed, advertised, promoted or sold.

68. Plaintiffs and the other Class members purchased the Product based upon and in reliance upon such false warranty.

69. As a consequence of the foregoing, Defendants are liable to Plaintiffs and the other Class members for damages incurred as a result of Defendants' actions, including but not necessarily limited to the purchase price of the Product that they purchased, the amount of such damages to be determined at trial.

70. Defendants' conduct was intentional, wanton, willful, malicious, and in blatant disregard of, or grossly negligent and reckless with respect to, the life, health, safety, and well-being of Plaintiffs and other Class members. Defendants are therefore additionally liable for punitive damages, in an amount to be determined at trial.

**COUNT III**  
**COMMON LAW FRAUD**

71. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 70 of this Complaint, as if fully set forth herein.

72. Defendants intentionally made materially false and misleading representations regarding the prizes available from the Product.

73. Plaintiffs and members of the Class were induced by, and relied on, Defendant's false and misleading packaging, representations and omissions and did not know at the time that they were purchasing the Product that they would only receive a 1 lb. package, rather than a three pack of a total of 3 lbs.

74. Defendants knew or should have known of its false and misleading labeling, packaging and misrepresentations and omissions. Defendants nevertheless continued to promote and encourage customers to purchase the product in a misleading and deceptive manner.

75. Plaintiffs and members of the Class have been injured as a result of Defendants' fraudulent conduct.

76. Defendants are liable to Plaintiffs and members of the Class for damages sustained as a result of Defendants' fraud, in an amount to be determined at trial.

**COUNT IV**  
**UNJUST ENRICHMENT**

77. Plaintiffs reallege and incorporate herein by reference paragraphs 1 – 76 of this Complaint, as if fully set forth herein.

78. Defendants received certain monies as a result of its uniform deceptive marketing of the Product that are excessive and unreasonable.

79. Plaintiffs and the Class conferred a benefit on Defendant through purchasing the Product, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on it.

80. Defendants will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

81. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that it received from Plaintiff, and all others similarly situated, in light of the fact that the quantity of the Products purchased by Plaintiffs and members of the Class, was not what Defendants purported it to be by their marketing.

**COUNT IV**  
**INJUNCTIVE RELIEF**

82. Plaintiffs reallege and incorporate herein by reference paragraphs 1 – 81 of this Complaint, as if fully set forth herein.

83. Given Defendants' wrongful actions as set forth above, which are ongoing and continuing to deceive and harm purchasers and users of the Product, the Court should (i) enjoin Defendants from continuing to market, advertise, promote and sell the Product through use of the 3-pack misrepresentation and (b) order Defendants to take all steps necessary to remove the offending misrepresentation from their website and any other marketing tool currently in use.

84. Unless Defendants' conduct is enjoined, consumers will continue to be deceived into believing that they are buying a 3-pack, when in fact they are buying a 1-pack.

85. Such harm will continue unless and until injunctive relief is granted.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated, seeks judgment against Defendant, as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiffs as representative of the Class;
- b. An Order appointing the undersigned attorney as class counsel in this action;
- c. Restitution and disgorgement of all amounts obtained by Defendants as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- d. All recoverable compensatory and other damages sustained by Plaintiffs and members of the Class, including the fair market value of two 1lb. packages at \$2.00 each;
- e. Actual and/or statutory damages for injuries suffered by Plaintiffs and members of the Class and in the maximum amount permitted by applicable law;

- f. An order (1) requiring Defendants to immediately cease their wrongful conduct as set forth in this Complaint; (2) enjoining Defendants from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering Defendants to engage in a corrective advertising campaign; and (4) requiring Defendants to reimburse Plaintiffs and all members of the Class the amounts paid for the Product;
- g. Statutory pre-judgment and post-judgment interest on any amounts;
- h. Payment of reasonable attorneys' fees and costs; and
- i. Such other relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: January 12, 2015

Respectfully submitted,

LAW OFFICE OF ROBERT L. KRASELNIK, PLLC  
Robert L. Kraselnik (RK 0684)  
37-53 90<sup>th</sup> Street, Suite 12  
Jackson Heights, NY 11372  
Tel.: 646-342-2019  
Fax: 646-661-1317  
*Attorneys for Plaintiffs and the Class*

LEE LITIGATION GROUP, PLLC  
Anne Seelig (AS 3976)  
30 East 39th Street, Second Floor  
New York, NY 10016  
Tel.: 212-465-1188  
Fax: 212-465-1181  
*To be admitted Pro Hac Vice*

By:     /s/ Robert Kraselnik      
Robert L. Kraselnik (RK 0684)

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 ROGUE HERNANDEZ and JOHN DOES 1-100, on behalf of themselves and others similarly situated

(b) County of Residence of First Listed Plaintiff Bergen  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)  
 Robert L. Kraselnik, Esq., 37-53 90th Street, Suite 12, Jackson Heights, NY 11372, 646-342-2019, Anne Seelig, Esq., Lee Litigation Group, PLLC, 30 East 39th Street, 2nd. Fl., New York, NY 10016, 212-465-1188

**DEFENDANTS**  
 WAL-MART STORES, INC., WAL-MART STORES EAST, INC., WAL-MART STORES EAST, LP and WAL-MART.COM USA, LLC

County of Residence of First Listed Defendant Benton  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332(d)

Brief description of cause:  
An action to recover damages sustained as a result of Defendant's sale of products using deceptive marketing

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 5,000,000.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE 01/12/2015    SIGNATURE OF ATTORNEY OF RECORD /s/ Robert Kraselnik

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_