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17 Attorneys for Plaintiff

18 UNITED STATES DISTRICT COURT
19 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

20 **Diann Kohn**, an individual, on behalf
21 of herself and all others similarly
22 situated,

23 Plaintiff,

24 v.

25 **Wal-Mart Stores, Inc.**, a Delaware
26 corporation, and Does 1 through 100,

27 Defendants.
28

CASE NO. '15CV0538 L BLM

**Class Action Complaint for
Damages and Equitable Relief**

1 Plaintiff, Diann Kohn, on behalf of herself and all others similarly situated,
2 hereby complains and alleges as follows:

3
4 **INTRODUCTION**

5 1. Defendant Wal-Mart Stores, Inc. (“Defendant”) markets and sells
6 various herbal supplements in the United States under the “Spring Valley” brand
7 name. These herbal supplements include Garlic, Echinacea, St. John’s Wort,
8 Ginkgo Biloba, Saw Palmetto, and others (“Supplements”). As alleged more fully
9 below, the Supplements either do not, and during the relevant time period did not,
10 contain the listed ingredients, or they contained unlisted ingredients in addition to
11 or in place of the listed ingredients.

12 2. Defendant Wal-Mart’s failure to include the stated ingredients in its
13 “Spring Valley” supplements was and is deceptive, fraudulent, misleading, illegal,
14 and dangerous.

15 3. Likewise, Wal-Mart’s inclusion of unlisted ingredients in its “Spring
16 Valley” supplements was and is deceptive, fraudulent, misleading, illegal, and
17 dangerous.

18 4. Defendant Wal-Mart has known for many years that its “Spring
19 Valley” supplements either do not contain the listed ingredients or contained
20 unlisted ingredients in addition to or in place of the listed ingredients.

21 5. On February 3, 2015, the Attorney General of New York sent letters
22 to four major retailers, GNC, Target, Wal-Mart, and Walgreens, for allegedly
23 selling store brand herbal supplement products that either could not be verified to
24 contain the labeled substance, or which were found to contain ingredients not listed
25 on the labels.

26 6. The letters were the result of DNA testing (also known as DNA
27 barcoding), performed as part of an ongoing investigation by the New York
28 Attorney General’s Office into fraudulent or misleading business practices relating

1 to the sale of nutritional supplements. The testing demonstrated that just 21% of
2 the tested products contained DNA from the plants listed on the products' labels.
3 The remaining 79% contained no DNA related to the labeled content. **Only 4% of**
4 **the Wal-Mart products tested showed DNA from the plants listed on the**
5 **products' labels.** There was also evidence that the products contained ingredients
6 not disclosed on the label.

7 7. When the producers and retailers of herbal supplements, such as Wal-
8 Mart, fail to identify all the ingredients on a product's label, a consumer with food
9 allergies, or who is taking medication for an unrelated illness, is taking a serious
10 health risk every time a contaminated herbal supplement is ingested.

11 PARTIES

12 8. This action is brought by Plaintiff Diann Kohn on behalf of a class
13 comprising all similarly situated consumers in the United States who purchased
14 one or more of the Supplements from the Defendant. Plaintiff and Class members
15 assert claims against Defendant for violations of the Consumer Legal Remedies
16 Act ("CLRA"), violations of The California Unfair Competition Law ("UCL"),
17 violations of The California False Advertising Law ("FAL"), Negligence, Breach
18 of Implied Warranty, Breach of Express Warranty, Deceit by Concealment,
19 Negligent Misrepresentation, and Intentional Misrepresentation. Plaintiff and Class
20 Members seek restitution, damages and equitable relief, including disgorgement of
21 profits, and appropriate attorney's fees and costs.

22 9. Plaintiff Diann Kohn is an individual who resides in San Diego
23 County, California. Plaintiff purchased Spring Valley brand Garlic from Wal-Mart
24 regularly over the past several years.

25 10. Defendant Wal-Mart Stores, Inc. is a Delaware corporation that has its
26 principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas.
27 Defendant Wal-Mart manufactures and sells its own line of Supplements under the
28

1 “Spring Valley” brand name. Wal-Mart was and is in the business of
2 manufacturing and selling Spring Valley Supplements in the United States.
3 Through these actions, Wal-Mart placed the Supplements in the stream of
4 commerce in California, and throughout the United States. Wal-Mart has received,
5 and continues to receive, substantial benefits and income through the sales of its
6 Supplements.

7 11. The true names and capacities, whether individual, corporate,
8 associate or otherwise of certain manufacturers, distributors or their alter egos sued
9 herein as DOES 1 through 100 inclusive are presently unknown to Plaintiff who
10 therefore sues these defendants by fictitious names. Plaintiff will seek leave of this
11 court to amend the complaint to show their true names and capacities when the
12 same have been ascertained. Plaintiff is informed and believes and thereon alleges
13 that DOES 1 through 100 were authorized to do and did business in California and
14 the United States. Plaintiff is further informed and believes and thereon on alleges
15 that DOES 1 through 100 were or are in some manner or way responsible for and
16 liable to Plaintiff for the events, happening, and damages hereinafter set forth
17 below.

18 JURISDICTION AND VENUE

19
20 12. This Court has subject matter jurisdiction over the class action
21 pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds
22 \$5,000,000, exclusive of interest and costs, because the proposed Class consists of
23 100 or more members, and because minimum diversity exists.

24 13. This Court has personal jurisdiction over Defendant Wal-Mart
25 because it is authorized to do business and does business in this district and has
26 sufficient minimum contacts with this district. Additionally, Defendant Wal-Mart
27 intentionally avails itself of the markets in this state through the promotion,
28 marketing and sale of its herbal Supplements in this district. These actions render

1 the exercise of jurisdiction by this Court permissible under traditional notions of
2 fair play and substantial justice.

3 14. Venue is proper in this District because a substantial part of the events
4 or omissions giving rise to the claims occurred here and Defendant regularly does
5 business here. Additionally, venue is proper under the CLRA under Civil Code §
6 1780(d), and the declaration required by that subsection is attached to this
7 Complaint as Exhibit 1.

8 9 FACTS COMMON TO ALL CAUSES OF ACTION

10 15. According to a 2007 National Health Interview Survey, 17.7 percent
11 of American adults had used a dietary supplement in the past 12 months.¹

12 16. “Dietary supplements” or “herbal supplements” such as the Spring
13 Valley brand of supplements manufactured and sold by Defendant Wal-Mart are
14 governed by the Dietary Supplement Health Education Act (“DSHEA”) rather than
15 the Food, Drug and Cosmetic Act. The goal of the DSHEA was to let dietary
16 supplement manufacturers, such as Wal-Mart, get their supplements onto store
17 shelves and to market dietary supplements with minimal FDA regulation.

18 17. The DSHEA exempts dietary and herbal supplements from the pre-
19 market approval processes required of prescription drugs prior to FDA approval.
20 21 U.S.C. § 343(r)(6). The DSHEA permits the makers of dietary supplements to
21 make claims as to how their supplement affects the structure or function of the
22 body without first conducting clinical studies that demonstrate these claims, or
23 without gaining prior FDA approval, so long as certain criteria are met. Under the
24 DSHEA, however, makers of herbal supplements must provide a **complete list** of
25 ingredients by their common or usual names, either in descending order of
26 prominence or with the source of the dietary ingredient in the "Supplement Facts"
27 panel following the name of the dietary ingredient.

28

¹ <https://nccih.nih.gov/health/supplements/wiseuse.htm>

1 18. The FDA does not verify that dietary or herbal supplements are safe
2 or effective, or that the structure and function claims made by the supplement
3 manufacturers and retailers are true. Supplements can get to the marketplace very
4 quickly and cheaply compared with prescription or over the counter drugs. It is
5 therefore imperative that manufacturers, such as Defendant Wal-Mart, use strict
6 quality controls in manufacturing and distribution of its Supplements and
7 accurately identify all ingredients in them.

8 19. At all relevant times herein, Defendant Wal-Mart has known that its
9 “Spring Valley” Supplements failed to contain the stated ingredients and contained
10 unlisted ingredients including known allergens. A study published in the journal
11 BMC Medicine, followed a number of smaller studies that found a significant
12 percentage of herbal products do not contain what they claim. The findings, backed
13 by DNA testing, offer credible evidence of adulteration, contamination, and
14 mislabeling in the herbal supplement industry, a rapidly growing area of alternative
15 medicine that includes an estimated 29,000 herbal products and substances sold
16 throughout North America.²

17 18 CLASS ACTION ALLEGATIONS

19 20. Plaintiff brings this action pursuant to Rule 23(a), 23(b)(2) and
20 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and the
21 members of the following Class:

22 All United States residents who purchased Wal-Mart Spring
23 Valley brand herbal or dietary supplements from the period of
24 four years prior to the filing of this Complaint through the
25 present (“Class Period”).

26 Plaintiff also seeks certification of a “California subclass” comprising:

27
28

29 ² <http://www.biomedcentral.com/1741-7015/11/222/abstract>

1 All California residents who purchased Wal-Mart Spring Valley
2 brand herbal or dietary supplements from the period of four
3 years prior to the filing of this Complaint through the present
4 (“Class Period”).

5 21. Collectively, these persons will be referred to as “Class members” or
6 “the Class.” Plaintiff represents, and is a member of, the Class. Excluded from the
7 Class are Defendant Wal-Mart and any entities in which Defendant or its
8 subsidiaries or affiliates have a controlling interest, Defendant’s officers, agents
9 and employees, the judicial officer to whom this action is assigned and any
10 member of the Court’s staff and immediate families, as well as Class members’
11 claims for personal injury, wrongful death, and emotional distress caused by
12 Defendant’s Supplements.

13 22. Well-defined, common legal and factual questions affect all Class
14 members and predominate over any individual questions that might arise. Common
15 questions include whether Defendant’s advertising, in any medium, was unfair,
16 deceptive, untrue, or misleading; whether Defendant sold the Supplements with
17 knowledge of their defective nature, whether Defendant violated implied and
18 express warranties of merchantability, whether Defendant was negligent in its
19 actions, and others.

20 23. Plaintiff will fairly and adequately represent and protect the interests
21 of all Class members and Plaintiff has no interests which are antagonistic to those
22 of Class members. Plaintiff has retained counsel with experience prosecuting
23 consumer class action and complex litigation claims.

24 24. A class action is superior to all other available methods for the fair
25 and efficient adjudication of the controversy for the following reasons:

- 26 a. It is economically impractical for members of the Class to prosecute
27 individual actions;
- 28 b. The Class is readily definable; and

1 c. Prosecution as a class action will eliminate the possibility of
2 repetitious litigation.

3 25. A class action will allow an orderly and expeditious administration of
4 the claims of the Class. It will also foster economies of time, effort, and expense,
5 as well as uniformity of decisions.

6 26. Class wide relief is essential to compel Defendant Wal-Mart to
7 comply with Federal and California law. The interest of Class members in
8 individually controlling the prosecution of separate claims against Defendant is
9 small because the damages in an individual action may be small, potentially
10 amounting to as little as the purchase price of herbal supplements.

11 27. Defendant has acted on grounds generally applicable to the Class,
12 thereby making final injunctive relief and corresponding declaratory relief with the
13 respect to the Class as a whole appropriate. Moreover, the violations complained of
14 herein are substantially likely to continue in the future if an injunction is not
15 entered.

16
17 **FIRST CAUSE OF ACTION**

18 **Violations of the Consumer Legal Remedies Act**

19 **(Cal. Civ. Code § 1750, et. seq.)**

20 28. Plaintiff re-alleges and incorporates by reference the allegations set
21 forth above.

22 29. Each individual Class Member qualifies as a “person” under Cal. Civ.
23 Code § 1761(c).

24 30. The Class Members are “consumers,” as defined by Cal. Civ. Code §
25 1761(d).

26 31. The CLRA prohibits “unfair or deceptive acts or practices undertaken
27 by any person in a transaction intended to result or which results in the sale or
28 lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).

1 Defendant has engaged in unfair or deceptive acts or practices that violated Cal.
2 Civ. Code § 1750, *et. seq.*, by among other things, representing that the subject
3 supplements have characteristics, uses, benefits, and qualities which they do not
4 have; representing that subject supplements are of a particular standard, quality,
5 and grade when they are not; representing that subject supplements contain
6 specifically listed ingredients when in fact they do not; and failing to disclose
7 ingredients contained within subject supplements.

8 32. In the course of its business, Defendant willfully and/or negligently
9 failed to disclose the specific ingredients contained in the subject Supplements.
10 Defendant is directly liable for engaging in unfair and deceptive acts or practices in
11 the conduct of trade or commerce in violation of the CLRA.

12 33. Defendant knew or should have known that its conduct violated the
13 CLRA.

14 34. Defendant made material statements about the purity and ingredients
15 in the Supplements that were either false or misleading. Defendant engaged in a
16 deceptive trade practice when it failed to disclose material information concerning
17 the Supplements which it knew at the time of the sale.

18 35. The Defendant owed the Class Members a duty to disclose the true
19 contents of the Supplements. Failing to do so not only constitutes a deceptive
20 business practice but a serious health risk due to the inclusion of known allergens
21 within the Supplements.

22 36. The Defendant's unfair or deceptive acts or practices were likely to
23 deceive reasonable consumers, including the Class Members, about the true safety,
24 effectiveness, and contents of the Supplements.

25 37. At all times herein relevant, Defendant has known about the
26 substitution or absence of listed ingredients in herbal supplements in North
27 America.

1 38. By failing to disclose the substituted ingredients, failing to take
2 corrective action when it was aware of the poor quality, and by failing to include
3 stated ingredients, Defendant engaged in deceptive business practices prohibited
4 by the CLRA.

5 39. All members of the Class suffered ascertainable loss caused by the
6 Defendant's failure to disclose material information. The Class Members overpaid
7 for the Supplements and received a product that was different than advertised and
8 not what they intended to purchase.

9 40. The Class Members have been directly damaged by Defendant's
10 misrepresentations, concealment, and non-disclosure of stated and unstated
11 ingredients as well as Defendant's failure to include the advertised ingredients and
12 inclusion of ingredients not listed on the label.

13 41. Despite being aware of the issue, Defendant has failed to remedy the
14 situation.

15 42. Under Cal. Civ. Code § 1780(b), the Class members seek an
16 additional award against Defendant of up to \$5,000 for each California Class
17 member who qualifies as a "senior citizen" or "disabled person" under the CLRA.
18 Defendant knew or should have known that their conduct was directed to one or
19 more Class members who are senior citizens or disabled persons. Defendant's
20 conduct caused one or more of these senior citizens or disabled persons to suffer a
21 substantial loss of property set aside for retirement or for personal or family care
22 and maintenance, or assets essential to the health or welfare of the senior citizen or
23 disabled person. One or more Class members who are senior citizens or disabled
24 persons are substantially more vulnerable to Defendants conduct because of age,
25 poor health or infirmity, impaired understanding, restricted mobility, or disability,
26 and each of them suffered substantial physical, emotional, or economic damage
27 resulting from Defendant's conduct.
28

1 43. Pursuant to Civil Code § 1782, concurrently with the filing of this
 2 Complaint, Plaintiff will notify Defendants in writing by certified mail of the
 3 alleged violations of section 1770 and demand that the same be corrected. If
 4 Defendants fails to rectify or agree to rectify the problems associated with the
 5 action detailed above within 30 days of the date of written notice pursuant to Civil
 6 Code § 1782, Plaintiff will amend this Complaint to add claims for actual, punitive
 7 and statutory damages, as appropriate in accordance with Civil Code § 1782(a) &
 8 (d).

9
 10 **SECOND CAUSE OF ACTION**

11 **Violation of The California Unfair Competition Law**
 12 **(Cal. Bus. & Prof. Code § 17200, Et. Seq.)**

13 44. Plaintiff re-alleges and incorporates by reference the allegations set
 14 forth above.

15 45. California Business and Professions Code § 17200 prohibits acts of
 16 “unfair competition,” including any “unlawful, unfair or fraudulent business act or
 17 practice” and “unfair, deceptive, untrue or misleading advertising. . . .” Defendant
 18 engaged in conduct that violated each of this statute’s three prongs.

19 46. Defendant committed an unlawful business act or practice in violation
 20 of § 17200 by violating the Consumer Legal Remedies Act, Cal. Civ. Code § 1750,
 21 et. seq., as set forth above.

22 47. Defendant committed unfair business acts and practices in violation of
 23 § 17200 when it improperly and illegally labeled its herbal supplements. Defendant
 24 committed unfair business acts and practices by failure to include the advertised
 25 ingredients and inclusion of ingredients not listed on the label.

26 48. Defendant also violated the unfairness prong of § 17200 by failing to
 27 remedy the situation involving adulterated, substituted, added, and missing
 28 ingredients when it first learned of the issue.

1 17500 because its misrepresentations and omissions regarding the contents of the
2 Supplements were material and likely to deceive a reasonable consumer.

3 55. Plaintiff and the other Class members have suffered an injury in fact,
4 including the loss of money or property, as a result of the Defendant's unfair,
5 unlawful, and/or deceptive practices. In choosing to purchase the Herbal
6 Supplements, Plaintiff and the other Class members relied on the
7 misrepresentations and/or omissions of the Defendant with respect to the content of
8 the Supplements. Had Plaintiff and the other Class members known the true facts,
9 they would not have purchased the Supplements from the Defendant. Accordingly,
10 Plaintiff and the other Class members overpaid for the Supplements (which were
11 worth nothing) and did not receive the benefit of their bargain.

12 56. All of the wrongful conduct alleged herein occurred, and continues to
13 occur, in the conduct of the Defendant's business. The Defendant's wrongful
14 conduct is part of a pattern or generalized course of conduct that was perpetuated
15 and repeated, both in the State of California and nationwide.

16
17 **FOURTH CAUSE OF ACTION**

18 **Breach of Implied Warranty**

19 57. Plaintiff repeats and re-alleges the foregoing paragraphs, inclusive,
20 and incorporates the same as if set forth herein at length.

21 58. Prior to the time that Plaintiff used the Supplements, Defendant
22 impliedly warranted to Plaintiff and Class that the Supplements were of
23 merchantable quality and contained the ingredients as listed on the labels.

24 59. Plaintiff and other Class members were and are unskilled in the
25 research, design, and manufacture of the Supplements and reasonably relied
26 entirely on the skill, judgment, and implied warranty of the Defendant in using the
27 Supplements.
28

1 60. The Supplements were neither as represented on the labels nor of
2 merchantable quality, as warranted by Defendant. The Supplements did not
3 containing the advertised ingredients or contained unlisted ingredients, contrary to
4 law, and therefore the contents of the Supplements were misrepresented to the
5 public.

6 61. Plaintiff and the Class are direct purchasers of the Supplements from
7 Defendant and thus are in privity with Defendant.

8 62. As a result of Defendant's breach of warranty, Plaintiff and the Class
9 have suffered the damages set forth above.

10
11 **FIFTH CAUSE OF ACTION**

12 **Breach of Express Warranty**

13 63. Plaintiff repeats and re-alleges the foregoing paragraphs, inclusive,
14 and incorporates the same as if set forth herein at length.

15 64. Defendant expressly warranted to Plaintiff and the Class that the
16 Supplements were fit and proper for their intended use and contained the
17 ingredients listed on the label and only those ingredients. Since herbal and dietary
18 supplements are not evaluated by the FDA, consumers are only able to make
19 informed decisions by relying on the accuracy of the ingredients as stated on the
20 packaging of the Supplements. By failing to list all ingredients and failing to
21 contain stated ingredients Defendant breached its express warranty.

22 65. Plaintiff and the Class relied on the skill, judgment, representations,
23 and express warranties of Defendant when they decided to purchase and use the
24 Supplements. In fact, these warranties and representations were false since the
25 Supplements were not as advertised, as alleged above.

26 66. As a result of Defendant's breach of express warranty, Plaintiff and
27 the Class have suffered the damages set forth above.

SIXTH CAUSE OF ACTION

Deceit by Concealment - Civil Code §§ 1709, 1710

1
2
3 67. Plaintiff repeats and re-alleges the foregoing paragraphs, inclusive,
4 and incorporates the same as if set forth herein at length.

5 68. Defendant willfully deceived Plaintiff and the Class by concealing the
6 true facts concerning the Supplements, which the Defendant was obligated to, and
7 had a duty to, disclose. As set forth above, Defendant knew, in advance of Plaintiff
8 and the Class's purchase and use of the Supplements, of the substitution of
9 ingredients, the failure to contain stated ingredients, and the addition of unlisted
10 ingredients.

11 69. Defendant concealed and failed to disclose those facts to Plaintiff and
12 the Class.

13 70. As a result of the deceit by concealment by Defendant, Plaintiff and
14 the Class suffered the injuries and damages set forth above.

15
16 **SEVENTH CAUSE OF ACTION**

17 **Negligent Misrepresentation**

18 71. Plaintiff repeats and re-alleges the foregoing paragraphs, inclusive,
19 and incorporates the same as if set forth herein at length.

20 72. Defendant made misrepresentations, as previously set forth herein, to
21 Plaintiff and Class, including the misrepresentation that the Supplements contained
22 ingredients which they in fact did not include and that the Supplements did not
23 contain ingredients which they in fact did.

24 73. Defendant made the foregoing representations without reasonable
25 grounds for believing them to be true. These representations were made directly
26 by Defendant, and their authorized agents, on the Supplements' packaging and
27 labeling and in publications and other written materials directed to the public, with
28 the intention of inducing reliance and the purchase and use of the Supplements.

1 74. The foregoing representations by Defendant were false. The
2 Supplements did not contain the stated ingredients or contained additional unlisted
3 ingredients.

4 75. In reliance on the above misrepresentations by Defendant, Plaintiff
5 and the Class were induced to purchase and to use the Supplements. If Plaintiff and
6 the Class had known of the true facts and ingredients concealed by Defendant, they
7 would not have purchased or used the Supplements.

8 76. Plaintiff's reliance on the misrepresentations by Defendant was
9 justified and reasonable in that such misrepresentations were made by individuals
10 and entities that held themselves out as reputable in the field of supplements, were
11 in a position to know the true facts, and had a legal obligation to list all ingredients
12 contained within the supplements.

13 77. As a result of the negligent misrepresentations by Defendant, Plaintiff
14 and the Class suffered the injuries and damages set forth above.

15
16 **EIGHTH CAUSE OF ACTION**

17 **Intentional Misrepresentation**

18 78. Plaintiff repeats and re-alleges the foregoing paragraphs, inclusive,
19 and incorporates the same as if set forth herein at length.

20 79. Defendant made misrepresentations to Plaintiff and the Class
21 including that the Supplements contained the stated ingredients and nothing more.

22 80. Defendant conducted a sales and marketing campaign to promote the
23 sale of the Supplements and to willfully deceive Plaintiff and the general public as
24 to the contents of the Supplements.

25 81. Defendant made the foregoing representations knowing that they were
26 false. These representations were made directly by Defendant and their authorized
27 agents, in publications and other written materials directed to the public, with the
28 intention of inducing reliance and the purchase and use of the Supplements.

1 82. The foregoing representations by Defendant were in fact false. The
2 Supplements did not contain the stated ingredients, had other ingredients
3 substituted for the stated ingredients, and had additional unlisted ingredients.

4 83. The foregoing representations by Defendant were made with the
5 intention of inducing reliance and the purchase and use of the Supplements.

6 84. In reliance on the misrepresentations by Defendant, as set forth above,
7 Plaintiff and the Class were induced to purchase and to use the Supplements. If
8 Plaintiff and the Class had known of the true facts and the facts that Defendant
9 concealed, they would not have purchased or used the Supplements.

10 85. Plaintiff's reliance on the intentional misrepresentations by Defendant
11 was justified and reasonable because such misrepresentations were made and
12 conducted by individuals and entities that were in a position to know the true facts.

13 86. As a result of the intentional misrepresentations by Defendant,
14 Plaintiff suffered the injuries and damages set forth above.

15 87. Defendant knew when they made the aforementioned representations
16 that the representations were false. Defendant intended that Plaintiff and the Class
17 would reasonably rely on the representations. Plaintiff and the Class did rely on
18 these representations and purchased and used the Supplements, to Plaintiff's
19 detriment. In this context, the conduct of defendants constituted malice,
20 oppression, and fraud. Plaintiff and the class are therefore entitled to recover
21 punitive or exemplary damages.

22
23 **PRAYER FOR RELIEF**

24 Wherefore Plaintiff and Class members request that the Court enter an order
25 or judgment against the Defendant for the following relief:

- 26 1. Declaring this action may be maintained as a class action pursuant to
27 Federal Rules of Civil Procedure, Rule 23, and for an order certifying this
28 case as a class action and appointing Plaintiff as the Class representative;

- 1 2. Declaring that the Defendant’s advertising and sales of its Supplements
- 2 that do not contain the stated ingredients or that contain substituted or
- 3 additional unlisted ingredients, was wrongful and misleading;
- 4 3. Restitution of all purchases of Herbal Supplements by Plaintiff and Class
- 5 members, in an amount to be determined at trial;
- 6 4. Disgorgement of all ill-gotten gains Defendant’s derived from their
- 7 misconduct;
- 8 5. Actual damages according to proof;
- 9 6. Compensatory damages caused by the Defendant’s unfair and deceptive
- 10 practices;
- 11 7. Punitive damages as to the Eighth Cause of Action only;
- 12 8. Pre-judgment and post-judgment interest at the maximum rate permitted
- 13 by law;
- 14 9. Attorney’s fees, costs, and expenses incurred related to bringing this
- 15 action; and
- 16 10. Any additional relief as the Court deems proper.

17
18 Dated: March 10, 2015

Casey Gerry Schenk
Francavilla Blatt & Penfield, LLP

19
20
21 s/ Gayle M. Blatt
22 Gayle M. Blatt, Esq.
23 *gmb@cglaw.com*
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues alleged above.

Dated: March 10, 2015

Casey Gerry Schenk
Francavilla Blatt & Penfield, LLP

s/ Gayle M. Blatt
Gayle M. Blatt, Esq.
gmb@cglaw.com

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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

Diann Kohn, an individual, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

David S. Casey, Jr., Frederick Schenk, Gayle M. Blatt, Wendy M. Behan, Jason C. Evans, Casey Gerry Schenk Francavilla Blatt & Penfield LLP, 110 Laurel Street, San Diego, CA 92101 / 619-238-1811

DEFENDANTS

Wal-Mart Stores, Inc., a Delaware corporation, and Does 1 through 100

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

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

Attorneys (If Known)

'15CV0538 L BLM

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<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 checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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))	<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 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 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		FEDERAL TAX SUITS	
<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	Habeas Corpus: <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 Other: <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"/> 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 USC Sec. 1332(d)
Brief description of cause:
Consumer Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 03/10/2015 SIGNATURE OF ATTORNEY OF RECORD: s/Gayle M. Blatt

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Print

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Attachment to Civil Cover Sheet

Defendants (continued): The Anthem Companies of California, Inc., a California corporation; Anthem Blue Cross Life and Health Insurance Company, a California corporation; and Does 1-30

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Diann Kohn, an individual, on
behalf of herself and all others
similarly situated,

Plaintiff,

v.

Wal-Mart Stores, Inc., a Delaware
corporation, and Does 1 through
100,

Defendants.

CASE NO. **'15CV0538 L BLM**

**Declaration of Diann Kohn,
Pursuant to Cal. Civ. Code
§ 1780**


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I, Diann Kohn, declare:

1. I purchased Spring Valley brand Garlic herbal supplements from Wal-Mart in San Diego County over the past several years.

2. I reside in San Diego County, California.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct. Executed on March 6, 2015, at OCEANSIDE, California.



Diann Kohn