

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

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

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

DEFENDANTS

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) _____

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 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 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	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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 <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	CIVIL RIGHTS <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	PRISONER PETITIONS 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			

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):

Brief description of cause:

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 _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

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

Civil Cover Sheet

I. (c) Attorneys (*Firm Name, Address, and Telephone number*) - attachment

CARLSON LYNCH SWEET & KILPELA, LLP

Gary F. Lynch (PA #56887)
1133 Penn Avenue, 5th Floor
Pittsburgh, Pennsylvania 15222
P. (412) 322-9243
F. (412) 231-0246
glynch@carlsonlynch.com

THE DRISCOLL FIRM, P.C.

JOHN J. DRISCOLL, #6276464
PHILIP SHOLTZ, #6290754
211 N. Broadway, 40th Floor
St. Louis, Missouri 63102
P: 314-932-3232
F: 314-932-3233
john@thedriscollfirm.com
phil@thedriscollfirm.com

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.Address of Plaintiff: 211 E. Baltimore Ave., Apartment 9, Clifton Heights, PA 19018Address of Defendant: 702 SW 8th Street, Bentonville, ArkansasPlace of Accident, Incident or Transaction: Clifton Heights, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases

(Please specify) PA and US Statutory Violations**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Gary F. Lynch, counsel of record do hereby certify:☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;☒ Relief other than monetary damages is sought.DATE: March 8, 2016Gary F. Lynch

Attorney-at-Law

56887

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.**I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.**DATE: March 8, 2016Gary F. Lynch

Attorney-at-Law

56887

Attorney I.D.#

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.

JHS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

MICHAEL JONES, on behalf of himself and
all others similarly situated

v.

WAL-MART STORES, INC.

CIVIL ACTION

16 **1135**
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

March 10, 2016

Date

412-322-9243

Telephone

Gary F. Lynch

Attorney-at-law

412-231-0246

FAX Number

Plaintiffs

Attorney for

glynch@carlsonlynch.com

E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL JONES, on behalf of himself and)	
all others similarly situated,)	
)	
Plaintiffs,)	
)	CASE NO.: _____
v.)	
)	
WAL-MART STORES, INC.,)	
)	JURY TRIAL DEMANDED
Defendant.)	
)	
)	

COMPLAINT-- CLASS ACTION

Plaintiff MICHAEL JONES, on behalf of himself and all others similarly situated, and for his Class Action Complaint alleges as follows:

NATURE OF THE ACTION

1. Defendant Wal-Mart Stores, Inc. has advertised and sold millions of containers of its Great Value branded “100% Grated Parmesan Cheese” products as “100%” Parmesan cheese. Independent laboratory testing shows, however, that such products are not in fact “100%” Parmesan, but rather contain significant amounts of adulterants and fillers. In fact, testing shows that at least 7.8 percent of the purportedly “100%” Parmesan consists of cellulose, a filler and anti-clumping agent derived from wood pulp.

2. Plaintiff and the members of the Class, as defined herein, purchased Wal-Mart’s “100%” Parmesan cheese products because they were deceived into believing that the products were 100% Parmesan cheese. Because Wal-Mart’s “100%” Parmesan cheese products contain a substantial amount of fillers and are not “100%” Parmesan cheese, Plaintiff and members of the Class have been injured and have suffered an ascertainable loss.

PARTIES, JURISDICTION, AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2)(A) because this case is a class action where the aggregate claims of all Members of the putative Classes are in excess of \$5,000,000.00, exclusive of interest and costs, and many of the Members of the putative Classes are citizens of different states than Defendant. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d).

4. Venue is properly set in this District pursuant to 28 U.S.C. §1391(b) since Defendant transacts business within this judicial district. Likewise, a substantial part of the events giving rise to the claim occurred within this judicial district.

5. Consistent with the Due Process Clause of the Fifth and Fourteenth Amendments, the Court has personal jurisdiction over Defendant, because Defendant is present in the Commonwealth of Pennsylvania, such that requiring an appearance does not offend traditional notions of fair play and substantial justice.

6. This court has personal jurisdiction over Defendant pursuant to and consistent with the Constitutional requirements of Due Process in that Defendant, acting through its agents or apparent agents, committed one or more of the following:

- a. The transaction of any business within the state;
- b. The making of any contract within the state;
- c. The commission of a tortious act within this state; and
- d. The ownership, use, or possession of any real estate situated within this state.

7. Requiring Defendant to litigate these claims in Pennsylvania does not offend traditional notions of fair play and substantial justice and is permitted by the United States

Constitution. All Plaintiff and Class Members' claims arise in part from conduct Defendant purposefully directed to Pennsylvania. On information and belief, Defendant's "100%" Parmesan cheese products are sold at hundreds of its retail locations throughout the Commonwealth of Pennsylvania. On information and belief, Defendant avails itself of numerous advertising and promotional materials regarding its defective products specifically intended to reach consumers in Pennsylvania, including but not limited to advertisements on local Pennsylvania television programs, advertisements on local Pennsylvania radio broadcasts, advertisements on billboards in Pennsylvania and advertisements in print publications delivered to consumers in the Commonwealth of Pennsylvania.

8. Plaintiff and Class Members' claims arise out of Defendant's design, marketing and sale of "100%" Parmesan cheese products in the Commonwealth of Pennsylvania.

9. Defendant regularly conducts or solicits business and derives substantial revenue from goods used or consumed in, inter alia, the Commonwealth of Pennsylvania.

10. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with headquarters in Bentonville, Arkansas. Defendant maintains an agent for service of process at CT Corporation System, 116 Pine Street, Suite 320, Harrisburg, Pennsylvania 17101.

11. At all times relevant hereto, Defendant Wal-Mart Stores, Inc. was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling "100%" Parmesan cheese products.

12. Upon information and belief, at all relevant times, Defendant Wal-Mart Stores, Inc. was present and doing business in the Commonwealth of Pennsylvania.

13. At all relevant times, Defendant Wal-Mart Stores, Inc., transacted, solicited, and conducted business in the Commonwealth of Pennsylvania and derived substantial revenue from

such business.

14. At all times relevant hereto, Defendant Wal-Mart Stores, Inc. expected or should have expected that its acts would have consequences within the United States of America, and the Commonwealth of Pennsylvania in particular.

FACTUAL ALLEGATIONS

15. Wal-Mart's grated Parmesan cheese products are advertised as consisting of only one, simple ingredient – "100%" Parmesan cheese.

16. Wal-Mart makes only one marketing representation on the label: the Product is "100%" Grated Parmesan Cheese. Consumers, including Plaintiff, reasonably rely on the label and believe Wal-Mart's statement that the Product consists of "100%" Parmesan cheese means that no substitutes or fillers are present in the container. Because the Product does in fact contain fillers and substitutes, the "100%" Parmesan claim is literally false and is also misleading to consumers, including Plaintiff.

17. Independent testing shows that at least 7.8 percent of the Product is not Parmesan cheese. Indeed, at least 7.8 percent of the Product is not even cheese of any kind, but is rather fillers and additives. In fact, at least 7.8 percent of the Product is cellulose, an anti-clumping agent derived from wood chips.

18. Defendant has made, and continues to make, unlawful, false, fraudulent, and misleading claims on the food labels of Wal-Mart's "100% Grated Parmesan Cheese" Products.

PLAINTIFF'S USE OF WAL-MART'S "100%" PARMESAN CHEESE PRODUCTS

19. Plaintiff Michael Jones is and was at all times alleged herein a citizen of the Commonwealth of Pennsylvania and currently resides in Clifton Heights, Pennsylvania.

20. Plaintiff Michael Jones purchased Wal-Mart's Great Value branded "100% Grated Parmesan Cheese" Products on numerous occasions, including but not limited to, in or about 2015 within Clifton Heights, Pennsylvania. Plaintiff Michael Jones consumed Wal-Mart's "100% Grated Parmesan Cheese" Products in or about 2015 within Clifton Heights, Pennsylvania.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action on his own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following class:

All persons who purchased Wal-Mart's Great Value branded "100% Grated Parmesan Cheese" Products in the United States of America for personal use.

22. As a further separate subclass ("Pennsylvania Class"), Plaintiff also brings this action on behalf of purchasers who are domiciliary citizens of the Commonwealth of Pennsylvania, this subclass's being defined as follows:

All persons who purchased Wal-Mart's Great Value branded "100% Grated Parmesan Cheese" Products in the Commonwealth of Pennsylvania for personal use.

Excluded from the Class are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded is any trial judge who may preside over this case.

23. The Members of the Class are so numerous that joinder of all Members is impracticable. On information and belief, hundreds of thousands of consumers have purchased Wal-Mart's "100% Grated Parmesan Cheese" Products. Disposition of the claims of the proposed Class in a class action will provide substantial benefits to both the parties and the Court.

24. The rights of each member of the proposed Class were violated in a similar fashion based upon Defendant's uniform wrongful actions and/or inaction.

25. The following questions of law and fact are common to each proposed Class Member and predominate over questions that may affect individual Class Members:

- a. Whether Defendant engaged in marketing and promotional activities which were likely to deceive consumers by omitting, suppressing, and/or concealing the true content of Wal-Mart's "100% Grated Parmesan Cheese" Products;
- b. Whether Defendant omitted, suppressed, and/or concealed material facts concerning Wal-Mart's "100% Grated Parmesan Cheese" Products from consumers;
- c. What the fair market value of Wal-Mart's "100% Grated Parmesan Cheese" Products would have been throughout the class period but for Defendant's, its employees', agents', apparent agents', independent contractors', sales representatives', and/or liaisons', omissions, suppressions, and/or concealments concerning the true content of Wal-Mart's "100% Grated Parmesan Cheese" Products;
- d. Whether the prices which Defendant charged for Wal-Mart's "100% Grated Parmesan Cheese" Products throughout the class period exceeded the fair market value Wal-Mart's "100% Grated Parmesan Cheese" Products would have had but for Defendant's omissions, suppressions, and/or concealments;
- e. Whether Plaintiff and the Class were deprived of the benefit of the bargain in purchasing Wal-Mart's "100% Grated Parmesan Cheese" Products;
- f. Whether the excessive prices that Defendant charged for Wal-Mart's "100% Grated Parmesan Cheese" Products constituted unfair acts or practices in violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Law;
- g. Whether Defendant's unconscionable actions occurred in connection with the Defendant's conduct of trade and commerce;
- h. Whether Defendant's omissions, suppressions, and/or concealments of the content of Wal-Mart's "100% Grated Parmesan Cheese" Products enabled Defendant to charge unfair or unconscionable prices for Wal-Mart's "100% Grated Parmesan Cheese" Products;
- i. Whether Defendant violated the Pennsylvania Unfair Trade Practice and Consumer Protection Law through its course of unfair and/or deceptive conduct as alleged herein;
- j. Whether Defendant was unjustly enriched at the expense of the Class members;
- k. Whether Defendant's conduct in violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Law was willful and wanton; and
- l. Whether Plaintiff and the Class have been damaged and, if so, the extent of such damages.

26. Plaintiff's claims are typical of the claims of absent Class Members. If brought individually, the claims of each Class Member would necessarily require proof of the same material and substantive facts, and seek the same remedies.

27. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity. Plaintiff will fairly and adequately protect the interest of the Class and have no interests adverse to, or which directly and irrevocably conflicts with, the interests of other Members of the Class. Further, Plaintiff has retained counsel experienced in prosecuting complex class action litigation.

28. Defendant has acted or refused to act on grounds generally applicable to the proposed Class, thereby making appropriate equitable relief with respect to the Class.

29. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual claims by the Class Members are impractical, as the costs of prosecution may exceed what any Class Member has at stake.

30. Members of the Class are readily ascertainable through Defendant's records and files and from other sources.

31. Prosecuting separate actions by individual Class Members would create a risk of inconsistent or varying adjudications that would establish incomparable standards of conduct for Defendant. Moreover, adjudications with respect to individual Class Members would, as a practical matter, be dispositive of the interests of other Class Members.

TOLLING OF THE STATUTE OF LIMITATIONS

32. The filing of this Class Action Complaint serves to toll and preserve the claims of the Class and other purchasers who were defrauded and injured by Defendant's wrongful and unlawful acts, and the commencement of this action suspends the applicable statute of limitations

as to all asserted members of the Class who would have been parties had the suit been permitted to continue as a class action until a district judge declines to certify a class, or certifies a class that excludes particular persons.

33. Defendant at all relevant times knew or should have known of the problems and defects with Wal-Mart's "100% Grated Parmesan Cheese" Products, and the falsity and misleading nature of Defendant's statements, representations and warranties with respect to Wal-Mart's "100% Grated Parmesan Cheese" Products. Defendant concealed and failed to notify Plaintiff, the Class members, and the public of such defects.

34. Any applicable statute of limitation has therefore been tolled by Defendant's knowledge, active concealment and denial of the facts alleged herein, which behavior is ongoing.

COUNT I
Pennsylvania Unfair Trade Practice and Consumer Protection Law

35. Plaintiff and Class Members incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

36. This Count is brought pursuant to the Pennsylvania Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1 et seq.

37. Plaintiff and the Class are persons as defined by the Pennsylvania Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-2(2).

38. The Pennsylvania Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-2, provides as follows:

"Unfair methods of competition" and "unfair or deceptive acts or practices" mean any one or more of the following: ... Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have."

39. Beginning the first date Defendant placed its "100% Grated Parmesan Cheese" Products into the stream of commerce in Pennsylvania and continuing through the present,

Defendant, by and through its employees, agents, apparent agents, and/or sales representatives, engaged in concealment, suppressions, and/or omissions, misrepresentations, unlawful schemes and courses of conduct intended to induce Plaintiff and members of the Class to purchase Defendant's "100% Grated Parmesan Cheese" Products through one or more of the following unfair and/or deceptive acts and/or practices:

- a. Knowingly, intentionally, and/or recklessly omitted, suppressed, and/or concealed the content and ingredients of Wal-Mart's "100% Grated Parmesan Cheese" Products;
- b. Knowingly, intentionally, and/or recklessly omitted, suppressed, and/or concealed the true nutritional value of Wal-Mart's "100% Grated Parmesan Cheese" Products;
- c. Knowingly, intentionally, recklessly, or negligently omitted proper labels from being placed on its packaging, or otherwise calling attention to the actual ingredients in Wal-Mart's "100% Grated Parmesan Cheese" Products;
- d. Omitted, suppressed, and/or concealed the content and ingredients of the Wal-Mart's "100% Grated Parmesan Cheese" Products it manufactured, marketed, promoted, distributed, and/or sold.

40. The facts which Defendant omitted, suppressed, and/or concealed as alleged in the preceding paragraph were material in that they concerned facts that would have been important to a reasonable consumer in making a decision whether to purchase Wal-Mart's "100% Grated Parmesan Cheese" Products.

41. Defendant's conduct as alleged in the preceding paragraphs was unfair in that it (1) offended public policy; (2) it was immoral, unethical, oppressive, and/or unscrupulous; and/or (3) it caused substantial economic injury to consumers, namely Plaintiff and members of the Class.

42. Defendant's unfair and/or deceptive acts and/or practices alleged in the preceding paragraph occurred in connection with Defendant's conduct of trade and commerce in Pennsylvania.

43. Defendant intended for Plaintiff and members of the Class to purchase Defendant's "100% Grated Parmesan Cheese" Products in reliance upon Defendant's unfair and/or deceptive acts and/or practices in the marketing, promotion, and sale of its Wal-Mart's "100% Grated Parmesan Cheese" Products.

44. Defendant's unfair and/or deceptive acts and/or practices were committed with willful and wanton disregard for whether or not Plaintiff and members of the Class would actually receive an appropriate product.

45. Defendant's unfair and/or deceptive acts and/or practices violate the Pennsylvania Unfair Trade Practice and Consumer Protection Law.

46. As a direct and proximate result of Defendant's unfair and/or deceptive acts and/or practices, Plaintiff and members of the Class did not receive a safe and/or effective product when they purchased Wal-Mart's "100% Grated Parmesan Cheese" Products.

47. Plaintiff and members of the Class have suffered actual damages in an amount to be proven at trial, including all compensatory damages, punitive damages, attorney's fees and costs.

WHEREFORE, Plaintiff and the Class pray for Judgment in their favor and against Defendant on this Count I of their Complaint; for actual and compensatory damages; for punitive or exemplary damages; for costs, expenses and attorney fees as allowed by law; and for such other and further relief as this Court deems just and proper.

COUNT II
UNJUST ENRICHMENT

48. Plaintiff and Class Members incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

49. As stated with more particularity above, Defendant embarked on and carried

out a common scheme of marketing and selling Wal-Mart's "100% Grated Parmesan Cheese" Products by omitting, suppressing, and/or concealing the true content of Wal-Mart's "100% Grated Parmesan Cheese" Products.

50. Defendant's practices were designed to result in Plaintiff and Class Members' purchasing Wal-Mart's "100% Grated Parmesan Cheese" Products.

51. Defendant's practices further resulted in Plaintiff and Class Members' purchasing Wal-Mart's "100% Grated Parmesan Cheese" Products without understanding the true content of Defendant's products or Defendant's omissions, suppressions, and/or concealment of material terms to increase its own ill-gotten profits.

52. The monies paid by Plaintiff and the Class Members to Defendant in the purchase of Wal-Mart's "100% Grated Parmesan Cheese" Products conferred substantial benefits upon Defendant. Defendant knew of and appreciated the benefits conferred upon it by Plaintiff and the Class and accepted and retained these benefits, which, in justice and fairness, should be refunded and paid over to Plaintiff and the Class in an amount to be proven at trial.

WHEREFORE, Plaintiff and the Class pray for Judgment in their favor and against Defendant on this Count II of their Complaint; for actual and compensatory damages; for punitive or exemplary damages; for costs, expenses and attorney fees as allowed by law; and for such other and further relief as this Court deems just and proper.

COUNT III
VIOLATION OF MAGNUSSON-MOSS WARRANTY ACT
15 U.S.C. §2301 et seq. ("MMWA")

53. Plaintiff and Class Members incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

54. At all times relevant hereto, there was in full force and effect the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, et seq. (“MMWA”).

55. The Product is a consumer product within the meaning of 15 U.S.C. §2301(1).

56. Plaintiff and Class Members are consumers as defined in 15 U.S.C. §2301(3). They are consumers because they are persons entitled under applicable state law to enforce against the warrantors the obligations of their express and implied warranties.

57. Defendant is a supplier and warrantor within the meaning of 15 U.S.C. §§2301(4), (5).

58. Pursuant to 15 U.S.C. §2310(e), Plaintiff is entitled to bring this class action and is not required to give Defendant or any of them notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiff pursuant to Rule 23 of the Federal Rules of Civil Procedure.

59. In connection with the sale of the Product, Defendant gave multiple written warranties as defined in 15 U.S.C. 2301(6), including but not limited to the written warranties enumerated in the foregoing incorporated paragraphs.

60. In connection with the sale of the Product, Defendant gave multiple implied warranties as defined in 15 U.S.C. §2301(7), included but not limited to the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. As a part of the implied warranty of merchantability, Defendant warranted that the Product was fit for its ordinary purpose as a “100% Grated Parmesan Cheese” Product, would pass without objection in the trade as designed, manufactured and marked, and was adequately contained, packaged, and labeled. As part of the implied warranty of fitness for a particular purpose, Defendant warranted that the

Product was a “100% Grated Parmesan Cheese” Product as set forth in the incorporated allegations.

61. Defendant is liable to Plaintiff and the Class Members pursuant to 15 U.S.C. §2310(d)(1), because it breached all written warranties and all implied warranties, including implied warranties of merchantability and implied warranties of fitness for a particular purpose.

62. Specifically, but without limitation, among the express warranties Defendant breached were that the Product is a “100% Grated Parmesan Cheese” Product; the true nutritional value of Wal-Mart’s “100% Grated Parmesan Cheese” Products; and/or that the Product is free of adulterants and fillers.

63. In much the same vein and for many of the same reasons and circumstances of material fact, Defendant has breached all implied warranties, including the implied warranty of merchantability. The Product is not fit for the ordinary purpose for which it is used, namely as a “100% Grated Parmesan Cheese” Product.

64. Defendant also breached the implied warranty of merchantability as the Product would not pass without objection in the trade, for a variety of separate and independent inadequacies, including the Product’s false labeling. The Product cannot pass in the trade as suitable given these defects, deficiencies, and falsehoods.

65. Again similarly, the Product breached the implied warranty of merchantability as being inadequately and improperly contained, packaged, and labeled. The Product was packaged and labeled as a “100% Grated Parmesan Cheese” Product, when it is not. Rather, it contains a significant amount of fillers and adulterants. These deficiencies and falsehoods, and others as incorporated herein, breach the implied warranty of merchantability.

66. As the proximate cause and legal result of the breach of the aforementioned warranties regarding the Product as manufactured and/or supplied and/or distributed by Defendant and as a direct and legal result of the conduct of Defendant described herein, Plaintiff and the Class have been damaged directly, incidentally, and consequentially, including but not limited to the price paid for the Product.

WHEREFORE, Plaintiff and the Class pray for Judgment in their favor and against Defendant on this Count III of their Complaint; for actual and compensatory damages; for punitive or exemplary damages; for costs, expenses and attorney fees as allowed by law; and for such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff and Class Members demand a jury trial as to all claims and issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Members of the proposed Class pray that this Honorable Court do the following:

- A. Certify the matter as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure and order that notice be provided to all Class Members;
- B. Designate Plaintiff as representative of the Class and the undersigned counsel as Class Counsel;
- C. Award Plaintiff and the Class compensatory and punitive damages in an amount to be determined by the trier of fact;
- D. Award Plaintiff and the Class statutory interest and penalties;
- E. Award Plaintiff and the Class appropriate injunctive and/or declaratory relief;

- F. Award Plaintiff and the Class their costs, prejudgment interest, and attorney fees;
and
- G. Grant such other relief as is just and proper.

DATED: March 10, 2016

Respectfully submitted,

CARLSON LYNCH SWEET & KILPELA, LLP

/s/ Gary F. Lynch

CARLSON LYNCH SWEET & KILPELA, LLP

Gary F. Lynch (PA #56887)
1133 Penn Avenue, 5th Floor
Pittsburgh, Pennsylvania 15222
P. (412) 322-9243
F. (412) 231-0246
glynch@carlsonlynch.com

THE DRISCOLL FIRM, P.C.

JOHN J. DRISCOLL, #6276464
PHILIP SHOLTZ, #6290754
211 N. Broadway, 40th Floor
St. Louis, Missouri 63102
P: 314-932-3232
F: 314-932-3233
john@thedriscollfirm.com
phil@thedriscollfirm.com

Attorneys for Plaintiffs