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3:06-CV-00897 CATTIE V. WAL-MART STORES

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SOUTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CATHERINE CATTIE, on Behalf of Herself
and All Others Similarly Situated,

Case No.: 06CV0897 BEN(CAB)

Plaintiff,

CLASS ACTION

v.

**SECOND AMENDED CLASS ACTION
COMPLAINT**

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

JURY TRIAL DEMANDED

Defendants.

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WON

1 Plaintiff, on behalf of herself and all others similarly situated, by her undersigned counsel,
2 upon knowledge as to her own acts and upon information and belief as to Defendants and their
3 actions, bring the following Complaint against Defendants Wal-Mart.com USA, LLC and Wal-
4 Mart Stores, Inc. (collectively "Wal-Mart" or the "Company").

5 **NATURE OF THE ACTION**

6 1. This class action arises out of the misleading advertising and promotion of the
7 "thread count" of bed linens sold by the Company on its proprietary website,
8 <http://www.walmart.com/>.

9 2. Thread count is the number of threads in a square inch of cotton. It is supposed to
10 be an objective measure of the number of threads per square inch of fabric. There is a universal
11 expectation that the higher the thread count, the softer and more luxurious the fabric.

12 3. Plaintiff and the members of the Class are consumers residing throughout the
13 United States who purchased bed linens from Wal-Mart on its website, <http://www.walmart.com/>,
14 where the advertising and packaging stated that the bed linens have a thread count significantly in
15 excess of the linens' actual thread count.

16 4. To create the impression that the Company's store brand bed linens are of better
17 quality and are more affordable than bed linens manufactured by other brands, Defendants violated
18 the industry standard for counting threads and guidelines established by ASTM International and
19 the United States Federal Trade Commission ("FTC") for reporting thread count.

20 5. Defendants have repeatedly misrepresented the thread count of their store brand
21 bed linens to Plaintiff and members of the Class.

22 6. By reason of the above-alleged facts, Plaintiff and the Class have sustained
23 damages in an amount to be proven at trial.

24 7. This Complaint consists of three Counts, alleging violations of the California
25 Business and Professions Code §§ 17200, *et. seq.* and 17500, *et. seq.*, and the California Consumer
26 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et. seq.* To the extent recoverable pursuant to such
27 claims Plaintiff intends to seek all relief permitted by law including, but not limited to, injunctive
28 relief, damages, disgorgement, interest, restitution, attorneys' fees, and expenses.

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2 **JURISDICITON AND VENUE**

3 8. This Court has subject-matter jurisdiction over this class action pursuant to the
4 Class Action Fairness Act of 2005, which amended 28 U.S.C. § 1332 to add a new subsection (d)
5 conferring federal jurisdiction over class actions where “any member of a class of Plaintiffs is a
6 citizen of a state different from any defendant and the aggregated amount in controversy exceeds
7 \$5,000,000.00, exclusive of interest and costs,” because Plaintiff is a citizen of New Jersey,
8 whereas Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of
9 business in Arkansas and Defendant Wal-Mart.com, a wholly owned subsidiary of Defendant Wal-
10 Mart Stores, Inc., has its headquarters in California, and the amount in controversy exceeds
11 \$5,000,000.00.

12 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Defendants
13 reside, transact business, or are found within this District, and a substantial part of the events
14 giving rise to Plaintiff’s claims arose here.

15 10. In addition, under the “Terms of Use” of Wal-Mart’s website, under the “General”
16 subsection, the Company explicitly chose the California Courts as the exclusive jurisdiction for
17 any action arising out of use of the Company’s commercial website. Specifically, Wal-Mart
18 stated, “This Agreement shall be governed by and construed under California law without regard
19 to conflicts of law provisions. Any action or proceeding arising out of or related to this Agreement
20 or your use of this Site must be brought in the state or federal courts of California and you consent
21 to the exclusive personal jurisdiction of such courts.”

22 **PARTIES**

23 11. Plaintiff, Catherine Cattie (“Plaintiff” or “Plaintiff Cattie”), is an individual who
24 purchased “luxury” bed linens from Wal-Mart on its website, <http://www.walmart.com/>.

25 12. Defendant Wal-Mart Stores, Inc. and its subsidiaries operate a chain of stores
26 throughout the world. Wal-Mart stores offer a variety of goods including domestic merchandise
27 and home furnishings, bed linens, giftware, household items, and health and beauty care items. As
28 of March 29, 2006, the Company operated more than 3,800 stores in the United States alone and

1 generated net sales of over \$300 billion in 2006. Wal-Mart's business began in 1945 when Sam
2 Walton opened his first variety store in Newport, Arkansas. The Company was later incorporated
3 in Delaware in 1969. The Company maintains its principal offices at 702 S.W. 8th Street,
4 Bentonville, Arkansas 72716.

5 13. Defendant Wal-Mart.com USA, LLC was founded in 2000 and is a wholly owned
6 subsidiary of Wal-Mart Stores, Inc. Wal-Mart.com's headquarters are located at 7000 Marina
7 Boulevard, Brisbane, California 94005.

8 **CLASS ACTION ALLEGATIONS**

9 14. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
10 Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all persons or entities who
11 purchased store brand "luxury" bed linens on Wal-Mart's website, which bed linens were
12 advertised on Wal-Mart's website and/or packaged as indicating thread counts in excess of the
13 actual thread counts of the bed linens purchased. Excluded from the Class are Defendants, the
14 officers and directors of the Company at all relevant times, members of their immediate families
15 and their legal representatives, heirs, successors or assigns and any entity in which Defendants
16 have or had a controlling interest.

17 15. The Class is so numerous that joinder of all members is impracticable. While the
18 exact number of class members is presently unknown to Plaintiff, and can only be ascertained
19 through appropriate discovery, Plaintiff believes that there are thousands of members of the Class
20 geographically dispersed throughout the United States.

21 16. Plaintiff's claims are typical of the claims of the members of the Class as all
22 members of the Class are similarly affected by Defendants' wrongful conduct in violation of the
23 California Business and Professions Code, as well as the California Consumer Legal Remedies
24 Act.

25 17. Plaintiff will fairly and adequately protect the interests of the members of the Class
26 and has retained counsel competent and experienced in class action litigation.

27 18. Common questions of law and fact exist as to all members of the Class and
28 predominate over any questions solely affecting individual members of the Class. Among the

1 questions of law and fact common to the Class are:

2 a. Whether the California Business & Professions Code and the California Consumer
3 Legal Remedies Act were violated by Defendants' acts and omissions as alleged herein;

4 b. Whether Defendants' marketing of bed linens on their website,
5 <http://www.walmart.com/>, during the Class Period misrepresented the thread count of bed linens
6 made available for sale on the website; and

7 c. To what extent the members of the Class are entitled to remedies under the claims
8 alleged and the extent of those remedies.

9 19. A class action is superior to all other available methods for the fair and efficient
10 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
11 damages suffered by the individual class members may be relatively small, the expense and
12 burden of individual litigation make it impossible for members of the Class to individually redress
13 the wrongs done to them. There will be no difficulty in the management of this class action.

14 **SUBSTANTIVE ALLEGATIONS**

15 20. Defendant Wal-Mart Stores, Inc. and its subsidiaries operate a chain of stores
16 throughout the world. Its stores offer a diverse selection of goods from domestic merchandise and
17 home furnishings, including bed linens, to giftware, household items, and health and beauty care
18 items. As of March 29, 2006, the Company operated more than 3,800 stores in the United States.

19 21. Wal-Mart maintains a website, <http://www.walmart.com/>. The website allows
20 consumers all over the United States to shop for and to purchase goods sold by Wal-Mart.

21 22. One of the menus appearing on the Home page of the website lists a category of
22 items "For the Home." Clicking this link leads to a sub-menu for "Bed & Bath." This page
23 contains a menu on the left side of the page, while featured products are showcased down the
24 center of the page. Among the featured items on this page is the heading, "Our Highest Quality
25 Sheets Ever," which advises potential customers to "Discover our high-threadcount sheets and feel
26 true luxury."

27 23. Under this heading and sub-heading are three "luxury" bed linen sets offered for
28 sale. The first bed linen set is advertised as having "440-Threadcount," the second purportedly has

1 “550-Threadcount,” and the third purportedly has a luxurious “1,000-Threadcount.”

2 24. These bed linens are made for Wal-Mart and sold exclusively by Wal-Mart. The
3 descriptions of these products appearing on Wal-Mart’s website are created by the Company for
4 the explicit purpose of selling these “luxury” bed linens.

5 25. Clicking on links to either the 440, 550, or 1,000 thread count bed linen sets brings
6 you to a page containing a description of the bed linens being sold, as well as further links to
7 purchase those goods.

8 26. The website description of the “440-Threadcount” bed linens boasts, “This
9 luxurious bedding provides a lush 440 threadcounts per inch for the ultimate in sleeping comfort.”
10 Prices for bed linen sets made of this fabric begin at \$59.88 on Wal-Mart’s website.

11 27. The website description of the “550-Threadcount” bed linens boasts, “Made
12 buttery soft with 550-threadcounts per inch, this top-of-the-line bedding softens with each washing
13 to create enduring comfort.” Prices for bed linen sets made of this fabric begin at \$89.88 on Wal-
14 Mart’s website.

15 28. The website description of the “1,000-Threadcount” bed linens states, “This
16 amazing set provides a plush 1,000 threadcounts per inch, at an unprecedented price.” Prices for
17 bed linen sets made of this fabric begin at \$99.88 on Wal-Mart’s website.

18 29. Misrepresentations of the advertised thread counts also appear on the packaging
19 for these products.

20 30. Wal-Mart also sells “non-luxury” bed linen sets from Springmaid© with thread
21 counts of 350. Prices for these bed linen sets start as low as \$35.64 a set.

22 31. Wal-Mart’s generic “luxury” bed linen sets, described in paragraphs 26-28, have
23 thread counts that are the same as, or lower than, the “non-luxury” name brand bed linens,
24 described in paragraph 30, that are sold on Defendants’ website. Defendant, however, sells these
25 “luxury” sheet sets at prices that are 68% to 280% higher than the “non-luxury” name brand sheets
26 offered on its website.

27 32. For decades, the common practice in the United States textile bedding industry has
28 been to count thread, or yarns, as one yarn, regardless of whether the yarn was a single ply or

1 multi-ply yarn. A multi-ply yarn is one yarn that has been created by twisting two or more yarns
2 together.

3 33. ASTM International, an international standards writing organization, addressed the
4 thread count issue in standard D3775-03a, stating that “ends” and “picks” are to be counted as
5 single units regardless of whether they are comprised of single or plied yarns.

6 34. As reported in the April 2006 edition of *Good Housekeeping* magazine, tests on
7 the bed linens sold exclusively by <http://www.walmart.com/> showed that the advertised thread
8 counts were significantly exaggerated:

9 Did you recently buy bedding from Bed Bath & Beyond, Linens ‘n Things, Linen
10 Source, or Walmart.com? If so, you may be in for a surprise. GH Institute tests
11 found that some brands sold exclusively at these retailers carry exaggerated thread
12 counts (the number of threads per square inch of fabric). Of the eight brands we
13 tested, only one delivered the count it advertised: JCPenney Home Collection.

14 Our textile experts got suspicious because of the prices. High thread count
15 indicates that a sheet is exceptionally soft and luxurious, which usually means it’s
16 also expensive – but these brands were going for as little as \$149 for a queen-size
17 set. (The JCPenney line, which did have the 600 count it claimed, was only \$110
18 for a queen set). How much did the others exaggerate? Bed Bath & Beyond’s
19 Synergy brand boasts a thread count of 1,000 – but our tests found only 368. (All
20 results were confirmed by an outside lab.) Other offenders: Royal Heritage,
21 Interiors Sunham Home Fashions, Hotel Fine Linens, The Grand, Distinctive Home
22 and Regency Collection.

23 35. On information and belief, Wal-Mart has inflated the thread count of the bed
24 linens it offers on an exclusive basis by counting each “ply” of a thread of yarn as a separate
25 thread. This has the effect of doubling, tripling, or even quadrupling the actual thread count.

26 36. The misleading representations of thread count, as made by Wal-Mart on its
27 website, was brought to the attention of the FTC. In an opinion dated August 2, 2005, the FTC
28 opined:

29 A representation about thread count, like other objective, material claims about a
30 product, must be supported by a “reasonable basis.” In determining what
31 constitutes a reasonable basis for claims, we consider what experts in the field
32 believe is appropriate, including whether there are relevant consensus based test
33 procedures, such as an ASTM test procedure, or other widely accepted industry
34 practices that apply to the matter. If so, we give such procedures or practices great
35 weight in determining whether the advertiser has met its substantiation burden.

1 actual thread count of Defendants' "luxury" bed linens is less than as represented by Defendants.

2 42. Defendants' advertisements for their "luxury" bed linens contain untrue or
3 misleading statements concerning the thread count of Defendants' advertised products in that,
4 while misrepresenting the thread count of Defendants' "luxury" bed linens, Defendants have failed
5 to disclose, concealed, suppressed or omitted material facts, including the true, lower thread count
6 of Defendants' "luxury" bed linens.

7 43. Defendants' advertisements for "luxury" bed linens containing the same or lower
8 thread counts as other "non-luxury" bed linens sold on Defendants' website, contain untrue or
9 misleading statements, and fail to disclose, conceal, suppress or omit material facts, in that the
10 thread counts are misrepresented and bed linens advertised as "luxury" bed linens are not different
11 products, and contain the same or lower thread counts as less expensive bed linens sold on
12 Defendants' website.

13 44. Defendants knew, or in the exercise of reasonable care should have known, that
14 the statements, representations and omissions set forth in this Complaint were untrue and/or
15 misleading.

16 45. Defendants' conduct of misrepresenting and overstating the thread count of their
17 "luxury" bed linens in Defendants' advertising disseminated in California constitutes multiple,
18 separate violations of Cal. Bus. & Prof Code § 17500.

19 46. Defendants' conduct in failing to disclose, concealing, suppressing or omitting
20 material facts, including the true, lower thread count of Defendants' "luxury" bed linens in
21 Defendants' advertising disseminated in California constitutes multiple, separate violations of Cal.
22 Bus. & Prof. Code § 17500.

23 47. Defendants' conduct in overstating the thread counts of its bed linens and
24 advertising in California its "luxury" bed linens containing the same or lower thread count as less
25 expensive "non-luxury" bed linens, without disclosing the material fact that the "luxury" bed
26 linens contained the same or lower thread counts as the "non-luxury" bed linens, and
27 misrepresenting and failing to disclose, concealing, suppressing or omitting the true, lower thread
28 count of such bedding, constitutes multiple, separate violations of Cal. Bus. & Prof. Code § 17500.

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48. Plaintiff Cattie and members of the Class have been injured in their money or property as a result of Defendants' false or misleading advertising practices as set forth in this Complaint.

49. As a result of Defendants' false or misleading advertising, Plaintiff Cattie and members of the Class are entitled to injunctive relief, restitution of all amounts paid for Defendants' "luxury" bed linens, disgorgement, interest, and attorneys' fees and costs, pursuant to California law.

COUNT 2
Violations of the California Consumer Legal Remedies Act,
California Civil Code Sections 1750, et. seq.

50. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.

51. The California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1770(a)(5) and (7), provides:

(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

* * *

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have

* * *

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

52. Defendants' business practices, in advertising, marketing and selling their "luxury" bed linens, of misrepresenting and overstating the thread count of their "luxury" bed linens, when, in fact, the actual thread count of Defendants' "luxury" bed linens is less than as represented by Defendants, constitute multiple, separate violations of Cal. Civ. Code § 1770(a)(5) and (7), including:

1 a. Falsely representing that Defendants' "luxury" bed linens have characteristics,
2 uses, benefits or quantities of threads per square inch, when, in fact, they do not; and

3 b. Falsely representing that Defendants' "luxury" bed linens are of a particular
4 standard, quality or grade, made with fabric of a certain advertised thread count, when in fact, they
5 are not.

6 53. Defendants' business practices, in advertising, marketing and selling their "luxury"
7 bed linens, of failing to disclose, concealing, suppressing or omitting material information
8 concerning the true, lower thread count of their "luxury" bed linens, constitute multiple, separate
9 violations of Cal. Civ. Code §§ 1770(a)(5) and (7).

10 54. Defendants' business practices of advertising, marketing and selling other bed
11 linens containing the same or higher thread counts than the "luxury" bed linens sold on
12 Defendants' website, while misrepresenting the thread count of such products and concealing,
13 suppressing or omitting material facts, including the facts that such "luxury" bed linens contain the
14 same or lower thread counts than the "non-luxury" bed linens sold on Defendants' website,
15 constitute multiple, separate violations of Cal. Civ. Code §§ 1770(a)(5) and (7), including:

16 a. Falsely representing that such "luxury" bed linens have characteristics, uses,
17 benefits, or quantities, including that they are different products and that they contain higher thread
18 counts than less expensive "non-luxury" bed linens, when, in fact, they do not; and

19 b. Falsely representing that such "luxury" bed linens are of a particular standard,
20 quality, grade or style, including that they are of a higher quality than "non-luxury" bed linens sold
21 on Defendants' website, or that Defendants' "luxury" bed linens have a higher thread count, when,
22 in fact, they do not.

23 55. Plaintiff Cattie and members of the Class are consumers, as defined by Cal. Civ.
24 Code § 1761(d), in that they purchased "luxury" bedding from Defendants for personal, family or
25 household purposes.

26 56. Defendants engaged in the unfair or deceptive acts or practices set forth in this
27 Complaint in transactions intended to result, and which did result, in the sale of goods or services
28

1 to consumers, including Plaintiff Cattie and members of the Class.

2 57. Plaintiff Cattie and members of the Class have been injured in their money or
3 property by Defendants' unfair or deceptive acts or practices set forth in this Complaint.

4 58. As a result of Defendants' violations of Cal. Civ. Code § 1770 as set forth in this
5 Complaint, Plaintiff Cattie and members of the Class are entitled to injunctive relief.

6 59. Additionally, Defendants have failed to respond to Plaintiff's notice pursuant to
7 Cal. Civ. Code § 1982 with corrective action within the thirty days allowed. Therefore, Plaintiff
8 and the Class are entitled to their actual damages, or at least one thousand dollars (\$1,000),
9 restitution, punitive damages, costs and attorneys' fees, interest and any other relief the Court
10 deems proper, pursuant to Cal. Civ. Code § 1780(a).

11 **COUNT 3**

12 **Violations of California Business & Professions Code**

13 **Sections 17200, et seq.**

14 60. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in
15 full herein.

16 61. California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, provides as
17 follows:

18 As used in this chapter, unfair competition shall mean and include any unlawful,
19 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
20 misleading advertising and any act prohibited by Chapter 1 (commencing with
21 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

22 62. Defendants' business practices of advertising, marketing and selling their "luxury"
23 bed linens by misrepresenting and overstating the thread count of those bed linens, are:

24 a. Unlawful, as proscribed by, *inter alia*, Cal. Civ. Code §§1704, 1710, Cal. Bus. &
25 Prof. Code § 17200, § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the Consumer
26 Legal Remedies Act, and/or common law fraud, in that Defendants' advertisements and packaging
27 contain untrue or misleading statements which are known by Defendants, or which by the exercise
28 of reasonable care should be known, to be untrue or misleading;

b. Fraudulent business practices under Cal. Bus. & Prof. Code § 17200, in that

1 members of the public are likely to be deceived by Defendants' acts and practices into believing
2 that Defendants' "luxury" bed linens contain the thread count represented by Defendants when, in
3 fact, they do not; and

4 c. Unfair business practices in violation of Cal. Bus. & Prof. Code § 17200, because
5 they offend the public policy of California, are unethical, oppressive, unscrupulous or substantially
6 injurious to consumers or, alternatively, the harm caused by Defendants' actions outweigh any
7 benefits accruing from such actions.

8 63. In advertising, marketing and selling Defendants' "luxury" bed linens, Defendants
9 made the material misrepresentations and omissions set forth in this Complaint in Defendants'
10 advertising, including labeling, packing materials, website, point-of-sale materials and other
11 promotional materials disseminated by or on behalf of Defendants in California.

12 64. Defendants' misrepresentations and omissions set forth in this Complaint are
13 material in that they relate to matters that would likely affect the purchasing decisions or conduct
14 of consumers, including Plaintiff Cattie and the members of the Class, regarding Defendants'
15 products.

16 65. Plaintiff Cattie and members of the Class have been injured in their money or
17 property as a result of Defendants' unlawful, unfair, or fraudulent business acts or practices and
18 unfair, deceptive, untrue or misleading advertising, as set forth in this Complaint.

19 66. As a result of Defendants' violations of Cal. Bus. & Prof. Code § 17200, Plaintiff
20 Cattie and members of the Class are entitled to restitution of all amounts paid to Defendants for
21 Defendants' "luxury" bed linens and injunctive relief, disgorgement, interest, and attorneys' fees
22 and costs, pursuant to California law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 25 A. For an order declaring this a class action;
- 26 B. For declaratory relief finding that Defendants have engaged in unfair, unlawful, or
27 fraudulent business acts or practices in violation of California Business & Professions Code
28 §§ 17200, *et seq.* and 17500;

1 C. For a temporary restraining order and a preliminary and permanent injunction
2 enjoining Defendants and their officers, directors, agents, distributors, servants, employees,
3 attorneys, and all others in active concert or participation with Defendants during the pendency of
4 this action and permanently thereafter from engaging in the false advertising and marketing
5 campaign described herein;

6 D. For restitution to all persons from whom Defendants unlawfully, unfairly, or
7 fraudulently took money, including accrued interest, in addition to other unjust enrichment of
8 Defendants, in an amount to be proven at trial;

9 E. For actual damages suffered by Plaintiff and the Class;

10 F. For interest at the maximum rate allowed by law;

11 G. For costs of suit;

12 H. For Plaintiff to be awarded attorneys' fees and all litigation expenses pursuant to
13 California Civil Code § 1780(d) and California Code of Civil Procedure § 1021.5. Alternatively,
14 for all attorneys' fees and all litigation expenses to be awarded pursuant to the substantial benefit
15 doctrine, the common fund doctrine, or any other provision of law; and

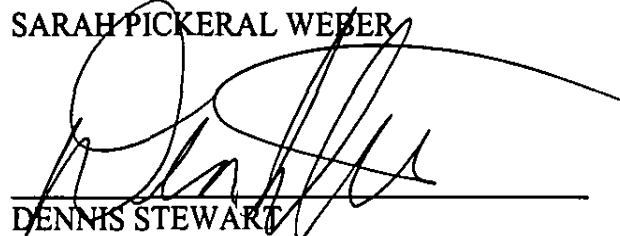
16 I. For such other and further relief as the Court may deem just and proper.

17 **JURY TRIAL DEMANDED**

18 Plaintiff hereby demands a trial by jury on all issues so triable.

19 DATED: June 9, 2006

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PROOF OF SERVICE

Catherine Cattie vs. Wal-Mart Stores, Inc.
Case No.: 06CV0897 LAB CAB

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is: 550 West C Street, Suite 1600, San Diego, CA 92101.

That on June 9, 2006, I served the following document(s) entitled: **SECOND AMENDED CLASS ACTION COMPLAINT** on ALL INTERESTED PARTIES in this action:

SEE ATTACHED SERVICE LIST

- BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings, and other matters for mailing with the United States Postal Service. The correspondence, pleadings and other matters are deposited with the United States Postal Service with postage thereon fully prepaid in San Diego, California, on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be contained in an overnight envelope and to be deposited in a **Federal Express/Overnite Express** box located at 550 West C Street, San Diego, California, for delivery to the above address(es).
- BY FAX:** I transmitted a copy of the foregoing document(s) this date via telecopier to the facsimile numbers shown on the attached service list. The facsimile machine I used reported no error and I caused the machine to print a transmission record of the transmission.
- BY PERSONAL SERVICE:** I had such envelope delivered by hand where indicated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 9, 2006, at San Diego, California.


SHERALYNN M. MACHADO

BED LINENS

No. 06CV0897LAB(CAB)

Service List

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