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9

FILED
FEB 20 2024
Superior Court of California
County of Tuolumne
by: **EM** Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF TUOLUMNE**

CV65903

12
13 MATTHEW HAWKINS, on behalf of himself
and all others similarly situated,

CASE NO.: *EM*

BY Fax

14 Plaintiff,

CLASS ACTION COMPLAINT

15 v.

16 WALMART INC., a corporation; and DOES 1
17 through 10, inclusive,

18 Defendant.
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1. Violation of California Consumers Legal Remedies Act
2. Violation of California False Advertising Law
3. Violation of California Unfair Competition Law
4. Breach of Express Warranty (Cal. Com. Code § 2313)
5. Breach of Implied Warranty (Cal. Com. Code § 2314)
6. Intentional Misrepresentation

DEMAND FOR JURY TRIAL

1 Plaintiff Matthew Hawkins (“Plaintiff”), on behalf of himself and all others similarly
2 situated, brings this class action against Defendant Walmart Inc. (“Defendant” or “Walmart”), and
3 Does 1 through 10, based on Walmart’s false and deceptive advertising and labeling regarding its
4 Avocado Oil Products. Plaintiff makes the following allegations based on the investigation of his
5 counsel, and on information and belief, except as to allegations pertaining to Plaintiff individually,
6 which are based on his personal knowledge.

7 **INTRODUCTION**

8 1. During the statute of limitations period, Walmart has marketed, labeled, advertised,
9 and sold its Great Value Avocado Oil (the “Class Product(s)”) to consumers with packaging that
10 has prominently represented that it is avocado oil.

11 2. The Class Products’ packaging unequivocally states that the oil is “Avocado Oil”
12 (the “*Avocado Oil Claim*”).

13 3. Reasonable consumers believe, based on the *Avocado Oil Claim*, that the Class
14 Products are pure avocado oil. However, this is not the case. Unbeknownst to consumers, the Class
15 Products are adulterated with other oils.

16 4. Plaintiff seeks relief in this action individually, and on behalf of all other similarly
17 situated individuals who purchased the falsely and deceptively labeled Class Products during the
18 statute of limitations period, for violations of California’s Consumers Legal Remedies Act, Cal. Civ.
19 Code § 1750, *et seq.*, California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*,
20 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, breach of express and
21 implied warranty (Cal. Com. Code §§ 2313-2314), and intentional misrepresentation (i.e., common
22 law fraud).

23 **JURISDICTION AND VENUE**

24 5. This Court has personal jurisdiction over Walmart because Walmart has sufficient
25 minimum contacts in California, or otherwise intentionally avails itself of the markets within
26 California, through its sale of the goods and Class Products in California, including in this County.

27 6. Venue is proper in this County pursuant to California Code of Civil Procedure § 395,
28 *et seq.* and Cal. Civ. Code § 1780(d). Walmart regularly conducts business throughout this County

1 and it made the misrepresentations that had a substantial effect in this County. A substantial part of
2 the events or omissions giving rise to Plaintiff's claims occurred in this County. Plaintiff resides in
3 this County, and he purchased the Class Product in this County within the statute of limitations
4 period.

5 **PLAINTIFF**

6 7. Plaintiff is a citizen of the United States and the State of California. He currently
7 resides in Sonora, California.

8 8. In or around August 2023, Plaintiff purchased a bottle of Walmart's Great Value
9 Avocado Oil at a Wal-Mart store in Sonora, California for which he recalls paying between \$9 to
10 \$10. Plaintiff saw and relied on the *Avocado Oil Claim* in making this purchase. More specifically,
11 Plaintiff reasonably believed, based on the *Avocado Oil Claim*, that he was buying pure avocado
12 oil. This belief was an important part of his decision to purchase the Class Product. Had Plaintiff
13 known that the Class Product is not pure avocado oil, he would not have purchased it, or he would
14 have paid less for it. Thus, Plaintiff has suffered injury in fact and lost money as a result of
15 Walmart's misleading, false, unfair, and deceptive practices, as alleged herein.

16 9. Although Plaintiff currently believes that the Class Products are not pure avocado oil
17 as represented, he cannot trust any of Walmart's representations, and he lacks personal knowledge
18 as to the specific conditions under which Walmart sources, manufactures, and packages the Class
19 Products. Therefore, even though Plaintiff would like to continue purchasing the Class Products if
20 he knew that it was pure avocado oil, Plaintiff will for the time being refrain from doing so. This is
21 a tangible and ongoing harm to Plaintiff.

22 10. As a result of Walmart's unlawful business practices, and the harm caused to Plaintiff
23 and Class members, Walmart should be required to pay for all damages and/or restitution. However,
24 monetary compensation alone is insufficient to remedy the ongoing harm that is being caused to
25 Plaintiff, and Class members, who are unaware of Walmart's deceptive conduct and will continue
26 purchasing the Class Products, reasonably but incorrectly believing that they are getting pure
27 avocado oil. As such, injunctive relief requiring Walmart to cease its false and deceptive labeling
28 practices with respect to the Class Products is necessary and appropriate.

DEFENDANT

1
2 11. Walmart is a Delaware corporation with its headquarters and principal place of
3 business in Bentonville, Arkansas.

4 12. Walmart has labeled and sold the Class Products at its retail stores, and via its
5 ecommerce website, in California and the rest of the country, during the statute of limitations period
6 under its private label brand “Great Value”.

7 13. The true names and capacities of Does 1 through 10, inclusive, are unknown to
8 Plaintiff at this time, and Plaintiff therefore sues such Doe defendants under fictitious names. On
9 information and belief, each Defendant designated as a Doe is in some manner highly responsible
10 for the occurrences alleged herein, and Plaintiff’s and Class members’ injuries and damages, as
11 alleged herein, were proximately caused by the conduct of such Doe defendants. Plaintiff will seek
12 leave of the Court to amend this Complaint to allege the true names and capacities of such Doe
13 defendants when ascertained.

14 **FACTUAL ALLEGATIONS**

15 **A. The Class Products**

16 14. The Class Products consist of Walmart’s Great Value Brand Avocado Oil. The Class
17 Products are generally sold in 25.5 oz. bottles. The *Avocado Oil Claim* is prominently displayed in
18 the same manner on all Class Products, as set forth in the following representative image:
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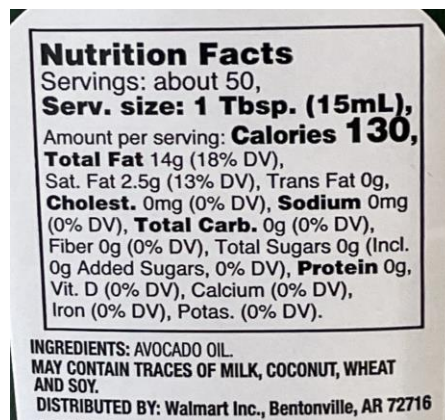
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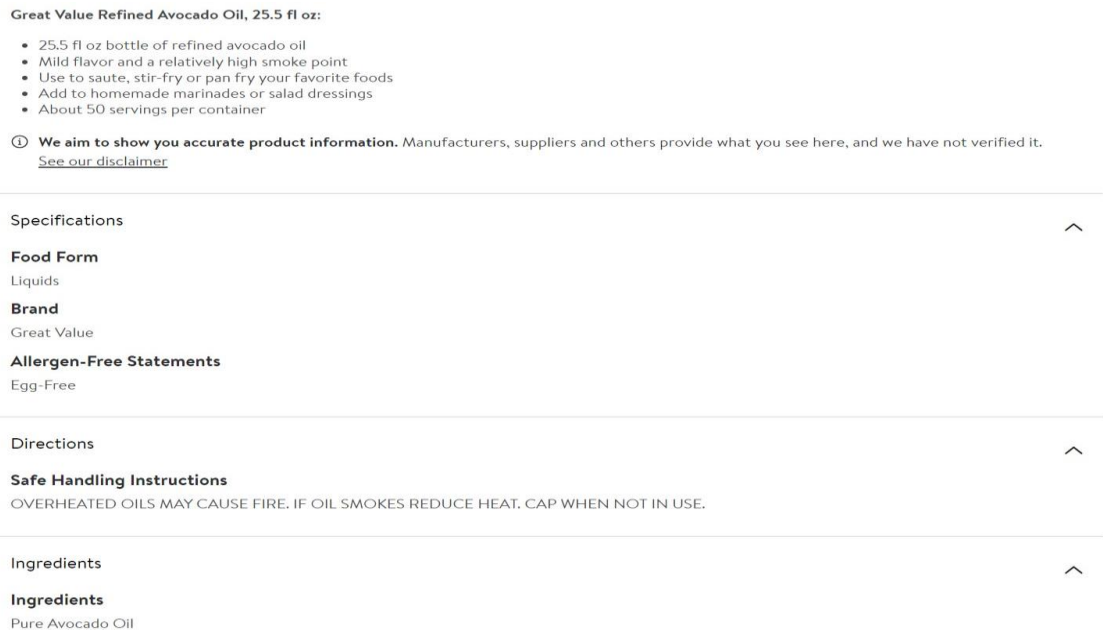
B. The Avocado Oil Claim is False and Deceptive

15. As can be seen from the above image, the *Avocado Oil Claim* conveys the unequivocal message that the Class Products are pure avocado oil.

16. This understanding is reinforced by the ingredient list on the Class Products' back labels, which list avocado oil as the only ingredient, as reflected in the following representative image:



1 17. In addition, Walmart’s e-commerce website lists “Pure Avocado Oil” as the only
2 ingredient in the Class Products, as reflected in the following screenshot:¹



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14 18. Walmart does not disclose anywhere that the Class Products are not pure avocado
15 oil, and thus, the only conclusion reasonable consumers can reach is that the Class Products are pure
16 avocado oil.

17 19. The Class Products are not pure avocado oil. To the contrary, and based on Plaintiff’s
18 investigation, which includes testing and analysis of the Class Products performed by third party
19 laboratories, the fatty acid and sterol profiles of the Class Products show that the Class Products are
20 not pure avocado oil. Thus, the claim is false and deceptive.

21 **C. The Avocado Oil Claim is Material**

22 20. The *Avocado Oil Claim* is material—i.e., it is important to consumers with respect
23 to their purchasing decisions of the Class Products.²

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25
26 ¹ <https://www.walmart.com/ip/Great-Value-Refined-Avocado-Oil-25-5-fl-oz/535864229> (last
visited on February 15, 2024)

27 ² For instance, at 25.5 fl oz bottle of the Class Product costs \$9.54, or \$0.37 per ounce. By contrast,
28 a 48 fl oz bottle of Great Value Canola Oil costs \$4.44, or \$0.09 per ounce. Similarly, a 48 fl oz
bottle of Great Value Vegetable Oil costs \$4.37, or \$0.09 per ounce.

1 **California Consumer Subclass**

2 All natural persons who purchased at least one of the Class Products in the State of
3 California, for personal, family, or household purposes, within the applicable statute of
4 limitations period.

5 25. Excluded from the Classes are the following individuals and/or entities: Walmart and
6 its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity
7 in which Walmart has a controlling interest; all individuals who make a timely election to be
8 excluded from this proceeding using the correct protocol for opting out; and all judges assigned to
9 hear any aspect of this litigation, as well as their immediate family members.

10 26. Plaintiff reserves the right to modify or amend the definition of the proposed Classes
11 and/or add subclasses before the Court determines whether class certification is appropriate.

12 27. Plaintiff is a member of both classes.

13 28. Numerosity: The proposed Classes are so numerous that joinder of all members
14 would be impractical. The Class Products are sold throughout the United States and the State of
15 California. The number of individuals who purchased Class Products during the relevant time period
16 is at least in the hundreds. Accordingly, Class members are so numerous that their individual joinder
17 herein is impractical. While the precise number of Class members and their identities are unknown
18 to Plaintiff at this time, these Class members are identifiable and ascertainable.

19 29. Common Questions Predominate: There are questions of law and fact common to the
20 proposed Classes that will drive the resolution of this action and will predominate over questions
21 affecting only individual Class members. These questions include, but are not limited to, the
22 following:

- 23 a. Whether Walmart misrepresented material facts and/or failed to disclose material
24 facts in connection with the packaging, marketing, distribution, and sale of the
25 Class Products;
- 26 b. Whether Walmart’s use of the challenged packaging, i.e., the *Avocado Oil Claim*,
27 constituted false or deceptive advertising;

- 1 c. Whether Walmart engaged in unfair, unlawful and/or fraudulent business
2 practices;
- 3 d. Whether Walmart's unlawful conduct, as alleged herein, was intentional and
4 knowing;
- 5 e. Whether Plaintiff and the Classes are entitled to damages and/or restitution, and
6 if so, in what amount;
- 7 f. Whether Plaintiff and the Classes are entitled to injunctive relief;
- 8 g. Whether Plaintiff and the Classes are entitled to punitive damages, and if so, in
9 what amount; and
- 10 h. Whether Plaintiff and the Classes are entitled to an award of reasonable
11 attorneys' fees, interest, and costs of suit.

12 30. Walmart has engaged in a common course of conduct giving rise to violations of the
13 legal rights sought to be enforced uniformly by Plaintiff on behalf of the proposed Classes. Similar
14 or identical statutory and common law violations, business practices, and injuries are involved. The
15 injuries sustained by members of the proposed Classes flow, in each instance, from a common
16 nucleus of operative fact, namely, Walmart's deceptive packaging and advertising of the Class
17 Products. Each instance of harm suffered by Plaintiff and Class members has directly resulted from
18 a single course of unlawful conduct. Each Class member has been exposed to the same deceptive
19 practice, as the packaging of the Class Products: (a) bear the same material *Avocado Oil Claim*, and
20 (b) the Class Products does not meet this representation of fact. Therefore, individual questions, if
21 any, pale in comparison to the numerous common questions presented in this action.

22 31. Superiority: Because of the relatively small damages at issue for each individual
23 Class member, no Class member could afford to seek legal redress on an individual basis.
24 Furthermore, individualized litigation increases the delay and expense to all parties and multiplies
25 the burden on the judicial system presented by the complex legal and factual issues of this case.
26 Individualized litigation also presents a potential for inconsistent or contradictory judgments. A
27 class action is superior to any alternative means of prosecution.

28

1 39. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
2 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
3 another.” By marketing the Class Products with their current packaging, Walmart has represented and
4 continues to represent that the Class Products are of a particular standard, quality, or grade (i.e., they
5 are pure avocado oil) which they do not possess. Therefore, Walmart has violated section 1770(a)(7) of
6 the CLRA.

7 40. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
8 to sell them as advertised.” By marketing the Class Products as pure avocado oil, but not intending to
9 sell the Class Products as such (i.e., selling them with the knowledge that they are not pure avocado
10 oil), Walmart has violated section 1770(a)(9) of the CLRA.

11 41. At all relevant times, Walmart has known or reasonably should have known that its
12 *Avocado Oil Claim* on the Class Products’ packaging is false and deceptive, and that Plaintiff and
13 other members of the California Consumer Subclass would reasonably and justifiably rely on it
14 when purchasing the Class Products. Nonetheless, Walmart persisted in making the *Avocado Oil*
15 *Claim* on the Class Products’ labels to deceive consumers into believing they are buying and
16 consuming pure avocado oil.

17 42. Plaintiff and members of the California Consumer Subclass have justifiably relied
18 on Walmart’s misleading *Avocado Oil Claim* when purchasing the Class Products. Moreover, based
19 on the materiality of Walmart’s misleading and deceptive conduct, reliance may be presumed or
20 inferred for Plaintiff and members of the California Consumer Subclass.

21 43. Plaintiff and members of the California Consumer Subclass have suffered and
22 continue to suffer injuries caused by Walmart because they would have paid less for the Class
23 Products, or would not have purchased them at all, had they known that the *Avocado Oil Claim* was
24 false.

25 44. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a declaration of venue,
26 attached as **Exhibit A** to this Complaint.

27 45. On September 28, 2023, Plaintiff, by and through his counsel, sent a notice and
28 demand letter by certified mail to Walmart of his intent to pursue claims under the CLRA, and an

1 opportunity to cure, consistent with Cal. Civ. Code § 1782. Walmart received this notice and demand
2 letter on October 2, 2023, but it has done nothing to rectify the unlawful conduct described herein.

3 46. Because Walmart has failed to fully rectify or remedy the damages caused after
4 waiting more than the statutorily required 30 days after Walmart received the foregoing notice and
5 demand letter, Plaintiff is timely filing this Complaint for damages as permitted under Cal. Civ.
6 Code § 1782(d). Plaintiff also requests an award of actual and punitive damages, attorneys' fees and
7 costs, and any other relief that the Court deems proper, pursuant to Cal. Civ. Code § 1780(a).

8 47. Plaintiff and members of the proposed Classes have no adequate remedy at law and
9 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to
10 recover the amount of Defendant's ill-gotten gains, and/or other sums as may be just and equitable.

11 **SECOND CLAIM FOR RELIEF**
12 **Violation of California's False Advertising Law**
13 **California Business & Professions Code § 17500, *et seq***
14 **(For the Classes)**

15 48. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
16 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

17 49. Plaintiff brings this claim individually and on behalf of the members of the proposed
18 Classes against Walmart pursuant to California's False Advertising Law ("FAL"), Cal. Bus. & Prof.
19 Code § 17500, *et seq.*

20 50. The FAL makes it "unlawful for any person to make or disseminate or cause to be
21 made or disseminated before the public . . . in any advertising device . . . or in any other manner or
22 means whatever, including over the Internet, any statement, concerning . . . personal property or
23 services professional or otherwise, or performance or disposition thereof, which is untrue or
24 misleading and which is known, or which by the exercise of reasonable care should be known, to
25 be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

26 51. Walmart has represented and continues to represent to the public, including Plaintiff
27 and members of the proposed Classes, through its deceptive packaging, that the Class Products are
28 pure avocado oil. Because Walmart has disseminated misleading information regarding the Class
Products, and Walmart knows, knew, or should have known, through the exercise of reasonable

1 care, that the *Avocado Oil Claim* is false and misleading, Walmart has violated the FAL.

2 52. As a result of Walmart’s false advertising, Walmart has and continues to unlawfully
3 obtain money from Plaintiff and members of both Classes. Plaintiff therefore requests that the Court
4 cause Walmart to restore this fraudulently obtained money to him and members of the proposed
5 Classes, to disgorge the profits Walmart made on these transactions, and to enjoin Walmart from
6 violating the FAL or violating it in the same fashion in the future as discussed herein. Otherwise,
7 Plaintiff and members of the proposed Classes may be irreparably harmed and/or denied an effective
8 and complete remedy.

9 53. Plaintiff and members of the proposed Classes have no adequate remedy at law and
10 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to
11 recover the amount of Defendant’s ill-gotten gains, and/or other sums as may be just and equitable.

12 **THIRD CLAIM FOR RELIEF**
13 **Violation of California’s Unfair Competition Law (“UCL”),**
14 **California Business & Professions Code § 17200, *et seq.***
(For the Classes)

15 54. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
16 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

17 55. Plaintiff brings this claim individually and on behalf of the members of the proposed
18 Classes against Walmart.

19 56. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part, that “unfair
20 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
21 deceptive, untrue or misleading advertising . . .”.

22 57. Under the UCL, a business act or practice is “unlawful” if it violates any established
23 state or federal law. Walmart’s false and misleading advertising of the Class Products was and
24 continues to be “unlawful” because it violates, *inter alia*, the CLRA and the FAL. As a result of
25 Walmart’s unlawful business acts and practices, Walmart has unlawfully obtained money from
26 Plaintiff, and members of the proposed Classes.

27 58. Under the UCL, a business act or practice is “unfair” if Walmart’s conduct offends
28 an established public policy, or is immoral, unethical, oppressive, unscrupulous, or substantially

1 Classes against Walmart.

2 64. California’s express warranty statute provides that “(a) Any affirmation of fact or
3 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of
4 the bargain creates an express warranty that the goods shall conform to the affirmation or promise,”
5 and “(b) Any description of the goods which is made part of the basis of the bargain creates an
6 express warranty that the goods shall conform to the description.” Cal. Com. Code § 2313.

7 65. Walmart has expressly warranted on the Class Products’ packaging that they are pure
8 avocado oil through the *Avocado Oil Claim*.

9 66. This representation about the Class Products is: (a) an affirmation of fact or promise
10 made by Walmart to consumers that Class Products are pure avocado oil; (b) became part of the
11 basis of the bargain to purchase the Class Products when Plaintiff and other consumers relied on the
12 representation; and (c) created an express warranty that the Class Products would conform to the
13 affirmation of fact or promise. In the alternative, the representation about the Class Products is a
14 description of goods which were made as part of the basis of the bargain to purchase the Class
15 Products, and which created an express warranty that the Class Products would conform to the Class
16 Products’ description.

17 67. Plaintiff and members of the Classes reasonably and justifiably relied on the
18 foregoing express warranties, believing that the Class Products did in fact conform to those
19 warranties.

20 68. Walmart has breached the express warranties made to Plaintiff and members of the
21 proposed Classes by failing to produce the Class Products in accordance with the *Avocado Oil*
22 *Claim*, as expressly warranted on the packaging.

23 69. Plaintiff and members of the proposed Classes paid a premium price for the Class
24 Products but did not obtain the full value of the Class Products as represented. If Plaintiff and
25 members of the proposed Classes had known of the true nature of the Class Products, they would
26 not have been willing to pay the premium price charged in the market, or they would not have
27 purchased them at all. As a result, Plaintiff and members of the Classes suffered injury and deserve
28 to recover all damages afforded under the law.

1 Walmart's breach, Plaintiff and members of the Classes have suffered injury and deserve to
2 recover all damages afforded under the law.

3 79. Within a month after Plaintiff discovered that Walmart did in fact breach the implied
4 warranty, Plaintiff notified Walmart of the breach. *See supra* ¶ 45.

5 **SIXTH CLAIM FOR RELIEF**
6 **Intentional Misrepresentation**
7 ***(for the Classes)***

8 80. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
9 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

10 81. Plaintiff brings this claim individually and on behalf of the members of the proposed
11 Classes against Walmart.

12 82. Walmart marketed the Class Products in a manner indicating that they are pure
13 avocado oil when they are not. Therefore, Walmart has made misrepresentations about the Class
14 Products.

15 83. The *Avocado Oil Claim* is material to a reasonable consumer because it relates to the
16 quality, safety, utility, and healthfulness of the Class Products. A reasonable consumer attaches
17 importance to such representations and is induced to act thereon in making purchasing decisions
18 with respect to oil that is consumed—i.e., oil that is used for cooking or consumed raw.

19 84. At all relevant times, Walmart knew that the *Avocado Oil Claim* was misleading.
20 Walmart intends for Plaintiff and other consumers to rely on the *Avocado Oil Claim*, as evidenced
21 by Walmart intentionally and conspicuously placing it on the packaging of the Class Products. In
22 the alternative, Walmart acted recklessly in making the *Avocado Oil Claim* without regard to the
23 truth.

24 85. Plaintiff and members of the proposed Classes have reasonably and justifiably relied
25 on Walmart's intentional misrepresentations (i.e., the *Avocado Oil Claim*) when purchasing the
26 Class Products, and had the correct facts been known, would not have purchased them at the prices
27 at which they were sold in the market, or would not have purchased them at all.

28 86. Therefore, as a direct and proximate result of Walmart's intentional
misrepresentations, Plaintiff and members of the Classes have suffered economic losses and other

1 general and specific damages, including but not limited to the amounts paid for the Class Products,
2 and any interest that would have accrued on those monies, all in an amount to be proven at trial.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of the proposed Classes, respectfully
5 prays for following relief:

6 A. Certification of this case as a class action on behalf of the Classes defined above,
7 appointment of Plaintiff as Class representative, and appointment of his counsel as Class counsel;

8 B. A declaration that Walmart’s actions, as described herein, violate the claims
9 described herein;

10 C. An award to Plaintiff and the proposed Classes of restitution and/or other equitable
11 relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment
12 that Walmart obtained from Plaintiff and the proposed Classes as a result of its unlawful, unfair and
13 fraudulent business practices described herein;

14 D. An award of injunctive and other equitable relief as is necessary to protect the
15 interests of Plaintiff and Class members, including, *inter alia*, an order prohibiting Walmart from
16 engaging in the unlawful acts described above;

17 E. An award of all economic, monetary, actual, consequential, and compensatory
18 damages caused by Walmart’s conduct;

19 F. An award of punitive damages;

20 G. An award of nominal damages;

21 H. An award to Plaintiff and his counsel of reasonable expenses and attorneys’ fees;

22 I. An award to Plaintiff and the proposed Classes of pre and post-judgment interest, to
23 the extent allowable; and

24 J. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the proposed Classes, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: February 20, 2024

THE WAND LAW FIRM, P.C.



By: _____
Aubry Wand

FARUQI & FARUQI, LLP
Lisa T. Omoto

*Attorneys for Plaintiff and the Putative
Classes*