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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

**REBECA CASTILLO on behalf of herself  
and all others similarly situated,**

**Plaintiff,**

**v.**

**WALMART INC.**

**Defendant**

**CASE NO.:**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY, AND  
INJUNCTIVE RELIEF**

1 Plaintiff Rebeca Castillo (“Plaintiff”), on behalf of herself and all others similarly situated,  
2 brings this class action against Walmart, Inc. (“Walmart” or “Defendant”), and on the basis of  
3 personal knowledge, information and belief, and the investigation of counsel, allege as follows:  
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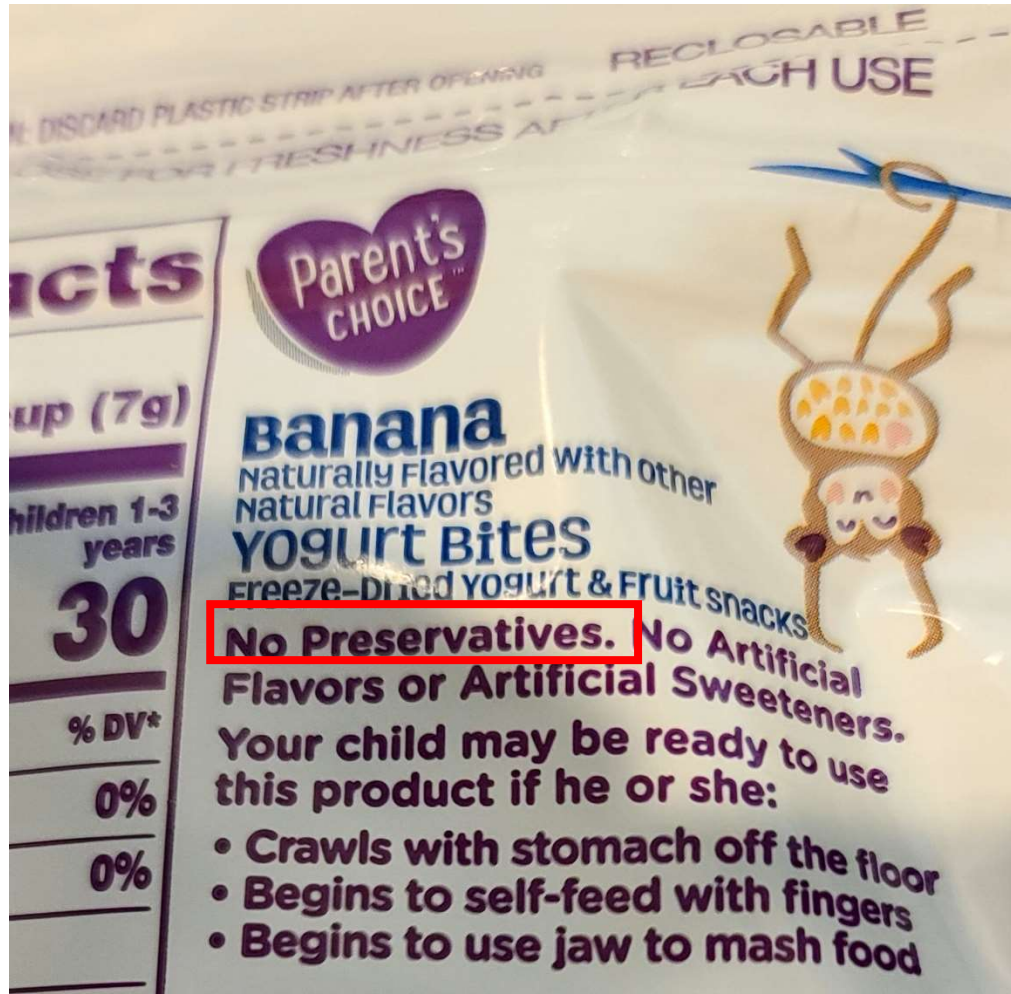
5 **INTRODUCTION**

6 1. This is a proposed class action on behalf of a nationwide and California class  
7 (collectively, “Class”) of consumers seeking redress for Defendant’s deceptive practices associated  
8 with the advertising, labeling, and sale of its Parent’s Choice Yogurt Bites Freeze-Dried Yogurt &  
9 Fruit Snacks” (“Product” or “Yogurt Bites”).

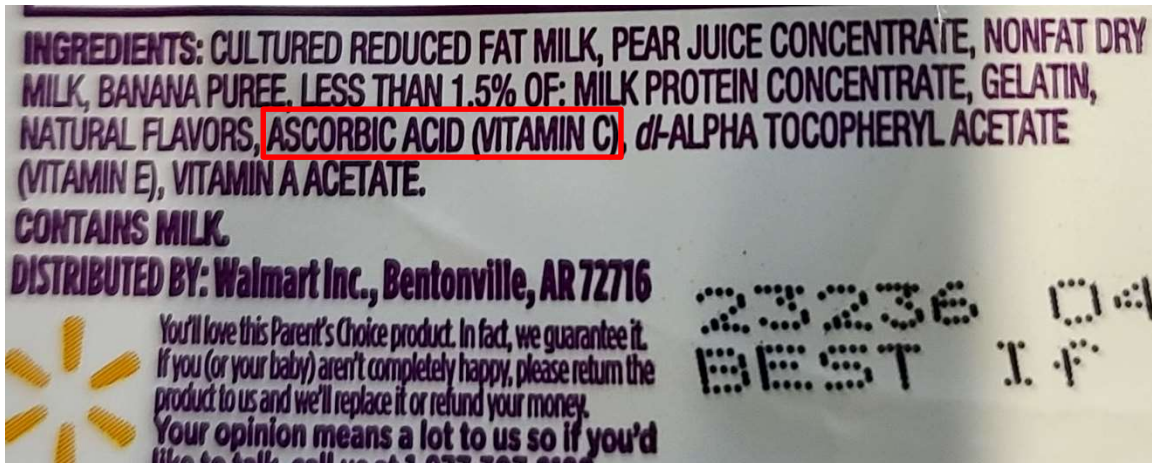
10 2. The Product’s principal display makes several clean label claims designed to tout its  
11 health benefits, especially in light of the fact it is being specifically targeted to parents of young  
12 children. Among four representations, Walmart boldly claims the Product contains “**No**  
13 **Preservatives.**” The import of this claim cannot be understated as it is repeated in bold on the back  
14 label and located in the upper right corner where it is most likely to be seen. This time it is the  
15 leading claim among other clean label claims (“No Preservatives. No Artificial Flavors, or Artificial  
16 Sweeteners”). Walmart makes these claims to reassure consumers that its Products are wholesome  
17 and suitable for young children.  
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3. Contrary to the representation on the Product's label – that it contains “No Preservatives,” the ingredient deck reveals the inclusion of ascorbic acid – a chemical preservative, rendering the representations false, misleading, and in violation of the law.





1 putative Class, and the profits reaped by Defendant from its transactions with Plaintiff and the Class,  
2 as a direct and proximate result of the wrongful conduct alleged herein, and by virtue of the  
3 injunctive and equitable relief sought.

4 10. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391 because a  
5 substantial portion of the underlying transactions and events complained of occurred and affected  
6 persons and entities located in this judicial district. Defendant has received substantial compensation  
7 for affected transactions and business activity in this judicial district.

8  
9 **PARTIES**

10 11. Plaintiff Rebeca Castillo is a resident of San Jose, California.

11 12. Ms. Castillo regularly purchased Walmart's Yogurt Bites over the past 2 years  
12 making her final purchase in May 2024 from the Walmart Supercenter located at 777 Story Road,  
13 San Jose, CA 95122.

14 15. Ms. Castillo made each of her purchases after reading and relying on Defendant's  
15 Product label.

16 17. Ms. Castillo believed the representations on the Product's label that, among other  
17 things, it contained "No Preservatives."

18 19. Ms. Castillo believed that Defendant lawfully marketed and sold the Product.

20 21. Ms. Castillo relied on Defendant's labeling and was misled thereby.

21 22. Ms. Castillo would not have purchased the Product, or would have purchased the  
22 Product on different terms, had she known the truth.

23 24. Ms. Castillo was injured in fact and lost money as a result of Defendant's improper  
24 conduct.

25 26. Plaintiff and members of the Class have been economically damaged by their  
26 purchases of the Products because the advertising for the Products was deceptive and/or misleading



1 23. Ascorbic acid is a preservative within the meaning of 21 C.F.R. §101.22. Indeed, in a  
 2 consumer facing publication, *Food Ingredients and Colors*, the Food and Drug Administration  
 3 (“FDA”) unequivocally identifies “ascorbic acid” as a preservative.<sup>1</sup>  
 4

Types of Ingredients	What they Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	<b>Ascorbic acid</b> , citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, <b>tocopherols (Vitamin E)</b> <sup>2</sup>

14 24. Ascorbic acid is further identified as a chemical preservative under Title 21, Chapter  
 15 1, Subchapter B, Part 182 Subpart D (21 C.F.R. §182.3013), a fact reaffirmed by in a Technical  
 16 Report United States Department of Agriculture Agricultural Marketing Service. See e.g.,  
 17 “Ascorbic acid is often included in food products as a preservative. Preservative applications of  
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22  
 23 <sup>1</sup> *Food Ingredients and Colors*, International Food Information Council Foundation and U.S. Food  
 24 and Drug Administration, specifically identifies the following as preservatives: ascorbic acid, **citric**  
 25 **acid**, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate,  
 26 potassium sorbate, BHA, BHT, EDTA, **tocopherols (Vitamin E)**. Available at  
<https://www.fda.gov/files/food/published/Food-Ingredients-and-Colors-%28PDF%29.pdf> (last  
 27 visited October 2, 2023)

28 <sup>2</sup> The Product also contains dl-alpha tocopheryl acetate (Vitamin D) which has preservative  
 functions by maintaining the stability and extending the shelf life of products by protecting against  
 oxidation.



1 ascorbic acid make use of its antioxidant properties to prevent discoloration in a range of processed  
2 products” at p. 13 lines 107-115.<sup>3</sup>

3 25. Finally, in a Warning Letter issued to Chiquita Brands International, Inc. and Fresh  
4 Express, Incorporated, October 6, 2010, the FDA made clear that ascorbic acid was a preservative  
5 and needed to be identified as such. “The "Pineapple Bites" and "Pineapple Bites with Coconut"  
6 products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)]  
7 in that they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to  
8 declare these preservatives with a description of their functions. 21 CFR §101.22.”<sup>4</sup>

9  
10 26. Ascorbic acid’s primary use is as a preservative, despite potentially having additional  
11 functions.<sup>5</sup> It functions as a preservative in the Product, regardless of Defendant’s subjective  
12 purpose(s) for adding it to the Product, and regardless of any other functions ascorbic acid may  
13 perform (*e.g.*, vitamin C).<sup>6</sup>

14 **B. Ascorbic Acid Operates as a Preservative in Defendant’s Product**

15 27. Preservatives slow product spoilage caused by mold, air, bacteria, fungi or yeast  
16 (antimicrobials) and slow or prevent changes in flavor and delay rancidity (antioxidants). Ascorbic  
17 acid is also used as an antioxidant to protect the sensory and nutritional properties of foods. As an  
18 anti-browning agent, it can inhibit the browning of vegetables and fruits caused by oxidation.<sup>7</sup>

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20 <sup>3</sup> Ascorbic Acid, Technical Report United States Department of Agriculture Agricultural Marketing  
21 Service, National Organic Program, July 17, 2019. Available at  
22 <https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf> (last visited  
June 21, 2024)

23 <sup>4</sup> <http://fda-warning-letters.blogspot.com/2010/10/fresh-express-incorporated-10610.html> (last  
visited September 15, 2024).

24 <sup>5</sup> See <https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/>  
25 (last visited September 15, 2024).

26 <sup>6</sup> The same holds true with respect to the tocopherols which are identified as Vitamin E in  
27 Defendant’s Product.

28 <sup>7</sup> Yin X, Chen K, Cheng H, Chen X, Feng S, Song Y, Liang L. *Chemical Stability of Ascorbic Acid  
Integrated into Commercial Products: A Review on Bioactivity and Delivery Technology.*

1           28. The FDA broadly defines a food additive as any substance added to food. More  
2 specifically, the term refers to “any substance the intended use of which results or may reasonably be  
3 expected to result — directly or indirectly — in its becoming a component or otherwise affecting the  
4 characteristics of any food.”<sup>8</sup> This definition includes any substance used in the production,  
5 processing, treatment, packaging, transportation or storage of food. The ascorbic acid identified in  
6 the ingredient list of Defendant’s Product is not naturally occurring, but rather a chemical  
7 preservative specifically added as part of the Product’s formulation.

8           29. Moreover, ascorbic acid is effective as, and functions as, a preservative in  
9 Defendant’s Product even when used in relatively low quantities. Thus, even if ascorbic acid is  
10 present in the Product at low quantities, Defendant’s “No Preservatives” representation is false,  
11 deceptive, and misleading for two independent reasons: (1) it contains ascorbic acid, which is  
12 undeniably an added chemical preservative; and (2) it contains ascorbic acid in quantities that are  
13 sufficient for the it to have a tendency to preserve and function as a preservative in the Product.<sup>9</sup>

14           30. To this end, Plaintiff conducted an independent chemical analysis of Walmart’s  
15 Product to determine the amount of ascorbic acid and whether it exists in sufficient amounts in the  
16 Product to function as a preservative or otherwise has the tendency to preserve.

17           31. Walmart’s Product has an ascorbic acid content of 0.163%. The measured amount of  
18 ascorbic acid contributes to acidifying the product in a state prior to freeze drying and protects  
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20  
21 Antioxidants (Basel), January 11, 2022. Available at  
22 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8773188/#:~:text=Ascorbic%20acid%20is%20also%20used,and%20fruits%20caused%20by%20oxidation> (last visited June 21, 2024)

23 <sup>8</sup> *Understanding How the FDA Regulates Food Additives and GRAS Ingredients*, Current as of  
24 07/06/23. Available at <https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/understanding-how-fda-regulates-food-additives-and-gras-ingredients#:~:text=A%20food%20additive%20is%20defined,the%20characteristics%20of%20any%20food> (last visited March 12, 2024).

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26  
27 <sup>9</sup> *Olmos v. T. Marzetti Co.*, 2022 U.S. Dist. LEXIS 236205 \*29 (finding Defendant’s argument  
28 unpersuasive with respect to Plaintiffs’ claims that citric acid always functions as a preservative even if it is at a very low level in the products).

1 against oxidation in the package. USDA guidelines suggest using 3 g of ascorbic acid in 1 gallon  
2 (3785 g) of water to preserve color and freshness. This suggestion corresponds to a usage level of  
3 0.079%. Testing shows the Parent’s Choice product to have a level of 0.163% ascorbic acid, which  
4 is 2x the amount suggested by the standard. As such it has a tendency to act as a preservative in this  
5 product.

### 6 7 **C. Consumer Demand For Clean Label Products**

8 32. The clean label movement has been called “the largest shift in American food habits  
9 since World War II.”<sup>10</sup> The term encompasses many things but is most often associated with foods  
10 that are natural, healthy, and devoid of additives and preservatives.<sup>11</sup>

11 33. By representing the Product has “No Preservatives,” Defendant seeks to capitalize on  
12 consumer preference for clean label products. Indeed, “[foods bearing ‘free-from’ claims are  
13 increasingly relevant to Americans, as they perceive the products as closely tied to health.”<sup>12</sup> “84  
14 percent of Americans buy “free-from” foods because they believe them to be more natural or less  
15 processed.” Among such consumers, no preservatives ranks “[a]mong the top claims... deem[ed]  
16 most important.” *Id.*

17  
18 34. In a survey undertaken by L.E.K, around 1600 consumers were asked which claims  
19 were the most important to them when buying food and drink products. Results indicated the most  
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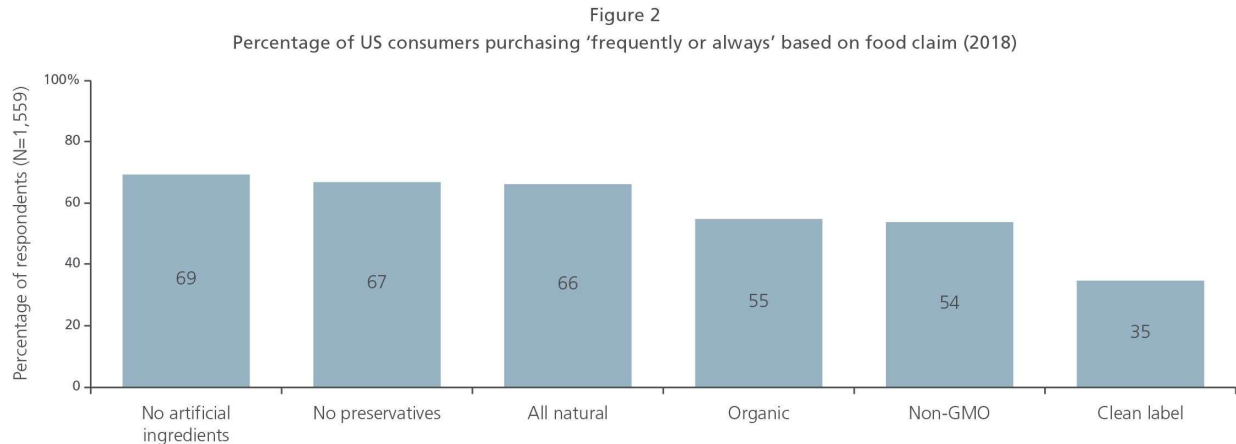
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22 <sup>10</sup> *Clean Labels, Public Relations or Public Health*, Center For Science in the Public Interest (2017),  
23 available <https://www.cspinet.org/sites/default/files/2022-03/Clean%20Label%20report.pdf> (last  
visited September 15, 2024).

24 <sup>11</sup> *Clean label trend is evolving - consumers still willing to pay a price premium*, Valio, May 29,  
25 2023. Available at [https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-  
26 evolving-and-consumers-willing-to-pay-a-price-premium/](https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-evolving-and-consumers-willing-to-pay-a-price-premium/) (last visited September 15, 2024).

27 <sup>12</sup> *See, Free-from Food Trends US 2015 Report*, MINTEL, Available at  
28 [https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-  
because-they-believe-them-to-be-more-natural-or-less-processed](https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed) (last visited March 12, 2024).

1 popular claim to be “no artificial ingredients” followed closely by a claim that a product contained  
 2 ”no preservatives.”<sup>13</sup>

3 35. The representation “No Preservatives” falls squarely within the realm of consumers’  
 4 desire for clean label products devoid of added unnatural and/or processed ingredients.  
 5



14 Note: Question: How frequently has your household purchased food with the following attributes or claims over the past 12 months when they were available?  
 15 Source: L.E.K. Consumer Survey and analysis

16 36. By failing to properly label its Product, Defendant has misled and deceived  
 17 consumers in violation of the laws pled herein.

18 37. As a result of Defendant’s unlawful and deceptive conduct, Plaintiff and members of  
 19 the Class have been harmed.

20 **NO ADEQUATE REMEDY AT LAW**

21 38. Plaintiff and members of the Class are entitled to equitable relief as no adequate  
 22 remedy at law exists.  
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 27 <sup>13</sup> L.E.K. Consulting, *How the Clean-Label Megatrend Is Changing the Food Ingredients*  
 28 *Landscape*, Vol XXI, Issue 74, November 18, 2019. Available at  
<https://www.lek.com/insights/ei/clean-label-food-ingredients> (last visited January 3, 2024).

1           39.     Broader Statutes of Limitations. The statutes of limitations for the causes of action  
2     pled herein vary. The limitations period is four years for claims brought under the UCL, which is  
3     one year longer than the statutes of limitations for damages claims under the CLRA.

4           40.     Broader Scope of Conduct. The scope of actionable misconduct under the unfair  
5     prong of the UCL is broader than the other causes of action asserted herein. The UCL creates a cause  
6     of action for violations of other laws (*e.g.*, Sherman Law), which does not require, among other  
7     things, that a reasonable consumer would have been deceived in order to establish a violation. Thus,  
8     Plaintiff and Class members may be entitled to restitution under the UCL, while not entitled to  
9     damages under other causes of action asserted herein (*e.g.*, the FAL requires actual or constructive  
10    knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks  
11    or acquires, by purchase or lease, any goods or services for personal, family, or household purposes)  
12    and other statutorily enumerated conduct).

13          41.     Injunctive Relief to Cease Misconduct and Dispel Misperception. Injunctive relief is  
14    appropriate on behalf of Plaintiff and members of the Class because Defendant continues to  
15    misrepresent the Products with the challenged representations. Injunctive relief is necessary to  
16    prevent Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct  
17    described herein and to prevent future harm—none of which can be achieved through available legal  
18    remedies (such as monetary damages to compensate past harm).

19          42.     Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel  
20    the public misperception about the Product that has resulted from years of Defendant’s unfair,  
21    fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to,  
22    publicly disseminated statements that the Product’s challenged representations is not true and  
23    providing accurate information about the Product’s true nature; and/or requiring prominent  
24    qualifications and/or disclaimers on the Product’s front label concerning the Product’s true nature.

25          43.     An injunction requiring affirmative disclosures to dispel the public’s misperception,  
26    and prevent the ongoing deception and repeat purchases based thereon, is also not available through  
27    a legal remedy (such as monetary damages).

28





1                   b. **Class Period** is the maximum time allowable as determined by the statute of  
2                   limitation periods accompanying each cause of action.

3                   59. Plaintiff brings this class action pursuant to Federal Rule of Civil Procedure 23(a),  
4                   and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

5                   60. Excluded from the Classes are: (i) Defendant and its employees, principals, affiliated  
6                   entities, legal representatives, successors and assigns; and (ii) the judges to whom this action is  
7                   assigned.

8                   61. Upon information and belief, there are tens of thousands of members of the Class.  
9                   Therefore, individual joinder of all members of the Class would be impracticable.

10                  62. There is a well-defined community of interest in the questions of law and fact  
11                  affecting the parties represented in this action.

12                  63. Common questions of law or fact exist as to all members of the Class. These  
13                  questions predominate over the questions affecting only individual Class members. These common  
14                  legal or factual questions include but are not limited to:

- 15
- 16                  a. Whether Defendant marketed, packaged, or sold the Class Products to  
17                  Plaintiff and those similarly situated using false, misleading, or  
18                  deceptive statements or representations;
  - 19                  b. Whether Defendant omitted or misrepresented material facts in  
20                  connection with the sales of their Products;
  - 21                  c. Whether Defendant participated in and pursued the common course of  
22                  conduct complained of herein;
  - 23                  d. Whether Defendant has been unjustly enriched as a result of their  
24                  unlawful business practices;
  - 25                  e. Whether Defendant's actions violate the Unfair Competition Law, Cal.  
26                  Bus. & Prof. Code §§17200, *et seq.* (the "UCL");
  - 27                  f. Whether Defendant's actions violate the False Advertising Law, Cal.

28                  date of the initial filing to the present. Plaintiff's claims under California's Business and Professions  
Code § 17200, *et seq.*, California's Business & Professions Code § 17500, *et seq.*, and for breach of  
express warranty have a statute of limitations of 4 years. Accordingly the Class Period for these  
claims begins 4 years from the date of the initial filing to the present.



1 Bus. & Prof. Code §§17500, et seq. (the “FAL”);

- 2 g. Whether Defendant’s actions violate the Consumers Legal Remedies  
Act, Cal. Civ. Code §§1750, et seq. (the “CLRA”);
- 3 h. Whether Defendant’s actions constitute breach of express warranty;
- 4 i. Whether Defendant should be enjoined from continuing the above-  
5 described practices;
- 6 j. Whether Plaintiff and members of the Class are entitled to declaratory  
relief; and
- 7 k. Whether Defendant should be required to make restitution, disgorge  
8 profits, reimburse losses, and pay damages as a result of the above-  
9 described practices.

10 64. Plaintiff’s claims are typical of the claims of the Class, in that Plaintiff is a consumer  
11 who purchased Defendant’s Product. Plaintiff is no different in any relevant respect from any other  
12 Class member who purchased the Product, and the relief sought is common to the Class.

13 65. Plaintiff is an adequate representatives of the Class because her interests do not  
14 conflict with the interests of the members of the Class she seeks to represent, and she have retained  
15 counsel competent and experienced in conducting complex class action litigation. Plaintiff and her  
16 counsel will adequately protect the interests of the Class.

17 66. A class action is superior to other available means for the fair and efficient  
18 adjudication of this dispute. The damages suffered by each individual Class member will likely be  
19 relatively small, especially given the cost of the Products at issue and the burden and expense of  
20 individual prosecution of complex litigation necessitated by Defendant’s conduct. Thus, it would be  
21 virtually impossible for members of the Class individually to effectively redress the wrongs done to  
22 them. Moreover, even if members of the Class could afford individual actions, it would still not be  
23 preferable to class-wide litigation. Individualized actions present the potential for inconsistent or  
24 contradictory judgments. By contrast, a class action presents far fewer management difficulties and  
25 provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a  
26 single court.  
27  
28



1 75. Plaintiff and the members of the Class paid money for the Products. However,  
2 Plaintiff and the members of the Class did not obtain the full value of the advertised Products. If  
3 Plaintiff and other members of the Class had known of the true nature of the Products, they would  
4 not have purchased them or paid less for them. Accordingly, Plaintiff and members of the Class have  
5 suffered injury in fact and lost money or property as a result of Defendant’s wrongful conduct.

6 76. Plaintiff and Class members are therefore entitled to recover damages, punitive  
7 damages, equitable relief such as restitution and disgorgement of profits, and declaratory and  
8 injunctive relief.

9  
10 **SECOND CAUSE OF ACTION**

11 **Unlawful Business Practices**  
12 **Violation of The Unfair Competition Law (“UCL”)**  
13 **Bus. & Prof. Code §§17200, *et seq.***  
**(On behalf of the California Class)**

14 77. Plaintiff incorporates each and every allegation contained in the paragraphs above as  
15 if restated herein.

16 78. The UCL defines unfair business competition to include any “unlawful, unfair or  
17 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.  
18 Bus. Prof. Code §17200.

19 79. A business act or practice is “unlawful” if it violates any established state or federal  
20 law.

21 80. Defendant’s acts, omissions, misrepresentations, practices, and/or non-disclosures  
22 concerning the Products alleged herein, constitute “unlawful” business acts and practices in that they  
23 violate the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301, *et seq.* and its implementing  
24 regulations, including, at least, the following sections:  
25

- 26 a. 21 U.S.C. §343(a), which deems food misbranded when its labeling contains a  
27 statement that is false or misleading in any particular;  
28

- b. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as to create an erroneous impression about the presence or absence of ingredient(s) or component(s) therein;
- c. 21 U.S.C. §§331 and 333, which prohibits the introduction of misbranded foods into interstate commerce.
- d. 21 C.F.R. §101.3 and 21 C.F.R. §101.36 as described above, pertaining to, *inter alia*, use of common or usual names.

81. California has expressly adopted federal labeling requirements as its own pursuant to the Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code § 109875 et seq. (the “Sherman Law”), the Sherman Law, which provides that “[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food regulations of this state.” Cal. Health & Safety Code § 110100.

82. Each of Defendant’s violations of federal law and regulations violates California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code § 109875 et seq. (the “Sherman Law”), including, but not limited to, the following sections:

83. Section 110100 (adopting all FDA regulations as state regulations);

84. Section 110290 (“In determining whether the labeling or advertisement of a food . . . is misleading, all representations made or suggested by statement, word, design, device, sound, or any combination of these, shall be taken into account.”);

85. Section 110390 (“It is unlawful for any person to disseminate any false advertisement of any food. . . . An advertisement is false if it is false or misleading in any particular.”);

86. Section 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food . . . that is falsely advertised.”);

87. Section 110398 (“It is unlawful for any person to advertise any food, drug, device, or cosmetic that is adulterated or misbranded.”);

1           88.     Section 110400 (“It is unlawful for any person to receive in commerce any food . . .  
2 that is falsely advertised or to deliver or proffer for delivery any such food . . . .”); and

3           89.     Section 110660 (“Any food is misbranded if its labeling is false or misleading in any  
4 particular.”).

5           90.     Each of the challenged omissions, statements, and actions by Defendant violate the  
6 FDCA, and the Sherman Law, and, consequently, violates the “unlawful” prong of the UCL.  
7

8           91.     Defendant’s conduct is further “unlawful” because it violates California’s False  
9 Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq. (the “FAL”), California’s Consumers  
10 Legal Remedies Act, Cal. Civ. Code § 1750 et seq. (the “CLRA”), and breaches express warranty, as  
11 discussed in the claims above and below.

12           92.     By committing the unlawful acts and practices alleged above, Defendant has engaged,  
13 and continue to be engaged, in unlawful business practices within the meaning of California  
14 Business and Professions Code §§17200, *et seq.*

15           93.     Through their unlawful acts and practices, Defendant has obtained, and continue to  
16 unfairly obtain, money from members of the Class. As such, Plaintiff requests that this Court cause  
17 Defendant to restore this money to Plaintiff and all members of the Class, to disgorge the profits  
18 Defendant made on these transactions, and to enjoin Defendant from continuing to violate the Unfair  
19 Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be  
20 irreparably harmed and denied an effective and complete remedy if such an order is not granted.  
21

22           94.     In accordance with California Business & Professions Code section 17203, and as  
23 Plaintiff lacks an adequate remedy at law, she seeks an order enjoining Defendant from continuing to  
24 conduct business through unlawful, unfair, and/or fraudulent acts and practices and to commence a  
25 corrective advertising campaign.  
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**THIRD CAUSE OF ACTION**

**Unfair Business Practices  
Violation of The Unfair Competition Law  
Bus. & Prof. Code §§ 17200, *et seq.***

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4 95. Plaintiff incorporates each and every allegation contained in the paragraphs above as  
5 if restated herein.

6 96. The UCL defines unfair business competition to include any “unlawful, unfair or  
7 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.  
8 Bus. Prof. Code §17200.

9 97. A business act or practice is “unfair” under the Unfair Competition Law if the reasons,  
10 justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the  
11 alleged victims.

12 98. Defendant has violated, and continue to violate, the “unfair” prong of the UCL through  
13 their misleading description of the Products. The gravity of the harm to members of the Class resulting  
14 from such unfair acts and practices outweighs any conceivable reasons, justifications, or motives of  
15 Defendant for engaging in such deceptive acts and practices. By committing the acts and practices  
16 alleged above, Defendant engaged, and continued to engage, in unfair business practices within the  
17 meaning of California Business and Professions Code §§17200, *et seq.*

18  
19 99. Through its unfair acts and practices, Defendant obtained, and continue to unfairly  
20 obtain, money from members of the Class. As such, Plaintiff has been injured and requests that this  
21 Court cause Defendant to restore this money to Plaintiff and the members of the Class, to disgorge the  
22 profits Defendant made on their Products, and to enjoin Defendant from continuing to violate the  
23 Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be  
24 irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

25 100. In accordance with California Business & Professions Code section 17203, and as  
26 Plaintiff lacks an adequate remedy at law, she seeks an order enjoining Defendant from continuing to  
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1 conduct business through unlawful, unfair, and/or fraudulent acts and practices and to commence a  
2 corrective advertising campaign.

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4  
5 **FOURTH CAUSE OF ACTION**

6 **Fraudulent Business Practices**  
7 **Violation of The Unfair Competition Law**  
8 **Bus. & Prof. Code §§ 17200, *et seq.***

9 101. Plaintiff incorporates each and every allegation contained in the paragraphs above as  
10 if restated herein.

11 102. The UCL defines unfair business competition to include any “unlawful, unfair or  
12 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.  
13 Bus. & Prof. Code §17200.

14 103. A business act or practice is “fraudulent” under the Unfair Competition Law if it  
15 actually deceives or is likely to deceive members of the consuming public.

16 104. Defendant’s acts and practices of mislabeling their Products in a manner to suggest  
17 they principally contained their characterizing ingredients.

18 105. As a result of the conduct described above, Defendant has been, and will continue to  
19 be, unjustly enriched at the expense of Plaintiff and members of the proposed Class. Specifically,  
20 Defendant has been unjustly enriched by the profits it has obtained from Plaintiff and the Class from  
21 the purchases of its Products.

22 106. Through its fraudulent acts and practices, Defendant has improperly obtained, and  
23 continue to improperly obtain, money from members of the Class. As such, Plaintiff requests that  
24 this Court cause Defendant to restore this money to Plaintiff and the Class, to disgorge the profits  
25 Defendant has made, and to enjoin Defendant from continuing to violate the Unfair Competition  
26 Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed  
27 and denied an effective and complete remedy if such an Order is not granted.  
28





1 113. Pursuant to California Business & Professions Code §17535, Plaintiff seeks an Order  
2 of this Court ordering Defendant to fully disclose the true nature of its misrepresentations. Plaintiff  
3 additionally requests an Order: (1) requiring Defendant to disgorge its ill-gotten gains, (2) award full  
4 restitution of all monies wrongfully acquired by Defendant, and (3) interest and attorneys’ fees.  
5 Plaintiff and the Class may be irreparably harmed and denied an effective and complete remedy if  
6 such an Order is not granted.

7 114. As a result, and as they lack an adequate remedy at law, Plaintiff and the Class are entitled to  
8 equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was  
9 unjustly enriched, and pray for relief as set forth below.

10  
11 **SIXTH CAUSE OF ACTION**  
12 **Violation of the Consumers Legal Remedies Act**  
13 **California Civil Code §§ 1750, *et seq.***

14 115. Plaintiff incorporates each and every allegation contained in the paragraphs above as  
15 if restated herein.

16 116. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
17 California Civil Code §§1750, *et seq.* (the “CLRA”).

18 117. Plaintiff and each member of the proposed Class are “consumers” within the meaning  
19 of Civil Code §1761(d).

20 118. The purchases of the Products by consumers constitute “transactions” within the  
21 meaning of Civil Code §1761(e) and the Products constitute “goods” within the meaning of Civil  
22 Code §1761(a).

23 119. Defendant has violated, and continue to violate, the CLRA in at least the following  
24 respects:

- 25  
26 a. §1770(5) pertaining to misrepresentations regarding the characteristics of  
27 goods sold—specifying that misleading representations regarding ingredients  
28 violate the CLRA;

- b. §1770(7) pertaining to misrepresentations regarding the standard, quality, or grade of goods sold; and
- c. § 1770(9) pertaining to goods advertised with the intent not to provide what is advertised.

120. Defendant knew, or should have known, that the labeling of its Products violated consumer protection laws, and that these statements would be relied upon by Plaintiff and the members of the Class.

121. The representations were made to Plaintiff and all members of the Class. Plaintiff relied on the accuracy of the representations on Defendant's labels which formed a material basis for his decision to purchase the Products. Moreover, based on the very materiality of Defendant's misrepresentations uniformly made on or omitted from their Product labels, reliance may be presumed or inferred for all members of the Class.

122. Defendant carried out the scheme set forth in this Complaint willfully, wantonly, and with reckless disregard for the interests of Plaintiff and the Class, and as a result, Plaintiff and the Class have suffered an ascertainable loss of money or property.

123. Plaintiff and the members of the Class request that this Court enjoin Defendant from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless Defendant is permanently enjoined from continuing to engage in such violations of the CLRA, future consumers of Defendant's Products will be damaged by their acts and practices in the same way as have Plaintiff and the members of the proposed Class.

124. In conjunction with the original Complaint, Plaintiff served a CLRA demand pursuant to Civil Code §1782, notifying Defendant of the conduct described herein and that such conduct was in violation of particular provisions of Civil Code §1770. Defendant has failed to provide a proper remedy within 30 days of receipt of Plaintiff's demand. Accordingly, Plaintiff's claim for damages is ripe, which she now seeks pursuant to Civil Code § 1780(a).

1 125. Pursuant to Civil Code § 1782(d), Plaintiff and members of the Class seek statutory,  
2 actual, and punitive damages.

3  
4 **SEVENTH CAUSE OF ACTION**

5 **Restitution Based On Quasi-Contract/Unjust Enrichment**

6 126. Plaintiff incorporates each and every allegation contained in the paragraphs above as  
7 if rewritten herein.

8 127. Plaintiff pleads this cause of action in the alternative.

9 128. Defendant's conduct in enticing Plaintiff and the Class to purchase its Products with  
10 false and misleading packaging is unlawful because the statements contained on the Defendant's  
11 Product labels are untrue.

12 129. Defendant took monies from Plaintiff and the Class for these Products and have been  
13 unjustly enriched at the expense of Plaintiff and the Class as a result of their unlawful conduct  
14 alleged herein, thereby creating a quasi-contractual obligation on Defendant to restore these ill-  
15 gotten gains to Plaintiff and the Class. It is against equity and good conscience to permit Defendant  
16 to retain the ill-gotten benefits received from Plaintiff and Class members.

17 130. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the  
18 Class are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.  
19

20  
21 **PRAYER FOR RELIEF**

22 THEREFORE, Plaintiff, on behalf of herself and on behalf of the other members of the Class  
23 and for the Counts so applicable on behalf of the general public request an award and relief as  
24 follows:

25 A. An order certifying that this action is properly brought and may be maintained as a  
26 class action, that Plaintiff be appointed Class Representative, and Plaintiff's counsel be appointed  
27 Lead Counsel for the Class.  
28

1 B. Restitution in such amount that Plaintiff and all members of the Class paid to  
2 purchase Defendant's Product or restitutionary disgorgement of the profits Defendant obtained from  
3 those transactions, for Causes of Action for which they are available.

4 C. Compensatory damages for Causes of Action for which they are available.

5 D. Statutory penalties for Causes of Action for which they are available.

6 E. Punitive Damages for Causes of Action for which they are available.

7 F. A declaration and Order enjoining Defendant from marketing and labeling its  
8 Products deceptively, in violation of laws and regulations as specified in this Complaint.  
9

10 G. An Order awarding Plaintiff her costs of suit, including reasonable attorneys' fees and  
11 pre and post judgment interest.  
12

13 H. An Order requiring an accounting for, and imposition of, a constructive trust upon all  
14 monies received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct  
15 alleged herein.

16 I. Such other and further relief as may be deemed necessary or appropriate.  
17

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial by jury on all causes of action or issues so triable.  
20

21 DATED: September 25, 2024

Respectfully submitted,

22  
23  
24 

25 Michael D. Braun  
26 **KUZYK LAW, LLP**  
27 2121 Avenue of the Stars, Ste. 800  
28 Los Angeles, California 90067  
Telephone: (213) 401-4100  
Email: mdb@kuzykclassactions.com

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Peter N. Wasylyk (pro hac vice pending)  
**LAW OFFICES OF PETER N. WASYLYK**  
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Email: pnwlaw@aol.com

*Counsel for Plaintiff*

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

REBECA CASTILLO on behalf of herself and all others similarly situated,

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

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

Michael D. Braun, Kuzyk Law, LLP
2121 Avenue of the Stars, Ste. 800, Los Angeles, CA 90067
213-401-4100

DEFENDANTS

Walmart, Inc

County of Residence of First Listed Defendant Benton, AR (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Incorporated or Principal Place of Business In This State', etc.

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

Large table with columns for CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES.

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-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): CA Bus & Prof Code 17200, 17500, CA Civil Code 1780,

Brief description of cause: Misleading labeling

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,001.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/25/2024

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Michael D. Braun