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11	UNITED STATE	S DISTRICT COURT							
12	NORTHERN DIST	RICT OF CALIFORNIA							
13	SAN JO	SE DIVISION							
14	REBECA CASTILLO on behalf of herself	CASE NO.:							
15	and all others similarly situated,	CLASS ACTION							
16	Plaintiff,	COMPLAINT FOR DAMAGES,							
17	V.	EQUITABLE, DECLARATORY, AND INJUNCTIVE RELIEF							
18	WALMART INC.	INJUNCTIVE RELIEF							
19	Defendant								
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Plaintiff Rebeca Castillo ("Plaintiff"), on behalf of herself and all others similarly situated, brings this class action against Walmart, Inc. ("Walmart" or "Defendant"), and on the basis of personal knowledge, information and belief, and the investigation of counsel, allege as follows:

INTRODUCTION

- 1. This is a proposed class action on behalf of a nationwide and California class (collectively, "Class") of consumers seeking redress for Defendant's deceptive practices associated with the advertising, labeling, and sale of its Parent's Choice Yogurt Bites Freeze-Dried Yogurt & Fruit Snacks" ("Product" or "Yogurt Bites").
- 2. The Product's principal display makes several clean label claims designed to tout its health benefits, especially in light of the fact it is being specifically targeted to parents of young children. Among four representations, Walmart boldly claims the Product contains "No Preservatives." The import of this claim cannot be understated as it is repeated in bold on the back label and located in the upper right corner where it is most likely to be seen. This time it is the leading claim among other clean label claims ("No Preservatives. No Artificial Flavors, or Artificial Sweeteners"). Walmart makes these claims to reassure consumers that its Products are wholesome 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.

ored With other

d yogurt & Fruit snacks

Your child may be ready to use

· Crawls with stomach off the floor

· Begins to self-feed with fingers

· Begins to use jaw to mash food

this product if he or she;

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INGREDIENTS: CULTURED REDUCED FAT MILK, PEAR JUICE CONCENTRATE, NONFAT DRY MILK, BANANA PUREE, LESS THAN 1.5% OF: MILK PROTEIN CONCENTRATE, GELATIN, NATURAL FLAVORS, ASCORBIC ACID (VITAMIN C), dl-Alpha Tocopheryl Acetate (VITAMIN E), VITAMIN A ACETATE. ITAINS MILK. BUTED BY: Walmart Inc., Bentonville, AR 72716 You'll love this Parent's Choice product. In fact, we guarantee it. If you (or your baby) aren't completely happy, please return the roduct to us and we'll replace it or refund your money

- 4. Defendant knows that consumers are willing to pay more for products, especially those that target young children, that are free of preservatives because they perceive them to be a healthier alternative to similar products that contain chemical preservatives. Indeed, Defendant advertises the Products with the clear intention that consumers rely on the representation made on the packaging that the Products have "No Preservatives."
- 5. Reasonable consumers such as Plaintiff do not have specialized knowledge necessary to identify ingredients in the Products as being inconsistent with Defendant's advertised claim of "No Preservatives." This is even more so given Defendant has chosen to obfuscate the existence of preservatives by characterizing the ascorbic acid merely as Vitamin C and failing to recognize that it is, and acts as a chemical preservative in the Product.
- 6. By falsely labeling the Products as having "No Preservatives," Defendant has profited from consumers' preference for offerings that are perceived to be healthier clean label products.
- 7. Throughout the applicable Class Periods (defined below), Defendant has falsely represented the true nature of its Products, and as a result of this false and misleading labeling, was able to sell these Products to hundreds of thousands of unsuspecting consumers throughout California and the United States.
- 8. Plaintiff alleges that Defendant's conduct is in breach of warranty, violates California's Business and Professions Code § 17200, et. seq., California's Business & Professions Code § 17500, et. seq., California Civil Code § 1750, et seq., and is otherwise grounds for restitution on the basis of quasi-contract/unjust enrichment.

JURISDICTION AND VENUE

9. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2). Diversity jurisdiction exists as Plaintiff Castillo is a resident of San Jose, California and Defendant Walmart is Delaware corporation with its principal place of business in Bentonville, Arkansas. The amount in controversy exceeds \$5,000,000 for the Plaintiff and members of the Class collectively, exclusive of interest and costs, by virtue of the combined purchase prices paid by Plaintiff and members of the

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

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

PARTIES

- 11. Plaintiff Rebeca Castillo is a resident of San Jose, California.
- 12. Ms. Castillo regularly purchased Walmart's Yogurt Bites over the past 2 years making her final purchase in May 2024 from the Walmart Supercenter located at 777 Story Road, San Jose, CA 95122.
- 13. Ms. Castillo made each of her purchases after reading and relying on Defendant's Product label.
- 14. Ms. Castillo believed the representations on the Product's label that, among other things, it contained "No Preservatives."
 - 15. Ms. Castillo believed that Defendant lawfully marketed and sold the Product.
 - 16. Ms. Castillo relied on Defendant's labeling and was misled thereby.
- 17. Ms. Castillo would not have purchased the Product, or would have purchased the Product on different terms, had she known the truth.
- 18. Ms. Castillo was injured in fact and lost money as a result of Defendant's improper conduct.
- 19. Plaintiff and members of the Class have been economically damaged by their purchases of the Products because the advertising for the Products was deceptive and/or misleading

under California laws and the Products are misbranded; therefore, the Products are worth less than what Plaintiff and members of the Class paid for them and/or Plaintiff and members of the Class did not receive what they reasonably intended to receive.

20. Defendant Walmart is incorporated in Delaware and headquartered in Bentonville, Arkansas. Walmart is one of America's largest retail corporations operating chains of supercenters, department and grocery stores across the United States, including more than 300 of which are located in California.

GENERAL ALLEGATIONS

A. Ascorbic Acid is a Preservative

- 21. The federal Food Drug & Cosmetic Act ("FDCA") defines a chemical preservative as "any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties." 21 C.F.R. §101.22(a)(5). "A food to which a chemical preservative(s) is added shall.... bear a label declaration stating both the common or usual name of the ingredient(s) and a separate description of its function, e.g., "preservative," "to retard spoilage," "a mold inhibitor," "to help protect flavor," or "to promote color retention." 21 C.F.R. §101.22(j).
- 22. Chemical preservation is the process of adding ingredients to a food for the purpose of preventing potential damage from oxidation, rancidity, microbial growth, or other undesirable changes. Chemical preservatives may be both natural or synthetic and function one of several ways (a) as an antimicrobial agent to destroy bacteria or inhibit the growth of mold on foods; (b) as an antioxidant to inhibit oxidation and resulting rancidity; and (3) as a chelating agent which binds metal ions in certain foods to prevent oxidation.

23. Ascorbic acid is a preservative within the meaning of 21 C.F.R. §101.22. Indeed, in a consumer facing publication, Food Ingredients and Colors, the Food and Drug Administration ("FDA") unequivocally identifies "ascorbic acid" as a preservative.¹

Types of Ingredients What they Do

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

Examples of Uses

Ascorbic acid. citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols $(Vitamin E)^2$

Names Found on **Product Labels**

24. Ascorbic acid is further identified as a chemical preservative under Title 21, Chapter 1, Subchapter B, Part 182 Subpart D (21 C.F.R. §182.3013), a fact reaffirmed by in a Technical Report United States Department of Agriculture Agricultural Marketing Service. See e.g., "Ascorbic acid is often included in food products as a preservative. Preservative applications of

¹ Food Ingredients and Colors, International Food Information Council Foundation and U.S. Food and Drug Administration, specifically identifies the following as preservatives: ascorbic acid, citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, 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 visited October 2, 2023)

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² 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.

ascorbic acid make use of its antioxidant properties to prevent discoloration in a range of processed products" at p. 13 lines 107-115.³

- 25. Finally, in a Warning Letter issued to Chiquita Brands International, Inc. and Fresh Express, Incorporated, October 6, 2010, the FDA made clear that ascorbic acid was a preservative and needed to be identified as such. "The "Pineapple Bites" and "Pineapple Bites with Coconut" products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions. 21 CFR §101.22."
- 26. Ascorbic acid's primary use is as a preservative, despite potentially having additional functions.⁵ It functions as a preservative in the Product, regardless of Defendant's subjective purpose(s) for adding it to the Product, and regardless of any other functions ascorbic acid may perform (*e.g.*, vitamin C).⁶

B. Ascorbic Acid Operates as a Preservative in Defendant's Product

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

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

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

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

⁶ The same holds true with respect to the tocopherols which are identified as Vitamin E in Defendant's Product.

⁷ 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*.

- 28. The FDA broadly defines a food additive as any substance added to food. More specifically, the term refers to "any substance the intended use of which results or may reasonably be expected to result directly or indirectly in its becoming a component or otherwise affecting the characteristics of any food." This definition includes any substance used in the production, processing, treatment, packaging, transportation or storage of food. The ascorbic acid identified in the ingredient list of Defendant's Product is not naturally occurring, but rather a chemical preservative specifically added as part of the Product's formulation.
- 29. Moreover, ascorbic acid is effective as, and functions as, a preservative in Defendant's Product even when used in relatively low quantities. Thus, even if ascorbic acid is present in the Product at low quantities, Defendant's "No Preservatives" representation is false, deceptive, and misleading for two independent reasons: (1) it contains ascorbic acid, which is undeniably an added chemical preservative; and (2) it contains ascorbic acid in quantities that are sufficient for the it to have a tendency to preserve and function as a preservative in the Product.⁹
- 30. To this end, Plaintiff conducted an independent chemical analysis of Walmart's Product to determine the amount of ascorbic acid and whether it exists in sufficient amounts in the Product to function as a preservative or otherwise has the tendency to preserve.
- 31. Walmart's Product has an ascorbic acid content of 0.163%. The measured amount of ascorbic acid contributes to acidifying the product in a state prior to freeze drying and protects

Antioxidants (Basel), January 11, 2022. Available at 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)

⁸ Understanding How the FDA Regulates Food Additives and GRAS Ingredients, Current as of 07/06/23. Available at <a href="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).

⁹ Olmos v. T. Marzetti Co., 2022 U.S. Dist. LEXIS 236205 *29 (finding Defendant's argument 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).

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

C. Consumer Demand For Clean Label Products

- 32. The clean label movement has been called "the largest shift in American food habits since World War II." The term encompasses many things but is most often associated with foods that are natural, healthy, and devoid of additives and preservatives. 11
- 33. By representing the Product has "No Preservatives," Defendant seeks to capitalize on consumer preference for clean label products. Indeed, "[foods bearing 'free-from' claims are increasingly relevant to Americans, as they perceive the products as closely tied to health." ¹² "84 percent of Americans buy "free-from" foods because they believe them to be more natural or less processed." Among such consumers, no preservatives ranks "[a]mong the top claims... deem[ed] most important." *Id*.
- 34. In a survey undertaken by L.E.K, around 1600 consumers were asked which claims were the most important to them when buying food and drink products. Results indicated the most

¹⁰ Clean Labels, Public Relations or Public Health, Center For Science in the Public Interest (2017), available https://www.cspinet.org/sites/default/files/2022-03/Clean%20Label%20report.pdf (last visited September 15, 2024).

¹¹ Clean label trend is evolving - consumers still willing to pay a price premium, Valio, May 29, 2023. Available at 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).

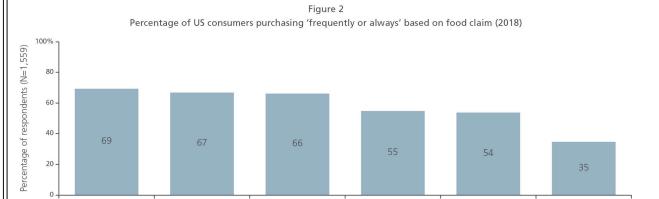
¹² See, Free-from Food Trends US 2015 Report, MINTEL, Available at https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed (last visited March 12, 2024).

No artificial

ingredients

popular claim to be "no artificial ingredients" followed closely by a claim that a product contained "no preservatives. 13

35. The representation "No Preservatives" falls squarely within the realm of consumers' desire for clean label products devoid of added unnatural and/or processed ingredients.



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

All natural

No preservatives

- 36. By failing to properly label its Product, Defendant has misled and deceived consumers in violation of the laws pled herein.
- 37. As a result of Defendant's unlawful and deceptive conduct, Plaintiff and members of the Class have been harmed.

NO ADEQUATE REMEDY AT LAW

Organic

Non-GMO

Clean label

38. Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

¹³ L.E.K. Consulting, *How the Clean-Label Megatrend Is Changing the Food Ingredients 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).

- 39. Broader Statutes of Limitations. The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitations for damages claims under the CLRA.
- 40. Broader Scope of Conduct. The scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. The UCL creates a cause of action for violations of other laws (*e.g.*, Sherman Law), which does not require, among other things, that a reasonable consumer would have been deceived in order to establish a violation. Thus, Plaintiff and Class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (*e.g.*, the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct).
- 41. Injunctive Relief to Cease Misconduct and Dispel Misperception. Injunctive relief is appropriate on behalf of Plaintiff and members of the Class because Defendant continues to misrepresent the Products with the challenged representations. Injunctive relief is necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm).
- 42. Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel the public misperception about the Product that has resulted from years of Defendant's unfair, fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to, publicly disseminated statements that the Product's challenged representations is not true and providing accurate information about the Product's true nature; and/or requiring prominent qualifications and/or disclaimers on the Product's front label concerning the Product's true nature.
- 43. An injunction requiring affirmative disclosures to dispel the public's misperception, and prevent the ongoing deception and repeat purchases based thereon, is also not available through a legal remedy (such as monetary damages).

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44. Procedural Posture—Incomplete Discovery & Pre-Certification. Lastly, this is an initial pleading in this action and discovery has not yet commenced. No class has been certified. No expert discovery has commenced. The completion of fact and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiff's individual claims and any certified class. Plaintiff therefore reserves her right to amend this complaint and/or assert additional facts that demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal remedies are available for either Plaintiff and/or any certified class. Such proof, to the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

ECONOMIC INJURY

- 45. Plaintiff sought to buy Products that were lawfully labeled, marketed, and sold.
- 46. Plaintiff saw and relied on Defendant's misleading labeling of its Products.
- 47. Plaintiff believed that the purchased Products contained no added preservatives.
- 48. Plaintiff believed that the Products were lawfully marketed and sold.
- 49. In reliance on the claims made by Defendant regarding the qualities of their Products, Plaintiff paid a price premium.
- 50. As a result of her reliance on Defendant's misrepresentations, Plaintiff received Products that contained ingredients which she reasonably believed they did not contain.
 - 51. Plaintiff received Products that were unlawfully marketed and sold.
- 52. Plaintiff lost money and thereby suffered injury as she would not have purchased these Products and/or paid as much for them absent the misrepresentation.
- 53. Defendant knows that the claim "No Preservatives" is material to a consumer's purchasing decision.

- 54. Plaintiff altered her position to her detriment and suffered damages in an amount equal to the amounts they paid for the Products she purchased, and/or in additional amounts attributable to the deception.
- 55. By engaging in the false and deceptive conduct alleged herein, Defendant reaped, and continues to reap financial benefits in the form of sales and profits from its Products.
- 56. Plaintiff, however, would be willing to purchase products labeled as "No Preservatives" again in the future, including Defendant's Product, should she be able to rely with any confidence on Defendant's marketing as truthful and not deceptive.
- 57. However, Plaintiff will not be able to purchase Defendant's Product in the future, even though Plaintiff would like to, since simply viewing the ingredient list on Defendant's Product that displays the wording "No Preservatives" on the label may not be enough to prevent Plaintiff from being deceived by Defendant's Product since it will not afford Plaintiff the opportunity to quickly and easily view the ingredient list before purchasing the Product to determine whether any of the ingredients in the Product are preservatives, especially because Plaintiff, as a reasonable consumer, does not have the scientific or encyclopedic knowledge to view all the ingredients identified on the ingredient list to determine whether a particular ingredient is a preservative. Moreover, Plaintiff does not have access to Defendant's ingredient formulations to properly identify whether a particular ingredient is a preservative much less that if it tends to preserve and/or has a preservative effect.

CLASS ACTION ALLEGATIONS

- 58. Plaintiff brings this action on behalf of herself and on behalf of classes of all others similarly situated consumers defined as follows:
 - a. **California:** All persons in California who purchased the Class Products in California during the Class Period ¹⁴

¹⁴ The statute of limitations for Plaintiff's claims under California Civil Code § 1750, *et seq.* and for unjust enrichment is 3 years. Accordingly for these claims the Class Period begins 3 years from the

- b. **Class Period** is the maximum time allowable as determined by the statute of limitation periods accompanying each cause of action.
- 59. Plaintiff brings this class action pursuant to Federal Rule of Civil Procedure 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).
- 60. Excluded from the Classes are: (i) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; and (ii) the judges to whom this action is assigned.
- 61. Upon information and belief, there are tens of thousands of members of the Class. Therefore, individual joinder of all members of the Class would be impracticable.
- 62. There is a well-defined community of interest in the questions of law and fact affecting the parties represented in this action.
- 63. Common questions of law or fact exist as to all members of the Class. These questions predominate over the questions affecting only individual Class members. These common legal or factual questions include but are not limited to:
 - a. Whether Defendant marketed, packaged, or sold the Class Products to Plaintiff and those similarly situated using false, misleading, or deceptive statements or representations;
 - b. Whether Defendant omitted or misrepresented material facts in connection with the sales of their Products;
 - c. Whether Defendant participated in and pursued the common course of conduct complained of herein;
 - d. Whether Defendant has been unjustly enriched as a result of their unlawful business practices;
 - e. Whether Defendant's actions violate the Unfair Competition Law, Cal. Bus. & Prof. Code §§17200, et seq. (the "UCL");
 - f. Whether Defendant's actions violate the False Advertising Law, Cal.

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.

- Bus. & Prof. Code §§17500, et seq. (the "FAL");
- g. Whether Defendant's actions violate the Consumers Legal Remedies Act, Cal. Civ. Code §§1750, et seq. (the "CLRA");
- h. Whether Defendant's actions constitute breach of express warranty;
- i. Whether Defendant should be enjoined from continuing the above-described practices;
- j. Whether Plaintiff and members of the Class are entitled to declaratory relief; and
- k. Whether Defendant should be required to make restitution, disgorge profits, reimburse losses, and pay damages as a result of the above-described practices.
- 64. Plaintiff's claims are typical of the claims of the Class, in that Plaintiff is a consumer who purchased Defendant's Product. Plaintiff is no different in any relevant respect from any other Class member who purchased the Product, and the relief sought is common to the Class.
- 65. Plaintiff is an adequate representatives of the Class because her interests do not conflict with the interests of the members of the Class she seeks to represent, and she have retained counsel competent and experienced in conducting complex class action litigation. Plaintiff and her counsel will adequately protect the interests of the Class.
- 66. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual Class member will likely be relatively small, especially given the cost of the Products at issue and the burden and expense of individual prosecution of complex litigation necessitated by Defendant's conduct. Thus, it would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Moreover, even if members of the Class could afford individual actions, it would still not be preferable to class-wide litigation. Individualized actions present the potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

	67.	In the alternative, the Class may be certified because Defendant has acted or refused
to act o	n grour	ds generally applicable to the Class, thereby making appropriate preliminary and final
equitab	le relie	with respect to each Class.

	68.	The requirements for maintaining a class action pursuant to Rule 23(b)(2) are also
met, as	Defend	lant has acted or refused to act on grounds generally applicable to the Class, thereby
making	g approp	oriate final injunctive relief or corresponding declaratory relief with respect to the
Class a	s a who	le.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Breach of Express Warranty

- 69. Plaintiff incorporates each and every allegation contained in the paragraphs above as if rewritten herein.
 - 70. Plaintiff's express warranty claims are based on violations of Cal. Com. Code §2313.
- 71. Defendant made express warranties to Plaintiff and members of the Class that the Products they purchased contained no preservatives.
- 72. The express warranties made to Plaintiff and members of the Class appear on every Product label. This warranty regarding the nature of the Product marketed by Defendant specifically relates to the goods being purchased and became the basis of the bargain.
- 73. Plaintiff and Class members purchased the Products in the belief that they conformed to the express warranties that were made on the Products' labels.
- 74. Defendant breached the express warranties made to Plaintiff and members of the Class by failing to supply goods that conformed to the warranties it made. As a result, Plaintiff and members of the Class suffered injury and deserve to be compensated for the damages they suffered.

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

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

SECOND CAUSE OF ACTION

Unlawful Business Practices
Violation of The Unfair Competition Law ("UCL")
Bus. & Prof. Code §§17200, et seq.
(On behalf of the California Class)

- 77. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.
- 78. The UCL defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. Prof. Code §17200.
- 79. A business act or practice is "unlawful" if it violates any established state or federal law.
- 80. Defendant's acts, omissions, misrepresentations, practices, and/or non-disclosures concerning the Products alleged herein, constitute "unlawful" business acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301, et seq. and its implementing regulations, including, at least, the following sections:
 - a. 21 U.S.C. §343(a), which deems food misbranded when its labeling contains a statement that is false or misleading in any particular;

- 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. §§331and 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.");

- 88. Section 110400 ("It is unlawful for any person to receive in commerce any food . . . that is falsely advertised or to deliver or proffer for delivery any such food"); and
- 89. Section 110660 ("Any food is misbranded if its labeling is false or misleading in any particular.").
- 90. Each of the challenged omissions, statements, and actions by Defendant violate the FDCA, and the Sherman Law, and, consequently, violates the "unlawful" prong of the UCL.
- 91. Defendant's conduct is further "unlawful" because it violates California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq. (the "FAL"), California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq. (the "CLRA"), and breaches express warranty, as discussed in the claims above and below.
- 92. By committing the unlawful acts and practices alleged above, Defendant has engaged, and continue to be engaged, in unlawful business practices within the meaning of California Business and Professions Code §§17200, et seq.
- 93. Through their unlawful acts and practices, Defendant has obtained, and continue to unfairly obtain, money from members of the Class. As such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and all members of the Class, to disgorge the profits Defendant made on these transactions, and to enjoin Defendant from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and denied an effective and complete remedy if such an order is not granted.
- 94. In accordance with California Business & Professions Code section 17203, and as Plaintiff lacks an adequate remedy at law, she seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices and to commence a corrective advertising campaign.

THIRD CAUSE OF ACTION

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

- 95. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.
- 96. The UCL defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. Prof. Code §17200.
- 97. A business act or practice is "unfair" under the Unfair Competition Law if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.
- 98. Defendant has violated, and continue to violate, the "unfair" prong of the UCL through their misleading description of the Products. The gravity of the harm to members of the Class resulting from such unfair acts and practices outweighs any conceivable reasons, justifications, or motives of Defendant for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Defendant engaged, and continued to engage, in unfair business practices within the meaning of California Business and Professions Code §§17200, et seq.
- 99. Through its unfair acts and practices, Defendant obtained, and continue to unfairly obtain, money from members of the Class. As such, Plaintiff has been injured and requests that this Court cause Defendant to restore this money to Plaintiff and the members of the Class, to disgorge the profits Defendant made on their Products, and to enjoin Defendant from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.
- 100. In accordance with California Business & Professions Code section 17203, and as Plaintiff lacks an adequate remedy at law, she seeks an order enjoining Defendant from continuing to

conduct business through unlawful, unfair, and/or fraudulent acts and practices and to commence a corrective advertising campaign.

FOURTH CAUSE OF ACTION

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

- 101. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.
- 102. The UCL defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. & Prof. Code §17200.
- 103. A business act or practice is "fraudulent" under the Unfair Competition Law if it actually deceives or is likely to deceive members of the consuming public.
- 104. Defendant's acts and practices of mislabeling their Products in a manner to suggest they principally contained their characterizing ingredients.
- 105. As a result of the conduct described above, Defendant has been, and will continue to be, unjustly enriched at the expense of Plaintiff and members of the proposed Class. Specifically, Defendant has been unjustly enriched by the profits it has obtained from Plaintiff and the Class from the purchases of its Products.
- 106. Through its fraudulent acts and practices, Defendant has improperly obtained, and continue to improperly obtain, money from members of the Class. As such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and the Class, to disgorge the profits Defendant has made, and to enjoin Defendant from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

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

FIFTH CAUSE OF ACTION

False Advertising Violation of California Business & Professions Code §§ 17500, et seg.

- 108. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.
- 109. Defendant uses advertising and packaging to sell its Products. Defendant disseminates advertising regarding its Products which by their very nature are deceptive, untrue, or misleading within the meaning of California Business & Professions Code §§17500, et seq. because those advertising statements contained on the labels are misleading and likely to deceive, and continue to deceive, members of the putative Class and the general public.
- 110. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading, and acted in violation of California Business & Professions Code §§17500, et seq.
- 111. The misrepresentations and non-disclosures by Defendant of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of California Business & Professions Code §§17500, et seq.
- 112. Through their deceptive acts and practices, Defendant has improperly and illegally obtained money from Plaintiff and the members of the Class. As such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and the members of the Class, and to enjoin Defendant from continuing to violate California Business & Professions Code §§17500, *et seq.*, as discussed above. Otherwise, Plaintiff and those similarly situated will continue to be harmed by Defendant's false and/or misleading advertising.

- 113. Pursuant to California Business & Professions Code §17535, Plaintiff seeks an Order of this Court ordering Defendant to fully disclose the true nature of its misrepresentations. Plaintiff additionally requests an Order: (1) requiring Defendant to disgorge its ill-gotten gains, (2) award full restitution of all monies wrongfully acquired by Defendant, and (3) interest and attorneys' fees. Plaintiff and the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.
- 114. As a result, and as they lack an adequate remedy at law, Plaintiff and the Class are entitled to equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched, and pray for relief as set forth below.

SIXTH CAUSE OF ACTION

Violation of the Consumers Legal Remedies Act California Civil Code §§ 1750, et seq.

- 115. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.
- 116. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§1750, *et seq.* (the "CLRA").
- 117. Plaintiff and each member of the proposed Class are "consumers" within the meaning of Civil Code §1761(d).
- 118. The purchases of the Products by consumers constitute "transactions" within the meaning of Civil Code §1761(e) and the Products constitute "goods" within the meaning of Civil Code §1761(a).
- 119. Defendant has violated, and continue to violate, the CLRA in at least the following respects:
 - a. §1770(5) pertaining to misrepresentations regarding the characteristics of goods sold—specifying that misleading representations regarding ingredients 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' 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).

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

SEVENTH CAUSE OF ACTION

Restitution Based On Quasi-Contract/Unjust Enrichment

- 126. Plaintiff incorporates each and every allegation contained in the paragraphs above as if rewritten herein.
 - 127. Plaintiff pleads this cause of action in the alternative.
- 128. Defendant's conduct in enticing Plaintiff and the Class to purchase its Products with false and misleading packaging is unlawful because the statements contained on the Defendant's Product labels are untrue.
- 129. Defendant took monies from Plaintiff and the Class for these Products and have been unjustly enriched at the expense of Plaintiff and the Class as a result of their unlawful conduct alleged herein, thereby creating a quasi-contractual obligation on Defendant to restore these illgotten gains to Plaintiff and the Class. It is against equity and good conscience to permit Defendant to retain the ill-gotten benefits received from Plaintiff and Class members.
- 130. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

PRAYER FOR RELIEF

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

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

- B. Restitution in such amount that Plaintiff and all members of the Class paid to purchase Defendant's Product or restitutionary disgorgement of the profits Defendant obtained from those transactions, for Causes of Action for which they are available.
 - C. Compensatory damages for Causes of Action for which they are available.
 - D. Statutory penalties for Causes of Action for which they are available.
 - E. Punitive Damages for Causes of Action for which they are available.
- F. A declaration and Order enjoining Defendant from marketing and labeling its Products deceptively, in violation of laws and regulations as specified in this Complaint.
- G. An Order awarding Plaintiff her costs of suit, including reasonable attorneys' fees and pre and post judgment interest.
- H. An Order requiring an accounting for, and imposition of, a constructive trust upon all monies received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein.
 - I. Such other and further relief as may be deemed necessary or appropriate.

DEMAND FOR JURY TRIAL

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

DATED: September 25, 2024 Respectfully submitted,

Michael D. Braun KUZYK LAW, LLP

2121 Avenue of the Stars, Ste. 800 Los Angeles, California 90067

Telephone: (213) 401-4100

Email: mdb@kuzykclassactions.com

Case 5:24-cv-06757 Document 1 Filed 09/26/24 Page 29 of 29

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Case 5:24-cv-06757 Filed 09/26/24 Page 1 of 1

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.)

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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 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

I.	BASIS OF JURISDICTION (Place	e an "X" in One Box Only)		CITIZENSHIP OF PR (For Diversity Cases Only)	INCIP.	AL PA	RTIES (Place an "X" in One Bo and One Box for Defena		ıintiff
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CONTRACT	TOI	RTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment	Only) PERSONAL INJURY 365 Personal Injury — Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS	FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent—Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities Exchange ★ 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	443 Housing/ Accommodations 445 Amer. w/Disabilities— Employment 446 Amer. w/Disabilities—Other 448 Education	510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee— Conditions of Confinement		870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC § 7609	895 Freedom of Informatic Act 896 Arbitration 899 Administrative Procedur Act/Review or Appeal Agency Decision 950 Constitutionality of Sta Statutes

V.	ORIGIN	(Place an	"X" in	One Rox	Only)

Original Removed from Remanded from Multidistrict Reinstated or 5 Transferred from Another District (specify) Litigation-Transfer Proceeding Appellate Court Reopened Litigation-Direct File

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

JUDGE

Brief description of cause:

Misleading labeling

REQUESTED IN ✓ CHECK IF THIS IS A CLASS ACTION **DEMAND \$ 5,000,001.00** CHECK YES only if demanded in complaint: UNDER RULE 23, Fed. R. Civ. P. **JURY DEMAND:** × Yes **COMPLAINT:**

IF ANY (See instructions):

DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

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

DOCKET NUMBER

VIII. RELATED CASE(S),