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7 **UNITED STATES DISTRICT COURT**
 8 **CENTRAL DISTRICT OF CALIFORNIA**

9 CINDY BUSTAMANTE, RITA SCHMOLL,
 10 and BARBARA REINBOTT, on behalf of
 themselves and all others similarly situated,

11 Plaintiffs,

12 v.

13 WAL-MART STORES, INC., and
 14 WAL-MART STORES EAST, L.P.

15 Defendants.

CLASS ACTION COMPLAINT

16 **INTRODUCTION**

17
 18 VIII. This is a proposed class action, brought on behalf of all those who purchased
 19 Walmart’s
 20 store-brand “**Great Value 100% Grated Parmesan Cheese,**” (the “Product”) in a Walmart
 21 store located in the United States, between February 25, 2010 and the present (“the Nationwide
 22 Class”).

23
 24 IX. This action is also brought on behalf of four proposed sub-classes, the California
 25 Sub-
 26 Class, the New Jersey Sub-Class, and the North Carolina Sub-Class (collectively “the State
 27 Sub-Classes”), composed of all those who purchased the Product at a Walmart store located in
 28

1 California, New Jersey, and North Carolina, respectively, during the relevant state sub-class
2 periods.

3 X. **“Great Value 100% Grated Parmesan Cheese”** is a Walmart store
4 -brand food product which is distributed by Defendants and is sold exclusively by Defendants
5 at Walmart stores, including Walmart stores located in every state in the United States.
6

7 XI. Despite naming the Product **“Great Value 100% Grated Parmesan Cheese,”**
8 and the
9 fact that the words **“100% Grated Parmesan Cheese”** appear prominently on the front label
10 of the Product, rigorous independent scientific testing has revealed that the Product actually
11 consists of at least 7.8% wood pulp, also known as cellulose, a filler and anti-clumping agent.
12

13 XII. Thus, the Product is not, in fact, **“100% Grated Parmesan Cheese”** and each
14 and
15 every container of the Product bears a uniformly-worded label which makes the same false,
16 affirmative statements of fact regarding the Product.
17

18 XIII. Upon information and belief, Defendants have been fully aware that the Product
19 is actually not composed of **“100% Grated Parmesan Cheese”** since the Product’s inception.

20 XIV. This complaint seeks injunctive, declaratory and monetary relief for Plaintiffs,
21 the
22 proposed Nationwide Class, and the proposed State Sub-Classes, as outlined in greater detail
23 herein.
24

25 **JURISDICTION AND VENUE**

26 XV. There is federal subject matter jurisdiction over this matter under the Class
27 Action
28

1 Fairness Act in that it is a proposed class action, there are more than 100 members of the
2 Nationwide Class and each State Sub-Class, at least some class members and some defendants
3 are citizens of different states, and the amount in controversy is more than \$5 million.

4 **THE PARTIES**

5 XVI. Plaintiff Cindy Bustamante resides in Palmdale, California.

6 XVII. Like all members of the proposed class, Plaintiff Bustamante purchased the
7 Product in a Walmart store located in the United States between February 25, 2010 and the
8 present. Like all members of the proposed California Sub-class, Plaintiff Bustamante
9 purchased the Product at a Walmart store located in California between February 25, 2010 and
10 the present.
11

12 XVIII. Specifically, Plaintiff Bustamante purchased the Product at Walmart Store
13 located
14 in 37140 47th Street E., Palmdale, California, on various dates between February 25 2010, and
15 the present, including on January 2016, when Plaintiff Bustamante purchased an 8 ounce
16 container of the Product at this location for approximately \$2.98.
17

18 XIX. Plaintiff Rita Schmoll resides in Cherry Hill, New Jersey.

19 XX. Like all members of the proposed class, Plaintiff Schmoll purchased the Product
20 in a
21 Walmart store located in the United States between February 25, 2010 and the present. Like all
22 members of the proposed New Jersey sub-class, Plaintiff purchased the Product at a Walmart
23 store located in New Jersey between February 25, 2010 and the present.
24

25 XXI. Specifically, Plaintiff Schmoll purchased the Product at Walmart Store #5340
26 located
27
28

1 in Cherry Hill, New Jersey, on various dates between February 25, 2010 and the present,
2 including on February 22, 2016, when Plaintiff Schmoll purchased two 8 ounce containers of
3 the Product at this location for \$2.98 each. See Attachment A, Receipt dated February 22, 2016.

4 XXII. Plaintiff Barbara Reinbott resides in Rockingham, North Carolina.

5 XXIII. Like all members of the proposed class, Plaintiff Reinbott purchased the Product
6 in a
7 Walmart store located in the United States between February 25, 2010 and the present. Like all
8 members of the proposed North Carolina Sub-Class, Plaintiff Reinbott purchased the Product at
9 a Walmart store located in North Carolina between February 25, 2010 and the present.

10 XXIV. Specifically, Plaintiff Reinbott purchased the Product at the Walmart Store
11 located
12 in Rockingham, North Carolina, on various dates between February 25, 2010 and the present,
13 including on or about January 22, 2016, when Plaintiff Reinbott purchased a 16 ounce
14 container of the Product at this location for approximately \$5.42.

15 XXV. Defendant Wal-Mart Stores, Inc. is a corporation which is headquartered at 702
16 SW
17 8th Street, Bentonville, Arkansas 72716. The uniformly-worded label on the product admits,
18 inter alia, that the product was “**DISTRIBUTED BY: Wal-Mart Stores, Inc.**” Upon
19 information and belief, Defendant Wal-Mart Stores, Inc. is the owner and operator of various
20 Walmart stores throughout the United States, including California.

21 XXVI. Defendant Wal-Mart Stores East, L.P. maintains its principal offices at 702 SW
22 8th
23
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1 Street, Bentonville, Arkansas 72716. Wal-Mart Stores East, L.P. purports to own and operate
2 all Walmart stores in various states, including New Jersey and Pennsylvania.

3 XXVII. Together, Defendants Wal-Mart Stores, Inc. and Wal-Mart Stores East,
4 L.P.
5 (collectively “Walmart”) jointly distributed, advertised, labeled, sold and/or manufactured the
6 product in, inter alia, California, New Jersey, and North Carolina, with each defendant jointly
7 determining that each such container of the product would bear the name “**Great Value 100%**
8 **Grated Parmesan Cheese**” on the front of the Product.
9

10 **CLASS ACTION ALLEGATIONS**

11 XXVIII. Plaintiffs bring this action as a class action pursuant to Fed.R.Civ.P. 23,
12 on behalf of a
13 Nationwide Class defined as:

14 **All persons who, between February 25, 2010 and the present,**
15 **purchased one or more containers of “Great Value 100%**
16 **Grated Parmesan Cheese” at a Walmart store located in the**
17 **United States.**

18 XXIX. Plaintiff ** also brings this action as a class action pursuant to Fed.R.Civ.P. 23,
19 on
20 behalf of a California Sub-Class defined as:

21 **All persons who, between February 25, 2010 and the present,**
22 **purchased one or more containers of “Great Value 100%**
23 **Grated Parmesan Cheese” at a Walmart store located in**
24 **California.**

25 XXX. Plaintiff Schmoll also brings this action as a class action pursuant to
26 Fed.R.Civ.P. 23,
27 on behalf of a New Jersey Sub-Class defined as:
28

1 **All persons who, between February 25, 2010 and the present,**
2 **purchased one or more containers of “Great Value 100%**
3 **Grated Parmesan Cheese” at a Walmart store located in New**
4 **Jersey.**

5 XXXI. Plaintiff Reinbott also brings this action as a class action pursuant to
6 Fed.R.Civ.P. 23,
7 on behalf of a North Carolina Sub-Class defined as:

8 **All persons who, between February 25, 2010 and the present,**
9 **purchased one or more containers of “Great Value 100%**
10 **Grated Parmesan Cheese” at a Walmart store located in**
11 **North Carolina.**

12 XXXII. The members of the class and sub-classes for whose benefit this action is
13 brought are so
14 numerous that joinder of all members is impracticable.

15 XXXIII. Upon information and belief, the proposed Nationwide Class is
16 composed of over
17 100,000 persons and each proposed State Sub-Class is composed of at least 5,000 persons.

18 XXXIV. No violations alleged in this complaint are a result of any oral
19 communications or
20 individualized interaction of any kind between class members and Defendants.

21 XXXV. Rather, all claims in this matter arise from the identical, false, written
22 affirmative
23 statements on the Product label as outlined in detail herein.

24 XXXVI. There are common questions of law and fact affecting the rights of all
25 Nationwide
26 Class members, including, inter alia, the following:
27
28

1 **2. Whether at least 7.8% of the Product consists of wood pulp;**

2 **3. Whether the Product is, in fact, 100% parmesan cheese;**

3 **4. Whether naming the Product “Great Value 100% Grated Parmesan**
4 **Cheese” is false, deceptive and/or misleading;**

5 **5. Whether placing the name “Great Value 100% Grated Parmesan**
6 **Cheese” in large letters on the front of the Product was false,**
7 **deceptive and/or misleading;**

8 **6. Whether naming the Product “100% Grated Parmesan Cheese”**
9 **would be understood by the average consumer to be a claim by the**
10 **manufacturer and/or seller of the Product that 100% of the**
11 **Product consisted of parmesan cheese;**

12 **7. The date each Defendant became aware that at least 7.8% of the**
13 **Product consisted wood pulp.**

14 XXXVII. In addition, there are common questions of law and fact affecting the
15 rights of all

16 California Sub-Class members, including, inter alia, the following:

17 **a. Whether Defendants’ actions, as outlined herein, violated the**
18 **California Business & Professions Code § 17200 et seq.;**

19 **b. Whether Defendants’ actions, as outlined herein, violated the**
20 **California Business & Professions Code § 17500 et seq.;**

21 **c. Whether Defendants’ action in placing the words “100% Grated**
22 **Parmesan Cheese” in large letters on the front of the Product**
23 **constituted an express or implied warranty under California law;**
24 **and**

25 **d. Whether, by the facts alleged herein, Defendants have breached an**
26 **express or implied warranty under California common law.**

27 XXXVIII. In addition, there are common questions of law and fact affecting the
28 rights of all New

Jersey Sub-Class members, including, inter alia, the following:

- 1 **a. Whether Defendants’ action, in naming the Product “Great Value**
2 **100% Grated Parmesan Cheese,” was a misleading sales practice in**
3 **the sale of goods in violation of N.J.S.A. 56:8-2 of the New Jersey**
4 **Consumer Fraud Act;**
- 5 **b. Whether Defendants’ action, in placing a uniform written**
6 **statement on the front of the Product, describing the Product as**
7 **“100% Grated Parmesan Cheese”, was a false, affirmative**
8 **statement of fact in the sale of goods in violation of N.J.S.A. 56:8-2**
9 **of the New Jersey Consumer Fraud Act;**
- 10 **c. Whether Defendants’ action in placing the words “100%**
11 **Grated Parmesan Cheese” in the Product name and on the**
12 **front of the Product label constituted an express warranty**
13 **under New Jersey law;**
- 14 **d. Whether, by the facts alleged herein, Defendants have breached an**
15 **express or implied warranty under New Jersey law;**
- 16 **e. Whether the Product label was a consumer notice or warranty**
17 **within the meaning of the New Jersey Truth in Consumer Contract,**
18 **Warranty and Notice Act;**
- 19 **f. Whether Defendants’ actions, as described herein, violated the New**
20 **Jersey Truth in Consumer Contract, Warranty and Notice Act;**
- 21 **g. Whether an implied contract relating to the sale of the Product**
22 **existed under New Jersey common law between Defendants and**
23 **each member of the New Jersey Sub-Class; and**
- 24 **h. Whether, by placing false statements of fact on the Product label, as**
25 **described herein, Defendants breached the implied duty of good**
26 **faith and fair dealing which was part of the implied contract of sale**
27 **between Defendants and each member of the New Jersey Sub-**
28 **Class.**

XXXIX. In addition, there are common questions of law and fact affecting the rights of all

North Carolina Sub-Class members, including, *inter alia*, the following:

- a. Whether Defendants’ action, in naming the Product “Great Value 100%**
 Grated Parmesan Cheese” and placing these words on the front of the
 Product label violated the North Carolina Unfair and Deceptive
 Trade Practices Act, N.C. Gen. Stat. Sec. 75.1-1, et seq;

1 **b. Whether Defendants’ action, in naming the Product “Great Value 100%**
2 **Grated Parmesan Cheese” and placing these words on the front of the**
3 **Product label constituted an express warranty under North Carolina**
4 **law;**

5 **c. Whether, by the facts alleged herein, Defendants have breached an express**
6 **warranty under North Carolina law;**

7 **d. Whether an implied contract relating to the sale of the Product existed**
8 **under North Carolina common law between Defendants and each**
9 **member of the North Carolina Sub-Class; and**

10 **e. Whether, by placing false statements of fact on the Product label, as**
11 **described herein, Defendants breached the implied duty of good faith**
12 **and fair dealing which was part of the implied contract of sale between**
13 **Defendants and each member of the North Carolina Sub-Class.**

14 XL. Plaintiffs are each members of the Nationwide Class and respective State Sub-
15 Class

16 they seek to represent.

17 XLI. The claims of Plaintiffs are not only typical of all Nationwide Class and State
18 Sub-

19 Class members, they are identical.

20 XLII. All claims of Plaintiffs and the Nationwide Class and State Sub-Classes arise
21 from the

22 identical false, written statement of affirmative fact on the Product label as described herein.

23 XLIII. All claims of Plaintiffs and the Nationwide Class and State Sub-Classes are
24 based on

25 the same legal theories.

26 XLIV. Plaintiffs have no interest antagonistic to, or in conflict with, the Nationwide
27 Class and

28 State Sub-Classes.

1 LIX. A food product is deemed misbranded under federal law if, inter alia, its labeling
2 is
3 false or misleading in any particular. 21 U.S.C. §343(a) (“**A food shall be deemed to be**
4 **misbranded--(a) False or misleading label. If (1) its labeling is false or misleading in any**
5 **particular...”**)

6 LX. The use of the term “100%”, when placed in front of the words “Grated
7 Parmesan
8 Cheese” renders the labeling of the Product false and misleading to the average consumer,
9 since at least 7.8% of the Product is not parmesan cheese---or any type of cheese at all---, but
10 rather wood pulp.
11

12 LXI. In addition, the use of the name “**Grated Parmesan Cheese**” to describe the
13 Product violates other federal standards, including 21 C.F.R. §133.165 and 21 C.F.R. §133.146.
14

15 LXII. Specifically, 21 C.F.R. §133.165 and 21 C.F.R. §133.146 allows the use of
16 anticaking
17 and antimycotic agents, but limits the inclusion of such additional ingredients to current
18 industry standards, stating: “**the cumulative levels of [such ingredients] which shall not**
19 **exceed current good manufacturing practice...**”
20

21 LXIII. A wood pulp content of 7.8% exceeds current industry standards and good
22 manufacturing practice within the parmesan cheese industry, which is currently no more than
23 3%.
24

25 LXIV. Defendants, as distributors, developers, exclusive sellers and/or manufacturers
26 of
27
28

1 “**Great Value 100% Grated Parmesan Cheese,**” are aware of the contents of their own
2 Product and have been aware since the Product’s inception that the Product does not consist of
3 100% parmesan cheese.

4 LXV. Despite this, Defendants opted to name the Product “**Great Value 100%**
5 **Grated**
6 **Parmesan Cheese,**” knowing that at least 7.8% of the Product was not cheese at all, but rather
7 wood pulp.
8

9 LXVI. Despite all of the foregoing, Defendants continue to sell the Product, with the
10 same
11 written, false, uniformly-worded name outlined herein, in Walmart stores throughout the
12 United States, including California, New Jersey, and North Carolina.
13

14 **COUNT I**

15 **BREACH OF WARRANTY**

16 **On Behalf of the Nationwide Class**

17 LXVII. Defendants sold the Product in their regular course of business.
18

19 LXVIII. Plaintiffs and the members of the Nationwide Class purchased the
20 Product.
21

22 LXIX. The written, uniformly-worded name of the Product, displayed in large letters on
23 the
24 front of the Product as depicted herein, constituted an express warranty provided to all
25 purchasers of the Product under the law of each state in the United States in which the Product
26 was sold that the Product was “**100% Grated Parmesan Cheese.**”
27
28

1 LXX. Defendants' written affirmations of fact, promises, and/or descriptions on the
2 Product
3 in that name were part of that express warranty under the laws of each state in the United States
4 in which the Product was sold.

5 LXXI. By the acts alleged herein, Defendants breached that warranty because the
6 Product
7 cannot and does not conform to the properties Defendants represented in that name.
8

9 LXXII. The false information provided in that name was undiscoverable to Plaintiffs
10 and the
11 members of the Nationwide Class at the time of purchase of the Product.
12

13 LXXIII. All conditions precedent to seeking liability under this claim for breach
14 of warranty
15 have been performed by or on behalf of Plaintiffs and the members of the Nationwide Class in
16 terms of paying for the goods at issue.
17

18 LXXIV. Defendants had actual and/or constructive notice of the false information
19 and
20 to date have taken no action to remedy their breaches of warranty.

21 LXXV. Defendants were on notice of their breaches of warranty and have
22 refused to remedy
23 such breaches.
24

25 LXXVI. By placing the Product into the stream of commerce, by operation of law
26 in each state
27
28

1 in the United States, Defendants also impliedly warranted to Plaintiffs and the members of the
2 Nationwide Class that the Product was “**100% Grated Parmesan Cheese.**”

3 LXXVII. Defendants’ breaches of warranty have caused Plaintiffs and the
4 members of the
5 Nationwide Class to suffer injuries by paying for falsely labeled products. As a direct and
6 proximate result of Defendants’ breaches of warranty, Plaintiffs and the members of the
7 Nationwide Class have suffered damages and continue to suffer damages, including economic
8 damages in terms of the difference between the value of the Product as promised and the value
9 of the Product as delivered.
10

11 LXXVIII. As a result of the breach of these warranties, Plaintiffs and the members
12 of the
13 Nationwide Class are entitled to legal and equitable relief including damages, costs, attorneys’
14 fees, rescission, and/or other relief as deemed appropriate, for an amount to compensate them
15 for not receiving the benefit of their bargain.
16

17
18 **COUNT II**

19 **UNJUST ENRICHMENT**

20 **On Behalf of the Nationwide Class**

21 LXXIX. Plaintiffs incorporate all preceding paragraphs of this complaint as if set
22 forth fully
23 herein.
24

25 LXXX. Plaintiffs and the members of the Nationwide Class have conferred
26 substantial benefits
27
28

1 on Defendants by purchasing the Product, and Defendants have knowingly and willingly
2 accepted and enjoyed these benefits.

3 LXXXI. Defendants either knew or should have known that the payments
4 rendered by Plaintiffs
5 and the members of the Nationwide Class were given and received with the expectation that the
6 Product would be as represented and warranted.
7

8 LXXXII. Under the common law of unjust enrichment in every state in the United
9 States
10 where the Product was sold, it would be inequitable for Defendants to retain the benefit of the
11 payments under these circumstances and such retention constitutes unjust enrichment.
12

13 LXXXIII. Under the law of every state in the United States where the Product was
14 sold, both law
15 and equity demand disgorgement of Defendants' ill-gotten gains.
16

17 LXXXIV. As a direct and proximate result of Defendants' wrongful conduct and
18 unjust
19 enrichment, Plaintiffs and the members of the Nationwide Class are entitled to restitution from
20 Defendants and institution of a constructive trust disgorging all profits, benefits, and other
21 compensation obtained by Defendants.
22

23 **COUNT III**

24 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**
25 **Unlawful Business Acts and Practices**

26 **On Behalf of the California Sub-Class Only**

27 LXXXV. Plaintiff Bustamante incorporates all preceding paragraphs of this
28 complaint as if set forth fully herein.

1 LXXXVI. Defendants' conduct as set forth herein constitutes unlawful business
2 acts and practices
3 within the meaning of the California Business & Professions Code §17200, et seq.

4 LXXXVII. Defendants sold the Product in California during the relevant class
5 period applicable to
6 Plaintiff Bustamante and the members of the California Sub-Class.

7 LXXXVIII. Defendants are each a "person" within the meaning of the Sherman Food
8 Drug &
9 Cosmetic Law, California Health & Safety Code section 109875, et seq. (the "Sherman Law").

10 LXXXIX. Defendants' business practices, as described herein, are unlawful under
11 section 17200,
12 et seq. by virtue of Defendants' violations of the advertising provisions of Article 3 of the
13 Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

14 XC. Defendants' business practices are unlawful under section 17200, et seq. by
15 virtue of
16 Defendants' violations of section 17500, et seq., which forbids untrue and misleading
17 advertising.

18 XCI. Defendants' business practices are unlawful under section 17200 et seq. by
19 virtue of
20 Defendants' violations of the Consumers Legal Remedies Act, California Civil Code section
21 1750, et seq.

22 85. Defendants sold Plaintiff Bustamante and the members of the California Sub-Class the
23 Product, which was not capable of being sold or held legally in California, and which was
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1 legally worthless or worth less than advertised, and Plaintiff Bustamante and the members of
2 the California Sub-Class paid a premium price for the Product.

3 86. As a result of Defendants' illegal business practices, Plaintiff Bustamante and the
4 members of the California Sub-Class, pursuant to California Business and Professions Code
5 section 17203, are entitled to an order enjoining such future conduct and such other orders and
6 judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to
7 Plaintiff Tye and members of the California Sub-Class any money paid for the Product.
8

9 87. Defendants' unlawful business acts present a threat and a reasonable continued
10 likelihood of injury to Plaintiff Bustamante and members of the California Sub-Class.
11

12 88. As a result of Defendants' conduct, Plaintiff Bustamante and members of the California
13 Sub-Class, pursuant to California Business and Professions Code section 17203, are entitled to
14 an order enjoining such future conduct by Defendants, and such other orders and judgments
15 which may be necessary to disgorge Defendants' ill-gotten gains and restore to Plaintiff ** and
16 members of the California Sub-Class any monies paid for the Product.
17

18 **COUNT IV**

19 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**
20 **Unfair Business Acts and Practices**

21 **On Behalf of the California Sub-Class Only**

22
23 89. Plaintiff Bustamante incorporates all preceding paragraphs of this complaint as if set
24 forth fully herein.

25 90. Defendants' conduct as set forth herein constitutes unfair business acts and practices
26 within the meaning of the California Business and Professions Code § 17200, et seq.
27
28

1 91. Defendants sold the Product in California during the relevant class period applicable
2 to Plaintiff Bustamante and the members of the California Sub-Class.

3 92. Plaintiff Bustamante and the members of the California Sub-Class suffered a
4 substantial injury by virtue of buying the Product which they would not have suffered absent
5 Defendants' illegal conduct.

6 93. Defendants' deceptive marketing, advertising, packaging and labeling of the
7 Product and their sale of unsalable misbranded products that were illegal to possess was of
8 no benefit to consumers, and the harm to consumers and competition is substantial.

9 94. Defendants sold the product to Plaintiff Bustamante and the California Sub-Class,
10 which was not capable of being legally sold in California and which was legally worthless.

11 95. Plaintiff Bustamante and the members of the California Sub-Class had no way of
12 reasonably knowing that the Product was misbranded and was not properly marketed,
13 advertised, packaged and labeled, and thus they could not have reasonably avoided the injury
14 each of them suffered.

15 96. The consequences of Defendants' conduct as set forth herein outweigh any
16 justification, motive or reason therefor. Defendants' conduct is and continues to be immoral,
17 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff
18 Bustamante and the California Sub-Class.

19 97. Pursuant to Business and Professions Code § 17203, and as a result of Defendants'
20 conduct, Plaintiff Bustamante and the California Sub-Class are entitled to an order enjoining
21 such future conduct by Defendants, and such other orders and judgments which may be
22 necessary to disgorge Defendants' ill-gotten gains and restore any money paid by Plaintiff
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1 Bustamante and the members of California Sub-Class to purchase the Product from Defendants
2 in California.

3
4 **COUNT V**

5 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**
6 **Fraudulent Business Acts and Practices**

7 **On Behalf of the California Sub-Class Only**

8
9 98. Plaintiff Bustamante incorporates all preceding paragraphs of this complaint as if set
10 forth fully herein.

11 99. Defendants' conduct as set forth herein constitutes fraudulent business practices
12 under California Business and Professions Code section 17200, et seq.

13 100. Defendants' conduct in mislabeling and misbranding its food products originated
14 from and was approved at Defendants' headquarters.

15 101. Defendants sold the Product in California during the relevant class period.

16 102. Defendants' misleading marketing, advertising, packaging, and labeling of the
17 Product and their misrepresentations that the Product was salable, capable of legal possession
18 and not misbranded were likely to deceive reasonable consumers and, in fact, Plaintiff
19 Bustamante and the members of the California Sub-Class were deceived. By the acts set forth
20 herein, Defendants have engaged in fraudulent business acts and practices.

21 103. Defendants' fraud and deception caused Plaintiff Bustamante and members of the
22 California
23 Sub-Class to purchase the Product from Defendants which they would have not otherwise
24 purchased had they known the true nature of the Product.
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1 104. Defendants sold Plaintiff Bustamante and members of the California Sub-Class the
2 Product, which was not capable of being sold or held legally and which was legally worthless.
3 Plaintiff Bustamante and members of the California Sub-Class paid a premium price for the
4 Product.

5 105. As a result of Defendants' conduct as set forth herein, Plaintiff Bustamante and
6 members of the California Sub-Class, pursuant to California Business and Professions Code
7 section 17203, are entitled to an order enjoining such future conduct by Defendants, and such
8 other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains
9 and restore any money paid for the Product by Plaintiff Bustamante and members of the
10 California Sub-Class.
11

12
13 **COUNT VI**

14 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.**
15 **Misleading and Deceptive Advertising**

16 **On Behalf of the California Sub-Class Only**

17 106. Plaintiff Bustamante incorporates all preceding paragraphs of this complaint as if set
18 forth fully herein.

19 107. Plaintiff Bustamante asserts this cause of action for violations of California
20 Business and Professions Code § 17500, et seq. for misleading and deceptive advertising
21 against Defendants on behalf of the California Sub-Class.
22

23 108. Defendants sold the Product to Plaintiff Bustamante and the members of the
24 California Sub-Class in California.

25 109. Defendants sold the Product to Plaintiff Bustamante and the California Sub-Class,
26 which was not capable of being legally sold in California and which was legally worthless.
27

28 110. By the acts alleged herein, Defendants engaged in a scheme of offering the Product

1 for sale in California to Plaintiff Bustamante and the members of the California Sub-Class by
2 way of, inter alia, product packaging and labeling.

3 111. These materials misrepresented the true nature of Defendants' Product, as outlined
4 in
5 greater detail previously.

6 112. The name of the Product used within California came within the
7 definition of advertising as contained in California Business and Professions Code § 17500, et
8 seq. in that such Product name was intended as an inducement to purchase the Product and is a
9 statement disseminated by Defendants to Plaintiff Bustamante and the California Sub-Class
10 that was intended to reach members of the California Sub-Class.

11 113. Defendants knew, or in the exercise of reasonable care, should have known, that the
12 Statement that the Product was "**100% Grated Parmesan Cheese**" was misleading and
13 deceptive as set forth herein.

14 114. In furtherance of their plan and scheme, Defendants prepared and distributed within
15 California via product packaging and labeling, statements that misleadingly and deceptively
16 represented the composition and the nature of the Product.

17 115. Plaintiff Bustamante and the members of the California Sub-Class necessarily and
18 reasonably relied on the deceptive Product name, and were the intended targets of such
19 representations.

20 116. Indeed, as the misrepresentations at issue were contained in the name of the
21 Product
22 itself, the Court may presume that the members of the California Sub-Class relied upon this
23 false statement.
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1 117. Defendants' conduct in disseminating misleading and deceptive statements in
2 California to Plaintiff Bustamante and the members of the California Sub-Class was and is
3 likely to deceive reasonable consumers by obfuscating the true composition and nature of the
4 Product in violation of the "misleading prong" of California Business and Professions Code §
5 17500, et seq.

6
7 118. As a result of Defendants' violation of the "misleading prong" of California
8 Business
9 and Professions Code § 17500, et seq., Defendants have been unjustly enriched at the expense
10 of Plaintiff Bustamante and the members of the California Sub-Class.

11
12 119. Misbranded products cannot be legally sold or held in California and are legally
13 worthless.

14 120. Pursuant to California Business and Professions Code § 17535, Plaintiff Bustamante
15 and the members of the California Sub-Class are entitled to an order enjoining such future
16 conduct by Defendants, and such other orders and judgments which may be necessary to
17 disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Product in
18 California.
19

20 **COUNT VII**

21 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.**
22 **Untrue Advertising**

23 **On Behalf of the California Sub-Class Only**

24 121. Plaintiff Bustamante incorporates all preceding paragraphs of this complaint as if set
25 forth fully herein.

26
27 122. Plaintiff Bustamante asserts this cause of action against Defendants on behalf of the
28

1 California Sub-Class for violations of California Business and Professions Code § 17500, et
2 seq., regarding untrue advertising.

3 123. Defendants engaged in a scheme of offering the Product for sale to Plaintiff Tye and
4 the members of the California Sub-Class in California by way of a misleading and false
5 description of the Product in the name of the Product, as outlined herein.

6 124. That name misrepresented the true contents and nature of the
7 Product.

8 125. With regard to sales of the Product in California during the class period relevant to
9 the California Sub-Class, Defendants' advertisements and inducements were made in
10 California and come within the definition of advertising as contained in California Business
11 and Professions Code § 17500, et seq. in that the Product name, as expressed on the Product's
12 packaging and labeling, was intended as an inducement to purchase the Product, and are
13 statements disseminated by Defendant to Plaintiff Bustamante and the California Sub-Class.
14

15 126. Defendants knew, or in the exercise of reasonable care, should have known that these
16 statements were untrue.
17

18 127. In furtherance of their plan and scheme, Defendants prepared and distributed in
19 California via the Product's packaging and labeling, statements that falsely advertise the
20 composition of the Product, as outlined in greater detail previously, and which falsely
21 misrepresented the nature of the Product.
22

23 128. Plaintiff Bustamante and the members of the California Sub-Class were the intended
24 targets of such representations and would reasonably be deceived by the name "**100%**
25 **Grated Parmesan Cheese.**"
26

27 129. Indeed, it is impossible to envision a scenario in which someone who desired to
28

1 purchase unadulterated parmesan cheese would not look at the label of the product, which
2 identified the name of the product as **“100% Grated Parmesan Cheese.”**

3 130. Defendants’ conduct in disseminating untrue advertising throughout California
4 deceived Plaintiff Bustamante and members of the California Sub-Class by obfuscating the
5 nature and quality of the Product in violation of the “untrue prong” of California Business and
6 Professions Code § 17500.

7
8 131. As a result of Defendants violations of the “untrue prong” of California Business and
9 Professions Code § 17500, et seq., Defendants have been unjustly enriched at the expense of
10 Plaintiff and the members of the California Sub-Class.

11
12 132. Pursuant to California Business and Professions Code § 17535, Plaintiff Bustamante
13 and the members of the California Sub-Class are entitled to an order enjoining such further
14 conduct by Defendants, and such other orders and judgments which may be necessary to
15 disgorge Defendants’ ill-gotten gains and restore any money paid for the Product in California
16 by Plaintiff Bustamante and the members of the California Sub-Class.

17
18 **COUNT VIII**

19 **CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, et seq.**

20 **On Behalf of the California Sub-Class Only**

21 133. Plaintiff Bustamante incorporates all preceding paragraphs of this complaint as if set
22 forth fully herein.

23
24 134. This cause of action is brought pursuant to the California Consumers Legal Remedies
25 Act, California Civil Code § 1750, et seq. (the “CCLRA”) because the actions of Defendants,
26 and their conduct described herein, constitute transactions that have resulted in the sale or lease
27 of goods or services to consumers in California.
28

1 135. Plaintiff Bustamante and each member of the California Subclass, are consumers as
2 defined by California Civil Code § 1761(d).

3 136. Defendants intended to sell the Product to, inter alia, Plaintiff Bustamante and the
4 members of the California Sub-Class.

5 XCII. The Product is a good within the meaning of Civil Code § 1761(a).

6 XCIII. Defendants violated the CCLRA in at least the following respects:

- 7
- 8 **a. in violation of § 1770(a)(5), in that these Defendants represented that**
9 **the Product had characteristics, ingredients, and benefits (i.e. that it**
10 **contained pork) which the Product did not actually possess;**
- 11 **b. in violation of § 1770(a)(7), in that these Defendants represented that**
12 **the Products was of a particular standard, quality, or grade (i.e. that it**
13 **was “100% Grated Parmesan Cheese”), when the Product was**
14 **actually, at most, 92.02% parmesan cheese;**
- 15 **c. in violation of § 1770(a)(9), in that these Defendants have advertised**
16 **the Product on its label as being “100% Grated Parmesan Cheese,”**
17 **with intent not to sell the Product as advertised, because the Product**
18 **was actually less than 100% parmesan cheese; and**
- 19 **d. in violation of § 1770(a)(16), in that these Defendants represented that**
20 **the Product has been supplied in accordance with previous**
21 **representations, which the Product did not meet.**

22 137. Defendants violated the CCLRA by representing the Product as “100%” Grated
23 Parmesan Cheese, when Defendants knew, or should have known, that the representations and
24 advertisements were false and misleading.

25 138. The acts and omissions of these Defendants constitute unfair, deceptive, and
26 misleading business practices in violation of Civil Code § 1770(a).

27 139. Plaintiff Bustamante has sent Defendants notice in writing, by certified mail, of the
28 violations alleged herein and demanded that these Defendants remedy those violations.

140. Defendants have not ceased the challenged conduct.

1 141. As a result, Plaintiff Bustamante and the California Sub-Class now seek actual,
2 punitive, and statutory damages pursuant to the CCLRA for the California Subclass.

3 142. The conduct by these Defendants was malicious, fraudulent, and wanton in that these
4 Defendants intentionally and knowingly provided misleading information to the public.

5 **COUNT IX**

6 **CALIFORNIA COMMON LAW REGARDING BREACH OF EXPRESS WARRANTY**

7 **On Behalf of the California Sub-Class Only**

8
9 143. Plaintiff Bustamante incorporates all preceding paragraphs of this complaint as if
10 set forth fully herein.

11
12 144. By operation of California law, Defendants entered into a contract with each
13 member of the California Sub-Class when the member purchased a container of the Product at
14 Walmart located in California.

15 145. By operation of California law, the terms of this contract included an express
16 warranty incorporating the identical affirmation, promise and description by Defendants in the
17 Product name, that the Product contained **“100% Grated Parmesan Cheese.”**

18
19 146. The relevant terms and language of the express warranty between Defendants and
20 each member of the California Sub-Class are identical.

21 147. Defendants have breached the terms of this express warranty in an identical
22 manner
23 for each member of the California Sub-Class because the Product actually contained no more
24 than 92.02% parmesan cheese and therefore did not, and could not, conform to the affirmation,
25 promise, and description in the name of the Product.
26
27
28

1 148. As a direct and proximate result of this breach of express warranty by
2 Defendants,
3 each member of the California Sub-Class has suffered economic loss.
4

5
6
7 **COUNT X**

8 **NEW JERSEY CONSUMER FRAUD ACT, N.J.S.A. 56:8-1 et seq.**

9 **On Behalf of the New Jersey Sub-Class Only**
10

11 149. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set
12 forth fully herein.

13 150. The New Jersey Consumer Fraud Act clearly applies to all sales of “**Great Value**
14 **100% Grated Parmesan Cheese**” sold in Walmart stores located in New Jersey.
15

16 151. The New Jersey Consumer Fraud Act (“CFA”) was enacted to protect consumers
17 against sharp and unconscionable commercial practices by persons engaged in the sale of goods
18 or services. See Marascio v. Campanella, 298 N.J. Super. 491, 500 (App. Div. 1997).
19

20 152. The CFA is a remedial statute which the New Jersey Supreme Court has
21 repeatedly
22 held must be construed liberally in favor of the consumer to accomplish its deterrent and
23 protective purposes. See Furst v. Einstein Moomjy, 182 N.J. 1, 11-12 (2004) (“**The Consumer**
24 **Fraud Act is remedial legislation that we construe liberally to accomplish its broad**
25 **purpose of safeguarding the public.**”).
26
27
28

1 153. With regard to the CFA, “[t]he available legislative history demonstrates that
2 **the Act was intended to be one of the strongest consumer protection laws in the nation.”**

3 New Mea Const. Corp. v. Harper, 203 N.J. Super. 315, 319 (App. Div. 1986).

4 154. For this reason, the **“history of the Act is one of constant expansion of
5 consumer
6 protection.”** Kavky v. Herballife International of America, 359 N.J. Super. 497, 504 (App.
7 Div. 2003).

9 155. The CFA was intended to protect consumers **“by eliminating sharp practices
10 and
11 dealings in the marketing of merchandise and real estate.”** Lemelledo v. Beneficial
12 Management Corp., 150 N.J. 255, 263 (1997).

14 156. Specifically, N.J.S.A. 56:8-2 of the CFA prohibits **“unlawful practices,”** which
15 are defined as:

16 **“The act, use or employment of any unconscionable
17 commercial practice, deception, fraud, false pretense,
18 misrepresentation, or the knowing, concealment, suppression,
19 or omission of any material fact with intent that others rely
20 upon such concealment, suppression or omission whether or
21 not any person has in fact been misled, deceived or damaged
22 thereby.”**

23 157. The catch-all term **“unconscionable commercial practice”** was added to the
24 CFA by amendment in 1971 to ensure that the Act covered, inter alia, **“incomplete
25 disclosures.”** Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 472 (App. Div. 1982).

26 158. In describing what constitutes an **“unconscionable commercial practice,”** the
27 New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a
28 broad business ethic. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994).

1 159. **“Great Value 100% Grated Parmesan Cheese”** is a “credence good,” because
2 its properties and purported benefits cannot be independently assessed or verified by the
3 consumer at the time of purchase and such properties and benefits are made known to
4 consumers only through the information provided on the label by the product’s manufacturer
5 and distributor. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010). See also Richard
6 A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L.Rev. 1477, 1489 (1999)
7 (“**A good is a credence good if the consumer cannot readily determine its quality by**
8 **inspection or even use, so that he has to take its quality ‘on faith.’**”).
9

10 160. The New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496,
11 522 (2010) spoke regarding the relationship between dishonest product labeling and credence
12 goods, stating:
13

14 **“A rational consumer does not randomly take a bottle of pills**
15 **off a shelf and then purchase it without reading the**
16 **packaging and labeling.”**

17 161. In order to state a cause of action under the CFA, a plaintiff does not need to
18 show
19 reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 332 N.J.Super.
20 31, 43, 752 A.2d 807 (App.Div.2000); Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607-
21 608, 691 A.2d 350 (1997) (holding that reliance is not required in suits under the CFA because
22 liability results from **“misrepresentations whether ‘any person has in fact been misled,**
23 **deceived or damaged thereby”**”).
24

25 162. Rather, the CFA requires merely a causal nexus between the false statement and
26 the
27
28

1 purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 522 (2010)
2 (“**causation under the CFA is not the equivalent of reliance**”).

3 163. As stated by the New Jersey Supreme Court in Lee, 203 N.J. at 528:

4 **“It bears repeating that the CFA does not require proof of**
5 **reliance, but only a causal connection between the unlawful**
6 **practice and ascertainable loss.”**

7 164. The purchase of a credence good, where the label on the product contains false
8 misrepresentations of material fact, by itself, establishes a presumption of a causal nexus under
9 the CFA. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496 (2010). See also Varcallo, at *49
10 (“**the purchase of the policy by a person who was shown the literature would be sufficient**
11 **to establish prima facie proof of causation.**”).
12

13 165. By the acts alleged herein, Defendants have violated the CFA.

14 166. Specifically, Defendants have made identical, false, written, misstatements of
15 affirmative fact by naming the Product “**Great Value 100% Grated Parmesan Cheese,**” and
16 placing that name in large letters on the front of each container of the Product sold in New
17 Jersey, as outlined previously.
18

19 167. These statements were false when made and Defendants knew that these
20 statements
21 were false when made.

22 168. As a result of these false, written affirmative misstatements of material fact,
23 Plaintiff Schmoll and the New Jersey Sub-Class have suffered an ascertainable loss of money.
24

25 169. Specifically, Plaintiff Schmoll and the members of the New Jersey Sub-Class have
26 been deprived of the benefit of the promised bargain – a valid measure of “ascertainable loss”
27 under the CFA according to the New Jersey Supreme Court and New Jersey Appellate Division
28

1 – in that Plaintiff Schmoll and the members of the New Jersey Sub-Class received something
2 less than what was represented by Defendants in the Product name and on the Product’s label.

3 **COUNT XI**

4 **NEW JERSEY BREACH OF EXPRESS WARRANTY**

5 **On Behalf of the New Jersey Sub-Class Only**

6
7 170. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set
8 forth fully herein.

9 171. By operation of New Jersey law, Defendants entered into a contract with each
10 New
11 Jersey Sub-Class member, including Plaintiff Schmoll, when the member purchased a container
12 of “**Great Value 100% Grated Parmesan Cheese**” in New Jersey.

13
14 172. By operation of New Jersey law, the terms of this contract included an express
15 warranty incorporating the identical affirmation, promise and description by Defendants that
16 the Product was “**100% Grated Parmesan Cheese.**”

17
18 173. The relevant terms and language of the express warranty between Defendants and
19 each member of the New Jersey Sub-Class are identical.

20 174. Defendants have breached the terms of this express warranty in an identical
21 manner
22 for each New Jersey Sub-class member because “**Great Value 100% Grated Parmesan**
23 **Cheese**” did not and could not conform to the affirmation, promise and description contained
24 in the Product name because at least 7.8% of the Product did not consist of cheese.
25

26 175. As a direct and proximate result of this breach of express warranty by
27 Defendants,
28

1 each member of the New Jersey Sub-Class has suffered economic loss.

2 **COUNT XII**

3 **NEW JERSEY BREACH OF IMPLIED CONTRACT/VIOLATION**
4 **OF COVENANT OF GOOD FAITH AND FAIR DEALING**

5 **On Behalf of the New Jersey Sub-Class Only**

6 176. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set
7 forth fully herein.

8 177. By operation of New Jersey law, there existed an implied contract for the sale of
9 goods between Plaintiff Schmoll and each member of the New Jersey Sub-Class who
10 purchased the Product at a Walmart store located in New Jersey.

11 178. By operation of New Jersey law, there existed an implied duty of good faith and
12 fair dealing in each such contract.

13 179. By the acts alleged herein, Defendants have violated that duty of good faith and
14 fair dealing, thereby breaching the implied contract between Defendants and each member of
15 the New Jersey Sub-Class.

16 180. As a result of that breach, Plaintiff Schmoll and each member of the New Jersey
17 Sub-Class suffered damages.

18 **COUNT XIII**

19 **NEW JERSEY TRUTH IN CONSUMER CONTRACT, WARRANTY**
20 **AND NOTICE ACT N.J.S.A. 56:12-14 et seq.**

21 **On Behalf of the New Jersey Sub-Class Only**

22 181. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set
23 forth fully herein.

24 182. Plaintiff Schmoll and the members of the New Jersey Sub-Class are “consumers”
25
26
27
28

1 within the meaning of N.J.S.A. 56:12-15 and 16.

2 183. Defendants are “sellers” within the meaning of N.J.S.A. 56:12-15 and 16.

3 184. The Product label on “**Great Value 100% Grated Parmesan Cheese**” is both a
4 consumer “notice” and “warranty” within the meaning of N.J.S.A. 56:12-15 and 16.

5 185. By the acts alleged herein, Defendants have violated N.J.S.A. 56:12-16 because,
6 in
7 in
8 the course of Defendants’ business, Defendants have offered written consumer notices and
9 warranties to Plaintiff Schmoll and the New Jersey Sub-Class which contained provisions
10 which violated their clearly established legal rights under New Jersey state law and federal law,
11 within the meaning of N.J.S.A. 56:12-15.

12 186. Pursuant to N.J.S.A. 56:12-17, this class complaint seeks a statutory penalty of
13 \$100 for each member of the New Jersey Sub-Class, as well as actual damages and attorney’s
14 fees and costs.
15

16 **COUNT XIV**

17 **NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT**
18 **N.C. Gen. Stat. Sec. 75.1-1, et seq.**

19 **On Behalf of the North Carolina Sub-Class Only**

20 187. Plaintiff Reinbott incorporates all preceding paragraphs of this complaint as if set
21 forth fully herein.

22 188. Defendants’ business practices of marketing, advertising, promoting and selling
23 their “**Great Value 100% Grated Parmesan Cheese**” in a misleading, inaccurate, and
24 deceptive manner by naming the Product “**100% Grated Parmesan Cheese,**” and
25 misrepresenting it as such in large letters on the front of the Product, is part of a pattern of
26
27
28

1 deception designed to deceive which operated through deceptive and misleading statements as
2 described herein.

3 189. Defendants' conduct was in or affecting commerce.

4 190. Defendants' conduct proximately caused actual injury to Plaintiff Reinbott and
5 the other members of the North Carolina Sub-Class.
6

7 191. Plaintiff Reinbott and the members of the North Carolina Sub-Class relied upon
8 the false and misleading representation that the Product was "100% Grated Parmesan Cheese."

9 192. Defendants' conduct was accompanied by aggravated circumstances such that
10 their conduct rises to the level of an unfair and deceptive trade practice.
11

12 **COUNT XV**

13 **NORTH CAROLINA COMMON LAW BREACH OF WARRANTY**

14 **On Behalf of the of the North Carolina Sub-Class**

15 193. Plaintiff Reinbott incorporates all preceding paragraphs of this complaint as if set
16 forth fully herein.
17

18 194. Defendants expressly warranted in their marketing, advertising and promotion of
19 **"Great Value 100% Grated Parmesan Cheese"** that the Product was **"100% Grated**
20 **Parmesan Cheese."**

21 195. Defendants' above representations constitute affirmations of facts or promises to
22 Plaintiff Reinbott and the members of the North Carolina Sub-Class that relate to the **"Great**
23 **Value 100% Grated Parmesan Cheese"** and became part of the basis of their bargain in
24 purchasing the Product.
25

26 196. Such affirmation of fact creates an express warranty under North Carolina law that
27
28

1 the Product will conform to the express description and possess the characteristics as set forth
2 in the name **“100% Grated Parmesan Cheese.”**

3 197. Defendants breached their express warranties because the Product does not consist
4 of 100% grated parmesan cheese.

5 198. as a direct and proximate result of Defendants’ breach of warranty,
6 Defendants are liable to Plaintiff Reinbott and the North Carolina Sub-Class members for the
7 damages incurred as a result of Defendants’ actions, including, but not limited to, the purchase
8 price of Defendants’ **“Great Value 100% Grated Parmesan Cheese,”** the amount of such
9 damages to be determined at trial.
10

11 **COUNT XVI**

12 **NORTH CAROLINA BREACH OF IMPLIED CONTRACT/VIOLATION**
13 **OF COVENANT OF GOOD FAITH AND FAIR DEALING**

14 **On Behalf of the North Carolina Sub-Class Only**

15 199. Plaintiff Reinbott incorporates all preceding paragraphs of this complaint as if set
16 forth fully herein.
17

18 200. Alternatively, if the Court concludes there was no actual express warranty or
19 contract
20 between Defendants and the members of the North Carolina Sub-Class, then, by operation of
21 North Carolina law, there existed an implied contract for the sale of goods between the
22 Defendants and each member of the North Carolina Sub-Class who purchased the Product at a
23 Walmart store located in North Carolina.
24

25 201. By operation of North Carolina law, there existed an implied duty of good faith and
26 fair dealing in each such contract.
27

28 202. By the acts alleged herein, Defendants have failed to abide by the terms of the

1 implied contract and violated that duty of good faith and fair dealing, thereby breaching the
2 implied contract between Defendants and each member of the North Carolina Sub-Class.

3 203. As a result of that breach, Plaintiff Reinbott and each member of the North Carolina
4 Sub-Class suffered damages.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs ask this court to:

- 7
- 8 a. Certify the proposed Nationwide Class and each State Sub-Class as class
9 actions pursuant to Fed.R.Civ.P. 23;
- 10 b. Enter an order for injunctive, equitable and declaratory relief as described
11 herein;
- 12 c. Enter judgment in favor of each class member for damages suffered as a result
13 of the conduct alleged herein, to include interest and pre-judgment interest;
- 14 d. Award plaintiffs reasonable attorneys' fees and costs;
- 15 e. Award plaintiffs and the class treble damages where appropriate; and
- 16 8. Grant such other and further legal and equitable relief as the court deems just and
17 equitable.

18 **JURY DEMAND**

19 Plaintiffs hereby demand a trial by jury as to all issues so triable.

20

21 By: s/Todd M. Friedman
22 Todd M. Friedman (SBN: 216752)

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Dated: February 24, 2016

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