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6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION
10

11 OSCAR WAND, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 WAL-MART STORES, INC., a
16 corporation; and DOES 1 through 50,
inclusive,

17 Defendants.
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19
20
21
22

CASE NO.:

CLASS ACTION COMPLAINT

- 1. Violation of California False Advertising Law
- 2. Violation of California Consumer Legal Remedies Act
- 3. Violation of California Unfair Competition Law
- 4. Breach of Express Warranty
- 5. Breach of Implied Warranty of Merchantability
- 6. Negligent Misrepresentation
- 7. Unjust Enrichment and Common Law Restitution

DEMAND FOR JURY TRIAL

1 Plaintiff Oscar Wand (“Plaintiff”), on behalf of himself and all others
2 similarly situated, brings this action against Defendant Wal-Mart Stores, Inc. and
3 Does 1 through 50 (“Walmart” or “Defendant”) to recover monetary damages,
4 injunctive relief, and other remedies for violations of California and other laws.
5 Plaintiff makes the following allegations based on the investigation of his counsel
6 and on information and belief, except as to allegations pertaining to Plaintiff
7 individually, which is based on his personal knowledge.

8 **INTRODUCTION**

9 1. During the statute of limitations period, Walmart has falsely labeled,
10 advertised, and sold thousands of containers of its Great Value brand “100% Grated
11 Parmesan Cheese” products.

12 2. Walmart has advertised that its Parmesan cheese products are “100%
13 Grated Parmesan Cheese” when, in fact, they contain a significant percentage of
14 cellulose.

15 3. Cellulose, which is derived from wood pulp, may be used as an anti-
16 clumping agent in Parmesan cheese products. Walmart, however, used cellulose in
17 its Great Value 100% Grated Parmesan Cheese” products as a filler (in order to
18 conserve costs and increase profits), in addition to potentially using it as an anti-
19 clumping agent.

20 4. Laboratory testing shows that Walmart’s Great Value brand “100%
21 Grated Parmesan Cheese” products do not consist of “100%” Parmesan cheese,” as
22 represented by Walmart, but rather consists of between approximately 7.8 and 9.6
23 percent cellulose.

24 5. Plaintiff and other consumers purchased Walmart’s Great Value brand
25 “100% Grated Parmesan Cheese” products because they were deceived into
26 believing that the products were 100% Parmesan cheese. Because Walmart’s Great
27 Value brand “100% Grated Parmesan Cheese” products contain a significant
28 percentage of cellulose – at least some of which does not serve any anti-caking

1 purpose – Plaintiff and other consumers have been deceived and have suffered
2 economic injury.

3 6. Plaintiff seeks relief in this action individually, and on behalf of all
4 other individuals who purchased Walmart’s Great Value brand “100% Grated
5 Parmesan Cheese” products during the statute of limitations period, for violations of
6 California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*,
7 California’s Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*,
8 California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*,
9 and for breach of express and implied warranties of merchantability, negligent
10 misrepresentation, and unjust enrichment.

11 7. As a result of the unlawful scheme alleged herein, Walmart has been
12 able to overcharge Plaintiff and other consumers for merchandise, induce purchases
13 that would otherwise not have occurred, and/or obtained wrongful profits.
14 Walmart’s misconduct has caused Plaintiff and other consumers to suffer significant
15 damages. Plaintiff, on behalf himself and other similarly situated consumers, seeks
16 a refund and/or rescission of the transaction and all further equitable and injunctive
17 relief as provided by applicable law.

18 **JURISDICTION AND VENUE**

19 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
20 1332(a) because Plaintiff and Walmart are citizens of different states and the amount
21 in controversy exceeds \$75,000. This Court also has subject matter jurisdiction
22 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because
23 this is a class action, including claims asserted on behalf of a nationwide class, filed
24 under Rule 23 of the Federal Rules of Civil Procedure; there are thousands of
25 proposed Class members; the aggregate amount in controversy exceeds five million
26 dollars; and Walmart, Inc. is a citizen of a state different from Plaintiff and members
27 of the Class.

28

1 California, and throughout the United States, by owning and operating thousands of
2 retail stores. In 2015, Walmart owned and operated approximately 5,163 stores in
3 the United States. These retail stores include Walmart Discount Stores, Walmart
4 Supercenters, Walmart Neighborhood Markets, and Sam’s Club.

5 14. Walmart advertises on its website that “nearly 260 million customers
6 visit our more than 11,500 stores under 65 banners in 28 countries and e-commerce
7 sites in 11 countries each week. With fiscal year 2015 net sales of \$482.2 billion,
8 Walmart employs 2.2 million associates worldwide – 1.4 million in the U.S. alone.”¹

9 15. Walmart develops, manufactures, distributes, sells, and advertises the
10 product at issue here – Walmart’s Great Value brand “100% Grated Parmesan
11 Cheese” – throughout the United States, including in the State of California.
12 Walmart has long maintained substantial distribution, marketing, and sales
13 operations in California, and in this District.

14 16. Walmart also markets, advertises, and sells its Great Value brand
15 “100% Grated Parmesan Cheese” products online to consumers throughout the
16 United States via its primary E-commerce website: <http://www.walmart.com>.

17 **FACTUAL ALLEGATIONS**

18 17. Walmart’s Great Value brand “100% Grated Parmesan Cheese”
19 products are sold in 8 and 16 oz. bottles. On Walmart’s E-commerce website, and
20 in retail stores, these products are currently sold for \$2.98 and \$5.42, respectively.
21 The online product numbers Walmart has assigned to 8 and 16 oz. containers of this
22 product are 009217828 and 009253505, respectively.

23 18. Walmart markets, advertises, and sells its Great Value brand “100%
24 Grated Parmesan Cheese” products in many of its retail stores nationwide and online
25 through its E-commerce website.

26

27

28 ¹ <http://corporate.walmart.com/our-story/our-business>.

1 19. The Great Value brand is Walmart’s food brand. The trademark “Great
2 Value” is owned by Walmart, and Walmart distributes Great Value products –
3 including the Parmesan cheese products at issue in this action – online and through
4 its retail stores.

5 20. Walmart prominently displays in large lettering on the front label of its
6 Great Value brand “100% Grated Parmesan Cheese” products that the product is
7 made of “100% GRATED PARMESAN Cheese.” *See* Figures 1 and 2.

8 21. Walmart also prominently lists on the back of the container of its Great
9 Value brand “100% Grated Parmesan Cheese” products, “100% GRATED
10 PARMESAN CHEESE” at the top of the label, in lettering that is larger than, and
11 distinctive from, the rest of the nutritional and ingredient information contained on
12 the back of the label.

13 22. Moreover, Walmart specifically advertises that these products contain
14 100% Parmesan cheese. On its E-commerce website under the header “About this
15 item,” for its 16 oz. containers of its Great Value brand “100% Grated Parmesan
16 Cheese,” Walmart states in relevant part:

17 **“Important Made in USA Origin Disclaimer:** For certain items sold by
18 Walmart on Walmart.com, the displayed country of origin information may
19 not be accurate or consistent with manufacturer information. For updated,
20 accurate country of origin data, it is recommended that you rely on product
packaging or manufacturer information.

21 Add cheesy flavor to your meals with Great Value Grated Parmesan Cheese.
22 It is 100 percent cheese aged for more than 10 months for added flavor. The
23 lid of this gluten-free cheese container comes with two dispensing choices for
24 added convenience. Add this delicious cheese to spaghetti, lasagna, pizza,
macaroni and cheese and many more dishes for added flavor.”

25 (emphasis in original). *See* Figure 3.

26 23. In addition, on its E-commerce website under the header “About this
27 item,” for its 8 oz. containers of its Great Value brand “100% Grated Parmesan
28 Cheese,” Walmart states in relevant part:

1 **“Important Made in USA Origin Disclaimer:** For certain items sold by
2 Walmart on Walmart.com, the displayed country of origin information may
3 not be accurate or consistent with manufacturer information. For updated,
4 accurate country of origin data, it is recommended that you rely on product
5 packaging or manufacturer information.

6 Keep some Great Value Parmesan Cheese handy to add flavor to your recipes.
7 It comes in an easy shake jar so you can conveniently add it to your favorite
8 pastas, soups and other foods. This 100 percent Parmesan grated cheese
9 makes for a wonderful addition to your cooking supplies.”

10 (emphasis in original). *See* Figure 4.

11 24. Thus, not only are the labels deceptive, but Walmart explicitly
12 advertises on its E-commerce website that its Great Value brand “100% Grated
13 Parmesan Cheese” products are “100 percent cheese” and “100 percent Parmesan.”

14 25. Class members, like Plaintiff, are likely to reasonably rely on the label,
15 and Walmart’s online advertising, and believe Walmart’s representation that the
16 product consists only of Parmesan cheese, in purchasing the product. Put
17 differently, a reasonable consumer interprets this representation to mean that no
18 substitutes or fillers, such as cellulose, are present in the product.

19 26. However, because Walmart’s Great Value brand “100% Grated
20 Parmesan Cheese” products contain fillers, namely substantial amounts of cellulose
21 – a substance derived from wood chips and that can be used as an anti-clumping
22 agent in cheese products – Walmart’s representation that the products are “100%
23 Grated Parmesan Cheese” is inaccurate and intentionally misleading.

24 27. Laboratory testing shows that a significant percentage of Walmart’s
25 Great Value brand “100% Grated Parmesan Cheese” products are not 100 percent
26 Parmesan cheese. Plaintiff has had a food testing company test the ingredients from
27 an 8 oz. container of Walmart’s Great Value brand “100% Grated Parmesan
28

1 Cheese,” and this independent food tester found that 9.6 percent consisted of fiber,
2 which in the context of this product, largely equates to cellulose.²

3 28. Other testing by an independent food tester found that Walmart’s Great
4 Value brand “100% Grated Parmesan Cheese” products consist of approximately
5 7.8 percent cellulose.³

6 29. Cellulose may be added to Parmesan cheese products in order to
7 prevent clumping. One cheese and food technologist, Dean Sommer, of the Center
8 for Dairy Research in Madison, Wisconsin, has stated that levels of between 2 to 4
9 percent of cellulose as an additive to food products is safe.⁴

10 30. Here, however, Walmart’s Great Value brand “100% Grated Parmesan
11 Cheese” products consist of between approximately 7.8 and 9.6 percent cellulose. A
12 significant amount of this cellulose, therefore, is filler and serves no legitimate
13 business purpose. The extra cellulose is simply filler to lower Walmart’s costs and
14 boost Walmart’s profits. Alternatively, since cellulose consists of a significant
15 amount of fiber, increasing the percentage of cellulose is a method for Walmart to
16 increase the percentage of dietary fiber and reduce the percentage of fat, on the
17 nutritional label of these products, in a deceptive and misleading manner.

18 31. California’s consumer protection statutes, and other warranty laws,
19 prohibit these false representations and render Walmart’s Great Value brand “100%
20 Grated Parmesan Cheese” products misbranded and unfit for sale in the state of
21 California and throughout the United States.

22 //

23 _____
24 ² This testing was conducted as part of Plaintiff’s initial investigation; Plaintiff may
25 conduct additional testing of the products at issue.

26 ³ See [http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-](http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood)
27 [sprinkle-on-your-penne-could-be-wood.](http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood)

28 ⁴ See *id.*

1 **Plaintiff’s Purchase**

2 32. On February 19, 2016, Plaintiff was shopping at a Walmart
3 Neighborhood Market in Inglewood, California. Among other items, Plaintiff
4 purchased an 8 oz. bottle of Walmart’s Great Value brand “100% Grated Parmesan
5 Cheese” for \$2.98. Plaintiff read the front label of the product, which prominently
6 stated, “100% Grated PARMESAN CHEESE,” before deciding to purchase the
7 product. Plaintiff would not have purchased this product, or would have paid
8 significantly less for the product, had he known that the “100%” representation
9 mischaracterizes the amount and percentage of Parmesan cheese in the container.

10 33. As with Plaintiff, Class members were likely to be deceived by
11 Walmart’s misrepresentations on the labels of its Great Value brand “100% Grated
12 Parmesan Cheese,” in that they would not have purchased the product, or would
13 have paid substantially less for the product, had the misrepresentations not been
14 made.

15 34. As a result of Walmart’s misrepresentations, Plaintiff and the Class
16 have been injured to the financial benefit of Walmart.

17 **CLASS ACTION ALLEGATIONS**

18 35. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of
19 Civil Procedure, individually and on behalf of all members of the following Class:

20 All natural persons located within the United States who purchased a Walmart
21 Great Value brand “100% Grated Parmesan Cheese” product at any time
22 beginning four (4) years prior to the filing of this action, and ending at the
23 time this action settles or proceeds to final judgment.

24 36. Plaintiff also seeks to represent a subclass defined as all members of
25 the Class who purchased a Walmart Great Value brand “100% Grated Parmesan
26 Cheese” product, and who resided in the State of California at the time they
27 purchased the product (the “California Subclass”).
28

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

7 38. Plaintiff reserves the right to modify or amend the definition of the
8 proposed Class and California Subclass, and/or add subclasses before the Court
9 determines whether certification is appropriate.

10 39. The Class is so numerous that joinder of all members would be
11 impractical. On information and belief, the number of individuals who purchased
12 Walmart's Great Value brand "100% Grated Parmesan Cheese" within the relevant
13 time period is in the thousands. Since a significant percentage of in-person or retail
14 store purchases, and most if not all of online purchases, are made through the use of
15 a credit card, these individuals are identifiable and ascertainable through Walmart's
16 records.

17 40. There are questions of law and fact common to the Class that will drive
18 the resolution of this action. These questions include, but are not limited to, the
19 following:

- 20 a. Whether Walmart misrepresented the ingredients of its Great Value
21 brand "100% Grated Parmesan Cheese" products;
- 22 b. Whether Walmart misrepresented material facts and/or failed to
23 disclose material facts in connection with the marketing and sale of
24 its Great Value brand "100% Grated Parmesan Cheese" products;
- 25 c. Whether Walmart's use of false or deceptive labeling and
26 advertising constituted false advertising under California Law;
- 27 d. Whether Walmart engaged in unfair, unlawful and/or fraudulent
28 business practices under California law;

- 1 e. Whether Walmart made false or misleading statements of fact
- 2 concerning the ingredients of its Great Value brand “100% Grated
- 3 Parmesan Cheese” products;
- 4 f. Whether Walmart’s unlawful conduct, as alleged herein, was
- 5 intentional and knowing;
- 6 g. Whether Plaintiff and the Class are entitled to damages and/or
- 7 restitution, and in what amount;
- 8 h. Whether Walmart is likely to continue using false, misleading or
- 9 unlawful conduct such that an injunction is necessary; and
- 10 i. Whether Plaintiff and the Class are entitled to an award of
- 11 reasonable attorneys’ fees, interest, and costs of suit.

12 41. Walmart engaged in a common course of conduct giving rise to
13 violations of the legal rights sought to be enforced uniformly by Plaintiff and the
14 Class members. Similar or identical statutory and common law violations, business
15 practices, and injuries are involved. Therefore, individual questions, if any, pale in
16 comparison to the numerous common questions presented in this action.

17 42. The injuries sustained by members of the Class flow, in each instance,
18 from a common nucleus of operative fact. Each instance of harm suffered by
19 Plaintiff and the Class has directly resulted from a single course of illegal conduct –
20 namely, the false representation that Walmart’s Great Value brand “100% Grated
21 Parmesan Cheese” products consist of 100% Parmesan cheese, when in actuality,
22 they consist of between approximately 7.8 and 9.6 percent cellulose. A substantial
23 portion of the alleged unlawful conduct occurred in and stemmed from business
24 activities in the State of California.

25 43. Given the similar nature of the Class members’ claims and the absence
26 of material differences in the statutes and common laws upon which the Class
27 members’ claims are based, a nationwide class will be easily managed by the Court
28 and the parties.

1 44. Because of the relatively small size of the individual Class members’
2 claims, no Class member could afford to seek legal redress on an individual basis.
3 A class action is superior to any alternative means of prosecution.

4 45. The representative Plaintiff’s claims are typical of those of the Class, as
5 all members of the Class are similarly affected by Walmart’s uniform unlawful
6 conduct as alleged herein.

7 46. Walmart acted, and failed to act, on grounds generally applicable to
8 Plaintiff and the Class, supporting the imposition of uniform relief to ensure
9 compatible standards of conduct toward the members of the Class.

10 47. Plaintiff will fairly and adequately protect the interests of the Class, and
11 has retained counsel competent and experienced in class action litigation. The Class
12 representative has no interest which conflicts with or is adverse to those of the other
13 Class members.

14 **COUNT I**

15 **Violation of the California False Advertising Law**

16 **(On behalf of Plaintiff and the California Subclass against Walmart)**

17 48. Plaintiff incorporates herein by specific reference, as though fully set
18 forth, the allegations in paragraphs 1 through 47.

19 49. California’s False Advertising Law (“FAL”), California Business and
20 Professions Code § 17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading
21 advertising.

22 50. Walmart’s practice of representing that its Great Value brand “100%
23 Grated Parmesan Cheese” products consist of 100% Parmesan cheese violates the
24 FAL. Specifically, California Business and Professions Code § 17500 makes it
25 unlawful for “[a]ny person . . . to make or disseminate or cause to be made or
26 disseminated from this state before the public in any state . . . in any advertising
27 device . . . or in any other manner or means whatever, including over the Internet,
28 any statement, concerning . . . personal property or services, professional or

1 otherwise, or performance or disposition thereof, which is untrue or misleading and
2 which is known, or which by the exercise of reasonable care should be known, to be
3 untrue or misleading.”

4 51. Walmart engaged in a scheme of offering adulterated and mislabeled
5 containers of its Great Value brand “100% Grated Parmesan Cheese” products for
6 sale to Plaintiff and California Subclass members by way of product packaging,
7 labeling, internet advertising, and other promotional materials. These labels and
8 materials misrepresented and/or omitted the true content and nature of the
9 mislabeled products. Walmart’s advertisements and inducements – including the
10 “100 percent cheese” representations made on Walmart’s E-commerce website –
11 were made in California, and come within the definition of advertising as contained
12 in Bus. & Prof. Code § 17500, *et seq.*, in that the product packaging, labeling, and
13 promotional materials were intended as inducements to purchase Walmart’s Great
14 Value brand “100% Grated Parmesan Cheese” products, and they are statements
15 disseminated by Walmart to Plaintiff and the California Subclass members.
16 Walmart knew or should have known that these statements were inaccurate and
17 misleading.

18 52. Walmart’s false advertisements, as alleged herein, were calculated to
19 induce Plaintiff and California Subclass members to purchase merchandise they
20 otherwise would not have and/or to spend more money than they otherwise would
21 have spent, in order to increase Walmart’s profits.

22 53. Through its unfair acts and practices, Walmart has improperly obtained
23 money from Plaintiff and the California Subclass. As such, Plaintiff requests that
24 this Court cause Walmart to restore this money to Plaintiff and all California
25 Subclass members, and to enjoin Walmart from continuing to violate the FAL in the
26 future.

27 54. Plaintiff also requests that the Court award reasonable attorneys’ fees
28 and costs pursuant to Cal. Code of Civ. Proc. § 1021.5.

COUNT II

**Violation of the California Consumer Legal Remedies Act
(On behalf of Plaintiff and the California Subclass against Walmart)
(For injunctive relief only)**

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5 55. Plaintiff incorporates herein by specific reference, as though fully set
6 forth, the allegations in paragraphs 1 through 54.

7 56. This cause of action is brought pursuant to the California Consumer
8 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

9 57. Plaintiff and California Subclass members are “consumers” within the
10 meaning of Cal. Civ. Code § 1761(d).

11 58. The selling of Walmart’s Great Value brand “100% Grated Parmesan
12 Cheese” products to Plaintiff and California Subclass members were “transactions”
13 within the meaning of Cal. Civ. Code § 1761(e). The merchandise purchased by
14 Plaintiff and California Subclass members are “goods” within the meaning of Cal.
15 Civ. Code §1761(a).

16 59. As alleged herein, Walmart violated the CLRA by falsely labeling and
17 advertising its products as consisting of 100% Parmesan Cheese, when in fact, they
18 contain a significant percentage of cellulose, rendering the “100%” claim false, and
19 misleading to a reasonable consumer.

20 60. Walmart has violated several provisions of the CLRA. Cal. Civ. Code
21 § 1770(a)(5), prohibits “[r]epresenting that goods or services have sponsorship,
22 approval, characteristics, ingredients, uses, benefits, or quantities which they do not
23 have or that a person has a sponsorship, approval, status, affiliation, or connection
24 which he or she does not have.” Further, Cal. Civ. Code § 1770(a)(7) prohibits
25 representing that goods or services are of a particular standard, quality, or grade, or
26 that goods are of a particular style or model, if they are of another. In addition, Cal.
27 Civ. Code § 1770(a)(9)) prohibits “[a]dvertising goods or services with intent not to
28 sell them as advertised.”

1 67. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof.
2 Code § 17200, *et seq.*, defines unfair business competition to include any “unlawful,
3 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
4 misleading” advertising.

5 68. A business act or practice is “unfair” under the UCL if the reasons,
6 justifications and motives of the alleged wrongdoer are outweighed by the gravity of
7 the harm to the alleged victims. A business act or practice is “fraudulent” under the
8 UCL if it is likely to deceive members of the consuming public. A business act or
9 practice is “unlawful” under the UCL if it violates any other law or regulation.

10 69. Walmart has violated the “unfair” prong of the UCL by mislabeling its
11 Great Value brand “100% Grated Parmesan Cheese” products in order to induce
12 consumers into believing the products consist of 100% Parmesan cheese, when they
13 do not.

14 70. The business acts and practices alleged herein are unfair because they
15 caused Plaintiff and Class members to falsely believe that Walmart is offering a
16 product that is superior to what they actually received. This deception was likely to
17 have induced reasonable consumers, including Plaintiff, to buy Walmart’s Great
18 Value brand “100% Grated Parmesan Cheese” products, which they otherwise
19 would not have purchased, or would have paid substantially less for such products.

20 71. The gravity of the harm to Plaintiff and California Subclass members
21 resulting from these unfair acts and practices outweighs any conceivable reasons,
22 justifications and/or motives of Walmart for engaging in such deceptive acts and
23 practices. By committing the acts and practices alleged herein, Walmart has
24 engaged in, and continues to engage in, unfair business practices within the meaning
25 of California Business & Professions Code § 17200, *et seq.*

26 72. Walmart has also violated the “unlawful” prong of the UCL by
27 violating several California laws, as alleged herein, including the FAL and CLRA.
28

1 73. Walmart also violated the “fraudulent” prong of the UCL by
2 misleading Plaintiff and California Subclass members to believe that its Great Value
3 brand “100% Grated Parmesan Cheese” products consist of 100% Parmesan cheese,
4 when in actuality, they consist of between approximately 7.8 and 9.6 percent
5 cellulose.

6 74. Through its unlawful acts and practices, Walmart has improperly
7 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
8 Court cause Walmart to restore this money to Plaintiff and the California Subclass,
9 and to enjoin Walmart from continuing to violate the UCL as alleged herein.

10 75. Plaintiff also requests that the Court award reasonable attorneys’ fees
11 and costs pursuant to Cal. Code of Civ. Proc. § 1021.5.

12 **COUNT IV**

13 **Breach of Express Warranty**

14 **(On behalf of Plaintiff and the Class against Walmart)**

15 76. Plaintiff incorporates herein by specific reference, as though fully set
16 forth, the allegations in paragraphs 1 through 75.

17 77. In connection with the sale of its Great Value brand “100% Grated
18 Parmesan Cheese” products, Walmart issued an express warranty that these products
19 consisted of 100% Parmesan cheese.

20 78. Walmart’s affirmation of fact and promise on the labels of these
21 products that they consisted of 100% Parmesan cheese became part of the basis of
22 the bargain between Walmart and Plaintiff and Class members, thereby creating
23 express warranties that these products would conform to Walmart’s affirmation of
24 fact, representations, promise, and description.

25 79. Walmart breached its express warranty because its Great Value brand
26 “100% Grated Parmesan Cheese” products do not in fact consist of 100% Parmesan
27 cheese – but instead, are substantially filled with cellulose. The products at issue
28 here do not live up to Walmart’s express warranty.

1 80. Plaintiff was injured as a result of Walmart's breach because he would
2 not have purchased the product if he had known that the product did not have the
3 characteristics or qualities as expressly warranted by Walmart, or he would have
4 paid substantially less for the product. Class members were likely to also have
5 reasonably relied upon Walmart's express warranties in purchasing Walmart's Great
6 Value brand "100% Grated Parmesan Cheese" products.

7 **COUNT V**

8 **Breach of Implied Warranty of Merchantability**

9 **(On behalf of Plaintiff and the Class against Walmart)**

10 81. Plaintiff incorporates herein by specific reference, as though fully set
11 forth, the allegations in paragraphs 1 through 80.

12 82. The Uniform Commercial Code § 2-314 provides that, unless excluded
13 or modified, a warranty that the goods shall be merchantable is implied in a contract
14 for their sale if the seller is a merchant with respect to goods of that kind. To be
15 "merchantable," goods must "run, within the variations permitted by the agreement,
16 of even kind, quality and quantity within each unit and among all units involved,"
17 "are adequately contained, packaged, and labeled as the agreement may require,"
18 and "conform to the promise or affirmations of fact made on the container or label if
19 any."

20 83. Walmart, through its acts and omissions as alleged herein, in its sale,
21 labeling, marketing, and promotion of its Great Value brand "100% Grated
22 Parmesan Cheese" products, impliedly warranted that these products consisted of
23 100% Parmesan cheese.

24 84. Walmart was a merchant with respect to the goods of this kind which
25 were sold to Plaintiff and the Class, and there was an implied warranty that those
26 goods were merchantable in the sale to Plaintiff and Class members.

27 85. Walmart breached that warranty implied in the contract for the sale of
28 the goods, in that its Great Value brand "100% Grated Parmesan Cheese" products

1 do not contain the “quality and quantity” of Parmesan cheese as impliedly
2 warranted, and because these products do not conform to the promises made on their
3 labels.

4 86. Plaintiff was injured as a result of Walmart’s breach because he would
5 not have purchased the product if he had known that the product did not have the
6 characteristics or qualities as impliedly warranted by Walmart, or he would have
7 paid substantially less for the product. Class members were likely to also have
8 reasonably relied upon Walmart’s implied warranties in purchasing Walmart’s Great
9 Value brand “100% Grated Parmesan Cheese” products.

10 **COUNT VI**

11 **Negligent Misrepresentation**

12 **(On behalf of Plaintiff and the Class against Walmart)**

13 87. Plaintiff incorporates herein by specific reference, as though fully set
14 forth, the allegations in paragraphs 1 through 86.

15 88. As alleged herein, Walmart misrepresented that its Great Value brand
16 “100% Grated Parmesan Cheese” products contain 100% Parmesan cheese, when, in
17 fact, they contain a substantial amount of cellulose.

18 89. At the time Walmart made these representations, Walmart knew or
19 should have known that these representations were false or made them without
20 knowledge of their truth or veracity.

21 90. At minimum, Walmart negligently misrepresented and/or negligently
22 omitted material facts about its Great Value brand “100% Grated Parmesan Cheese”
23 products.

24 91. The negligent misrepresentations and omissions made by Walmart,
25 upon which Plaintiff and Class members reasonably and justifiably relied, were
26 intended to induce, and actually induced, Plaintiff and Class members to purchase
27 the products at issue.

28

1 92. Plaintiff would not have purchased the product, or would not have
2 purchased the product on the same terms, if the true ingredients had been known to
3 him. Class members were likely to also have reasonably relied upon Walmart's
4 deceptive labeling and advertising in purchasing Walmart's Great Value brand
5 "100% Grated Parmesan Cheese" products.

6 93. The negligent actions of Walmart caused damage to Plaintiff and Class
7 members, who are entitled to damages and other legal and equitable relief as a
8 result.

9 **COUNT VII**

10 **Unjust Enrichment and Common Law Restitution**

11 **(On behalf of Plaintiff and the Class against Walmart)**

12 94. Plaintiff incorporates herein by specific reference, as though fully set
13 forth, the allegations in paragraphs 1 through 93.

14 95. As a result of Walmart's wrongful and deceptive conduct, Plaintiff and
15 Class members have suffered a detriment while Walmart has received a benefit.

16 96. Walmart's misleading, inaccurate and deceptive marketing and labeling
17 intentionally cultivates the perception that consumers are being offered a product
18 that they are not. Plaintiff and Class members were intended to rely upon
19 Walmart's misrepresentations when they purchased Walmart's merchandise.
20 Plaintiff and Class members likely would not have purchased Walmart's Great
21 Value brand "100% Grated Parmesan Cheese" products, or would have paid
22 significantly less for the products, if Walmart had not misrepresented the nature of
23 the products.

24 97. Walmart has received a premium price benefit and/or additional sales
25 from Plaintiff and Class members as a result of this unlawful conduct.

26 98. Walmart should not be allowed to retain the premium price profits
27 and/or additional sales generated from the sale of products that were unlawfully
28 marketed, advertised and promoted. Allowing Walmart to retain these unjust profits

1 would offend traditional notions of justice and fair play and induce companies to
2 misrepresent key characteristics of their products in order to increase sales.

3 99. Thus, Walmart is in possession of funds that were wrongfully retained
4 from Plaintiff and Class members that should be disgorged as illegally gotten gains.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff, individually and on behalf of the Class,
7 respectfully prays for following relief:

8 1. Certification of this case as a class action on behalf of the Class defined
9 above, appointment of Plaintiff as Class representative, and appointment of his
10 counsel as Class counsel;

11 2. A declaration that Walmart's actions, as described herein, violate the
12 claims described herein;

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

16 4. An award to Plaintiff and the Class of restitution and/or other equitable
17 relief, including, without limitation, restitutionary disgorgement of all profits and
18 unjust enrichment that Walmart obtained from Plaintiff and the Class as a result of
19 its unlawful, unfair and fraudulent business practices described herein;

20 5. An award to Plaintiff and his counsel of their reasonable expenses and
21 attorneys' fees;

22 6. An award to Plaintiff and the Class of pre and post-judgment interest,
23 to the extent allowable; and

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

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DEMAND FOR JURY TRIAL

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

DATED: February 26, 2016 THE WAND LAW FIRM

By: /s/ Aubry Wand _____
AUBRY WAND

Attorney for Plaintiff

Figure 1: screenshot of 16 oz. container of Walmart's Great Value brand "100% Grated Parmesan Cheese" taken from www.walmart.com on February 22, 2016.



Figure 2: screenshot of 8 oz. container of Walmart's Great Value brand "100% Grated Parmesan Cheese" taken from www.walmart.com on February 22, 2016.

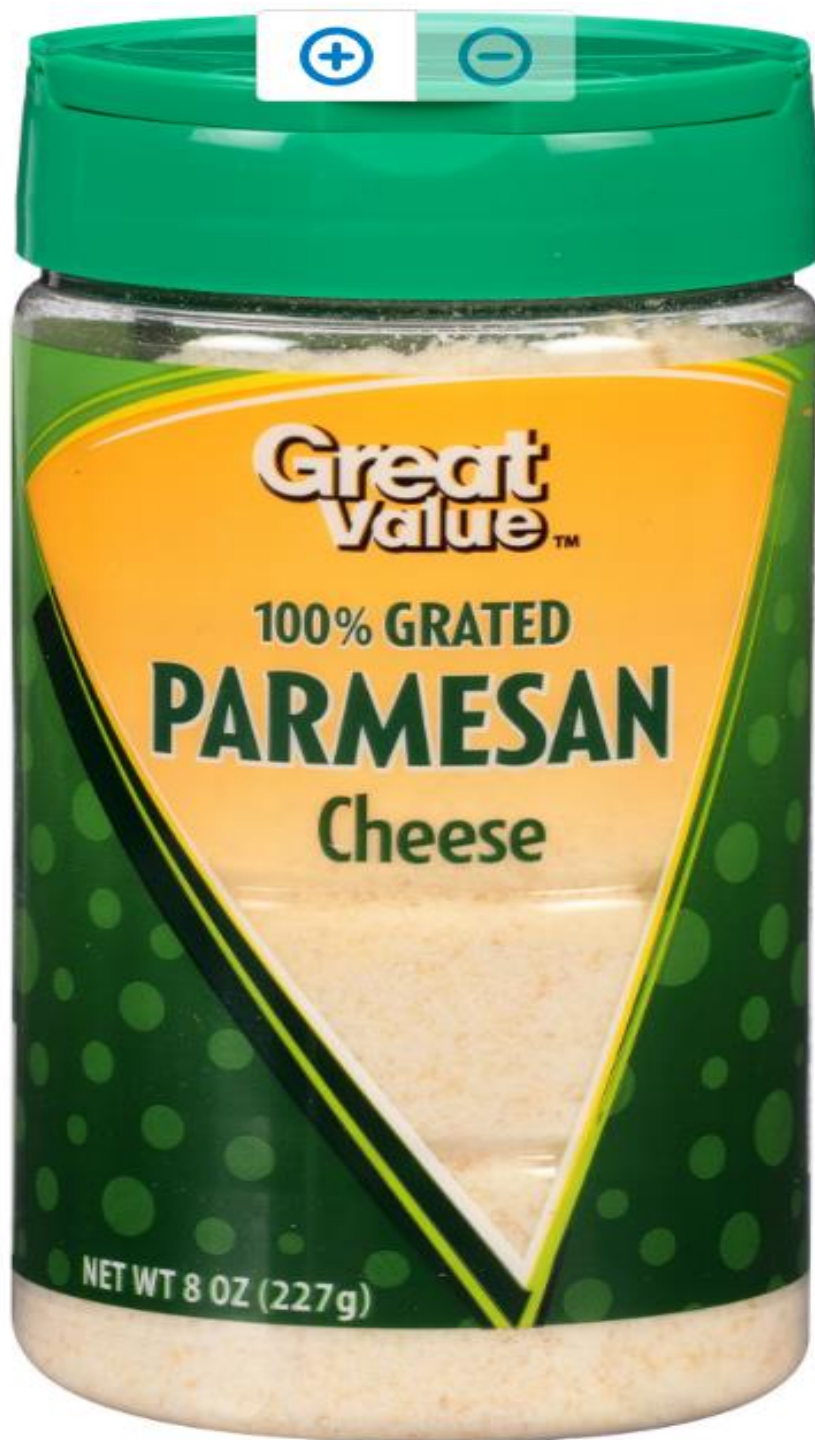


Figure 3: screenshot of product description for 16 oz. container of Walmart's Great Value brand "100% Grated Parmesan Cheese" taken from www.walmart.com on February 25, 2016.

[About this item](#)

[Customer reviews](#)

[Item recommendations](#)

About this item

Important Made in USA Origin Disclaimer: For certain items sold by Walmart on Walmart.com, the displayed country of origin information may not be accurate or consistent with manufacturer information. For updated, accurate country of origin data, it is recommended that you rely on product packaging or manufacturer information.

Add cheesy flavor to your meals with Great Value Grated Parmesan Cheese. It is 100 percent cheese aged for more than 10 months for added flavor. The lid of this gluten-free cheese container comes with two dispensing choices for added convenience. Add this delicious cheese to spaghetti, lasagna, pizza, macaroni and cheese and many more dishes for added flavor.

Great Value Grated Parmesan Cheese:

- Aged for more than 10 months
- Gluten-free
- Shredded Parmesan cheese, 16 oz, contains no artificial flavors or colors

Figure 4: screenshot of product description for 8 oz. container of Walmart's Great Value brand "100% Grated Parmesan Cheese" taken from www.walmart.com on February 25, 2016.

About this item

Important Made in USA Origin Disclaimer: For certain items sold by Walmart on Walmart.com, the displayed country of origin information may not be accurate or consistent with manufacturer information. For updated, accurate country of origin data, it is recommended that you rely on product packaging or manufacturer information.

Keep some Great Value Parmesan Cheese handy to add flavor to your recipes. It comes in an easy shake jar so you can conveniently add it to your favorite pastas, soups and other foods. This 100 percent Parmesan grated cheese makes for a wonderful addition to your cooking supplies.

Great Value: 100% Parmesan Grated Cheese, 8 oz:

- Grated cheese
- Great Value cheese, 8 oz