¢	ase 1:24-cv-00374-KES-SKO Document	1-1 Filed 03/29/24 Page 2 of 28		
1 2 3 4 5 6 7 8 9	<ul> <li>THE WAND LAW FIRM, P.C.</li> <li>Aubry Wand (SBN 281207)</li> <li>100 Oceangate, Suite 1200</li> <li>Long Beach, CA 90802</li> <li>Telephone: (310) 590-4503</li> <li>Email: awand@wandlawfirm.com</li> <li>FARUQI &amp; FARUQI, LLP</li> <li>Lisa T. Omoto (SBN 303830)</li> <li>1901 Avenue of the Stars, Suite 1060</li> <li>Los Angeles, CA 90067</li> <li>Telephone: (424) 256-2884</li> <li>Email: lomoto@faruqilaw.com</li> <li>Attorneys for Plaintiff and the Putative Classes</li> </ul>	FILED FEB 2 0 2024 Superior Court of California County of Tuolumne by		
10	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
11		TUOLUMNE		
12		CV65403 BY Fax		
13	MATTHEW HAWKINS, on behalf of himself and all others similarly situated,	CV65403 CASE NO.:		
14	Plaintiff,	CLASS ACTION COMPLAINT		
15	v.	<ol> <li>Violation of California Consumers Legal Remedies Act</li> </ol>		
16	WALMART INC., a corporation; and DOES 1	2. Violation of California False		
17	through 10, inclusive,	Advertising Law 3. Violation of California Unfair		
18	Defendant.	Competition Law 4. Breach of Express Warranty (Cal.		
19 20		<ul> <li>Com. Code § 2313)</li> <li>5. Breach of Implied Warranty (Cal. Com. Code § 2314)</li> </ul>		
21		6. Intentional Misrepresentation		
22		DEMAND FOR JURY TRIAL		
23				
24				
25				
26				
27				
28				
	CLASS ACTION COMPLAINT			

Plaintiff Matthew Hawkins ("Plaintiff"), on behalf of himself and all others similarly 1 2 situated, brings this class action against Defendant Walmart Inc. ("Defendant" or "Walmart"), and 3 Does 1 through 10, based on Walmart's false and deceptive advertising and labeling regarding its 4 Avocado Oil Products. Plaintiff makes the following allegations based on the investigation of his 5 counsel, and on information and belief, except as to allegations pertaining to Plaintiff individually, 6 which are based on his personal knowledge. 7 **INTRODUCTION** 8 1. During the statute of limitations period, Walmart has marketed, labeled, advertised, 9 and sold its Great Value Avocado Oil (the "Class Product(s)") to consumers with packaging that 10 has prominently represented that it is avocado oil. 2. The Class Products' packaging unequivocally states that the oil is "Avocado Oil" 11 (the "Avocado Oil Claim"). 12 13 3. Reasonable consumers believe, based on the Avocado Oil Claim, that the Class Products are pure avocado oil. However, this is not the case. Unbeknownst to consumers, the Class 14 15 Products are adulterated with other oils. 16 4. Plaintiff seeks relief in this action individually, and on behalf of all other similarly 17 situated individuals who purchased the falsely and deceptively labeled Class Products during the 18 statute of limitations period, for violations of California's Consumers Legal Remedies Act, Cal. Civ. 19 Code § 1750, et seq., California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq., 20 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, breach of express and

21 implied warranty (Cal. Com. Code §§ 2313-2314), and intentional misrepresentation (i.e., common
22 law fraud).

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#### JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Walmart because Walmart has sufficient
 minimum contacts in California, or otherwise intentionally avails itself of the markets within
 California, through its sale of the goods and Class Products in California, including in this County.
 6. Venue is proper in this County pursuant to California Code of Civil Procedure § 395,
 *et seq.* and Cal. Civ. Code § 1780(d). Walmart regularly conducts business throughout this County

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

#### **PLAINTIFF**

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

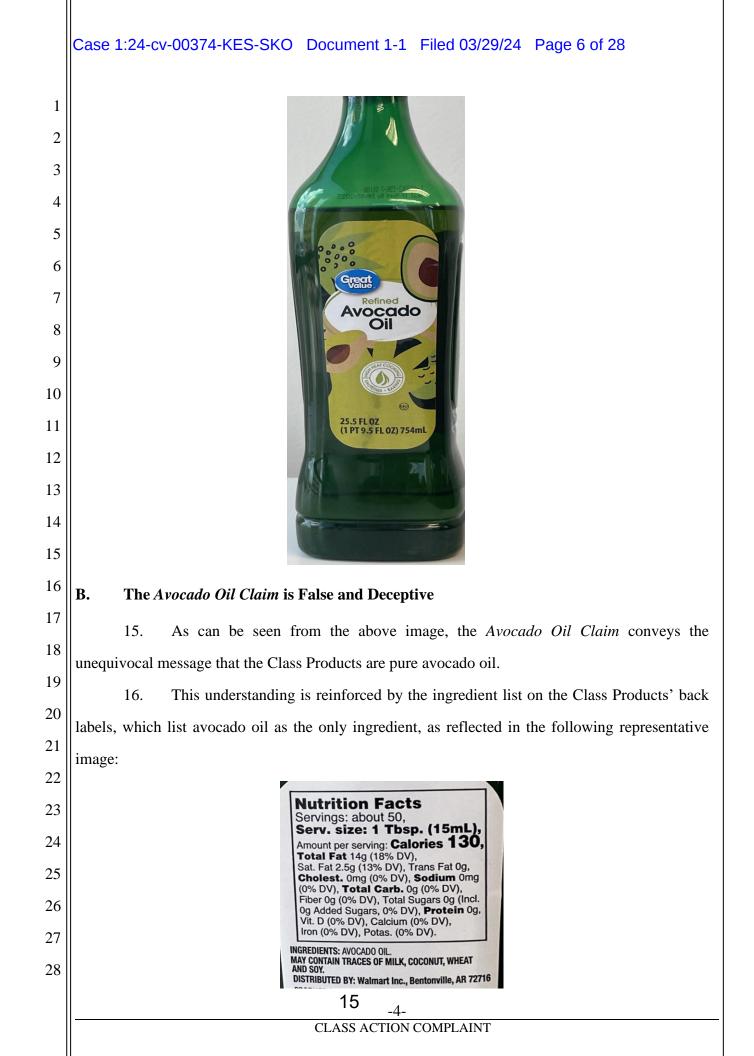
8 8. In or around August 2023, Plaintiff purchased a bottle of Walmart's Great Value 9 Avocado Oil at a Wal-Mart store in Sonora, California for which he recalls paying between \$9 to 10 \$10. Plaintiff saw and relied on the Avocado Oil Claim in making this purchase. More specifically, 11 Plaintiff reasonably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

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

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

#### 3

1	<b>DEFENDANT</b>		
2	11. Walmart is a Delaware corporation with its headquarters and principal place of		
3	business in Bentonville, Arkansas.		
4	12. Walmart has labeled and sold the Class Products at its retail stores, and via its		
5	ecommerce website, in California and the rest of the country, during the statute of limitations period		
6	under its private label brand "Great Value".		
7	13. The true names and capacities of Does 1 through 10, inclusive, are unknown to		
8	Plaintiff at this time, and Plaintiff therefore sues such Doe defendants under fictitious names. On		
9	information and belief, each Defendant designated as a Doe is in some manner highly responsible		
10	) for the occurrences alleged herein, and Plaintiff's and Class members' injuries and damages, as		
11	alleged herein, were proximately caused by the conduct of such Doe defendants. Plaintiff will seek		
12	leave of the Court to amend this Complaint to allege the true names and capacities of such Doe		
13	defendants when ascertained.		
14	FACTUAL ALLEGATIONS		
15	A. The Class Products		
16	14. The Class Products consist of Walmart's Great Value Brand Avocado Oil. The Class		
17	Products are generally sold in 25.5 oz. bottles. The <i>Avocado Oil Claim</i> is prominently displayed in		
18	the same manner on all Class Products, as set forth in the following representative image:		
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1	17. In addition, Walmart's e-commerce website lists "Pure Avocado Oil" as the only				
2	ingredient in the Class Products, as reflected in the following screenshot: <sup>1</sup>				
3					
4	<ul> <li>25.5 fl oz bottle of refined avocado oil</li> <li>Mild flavor and a relatively high smoke point</li> <li>Use to saute, stir-fry or pan fry your favorite foods</li> <li>Add to homemade marinades or salad dressings</li> <li>About 50 servings per container</li> </ul>				
5	We aim to show you accurate product information. Manufacturers, suppliers and others provide what you see here, and we have not verified it. See our disclaimer				
6	Specifications				
7	Food Form Liquids				
8	Brand Great Value				
	Allergen-Free Statements Egg-Free				
9	Directions				
10	Safe Handling Instructions Overheated oils may cause fire. If oil smokes reduce heat, cap when not in use.				
11					
12	Ingredients				
13	Pure Avocado Oil				
14	18. Walmart does not disclose anywhere that the Class Products are not pure avocado				
15	avocado oil.				
16					
17	19. The Class Products are not pure avocado oil. To the contrary, and based on Plaintiff's				
18	investigation, which includes testing and analysis of the Class Products performed by third party				
19	laboratories, the fatty acid and sterol profiles of the Class Products show that the Class Products are				
20	not pure avocado oil. Thus, the claim is false and deceptive.				
21	C. The Avocado Oil Claim is Material				
22	20. The Avocado Oil Claim is material—i.e., it is important to consumers with respect				
23	to their purchasing decisions of the Class Products. <sup>2</sup>				
24					
25					
26	<sup>1</sup> https://www.walmart.com/ip/Great-Value-Refined-Avocado-Oil-25-5-fl-oz/535864229 (last visited on February 15, 2024)				
27 28	<sup>2</sup> For instance, at 25.5 fl oz bottle of the Class Product costs \$9.54, or \$0.37 per ounce. By contrast $48$ fl oz bottle of Canada Oil costa $64.44$ or $60.00$ mm compared Similarly of Canada A9 fl oz				
	ULASS ACTION COMPLAINT				

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Avocado oil is well-known to be one of the healthiest cooking oils. For example,
 studies have indicated that compounds in avocado oil may help protect the liver, lower blood
 pressure, LDL cholesterol, as well as reduce osteoarthritis-related joint pain, post-meal blood sugar,
 and total cholesterol levels.<sup>3</sup> It is also high in monounsaturated fat, which is considered more heart
 healthy than saturated fat while being slightly more stable than the polyunsaturated fats typically
 found in vegetable oils.<sup>4</sup> Avocado oil is also a high demand cooking oil because it has the highest
 smoke point of all plant-based cooking oils.<sup>5</sup>

8 22. Regardless of whether consumers believe avocado oil is in fact superior to other oils,
9 the issue of whether the cooking oil is pure is material to reasonable consumers. For example,
10 consumers may be allergic to, or have other reasons, for not consuming certain oils. Simply put,
11 consumers of the Class Products reasonably expect to know what type of oil they are consuming.

23. Consumers purchased, and continue to purchase, the Class Products in part because
the *Avocado Oil Claim* conveys the unequivocal message that they are pure avocado oil. Plaintiff
and Class members would have paid less for the Class Products, or would not have purchased them
at all, if not for the *Avocado Oil Claim*. Therefore, Plaintiff and Class members have suffered a
financial injury in the form of paying a price premium that the Class Products command in the
market as a result of Walmart's representations that they are pure avocado oil.

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## **CLASS ACTION ALLEGATIONS**

19 24. Plaintiff brings this class action pursuant to Cal. Civ. Proc. Code § 382, and all other
20 applicable laws and rules, individually, and on behalf of all members of the following Classes:

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#### California Class

- All natural persons who purchased at least one of the Class Products in the State of California within the applicable statute of limitations period.
- <sup>26</sup><sup>3</sup> https://www.healthline.com/nutrition/9-avocado-oil-benefits#TOC\_TITLE\_HDR\_4
- 27 <sup>4</sup> https://www.masterclass.com/articles/what-is-avocado-oil-a-guide-to-cooking-with-avocado-oil
   (last visited on February 15, 2024)
  - $^{8}$   $\|_{5}$  *Id.*

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#### California Consumer Subclass

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

- Excluded from the Classes are the following individuals and/or entities: Walmart and
  its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity
  in which Walmart has a controlling interest; all individuals who make a timely election to be
  excluded from this proceeding using the correct protocol for opting out; and all judges assigned to
  hear any aspect of this litigation, as well as their immediate family members.
- Plaintiff reserves the right to modify or amend the definition of the proposed Classes
   and/or add subclasses before the Court determines whether class certification is appropriate.

27. Plaintiff is a member of both classes.

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

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

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

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1	c. Whether Walmart engaged in unfair, unlawful and/or fraudulent business		
2	practices;		
3	d. Whether Walmart's unlawful conduct, as alleged herein, was intentional and		
4	knowing;		
5	e. Whether Plaintiff and the Classes are entitled to damages and/or restitution, and		
6	if so, in what amount;		
7	f. Whether Plaintiff and the Classes are entitled to injunctive relief;		
8	g. Whether Plaintiff and the Classes are entitled to punitive damages, and if so, in		
9	what amount; and		
10	h. Whether Plaintiff and the Classes are entitled to an award of reasonable		
11	attorneys' fees, interest, and costs of suit.		
12	30. Walmart has engaged in a common course of conduct giving rise to violations of the		
13	legal rights sought to be enforced uniformly by Plaintiff on behalf of the proposed Classes. Similar		
14	or identical statutory and common law violations, business practices, and injuries are involved. The		
15	injuries sustained by members of the proposed Classes flow, in each instance, from a common		
16	nucleus of operative fact, namely, Walmart's deceptive packaging and advertising of the Class		
17	Products. Each instance of harm suffered by Plaintiff and Class members has directly resulted from		
18	a single course of unlawful conduct. Each Class member has been exposed to the same deceptive		
19	practice, as the packaging of the Class Products: (a) bear the same material <i>Avocado Oil Claim</i> , and		
20	(b) the Class Products does not meet this representation of fact. Therefore, individual questions, if		
21	any, pale in comparison to the numerous common questions presented in this action.		
22	31. <u>Superiority</u> : Because of the relatively small damages at issue for each individual		
23	Class member, no Class member could afford to seek legal redress on an individual basis.		
24	Furthermore, individualized litigation increases the delay and expense to all parties and multiplies		
25	the burden on the judicial system presented by the complex legal and factual issues of this case.		
26	Individualized litigation also presents a potential for inconsistent or contradictory judgments. A		
27	class action is superior to any alternative means of prosecution.		
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32. <u>Typicality</u>: The representative Plaintiff's claims are typical of those of the proposed
 Classes, as all members of the proposed Classes are similarly affected by Walmart's uniform
 unlawful conduct as alleged herein.

Adequacy: Plaintiff will fairly and adequately protect the interests of the proposed
Classes as his interests do not conflict with the interests of the members of the proposed Classes he
seeks to represent, and he has retained counsel competent and experienced in similar class action
litigation. The interests of the members of the Classes will be fairly and adequately protected by the
Plaintiff and his counsel.

9 34. Walmart has also acted, or failed to act, on grounds generally applicable to Plaintiff
10 and the proposed Classes, supporting the imposition of uniform relief to ensure compatible standards
11 of conduct toward the members of the Classes.

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#### FIRST CLAIM FOR RELIEF Violation of California's Consumers Legal Remedies Act California Civil Code § 1750, et seq. (For the California Consumer Subclass)

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

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36. Plaintiff brings this claim individually and on behalf of the members of the proposed
California Consumer Subclass against Walmart pursuant to California's Consumers Legal Remedies
Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

37. The Class Products are "goods" within the meaning of Cal. Civ. Code § 1761(a), and
the purchases of the Class Products by Plaintiff and members of the California Consumer Subclass
constitute "transactions" within the meaning of Cal. Civ. Code § 1761(e).

- 38. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have
  sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
  have..." By marketing the Class Products with their current packaging, Walmart has represented and
  continues to represent that the Class Products have characteristics (i.e., they are pure avocado oil) that
  they do not have. Therefore, Walmart has violated section 1770(a)(5) of the CLRA.
- 27 28

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

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

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

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

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

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

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

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opportunity to cure, consistent with Cal. Civ. Code § 1782. Walmart received this notice and demand 1 2 letter on October 2, 2023, but it has done nothing to rectify the unlawful conduct described herein. 3 46. Because Walmart has failed to fully rectify or remedy the damages caused after waiting more than the statutorily required 30 days after Walmart received the foregoing notice and 4 5 demand letter, Plaintiff is timely filing this Complaint for damages as permitted under Cal. Civ. Code § 1782(d). Plaintiff also requests an award of actual and punitive damages, attorneys' fees and 6 7 costs, and any other relief that the Court deems proper, pursuant to Cal. Civ. Code § 1780(a). 8 47. Plaintiff and members of the proposed Classes have no adequate remedy at law and 9 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to 10 recover the amount of Defendant's ill-gotten gains, and/or other sums as may be just and equitable. SECOND CLAIM FOR RELIEF 11 Violation of California's False Advertising Law 12 California Business & Professions Code § 17500, et seq (For the Classes) 13 48. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set 14 forth herein and, to the extent necessary, pleads this cause of action in the alternative. 15 49. Plaintiff brings this claim individually and on behalf of the members of the proposed 16 Classes against Walmart pursuant to California's False Adverting Law ("FAL"), Cal. Bus. & Prof. 17 Code § 17500, et seq. 18 50. The FAL makes it "unlawful for any person to make or disseminate or cause to be 19 made or disseminated before the public . . . in any advertising device . . . or in any other manner or 20 means whatever, including over the Internet, any statement, concerning . . . personal property or 21 services professional or otherwise, or performance or disposition thereof, which is untrue or 22 misleading and which is known, or which by the exercise of reasonable care should be known, to 23 be untrue or misleading." Cal. Bus. & Prof. Code § 17500. 24 Walmart has represented and continues to represent to the public, including Plaintiff 51. 25 and members of the proposed Classes, through its deceptive packaging, that the Class Products are 26 pure avocado oil. Because Walmart has disseminated misleading information regarding the Class 27 Products, and Walmart knows, knew, or should have known, through the exercise of reasonable 28 22 CLASS ACTION COMPLAINT

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

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

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

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#### <u>THIRD CLAIM FOR RELIEF</u> Violation of California's Unfair Competition Law ("UCL"), California Business & Professions Code § 17200, *et seq.* (For the Classes)

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

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

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

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

58. Under the UCL, a business act or practice is "unfair" if Walmart's conduct offends
an established public policy, or is immoral, unethical, oppressive, unscrupulous, or substantially

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1 injurious to consumers, as the benefits for committing such acts or practices are outweighed by the gravity of the harm to the alleged victims. Walmart's conduct was and continues to be of no benefit 2 3 to purchasers of the Class Products, as it is misleading, unfair, unlawful, and is injurious to 4 consumers who rely on the packaging. Deceiving consumers into believing the Class Products are 5 pure avocado oil, when they are not, is of no benefit to consumers. Therefore, Walmart's conduct was and continues to be "unfair." As a result of Walmart's unfair business acts and practices, 6 7 Walmart has and continues to unfairly obtain money from Plaintiff, and members of the proposed 8 Classes.

9 59. Under the UCL, a business act or practice is "fraudulent" if it actually deceives or is 10 likely to deceive members of the consuming public. Walmart's conduct was and continues to be 11 fraudulent because it has the effect of deceiving consumers into believing the Class Products are pure avocado oil. Because Walmart misled Plaintiff and members of both Classes, Walmart's 12 13 conduct was "fraudulent." As a result of Walmart's fraudulent business acts and practices, Walmart has and continues to fraudulently obtain money from Plaintiff and members of the proposed Classes. 14 60. 15 Plaintiff requests that the Court cause Walmart to restore this unlawfully, unfairly, and fraudulently obtained money to them, and members of the proposed Classes, to disgorge the 16 17 profits Walmart made on these transactions, and to enjoin Walmart from violating the UCL or 18 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff and members 19 of the proposed Classes may be irreparably harmed and/or denied an effective and complete remedy. 61. 20 Plaintiff and members of the proposed Classes have no adequate remedy at law and 21 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to recover the amount of Defendant's ill-gotten gains, and/or other sums as may be just and equitable. 22 23 FOURTH CLAIM FOR RELIEF **Breach of Express Warranty** 24 California Commercial Code § 2313 25 (For the Classes) 62. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set 26 forth herein and, to the extent necessary, pleads this cause of action in the alternative. 27 63. Plaintiff brings this claim individually and on behalf of the members of the proposed 28 24 CLASS ACTION COMPLAINT

1 Classes against Walmart.

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

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

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

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

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

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

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1	70. Within a month after Plaintiff discovered that Walmart did in fact breach the express			
2	warranty, Plaintiff notified Walmart of the breach. See supra ¶ 45.			
3	FIFTH CLAIM FOR RELIEF			
4 5	Breach of Implied Warranty California Commercial Code § 2314 (2)(f) (For the Classes)			
6	71. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set			
7	forth homin and to the output recessory rheads this cause of action in the alternative			
8	72 Disintiff brings this slaim individually and an babalf of the members of the			
9				
10	73. California's implied warranty of merchantability statute provides that "a warranty			
11	that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant			
12	with respect to goods of that kind." Cal. Com. Code § 2314(1).			
13	74. California's implied warranty of merchantability statute also provides that "[g]oods			
14	to be merchantable must be at least such as (f) [c]onform to the promises or affirmations of			
15	fact made on the container or label if any." Cal. Com. Code § 2314(2)(f).			
16	75. Walmart is a merchant with respect to the sale of the Class Products. Therefore, a			
17	warranty of merchantability is implied in every contract for sale of the Class Products to California			
18	consumers.			
19	76. By advertising the Class Products with their current packaging, Walmart made an			
20	implied promise that the Class Products are pure avocado oil. The Class Products do not, however,			
21	"conform to the promisesmade on the container or label" because they are not pure avocado oil,			
22	but instead consist of other oils. Plaintiff, as well as consumers, did not receive the goods as			
23	impliedly warranted by Walmart to be merchantable.			
24	77. Therefore, the Class Products are not merchantable under California law and			
25	Walmart has breached its implied warranty of merchantability with respect to the Class Products.			
26	78. If Plaintiff and members of the Classes had known that the Class Products were not			
27	pure avocado oil, they would not have been willing to pay the premium price associated with them,			
28	or they would not have purchased them at all. Therefore, as a direct and/or indirect result of			
	26			
	CLASS ACTION COMPLAINT			

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

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

## 5

6

#### SIXTH CLAIM FOR RELIEF Intentional Misrepresentation (for the Classes)

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

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

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

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

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

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

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

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

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## PRAYER FOR RELIEF

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

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

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

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

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

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

- 19 F. An award of punitive damages;
  - G. An award of nominal damages;
  - H. An award to Plaintiff and his counsel of reasonable expenses and attorneys' fees;
- I. An award to Plaintiff and the proposed Classes of pre and post-judgment interest, to

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

23 the extent allowable; and

J.

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1	DEMA	DEMAND FOR JURY TRIAL			
2	Plaintiff, on behalf of himself an	Plaintiff, on behalf of himself and the proposed Classes, hereby demands a jury trial with			
3	respect to all issues triable of right by jury.				
4					
5	DATED: February 20, 2024	THE WAND LAW FIRM, P.C.			
6	5				
7		By: Aubry Wand			
8 9		FARUQI & FARUQI, LLP Lisa T. Omoto			
10		Attorneys for Plaintiff and the Putative			
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# **ClassAction.org**

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Great Value Avocado Oil Not as Pure as</u> <u>Advertised, Class Action Alleges</u>