UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Amanda Kelly, as Parent/Guardian for Infant G.S., on behalf of herself and those similarly situated, Plaintiffs, v. Wal-Mart Stores, Inc., Defendant.	Case No. 5:18-CV-0702 (GTS/ATB) **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

INTRODUCTION

1. Wal-Mart sells Parent's Choice Organic Rice Rusks at its stores. The Rice Rusks are a snack for small children. The packaging of the Rice Rusks does not disclose that the Rice Rusks contain milk or eggs, but they do.

2. Wal-Mart is required to disclose the presence of allergens such as milk and eggs on packaged foods under the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C § 343(w).

3. Plaintiff purchased the Rice Rusks for her one-year old daughter relying on the fact that the Rice Rusks did not contain milk or eggs, since the packaging did not state that the Rice Rusks contained eggs or milk. Plaintiff's daughter suffered a severe allergic reaction to the Rice Rusks.

4. The undisclosed presence of milk or eggs in the Rice Rusks presents a danger to children with egg or milk allergies. The Rice Rusks should be removed from Wal-Mart's shelves immediately and purchasers should receive refunds.

JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2). Plaintiff Amanda Kelly is a citizen of the State of New York and resides in Onondaga County, New York. Defendant is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Upon information and belief, the amount in controversy is in excess of $5,000,000, exclusive of interests and costs.

6. Jurisdiction is also proper under 28 U.S.C. § 1332(a) because the parties are citizens of different states and the amount in controversy for Plaintiff's individual claim is greater than $75,000.

7. This Court has personal jurisdiction over Defendant because Defendant conducts and transacts business in the State of New York, contracts to supply goods within the State of New York, and supplies goods within the State of New York.

8. Venue is proper because Plaintiff and many Class Members reside in the Northern District of New York, and throughout the State of New York. In addition, the transactions and occurrences giving rise to this action took place in this District.

PARTIES

Plaintiff

9. Plaintiff Amanda Kelly is an individual consumer who, at all times material hereto, was a citizen of Onondaga County, New York. During the Class Period she purchased the Rice Rusks from a Wal-Mart store in East Syracuse, New York.

10. Plaintiff purchased the Rice Rusks because she carefully read the packaging, which did not disclose that the Rice Rusks contained milk or eggs. Plaintiff relied on the packaging in making her purchase decision. Had she known the truth, that the Rice Rusks contain milk or eggs, she would not have purchased them.

Defendant

11. Defendant Wal-Mart Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. Defendant sells the Rice Rusks at Wal-Mart stores. Defendant is responsible for the contents, ingredients, labeling and packaging for the Rice Rusks.

FACTS

12. Plaintiff is the parent of sixteen-month old child, G.S.

13. G.S. suffers from egg and milk allergies for which she was diagnosed at six months of age.

14. Plaintiff is careful to examine the ingredients of food products she purchases for her daughter to see if they contain milk or eggs and does not purchase the products if they do.

15. As a general matter, Plaintiff relies on the labeling of food packages to determine if the product contains milk or eggs.

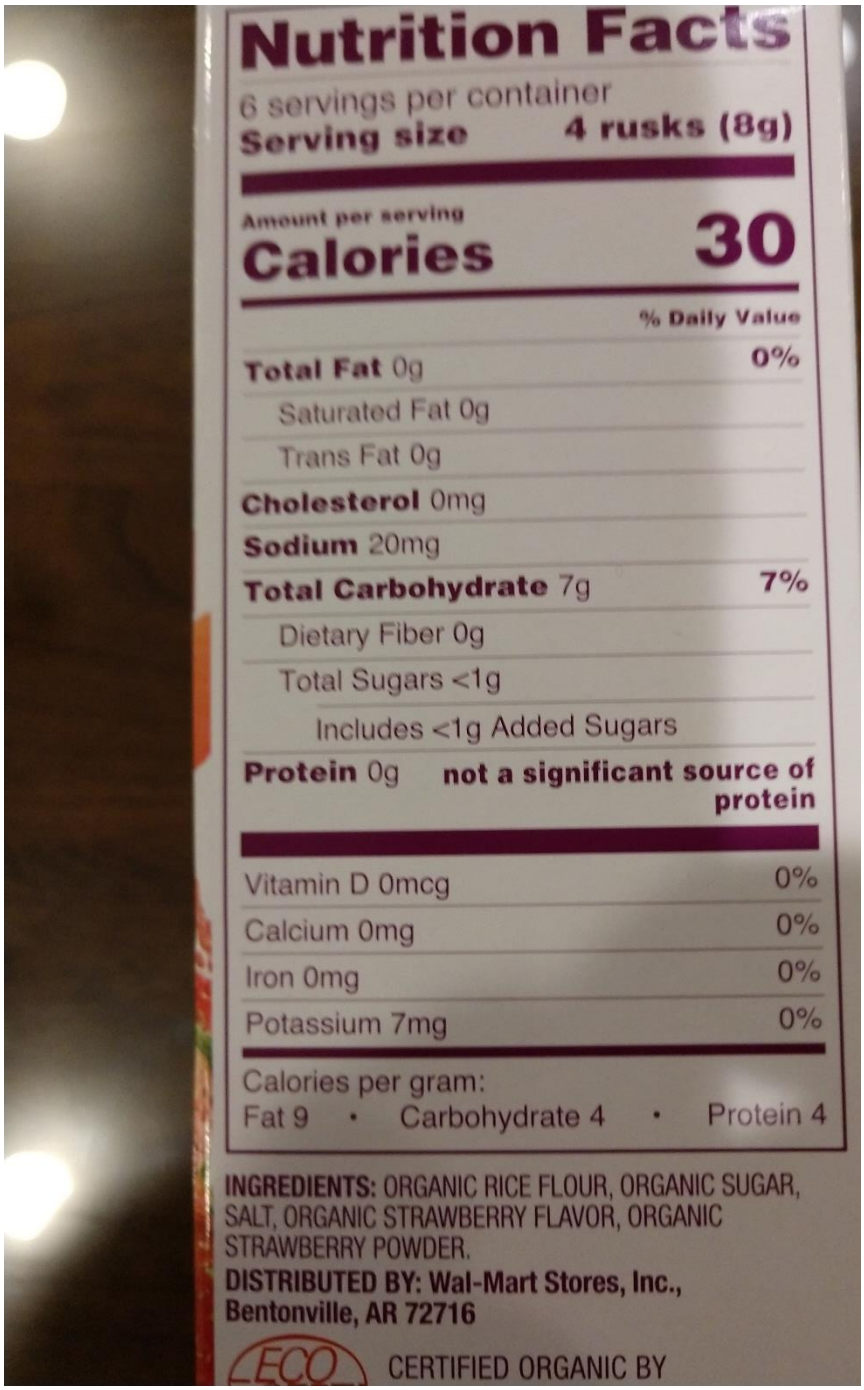
16. Plaintiff is willing to pay a premium for packaged food that does not contain milk or eggs compared with packaged food that does.

17. On June 3, 2018, Plaintiff purchased Parent's Choice Organic Rice Rusks at Wal-Mart in Syracuse.

18. "Parents Choice" is Wal-Mart's brand.

19. Before purchase, Plaintiff examined the box to see if the Rice Rusks contained milk or eggs.

20. There was no indication on the package that the product contained milk or eggs, on the ingredients panel or anywhere else.



Nutrition Facts

6 servings per container

Serving size **4 rusks (8g)**

Amount per serving

Calories **30**

	% Daily Value
Total Fat 0g	**0%**
Saturated Fat 0g	
Trans Fat 0g	
Cholesterol 0mg	
Sodium 20mg	
Total Carbohydrate 7g	**7%**
Dietary Fiber 0g	
Total Sugars <1g	
Includes <1g Added Sugars	
Protein 0g	**not a significant source of protein**
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 7mg	0%

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: ORGANIC RICE FLOUR, ORGANIC SUGAR, SALT, ORGANIC STRAWBERRY FLAVOR, ORGANIC STRAWBERRY POWDER.

DISTRIBUTED BY: Wal-Mart Stores, Inc., Bentonville, AR 72716

ECO CERTIFIED ORGANIC BY

21. Plaintiff relied on this fact when making her purchase decision.

22. The evening of June 3, Ms. Kelly gave one of the Rice Rusks to G.S. Before G.S. had even finished eating it, an allergic reaction began. G.S. began to experience itching and raised, red hives all over her body.

23. Plaintiff immediately recognized these signs as an allergic reaction.

24. Plaintiff examined the package again, concerned that she might have missed an ingredient or that S.G's reaction indicated that she was allergic to something besides eggs and milk. Plaintiff again observed that the package did not disclose the presence of eggs or milk and that G.S. regularly consumes the other ingredients disclosed on the Rice Rusk package.

25. The next day Ms. Kelly called Wal-Mart at the number provided on the package to ask about the ingredients of the Rice Rusks.

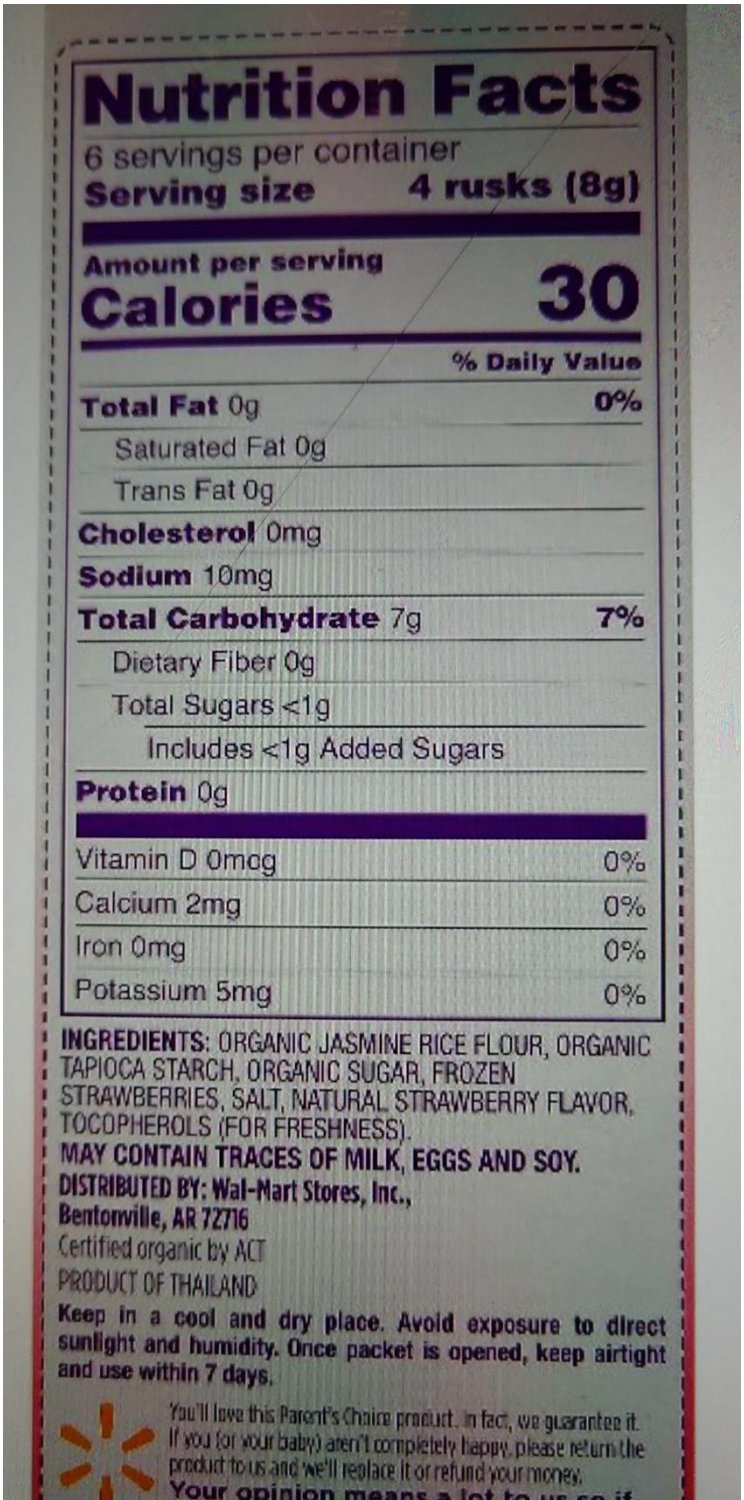
26. The Wal-Mart representative stated that Rice Rusks may contain milk and eggs and that the packaging of the Rice Rusks clearly states: "May contain milk or eggs."

27. Plaintiff responded that the package did not state that it may contain milk or eggs.

28. The Wal-Mart representative stated that she was looking at the package and the package stated: "May contain milk or eggs."

29. Plaintiff looked at the Wal-Mart website and the Rice Rusks package she found there was different from the package she bought at the store.

30. The Rice Rusks package on the website stated that the product "May contain milk or eggs."



Nutrition Facts

6 servings per container

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Amount per serving

Calories **30**

	% Daily Value
Total Fat 0g	**0%**
Saturated Fat 0g	
Trans Fat 0g	
Cholesterol 0mg	
Sodium 10mg	
Total Carbohydrate 7g	**7%**
Dietary Fiber 0g	
Total Sugars <1g	
Includes <1g Added Sugars	
Protein 0g	
Vitamin D 0mcg	0%
Calcium 2mg	0%
Iron 0mg	0%
Potassium 5mg	0%

INGREDIENTS: ORGANIC JASMINE RICE FLOUR, ORGANIC TAPIOCA STARCH, ORGANIC SUGAR, FROZEN STRAWBERRIES, SALT, NATURAL STRAWBERRY FLAVOR, TOCOPHEROLS (FOR FRESHNESS).

MAY CONTAIN TRACES OF MILK, EGGS AND SOY.

DISTRIBUTED BY: Wal-Mart Stores, Inc., Bentonville, AR 72716

Certified organic by ACT

PRODUCT OF THAILAND

Keep in a cool and dry place. Avoid exposure to direct sunlight and humidity. Once packet is opened, keep airtight and use within 7 days.

You'll love this Parent's Choice product. In fact, we guarantee it. If you (or your baby) aren't completely happy, please return the product to us and we'll replace it or refund your money.

Your opinion means a lot to us so if

31. However, this notice did not appear on the package Ms. Kelly purchased at the Wal-Mart store.

32. Ms. Kelly believes that the Rice Rusks she bought in the store are the same as the Rice Rusks on the Wal-Mart website except for a slightly different package design and the lack of a warning that the product may contain milk or eggs.

33. The Wal-Mart representative offered Plaintiff a gift card refund for the $1.84 price of the Rice Rusks. Ms. Kelly declined the offer.

34. Plaintiff keeps an Epipen with her at all times and carefully monitored her daughter's symptoms over the next few days. G.S. did not sleep for two nights and continuously cried and tried to scratch herself.

CLASS ALLEGATIONS

35. Plaintiff brings this matter on behalf of herself and those similarly situated. Defendant's customers were uniformly impacted by and exposed to the failure of Wal-Mart to disclose the presence of milk or eggs in the Rice Rusks. Accordingly, this Complaint is well situated for classwide resolution, including injunctive relief.

36. The Class is defined as all consumers who purchased the Rice Rusks contained in packaging which did not disclose the presence of milk or eggs, anywhere in the United States during the Class Period (the "Class").

37. Ms. Kelly also seeks certification, to the extent necessary or appropriate, of a subclass of individuals who purchased the Rice Rusks in the State of New York at any time during the Class Period (the "New York Subclass").

38. This action should be maintained as a class action under Rule 23(a) because the case satisfies the class action prerequisites of numerosity, commonality, typicality, and adequacy:

39. Numerosity: Class and Subclass Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of consumers who are Class Members described above who have been misled by Defendant's failure to disclose the presence of eggs or milk.

40. Commonality: The questions of law and fact common to the Class and Subclass Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

a. Whether Wal-Mart is required to disclose the presence of eggs or milk in the Rice Rusks on the packaging;
b. Whether Wal-Mart is responsible for the failure to disclose the presence of eggs or milk in the Rice Rusks;
c. Whether Wal-Mart knew or should have known that the presence of milk or eggs in the Rice Rusks was not disclosed;
d. Whether Wal-Mart's conduct constitutes a breach of its duty to class members;
e. Whether Wal-Mart's conduct constitutes a breach of warranty of merchantability;

f. With respect to the New York Subclass, whether Wal-Mart's conduct violates General Business Law § 349;

g. Whether Plaintiff and the Class are entitled to injunctive relief;

h. Whether Plaintiff and the Class are entitled to monetary damages.

41. Typicality: Plaintiff is a member of the Class and Subclass. Plaintiff's claims are typical of the claims of each Class and Subclass Member in that every member of the Class and Subclass was subjected to the same misconduct, the failure to disclose the presence of eggs or milk in the Rice Rusks.

42. Adequacy: Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the Class and Subclass Members they seek to represent; her claims are common to all members of the Class and Subclass and she has a strong interest in vindicating their rights; and she has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class or Subclass.

43. The Class is properly brought and should be maintained as a class action under Rule 23(b) because a class action is superior to traditional litigation of this controversy. Pursuant to Rule 23(b)(3), common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Wal-Mart's marketing and labeling practices. In addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

44. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

a. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

b. The individual claims of the Class Members are very small, thereby making it impracticable, unduly burdensome, and expensive—if not totally impossible—to justify individual actions;

c. When Defendant's liability has been adjudicated, all Class Members' claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;

d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;

e. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;

f. This class action will assure uniformity of decisions among Class Members;

g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;

h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and

45. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who purchased Rice Rusks.

46. Accordingly, this Class is properly brought and should be maintained as a class action under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

INJUNCTIVE CLASS RELIEF

47. Rules 23(b)(1) and (2) contemplate a class action for purposes of seeking class-wide injunctive relief. Here, Wal-Mart has failed to disclose the presence of allergens in the Rice Rusks. Since Defendant's conduct has been uniformly directed at all consumers in the United States, and the conduct continues presently, injunctive relief on a class-wide basis is a viable and suitable solution to remedy Defendant's continuing misconduct.

48. Plaintiff would probably purchase the Rice Rusks in the future if she could be certain that she could rely on the label that the Rice Rusks do not contain eggs or milk.

49. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

a. Numerosity: Individual joinder of the injunctive Class Members would be wholly impracticable. Defendant's Products have been purchased by thousands of people throughout the United States;

b. Commonality: Questions of law and fact are common to members of the Class. Defendant's misconduct was uniformly directed at all consumers. Thus, all members of the Class have a common cause against Defendant to stop its misleading conduct through an injunction. Since the issues presented by this injunctive Class deal exclusively with Defendant's misconduct, resolution of these questions would necessarily be common to the entire Class. Moreover, there are common questions of law and fact inherent in the resolution of the proposed injunctive class, including, *inter alia*:

    i. Resolution of the issues presented in the 23(b)(3) class;

    ii. Whether members of the Class will continue to suffer harm by virtue of Defendant's marketing and labeling; and

    iii. Whether, on equitable grounds, Defendant should be ordered to stop selling the Rice Rusks.

c. Typicality: Plaintiff's claims are typical of the claims of the Injunctive Class because her claims arise from the same course of conduct (i.e. Defendant's failure to disclose the presence of eggs and milk in the Rice Rusks. Plaintiff is a typical representative of the Class because, like all members of the Injunctive Class, she

purchased Wal-Mart's Rice Rusks, the packaging of which failed to disclose the presence of eggs and milk.

d. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the injunctive Class. Her consumer protection claims are common to all members of the injunctive Class and she has a strong interest in vindicating her rights. In addition, Plaintiff and the Class are represented by counsel who is competent and experienced in both consumer protection and class action litigation.

50. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(b)(2) because Plaintiff seeks injunctive relief on behalf of the Class Members on grounds generally applicable to the entire injunctive Class. Certification under Rule 23(b)(2) is appropriate because Defendant has acted or refused to act in a manner that applies generally to the injunctive Class (i.e. Defendant has marketed its Products using the same labeling to all of the Class Members). Any final injunctive relief or declaratory relief would benefit the entire injunctive Class as Defendant would be prevented from continuing its misleading and deceptive marketing practices and would be required to honestly disclose to consumers the nature of the contents of its Products.

FIRST CAUSE OF ACTION
VIOLATION OF NEW YORK GBL § 349
(On Behalf of Plaintiff and the New York Subclass)

51. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

52. New York General Business Law Section 349 ("GBL § 349") declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state . . ."

53. Defendant's conduct, the sale of the Rice Rusks in its stores, is "consumer oriented."

54. Defendant's failure to disclose the presence of eggs and milk was materially misleading.

55. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Ms. Kelly and the New York Subclass Members are entitled to monetary, compensatory, statutory, treble and/or punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

56. In addition, Plaintiff and the New York Subclass Members seek preliminary and permanent injunctive relief against Defendant, enjoining it from selling the Rice Rusks without the disclosure of the presence of eggs and milk as required by the Food Allergen Labeling and Consumer Protection Act of 2004.

57. There is no adequate remedy at law, since the Rice Rusks are still being sold and present a health risk to consumers with milk and egg allergies.

SECOND CAUSE OF ACTION
NEW YORK AGRICULTURE AND MARKETS LAW (NY CLS Agr. & M § 201)
(On Behalf of Plaintiff and the New York Subclass)

58. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

Section 201 ("Misbranding of Food") of the New York Agriculture and Markets Law (NY CLS Agr. & M § 201) states that "Food shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular."

59. The labeling on the Rice Rusks is "false and misleading" because it fails to disclose the presence of milk and eggs.

60. Section 201 also states that "Food shall be deemed to be misbranded: … 14. If it contains a milk protein concentrate, caseinate, or added casein…, unless its label bears the name of such substance as an ingredient."

61. The Rice Rusks are misbranded because the presence of milk means the Rice Rusks contain "milk protein concentrate, caseinate, or added casein" and that fact is not disclosed.

62. G.S. has been damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF MERCHANTIBILITY
(On Behalf of Plaintiff and All Class Members)

63. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

64. An implied warranty of merchantability arises with respect to Wal-Mart's sale of the Rice Rusks.

65. Defendant is in the business of selling the Rice Rusks.

66. The Rice Rusks would not pass without objection in the trade, since the packaging

does not disclose the presence of milk and eggs.

67. The Rice Rusks are not adequately contained, packaged and labeled since the packaging does not disclose the presence of milk and eggs.

68. Plaintiff and consumers cannot reasonably expect that a product that is required to disclose the presence of milk and eggs nonetheless contains milk and eggs.

69. Within twenty-four hours of Plaintiff's discovery of the existence of milk and eggs in the Rice Rusks, she notified Wal-Mart.

70. The inability of the Rice Rusks to meet the label description was wholly due to the Defendant's fault and without Plaintiff's or Class Members' fault or neglect, and was solely due to the Defendant's manufacture and distribution of the Products to the public.

71. As a result of the foregoing, Plaintiff and Class Members have been damaged in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
NEGLIGENCE
(On behalf of Plaintiff and All Class Members)

72. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

73. At all times relevant to this lawsuit, Wal-Mart was in the business of selling snack products in its stores such as Rice Rusks.

74. Wal-Mart sold the Rice Rusks to Ms. Kelly.

75. The Rice Rusks were mislabeled and unsafe because the packaging did not include the required warning concerning the presence of milk and/or eggs.

76. As a direct and proximate result of the presence of milk and/or eggs, G.S. suffered from raised and red hives all over her body. SG cried nearly continuously for two days and continuously tried to scratch herself.

77. G.S. has been damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
STRICT LIABILITY – FAILURE TO WARN
(On behalf of Plaintiff)

78. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

79. Wal-Mart was under a duty to provide a warning that the Rice Rusks contained eggs and/or milk.

80. Wal-Wart failed to provide such a warning.

81. The Rice Rusks contained eggs and/or milk at the time of sale.

82. As a direct and proximate result of the lack of warning about the presence of eggs and/or milk in the Rice Rusks, G.S. suffered from raised and red hives all over her body. G.S. cried nearly continuously for two days and continuously tried to scratch herself.

83. G.S. has been damaged in an amount to be determined at trial.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for judgment as follows:

(a) Declaring this action to be a proper class action under Rule 23 of the FRCP and certifying Plaintiff as the representative of the nationwide class and New York Subclass;

(b) Entering preliminary and permanent injunctive relief against Defendant, directing Defendant to correct its practices and to comply with consumer protection statutes nationwide, including federal New York consumer protection laws;

(c) Awarding monetary damages, including treble damages;

(d) Awarding punitive damages;

(e) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and

(f) Granting such other and further relief as the Court may deem just and proper.

Dated: June 13, 2018

THE SULTZER LAW GROUP P.C.

By: Adam R. Gonnelli /s/

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Counsel for Plaintiff and the Class

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Amanda Kelly, as Parent/Guardian for Infant G.S., on behalf of herself and those similarly situated,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
The Sultzer Law Group, P.C.
85 Civic Center Plaza, Suite 104
Poughkeepsie, NY 12601 (845) 483-7100

DEFENDANTS
Wal-Mart Stores, Inc.,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☒ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. § 1332(d)(2)
Brief description of cause:
Consumer product liability class action

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $ 5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*
JUDGE _____ DOCKET NUMBER _____

DATE 06/15/2018
SIGNATURE OF ATTORNEY OF RECORD /s/ Adam R. Gonelli

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT $400.00 APPLYING IFP _____ JUDGE GTS MAG. JUDGE ATB

ANYNDC-4418731

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.