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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 Pearl Magpayo, individually, and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 Walmart Inc.,

20 Defendant.

CASE NO.: 3:24-cv-01350

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Pearl Magpayo (“Plaintiff”), individually, and on behalf of all others
2 similarly situated, by and through her attorneys, brings this Class Action Complaint
3 against Walmart Inc. (“Defendant”), based upon personal knowledge as to herself,
4 and upon information, investigation and belief of her counsel.
5

6 INTRODUCTION

7 1. It should go without saying that reasonable consumers associate heart
8 health with the prevention of heart disease.

9 2. One person dies every 33 seconds in the United States from
10 cardiovascular disease.¹ Coronary heart disease is the most common type of
11 cardiovascular disease, killing 375,476 people in 2021.² About 1 in 20 adults aged 20
12 and older have coronary heart disease (about 5%).³ In 2021, about 2 in 10 deaths from
13 coronary heart disease happen in adults less than 65 years old.⁴
14

15 3. This national health problem has spurred an entire industry dedicated to
16 marketing Omega-3 supplements, often with marketing known to mislead reasonable
17 consumers.
18

19 4. “The sale of fish oil supplements is a multibillion-dollar industry, and
20 many people take fish oil capsules daily, believing the omega-3 fatty acids they
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22

23 ¹ *Heart Disease Facts*, Ctrs. Disease Control & Prevention (May 15, 2023),
24 <https://www.cdc.gov/heartdisease/facts.htm>.

25 ² *Id.*

26 ³ *Id.*

27 ⁴ Lindsey Bever, *Marketers Overstate Fish Oil Claims for Heart Health, Study Shows*,
28 *Wash. Post* (Aug. 23, 2023), www.washingtonpost.com/wellness/2023/08/23/fish-oil-supplements-heart-benefits/.

1 contain are good for their overall health, particularly for their heart.”⁵

2 5. “Most research shows that over-the-counter fish oil supplements don’t
3 offer cardiovascular benefits, but that hasn’t stopped marketers from touting them for
4 heart health, a new study shows.”⁶

5 6. In a study by JAMA Cardiology, the labels of more than 2,800 fish oil
6 supplements were examined.⁷

7 7. It was found that a majority of fish oil supplements make claims health
8 claims, often related to heart health, even though there is a lack of trial data showing
9 efficacy, and that such statements increased the potential for consumer
10 misinformation.⁸

11 8. Indeed, even the U.S. Department of Health and Human Services, National
12 Center for Complementary and Integrative Health (“NIH”) has stated that “[r]esearch
13 indicates that omega-3 supplements don’t reduce the risk of heart disease.”⁹
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17 ⁵ *Id.*; see also ASCEND Study Collaborative Grp., *Effects of n-3 Fatty Acid*
18 *Supplements in Diabetes Mellitus*, 379 N. Eng. J. Med. 1540 (Oct. 18, 2018),
19 <https://www.nejm.org/doi/full/10.1056/nejmoa1804989> (finding that in a randomized
20 trial of more than 15,000 patients with diabetes, a risk factor for cardiovascular
21 disease, the risk of a serious cardiovascular event was not significantly different
22 between those who were taking an omega-3 supplement and those who were not).

23 ⁶ Bever, *supra* note 4.

24 ⁷ Joanna N. Assadourian et al., *Health Claims and Doses of Fish Oil Supplements in*
25 *the US*, 8(10) JAMA Cardiology 984, 986 (Aug. 23, 2023),
26 https://jamanetwork.com/journals/jamacardiology/article-abstract/2808769?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jamacardio.2023.2424.

27 ⁸ *Id.* at 985.

28 ⁹ *Omega-3 Supplements: In Depth*, Nat’l Ctr. Complimentary & Integrative Health (“NIH”) - U.S. Dep’t Health & Hum. Servs. (Apr. 2018),

1 9. “However, people who eat *seafood* one to four times a week are less
2 likely to die of heart disease.” (emphasis added).¹⁰

3 10. Despite the lack of evidentiary support, companies like Defendant
4 continue to make false and misleading claims related to Omega-3 supplements
5 because reasonable consumers are particularly vulnerable to such claims.
6

7 11. As stated by registered dietitian Scott Keatley, co-owner of Keatley
8 Medical Nutrition Therapy, “Many people take fish oil because of longstanding
9 beliefs about its potential health benefits, particularly for heart health.”¹¹

10 12. “*The supplement industry*, anecdotal evidence and earlier studies *have*
11 *often promoted these benefits*. Once a narrative becomes deeply embedded in popular
12 culture, it can be difficult to change, even when new evidence emerges.”¹²
13

14 13. This case involves an Omega-3 Supplement also touting purported heart
15 health benefits—Defendant’s Spring Valley Fish Oil Omega-3 supplement. The
16

17 <https://www.nccih.nih.gov/health/omega3-supplements-in-depth> (scroll down to
18 heading “What Do We Know About the Effectiveness of Omega-3s” and click on the
19 “+” button to the right of “Heart Disease” subheading) (“A 2018 analysis of 10 major
20 omega-3 supplementation studies (77,917 total participants, all at high risk of heart
21 disease), each of which involved at least 500 participants and a treatment duration of
22 at least a year, found no evidence that omega-3s could reduce the risk of fatal or
23 nonfatal coronary heart disease.”) (last visited March 2, 2024). *Id.* (“In 2016, the U.S.
24 Government’s Agency for Healthcare Research and Quality (AHRQ) did a
25 comprehensive evaluation of 98 studies of omega-3s and heart disease, including both
26 diet and supplementation studies. They did not find evidence that omega-3s can
27 reduce the risk of heart attacks or death from heart disease.”).

28 ¹⁰ *Id.*

¹¹ Korin Miller, *Most Fish Oil Supplements Make Unsupported Heart Health Claims, Finds New Study. Here's Why Experts Say Most People Can Skip Them.*, yahoo!life (Aug. 23, 2023), <https://www.yahoo.com/lifestyle/fish-oil-supplements-heart-heart-study-150006741.html>.

¹² *Id.*

1 Products' front label includes the following prominent heart health representations:

- 2 • "Omega-3"
- 3 • "Fish Oil is a source of Omega-3 fatty acids that support heart health"
- 4 • "Heart Health"
- 5 • A heart symbol
- 6 • A heart symbol

7 *See example below.*



1 14. Collectively, the heart health representations lead reasonable consumers to
2 believe the Products’ Omega-3s support heart health. Unbeknownst to consumers, the
3 heart health representations are false and misleading because the Products’ Omega-3s do
4 not support heart health (i.e., the Omega-3s in the Products do not reduce the risk of heart
5 disease). As discussed in more detail below, this allegation is well supported by current
6 studies on Omega-3 supplementation, and by leading authorities in the field of heart
7 health like the NIH.

9 15. The heart health representations also lead reasonable consumers to believe
10 there is—at least some—conclusive research to show that the Products’ Omega-3s
11 reduce the risk of heart disease. Unbeknownst to consumers, there is no conclusive
12 research to show that the Products’ Omega-3s reduce the risk of heart disease.

14 16. It should be noted that the U.S. Food and Drug Administration (the
15 “FDA”) has addressed this exact form of deception and taken tremendous efforts to
16 ensure that supplements accurately communicate to consumers the level of scientific
17 evidence that exists for a health claim.

18 17. As discussed in more detail below, because the Products make health
19 claims that lead reasonable consumers to believe the Products will reduce the risk of heart
20 disease, Defendant was required by the FDA to include a disclaimer stating that
21 “Supportive *but not* conclusive research shows that consumption of EPA and DHA
22 Omega-3 fatty acids *may* reduce the risk of coronary heart disease.” (emphasis
23 added). This is because the FDA has found that health claims related to heart disease
24 on Omega-3 supplements lack significant scientific agreement.

27 18. While Plaintiff is not bringing claims to enforce the FDA’s rules and
28 regulations, the fact that the FDA requires such a disclaimer shows that reasonable

1 consumers can be misled about the level of scientific support that exists for a health
2 claim.

3 19. This is because consumers reasonably trust and rely on a supplement's
4 health claims and believe that there must be at least some conclusive research before
5 a company is allowed to make a health claim like—supports heart health.
6

7 20. Because that is not the case, reasonable consumers have been misled by the
8 Products' health claims.

9 21. Plaintiff and other consumers purchased the Products and paid a price
10 premium relying on the false and deceptive labeling, advertising, and marketing of
11 the Products.
12

13 22. Had Plaintiff and other consumers been aware that the Products do not
14 support heart health, they would not have purchased the Products or would have paid
15 significantly less for them.

16 23. Also, had Plaintiff and other consumers known there is no conclusive
17 research showing that the Products reduce the risk of heart disease, they would not have
18 purchased the Products or would have paid significantly less for them.
19

20 24. Accordingly, Plaintiff and Class members have been injured by
21 Defendant's deceptive business practices.

22 JURISDICTION AND VENUE

23 25. This Court has subject matter jurisdiction pursuant to the Class Action
24 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under
25 Rule 23 of the Federal Rules of Civil Procedure, there are thousands of proposed Class
26 members, the aggregate amount in controversy exceeds \$5,000,000 exclusive of
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1 interest and costs, and Defendant is a citizen of a state different from at least some
2 members of the proposed Classes, including Plaintiff.

3 26. This Court has personal jurisdiction over Defendant because Defendant
4 has sufficient minimum contacts in California, or otherwise intentionally avails itself
5 of the markets within California, through its sale of goods and products (including the
6 Products) in California and to California consumers.

8 27. Venue is proper in this judicial District pursuant to 28 U.S.C.
9 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the
10 claims at issue in this case occurred in this District. Specifically, Plaintiff resides in
11 this District and she purchased one of the Products at issue in this case in this District
12 during the statute of limitations period.

14 PLAINTIFF

15 28. Plaintiff Pearl Magpayo is a citizen of California and currently resides in
16 Hayward, California. During the relevant class period, including in or around May or
17 June 2023, Plaintiff purchased the Spring Valley Omega-3 Fish Oil Soft Gels, Heart
18 Health Dietary Supplement, 1000 mg from a Walmart in either Union City or San
19 Leandro, California. Based on the representations “Heart Health,” “Fish Oil is a source
20 of Omega-3 fatty acids that *support heart health*,” “Omega-3,” and the heart symbol on
21 the front label of the Product, Plaintiff reasonably believed the Product would support
22 heart health (i.e., that the Product would reduce the risk of heart disease). Had she known
23 the Product does not support heart health, she would not have purchased it, or would
24 have paid significantly less for it. As such, Plaintiff has been directly financially
25 injured by Defendant’s false and misleading labeling.
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1 29. Based on the Product's heart health representations, Plaintiff also
2 reasonably believed there was conclusive research showing that consumption of the
3 Product's Omega-3s would reduce the risk of heart disease. Had she known that there
4 is no conclusive research showing that consumption of the Product's Omega-3s
5 reduces the risk of heart disease, she would not have purchased the Product, or would
6 have paid significantly less for it. As such, Plaintiff has been directly financially
7 injured by Defendant's false and misleading labeling.

9 30. Despite Defendant's misrepresentations, Plaintiff would purchase the
10 Products, as labeled and marketed, if they actually supported heart health, and there
11 was conclusive research supporting such a claim. Although Plaintiff regularly shops
12 at stores that carry the Products, absent an injunction of Defendant's deceptive
13 labeling, she will be unable to rely with confidence on Defendant's labeling and
14 advertising of the Products in the future. Furthermore, while Plaintiff currently
15 believes the Products' labeling and advertising is inaccurate, she lacks personal
16 knowledge as to Defendant's specific business practices, and thus, she will not be able
17 determine whether the Products truly abide by their heart health representations. This
18 leaves doubt in her mind as to the possibility that at some point in the future the
19 Products could be made in accordance with the heart health representations on the
20 Products' front label and advertising. This uncertainty, coupled with her desire to
21 purchase a Product supporting heart health, is an ongoing injury that can and would
22 be rectified by an injunction enjoining Defendant from making the alleged misleading
23 representations. In addition, other Class members will continue to purchase the
24 Products, reasonably but incorrectly, believing that they support heart health, and that
25 there is conclusive research supporting such a claim.
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1 **DEFENDANT**

2 31. Defendant is a Delaware limited liability company with its principal
3 place of business in Bentonville, Arkansas. Defendant is an American multinational
4 retail corporation that sells a variety of consumer goods, including supplements.
5

6 **FACTUAL ALLEGATIONS**

7 32. At issue in this Complaint are the following Spring Valley Omega-3 Fish
8 Oil products:

- 9
- 10 • Spring Valley Omega-3 Fish Oil Soft Gels, Heart Health Dietary
11 Supplement, 1000 mg, 60 Count;
 - 12 • Spring Valley Proactive Support Omega-3 Mini from Fish Oil Dietary
13 Supplement, 1000 mg, 120 Count;
 - 14 • Spring Valley Omega-3 Fish Oil For Heart and Brain Health, Dietary
15 Supplement Soft gels, 1000 mg, 60 Count;
 - 16 • Spring Valley Maximum Care Omega-3 from Fish Oil Eye Brain Bone &
17 Heart Health Dietary Supplement Soft gels, 2000 mg, 120 Count;
 - 18 • Spring Valley Fish Oil Omega-3 General & Heart Health Dietary
19 Supplement Soft gels, 500 mg, 60 Count, 120, & 180 count;
 - 20 • Spring Valley Proactive Support Omega-3 from Fish Oil Heart General &
21 Brain Health Dietary Supplement Soft gels, 1000 mg, 120 Count;
 - 22 • Spring Valley Omega-3 Fish Oil Soft Gels, 1000 mg, 180 Count;
 - 23 • Spring Valley Omega-3 Fish Oil Brain & Heart Health Dietary Supplement
24 Soft gels, 2000 mg, 180 count; and
 - 25 • Spring Valley Omega-3 Natural Lemon Flavor Dietary Supplement Twin
26 Pack, 1000 mg, 360 count.
 - 27
 - 28

1 (collectively, the “Products”).

2 33. The front label of the Products tout purported heart health benefits with
3 the following heart health representations: (1) “Heart Health”; (2) a heart symbol; (3)
4 “Fish Oil is a source of Omega-3 fatty acids that support heart health”; and (4)
5 “Omega-3.” *See image below.*
6



14 34. Unfortunately for consumers, Defendant engages in false and misleading
15 business practices to gain a competitive edge in the market, all at the expense of
16 unsuspecting consumers. Defendant accomplishes this by using front label
17 representations that lead reasonable consumers to believe the Products’ Omega-3s
18 support heart health.
19

20 35. Unbeknownst to consumers, the Products’ heart health representations
21 are false and misleading because the Products’ Omega-3s do not support heart health
22 (i.e., the Products’ Omega-3s do not reduce the risk of heart disease). As discussed in
23 more detail below, this allegation is well supported by current studies on Omega-3
24 supplementation, and by reputable organizations in the field of heart health like the
25 NIH.
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1 36. Based on the Products’ heart health representations, reasonable
2 consumers are also led to believe there is—at least some—conclusive research to show
3 that the Products’ Omega-3s reduce the risk of heart disease.

4 37. Unbeknownst to consumers, there is no conclusive research to show that
5 the Products’ Omega-3s reduce the risk of heart disease. In fact, as discussed in more
6 detail below, “most [recent studies] found little or no evidence for a protective effect
7 of omega-3 supplements against heart disease.”¹³

8
9 **History Of Heart Disease and the Fish Oil Industry**

10 38. The rise of heart disease has spurred an entire industry dedicated to
11 marketing Omega-3 supplements, often with marketing known to mislead reasonable
12 consumers.

13
14 39. Americans are rightly concerned about their heart health because one
15 person dies every 33 seconds in the United States from heart disease. In fact, the most
16 common type of heart disease, coronary heart disease, killed 375,476 people in 2021.

17 40. In response, omega-3 supplements have skyrocketed in popularity, and
18 created “a multibillion-dollar industry” that encourages people to “take fish oil
19 capsules daily” because they “believe[] the omega-3 fatty acids they contain are good
20 for their overall health, particularly for their heart.”¹⁴

21
22 41. Several news outlets have recently brought the effectiveness of omega-3
23 supplements into question. For example, the New York Post described fish oil
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27 ¹³ NIH, *supra* note 9.

28 ¹⁴ Bever, *supra* note 4.

1 supplements as “worthless” and the health claims they make as “outrageous,”¹⁵ while
 2 the Washington Post said that “the vagueness of the wording used by fish oil
 3 marketers could lead to misinformation about the role of the dietary supplement.”¹⁶

4
 5 **Studies Finding that Omega-3 Supplements**
 6 **Do Not Reduce the Risk of Heart Disease**

7 42. Studies show that although consumers have been led to believe that
 8 taking fish oil supplements will reduce the risk of heart disease, “multiple randomized
 9 clinical trials have shown no cardiovascular benefits to fish oil supplements.”¹⁷

10 43. Meta-analyses of supplementation with marine-derived omega-3 fatty
 11 acids have reached a similar conclusion. Finding, for example, that “marine-derived
 12 omega-3 fatty acids . . . had no significant association with reductions in fatal or
 13 nonfatal coronary heart disease or any major vascular events.”¹⁸

14 44. Similarly, another study found that: “Supplementation with n–3 fatty
 15 acids did not result in a lower incidence of major cardiovascular events or cancer than
 16 placebo.”¹⁹

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 20 ¹⁵ Marc Lallanilla, *Why Fish Oil Supplements Are Basically Worthless: Study*, N.Y.
 21 Post (Oct. 2, 2023), <https://nypost.com/2023/10/02/why-fish-oil-supplements-are-basically-worthless-study/>.

22 ¹⁶ Bever, *supra* note 4.

23 ¹⁷ Assadourian, *supra* note 7, at 985.

24 ¹⁸ Theingi Aung, *Associations of Omega-3 Fatty Acid Supplement Use with*
 25 *Cardiovascular Disease Risks: Meta-analysis of 10 Trials Involving 77 917*
 26 *Individuals*, 3(3) JAMA Cardiology 225, 226 (Mar. 21, 2018)
<https://jamanetwork.com/journals/jamacardiology/fullarticle/2670752>.

27 ¹⁹ JoAnn E. Manson et al., *Marine n–3 Fatty Acids and Prevention of Cardiovascular*
 28 *Disease and Cancer*, 830(1) N. Eng. J. Med. 23, 23 (Jan. 3, 2019),
<https://www.nejm.org/doi/10.1056/NEJMoa1811403>.

1 45. The U.S. Department of Health and Human Services, National Center for
2 Complementary and Integrative Health (“NIH”) states that “[r]esearch indicates that
3 omega-3 supplements don’t reduce the risk of heart disease.”²⁰

4
5 46. In support, the NIH cites to two separate findings, including the 2018
6 meta-analysis discussed in paragraph 45 and the 2016 AHRQ study described below:

7 A 2018 analysis of 10 major omega-3 supplementation studies (77,917
8 total participants, all at high risk of heart disease), each of which
9 involved at least 500 participants and a treatment duration of at least a
10 year, found no evidence that omega-3s could reduce the risk of fatal or
11 nonfatal coronary heart disease.

12 * * *

13 In 2016, the U.S. Government’s Agency for Healthcare Research and
14 Quality (AHRQ) did a comprehensive evaluation of 98 studies of omega-
15 3s and heart disease, including both diet and supplementation studies.
16 They did not find evidence that omega-3s can reduce the risk of heart
17 attacks or death from heart disease.²¹

18 47. “Several other analyses of the evidence have been done in the last few
19 years (2012 or later), and like the 2018 analysis and the AHRQ report, most found
20 little or no evidence for a protective effect of omega-3 supplements against heart
21 disease.”²²

22 48. In 2020, the STRENGTH Randomized Clinical Trial stated that its
23 “findings [did] not support use of this omega-3 fatty acid formulation to reduce major
24 adverse cardiovascular events in high-risk patients.”²³

25 ²⁰ NIH, *supra* note 9.

26 ²¹ *Id.*

27 ²² *Id.*

28 ²³ Stephen J. Nicholls et al., *Effect of High-Dose Omega-3 Fatty Acids vs Corn Oil on Major Adverse Cardiovascular Events in Patients at High Cardiovascular Risk: The*

1 49. Based on such findings, several experts have debunked the myth that fish
2 oil supplements are conclusively linked to heart health benefits. For example, in an
3 interview with health.com, Timothy Jacobson, MD, chief cardiologist for Kaiser
4 Permanente in the Northwest, stated that:

5 “There have now been a large number of well-conducted studies which
6 have not shown a cardiac benefit to taking over-the-counter fish oil
7 supplements,” . . .

8 In fact, Jacobson said, taking fish oil could even have adverse effects for
9 some people. “There is data these supplements may increase the risk of
10 atrial fibrillation,” he said.²⁴

11 50. Dr. Ann Marie Navar, associate professor of medicine at University of
12 Texas Southwestern Medical School, states “as a preventive cardiologist, I see
13 patients in clinic all the time taking fish oil with the belief it is helping their heart.
14 They are often surprised when I tell them that randomized trials have shown no benefit
15 for fish oil supplements on heart attacks or strokes.”²⁵

16 51. Indeed, as stated in the Washington Post, “[m]ost research shows that
17 over-the-counter fish oil supplements don’t offer cardiovascular benefits, but that
18 hasn’t stopped marketers from touting them for heart health, a new study shows.”²⁶

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STRENGTH Randomized Clinical Trial, 324(22) JAMA 2268, E1 (Nov. 15, 2020),
<https://jamanetwork.com/journals/jama/fullarticle/2773120>.

25 ²⁴ Sarah Garone, *Study: Majority of Fish Oil Supplements Make Unfounded Health*
26 *Claims*, health.com (Aug. 29, 2023), [https://www.health.com/fish-oil-supplements-](https://www.health.com/fish-oil-supplements-for-heart-health-7852475)
27 [for-heart-health-7852475](https://www.health.com/fish-oil-supplements-for-heart-health-7852475).

28 ²⁵ Miller, *supra* note 11.

²⁶ Bever, *supra* note 4.

1 52. The lack of scientific support for heart health claims on fish oil
2 supplements has led to a report from JAMA Cardiology examining the potential for
3 consumer deception.

4 53. In the report, the labels of more than 2,800 fish oil supplements were
5 examined. The report found:²⁷

- 6 • “One in 5 US adults older than 60 years takes fish oil supplements often for
7 heart health despite multiple randomized clinical trials showing no data for
8 cardiovascular benefit for supplement-range doses. Statements on the
9 supplement labels may influence consumer beliefs about health benefits.”
- 10 • Heart health claims (e.g., “promotes heart health”) were the most common
11 health claims made on fish oil supplements.
- 12 • Results of this cross-sectional study suggest that the majority of fish oil
13 supplement labels make health claims, usually in the form of
14 structure/function claims, that imply a health benefit across a variety of
15 organ systems despite a lack of trial data showing efficacy.
- 16 • Results of this cross-sectional study suggest that fish oil supplement labels
17 frequently include health claims in the form of structure/function claims that
18 imply health benefits across a wide range of organ systems, increasing
19 potential for consumer misinformation.
- 20 • Results of this cross-sectional study suggest that fish oil supplement labels
21 frequently include health claims in the form of structure/function claims that
22 imply health benefits across a wide range of organ systems, increasing
23 potential for consumer misinformation.

24 54. The JAMA Cardiology report shows that not only do the Products’ lack
25 support for their heart health representations, but that Plaintiff and other reasonable
26 consumers are in fact being misled.

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²⁷ Assadourian, *supra* note 7, at 984.

1 The Products Mislead Consumers About the Level of
2 Scientific Support that Exists for the Heart Health Representations

3 55. The commonly held belief that fish oil supplements reduce the risk of
4 heart disease, coupled with the Products' heart health representations, results in many
5 consumers being misled into believing there is—at least some—conclusive evidence
6 to support the Products' heart health representations.
7

8 56. R. Preston Mason, a member of Cardiovascular Division at Brigham and
9 Women's Hospital and Harvard Medical School since 2002, wrote that:

10 Consumers have been told so many times that dietary fish oil
11 supplements promote heart health that it seems to be accepted as factual.
12 But this conventional thinking is not supported by the science. After
13 decades of promises that fish oil “may work,” the lack of demonstrated
14 benefit leads me to conclude that consumers are wasting their money on
15 supplements in an effort to reduce cardiovascular risk.²⁸

16 57. For such reasons, the FDA has taken significant precautions to ensure
17 that consumers are not misled about the level of scientific evidence that exists for a
18 health claim. This is especially true for the health claims at issue in this case: (1)
19 “Heart Health”; (2) a heart symbol; and (3) “support[s] heart health.”

20 58. Under 21 C.F.R. § 101.14, a health claim is defined as any claims,
21 written statements, symbols, or vignettes that characterize the relationship of any
22 supplement to a disease or health-related condition.

23 59. The FDA recognizes that supplements can make either express health
24 claims or *implied* health claims. 21 C.F.R. § 101.14.
25

26 _____
27 ²⁸ R. Preston Mason, *The False Promise of Fish Oil Supplements*, Scientific American
28 (Aug. 22, 2019), <https://blogs.scientificamerican.com/observations/the-false-promise-of-fish-oil-supplements/>.

1 60. An implied health claim is defined as “statements, symbols, vignettes, or
2 other forms of communication that suggest, within the context in which they are
3 presented, that a relationship exists between the presence or level of a substance in
4 the food and a disease or health-related condition.” *Id.*

5 61. Examples of implied health claims include written statements that simply
6 include the word “heart.” *See id.*²⁹

7 62. Certain symbols—such as “**a heart symbol**,” can also convey an implied
8 health claim.³⁰

9 63. The FDA has specifically stated that simply using the word heart on a
10 supplement can imply a health claim relating to cardiovascular disease³¹:
11

12 FDA does agree, however, that under §101.14(a)(1), a dietary supplement
13 name that included the word “heart” could be a health claim, depending
14 on the context. Thus, a dietary supplement could be called “HeartTabs”
15 if its claim was “to maintain healthy circulation,” or some other role
16 related to the structure or function of the heart that did not imply
17 treatment or prevention of disease. ***If, however, the product name was
18 not qualified by any further claim in the labeling, the product could be
19 considered, under §101.14(a)(1), to be intended for treatment or***

20 ²⁹ 21 C.F.R. § 101.14(a)(1) (“Health claim means any claim made on the label or in
21 labeling of a food, including a dietary supplement, that expressly or by implication,
22 including ‘third party’ references, written statements (e.g., a brand name including a
23 term such as ‘heart’), symbols (e.g., a heart symbol), or vignettes, characterizes the
24 relationship of any substance to a disease or health-related condition.”)

25 ³⁰ *Id.* (“Implied health claims include those statements, symbols, vignettes, or other
26 forms of communication that suggest, within the context in which they are presented,
27 that a relationship exists between the presence or level of a substance in the food and
28 a disease or health-related condition.”).

³¹ Cardiovascular disease is the umbrella term, which includes heart disease. *See*
editorial staff, *What Is Cardiovascular Disease?*, Am. Heart Ass’n (last reviewed Jan.
10, 2024), <https://www.heart.org/en/health-topics/consumer-healthcare/what-is-cardiovascular-disease>.

1 *prevention of cardiovascular disease.*³²

2 64. As to the use of a heart symbol on supplements, the FDA has stated that
3 it is ordinarily considered an implied health claim regarding heart disease:

4 FDA also believes that the heart symbol has become so widely associated
5 with prevention of heart disease that its use in the labeling of a dietary
6 supplement would be *ordinarily considered an implied heart disease*
7 *prevention claim*. Consistent with the examples provided in the January
8 6, 1993, Federal Register document on health claims (58 FR 2486),
9 however, there may be *unusual* cases in which, in context, the use of a
10 heart symbol does not imply heart disease prevention.³³

11 * * *

12 FDA agrees that in most cases, a picture of a healthy organ would not be
13 considered a disease claim, if, in the context of the labeling as a whole, it
14 did not imply treatment or prevention of disease. As described in
15 response to comment 51 of section II.I of this document, however, *there*
16 *may be symbols for organs, like the heart symbol, that have become so*
17 *widely recognized as symbols for disease treatment or prevention, their*
18 *use in labeling would constitute an implied disease claim.*³⁴

19 65. Under the FDA’s regulations, Defendant’s use of the word “heart” (in
20 “Heart Health” and “support[s] *heart* health”)—along with Defendant’s use of the heart
21 symbol—constitute an implied health claim related to heart disease.
22
23
24

25 ³² Regulations on Statements Made for Dietary Supplements Concerning the Effect
26 of the Product on the Structure or Function of the Body, 65 Fed. Reg. 10000, 1022
27 (Jan. 6, 2000) (codified at 21 C.F.R. pt. 101) (emphasis added).

28 ³³ *Id.* (emphasis added).

³⁴ *Id.* at 1026 (emphasis added).

1 66. Indeed, even the defense bar recognizes that the use of the heart symbol
2 alone is sufficient to constitute an implied health claim:³⁵



3
4 (Exception: The preamble to the final rules indicate that use of
5 the heart symbol on product label and labeling is an
6 impermissible heart disease prevention claim.)

6 67. As a health claim, the Products’ heart health representations must
7 comply with specific rules and regulations that have been enacted by the FDA to
8 prevent consumer deception.
9

10 68. The FDA allows a limited number of health claims—either “authorized”
11 health claims or “qualified” health claims.³⁶

12 69. Authorized health claims must follow the strict language proscribed by
13 the FDA, but do not need to be “qualified” by a disclaimer. An example of an
14 authorized health claim that is unqualified is, “Adequate calcium and vitamin D as
15 part of a healthful diet, along with physical activity, may reduce the risk of
16 osteoporosis in later life.”³⁷
17

18 70. Because unqualified health claims have such a high influence on reasonable
19 consumers, the FDA will only allow an *unqualified* health claim on a product label if
20 the FDA “determines, based on the totality of publicly available scientific evidence
21

22
23 ³⁵ Todd A. Harrison et al., *Permissible vs. Impermissible Structure/Function Claims*
24 *for Dietary Supplements*, Venable LLP (2014),
25 https://www.venable.com/files/upload/FDLI-Dietary_Supplements.pdf.

26 ³⁶ See *Yamagata v. Reckitt Benckiser LLC*, 445 F. Supp. 3d 28, 32 n. 1 (N.D. Cal.
27 2020) (citing *Questions and Answers on Health Claims in Food Labeling*, Food &
28 Drug Admin. (“FDA”) (Mar. 10, 2020), <https://www.fda.gov/food/food-labeling-nutrition/questions-and-answers-health-claims-food-labeling>).

³⁷ 21 C.F.R. § 101.72.

1 (including evidence from well-designed studies conducted in a manner which is
 2 consistent with generally recognized scientific procedures and principles), that there
 3 is *significant scientific agreement*, among experts qualified by scientific training and
 4 experience to evaluate such claims, that the claim is supported by such evidence.”³⁸
 5

6 71. The FDA has authorized only 12 unqualified health claims since 1990.³⁹

7 72. The Products’ implied health claims (i.e., heart health representations) have
 8 not been authorized by the FDA.⁴⁰

9 73. Because the Products’ health claims are not authorized, the FDA requires
 10 that Defendant properly qualify the Products’ health claims with an appropriate
 11 disclaimer to ensure that consumers are not misled by the level of scientific evidence that
 12 exists for the Products’ heart health claims.
 13

14 74. “Qualified health claims are supported by some scientific evidence, but
 15 do not meet the significant scientific agreement standard. *To ensure that they are not*
 16 *false or misleading to consumers*, qualified health claims *must be* accompanied by a
 17 disclaimer or other qualifying language to accurately communicate the level of
 18 scientific evidence supporting the claim.”⁴¹
 19

20 75. The FDA has required the following disclaimer for qualified health claims
 21 on Omega-3 supplements:

22 . . . FDA will consider exercising enforcement discretion for the
 23 following qualified health claim: Supportive but not conclusive research

24 ³⁸ 21 U.S.C. § 343(r)(3)(B)(i) (emphasis added); 21 C.F.R. § 101.14 (c).

25 ³⁹ See 21 C.F.R. §§ 101.72-101.83.

26 ⁴⁰ *Id.*

27 ⁴¹ *Questions and Answers on Health Claims in Food Labeling*, FDA (Dec. 13, 2017),
 28 <https://www.fda.gov/food/food-labeling-nutrition/questions-and-answers-health-claims-food-labeling> (emphasis added).

1 shows that consumption of EPA and DHA omega-3 fatty acids may
2 reduce the risk of coronary heart disease. One serving of [Name of the
3 food] provides [] gram of EPA and DHA omega-3 fatty acids. [See
4 nutrition information for total fat, saturated fat, and cholesterol content.].

5 76. Here, even though the Products' heart health representations are health
6 claims, they were not qualified with a disclaimer that accurately conveys the level of
7 scientific evidence/research that exists for the Products' heart health claims, as
8 required by the FDA.

9 77. While Plaintiff is not bringing this action to enforce the FDA's
10 regulations, these FDA regulations were enacted specifically to prevent consumer
11 deception.

12 78. Thus, Defendant's failure to abide by the FDA's regulations further
13 supports Plaintiff's allegations that reasonable consumers were misled about the level
14 of scientific evidence/research that purportedly supports the Products' heart health
15 claims.
16

17 79. As the entity responsible for the development, manufacturing,
18 packaging, labeling, advertising, distribution and sale of the Products, Defendant
19 knew or should have known that the Products falsely and deceptively represent that
20 they support heart health, and that there is conclusive research to support such a claim.
21

22 80. Defendant also knew or should have known that Plaintiff and other
23 consumers, in purchasing the Products, would rely on Defendant's front label heart
24 health representations. Nonetheless, Defendant deceptively advertises the Products in
25 order to deceive consumers and gain an advantage over other fish oil supplements that
26 do not use deceptive claims like the heart health representations.
27
28

1 81. Consumers are willing to pay more for the Products based on the belief
2 that the Products will reduce their risk of heart disease, and that there is conclusive
3 research to support such a claim. Plaintiff and other consumers would have paid
4 significantly less for the Products, or would not have purchased them at all, had they
5 known the truth about them. Thus, through the use of misleading representations,
6 Defendant commands a price that Plaintiff and the Class would not have paid had they
7 been fully informed. Therefore, Plaintiff and other consumers purchasing the Products
8 have suffered injury in fact and lost money as a result of Defendant's false and
9 deceptive practices, as described herein.
10

11 **CLASS ACTION ALLEGATIONS**

12 82. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all
13 other applicable laws and rules, individually, and on behalf of all members of the
14 following Classes:
15

16 **California Class**

17 All residents of California who purchased any of the Products within the
18 applicable statute of limitation ("California Class").

19 **California Consumer Subclass**

20 All residents of California who purchased any of the Products for personal,
21 family, or household purposes, within the applicable statute of limitations
22 period ("California Consumer Subclass").

23 83. The California Class and California Consumer Subclass are referred to
24 collectively as the "Classes."

25 84. Excluded from the Classes are the following individuals and/or entities:
26 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or
27 former employees, and any entity in which Defendant has a controlling interest; all
28 individuals who make a timely election to be excluded from this proceeding using the

1 correct protocol for opting out; and all judges assigned to hear any aspect of this
2 litigation, as well as their immediate family members.

3 85. Plaintiff reserves the right to modify or amend the definition of the
4 proposed Classes and/or add subclasses before the Court determines whether class
5 certification is appropriate.
6

7 86. Plaintiff is a member of both Classes.

8 87. **Numerosity**: Members of each Class are so numerous and
9 geographically dispersed that individual joinder of all Class members is
10 impracticable. The precise number of Class members is unknown to Plaintiff but is
11 likely to be ascertained by Defendant's records. At a minimum, there are likely
12 thousands of Class members.
13

14 88. **Commonality**: There are questions of law and fact common to the
15 proposed class(es). Common questions of law and fact include, without limitations:

- 16 a. whether Defendant's course of conduct alleged herein violates the
17 statutes and other laws that are pled in this Complaint;
18
19 b. whether reasonable consumers would rely upon Defendant's
20 representations about the Products and reasonably believe the
21 Products' Omega-3s support heart health;
22
23 c. whether reasonable consumers would rely upon Defendant's
24 representations about the Products and reasonably believe there is—
25 at least some—conclusive research showing that Omega-3 supplements
26 like the Products reduce the risk of heart disease;
27
28 d. whether Defendant knew or should have known its representations
were false or misleading;

- 1 e. whether Defendant was unjustly enriched by retaining monies from
2 the sale of the Products;
- 3 f. whether certification of each Class is appropriate under Rule 23;
- 4 g. whether Plaintiff and the members of each Class are entitled to
5 declaratory, equitable, or injunctive relief, and/or other relief, and the
6 scope of such relief; and
- 7
- 8 h. the amount and nature of the relief to be awarded to Plaintiff and the
9 Classes.

10 89. **Typicality**: Plaintiff's claims are typical of the other Class members
11 because Plaintiff, as well as Class members, purchased one of the Products and relied
12 on the representations made by the Defendant about the Product prior to purchasing
13 the Product. Plaintiff and the members of each Class paid for Defendant's Products
14 and would not have purchased them (or would have paid substantially less for them)
15 had they known that the Defendant's representations were untrue.

16

17 90. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the
18 proposed Classes as her interests do not conflict with the interests of the members of
19 the proposed Classes she seeks to represent, and she has retained counsel competent
20 and experienced in class action litigation. Thus, the interests of the members of the
21 Classes will be fairly and adequately protected by Plaintiff and her counsel.

22

23 91. **Predominance**: Pursuant to Rule 23(b)(3), the common issues of law
24 and fact identified in this Complaint predominate over any other questions affecting
25 only individual members of the Classes. Class issues fully predominate over any
26 individual issue because no inquiry into individual conduct is necessary; all that is
27

1 required is a narrow focus on Defendant's misconduct detailed at length in this
2 Complaint.

3 92. **Superiority:** A class action is superior to all other available methods for
4 the fair and efficient adjudication of this litigation because individual litigation of
5 each claim is impractical. It would be unduly burdensome to have individual litigation
6 of hundreds of thousands of individual claims in separate lawsuits, every one of which
7 would present the issues presented in the Complaint/lawsuit. Further, because of the
8 damages suffered by any individual Class member may be relatively modest in
9 relation to the cost of litigation, the expense and burden of individual litigation make
10 it difficult, if not impossible. Furthermore, many of the Class members may be
11 unaware that claims exist against the Defendant.
12

13
14 93. **Declaratory and Injunctive Relief:** Pursuant to Rule 23(b)(2),
15 declaratory and injunctive relief is appropriate in this matter. Defendant has acted or
16 refused to act on grounds generally applicable to Plaintiff and the other Class
17 members, thereby making appropriate final injunctive relief and declaratory relief, as
18 described below, with respect to the Class members as a whole. Unless a class-wide
19 injunction is issued, Defendant will continue to advertise, market, promote, and sell
20 the Products in an unlawful and misleading manner, as described throughout this
21 Complaint, and members of the Classes will continue to be misled, harmed, and
22 denied their rights under the law.
23

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

27 94. Plaintiff repeats the allegations contained in paragraphs 1-93 above as if
28 fully set forth herein.

1 95. Plaintiff brings this claim individually and on behalf of the members of
2 the proposed California Consumer Subclass against Defendant pursuant to
3 California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et*
4 *seq.*

5 96. The Products are “good[s]” within the meaning of Cal. Civ. Code
6 § 1761(a), and the purchases of the Products by Plaintiff and members of the
7 California Consumer Subclass constitute “transactions” within the meaning of Cal.
8 Civ. Code § 1761(e).

9 97. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
10 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
11 quantities which they do not have. . . .” By using the heart health representations on
12 the front label of the Products, Defendant has represented and continues to represent
13 that the Products have sponsorship, approval, characteristics, uses, and benefits (i.e.,
14 that the Products support heart health and that there is sponsorship and approval in
15 the form of conclusive research for such a claim) that they do not have. Therefore,
16 Defendant has violated section 1770(a)(5) of the CLRA.

17 98. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or
18 services are of a particular standard, quality, or grade, or that goods are of a particular
19 style or model, if they are of another.” By using the heart health representations on
20 the front label of the Products, Defendant has represented and continues to represent
21 that the Products are of a particular standard, quality, or grade (i.e., that the Products
22 support heart health and have conclusive research to support such a claim) that they
23 do not meet. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

24 99. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services
25
26
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28

1 with intent not to sell them as advertised.” By using the heart health representations
2 on the front label of the Products, and not delivering Products that support heart health
3 or that have been shown through conclusive research to reduce the risk of heart
4 disease, Defendant has advertised the Products with characteristics it intended not to
5 provide to consumers. As such, Defendant has violated section 1770(a)(9) of the
6 CLRA.
7

8 100. At all relevant times, Defendant has known or reasonably should have
9 known that the heart health representations on the front label of the Products are false
10 and deceptive, and that Plaintiff and other members of the California Consumer
11 Subclass would reasonably and justifiably rely on these representations when
12 purchasing the Products. Nonetheless, Defendant deceptively advertises the Products
13 as such in order to deceive consumers into believing the Products support heart health,
14 and that there is conclusive research supporting such a claim.
15

16 101. Plaintiff and members of the California Consumer Subclass have
17 justifiably relied on Defendant’s misleading representations when purchasing the
18 Products. Moreover, based on the materiality of Defendant’s misleading and
19 deceptive conduct, reliance may be presumed or inferred for Plaintiff and members
20 of California Consumer Subclass.
21

22 102. Plaintiff and members of the California Consumer Subclass have
23 suffered and continue to suffer injuries caused by Defendant because they would have
24 paid significantly less for the Products, or would not have purchased them at all, had
25 they known that the Products do not support heart health, and that there is no
26 conclusive research supporting such a claim.
27
28

1 103. Under Cal. Civ. Code § 1780(a), Plaintiff and Class members currently
2 seek injunctive relief for Defendant’s violations of the CLRA.

3 104. Plaintiff mailed notice to Defendant of their CLRA violations pursuant
4 to Cal. Civ. Code § 1782 on March 5, 2024. If within 30 days of receipt, Defendant
5 does not agree to rectify the problems identified herein, Plaintiff will amend this
6 Complaint to seek damages pursuant to Cal. Civ. Code § 1780 individually, and on
7 behalf of the members of the Classes.

8 105. Pursuant to Cal. Civ. Code § 1780(d), a declaration of venue is attached
9 to this Complaint.
10

11 **SECOND CLAIM FOR RELIEF**
12 **Violation of California’s False Advertising Law**
13 **California Business & Professions Code § 17500, *et seq***
14 ***(For the California Class)***

15 106. Plaintiff repeats the allegations contained in paragraphs 1-93 above as if
16 fully set forth herein.

17 107. Plaintiff brings this claim individually and on behalf of the members of
18 the proposed California Class against Defendant pursuant to California’s False
19 Adverting Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq*.

20 108. The FAL makes it “unlawful for any person to make or disseminate or
21 cause to be made or disseminated before the public . . . in any advertising device . . .
22 or in any other manner or means whatever, including over the Internet, any statement,
23 concerning . . . personal property or services professional or otherwise, or
24 performance or disposition thereof, which is untrue or misleading and which is
25 known, or which by the exercise of reasonable care should be known, to be untrue or
26 misleading.” Cal. Bus. & Prof. Code § 17500.
27
28

1 109. Defendant has represented and continues to represent to the public,
2 including Plaintiff and members of the proposed California Class, through its
3 deceptive labeling and advertising, that the Products support heart health, and that
4 there is conclusive research supporting such a claim. Because Defendant has
5 disseminated misleading information regarding the Products, and Defendant knows,
6 knew, or should have known through the exercise of reasonable care that the
7 representations were and continue to be misleading, Defendant has violated the FAL.
8

9 110. As a result of Defendant’s false advertising, Defendant has and continues
10 to unlawfully obtain money from Plaintiff and members of the California Class.
11 Plaintiff therefore requests that the Court cause Defendant to restore this fraudulently
12 obtained money to Plaintiff and members of the proposed California Class, to
13 disgorge the profits Defendant made on these transactions, and to enjoin Defendant
14 from violating the FAL or violating it in the same fashion in the future as discussed
15 herein. Otherwise, Plaintiff and members of the proposed California Class may be
16 irreparably harmed and/or denied an effective and complete remedy.
17

18
19 **THIRD CLAIM FOR RELIEF**
20 **Violation of California’s Unfair Competition Law (“UCL”),**
California Business & Professions Code § 17200, *et seq.*
(For the California Class)

21 111. Plaintiff repeats the allegations contained in paragraphs 1-93 above as if
22 fully set forth herein.

23 112. Plaintiff brings this claim individually and on behalf of the members of
24 the proposed California Class against Defendant.
25

26 113. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part,
27 that “unfair competition shall mean and include unlawful, unfair or fraudulent
28 business practices and unfair, deceptive, untrue or misleading advertising”

1 114. Under the UCL, a business act or practice is “unlawful” if it violates any
2 established state or federal law. Defendant’s false and misleading advertising of the
3 Products was and continues to be “unlawful” because it violates the CLRA the FAL.
4 Defendant’s health claims are also “unlawful” under federal laws and regulations,
5 including 21 U.S.C. § 343(r)(3)(B)(i); 21 C.F.R. § 101.14 (c), and the FDA’s
6 requirements regarding qualified health claims, as described herein. As a result of
7 Defendant’s unlawful business acts and practices, Defendant has unlawfully obtained
8 money from Plaintiff and members of the proposed California Class.
9

10 115. Under the UCL, a business act or practice is “unfair” if its conduct is
11 substantially injurious to consumers, offends public policy, and is immoral, unethical,
12 oppressive, and unscrupulous, as the benefits for committing such acts or practices
13 are outweighed by the gravity of the harm to the alleged victims. Defendant’s conduct
14 was and continues to be of no benefit to purchasers of the Products, as it is misleading,
15 unfair, unlawful, and is injurious to consumers who rely on the Products’ labeling.
16 Deceiving consumers into believing they will receive a Product(s) that supports heart
17 health, and that has conclusive research to support such a claim, is of no benefit to
18 consumers. Therefore, Defendant’s conduct was and continues to be “unfair.” As a
19 result of Defendant’s unfair business acts and practices, Defendant has and continues
20 to unfairly obtain money from Plaintiff and members of the proposed California Class.
21

22 116. Under the UCL, a business act or practice is “fraudulent” if it actually
23 deceives or is likely to deceive members of the consuming public. Defendant’s
24 conduct here was and continues to be fraudulent because it has the effect of deceiving
25 consumers into believing the Products support heart health and that there is conclusive
26 research supporting such a claim. Because Defendant misled Plaintiff and members
27
28

1 of the California Class, Defendant’s conduct was “fraudulent.” As a result of
2 Defendant’s fraudulent business acts and practices, Defendant has and continues to
3 fraudulently obtain money from Plaintiff and members of the California Class.

4
5 117. Plaintiff requests that the Court cause Defendant to restore this
6 unlawfully, unfairly, and fraudulently obtained money to her, and members of the
7 proposed California Class, to disgorge the profits Defendant made on these
8 transactions, and to enjoin Defendant from violating the UCL or violating it in the
9 same fashion in the future as discussed herein. Otherwise, Plaintiff and members of
10 the proposed California Class may be irreparably harmed and/or denied an effective
11 and complete remedy.

12
13 **FOURTH CLAIM FOR RELIEF**
14 **Breach of Express Warranty**
15 **Cal. Com. Code § 2313**
16 **(For the California Class)**

17
18 118. Plaintiff repeats the allegations contained in paragraphs 1-93 above as if
19 fully set forth herein.

20
21 119. Plaintiff brings this claim individually and on behalf of the members of
22 the California Class against Defendant.

23
24 120. California’s express warranty statutes provide that “(a) Any affirmation
25 of fact or promise made by the seller to the buyer which relates to the goods and
26 becomes part of the basis of the bargain creates an express warranty that the goods
27 shall conform to the affirmation or promise,” and “(b) Any description of the goods
28 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.

121. Defendant has expressly warranted on the Products’ front label that they
support heart health, and that there is conclusive research supporting such a claim.

1 However, as alleged herein, these express representations are false and misleading, as
2 the Products do not support heart health, and there is no conclusive research
3 supporting such a claim.

4
5 122. Defendant's representations about heart health on the Products' front
6 labels are: (a) affirmations of fact or promises made by Defendant to consumers that
7 the Products support heart health, and that there is conclusive research supporting
8 such a claim; (b) became part of the basis of the bargain to purchase the Products
9 when Plaintiff and other consumers relied on the representations; and (c) created an
10 express warranty that the Products would conform to the affirmations of fact or
11 promises. In the alternative, the representations about the Products are descriptions of
12 goods which were made as part of the basis of the bargain to purchase the Products,
13 and which created an express warranty that the Products would conform to the product
14 descriptions.

15
16 123. Plaintiff and members of the California Class reasonably and justifiably
17 relied on the foregoing express warranties, believing the Products support heart
18 health, and that there is conclusive research supporting such a claim.

19
20 124. Defendant has breached the express warranties made to Plaintiff and
21 members of the California Class by failing to provide the Products as represented on
22 the front label.

23
24 125. Plaintiff and members of the California Class paid a premium price for
25 the Products but did not obtain the full value of the Products as represented. If Plaintiff
26 and members of the California Class had known of the true nature of the Products,
27 they would not have been willing to pay the premium price associated with them. As
28 a result, Plaintiff and members of the California Class suffered injury and deserve to

1 recover all damages afforded under the law.

2 126. On March 5, 2024, the undersigned counsel notified Defendant of its
3 breach of warranty by way of a notice letter outlining the foregoing allegation.

4 **FIFTH CLAIM FOR RELIEF**
5 **Breach of Implied Warranty**
6 ***(For the California Class)***

7 127. Plaintiff repeats the allegations contained in paragraphs 1-93 above as if
8 fully set forth herein.

9 128. Plaintiff brings this claim individually and on behalf of the members of
10 the California Class against Defendant.

11 129. California’s implied warranty of merchantability statute provides that “a
12 warranty that the goods shall be merchantable is implied in a contract for their sale if
13 the seller is a merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

14 130. California’s implied warranty of merchantability statute also provides
15 that “[g]oods to be merchantable must be at least such as . . . (f) conform to the
16 promises or affirmations of fact made on the container or label if any.” Cal. Com.
17 Code § 2314(2)(f).

18 131. Defendant is a merchant with respect to the sale of Products. Therefore,
19 a warranty of merchantability is implied in every contract for sale of the Products to
20 California consumers.

21 132. By advertising the Products with representations about heart health on
22 the Products’ front label, Defendant made an implied promise that the Products
23 support heart health, and that there is conclusive research supporting such a claim.
24 However, the Products have not “conformed to the promises. . . made on the container
25 or label” because the Products do not support heart health, and there is no conclusive
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1 research supporting such a claim. Plaintiff, as well as other California consumers, did
2 not receive the goods as impliedly warranted by Defendant to be merchantable.
3 Therefore, the Products are not merchantable under California law and Defendant has
4 breached its implied warranty of merchantability in regard to the Products.
5

6 133. If Plaintiff and members of the California Class had known that the
7 Products' heart health representations were false and misleading, they would not have
8 been willing to pay the premium price associated with them. Therefore, as a direct
9 and/or indirect result of Defendant's breach, Plaintiff and members of the California
10 Class have suffered injury and deserve to recover all damages afforded under the law.
11

12 134. On March 5, 2024, the undersigned counsel notified Defendant of its
13 breach of warranty by way of a notice letter outlining the foregoing allegation.

14 **SIXTH CLAIM FOR RELIEF**
15 **Quasi Contract/Unjust Enrichment/Restitution**
16 ***(for the California Class)***

17 135. Plaintiff repeats the allegations contained in paragraphs 1-93 above as if
18 fully set forth herein.

19 136. Plaintiff brings this claim individually and on behalf of the members of
20 the proposed California Class against Defendant.

21 137. As alleged herein, Defendant has intentionally and recklessly made
22 misleading representations to Plaintiff and members of the California Class to induce
23 them to purchase the Products. Plaintiff and members of the California Class have
24 reasonably relied on the misleading representations and have not received all of the
25 benefits and promises (that the Products would support heart health, and that there
26 was conclusive research supporting such a claim) made by Defendant through the
27 Products' representations. Plaintiff and members of the proposed California Class
28

1 have therefore been induced by Defendant’s misleading and deceptive representations
2 about the Products, and paid more money to Defendant for the Products than they
3 otherwise would and/or should have paid.

4
5 138. Plaintiff and members of the proposed Classes have conferred a benefit
6 upon Defendant as Defendant has retained monies paid to them by Plaintiff and
7 members of the proposed Classes.

8
9 139. The monies received were obtained under circumstances that were at the
10 expense of Plaintiff and members of the proposed Classes—i.e., Plaintiff and
11 members of the proposed Classes did not receive the full value of the benefit conferred
12 upon Defendant. Therefore, it is inequitable and unjust for Defendant to retain the
13 profit, benefit, or compensation conferred upon them.

14
15 140. As a direct and proximate result of Defendant’s unjust enrichment,
16 Plaintiff and members of the proposed Classes are entitled to restitution,
17 disgorgement, and/or the imposition of a constructive trust upon all profits, benefits,
18 and other compensation obtained by Defendant from its deceptive, misleading, and
19 unlawful conduct as alleged herein.

20 **PRAYER FOR RELIEF**

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

23 A. Certification of this case as a class action on behalf of the proposed
24 Classes defined above, appointment of Plaintiff as Class representative, and
25 appointment of her counsel as Class Counsel;

26
27 B. A declaration that Defendant’s actions, as described herein, violate the
28 claims described herein;

1 C. An award of injunctive and other equitable relief as is necessary to
2 protect the interests of Plaintiff and the proposed Classes, including, *inter alia*, an
3 order prohibiting Defendant from engaging in the unlawful acts described above;

4 D. An award to Plaintiff and the proposed Classes of restitution and/or other
5 equitable relief, including, without limitation, restitutionary disgorgement of all
6 profits and unjust enrichment that Defendant obtained from Plaintiff and the proposed
7 Classes as a result of its unlawful, unfair and fraudulent business practices described
8 herein;

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

11 F. An award of nominal, punitive, and statutory damages;

12 G. An award to Plaintiff and her counsel of reasonable expenses and
13 attorneys' fees;

14 H. An award to Plaintiff and the proposed Classes of pre and post-judgment
15 interest, to the extent allowable; and

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

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff, individually, and on behalf of the proposed Classes, hereby demands
19 a jury trial with respect to all issues triable of right by jury.
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DATED: March 6, 2024

TREEHOUSE LAW, LLP

By: /s/ Ruhandy Glezakos

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*Attorneys for Plaintiff and the
Putative Classes*

Venue Declaration Pursuant to Cal. Civ. Code 1780(d)

I, Pearl Magpayo, declare as follows:

1. I am the named Plaintiff in the above-captioned action and a citizen of the State of California. I have personal knowledge of the facts set forth in this declaration, and am competent to testify to the same. The matters set forth herein are true and correct to the best of my knowledge and belief.

2. I believe that the Northern District of California is the proper place for trial of this case because I reside in this District and I purchased one of the Products at issue in this case in this District. Thus, a substantial part of the events or omissions giving rise to the claims at issue in this case occurred in this District.

I declare under penalty of perjury that the foregoing is true and correct, executed on

03/04/2024 in Hayward, California



Pearl Magpayo

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Walmart Misrepresents Spring Valley Omega-3 Fish Oil Supplements' Heart Health Benefits, Class Action Says](#)
