

**ELECTRONICALLY FILED**  
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County of San Diego

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and as representative of the class

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Mojdeh Omid, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

Wal-Mart Stores, Inc., a Delaware  
corporation,

Defendants.

Case No.: 37-2013-00074230-CU-MC-CTL

Class-Action Complaint

Plaintiff Mojdeh Omid ("Plaintiff"), who brings this action on his own behalf and  
on behalf of all others similarly situated, alleges on information and belief as follows:

NATURE OF THE ACTION

1. This is a class-action lawsuit brought by Plaintiff on his own behalf and on  
behalf of all other persons similarly situated, against Defendants Wal-Mart Stores, Inc.  
("Wal-Mart" or "Defendant") for:

1.1. Offering customers eye examinations and prescription eyewear in a  
single retail location, in violation of Business & Professions Code sections 655, 2003, 2050,  
2556, 3010.1, 3041, 3041.2, 3042, and 3055;

1.2. Engaging in deceptive and/or unlawful business practices in violation of Business & Professions Code section 17200 and Civil Code 1750, et seq.;

1.3. Issuing false and misleading advertisements throughout the State of California which violate Business & Professions Code section 17500 and Civil Code 1750, et seq.;

1.4. Disseminating patient/customers' confidential medical information in violation of Civil Code section 56.

2. The purpose of this action is to hold Defendant accountable for engaging in false, misleading, fraudulent, and/or unlawful advertising, business practices, and/or conduct in violation of California law.

3. As a result of the violations described in paragraph 2, above, Plaintiff seeks the following remedies for himself and for all others similarly situated:

3.1. Restitution to the Class for the Defendant's misconduct complained of herein;

3.2. Disgorgement from Defendant of all monies obtained from the Class members as a result of the unlawful, improper, and fraudulent business acts and practices pled herein;

3.3. Injunctive relief, including a prohibition of the practices employed by the Defendants as complained of herein;

3.4. Damages for violations of the Consumer Legal Remedies Act and the Confidentiality of Medical Information Act.

#### PARTIES

4. Plaintiff is, and at all relevant times was, a resident of the County of San Diego, State of California. Plaintiff brings this action individually and on behalf of the Class of other similarly situated individuals.

5. Defendant Wal-Mart is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Wal-Mart operates stores throughout the United States, including California, in which it offers eye exams from on-site optometrists and sells

1 prescription eyeglasses and contact lenses.

2 6. Does 1 through 100 are fictitious defendants meant to represent the officers,  
3 directors, franchisees, shareholders, founders, owners, operators, agents, servants,  
4 employees, representatives, and/or independent contractors of Defendants involved in the  
5 conduct that gives rise to this Complaint, but whose precise identities are presently  
6 unknown to the Plaintiffs. As the true identities of any such individuals are identified,  
7 Plaintiff will amend the Complaint to include them. All subsequent references to  
8 "Defendants" are intended to include any Doe defendants.

#### 9 JURISDICTION & VENUE

10 7. Original jurisdiction over the subject matter of this case has not been vested  
11 with any other court, and therefore this Court has jurisdiction over the subject matter of  
12 this case under article VI, section 10, of the California Constitution.

13 8. Wal-Mart maintains numerous retail locations throughout the State of  
14 California and therefore conducts professional and commercial activities in the State of  
15 California on a substantial, continuous, and systemic basis, sufficient to subject them to the  
16 general personal jurisdiction of the courts of the State of California.

17 9. While Defendant is subject to the general personal jurisdiction of the courts  
18 of the State of California as set forth in the preceding paragraphs, the claims asserted in this  
19 complaint arise out of the Defendant's professional and commercial activities within the  
20 State of California, and therefore Defendant is also subject to the specific personal  
21 jurisdiction of the courts of the State of California for purposes of this lawsuit.

22 10. The damages sought by the Class are well in excess of this Court's  
23 jurisdictional threshold of \$25,000.

24 11. The claims asserted in this Complaint arise out of acts, transactions, and  
25 conduct that occurred with the County of San Diego, and therefore this action is properly  
26 venued in the Superior Court for the County of San Diego.

1 CLASS ALLEGATIONS

2 12. Plaintiff brings this class action pursuant to Code of Civil Procedure section  
3 382 on her own behalf and as a representative of the class of similarly situated individuals.  
4 The class is defined to include all individuals who, within four years preceding the filing of  
5 this complaint, purchased eye examinations and/or eyewear at a Wal-Mart store after  
6 examination by an optometrist affiliated with the Wal-Mart store.

7 13. The joinder of all class members in a single conventional action is  
8 impracticable due to the number and geographical diversity of potential claimants. The  
9 disposition of these persons' claims in a class action will provide substantial benefits to both  
10 the parties and the Court. The class is ascertainable and maintains a sufficient community  
11 of interest. The rights of each member of the class were violated in a similar fashion based  
12 upon Defendants' misconduct.

13 14. The class representative's claims are typical of the claims of the members of  
14 the class because Defendants' wrongful conduct arises out of Defendants' established  
15 custom and practice, and thus the class representative and members of the class were  
16 damaged by the same wrongful acts in a similar way.

17 15. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff is  
18 unaware of any current or potential conflicts of interest with the prospective class. Plaintiff's  
19 interests are coincident with, and not antagonistic to, the interests of the other class  
20 members.

21 16. Plaintiff has retained counsel which are competent and experienced in class-  
22 action litigation in general, and consumer class actions of this sort in particular.

23 17. Questions of law and fact common to the members of the class predominate  
24 over questions that may affect only individual members. Among the questions of law and  
25 fact common to the entire class are the following:

26 17.1. Whether Wal-Mart has violated Business & Professions Code section  
27 655 through its operations;  
28

1 17.2. Whether Wal-Mart has violated Business & Professions Code section  
2 2556 through the nature of its operations;

3 17.3. Whether Wal-Mart has violated Business & Professions Code section  
4 17200 through the nature of its operations;

5 17.4. Whether Wal-Mart has violated Business & Professions Code section  
6 17500 through the nature of its operations;

7 17.5. Whether Wal-Mart has violated the Consumers' Legal Remedy Act,  
8 codified at Civil Code sections 1750, et seq., through the nature of its operations;

9 17.6. Whether Wal-Mart has violated the Confidentiality of Medical  
10 Information Act, codified at Civil Code sections 56, et seq., through the nature of its  
11 operations;

12 17.7. Whether Plaintiff and the members of the class have sustained  
13 damages as a result of any or all of the above-described misconduct, and if so, the proper  
14 measure of those damages;

15 17.8. Whether Plaintiff and the members of the class should be awarded  
16 punitive damages as a result of any or all of the above-described misconduct, and if so, the  
17 proper measure of those damages; and

18 17.9. Whether Plaintiff and the members of the class are entitled to any  
19 equitable relief as a result of any or all of the above-described misconduct, and if so, the  
20 nature of that relief.

21 18. A class action is superior to other methods for the fair and efficient  
22 adjudication of this controversy. The class members are so numerous that joinder of all  
23 members into a conventional lawsuit is impracticable. A class action will permit a large  
24 number of similarly situated persons to simultaneously prosecute their common claims in a  
25 single forum efficiently and without the duplication of effort and expense that numerous  
26 individual actions would entail. There are no difficulties likely to be encountered in the  
27 management of this class action that would preclude it from proceeding as a class action.  
28

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## FACTUAL ALLEGATIONS

19. An "optometrist" is a medical professional who performs eye examinations and writes prescriptions for corrective lenses. To perform these functions in California, an optometrist must hold a valid Doctor of Optometry degree and maintain a valid license from the California Board of Optometry.

20. By contrast, a "dispensing optician" or "optician," is an individual who dispenses prescription eyewear for profit. Notably, opticians do not need any specialized degrees, nor do they need to obtain a professional license. Rather, an optician need only register with the Medical Board of California.

21. California law precludes opticians from conducting eye examinations and writing prescriptions for corrective lenses. (See Bus. & Prof. Code §§ 3041, 3041.2, 3042, 3055.)

22. Since at least 1981, California law has also been understood to prohibit joint franchise or business relationships between retailers of prescription eyewear and optometrists. (See Bus. & Prof. Code §§ 655.) This includes, most notably, a ban on the establishment of so-called "one-stop shops," wherein a corporation arranges for an optometrist to provide eye examinations "on or near" the same retail space where prescription eyewear is sold. (See Bus. & Prof. Code § 2556.)

23. These laws have been the subject of considerable litigation in California, in both state and federal courts. In 2006, the California Supreme Court upheld, in a published opinion, the aforementioned California laws which prohibit the practice of optometry in a retail setting. (See *People v. Cole* (2006) 38 Cal.4th 964.) More recently, the United States Court of Appeals for the Ninth Circuit upheld the same laws against constitutional challenge by, among others, the National Association of Optometrists & Opticians. (See *National Ass'n of Optometrists & Opticians v. Harris* (9th Cir. 2012) 682 F.3d 1144; *National Ass'n of Optometrists & Opticians v. Brown* (9th Cir. 2009) 567 F.3d 521.)

24. These laws are designed to protect the general public from the potential hazards of a combined optometrist-optician operation, on the rationale that such

1 operations may give rise to a situation in which optometrist's professional judgment is  
 2 influenced by the financial interests of the business as a whole. Accordingly, the California  
 3 Legislature — like legislatures in most American jurisdictions — long ago determined that  
 4 optometrists must be insulated from the commercial business of selling eyewear.

5 25. Despite the above, Wal-Mart continues to offer customers the ability to  
 6 obtain both an eye examination from an optometrist and eyewear from an optician in its  
 7 retail stores.

8 26. Wal-Mart has violated California law by placing optometrists in its retail  
 9 stores and offering customers the ability to obtain an eye examination and to purchase the  
 10 resulting prescription eyewear in the same location. Wal-Mart has further violated  
 11 California law by creating an atmosphere in which professionally licensed optometrists  
 12 operate for all practical purposes under the influence and control of Wal-Mart retail stores.  
 13 And Wal-Mart has further violated California law by advertising the joint nature of its  
 14 optometrist-retail operation.

15 27. Wal-Mart's self-serving decision to refer to its optometrists as "Independent  
 16 Doctors of Optometry" on its website and in its advertising materials not only fails to  
 17 insulate the company from liability under California law, it actually underscores Wal-Mart's  
 18 awareness of, and insecurity about, the illegality of its consolidated optometrist-retail  
 19 operation.

20 28. On or about June 27, 2012, Plaintiff Mojdeh Omidia visited the optical  
 21 department at the Wal-Mart store located at 4840 Shawline Street in San Diego, California.  
 22 She received an eye examination from Hoang Ho, O.D., immediately after which she  
 23 purchased the recommended prescription eyewear from a Wal-Mart optician at the store.  
 24 The address printed on the exam form, immediately below Dr. Ho's signature, is "4840  
 25 Shawline Street in San Diego, CA."

26 29. Ms. Omidia believes that because of the nature of their joint operation,  
 27 Defendants are able to charge above-market prices, and therefore that Ms. Omidia paid more  
 28 than she should have for his eyewear and herein alleges that he has sustained financial

1 damage as a result of Defendants' conduct.

2 30. Ms. Omidy would not have agreed to undergo what amounts to an illegal eye  
3 examination had she known that Defendants' joint enterprise was illegal as well and/or the  
4 rationales which prompted the California Legislature to ban the practice.

5  
6 **FIRST CAUSE OF ACTION**

(Violation of Unfair Competition Laws – Against All Defendants)

7 31. Plaintiff incorporates herein each and every allegation set forth in the  
8 preceding paragraphs as though fully set forth herein.

9 32. Defendants' above-described conduct violated California statutory law,  
10 including Business & Professions Code sections 2003, 2050, 3010.1, 3041, 3041.2, 3042,  
11 and 3055. Consequently, Defendants have engaged in "unlawful" business practices in  
12 violation of California's Unfair Competition Act.

13 33. Defendants' conduct was likely to, and did deceive, the people of the State of  
14 California and the general public regarding, among other things, the affiliation/association  
15 between the in-house optometrists providing eye exams and the retail establishment selling  
16 prescription eyewear. Consequently, Defendants have engaged in fraudulent business  
17 practices in violation of California's Unfair Competition Act.

18 34. The conduct described above offends established public policy in the State of  
19 California and is immoral and/or unethical. Consequently, Defendants have engaged in  
20 unfair business practices in violation of California's Unfair Competition Act.

21 35. By the conduct alleged herein, Defendants have caused financial damage to  
22 Plaintiff and the class members.

23  
24 **SECOND CAUSE OF ACTION**

(Violation of Consumer Legal Remedies Act – Against All Defendants)

25 36. Plaintiff incorporates herein each and every allegation set forth in the  
26 preceding paragraphs as though fully set forth herein.

27 37. The Consumer Legal Remedies Act ("CLRA"), codified at California Civil  
28 Code section 1750, et seq., was designed to protect consumers from unfair and deceptive

1 business practices. To that end, the CLRA sets forth a list of unfair and deceptive business  
 2 acts and practices that are specifically prohibited in any transaction intended to result in the  
 3 sale or lease of goods or services to a consumer.

4 38. Defendants are "persons" within the meaning of Civil Code sections 1770  
 5 and 1761, subdivision (c). Furthermore, Defendants sell "goods" within the meaning of  
 6 Civil Code sections 1770 and 1761, subdivision (b).

7 39. Plaintiff and members of the class were, at all relevant times, "consumers"  
 8 within the meaning of Civil Code section 1761, subdivision (d).

9 40. The purchase of eye examinations and/or prescription eyewear from  
 10 Defendants constitutes a transaction within the meaning of Civil Code sections 1770 and  
 11 1761, subdivision (e).

12 41. Defendants violated the CLRA in the following ways:

13 41.1. By "[p]assing off the goods or services as those of another," in  
 14 violation of Civil Code section 1770, subdivision (a)(1);

15 41.2. By "misrepresenting the affiliation, connection, or association with,  
 16 or certification by, another," in violation of Civil Code section 1770, subdivision (a)(3);

17 41.3. By representing that the "goods" they transacted had "sponsorship,  
 18 approval, characteristics, ingredients, uses, benefits, or quantities which they d[id] not  
 19 have," in violation of Civil Code section 1770, subdivision (a)(5);

20 41.4. By advertising "goods" with an intent not to sell them as advertised,  
 21 in violation of Civil Code section 1770, subdivision (a)(9);

22 41.5. By representing that a transaction confers or involves rights,  
 23 remedies, or obligations which it does not have or involve, or which are prohibited by law,  
 24 in violation of Civil Code section 1770, subdivision (a)(14);

25 41.6. By representing that the subject of a transaction has been supplied in  
 26 accordance with a previous representation when it has not, in violation of Civil Code  
 27 section 1770, subdivision (a)(16).  
 28

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1           42. Defendants aided and abetted, encouraged and rendered substantial  
2 assistance in accomplishing the wrongful conduct and their wrongful goals and other  
3 wrongdoing complained of herein. In taking actions to aid and abet and substantially assist  
4 the commission of these wrongful acts and other wrongdoings complained of, Defendants  
5 acted with an awareness of the primary wrongdoing and realized the conduct would  
6 substantially assist the accomplishment of the wrongful conduct, wrongful goals, and  
7 wrongdoing.

8           43. Defendants have caused, by this conduct alleged herein, financial damage to  
9 Plaintiff and the class members.

10           44. On June 18, 2013, and in the manner set forth in Civil Code section 1782,  
11 subdivision (a)(2), Plaintiff notified Defendants of the aforementioned violations of the  
12 CLRA and demanded that they take appropriate corrective measures to ameliorate the  
13 violations. As of the filing of this complaint, Defendants failed to take appropriate corrective  
14 measures.

15           45. Accordingly, pursuant to Civil Code section 1780, subdivision (a), Plaintiff  
16 and the class seek the following remedies:

17           45.1. Actual damages, as provided under Civil Code section 1780,  
18 subdivision (a)(1);

19           45.2. An order of this Court enjoining Defendants from engaging in the  
20 methods, acts, and/or practices alleged herein, as provided under Civil Code section 1780,  
21 subdivision (a)(2);

22           45.3. Restitution of property, as provided under Civil Code section 1780,  
23 subdivision (a)(3); and

24           45.4. Punitive damages, as provided under Civil Code section 1780,  
25 subdivision (a)(4).

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THIRD CAUSE OF ACTION  
(Violation of the Confidentiality of  
Medical Information Act – Against All Defendants)

46. Plaintiff repeats and alleges each and every allegation made above, fully incorporating those allegations as if set forth herein.

47. This cause of action is brought pursuant to the Confidential of Medical Information Act ("CMIA"), codified at Civil Code section 56, et seq. The CMIA states that no healthcare provider or healthcare service plan shall disclose medical information regarding a patient or subscriber, respectively, without first obtaining proper authorization.

48. During eye examinations at Defendant's retail locations, Wal-Mart's optometrists obtain medical information from patients during the patient history review and eye examinations. The Wal-Mart optometrist then provides that medical information to Wal-Mart retail employees not under the direct supervision or control of the optometrists, and is provided for marketing and/or sales purposes, not for medical reasons.

49. Plaintiff did not provide informed consent to the disclosure of this medical information.

50. By disclosing, or causing the disclosure of, the confidential medical information of Plaintiff and the class, Defendants have violated the CMIA and are therefore liable for compensatory and punitive damages, in addition to attorneys' fees and costs of suit.

51. As a result of the disclosure and use of their medical information, Plaintiff and each member of the class are entitled to \$1,000 in nominal damages for each such release of medical information, in addition to actual damages. Plaintiff and each member of the class are entitled to these nominal damages even without showing that they suffered or are likely to suffer actual damages.

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## PRAYER FOR RELIEF

Wherefore, Plaintiffs pray that this action be certified as a class, and that judgment be entered against Defendants, and each of them, jointly and severally, as follows:

1. For compensatory damages, including economic damages, according to proof;
2. For statutory damages, including nominal damages of \$1,000 per violation of the CMLA;
3. For restitution in an amount to be determined and prove at time of trial;
4. For disgorgement in an amount to be determined and proven at time of trial;
5. For attorneys' fees incurred in the investigation and prosecution of this suit, where applicable;
6. For the costs of litigation and investigation associated with this suit;
7. For punitive damages;
8. For pre-judgment interest at the maximum legal rate on all sums awarded;
9. For injunctive relief;
10. For appointment of a receiver; and
11. For such other relief as the Court deems just and proper.

Dated: October 30, 2013

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