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and all others similarly situated*

FILED
Superior Court of California
County of Los Angeles
OCT 16 2019
Sherri R. Carter, Executive Officer/Clerk of Court
By Isaac Love Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 SOFIA MAYNEZ, an individual, on behalf of
herself and all others similarly situated,

12 Plaintiffs,

13 v.

14 WALMART, INC., a Delaware Corporation; and
15 DOES 1-50, inclusive,

16 Defendants.

Case No. **19STCV36866**

CLASS ACTION

COMPLAINT FOR:

1. Violation of California's Unfair Competition Law ("UCL"); Bus. & Prof. Code § 17200 *et seq.*
2. Violation of California's Consumer Legal Remedies Act ("CLRA"); Cal. Civil Code §1750 *et seq.*
3. Violation of California's False Advertising Law ("FAL"), Bus & Prof. Code § 17500 *et seq.*

JURY TRIAL DEMANDED

By Fax

10/17/2019

1 Plaintiff SOFIA MAYNEZ (“Plaintiff”), on behalf of herself and all others similarly situated,
2 alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff, at all relevant times herein, was and is a citizen and resident of Los Angeles
5 County, California. On May 7, 2019, Plaintiff used the e-commerce app of WALMART, INC.
6 (“WALMART” or “Defendant”) on her mobile phone to search for price and availability of baby items
7 she needed at WALMART’s various stores in her geographic area. When Plaintiff searched on the
8 WALMART app, she found a 586 count box of Huggies Simply Clean Baby Wipes (“Huggies
9 Wipes”) listed for \$5.44 and an 84 count box of Pull-Ups Girls’ Learning Designs Training Pants
10 (“Huggies Pull Ups”) listed for \$8.97, both available in Aisle 22 at the WALMART store at 22015
11 Hawthorne Blvd. in Torrance, California, according to the WALMART app. However, upon her
12 arrival at Aisle 22, after traveling to the Walmart store to purchase the items listed, Plaintiff was
13 shocked to learn the prices at the WALMART store were substantially higher than what was listed on
14 the search results in the WALMART app. The 586 count Huggies Wipes were being sold for \$12.54,
15 more than double the price for that specific product advertised on the WALMART app, and the 84
16 count Huggies Pull Ups were being sold for \$31.84, more than three times the \$8.97 price listed on the
17 WALMART app Plaintiff had used.

18 2. Plaintiff is informed and believes, and upon such information and belief alleges, that
19 defendant WALMART, INC. is a Delaware Corporation with its principal place of business in
20 Bentonville, Arkansas. WALMART is registered to do business in California and operates in Los
21 Angeles County. WALMART is a multinational corporation that operates a chain of hypermarkets,
22 discount department stores, grocery store chains, and e-commerce websites, selling goods to
23 consumers throughout the country.

24 3. Plaintiff does not know the true names or capacities of the persons or entities sued
25 herein as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff
26 is informed and believes, and upon such information and belief alleges, that each of the DOE
27 Defendants is in some manner legally responsible for the damages suffered by Plaintiff and the
28 members of the Class as alleged herein. Plaintiff will amend this Complaint to set forth the true names

10/17/2019

1 and capacities of these Defendants when they have been ascertained, along with appropriate charging
2 allegations, as may be necessary.

3 4. At all times herein mentioned, Defendants, and each of them, were the agents,
4 principals, servants, employees, and subsidiaries of each of the remaining Defendants, and were at all
5 times acting within the purpose and scope of such agency, service, and employment, and directed,
6 consented, ratified, permitted, encouraged, and approved the acts of each remaining Defendant.

7 **JURISDICTION AND VENUE**

8 5. This Court has jurisdiction over all causes of action asserted herein under the California
9 Constitution.

10 6. Venue is proper in this County pursuant to California *Civil Code* § 1780(d) because
11 Defendant does business here.

12 7. Venue is proper in this District pursuant to Los Angeles County Superior Court Rule
13 2.3(a)(1)(A) because this is a class action.

14 **FACTUAL ALLEGATIONS**

15 8. This action arises out of WALMART's practice of advertising lower prices for certain
16 items on its WALMART app, but actually charging higher prices for the same items at the very store
17 listed in the app for sale of such items.

18 9. On May 7, 2019, Plaintiff decided to search on Defendant's e-commerce app on her
19 mobile phone for price and availability of baby items she needed at WALMART's various stores in her
20 geographic area. Specifically, Plaintiff was looking for two types of items for her young daughter
21 when she accessed the WALMART app on her mobile phone: Pull-Ups Girls' Learning Designs
22 Training Pants by Huggies Brand, and Huggies Wipes.

23 10. Upon accessing WALMART's e-commerce app, which showed the WALMART store
24 at 22015 Hawthorne Blvd., in Torrance, California as her local store, Plaintiff searched for and
25 accessed these products she was looking to buy.

26 11. In the list of results for her searches, a picture of a box of Huggies Simply Clean Wipes,
27 which Plaintiff was looking to purchase, appeared. The box indicated it was a 576 count box, meaning
28 576 baby wipes were contained in the box. The product name, "Huggies Simply Clean Baby Wipes,"

10/17/2019

1 also appeared, with the specifying terms “Unscented, 9 packs of 64 (586 ct.).” The price listed for the
2 Huggies Wipes was \$5.44 (\$0.01 ea) and the search result indicated the item pictured and listed was
3 “In stock,” and available in Aisle 22.

4 12. Similarly, when Plaintiff searched for Pull-Ups Girls’ Learning Designs Training Pants,
5 a picture of a box of Huggies Pull-Ups Learning Designs Training Pants, which Plaintiff was looking
6 to purchase, appeared. The box indicated it was an 84 count box, meaning 84 pull-up pants were
7 contained in the box. The product name, “Pull-Ups Girls’ Learning Designs Training Pants,” also
8 appeared. The price listed for the Huggies Pull-Ups was \$8.97 (\$0.11 ea) and the search result
9 indicated the item pictured and listed was “in stock,” and available in Aisle 22.

10 13. To purchase the products she had found online, at the prices advertised, Plaintiff
11 traveled to the WALMART store located at 22015 Hawthorne Blvd. in Torrance, California. Upon her
12 arrival at Aisle 22, and her location of the Huggies Wipes and Huggies Pull-Ups products she sought,
13 Plaintiff was shocked to learn the prices at the WALMART store were substantially higher than what
14 was listed on the search results in the WALMART app.

15 14. To Plaintiff’s surprise, the “Huggies Simply Clean Baby Wipes, Unscented, 9 packs of
16 64 (586 Ct.)” Plaintiff found in Aisle 22 was not \$5.44, as the WALMART app had advertised, but
17 was being sold for \$12.54, more than double the price for that specific product advertised on the
18 WALMART app.

19 15. Additionally, the Huggies “Pull-Ups Girls’ Learning Designs Training Pants” in the 84
20 count box was \$31.84, more than three times the \$8.97 price listed on the WALMART app she had
21 used.

22 16. Plaintiff was dismayed by the difference between the prices WALMART advertised for
23 the items she sought on the WALMART app and the prices in Aisle 22 at the Torrance WALMART
24 store, but having traveled to the store to buy these items she needed, she nevertheless bought the
25 products during that visit.

10/17/2019

CLASS DEFINITION AND CLASS ALLEGATIONS

17. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated as members of the Classes (collectively referred to hereinafter as the “Classes”) defined as follows:

(1) Injunctive Relief Class: All users of Defendant’s e-commerce app who view on the app a quoted price for an item on sale at one of Defendant’s stores, and whom are offered the quoted item at that store at a price higher than the price listed on Defendant’s e-commerce app, at the time of the attempted purchase. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over the case.

(2) Class: All users of Defendant’s e-commerce app who viewed on the app a quoted price for an item on sale at one of Defendant’s stores, and whom purchased the quoted item at that store at a price higher than the price listed on Defendant’s e-commerce app at the time of purchase, from four years prior to the filing of the complaint to the present. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over the case.

18. **Numerosity**: The proposed Classes are so numerous that individual joinder of all the members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes the total number of class members in each of the Classes is in the hundreds of thousands if not more and that the members of the Classes are numerous. While the exact number and identities of all members of the Classes are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the members of the Classes in a single class action will provide substantial benefits to all parties and to the Court.

19. **Commons Questions of Law and Fact Predominate**: There are many questions of law and fact common to the representative Plaintiff and the Classes, and those questions substantially predominate over any questions that may affect individual members of the Classes. The common questions of law and fact include, but are not limited to, the following:

10/17/2019

10/17/2019

- 1 i. Whether Defendant’s representations on its e-commerce App regarding the
- 2 quoted prices for items on sale at its stores were likely to mislead and did in fact
- 3 mislead Plaintiff and members of the putative Classes;
- 4 ii. Whether Defendant represented that the transactions with Plaintiff and members
- 5 of the putative Classes conferred rights that they do not have, i.e. that Plaintiff
- 6 and putative class members could purchase items at Defendant’s stores at the
- 7 prices listed on its e-commerce App;
- 8 iii. Whether Defendant engaged in unlawful, unfair or fraudulent business practices;
- 9 iv. Whether Defendant’s conduct was willful, deceptive, and oppressive; and
- 10 v. The nature and extent of damages and other remedies to which the conduct of
- 11 Defendant entitles members of the putative Classes.

12 20. These common questions of law and fact predominate over questions that may affect

13 individual class members in that the claims of all members of the Classes for each of the claims herein

14 can be established with common proof. Additionally, a class action would be “superior to other

15 available methods for the fair and efficient adjudication of the controversy” because: (1) members of

16 the Classes have little interest in individually controlling the prosecution of separate actions because

17 the individual damages claims of each member of the Classes are not substantial enough to warrant

18 individual filings; (2) Plaintiff is not aware of other lawsuits against Defendant commenced by or on

19 behalf of members of the Classes; and (3) the conduct alleged is common to all members of the Classes

20 and because resolution of the claims of Plaintiff will resolve the claims of the remaining Classes,

21 certification does not pose any manageability problems.

22 21. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Classes.

23 Plaintiff and all members of the Classes have been similarly affected by Defendant’s conduct as they

24 all were offered the quoted item at that store at a price higher than the price listed on Defendant’s e-

25 commerce app, and purchased products from Walmart at higher prices than Walmart advertised on its

26 e-commerce app.

27 22. **Adequacy of representation:** Plaintiff will fairly and adequately represent and protect

28 the interests of the Classes. Plaintiff has retained counsel with substantial experience in handling

1 complex class action litigation. Plaintiff and his counsel are committed to prosecuting this action
2 vigorously on behalf of the Classes and have the financial resources to do so.

3 23. **Superiority of Class Action:** Plaintiff and the members of the Classes suffered and will
4 continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class action is
5 superior to other available methods for the fair and efficient adjudication of the present controversy.
6 Members of the Classes have little interest in individually controlling the prosecution of separate
7 actions because the individual damages Claims of each member of the Classes are not substantial
8 enough to warrant individual filings. In sum, for many, if not most, members of the Classes, a class
9 action is the only feasible mechanism that will allow them an opportunity for legal redress and justice.

10 24. Adjudication of individual claims of the members of the Classes with respect to
11 Defendant would, as a practical matter, be dispositive of the interests of other members not parties to
12 the adjudication, and could substantially impair or impede the ability of other members of the Classes
13 to protect their interests.

14 **FIRST CAUSE OF ACTION**

15 **Business & Professions Code § 17200 et seq.**

16 **(Violation of Unfair Competition Law)**

17 **(By Plaintiff and the Class Against Defendant WALMART and Does 1-50)**

18 25. Plaintiff restates and incorporates by reference each and every allegation contained in
19 paragraphs 1-24 as though fully set forth herein.

20 26. California *Business & Professions Code § 17200 et seq.* (hereafter referred to as the
21 “Unfair Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair
22 competition,” which include any unlawful, unfair, or fraudulent business practice.

23 27. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally
24 or negligently engaged in unlawful, unfair, or fraudulent business practices – only that such practices
25 occurred.

26 28. WALMART’s advertising lower prices for certain items on its WALMART app, but
27 actually charging higher prices for the same items at the very store listed in the app for sale of such
28 items, is an unlawful, unfair, and fraudulent business practice prohibited by the UCL.

10/17/2019

1 29. In carrying out its advertising of lower prices for certain items to users of its
2 WALMART app, Defendant has violated the Consumer Legal Remedies Act, the False Advertising
3 Law, and various other laws, regulations, statutes, and/or common law duties. Defendant’s business
4 practices alleged herein, therefore, are unlawful within the meaning of the UCL.

5 30. The harm to Plaintiff and members of the public outweighs the utility of Defendant’s
6 practices and, consequently, Defendant’s practices, as set forth fully above, constitute an unfair
7 business act or practice within the meaning of the UCL.

8 31. Defendant’s practices are additionally unfair because they have caused Plaintiff and the
9 Classes substantial injury, which is not outweighed by any countervailing benefits to consumers or to
10 competition, and which is not an injury the consumers themselves could have reasonably avoided.

11 32. Defendant’s practices, as set forth above, have misled the general public in the past and
12 will mislead the general public in the future. Consequently, Defendant’s practices constitute an
13 unlawful and unfair business practice within the meaning of the UCL.

14 33. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition
15 may be brought by any “person ... who has suffered injury in fact and has lost money or property as a
16 result of such unfair competition.” Defendant’s misleading business practice – advertising lower
17 prices for certain items on its WALMART app, but actually charging higher prices for the same items
18 at the very store listed in the app for sale of such items – directly and seriously injured Plaintiff and the
19 putative Classes who were thus deprived of their property rights.

20 34. The unlawful, unfair and fraudulent business practices of Defendant are ongoing and
21 present a continuing threat that members of the public will be misled into believing they will have the
22 right to purchase items from WALMART at certain quoted prices but, like Plaintiff, will be deprived
23 of that right and damaged financially.

24 35. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief
25 ordering Defendant to cease this unfair business practice, as well as disgorgement and restitution to the
26 Class of the price of all money Defendant wrongfully obtained associated with its unfair business
27 practice, or such portion of those revenues as the Court may deem equitable.

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10/17/2019

SECOND CAUSE OF ACTION

Civil Code § 1750 et seq.

(Violation of the Consumer Legal Remedies Act)

(By Plaintiff and the Class Against WALMART and Does 1-50)

36. Plaintiff restates and incorporates by reference each and every allegation contained in paragraphs 1-35 as though fully set forth herein.

37. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a non-exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-declared purpose is to protect consumers against these unfair and deceptive business practices, and to provide efficient and economical procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was designed to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

38. More specifically, Plaintiff alleges that Defendant has violated paragraphs 4, 9, 13 and 14 of *Civil Code* Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth herein. Defendant's unfair and deceptive business practices in carrying out its advertising of lower prices for certain items on its WALMART app, and actually charging higher prices for the same items at the very store listed in the app for sale of such items, as described herein were and are intended to and did and do result in numerous individuals, including Plaintiff, being deprived of their right to purchase items at certain quoted prices, in violation of the CLRA. Cal. Civ. Code § 1770 *et seq.* Members of the putative Class were damaged in that they incurred higher purchase prices than warranted by Defendant's advertising.

39. As a result of Defendant's unfair and/or deceptive business practices, Plaintiff and all individuals who had the higher purchase prices imposed on them as a result of WALMART's business practice have suffered damage in that they lost a vested right in items from WALMART at certain quoted prices because Defendant misrepresented that the offers for sale conferred rights to Plaintiff and the Classes, which, according to WALMART they did not. Plaintiff seeks and is entitled to an order

10/17/2019

1 enjoining Defendant from continuing to engage in the unfair and deceptive business practices alleged
2 herein.

3 40. Pursuant to CLRA section 1782, Plaintiff has notified Defendant in writing of the
4 particular violations of Section 1770 of the CLRA Plaintiff alleges Defendant committed. In response,
5 WALMART has not agreed to provide the monetary compensation Plaintiff demanded for members of
6 the putative Class.

7 **THIRD CAUSE OF ACTION**

8 **Business & Professions Code § 17500, et seq.**

9 **(Violation of the False Advertising Law)**

10 **(By Plaintiff and the Class Against WALMART and Does 1-50)**

11 41. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
12 paragraphs 1-40 as if fully set forth herein.

13 42. California *Business & Professions Code* § 17500 provides that “[I]t is unlawful for any
14 ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into
15 any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from
16 this state before the public in any state, in any newspaper or other publication, or any advertising
17 device, or by public outcry or proclamation, or in any other manner or means whatever ... any
18 statement ... which is untrue or misleading, and which is known, or which by exercise of reasonable
19 care should be known, to be untrue or misleading...”

20 43. Defendant misled consumers by advertising lower prices for certain items on its
21 WALMART app, when according to WALMART they were not for sale at those prices, and instead
22 actually charging higher prices for the same items at the very store listed in the app for sale of such
23 items.

24 44. As a direct and proximate result of Defendant’s misleading and false advertising,
25 Plaintiff and the members of the Classes have suffered injury in fact and have lost money/property.

26 45. The misleading and false advertising described herein presents a continuing threat to
27 Plaintiff and the Classes in that Defendant persists and continues to engage in these practices, and will
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10/17/2019

1 not cease doing so unless and until forced to do so by this Court. Defendant's conduct will continue to
2 cause irreparable injury to consumers unless enjoined or restrained.


3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of the Classes, prays for relief and
5 judgment as follows:

- 6 1. For certification of the putative Classes;
- 7 2. For restitution and disgorgement of all money and property wrongfully obtained by Defendant
- 8 by means of its herein-alleged unlawful, unfair and fraudulent business practices;
- 9 3. For an accounting by Defendant for any and all profits derived by Defendant from its herein-
- 10 alleged unlawful, unfair and fraudulent business practices;
- 11 4. An award of general damages according to proof;
- 12 5. An award of special damages according to proof;
- 13 6. Exemplary damages in light of Defendants' fraud, malice, and conscious disregard for the
- 14 rights of Plaintiff and putative class members;
- 15 7. Injunctive relief;
- 16 8. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation,
- 17 the CLRA and the common law private attorney general doctrine;
- 18 9. For costs of suit;
- 19 10. For such other and further relief as the court deems just and proper.

20
21 Dated: October 15, 2019

KIRTLAND & PACKARD, LLP

22
23 By: 
24 MICHAEL LOUIS KELLY
25 BEHRAM V. PAREKH
26 JOSHUA A. FIELDS

27 *Counsel for Plaintiff Sofia Maynez and all*
28 *others similarly situated*


10/17/2019

DEMAND FOR JURY TRIAL

Plaintiff SOFIA MAYNEZ hereby demands a jury trial.

Dated: October 15, 2019

KIRTLAND & PACKARD, LLP

By: 
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
JOSHUA A. FIELDS

*Counsel for Plaintiff Sofia Maynez and all
others similarly situated*

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10/17/2019