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Superior Court of California
County of San Diego
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Clerk of the Superior Court
By: Brandon Krause, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

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ANDREW WEINBERG,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

WALMART, INC.,
a Delaware corporation;
and DOES 1-50, inclusive,

Defendants.

CASE NO. 37-2023-00005248-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR VIOLATION OF THE
UNFAIR COMPETITION LAW
[Bus. & Prof. Code, § 17200 et seq.]

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INTRODUCTION

1. California law prohibits merchants from charging an amount greater than the price that is advertised, posted, marked, displayed, or quoted for any item of merchandise. (Bus. & Prof. Code, § 12024.2(a).) This class action complaint alleges that, with respect to a variety of merchandise, Walmart Inc. has charged at checkout an amount greater than the price posted, marked, or displayed for such merchandise. Such conduct constitutes an unlawful business practice in violation of the Unfair Competition Law, Bus. & Prof. Code, § 17200 et seq., (“UCL”). Pursuant to Business and Professions Code section 17203, Plaintiff seeks restitution for himself and all other affected California consumers, as well as an injunction for the benefit of the general public.

THE PARTIES

2. Plaintiff Andrew Weinberg (“Plaintiff”) is an individual residing in Solano County, California.

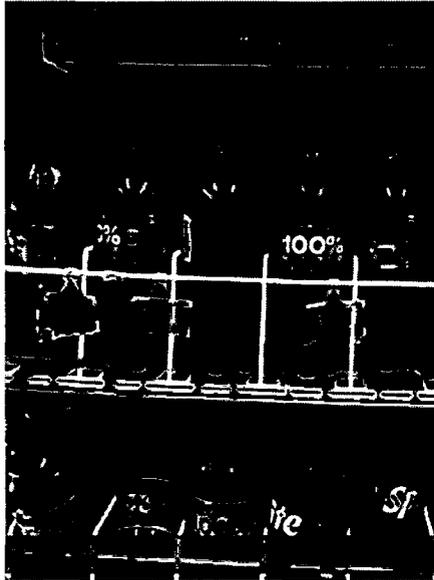
3. Defendant Walmart, Inc. (“Walmart”) is a Delaware corporation that does business throughout California, including at retail stores in San Diego County.

4. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated with the named defendant in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other defendants. For ease of reference, Plaintiff will refer to the named defendant and the DOE defendants collectively as Defendants.

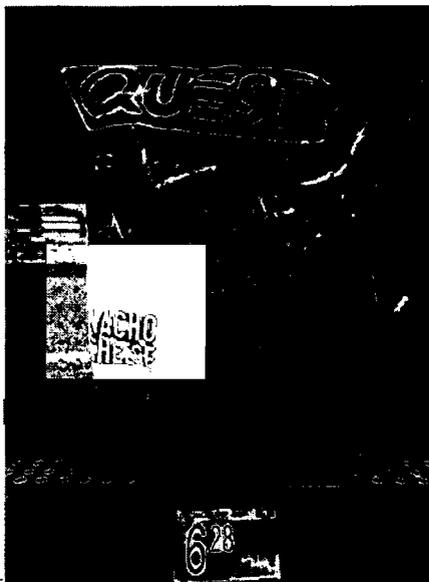
5. Venue is proper in this court because Walmart has not designated a principal place of business in California and therefore venue is proper in any county. In addition, Walmart does business in San Diego County and has engaged in conduct that gives rise to liability in San Diego County.

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1 a. For a 20-ounce bottle of Coke Zero, the charge at checkout was \$2.08 (see
2 Exhibit 1), whereas the posted price was \$1.98, as reflected in the photograph attached hereto as
3 Exhibit 2 and shown below:



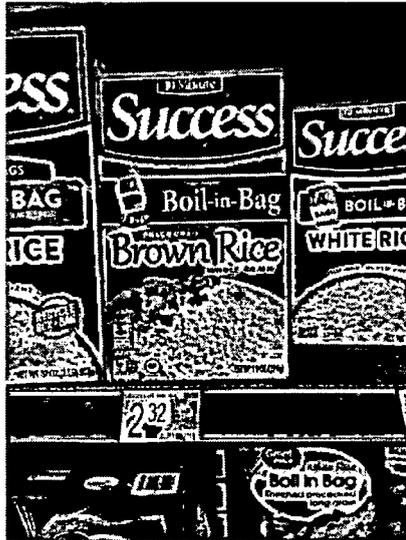
14 b. For a 4-ounce bag of Quest Nacho Cheese Protein Chips, the charge at
15 checkout was \$6.98 (see Exhibit 1), whereas the posted price was \$6.28, as reflected in the
16 photograph attached hereto as Exhibit 3 and shown below:



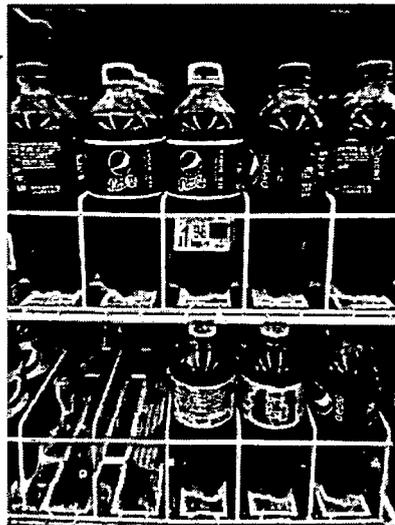
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1 10. On September 12, 2022, at the Walmart store located at 13487 Camino Canada, El
2 Cajon, California, Walmart overcharged for 2 of 17 items that were purchased (that is, there was an
3 overcharge for more than 11% percent of the purchased items). The receipt for those purchases is
4 attached hereto as Exhibit 4. The two overcharges are described below.

5 a. For a 14-ounce box of Success Brown Rice Boil-in-Bag, the charge at
6 checkout was \$2.52 (see Exhibit 4), whereas the posted price was \$2.32, as reflected in the
7 photograph attached hereto as Exhibit 5 and shown below:



17 b. For a 20-ounce bottle of Pepsi Real Sugar, the charge at checkout was \$2.18
18 (see Exhibit 4), whereas the posted price was \$1.98, as reflected in the photograph attached hereto
19 as Exhibit 6 and shown below:



1 Los Angeles County

2 11. On September 19, 2022, at the Walmart store located at 27931 Kelly Johnson
3 Parkway, Santa Clarita, California, Walmart overcharged for 3 of 15 items that were purchased (that
4 is, there was an overcharge for 20% of the purchased items). The receipt for those purchases is
5 attached hereto as Exhibit 7. The three overcharges are described below.

6 a. For a 6-pack of Hershey's Chocolate bars, the charge at checkout was \$5.88,
7 whereas the posted price was \$3.98, as reflected in the photograph attached hereto as Exhibit 8 and
8 shown below:



18 b. For a 6-pack of Hershey's White Chocolate bars, the charge at checkout was
19 \$5.88, whereas the posted price was \$3.98, as reflected in the photograph attached hereto as Exhibit
20 8 and shown above.

21 c. For a 6-pack of Reese's Peanut Butter Cups, the charge at checkout was
22 \$5.88, whereas the posted price was \$3.98, as reflected in the photograph attached hereto as Exhibit
23 8 and shown above.

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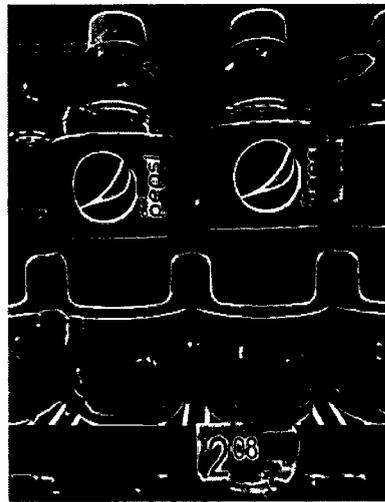
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1 12. In another transaction on September 19, 2022, at the Walmart store located at 27931
2 Kelly Johnson Parkway, Santa Clarita, California, Walmart overcharged for 2 of 36 items that were
3 purchased (that is, there was an overcharge for over 5% of the purchased items). The receipt for
4 attached hereto as Exhibit 9. The two overcharges are described below.

5 a. For a 20-ounce bottle of Diet Pepsi, the charge at checkout was \$2.18 (see
6 Exhibit 9), whereas the posted price was \$2.08, as reflected in the photograph attached hereto as
7 Exhibit 10 and shown below:



17 b. For a 7-ounce bag of White Cheddar Popcorners, the charge at checkout was
18 \$3.68 (see Exhibit 9), whereas the posted price was \$3.28, as reflected in the photograph attached
19 hereto as Exhibit 11 and shown below:



1 **Bay Area**

2 13. On September 12, 2022, at the Walmart store located at 1919 Davis Street, San
3 Leandro, California, Walmart overcharged for 4 of 15 items that were purchased (that is, there was
4 an overcharge for more than 25% of the purchased items). The receipt for those purchases is attached
5 hereto as Exhibit 12. The four overcharges are described below.

6 a. For a 16.9-ounce bottle of Coca-Cola, the charge at checkout was \$1.88 (see
7 Exhibit 12), whereas the posted price was \$1.78, as reflected in the photograph attached hereto as
8 Exhibit 13 and shown below:



17 b. For a 20-ounce bottle of Pepsi, the charge at checkout was \$2.18 (see Exhibit
18 12), whereas the posted price was \$2.08, as reflected in the photograph attached hereto as Exhibit
19 14 and shown below:



1 c. For a can of Sugar Free Red Bull, the charge at checkout was \$2.68 (see
2 Exhibit 12), whereas the posted price was \$2.50, as reflected in the photograph attached hereto as
3 Exhibit 15 and shown below:

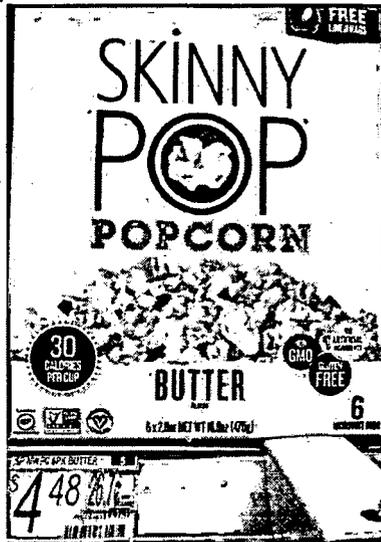


13 d. For a 14-ounce box of Success Brown Rice Boil-in-Bag, the charge at
14 checkout was \$2.52 (see Exhibit 12), whereas the posted price was \$2.32, as reflected in the
15 photograph attached hereto as Exhibit 16 and shown below:



1 14. In another transaction on September 12, 2022, at the Walmart store located at 1919
2 Davis Street, San Leandro, California, Walmart overcharged for 2 of 20 items that were purchased
3 (that is, there was an overcharge of 10% of the purchased items). The receipt for those purchases as
4 Exhibit 17. The two overcharges are described below.

5 a. For a 6-pack of Skinny Pop Popcorn, the charge at checkout was \$4.84 (see
6 Exhibit 17), whereas the posted price was \$4.48, as reflected in the photograph attached hereto as
7 Exhibit 18 and shown below:



17 b. For a container of Armor All Glass Wipes, the charge at checkout was \$4.67
18 (see Exhibit 17), whereas the posted price was \$4.37, as reflected in the photograph attached hereto
19 as Exhibit 19 and shown below:



CLASS ACTION ALLEGATIONS

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15. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on behalf of the following Class: “All persons who, within the four years preceding the filing of this Complaint and while physically present in California, purchased at least one item of merchandise from Walmart for which Walmart charged an amount greater than the price posted, marked, or displayed for the item. Excluded from the Class are all employees of Walmart, all employees of Plaintiff’s counsel, and the judicial officers to whom this case is assigned.”

16. Ascertainability. The members of the Class may be ascertained by information or records in the possession of Walmart, third parties, and/or the Class members.

17. Common Questions of Fact or Law. There are questions of fact or law that are common to the members of the Class, which predominate over individual issues. Common questions include, without limitation, whether Walmart charged the Class members an amount greater than the posted, marked, or displayed price for merchandise, and the appropriate remedies.

18. Numerosity. The Class is so numerous that joinder of all Class members would be impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of thousands of members.

19. Typicality and Adequacy. Plaintiff’s claims are typical of the claims of the Class members. Plaintiff has no interests that are adverse to those of the other Class members. Plaintiff will fairly and adequately protect the interests of the members of the Class.

20. Superiority. A class action is superior to other methods for resolving this controversy. Because the amount of money to which a Class member may be entitled is low in comparison to the expense and burden of individual litigation, it would be impracticable for Class members to redress the wrongs done to them without a class action forum. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Certification of the Class would therefore conserve judicial resources and avoid the possibility of inconsistent judgments.

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FIRST CAUSE OF ACTION

(Violation of the California Unfair Competition Law)

(Bus. & Prof. Code, § 17200 et seq.)

21. Plaintiff incorporates the previous allegations as though fully set forth herein.

22. The Unfair Competition Law defines unfair competition as including any unlawful business act or practice. (Bus. & Prof. Code, § 17200.)

23. Defendants' conduct as alleged above constitutes a business practice that violates Business and Professions Code section 12024.2(a) and, therefore, constitutes an unlawful business practice that is proscribed by Business and Professions Code section 17200.

24. Plaintiff has suffered injury in fact and lost money as a result of Walmart's acts of unfair competition.

25. Pursuant to Business and Professions Code section 17203, Plaintiff seeks restitution for himself and the Class members.

26. Unless enjoined and restrained by this Court, Walmart will continue to commit the violations alleged herein. Pursuant to Business and Professions Code section 17203, Plaintiff seeks an injunction prohibiting Walmart from continuing its unlawful business practice as alleged herein.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Walmart as follows:

- 1. For restitution;
- 2. For a public injunction for the benefit of the People of the State of California;
- 3. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;
- 4. For costs of suit; and
- 5. For such other relief as the Court may deem just and proper.

Dated: February 6, 2023

DOSTART HANNINK LLP



 ZACH F. DOSTART
 Attorneys for Plaintiff

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