

1 Scott Edelsberg (SBN 330090)
2 **EDELSBERG LAW PA**
3 1925 Century Park East, Suite 1700
4 Los Angeles, CA 90067
5 Tel: 305-975-3320
6 Email: scott@edelsberglaw.com

7 Jeffrey D. Kaliel (SBN 238293)
8 *jkaliel@kalielpllc.com*
9 **KALIELGOLD PLLC**
10 1100 15th Street., NW, 4th Floor
11 Washington, D.C. 20005
12 Tel: (202) 350-4783

13 Sophia Goren Gold (SBN 307971)
14 *sgold@kalielgold.com*
15 **KALIELGOLD PLLC**
16 950 Gilman Avenue, Suite 200
17 Berkeley, California 94710
18 Tel: (202) 350-4783

19 *Attorneys for Plaintiff and the Proposed Class*

20
21
22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**
24

25 THOMAS REMODELING, on behalf of itself
26 and all others similarly situated,

27 Plaintiff,

28 v.

THE SHERWIN-WILLIAMS COMPANY,

Defendant.

Case No. 8:22-cv-02061-JVS-ADS

AMENDED CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

1 Plaintiff THOMAS REMODELING, on behalf of itself and all others similarly situated,
2 complains and alleges upon information and belief based, among other things, upon the investigation
3 made by Plaintiff and through its attorneys as follows:

4 **NATURE OF ACTION**

5 1. This is a proposed class action seeking monetary damages, restitution, and injunctive and
6 declaratory relief from Defendant The Sherwin-Williams Company (“Sherwin-Williams” or
7 “Defendant”), arising from its deceptive bait-and-switch scheme of covertly adding a so-called 4%
8 “Supply Chain Surcharge” on sales receipts after purchases are consummated.

9 2. Throughout its stores, and like all retailers, Sherwin-Williams provides prominent price
10 displays for each of its products. Reasonable consumers like Plaintiff understand those are the true and
11 complete prices for the products, exclusive of government-imposed taxes and discounts that a customer
12 might be eligible for.

13 3. But Sherwin-Williams’ in-store displays are not the true prices for those products. In fact,
14 the true prices are 4% higher than listed. That is because after consumers select in-store items based on
15 listed prices and customize those in-store items with colors and other specifications, and after the
16 purchase process is substantially complete, Defendant surreptitiously imposes a so-called “Supply Chain
17 Charge” as a line item on receipts, amounting to an additional 4% added to the in-store prices on all
18 purchases. This late addition of a so-called “Supply Chain Charge” substantially changes the in-store
19 prices upon which Plaintiff and other purchasers rely while shopping.

20 4. Worse, the so-called “Supply Chain Charge” is never reasonably disclosed to consumers
21 until it shows up as a line item on their receipts—*after the purchase is complete*.

22 5. Moreover, the “Supply Chain Charge” is itself a misnomer and a deception. Defendant
23 knows full well that average consumers do not understand the meaning of the term “supply chain” nor
24 the indirect effect that economists understand it has on prices. Reasonable consumers are not economists.

25 6. Sherwin-Williams intentionally chose a technical-sounding term in order to falsely convey
26 to consumers that it was passing through an out-of-pocket cost it paid. That was false. Sherwin-Williams
27 did not pay the “supply chain” an additional 4%. Rather, the charge disguises a simple truth: Sherwin-
28 Williams wanted to raise prices on all of its products, uniformly.

COMMON FACTUAL ALLEGATIONS

A. Sherwin-Williams Omits and Conceals Material Facts About the Total Cost of Purchases by Deceptively Tacking on a “Supply Chain Charge” to All Items

14. On September 28, 2021, Sherwin-Williams’ Chairman, President, and Chief Executive Officer, John G. Morikis, made a public statement to its investors that manufacturing costs were rising due to the limited availability of raw materials.¹

15. In other words, paint and other items were becoming more expensive to manufacture and produce—their price was increasing.

16. Instead of raising the advertised prices of its individual items for sale, Defendant began tacking on a 4% “Supply Chain Charge” to all items purchased by customers at each of their Sherwin-Williams stores across the country.

17. By furtively adding a hidden “Supply Chain Charge” onto each item offered for sale in its stores, Sherwin-Williams unfairly obscured the true price of each item.

18. Reasonable consumers like Plaintiff understand the advertised prices are the true and complete prices for the products, exclusive of government-imposed taxes and discounts that a customer may be eligible for.

19. As the Los Angeles times reported, “‘Hidden surcharges undermine consumers’ ability to shop around for the best value for their money,’ said Jenn Engstrom, state director for the California Public Interest Research Group.”

20. Sherwin-Williams’ scheme prevented consumers from effectively comparison shopping.

21. Indeed, at its stores, Sherwin Williams prominently advertises the price of all of its products on its shelves and in other displays.

22. These price representations are important: as Sherwin-Williams knows, price is extremely important to consumers in choosing whether to buy a product or take their business elsewhere.

¹ *Despite Strong Demand, Sherwin-Williams Lowers Third Quarter and Full Year 2021 Sales and Earnings Expectations Amid Escalating Raw Material Availability Challenges and Inflation Headwinds; Announces Agreement to Expand Internal Resin Manufacturing Capabilities*, Sherwin-Williams, September 28, 2021, available at <https://investors.sherwin-williams.com/press-releases/press-release-details/2021/Despite-Strong-Demand-Sherwin-Williams-Lowers-Third-Quarter-and-Full-Year-2021-Sales-and-Earnings-Expectations-Amid-Escalating-Raw-Material-Availability-Challenges-and-Inflation-Headwinds/default.aspx>, last accessed March 4, 2022.

1 23. For consumers shopping for paint specifically, a selection is made and the paint can then
2 be customized by color or other characteristics.

3 24. At checkout, the products are then scanned and totaled at the register. The scanned price
4 matches the price displayed on the shelves. Tax is added, any coupons are deducted, and a total price is
5 then displayed to customers. The customer pays. A receipt is provided.

6 25. Unbeknownst to consumers, however, Sherwin-Williams quietly adds a 4% “Supply
7 Chain Charge” at the register, at the same time it adds tax.

8 26. The “Supply Chain Charge” is never reasonably disclosed to consumers until it shows up
9 as a line item on their receipts—after the purchase is complete. This process fails to provide an adequate
10 advance warning to customers that a “Supply Chain Charge” will be imposed on their purchases.

11 **B. The Name of the “Supply Chain Charge” is Deceptive**

12 27. Moreover, the “Supply Chain Charge” is itself a misnomer and a deception. Defendant
13 knows full well that average consumers do not understand the meaning of the term “supply chain” nor
14 the indirect effect that economists understand it has on prices. Reasonable consumers are not economists.

15 28. Sherwin-Williams intentionally chose a technical-sounding term in order to falsely convey
16 to consumers that it was passing through an out of pocket cost it paid. That was false. Sherwin-Williams
17 did not pay the “supply chain” an additional 4%. Rather, the charge disguises a simple truth: Sherwin-
18 Williams wanted to raise prices on all its products, uniformly.

19 29. In fact, the “Supply Chain Charge” should simply have been labelled truthfully: “Price
20 Increase Surcharge.”

21 **C. Numerous Consumer Complaints Confirm the Deception**

22 30. Numerous customers report being surprised by the “Supply Chain Charge.” As the Los
23 Angeles Times has reported,

24 Hugo Granadino recently stopped by the Sherwin-Williams paint store in Inglewood
25 to pick up some rollers and brushes. He’s repainting the den of his South Los Angeles
26 home. After the purchase, Granadino, 40, took a look at his receipt and was surprised
to see a 4% “supply chain charge.” There’d been no advance warning that a surcharge
was being imposed — it was just quietly tacked on at the checkout counter.

27 <https://www.latimes.com/business/story/2021-10-14/column-pandemic-paint-surcharge>
28

1 31. Likewise, an Arkansas news periodical reported the same issue:

2 Camilla Kinslow bought paint from the Sherwin Williams in Russellville. After she
3 left, she noticed an additional charge on her receipt: a 4% supply chain surcharge. "I
4 was kind of frustrated, because I was like, "How can they do this? How can people
5 just do that," said Kinslow.

6 [https://www.thv11.com/article/news/local/customers-see-surcharges-supply-chain-impacts-
7 businesses/91-5bc77cba-e302-4442-9a8f-f47a2448114b](https://www.thv11.com/article/news/local/customers-see-surcharges-supply-chain-impacts-businesses/91-5bc77cba-e302-4442-9a8f-f47a2448114b)

8 32. Similarly in Houston, the media has reported the same surprise by consumers:

9 Construction company owner Brennan Dougherty said he only noticed the extra cost
10 when he looked at his receipt after buying paint. "Wow, they're just flat out, busting it
11 out on the receipt, 4%," said Dougherty. "Obviously if it was a bigger job it affects
12 you a lot more. But 4% on a million dollar job is \$40,000."

13 <https://abc13.com/supply-chain-surcharge-sherwin-williams-and-demand-costs/11229601/>

14 33. Numerous other complaints from online forums confirm consumers feel misled by the
15 imposition of the "Supply Chain Charge." Such as this deceived consumer on Yelp:

16 Rip off! They charged me an additional 4% [without] telling me
17 (supply chain charge) I wouldn't mine [sic] paying extra if they didn't hid[e] it.

18 [https://www.yelp.com/biz/sherwin-williams-paint-store-asheville
19 2?adjust_creative=mapquest&hrid=Rf4HBez5gd822SoS2jWYg&utm_campaign=yelp_feed&utm_mediu
20 m=feed_v2&utm_source=mapquest](https://www.yelp.com/biz/sherwin-williams-paint-store-asheville?adjust_creative=mapquest&hrid=Rf4HBez5gd822SoS2jWYg&utm_campaign=yelp_feed&utm_medium=feed_v2&utm_source=mapquest) (last accessed June 20, 2022).

21 34. Also, consider this consumer complaint to the Better Business Bureau:

22 Sherwin Williams sneakily charged me a supply chain charge of 4 percent on each of
23 my purchases. They did not inform me of this charge at the register nor did they have
24 any signs up detailing the charge. They would not allow me to return the "premixed"
25 paint. This is underhanded and wrong not to inform the customer of this charge and
26 allow me to make a decision to void the purchase.

27 [https://www.bbb.org/us/oh/cleveland/profile/producers/the-sherwin-williams-company-0312-
28 6651/complaints](https://www.bbb.org/us/oh/cleveland/profile/producers/the-sherwin-williams-company-0312-6651/complaints) (last accessed June 20, 2022).

35. Consumers have also flocked to Twitter to express their concerns over the sneakily
tacked-on surcharge:

@SherwinWilliams why not be upfront about it? Just raise the base cost of the paint
by 4%. If you try to sneak it onto the customer's bill without them knowing, they won't
trust your product!

[https://twitter.com/p_piotti/status/1449136968936267778?s=20&t=XWxnQ2m6WsHRwO5xzy_dKw
\(last accessed June 20, 2022\).](https://twitter.com/p_piotti/status/1449136968936267778?s=20&t=XWxnQ2m6WsHRwO5xzy_dKw)

36. As another consumer on Twitter aptly describes the deception,

1 It's *how* they're passing along higher costs that's at issue. Raising the list price is
2 fairer to consumers. Tacking on a sneaky fee is not

3 https://twitter.com/Davidlaz/status/1449101569295716352?s=20&t=XWxnQ2m6WsHRwO5xzy_dKw
4 (last accessed June 20, 2022).

5 **D. Plaintiff's Experience**

6 37. On or about, October 2021, Chris Thomas, as owner of Plaintiff Thomas Remodeling,
7 made a purchase at a Sherwin-Williams store located in San Bernardino, California.

8 38. Relying upon price tags and displays provided in-store, Plaintiff purchased paint and paint
9 related supplies.

10 39. Without its knowledge, Plaintiff was assessed a 4% "Supply Chain Charge" for each item.

11 40. At no time prior to its purchase did Plaintiff view any sign or disclosure informing it that
12 the 4% "Supply Chain Charge" would be added to its purchase.

13 41. Accordingly, at no time prior to its purchase did Plaintiff realize that Sherwin-Williams
14 would furtively affix a price increase on the transaction.

15 42. It was not until Plaintiff examined the purchase receipt after it completed the transaction
16 that it discovered a 4% "Supply Chain Charge" had been added to its purchase.

17 43. Had Plaintiff known that the "Supply Chain Charge" would be assessed on its purchases,
18 it would not have purchased paint from Sherwin-Williams.

19 **CLASS ALLEGATIONS**

20 44. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this action on behalf of
21 itself and Classes of similarly situated persons defined as follows:

22 **California Class:**

23 All persons in California who, within the applicable statute of limitations
24 preceding the filing of this action, made a purchase at a Sherwin-Williams
25 store and was charged a 4% "Supply Chain Charge."

26 **Nationwide Class:**

27 All persons who, within the applicable statute of limitations preceding the
28 filing of this action, made a purchase at a Sherwin-Williams store and was
charged a 4% "Supply Chain Charge."

45. Excluded from the Classes are Defendant, any entities in which they have a controlling
interest, any of their parents, subsidiaries, affiliates, officers, directors, employees, and members of such

1 persons' immediate families, and the presiding judge(s) in this case and their staff. Plaintiff reserves the
2 right to expand, limit, modify, or amend this class definition, including, without limitation, the addition
3 of one or more subclasses, in connection with its motion for class certification, or at any other time,
4 based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

5 46. **Numerosity:** At this time, Plaintiff does not know the exact size of the Classes; however,
6 due to the nature of the trade and commerce involved, Plaintiff believes that the Class members are well
7 into the thousands, and thus are so numerous that joinder of all members is impractical. The number and
8 identities of Class members is administratively feasible and can be determined through appropriate
9 discovery in the possession of the Defendant.

10 47. **Commonality:** There are questions of law or fact common to the Classes, including the
11 following, without limitation:

- 12 a. Whether during the class period, Defendant deceptively engaged in a bait-and-
13 switch scheme with customers regarding its 4% "Supply Chain Charge" that it
14 assessed on all purchases made in its Sherwin-Williams stores;
- 15 b. Whether during the class period, Defendant made material omissions regarding its
16 4% "Supply Chain Charge";
- 17 c. Whether during the class period, Defendant failed to sufficiently inform reasonable
18 customers of its 4% "Supply Chain Charge";
- 19 d. Whether Defendant's alleged misconduct misled or had the tendency to mislead
20 customers;
- 21 e. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 22 f. Whether Plaintiff and the Classes were harmed by Defendant's misrepresentations
23 and omissions;
- 24 g. Whether Plaintiff and the Classes have been damaged, and if so, the proper
25 measure of damages; and
- 26 h. Whether an injunction is necessary to prevent Defendant from continuing to
27 deceptively assess the hidden 4% "Supply Chain Charge" on customers' purchases
28

1 at its Sherwin-Williams stores and/or to order Defendant to sufficiently disclose to
2 customers the 4% “Supply Chain Charge” prior to making their purchases.

3 48. **Typicality:** Like Plaintiff, many other customers made purchases at a Sherwin-Williams
4 store without understanding that the 4% “Supply Chain Charge” would be added to its transactions.
5 Plaintiff’s claims are typical of the claims of the Classes because Plaintiff and each Class member was
6 injured by Defendant’s false representations and omissions about the 4% “Supply Chain Charge.”
7 Plaintiff and the Classes have suffered the same or similar injury as a result of Defendant’s false,
8 deceptive, and misleading representations. Plaintiff’s claims and the claims of the Classes emanate from
9 the same legal theory, Plaintiff’s claims are typical of the claims of the Classes, and, therefore, class
10 treatment is appropriate.

11 49. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and has
12 retained counsel competent and experienced in prosecuting and resolving consumer class actions.
13 Plaintiff will fairly and adequately represent the interests of the Classes and does not have any interests
14 adverse to those of the Classes.

15 50. **The Proposed Classes Satisfy the Prerequisites for Injunctive Relief.** Defendant has
16 acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final
17 injunctive and equitable relief with respect to the Classes as a whole. Plaintiff remains interested in
18 making purchases at Sherwin-Williams stores in the future; there is no way for it to know when or if
19 Defendant will cease deceptively misrepresenting the true cost of each purchase transaction through
20 affixing the 4% “Supply Chain Charge.”

21 51. Specifically, Defendant should be ordered to provide customers with sufficient disclosures
22 about the 4% “Supply Chain Charge” *prior* to their decision to make purchases at Sherwin-Williams
23 locations and not when it is too late for the customer to rescind their purchase.

24 52. Defendant’s ongoing and systematic practices make declaratory relief with respect to the
25 Classes appropriate.

26 53. **The Proposed Classes Satisfy the Prerequisites for Damages.** The common questions
27 of law and fact enumerated above predominate over questions affecting only individual members of the
28 Classes, and a class action is the superior method for fair and efficient adjudication of the controversy.

1 The likelihood that individual members of the Classes will prosecute separate actions is remote due to the
2 extensive time and considerable expense necessary to conduct such litigation, especially when compared
3 to the relatively modest amount of monetary, injunctive, and equitable relief at issue for each individual
4 Class member.

5 **FIRST CLAIM FOR RELIEF**
6 **Violation of California’s Unfair Competition Law (“UCL”)**
7 **Cal. Bus. & Prof. Code § 17200, *et seq.***
8 **(Asserted on Behalf of the California Class)**

9 54. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

10 55. California Business & Professions Code § 17200 prohibits acts of “unfair competition,”
11 including any “unlawful, unfair or fraudulent business act or practice.” Sherwin-Williams’ conduct
12 related to deceptively representing prices on products and adding a deceptive “Supply Chain Charge”
13 violates each of the statutes’ “unfair,” “unlawful,” and “fraudulent” prongs.

14 56. The UCL imposes strict liability. Plaintiff need not prove that Sherwin-Williams
15 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that
16 such practices occurred.

17 57. A business act or practice is “unfair” under the UCL if it offends an established public
18 policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and
19 that unfairness is determined by weighing the reasons, justifications, and motives of the practice against
20 the gravity of the harm to the alleged victims.

21 58. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members
22 of the public.

23 59. A business act or practice is “unlawful” under the UCL if it violates any other law or
24 regulation.

25 60. Sherwin-Williams committed unfair and fraudulent business acts and practices in
26 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting in-
27 store that it provides products at the prices listed when, in reality, it hides price inflation through the
28 assessment of an additional and deceptive “Supply Chain Charge.”

- 1 (f) For reasonable attorneys' fees and costs of suit;
2 (g) For pre-judgment interest; and
3 (h) Awarding such other and further relief as this Court deems just, proper and equitable.

4 **JURY DEMAND**

5 Plaintiff hereby demands a jury trial on all claims so triable.

6
7 Dated: January 9, 2023

By: /s/ Scott Edelsberg
Scott Edelsberg, (CA Bar # 330090)
EDELSBERG LAW, P.A.
scott@edelsberglaw.com
1925 Century Park East, Suite 1700
Los Angeles, CA 90067
Tel: 305-975-3320

8
9
10
11
12 Jeffrey D. Kaliel (SBN 238293)
jkaliel@kaliellpc.com
KALIELGOLD PLLC
1100 15th Street., NW, 4th Floor
Washington, D.C. 20005
Tel: (202) 350-4783

13
14
15
16 Sophia Goren Gold (SBN 307971)
sgold@kalielgold.com
KALIELGOLD PLLC
950 Gilman Avenue, Suite 200
Berkeley, California 94710
Tel: (202) 350-4783

17
18
19
20 *Attorneys for Plaintiff*