

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHERYL DRISKILL, on behalf of herself
and those similarly situated,
% DannLaw
15000 Madison Avenue
Lakewood, OH 44107

Plaintiff(s)

v.

WALMART, INC., d/b/a WALMART
c/o CT Corporation System
4500 Easton Commons Way, Suite 125
Columbus, OH 43219

Defendant.

Case No.

Judge

**CLASS ACTION COMPLAINT FOR
DAMAGES**

JURY DEMAND ENDORSED HEREON

Plaintiff Cheryl Driskill (“Plaintiff”), individually and on behalf of all others similarly situated, through her attorneys, brings this action against Defendant Walmart, Inc. d/b/a Walmart #2362 (“Defendant” or “Walmart”), and alleges upon personal knowledge as to her own actions and experiences, and upon investigation, information and belief as to all others, as follows:

NATURE OF THE ACTION

1. This is a consumer protection class action against Walmart arising out of Walmart’s policies and procedures of regularly failing to refund the Plaintiff and putative class members pursuant to the terms of its advertised refund policy.

2. This class action arises from Walmart’s regular practice of denying customers a refund in alignment with the terms of its advertised refund policy in violation of the Ohio Consumer Sales Practices Act, ORC 1345.01, *et seq.*

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff Cheryl Driskill (“Plaintiff” or “Ms. Driskill”) is a natural person who

resides in the City of Cleveland Heights, County of Cuyahoga, State of Ohio.

4. Defendant Walmart, Inc. d/b/a Walmart (“Walmart”) is a foreign corporation incorporated under the laws of the State of Delaware with its principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716.

5. This Court has jurisdiction pursuant to R.C. 1345.04 as this action arises under the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.* (“CSPA”).

6. Venue lies in this Court as the substantial majority of the transactions giving rise to the Plaintiff’s causes of action occurred within Walmart Store #2363 situated in Cuyahoga County, Ohio.

FACT RELATED TO DOLLAR GENERAL

7. Plaintiff and all others similarly situated are persons who shop at Walmart stores in Ohio.

8. Walmart operates retail stores throughout the U.S., and internationally, that offer a variety of inexpensive merchandise, including home products, seasonal products, consumables, and apparel. The company’s business model focuses on offering a wide range of products at competitive prices in a convenient, one-stop shop. Its core customer category includes low-to-middle-income customers. The company’s stores are located in convenient locations that are custom-tailored to their respective neighborhood.¹ Due to its large scale, Walmart is uniquely positioned to leverage pricing better than any of its competitors to drive sales and uphold its slogan, “Every Day Low Price” for the benefit of its customers.²

¹ <https://corporate.walmart.com/about> (last visited Sep. 15, 2023)

² <https://www.pymnts.com/walmart/2022/nearly-two-thirds-of-consumers-shop-in-walmart-stores-each-month-pymnts-study-shows/> (last visited Sep. 15, 2023)

9. As of March 2023, Walmart owned and operated approximately One Hundred Seventy-Two (172) Walmart stores in Ohio with more locations scheduled to open.³

FACTS RELATED TO PLAINTIFF'S TRANSACTIONS

10. The Plaintiff incorporates and restates the allegations contained in Paragraphs 1 through 10 as if fully set forth herein.

11. The Plaintiff is a frequent customer of Walmart Store #2362 in Cuyahoga County, Ohio.

12. On September 2, 2023, Ms. Driskill visited Walmart Store #2362 located at 1868 Warrensville Center Road, South Euclid, OH 44121, and purchased several grocery and household items, including but not limited to, Gain dryer sheets, and Angel Soft toilet paper. See **Exhibit 1**, Receipt.

13. The total value of purchased items equaled \$321.14. Ms. Driskill provided a cash payment of \$289.00 and paid the remaining balance of \$32.14 using her debit card. See Exhibit 1.

14. Nearly all products available at Walmart can be returned for a refund, however, some items are subject to restrictions or have shorter return periods. For this reason, Walmart encourages its customers to review its return policy which can be located on its website.

15. According to Walmart's refund policy, customers are entitled to a refund of items purchased within ninety (90) days of purchase unless the items fall under a narrow list of exceptions.⁴ All refunds are applied to the original form of payment.⁵

16. There are four (4) categories of items listed as exchange items only:⁶

- Unlocked, opened wireless phones within 14 days

³ <https://www.statista.com/statistics/1167169/walmart-number-of-stores-by-state-us/> (last visited Sep. 15, 2023)

⁴ <https://corporate.walmart.com/policies#return-policy> (last visited Sep. 15, 2023)

⁵ *Id.*

⁶ <https://corporate.walmart.com/policies#return-policy> (last visited Sep. 15, 2023)

- Drones within 30 days
- Air beds/air mattresses within 90 days
- Durable medical equipment within 90 days (e.g., crutches, walkers, slings, mobility scooters, pulse oximeters)

17. On or about September 11, 2023, Ms. Driskill returned to Walmart Store #2362 to return several items, including but not limited to, potatoes, salmon, and Gain dryer sheets, and requested a cash refund. These items were purchased on September 2, 2023 in a single transaction involving multiple payment methods. *See Exhibit 1.*

18. None of the items Ms. Driskill attempted to return were open, used, and/or defective. Furthermore, none of the items fell under the category of “exchange items only.”

19. Defendant advised Ms. Driskill that per company policy, returned items from purchases completed with multiple payment methods were only eligible for a Walmart gift card. The Defendant further advised Ms. Driskill that the system’s software would not permit a cash and/or credit refund on transactions of this nature.

20. The Defendant’s stated “company policy” is not reflected anywhere in Walmart’s advertised refund policy.

21. Ms. Driskill was left with no other option but to accept the Walmart gift card.

22. That same day, Ms. Driskill contacted Walmart’s corporate office to make a complaint. During this call, the corporate office advised Ms. Driskill that Walmart store managers have the capability to override the system software to issue a cash refund and instructed Ms. Driskill to make another attempt.

23. On or about September 12, 2023, Ms. Driskill returned to Walmart Store #2362 to return Angel Soft toilet paper, and requested a cash refund. This item was purchased on September 2, 2023 in a single transaction involving multiple payment methods. *See Exhibit 1.*

24. The Angel Soft toilet paper was not open, used, and/or defective. Additionally, the

item did not fall under the category of “exchange items only.”

25. Ms. Driskill informed the store’s manager of her conversation with the Walmart corporate office but again was denied the requested refund for the same reason.

26. Instead, the Walmart manager insisted that Ms. Driskill could only receive a refund in the form of a Walmart gift card. Again, Ms. Driskill was left with no other option but to accept the Walmart gift card. *See* **Exhibit 2**, Gift card receipt.

27. On or about September 15, 2023, Ms. Driskill again returned to Walmart Store #2362 to return several items, including but not limited to, biscuits, lawry’s, Gain fabric softener, and meat sauce, and requested a cash refund. These items were purchased on September 2, 2023 in a single transaction involving multiple payment methods. *See* Exhibit 1.

28. None of the items Ms. Driskill attempted to return were open, used, and/or defective. Furthermore, none of the items fell under the category of “exchange items only.”

29. The Walmart manager again insisted that Ms. Driskill could only receive a refund in the form of a Walmart gift card. Ms. Driskill was left with no other option but to accept the Walmart gift card.

30. Based on the allegations herein, *supra*, it is Walmart’s policy and practice to deny customers in Ohio stores a refund that aligns with the terms clearly stated in its advertised refund policy.

CLASS ACTION ALLEGATIONS

31. **Class Definition:** Plaintiff brings this action pursuant to Civ. R. 23 on behalf of a class of similarly situated individuals and entities defined as follows:

All persons who resided in Ohio on the date this complaint was filed, who at any time on or after the day two years prior to the date on which this Complaint was filed purchased merchandise using multiple payment methods at a Walmart store located in Ohio.

32. **Subclass Definition:** The Plaintiff also brings this action on behalf of a Subclass of similarly situated individuals and entitled defined as follows:

All members of the Class who received a refund in the form of a gift card at a Walmart store located in Ohio.

33. Excluded from the Class and Subclass are (1) the Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parent(s) have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class and/or Subclass; (4) any person(s) who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any excluded parties.

34. **Numerosity and Ascertainability:** Upon information and belief the Class and Subclass (the "Classes") are each composed of more than forty (40) members, such that the Classes are so numerous that joinder of all members is impractical. This conclusion is reasonable given that Defendant operates 172 stores across Ohio as of March 2023 as noted above and the number of customers at each of Walmart's stores on a daily basis is likely dozens if not hundreds or thousands of consumers.

35. **Commonality and Predominance:** There are questions of law and fact common to the proposed Classes that predominate over any individual questions. These questions of law and fact include, but are not limited to:

- a. Whether by refusing consumers in Ohio a cash and/or check refund for a returned item in accordance with its refund policy, Walmart committed an unconscionable act as defined by the CSPA;

- b. Whether by refusing consumers in Ohio a cash and/or check refund for a returned item in accordance with its refund policy, Walmart committed a unfair and deceptive act as defined by the CSPA;
- c. Whether any or all of the purchases made by the Plaintiff and members of the Classes were consumer transactions as defined by the CSPA;
- d. Whether the Plaintiff and/or members of the putative Classes suffered an ascertainable loss as a result of the Defendant's unlawful practices;

36. **Typicality:** Plaintiff's claims are typical of the claims of the Classes. Plaintiff and the putative Class Members were all subjected to and affected by a uniform course of conduct; specifically, Walmart's pattern and practice of refusing Ohio consumers a cash and/or check refund for a returned item purchased with multiple payment methods.

37. **Adequacy:** The Plaintiff will adequately represent the interests of the Classes. The Plaintiff does not have any interests adverse to the Classes. Plaintiff's proposed class counsel has a great deal of experience in handling class actions, other complex litigation, and claims of the type asserted in this action.

38. **Superiority:** A class action is the superior method for the quick and efficient adjudication of this controversy since joinder of all members is impracticable. While the economic damages suffered by the individual members of the Classes are significant, the amount is modest compared to the expense and burden of individual litigation. The questions of law or fact common to the members of the Classes predominate over any question affecting only individual members. A class action will cause an orderly and expeditious administration of the claims of the Classes, and will foster economies of time, effort, and expense. Given the relatively small amount of damages available to Plaintiff and members of the Classes, adjudication on a classwide basis would

provide members of the Classes with a remedy that they may be unlikely to pursue individually. Plaintiff does not anticipate any difficulty in the management of this litigation.

CLASS CLAIMS

**COUNT ONE: VIOLATIONS OF THE CSPA, R.C. 1345.01, *et seq.*
(On behalf of the Plaintiff and Classes)**

39. Plaintiff restates and incorporates all of his allegations contained in paragraphs 1 through 38 in their entirety.

40. A “consumer transaction” is defined as “a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.” R.C. 1345.01(A).

41. Walmart’s sales of merchandise to Plaintiff and the Class Members constitute “consumer transactions” because such services were for the primary purpose of Plaintiff’s and the Class Members’ personal, family, or household use. R.C. 1345.01(A).

42. Plaintiff and the Class Members are each a “consumer” because they engaged in a consumer transaction with Walmart. R.C. 1345.01(D).

43. Walmart is a “supplier” because it is engaged in the business of effecting or soliciting consumer transactions. R.C. 1345.01(C)

44. “No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.” R.C. 1345.02(A).

45. “No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.” R.C. 1345.03(A).

46. Walmart has engaged in unfair, deceptive, and/or unconscionable acts or practices in direct violation of the CSPA by refusing to provide Ohio consumers a cash and/or check refund for a returned item in accordance with its refund policy.

47. Ohio Courts have determined that the actions of a supplier in failing to honor its refund, cancellation, exchange, credit, or repurchase policy in effect at the time of each sale constitute unfair or deceptive acts or practices. *See State ex rel Yost v StubHub, Inc.*, PIF No. 3602 (September 20, 2021); and *McClain v. RB Sportstore, Inc.*, PIF No. 10002416 (March 11, 2006). A copy of PIF Nos. 3602 and 100002416 is attached as **Exhibit 4**.

48. The Ohio Attorney General has made these determinations available for inspection pursuant to R.C. 1345.05(A)(3).

49. Plaintiff and the Class Members have a private right of action under the CSPA for the claimed breaches.

50. As a direct and proximate result of the actions of Walmart which violate the CSPA, Plaintiff and the Class Members are entitled to actual damages in an amount to be determined at trial, as well as an award of reasonable attorneys' fees.

**COUNT TWO: UNJUST ENRICHMENT
(On behalf of the Plaintiff and Classes)**

51. Plaintiff restates and incorporates all of his allegations contained in paragraphs 1 through 48 in their entirety.

52. “The purpose of an unjust enrichment claim is not to compensate the plaintiff for loss or damage suffered by the plaintiff, but to enable the plaintiff to recover the benefit he has conferred on the defendant under circumstances in which it would be unjust to allow the defendant to retain it.” *Barrow v. Vill. of New Miami*, 104 N.E.3d 814, 818 (Ohio Ct. App. 2018); *San Allen*,

Inc. v. Buehrer, 11 N.E.3d 739, 781 (Ohio Ct. App. 2014). Equitable “restitution is the remedy for the unjust enrichment of one party at the expense of another.” *Id.*

53. “To prevail on a claim for unjust enrichment, a plaintiff must demonstrate that: (1) he conferred a benefit upon the defendant, (2) the defendant had knowledge of the benefit, and (3) the defendant retained the benefit under circumstances where it would be unjust to do so without payment.” *Id.*

54. Based on the allegations herein, *supra*, Walmart has engaged in a pattern and practice of refusing to provide Ohio consumers a cash and/or check refund for a returned item in accordance with its refund policy. Instead, Walmart provides Ohio consumers with a gift card that can only be used at Walmart stores, which confers a benefit on the Defendant at the Plaintiff’s expense.

55. Based on the allegations herein, Walmart enjoyed the use of these gift cards without providing any material benefit to the Plaintiff and members of the Classes.

56. Walmart is therefore liable to the Plaintiffs and members of the Classes for an award of actual damages, compensatory damages, and punitive damages in amounts to be determined at trial.

**COUNT THREE: VIOLATIONS OF THE CSPA, R.C. 1345.01, et seq.
(On behalf of Plaintiff individually)**

57. Plaintiff restates and incorporates all of his allegations contained in paragraphs 1 through 54 in their entirety.

58. A “consumer transaction” is defined as “a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.” R.C. 1345.01(A).

59. Walmart's sales of merchandise to Plaintiff constitute "consumer transactions" because such services were for the primary purpose of Plaintiff's personal, family, or household use. R.C. 1345.01(A).

60. Plaintiff is a "consumer" because she engaged in a consumer transaction with Walmart. R.C. 1345.01(D).

61. Walmart is a "supplier" because it is engaged in the business of effecting or soliciting consumer transactions. R.C. 1345.01(C)

62. "No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction." R.C. 1345.02(A).

63. "No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction." R.C. 1345.03(A).

64. Walmart has engaged in unfair, deceptive, and/or unconscionable acts or practices in direct violation of the CSPA by refusing to provide Ohio consumers a cash and/or check refund for a returned item in accordance with its refund policy.

65. Ohio Courts have determined that the actions of a supplier in failing to honor its refund, cancellation, exchange, credit, or repurchase policy in effect at the time of each sale constitute unfair or deceptive acts or practices. See *State ex rel Yost v StubHub, Inc.*, PIF No. 3602 (September 20, 2021); and *McClain v. RB Sportstore, Inc.*, PIF No. 10002416 (March 11, 2006). A copy of PIF Nos. 3602 and 100002416 is attached as **Exhibit D**.

66. The Ohio Attorney General has made these determinations available for inspection pursuant to R.C. 1345.05(A)(3).

67. Plaintiff has a private right of action under the CSPA for the claimed breaches and such action provides for remedies including actual damages, costs, treble damages, statutory damages and attorneys' fees.

68. As a direct and proximate result of the actions of Walmart which violate the CSPA, Plaintiff is entitled to actual damages in an amount to be determined at trial or statutory damages of \$200.00, non-economic damages of up to \$5,000.00, treble damages, as well as an award of reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cheryl Driskill, on behalf of herself and those similarly situated, respectfully requests that that this Court grants judgment against Defendant Walmart, Inc. d/b/a Walmart, and issue an Order:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and Subclass, each as defined, *supra*;
- B. Designating the Plaintiff as a representative of the Class and Subclass, and her undersigned counsel as Class Counsel;
- C. Awarding the Plaintiff, Class and Subclass their actual damages;
- D. Awarding the Plaintiff, Class and Subclass their statutory damages, as applicable;
- E. Awarding the Plaintiff her statutory non-economic damages for violations of the CSPA, as applicable;
- F. Awarding the Plaintiff, Class, and Subclass, treble damages, as applicable, for violations of the CSPA;
- G. Awarding the Plaintiff, Class and Subclass punitive damages, as applicable;

- H. Awarding the Plaintiff, Class and Subclass their reasonable attorneys' fees and costs, including interest thereon, as allowed or required by law; and,
- I. Granting all such further and other relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Marc E. Dann

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JURY DEMAND

Plaintiff Cheryl Driskill hereby respectfully demands a trial by jury on all such claims that may be so tried.

/s/ Marc E. Dann

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Brian D. Flick (0081605)

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