

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Loraine Dawkins, and all others similarly situated,

CLASS ACTION COMPLAINT

Case No. _____

Plaintiff(s)

v.

Publix Super Markets, Inc.,

Defendant.

_____ \

CLASS COMPLAINT

Plaintiff, Loraine Dawkins, by and through her undersigned, brings this class action complaint against Defendant, Publix Super Markets, Inc. (“Publix” or “Defendant”), individually and on behalf of others similarly situated, and alleges upon personal knowledge as to her own acts and experiences, and as to all other matters, upon information and belief, including the investigation conducted by Plaintiff’s counsel.

NATURE OF THE ACTION

1. This action seeks redress for Defendant’s unfair, misleading and deceptive practices in the pricing of its products, which has caused financial harm to Plaintiff and consumers.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because the amount in controversy, exclusive of interests and costs, exceeds the sum or value of \$5,000,000, and is a class action in which there are in excess of 100 class members, and at least one member of the class is a citizen of a state different from Defendant.

3. This Court has personal jurisdiction over Defendant because Defendant conducts significant amounts of business in Florida. Publix has 870 stores in Florida.¹ In addition, because Defendant marketed, promoted, distributed, and sold its products to Plaintiff in Florida, the claims arise out of or relate to Defendant's contacts with Florida, subjecting Defendant to personal jurisdiction in Florida. Publix is Florida based company.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district, and Defendant conducts substantial business in this district.

PARTIES

5. Plaintiff, Loraine Dawkins is a resident of Florida and a regular purchaser of Publix products. She has purchased multiple items from Publix that were mispriced, causing her financial loss.

6. Defendant, Publix Super Markets, Inc., is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Lakeland, Florida. Publix operates numerous retail grocery stores throughout Florida and other states, selling a wide range of food and household products.

FACTUAL ALLEGATIONS

7. Publix has engaged in a systematic practice of misrepresenting the "Unit "Price"² of various products to appear as though they are offered at a lower price than what is actually charged at the point of sale, all for the purpose of increasing its profits.

¹ See <https://corporate.publix.com/about-publix/company-overview/facts-figures>

² See *Fla. Stat. § 501.135(3)(c)* defining "Unit Price" "the pricing of, or expression of the price of, a consumer commodity as the price per an approved unit of quantity."

8. Specifically, Publix misrepresents the Unit Price of 24 packs of Swiffer Wet Mopping Cloths Fresh Scent and 24 Packs of Swiffer Wet Mopping Cloths Lavender with Febreze (together “Swiffer Products”); Viva Signature Cloth Paper Towels 8=16 (“Viva Products”); and Scott Paper Towels Fast Absorbing 6=12 (“Scott Products”).

9. As it relates to Swiffer products:

- a. On August 5, 2024, a Publix where Plaintiff Loraine Dawkins shops in Weston, Florida, located at 1601 Promenade Blvd³ (the “Weston Town Center Publix”) sold Swiffer Products for \$12.99, with a Unit Price of \$0.4639 per each; however, the true cost was \$0.5412 per each, an almost 15% pre-tax difference.
- b. On September 10, 2024, a Publix where Plaintiff, Loraine Dawkins, shops in Miramar, Florida, located at 12681 Miramar Parkway (the “Monarch Town Center Publix”) sold Swiffer Products for \$12.49, with a Unit Price of \$0.4461 per each; however, the true cost is \$0.5204 an almost 15% pre-tax difference.
- c. On September 18, 2024, a Publix where Plaintiff, Loraine Dawkins, shops in Pembroke Pines, Florida located at 10450 Pines Blvd (the “Pines City Publix”), sold Swiffer Products for \$12.49, with a Unit Price of \$0.4461 per each; however, the true cost was \$0.5204, an almost 15% pre-tax difference.

10. On September 18, 2024, a Publix where Plaintiff, Loraine Dawkins, shops in Pembroke Pines, Florida located at 3102 Griffin Road (the “Oakbridge Publix”), sold Swiffer

³ The total price for each product may vary from store to store; however, the percentage difference is uniform throughout all.

Products for \$12.49, with a Unit Price of \$0.4461 per each; however, the true cost is \$0.5204 an almost 15% pre-tax difference.

11. As it relates to Scott Products:

- a. On August 16, 2024, a Publix where Plaintiff, Loraine Dawkins shops in Miramar Florida, located at 18409 Miramar Pkwy, (the “Sunset Lakes Publix”) sold Scott Products (270 square feet) for \$8.49, with a Unit Price of \$0.0281 per square foot; however, the true cost is \$0.0314 per square foot, over a 10% pre-tax difference.
- b. On September 10, 2024, the Monarch Town Center Publix sold Scott Products (270 Square Feet) for \$6.69 for \$6.69 with a Unit Price of \$0.0221 per square foot; however, the true cost is \$0.0248, over a 10% pre-tax difference.

12. As it relates to Viva Products

- a. On August 16, 2024, the Sunset Lakes Publix sold Viva Products (338.4 square feet) for \$16.49, with a Unit Price of \$0.0440 per square foot; however, the true cost is \$0.0487 per square foot, an almost 10% pre-tax difference.
- b. On September 10, 2024, the Monarch Town Center sold Viva Products (338.4 square fee) for \$16.49, with a Unit Price of \$0.0440 per square foot; however, the true cost is \$0.0487 per square foot, an almost 10% pre-tax difference.

13. Plaintiff Loraine Dawkins is a loyal Publix shopper and relies on the Unit Prices listed by Publix. Further, Plaintiff Loraine Dawkins is and has been a purchaser of Swiffer Products, Viva Products, and Scott Products for years at various Publix stores. She has not kept her receipts for the vast majority of her purchases. But upon information and belief, proof of a number of her purchases will be available through documentation kept by Publix in the regular

course of its business by reference to the credit cards she used. Moreover, on several specific occasions, detailed above, she did keep the receipt.

14. Indeed, upon investigation, Publix appears to misrepresent the Unit Prices of Swiffer Products, Viva Products and Scott Products up and down the State of Florida. Furthermore, this is not a one-time phenomenon. Rather, the Unit Price misrepresentation was not fixed even when a price increase or decrease has occurred in the Swiffer and Scott Products.

15. Florida Statute § 501.135 regulates the computation, display, and advertising of consumer commodities. Publix's display of Swiffer Products, Viva Products and Scott Products are a clear violation of that statute.

16. Reasonable consumers use the Unit Price that is listed on pricing labels at retail stores. That is precisely why retailers such as Publix go through the trouble of including that information on the pricing label, and that is precisely why Fla. Stat. § 501.135 regulates the display of Unit Price and makes it a second-degree misdemeanor for violating those regulations.

17. Mis-representing the unit price of Swiffer Products, Viva Products and Scott Products actually deceives reasonable consumers every day. And the effect is more profits for Publix.

18. Publix also misrepresents the unit price of several other products, including Sparkling Ice +Caffeine, Grace Strawberry Syrup, Off! Active Insect Repellant, and Hot Shot Liquid Roach Bait.

19. The Class is any purchaser of Swiffer Products, Viva Products, and Scott Products from Publix.

20. Plaintiff and the Class relied upon or otherwise were affected by these false and misleading unit price labels when purchasing products from Publix.

21. As a result of these deceptive practices, Plaintiff and the Class paid 10-15% more for products than Publix represented they would cost, resulting in economic injury. Also, by relying on the mis-represented Unit Price, consumers make *incorrect* decisions. For instance, on August 5, 2024, at the Weston Town Center Publix, it was cheaper to buy two 12-packs of Swiffer Products (\$5.92 per pack / \$0.4933 per each) rather than a 24-pack (\$12.99 per pack). But if one relies on the misrepresented Unit Price, then the 24-pack (\$12.99 per pack) appears to be the more economical option. That means that *every single* sale of 24-pack Swiffer Products by Publix under those circumstances constitutes Publix making more than a dollar off of an unsuspecting consumer.

22. Publix's misrepresentations of Unit Price is significant, and when viewed through the larger lens of the consuming public in the State of Florida, the misrepresentations become astronomical. Each purchase of a 24-pack of Swiffer Products entails a \$1.78 - 1.86 over-charge, each purchase of Viva Products entails a \$1.60 overcharge, and each purchase of Scott Products entails a \$0.72 – \$0.90 overcharge. Also, Publix is a volume seller, and the products misrepresented are single use consumer commodities which get bought often. Publix has 870 stores in Florida, all of which – it seems – are perpetrating the above-detailed misrepresentations.

23. Publix's conduct constitutes unfair and deceptive acts or practices in violation of state consumer protection laws, including but not limited to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on behalf of herself, and all others similarly situated (the proposed Class) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

25. The Class is defined as:

All persons in the United States who purchased the Products from any Florida Publix Location that had the incorrect Per Unit price.

26. Excluded from the Class are Defendant, its officers, directors, and employees, and any person who has filed a timely request for exclusion.

27. **Numerosity – Federal Rule of Civil Procedure 23(a)(1):** The members of the proposed Class are so numerous that the individual joinder of all absent Class members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and is in the exclusive control of Defendant, it is ascertainable by appropriate discovery. Plaintiff reasonably believes that Class members include thousands of people or more, who are geographically diverse so that joinder of all Class members is impracticable.

28. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3):** There are questions of law and fact common to the Class, which predominate over any questions affecting only individual members, including:

- a. Whether Publix's pricing of its products was false and misleading.
- b. Whether Publix's conduct violated state consumer protection laws.
- c. Whether Plaintiff and the Class are entitled to damages, restitution, and/or injunctive relief.

29. **Typicality – Federal Rule of Civil Procedure 23(a)(3):** Plaintiff's claims are typical of the claims of the Class, as all members of the Class were similarly affected by Publix's wrongful conduct. Plaintiff is advancing the same claims and legal theories on behalf of himself and all other Class members, and there are no defenses that are unique to Plaintiff. The claims of Plaintiff and those of the other Class members arise from the same operative facts and are based on the same legal theories.

30. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4):** Plaintiff is an adequate representative of the Class because her interests do not conflict with the

interests of the other Class members she seeks to represent. As such, Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel competent and experienced in class action litigation.

31. **Superiority – Federal Rule of Civil Procedure 23(b)(3):** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this matter as a class action. The damages, harm, or other financial detriment suffered individually by Plaintiff and Class members are relatively small compared to the burden and expense that would be required to litigate their claims on an individual basis against Defendant, making it impracticable for Class members to individually seek redress for Defendant’s wrongful conduct. Individualized litigation would create the potential for inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economics of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

COUNT I: PER SE VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (FDUTPA)

Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in the preceding paragraphs as though fully set forth herein.

32. FDUTPA renders unlawful unfair or deceptive acts or practices in the conduct of any trade or commerce.

33. Fla. Stat. 501.203 states that a [v]iolation of this part” means a violation of “any law, statute, regulation, or ordinance which proscribes unfair methods of competition, or unfair deceptive, or unconscionable acts or practices”.

34. Fla. Stat. 501.135 is a statute that proscribes unfair or deceptive practices, and as such a violation of same is a per se violation of FDUTPA.

35. At all relevant times, Publix sold goods or things of value by operating as a supermarket, and was thereby engaged in trade or commerce as defined by Fla. Stat. 501.203(8).

36. At all relevant times, Class Members are consumers as defined by Fla. Stat. 501.203(7).

37. Swiffer Product, Viva Products, and Scott Products are a consumer commodity as defined by Fla. Stat. 501.135(3)(b).

38. Publix's false Unit Price described in the paragraphs above is a violation of Fla. Stat. 501.135 because the Unit Price fails to accurately compute the correct Unit Price as required by law.

39. Accordingly, Defendant's actions are a per se violation of FDUTPA pursuant to Fla. Stat. 501.203.

40. Pursuant to Fla. Stat. § 501.211, Plaintiff and the Class seek damages, declaratory relief, and reasonable attorneys' fees and costs.

COUNT II: VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (FDUTPA)

Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in the preceding paragraphs as though fully set forth herein.

41. Publix engaged in unfair and deceptive acts and practices in the conduct of its business, trade, and commerce by misstating its Unit Price.

42. Plaintiff and the Class have been aggrieved by Publix's unfair and deceptive practices and have suffered actual damages as a result thereof.

43. Pursuant to Fla. Stat. § 501.211, Plaintiff and the Class seek damages, declaratory relief, and reasonable attorneys' fees and costs.

COUNT III: BREACH OF EXPRESS WARRANTY

44. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in the preceding paragraphs as though fully set forth herein.

45. Publix, through its product price labels, expressly warranted that its products were offered at a specific price, including sale prices, discounts, or special offers.

46. These express warranties became part of the basis of the bargain between Plaintiff and Publix.

47. Publix breached these express warranties by charging higher prices at checkout than those advertised.

48. As a result of Publix's breach, Plaintiff and the Class have suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment in favor of Plaintiff and against Defendant as follows:

A. Declaring that this action is a proper class action, certifying the Class as requested herein; designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel.

B. Awarding Plaintiff and the proposed Class members actual damages, compensatory damages, and punitive damages in an amount to be determined at trial.

C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members.

D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein.

E. Awarding Plaintiff and the proposed Class members pre-judgment and post-judgment interest on any amounts awarded, as well as paying reasonable attorneys' fees and litigation costs.

F. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated:

Respectfully submitted,

/s/ Michael A. Citron

Michael A. Citron, Esq.
Florida Bar. No.: 105083

MAC Legal, P.A.

4601 Sheridan Street, Suite #205
Hollywood, FL 33021

Telephone: (954) 395-2954

Email: michael@maclegalpa.com

Service@maclegalpa.com

Attorneys for Plaintiff and the Proposed Class

/s/ Jonathan Korin

Jonathan Korin, Esq.
Florida Bar. No.: 93914
David Mannering, Esq.
Florida Bar. No. 118793

Korin Law PA

4000 Hollywood Blvd. Suite 555-S
Hollywood, FL 33021

Telephone: (954) 556-6753

Email: Jonathan@KorinLaw.com

David@KorinLaw.com

Charlyn@KorinLaw.com

Attorneys for Plaintiff and the Proposed Class

/s/ Ely R. Levy

Ely R. Levy, Esq.
Florida Bar No.: 15452

Levy & Partners, PLLC

3230 Stirling Road, Suite 1

Hollywood, FL 33021

Telephone: (954) 727-8570

Email: elevy@lawlp.com

aylin@lawlp.com

christina@lawlp.com

Attorneys for Plaintiff and the Proposed Class

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Loraine Dawkins, and all others similarly situate

DEFENDANTS

Publix Super Markets, Inc.

(b) County of Residence of First Listed Plaintiff Broward

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Polk

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

MAC Legal, P.A. 4601 Sheridan St., Ste. 205, Hollywood FL 33021 (9:

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION Violations of Deceptions Practices Laws and Breach of Warranty

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

October 15, 2024

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Loraine Dawkins, and all others similarly situated

Plaintiff(s)

v.

Publix Super Markets, Inc.

Defendant(s)

Civil Action No. 0:24-cv-61918

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PUBLIX SUPER MARKETS, INC.
c/o the Registered Agent
Corporate Creations Network, Inc.
801 US Highway 1
North Palm Beach, FL 33408

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Citron, Esq.
Florida Bar. No.: 105083
MAC Legal, P.A.
4601 Sheridan Street, Suite #205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 10/15/2024

Signature of Clerk or Deputy Clerk