

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS**

TANYA THOMPSON MULLINS,	)	Case No:
on Behalf of Herself and All Others	)	
Similarly Situated,	)	Judge:
	)	
Plaintiff,	)	
v.	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
WAL-MART STORES, INC.,	)	
	)	
Defendant.	)	

**CLASS ACTION COMPLAINT**

This is a proposed class action, brought on behalf of all those who purchased Wal-Mart’s “store brand,” **“Great Value Pork & Beans in Tomato Sauce,”** (or the “Product”) in a Wal-Mart store located in the United States, between October 8, 2009 and the present (“the National Class”).

**NATURE OF THE ACTION**

1. This action is also brought on behalf of a proposed sub-class, composed of all those who purchased the Product at a Wal-Mart store located in Illinois between October 8, 2012 and the present (the “Illinois Sub-Class”).

2. **“Great Value Pork & Beans in Tomato Sauce”** is a Wal-Mart “store brand” food product which is distributed by Defendant and is sold exclusively by Defendant at Wal-Mart stores located in every state in the United States, including Illinois.

3. Despite the inclusion of the words **“Pork & Beans”** in the name of the Product itself, and despite the fact that the **“INGREDIENTS”** section on the label on each and every container of the product lists **“Pork”** as an ingredient of the product, rigorous scientific testing has revealed that the Product actually contains no pork whatsoever.

4. Each and every can of the Product bears a uniformly-worded label which makes same false, affirmative statements of fact regarding whether pork is included in the Product.

5. Upon information and belief, Defendant has been fully aware that the Product actually contains no pork since its inception.

6. As a result of Defendant's deceptive, false and misleading claim on its label, consumers in the U.S. – including Plaintiff and other members of the proposed Illinois Sub-Class – have purchased the Product without being advised that Defendant's claim that the Product contains pork is false. Had Defendant disclosed this material fact, Plaintiff would not have purchased the Product, or would not have paid what she did. Defendant was able to charge more than what the Product would have been worth had Defendant disclosed the truth.

7. This complaint seeks injunctive, declaratory and monetary relief for Plaintiff, the proposed National Class, and the proposed Illinois Sub-Class, as outlined in greater detail herein.

#### **JURISDICTION AND VENUE**

8. There is federal subject matter jurisdiction over this matter under the Class Action Fairness Act in that it is a proposed class action, there are more than 100 members of the National Class and the Illinois Sub-Class, at least some class members and Defendant are citizens of different states, and the amount in controversy is more than \$5 million.

#### **THE PARTIES**

9. Plaintiff Tanya Thompson Mullins resides in Schaumburg, Illinois.

10. Like all members of the proposed class, Plaintiff Mullins purchased the Product in a Wal-Mart store located in the United States between October 8, 2009 and the present. Like all members of the proposed Illinois Sub-Class, Plaintiff Mullins purchased the Product at a Wal-Mart store located in Illinois between October 8, 2012 and the present.

11. Specifically, Plaintiff Mullins typically purchased at least four cans of the Product per month at the Wal-Mart Store located at 801 Meacham Road, Elk Grove Village, Illinois, with her most recent such purchase occurring in September of 2015. During these purchases, Plaintiff Mullins participated in Wal-Mart's "Savings Catcher" program, in which she typically uploaded her receipts to her Wal-Mart on line account, thereby showing the exact dates of each such purchase.

12. Defendant Wal-Mart Stores, Inc. ("Wal-Mart") is a corporation which is headquartered at 702 SW 8th Street, Bentonville, Arkansas, 72716. The uniformly-worded label on the product states, *inter alia*, that the product was "**DISTRIBUTED BY: Wal-Mart Stores, Inc.**" Upon information and belief, Defendant Wal-Mart Stores, Inc. is the owner and operator of various Wal-Mart stores throughout the United States, including Illinois.

13. Defendant Wal-Mart manufactured, distributed, advertised, labeled and sold the product, determining that each such container would bear the name "**Great Value Pork & Beans in Tomato Sauce**" and would list "**PORK**" under the portion of the product label marked "**INGREDIENTS.**"

#### **CLASS ACTION ALLEGATIONS**

14. Plaintiff Mullins brings this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of a National Class defined as:

**All persons who, between October 8, 2009 and the present, purchased one or more containers of "Great Value Pork & Beans in Tomato Sauce" at a Wal-Mart store located in the United States.**

15. Plaintiff Mullins also brings this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of an Illinois Sub-Class defined as:

**All persons who, between October 8, 2012 and the present, purchased one or more containers of “Great Value Pork & Beans in Tomato Sauce” at a Wal-Mart store located in Illinois.**

16. The members of the class and sub-class for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

17. Upon information and belief, the proposed National Class and the proposed Illinois Sub-Class are each composed of many thousands of persons.

18. No violations alleged in this complaint are a result of any oral communications or individualized interaction of any kind between class members and Defendant.

19. Rather, all claims in this matter arise from the identical, false, written affirmative statements on the Product label as outlined in detail herein.

20. There are common questions of law and fact affecting the rights of all National and Illinois Sub-Class members, including, *inter alia*, the following:

- a. Whether there is pork in the Product;
- b. Whether Defendant’s act in naming the Product “Great Value Pork & Beans in Tomato Sauce” was a false, affirmative statement of fact;
- c. Whether Defendant’s act in placing a uniform written statement on the label of the Product, listing “PORK” under the word “INGREDIENTS” was a false, affirmative statement of fact;
- d. Whether Defendant was aware that the Product contained no pork whatsoever; and
- e. The date Defendant became aware that the Product contained no pork whatsoever.

21. In addition, there are common questions of law and fact affecting the rights of all Illinois Sub-Class members, including, *inter alia*, the following:

- a. Whether Defendant's actions, as outlined herein, violated the Illinois Consumer Fraud and Deceptive Business Practices Act; 815 ILCS 505/1 *et seq.*;
- b. Whether, by the facts alleged herein, Defendant breached an express or implied warranty under Illinois common law;
- c. Whether an implied contract for the purchase of goods existed between Defendant and each member of the Illinois Sub-Class under Illinois common law; and
- d. Whether Defendant's actions, as outlined herein, breached that implied contract and/or the implied covenant of good faith and fair dealing that was part of each such contract under Illinois common law.

22. Plaintiff Mullins is a member of the class and sub-class she seeks to represent.

23. The claims of Plaintiff are not only typical of all class and sub-class members, they are identical.

24. All claims of Plaintiff and the class and sub-class arise from the same identical, false, written statement of affirmative fact on the Product label as described herein.

25. All claims of Plaintiff and the class and sub-class are based on the same legal theories.

26. Plaintiff has no interest antagonistic to, or in conflict with, the class or sub-class.

27. Plaintiff will thoroughly and adequately protect the interests of the class and sub-class, having retained qualified and competent legal counsel to represent herself and the class and sub-class.

28. Defendant has acted and refused to act on grounds generally applicable to the class and sub-class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

29. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

30. A class action is the only practical, available method for the fair and efficient adjudication of the controversy since, *inter alia*, the damages suffered by each class member were less than \$1 per container of the Product purchased and, as such, individual actions are not economically feasible.

31. Common questions will predominate, and there will be no unusual manageability issues.

### **FACTUAL ALLEGATIONS**

32. Defendant is in the business of manufacturing, distributing, marketing, and selling, *inter alia*, **“Great Value Pork & Beans in Tomato Sauce.”**

33. **“Great Value Pork & Beans in Tomato Sauce”** is a an exclusive Wal-Mart “store brand” food product, sold at Wal-Mart stores throughout the United States, including 156 Wal-Mart stores in Illinois.

34. In addition, as part of its business, Defendant employs a customer “rewards” and/or “loyalty” program, called the “Savings Catcher” program. Participants in this program, such as Plaintiff Mullins, upload their receipts to their online Wal-Mart accounts and have their Wal-Mart purchases tracked by Defendant, who keeps records of Wal-Mart purchases by the customer so as to be able to refund money when certain products are found to sell for less at a competitor’s store. Thus, Defendant has records identifying participants in the “Savings Catcher” program, such as Plaintiff Mullins, who purchased the Product in a given time period.

35. Since the initial offering of the Product, each and every label on this Product has borne a uniformly-worded label which identifies the name of the Product in large letters as **“Great Value Pork & Beans in Tomato Sauce,”** as depicted in Figure 1, below.

**Figure 1**



36. Since the initial offering of the Product, each and every label on this Product has borne a uniformly-worded label which includes, *inter alia*, the word **“PORK”** under the word **“INGREDIENTS,”** as depicted in Figure 2, below.

**Figure 2**



37. In actuality, rigorous scientific testing, including microscopic and chemical analysis, has revealed that the Product contains no pork whatsoever.

38. Defendant, as developer, manufacturer, and exclusive seller and distributor of **“Great Value Pork & Beans in Tomato Sauce”** has been aware since the Product’s inception that the Product contains no pork whatsoever.

39. It is equally clear that Defendant has or should have been fully aware for some time that in order to label a product as “Pork & Beans,” the product must contain at least some pork. *See* U.S. Food and Drug Administration CPG Sec. 567.200, entitled **“Pork and Beans and Similar Bean Products,”** which makes clear that the product must be made **“with pork.”**

40. Indeed, over fifteen years ago, the United States Department of Agriculture promulgated a written **“Commercial Item Description”** which specifies that any product described as **“‘Pork and Beans in Tomato Sauce’ ... shall contain a minimum of 12 percent ham, bacon or pork based on the weight of the smoked or fresh meat at the time of formulation.”**

41. Despite this, Defendant opted to name the Product **“Great Value Pork & Beans in Tomato Sauce,”** knowing that it contains no pork whatsoever.

42. Defendant also chose to list the word **“PORK”** on the Product label, under the word **“INGREDIENTS,”** knowing that the Product actually contained no pork whatsoever.

43. Despite all of the foregoing, Defendant continues to sell the Product, with the same written, false, uniformly-worded statements on the Product label outlined herein, in Wal-Mart stores throughout the United States, including Illinois.

**FIRST CLAIM FOR RELIEF**

**BREACH OF EXPRESS WARRANTY**

**On Behalf of the National Class**  
**or, in the Alternative, the Illinois Sub-Class**

44. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

45. Plaintiff brings this claim individually and on behalf of the National Class.<sup>1</sup> Plaintiff and each member of the National Class formed a contract with Defendant at the time Plaintiff and the other members of the National Class purchased Defendant's Product.

46. Defendant sold the Product in its regular course of business.

47. Plaintiff and the members of the National Class purchased the Product.

48. The written, uniformly-worded label on the Product (as depicted herein) constituted an express warranty provided to all purchasers of the Product under the law of each state in the United States in which the Product was sold.

49. Defendant's written affirmations of fact, promises, and/or descriptions on the Product label were part of that express warranty under the laws of each state in the United States in which the Product was sold.

50. By the acts alleged herein, Defendant breached that warranty because the Product cannot and does not conform to the properties Defendant represented on the label.

51. The false information provided on the label was undiscoverable to Plaintiff and the members of the National Class at the time of purchase of the Product.

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<sup>1</sup> In the event that the Court declines to certify the Breach of Express Warranty claim on behalf of the National Class, Plaintiff asks that the Court, in the alternative, certify the claim on behalf of the Illinois Sub-Class.

52. All conditions precedent to seeking liability under this claim for breach of warranty have been performed by or on behalf of Plaintiff and the members of the National Class in terms of paying for the goods at issue.

53. Defendant had actual and/or constructive notice of the false labeling information and to date have taken no action to remedy its breaches of warranty.

54. Defendant was on notice of its breaches of warranty and has refused to remedy such breaches.

55. By placing the Product into the stream of commerce, by operation of law in each state in the United States, Defendant also impliedly warranted to Plaintiff and the members of the National Class that the Product was accurately labeled in conformance with the law.

56. Defendant's breaches of warranty have caused Plaintiff and the members of the National Class to suffer injuries by paying for falsely labeled products. As a direct and proximate result of Defendant's breaches of warranty, Plaintiff and the members of the National Class have suffered damages and continue to suffer damages, including economic damages in terms of the difference between the value of the Product as promised and the value of the Product as delivered.

57. As a result of the breach of these warranties, Plaintiff and the members of the National Class are entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or other relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of their bargain.

**SECOND CLAIM FOR RELIEF**

**UNJUST ENRICHMENT**

**(Alternative Claim to Count I for Breach of Express Warranty)**

**On Behalf of the National Class**  
**or, in the Alternative, the Illinois Sub-Class**

58. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

59. Plaintiff brings this claim individually and on behalf of the National Class.<sup>2</sup>

60. Plaintiff and the members of the National Class have conferred substantial benefits on Defendant by purchasing the Product, and Defendant has knowingly and willingly accepted and enjoyed these benefits.

61. Defendant either knew or should have known that the payments rendered by Plaintiff and the members of the National Class were given and received with the expectation that the Product would be as represented and warranted.

62. Under the common law of unjust enrichment in every state in the United States where the Product was sold, it would be inequitable for Defendant to retain the benefit of the payments under these circumstances and such retention constitutes unjust enrichment.

63. Under the law of every state in the United States where the Product was sold, both law and equity demand disgorgement of Defendant's ill-gotten gains.

64. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and the members of the National Class are entitled to restitution from Defendant and institution of a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendant.

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<sup>2</sup> In the event that the Court declines to certify the Unjust Enrichment claim on behalf of the National Class, Plaintiff asks that the Court, in the alternative, certify the claim on behalf of the Illinois Sub-Class.

**THIRD CLAIM FOR RELIEF**

**ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT  
815 ILCS 505/1 *et seq.***

**On Behalf of the Illinois Sub-Class Only**

65. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

66. Plaintiff brings this claim individually and on behalf of the Illinois Sub-Class.

67. As alleged herein, Plaintiff Mullins has suffered injury in fact and lost money or property as a result of Defendant's conduct because she purchased the Product in reliance on Defendant's claims detailed above, but did not receive a product containing the characteristics detailed above.

68. At all times relevant hereto, the sale of the Product in Illinois was governed by the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1 *et seq.*

69. The ICFA is a regulatory and remedial statute intended to protect consumers, including Plaintiff Mullins and the Illinois Sub-Class, against unfair or deceptive acts or practices.

70. Specifically, Section 2 of the ICFA prohibits deceptive acts or practices, which are committed in the course of trade or commerce and with the intent that others rely upon. *See* 815 ILCS 505/2, which states:

**“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade**

**or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.”**

71. 815 ILCS 510/2(a)(5) of the Uniform Deceptive Trade Practices Act states:

**“A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person ... represents that goods or services have ... characteristics, ... uses, [or] benefits ... that they do not have ...”**

72. Plaintiff Mullins and the Illinois Sub-Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

73. The above-described unfair or deceptive acts or practices occurred in the course of conduct involving trade or commerce, namely, the sale of goods to Plaintiff Mullins and the Illinois Sub-Class.

74. Defendant’s practice of unlawfully engaging in the activity described above also constitutes “unfair” business acts or practices because, *inter alia*, Defendant engaged in false advertising, which misrepresents and omits material facts regarding the Product.

75. Defendant’s business acts or practices therefore offend an established public policy, and Defendant engages in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers, as alleged in detail previously, and therefore Defendant’s actions are unfair or deceptive acts or practices prohibited by Chapter 2 of the ICFA. 815 ILCS 505/2.

76. Defendant intended that Plaintiff Mullins and the Illinois Sub-Class rely on the deceptive acts or practices described herein. Defendant’s intent is evidenced by, *inter alia*, the fact that Defendant included the words **“Pork & Beans”** in the name of the Product itself, even though Defendant was aware that the Product did not, in fact, contain any pork.

77. As a matter of necessity, any consumer wishing to purchase a pork and beans product would have to look at, and rely upon, the name of the Product, as stated on the label.

78. Defendant's material misrepresentations and omissions described above have caused harm to Plaintiff Mullins and other members of the Illinois Sub-Class.

79. Plaintiff Mullins and the other members of the Illinois Sub-Class have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

**FOURTH CLAIM FOR RELIEF**

**ILLINOIS BREACH OF IMPLIED CONTRACT/VIOLATION  
OF COVENANT OF GOOD FAITH AND FAIR DEALING**

**On Behalf of the Illinois Sub-Class Only**

80. Plaintiff Mullins incorporates all preceding paragraphs as though fully set forth at length herein.

81. By operation of Illinois law, there existed an implied contract for the sale of goods between Plaintiff Mullins and each member of the Illinois Sub-Class who purchased the Product at a Wal-Mart store located in Illinois.

82. By operation of Illinois law, there existed an implied duty of good faith and fair dealing in each such contract.

83. By the acts alleged herein, Defendant violated that duty of good faith and fair dealing, thereby breaching the implied contract between Defendant and each member of the Illinois Sub-Class.

84. As a result of that breach, Plaintiff Mullins and each member of the Illinois Sub-Class suffered damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks this court to:

- a. Certify the proposed National Class and the Illinois Sub-Class as class actions pursuant to Fed. R. Civ. P. 23, appoint Plaintiff as the class representative and her undersigned counsel as class counsel;
- b. Enter an order for injunctive and declaratory relief as described herein, including but not limited to a corrective advertising campaign;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award plaintiff reasonable attorneys' fees and costs;
- e. Award plaintiff and the class treble damages; and
- f. Grant such other and further legal and equitable relief as the court deems just and equitable.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury as to all issues so triable.

**NOTICE TO ILLINOIS ATTORNEY GENERAL OF ACTION**

Pursuant to 815 ILCS 505/10a(d), a copy of this Complaint has been mailed to the Illinois Attorney General with the filing of this Complaint.

Dated: October 8, 2015

/s/ Theodore B. Bell  
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