

**IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY, MARYLAND**

ROBERT VAN BUREN,
120 Lejune Way
Annapolis, MD 21401

for himself and on behalf of all others
similarly situated,

Plaintiffs,

v.

WALMART, INC.,
t/a Sam's Club

Serve On:
Corporation Trust Incorporated
2405 York Road, Suite 201
Lutherville, Timonium, MD 21093-2264

Defendant

Case No.: C-02-CV-19-000472

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. This consumer class action challenges Defendant Walmart Inc.'s ("Walmart") practice of intentionally or negligently misrepresenting the true sale price of items by including and collecting amounts from customers in excess of the sale taxes.
2. Walmart is a national retailer that operates stores and various web sites. In connection with these operations, Walmart's representations as to sale prices are routinely understated because part of the sale price is included under entries for sales taxes.
3. The sales tax that is due should be calculated based on the purchase price paid by the customers for a particular item. If an item is on sale or sold at a reduced price, only the amount of the sale or reduced price is the amount subject to sales tax.

4. Walmart overstates the sales taxes on sale items by calculating the sales tax based on the regular price of the item, not on the sale or reduced price of the item. This additional amount represented to be sales tax is a hidden addition to the sale price of the item.

5. As a result Walmart collects amounts in excess of the sale price of items from its customers.

6. This action seeks the return of the amounts represented to be sales tax that are not sales taxes to the Plaintiff and the class of persons defined herein.

PARTIES

7. Plaintiff, Robert Van Buren is an individual who resides in, Annapolis, Maryland.

8. Defendant Walmart is a retailer with operations throughout the United States. Walmart is a Delaware corporation with a principal place of business at Bentonville, Arkansas that operates under the trade names of Walmart and Sam's Club.

JURISDICTION

9. This court has jurisdiction over the Defendant under Md. Code Ann., Cts. & Jud. Proc. § 6-103 because Plaintiff's cause of action arose in Maryland.

10. Venue is proper in Anne Arundel County under Md. Code Ann., Cts. & Jud. Proc. § 6-201 because Defendant regularly carries on business in Anne Arundel County by operating a retail store in the County.

OVERVIEW

11. Walmart operates retail operations and also maintains website to make sales to residents of the United States.

12. The sales made by Walmart are subject to sales tax in all the states except

Alaska, Delaware, Montana, New Hampshire and Oregon.

13. Walmart collects sales taxes in the states where sales taxes are due and they conduct sales. In connection with these sales, Walmart represents the amount of the sales tax as a separate entry on the sales transaction.

14. If the amount represented by Walmart as sales tax is more than the sales tax legally due, the representation of the amount is material and false.

15. Walmart routinely misrepresents the amount of sales tax due when it charges sales tax on a sales amount in excess of the price actually paid by a customer.

16. The Plaintiff contends that by overcharging him and other customers, Walmart negligently misrepresented the amount of the sales tax and filing fees, (see Count I - Negligent Misrepresentation), or intentionally misrepresented the amounts of sales tax (see Count II – Fraud).

FACTS RELATING TO PLAINTIFF'S TRANSACTIONS

17. On July 12, 2018, Mr. Van Buren purchased various items at Sam's Club in Annapolis, Maryland, including a Sonicare product for \$31.98 because the purchase price was reduced by \$8.00 due to a sale.

18. While the purchase price he paid for the Sonicare was \$31.98, the sales tax represented to be due was based on the \$39.98 price that was neither charged nor collected from him.

19. His total taxable purchases that day was \$38.12.

20. The sales tax due on this amount at 6% was \$2.29.

21. But Walmart represented the amount of sales tax due was \$2.77.

22. Based on Walmart's representation, Mr. Van Buren paid Walmart \$2.77 for

sales tax. This increase in sales tax charged by Walmart increased the price he paid for the sale item. The representation as to the price of the sale item was understated by Walmart.

23. Alternatively, if the sale tax was due on the regular price of the item, Walmart failed to advise Mr. Van Buren that the sale price would not reduce his sales taxes to the sale amount. Either way, Mr. Van Buren has been damaged.

24. On August 31, 2018, Mr. Van Buren purchased various items at Sam's Club in Annapolis Maryland, including a Zero vitamin water product for \$12.73 because the purchase price was reduced by \$2.75 due to a sale.

25. While the purchase price he paid for the Zero was \$12.73, the sales tax represented to be due was based on the \$15.48 price that was neither charged nor collected from him.

26. His total taxable purchases that day was \$52.60.

27. The sales tax due on this amount at 6% was \$3.16.

28. But Walmart represented the amount of sales tax due was \$3.33.

29. Based on Walmart's representation, Mr. Van Buren paid Walmart \$3.33 for sales tax. This increase in sales tax charged by Walmart increased the price he paid for the sale item. The representation as to the price of the sale item was understated by Walmart.

30. Alternatively, if the sale tax was due on the regular price of the item, Walmart failed to advise Mr. Van Buren that the sale price would not reduce his sales taxes to the sale amount. Either way, Mr. Van Buren has been damaged.

31. On September 10, 2018, Mr. Van Buren purchased various items at Sam's Club in Annapolis Maryland, including a Brindale mattress product for \$194.98 because the purchase price was reduced by \$75.00 due to a sale.

32. While the purchase price he paid for the Brindale mattress was \$194.98, the

sales tax represented to be due was based on the \$269.98 price that was neither charged nor collected from him.

33. His total taxable purchases that day was \$322.96.

34. The sales tax due on this amount at 6% was \$19.38.

35. But Walmart represented the amount of sales tax due was \$23.88.

36. Based on Walmart's representation, Mr. Van Buren paid Walmart \$23.88 for sales tax. This increase in sales tax charged by Walmart increased the price he paid for the sale item. The representation as to the price of the sale item was understated by Walmart.

37. Alternatively, if the sale tax was due on the regular price of the item, Walmart failed to advise Mr. Van Buren that the sale price would not reduce his sales taxes to the sale amount. Either way, Mr. Van Buren has been damaged.

38. On September 16, 2018, Mr. Van Buren purchased various items at Sam's Club in Annapolis Maryland, including a Zero vitamin water product for \$12.73 because the purchase price was reduced by \$2.75 due to a sale.

39. While the purchase price he paid for the Zero was \$12.73, the sales tax represented to be due was based on the \$15.48 price that was neither charged nor collected from him.

40. His total taxable purchases that day was \$12.73.

41. The sales tax due on this amount at 6% was \$.76.

42. But Walmart represented the amount of sales tax due was \$.93.

43. Based on Walmart's representation, Mr. Van Buren paid Walmart \$.93 for sales tax. This increase in sales tax charged by Walmart increased the price he paid for the sale item. The representation as to the price of the sale item was understated by Walmart.

44. Alternatively, if the sale tax was due on the regular price of the item, Walmart

failed to advise Mr. Van Buren that the sale price would not reduce his sales taxes to the sale amount. Either way, Mr. Van Buren has been damaged.

45. On October 24, 2018, Mr. Van Buren purchased an item at Sam's Club in Annapolis Maryland, ALL 120 CT laundry detergent, for \$13.77 because the purchase price was reduced by \$3.00 due to a sale.

46. While the purchase price he paid was \$13.77, the sales tax represented to be due was based on the \$15.82 price that was neither charged nor collected from him.

47. His total taxable purchases that day was \$13.77.

48. The sales tax due on this amount at 6% was \$0.83.

49. But Walmart represented the amount of sales tax due was \$0.95.

50. Based on Walmart's representation, Mr. Van Buren paid Walmart \$0.95 for sales tax. This increase in sales tax charged by Walmart increased the price he paid for the sale item. The representation as to the price of the sale item was understated by Walmart.

51. Alternatively, if the sale tax was due on the regular price of the item, Walmart failed to advise Mr. Van Buren that the sale price would not reduce his sales taxes to the sale amount. Either way, Mr. Van Buren has been damaged.

52. In sum, Mr. Van Buren's transactions with Defendant were as follows:

Item	Date	Full Price	Sale Price	Total Taxable Purchases	Tax Owed	Tax Collected
Sonicare item	7/12/2018	\$39.98	\$31.98	\$38.12	\$2.29	\$2.77
Zero item	8/31/2018	\$15.48	\$12.73	\$52.60	\$3.16	\$3.33

Brindale mattress	9/10/2018	\$269.98	\$194.98	\$322.96	\$19.38	\$23.88
Zero item	9/16/2018	\$15.48	\$12.73	\$12.73	\$0.76	\$0.93
All 120 CT	10/24/2018	\$15.82	\$12.82	\$13.77	\$0.83	\$0.95

FACTS COMMON TO ALL TRANSACTIONS

53. Plaintiff and class members (hereinafter collectively “Class Members”) made purchases from Walmart. The purchases included an item that was represented to be sold at a sale price.

54. Walmart represented an amount for the sale price that was less than the actual amount paid because Walmart added an amount to the sales tax sales charge in excess of the sales taxes due in connection with the purchase. Walmart calculated the sales tax amount based on the regular price not the sale price. As a result, the Plaintiff and Class Members paid more than the sale price than what Walmart represented the sale price of the item to be.

55. Unbeknownst to Class Members, they overpaid the sale price represented to be due for the item based on Walmart hiding the additional amount for the sale price in the sales taxes.

56. Walmart made the representations as to the price of the item with the intent that the Plaintiff and Class Members rely on the representations.

57. Walmart knew or should have known that its representations were false.

58. Walmart’s false representations were material.

59. Plaintiff and the Class Members reasonably relied on Walmart’s representations.

60. Plaintiff and the Class Members have been damaged by their reliance on Walmart's representations.

CLASS ALLEGATIONS

61. Plaintiff brings this complaint individually and on behalf of a class of all other persons similarly situated.

62. The class is comprised of all residents within the last three years from the filing of the initial complaint, who:

- a. Entered into purchase with Walmart;
- b. The purchase included a representation of a sale price;
- c. Walmart calculated the sales tax amount represented to be due on a price greater than the sale price; and
- d. Paid more than the sale price amount; and
- e. Did not receive a refund of the excess sale price.

63. The class is so numerous as to make it impracticable to join all members of the class of plaintiffs. On information and belief the class comprises thousands of individuals.

64. There are questions of law and fact which are common to all members of the class, which questions predominate over any question affecting only individual class members, the principal common issues are:

- a. whether Plaintiff and the Class Members paid more than the sale or reduced price that Walmart claimed it was selling the item for to them;
- b. whether Walmart's conduct amounts to negligent misrepresentation or intentional misrepresentation;
- c. whether Walmart's systematic failure to properly charge its customers sale

or reduced prices is intentional, thus warranting the imposition of punitive damages.

- d. whether alternatively Walmart failed to provide its customers notice that the taxes due on the sale price of an item would be calculated based on the regular price of the item.

65. The only individual questions concern the identification of class members and the computation of the relief to be afforded each class member and can be determined by a ministerial examination of the files.

66. Plaintiff's claims are typical of the claims of the class members.

67. Plaintiff will fairly and adequately protect the interests of all class members in the prosecution of this action. He is similarly situated with, and has suffered similar injuries as, the members of the class he seeks to represent. He feels has been wronged and wishes to obtain redress of the wrong, and wants to stop these practices by Walmart. To that end, plaintiff has retained counsel experienced in handling class action suits involving claims as set forth in this complaint. Neither the named plaintiff or his counsel have any interest which might cause them not to vigorously pursue this action.

68. Walmart in misrepresenting the amounts items are sold for has acted in a uniform manner with respect to the entire class and on grounds uniformly applicable to the class.

69. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

- a. The individual class members are not aware that they have been wronged and are thus unable to prosecute individual actions;
- b. Concentration of the litigation concerning this matter in this Court is

desirable;

- c. The claims of the representative plaintiffs are typical of the claims of the class;
- d. A failure of justice will result from the absence of a class action; and
- e. Class Members bring this action to secure redress for the practices of Walmart which engaged in conduct which had the effect of illegally depriving Class Members of their money.

70. Class Members were damaged by the conduct complained of, in that they paid more than the amounts Walmart represented they were selling the items for or paid taxes in excess of the amounts that they were led to believe would be due based on the sale price.

COUNT I – NEGLIGENT MISREPRESENTATION

71. Plaintiff incorporates the foregoing paragraphs.

72. Walmart owed a duty to the Plaintiff and the Class members to use due care in representing the sale price of items.

73. The receipts provided to Plaintiff and each Class Member constitutes a representation of the sale price for items;

74. Walmart knows or should have known that the sale price reflected on the receipt was less than the true price paid by its customer.

75. Walmart negligently misrepresented the sale price to Class Members.

76. Walmart knew that its representation of the sale price for items would be relied upon by Class Members.

77. Walmart knew or should have known that its representation of the sale price

would be relied upon by the Plaintiff and the Class Members.

78. Walmart knew or should have known that its representations were false.

79. Walmart knew or should have known that Class Member's would be harmed by its false representations.

80. The Plaintiff and the Class Members justifiably relied on Walmart's representations.

81. The Plaintiff and the Class Members suffered damages proximately caused by Walmart's negligent representations.

COUNT II – FRAUD

82. Plaintiff incorporates the foregoing paragraphs.

83. Walmart's represented the sales price of the items on the receipts they provided.

84. Walmart knew that the price represented to be the sale price was less than the true price of the sale item.

85. The price of the sale item was material.

86. Walmart made the false representation with the intent that the Plaintiff and the Class Members rely on the false representations.

87. Plaintiff and the Class Members reasonably relied on Walmart's representations.

88. Plaintiff and the Class Members have been damaged by relying on Walmart's misrepresentations.

89. Walmart acted with the intent to deceive the Plaintiff and the Class Members to obtain amounts in excess of sale prices.

90. Walmart's actions warrant the imposition of punitive damages.

Wherefore, Plaintiff and Class Members pray that this court:

- A. Certify this case as a class action with the named Plaintiff as class representative and his attorneys as counsel on behalf of the class described herein;
- B. Order appropriate compensatory damages in an amount to be determined at trial in excess of \$75,000;
- C. Order appropriate punitive damages in an amount to be determined at trial in excess of \$75,000;
- D. Award costs; and
- E. Provide such other or further relief as the Court deems appropriate.

Respectfully submitted,

Dated: February 13, 2019

By: /s/ Peter A. Holland

Peter A. Holland
Emanwel J. Turnbull
CPF# 1606210269
THE HOLLAND LAW FIRM, P.C.
914 Bay Ridge Rd. Ste 230
Annapolis, MD 21401
Telephone: (410) 280-6133
Facsimile: (410) 280-8650
peter@hollandlawfirm.com
eturnbull@hollandlawfirm.com

Scott C. Borison
Borison@legglaw.com
LEGG LAW FIRM, LLP
1900 S. Norfolk Rd. Suite 350
San Mateo CA 94403
Borison@legglaw.com

MD Office:
38 S. Paca St. #116, Suite B
Baltimore MD 21201

(301) 620-1016
Fax: (301) 620-1018

***** Pro Hac Vice to be Filed by:*****

Robert Persante, Esquire, FBN: 376698
Darren M. Stotts, Esquire, FBN: 107221
PERSANTEZUROWESTE
2555 Enterprise Road, Suite 15
Clearwater, FL 33763-1118
Email: Firm@Persantelaw.com
Telephone: (727) 796-7666
Facsimile: (727) 796-8099

Counsel for Plaintiff

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

By: /s/Peter A. Holland
Peter A. Holland

Dated: February 13, 2019