

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS COURTHOUSE**

Aja Adeghe, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

The Procter & Gamble Company,

Defendant

7:22-cv-10025-CS

First Amended
Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. The Procter & Gamble Company (“Defendant”) manufactures 2.72 liters of detergent marketed as sufficient for 64 loads of laundry under the Tide brand (“Product”).



2. Though the number 64 grabs the purchaser’s attention, a difficult-to-see white diamond follows the word “loads ◇.”

3. Only if the container is turned around and the consumer navigates hundreds of words of varying size and fonts will they learn the amount of detergent is only sufficient for “◇[] approximately 64 loads as measured just below Bar 1 on cap.”



4. That graphic shows that “just below Bar 1” corresponds to “Medium Loads,” even though this is the smallest size listed, less than “large” (Bar 3) and “full” (Bar 5).

5. Consumers understand “loads” in the context of laundry to refer to full units, in the same way as other metric and imperial units of measurement, such as meters, liters, grams, feet, ounces and pounds.

6. This understanding was confirmed by the Department of Energy, which analyzed the direct relationship between capacity and maximum load by referencing how washing machine directions generally tell consumers to load them “to the point that the clothes container is loosely filled.”

7. It determined that the term “full load” is widely understood by consumers, washing machine manufacturers and detergent companies as referring to a load size that takes advantage of the whole usable capacity of the clothes washer.

8. These facts are supported by “[U]npublished data from Procter & Gamble [which] indicate that North American households prefer large size loads (43%) over very large or medium loads (21% each).”¹

9. California’s utility companies conducted their own survey and concluded that 59 percent or 180 (of 310) laundry loads were either large or very large, more than twice as much as medium laundry loads.²

¹ Sabaliunas, Darius, et al. “Residential energy use and potential conservation through reduced laundering temperatures in the United States and Canada.” *Integrated Environmental Assessment and Management: An International Journal* 2.2 (2006): 142-153; Golden, Jay S., et al. “Energy and carbon impact from residential laundry in the United States.” *Journal of Integrative Environmental Sciences* 7.1 (2010): 53-73.

² Comment, California Investor-Owned Utilities (“CA IOUs”), Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers, 85 Fed. Reg. 38106 (proposed rule, June 25, 2020) (to be codified at 10 CFR Parts 430 and 431), Docket No. EERE-2016-BT-TP-0011

Table 5: Relative Load Sizes

Load Size	Response Count (# loads reported)	Percentage of Total
Very small	8	3%
Small	34	11%
Medium	88	28%
Large	138	45%
Very Large	42	14%
Total	310	100%

Source: PG&E 2016 Survey.

10. This California data is close to what Defendant discovered, that “Small and very small loads constitute less than 10% of total washes.”

11. The tendency towards filling up a washing machine is not limited to the United States.

12. A 2011 study of over 2,000 Europeans found that roughly 70 percent used the full capacity of their washer, which increased to 74 percent by 2015.

13. Consumer laundry habits in favor of larger loads has increased the past ten years, as they have become aware of the effects of energy consumption on climate change.

14. CNN surveyed laundry and environmental experts, who recommended that Americans “save up [their] dirty clothes and wash them in a few big loads versus several smaller loads” to mitigate the environmental impact.³

15. The majority of Americans who do “full” loads of laundry will only get half as many, or 32 loads from the bottle when run at high efficiency (“he”).

³ Leah Kirts, How to wash laundry sustainably, according to experts, CNN Underscored, August 23, 2022.

16. Consumers will expect that the 64 loads has relevance to them, as typical Americans, who do full loads instead of small loads of laundry.

17. As a result of the false and misleading representations, the Product is sold at a premium price, approximately no less than \$12.99 for 92 oz, excluding tax and sales, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions.

Jurisdiction and Venue

18. Jurisdiction is based on the Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

19. The aggregate amount in controversy exceeds \$5 million, including any statutory and punitive damages, exclusive of interest and costs.

20. Plaintiff is a citizen of New York.

21. Defendant is a citizen of Ohio.

22. The class of persons Plaintiff seeks to represent includes persons who are citizens of different states from which Defendant is a citizen.

23. The members of the class Plaintiff seeks to represent are more than 100, because the Product is sold with the representations described here in thousands of stores and online, in the States Plaintiff seeks to represent.

24. Venue is in this District with assignment to the White Plains Courthouse because a substantial part of the events or omissions giving rise to these claims occurred in Westchester County, including Plaintiff’s purchase, reliance on the identified statements, and subsequent awareness these were false and misleading.

Parties

25. Plaintiff Aja Adeghe is a citizen of New Rochelle, Westchester County, New York.

26. Defendant The Procter & Gamble Company is an Ohio corporation with a principal place of business in Cincinnati, Ohio, Hamilton County.

27. Defendant owns and controls the Tide brand of laundry detergents.

28. Plaintiff purchased the Product at stores including Shoprite, 8 Palmer Ave, New Rochelle, NY 10801 in 2021 and/or 2022, among other times.

29. Plaintiff read and relied on the number “64” on the front label which she understood referred to the number of loads of laundry she would be able to do from the Product.

30. Plaintiff’s laundry habits are similar to most Americans, because she waits until she has enough laundry to fill up most of her washing machine before doing a load of laundry, which means the size of the loads of laundry she does is best described as “full” or “very large” and not “small.”

31. Plaintiff did not notice the diamond next to the word “loads” which referred to the back label, and significantly qualified the 64 loads.

32. Plaintiff was unable to get the amount of detergent to wash 64 full size loads of laundry, which is what she expected.

33. Plaintiff did not expect 64 loads would mean 64 half or small loads.

34. Plaintiff bought the Product at or exceeding the above-referenced price.

35. Plaintiff paid more for the Product than she would have had she known she would only be able to do 32 full loads of laundry from the Product, or would not have purchased it.

36. The value of the Product that Plaintiff purchased was materially less than its value as represented by Defendant.

37. Plaintiff chose between Defendant's Product and products represented similarly, but which did not misrepresent their attributes, requirements, features, and/or components.

Class Allegations

38. Plaintiff seeks certification under Fed. R. Civ. P. 23 of the following classes:

New York Class: All persons excluding Judges who may hear this action, their immediate families and direct staff, in the State of New York who purchased the Product during the statutes of limitations for each cause of action alleged; and

Consumer Fraud Multi-State Class: All persons in the States of South Dakota, Wyoming, Idaho, Alaska, West Virginia, Arkansas, North Carolina, and Utah who purchased the Product during the statutes of limitations for each cause of action alleged.

39. Common questions of issues, law, and fact predominate and include whether Defendant's representations were and are misleading and if Plaintiff and class members are entitled to damages.

40. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

41. Plaintiff is an adequate representative because her interests do not conflict with other members.

42. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

43. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

44. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

New York General Business Law (“GBL”) §§ 349 and 350
(New York Class)

45. Plaintiff incorporates by reference all preceding paragraphs.

46. Plaintiff saw and relied on the label which stated the Product could be used to do 64 loads of laundry at normal load size, not small loads, described on the label as “medium.”

47. Defendant’s false, misleading, and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions, because value is important to consumers like Plaintiff.

48. Plaintiff would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Violation of State Consumer Fraud Acts
(Consumer Fraud Multi-State Class)

49. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class are similar to the consumer protection statute invoked by Plaintiff and prohibit the use of unfair or deceptive business practices in the conduct of commerce.

50. The members of the Consumer Fraud Multi-State Class reserve their rights to assert their consumer protection claims under the Consumer Fraud Acts of the States they represent and/or the consumer protection statute invoked by Plaintiff.

51. Defendant intended that members of the Consumer Fraud Multi-State Class would rely upon its deceptive conduct, which they did, suffering damages.

Breaches of Express Warranty,
Implied Warranty of Merchantability/Fitness for a Particular Purpose
and Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

52. The Product was manufactured, identified, marketed, and sold by Defendant and expressly and impliedly warranted to Plaintiff that the Product could be used to do 64 loads of

laundry at normal load size, not small loads, described on the label as “medium.”

53. Defendant directly marketed the Product to Plaintiff through its advertisements and marketing, through various forms of media, on the packaging, in print circulars, direct mail, product descriptions, and targeted digital advertising.

54. Defendant knew the product attributes that potential customers like Plaintiff were seeking and developed its marketing and labeling to directly meet those needs and desires, such as the many Americans who seek value for their money.

55. Defendant’s representations about the Product were conveyed in writing and promised it would be defect-free, and Plaintiff understood this meant it could be used to do 64 loads of laundry at normal load size, not small loads, described on the label as “medium.”

56. Defendant’s representations affirmed and promised that it could be used to do 64 loads of laundry at normal load size, not small loads, described on the label as “medium.”

57. Defendant described the Product so Plaintiff believed it could be used to do 64 loads of laundry at normal load size, not small loads, described on the label as “medium,” which became part of the basis of the bargain that it would conform to its affirmations and promises.

58. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

59. This duty is based on Defendant’s outsized role in the market for this type of Product, the most trusted brand of detergent.

60. Plaintiff recently became aware of Defendant’s breach of the Product’s warranties.

61. Plaintiff provided or provides notice to Defendant, its agents, representatives, retailers, and their employees that it breached the Product’s warranties.

62. Defendant received notice and should have been aware of these issues due to

complaints by third-parties, including regulators, competitors, and consumers, to its main offices, and by consumers through online forums.

63. The Product did not conform to its affirmations of fact and promises due to Defendant's actions.

64. The Product was not merchantable because it was not fit to pass in the trade as advertised, not fit for the ordinary purpose for which it was intended and did not conform to the promises or affirmations of fact made on the packaging, container, or label, because it was marketed as if it could be used to do 64 loads of laundry at normal load size, not small loads, described on the label as "medium."

65. The Product was not merchantable because Defendant had reason to know the particular purpose for which the Product was bought by Plaintiff, because she expected that it could be used to do 64 loads of laundry at normal load size, not small loads, described on the label as "medium," and she relied on Defendant's skill and judgment to select or furnish such a suitable product.

Unjust Enrichment

66. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of Plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as counsel for the class;
2. Awarding monetary, statutory and/or punitive damages and interest;

3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: March 20, 2023

Respectfully submitted,

/s/ Spencer Sheehan

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James Chung Law Office