

1 **CARLSON LYNCH, LLP**
TODD D. CARPENTER (#234464)
2 tcarpenter@carsonlynch.com
3 SCOTT G. BRADEN (#305051)
sbraden@carsonlynch.com
1350 Columbia Street, Suite 603
4 San Diego, CA 92101
Tel: 619-762-1910
5 Fax: 619-756-6991

6 *Attorneys for Plaintiff*
and the Putative Classes
7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 RANDALL SULZER, individually, and on
behalf of all others similarly situated,
11 Plaintiff,
12 v.
13 WALMART, INC., and DOES 1-10,
14 inclusive,
15 Defendants.

Case No.: '20CV1536 BAS BLM

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

16 Plaintiff Randall Sulzer (“Plaintiff”), on behalf of himself and all others similarly
17 situated, brings this class action against Defendant Walmart, Inc. (“Defendant”), based
18 on Defendant’s false and deceptive advertising and labeling of their Great Value brand
19 ground coffee products. Plaintiff makes the following allegations based on the
20 investigation of his counsel and on information and belief, except as to allegations
21 pertaining to Plaintiff individually, which are based on his personal knowledge.

22 **NATURE OF ACTION**

23 1. This case revolves around a straightforward and systemic course of false,
24 misleading, and unlawful conduct: Defendant has grossly exaggerated the number of
25 cups of coffee that certain varieties of Great Value ground coffee products (the
26 “Products”)¹ can make in order to induce consumer purchases and to charge consumers
27 more for these Products.
28

¹ “Products” are further defined and listed in Paragraphs 15 ,16 and 31.

1 false advertisement artificially inflated the price of the Product as a result of increased
2 consumer demand generated by the false advertisement, which naturally led to an
3 increase in the price charged.

4 11. Plaintiff is susceptible to this reoccurring harm because he cannot be certain
5 that Defendant has corrected this deceptive and false advertising scheme, and he desires
6 to continue to purchase Defendant's Products when convenient. However, despite being
7 misled by Defendant with respect to the Product he purchased, Plaintiff lacks personal
8 knowledge as to Defendant's specific business practices relating to the Products.
9 Consequently, there is still doubt in his mind as to the possibility that some of the
10 Products could contain enough coffee to make the advertised number of servings. In
11 short, Plaintiff cannot trust that Defendant will label and/or advertise its Products
12 truthfully and in a non-misleading fashion in compliance with California law. Plaintiff
13 simply does not have the resources to ensure that Defendant is complying with California
14 and federal law with respect to its labeling and advertising of the Products.

15 12. Additionally, because of the breadth of Products involved in Defendant's
16 deceit, and the likelihood that Defendant may yet develop and market additional
17 products that misrepresent the serving yield, Plaintiff may again purchase a falsely-
18 advertised product from Defendant under the mistaken impression that the represented
19 number of servings is accurate. Indeed, Plaintiff regularly shops at stores where the
20 Products are sold, and he would like to continue purchasing the Products in the future
21 when convenient. Therefore, Plaintiff may purchase the Products in the future.
22 Moreover, Class members will continue to purchase the Products, reasonably but
23 incorrectly believing that they contain enough coffee to make the advertised number of
24 servings.

25 13. Defendant Walmart, Inc., is a corporation organized and existing under the
26 laws of the state of Delaware, with its principal place of business at 702 S.W. 8th Street,
27 Bentonville, AR 72716. Walmart was founded by Sam Walton in 1962 and incorporated
28 in 1969. Sam Walton passed away in 1992, but the Walton family maintains ownership

1 of the company. Beginning as a single store with a strategy of selling products at low
2 prices to generate high-volume sales, Walmart has grown to become the world's largest
3 company by revenue (\$514.4 billion in 2019) and number of employees (2.2 million).
4 Walmart also earned over \$129 billion in gross profit in 2019. Part of Walmart's
5 successful business model involves selling products at low prices under its own house
6 brand, Great Value (launched in 1993). Walmart does not manufacture Great Value
7 products and instead maintains arrangements with other agricultural and food
8 corporations to purchase their products and sell them with Great Value packaging. In
9 one such arrangement, Sara Lee Corporation has manufactured Great Value coffee
10 products for Walmart.

11 14. Plaintiff does not know the true names or capacities of the persons or
12 entities sued herein as Does 1-10, inclusive, and therefore sues such defendants by such
13 fictitious names. Plaintiff is informed and believes, and upon such information and
14 belief alleges, that each of the Doe defendants is, in some manner, legally responsible
15 for the damages suffered by Plaintiff and the Class Members as alleged herein. Plaintiff
16 will amend his Complaint to set forth the true names and capacities of these defendants
17 when they have been ascertained, along with appropriate charging allegations, as may
18 be necessary.

19 **FACTUAL ALLEGATIONS**

20 **A. The Products At Issue**

21 15. The products at issue in this case consist of all varieties (e.g., different types
22 of roasts and strengths) and sizes (e.g., 11.3 oz., 30.5 oz., 48 oz., etc.) of Great Value
23 ground coffee canisters and tins which make a specific servings representation on the
24 front label (e.g., "MAKES UP TO 240 CUPS").

25 16. These Products include, but are not limited to, the following varieties of
26 Great Value ground coffee canisters and tins: Classic Roast, Classic Decaf, Colombian,
27 French Roast, and Donut Shop.

1 17. The Products are sold at Walmart store locations throughout California and
2 online at Walmart.com and other online channels, such as amazon.com.

3 **B. Defendant Grossly Overstates The Number Of Servings The Products Can Make**

4 18. Defendant represents on the packaging of each of the Products that they
5 contain enough ground coffee to make up to a specified number of servings. For
6 example, Defendant prominently states on the front packaging of the Great Value Classic
7 Roast, 30.5 oz product: “MAKES UP TO 240 OZ CUPS.”

8 19. Representative images of the front packaging of some of the Products are
9 depicted below:





20. Defendant places a materially identical representation on the front label of all the Products, although the number of represented servings of course varies based on the size of the Product.

21. On “Brewing Instructions” on the side label of all the Products, Defendant instructs consumers to use 1 “heaping” tablespoon of ground coffee to make 1 six-ounce serving,² as shown below:

² Hereinafter, the term “cup” is synonymous, and used interchangeably with, the term “serving.”



22. One tablespoon of Great Value ground coffee weighs approximately 5 grams.

23. Based on these standard measurements, it is evident that Defendant grossly overstates the number of servings the Products can make.

24. By way of example, as depicted above, Defendant represents on the 30.5 oz canister of Great Value Classic Roast that it “MAKES UP TO 240 CUPS.”

25. As set forth above, 1 tablespoon of ground coffee is needed to make 1 serving/cup. Therefore, 240 tablespoons of ground coffee are needed to make 240 servings/cups.

1 26. As set forth above, one tablespoon of Great Value’s ground coffee weighs
2 approximately 5 grams. Therefore, 1,200 grams of ground coffee are needed to make the
3 promised 240 servings [240 tablespoons x 5 grams].

4 27. However, the 30.5 oz canister has a net weight of 865 grams. Therefore, it
5 contains only 72% of the amount of ground coffee required to make up to 240 cups of
6 coffee [(865 / 1,200) x 100%]. This is equivalent to approximately 173 cups of coffee.

7 28. The same shortfall (i.e., only 173 cups of coffee) is calculated by dividing
8 the total grams of coffee in the 30.5 oz. canister by the number of grams required to
9 make a single serving [865 grams / 5 grams].

10 29. In sum, the 30.5 oz. tin only contains enough coffee to make 173 cups,
11 which is equivalent to 72% of the amount of ground coffee that is required to make the
12 240 cups of coffee:

- 13 • 865 grams / 1,200 grams = 72%
- 14 • 173 cups / 240 cups = 72%

15 30. Thus, it is impossible for the Great Value Classic Roast Product to contain
16 enough ground coffee to make anywhere close to 240 cups of coffee. Defendant’s
17 representation that the 30.5 oz. canister “MAKES UP TO 240 CUPS” is therefore false,
18 deceptive, and misleading.

19 31. The same calculations apply equally to all of the other Products. According
20 to their net weight, as well as the weight per tablespoon of ground coffee, they are unable
21 to make anywhere close to the represented number of cups. These approximate
22 calculations are set forth in the following chart:

23 Product Name	24 Net Weight (oz)	25 Net Weight (g)	26 Number of “Up To” Servings Promised	27 Approximate Number of Servings Received	28 Approximate Percentage of Servings Received
Classic Roast	11.3	320	90	64	71%
Classic Roast	30.5	865	240	173	72%
Classic Roast	48	1360	380	272	71.5%
Classic Decaf	11.3	320	90	64	71%
Classic Decaf	30.5	865	240	173	72%

Product Name	Net Weight (oz)	Net Weight (g)	Number of "Up To" Servings Promised	Approximate Number of Servings Received	Approximate Percentage of Servings Received
Colombian	11.3	320	90	64	71%
Colombian	24.2	686	200	137	68.5%
French Roast	24.2	686	200	137	68.5%
Donut Shop	30.5	865	240	173	72%

32. There are 9 varieties of the Products listed in the chart above. Each and every one of them contains substantially less ground coffee than is required to make the recommended number of "up to" servings promised on the packaging. On average, these Products contain enough ground coffee to make only 70.8% of the number of servings promised on the packaging, thus revealing a systematic course of unlawful conduct by Defendant to deceive and shortchange consumers.

C. The False And Deceptive Serving Amount Representation Harms Consumers

33. Plaintiff and other consumers purchased the Products relying on Defendant's serving amount representations on the Products' packaging.

34. Plaintiff and other consumers reasonably expect that, if they follow the serving instructions, the Products will produce the number of servings/cups of coffee as represented on the Products' packaging.

35. Plaintiff's and consumers' reasonable belief that the Products are able to make up to the represented number of cups of coffee was a significant factor in each of their decisions to purchase the Products.

36. Plaintiff's and Class members did not know, and had no reason to know, that the Products' labeling vastly overstates the number of cups of coffee they are able to make. At the time of purchase, a reasonable consumer cannot measure or calculate how many servings the Products can make. Nor are reasonable consumers expected to keep track of the precise number of cups of coffee they make over a period of time.

37. As the entity responsible for the development, manufacturing, packaging, advertising, distribution and sale of the Products, Defendant knew or should have known

1 that each of the Products falsely and deceptively overstates the number of servings of
2 coffee that can be made.

3 38. Defendant also knew or should have known that Plaintiff and other
4 consumers, in purchasing the Products, would rely on Defendant's serving size
5 representations. Nonetheless, Defendant deceptively advertises the Products in order to
6 deceive consumers into believing they are getting considerably more coffee than they
7 actually are.

8 39. Consumers are willing to pay more for the Products based on the belief that
9 the Products contain enough ground coffee to make up to the represented number of
10 servings. Plaintiff and other consumers would have paid significantly less for the
11 Products, or would not have purchased them at all, had they known that they were getting
12 fewer servings of coffee than what they were promised.

13 40. By analogy, if a consumer purchased a six-pack of soda, but only received
14 four cans of soda, the consumer would only be receiving 66.67% of what she paid for.
15 The situation here is no different in terms of the harm to the consumer. The only
16 difference is that, due to the nature of the Products, Defendant is able to conceal the
17 gross shortfall of coffee because reasonable consumers do not keep track of the number
18 of cups of coffee they make over a period of time.

19 41. Therefore, Plaintiff and other consumers purchasing the Products have
20 suffered injury in fact and lost money as a result of Defendant's false and deceptive
21 practices, as described herein.

22 **CLASS ACTION ALLEGATIONS**

23 42. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 and all other
24 applicable laws and rules, individually, and on behalf of all members of the following
25 Classes:

26 All consumers within the State of California who purchased any Great
27 Value coffee canisters or tins advertising a number of coffee cups that the
28 product would purportedly produce during the applicable statute of
limitations and who have not received a refund or credit for their
purchase(s).

1 43. Excluded from the Class are the following individuals and/or entities:
2 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or
3 former employees, and any entity in which Defendant has a controlling interest; all
4 individuals who make a timely election to be excluded from this proceeding using the
5 correct protocol for opting out; and all judges assigned to hear any aspect of this
6 litigation, as well as their immediate family members.

7 44. Plaintiff reserves the right to modify or amend the definition of the
8 proposed Class before the Court determines whether certification is appropriate.

9 45. Plaintiff is a member of the proposed Class.

10 46. Numerosity: The proposed Class is so numerous that joinder of all members
11 would be impractical. The Products are sold at Walmart stores throughout California and
12 are available online by Defendant and third-party retailers. The number of individuals
13 who purchased the Products during the relevant time period is at least in the thousands.
14 Accordingly, Class members are so numerous that their individual joinder herein is
15 impractical. While the precise number of Class members and their identities are
16 unknown to Plaintiff at this time, these Class members are identifiable and ascertainable.

17 47. Common Questions Predominate: There are questions of law and fact
18 common to the proposed Class that will drive the resolution of this action and will
19 predominate over questions affecting only individual Class members. These questions
20 include, but are not limited to, the following:

21 a. Whether Defendant misrepresented material facts and/or failed to
22 disclose material facts in connection with the packaging, marketing, distribution,
23 and sale of the Products;

24 b. Whether Defendant's use of false or deceptive packaging and
25 advertising constituted false or deceptive advertising;

26 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent
27 business practices;
28

1 d. Whether Defendant's unlawful conduct, as alleged herein, was
2 intentional and knowing;

3 e. Whether Plaintiff and the Class are entitled to damages and/or
4 restitution, and in what amount;

5 f. Whether Defendant is likely to continue using false, misleading or
6 unlawful conduct such that an injunction is necessary; and

7 g. Whether Plaintiff and the Classes are entitled to an award of
8 reasonable attorneys' fees, interest, and costs of suit.

9 48. Defendant has engaged in a common course of conduct giving rise to
10 violations of the legal rights sought to be enforced uniformly by Plaintiff and Class
11 members. Similar or identical statutory and common law violations, business practices,
12 and injuries are involved. The injuries sustained by members of the proposed Classes
13 flow, in each instance, from a common nucleus of operative fact, namely, Defendant's
14 deceptive packaging and advertising of the Products. Each instance of harm suffered by
15 Plaintiff and Class members has directly resulted from a single course of illegal conduct.
16 Each Class member has been exposed to the same deceptive practice, as each of the
17 Products: (a) bear the materially same serving amount representations, and (b) do not
18 contain enough ground coffee to make anywhere close to the represented serving
19 amount. Therefore, individual questions, if any, pale in comparison to the numerous
20 common questions presented in this action.

21 49. Typicality: The representative Plaintiff's claims are typical of those of the
22 proposed Class, as all members of the proposed Classes are similarly affected by
23 Defendant's uniform unlawful conduct as alleged herein.

24 50. Adequacy: Plaintiff will fairly and adequately protect the interests of the
25 proposed Class as his interests do not conflict with the interests of the members of the
26 proposed Class he seeks to represent, and he has retained counsel competent and
27 experienced in class action litigation. The interests of the members of the Class will be
28 fairly and adequately protected by the Plaintiff and his counsel.

1 servings) that they do not have. Therefore, Defendant has violated section 1770(a)(5) of
2 the CLRA.

3 56. Cal. Civ. Code § 1770(a)(7) prohibits “[r]espresenting that goods or
4 services are of a particular standard, quality, or grade, or that goods are of a particular
5 style or model, if they are of another.” By marketing the Products with their current
6 packaging, Defendant has represented and continues to represent that the Products are
7 of a particular standard (i.e., contain enough ground coffee to make up to a certain
8 number of servings) which they do not possess. Therefore, Defendant has violated
9 section 1770(a)(7) of the CLRA.

10 57. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with
11 intent not to sell them as advertised.” By marketing the Products as containing enough
12 ground coffee to make a specified number of servings, but not intending to sell the
13 Products as such, Defendant has violated section 1770(a)(9) of the CLRA.

14 58. At all relevant times, Defendant has known or reasonably should have
15 known that the Products did not contain enough ground coffee to make the represented
16 number of servings, and that Plaintiff and other members of the Class would reasonably
17 and justifiably rely on the packaging in purchasing the Products.

18 59. Plaintiff and members of the Class have justifiably relied on Defendant’s
19 misleading representations when purchasing the Products. Moreover, based on the
20 materiality of Defendant’s misleading and deceptive conduct, reliance may be presumed
21 or inferred for Plaintiff and members of the Class.

22 60. Plaintiff and members of the Class have suffered and continue to suffer
23 injuries caused by Defendant because they would have paid significantly less for the
24 Products, or would not have purchased them at all, had they known that the Products
25 contain substantially less ground coffee to make the promised number of servings.

26 61. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a declaration
27 of venue concurrently with this Complaint.
28

1 Products was and continues to be “unlawful” because it violates the CLRA and FAL.
2 As a result of Defendant’s unlawful business acts and practices, Defendant has
3 unlawfully obtained money from Plaintiff and members of the Class.

4 74. Under the UCL, a business act or practice is “unfair” if the defendant’s
5 conduct is substantially injurious to consumers, offends public policy, and is immoral,
6 unethical, oppressive, and unscrupulous, as the benefits for committing such acts or
7 practices are outweighed by the gravity of the harm to the alleged victims. Defendant’s
8 conduct was and continues to be of no benefit to purchasers of the Products, as it is
9 misleading, unfair, unlawful, and is injurious to consumers who rely on the packaging.
10 Deceiving consumers as to how many cups of coffee the Products can make is of no
11 benefit to consumers. Therefore, Defendant’s conduct was and continues to be “unfair.”
12 As a result of Defendant’ unfair business acts and practices, Defendant has and continues
13 to unfairly obtain money from Plaintiff and members of the Class.

14 75. Under the UCL, a business act or practice is “fraudulent” if it actually
15 deceives or is likely to deceive members of the consuming public. Defendant’s conduct
16 here was and continues to be fraudulent because it has the effect of deceiving consumers
17 into believing that the Products contain enough ground coffee to make substantially more
18 servings than they can actually make. Because Defendant misled Plaintiff and members
19 of the Class, Defendant’s conduct was “fraudulent.”

20 76. Plaintiff requests that this Court cause Defendant to restore this unlawfully,
21 unfairly, and fraudulently obtained money to him and members of the Class, to disgorge
22 the profits Defendant made on these transactions, and to enjoin Defendant from violating
23 the UCL or violating it in the same fashion in the future as discussed herein. Otherwise,
24 Plaintiff and members of the Class may be irreparably harmed and/or denied an effective
25 and complete remedy if such an order is not granted.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully
28 prays for following relief:

1 A. Certification of this case as a class action on behalf of the Class defined
2 above, appointment of Plaintiff as Class representative, and appointment of his counsel
3 as Class counsel;

4 B. An award to Plaintiff and the proposed Class of restitution and/or other
5 equitable relief, including, without limitation, restitutionary disgorgement of all profits
6 and unjust enrichment that Defendant obtained from Plaintiff and the proposed Class as
7 a result of its unlawful, unfair and fraudulent business practices described herein;

8 C. A declaration that Defendant's actions, as described herein, constitute
9 violations of the claims described herein;

10 D. An award of injunctive relief as permitted by law or equity, including:
11 enjoining Defendant from continuing the unlawful practices as set forth herein, and
12 directing Defendant to identify, with Court supervision, victims of its conduct and pay
13 them all money it is required to pay;

14 E. An order directing Defendant to engage in a corrective advertising
15 campaign;

16 F. An award to Plaintiff and his counsel of his reasonable expenses and
17 attorneys' fees;

18 G. An award to Plaintiff and the proposed Classes of pre- and post-judgment
19 interest, to the extent allowable; and

20 H. For such further relief that the Court may deem just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff, on behalf of himself and the Classes, hereby demands a jury trial with
23 respect to all issues so triable.

24 Dated: August 7, 2020

CARLSON LYNCH LLP

25 By: /s/Todd D. Carpenter

26 Todd D. Carpenter (#234464)
27 tcarpenter@carlsonlynch.com
28 Scott G. Braden (#305051)
sbraden@carlsonlynch.com

*Attorneys for Plaintiff
and the Putative Classes*

1 **CARLSON LYNCH, LLP**
TODD D. CARPENTER (#234464)
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3 sbraden@carsonlynch.com
1350 Columbia Street, Suite 603
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 RANDALL SULZER, individually, and
on behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 WALMART, INC., and DOES 1-10,
14 inclusive,

15 Defendants.

Case No.:

**DECLARATION IN SUPPORT OF
JURISDICTION**

16 I, Todd D. Carpenter, declare under penalty of perjury the following:

17 1. I am an attorney duly licensed to practice before all of the courts in the State
18 of California. I am a partner and part-owner of Carlson Lynch LLP and counsel of record
19 for Plaintiff in the above-entitled action.

20 2. Defendant Walmart, Inc. has done and is doing business in the County of San
21 Diego. Such business includes the marketing, distributing, and retail and online sales of
22 ground coffee.

23 3. Plaintiff Randall Sulzer purchased a canister of Defendant's Great Value
24 brand Classic Roast ground coffee, 30.5 oz, from Walmart in La Mesa, California during
25 July 2020.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct. Executed August 7, 2020, in San Diego, California.

28 /s/ Todd D. Carpenter
Todd D. Carpenter

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Walmart's Great Value Ground Coffee Yields Fewer Cups than Advertised, Class Action Says](#)
