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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

RACHEL MILLER
individually and on behalf
of others similarly situated

Plaintiff

vs

WINCO FOODS, LLC

Defendant

Case No.

**CLASS ACTION
COMPLAINT FOR
EQUITABLE RELIEF**

Unlawful Trade Practices
Unjust Enrichment

Jury Trial Requested
Filing Fee Authority: ORS 21.135
Not Subject to Mandatory Arbitration

1.

INTRODUCTION

In an effort to profit and to obtain an unfair advantage over its competitors, Winco misled thousands of Oregon customers into paying unlawful hidden surcharges on certain non-grocery items.

2.

Any Oregon customer affected by Winco's unlawful surcharge may contact underdoglawyer.com or call 503-222-2000 to file a claim for \$200 compensation.

1
2 **3.**

3 **FACTUAL ALLEGATIONS**

4 The Circuit Court for the County of Multnomah in Oregon has jurisdiction
5 because the behavior alleged in this complaint took place in and around Multnomah
6 County and because plaintiff's claim arises under the Oregon Unlawful Trade
7 Practices Act, ORS 646.638. The amount in controversy in this case as an individual
8 action does not exceed \$75,000. The amount in controversy in this case as a state-
9 wide class action does not exceed \$4.5 million.
10
11

12 **4.**

13 This complaint's allegations are based on personal knowledge as to plaintiff's
14 own behavior and are made on information and belief as to the behavior of others.
15

16 **5.**

17 Plaintiff is an individual living in Portland, Oregon.
18

19 **6.**

20 Plaintiff is a "person" as that term is defined at ORS 646.605(4).
21

22 **7.**

23 Defendant is a Delaware corporation.
24

25 **8.**

26 Defendant is a "person" as that term is defined at ORS 646.605(4).
27

28 **9.**

Defendant regularly advertises and sells consumer goods in Oregon in the
course of defendant's business.

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2 **10.**

3 Throughout 2019 defendant advertised and provided non-grocery consumer
4 goods to plaintiff and other class members in Oregon. Specifically, on October 3, 2019
5 defendant advertised and sold non-grocery consumer goods to plaintiff at defendant's
6 store at 7979 SE Powell Blvd. in Portland. Defendant's sticker on its shelf advertised
7 its non-grocery consumer goods to plaintiff as costing a certain price. After plaintiff
8 paid for the non-grocery consumer goods and read her receipt, plaintiff discovered
9 that defendant's sticker price was falsely advertised because defendant added and
10 collected a hidden nine cent surcharge in addition to the advertised price of its non-
11 grocery consumer goods to plaintiff, causing plaintiff ascertainable loss of nine cents.
12
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15 **11.**

16 The consumer goods defendant advertised and provided to plaintiff and other
17 class members were obtained primarily for their personal, family or household
18 purposes.
19

20 **12.**

21 As alleged in this complaint, defendant made false or misleading
22 representations of fact concerning plaintiff and other class members' cost for its
23 consumer goods by falsely telling plaintiff and other class members that its consumer
24 goods could be purchased for a certain price, when in fact defendant knew and should
25 have known that defendant would add and collect from plaintiff and other class
26 members a hidden surcharge in addition to the advertised price of its consumer
27 goods.
28

1
2 **13.**

3 As alleged in this complaint, defendant's behavior as alleged above violated
4 ORS 646.608(1)(s) and (u) and applicable Oregon Administrative Rules, causing
5 plaintiff and other class members ascertainable loss of a surcharges they should
6 never have been assessed, and loss of use of money and interest on surcharges they
7 never should have been assessed.
8

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10 **14.**

11 Defendant's violation of ORS 646.608 as alleged in this complaint was willful
12 because defendant knew or should have known that its behavior as alleged in this
13 complaint was an unlawful trade practice. Defendant knew the sticker price on its
14 shelves was lower than the price defendant actually charged and collected from its
15 customers for certain non-grocery consumer goods.
16

17 **15.**

18 Defendant knew or should have known that Oregon law protects customers
19 from unfair and deceptive surcharges.
20

21 **16.**

22 Defendant's violation of ORS 646.608 was reckless because the unfair and
23 deceptive surcharges as alleged in this complaint were in pursuit of profit and stood
24 to give defendant an unfair advantage over its competitors in the billion-dollar
25 grocery business that chose to follow Oregon law. Defendant's behavior as alleged in
26 this complaint was reprehensible, and violated the common standards required of
27 corporations by the people of Oregon.
28

CAUSES OF ACTION

Claim One – Unlawful Trade Practices

This claim is not a request for damages at this time, only equitable and injunctive relief. Plaintiff and the other class members intend to request damages in an amended complaint. As alleged in this complaint, defendant’s behavior willfully violated ORS 646.608, causing plaintiff and the other class members an ascertainable loss of money. Under ORS 646.638 plaintiff requests an order that defendant’s behavior violated ORS 646.608, entitling plaintiff to relief under ORS 646.638, reasonable attorney fees, costs and disbursements, an order prohibiting defendant from continuing to violate ORS 646.608, an order requiring defendant to provide an accounting of the unlawful surcharges it collected in violation of ORS 646.608 in the past year, and an order requiring defendant to preserve all documents and information (and electronically stored information) pertaining to this case.

1
2 **18.**

3 **Claim Two – Unjust Enrichment**

4 This claim is not a request for damages at this time, only equitable and
5 injunctive relief. As alleged in this complaint, defendant operated a common scheme
6 to profit from the collection of misleading and unlawful surcharges that were not
7 allowed by law. As a matter of justice and equity, defendant should not be able to
8 retain the unlawful surcharges it collected from plaintiff and the other class
9 members. Under a theory of unjust enrichment, plaintiff requests an order that
10 defendant’s behavior violated Oregon law, entitling plaintiff to reasonable attorney
11 fees, costs and disbursements, an order prohibiting defendant from continuing to
12 violate Oregon law, an order requiring defendant to provide an accounting of the
13 unlawful surcharges it collected in violation of Oregon law in the past year, and an
14 order requiring defendant to preserve all documents and information (and
15 electronically stored information) pertaining to this case.
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20 **19.**

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff respectfully requests a trial by a jury.
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2 **20.**

3 **PRAYER FOR RELIEF**

4 Plaintiff respectfully requests relief against defendant as sought above, and
5 any other relief the Court may deem appropriate, and an order appointing class
6 counsel and an order certifying this case as a class action.
7

8
9 November 25, 2019

10 **RESPECTFULLY FILED,**

11 /s/ Michael Fuller

12 **Michael Fuller, OSB No. 09357**

13 Lead Attorney for Plaintiff

14 OlsenDaines

15 US Bancorp Tower

16 111 SW 5th Ave., Suite 3150

17 Portland, Oregon 97204

18 michael@underdoglawyer.com

19 Direct 503-222-2000
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1
2 **CERTIFICATE OF SERVICE**

3 I certify that I cause this document to be served on:
4

5 **State of Oregon**
6 **c/o Oregon Department of Justice**
7 **1162 Court St. NE**
8 **Salem, Oregon 97301-4096**

9 November 25, 2019
10

11 /s/ Michael Fuller

12 **Michael Fuller, OSB No. 09357**

13 Lead Attorney for Plaintiff

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