

IN THE CIRCUIT COURT THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

JOHN WHITWELL, individually and behalf
of others similarly situated,

Plaintiff,

vs.

WAL MART STORES INC.

Defendant.

Serve the Registered Agent for defendant at:

CT Corporation System
208 So. LaSalle, St. Ste. 814
Chicago, IL 60604

Case No. 09L 525

JURY DEMAND

Plaintiff hereby demands a 12 person
jury trial.

FILED

MAY 21 2009

CLERK OF CIRCUIT COURT #74
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

CLASS ACTION COMPLAINT

Plaintiff, John Whitwell, on behalf of himself and others similarly situated, brings
this class action against Wal Mart Stores Inc. (hereinafter "Wal Mart") alleging as
follows:

INTRODUCTION

1. Wal Mart is a retailer selling goods to consumers nationwide including in,
but not limited to, Madison County, Illinois. This class action challenges Wal Mart's
failure to provide customers a refund of all amounts paid when merchandise is returned to
a Wal Mart store where the applicable sales tax rate is lower than the applicable tax rate
at the Wal Mart store where the merchandise was purchased. This class action does not
challenge the application, calculation, or collection of sales tax at the time of sale. This

class action challenges Wal Mart's failure to return all amounts paid for merchandise as promised under its return policy.

2. Plaintiff, on behalf of himself and others similarly situated, asserts a claim for breach of contract.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff, John Whitwell, is a resident of Maryville, Madison County, Illinois.

4. Defendant Wal Mart is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas.

5. This Court's exercise of personal jurisdiction over Defendant is proper pursuant to 735 ILCS §§ 5/2-209(a), (b) and (c) because (1) this cause of action arises from Defendant's transaction of business in this State and the formation and Defendant's breach of contract within this State; (2) Defendant is a corporation doing business within this State and (3) for any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.

6. Venue is proper in this Circuit pursuant to 735 ILCS 5/2-101 in that the transaction out of which the cause of action arose occurred in this County.

GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

7. Wal Mart enters into thousands of contracts daily, nationwide with consumers who purchase its goods.

8. Wal Mart promises each of its customers, through its use of store plaquards, its web site, sales associates and other means, that they may return goods to

Wal Mart within a certain number of days from the original date of sale and receive a refund of all amounts paid for the good(s).

9. Upon information and belief, Wal Mart has systematically breached its contracts with consumers. While Wal Mart promises a refund of all amounts paid by the purchaser if merchandise is returned to it within the prescribed time period, it does not do so if the item is returned to a Wal Mart location where the applicable sales tax rate is lower than the rate applicable at the location where the item originally was purchased. Rather than return the entire amount paid by the purchaser as promised, Wal Mart returns only what it categorizes as the cost of the item and an amount equal to the sales tax rate at the store where the item is returned.

10. Conversely, if the item is purchased at a Wal Mart location with a lower applicable sales tax rate and returned at a location with a higher applicable sales tax rate, Wal Mart makes an adjustment to ensure that it does not return more than the amounts originally paid for the item.

PLAINTIFF WHITWELL'S EXPERIENCE

11. Proposed Class Representative, John Whitwell, purchased a blue ray disc player on April 14, 2009 at Wal Mart's Collinsville store location for two hundred fourteen dollars and four cents (\$214.04). One hundred ninety eight dollars (\$198) of that amount represented the price of the player while sixteen dollars and four cents (\$16.04) represented 8.1% sales tax. A true and correct copy of the receipt is attached as Exhibit 1. The sale was subject to Wal Mart's return policy, which provided that plaintiff could obtain a refund of all amounts paid if the player was returned with a receipt to Wal Mart within 90 days.

12. On April 16, 2009 the Plaintiff, receipt in hand, returned the player to Wal Mart's Glen Carbon, Illinois store location. A true and correct copy is attached as Exhibit 2.

13. In breach of its promises made to Plaintiff, Wal Mart failed to return all amounts previously paid by the plaintiff connected to his purchase of the player. Wal Mart refunded only two hundred eleven dollars and fifty six cents. (\$211.56). Upon information and belief Wal Mart returned the lesser amount because the applicable tax rate at the Glen Carbon, Illinois store is 6.85%.

14. To date Wal Mart has failed to refund the remaining two dollars and forty eight cents to plaintiff (\$2.48).

CLASS ACTION ALLEGATIONS

15. Pursuant to 735 ILCS 5/2-801, *et seq.*, Plaintiff brings this Class Action on behalf of the following proposed Class:

All persons in the United States who returned merchandise to Wal Mart after May 14, 1999, and received a refund of sales tax in an amount less than the sales tax originally paid for the returned merchandise.

Excluded from the Class are (1) members of the Illinois state judiciary, and (2) Wal Mart and any entity in which Wal Mart has a controlling interest, including officers, directors, and members of their immediate families.

16. The members of the Class, being geographically dispersed and numbering at least 50, are so numerous that joinder of them in a single action is impracticable.

17. Plaintiff can and will fairly and adequately represent and protect the interests of the Class as (a) the claims of Plaintiff are substantially similar (if not

identical) to those of absent Class members, (b) there are questions of law or fact that are common to the Class and that predominate over any individual issues, (c) without the Class representation provided by Plaintiff, virtually no Class members will receive legal representation or redress for their injuries, (d) Plaintiff and Class counsel have the necessary financial resources to adequately and vigorously litigate this class action, and (e) Class counsel are experienced in class litigation and have the resources to vigorously pursue this matter.

18. There are questions of law and fact that are common to all Class members, including *inter alia*:

- (a) Whether Wal Mart promised class members a refund of all amounts paid for merchandise;
- (b) Whether Wal Mart's promise formed part of the sales contract;
- (c) Whether Wal Mart breached its contract with purchasers of its good(s) when it failed to provide them a refund of all sales tax amounts when good(s) were returned to a Wal Mart store location with a lower applicable sales tax rate than the Wal Mart store location where the good(s) were purchased.
- (d) Whether the Class members have sustained damages and, if so, the proper measure of their damages.

19. The common questions of law and/or fact predominate over any questions affecting only individual Class members.

20. A class action is an appropriate method for the fair and efficient adjudication of this controversy, given that: (a) common questions of law and fact overwhelmingly predominate over any individual questions that may arise, such that there would be enormous economies to the Court and the parties in litigating the common

issues on a class-wide (instead of a repetitive individual) basis; (b) the size of each Class member's relatively small claim is too insignificant to make individual litigation an economically viable alternative, such that as a practical matter there is no "alternative" means of adjudication to a class action; (c) few Class members have any interest in individually controlling the prosecution of separate actions (and any that do may opt out); (d) class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by Class members; (e) despite the relatively small size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this class action to be litigated on a cost-effective basis, especially when compared with repetitive individual litigation; and (f) no unusual difficulties are likely to be encountered in the management of this class action insofar as Wal Mart's liability turns on substantial questions of law or fact that are common to the Class and that predominate over any individual questions.

COUNT I – BREACH OF CONTRACT

21. Plaintiff incorporates by reference the allegations in all preceding paragraphs as if fully set forth herein.

22. Wal Mart materially breached its agreement with Plaintiff and other members of the proposed class by failing to provide them a refund of all sales tax amounts when good(s) were returned by them to a Wal Mart store location with a lower applicable sales tax rate than where the good(s) were originally purchased.

23. As a result of said breaches by Wal Mart, Plaintiff and the other members of the proposed class have been damaged in amounts to be determined at the trial of this matter.

24. Plaintiff and the other members of the proposed class have substantially performed all obligations required of them under their agreement(s) with Wal Mart.

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, requests relief on Count I as follows:

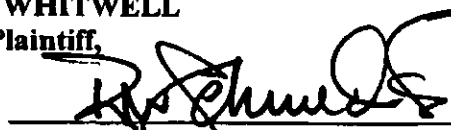
- a) An order certifying the proposed Class pursuant to 735 ILCS 5/2-801, *et seq.*, and appointing Plaintiff and his counsel of record to represent the proposed Class;
- b) Judgment in favor of Plaintiff and the proposed Class and against Wal Mart in the amount of the actual damages of Plaintiff and the proposed Class.
- c) An order awarding attorneys' fees and costs of suit;
- d) Pre-judgment and post-judgment interest; and
- e) Such other and further relief as the Court deems just and proper.

Dated: May 21, 2009

Respectfully submitted,

JOHN WHITWELL
Class Plaintiff,

By:


One of His Attorneys

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**Attorneys for Plaintiff
and the Proposed Class**