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2017-CH-10758
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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

VINCENT DE LEON, individually and on
behalf of all others similarly situated
Plaintiff,

v.

WALGREENS BOOTS ALLIANCE, INC.,
Defendant.

No.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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Plaintiff Vince De Leon, individually and on behalf of all others similarly situated, states as follows:

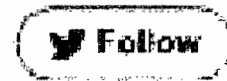
I. INTRODUCTION

1. Walgreens is improperly collecting Cook County's sweetened beverage tax, or "pop tax", from consumers on unsweetened drinks. Even though the tax only applies to sweetened beverages, Walgreens has widely applied it, including to unsweetened sparkling water purchases.

2. Even the architect of the tax, Cook County Board President Toni Preckwinkle, recently tweeted that unsweetened beverages are not subject to the pop tax:



Toni Preckwinkle
@ToniPreckwinkle



Unsweetened sparkling water, like LaCroix, is NOT subject to the sweetened beverage tax. Don't believe otherwise.

4:35 PM - Aug 1, 2017

27 40 102

3. Walgreens has publicly admitted it is wrongly charging the pop tax on unsweetened beverages – and yet it continues to do so without informing customers that they are being wrongly charged. Walgreens reportedly stated in an email to a reporter: "While preparing to collect the County's tax on sweetened beverages, we inadvertently coded some of our products incorrectly within our system that applies taxes during the checkout process." "We are

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working to resolve this complex issue as soon as possible.”¹ Despite knowing that it has improperly coded its products, Walgreens has not taken any steps to provide corrections at the cash register.

4. Plaintiff and members of the Class purchased beverages from Walgreens that were not supposed to be subject to the sweetened beverage tax, but Walgreens nonetheless charged them the sweetened beverage tax on their purchases. Plaintiff and the Class were actually deceived by Walgreens’ imposition of the tax, and paid the tax to their detriment. Plaintiff sues individually and on behalf of all others similarly situated to recover the improper charges, plus attorneys’ fees and costs.

II. PARTIES

5. Plaintiff Vince De Leon is a resident of Schaumburg, Illinois. On or about August 4, 2017, Plaintiff purchased an unsweetened beverage from Walgreens in Hoffman Estates, Illinois. He was charged and paid the sweetened beverage tax at the time of his purchase. At the time of his purchase, Plaintiff paid the pop tax on the mistaken assumption that it was due, as he did not know the details regarding application of the tax, and did not have knowledge of any facts that could be used to frame a protest of the tax. Accordingly, Plaintiff was actually deceived and damaged as a result of Walgreens’ actions.

6. Defendant Walgreens Boots Alliance Inc. is a Delaware corporation with its principal place of business located in Deerfield, Illinois. Walgreens is a Sweetened Beverage Distributor registered with the Cook County Department of Revenue.

¹ “LaCroix Lovers Angry After Walgreens Wrongfully Taxes Their Drink (Again),” DNAInfo (August 3, 2017), available at <https://www.dnainfo.com/chicago/20170802/downtown/lacroix-taxed-walgreens-cook-county-pop-tax-soda-sweetened-beverage> (last accessed August 4, 2017).

III. VENUE

7. Venue is appropriate in the Circuit Court of Cook County under 735 Ill. Comp. Stat 5/2-101 *et seq.* and 735 Ill. Comp. Stat. 5/2-103 because Walgreens is located within Cook County and also because the transactions occurred in Cook County, out of which the causes of action arose.

IV. FACTS

A. Cook County's "Pop Tax" Becomes Effective August 2, 2017

8. On November 10, 2016, the Cook County Board of Commissioners adopted and approved the Sweetened Beverage Tax, Sections 74-850 through 74-859 of the Cook County Code.

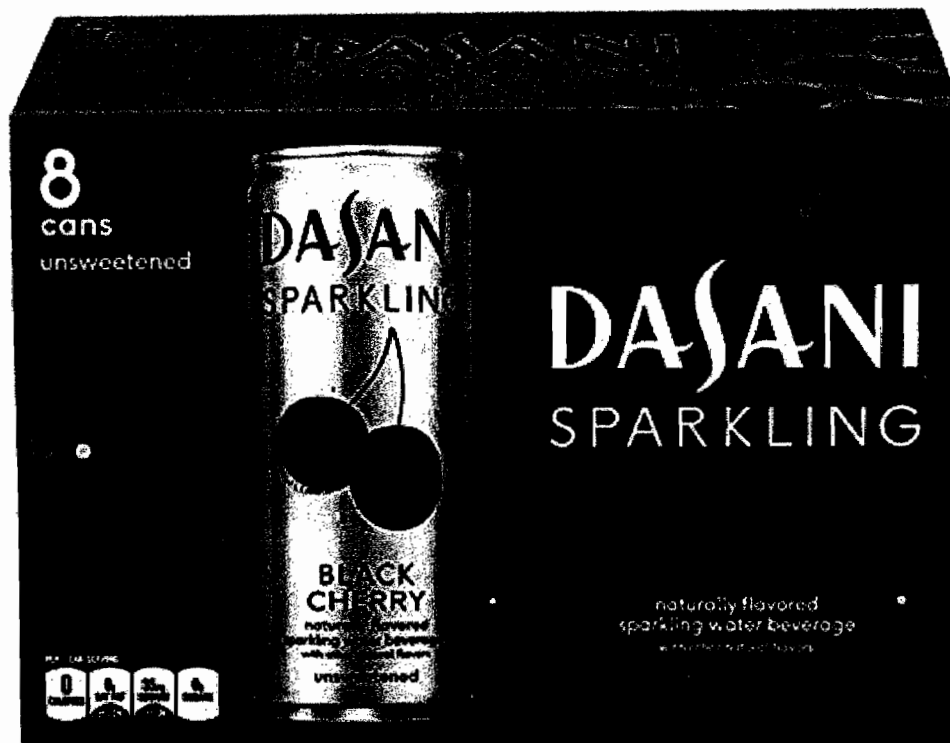
9. The Cook County Board of Commissioners approved the Sweetened Beverage Tax for the express purpose of promoting public health, including lowered obesity rates. *See* Cook County Ordinance No. 16-5931 at p. 2.

10. The Sweetened Beverage Tax became effective on March 1, 2017.

11. The tax imposes a one (1) cent tax per ounce of sweetened beverage purchased in Cook County beginning July 1, 2017. Cook County Ordinances§ 74-852(a). Pursuant to a Court Order however, the imposition of the tax was delayed until August 2, 2017.

12. A distributor of bottled sweetened beverages and syrup and/or powder used to produce a sweetened beverage is required to collect the tax from any retailer to whom the sale of bottled sweetened beverages or syrup and/or powder used to produce a sweetened beverage is made and shall remit the tax to the Department. Cook County Ordinances§ 74-852(c).

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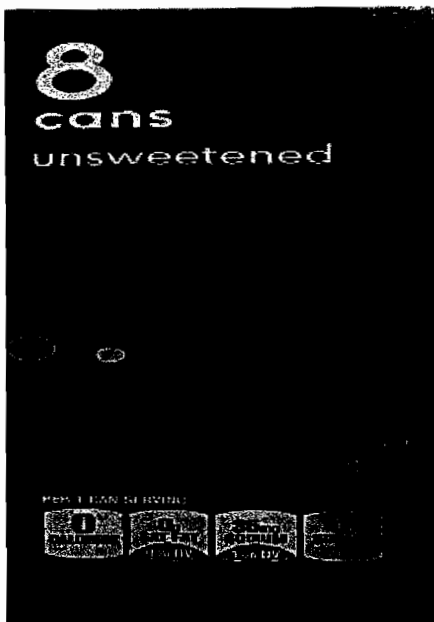


B. Walgreens Is Imposing the Pop Tax on Unsweetened Beverages To The Detriment of Plaintiff and the Class

13. Despite the fact that the pop tax does not apply to unsweetened drinks, Walgreens has implemented and is collecting the sweetened beverage tax on unsweetened drinks.

14. For example, on August 3, 2017, a Walgreens store in Western Springs, Illinois charged the sweetened beverage tax on a case of Dasani Black Cherry Sparkling Water, which is clearly labeled “Unsweetened.” Western Springs, Illinois is in Cook County. A picture of an exemplar case of Dasani Black Cherry Sparkling Water follows:

15. The actual box next to the receipt showing the tax charged by Walgreens on August 3, 2017 follows:



345 1936 0023 08/03/2017
DASANI SPARKLING BLK CHRYS 12OZ B
0490000686
2 @ 3.79
~~REVERSE BEVERAGE TAX~~
0000000003
2 @ 0.86
SUBTOTAL
SALES TAX B-2.25%
TOTAL
MASTERCARD ACCT 4356
CHANGE
AID: A000000043D10
DEBIT MASTERCARD
TAPPED
THANK YOU FOR SHOPPING AT WALGREENS
GET MORE WITH BALANCE REWARDS.
REDEEM POINTS FOR SOMETHING EXTRA
IN A FUTURE PURCHASE. RESTRICTIONS
APPLY FOR TERMS AND CONDITIONS.
VISIT WALGREENS.COM/BALANCE.
REF: 0538-4231-9360-1708

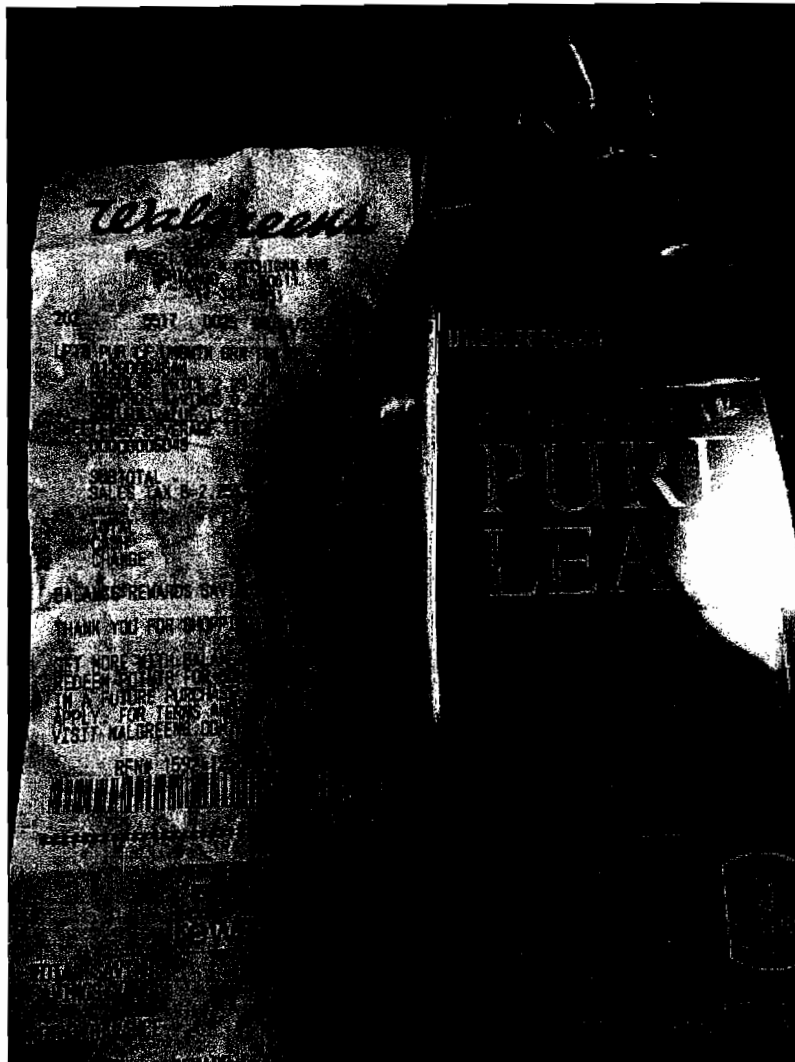
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16. On August 4, 2017, a Walgreens in Chicago, Illinois charged the sweetened beverage tax on a bottle of Lipton Pure Leaf Unsweetened Green Tea, which is clearly labeled “Unsweetened.” Chicago, Illinois is in Cook County. A picture of an exemplar bottle of Lipton Pure Leaf Unsweetened Green Tea follows:



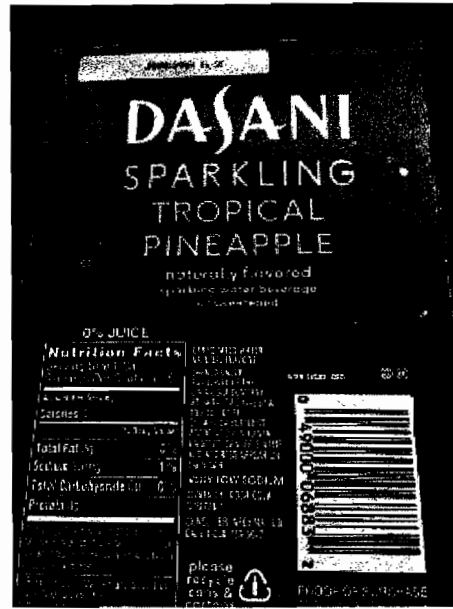
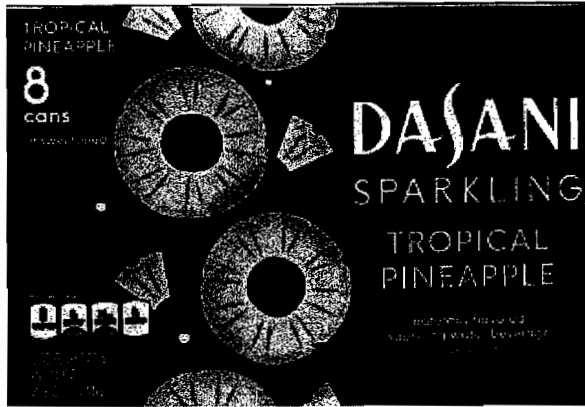
17. The actual bottle next to the receipt showing the tax charged by Walgreens on August 4, 2017 follows:

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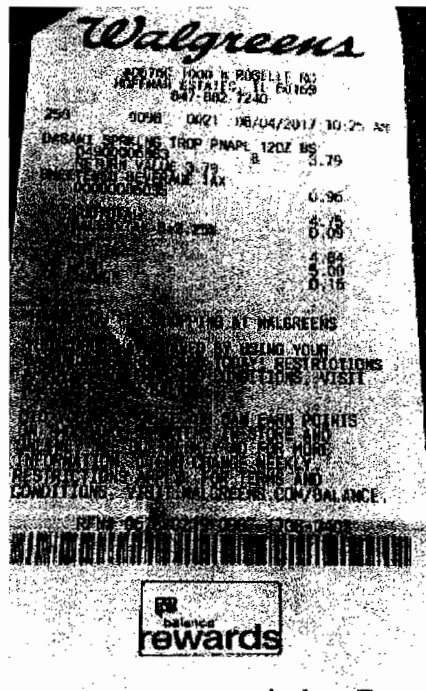


18. On August 4, 2017, Plaintiff Vince De Leon visited the Walgreens store located at 1000 N. Roselle Rd. in Hoffman Estates, Illinois, which is within the boundaries of Cook County. Plaintiff purchased a case of Dasani Tropical Pineapple Sparking Water, which is clearly labeled “unsweetened.” Pictures of the labels follow:

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19. Despite the fact that the water was clearly labeled unsweetened, Plaintiff was charged the sweetened beverage tax. At the time he paid the tax, Plaintiff was not aware that he should not have been charged the tax. Subsequently, after the purchase, Plaintiff learned that he was improperly charged the sweetened beverage tax. A copy of Plaintiff's receipt follows:



20. Plaintiff was actually deceived by Walgreens' actions and was damaged as a result of having paid the sweetened beverage tax for a case of unsweetened beverages.

V. CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action on behalf of himself, and as a class action under Section 2-801 of the Illinois Code of Civil Procedure (735 Ill. Comp. Stat. 5/2-801), on behalf of the following class:

All persons who paid the Sweetened Beverage Tax on a beverage which was not subject to the tax at Walgreens.

Excluded from the class are Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant, Defendant's legal representatives, predecessors, successors, assigns, and employees, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

22. The definition of the Class is unambiguous. Plaintiff is a member of the Class he seeks to represent. Members of the Class can be identified using Defendant's records and by their receipts.

23. Pursuant to Section 2-801(1), Class members are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown to Plaintiff, but that number greatly exceeds the number considered in this judicial district to make joinder impossible.

24. Pursuant to Section 2-801(2), questions of fact and law, except as to the amount of damages each member of the Class sustained, are common to the Class. Common questions of law and fact predominate over the questions affecting only individual Class members. Some of the common legal and factual questions include:

- a. Whether Defendant improperly assessed and/or collected the Sweetened Beverage Tax on products which should not have been subject to the tax;

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- b. Whether Plaintiff and other Class members improperly paid the pop tax on products that were not subject to the tax;
- c. Whether Defendant's actions were deceptive, misleading and/or unfair;
- d. Whether Plaintiff and the members of the Class are entitled to declaratory and/or injunctive relief;
- e. Whether Defendant was unjustly enriched in its collection of transfer taxes;
- f. The nature and extent of damages and other remedies to which Defendant's conduct entitles Plaintiff and the Class members.

25. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff and the Class members. Individual questions, if any, pale by comparison to the numerous common questions that dominate.

26. The injuries sustained by the Class members flow, in each instance, from a common nucleus of operative facts – Defendant's charging of the pop tax on unsweetened beverages. Each Class member purchased unsweetened beverages from Walgreens and paid the pop tax.

27. Moreover, Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff was subject to, and was financially harmed by, a common policy and practice applied by Defendant to all Class members.

28. Pursuant to Section 2-801(3), Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is familiar with the basic facts that form the bases of the Class members' claims. Plaintiff's interests do not conflict with the interests of the other Class members that they seek to represent. Plaintiff has retained counsel competent and experienced in class action litigation and intend to prosecute this action vigorously.

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29. Pursuant to Section 2-801(4), a class action is an appropriate method for the fair and efficient adjudication of this controversy because joinder of all Class members are impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action would achieve substantial economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness.

30. Individual litigation of the legal and factual issues raised by the conduct of Defendants would increase delay and expense to all parties and to the court system. Thus, the class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale and comprehensive supervision by a single court.

VI. CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

31. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiff.

32. Defendant's imposition of the pop tax on unsweetened beverages was a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. 815 ILCS 505/1 et seq. Section 505/2 of the Act provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the

use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.

33. The acts, practices, misrepresentations and omissions by Defendant described above, and Defendant's imposition of the pop tax, occurring in the course of conduct involving trade or commerce, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes.

34. Defendant's acts and practices created a likelihood of confusion or of misunderstanding and misled, deceived or damaged Plaintiff and members of the Class in connection with the sale of and payments for unsweetened beverages. Defendant's conduct also constituted the use or employment of deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods.

35. Plaintiff was actually deceived by Defendant's conduct.

36. Plaintiff, on behalf of himself and the Class members, seeks monetary damages, treble damages and such other and further relief as permitted.

COUNT TWO

UNJUST ENRICHMENT

37. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiff.

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38. To the detriment of Plaintiff and the Class members, Defendant has been, and continues to be, unjustly enriched as a result of the wrongful collection of the sweetened beverage tax on unsweetened beverages.

39. Defendant has been unjustly benefited through the wrongful collection of the unsweetened beverage taxes to the detriment and at the expense of Plaintiffs and the Class members.

40. Accordingly, Plaintiff and the Class members seek full restitution of Defendant's enrichment and benefits acquired as a result of the conduct alleged herein, including return of all pop taxes paid on unsweetened beverages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter an order or judgment against Defendant including the following:

A. A finding that Defendant improperly collected the Sweetened Beverage Tax on unsweetened beverages, in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

B. Actual damages exceeding \$50,000, including but not limited to the refund of all improperly-charged Sweetened Beverage Taxes paid by Plaintiffs and members of the Class, and all such other relief as provided by law.

C. Pre-judgment and post-judgment interest on such monetary relief.

D. Other appropriate declaratory and injunctive relief.

E. The costs of bringing this suit, including reasonable attorneys' fees.

F. All other relief to which Plaintiffs may be entitled at law or in equity.

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JURY DEMAND

Plaintiff demands a jury trial on all issues and claims that can be so tried.

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Dated: August 4, 2017

Respectfully Submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP
[Firm No. 41580]

By: /s/ Elizabeth A. Fegan

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