

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
LAW DIVISION**

BRANDON DURHAM, individually)
and on behalf of all those similarly situated,)
)
Plaintiff,)
)
v.)
)
MEIJER GREAT LAKES LIMITED PARTNERSHIP,)
)
Defendant.)

No. 2024LA000403

Class Action

Jury Trial Demand

CLASS ACTION COMPLAINT

Plaintiff, BRANDON DURHAM (“Plaintiff” or “Durham”), on behalf of himself and all those similarly situated, bring this Class Action Complaint against MEIJER GREAT LAKES LIMITED PARTNERSHIP (“Defendant” or “Meijer”), alleging as follows:

INTRODUCTORY STATEMENT

1. This is a class action seeking monetary damages, restitution, injunctive and declaratory relief from Defendant, MEIJER GREAT LAKES LIMITED PARTNERSHIP, for its deceptive, unfair and misleading advertising and pricing of gasoline products sold to consumers in the State of Illinois.

2. This class action seeks remedies for Plaintiff and other Illinois consumers who were deceived by Meijer’s advertising of gas prices using fractional pricing to the 9/10th of a penny.

3. Meijer’s fractional gas pricing is deceptive, unfair and misleading because

it does not reflect the true cost to consumers of the gasoline purchased.

4. Meijer uses fractional gas pricing to advertise one price for the gasoline it sells to Plaintiff and Illinois consumers and then charges a different price by rounding up the final price.

5. The price a consumer sees as advertised by Meijer and the price the consumer pays to Meijer for its gasoline are two different amounts.

6. Meijer rounds up from the actual, advertised price, to charge the Plaintiff and Illinois consumers a price that is higher than advertised.

7. This bait-and-switch advertising allows Meijer to make millions of dollars each year from unsuspecting Illinois consumers.

8. During the Class Period (defined below), Meijer used deceptive, unfair and misleading bait-and-switch advertising to fleece Illinois consumers of millions of dollars by advertising one price and then charging a different price for its gasoline products.

9. In in order to artificially inflate its income from gasoline sales, Meijer rounds up its price for gasoline to a different, higher price than is shown on the gas pump.

10. Meijer operates retail locations in Illinois that sell gasoline to Illinois consumers.

11. Relying on the deceptive, unfair and misleading advertising, Plaintiff and the Class Members (defined below in para. 62) purchased Meijer gasoline products and paid more than the advertised price.

NATURE OF THE ACTION

12. Plaintiff, BRANDON DURHAM, on behalf of himself and all those

similarly situated Class Members seek damages, declaratory judgment, permanent injunctive relief, disgorgement of ill-gotten monies, attorney's fees and costs, and other relief from Defendant Meijer for violation of the Illinois Consumer Fraud Act, Illinois Uniform Deceptive Trade Practices Act, and Common Law Fraud

PARTIES

13. Plaintiff, **Brandon Durham** is a citizen of Illinois who resides in DuPage County, IL and is otherwise *sui juris*.

14. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated Class Members (as defined below).

15. Defendant, Meijer Great Lakes Limited Partnership is a Michigan limited partnership with its principal place of business in the City of Grand Rapids, County of Kent, State of Michigan.

JURISDICTION AND VENUE

16. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois and has committed tortious acts in Illinois.

17. Venue is proper in DuPage County because Plaintiff resides in DuPage County and Defendant operates in Defendant operates multiple retail stores that sell gasoline located within DuPage County, Illinois.

PLAINTIFF'S GAS PURCHASES

October 31, 2023, Gas Purchase

18. On October 31, 2023, Plaintiff purchased gasoline at Defendant's retail store #178 located 818 N. Route 59, Aurora, Illinois 60504.

19. On this date, Defendant's retail sign, as visible to the Plaintiff and general public, listed the price of gas per gallon as \$3.499.

20. On this date, Plaintiff purchased 11.431 gallons of gas from Defendant.

21. Plaintiff was charged a total fuel sale price of \$40.00 and paid with a debit card.

22. Based on the advertised price and amount of gasoline purchased, Plaintiff should have been charged a total sale price of \$39.997.

23. Instead, Defendant rounded up the price charged to Plaintiff by \$.003.

24. Because of Defendant's rounding up of the final sale price, Plaintiff was actually charged a price of \$3.503 per gallon.

25. The price Plaintiff paid per gallon of gas was higher than the advertised price.

November 4, 2023, Gas Purchase

26. On November 4, 2023, Plaintiff purchased gasoline at Defendant's retail store #178 located at 818 N. Route 59, Aurora, IL 60504.

27. On this date, Defendant's retail sign, as visible to Plaintiff and the general public, listed the price of gas per gallon as \$4.399.

28. On this date, Plaintiff purchased 1.136 gallons of gasoline from Defendant.

29. Plaintiff was charged a total fuel sale price of \$5.00 and paid with a debit card.

30. Based on the advertised price and the amount of gasoline purchased, Plaintiff should have been charged a total sales price of \$4.997.

31. Instead, Defendant rounded up the price charged to Plaintiff by \$.003.

32. Because of Defendant's rounding up of the final sales price, Plaintiff was actually charged a price of \$4.401 per gallon, rather than the \$4.399 advertised.

33. The price Plaintiff paid per gallon was higher than the advertised price.

34. In addition to the gasoline purchases set forth above, Plaintiff has purchased gasoline from Meijer many other times during the Class Period and suffered damages of at least \$5 as a result of Meijer's illegal gasoline pricing.

DEFENDANT'S ADVERTISING AND SALE OF GASOLINE PRODUCTS

35. Defendant sells gasoline products to consumers at its retail stores in the State of Illinois.

36. Defendant advertises its price for gasoline products on at least one publicly visible sign outside of its retail stores.

37. Defendant also advertises its price for its gasoline at the gas pumps outside of its retail stores.

38. Defendant lists the price for its gasoline products on the receipt printed for the consumer after the purchase.

39. Defendant advertises and lists the price for its gasoline products using fractional pricing to the 9/10th of a penny (e.g. \$2.999/gal).

40. Defendant has a policy to advertise and sell its gasoline products using fractional pricing to the 9/10th of a penny.

41. However, Defendant then charges Plaintiff and Illinois consumers a final sales price that only includes a price to the penny.

42. Defendant has a policy and practice to round up the final sales price to the penny *only*, or two digits after the decimal point (e.g. \$3.00/gal)

43. Defendant's gasoline pricing policy has been in place during the entire Class Period and is currently still be employed by Defendant.

44. Fractional gas pricing is deceptive to consumers when the gas station rounds up the purchase price, to the detriment of the consumer.

45. Reasonable consumers believe that prices are lower when they end in the number 9, since they do not mentally round up on their minds.

46. For example, gasoline that is advertised at \$3.299 per gallon looks more appealing to consumers than gasoline advertised at \$3.30 per gallon, or the actual price of \$3.305.

47. In the example in the preceding paragraph, the \$3.299 is the advertised price of the gasoline while the actual price of the gasoline is over \$3.300.

48. Defendant rounds up its price for gasoline to charge the consumer more than the advertised price.

49. Defendant rounds up the prices from the prices that end in a 9/10th of a penny.

50. What a consumer sees as the advertised price for gasoline and what the consumer pays as the actual price for gasoline are different.

51. Defendant's policy and practice of rounding up the price of gasoline is a classic example of bait-and-switch advertising.

52. Defendant entices Plaintiff and Illinois consumers to buy its gasoline products with one advertised price and then charges a different final sales price at the pump.

53. Gas companies and retail operators such as Defendant are not legally obligated to price gasoline products to the 9/10 of a penny, or to round up the total price – it is a choice intended to increase their revenues at the expense of Illinois consumers.

54. When the Defendant rounds up the amount paid to the detriment of the consumers, fractional gas pricing is unfair to consumers and this practice of rounding up the price of gasoline should be ended.

55. Defendant's policy and practice of rounding up the price of gasoline products causes consumers to pay more than the advertised price of the gasoline.

56. Defendant's policy and practice of rounding up the price of gasoline products is deceptive, unfair and misleading to Plaintiff and consumers in Illinois.

57. By rounding up the final price of gasoline products, Defendant makes millions of dollars in extra revenue each year.

58. By its deceptive, unfair and misleading policy and practice of rounding up gasoline products, Defendant fleeces Illinois consumers out of millions of dollars each year.

CLASS ALLEGATIONS

59. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully re-written herein.

60. Plaintiff asserts the counts stated herein as class action claims pursuant to 735 ILCS 5/2-801.

61. Plaintiff is filing this lawsuit on behalf of all persons that purchased Meijer gasoline products at a price greater than the advertised price from April 2, 2019, to the present (“Class Period”).

62. Plaintiff seeks to represent a class of persons defined as follows:

Each person who purchased gasoline products from Defendant in Illinois during the Class Period and paid a price higher than the advertised price due to Defendant’s policy and practices related to fractional pricing.

63. Collectively the members of the Class shall be referred to as “Class Members.”

64. The class excludes counsel representing the class, governmental entities, Defendant, any entity in which Defendant has a controlling interest, Defendant’s officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individual whose interests are antagonistic to other putative class members.

65. Plaintiff reserves the right to amend or modify the class descriptions with greater particularity or further division into subclasses or limitation to particular issues.

66. This action has been brought and may properly be maintained as a class action under 735 ILCS 5/2-801 because it is a well-defined community of interest in the litigation and the class is readily and easily ascertainable.

67. Numerosity: Thousands of Illinois consumers have been injured by Defendant's deceptive, unfair and misleading advertising practices related to Defendant's fractional pricing policy and practices.

68. Typicality: Plaintiff's story and his claims are typical for the class and, as the named Plaintiff, he is aware of other persons in the same situation. Plaintiff and the Class Members sustained damages arising out of Defendant's illegal course of business.

69. Commonality: Since the whole class purchased Meijer gasoline products and such products are advertised by the Defendant, the questions of law and fact are common to the class.

70. Adequacy: Durham will fairly and adequately protect the interests of the class he represents.

71. Superiority: As questions of law and fact that are common to class members predominate over any questions affecting only individual members, a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

**COUNT I: VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT**

72. Plaintiff incorporates by reference paragraphs 1-71 of this Complaint as if fully re-written herein. Plaintiff asserts this count on his own behalf and on behalf of the Class pursuant to 735 ILCS 5/2-801.

73. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS §§ 505/1, et seq., provides protection to consumers by mandating fair competition in commercial markets for goods and services.

74. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business

acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS § 505/2.

75. The ICFA applies to Defendants’ acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

76. Defendant is a “person” as defined by section 505/1(c) of the ICFA.

77. Plaintiff and each member of the Class are “consumers” as defined by section 505/1(e) of the ICFA.

78. Gasoline constitutes “merchandise” under the meaning of section 505/1(b) and its sale is within the meaning of “trade” or “commerce” under the ICFA.

79. Defendant’s misrepresentations and omissions regarding the true price of its gasoline products are deceptive and unfair acts and practices prohibited by Chapter 2 of ICFA.

80. Defendant violated the ICFA when it misrepresented facts regarding the price of its gasoline. Accordingly, the misrepresentations were the central reason for consumers choosing to purchase Meijer gasoline over other alternatives.

81. Plaintiff and Class Members relied upon Defendant’s misrepresentations and omissions when they purchased Defendant’s gasoline.

82. Plaintiff and Class Members saw Defendant’s marketing and online advertising materials prior to purchasing Defendant’s gasoline, and they reasonably relied on Defendant’s misrepresentations and omissions when they purchased Defendant’s

gasoline.

83. Defendant's misrepresentations and omissions regarding its gasoline were acts likely to mislead the Plaintiff and Class Members acting reasonably under the circumstances, and thus constitute unfair and deceptive trade practices in violation of ICFA.

84. As a direct and proximate result of Defendant's violation of the ICFA, Plaintiff and the Class Members have suffered harm in the form of monies paid in exchange for gasoline because they paid more than what they would have otherwise paid had they know the true price of the gasoline.

85. Upon information and belief, the value of the loss, calculated as the price paid for a gasoline product rounded up less the advertised price of the gasoline, is in excess of \$5,000,000 for the entire Class.

86. Defendant's practices set forth herein offend public policy, were and are immoral, unethical, oppressive, and unscrupulous, and cause substantial injury to consumers.

COUNT II: VIOLATIONS OF THE ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT

87. Plaintiff incorporates by reference paragraphs 1 - 71 of this Complaint as if fully re-written herein. As set forth above, Plaintiff asserts this count on his own behalf and on behalf of the Class, as defined above.

88. At all times relevant hereto, there was in full force and effect the Illinois Uniform Deceptive Practices Act, 815 ILCS 510/1, et seq. ("DTPA").

89. The UDTPA applies to any business or individual that engages in a

deceptive trade practice during commerce or trade in Illinois.

90. Defendant advertises gasoline products with the intent not to sell it as advertised by using the false and misleading advertising detailed above, in violation of 815 ILCS 510/2(a)(9).

91. Defendant's false, misleading, and deceptive conduct creates a likelihood of confusion or misunderstanding on the part of Plaintiff and Class Members who purchase its gasoline, in violation of 815 ILCS 510/2(a)(12).

92. By advertising the price of gasoline at one price and then charging Plaintiff and the Class Members a different price, Defendant providing misleading information to Plaintiff and Class Member about the price of its gasoline products.

93. Defendant's false and misleading statements set forth above were made knowingly and intentionally, with the intent to mislead the Plaintiff and the Class Members.

94. Accordingly, Defendant has violated the DTPA.

COUNT III: UNJUST ENRICHMENT

95. Plaintiff incorporates by reference paragraphs 1-71 of this Complaint as if fully rewritten herein. As set forth above, Plaintiff asserts this count on his own behalf and on behalf of all other similarly situated consumers.

96. By paying the higher prices charged by Defendant for gasoline, Plaintiff and Class Members conferred a direct benefit to the Defendant.

97. Purchasers of Defendant's gasoline that are members of the Class continue to suffer injuries as a result of the Defendant's actions. If the Defendant does not compensate the Plaintiff and Class Members, Defendant would be unjustly enriched as a

result of its unlawful act or practices.

98. It is an equitable principle that no one should be allowed to profit from his own wrong, therefore it would be inequitable for the Defendant to retain said benefit, reap unjust enrichment.

99. Since the Defendant unjustly enriched itself at the expense of the gasoline purchasers, the Plaintiff requests the disgorgement of these ill-gotten monies.

100. Due to Defendant's conduct, Plaintiff and the Class Members are entitled to damages according to proof.

COUNT IV: COMMON LAW FRAUD

101. Plaintiff incorporates by reference the foregoing paragraphs 1 - 71 of this Complaint as if fully rewritten herein. As set forth above, the Plaintiff asserts this count on his own behalf and on behalf of all other similarly situated persons pursuant to 735 ILCS 5/2-801.

102. Defendant made false statements and omissions of material fact to the Plaintiff and Class Members.

103. Defendant's assertion that its price for gasoline was the same as the advertised price was false.

104. Defendant's gasoline price contained on its publicly visible signage is false.

105. Defendant's gasoline price shown on the gas pump is false.

106. Defendant's policy of rounding up the price of gasoline to the higher tenth of a cent is deceptive, unfair and false.

107. Defendant made the false statements with the intent that Plaintiff and Class

Members rely on said false statements to purchase its gasoline products.

108. Plaintiff and the Class Members acted in reliance on Defendant's false statements to purchase its gasoline products.

109. Plaintiff and the Class Members suffered damages in the form of the higher payments made to Defendant as a result of its policy of rounding up fractional pricing.

110. Plaintiff and the Class Members suffered damages in the form of the payment of higher prices for Defendant's gasoline products.

COUNT V: BREACH OF CONTRACT

111. Plaintiff incorporates by reference the foregoing paragraphs 1 - 71 of this Complaint as if fully rewritten herein. As set forth above, the Plaintiff asserts this count on his own behalf and on behalf of all other similarly situated persons pursuant to 735 ILCS 5/2-801.

112. Plaintiff and Class Members entered into contractual agreements with Defendant for the purchase of Defendant's gasoline.

113. Defendant offered gasoline for sale at a specific advertised price.

114. Defendant's price for gasoline was publicly listed on visible signs at Defendant's gasoline stations and listed on the gasoline pump.

115. Plaintiff and Class Members accepted Defendant's offer for gasoline when they began pumping gasoline into their car.

116. Plaintiff and Defendant entered into a contract for the purchase of gasoline when Plaintiff began pumping gasoline into his car.

117. Defendant had a duty to charge Plaintiff only the price of the gasoline

agreed to and a duty not to charge Plaintiff a higher price for the gasoline.

118. Defendant breached the agreement for the purchase of gasoline when it rounded up the price charged to Plaintiff for the purchase of gasoline.

119. The price of gasoline charged to Plaintiff by Defendant for the purchase of gasoline was different than the price of gasoline agreed to by the Plaintiff and Defendant.

120. Plaintiff and Class Members suffered damages directly caused by Defendant's breach of the contract in the form of a higher price for the purchase of gasoline.

DEMAND FOR JURY TRIAL

Plaintiff and those similarly situated Class Members demand a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Brandon Durham, respectfully requests that judgment be entered in his favor and in favor of the Class Members as follows:

- a. Certifying and maintaining this action as a class action, with the named Plaintiff as designated class representatives and with their counsel appointed as class counsel;
- b. Declaring the Defendant in violation of each of the counts set forth above;
- c. Awarding the Plaintiff and those similarly situated compensatory, punitive, and treble damages;
- d. Awarding the Plaintiff and those similarly situated liquidated damages;
- e. Order the disgorgement of ill-gotten monies;
- f. Awarding the named Plaintiff a service award;

- g. Awarding pre-judgment, post-judgment, and statutory interest;
- h. Awarding attorneys' fees and costs;
- i. Awarding such other and further relief as the Court may deem just and proper.

Dated: April 2, 2024

Respectfully Submitted,

s/Keith Gibson
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