

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

CHRISTINA DURANKO, GERRY  
MCLEAN, MARY MAROUS, JOYCE  
WOJTON, BEVERLY EVANS, JENNIFER  
POLLOCK, and MARTHA BAILEY,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

BIG LOTS INC., DOLLAR GENERAL  
CORPORATION, GIANT EAGLE, INC.,  
JO-ANN STORES, LLC, OLLIE'S  
BARGAIN OUTLET HOLDINGS, INC.,  
THE HOME DEPOT, INC., TUESDAY  
MORNING CORPORATION, ULTA  
BEAUTY, INC., and WALMART INC.,

Defendants.

CIVIL DIVISION





No.

CLASS ACTION

**CLASS ACTION COMPLAINT**

Filed on behalf of Plaintiffs:  
Christina Duranko, Gerry McLean, Mary  
Marous, Joyce Wojton, Beverly Evans,  
Jennifer Pollock, and Martha Bailey

Counsel of record for Plaintiffs:

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*Other Attorneys On Signature*

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

CHRISTINA DURANKO, GERRY MCLEAN, MARY MAROUS, JOYCE WOJTON, BEVERLY EVANS, JENNIFER POLLOCK, and MARTHA BAILEY, individually and on behalf of all others similarly situated,	CIVIL DIVISION  No.  CLASS ACTION
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BARGAIN OUTLET HOLDINGS, INC.,  
THE HOME DEPOT, INC., TUESDAY  
MORNING CORPORATION, ULTA  
BEAUTY, INC., and WALMART INC.,

Defendants.

**NOTICE TO DEFEND**

**YOU HAVE BEEN SUED IN COURT.** If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

LAWYER REFERRAL SERVICE  
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436 Seventh Avenue  
Pittsburgh, PA 15219  
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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
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Defendants.

**CLASS ACTION COMPLAINT**

Plaintiffs Christina Duranko (“Duranko”), Gerry McLean (“McLean”), Mary Marous (“Marous”), Joyce Wojton (“Wojton”), Beverly Evans (“Evans”), Jennifer Pollock (“Pollock”), and Martha Bailey (“Bailey”) (collectively, “Plaintiffs”) individually and on behalf of all others similarly situated, bring this action against Defendants Big Lots, Inc., Dollar General Corporation, Giant Eagle, Inc., Jo-Ann Stores, LLC, Ollie’s Bargain Outlet Holdings, Inc., The Home Depot, Inc., Tuesday Morning Corporation, Ulta Beauty, Inc., and Walmart Inc. (“Defendants”), and allege as follows:

**NATURE OF THE ACTION**

1. This action seeks statutory damages, attorneys’ fees, and costs against Defendants for violations of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat. § 201-1, *et seq.*

## **JURISDICTION AND VENUE**

2. The Court has subject matter jurisdiction under 42 Pa. C.S. § 931.
3. The Court has personal jurisdiction over Defendants under 42 Pa. C.S. § 5301.
4. Venue is proper under Pa. R. Civ. P. 2179 because Defendants regularly conduct business in this County, this is the County where the cause of action arose, and/or this is the County where the transactions or occurrences took place out of which the cause of action arose.
5. Principles of comity and the Tax Injunction Act, U.S.C. § 1341 require the state courts of the Commonwealth of Pennsylvania to address matters involving state tax laws and regulations. *See Farneth v. Wal-Mart Stores, Inc.*, 2013 WL 6859013 (W.D. Pa. Dec. 30, 2013).

## **PARTIES**

6. Plaintiffs are natural persons over the age of eighteen. Plaintiffs reside in Pennsylvania.
7. Big Lots Inc. (“Big Lots”) is an Ohio corporation headquartered in Columbus, Ohio. Big Lots operates brick-and-mortar and online retail stores under the Big Lots brand name. Big Lots owns, operates, or controls at least 68 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020 were \$5,323,180,000.<sup>1</sup>
8. Dollar General Corporation (“Dollar General”) is a Tennessee corporation headquartered in Goodlettsville, Tennessee. Dollar General operates brick-and-mortar and online retail stores under the Dollar General brand name. Dollar General owns, operates, or manages at

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<sup>1</sup> Big Lots Inc., Annual Report (Form 10-K), at 3, 19 (Mar. 31, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/768835/000076883520000033/big-202021x10k.htm> (last accessed Nov. 19, 2020).

least 781 brick-and-mortar retail locations in Pennsylvania. For the year ended January 31, 2020, Dollar General's net sales were \$27,754,000,000.<sup>2</sup>

9. Giant Eagle, Inc. ("Giant Eagle") is a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania. Giant Eagle operates brick-and-mortar and online retail stores under the brands Giant Eagle, Giant Eagle Express, GetGo, Market District, and BeerVan. Giant Eagle owns, operates, or manages "more than 400 retail locations, ranging in size from 120,000 square-foot supermarkets to small neighborhood markets and fuel and convenience locations."<sup>3</sup> For the year ended June 30, 2019, Giant Eagle's total net sales were \$9,200,000,000.<sup>4</sup>

10. Jo-Ann Stores, LLC ("JOANN") is an Ohio limited liability company headquartered in Hudson, Ohio. JOANN operates brick-and-mortar and online retail stores under the JOANN brand. JOANN owns, operates, or manages at least 42 brick-and-mortar retail locations in Pennsylvania.<sup>5</sup>

11. Ollie's Bargain Outlet Holdings, Inc. ("Ollie's") is a Delaware corporation headquartered in Harrisburg, Pennsylvania. Ollie's operates brick-and-mortar stores under the brand name Ollie's. Ollie's owns, operates, or manages at least 46 brick-and-mortar retail locations

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<sup>2</sup> Dollar General Corporation, Annual Report (Form 10-K), at 18, 23 (Mar. 19, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/29534/000155837020002915/dg-20200131x10ka41072.htm> (last accessed Nov. 19, 2020).

<sup>3</sup> Giant Eagle, Inc., *Our History*, available at <https://www.gianteagle.com/about-us/our-history> (last accessed Nov. 16, 2020).

<sup>4</sup> Forbes, *America's Largest Private Companies 2019*, available at <https://www.forbes.com/companies/giant-eagle/?sh=4cc6a99a2cda> (last accessed Nov. 16, 2020).

<sup>5</sup> JOANN, *JOANN Fabric & Craft Store Locations in Pennsylvania*, available at <https://stores.joann.com/pa/> (last accessed Nov. 19, 2020).

in Pennsylvania.<sup>6</sup> For the year ended February 1, 2020, Ollie's' total net sales were \$1,408,199,000.<sup>7</sup>

12. The Home Depot, Inc. ("Home Depot") is a Delaware corporation headquartered in Atlanta, Georgia. Home Depot operates brick-and-mortar and online retail stores under the Home Depot brand name. Home Depot owns, operates, or manages at least 70 brick-and-mortar retail locations in Pennsylvania. For the year ended February 2, 2020, Home Depot's total net sales were \$110,225,000,000.<sup>8</sup>

13. Tuesday Morning Corporation ("Tuesday Morning") is a Delaware corporation headquartered in Dallas, Texas. Tuesday Morning operates brick-and-mortar and online retail stores under the Tuesday Morning brand name. Tuesday Morning owns, operates, or manages at least 18 brick-and-mortar retail locations in Pennsylvania. For the year ended June 30, 2020, Tuesday Morning's total net sales were \$874,900,000.<sup>9</sup>

14. Ulta Beauty, Inc. ("Ulta Beauty") is a Delaware corporation headquartered in Bolingbrook, Illinois. Ulta Beauty operates brick-and-mortar and online retail stores under the Ulta Beauty brand name. Ulta Beauty owns, operates, or manages at least 45 brick-and-mortar retail

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<sup>6</sup> Ollie's, *Store Locator*, available at <https://www.ollies.us/locations/> (last accessed Nov. 16, 2020).

<sup>7</sup> Ollie's Bargain Outlet Holdings, Inc., Annual Report (10-K), at 31 (Mar. 25, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1639300/000114036120006788/form10k.htm> (last accessed Nov. 16, 2020).

<sup>8</sup> The Home Depot, Inc., Annual Report (Form 10-K), at 17, 33 (Mar. 25, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/354950/000035495020000015/hd10k02022020.htm> (last accessed Nov. 16, 2020).

<sup>9</sup> Tuesday Morning Corporation, Annual Report (Form 10-K), at 8, 27 (Sept. 14, 2020), available at [https://www.sec.gov/Archives/edgar/data/878726/000156459020043372/tuesq-10k\\_20200630.htm](https://www.sec.gov/Archives/edgar/data/878726/000156459020043372/tuesq-10k_20200630.htm) (last accessed Nov. 19, 2020).

locations in Pennsylvania. For the year ended February 1, 2020, Ulta Beauty's total net sales were \$7,398,068,000.<sup>10</sup>

15. Walmart Inc. ("Walmart") is a Delaware corporation headquartered in Bentonville, Arkansas. Walmart operates brick-and-mortar and online retail stores under the brand names Walmart and Sam's Club. Walmart owns, operates, or manages at least 164 brick-and-mortar retail locations in Pennsylvania. For the year ended January 31, 2020, Walmart's total net sales were \$519,926,000,000.<sup>11</sup>

16. Defendants are retail companies that sell apparel, jewelry, groceries, personal protective equipment, and other accessories throughout Pennsylvania.

### **FACTUAL ALLEGATIONS**

17. Retailers cannot charge or collect sales tax on protective face masks or face coverings because they are nontaxable.

18. On October 22, 2020, undersigned counsel filed a substantially similar case in this Court on behalf of Daniel Garcia alleging fifteen retailers improperly charged him Pennsylvania sales tax on purchases of protective face masks. See *Garcia v. American Eagle Outfitters, Inc.*, GD-20-011057. Garcia's claims rest, in part, on guidance then existing from the Pennsylvania Department of Revenue that provided:

Protective face masks that are sold at retail are exempt from Pennsylvania sales tax during the emergency disaster declaration issued on March 6, 2020 by Governor

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<sup>10</sup> Ulta Beauty, Inc., Annual Report (Form 10-K), at 23, 28, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1403568/000155837020003272/ulta-20200201x10k11b4b7.htm> (last accessed Nov. 19, 2020).

<sup>11</sup> Walmart Inc., Annual Report (Form 10-K), at 24, 29 (Mar. 20, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/104169/000010416920000011/wmtform10-kx1312020.htm> (last accessed Nov. 16, 2020).

Wolf. The emergency disaster declaration was issued in response to the COVID-19 pandemic.<sup>12</sup>

19. *After* the Garcia Complaint was filed on October 22, 2020, the Pennsylvania Department of Revenue updated the above guidance, confirming its original position on October 30, 2020 by providing:

[F]ace masks (cloth and disposable) are exempt from Pennsylvania sales tax. Prior to the COVID-19 pandemic, masks sold at retail were typically subject to Pennsylvania sales tax. However, masks (both cloth and disposable) could now be considered everyday wear/clothing as they are part of the normal attire. Generally speaking, clothing is not subject to Pennsylvania sales tax. Check the [Retailer's Information Guide \(REV-717\)](#) for a list of exceptions.<sup>13</sup>

20. Defendants knew or should have known that it was impermissible to charge or collect Pennsylvania sales tax on protective face masks following Governor Wolf's emergency declaration on March 6, 2020.

21. This action is brought against those retailers that charged or continue to charge sales tax on protective face masks sold in, or into via the internet, Pennsylvania.

### **Big Lots Inc.**

22. Big Lots sells protective face masks.

23. Wojton bought a protective face mask from Big Lots at a retail store located at 1155 Washington Pike, Bridgeville, PA 15017, on June 28, 2020.

24. Big Lots advertised the mask Wojton purchased as costing \$2.04.

25. Yet Big Lots charged, and Wojton paid, at least \$2.18 for the mask.

26. The extra \$0.14 equals 7% of the mask's advertised price.

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<sup>12</sup> Ex. 1, Pennsylvania Dept. of Revenue, *Masks and Ventilators* (Apr. 23, 2020); Ex. 2, Proclamation of Disaster Emergency (Mar. 6, 2020) and Extensions (June 3, 2020 and Aug. 31, 2020); Ex. 3 (72 P.S. § 7204(17)) (excluding "[t]he sale at retail or use of...medical supplies" from sales tax.).

<sup>13</sup> Ex. 4, Pennsylvania Dept. of Revenue, *Masks and Ventilators* (updated Oct. 30, 2020).



27. Wojton did not discover the extra \$0.14 charge until reviewing her receipt.<sup>14</sup>
28. The receipt identified the extra \$0.14 charge as sales tax.
29. Big Lots operates, controls, maintains, and is otherwise responsible for the point of sale (“POS”) systems in its brick-and-mortar locations and online stores.
30. Big Lots’ POS systems regularly charge and collect sales tax on protective face masks sold at Big Lots’ brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.
31. By charging and collecting sales tax on protective face masks, Big Lots denied Wojton and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.
32. Wojton and the class suffered harm as a result of Big Lots’ conduct.

#### **Dollar General Corporation**

33. Dollar General sells protective face masks.
34. Evans bought protective face masks from Dollar General at a retail store located at 4665 Tuscarawas Rd., Beaver, PA 15009, on July 11, 2020.
35. Dollar General advertised the masks Evans purchased as costing \$2.00 each, or a total of \$4.00.
36. Yet Dollar General charged, and Evans paid, \$4.24 for the masks.
37. The extra \$0.24 equals 6% of the masks’ advertised price.
38. Evans did not discover the extra \$0.24 charge until reviewing her receipt.<sup>15</sup>
39. The receipt identified the extra \$0.24 charge as sales tax.

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<sup>14</sup> Ex. 5.

<sup>15</sup> Ex. 6

40. Dollar General operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

41. Dollar General's POS systems regularly charge and collect sales tax on protective face masks sold at Dollar General's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

42. By charging and collecting sales tax on protective face masks, Dollar General denied Evans and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

43. Evans and the class suffered harm as a result of Dollar General's conduct.

**Giant Eagle, Inc.**

44. Giant Eagle sells protective face masks.

45. Marous bought a protective face mask from Giant Eagle at a retail store located at 132 Ben Avon Heights Road, Pittsburgh, PA 15237 on July 3, 2020.

46. Giant Eagle advertised the mask Marous purchased as costing \$14.99.

47. Yet Giant Eagle charged, and Marous paid, at least \$16.06 for the mask.

48. The extra \$1.04 equals 7% of the mask's advertised price.

49. Marous did not discover the extra \$1.04 charge until reviewing her receipt.<sup>16</sup>

50. The receipt identified the extra \$1.04 charge as sales tax.

51. Marous bought two protective face masks from Giant Eagle at a retail store located at 132 Ben Avon Heights Road, Pittsburgh, PA 15237 on July 27, 2020.

52. Giant Eagle advertised each mask Marous purchased as costing \$5.99, for a total of \$11.98.

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<sup>16</sup> Ex. 7.

53. Yet Giant Eagle charged, and Marous paid, at least \$12.81 for the masks.
54. The extra \$0.83 equals 7% of the masks' advertised price.
55. Marous did not discover the extra \$0.83 charge until reviewing her receipt.<sup>17</sup>
56. The receipt identified the extra \$0.83 charge as sales tax.
57. Giant Eagle operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.
58. Giant Eagle's POS systems regularly charge and collect sales tax on protective face masks sold at Giant Eagle's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.
59. By charging and collecting sales tax on protective face masks, Giant Eagle denied Marous and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.
60. Marous and the class suffered harm as a result of Giant Eagle's conduct.

**Jo-Ann Stores, LLC**

61. JOANN sells protective face masks.
62. Pollock bought a protective face mask from JOANN at a retail store located at 6945 US 322, Cranberry, PA 16319.
63. JOANN advertised the masks Pollock purchased as costing \$3.99.
64. Yet JOANN charged, and Pollock paid, more than \$3.99 for the masks.
65. The extra amount equals 6% of the masks' advertised price.
66. Pollock did not discover the extra charge until reviewing her receipt.<sup>18</sup>

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<sup>17</sup> Ex. 7.

<sup>18</sup> Ex. 8.

67. The receipt identified the extra charge as sales tax.

68. JOANN operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

69. JOANN's POS systems regularly charge and collect sales tax on protective face masks sold at JOANN's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

70. By charging and collecting sales tax on protective face masks, JOANN denied Pollock and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

71. Pollock and the class suffered harm as a result of JOANN's conduct.

**Ollie's Bargain Outlet Holdings, Inc.**

72. Ollie's sells protective face masks.

73. Duranko bought protective face masks from Ollie's at a retail store located at 4505 Century Dr., West Mifflin, PA 15122 on May 4, 2020.

74. Ollie's advertised the masks Duranko purchased as costing \$39.99.

75. Yet Ollie's charged, and Duranko paid, at least \$42.78 for the masks.

76. The extra \$2.79 equals 7% of the masks' advertised price.

77. Duranko did not discover the extra \$2.79 charge until reviewing her receipt.<sup>19</sup>

78. The receipt identified the extra \$2.79 charge as sales tax.

79. Ollie's operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

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<sup>19</sup> Ex. 9.

80. Ollie's' POS systems regularly charge and collect sales tax on protective face masks sold at Ollie's' brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

81. By charging and collecting sales tax on protective face masks, Ollie's denied Duranko and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

82. Duranko and the class suffered harm as a result of Ollie's' conduct.

### **The Home Depot, Inc.**

83. Home Depot sells protective face masks.

84. Marous bought two protective face masks from Home Depot at a retail store located at 112 Ben Avon Heights Road, Pittsburgh, PA 15237, on November 18, 2020.

85. Home Depot advertised the masks Marous purchased as costing \$14.97.

86. Yet Home Depot charged, and Marous paid, \$16.01 for the masks.

87. The extra \$1.04 equals 7% of the masks' advertised price.

88. Marous did not discover the extra \$1.04 charge until reviewing her receipt.<sup>20</sup>

89. The receipt identified the extra \$1.04 charge as sales tax.

90. Home Depot operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

91. Home Depot's POS systems regularly charge and collect sales tax on protective face masks sold at Home Depot's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

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<sup>20</sup> Ex. 10.

92. By charging and collecting sales tax on protective face masks, Home Depot denied Marous and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

93. Marous and the class suffered harm as a result of Home Depot's conduct.

### **Tuesday Morning Corporation**

94. Tuesday Morning sells protective face masks.

95. Marous bought protective face masks from Tuesday Morning at a retail store located at 12 Ohio River Boulevard, Leetsdale, PA 15056, on November 3, 2020.

96. Tuesday Morning advertised the masks Marous purchased as costing \$35.95.

97. Yet Tuesday Morning charged, and Marous paid, at least \$38.46 for the masks.

98. The extra \$2.51 equals 7% of the masks' advertised price.

99. Marous did not discover the extra \$2.51 charge until reviewing her receipt.<sup>21</sup>

100. The receipt identified the extra \$2.51 charge as sales tax.

101. Tuesday Morning operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

102. Tuesday Morning's POS systems regularly charge and collect sales tax on protective face masks sold at Tuesday Morning's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

103. By charging and collecting sales tax on protective face masks, Tuesday Morning denied Marous and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

104. Marous and the class suffered harm as a result of Tuesday Mornings' conduct.

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<sup>21</sup> Ex. 11.

**Ulta Beauty, Inc.**

105. Ulta Beauty sells protective face masks.
106. Bailey bought two protective face masks from Ulta Beauty at a retail store located at 20111 Route 19, Suite 110, Cranberry Township, PA 16066, on October 17, 2020.
107. Ulta Beauty advertised the masks Bailey purchased as costing \$2.50 each, or a total of \$5.00.
108. Yet Ulta Beauty charged, and Bailey paid, \$5.30 for the masks.
109. The extra \$0.30 equals 6% of the masks' advertised price.
110. Bailey did not discover the extra \$0.30 charge until reviewing her receipt.<sup>22</sup>
111. The receipt identified the extra \$0.30 charge as sales tax.
112. Ulta Beauty operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.
113. Ulta Beauty's POS systems regularly charge and collect sales tax on protective face masks sold at Ulta Beauty's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.
114. By charging and collecting sales tax on protective face masks, Ulta Beauty denied Bailey and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.
115. Bailey and the class suffered harm as a result of Ulta Beauty's conduct.

**Walmart Inc.**

116. Walmart sells protective face masks.

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<sup>22</sup> Ex. 12.

117. McLean bought protective face masks from Walmart at a retail store located at 250 Summit Park Dr., Pittsburgh, PA 15275 on September 11, 2020 and on September 28, 2020.

118. Walmart advertised the mask that McLean purchased on September 11, 2020 as costing \$5.97.

119. Yet Walmart charged, and McLean paid, at least \$6.38 for the mask that McLean purchased on September 11, 2020.

120. The extra \$0.41 equals 7% of the advertised price for the mask that McLean purchased on September 11, 2020.

121. McLean did not discover the extra \$0.41 she paid on September 11, 2020 until reviewing her receipt.<sup>23</sup>

122. The September 11, 2020 receipt identified the extra \$0.41 charge as sales tax for the mask that McLean purchased.

123. Walmart advertised a 5-pack of masks that McLean purchased on September 28, 2020 as costing \$9.97.

124. Yet Walmart charged, and McLean paid, at least \$10.66 for the 5-pack she purchased on September 28, 2020.

125. The extra \$0.69 equals 7% of the advertised price for the 5-pack McLean purchased on September 28, 2020.

126. McLean did not discover the extra \$0.69 she paid on September 28, 2020 until reviewing her receipt.

127. The receipt indicated the extra \$0.69 charge as sales tax for the 5-pack McLean purchased on September 28, 2020.

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<sup>23</sup> Ex. 13.



128. Walmart operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

129. Walmart's POS systems regularly charge and collect sales tax on protective face masks sold at Walmart's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

130. By charging and collecting sales tax on protective face masks, Walmart denied McLean and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

131. McLean and the class suffered harm as a result of Walmart's conduct.

### **CLASS ACTION ALLEGATIONS**

132. Plaintiffs bring this action individually and on behalf of all others similarly situated under Rules 1702, 1708, and 1709 of the Pennsylvania Rules of Civil Procedure.

133. Plaintiffs seek to certify the following Classes:

(a) The Big Lots Class: "All persons who purchased a protective face mask or face covering from Big Lots at a retail store in Pennsylvania, or from Big Lots over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020."

(b) The Dollar General Class: "All persons who purchased a protective face mask or face covering from Dollar General at a retail store in Pennsylvania, or from Dollar General over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020."

(c) The Giant Eagle Class: "All persons who purchased a protective face mask or face covering from Giant Eagle at a retail store in Pennsylvania, or from Giant Eagle over the

internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(d) The JOANN Class: “All persons who purchased a protective face mask or face covering from JOANN at a retail store in Pennsylvania, or from JOANN over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(e) The Ollie’s Class: “All persons who purchased a protective face mask or face covering from Ollie’s at a retail store in Pennsylvania, or from Ollie’s over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(f) The Home Depot Class: “All persons who purchased a protective face mask or face covering from Home Depot at a retail store in Pennsylvania, or from Home Depot over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(g) The Tuesday Morning Class: “All persons who purchased a protective face mask or face covering from Tuesday Morning at a retail store in Pennsylvania, or from Tuesday Morning over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(h) The Ulta Beauty Class: “All persons who purchased a protective face mask or face covering from Ulta Beauty at a retail store in Pennsylvania, or from Ulta Beauty over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(i) The Walmart Class: “All persons who purchased a protective face mask or face covering from Walmart at a retail store in Pennsylvania, or from Walmart over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.

134. Plaintiffs reserve the right to expand, narrow, or otherwise modify the Classes as the litigation continues and discovery proceeds.

135. Pa. R. Civ. P. 1702(1), 1708(a)(2): Each Class is so numerous that joinder of its Class Members is impracticable. The United States Census Bureau estimates there are 12,801,989 individuals residing in Pennsylvania as of July 1, 2019.<sup>24</sup> All of these individuals have been ordered to wear protective face masks or face coverings to prevent the spread of COVID-19 since at least April 15, 2020.<sup>25</sup> Given Pennsylvania’s population, orders requiring Pennsylvania residents to wear protective face masks in public, and the size of Defendants’ businesses, each of which operates brick-and-mortar retail locations in Pennsylvania and online stores that sell protective face masks or face coverings into Pennsylvania, there likely are hundreds or thousands of Members of each Class. Since each of the claims of the Class Members is substantially identical, and the Class Members request substantially similar relief, centralizing the Class Members’ claims in a single proceeding likely is the most manageable litigation method available.

136. Pa. R. Civ. P. 1702(2), 1708(a)(1): Plaintiffs and each Member of each Classes they seek to represent share numerous common questions of law and fact that will drive the resolution of the litigation and predominate over any individual issues. For example, there is a single common

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<sup>24</sup> U.S. Census Bureau, *QuickFacts Pennsylvania*, available at <https://www.census.gov/quickfacts/PA> (last accessed Sept. 30, 2020).

<sup>25</sup> Ex. 14, p. 5 (April 15, 2020 order requiring face masks for consumers); Ex. 15, Section 2 (July 1, 2020 order requiring universal face coverings).

answer to the question of whether Defendants violated the UTPCPL by charging Class Members 7% or more than the advertised price for protective face masks. The answer to this question is the same for Plaintiffs and each Member of each Class, and Plaintiffs and each Member of each Class require the same proof to answer this question. This question, and other common questions of law and fact, predominate over any individual issues.

137. Pa. R. Civ. P. 1702(3): Plaintiffs' claims are typical of the claims of each Member of each Class because the claims are based on the same legal theories and arise from the same conduct.

138. Pa. R. Civ. P. 1702(4), 1709: Plaintiffs are adequate representatives of each Member of each Class they seek to represent because the interests of Plaintiffs and each Member of each Class align. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of each Member of each Class they seek to represent and they have no interest antagonistic to any Member of any Class. Plaintiffs retained counsel who are competent and experienced in the prosecution of class action litigation generally and UTPCPL litigation specifically. Plaintiffs have or can acquire adequate financial resources to assure that the interests of each Member of each Class will not be harmed.

139. Pa. R. Civ. P. 1708(a)(3), (6), (7): Given the complexity and nature of the issues presented and the relief requested, the expense and time necessary to obtain such relief, and the anticipated recovery and relief that Plaintiffs and each Member of each Class may obtain, the class action mechanism is by far the preferred and most efficient litigation mechanism to adjudicate the claims of Plaintiffs and each Member of each Class. Additionally, requiring Plaintiffs and each Member of each Class to file individual actions would impose a crushing burden on the court

system. Class treatment presents far fewer management difficulties and provides benefits of a single adjudication and economies of scale.

140. Pa. R. Civ. P. 1708(a)(4): Based on the knowledge of Plaintiffs and undersigned counsel, there are no similar cases currently pending against Defendants.

141. Pa. R. Civ. P. 1708(a)(5): This forum is appropriate for this litigation, as each Defendant regularly conducts business in this County and all or part of the claims arose in this County.

**COUNT 1—Big Lots Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

142. Wojton brings this claim individually and on behalf of the Big Lots Class.

143. Wojton and Big Lots are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Big Lots' conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

144. Big Lots' conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Big Lots represented that goods have characteristics they do not have; ii) Big Lots advertised goods with intent not sell them as advertised; and iii) Big Lots engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

145. Big Lots' use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

146. Wojton and the Big Lots Class Members lost money or property as result of Big Lots' violations and therefore are entitled to one hundred dollars (\$100) per violation under 73

P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 2—Dollar General Corporation**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

147. Evans brings this claim individually and on behalf of the Dollar General Class.

148. Evans and Dollar General are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Dollar General’s conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

149. Dollar General’s conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Dollar General represented that goods have characteristics they do not have; ii) Dollar General advertised goods with intent not sell them as advertised; and iii) Dollar General engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

150. Dollar General’s use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

151. Evans and the Dollar General’s Class Members lost money or property as result of Dollar General’s violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 3—Giant Eagle, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

152. Marous brings this claim individually and on behalf of the Giant Eagle Class.

153. Marous and Giant Eagle are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Giant Eagle's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

154. Giant Eagle's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Giant Eagle represented that goods have characteristics they do not have; ii) Giant Eagle advertised goods with intent not sell them as advertised; and iii) Giant Eagle engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

155. Giant Eagle's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

156. Marous and the Giant Eagle Class Members lost money or property as result of Giant Eagle's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 4—Jo-Ann Stores, LLC**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

157. Pollock brings this claim individually and on behalf of the JOANN Class.

158. Pollock and JOANN are persons, the protective face masks are goods purchased for personal, family, and/or household use, and JOANN's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

159. JOANN's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) JOANN represented that goods have characteristics they do not have; ii) JOANN advertised goods with intent not sell them

as advertised; and iii) JOANN engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

160. JOANN's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

161. Pollock and the JOANN Class Members lost money or property as result of JOANN's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 5—Ollie's Bargain Outlet Holdings, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

162. Duranko brings this claim individually and on behalf of the Ollie's Class.

163. Duranko and Ollie's are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Ollie's' conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

164. Ollie's' conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Ollie's represented that goods have characteristics they do not have; ii) Ollie's advertised goods with intent not sell them as advertised; and iii) Ollie's engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

165. Ollie's' use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

166. Duranko and the Ollie's Class Members lost money or property as result of Ollie's' violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-



9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 6—The Home Depot, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

167. Marous brings this claim individually and on behalf of the Home Depot Class.

168. Marous and Home Depot are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Home Depot's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

169. Home Depot's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Home Depot represented that goods have characteristics they do not have; ii) Home Depot advertised goods with intent not sell them as advertised; and iii) Home Depot engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

170. Home Depot's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

171. Marous and the Home Depot Class Members lost money or property as result of Home Depot's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 7—Tuesday Morning Corporation**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

172. Marous brings this claim individually and on behalf of the Tuesday Morning Class.

173. Marous and Tuesday Morning are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Tuesday Morning's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

174. Tuesday Morning's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Tuesday Morning represented that goods have characteristics they do not have; ii) Tuesday Morning advertised goods with intent not sell them as advertised; and iii) Tuesday Morning engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

175. Tuesday Morning's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

176. Marous and the Tuesday Morning Class Members lost money or property as result of Tuesday Morning's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 8—Ulta Beauty, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, *et seq.***

177. Bailey brings this claim individually and on behalf of the Ulta Beauty Class.

178. Bailey and Ulta Beauty are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Ulta Beauty's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

179. Ulta Beauty's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Ulta Beauty

represented that goods have characteristics they do not have; ii) Ulta Beauty advertised goods with intent not sell them as advertised; and iii) Ulta Beauty engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

180. Ulta Beauty's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

181. Bailey and the Ulta Beauty Class Members lost money or property as result of Ulta Beauty's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT 9—Walmart Inc.**

**Violation of the Unfair Trade Practices and Consumer Protection Law**

**73 Pa. Stat. § 201-1, et seq.**

182. McLean brings this claim individually and on behalf of the Walmart Class.

183. McLean and Walmart are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Walmart's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

184. Walmart's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Walmart represented that goods have characteristics they do not have; ii) Walmart advertised goods with intent not sell them as advertised; and iii) Walmart engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

185. Walmart's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

186. McLean and the Walmart Class Members lost money or property as result of Walmart's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**JURY TRIAL DEMANDED**

Plaintiffs request a jury trial on all claims so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

- a. An order certifying each proposed Class, appointing Plaintiffs as representative of each proposed Class they seek to represent, and appointing undersigned counsel as counsel for each proposed Class;
- b. An order awarding one hundred dollars (\$100.00) per violation of the UTPCPL, and not a refund of the overcharges that Defendants misrepresented as sales tax;
- c. An order awarding attorneys' fees and costs; and
- d. An order awarding all other relief that is just, equitable and appropriate.

Respectfully Submitted,

Dated: November 23, 2020

*/s/ Kevin W. Tucker*

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Retailers Sued in Pennsylvania for Charging Allegedly Unlawful Sales Tax on Masks Amid COVID-19 Pandemic](#)

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