

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

LEONARD PERRY, on behalf of himself)	
and all others similarly situated,)	
)	
Plaintiff,)	Cause No.
)	
vs.)	Division:
)	
SCHNUCK MARKETS, INC.)	JURY TRIAL DEMANDED
Serve: Registered Agent)	
Mary H. Moorkamp)	
11420 Lackland Rd.)	
St. Louis, MO 63146)	
)	
Defendant.)	

CLASS ACTION PETITION FOR DAMAGES

COME NOW Plaintiff Leonard Perry, on behalf of himself and all others similarly situated in the State of Missouri, through his attorneys, and brings this action against Defendant Schnuck Markets, Inc. (“Schnucks”); and, upon information and belief, except as to the allegations that pertain to himself, which are based upon personal knowledge, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action on his own behalf and as a representative of a class of persons consisting of all Missouri citizens who purchased Schnucks Products for personal, family, or household purposes.

2. Defendant markets, distributes, and sells a variety of personal, family, or household products, including the alcohol products identified in Exhibit A attached to this Petition. Exhibit A. (hereinafter the “Schnucks Products” or the “Products”).¹

¹ Plaintiff reserves the right to amend this Petition to include any additional items sold by Schnucks that are within the scope of this Petition.

3. Plaintiff alleges that Schnucks violated Missouri law by making false and misleading price comparisons in connection with the advertisement and sale of the Products.

4. The false and misleading price comparisons appear in a variety of places, including on signs posted in Schnucks' markets and stores, on in-store shelf signs located below the Products, in print advertisements, in mailing circulars, on Schnucks' website, www.schnucksdelivers.com, and on Schnucks' receipts. Through these mediums, Schnucks represents that consumers can buy the Schnucks Products on "sale" and at a substantial discount from its "Regular" or "Original" prices. In reality, the purported "sales" and discounts are illusory, fictitious and in violation of Missouri law because Schnucks has not sold substantial quantities of the Products at the higher "Regular" and "Original" prices in the recent past, nor has it offered to sell the Products at those prices for a reasonable and substantial period of time preceding the advertised "sale." As a result, Plaintiff and the Class have not received the "savings" and benefit of the bargain that Schnucks promises them because the Products that they purchased from Schnucks do not have the higher value and worth that Schnuck's represents they have through its false and misleading "Regular" and "Original" price comparisons. Moreover, but-for Schnucks deception, Plaintiff and the Class could have shopped around for a better price in the marketplace, and purchased the Products for a lower price elsewhere.

5. Missouri law explicitly forbids the false and misleading price comparisons that Schnucks engages in. It prohibits a seller, such as Schnucks, from advertising former price comparisons unless the comparative price is actual, bona fide and not illusory or fictitious, and is:

- A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of business, and on a regular basis during a

reasonably substantial period of time in the immediate, recent period preceding the advertisement; or

- A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement.

15 Mo. Code of State Regulations 60-7.060(2).

6. These laws exist because legislatures know that consumers rely on higher comparison prices (such as "Regular" and "Original" prices) to convey information about a product's market value, and that false price comparisons are an effective way to sell products that consumers would not otherwise buy, or to sell more products than consumers would normally purchase, absent the false price comparison. Indeed, academic research shows that a reasonable consumer would likely infer that a "regular" or "original" price is a comparison to a price at which the item previously and regularly sold at that retailer. Compeau, Larry, Joan Lindsey-Mullikin, Dhruv Grewal and Ross Petty, (2004) "Consumers' Interpretations of the Semantic Phrases Found in Reference Price Advertisements," *Journal of Consumer Affairs*, 38 (Summer), 178-187.

7. Numerous studies also show that consumers are much more likely to purchase an item if they are told that it is being offered at a price less than the price at which the seller or its competitors have recently sold the product. In other words, consumers are more likely to purchase an item if they are told that an item normally sells at a higher price (and is therefore worth more) than what they are currently being asked to pay for it. *See, e.g.*, Dhruv Grewal & Larry D. Compeau, Comparative Price Advertising: Informative or Deceptive?, 11 *J. of Pub. Pol'y & Mktg.* 52, 55 (Spring 1992) ("[b]y creating an impression of savings, the presence of a higher reference

price enhances significant impact on consumer purchasing decisions.”); Dr. Jerry B. Gotlieb & Dr. Cyndy Thomas Fitzgerald, *An Investigation Into the Effects of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App’d Bus. Res. 1 (1990) (concluding that “consumers are likely to be misled into a willingness to pay a higher price for a product simply because the product has a higher reference price.”) [consumers’] perceived value and willingness to buy [a] product.”); *see also* Compeau & Grewal, in *Comparative Price Advertising: Believe It Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002) (noting that “decades of research support the conclusion that advertised reference prices do indeed enhance consumers’ perceptions of the value of the deal,” and concluding that “[c]onsumers are influenced by comparison prices even when the stated reference prices are implausibly high.”); Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price Search: Deception and Competition*, 64 J. of Bus. Research 67 (January 2011) (concluding that “[r]eference price ads strongly influence consumer perceptions of value”); Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225 (2003) (concluding that “research has shown that retailer-supplied reference prices clearly enhance buyers’ perceptions of value” and “have a significant impact on consumer purchasing decisions.”); Dr. Jerry B. Gotlieb & Dr. Cyndy Thomas Fitzgerald, *An Investigation Into the Effects of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App’d Bus. Res. 1 (1990) (concluding that “consumers are likely to be misled into a willingness to pay a higher price for a product simply because the product has a higher reference price.”).

8. Retailers, including Defendant, understand that consumers are susceptible to a good bargain, and therefore, Defendant has a substantial financial interest in making the consumer believe they are receiving a good bargain, even if they are not. A product’s “Regular” or “Original”

price matters to consumers because it serves as a baseline upon which consumers perceive a product's value.

9. Consumers thrive on finding the best deal. Retailers, including Defendant, are keen to this fact and try to lure consumers to purchase their goods with advertised sales that promise huge savings off the regular price. Such "savings" also prevent consumers from shopping around and potentially obtaining a better price for the goods in the marketplace. But the promised savings are false if a retailer simply recasts its regular price as a discount from some higher, fictitious "Regular," "Original," and/or "Item" price that no one ever pays.

10. Retailers, including Schnucks, substantially benefit from employing false and misleading price comparisons and experience increased sales because consumers use advertised reference prices to make purchase decisions.

11. As alleged herein, Schnucks has routinely and systematically violated Missouri's prohibition against false price comparisons, and Plaintiff and members of the proposed Class (as defined below) were exposed to and victims of Defendant's false price comparisons when they purchased the Schnucks Products. Plaintiff and the Class did not receive Products worth the amounts reflected by Schnuck's "Regular," "Original," and/or "Item" prices, and therefore did not receive the benefit of the bargain that Schnuck's advertised they would receive through its use of fictitious "Regular," "Original," and/or "Item" prices. Instead, Plaintiff and members of the Class received items of lesser value than what Schnucks promised them, while Schnucks was unjustly enriched by selling more products, and at higher prices, than it otherwise would be able to sell absent the false price-comparison advertising scheme.

12. Plaintiff and the Class also paid more for the Products because, but-for Schnucks deceptive false and misleading price comparisons, Plaintiff and the Class could have shopped

around and obtained a better price for the Products in the marketplace. Plaintiff and the Class paid more for the Products because Plaintiff and the Class could have purchased the Products for a lower price elsewhere.

PARTIES

13. At all relevant times, Plaintiff Leonard Perry was and is a citizen of the State of Missouri. During the Class Period, Plaintiff Perry has purchased Schnucks Products for personal, family, or household use. Plaintiff Perry's purchases from Defendant include, without limitation, Meiomi Rose Wine and La Crema Rose Wine at an advertised discount of 20% or more from an advertised "Regular," "Original" and/or "Item" price. Accordingly, Plaintiff Perry has been injured as a result of Defendant's unlawful conduct alleged herein.

14. Defendant Schnucks distributes, markets, and sells the Products. Schnucks is a supermarket chain that was founded in 1939 and currently operates 112 stores in five states throughout the Midwest. It is a Missouri corporation in good standing with the State of Missouri, with its principal place of business and headquarters located at 11420 Lackland Road, St. Louis, Missouri 63146. Defendant conducts business, including selling the Products, throughout Missouri, including in the City of St. Louis, Missouri.

JURISDICTION AND VENUE

15. This Court has personal jurisdiction over this matter pursuant to Mo. Rev. Stat. §§ 478.070 and 506.500 because Defendant is registered to conduct business in Missouri, has its principal place of business and headquarters in Missouri at 11420 Lackland Road, St. Louis, Missouri, is present, has transacted and conducted, and continue to transact and conduct substantial business in Missouri, has a registered agent in Missouri, consistently and purposefully avails itself of the privileges of conducting business in Missouri and in this judicial district, and can fairly be

regarded as at home in Missouri. Furthermore, Defendant committed tortious acts within this state by marketing, distributing, promoting, and selling the Products in Missouri in a manner which violates Missouri law, as detailed further herein.

16. This Court has personal jurisdiction over Defendant because the acts and/or omissions which are the subject of this litigation occurred in the City of St. Louis, Missouri, and Defendant regularly conducts business in the City of St. Louis, Missouri.

17. As a result of the marketing, distribution, sale, and delivery of the Products, which would be sold to Plaintiff in the State of Missouri, Defendant, directly and through its subsidiaries, affiliates, or agents, obtained the benefits of the laws of the State of Missouri.

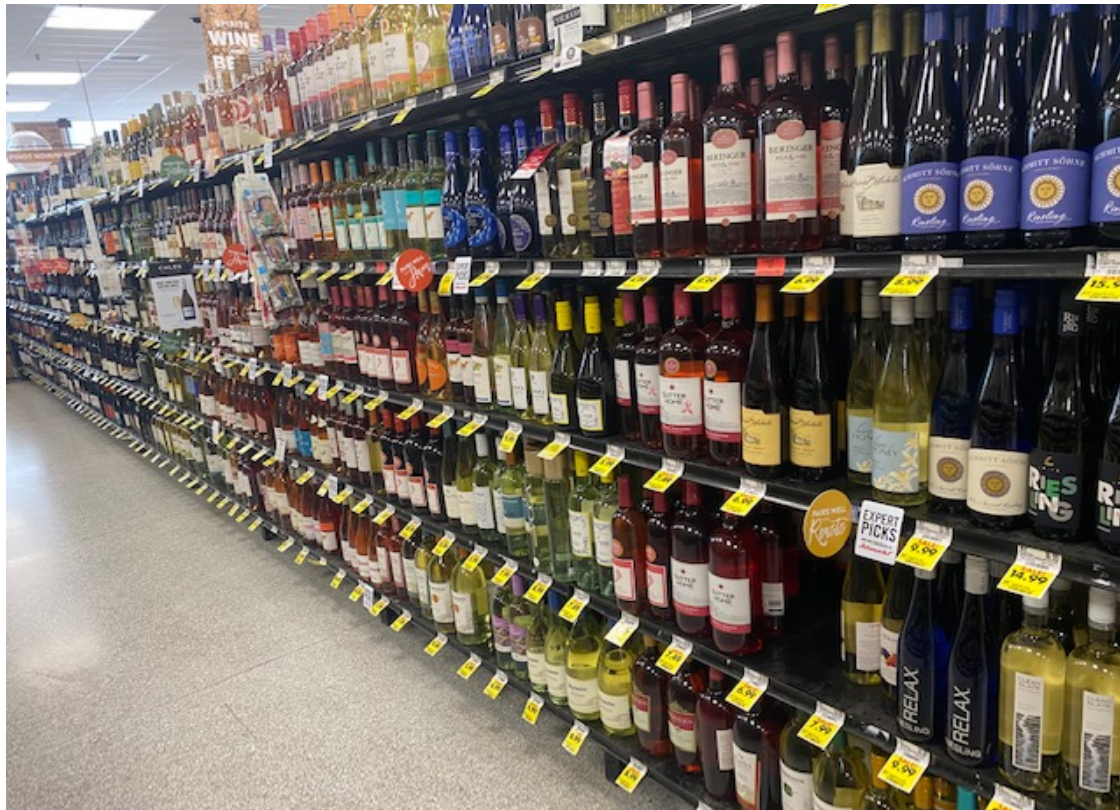
18. Neither Plaintiff nor any member of the proposed Class assert any federal question. Plaintiff asserts only violations of Missouri state law. Plaintiff specifically denies any intent to state a cause of action arising under the laws of the United States of America, including any claim for injunctive relief available under federal law.

19. Venue is proper in this Court pursuant to Mo. Rev. Stat. §§ 508.010.4 and 407.025.

FACTUAL ALLEGATIONS

20. The false and misleading price comparisons for the Products appear in a variety of places, including signs posted in Schnucks' markets and stores, on in-store shelf signs located below the Products, in print advertisements, in mailing circulars, on Schnucks' website, www.schnucksdelivers.com, and on Schnucks' receipts.

21. Schnucks places in-store price comparison signs on the shelf below all of the Products in its markets and stores.



22. Similarly, Schnucks lists price comparisons for all of the Products on its website, www.schnucksdelivers.com. For example:



Domaine Drouhin Pinot Noir, Willamette Valley, 2006
750 ml

Current price: \$47.49

\$19.50 off

Reg: Original Price: ~~\$66.99~~

23. While Schnucks refers to the prices on its in-store price signs and its website as the “Regular,” “Original” and/or “Item” prices, those prices are not actual, bona fide prices at which Schnucks has recently and in good faith sold such items in substantial quantities, nor are they prices at which Schnucks has recently and in good faith offered to sell such items for a substantial period of time. In short, Schnucks does not have any good faith or bona fide intention of offering or selling any meaningful quantity the Products at the advertised “Regular,” “Original,” and/or “Item” prices.

24. Instead, throughout the Class Period, Schnucks has routinely advertised (through its in-store price signs and advertisements, on-line, emails and print advertisements) that the Products are available for purchase at significantly marked-down “sale” prices as compared to Schnucks’ higher “Regular,” “Original,” and/or “Item” prices. Exhibit A. At checkout, Schnucks perpetuates the deception by providing customers with receipts that show the lower sale price and total amount that the customer purportedly “saved” in the transaction. Through these practices, Schnucks represents that the Products have a much higher market value and worth than the discounted “sale” prices that Plaintiff and the members of the Class paid to purchase them.

25. The Schnucks Products, along with their “Regular,” “Original,” and/or “Item” prices, “Sale Price,” and “Savings” identified in Exhibit A were all sold during the Class Period. Schnucks’ false and misleading price comparison scheme involved all of these Products during the Class Period. Exhibit A. The “Sale Price” of the Products changes every two (2) to four (4) weeks and only goes up or down by a few dollars. The advertised “Regular,” “Original,” and/or “Item” prices remained virtually the same during the Class Period. Exhibit A. There is some variation as to the advertised “Sale Price” and the “Savings” at different Schnucks markets and stores throughout the State of Missouri. There is also some variation between the advertised “Sale Price”

and the “Savings” at Schnucks markets and stores throughout the State of Missouri and the advertised “Sale Price” and the “Savings” on Schnucks’ website, www.schnucksdelivers.com. Thus, the amount of “Savings” on the Products fluctuated by a few dollars depending on when and where the Products were purchased, but was always purported to be at an advertised discount of 20% or more from the advertised “Regular,” “Original” and/or “Item” price.

26. In reality, the purported “savings” and discounts are false, misleading, and in violation of Missouri law because Schnucks has not recently and in good faith sold the Products in substantial quantities at the advertised “Regular,” “Original” and/or “Item” prices; nor has it recently and in good faith offered to sell them for a substantial period of time at those prices. In fact, Schnucks sells, at most, only a tiny fraction (significantly less than 5%) of the Products at their purported “Regular,” “Original,” and/or “Items” prices and, in many instances, it does not sell any of the Products at the advertised former prices. This is because, in violation of Missouri law, Schnucks does not offer to sell the products at the “Regular,” “Original,” and/or “Item” price for a substantial period of time preceding the advertised “sale” and, in many instances, it does not offer to sell them at the higher advertised prices at all.

27. Since the higher advertised “Regular,” “Original,” and/or “Item” prices materially overstate the actual market value and worth of the Schnucks Products, consumers like Plaintiff and the Class who buy these products do not receive the benefit of the bargain Schnucks promises them, and they suffer damages because they do not receive items that have the value or worth that Schnucks represents they have. Instead, Plaintiff and the members of the Class received products that, based on actual, historical selling prices, have a market value that was, at the time of purchase, significantly below the advertised former comparison price.

28. Through its use of fictitious and unsubstantiated “Regular,” “Original,” and/or “Item” former prices, Schnucks intentionally and/or negligently misrepresented and/or failed to disclose material information concerning the actual value or worth of the Products it sold to Plaintiff and the Class. In publishing, displaying, and otherwise communicating and disseminating the higher “Regular,” “Original,” and/or “Item” former prices, and the advertised discounted “sale” prices, and in concealing the true information, Schnucks intended to induce Plaintiff and members of the Class to purchase the Products in quantities and/or at prices at which they would not otherwise have agreed.

29. Schnucks knew or should have known that its price-comparison advertisements, in-store shelf signs, website statements, and receipts conveyed false information to consumers, including Plaintiff and members of the Class, about the value and worth of the Schnucks Products. Missouri law defines a “regular” price as a seller’s “usual and customary price,” 15 CSR 60-7.010(L), and it defines a “sale” as “a reduction from the seller’s former or future price of the product offered for a *limited* period of time, except for clearance or closeout situations in which the seller permanently reduces its price in order to remove the product from its inventory.” 15 CSR 60-7.010(M) (emphasis added). And, it requires that a seller disclose the basis of a comparative price unless the price comparison is to the seller’s own former price in compliance with 15 CSR 60-7.060(2). 15 CSR 60-7.060(8). In other words, Missouri law demands that an advertised “Regular,” “Original,” and/or “Item” price reflect *that seller’s* actual or expected market value of an item based on a substantial quantity of actual sales of the same item *at that retailer*, or based on a substantial period of time at which the same item is actually offered at the higher referenced price *by that retailer*. As demonstrated herein, Schnucks systematically violates these provisions of Missouri law with respect to all the Products.

30. Academic literature and consumer studies also show that false price comparisons influence consumer behavior; that reasonable consumers are likely to infer that an advertised “Regular,” “Original,” and/or “Item” price is a comparison to a price of the same item recently sold at the same retailer; that higher former prices influence consumer perception of value and purchasing decisions; and that if a former comparison price is fictitious or inflated, it is likely to deceive consumers by creating illusions of savings that the consumer thinks they need to take advantage of by purchasing the product now rather than risk losing the purported savings or continuing to look for a better deal elsewhere.

31. Schnucks further knew or should have known that, as discount sizes increase, consumers’ perceptions of value and their willingness to buy the product increases, while their intention to search for a lower price decreases. Accordingly, information concerning a product’s “Regular,” “Original,” and/or “Item” price is a material term that influences consumer behavior.

32. Through its use of fictitious and unsubstantiated “sale” prices, Schnucks also intentionally and/or negligently misrepresented and/or failed to disclose material information concerning the actual value or worth of the Products in the marketplace that it sold to Plaintiff and the Class. In publishing, displaying, and otherwise communicating and disseminating the higher advertised “sale” prices, and in concealing the true information, Schnucks intended to induce Plaintiff and members of the Class to purchase the Products before they had the opportunity to shop around for a better price and purchase the Products for a lower price elsewhere.

33. Schnucks knew or should have known that its price-comparison advertisements, in-store shelf signs, website statements, and receipts conveyed false information to consumers, including Plaintiff, about the value and worth of the Schnucks Products in the marketplace.

34. At their time of purchase, Plaintiff and members of the Class saw and/or were informed of Schnucks advertised “Regular,” “Original,” “Item” and/or “sale” prices of the Products under the price-comparison advertising scheme.

PLAINTIFF WAS A VICTIM OF SCHNUCKS’ PRACTICES

35. After being exposed to and influenced by Defendant’s price-comparison advertising scheme, Plaintiff purchased certain of the Schnucks Products for personal, family, or household purposes during the Class Period.

36. In making said purchases, Plaintiff was influenced by the higher advertised value of the Products that he purchased, and he bought items he would not otherwise have purchased absent Defendant’s price-comparison advertising scheme. Alternatively, if Defendant had offered a truthful discount from each item’s fair market value, Plaintiff would have paid less than he did to purchase those items. In any event, Plaintiff did not receive the actual value that Defendant represented he would receive through its false and misleading price-comparison advertising scheme.

37. On November 7, 2020, Plaintiff, relying upon Defendant’s misrepresentations and false and deceptive advertising, purchased Meiomi Rose Wine at a Schnucks store located in the City of St. Louis that was advertised on an in-store shelf sign located below the item as being on “Sale!” at a price of \$15.99 from its purported “Regular,” “Original,” and/or “Item Price” of \$28.99, which Schnucks claimed would “Save” Plaintiff \$13.00. The in-store shelf sign indicated that the “Sale!” would not last because it “ENDS 12/01/20.”² Plaintiff believed that he was

² Schnucks’ statement that the “Sale” would end on 12/01/20 was also a misrepresentation and false and misleading advertising because, as of the date this Petition was filed, the Meiomi Rose at the same Schnucks store was still advertised on an in-store shelf sign as being on “Sale!” at a price of \$15.99 from its purported “Regular,” “Original,” and/or “Item Price” of \$28.99, which Schnucks claimed would “Save” consumers \$13.00. And the in-store shelf sign indicated that the “Sale!” now “Ends 01/05/21.”

receiving a significant value by purchasing the Meiomi Rose Wine for \$15.99 that was originally priced at \$28.99.³ Schnucks provided Plaintiff with a receipt that showed the lower “sale” price of \$15.99 and stated “You Saved \$13.00.” (a true and accurate copy of the receipt that Plaintiff received from Schnucks in this transaction is attached as Exhibit B).



³ Schnucks’ false price comparisons on its website are similar to these in-store signs below the Products. Schnucks strikes through the “Regular” and “Original” prices listed on its website, lists the “sale” price in red, and identifies the dollar amount that is “off” to further advertise that the Product is on sale. www.schnucksdelivers.com



38. Also, on November 7, 2020, Plaintiff, relying upon Defendant’s misrepresentations and false and deceptive advertising, purchased La Crema Rose Wine at the same Schnucks store located in the City of St. Louis that was advertised on an in-store shelf sign as being on “Sale!” at a price of \$13.99 from its purported “Regular,” “Original,” and/or “Item Price” of \$30.99, which

Schnucks claimed would “Save” Plaintiff \$17.00. The in-store shelf sign indicated that the “Sale!” would not last because it “ENDS 11/10/20.”⁴ Plaintiff believed that he was receiving a significant value by purchasing the La Crema Rose Wine for \$13.99 that was originally priced at \$30.99. Schnucks provided Plaintiff with a receipt that showed the lower “sale” price of \$13.99 and stated “You Saved \$17.00.” Exhibit B.



⁴ Schnucks’ statement that the “Sale” would end on 11/10/20 was also a misrepresentation and false and misleading advertising because, as of the date this Petition was filed, the La Crema Rose at the same Schnucks store was still advertised on an in-store shelf sign as being on “Sale!” at a price of \$13.99 from its purported “Regular,” “Original,” and/or “Item Price” of \$30.99, which Schnucks claimed would “Save” consumers \$17.00. And the in-store shelf sign indicated that the “Sale!” now “Ends 01/05/21.”

39. The discounts were a material representation to Plaintiff and he relied upon them in making his purchasing decision.

40. Plaintiff would not have purchased the Products without the misrepresentations made by Defendant. As a result, Plaintiff has been personally victimized and suffered economic injury as a direct result of Defendant's unlawful and unfair conduct.

41. In making said purchases, Plaintiff was misled as to the higher value of the products that Schnucks advertised, and he did not receive products worth the amount that Schnucks represented he would receive through its false and misleading price-comparison advertising scheme.

42. Moreover, in making said purchases, Plaintiff paid more for the Products because, but-for Schnucks deceptive "sale" prices, Plaintiff could have shopped around for a better price in the marketplace, and purchased the Products for a lower price elsewhere. By misleading Plaintiff that he was purchasing products that were on "sale," Plaintiff paid more for the them because he could have purchased them for a lower price elsewhere.

43. Notably, by advertising on an in-store shelf sign and on its website that the products are on "Sale!" from their purported "Regular," "Original," and/or "Item" prices, and by failing to disclose that such prices were based on anything else, Schnucks indicated that its higher comparative prices were reflective of each product's market value based on its *own* actual, recent, usual and customary prices in compliance with 15 CSR 60-7.060(2). 15 CSR 60-7.010(L); 15 CSR 60-7.010(M); and 15 CSR 60-7.60(8).

44. In reality, the regular advertised "Regular," "Original," or "Item" price of each of these items was false, misleading, and in violation of 15 CSR 60-7060(2) because it did not represent the actual, bona fide price at which Schnucks had sold ten percent (10%) or more of the

total unit sales of the products during a period of time, not less than thirty (30) days nor more than twelve (12) months preceding the time of the advertisement; and because it did not represent a price at which Schnucks had offered the product for sale at the comparative price forty percent (40%) or more of the time during a time period, not less than thirty (30) days nor more than twelve (12) months preceding the advertisement.

45. In fact, Schnucks hardly, *if ever*, offered or sold these Products at their advertised “Regular,” “Original,” or “Item” price, and it certainly did not do so in compliance with Missouri law. As detailed above, the “Sale Price” of the Products changes every two (2) to four (4) weeks and only goes up or down by a few dollars. The advertised “Regular,” “Original,” and/or “Item” prices remained virtually the same during the Class Period. For example, the Meiomi Rose Wine that Plaintiff purchased has been on “sale” for at least the past six (6) months. The Meiomi Rose Wine had a purported “Regular,” “Original,” or “Item” price of \$28.99 since at least May, 2020, and Schnucks claimed that it was on “Sale!” at prices ranging from \$15.99 to \$18.99 during that time.

46. Likewise, similar representations were made regarding the Meiomi Rose Wine on Schnucks website throughout the Class Period. For example, for at least the past six (6) months, the Meiomi Rose Wine that Plaintiff purchased was advertised on Schnucks website, www.schnucksdelivers.com, as being on “Sale” at a price of \$20.99 from its purported “Regular,” “Original,” and/or “Item Price” of \$28.99, which Schnucks claimed would be “savings” of “\$8.00 off.”

47. The same is true for the La Crema Rose Wine that Plaintiff purchased.

48. The prevailing market price, and therefore actual value of each item was materially lower than the value Schnucks represented it to be through its false and misleading “Regular,” “Original,” or “Item” prices.

49. Plaintiff suffered monetary damages because he did not receive products worth the higher values Schnucks represented he would receive, and he therefore did not receive the full discount or benefit of the bargain that Schnucks represented and promised.

50. The receipt that Plaintiff received from Schnucks in connection with this transaction states that Plaintiff ‘s “Reduced Price Savings” were \$30.00 and reiterates that Plaintiff “SAVED” \$30.00 on his purchase of these products. Exhibit B. The purported “savings” are calculated as the difference between the higher “Regular,” “Original,” or “Item” price and the actual price paid, thus confirming that Schnucks intends for the “Regular,” “Original,” or “Item” price to reflect an items’ normal price and, therefore, *current* value. Exhibit B. Therefore, the representation that Plaintiff “saved” \$30.00 was false and misleading. Since Plaintiff did not receive Products with the higher “Regular,” “Original,” or “Item” prices stated, and did not receive the actual amount of “savings” Schnucks represented, he did not receive the full benefit of the bargain Schnucks promised him and thereby suffered an ascertainable loss and damages.

51. Alternatively, if Defendant had offered a truthful discount from each item’s fair market value, Plaintiff would have paid less than he did to purchase those items. In making said purchases, Plaintiff paid more for the Products because, but-for Schnucks deceptive “sale” prices, Plaintiff could have shopped around for a better price in the marketplace, and purchased the Products for a lower price elsewhere.

52. Plaintiff would like to shop for the Products at Schnucks again in the immediate future, but he currently cannot trust that Schnucks will advertise truthful price comparisons of the

Products in compliance with Missouri law. If Schnucks agrees to voluntarily change its practices with respect to the Products, or if Schnucks is ordered to do so by a court of competent jurisdiction, such that Plaintiff can reasonably trust that Schnucks price comparison advertisements for the Products will comply with Missouri law, Plaintiff will return to shop for the Products at Schnucks.

53. Schnucks' deceptive practices are wide-spread over the course of many years. Plaintiff therefore believes that hundreds or thousands of similar and materially indistinguishable acts of misleading, untrue, false and deceptive price-comparison advertising were committed by Schnucks with respect to Class Members' purchases of the Products at Schnucks' markets and stores throughout Missouri and on Schnucks' website during the Class Period. *See* Exhibit A.

54. Plaintiff and the Class Members relied on Defendant's false and deceptive price-comparison advertising in making their purchases; a reliance that was not only reasonable, but intended by Defendant.

55. Plaintiff asserts that Defendant continues to employ unfair, deceptive, false, misleading, and untrue advertising practices as alleged herein. Plaintiff, on behalf of himself and the putative Class, seeks all actual damages, punitive damages, injunctive relief, costs, attorneys' fees, and any other relief the Court deems proper.

CLASS ACTION ALLEGATIONS

56. Plaintiff and Class Members hereby incorporate and re-allege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Petition.

57. Plaintiff brings this action under Rule 52.08 of the Missouri Rules of Civil Procedure and Missouri Revised Statutes §§407.025.2 and 407.025.3, on behalf of himself and a class defined as follows:

All Missouri citizens who, during the five-year period preceding the filing of this Petition, purchased the Schnucks Products advertised with a "Sale" price

of 20% or more below a stated “Original,” “Regular” and/or “Item” price for personal, family or household use.

Excluded from the Class:

- i. Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant, and Defendant’s legal representatives, predecessors, successors, assigns, and employees;
- ii. Counsel and members of the immediate family of counsel for Plaintiff herein; and
- iii. The judge and staff to whom this case was assigned, and any member of the judge’s immediate family; and
- iv. Individuals claiming they have suffered a personal injury as a result of using the Products.

58. Plaintiff reserves the right to revise this definition of the Class based on facts they learn during discovery.

59. The proposed Class meets all requirements for class certification. The Plaintiff’s Class satisfies the numerosity standards. Plaintiff has a good faith belief that there are thousands of Class Members in the State of Missouri. As a result, joinder of all Class Members in a single action is impracticable. Class Members may be informed of the pendency of this Class Action by published and broadcast notice.

60. Plaintiff’s claims are typical of the other Class Members. Plaintiff and Class Members purchased the Schnucks Products in the State of Missouri in connection with Defendant’s violations of Missouri law. Plaintiff and Class Members have all sustained damages in that each paid the purchase price for the Products.

61. Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of the members of the Class he seeks to

represent. The interests of Class Members will be fairly and adequately protected by Plaintiff and his undersigned counsel, who have extensive experience prosecuting complex class action litigation.

62. Common questions of law and/or fact exist as to all Class Members, which predominate over any questions affecting solely individual Class Members. The questions of law and fact common to the Class arising from Schnucks actions include, without limitation, the following:

- a. Whether Schnucks made false or misleading statements in connections with its price-comparison advertising;
- b. Whether Schnucks' price-comparison advertising regarding the Schnucks Products was false, deceptive, misleading or unlawful under Missouri law;
- c. Whether Schnucks' statements regarding its price comparisons were material to a reasonable consumer;
- d. Whether the "Regular," "Original," or "Item" prices advertised by Schnucks were actual and bona fide, or fictitious under Missouri law;
- e. Whether Schnucks had a bona fide intent of selling a reasonable quantity of the Schnucks Products at the advertised "Regular," "Original," or "Item" prices;
- f. Whether the "Regular," "Original," or "Item" prices advertised by Schnucks overstate the fair market value of the item so advertised;
- g. Whether the "Sale" prices advertised by Schnucks was a truthful discount from each item's fair market value;
- h. Whether Plaintiff and the Class Members have suffered damages as a result of Schnucks conduct;

- i. Whether Plaintiff and the Class received the benefit of the bargain that Schnucks advertised they would receive;
- j. Whether Plaintiff and Class Members are entitled to an award of compensatory damages;
- k. Whether Plaintiff and Class Members are entitled to an award of punitive damages;
- l. Whether injunctive, declaratory, and/or other equitable relief is warranted; and
- m. Whether the members of the Class are entitled to an award of reasonable attorneys' fees and costs.

63. These and other questions of law and/or fact are common to the Class and predominate over any questions affecting only individual members of the Class. The resolution of common questions in this case will resolve the claims of both Plaintiff and the Class.

64. A class action is superior, with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy. The prosecution of separate actions by individual Class Members would impose heavy burdens upon the courts and Defendant, and would create a risk of inconsistent or varying adjudications of the questions of law and/or fact common to the Class. In addition, the prosecution of separate actions by individual Class Members would establish incompatible standards of conduct for any party opposing the Class. Also, the prosecution of separate actions by individual Class Members, if fully adjudicated, as a practical matter, would be dispositive of the interests of the other Class Members not parties to that particular adjudication and, as such, would substantially impair or impede upon those Class Members abilities to protect their interests. A class action, on the other hand, would achieve substantial economies of time, effort and expense, and would assure

uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.

65. The interest of Class Members in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and prosecution of the action through a representative would be unobjectionable. The amounts at stake for Class Members, while substantial in the aggregate, may not be great enough individually to enable them to maintain separate suits against Defendant. Plaintiff does not anticipate any difficulty in the management of this action as a class action.

66. Defendant has acted or has refused to act on grounds that generally apply to the Class and final injunctive relief is appropriate as to the Class as a whole. Specifically, Defendant has advertised misleading and untrue “Regular,” “Original,” and/or “Sale” prices of the Schnucks Products in violation of Missouri law, and injunctive relief is necessary to avoid ongoing violations in the future.

67. Notice can be provided to Class Members by using techniques and forms of notice similar to those customarily used in other consumer product-related cases and complex class actions.

68. Furthermore, the Class Members’ individual damages are insufficient to justify the cost of litigation, so that in the absence of class treatment, Defendant’s violations of law inflicting substantial damages in the aggregate would go unremedied without certification of the Class. Absent certification of this action as a class action, Plaintiff and the members of the Class will continue to be damaged, thereby allowing Defendant to retain the proceeds of their ill-gotten gain.

69. Plaintiff alleges that, as a direct result of bringing the allegations herein to Defendant’s attention, Plaintiff has or will make substantial and important changes to Defendant’s

advertising practices. Thus, Plaintiff has or will enforce an important public right affecting the public interest, conferring a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons. Plaintiff further alleges that private enforcement of the laws in question is both necessary and financially burdensome for Plaintiff.

COUNT I

VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

Mo. Rev. Stat. §§ 407.010, *et seq.*

70. Plaintiff and Class Members hereby incorporate and re-allege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Petition.

71. Defendant engaged in unlawful practices including deception, false promises, misrepresentation, and/or the concealment, suppression, or omission of material facts in connection with the sale, distribution or advertisement of the Schnucks Products in violation of Mo. Rev. Stat. § 407.020, which states in relevant part as follows:

407.020. 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce ... is declared to be an unlawful practice. ... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

72. Defendant's actions alleged herein violated, and continue to violate, the MMPA.

73. Defendant is a "person" within the meaning of the MMPA, at Missouri Revised Statutes § 407.010(5).

74. The goods purchased from Defendant are "merchandise" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(4).

75. The transactions resulting in purchases of goods from Defendant in Missouri are a "sale" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(6).

76. Schnucks violates the MMPA because its price-comparison advertising scheme violates numerous rules promulgated by the Missouri Attorney General, which such acts and practices are deemed to violate the MMPA, including the following:

- a A seller, such as Schnucks, may not “use terminology implying a reduction from a price in effect immediately prior to the advertisement (examples: sale, sale prices, now only \$__) unless . . . [t]he reduction is, in fact, from a bona fide regular price in effect immediately prior to the advertisement.” 15 CSR 60-7.050.
- b A seller, such as Schnucks, shall not make a price comparison to a former price, including through the use of terms such as “regular” or “original” price, unless the comparative former price is actual, bona fide and not illusory or fictitious, and is—
 - A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller’s business, and on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with these terms unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement; or
 - A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller’s business, and on a regular basis during a reasonably substantial period of the time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that

the seller has not complied with these terms unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement; or

- A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses, with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with these terms unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during the disclosed date, time or seasonal period; or
- A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with these terms unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the

time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes or is included within the disclosed date, time or seasonal period.

15 CSR 60-7060(2)(B).

77. As alleged herein, Plaintiff is entitled to a rebuttable presumption that Schnucks violates the MMPA because it cannot show that it complies with any of the above requirements in connection with its price-comparison advertising scheme for the Products.

78. Since Defendant does not disclose any alternative basis for its advertised price reductions, the advertised reductions (by default) must be from Defendant's own former prices in compliance with 15 CSR 60-7.060(2). But since they are not, Defendant violates 15 CSR 60-7.060(8).

79. Missouri law also prohibits a seller from using any price comparison or savings claims in its advertisement of products in Missouri unless it maintains adequate records which disclose the factual basis for the price comparison or savings claims and from which the validity of any claim can be established, and these records shall be maintained for at least twelve (12) months from the date of the advertisement. 15 CSR 60-7.070. Plaintiff further alleges that Schnucks does not maintain adequate records that disclose the basis for its price comparison and upon which the validity of its price comparison claims can be established under 15 CSR 60-7.070 and thereby further violates the MMPA.

80. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by Section 407.020, may bring a private civil action to recover actual damages. The court

may, in its discretion, award punitive damages and may award to the prevailing party attorneys' fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper. V.A.M.S. 407.025.

81. As alleged herein, Plaintiff and the Class purchased from Schnucks the Products for personal, family or household purposes. Schnucks advertised that the Products were on "sale" at a substantial discount compared to Schnucks "Regular," "Original," or "Item" prices. In reality the "sale" prices were false and misleading because they were not reductions from bona fide prices in effect immediately prior to the advertised sales, and the higher "Regular," "Original," or "Item" prices were not prices at which Schnucks had recently sold the Products in substantial quantities, or prices at which Schnucks had recently offered to sell the Products for a substantial period of time. Additionally, Plaintiff further alleges that Schnucks has not maintained records showing the validity of its price comparisons as required by the MMPA.

82. The acts and practices of Schnucks, as alleged herein, were intended and likely to deceive consumers.

83. The acts and practices of Schnucks, as alleged herein, caused actual damages to Plaintiff and the Class, who did not receive the benefit of their bargain because the actual market value of the Products they purchased was materially less than the value Schnucks represented the Product had through its "Regular," "Original," or "Item" prices. Schnucks' scheme also caused actual damages to Plaintiff and the Class because, if Defendant had offered a truthful discount from each Products' fair market value, Plaintiff and the Class would have paid less than they did to purchase those items. In making said purchases, Plaintiff and the Class paid more for the Products because, but-for Schnucks deceptive "sale" prices, Plaintiff and the Class could have shopped around for a better price in the marketplace and purchased the Products for a lower price elsewhere.

On behalf of himself and the Class, Plaintiff seeks from Schnucks benefit of the bargain damages, in addition to punitive damages, interest, attorneys' fees and any and all other relief to which they are entitled.

84. The foregoing acts and practices of Defendant constituted unfair and unlawful practices, and deceptive conduct, in violation of the Missouri Merchandising Practices Act.

85. As a direct proximate result of the above-described practices, Plaintiff and Class Members suffered ascertainable loss of money due to the purchasing of the Schnucks Products.

86. Appropriate injunctive relief is necessary to prevent Defendant's MMPA violations from continuing. If Defendant's violations of the MMPA are not stopped by such injunctive relief, Plaintiff and the members of the Class will continue to suffer injury.

87. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT II

UNJUST ENRICHMENT

88. Plaintiff and Class Members hereby incorporate and re-allege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Petition.

89. As a result of Defendant's false price comparison advertising scheme for the Products as alleged above, Schnucks has been unjustly enriched in that it received and retained the benefit of funds at the expense of Plaintiff and the Class who purchased from Schnucks more Products and/or paid higher prices than they would have absent the scheme.

90. Schnucks intentionally accepted, retained and appreciated the money that Plaintiff and the Class spent purchasing the Products that were tainted and influenced by the false price comparison advertising scheme.

91. Said funds were conferred on Schnucks by Plaintiff and the Class under a mistake of fact due to Schnucks misrepresentations, and unlawfully obtained to the detriment of Plaintiff and the Class.

92. Schnucks' retention of these funds is unjust because of Schnucks' false price comparison advertising scheme for the Products.

93. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff and the Class in light of the fact that the Products that Plaintiff and the Class purchased from Schnucks did not have the higher value or worth that Schnucks represented they had through its false "Regular," "Original," or "Item" price comparisons. And if Defendant had offered a truthful discount from each item's fair market value, Plaintiff and the Class would have paid less than they did to purchase the Products.

94. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

PRAYER FOR RELIEF

95. WHEREFORE, Plaintiff and each member of the proposed Class pray for a judgment:

- (a) Certifying the Class as requested herein;
- (b) Entering an order appointing Orlowsky Law, LLC and Goffstein Law, LLC as counsel for the Class;
- (c) Awarding actual damages, measured by the benefit of the bargain that Schnucks represented, but which Plaintiff and the Class did not receive;
- (d) Awarding restitution and all other forms of equitable relief to Plaintiff and the Class;

- (e) Awarding declaratory and injunctive relief as permitted by law or equity including a preliminary and permanent injunction enjoining Defendant from continuing the unlawful practices as set forth herein;
- (f) Awarding punitive damages in an amount to be determined at trial;
- (g) Awarding pre-judgment interest;
- (h) Awarding post-judgment interest;
- (i) Awarding attorneys' fees and costs;
- (j) Providing such further relief as the Court may deem fair and reasonable.

JURY DEMAND

96. Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

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