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6 *Yosuke Hiradate, on behalf of himself and*  
7 *all others similarly situated.*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10 YOSUKE HIRADATE, an individual, on behalf  
11 of himself and all others similarly situated,

12 Plaintiffs,

13 v.

14 RALPH'S GROCERY COMPANY, an Ohio  
15 Corporation; THE KROGER COMPANY, an  
16 Ohio Corporation; and DOES 1-50, inclusive,

17 Defendants.

Case No. 21TRCV00301

Assigned to the Hon. Gary Y. Tanaka, Dept. B

**CLASS ACTION**

**SECOND AMENDED COMPLAINT FOR  
DAMAGES AND PERMANENT  
INJUNCTIVE RELIEF:**

1. **Violation of California's Unfair Competition Law ("UCL"); Bus. & Prof. Code § 17200 et seq.**
2. **Violation of California's Consumer Legal Remedies Act ("CLRA"); Cal. Civil Code §1750 et seq.**
3. **Violation of California's False Advertising Law ("FAL"), Bus & Prof. Code § 17500 et seq.**
4. **Breach of Implied Warranty of Merchantability, Civil Code 1971 et seq.**
5. **Unjust Enrichment**

**JURY TRIAL DEMANDED**

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1 Plaintiff YOSUKE HIRADATE (“Plaintiff” or “Mr. Hiradate”), on behalf of himself and all  
2 others similarly situated, brings this Second Amended Class Action Complaint against Ralph’s Grocery  
3 Company (“Ralph’s”), The Kroger Company (“Kroeger”), and DOES 1-50 (collectively “Defendants”),  
4 and alleges as follows based on investigation of counsel and information and belief:

5 **THE NATURE OF THE CASE**

6 1. Plaintiff Yosuke Hiradate brings this action on behalf of himself and all other similarly  
7 situated consumers, seeking relief from Defendants’ practice of selling gift cards to California consumers  
8 for specified monetary values where the gift cards actually have no value and are thus worthless to the  
9 consumers. Despite RALPH’S knowledge of this issue, RALPH’S sold Mr. Hiradate a worthless gift  
10 card for which he paid a substantial amount of money to RALPH’S. In response to Mr. Hiradate’s  
11 complaints related to this business practice, RALPH’S has maintained throughout that its express  
12 company policy is that it considers all gift card sales to be “final.” KROGER did not respond at all when  
13 Mr. Hiradate reached out to it on multiple occasions after RALPH’S did not refund the money for the  
14 worthless gift card sold to Mr. Hiradate.

15 2. Plaintiff thus brings claims under California’s Unfair Competition Law (“UCL”), the  
16 Consumer Legal Remedies Act (“CLRA”), the False Advertising Law (“FAL”), for Breach of Implied  
17 Warranty of Merchantability and for Unjust Enrichment. Plaintiff seeks a refund of the monies paid to  
18 Defendants, actual damages, statutory damages, injunctive relief and all other relief that the Court deems  
19 is necessary and proper.

20 **THE PARTIES**

21 3. Plaintiff, at all relevant times herein, was and is a citizen and resident of Los Angeles  
22 County, California. On December 21, 2019, Plaintiff visited Ralph’s Grocery Store located at 1770  
23 Carson Street in Torrance, California, and purchased a \$500 Visa Gift Card, as confirmed on the receipt  
24 he received. Plaintiff also incurred a \$5.95 Gift Card activation fee. As soon as Plaintiff returned home,  
25 he opened the Gift Card package and checked the balance for the first time, prior to using the Gift Card.  
26 Plaintiff was shocked to learn the Gift Card he had just paid Ralph’s \$500 for actually had zero value.

27 4. Defendant Ralph’s Grocery Company (“RALPH’S”) is an Ohio Corporation with its  
28 principal place of business in Cincinnati, Ohio. RALPH’S is registered to do business in California and

1 operates in Los Angeles County, where its local headquarters are in Compton, California. RALPH’S is  
2 a multistate corporation that operates a chain of grocery stores, selling goods to consumers throughout  
3 the country.

4 5. Defendant The Kroger Company (“KROGER”) is an Ohio Corporation with its principal  
5 place of business in Cincinnati, Ohio. KROGER is registered to do business in California and operates  
6 in Los Angeles County, where its local headquarters are in Compton, California. KROGER operates,  
7 either directly or through its subsidiaries such as defendant RALPH’S, which it wholly owns and  
8 operates, supermarkets and multi-department stores nationwide. KROGER and RALPH’s are  
9 hereinafter collectively referred to as “Defendants”.

10 6. Plaintiff does not know the true names or capacities of the persons or entities sued herein  
11 as DOES 1-50, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is  
12 informed and believes, and upon such information and belief alleges, that each of the DOE Defendants  
13 is in some manner legally responsible for the damages suffered by Plaintiff as alleged herein. Plaintiff  
14 will amend this Complaint to set forth the true names and capacities of these Defendants when they have  
15 been ascertained, along with appropriate charging allegations, as may be necessary.

16 7. At all times herein mentioned, Defendants, and each of them, were the agents, principals,  
17 servants, employees, and subsidiaries of each of the remaining Defendants, and were at all times acting  
18 within the purpose and scope of such agency, service, and employment, and directed, consented, ratified,  
19 permitted, encouraged, and approved the acts of each remaining Defendant.

20 **JURISDICTION AND VENUE**

21 8. This Court has jurisdiction over all causes of action asserted herein under the California  
22 Constitution.

23 9. Venue is proper in this County because the acts and occurrences alleged herein occurred  
24 in this County, and pursuant to California *Civil Code* § 1780(d) because Defendants do business here.

25 **FACTUAL ALLEGATIONS**

26 10. On December 21 2019, Plaintiff visited the RALPH’S store at 1770 Carson Street in  
27 Torrance, California, where he saw a Visa Gift Card available for sale, with packaging that indicated it  
28 could be purchased in “Any Amount” between “\$20 and \$500” but that it had “NO VALUE UNTIL

1 *PAID FOR AND ACTIVATED AT THE REGISTER.*” (Emphasis added). At the RALPH’S STORE,  
2 Plaintiff purchased a \$500 Visa Gift Card, by requesting that \$500 be added to the Gift Card by the  
3 Ralph’s employee at the cash register, who agreed to do so, and the amount of the transaction was  
4 confirmed on the receipt Plaintiff received, which also demonstrated the Gift Card was activated.  
5 Plaintiff also incurred a \$5.95 activation fee for the Gift Card. As soon as Plaintiff returned home after  
6 making this purchase, he opened the Gift Card package and checked the balance for the first time, prior  
7 to using the Gift Card. Plaintiff was shocked to learn the Gift Card he had just paid RALPH’S \$500 for,  
8 in addition to the \$5.95 activation fee, actually had zero value.

9 11. Plaintiff quickly returned to the RALPH’S store on the same day to request a refund and  
10 get an explanation for why the Gift Card had no value when he first attempted to access it. Plaintiff  
11 spoke to the Store Manager, Stephanie, who told him the Gift Card had been tampered with prior to  
12 purchase. Stephanie also told Plaintiff she would call the Gift Card merchant in order to file a claim for  
13 gift card fraud. After Stephanie filed the claim on that date, she was provided a case number and 10-  
14 digit ID which she wrote on Plaintiff’s Gift Card receipt. Stephanie also told Plaintiff on that same date  
15 that what happened to his card involved someone placing a photocopy of another gift card over the Gift  
16 Card Plaintiff had purchased, prior to him checking out at RALPH’S, such that the bar card for the other  
17 gift card would be the one receiving money added to it by the RALPH’S cashier at check out.

18 12. Stephanie informed Plaintiff that a staff member meeting regarding this *exact problem*  
19 had been held that very same morning at the store. There, staff members at the RALPH’S store were  
20 instructed to check for any of the detectable signs of tampering on any gift cards RALPH’S sold, such  
21 as different textures between a valid card with ridges at the bar code area and one that had been tampered  
22 with and had no such ridges.

23 13. Additionally, a former assistant manager from another RALPH’S store in the area named  
24 Donald, who Plaintiff also spoke to that night, also told him *gift card tampering has been an on-going*  
25 *problem for years at RALPH’S*, that he believes the tampering is an inside job, i.e. that someone at  
26 RALPH’S was participating in the tampering, and that RALPH’S is aware of this precise issue happening  
27 at its stores such as the one in Torrance.

1           14.     Thereafter, Stephanie (the RALPH’S Store Manager) told Plaintiff he needed to call the  
2 gift card company to request a new gift card, and then after calling, he would need to fax a copy of the  
3 receipt, gift card, the tampering gift card number (i.e. the photo with a gift card number that was placed  
4 over Plaintiff’s gift card prior to his purchase of it at RALPH’S), and that Plaintiff would then receive a  
5 new gift card within a few weeks. That night, Plaintiff tried to reach out to the Gift Card merchant  
6 several times at the phone number on the back of the card, in order to attempt to have this issue addressed  
7 but, despite several attempts, could not reach a service associate or anyone in management at the Gift  
8 Card merchant to resolve this matter.

9           15.     Thereafter, that same night Plaintiff again returned to the RALPH’S store in Torrance  
10 where Stephanie the Store Manager assisted him in submitting the documents via fax including the  
11 receipt (with her writing of the case number and 10-digit ID), a photocopy of the gift card, a photocopy  
12 of the package including the false bar code from the gift card, Plaintiff’s photo ID and contact  
13 information. Shortly thereafter, on a later date, as Stephanie the Store Manager had also suggested,  
14 Plaintiff called the 1-866-544-8062 phone number on the activation status receipt RALPH’S gave him  
15 after his purchase (which apparently is KROGER’s customer relations number), but no one at KROGER  
16 ever answered his multiple calls and there was no messaging system that would allow him to leave a  
17 voicemail message. To date, Plaintiff received no response from the gift card merchant or a replacement  
18 card with the value of \$500 and the activation fee waived, despite his efforts, and Defendants also have  
19 not compensated Plaintiff for the loss.

20           16.     RALPH’S own position is that gift cards such as the one Plaintiff purchased are subject  
21 to tampering which can render them worthless, and which RALPH’S knows, yet it still sold the Gift  
22 Card Plaintiff purchased to him and retained \$505.95 of Plaintiff’s money, despite Plaintiff receiving no  
23 value in return whatsoever. Further, RALPH’S maintains in response to consumer complaints regarding  
24 this practice its express policy is that it considers all gift card sales at its stores to be “final”. Additionally,  
25 KROGER’s express policy is to prohibit individual retail stores it owns such as RALPH’S from directly  
26 refunding gift card purchases to consumers who paid money to RALPH’S for gift cards that are  
27 worthless. KROGER maintains such an express policy even though KROGER does not respond to  
28

1 attempts by consumers such as Plaintiff to obtain a refund for valueless gift cards sold at RALPH's stores  
2 and provides no voicemail messaging system on which a consumer can leave a message for it.

3 17. Subsequently, Plaintiff has learned of numerous consumers at RALPH'S stores, including  
4 without limitation at RALPH'S stores in California, who have been similarly affected by purchasing a  
5 gift card at RALPH'S which was actually worthless, and that Defendants been aware of the issue of  
6 worthless gift card sold to consumers at RALPH's stores, for many years. Despite their knowledge of  
7 this issue, Defendants improperly put the burden on the victimized consumer to attempt to obtain proper  
8 value for the gift cards after the purchase, even though it was Defendants' stores that sold the consumers  
9 worthless gift cards, at full price, for their own profit.

10 18. In a March 1, 2012 blog posted entitled "**Scammers Hit Grocery Store Gift Card**  
11 **Kiosk, Swap Out Empty Cards for New Ones**," on the Consumerist.com website, operated by  
12 Consumer Reports, one consumer writes that an employer had purchased numerous \$100 gift cards at a  
13 RALPH's store, which turned out to be valueless at purchase, and the "grocery store blame[d] card-  
14 switching thieves."<sup>1</sup> The post also noted that both RALPH'S and parent company KROGER were  
15 specifically notified by the consumer in that instance of the problem of the valueless gift cards being  
16 sold at RALPH'S stores. Further, the consumer posed the question of why does RALPH'S "not keep  
17 the 'real' cards behind a desk or locked up to prevent this"? The consumer also suggested RALPH'S  
18 should "just do what Costco does and have the real thing in a safe place."

19 19. Similarly, in a May 13, 2015 blog post entitled "**PSA: Don't Buy US Bank Visa Gift**  
20 **Cards from Ralphps / Kroger**" on the Travel With Grant website blog, it was noted by the blogger Grant  
21 that, several days prior to the post, he "was at a local Ralphps (Kroger) grocery store in Huntington Beach,  
22 CA and bought a \$500 Visa Gift Card".<sup>2</sup> Grant posted that, "shortly after purchasing the card (like 5  
23 minutes later)," he discovered it was valueless, so he went back to the RALPH'S store and was told by  
24 the Store Manager to call and speak to a KROGER agent, which he did. Grant also noted that the Store  
25 Manager then discovered numerous other compromised gift cards at the RALPH'S store during that visit  
26 and "shared with me a similar story where someone bought 3 \$500 Visa Gift Cards on Christmas Eve"

27 <sup>1</sup> [https://www.consumerist.com/2012/03/01/scammers-hit-grocery-store-gift-card-kiosk-swap-out-empty-cards-](https://www.consumerist.com/2012/03/01/scammers-hit-grocery-store-gift-card-kiosk-swap-out-empty-cards-for-new-ones/index.html)  
28 [for-new-ones/index.html](https://www.consumerist.com/2012/03/01/scammers-hit-grocery-store-gift-card-kiosk-swap-out-empty-cards-for-new-ones/index.html), last visited April 10, 2022.

<sup>2</sup> <https://travelwithgrant.boardingarea.com/2015/05/13/psa-dont-buy-us-bank-visa-gift-cards-from-ralphps-kroger/>,  
last visited April 10, 2022.

1 with no value. The comments below the blog post show numerous additional consumers complaining  
2 of purchasing valueless gift cards at RALPH's up to and including in 2022.

3 20. In an August 11, 2018 CBS News report out of Dallas Fort Worth, a Federal Trade  
4 Commission attorney M. Hassan Aijaz, explained how numerous gift cards sold at KROGER in Texas  
5 could have been compromised, by something as simple as hackers using pen and paper to write down  
6 the bar codes visible on the shelves of KROGER stores.<sup>3</sup> In that instance, other individuals apparently  
7 made purchases a RALPH'S store in California with money that should have been on the consumer's  
8 cards purchased a KROGER's store in Texas.

9 21. As recently as **February 2022**, a consumer in the Los Angeles area complained on an  
10 internet forum designed to raise awareness about unscrupulous businesses that he:

11 purchased a Visa gift card for the amount \$500 ... on [] Feb 15 at the  
12 Burbank, CA on victory Blvd., only to find out that the gift card that they  
13 sold me was a scam and they couldn't do anything to refund my money. I  
14 called the number on the back of the gift card only to be placed on hold for  
15 an hour and a half and nobody picked up. called corporate office in  
16 Compton, CA only to hear prompts and was never able to get a customer  
17 service representative on the phone. Now... I'm out \$500 because Ralphs  
18 supermarket can not and will not refund my money.

19 And Luis the manager at ralphs was extremely rude and hung up on me,  
20 after he admitted on the phone that he know that some of the gift cards are  
21 compromised but still sells the gift cards to their customers.<sup>4</sup>

22 22. Plaintiff is informed and believes that, unlike Defendants, retailers such as Costco  
23 Wholesale Corporation ("Costco") take reasonable and necessary precautions to prevent the sale of  
24 valueless and/or compromised gift cards at their stores by, for example, restricting the public from having  
25 access to gift cards on their shelves by keeping them behind a counter where consumers who want to  
26 purchase gift cards must request them from an attendant.

27 23. Defendants have not adequately taken preventative measures to prevent the sale of  
28 valueless gift cards at their stores. Defendants have not adequately trained or required their associates  
to carefully and consistently inspect gift cards prior to sale for evidence of tampering, such as checking  
for any of the detectable signs of tampering on any gift cards sold at their stores, such as different textures  
between a valid card with ridges at the bar code area and one that had been tampered with and had no

<sup>3</sup> <https://www.cbsnews.com/dfw/news/its-a-big-scam-retailers-respond-to-gift-card-theft/>, last visited April 10, 2022.

<sup>4</sup> <https://www.complaintsboard.com/ralphs-grocery-b120119>, last visited April 24, 2022.

1 such ridges. Defendants also have not adequately restricted the public from having access to gift cards  
2 on the shelves of their stores by keeping them behind a counter where consumers who want to purchase  
3 gift cards must request them from an attendant, which is a preventative measures Plaintiff is informed  
4 and believes retailers such as Costco already engage in.

5 24. Defendants must be required to take such action to prevent valueless gift cards from being  
6 sold at their stores, or if not, Defendants should not be selling these gift cards, or be allowed to sell these  
7 gift cards at all, considering their actual knowledge of the pervasive tampering issue at RALPH's stores,  
8 and that consumers such as Plaintiff end up having purchased gift cards with no value at all.

9 **CLASS DEFINITION AND CLASS ALLEGATIONS**

10 25. Plaintiff brings this action on behalf of himself and on behalf of all others similarly  
11 situated as members of the Class (collectively referred to hereinafter as the "Class") defined as follows:

12 (1) **Class:** All persons who purchased a gift card from a RALPH's and/or KROGER  
13 store, for a specified monetary amount, and who were not able to utilize the  
14 total monetary amount of gift card value purchased, because the total monetary  
amount was not available on the gift card after purchase.

15 26. **Numerosity:** The proposed Class is so numerous that individual joinder of all its  
16 members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes the  
17 total number of class members is at least in the thousands and that the members of the Class are  
18 numerous. While the exact number and identities of all Class members are unknown at this time, such  
19 information can be ascertained through appropriate investigation and discovery. The disposition of the  
20 claims of the Class members in a single class action will provide substantial benefits to all parties and to  
21 the Court.

22 27. **Commons Questions of Law and Fact Predominate:** There are many questions of law  
23 and fact common to the representative Plaintiff and the Class, and those questions substantially  
24 predominate over any questions that may affect individual Class members. The common questions of  
25 law and fact include, but are not limited to, the following:

26 i. Whether Defendants were aware of the alleged tampering on gift cards prior to  
27 sales at their stores;



- 1                   ii. Whether Defendants should have known that gift cards were allegedly tampered  
2                   with at their stores prior to sale;
- 3                   iii. Whether Defendants’ sale of gift cards for a specified monetary amount to  
4                   consumers who were not able to utilize the total monetary amount of gift card  
5                   value purchased, because the appropriate monetary amount was not available on  
6                   the gift card after purchase, violated the California’s Unfair Competition Law,  
7                   *Business & Professions Code § 17200, et seq.*;
- 8                   iv. Whether Defendants’ sale of gift cards for a specified monetary amount to  
9                   consumers who were not able to utilize the total monetary amount of gift card  
10                  value purchased, because the appropriate monetary amount was not available on  
11                  the gift card after purchase, violated the California’s *Civil Code §1750, et seq.*;
- 12                  v. Whether Defendants’ sale of gift cards for a specified monetary amount to  
13                  consumers who were not able to utilize the total monetary amount of gift card  
14                  value purchased, because the appropriate monetary amount was not available on  
15                  the gift card after purchase, violated California’s False Advertising Law, *Business*  
16                  *& Professions Code § 17500, et seq.*;
- 17                  vi. Whether Defendants’ sale of gift cards for a specified monetary amount to  
18                  consumers who were not able to utilize the total monetary amount of gift card  
19                  value purchased, because the appropriate monetary amount was not available on  
20                  the gift card after purchase, was a breach of the implied warranty of  
21                  merchantability and thus violated the California’s *Civil Code §1971, et seq.*;
- 22                  vii. Whether Defendants were unjustly enriched as a result of their conduct in relation  
23                  to the gift card sales;
- 24                  viii. The nature and extent of damages and other remedies to which the conduct of  
25                  Defendant entitles Class members.

26           28.       These common questions of law and fact predominate over questions that may affect  
27 individual class members in that the claims of all Class members for each of the claims herein can be  
28 established with common proof. Additionally, a class action would be “superior to other available

1 methods for the fair and efficient adjudication of the controversy” because: (1) Class members have little  
2 interest in individually controlling the prosecution of separate actions because the individual damages  
3 claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiff is not  
4 aware of other lawsuits against Defendant commenced by or on behalf of members of the Class; and (3)  
5 the conduct alleged is common to all Class members and because resolution of the claims of Plaintiff  
6 will resolve the claims of the remaining Class, certification does not pose any manageability problems.

7       29.     **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class.  
8 Plaintiff and all members of the Class have been similarly affected by Defendant’s conduct as they all  
9 purchased a gift card from a RALPH’s and/or KROGER store, for a specified monetary amount, and  
10 were not able to utilize the total monetary amount of gift card value purchased, because the appropriate  
11 monetary amount was not available on the gift card after purchase.

12       30.     **Adequacy of representation:** Plaintiff will fairly and adequately represent and protect  
13 the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex  
14 class action litigation. Plaintiff and his counsel are committed to prosecuting this action vigorously on  
15 behalf of the Class and have the financial resources to do so.

16       31.     **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will  
17 continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class action is  
18 superior to other available methods for the fair and efficient adjudication of the present controversy.  
19 Class members have little interest in individually controlling the prosecution of separate actions because  
20 the individual damages Claims of each Class member are not substantial enough to warrant individual  
21 filings. In sum, for many, if not most, Class members, a class action is the only feasible mechanism that  
22 will allow them an opportunity for legal redress and justice.

23       32.     Adjudication of individual Class members’ claims with respect to Defendants would, as  
24 a practical matter, be dispositive of the interests of other members not parties to the adjudication, and  
25 could substantially impair or impede the ability of other Class members to protect their interests.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Unfair Competition Law**

3 ***Business & Professions Code § 17200 et seq.***

4 **(By Plaintiff and the Class Against Defendants RALPH’S and KROGER and Does 1-50)**

5 33. Plaintiff restates and incorporates by reference each and every allegation contained in  
6 paragraphs 1-30 as though fully set forth herein.

7 34. California *Business & Professions Code § 17200 et seq.* (hereafter referred to as the  
8 “Unfair Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair competition,”  
9 which include any unlawful, unfair, or fraudulent business practice.

10 35. The UCL imposes strict liability. Plaintiff need not prove that Defendants intentionally  
11 or negligently engaged in unlawful, unfair, or fraudulent business practices – only that such practices  
12 occurred.

13 36. Defendants’ selling of gift cards with specified values when the gift cards actually have  
14 zero value to the consumer who purchased them, is an unlawful, unfair, and fraudulent business practice  
15 prohibited by the UCL.

16 37. In carrying out their selling of gift cards for specified values when the gift cards actually  
17 have zero value to the consumer who purchased them, Defendants have violated the Consumer Legal  
18 Remedies Act, the False Advertising Law, and various other laws, regulations, statutes, and/or common  
19 law duties. Defendants’ business practices alleged herein, therefore, are unlawful within the meaning of  
20 the UCL.

21 38. The harm to Plaintiff and members of the public outweighs the utility of Defendants’  
22 practices and, consequently, Defendants’ practices, as set forth fully above, constitute an unfair business  
23 act or practice within the meaning of the UCL.

24 39. Defendants’ practices are additionally unfair because they have caused Plaintiff and  
25 members of the public substantial injury, which is not outweighed by any countervailing benefits to  
26 consumers or to competition, and which is not an injury the consumers themselves could have reasonably  
27 avoided.

1 40. Defendants’ practices, as set forth above, have misled the general public in the past and  
2 will mislead the general public in the future. Consequently, Defendants’ practices constitute an unlawful  
3 and unfair business practice within the meaning of the UCL.

4 41. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition may  
5 be brought by any “person ... who has suffered injury in fact and has lost money or property as a result  
6 of such unfair competition.” Defendants’ misleading business practice – selling gift cards for specified  
7 values when the gift cards actually have zero value to the consumer who purchased them – directly and  
8 seriously injured Plaintiff and other members of the public who were thus deprived of their property  
9 rights.

10 42. The unlawful, unfair and fraudulent business practices of Defendants are ongoing and  
11 present a continuing threat that members of the public will be misled into believing they are purchasing  
12 gift cards for specified values but, like Plaintiff, will be deprived of that value and damaged financially.

13 43. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief  
14 ordering Defendants to take preventative measures to stop the sale of valueless gift cards at their stores,  
15 such as adequately training or requiring their associates to carefully and consistently inspect gift cards  
16 prior to sale for evidence of tampering, adequately restrict the public from having access to gift cards on  
17 the shelves of their stores by keeping them behind a counter, and/or cease this unfair business practice  
18 entirely by refraining from the sale of pre-paid gift cards entirely, as well as disgorgement and restitution  
19 of the money Defendants wrongfully obtained from Plaintiff associated with its unfair business practice.

20 **SECOND CAUSE OF ACTION**

21 **Violation of the Consumer Legal Remedies Act**

22 *Civil Code § 1750 et seq.*

23 **(By Plaintiff and the Class Against RALPH’S and KROGER and Does 1-50)**

24 44. Plaintiff restates and incorporates by reference each and every allegation contained in  
25 paragraphs 1-41 as though fully set forth herein.

26 45. The Consumer Legal Remedies Act (hereafter referred to as the “CLRA”) creates a non-  
27 exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or business  
28 practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4<sup>th</sup> 1139, 1164 (1997). Its self-declared purpose

1 is to protect consumers against these unfair and deceptive business practices, and to provide efficient  
2 and economical procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was designed  
3 to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

4 46. More specifically, Plaintiff alleges that Defendants have violated paragraphs 4, 5, 9 and  
5 14 of *Civil Code* Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth  
6 herein. Defendants' unfair and deceptive business practices in carrying out the selling of gift cards for  
7 specified values when the gift cards actually have zero value to the consumer who purchased them, as  
8 described herein, were and are intended to and did and do result in Plaintiff, and other members of the  
9 public, being deprived of their right to a gift card with the value they paid for actually on it, in violation  
10 of the CLRA. Cal. Civ. Code § 1770 *et seq.* Plaintiff, and other members of the class, were damaged in  
11 that they paid purchase prices for gift cards higher than the zero value they received on the cards.

12 47. As a result of Defendants' unfair and/or deceptive business practices, Plaintiff and other  
13 members of the class, as a result of the business practice alleged herein, have suffered damage in that  
14 they lost a vested right in gift cards at specified values, because Defendants misrepresented that the offers  
15 for sale conferred rights to Plaintiff, and other members of the class, which they did not. Plaintiff seeks  
16 and is entitled to an order permanently enjoining Defendants from continuing to engage in the unfair and  
17 deceptive business practices alleged herein.

18 48. Pursuant to section 1782 of the CLRA, Plaintiff has notified Defendants in writing of the  
19 particular violations of Section 1770 of the CLRA Plaintiff alleges Defendants committed. In response,  
20 Defendants have not agreed to provide the monetary compensation Plaintiff demanded for himself and  
21 the members of the class.

22 **THIRD CAUSE OF ACTION**

23 **Violation of the False Advertising Law**

24 ***Business & Professions Code § 17500, et seq.***

25 **(By Plaintiff and the Class Against RALPH'S and KROGER and Does 1-50)**

26 49. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
27 paragraphs 1-46 as if fully set forth herein.

1           50. California *Business & Professions Code* § 17500 provides that “[I]t is unlawful for any  
2 ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into  
3 any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this  
4 state before the public in any state, in any newspaper or other publication, or any advertising device, or  
5 by public outcry or proclamation, or in any other manner or means whatever ... any statement ... which  
6 is untrue or misleading, and which is known, or which by exercise of reasonable care should be known,  
7 to be untrue or misleading...”

8           51. Defendants misled consumers by selling gift cards that could be purchased in “Any  
9 Amount,” “between \$20 and \$500” and according to the packaging have value once “*PAID FOR AND*  
10 *ACTIVATED AT THE REGISTER,*” when the gift cards actually have zero value to the consumers who  
11 purchased them at RALPH’S. (Emphasis added)

12           52. As a direct and proximate result of Defendants’ misleading and false advertising,  
13 Plaintiff, along with other members of the class, has suffered injury in fact and has lost money and/or  
14 property.

15           53. The misleading and false advertising described herein presents a continuing threat to  
16 Plaintiff, the class, and other members of the public, in that Defendants persist and continue to engage  
17 in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants’  
18 conduct will continue to cause irreparable injury to members of the public unless adequate preventative  
19 measures are required or the practices are enjoined or restrained, permanently.

20   **FOURTH CAUSE OF ACTION**

21   **Breach of Implied Warranty of Merchantability**  
22   *Civil Code § 1971 et seq.*

23   **(By Plaintiff and the Class Against RALPH’S and KROGER and Does 1-50)**

24           54. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
25 paragraphs 1-51 as if fully set forth herein.

26           55. Plaintiff purchased the Visa Gift Card from RALPH’s for \$500 and paid a \$5.95  
27 activation fee for a total of \$505.95.

28           56. At the time of the purchase, RALPH’s was in the business of selling pre-paid gift cards  
such as the one Plaintiff purchased.

1 57. The Visa Gift Card Plaintiff purchased in the amount of \$500 was actually valueless, and  
2 thus was not fit for the ordinary purpose for which such gift cards are used, pursuant to *Civil Code* §  
3 1791.1(a)(2).

4 58. Plaintiff took reasonable steps to notify RALPH'S, and at RALPH'S request, to also  
5 notify KROGER, at its customer service telephone line, that the gift card did not have the expected  
6 quality, i.e. a \$500 value.

7 59. Plaintiff was harmed as the gift card he purchased for \$500 and a \$5.95 activation fee did  
8 not have any value at all.

9 60. Defendants' failure to adequately take preventative measures to prevent the sale of  
10 valueless gift cards at their stores, such as Defendants' failure to adequately train or require their  
11 associates to carefully and consistently inspect gift cards prior to sale for evidence of tampering, and  
12 failure to adequately restrict the public from having access to gift cards on the shelves of their stores by  
13 keeping them behind a counter where consumers who want to purchase gift cards must request them  
14 from an attendant, were a substantial factor in causing Plaintiff harm.

15 61. As a result, Plaintiff and the putative class have been damaged in an amount to be proven  
16 at trial.

## 17 FIFTH CAUSE OF ACTION

### 18 **Unjust Enrichment**

#### 19 **(By Plaintiff Against RALPH'S and KROGER and Does 1-50)**

20 62. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
21 paragraphs 1-59 as if fully set forth herein.

22 63. When Plaintiff purchased the Visa Gift Card from the Ralph's Grocery Store located at  
23 1770 Carson Street in Torrance, California, he paid \$500 for the Gift Card and also incurred a \$5.95  
24 activation fee. Thus, Defendants received a \$505.95 benefit from the Gift Card transaction with Plaintiff,  
25 who in return received a valueless Gift Card from the RALPH'S store. Despite his numerous requests,  
26 Defendants retained the \$505.95 benefit they received from Plaintiff, at his sole expense, and the \$505.95  
27 has not been otherwise returned to him by Defendants, who have therefore been unjustly enriched as a  
28 result of their business practice.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, individually and on behalf of the class, prays for relief and judgment  
3 as follows:

- 4 1. For certification of the putative class;
- 5 2. For restitution and disgorgement of the money and property wrongfully obtained by Defendants  
6 by means of their herein-alleged unlawful, unfair and fraudulent business practices;
- 7 3. An award of general damages according to proof;
- 8 4. An award of special damages according to proof;
- 9 5. Exemplary damages in light of Defendants’ fraud, malice, and conscious disregard for the rights  
10 of Plaintiff;
- 11 6. Injunctive relief, including without limitation, public injunctive relief, in the form of an order  
12 requiring Defendants to take preventative measures to prevent the sale of valueless gift cards at  
13 their stores and/or a permanent injunction enjoining Defendants from engaging in the unlawful,  
14 unfair, and fraudulent business practices alleged herein;
- 15 7. For attorneys’ fees and expenses pursuant to all applicable laws, including, without limitation,  
16 the CLRA, the common law private attorney general doctrine, *Code of Civil Procedure* § 1021.5,  
17 and *Civil Code* § 1794;
- 18 8. For costs of suit;
- 19 9. For such other and further relief as the court deems just and proper.
- 20

21 Dated: April 25, 2022

**SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES LLP**

22  
23  
24 By: \_\_\_\_\_

  
HELEN I. ZELDES  
JOSHUA A. FIELDS

*Counsel for Plaintiff,  
Yosuke Hiradate, on behalf of himself and  
all others similarly situated.*




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**DEMAND FOR JURY TRIAL**

Plaintiff YOSUKE HIRADATE hereby demands a jury trial.

Dated: April 25, 2022

**SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES LLP**

By:   
HELEN I. ZELDES  
JOSHUA A. FIELDS

*Counsel for Plaintiff,  
Yosuke Hiradate, on behalf of himself and  
all others similarly situated.*


1 **DECLARATION OF PROPER VENUE BY YOSUKE HIRADATE**

2 I, Yosuke Hiradate, declare as follows:

3 1. I am a Plaintiff in this action, and I am a resident and citizen of the State of California. I  
4 have personal knowledge of the facts alleged herein and, if called as a witness, I could and would  
5 testify competently thereto.

6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper  
7 place for trial under Civil Code § 1780(d) in that Los Angeles County is a county where Defendant  
8 does business.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
10 true and correct and that this declaration was executed in Torrance, California on April 15, 2021.  
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15 Yosuke Hiradate

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**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 9415 Culver Boulevard, #115, Culver City, CA 90232.

On April 25, 2022, I caused the service of the following document(s) described as:

**SECOND AMENDED COMPLAINT FOR DAMAGES AND PERMANENT  
INJUNCTIVE RELIEF**

on all interested parties in this action by the following means of service:

Jacob M. Harper  
*jharper@dwt.com*

James H. Moon  
*jamesmoon@dwt.com*

K. Peter Bae  
*peterbae@dwt.com*

**DAVIS WRIGHT TREMAINE LLP**

865 S Figueroa St, Ste 2400,  
Los Angeles, CA 90017  
Telephone: 213-633-6800  
Facsimile: 213-633-6899

*Attorneys for Defendants RALPH'S GROCERY COMPANY, an Ohio Corporation;  
THE KROGER COMPANY, an Ohio Corporation.*

X [BY E-SERVICE] - Electronic Service through One Legal, LLC. I affected electronic service by submitting an electronic version of the documents to One Legal, LLC, www.onelegal.com, which caused the documents to be sent by electronic transmission to the person(s) at the electronic service address(es) listed above.

X [STATE] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2022, at Culver City, California.

\_\_\_\_\_  
Carlos Gallegos