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8 Attorneys for Representative Plaintiff
 and the Plaintiff Classes
 9

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12
 13 RYAN RICHARDS, individually, and
 on behalf of all others similarly
 14 situated,

15 Plaintiff,

16 vs.

17 SAFEWAY, INC.,

18 Defendant.

) **Case No.**

) **CLASS ACTION**

) **COMPLAINT FOR DAMAGES,
 INJUNCTIVE RELIEF AND RESTITUTION**

) **[Jury Trial Demanded]**
 19)
 20)

21 Representative Plaintiff alleges as follows:

22 **INTRODUCTION**

23 1. This is a class action brought by Representative Plaintiff for himself and on behalf of
 24 a national class of consumers who have purchased Safeway, Inc.'s food products that were falsely
 25 and misleadingly labeled as "100% Natural," but which, in fact, contained one or more synthetic
 26 ingredients.

27 2. Representative Plaintiff, on behalf of himself and persons who purchased these
 28 products from one of Defendant's United States locations at any time during the applicable

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1 limitations period (hereinafter referred to as the “class members” and/or, dependant on the Claim for
2 Relief, one or both of the “classes”) seeks damages, interest thereon, reasonable attorneys’ fees and
3 costs, injunctive, restitution, other equitable relief, and disgorgement of all benefits Safeway has
4 enjoyed from its unlawful and/or deceptive business practices, as detailed herein.

5 3. Representative Plaintiff asserts that defendant Safeway, Inc. (hereinafter referred to as
6 “Safeway” and/or “Defendant”) knowingly engaged in the unfair, unlawful, deceptive, and
7 fraudulent practice of describing and falsely advertising certain products as “100% Natural” when, in
8 fact, they contain the synthetic chemical preservative Sodium Acid Pyrophosphate. Those products
9 labeled as “100% Natural,” but which contain Sodium Acid Pyrophosphate (also known as disodium
10 dihydrogen pyrophosphate), for purposes of this Complaint, are collectively referred to as the
11 ““100% Natural” Products” or, simply, the “Products.” Those Products are listed and/or otherwise
12 shown in Attachment “A” hereto, and are:

- 13 • Open Nature 100% Natural Multi-Grain Waffles
- 14 • Open Nature 100% Natural Homestyle Waffles

15 4. Defendant’s advertising/labeling of these Products as “100% Natural” is false,
16 dishonest and intended to induce consumers to purchase these Products, at a premium price, while
17 ultimately failing to meet consumer expectations. Safeway knows reasonable consumers must and do
18 rely on Defendant to honestly report the nature of its Products’ ingredients, insofar as consumers
19 lack the ability to test or independently ascertain the accuracy of a food product’s label, especially at
20 the point of sale. Indeed, in this instance, Defendant played on consumer ignorance to fraudulently
21 generate substantial profits and engender unfair competition between itself and competitor
22 companies that, unlike Safeway, behave responsibly and honestly toward their customers.

23 5. Representative Plaintiff brings this action both on his own behalf and on behalf of the
24 classes he seeks to represent to redress Defendant’s deceptive, misleading and untrue advertising,
25 and unlawful, unfair and fraudulent business acts and practices related to the manufacture,
26 marketing, advertising, sale and/or distribution of the “100% Natural” Products listed above.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 (diversity jurisdiction) and/or 28 U.S.C. § 1331 (controversy arising under United States law). Supplemental jurisdiction to adjudicate issues pertaining to state law is proper in this Court under 28 U.S.C. § 1367.

7. Venue is proper in this Court under 28 U.S.C. § 1391 because the events that give rise to Representative Plaintiff's claims took place within the Northern District of California and because Safeway sells and distributes its Products in this Judicial District.

PLAINTIFFS

8. Ryan Richards is an adult individual and resident of Novato, California. He is referred to in this Complaint as the "Representative Plaintiff."

9. During the relevant time period, Representative Plaintiff purchased and consumed one or more of Defendant's Products.

10. The Representative Plaintiff is and, throughout the entire class period asserted herein, has been very concerned about and tries to avoid consuming foods that are not natural, such as foods using synthetic or artificial chemical ingredients. For this reason, the Representative Plaintiff is willing to and has paid a premium for foods that are "100% Natural" and has refrained from buying their counterparts that were not "100% Natural." Based on the "100% Natural" representation on Defendant's Product labels, Representative Plaintiff and members of both classes reasonably believed the Products they purchased were "100% Natural" and relied on this representation in making the purchases thereof.

11. Specifically, in the past several years, Representative Plaintiff purchased items such as Safeway's Open Nature Multi-Grain Waffles for himself and his daughter on multiple occasions from Safeway's grocery stores located in San Rafael and Novato, California, after reading and relying on the truthfulness of its labels' promise that these Products were "100% Natural." Representative Plaintiff saw and relied on these representations each time he purchased the Products. These representations were one of the reasons for Representative Plaintiff's purchase and he consistently relied on their truthfulness in making these purchases.

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12. Representative Plaintiff not only purchased the Products because the labels said they were “100% Natural,” but he paid more money for the Products than he would have had to pay for other similar products that were not “100% Natural” (i.e., products that admittedly contained man-made, synthetic ingredients).

13. Had Representative Plaintiff known the truth that Defendant’s Products were not “100% Natural,” he would not have purchased Defendant’s Products, but would have purchased other brands of food products that were truly “100% Natural” or, if such alternatives were not available, would have purchased other non-natural food products that were less expensive than Safeway’s “100% Natural” Products.

14. Representative Plaintiff is a “consumer” and “real party in interest,” as required to bring this action, and as set out in California Civil Code § 1780(a). Moreover, Representative Plaintiff suffered damages and injury as a result of Defendant’s conduct, as alleged herein.

15. As used throughout this Complaint, the term “class members” and/or one or both of the “classes” refers to the Representative Plaintiff, as well as each and every person eligible for membership in one or more of the classes of persons, as further described and defined herein.

16. At all times herein relevant, Representative Plaintiff is and was a person within both classes of persons, as further described and defined herein.

17. Representative Plaintiff brings this action on behalf of himself and as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly situated and proximately damaged by the unlawful conduct described herein.

DEFENDANT

18. At all times herein relevant, Safeway is a California Corporation with its principal executive offices located in Pleasanton, California. Upon information and belief, this Defendant advertises, markets, sells and distributes the “100% Natural” Products throughout the United States, including in this Judicial District.

CLASS ACTION ALLEGATIONS

19. Representative Plaintiff brings this action on behalf of himself and as a class action on behalf of the following classes:

The “California Class”:

All residents of California who, on or after September 18, 2009, purchased Safeway’s food products that were labeled “100% Natural,” yet contained Sodium Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).

The “National Class”:

All residents of the United States of America who, on or after September 18, 2009, purchased Safeway’s food products that were labeled “100% Natural,” yet contained Sodium Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).

20. Defendant and its officers and directors are excluded from each of the classes.

21. This action has been brought and may properly be maintained as a class action under Federal Rule of Civil Procedure Rule 23 because there is a well-defined community of interest in the litigation and membership in the proposed classes is easily ascertainable:

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of each of the classes are so numerous that joinder of all members is impractical, if not impossible, insofar as the Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of class members in either class is in the tens of thousands of individuals. Membership in the classes will be determined by analysis of point of sale, electronic-mail and/or other transactional information, among other records maintained by Safeway and/or entities affiliated therewith.

b. Commonality: The Representative Plaintiff and the members of both classes share a community of interests in that there are numerous common questions and issues of fact and law which predominate over questions and issues solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Safeway’s advertising of the Products was false, deceptive, and/or misleading;
- 2) Whether Safeway knew or should have known that representing the Products as being “100% Natural” was false advertising thereof;

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- 3) Whether Safeway intentionally or negligently misrepresented, concealed or omitted a material fact regarding the true characteristics of the Products;
 - 4) Whether Safeway violated California Business and Professions Code § 17500, *et seq.* by engaging in misleading and/or deceptive advertising;
 - 5) Whether Safeway violated California Civil Code § 1750 and/or 1770, *et seq.* by representing that its food Products had/has characteristics, uses and/or benefits which they do/did not have, and/or representing that these Products were and are of a particular standard, quality or grade, when they were not;
 - 6) Whether Safeway violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices;
 - 7) Whether Safeway's misrepresentations, concealment and/or failures to disclose material fact(s) regarding the "100% Natural" characteristics of the Products is a breach of contract;
 - 8) Whether injunctive, corrective and/or declaratory relief is appropriate;
 - 9) Whether Safeway's conduct rises to the level sufficient to warrant an award of punitive damages.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the members of each of the classes. Representative Plaintiff and all members of each of the classes sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representatives of each of the classes in that the Representative Plaintiff has the same interest in the litigation of this case as the members of both classes, is committed to vigorous prosecution of this case and has retained competent counsel who is experienced in prosecuting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to other class members or the classes in their entirety. The Representative Plaintiff anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it

impractical for members of each of the classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought, by each individual member of each of the classes, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

22. This action is also certifiable under the provisions of Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2).

23. Representative Plaintiff reserves the right to establish sub-classes as appropriate, and to amend the class definitions if discovery and further investigation reveal that the definitions should be expanded or otherwise modified.

COMMON FACTUAL ALLEGATIONS

24. Safeway created its Open Nature product line specifically for consumers seeking food made with all natural ingredients. As Safeway explains: “When it comes to your food, you’ve got high standards. That’s why Open Nature™ was made for you. It’s Safeway’s exclusive line that’s all-natural and 100% delicious.” See <http://www.safeway.com/ShopStores/Well-and-Good-Home.page>.

25. Through broad-based marketing efforts, Defendant Safeway touts its Open Nature products as made with “the best quality ingredients that nature offers” because Safeway allegedly wants “you to feel confident that when you choose Open Nature, you’ll be getting food that’s simple, real and delicious.” See <http://www.safeway.com/ShopStores/Open-Nature-Story.page>.

26. Safeway’s website prominently displays its “Open Nature™ Promise” that “ingredients should come from nature,” and even goes so far as to warn consumers of the dangers of unnatural ingredients: “Food products, particularly packaged food, can contain many hidden ingredients, like artificial flavors, colors, and preservative. We believe that this gets in the way of enjoying the natural taste of real, whole foods. And of course, it goes without saying that there are health benefits to eating more of the natural stuff and less of the artificial stuff!” See <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>.

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27. In branding its Open Nature Products as “100% Natural,” Safeway tells consumers that, since “there are no government regulations behind natural products....it is up to individual companies to establish their own standards and abide by them with integrity.” *See* <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>. Safeway then asks consumers to “trust” Safeway, promising to list the ingredients on the front of the package “so that you know exactly what you are getting.” *See id.*

28. Finally, Safeway tells its investors that it is “one of the largest food and drug retailers in North America,” (selling goods in 1,418 stores across the United States, 506 of those in California) and “successfully differentiates” its offering through, among a handful of other things, “Health and Wellness-focused initiatives.” *See* Attachment “C” hereto, Safeway’s Corporate Profile at <http://www.safeway.com/ShopStores/Investors.page#iframe>.

29. Throughout the class period, Safeway engaged in the unfair, unlawful, deceptive, and fraudulent practice of describing and falsely advertising the Products listed heretofore in this Complaint as “100% Natural” when, in fact, they contain the synthetic chemical ingredient identified below. Specifically, these Products contain, or contained at the time Representative Plaintiff purchased them, one or more non-natural, highly processed ingredients such as Sodium Acid Pyrophosphate.

THE PRODUCTS’ SYNTHETIC INGREDIENT

30. Sodium Acid Pyrophosphate (hereinafter referred to as “SAPP”), an odorless white powder, also referred to as disodium dihydrogen pyrophosphate and/or disodium pyrophosphate, has various applications—from its use in leather treatment to remove iron stains on hides during processing, to stabilizing hydrogen peroxide solutions against reduction, to facilitating hair removal in hog slaughter, to feather removal from birds in poultry slaughter, to use in petroleum production.

31. Defendant uses SAPP in its food Products that it sells to consumers, and labels the resultant Products “100% Natural.” Not only is SAPP a synthetic product, but there are warnings that excessive use can lead to imbalanced levels of minerals in the body and bone loss.

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32. The Products at issue herein are labeled “100% Natural,” yet contain the non-natural ingredient listed above.

DEFENDANT’S STRATEGY TO APPEAL TO HEALTH-CONSCIOUS CONSUMERS

33. Defendant engaged in this fraudulent advertising and marketing scheme because it knew that its target market values and will pay more for “100% Natural” food products than for conventional food products, due to the association consumers make between “100% Natural” food products and a wholesome way of life, the perceived higher quality, health and safety benefits of the products, and/or low impact on the environment.

34. As such, Safeway’s “100% Natural” labeling is central to its marketing of the Products and part of its overall strategy to capture the rapidly-expanding natural foods market. As a result, Safeway commands a premium price for the Products, using “100% Natural” claims to distinguish them from its competitors’ food products.

35. As Safeway undoubtedly knows, many American consumers are health-conscious and seek out wholesome, natural foods to keep a healthy diet. Because of this, consumers routinely take nutrition information into consideration in selecting and purchasing food items.

36. Consumers also value “100% Natural” ingredients for myriad other reasons, including perceived benefits of avoiding disease, helping the environment, assisting local farmers, assisting factory workers who would otherwise be exposed to synthetic and hazardous substances, and financially supporting the companies that share these values.

37. Product package labels, including nutrition labels, are vehicles that convey nutrition information to consumers which they can and do use to make purchasing decisions. As noted by Food and Drug Administration Commissioner Margaret Hamburg during an October 2009 media briefing, “[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help them build a healthy diet.”

38. The prevalence of claims about nutritional content on food packaging in the United States has increased in recent years as manufacturers have sought to provide consumers with nutrition information and thereby influence their purchasing decisions. Indeed, a substantial

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percentage of food products sold in the United States have a health claim or a qualified health claim on the food package, and even more have nutrient content claims on their packaging.

39. Consumers attribute a wide range of benefits to foods made entirely of natural ingredients. Consumers perceive “100% Natural” foods to be higher quality, healthier, safer to eat, and less damaging to the environment.

40. Catering to consumers’ taste for natural foods is tremendously advantageous for businesses. In 2008, foods labeled with the word “natural” produced \$22.3 billion in sales, a 10% increase from 2007, and a 37% increase from 2004. In 2009, sales jumped again by 4%.

41. It was in an effort to capture the growing demand and to entice consumers to purchase its Products that Safeway committed the unlawful acts detailed in this Complaint.

42. Consumers lack the ability to test or independently ascertain the accuracy of a food product label, especially at the point of sale. Reasonable consumers must and do rely on the company to honestly report the nature of a food product’s ingredients.

43. Moreover, not having the specialized food chemistry and regulatory knowledge necessary to make independent determinations thereof, a reasonable consumer would interpret the fine-print ingredient label in a way to be consistent with the front label representation.

44. Food product companies intend for consumers to rely upon their products’ labels, and reasonable consumers do, in fact, so rely. Those labels are the only available source of information consumers can use to make decisions on whether to buy “100% Natural” food products.

45. As a result of its false and misleading labeling, Defendant was able to sell its Products to thousands, if not hundreds of thousands of consumers, throughout the United States, and to profit handsomely from these transactions.

DEFINITION OF “100% NATURAL”

46. Representing that a food product or ingredient is “100% Natural” is a statement of fact, and this term has been defined by the federal governmental agencies that regulate food companies such as Defendant.

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47. Specifically, the FDA has established a policy and defined the outer boundaries of the use of the term “natural.” According to this agency, at the very least, a product is not “natural” if it contains color, artificial flavors, or synthetic substances. *See* www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf.

48. Pursuant to 7 C.F.R. § 205.2, an ingredient is synthetic if it is:

[a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

49. Similarly, the USDA’s Food Safety and Inspection Service (“FSIS”) defines a “natural” product as a product that does not contain any artificial or synthetic ingredient and does not contain any ingredient that is more than “minimally processed”:

Minimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices.

Relatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching would clearly be considered more than minimal processing. . . .

See USDA FSIS, Food Standards and Labeling Policy Book, available at www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf.

50. A reasonable consumer’s understanding of the term “natural” comports with these federal definitions.

51. A reasonable consumer would also expect that Defendant’s Products are what Defendant identifies them to be on its labels (i.e., that they are 100% Natural, with no preservatives).

DEFENDANT’S MISREPRESENTATIONS

52. Throughout the class period, Safeway prominently and repeatedly included the phrase “100% Natural” on the labels of the Products at issue here, thereby cultivating a wholesome,

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1 healthful and socially-conscious image in an effort to promote the sale of these Products, even
2 though they were not “100% Natural.”

3 53. Defendant made these false, misleading, and deceptive representations by labeling
4 them in the manner details in the paragraphs below, and as shown in Attachment “A” hereto. From
5 an advertising “best practices” perspective, Safeway makes maximum use of the available space on
6 the Products’ packaging to announce the Products’ alleged “100% Natural” character.

7 54. Specifically, the “100% Natural” representation appears nine times and on all six
8 sides of the Products’ packaging as part of the Open Nature logo. *See* Attachment “A” hereto. The
9 phrase “100% Natural” appears again on the Products’ box front side in large lettering immediately
10 beneath the identification of the Product (i.e., Homestyle Waffles) and above the claim “No
11 Artificial Preservatives.” *See id.* The “100% Natural” claim is asterisked, and the asterisk is defined
12 at the bottom of the front label as “*all ingredients from natural sources.” *See id.* Although
13 Safeway’s website ensures customers that it “list[s] the ingredients on the front of the package, so
14 that you know exactly what you are getting,” it does not list SAPP on the front of the package with
15 the other ingredients. *See* <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>; *see id.*

16 55. In addition to the logo containing the “100% Natural” promise, the right and left sides
17 of the package also state “100% Natural” in large lettering immediately beneath the identification of
18 the Product and above the claim “No Artificial Preservatives.” *See* Attachment “A” hereto. This
19 “100% Natural” claim is again asterisked and the asterisk is defined at the bottom of the side labels
20 as “*all ingredients from natural sources.” *See id.*

21 56. In addition to the logo containing the “100% Natural” promise, the back side of the
22 package also states: “Open Nature™ is about delicious flavor, straight from nature. We only use
23 ingredients from natural sources across our entire line. Always. No artificial anything. Food
24 thoughtfully prepared with as little processing as possible. Food made with our belief: “Nature has
25 nothing to hide, neither should your food.™” *See* Attachment “A” hereto.

26 57. For those consumers savvy enough to consider additional investigation, Safeway
27 demotivates them from doing so by further misrepresenting the all-natural characteristics of its
28 “Open Nature” Products by claiming: “Food products, particularly packaged foods, can contain

1 many hidden ingredients, like artificial flavors, colors, and preservatives. We believe that this gets in
 2 the way of enjoying the natural taste of real, whole foods. And of course, it goes without saying that
 3 there are health benefits to eating more of the natural stuff and less of the artificial stuff!" See
 4 <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>.

5 58. Safeway repeats these promises of the "100 Natural" characteristics of its Open
 6 Nature Products on other pages of its website such as those shown in Attachment "B" hereto.

8 **DEFENDANT'S KNOWLEDGE OF THE FALSITY OF ITS ADVERTISING**

9 59. Defendant knew what representations it made regarding the Products, insofar as all of
 10 those representations appeared on the Products' packages.

11 60. Defendant also knew what ingredients were added to each Product, since it
 12 manufactured the Products itself and then listed all of the Product ingredients on the Product
 13 packages.

14 61. Defendant is governed by and knew the federal regulations that control the labeling of
 15 its food Products and, thus, was aware that some of the ingredients have been federally declared to
 16 be synthetic substances and/or require extensive processing to be safely used as a food ingredient.
 17 Defendant has retained expert nutritionists, food chemists, and other scientists, and has spent much
 18 time and money in developing its own food technologies, such that it was aware that the synthetic
 19 substances used in its Products are not natural.

20 62. Despite this knowledge, Defendant endeavored to hide its wrongdoing and redirect
 21 consumers from further investigation by advertising on its website that "[c]urrently, there are no
 22 government regulations behind natural products. It is up to individual companies to establish their
 23 own standards and abide by them with integrity. We hope you will find Open Nature to be a brand
 24 you can trust." See <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>.

25 63. As such, Defendant knew all the facts demonstrating that its Products contain
 26 synthetic substances, that the Products are falsely labeled and that, by its website's further false
 27 statements, consumers would rely on Safeway's misrepresentations to these consumers' detriment.

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1 64. The misrepresentations and omissions were uniform and were communicated to
2 Representative Plaintiff and to each member of each class at every point of purchase and
3 consumption.

4 65. Since Representative Plaintiff and the members of the classes are not at fault for
5 failing to discover Defendant's wrongs before now and, thus, had no actual or presumptive
6 knowledge of facts sufficient to put them on inquiry, and since, to this day, Defendant has concealed
7 and suppressed the true characteristics of the Products, Defendant's continuing concealment tolls the
8 applicable statute of limitations.

9 10 **RELIANCE OF DEFENDANT'S FALSE REPRESENTATIONS**

11 66. Consumers frequently rely on food label representations and information in making
12 purchase decisions.

13 67. Each time Representative Plaintiff and the class members purchased the "100%
14 Natural" Products, Representative Plaintiff and the class members saw the Products' packages and,
15 thus, also saw the false, misleading, and deceptive representations detailed above, yet did not receive
16 disclosure of the facts concealed as detailed above.

17 68. Representative Plaintiff and the class members were among the intended recipients of
18 Defendant's deceptive representations and omissions.

19 69. Representative Plaintiff and the class members reasonably relied to their detriment on
20 Defendant's misleading representations and omissions.

21 70. Defendant's false, misleading, and deceptive misrepresentations and omissions were
22 intended to deceive and mislead, and are likely to continue to deceive and mislead Representative
23 Plaintiff, class members, reasonable consumers, and the general public.

24 71. Defendant's deceptive representations and omissions are material in that a reasonable
25 person would attach importance to such information and would be induced to act upon such
26 information in making purchase decisions. As such, Representative Plaintiff's and class members'
27 reliance upon such representations and omissions may be presumed as a matter of law. The
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1 materiality of those representations and omissions also establishes causation between Defendant's
2 conduct and the injuries sustained by Representative Plaintiff and members of both classes.

3 72. As a direct and proximate result of Defendant's unfair and wrongful conduct, as set
4 forth herein, Representative Plaintiff and class members (1) were misled into purchasing the
5 Products, (2) received a product that failed to meet Defendant's promises and reasonable
6 expectations, (3) paid a sum (indeed, a premium sum) of money for a product that was not as
7 represented and, thus, were deprived of the benefit of the bargain because the purchased Products
8 had less value than what was represented by Defendant, (4) ingested a substance that was other than
9 what was represented by Defendant and that Representative Plaintiff and class members did not
10 expect or give informed consent to, (5) ingested a product that did not bring the health benefits
11 Defendant promised and may, in fact, be produced using a substance that is generally harmful to
12 health and, *inter alia*, (6) were forced to unwittingly support a company that contributes to
13 environmental, ecological, or health damage and denied the benefit of supporting companies that sell
14 "100% Natural" foods and contributes to environmental sustainability and better health.

15 73. Defendant, at all times, knew that Representative Plaintiff and class members would
16 consider the Products' allegedly "100% Natural" characteristics to be material in their decision to
17 purchase them and would rely upon the misrepresentations and/or omissions of Defendant.
18 Defendant's concealment, misbranding and non-disclosure were intended to influence consumers'
19 purchasing decisions and were done with reckless disregard for the rights of consumers.
20 Representative Plaintiff's and class members' reliance and resultant substantial monetary loss were
21 reasonably foreseeable by Defendant.

22 74. This action is brought to redress and end Safeway's pattern of unfair and wrongful
23 conduct. Indeed, without an award of damages and injunctive relief by this Court, Defendant is
24 likely to continue to injure consumers and harm the public interest.

25 75. In fact, as of the date of filing this Complaint, Safeway retail stores in the United
26 States and California are still selling the Products at issue and labeling them "100% Natural." Even
27 if, during the pendency of this litigation, Defendant elected to remove the "100% Natural" labeling
28 from the Products, Defendant is not presently enjoined from putting the "100% Natural"

1 representation back on its labels at any time it so decides. Accordingly, Representative Plaintiff
 2 seeks declaratory and injunctive relief to ensure Safeway has, in fact, removed any and all of the
 3 “100% Natural” representations from labels on the Products still available for purchase, and to
 4 prevent Defendant from making the “100% Natural” representation on the Product labels in the
 5 future as long as the Products continue to contain synthetic ingredients.

6
 7
 8 **FIRST CLAIM FOR RELIEF**
Deceptive Advertising Practices
 9 **(California Business & Professions Code §§ 17500, et seq.)**
(for the California Class Only)

10 76. The Representative Plaintiff incorporates in this cause of action each and every
 11 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
 12 herein.

13 77. California Business & Professions Code § 17500 prohibits “unfair, deceptive, untrue
 14 or misleading advertising.”

15 78. Defendant violated California Business & Professions Code § 17500 when it
 16 represented, through its false and misleading advertising, and other express representations, that
 17 Safeway’s “100% Natural” Products possessed characteristics and a value that they did not actually
 18 have.

19 79. Defendant’s deceptive practices were specifically designed to induce Representative
 20 Plaintiff and members of the California class to purchase the Products. Defendant engaged in broad-
 21 based marketing efforts to reach Representative Plaintiff and California class members and to induce
 22 them to purchase these Products. Defendant was successful in masking its dishonesty insofar as it
 23 did induce Representative Plaintiff and members of the California class to unwittingly purchase the
 24 Products.

25 80. Representative Plaintiff and members of the California class would not have
 26 purchased and consumed the Products had it not been for Defendant’s misrepresentations of material
 27 facts. Representative Plaintiff and members of the California class were denied the benefit of the
 28 bargain when they decided to purchase the Products over competitor products (which are less

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1 expensive, actually contain “100% Natural” ingredients and/or do not unlawfully claim to be “100%
2 Natural”). Had Representative Plaintiff and members of the California class been aware of these
3 false and misleading advertising tactics, they would have paid less than what they did pay for these
4 Products, or they would not have purchased the Products at all.

5 81. The above acts of Defendant, in disseminating said misleading and deceptive
6 representations and statements throughout the State of California to consumers, including
7 Representative Plaintiff and members of the California class, were and are likely to deceive
8 reasonable consumers by obfuscating the nature of the ingredients of the “100% Natural”
9 Products, all in violation of California Business and Professions Code § 17500, *et seq.*

10 82. In making and disseminating the statements alleged herein, Defendant knew or should
11 have known that the statements were untrue or misleading, and acted in violation of California
12 Business & Professions Code § 17500, *et seq.*

13 83. To this day, Defendant continues to engage in unlawful, unfair and deceptive
14 practices in violation of California Business & Professions Code § 17500. Specifically, Defendant
15 continues to use advertising on its packaging and on its website that is deceptive to induce
16 consumers to purchase the “100% Natural” Products.

17 84. As a direct and proximate result of Defendant’s unlawful conduct in violation of
18 California Business & Professions Code § 17500, Representative Plaintiff and Representative
19 Plaintiff and members of the California class, pursuant to California Business and Professions
20 Code § 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on the
21 part of Defendant, and requiring Defendant to fully disclose the true nature of its misrepresentations.

22 85. Additionally, Representative Plaintiff and members of the California class request an
23 Order requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies
24 wrongfully acquired by Defendant by means of such acts of false advertising, plus interest and
25 attorneys’ fees.
26
27
28

SECOND CLAIM FOR RELIEF
Consumers Legal Remedies Act
(California Civil Code § 1750, et seq.)
(for the California Class Only)

86. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

87. Representative Plaintiff brings this action pursuant to California's Consumer Legal Remedies Act ("CLRA"); California Civil Code § 1750, *et seq.*

88. The CLRA provides that "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful."

89. The "100% Natural" Products are "goods," as defined by the CLRA in California Civil Code § 1761(a).

90. Defendant is a "person," as defined by the CLRA in California Civil Code § 1761(c).

91. Representative Plaintiff and members of the California class are "consumers," as defined by the CLRA in California Civil Code § 1761(d).

92. Purchases of the "100% Natural" Products by Representative Plaintiff and members of the California class are "transactions," as defined by California Civil Code § 1761(e).

93. Defendant engaged in unfair and deceptive acts declared unlawful by the CLRA by knowingly and intentionally mislabeling the "100% Natural" Products when, in fact, these Products contain one or more artificial man-made ingredients (i.e., that do not occur in nature).

94. Representing that its food Products had/has characteristics, uses and/or benefits which they do/did not have, and representing that these Products were and are of a particular standard, quality or grade, when they were, in fact, of another standard, quality and/or grade, constituted and continues to constitute an unfair or deceptive trade practice under the provisions of California Civil Code §§ 1770(a)(5) and 1770(a)(7).

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1 95. Defendant violated the CRLA by representing and advertising that these Products, as
2 discussed above, were “100% Natural.” Defendant knew, however, that this was not the case and
3 that, in reality, these Products contained one or more synthetic chemical preservatives.

4 96. Representative Plaintiff and members of California class reasonably and justifiably
5 relied on Defendant’s misrepresentations in purchasing these misbranded Products. Had the
6 Products been honestly advertised and labeled, Representative Plaintiff and members of
7 California class would not have purchased them and/or would have paid less than what they did
8 pay for these Products.

9 97. Representative Plaintiff and members of California class were unaware of the
10 existence of facts that Defendant suppressed and failed to disclose and, had the facts been known,
11 would not have purchased the Products and/or purchased them at the prices at which they were
12 offered.

13 98. Representative Plaintiff and the members of the California class have been directly
14 and proximately injured by Defendant’s conduct. Such injury may, but does not necessarily include
15 and is not limited to, the purchase of the Products and/or the purchase of the Products at the prices at
16 which they were offered.

17 99. Insofar as Defendant’s conduct violated California Civil Code § 1770(a)(5),
18 Representative Plaintiff and members of the California class are entitled to (pursuant to California
19 Civil Code § 1780, *et seq.*) and do seek injunctive relief to end Defendant’s violations of the
20 California Consumers Legal Remedies Act.

21 100. Moreover, Defendant’s conduct is malicious, fraudulent, and wanton. Defendant
22 intentionally misleads and withholds material information from consumers to increase the sale of its
23 Products.

24 101. Pursuant to California Civil Code § 1782(a), Representative Plaintiff on his own
25 behalf, and on behalf of members of the California class, has notified Safeway of the alleged
26 violations of the Consumer Legal Remedies Act. If, after 30 days from the date of the notification
27 letter, Safeway has failed to provide appropriate relief for the violations, Representative Plaintiff will
28 amend this Complaint to seek compensatory, monetary and punitive damages, in addition to

1 equitable and injunctive relief, and will further request that this Court enter such Orders or
 2 judgments as may be necessary to restore to any person in interest any money which may have been
 3 acquired by means of such unfair business practices, and for such other relief as provided in
 4 California Civil Code § 1780 and the Prayer for Relief.

5
 6 **THIRD CLAIM FOR RELIEF**

7 **Common Law Fraud**

8 ***(for the California and Nationwide Classes)***

9 102. Representative Plaintiff incorporates in this cause of action each and every allegation
 10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 103. Defendant willfully, falsely, and knowingly misrepresented material facts relating to
 12 the character and quality of the Products. These misrepresentations are contained in various media
 13 advertising and packaging disseminated or caused to be disseminated by Defendant, and such
 14 misrepresentations were reiterated and disseminated by officers, agents, representatives, servants, or
 15 employees of Defendant, acting within the scope of their authority, and employed by Defendant to
 16 merchandise and market the Products.

17 104. Defendant's misrepresentations were the type of misrepresentations that are material
 18 (i.e., the type of misrepresentations to which a reasonable person would attach importance and would
 19 be induced to act thereon in making purchase decisions).

20 105. Defendant knew that the misrepresentations alleged herein were false at the time it
 21 made them and/or acted recklessly in making such misrepresentations.

22 106. Defendant intended that Representative Plaintiff and members of both classes rely on
 23 the misrepresentations alleged herein and purchase the Products.

24 107. Representative Plaintiff and members of both classes reasonably and justifiably relied
 25 on Defendant's misrepresentations when purchasing the Products, were unaware of the existence of
 26 facts that Defendant suppressed and failed to disclose, and, had the facts been known, would not
 27 have purchased the Products and/or purchased them at the prices at which they were offered.

28 108. As a direct and proximate result of Defendant's wrongful conduct, Representative
 Plaintiff and members of both classes have suffered and continue to suffer economic losses and other

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1 general and specific damages, including, but not necessarily limited to, the monies paid to
 2 Defendant, and any interest that would have accrued on those monies, all in an amount to be proven
 3 at trial.

4 109. Moreover, in that, at all times herein mentioned, Defendant intended to cause or acted
 5 with reckless disregard of the probability of causing damage to Representative Plaintiff and members
 6 of both classes, and because Defendant was guilty of oppressive, fraudulent and/or malicious
 7 conduct, Representative Plaintiff and members of both classes are entitled to an award of exemplary
 8 or punitive damages against Defendant in an amount adequate to deter such conduct in the future.

9
 10 **FOURTH CLAIM FOR RELIEF**
 11 **Negligent Misrepresentation**
(for the California and Nationwide Classes)

12 110. Representative Plaintiff incorporates in this cause of action each and every allegation
 13 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

14 111. Defendant, directly or through its agents and employees, made false representations to
 15 Representative Plaintiff and members of both classes.

16 112. Defendant owed a duty to Representative Plaintiff and members of both classes to
 17 disclose the material facts set forth above about the Products.

18 113. In making the representations, and in doing the acts alleged above, Defendant acted
 19 without any reasonable grounds for believing the representations were true, and intended by said
 20 representations to induce the reliance of Representative Plaintiff and members of both classes.

21 114. Representative Plaintiff and members of both classes reasonably and justifiably relied
 22 on Defendant's misrepresentations when purchasing the "100% Natural" Products, were unaware
 23 of the existence of facts that Defendant suppressed and failed to disclose and, had the facts been
 24 known, would not have purchased the Products and/or purchased them at the price at which they
 25 were offered.

26 115. As a direct and proximate result of these misrepresentations, Representative Plaintiff
 27 and members of both classes have suffered and continue to suffer economic losses and other general
 28 and specific damages, including but not limited to the amounts paid for the "100% Natural"

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1 Products, and any interest that would have accrued on those monies, all in an amount to be proven at
2 trial.

3
4 **FIFTH CLAIM FOR RELIEF**
5 **Breach of Express Warranty**
(for the California Class Only)

6 116. Representative Plaintiff incorporates in this cause of action each and every allegation
7 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

8 117. By advertising and selling the Products at issue here as “100% Natural,” Defendant
9 made promises and affirmations of fact on these Products’ packaging, and through its marketing and
10 advertising, as described above. This marketing and advertising constitutes express warranties and
11 became part of the basis of the bargain between Representative Plaintiff and members of the
12 California class, on the one hand, and Defendant, on the other.

13 118. Defendant purports, through its advertising, to create express warranties of the
14 Products at issue here as “100% Natural” by making the affirmation of fact, and promising that these
15 Products were and are “100% Natural.”

16 119. Despite express warranties about the “100% Natural” character of these Products, the
17 “100% Natural” Products contain one or more synthetic chemical ingredients, as discussed above.

18 120. Defendant breached express warranties about these Products and their qualities
19 because these Products do not conform to Defendant’s affirmations and promises to be “100%
20 Natural.”

21 121. As a direct and proximate result of Defendant’s breach of express warranty,
22 Representative Plaintiff and members of the California class were harmed in the amount of the
23 purchase price they paid for these Products. Moreover, Representative Plaintiff and members of both
24 classes have suffered and continue to suffer economic losses and other general and specific damages,
25 including but not limited to the amounts paid for the “100% Natural” Products, and any interest
26 that would have accrued on those monies, all in an amount to be proven at trial.
27
28

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SIXTH CLAIM FOR RELIEF**Breach of Contract*****(for the California and Nationwide Classes)***

122. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

123. Representative Plaintiff and members of both classes had a valid contract, supported by sufficient consideration, pursuant to which Defendant was obligated to provide food products which were, in fact, “100% Natural,” as represented by Defendant.

124. Defendant materially breached its contract with Representative Plaintiff and members of both classes by providing the Products which were not “100% Natural.”

125. As a result of Defendant’s breach, Representative Plaintiff and members of both classes were damaged in that they received a product with less value than the amount paid. Moreover, Representative Plaintiff and members of both classes have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the “100% Natural” Products, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF**Unfair Business Practices****(California Business & Professions Code §§ 17200-17208)*****(for the California Class Only)***

126. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

127. Representative Plaintiff brings this claim seeking equitable and injunctive relief to stop Defendant’s misconduct, as complained of herein, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

128. Defendant’s knowing conduct, as alleged herein, constitutes an “unfair” and/or “fraudulent” business practice, as set forth in California Business & Professions Code §§ 17200-17208. Plaintiff also asserts a violation of public policy by Defendant by withholding material facts from consumers.

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129. Defendant's conduct was and continues to be fraudulent, because directly or through its agents and employees, Defendant made false representations to Representative Plaintiff and members of the California class that were likely to deceive them. These false representations (i.e., the labeling of the Products as "100% Natural") is and was likely to deceive reasonable California purchasers, such as the Representative Plaintiff and members of the California class, into purchasing the Products.

130. There were reasonable alternatives available to Defendant to further Defendant's legitimate business interests, other than the conduct described herein.

131. Defendant's misrepresentations of material facts, as set forth herein, also constitute an "unlawful" practice because they, *inter alia*, violate California Civil Code §§ 1572, 1573, 1709, 1710, 1711 and 1770, as well as the common law. Further, Defendant's misrepresentations violate California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law") which provides (in Article 6, § 110660 thereof) that: "Any food is misbranded if its labeling is false or misleading in any particular."

132. Finally, Defendant's conduct violates the FDA's policy concerning what is "natural," as set forth throughout this Complaint, although Representative Plaintiff does not seek to enforce any of the state law claims raised herein so as to impose any standard of conduct that exceeds that which would violate the FDA policy concerning, or definitions of what is "natural."

133. Defendant's conduct in making the representations described herein, constitutes a knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set forth herein, all of which are binding upon and burdensome to its competitors. This conduct engenders an unfair competitive advantage for Safeway, thereby constituting an unfair business practice under California Business & Professions Code §§ 17200-17208.

134. In addition, Defendant's conduct was, and continues to be, unfair, in that its injury to countless purchasers of the Products is substantial, and is not outweighed by any countervailing benefits to consumers or to competitors.

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135. Moreover, Representative Plaintiff and members of the California class could not have reasonably avoided such injury, given that Safeway failed to disclose the Products' true characteristics at any point. Representative Plaintiff and members of the California class purchased the Products in reliance on the representations made by Defendant, as alleged herein.

136. Representative Plaintiff and members of the California class have been directly and proximately injured by Defendant's conduct in ways including, but not necessarily limited to, the money paid to Defendant for products that lack the characteristics advertised, interest lost on those monies, and their unwitting support of a business enterprise that promotes deception and undue greed to the detriment of health- and environmentally-conscious consumers.

137. As a result of the business acts and practices described above, Representative Plaintiff and members of the California class, pursuant to California Business and Professions Code § 17203, are entitled to an Order enjoining such future wrongful conduct on the part of Defendant and such other Orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for the "100% Natural" Products as a result of the wrongful conduct of Defendant.

138. Defendant has clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to the Representative Plaintiff and members of the California class herein alleged, as incidental to its business operations, rather than accept the alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible competitors and as set forth in legislation and the judicial record.

EIGHTH CLAIM FOR RELIEF
Quasi-Contract/Unjust Enrichment
(for the California and Nationwide Classes)

139. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

140. As alleged herein, Defendant intentionally and/or recklessly made false representations to Representative Plaintiff and members of both classes to induce them to purchase

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1 the Products. Representative Plaintiff and members of both classes reasonably relied on these false
2 representations when purchasing the Products.

3 141. Representative Plaintiff and members of both classes did not receive all of the
4 benefits promised by Defendant, and paid more to Defendant for the Products than they otherwise
5 would and/or should have paid.

6 142. Safeway's conduct in enticing Representative Plaintiff and members of both classes
7 to purchase Defendant's Products through Defendant's false and misleading packaging, as described
8 in this Complaint, is unlawful because the statements contained on the Product labels are untrue.
9 Safeway took monies from Representative Plaintiff and members of both classes for products
10 promised to be "100% Natural," even though the Products were not "100% Natural" as detailed in
11 this Complaint. Safeway has been unjustly enriched at the expense of Representative Plaintiff and
12 members of both classes as a result of the unlawful conduct alleged herein, thereby creating a quasi-
13 contractual obligation on Safeway to restore these ill-gotten gains to Representative Plaintiff and
14 member of both classes.

15 143. It would be inequitable and unconscionable for Defendant to retain the profit, benefit
16 and/or other compensation it obtained from its deceptive, misleading, and unlawful conduct alleged
17 herein.

18 144. As a direct and proximate result of Safeway's unjust enrichment, Representative
19 Plaintiff and members of both classes are entitled to restitution of, disgorgement of, and/or the
20 imposition of a constructive trust upon all profits, benefits, and other compensation obtained by
21 Defendant from its deceptive, misleading, and unlawful conduct as alleged herein.

22 **RELIEF SOUGHT**

23
24 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and each of the
25 proposed **Plaintiff classes**, prays for judgment and the following specific relief against **Defendant**,
26 as follows:

27 1. That the Court declare, adjudge and decree that this action is a proper class action and
28 certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P. Rule

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23(b)1, (b)(2) and/or (b)(3);

2. That defendant Safeway is found to have violated California Business & Professions Code § 17200, *et seq.*, § 17500, *et seq.*, and California Civil Code § 1750, *et seq.*, and § 1790, *et seq.*, as to the Representative Plaintiff and class members;

3. That defendant Safeway be found to have breached its contracts with Representative Plaintiff and members of both classes;

4. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful activities in further violation of California Business and Professions Code § 17200, *et seq.*;

5. For a preliminary and permanent injunction enjoining Defendant from advertising, representing, or otherwise holding out for sale within the United States of America, any products which contain Sodium Acid Pyrophosphate (also known as disodium dihydrogen pyrophosphate) as being “100% Natural”;

6. For an Order requiring Defendant to provide a form of corrective advertising to correct the misrepresentations, misstatements and omissions made in the marketing, advertising, packaging and other promotional materials related to its “100% Natural” Products;

7. For an award of restitution and disgorgement of Defendant’s excessive and ill-gotten revenues to Representative Plaintiff and members of the California class;

8. For an Order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Safeway as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein;

9. For an award to Representative Plaintiff and members of both classes of compensatory damages in an amount to be proven at trial;

10. For an award of pre- and post-judgment interest on the amount of any and all economic losses, at the prevailing legal rate;

11. For an award to Plaintiff and to members of both classes of punitive and/or exemplary damages;

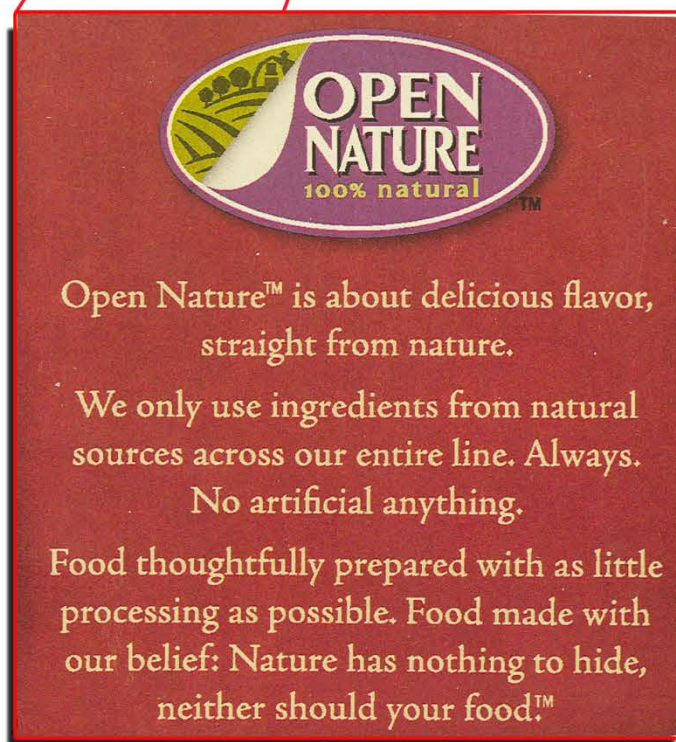
By: /s/ Scott Edward Cole
 Scott Edward Cole, Esq.
 Attorneys for Representative Plaintiff
 and the Plaintiff Classes

ATTACHMENT A



Multi-Grain Waffles
(Front Label View)

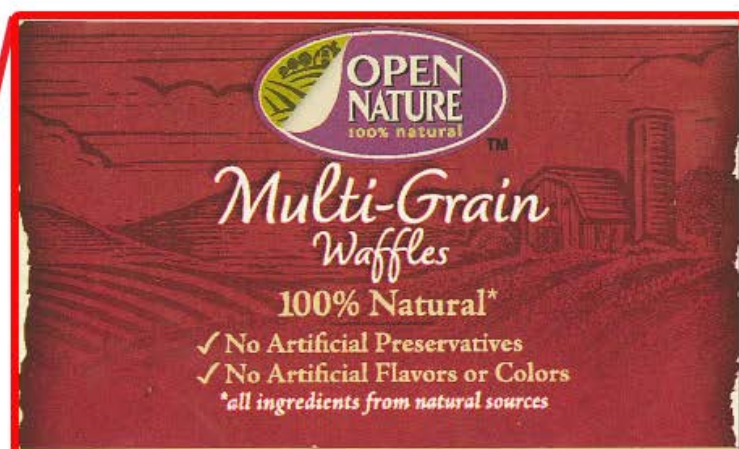
INGREDIENTS: WHOLE WHEAT FLOUR, WHEY, BUTTERMILK, WATER, EGG WHITES, EXPELLER PRESSED CANOLA OIL, MULTI-GRAIN BLEND (OAT FLOUR, CORN FLOUR, BARLEY FLOUR, RYE FLOUR, BROWN RICE FLOUR), CONTAINS 2% OR LESS OF: SUGAR, HONEY, LEAVENING (SODIUM ACID PYROPHOSPHATE, SODIUM BICARBONATE), WHEAT BRAN, EXPELLER PRESSED SOY LECITHIN, AMARANTH FLOUR, MILLET FLOUR, QUINOA FLOUR, SALT, CINNAMON.
CONTAINS: EGGS, MILK, SESAME, SOY, WHEAT.



**Multi-Grain Waffles
 (Back Label View)**



**Multi-Grain Waffles
(Right Side Label View)**

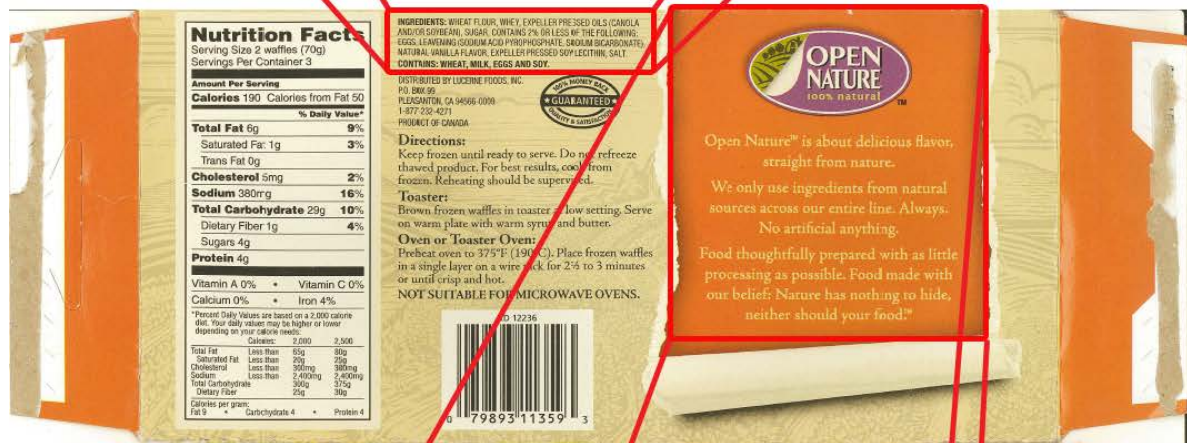


Multi-Grain Waffles
(Left Side Label View)



Home Style Waffles
(Front Label View)

INGREDIENTS: WHEAT FLOUR, WHEY, EXPELLER PRESSED OILS (CANOLA AND/OR SOYBEAN), SUGAR, CONTAINS 2% OR LESS OF THE FOLLOWING: EGGS, LEAVENING (SODIUM ACID PYROPHOSPHATE, SODIUM BICARBONATE), NATURAL VANILLA FLAVOR, EXPELLER PRESSED SOY LECITHIN, SALT.
CONTAINS: WHEAT, MILK, EGGS AND SOY.



**Multi-Grain Waffles
 (Back Label View)**



**Multi-Grain Waffles
(Right Side Label View)**



**Multi-Grain Waffles
(Left Side Label View)**

ATTACHMENT B



See <http://www.safeway.com/ShopStores/Open-Nature-Frozen>



See <http://www.safeway.com/ShopStores/Open-Nature-Products.page>



See <http://www.safeway.com/ShopStores/Well-and-Good-Home.page>

ATTACHMENT C

Corporate Profile

Ticker Symbol: SWY (NYSE)

Industry: Food Retailing

Number of stores: 1,412 in the U.S.

Number of manufacturing plants: 32

Number of employees: ~171,000 - 80% unionized

2012 Statistics

Sales and other revenue	\$44.2B
Sales and other revenue, x-fuel	\$39.2B
Gross profit margin	26.51%
Operating profit margin	2.50%
Net income attributable to Safeway Inc.	\$596.5M
Earnings per diluted share from cont. ops	\$2.27
Adjusted earnings per diluted share from cont. ops**	\$2.15

Financial Statistics (as of 6/14/13)

Total debt	\$5.7B
Market capitalization (\$24.16/share)	\$5.7B
Shares outstanding	239.5M
Quarterly dividend	\$0.20

Percentage of Stores with Specialty Departments and Fuel Stations

	2012	2000
Deli	99%	95%
Floral	98%	90%
Bakery	95%	94%
Seafood	81%	47%
Pharmacy	79%	69%
Starbucks	71%	0%
Fuel stations	25%	0%

Manufacturing and Processing Facilities

	U.S.	Canada
Milk plants	6	3
Bakery plants	6	2
Ice cream plants	2	2
Cheese and meat packaging plants	-	1
Soft drink bottling plants	4	-
Fruit and vegetable processing plants	1	3
Cake commissary	1	-
Sandwich commissary	-	1
Total	20	12

For More Information

See our Annual Report, Fact Book and Corporate Social Responsibility Report at www.safeway.com

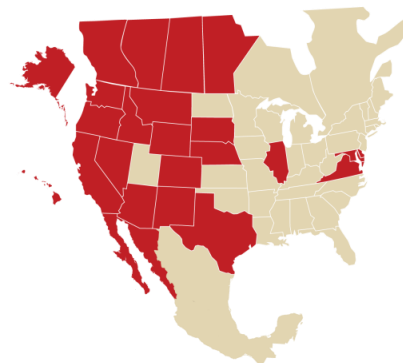
Contact

Christiane Pelz
Safeway Inc.
Vice President, Investor Relations
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
925-467-3832
investor.relations@safeway.com

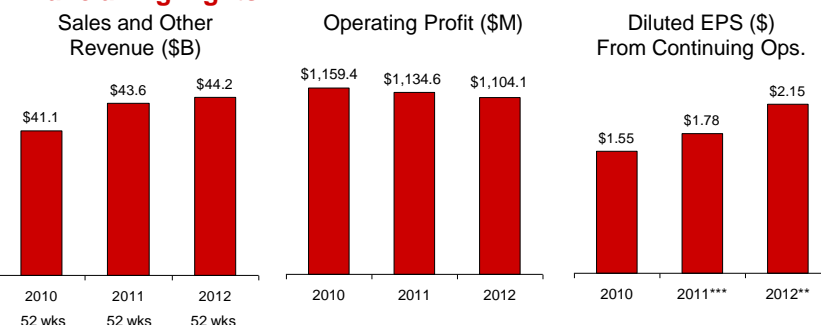
As of June 15, 2013, the company operated 1,412 stores in the Western, Southwestern, Rocky Mountain, and Mid-Atlantic regions of the United States and 223 in Western Canada. In June 2013, Safeway announced the sale of its Canadian operations for C\$5.8 billion.

Safeway holds a 49% interest in Casa Ley, S.A. de C.V., a food and general merchandise retailer with 195 stores in western Mexico. Safeway also owns 73% of Blackhawk Network Holdings Inc., (NASDAQ: HAWK) its gift and prepaid card subsidiary, which completed its IPO in April 2013.

Denver	136
Dominick's	72
Eastern	126
NorCal (incl. HI)	266
Northwest	312
Phoenix	115
Randalls	109
Vons (SoCal)	276
Canada	223
Total	1,635
Canada	223
Total SWY U.S.	1,412



Financial Highlights*



*2013 guidance of \$1.02 - \$1.12 diluted eps based on continuing operations (U.S.) only.

**2012 diluted eps from continuing operations has been adjusted to exclude a gain from legal settlements.

***2011 diluted eps from continuing operations has been adjusted to exclude tax charge on the Canadian dividend. See reconciliations on the back of this page.

Investment Thesis

Successfully differentiating our offering through:

- New and remodeled Lifestyle stores (89% of stores at end Q213)
- High-quality Perishables and innovative Private Brands
- Digital marketing platform just for **u** drives loyalty and sales
- Fuel Reward programs and Health and Wellness-focused initiatives
- Attractive everyday values in addition to Club Card specials

Spending capital effectively:

- Investment in previous years allows less capital expenditure for several years

Producing strong free cash flow and returning cash to shareholders:

- Dividends: Paid \$164M in 2012; increased quarterly dividend by 21% on 5/15/12 to \$0.20 per share
- Share Repurchases: \$1.3B in 2012 and \$1.6B in 2011; ~\$0.8B authorized remaining at end Q213

Leveraging strong balance sheet:

- Investment grade ratings; steady commercial paper access in U.S.
- Long-term debt maturities well spread out

Creating and developing new growth engines:

- Blackhawk: The largest third party gift and prepaid card provider in North America; continues to grow at a solid pace, up 11% in load value in Q213



Our Lifestyle Stores

Safeway's operating strategy is to provide outstanding value to our customers by offering a unique shopping experience in our Lifestyle stores with a wide selection of high quality products at low, attractive everyday pricing, Club Card specials and personalized savings, high-quality perishables, proprietary private label brands, health and wellness offerings and unparalleled service. We emphasize high quality meat and produce, in-store bakeries, deli and food service areas and outstanding floral and pharmacy departments.

Consumer Brands

Safeway is taking a brand management approach to building high quality proprietary Consumer Brands with significant innovation and new product development work.



Executive Management

Robert L. Edwards	President and Chief Executive Officer
Peter J. Bocian	Executive Vice President and Chief Financial Officer
Diane M. Dietz	Executive Vice President and Chief Marketing Officer
Kelly Griffith	Executive Vice President, Retail Operations
Larree M. Renda	Executive Vice President

Reconciliations table

	Fiscal Year	
	2012	2011
Diluted earnings per share from continuing operations, as reported	\$2.27	\$1.49
Gain from legal settlements	(0.12)	—
Tax charge on Canadian dividend	—	0.29
Diluted earnings per share from continuing operations, as adjusted	\$2.15	\$1.78

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Richards, Ryan

(b) County of Residence of First Listed Plaintiff Marin County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
(see attachment)**DEFENDANTS**

Safeway Inc.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

n/a

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Common Law Fraud; Negligent Misrepresentation; Breach of Contract; Quasi-Contract/Unjust Enrichment

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

09/18/2013

SIGNATURE OF ATTORNEY OF RECORD

/s/ Scott Edward Cole

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Richards v. Safeway Inc.

Civil Cover Sheet Attachment

- I(c) Attorneys (*Firm Name, Address, and Telephone Number*):

SCOTT COLE & ASSOCIATES, APC
1970 Broadway, Ninth Floor
Oakland, CA 94612

(510) 891-9800

Scott Edward Cole, Esq. (S.B. #160744)
Molly A. DeSario, Esq. (S.B. #230763)
Jessica L. Campbell, Esq. (S.B. #280626)