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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
EUREKA-MCKINLEYVILLE DIVISION

CALEB HALEY, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC., a  
foreign corporation, and SAFEWAY, INC., a  
domestic corporation,

Defendants.

NO. 23-cv-2811

**CLASS ACTION COMPLAINT FOR  
DAMAGES, RESTITUTION, AND  
INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:  
1. UNFAIR COMPETITION LAW  
2. FALSE ADVERTISING LAW  
3. CONSUMERS LEGAL  
REMEDIES ACT**

**DEMAND FOR JURY TRIAL**

**I. INTRODUCTION**

1.1 Major grocery retailer Albertsons Companies, Inc. operates hundreds of Safeway branded stores in California. Safeway stores routinely market meat, ice cream, frozen food, coffee, and other products under Buy One, Get One Free promotions. The grocery products offered as part of “Buy One, Get One Free,” or “Buy One, Get Two Free” (collectively

1 “BOGO”) sales rotate frequently. These promotions have been regularly available in California  
2 Safeway stores over the last four years. The “free” product is prominently promoted on special  
3 point-of-sale ads and on the packaging of the products themselves. But Albertsons and Safeway  
4 make consumers pay for the seemingly “free” product.

5 1.2 When Safeway stores offer grocery items under BOGO promotions, they raise the  
6 regular retail price of the BOGO grocery products, so that consumers pay substantially more for  
7 the first product to cover the cost of the second product that Safeway claims is “free.” As a  
8 result, consumers making purchases under these promotions do not get a free product. Instead,  
9 they pay more for the product and buy more of the product than they otherwise would to obtain  
10 the illusory “free” product.

11 1.3 These “free” sales are unlawful, unfair, or deceptive practices under California’s  
12 Unfair Competition Law and are impermissible under California’s False Advertising Law.

13 1.4 Caleb Haley brings this action on behalf of himself and other Safeway shoppers in  
14 California who overpaid for products offered as part of a BOGO promotion in the last four years.

## 15 II. JURISDICTION AND VENUE

16 2.1 Jurisdiction. This Court has jurisdiction over Mr. Haley’s claim under 28 U.S.C.  
17 § 1332(d) because Mr. Haley and at least the majority of the class members are citizens of  
18 California, while Albertsons Companies is a citizen of Idaho and Delaware, and because the  
19 amount in controversy exceeds \$5 million.

20 2.2 Venue. Venue is proper in this District and in Humboldt County because the  
21 product giving rise of Mr. Haley’s claims took place in Humboldt County and Safeway and  
22 Albertsons regularly transact business in Humboldt County.

23 2.3 Divisional Assignment. Pursuant to L.R. 3-2(c), this action should be assigned to  
24 the Eureka Division, as a substantial part of the events giving rise to the claim occurred in  
25 Humboldt County.

## 26 III. PARTIES

27 3.1 Caleb Haley is a natural person residing in Blue Lake, California.



1           4.6     Common BOGO products include but are not limited to boneless pork chops,  
2 chicken breast and thighs, beef steaks, ice cream, coffee, and frozen seafood.

3           4.7     For example, between March and May 2023, Defendants raised the regular retail  
4 price of the following items when offering them as part of a BOGO sale in California:

PRODUCT	REGULAR PRICE	BOGO PRICE
Gorton's Frozen Fish	\$8.99	\$11.99
Peets Coffee	\$8.99	\$13.99
Oreos Cookies	\$4.99	\$6.79
Dreyer's Ice Cream	\$4.00	\$7.49
Haggen-Dazs Ice Cream	\$5.99	\$7.49

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13           4.8     Contrary to the language of Defendants' free product offers, the BOGO products  
14 are not actually free. Instead, Defendants increase the price of the first unit of the product to  
15 cover the cost of the second—purportedly “free”—unit of the product.

16           4.9     The Federal Trade Commission has warned that retailers should use “extreme  
17 care” when including the word “free” in marketing. 16 C.F.R. § 251.1(a)(2).

18           4.10    The FTC has further explained that the public understands the offer of “free”  
19 merchandise to be based on the regular price of the item. With Buy 1 Get 1 Free offers, the  
20 customer believes they are paying nothing more than the regular price for the first item in order  
21 to obtain the second. 16 C.F.R. § 251.1(b)(1). The purchaser “has a right to believe that the  
22 merchant will not directly and immediately recover, in whole or in part, the cost of the free  
23 merchandise . . . by marking up the price of the article which must be purchased.” *Id.*

24   **C.     Caleb Haley has made numerous purchases of BOGO products at inflated prices.**

25           4.11    Caleb Haley lives in Blue Lake, California.

26           4.12    Mr. Haley regularly shops at the McKinleyville, California Safeway.  
27

1 4.13 Mr. Haley looks for bargains when he shops for groceries.

2 4.14 Mr. Haley is a Safeway Club Card member. The last four digits of his telephone  
3 number associated with his account are 2733.

4 4.15 Mr. Haley's most recent BOGO purchase at a Safeway store in California was  
5 Ben & Jerry's ice cream on April 14, 2023. He used his Safeway Club Card when he made the  
6 purchase. Safeway sold the BOGO Ben & Jerry's ice cream to Mr. Haley for \$7.49 per 16 oz.  
7 tub. The price for Safeway Club Members for the same item the day before Safeway put the Ben  
8 & Jerry's ice cream on BOGO promotion was \$4.00 per 16 oz. tub. The Ben & Jerry's ice cream  
9 returned to a lower price immediately after the BOGO promotion ended.

10 4.16 On May 31, 2023, the Safeway Club Card member price for the 16 oz. tubs of  
11 Ben & Jerry's ice cream was \$3.99.

12 4.17 Mr. Haley paid Safeway a price premium for the Ben & Jerry's ice cream he  
13 bought as part of a BOGO promotion on April 14, 2023.

14 4.18 Mr. Haley also bought 16 oz. tubs of Ben & Jerry's ice cream at the elevated  
15 BOGO price of \$7.49 on February 18, 2023, and December 17, 2022.

16 4.19 Mr. Haley bought the Cold Brew Coffee Sorbet flavor or Talenti Ice cream at an  
17 elevated BOGO price of \$7.49 on December 9, 2022.

18 4.20 Mr. Haley bought Oreo Double Stuff Family Size cookies at an elevated BOGO  
19 price of \$6.79 on December 17, 2022.

20 **V. CLASS ACTION ALLEGATIONS**

21 5.1 Mr. Haley brings this case on behalf of himself and of a proposed Class under  
22 Federal Rule of Civil Procedure 23 on behalf of himself and a Class defined as:

23 All persons who, within four years before the date of the filing of  
24 this Complaint, bought products sold on a buy one, get one free or  
25 buy one, get two free basis ("BOGO sales"), at a Safeway store  
located in the State of California using a Safeway Club Card.

26 Excluded from the proposed class are all attorneys for the class and  
27 employees of their law firms, the officers or directors of the

1 Defendants, any judge who presides over the case, and all jurors or  
2 alternate jurors who sit on the case.

3 5.2 Numerosity: Safeway is one of the largest grocery retailers in California. On  
4 information and belief, there are more than 800,000 members of the proposed Class.

5 5.3 Commonality and Predominance: Defendants' BOGO pricing is a standard  
6 practice applied in all Safeway and Albertsons stores in California during the class period. As a  
7 result, Mr. Haley's claims raise common issues that predominate over individual issues.

8 Adjudication of these common issues in a single action has important and desirable advantages  
9 of judicial economy.

10 5.4 Questions of law and fact common to Mr. Haley and the proposed Class include  
11 but are not limited to:

- 12 a. Whether Defendants regularly increase the price of BOGO products above  
13 the regular retail price for the same products;
- 14 b. Whether Defendants' BOGO sales pricing is unfair or unlawful;
- 15 c. Whether Defendants' BOGO sales pricing is fraudulent or misleading;
- 16 d. Whether Defendants' BOGO sales pricing and promotions omit  
17 information—namely that the BOGO price is higher than the regular retail  
18 price of the same product;
- 19 e. Whether Mr. Haley and the proposed Class are entitled to a rebuttable  
20 presumption of reliance as a result of Defendants' omissions;
- 21 f. Whether Defendants' conduct violates the California Consumer Legal  
22 Remedies Act;
- 23 g. Whether Defendants' conduct violates the False Advertising Law;
- 24 h. Whether Defendants' conduct violates California's Unfair Competition  
25 law; and
- 26 i. The nature and extent of the injury to the Class and the measure of  
27 compensation for such injury.

1           5.5     Typicality: Mr. Haley’s claims are typical of the claims of the Class. His claims,  
2 like the claims of the Class, arise out of the purchase of BOGO products where consumers did  
3 not actually receive a free product because they paid inflated prices for BOGO products, and are  
4 based on the same legal and remedial theories.

5           5.6     Adequacy of Representation: Mr. Haley is an appropriate representative for the  
6 Class and will fairly and adequately protect the interests of the Class. He understands and is  
7 willing to undertake the responsibilities of acting in a representative capacity on behalf of the  
8 proposed Class. Mr. Haley has no interests that directly conflict with the interests of the Class.

9           5.7     Mr. Haley has retained experienced trial lawyers with significant experience in  
10 complex and class action litigation, including consumer class actions. Mr. Haley and his counsel  
11 are committed to prosecuting this action vigorously on behalf of the Class and have the financial  
12 resources to do so.

13           5.8     Superiority: Mr. Haley and members of the Class suffered harm and damages as a  
14 result of Defendants’ unfair or deceptive conduct. Absent a class action, however, most Class  
15 members would find the cost of litigating their small dollar claims prohibitive. Class treatment is  
16 superior to multiple individual suits or piecemeal litigation because it conserves judicial  
17 resources, promotes consistency and efficiency of adjudication, provides a forum for small  
18 claimants, and deters illegal activities. The Class members are identifiable from Defendants’  
19 records, and there will be no significant difficulty in the management of this case as a class  
20 action.

21           5.9     Injunctive Relief: Defendants’ conduct is uniform as to all members of the Class.  
22 Defendants have acted or refused to act on grounds that apply generally to the Class, so that final  
23 injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.  
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1 **VI. FIRST CLAIM FOR RELIEF**

2 **Violation of the Consumer Legal Remedies Act – Cal. Civ. Code § 1770**

3 6.1 Mr. Haley incorporates by reference all preceding paragraphs.

4 6.2 Defendants’ sales of BOGO products are transactions that resulted in the sale of  
5 goods or services to a consumer. Cal. Civ. Code § 1770(a).

6 6.3 Under the CLRA, it is unlawful to advertise goods or services with intent to sell  
7 them not as advertised; or make a false or misleading statement about the existence of price  
8 reductions. Cal. Civ. Code § 1770(a)(9) and (13).

9 6.4 Defendants’ advertisement of BOGO products coupled with Defendants’ failure  
10 to provide the promised discount violates each of these provisions of the CLRA.

11 6.5 Defendants advertised the BOGO products, but failed to provide the promised  
12 discounts, in violation of Section 1770(a)(9).

13 6.6 Defendants made false or misleading statements about the existence of the BOGO  
14 discounts when they sold BOGO products at elevated prices, in violation of Section 1770(a)(13).

15 6.7 Mr. Haley brings this claim in furtherance of the public interest. He seeks no  
16 more relief for himself than he seeks for all members of the Class.

17 **VII. SECOND CLAIM FOR RELIEF**

18 **(False Advertising Law: Failure to Provide Advertised Discounts - Cal. Bus. & Prof.**  
19 **Code §§ 17500)**

20 7.1 Mr. Haley incorporates by reference all preceding paragraphs.

21 7.2 The False Advertising Law prohibits any unfair, deceptive, untrue, or misleading  
22 advertising. Cal. Bus. & Prof. Code §§ 17500 et seq.

23 7.3 Defendants used false and misleading advertising to sell BOGO products and then  
24 failed to provide the promised discounts when they sold the BOGO products at elevated prices.

25 7.4 Mr. Haley and members of the Class reasonably relied on Defendants’ promotion  
26 of the BOGO products. The promised BOGO discount was a material term that would induce a  
27 reasonable consumer to buy the products. Defendants failed to provide the promised discount.





1           8.6     Defendants’ advertisement of BOGO products coupled with its failure to provide  
2 the promised discount violates each of these provisions of the CLRA.

3           8.7     Defendants advertised the BOGO products, but failed to provide the promised  
4 discounts, in violation of Section 1770(a)(9).

5           8.8     Defendants made false or misleading statements about the existence of the BOGO  
6 discounts when they sold BOGO products at prices higher than the regular price, in violation of  
7 Section 1770(a)(13)

8           8.9     Under the CLRA, it is unlawful to advertise goods or services with intent to sell  
9 them not as advertised or make a false or misleading statement about the existence of price  
10 reductions. Cal. Civ. Code § 1770(a)(9), (13).

11          8.10    Defendants’ promotion of the BOGO products is impermissible under 16 C.F.R.  
12 § 251.1(b)(1).

13          8.11    Advertising that is false and misleading is unfair under the California UCL.

14          8.12    False and misleading statements of fact include omissions of material fact that, by  
15 the exercise of reasonable care, should be known to affect the average consumer’s decision as to  
16 whether to purchase a product.

17          8.13    Defendants’ omission of the fact that they raised the regular prices of products  
18 when placing them on BOGO promotions is false or misleading.

19          8.14    Mr. Haley and the Class relied on Defendants’ BOGO promotional statements  
20 when buying groceries. But for Defendants’ misrepresentations and omissions, Mr. Haley and  
21 any reasonable consumer would have purchased fewer products or would have paid less for those  
22 products.

23          8.15    Defendants’ misleading statements and failure to disclose that they raise the  
24 prices of products sold in BOGO promotions constitute false and misleading statements to the  
25 public.

26          8.16    Mr. Haley and the Class lost money or property as a result of Defendants’  
27 violations of the UCL when they paid Defendants elevated BOGO prices for grocery products.



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*Attorneys for Plaintiff*

**ATTESTATION**

Pursuant to Civil L.R. 501(h)(3), the undersigned attests that each of the other Signatories have concurred in the filing of the document.

Dated: June 7, 2023

By: /s/ Sophia M. Rios  
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CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CALEB HALEY

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sophia M. Rios, Berger Montague, 401 B Street, Suite 2000, San Diego, CA 92101; 619-489-0300

DEFENDANTS

ALBERTSONS COMPANIES, INC. and 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)

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)

Brief description of cause:

California state law claims for overcharging consumers offered as part of buy 1, get 1 free promotions.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

X EUREKA-MCKINLEYVILLE

DATE 06/07/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/Sophia M. Rios

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.