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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

KIM SIFLINGER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

ALBERTSON'S COMPANIES, LLC, a foreign
limited liability corporation, and SAFEWAY,
INC., a foreign corporation,

Defendants.

NO.

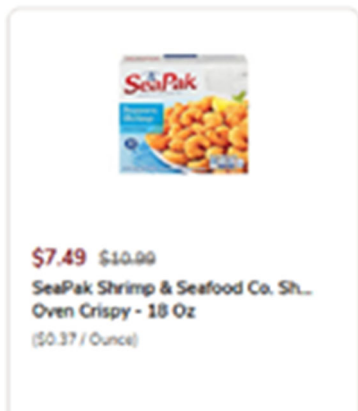
CLASS ACTION COMPLAINT

I. INTRODUCTION

1.1 Major grocery retailer Albertson's Companies, LLC operates hundreds of Safeway branded stores in Washington. 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 "BOGO") sales rotate frequently. These promotions have been regularly available in Washington Safeway stores over the last four years. The "free" product is prominently promoted on special point-of-sale ads and on the packaging of the products themselves. But Albertson's and Safeway make consumers pay for the seemingly "free" product.

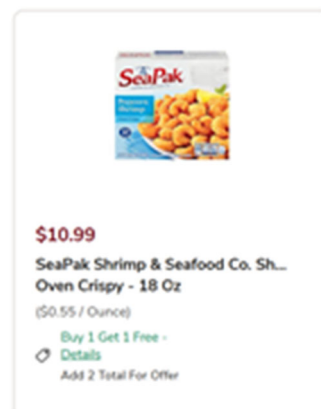
1 1.2 When Safeway stores offer grocery items under BOGO promotions, they raise
2 the regular retail price of the BOGO grocery products, so that consumers pay substantially more
3 for the first product to cover the cost of the second “free” product. As a result, consumers
4 making purchases under these promotions do not get a free product. Instead, they pay more
5 for the product and buy more of the product than they otherwise would in order to obtain the
6 illusory “free” product. Images of Safeway’s advertising demonstrate the issue:

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8 On April 4, 2023, Safeway offered boxed
9 frozen shrimp for \$7.49:



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The next day, Safeway offered the
same product for \$10.99 as part of a
Buy 1, Get Free sale:



1.4 These “free” sales are unfair or deceptive practices under Washington’s
Consumer Protection Act.

1.5 Kim Siflinger is a retiree who recently moved to Washington to be closer to her
family. Living on a fixed income, she regularly looked for BOGO deals and purchased BOGO
items from Safeway stores in Washington in an effort to stretch her dollars. She brings this
action on behalf of herself and other Safeway shoppers in Washington who overpaid for
products offered as part of a BOGO promotion in the last four years.

1 sold boneless, skinless chicken breasts to Club Card members for \$2.99 per pound. Within the
2 same month, Safeway sold seasoned boneless, skinless chicken breasts for \$5.99 per pound in a
3 Buy 1, Get 1 Free promotion. Thus, Club Card consumers overpaid by \$3.00 per pound for any
4 BOGO chicken purchase.

5 4.5 The price a Club Card member pays for an item is the regular retail price that any
6 customer pays for BOGO products because a consumer must have a Club Card to make BOGO
7 purchases.

8 4.6 Common BOGO products include but are not limited to boneless pork chops,
9 chicken breast and thighs, beef steaks, ice cream, coffee, and frozen seafood.

10 4.7 For example, in March and April 2023, Defendants raised the regular retail price
11 of the following items when offering them as part of a BOGO sale in Washington:

PRODUCT	REGULAR PRICE	BOGO PRICE
Chicken Breast	\$5.49	\$5.99
Chicken Thighs	\$5.49	\$6.49
Petite Sirloin Steak	\$7.99	\$9.99
Pork Loin Rib Chops (thin)	\$4.99	\$7.49
Pork Loin Rib Chops	\$2.99	\$6.49
Gortons Frozen Fish	\$6.99	\$9.99
Green Mountain Coffee	\$9.99	\$11.99

22 4.8 Contrary to the language of Defendants' free product offers, the BOGO products
23 are not actually free. Instead, Defendants increase the price of the first unit of the product to
24 cover the cost of the second—purportedly “free”—unit of the product.

25 4.9 The Federal Trade Commission has warned that retailers should use “extreme
26 care” when including the word “Free” in marketing. 16 C.F.R. § 251.1(a)(2).

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

7 4.11 The final decisions and orders of the FTC are offer persuasive guidance in
8 determining whether an act or practice is unfair or deceptive under Washington’s Consumer
9 Protection Act. RCW 19.86.920.

10 **C. Kim Siflinger has made numerous purchases of BOGO products at inflated prices.**

11 4.12 Kim Siflinger is a retiree who lives in Silverdale, Washington. She worked for
12 decades as a para educator and retired after she was injured at work.

13 4.13 Ms. Siflinger moved to Silverdale from California in late 2022 in order to be
14 closer to her son, who serves in the Navy, and her grandchildren.

15 4.14 Ms. Siflinger regularly shops at the NW Bucklin Hill Road Safeway in Silverdale.

16 4.15 Ms. Siflinger lives on relatively fixed income. She looks for bargains in order to
17 stretch her dollars further.

18 4.16 Ms. Siflinger is a Safeway Club Card member.

19 4.17 Ms. Siflinger’s most recent BOGO purchase at a Safeway store was boneless,
20 skinless chicken breasts on March 10, 2023. She used her Safeway Club Card when she made
21 the purchase. Safeway sold the BOGO boneless, skinless chicken breasts to Ms. Siflinger for
22 \$5.99 per pound. The price for the same item the day before Safeway put the boneless, skinless
23 chicken breasts on BOGO promotion was \$5.49 per pound and the boneless, skinless chicken
24 breasts returned to that price immediately after the BOGO promotion ended.

25 4.18 On March 24, 2023, the Safeway Club Card price for the same boneless, skinless
26 chicken breasts was \$2.99 per pound.

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- 1 d. Whether Defendants' BOGO sales pricing impacts the public interest
2 because it injured consumers other than Ms. Siflinger;
- 3 e. Whether Defendants' BOGO sales pricing and promotions omit
4 information—namely that the BOGO price is higher than the regular retail
5 price of the same product;
- 6 f. Whether Ms. Siflinger and the proposed Class are entitled to a rebuttable
7 presumption of reliance as a result of Defendants' omissions;
- 8 g. Whether Defendants' conduct violates the Washington Consumer
9 Protection Act; and
- 10 h. The nature and extent of the injury to the Class and the measure of
11 compensation for such injury.

12 5.5 Typicality: Ms. Siflinger's claims are typical of the claims of the Class. Her claims,
13 like the claims of the Class, arise out of the purchase of BOGO products where consumers did
14 not actually receive a free product because they paid inflated prices for BOGO products, and
15 are based on the same legal and remedial theories.

16 5.6 Adequacy of Representation: Ms. Siflinger is an appropriate representative for
17 the Class and will fairly and adequately protect the interests of the Class. She understands and
18 is willing to undertake the responsibilities of acting in a representative capacity on behalf of the
19 proposed Class. Ms. Siflinger has no interests that directly conflict with the interests of the
20 Class.

21 5.7 Ms. Siflinger has retained experienced trial lawyers with significant experience in
22 complex and class action litigation, including consumer class actions. Ms. Siflinger and her
23 counsel are committed to prosecuting this action vigorously on behalf of the Class and have the
24 financial resources to do so.

25 5.8 Superiority: Ms. Siflinger and members of the Class suffered harm and damages
26 as a result of Defendants' unfair or deceptive conduct. Absent a class action, however, most
27 Class members would find the cost of litigating their small dollar claims prohibitive. Class

1 treatment is superior to multiple individual suits or piecemeal litigation because it conserves
2 judicial resources, promotes consistency and efficiency of adjudication, provides a forum for
3 small claimants, and deters illegal activities. The Class members are readily identifiable from
4 Defendants' records, and there will be no significant difficulty in the management of this case
5 as a class action.

6 5.9 Injunctive Relief: Defendants' conduct is uniform as to all members of the Class.
7 Defendants have acted or refused to act on grounds that apply generally to the Class, so that
8 final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.

9 VI. FIRST CLAIM FOR RELIEF

10 Violation of the Consumer Protection Act – Unfair Acts or Practices

11 6.1 Ms. Siflinger and Defendants are "persons" as defined in RCW 19.86.010.

12 6.2 Defendants' conduct described in paragraphs 1.1-4.19 is unfair within the
13 meaning of the Washington Consumer Protection Act.

14 6.3 Defendants engaged in unfair acts or practices by promoting products as "free"
15 while charging more than the regular retail price for the products included in BOGO
16 promotions. As the FTC's rules explain, the average consumer does not expect to pay more
17 than the regular retail price for the first unit of a product offered in a Buy 1 Get 1 Free
18 promotion.

19 6.4 Defendants' marketing and sale of BOGO products is immoral, unethical,
20 oppressive, or unscrupulous.

21 6.5 Defendants' marketing and sale of BOGO products occurs in trade or commerce
22 within the meaning of the Washington Consumer Protection Act, and is capable of injuring a
23 substantial portion of the public.

24 6.6 Defendants' unfair acts or practices impact the public interest because they have
25 injured at least thousands of other Washington consumers, and have the capacity to injure
26 hundreds or thousands of other Washington consumers. Defendants continue offer BOGO
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1 promotions while inflating the regular retail price of products offered as part of the promotion
2 in Washington and, as a result, are likely to continue to injure the public.

3 6.7 As a direct and proximate result of Defendants' unfair acts or practices, Ms.
4 Siflinger and the Class have suffered an injury in fact and lost money. Specifically, Ms. Siflinger's
5 and the Class's injuries are the sum of the amounts above regular retail price they paid for the
6 first unit purchased as part of BOGO promotions.

7 6.8 Ms. Siflinger and the Class are therefore entitled to legal relief against
8 Defendants, including recovery of actual damages, treble damages, attorneys' fees, costs of
9 suit, and such further relief as the Court may deem proper.

10 6.9 Ms. Siflinger and the Class are also entitled to injunctive relief in the form of an
11 order prohibiting Defendants from increasing the regular retail price of items when they are
12 sold as part of a BOGO promotion.

13 VII. SECOND CLAIM FOR RELIEF

14 Violation of the Consumer Protection Act – Deceptive Acts or Practices

15 7.1 Ms. Siflinger and Defendants are "persons" as defined in RCW 19.86.010.

16 7.2 Defendants' conduct described in paragraphs 1.1-4.19 is deceptive within the
17 meaning of the Washington Consumer Protection Act.

18 7.3 Defendants engaged in deceptive acts or practices by marketing BOGO deals to
19 Ms. Siflinger and the Class while omitting the fact that Defendants increased the regular retail
20 price of products sold as part of the BOGO promotions.

21 7.4 Defendants' acts or practices are deceptive within the meaning of the CPA
22 because they have the capacity to deceive many Washington consumers.

23 7.5 Defendants' marketing and sale of BOGO products occurred in trade or
24 commerce within the meaning of the Washington Consumer Protection Act and is capable of
25 injuring a substantial portion of the public.

26 7.6 Defendants' deceptive acts or practices impact the public interest because they
27 have injured Ms. Siflinger and the Class, and have the capacity to injure hundreds or thousands

1 of other Washington residents. Defendants continue offer BOGO promotions while inflating the
2 regular retail price of products offered as part of the promotions in Washington and, as a result,
3 are likely to continue to injure the public.

4 7.7 As a direct and proximate result of Defendants' deceptive acts or practices, Ms.
5 Siflinger and the Class have suffered an injury in fact and lost money. Specifically, Ms. Siflinger's
6 and the Class's injuries are the sum of the amounts above regular retail price they paid for the
7 first unit purchased as part of BOGO promotions.

8 7.8 Ms. Siflinger and the Class are therefore entitled to legal relief against
9 Defendants, including recovery of actual damages, treble damages, attorneys' fees, costs of
10 suit, and such further relief as the Court may deem proper.

11 7.9 Ms. Siflinger and the Class are also entitled to injunctive relief in the form of an
12 order prohibiting Defendants from increasing the regular retail price of items when they are
13 sold as part of a BOGO promotion.

14 VIII. THIRD CLAIM FOR RELIEF

15 Injunctive Relief on Behalf of Washington Consumers

16 8.1 Under the Washington Consumer Protection Act, "[a]ny person who is injured in
17 his or her business or property" by a CPA violation "may bring a civil action in superior court to
18 enjoin further violations." RCW 19.86.090.

19 8.2 For the reasons stated above, Defendants have violated the Washington
20 Consumer Protection Act, and Ms. Siflinger has been injured and lost money as a result of those
21 violations. As a result, Ms. Siflinger has standing to seek an injunction to protect the public
22 interest from future violations. *See Hockley v. Hargitt*, 82 Wn.2d 337, 350-51 (1973).

23 8.3 Therefore, Ms. Siflinger seeks an injunction prohibiting Defendants from
24 continuing to inflate the prices of products offered on BOGO promotions above the regular
25 retail price for those products.

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1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Ms. Siflinger requests relief as follows:

- 3 A. Actual damages;
- 4 B. Treble damages under RCW 19.86.090;
- 5 C. Injunctive relief prohibiting Defendants from inflating the prices of products
6 offered on BOGO promotions above the regular retail price for those products;
- 7 D. Attorneys' fees and costs of suit;
- 8 E. Prejudgment interest; and
- 9 F. Such other relief as the Court deems just and proper.

10 RESPECTFULLY SUBMITTED AND DATED this 7th day of April, 2023.

11 TERRELL MARSHALL LAW GROUP PLLC

12 By: /s/Beth E. Terrell, WSBA #26759

13 Beth E. Terrell, WSBA #26759

14 Email: bterrell@terrellmarshall.com

15 Blythe H. Chandler, WSBA #43387

16 Email: bchandler@terrellmarshall.com

17 936 North 34th Street, Suite 300

Seattle, Washington 98103

Telephone: (206) 816-6603

18 David F. Sugerman, *Pro Hac Vice Forthcoming*

19 Email: david@sugermadahab.com

Nadia S. Dahab, *Pro Hac Vice Forthcoming*

20 Email: nadia@sugermadahab.com

21 SUGERMAN DAHAB

22 707 SW Washington Street, Ste. 600

Portland, OR 97205

Telephone: (503) 228-6474

23 Tim Alan Quenelle, *Pro Hac Vice Forthcoming*

24 Email: tim.quenelle@gmail.com

25 TIM QUENELLE, PC

26 4800 SW Meadows Road, #300

Lake Oswego, OR 97035

27 Telephone: (503) 675-4330

TERRELL MARSHALL LAW GROUP PLLC

936 North 34th Street, Suite 300

Seattle, Washington 98103-8869

TEL. 206.816.6603 • FAX 206.319.5450

www.terrellmarshall.com

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E. Michelle Drake, *Pro Hac Vice Forthcoming*
Email: emdrake@bm.net
BERGER MONTAGUE, P.C.
43 SE Main Street, Suite 505
Minneapolis, Minnesota 55414
Telephone: (612) 594-5999

Attorneys for Plaintiffs