

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**ERIC BECHTEL, KEVIN  
EVERSON, and ROBBIE SAYDE  
on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**v.**

**WINN-DIXIE STORES, INC.**

**Defendant.**

**Case No: 3:23-cv-1470**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiffs Eric Bechtel (“Mr. Bechtel”), Kevin Everson (“Mr. Everson”), and Robbie Sayde (“Mr. Sayde”) (collectively, the “Plaintiffs”) on behalf of themselves and all others similarly situated, allege the following based upon personal knowledge as to themselves, upon information and belief, and the investigation of their undersigned counsel as to all other matters, and bring this class action against Defendant Winn-Dixie Stores, Inc. (“Defendant” or “Winn Dixie”), as follows:

**I. NATURE OF THE ACTION**

1. Every day in every store, Winn-Dixie offers price promotions on products as “Buy One, Get One Free” (“BOGO”). However, a consumer is not actually able to receive a “free” product because Winn-Dixie charges a higher than regular price for the other product.

2. The “free” products are prominently promoted in weekly

advertisements, online, on special point-of-sale ads, on the packaging, and on stores shelves in front of the packaging itself. Some weeks there are thousands of BOGO products for sale across Winn-Dixie's various stores:



3. Winn-Dixie understands that consumers only buy its BOGO products because of the alleged savings:

At Winn-Dixie, we know our customers are searching for the best deals and continuing to save money on their grocery bills is a top priority. Through our commitment to lowering prices and keeping

them down on the items our customers love most, we hope to make a truly meaningful difference in our customers' lives. When our customers shop our stores, they can trust they are getting quality products at affordable prices

Dwayne Rabon, Chief Merchandising Officer for Southern Grocers (parent company of Winn-Dixie)

4. Winn-Dixie conducted an unfair and deceptive BOGO scheme during the class period in violation of the Federal Trade Commission Regulations and Florida law.

5. The Federal Trade Commission provides guidance on the meaning of the term "Free" as used in BOGO promotions as follows:

(b) Meaning of "Free"

(1) **The public understands that**, except in the case of introductory offers in connection with the sale of a product or service (See paragraph (f) of this section), **an offer of "Free" merchandise or service is based upon a regular price for the merchandise or service which must be purchased by consumers in order to avail themselves of that which is represented to be "Free"**. In other words, when the purchaser is told that an article is "Free" to him if another article is purchased, **the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other**. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) **The term regular when used with the term price, means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a "Free" or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period. For consumer products**

**or services which fluctuate in price, the “regular” price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period.**

16 CRF § 251.1(b) (emphasis added).

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

7. As a part of its BOGO scheme, Winn-Dixie lists products on BOGO with such high frequency that that the BOGO price is not special or meaningful.

8. The Federal Trade Commission provides guidance on the frequency of BOGO offers, as follows:

(h) *Frequency of offers.* So that a “Free” offer will be special and meaningful, a single size of a product or a single kind of service should not be advertised with a “Free” offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a “Free” offer should not exceed 50 percent of the total volume of his sales of the product, in the same size, in the area.

16 CRF § 251.1(h).

9. Winn-Dixie routinely sells dozens of BOGO products that are listed as

BOGO multiple times within a 30-day period, contain more than three BOGO offers in the same trade area, and listed as BOGO for over 6 months in any 12-month period

10. These “free” sales are unlawful, unfair, or deceptive practices under FDUTPA, or, in the alternative, unjustly enrich Winn-Dixie.

11. All monies collected by Winn-Dixie under its BOGO Program are unlawful as they stem from false and misleading BOGO advertisements, marketing, and/or displays regarding the goods being purchased.

12. Plaintiffs seek to represent all similarly situated consumers who have paid Winn-Dixie for products purchased under its unfair and deceptive BOGO Program. Plaintiffs also seek equitable relief, including an injunction, actual damages, prejudgment interest, attorneys’ fees and costs.

## **II. JURISDICTION AND VENUE**

13. This Court possesses jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332 because this dispute concerns more than \$5 million and there is minimal diversity. Many class members are citizens of Georgia, Alabama, Mississippi, and Louisiana where Winn-Dixie stores are also located, in addition to class members who are Florida Citizens.

14. Winn-Dixie is a Florida citizen and Florida corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its Corporate Headquarters and principal place of business located at 5050 Edgewood Court Jacksonville, Florida 32254.

15. The Defendant's BOGO scheme, which is implemented throughout its Florida, Georgia, Louisiana, Mississippi, and Alabama locations, originated in Defendant's Corporate Headquarters located at 5050 Edgewood Court Jacksonville, Florida 32254. Each week, the BOGO sales and pricing scheme details are selected and distributed from Defendant's Corporate Headquarters in Jacksonville and electronically transmitted to each state where Defendant has a location. While some of the items and prices may vary by location, Winn-Dixie's BOGO scheme was developed and is implemented from within the State of Florida. All the offending conduct occurs or originates in Florida, but harms consumers in other states.

16. The Defendant conducts regular and sustained business across the State of Florida, including in Duval County. Venue is proper in this district pursuant to 28 U.S. §1391 because Winn-Dixie is a Florida profit corporation headquartered in this District and subject to personal jurisdiction in this District., is doing business here for the purposes of venue. Additionally, venue is proper because a substantial portion of the acts, events, and/or unlawful activity giving rise to the claims occurred in this District.

17. This Court possesses personal jurisdiction because Winn-Dixie is Headquartered in Florida and deliberately and regularly conducts business and BOGO marketing, distributing, BOGO Promotions, and sells to consumers throughout the State of Florida. Winn-Dixie benefitted from the laws of Florida and profited handsomely from Florida commerce.

### **III. PARTIES**

18. Plaintiff, Eric Bechtel is a natural person, Florida citizen and resident of St. Petersburg, Pinellas County, Florida.

19. Plaintiff, Kevin Everson is a natural person, Florida citizen and resident of St. Petersburg, Pinellas County, Florida.

20. Plaintiff, Robbie Sayde is a natural person, Florida citizen and resident of St. Petersburg, Pinellas County, Florida.

21. Defendant Winn-Dixie Stores, Inc. is a Florida Profit Corporation with its principal place of business in Duval County, Florida. At all relevant times, Winn-Dixie sold groceries and related products in the retail marketplace online and through its many stores located in the states of Florida, Alabama, Georgia, Mississippi, and Louisiana.

22. Defendant offers its BOGO Program at its brick-and-mortar locations throughout Florida, Alabama, Georgia, Mississippi, and Louisiana. The BOGO products purchased by the named Plaintiffs were purchased at Winn-Dixie's store located in the State of Florida.

### **IV. FACTS**

23. Winn-Dixie is one of the largest conventional supermarket companies in the United States and it operates 545 stores located in Alabama, Florida, Georgia, Louisiana, and Mississippi.<sup>1</sup>

24. Upon information and belief, one of the main ways that Winn-Dixie

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<sup>1</sup> <https://www.segrocers.com/aboutus>

maintains its retail sales numbers is through its BOGO Promotions. Winn-Dixie's BOGO Promotions can be found in its weekly online flyer, weekly physical mail flyer, on store shelves, at the front of the store, on the aisle end caps, and in metal containers sitting within its aisles.

**UNFAIR AND DECEPTIVE BOGO PROGRAMS BY WINN-DIXIE**

25. The BOGO Program includes meat, seafood, produce, ice cream, condiments, and countless others. Winn-Dixie routinely inflates the regular price of its products just prior to placing them on BOGO. Winn-Dixie also rotates many of its BOGO products more frequently than allowed under the FTC BOGO Rule.

26. Winn-Dixie routinely raises the stated regular price of items for purposes of its BOGO sales. By way of example only, during the week of March 8, 2023, Winn-Dixie offered the following products for sale in Florida, after first raising the regular price, as part of its BOGO Program:



<b>Product</b>	<b>Regular Price</b>	<b>BOGO Price</b>	<b>BOGO Sale Less Than 30 Days?<sup>2</sup></b>	<b>BOGO Sales Per Year?<sup>3</sup></b>
Green Skin Avocado	\$3.00	\$4.99	Yes	8 times
Whole Pineapple	\$3.49	\$4.99	Yes	30 times
SEG Bnls/Sknls Chicken Breast	\$7.69	\$8.49	Yes	10 times
Onions 3 lb bag	\$3.99	\$4.99	Yes	28 times
Gwaltney Hotdogs (48oz)	\$6.99	\$9.99	Yes	13 times
Surimi – Imitation Crab	\$4.99	\$6.99	Yes	14 times
Armour Pepperoni	\$6.99	\$9.99	Yes	8 times
Adaptable Pork Loin	\$7.99	\$8.99	Yes	8 times
SEG Prestige Ice Cream	\$4.99	\$5.49	Yes	12 times
Smithfield Bacon	\$7.99	\$10.99	Yes	12 times
SEG Chicken Wings	\$11.99	\$19.99	Yes	38 times

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<sup>2</sup> 16 CRF § 251.1(h).

<sup>3</sup> *Id.*

27. Winn-Dixie returned Whole Pineapple, Gwaltney Hotdogs (48oz), Imitation Crab, Adaptable Polk Loin, Armour Pepperoni, and Smithfield Bacon to the BOGO program within two weeks after the March 8, 2023 BOGO sales Program. Winn-Dixie routinely cycles those and many other products through its BOGO program more than three times in a twelve-month period.

28. Winn-Dixie's weekly flyers illustrate its illusory "free" products. For example, the regular price of a 3 lb. bag of SE Grocers Yellow Onions is \$2.99, and might be advertised on sale for \$1.99. But when that same bag of onions is placed on a BOGO sale the price jumps to \$4.99.<sup>4</sup>



29. Instead of purchasing only one bag of onions for the regular price of \$2.99, many consumers will pick up a second bag of onions, whether they need them or not, and end up paying \$4.99 believing the second bag is "free" when it is not.

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<sup>4</sup> Winn-Dixie Flyer, Week 45 - FY\_23

30. Winn-Dixie offered SEG<sup>5</sup> Chicken Wings on BOGO 38 times so far in 2023, of which there has been 50 weeks, meaning that 76% of this year the product has been BOGO. Upon information and belief, over 50% of Winn-Dixie's SEG Chicken Wings sales derive from its BOGO sales.

31. Winn-Dixie offered Whole Pineapple on BOGO 30 times so far in 2023, of which there has been 50 weeks, meaning that 60% of this year the product has been BOGO. Upon information and belief, over 50% of Winn-Dixie's Whole Pineapple sales derive from its BOGO sales.

32. Winn-Dixie's BOGO Promotions have been regularly available in Winn-Dixie stores over the last four (4) years. The "free product" is prominently promoted on special point-of-sale ads, on signs posted near the product, and sometimes on the packaging of the products themselves. But by inflating the price of the first product Winn-Dixie consumers actually pay for the seemingly "free" product.

33. Upon information and belief, Winn-Dixie offers substantially similar flyers throughout Florida, Alabama, Georgia, Louisiana, and Mississippi and its flyers are not unique to any one store location or consumer.

34. Contrary to the language of the free product offer, the BOGO products are not actually free. When Winn-Dixie offers an item under its BOGO Program, the consumer should receive the second item free and pay regular price for the first

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<sup>5</sup> Several BOGO products have "SEG" or "SE Grocers" in the name, which refers to Winn-Dixie's parent company Southeastern Grocers.

item.

35. Based upon information and belief, while the products rotate, Winn-Dixie's BOGO Program runs 365 days per year in each of its grocery store locations.

36. All of Winn-Dixie's 545 stores located in Florida, Alabama, Georgia, Louisiana, and Mississippi have BOGO Programs and all operate under central policies established by Winn-Dixie.

**i. Plaintiff Eric Bechtel's Facts**

37. Mr. Bechtel routinely shops at the Winn-Dixie's store located at 1049 62nd Avenue North, St. Petersburg Florida, where he purchases many BOGO items.

38. On or about June, 27, 2023, Mr. Bechtel received the weekly flyer from Winn-Dixie, containing the following advertisement for BOGO chicken tenderloins or tenders:



39. In the advertisement, Winn-Dixie states that chicken tenders were

BOGO, along with several other chicken products.

40. On July 3, 2023, Mr. Bechtel Purchased BOGO chicken tenders at the price of \$6.99/lb. and received a second package of the product. A copy of Mr. Bechtel's receipt is attached as **Exhibit A**, as downloaded from his Winn-Dixie Rewards Program account.

41. Mr. Bechtel believed that he was paying the regular price for the product and receiving a second item for free. However, Mr. Bechtel did not receive his second chicken item for free. Winn-Dixie inflated the per pound of the chicken items when the price went on BOGO from a regular price of \$5.99/lb to an inflated BOGO price of \$6.99/lb.

42. Because Winn-Dixie failed to price its BOGO chicken tenders at its true regular price, Mr. Bechtel's second package of chicken tenders was not free. Mr. Bechtel suffered a concrete harm equal to the difference paid between the actual regular price for the first BOGO product and inflated BOGO price he paid.

43. During the class period, Mr. Bechtel purchased several other products under Winn-Dixie's BOGO Program that also had similarly inflated BOGO pricing and was damaged as result.

**ii. Plaintiff Kevin Everson's Facts**

44. Mr. Everson regularly shops at the Winn-Dixie's store located at 1049 62nd Avenue North, St. Petersburg Florida, where he purchases many BOGO products, including but not limited to the meat products described herein.

45. On or about July 25, 2023, Mr. Everson received the weekly flyer from

Winn-Dixie, containing the following advertisement for BOGO chicken thighs at a stated regular price of \$2.99/lb.:



46. The actual regular price for chicken drumsticks or thighs is \$1.49/lb.

47. On or about September 26, 2023, Mr. Everson received the weekly flyer from Winn-Dixie, containing the following advertisement for BOGO pork chops at a stated regular price of \$6.99/lb.:



48. The actual regular price for pork chops is \$4.49/lb.

49. Mr. Everson believed he was receiving a second product for free when he made BOGO purchases. However, for each of these purchases, Mr. Everson did

not receive his second items for free. Winn-Dixie inflated the price of the items as part of its deceptive BOGO Program. A copy of Mr. Everson's BOGO receipts are attached as **Composite Exhibit B**, as downloaded from his Winn-Dixie Rewards Program Account.

50. Because Winn-Dixie failed to price its BOGO products at their true regular price, Mr. Everson's second package of chicken and pork products were not free. Mr. Everson suffered a concrete harm equal to the difference paid between the actual regular price for the first BOGO product and inflated BOGO price he paid.

51. During the class period, Mr. Everson purchased several other products under Winn-Dixie's BOGO Program that also had similarly inflated BOGO pricing and was damaged as result.

### **iii. Plaintiff Robbie Sayde's Facts**

52. Mr. Sayde regularly shops at the Winn-Dixie's store located at 2139 34<sup>th</sup> Street North, St. Petersburg Florida, where he purchases many BOGO products.

53. When shopping Mr. Sayde regularly purchases BOGO meat products, produce, and many other products. Because Mr. Sayde is not a Winn-Dixie rewards member, Mr. Sayde is unable to review his receipts online.

54. When making BOGO purchases, Mr. Sayde did not receive his second items for free. Winn-Dixie inflated the price of the second product as part of its deceptive BOGO Program.

55. Because Winn-Dixie failed to price its BOGO products at their true regular price, Mr. Sayde's second items were not free. Mr. Sayde suffered a concrete harm equal to the difference paid between the actual regular price for the first BOGO product and inflated BOGO price he paid.

56. During the class period, Mr. Sayde purchased several other products under Winn-Dixie's BOGO Program that also had similarly inflated BOGO pricing and was damaged as result.

## **V. CLASS ALLEGATIONS**

57. Plaintiffs bring this case as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The proposed Class is defined as:

All consumers who, within four (4) years before the date of the filing of the initial Complaint in this matter, made one or more in-store purchases of a product sold on a buy one/get one free basis ("BOGO Sales") at a Winn-Dixie store.

58. Expressly excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendant and any entity in which Defendant has a controlling interest, or which has a controlling interest in Defendant, and its legal representatives, assigns and successors; (c) all attorneys representing the Class; and (d) all persons who properly execute and file a timely request for exclusion from the Class.

59. The exact products, including the precise number of units sold, can be confirmed through Defendant's extensive electronic records logged with every sale. Many Class Members will be readily identifiable by viewing a list of consumers



with Rewards cards that purchased the products mentioned herein.

60. The class period is four (4) years prior to the original filing date of this action under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") Fla. Stat. § 501.201, *et seq.*

61. Plaintiffs reserve the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

### **Rule 23(a) Criteria**

62. Numerosity. Winn-Dixie's BOGO scheme has harmed and continues to harm thousands of consumers on a daily basis. The members of the proposed Class are so numerous that joinder of all members is impracticable. Thousands of shoppers purchase BOGO products from Winn-Dixie each day.

63. The exact number of Class members is unknown as such information is in the exclusive control of Winn-Dixie. However, according to its website, Winn-Dixie operates 545 stores across five states,<sup>6</sup> and Plaintiffs believe the Class consists of tens of thousands of consumers. The Defendant's super markets are geographically dispersed throughout the States of Alabama, Florida, Georgia, Louisiana, and Mississippi, making joinder of all Class members impracticable.

64. Commonality. Common questions of law and fact affect the right of each Class member and common relief by way of damages is sought for Plaintiffs

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<sup>6</sup> <https://www.scrapehero.com/location-reports/WinnDixie-USA/#:~:text=There%20are%20546%20WinnDixie%20stores,WinnDixie%20stores%20in%20the%20US.>

and Class members. Defendant's BOGO pricing is a standard practicing scheme applied in all of its stores during the Class Period. As a result, Plaintiffs' claims raise common issues that predominate over individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

65. The harm that Winn-Dixie has caused is substantially uniform with respect to Plaintiffs' and Class members. Common questions of law and fact that affect Plaintiffs and the Class members include, but are not limited to:

- a. Whether the Defendant may lawfully raise the regular per-unit price of meat products when they rotate the products into the BOGO programs;
- b. Whether the Defendant regularly increases the price of BOGO products above the regular retail price for the same products;
- c. Whether Defendant may lawfully list a product as BOGO more than one time in a 30-day period;
- d. Whether Defendant may list a product as BOGO more than three times in a twelve-month period;
- e. Whether Defendant may lawfully derive more than 50% of its profits for a product from BOGO sales in a twelve-month period;
- f. Whether the Defendant's BOGO sales pricing is unfair, deceptive, and/or unlawful;
- g. Whether Defendant's BOGO Program violates the rules

- established by the Federal Trade Commission;
- h. Whether Plaintiffs and each class member were “consumers” within the meaning of Fla Stat. § 501.203(7), and they utilized the BOGO meat purchased from Winn-Dixie for personal and family purposes, and not for resale in the ordinary course of their trade or business;
  - i. Whether the Defendant was engaged in trade or commerce within the meaning of Fla. Stat. § 501.203(8);
  - j. Whether Defendant’s BOGO Programs violate Fla. Stat. § 501.201, *et. seq.*;
  - k. Whether Plaintiffs and the Class are entitled to equitable relief;
  - l. Whether Plaintiffs and members of the Class have sustained actual damages and, if so, the proper measure of such damages;
  - m. Whether Plaintiffs and the Class are entitled to recover attorneys’ fees and costs for violations of FDUTPA under Fla. Stat. § 501.201, *et seq.*; and
  - n. Any declaratory and/or injunctive relief to which Plaintiffs and Class members are entitled.

66. Typicality. The claims and defenses of the representative Plaintiffs are typical of the claims and defenses of the Class because they are consumers and their BOGO purchases were typical of sales made within the Winn-Dixie BOGO Program. The practice of raising the price on BOGO products operates in a

standardized fashion in all of Defendant's stores. Plaintiffs' claims, like the claims of the Class, arise out of the purchase of BOGO products where consumers did not actually receive a free product because they paid inflated prices for the initial BOGO products. Plaintiffs suffered damages of the same type and in the same manner as the Class they seek to represent. The injuries suffered by Plaintiffs and the Class differ only in the amounts of pecuniary losses and number of transactions per class member. The named Plaintiffs' claims for relief are based upon the same legal theories as are the claims of the Class. There is nothing peculiar about Plaintiffs' claims.

67. Adequacy. The representative Plaintiffs will fairly and adequately assert and protect the interests of the Class. Plaintiffs have hired attorneys who are experienced in prosecuting class action claims and will adequately represent the interests of the class and Plaintiffs have no conflict of interest that will interfere with maintenance of this class action.

### **Rule 23 (b) Criteria**

68. Predominance and Superiority. A class action provides a fair and efficient method for the adjudication of this controversy for the following reasons:

- a. The common questions of law and fact set forth herein predominate over any questions affecting only individual Class members.
- b. As far as Plaintiffs know, no class action that purports to include consumers suffering the same injury has been commenced;

- c. Individual class members have little interest in controlling the litigation, due to the high cost of individual action, the relatively small amounts of damages suffered by any individual consumer, and because Plaintiffs and their attorneys will vigorously pursue the claims;
- d. The forum is desirable as the Defendant does business in Duval County;
- e. A class action will be an efficient method of adjudicating the claims of the class members who have suffered relatively small monetary damages, as a result of the same conduct by the Defendant;
- f. In the aggregate, class members have claims for relief that are significant in scope relative to the expense of litigation;
- g. Injunctive relief will prevent further ongoing harm to Plaintiffs and the Class;
- h. The available electronic data will facilitate proof of the Class members' claims, processing of those claims, and distribution of any recoveries;
- i. As to customers who paid cash and for whom there are fewer records, to the extent that class members cannot be located, their monies may be distributed through a *cy pres* award;
- j. There are no unusual legal or factual issues that would create manageability problems;

- k. Prosecution of thousands of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendant and could create incompatible standards of conduct;
- l. Adjudications with respect to individual members of the Class could, as a practical matter, be dispositive of any interest of other members not parties to such adjudications, or substantially impair their ability to protect their interests; and
- m. The claims of the individual Class members are small in relation to the expenses of litigation, making a Class action the only procedural method of redress in which Class members can, as a practical matter, recover.

69. Moreover, Winn-Dixie has acted and refused to act on grounds generally applicable to the Class, thereby making declaratory relief and corresponding final injunctive relief under Rule 23(b)(2) appropriate with respect to the Class as a whole. Winn-Dixie should be enjoined from offering its BOGO Program in violation of Fla. Stat. § 501.201, *et seq.*, and a declaration should be made that the Defendant must disgorge its ill-gotten gains. See Fla. Stat. § 501.211(1).

**COUNT I**  
**Violation of the Fla. Stat. § 501.201, *et seq.***  
**(The Traditional FDUTPA Class)**

70. Plaintiffs re-allege and re-incorporate paragraphs 1 through 69 as if

expressly set forth herein.

71. The Florida Legislature passed FDUTPA to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce, and to make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

72. Plaintiffs and each Class member were “consumers” within the meaning of Fla. Stat. § 501.203(7), and they purchased the grocery products at issue for personal and family purposes, and not for resale in the ordinary course of their trade or business.

73. Winn-Dixie was engaged in trade or commerce within the meaning of Fla. Stat. § 501.203(8) throughout the class period.

74. Winn-Dixie violated FDUTPA by engaging in a BOGO Program which unfairly and deceptively inflates the “regular price” of BOGO products so that consumers pay the higher price for the first product and do not actually receive the second product for “free.”

75. Winn-Dixie knew at the time of each Class member transaction that the price presented as the regular base price of each BOGO product under this BOGO Program was inflated above the true, usual, and regular price for such products. As a result, consumers, including Plaintiffs and the class, did not actually receive the second product for free.

76. Winn-Dixie's conduct was an unfair and deceptive business practice in violation of FDUTPA.

77. Winn-Dixie knowingly engaged in unfair and deceptive business practices in connection with its BOGO Program.

78. Plaintiffs were deceived by Winn-Dixie's BOGO program as they were unaware that the regular price of the BOGO products had been inflated such that the second product was not actually free. This belief caused Plaintiffs to make the BOGO purchases. Reasonable consumers acting in similar circumstances would have been deceived by the unfair and deceptive practices involved in Winn-Dixie's BOGO Program. Plaintiffs and Class members were harmed and suffered actual damages by paying the difference in price between the regular price of the BOGO product offered and the inflated price under the BOGO Program.

79. As a direct and proximate cause of Winn-Dixie's unfair and deceptive BOGO Program, Plaintiffs and the Class are entitled to actual damages, compensatory damages, attorneys' fees and costs pursuant to Fla. Stat. § 501.211(2).

80. Plaintiffs and the Class are likely to continue to make purchases from Defendant and be impacted by the conduct complained of in the future entitling them to injunctive relief pursuant to Fla. Stat. § 501.211(1).

**COUNT II**  
**Per Se Violation of the Fla. Stat. § 501.201, et seq.**  
**(The Per Se FDUTPA Class)**

81. Plaintiffs re-allege and re-incorporate paragraphs 1 through 69 as if



expressly set forth herein.

82. The Florida Legislature passed FDUTPA to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce, and to make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

83. Plaintiffs and each Class member were “consumers” within the meaning of Fla. Stat. § 501.203(7), and they purchased the products at issue for personal and family purchases, and not for resale in the ordinary course of their trade or business.

84. Winn-Dixie was engaged in trade or commerce within the meaning of Fla. Stat. § 501.203(8). The Federal Trade Commission has repeatedly interpreted the offering of a product as “free” while requiring the purchase of a product at an inflated price to be an unfair or deceptive act or practice.

85. Pursuant to Fla. Stat. § 501.204(2), in construing whether actions of a defendant are unfair and deceptive, unconscionable, or otherwise unlawful, “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts related to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.” The FTC Rule “Concerning Use of the Word ‘Free’” is an implied FDUTPA predicate that restricts the use of Free in two separate ways that are relevant here. First, the Federal Trade

Commission's guideline on use of the term "Free" as used in BOGO promotions states that "when the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other." 16 CFR § 251.1(b).

86. Winn-Dixie's BOGO Program violates the FTC Free Rule in that the regular price of the first product is routinely inflated so that the second product is not actually free to the consumer.

87. Plaintiffs and members of the Class were caused harm by Defendant's BOGO Program by paying higher amounts for the first product purchased and not actually receiving the second product for free, as represented. The second way Winn-Dixie violates the FTC Free Rule is that it places too many products on BOGO status too often. The FTC Free Rule states as follows regarding the frequency of BOGO promotions:

(h) Frequency of offers. So that a "Free" offer will be special and meaningful, a single size of a product or a single kind of service should not be advertised with a "Free" offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a "Free" offer should not exceed 50 percent of the total volume of his sales of the product, in the same size, in the area.

16 C.F.R. § 251.1(h).

88. Winn-Dixie also violated the frequency limits set forth in the FTC Free Rule and FDUTPA by routinely: (1) listing products as BOGO more than three

times in a twelve-month period; (2) listing products as BOGO more than one time in a 30-day time period; and (3) deriving more than 50% of profits from BOGO sales in a twelve-month period. These practices have been declared unlawful by the FTC.

89. Winn-Dixie knew at the time of each Class member transaction that the BOGO sale items were being offered with such frequency that it was not special or meaningful.

90. Winn-Dixie's BOGO Program constitutes a per se unfair and deceptive business practice in violation of FDUTPA because it violates the FTC Free Rule.

91. Winn-Dixie knowingly committed unfair and deceptive business practices in carrying out its BOGO Program.

92. Plaintiffs were deceived by Winn-Dixie's BOGO program as they were unaware that the regular price of the BOGO products had been inflated such that the second product was not actually free. This belief caused Plaintiffs to make the BOGO purchases. Reasonable consumers acting in similar circumstances would have been deceived by the unfair and deceptive practices involved in Winn-Dixie's BOGO Program.

93. Plaintiffs and Class members have been harmed and suffered actual damages (as defined by the FDUTPA) by Winn-Dixie's BOGO Programs. Specifically, Plaintiffs have been harmed in an amount equal to the actual regular price of the BOGO product being offered and the inflated BOGO price falsely represented by Winn-Dixie.

94. As a direct and proximate cause of Winn-Dixie's unfair and deceptive BOGO Programs, Plaintiffs and the Class are entitled to actual damages, compensatory damages, attorneys' fees and costs pursuant to section Fla. Stat. § 501.211(2).

95. Plaintiffs and the Class are likely to be harmed in the future by Defendant's conduct and are therefore entitled to injunctive relief pursuant to section Fla. Stat. § 501.211(1).

**COUNT III**  
**Unjust Enrichment**  
**(The Unjust Enrichment Class)**

96. Plaintiffs re-allege and re-incorporate paragraphs 1 through 69 as if expressly set forth herein.

97. Winn-Dixie unlawfully conducted its BOGO Program with the express intent of misrepresenting the true cost of its products in order to entice consumers to purchase more products and recoup additional profits. Winn-Dixie accomplished this goal by inflating the price of the products when the product entered its BOGO Program.

98. Winn-Dixie benefitted from its unlawful BOGO Program to the detriment of Plaintiffs and the Class, and it would be inequitable for Winn-Dixie to retain these illegally obtained benefits.

99. Plaintiffs and the Class were harmed and Winn-Dixie was unjustly enriched. Plaintiffs and the Class demand that Winn-Dixie disgorge the ill-gotten gains derived through its unlawful BOGO Programs.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court enter an Order:

- a. Certifying this action as a class action as provided by Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs as Class Representatives, and appointing undersigned attorneys and their firms as Class Counsel;
- b. That this Court enter judgment in favor of Plaintiffs and the Class for Defendant's violations of Fla. Stat. § 501.201, *et seq*;
- c. That this Court award actual damages sustained by Plaintiffs and the Class in an amount to be proved at trial;
- d. That this Court disgorge ill-gotten gains received by Defendant from sales and revenue of any kind as a result of the actions complained of by Plaintiffs and the Class;
- e. Awarding Plaintiffs, and all those similarly situated, reasonable attorneys' fees and costs incurred in this action pursuant to Fla. Stat. § 501.201, *et seq.*;
- f. Injunctive relief prohibiting Defendant from inflating the prices of products offered in BOGO promotions above the regular retail price for those products;
- g. Injunctive relief prohibiting Defendant from offering the same BOGO promotion within a 30-day time period;
- h. Injunctive relief prohibiting Defendant from offering the same BOGO promotion more than three times in a twelve month period;

- i. Awarding Plaintiffs, and all those similarly situated, any pre-judgment and post-judgment interest as may be allowed under the law; and
- j. Awarding such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Plaintiffs demands a jury trial on all issues so triable.

Dated: December 14, 2023

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