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

MICHAEL TEMPEST, KERRY
MCCARTY, HILLARY BEAM, and
CHRISTOPHER LUNDT, *on behalf of
themselves and all others similarly situated,*

Plaintiffs,

v.

SAFEWAY INC.,

Defendant.

Case No. 3:24-cv-06553-JSC

Judge: Hon. Jacqueline Scott Corley

**THIRD AMENDED CLASS ACTION
COMPLAINT**

- (1) Violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*
- (2) Violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
- (3) Violation of the Consumer Legal Remedies Act, Cal. Civ. Code § 1760 *et seq.*
- (4) Quasi-Contract/Unjust Enrichment
- (5) Fraud
- (6) Violation of Oregon Unlawful Trade Practices Act, O.R.S. 646.605 *et seq.*
- (7) Violation of District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.*

1 **THIRD AMENDED CLASS ACTION COMPLAINT**

2 Plaintiffs Michael Tempest, Kerry McCarty, Hillary Beam, and Christopher Lundt, on
3 behalf of themselves and all others similarly situated, bring this Class Action Complaint against
4 Defendant Safeway, Inc. (“Safeway”) for violations of the California Unfair Competition Law
5 (“UCL”), Cal. Bus. & Prof. Code § 17200, California False Advertising Law (“FAL”), Cal. Bus.
6 § Prof. Code § 17500, California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§
7 1750 *et seq.*, and Oregon Unlawful Trade Practices Act, O.R.S. 646.605 *et seq.*, as well as for
8 quasi-contract/unjust enrichment, and fraud under California and Oregon. The following
9 allegations are based on Plaintiffs’ personal knowledge as to Plaintiffs’ individual experiences, the
10 investigation of counsel, and information and belief.

11 **INTRODUCTION**

12 1. *In vino veritas?* Seemingly not—at least when Safeway is pricing the wine for sale
13 to Safeway for U Rewards (“Safeway Rewards”) members in its grocery stores. Safeway
14 advertises a fake temporary sale on wine shelves in Safeway stores to induce customers to buy
15 individual bottles of wine from Safeway.

16 2. Although Safeway falsely states on shelf flyers and on its website that its discounted
17 price for a bottle of wine for Rewards members is “Thru” a certain date—suggesting that the sale
18 price will only temporarily be available—Safeway’s “Thru” dates are fabricated because there is
19 actually no end to the sale. Safeway misrepresents to consumers that the “discounted” price is only
20 available for a brief window, after which the wine will be sold at the non-discounted price. The
21 “Thru” date is a lie. The wine is not being offered on a special discount because it is never sold to
22 members using their membership cards at the non-discounted price.

23 3. As shown in the examples below, on store shelves below individual bottles of wine,
24 Safeway includes a non-sale price stuck or fastened to the shelf (the reference price) above a
25 temporary shelf flyer that includes a purported time-limited sale price for Rewards members on an
26 individual bottle of wine “Thru” a certain date (the discount price).



4. Although Safeway advertises a “Thru” date to motivate consumers to buy wine that they think is being sold at a time limited discount, at the end of each time-limited promotion, Safeway just renews the promotion to keep the Safeway Rewards member price at the purportedly temporary “discount” price. In short, while Safeway uses the idea that its sale is temporary and will end on a certain date by including “Thru” dates on shelf flyers and next to online offerings to induce more purchases, Safeway never actually ends the sale. As such, Safeway’s “Thru” dates are made-up to manipulate more shoppers to decide to buy a bottle of wine from the shelf at Safeway stores.

5. Safeway profits from its fraudulent advertising of temporary sales that are not in fact temporary at all by selling more wine than it would have absent the fake “Thru” date that suggests that the sale is temporary.

1 6. California, Oregon, and District of Columbia law prohibit false reference pricing
2 and fake time-limited sales. Plaintiffs are purchasers in each of these states who bought wine at
3 Safeway based on their belief that they were buying wine at temporary sale price. If they had
4 known that the “Thru” date was fake, and that they were not actually getting a special temporary
5 reduction of the regular price, they would not have purchased bottles of wine from Safeway.
6 Accordingly, on behalf of themselves and others similarly situated, Plaintiffs seek damages,
7 restitution, and injunctive relief that will finally put a stop to Safeway’s deceptive marketing of
8 wine in grocery stores across the country, including in California, Washington, D.C., and Oregon.

9 **PARTIES**

10 7. Michael Tempest is a natural person and resident and citizen of Greenbrae,
11 California.

12 8. Kerry McCarty is a natural person and resident and citizen of Bend, Oregon.

13 9. Hillary Beam is a natural person and resident and citizen of Salem, Oregon.

14 10. Christopher Lundt is a natural person and resident and citizen of the District of
15 Columbia.

16 11. Safeway is a Delaware corporation with a principal address at 11555 Dublin
17 Canyon Road, Pleasanton, CA 94588.

18 **JURISDICTION AND VENUE**

19 12. This Court has original jurisdiction over this action under the Class Action Fairness
20 Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction
21 because the aggregate claims of the members of the putative Class exceed \$5 million, exclusive of
22 costs, and members of the proposed Class are citizens of a different state from Safeway.

23 13. This Court has personal jurisdiction over Safeway because Safeway does regular
24 business in this district, including operating numerous Safeway locations in this district. Safeway
25 is also headquartered in this district and has a principal place of business in this district.

26 14. Venue is proper in this District because Defendant resides in this District and a
27 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.
28 *See* 28 U.S.C. §§ 1391(a)(1), (b)(1)-(2).

1 **FACTUAL ALLEGATIONS**

2 **A. Safeway’s Rewards Program**

3 15. Safeway markets a free membership rewards program for customers, Safeway
4 Rewards. The membership program is offered nationwide from Safeway’s headquarters in
5 Pleasanton, CA.

6 16. Safeway claims that its Safeway Rewards members “enjoy exclusive access to
7 offers on items & brands you love most,” among other perks.

8 17. Members are eligible to receive purported price discounts on products available for
9 purchases in-store as long as they use their account number at checkout. According to Safeway,
10 members can “save with digital-only coupons and personalized deals,” and gain “access to the
11 maximum level of savings” both in-store and online.

12 18. The Safeway membership is not in any way “exclusive”—it can be and is typically
13 created instantly at checkout if a non-member happens to walk into a Safeway store. Indeed,
14 virtually every sale made at a Safeway store is by a Safeway Rewards member and there are a
15 reported 38 million members in Safeway’s Rewards program. This is because Safeway makes it
16 extremely easy to sign up, including at checkout, to obtain the “Member Price!” on items that is
17 lower than a regular price at which it may in rare cases sell products to consumers who do not
18 follow a few simple steps to become Safeway Rewards members.

19 19. Given that the reference prices Safeway displays at the store are well above retail
20 price for wine products, reasonable consumers sign up for the Safeway membership to avoid
21 paying what are effectively penalty prices for not signing up for the membership.

22 **B. Safeway sells wine to Safeway Rewards members at fabricated discounts that
23 never end.**

24 20. Forty states and the District of Columbia allow wine sales in grocery stores. As of
25 2020, grocery store wine sales were a \$1.2 billion industry, with grocery stores placing their
26 selections in “premium” locations and offering their own private label brands.¹ Wine is an

27 ¹ Catherine Douglas Moran, *Bottoms Up: How grocers can keep alcohol sales pouring in*, Grocery
28 Dive (Nov. 11, 2020), <https://www.grocerydive.com/news/bottoms-up-how-grocers-can-keep-alcohol-sales-pouring-in/588755/>.

1 attractive product for grocery store owners because of its relatively high retail margins and its
2 ability to spur sales of other goods.²

3 21. Many grocery stores advertise sales and discounts on wine, just like they offer sales
4 and discounts on paper towels, rotisserie chickens, family size bags of chips, and Halloween candy
5 on November 1.

6 22. Especially where specific dates that the sale ends are provided in the advertising,
7 consumers understand and reasonably expect that a sale or discount is just that—a time-limited
8 offer to sell a particular product for a lower price than the retailer would ordinarily offer. During
9 a sale, consumers understand and reasonably expect that they are saving money by purchasing the
10 discounted product at a lower price than it would usually be sold.

11 23. Thus, when Safeway displays a supposed discount on the price of a bottle of wine,
12 which are accompanied by the representation (“Thru [DATE]”) that the discount is a sale that will
13 come to an end on a particular date, reasonable consumers understand and expect that they are
14 saving money by taking advantage of a time limited offer. Reasonable consumers believe, based
15 on the “Thru” date, that they might not be able to save if they came back at the end of stated end
16 date of the sale *after* the “Thru” date. Stated otherwise, reasonable consumers understand and
17 expect from Safeway’s shelf flyers advertising a discount on a bottle of wine compared to a price
18 on the shelf that, if they return to buy the products at a later date, the discount might no longer be
19 available and they would be required to buy the product at the higher advertised price.

20 24. Safeway deceives its customers by offering false “Thru” dates that purport to limit
21 the dates their wine prices are discounted for members. In fact, Safeway’s member prices on wine
22 are not temporary at all. Instead, the advertised discount prices are just the price that Safeway
23 always makes available to consumers as part of its free Rewards program available at checkout.
24 Safeway creates the illusion of a time-limited sale by advertising wine as ordinarily offered for
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28 ² Mike Veseth, *Sizing Up Supermarket Wine*, The Wine Economist (May 9, 2011),
<https://wineeconomist.com/2011/05/09/sizing-up-supermarket-wine/>.

1 sale at one price (the “reference price”), discounted down to a lower price for members (the “sale
2 price”), using a false “Thru” date to give the false impression that the discount is temporary.³

3 25. Safeway is, in fact, offering no time-limited discount to its Rewards customers at
4 all. The supposedly “discounted” temporary member price for individual bottles of wine is no
5 discount or savings at all, because the “Thru” date by which the sale supposedly ends is made-up.
6 When that date passes, Safeway just renews the sale and does not resume offering wine to Rewards
7 members at the higher reference price. Instead, Safeway’s fraudulent use of reference prices and
8 supposedly temporary discounted prices is a ploy to sell customers more bottles of wine and never
9 provide any discount at all.

10 26. Of course the ploy works. Consumers love a deal. And when consumers purchase
11 discounted wine, they are paying for and expecting to receive wine *on sale*. From the consumer’s
12 perspective, buying a \$40 wine marked down to \$12 is a completely different purchase from a \$12
13 bottle of wine sold at \$12. Consumers believe that the higher “reference” price is the actual price
14 at which the product is usually sold, and based on Safeway’s fake “Thru” dates, believe that the
15 “discount” will only be available “Thru” the date on the label. After that date, consumers
16 reasonably believe, the sale will be over and the product will go back to the higher reference price.
17 If consumers knew that the “discount” was just the price of the product, they would not buy the
18 product because they would no longer believe they were getting a deal: a bottle of wine *on sale*.

19 **1. Safeway’s consistent false advertising of sales on individual bottles of**
20 **wine**

21 27. In its stores, Safeway prominently displays the supposed reference price in black
22 and white, with the “discount” member price highlighted below in red and yellow with an end date
23 (the false “Thru” date) for the supposed sale. The appearance of these product label creates the
24 impression that the reference price is the usual price and the sale price is a special offer

25 _____
26 ³ Examples of wines that Safeway always advertises as discounted from higher reference prices
27 include, but are not limited to, Clos Du Bois Chardonnay, Joel Gott 815 Cabernet Sauvignon,
28 Chateau St. Michelle Sauvignon Blanc, Josh Cellars Merlot, Decoy Cabernet Sauvignon, Menage
a Trois Red Blend, La Marca Prosecco Sparkling Wine, Sutter Home blends, Chateau Ste.
Michelle Cabernet Sauvignon, Carmenet Chardonnay, Ferrari-Carano Fume, and Wente
Chardonnay, among others.

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Wine for sale in a Safeway store

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Wine for sale in a Safeway store

28. Below is a close-up exemplar of a typical discount label at Safeway:



29. As can be seen, the discount labels always have a purported “end date.” In this example, the discount label would make a reasonable consumer believe that the sale would end on “Jan. 7,” after which the price for the product would revert to the higher reference price. The label states, “Thru Sun. Jan. 07.” There is no reasonable interpretation of this “Thru” date but that the discount will no longer be available after “Sun. Jan. 07.”



1 **2. Contrary to its advertising of a temporary discount price, Safeway**
2 **never ends its “sale” and its discount prices are actually Safeway’s**
3 **ordinary prices.**

3 30. Contrary to its consistent advertising of a temporary discount price for Rewards
4 members, in reality, Safeway *never* sells its Rewards members wine at the reference prices. Its
5 “Thru” dates are false. Thus, for Rewards members, the purportedly temporary “sale price” is not
6 actually a “discount,” available “Thru” a date certain, from a higher price that members might
7 pay—instead it is simply the ordinary price for wine sold at Safeway. In other words, Safeway
8 Rewards members who purchase wine at Safeway for supposedly discounted prices are not
9 actually buying wine at lower prices than ordinarily offered—as the wine is always offered at the
10 discount price to all consumers (who can become Rewards members at check out for free).

11 31. To reasonable consumers, the end dates appearing on Safeway’s discount labels
12 mean that after the specified date, the products will no longer be on sale and will retail at their
13 purported list prices. That is the meaning of offering a discount “through” (“Thru” in Safeway’s
14 parlance) a particular date. But immediately after each purportedly time-limited sale ends, Safeway
15 generates another similar or identical discount with a new expiration date.

16 32. For example, the purported “sale” on Apothic Red Blend Wine advertised at \$12.99
17 for Rewards members through July 11, 2024 did not end after July 11, 2024. Instead, as of
18 September 2024, Safeway was still advertising Apothic Red Blend Wine for sale at \$12.99. Since
19 at least June 6, 2024, Safeway has never sold Apothic Red Blend Wine to its Rewards members
20 for the reference price of \$18.55 or any amount higher than \$12.99.

21 33. Similarly, on December 31, 2024, Safeway advertised a 750ml bottle of Meiomi
22 Pinot Noir Red Wine for a “sale” price of \$22.88, marked down from a “full” price of \$36.99,
23 “Thru” April 23, 2024. But the purported “sale” did not end after April 23, 2024. Instead, as of
24 September 2024, Safeway was still advertising that wine to Rewards members for \$24.99, marked
25 down from \$36.99, and had not advertised it to Rewards members at the purported reference prices.

26 34. During any 90-day period within the class period, Safeway did not once offer Joel
27 Gott 815 Cabernet Sauvignon, Chateau St. Michelle Sauvignon Blanc, Josh Cellars Merlot, Decoy
28 Cabernet Sauvignon, Menage a Trois Red Blend, Lamarca Prosecco Sparkling Wine, Sutter Home

1 wines, Chateau Ste. Michelle Cabernet Sauvignon, Carmenet Chardonnay, Ferrari-Carrano Fume,
2 or Wente Chardonnay to Safeway Rewards members at the advertised reference prices, despite the
3 presence of “Thru” dates that claimed the discounts would end on particular dates in order to
4 encourage people to buy.

5 35. Safeway’s fake wine sales are deceptive and misleading because they lead
6 reasonable consumers to buy wine from Safeway based on their belief that they are saving money
7 by buying wine at a lower price than it would usually be offered when that is not the case.

8 36. Plaintiffs’ and the class members’ reasonable expectations were not met. Instead of
9 receiving wine *on sale*, they received little or no discount.⁴

10 37. Thus, Safeway’s advertisements harm consumers by inducing them to make
11 purchases they would not otherwise have made, based on false information—i.e. that the discount
12 exists and will exist only for a short time, “Thru” a particular date. And Safeway’s advertisements
13 artificially increase consumer demand for its wine. This puts upward pressure on the prices that
14 Safeway can charge for wine. And as a result, Safeway can charge a price premium for wine that
15 it would not be able to charge absent the misrepresentations described above. So due to Safeway’s
16 misrepresentations, Plaintiffs and the class members either bought products they would not have
17 bought or paid more for the products than they would have otherwise.

18 **3. Safeway’s scheme is a recognized form of deception.**

19 38. Consumers are more likely to buy a product, and buy more of it, if they believe the
20 product is on sale and that they are getting a product with a higher regular price and/or market
21 value at a substantial discount. Consumers that are presented with discounts are substantially more
22 likely to make a purchase. Almost two thirds of consumers have reported that a promotion or
23 coupon “closes the deal, if they are wavering or are undecided on making a purchase.”⁵ And, two
24 thirds of consumers “have made a purchase they weren’t originally planning to make solely based
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26 ⁴ In the normal course of business, Safeway keeps records of its reference prices, its supposedly
time-limited sale prices, as well as the prices that Plaintiffs paid for individual bottles of wine at
27 checkout as they are Rewards Members.

28 ⁵ Khalid Saleh, *How Discounts Affect Online Consumer Buying Behavior*, The Invesp Blog (June
16, 2024), <https://www.invespro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

1 on finding a coupon or discount,” while “80% of [consumers] said they feel encouraged to make
2 a first-time purchase with a brand that is new to them if they found an offer or discount.”⁶

3 39. For these reasons, the Federal Trade Commission has described fictitious discounts
4 like Safeway’s as deceptive:

5 Where the former price is genuine, the bargain being advertised is a true one. If, on
6 the other hand, the former price being advertised is not bona fide but fictitious—
7 for example, where an artificial, inflated price was established for the purpose of
8 enabling the subsequent offer of a large reduction—the “bargain” being offered is
a false one; the purchaser is not receiving the unusual value he expects. In such a
case, the reduced price is, in reality, probably just the seller’s regular price.

9 16 C.F.R. § 233.1. Where Safeway’s purported reduced prices are, in reality, just its regular price,
10 the “bargain” being offered is false and misleading.

11 **C. Safeway deceived Plaintiffs into buying wine with misleading discounts.**

12 **1. Plaintiff Tempest**

13 40. Plaintiff Tempest is a Safeway Rewards member.

14 41. On or around April 13, 2024, Mr. Tempest purchased six bottles of Carmenet
15 Reserve Chardonnay Wine from a Safeway in Marin County, California. Before making his
16 purchases, Mr. Tempest observed a store label similar in shape, size, and color to those shown
17 above. These labels displayed a reference price of \$13.99 in black and white, and a yellow and red
18 tag advertising that the Carmenet Reserve Chardonnay Wine would be available at a reduced
19 “Member Price!” of approximately \$6.38 per bottle, including a further discount for buying six
20 bottles, “Thru” a specific date. Mr. Tempest understood the “Thru” date to mean that the discounts
21 would only be available “Thru” that date, after which the wine would return to being sold at the
22 advertised reference price. Mr. Tempest bought six bottles using his Rewards member card, relying
23 on the representation that the “discounted” price would only be available temporarily, “Thru” a
24 date certain, after which the wine would only be available at \$13.99.

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27 ⁶ *RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online,*
28 *Especially Among Millennial Buyers*, PR Newswire (Apr. 25, 2018),
<https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html>.

42. That representation was false as the “Thru” date does not represent an actual end date of Safeway’s purported time-limited sale. In fact, once the “Thru” date passes Safeway just restarts the sale and offers the “discounted” wine at the same or a similar “discount,” never actually selling it to Rewards members using their membership cards at the advertised reference price.

43. Safeway did not offer the Carmenet Reserve Chardonnay Wine to Rewards members at the stated reference price after the “Thru” date passed. Instead, it simply renewed the sale using a new similar discount.

44. In 2024, after purchasing the Carmenet wine in April, Mr. Tempest returned to his usual Safeway store in Marin County, California and observed wine on sale, including Carmenet Reserve Chardonnay. He observed that the Carmenet Reserve Shardonny was now being sold at a supposed reference price of \$14.99, and a “Member Price!” of \$8.99 (or \$8.09 for buying six bottles), supposedly “Thru” January 5, 2025. The “Thru” date that Mr. Tempest had observed on or around April 13, 2024 was plainly false as the wine had not returned to the advertised \$13.99 reference price and was instead still being offered at a similar discount:



Photo taken by Mr. Tempest in a Safeway store

45. Mr. Tempest has purchased other bottles of wine from Safeway, including Chateau Ste. Michelle Cabernet Sauvignon, Carmenet Chardonnay, Ferrari-Carrano Fume, and Wente Chardonnay, all from a Safeway located in Marin County, California. Like the wines he bought on

1 April 13, 2024, these wines were also advertised as marked down from a reference price, as a time-
2 limited discount promotion for Safeway Rewards members “Thru” a particular (false) date. Before
3 he purchased individual bottles of wine from Safeway stores, Mr. Tempest saw a higher price
4 affixed to the store shelf with a bright flyer beneath that advertised a time-limited temporary sale
5 price on individual bottles of wine that was several dollars less than affixed the shelf price,
6 including the “Thru” date that he reasonably believed signified the end of the discount. The
7 examples shown above are substantially similar to the discounted prices that Mr. Tempest
8 reviewed when deciding to buy wines, including individual bottles of Chateau Ste. Michelle
9 Cabernet Sauvignon, Carmenet Chardonnay, Ferrari-Carrano Fume, and Wente Chardonnay.

10 46. Based on Safeway’s representations on its store shelves, Mr. Tempest believed that
11 he was buying wine at a temporary discounted sale price and had therefore saved money on the
12 purchase by making it during the time-period for the sale that Safeway consistently included in its
13 shelf advertising. Mr. Tempest understood the reference price to be the true ordinary price of the
14 wine sold at Safeway stores, and believed that he was getting a time-limited promotion through
15 his Safeway Rewards membership by buying the wine during the duration of the sale. Mr. Tempest
16 did not realize that the “Thru” date was made up, the sale would actually be indefinite and that
17 Safeway would not sell the wine in question to Safeway Rewards members at the reference price.

18 47. Mr. Tempest would not have purchased individual bottles of wine if he had known
19 that he was not receiving time-limited savings off a former price, as he was led to believe, or he
20 would not have purchased it on the same terms or the same price.

21 48. Mr. Tempest would buy member-priced wine from Safeway in the future, if Mr.
22 Tempest could trust that the advertised discounts were actual time-limited markdowns from true
23 reference prices.

24 49. Mr. Tempest did not read and was not aware of an email from Safeway purporting
25 to bind him to arbitration, and he learned of this email when Safeway filed its motion to compel
26 arbitration. He promptly opted out of arbitration by sending a letter on November 15, 2024.

27 **2. Plaintiff McCarty**

28 50. Plaintiff McCarty is a Safeway Rewards member.

1 51. On numerous occasions, while she was a Safeway Rewards member, Ms. McCarty
2 purchased wines from a Safeway in Oregon that Safeway had advertised as discounted for Rewards
3 members “Thru” a particular date.

4 52. For example, on or about January 22, 2024, Ms. McCarty purchased a bottle of Josh
5 Cellars Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
6 observed a store label similar in shape, size, and color to those shown above. These labels
7 displayed a reference price of \$19.99 in black and white, and a yellow and red tag advertising that
8 the wine would be available at a reduced “Member Price!” of \$13.99 per bottle, “Thru” a specific
9 date. She understood the “Thru” date to mean that the discounts would only be available “Thru”
10 that date, after which the wine would return to being sold at the advertised reference price.

11 53. Ms. McCarty bought the Josh Cellars Chardonnay using her Rewards member card,
12 relying on the representation that the “discounted” price would only be available temporarily,
13 “Thru” a date certain, after which the wine would only be available at \$19.99 per bottle.

14 54. On or about January 26, 2024, Ms. McCarty purchased a bottle of Josh Cellars
15 Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
16 observed a store label similar in shape, size, and color to those shown above. These labels
17 displayed a reference price of \$19.99 in black and white, and a yellow and red tag advertising that
18 the wine would be available at a reduced “Member Price!” of \$13.99 per bottle, “Thru” a specific
19 date. She understood the “Thru” date to mean that the discounts would only be available “Thru”
20 that date, after which the wine would return to being sold at the advertised reference price. Ms.
21 McCarty bought the Josh Cellars Chardonnay using her Rewards member card, relying on the
22 representation that the “discounted” price would only be available temporarily, “Thru” a date
23 certain, after which the wine would only be available at \$19.99 per bottle.

24 55. On or about February 20, 2024, Ms. McCarty purchased a bottle of Josh Cellars
25 Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
26 observed a store label similar in shape, size, and color to those shown above. These labels
27 displayed a reference price of \$19.99 in black and white, and a yellow and red tag advertising that
28 the wine would be available at a reduced “Member Price!” of \$12.99 per bottle, “Thru” a specific

1 date. She understood the “Thru” date to mean that the discounts would only be available “Thru”
2 that date, after which the wine would return to being sold at the advertised reference price. Ms.
3 McCarty bought the Josh Cellars Chardonnay using her Rewards member card, relying on the
4 representation that the “discounted” price would only be available temporarily, “Thru” a date
5 certain, after which the wine would only be available at \$19.99 per bottle.

6 56. On or about February 25, 2024, Ms. McCarty purchased a bottle of Josh Cellars
7 Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
8 observed a store label similar in shape, size, and color to those shown above. These labels
9 displayed a reference price of \$19.99 in black and white, and a yellow and red tag advertising that
10 the wine would be available at a reduced “Member Price!” of \$14.99 per bottle, “Thru” a specific
11 date. She understood the “Thru” date to mean that the discounts would only be available “Thru”
12 that date, after which the wine would return to being sold at the advertised reference price. Ms.
13 McCarty bought the Josh Cellars Chardonnay using her Rewards member card, relying on the
14 representation that the “discounted” price would only be available temporarily, “Thru” a date
15 certain, after which the wine would only be available at \$19.99 per bottle.

16 57. On or about March 4, 2024, Ms. McCarty purchased a bottle of Clos Du Bois
17 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
18 observed a store label similar in shape, size, and color to those shown above. These labels
19 displayed a reference price of \$17.99 in black and white, and a yellow and red tag advertising that
20 the wine would be available at a reduced “Member Price!” of approximately \$9.49 per bottle,
21 “Thru” a specific date. She understood the “Thru” date to mean that the discounts would only be
22 available “Thru” that date, after which the wine would return to being sold at the advertised
23 reference price of \$17.99. She also purchased two bottles of Folie A Deux Menage a Trois Red
24 Table Wine, which displayed similar labels showing a reference price of \$17.99 per bottle,
25 available to Rewards members at a reduced price of approximately \$9.89, again “Thru” a specific
26 date. She understood the “Thru” date to mean that the discounts would be available only “Thru”
27 that date, after which the wine would return to being sold at the advertised reference price of
28 \$17.99. Ms. McCarty bought these wines using her Rewards member card, relying on the

1 representation that the “discounted” price would only be available temporarily, “Thru” a date
2 certain, after which the wine would only be available at \$17.99 per bottle.

3 58. On or about March 13, 2024, Ms. McCarty purchased six bottles of 1924 Double
4 Black Red Blend wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
5 observed a store label similar in shape, size, and color to those shown above. These labels
6 displayed a reference price of \$17.99 in black and white, and a yellow and red tag advertising that
7 the wine would be available at a reduced “Member Price!” of approximately 8.99 per bottle,
8 “Thru” a specific date. She understood the “Thru” date to mean that the discounts would only be
9 available “Thru” that date, after which the wine would return to being sold at the advertised
10 reference price. Ms. McCarty bought the wine using her Rewards member card, relying on the
11 representation that the “discounted” price would only be available temporarily, “Thru” a date
12 certain, after which the wine would only be available at \$17.99 per bottle.

13 59. On or about April 2, 2024, Ms. McCarty purchased three bottles of Clos Du Bois
14 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
15 observed a store label similar in shape, size, and color to those shown above. These labels
16 displayed a reference price of \$17.99 in black and white, and a yellow and red tag advertising that
17 the wine would be available at a reduced “Member Price!” of approximately \$7.99 per bottle,
18 “Thru” a specific date. She understood the “Thru” date to mean that the discounts would only be
19 available “Thru” that date, after which the wine would return to being sold at the advertised
20 reference price of \$17.99. She also purchased three bottles of Folie A Deux Menage a Trois Red
21 Table Wine, which displayed similar labels showing a reference price of \$17.99 per bottle,
22 available to Rewards members at a reduced price of approximately \$9.89, again “Thru” a specific
23 date. She understood the “Thru” date to mean that the discounts would be available only “Thru”
24 that date, after which the wine would return to being sold at the advertised reference price of
25 \$17.99. Ms. McCarty bought these wines using her Rewards member card, relying on the
26 representation that the “discounted” price would only be available temporarily, “Thru” a date
27 certain, after which the wine would only be available at \$17.99 per bottle.

28

1 60. On or about April 26, 2024, Ms. McCarty purchased two bottles of Clos Du Bois
2 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchases, Ms. McCarty
3 observed a store label similar in shape, size, and color to those shown above. These labels
4 displayed a reference price of \$17.99 in black and white, and a yellow and red tag advertising that
5 the wine would be available at a reduced “Member Price!” of approximately \$7.99 per bottle,
6 “Thru” a specific date. She understood the “Thru” date to mean that the discounts would only be
7 available “Thru” that date, after which the wine would return to being sold at the advertised
8 reference price of \$17.99. She also purchased six bottles of Folie A Deux Menage a Trois Red
9 Table Wine, which displayed similar labels showing a reference price of \$17.99 per bottle,
10 available to Rewards members at a reduced price of approximately \$9.89, again “Thru” a specific
11 date. She understood the “Thru” date to mean that the discounts would be available only “Thru”
12 that date, after which the wine would return to being sold at the advertised reference price of
13 \$17.99. Ms. McCarty bought these wines using her Rewards member card, relying on the
14 representation that the “discounted” price would only be available temporarily, “Thru” a date
15 certain, after which the wine would only be available at \$17.99 per bottle.

16 61. On or about May 20, 2024, Ms. McCarty purchased a bottle of Clos Du Bois
17 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty
18 observed a store label similar in shape, size, and color to those shown above. The label displayed
19 a reference price of \$17.99 in black and white, and a yellow and red tag advertising that the wine
20 would be available at a reduced “Member Price!” of approximately \$9.99 per bottle, “Thru” a
21 specific date. She understood the “Thru” date to mean that the discounts would only be available
22 “Thru” that date, after which the wine would return to being sold at the advertised reference price
23 of \$17.99. Ms. McCarty also bought other wines that day, similarly discounted from reference
24 prices with “Thru” dates. Ms. McCarty bought the wine using her Rewards member card, relying
25 on the representation that the “discounted” price would only be available temporarily, “Thru” a
26 date certain, after which the wine would only be available at \$17.99 (or other stated reference
27 price) per bottle.

1 62. On or about July 2, 2024, Ms. McCarty purchased two bottles of Clos Du Bois
2 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty
3 observed a store label similar in shape, size, and color to those shown above. The label displayed
4 a reference price of \$17.99 in black and white, and a yellow and red tag advertising that the wine
5 would be available at a reduced “Member Price!” of approximately \$7.64 per bottle, “Thru” a
6 specific date. She understood the “Thru” date to mean that the discounts would only be available
7 “Thru” that date, after which the wine would return to being sold at the advertised reference price
8 of \$17.99. Ms. McCarty also bought other wines that day, similarly discounted from reference
9 prices with “Thru” dates. Ms. McCarty bought the wine using her Rewards member card, relying
10 on the representation that the “discounted” price would only be available temporarily, “Thru” a
11 date certain, after which the wine would only be available at \$17.99 (or other stated reference
12 price) per bottle.

13 63. On or about August 2, 2024, Ms. McCarty purchased two bottles of Clos Du Bois
14 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty
15 observed a store label similar in shape, size, and color to those shown above. The label displayed
16 a reference price of \$17.99 in black and white, and a yellow and red tag advertising that the wine
17 would be available at a reduced “Member Price!” of approximately \$7.64 per bottle, “Thru” a
18 specific date. She understood the “Thru” date to mean that the discounts would only be available
19 “Thru” that date, after which the wine would return to being sold at the advertised reference price
20 of \$17.99. Ms. McCarty also bought other wines that day, similarly discounted from reference
21 prices with “Thru” dates. Ms. McCarty bought the wine using her Rewards member card, relying
22 on the representation that the “discounted” price would only be available temporarily, “Thru” a
23 date certain, after which the wine would only be available at \$17.99 (or other stated reference
24 price) per bottle.

25 64. On or about August 30, 2024, Ms. McCarty purchased a bottle of Josh Cellars
26 Chardonnay Wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty observed
27 a store label similar in shape, size, and color to those shown above. These labels displayed a
28 reference price of \$19.99 in black and white, and a yellow and red tag advertising that the wine

1 would be available at a reduced “Member Price!” of approximately \$12.99 per bottle, “Thru” a
2 specific date. She understood the “Thru” date to mean that the discounts would only be available
3 “Thru” that date, after which the wine would return to being sold at the advertised reference price
4 of \$19.99. Ms. McCarty bought this wine using her Rewards member card, relying on the
5 representation that the “discounted” price would only be available temporarily, “Thru” a date
6 certain, after which the wine would only be available at \$19.99 per bottle.

7 65. On or about September 26, 2024, Ms. McCarty purchased a bottle of Josh Cellars
8 Chardonnay Wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty observed
9 a store label similar in shape, size, and color to those shown above. These labels displayed a
10 reference price of \$19.99 in black and white, and a yellow and red tag advertising that the wine
11 would be available at a reduced “Member Price!” of approximately \$13.99 per bottle, “Thru” a
12 specific date. She understood the “Thru” date to mean that the discounts would only be available
13 “Thru” that date, after which the wine would return to being sold at the advertised reference price
14 of \$19.99. Ms. McCarty bought this wine using her Rewards member card, relying on the
15 representation that the “discounted” price would only be available temporarily, “Thru” a date
16 certain, after which the wine would only be available at \$19.99 per bottle.

17 66. On or about October 22, 2024, Ms. McCarty purchased a bottles of Josh Cellars
18 Chardonnay Wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty observed
19 a store label similar in shape, size, and color to those shown above. These labels displayed a
20 reference price of \$19.99 in black and white, and a yellow and red tag advertising that the wine
21 would be available at a reduced “Member Price!” of approximately \$13.99 per bottle, “Thru” a
22 specific date. She understood the “Thru” date to mean that the discounts would only be available
23 “Thru” that date, after which the wine would return to being sold at the advertised reference price
24 of \$19.99. Ms. McCarty bought this wine using her Rewards member card, relying on the
25 representation that the “discounted” price would only be available temporarily, “Thru” a date
26 certain, after which the wine would only be available at \$19.99 per bottle.

27 67. On or about November 4, 2024, Ms. McCarty purchased a bottle of Clos Du Bois
28 Buttery Chardonnay wine from a Safeway in Oregon. Before making her purchase, Ms. McCarty

1 observed a store label similar in shape, size, and color to those shown above. The label displayed
2 a reference price of \$17.99 in black and white, and a yellow and red tag advertising that the wine
3 would be available at a reduced “Member Price!” of approximately \$8.88 per bottle, “Thru” a
4 specific date. She understood the “Thru” date to mean that the discounts would only be available
5 “Thru” that date, after which the wine would return to being sold at the advertised reference price
6 of \$17.99. Ms. McCarty bought the wine using her Rewards member card, relying on the
7 representation that the “discounted” price would only be available temporarily, “Thru” a date
8 certain, after which the wine would only be available at \$17.99 per bottle.

9 68. Ms. McCarty bought wine from Safeway on numerous other instances. Like the
10 wines described above, these purchases were advertised as marked down from a reference price,
11 as a time-limited discount promotion for Safeway Rewards members “Thru” a particular (false)
12 date. Before she purchased individual bottles of wine from Safeway stores, Ms. McCarty saw and
13 relied on a higher price affixed to the store shelf with a bright flyer beneath that advertised a time-
14 limited temporary sale price on individual bottles of wine that was several dollars less than affixed
15 the shelf price, including the “Thru” date that she reasonably believed signified the end of the
16 discount and on which she relied in making her purchases. The examples shown above are
17 substantially similar to the discounted prices that Ms. McCarty reviewed when deciding to buy
18 wines, including individual bottles of Menage a Trois Red.

19 69. In each of these instances, Safeway’s “Thru” date representations were false. The
20 “Thru” date does not represent an actual end date of Safeway’s purported time-limited sale. In fact,
21 once the “Thru” date passes Safeway just restarts the sale and offers the “discounted” wine at the
22 same or a similar “discount,” never actually selling it to Rewards members using their membership
23 cards at the advertised reference price. Safeway thus did not offer the wines to Rewards members
24 at the stated reference prices after the “Thru” dates passed. Instead, it simply renewed the sales
25 using a new similar discount. Thus, the “Thru” dates that Ms. McCarty relied on were false and
26 misleading.

27 70. For example, each time Ms. McCarty bought Josh Cellars Chardonnay, it was
28 advertised using a reference price of \$19.99, but in none of her purchases (including in January,

1 February, August, September, and October of 2024) was the chardonnay offered to Rewards
2 members using their membership cards at that price. The “Thru” dates visible on the tags were
3 meaningless, as the discounts simply continued at the same or similar amounts. Similarly, each
4 time Ms. McCarty bought Clos Du Bois Buttery Chardonnay it was advertised using a reference
5 price of \$17.99, but in none of her purchases (including in March, April, May, July, August, and
6 November of 2024) was the chardonnay offered to Rewards members using their membership
7 cards at that price. The “Thru” dates visible on the tags were meaningless as the discounts simply
8 continued at the same or similar amounts.

9 71. Based on Safeway’s representations on its store shelves, Ms. McCarty believed that
10 she was buying wine at a temporary discounted sale price and had therefore saved money on the
11 purchase by making it during the time-period for the sale that Safeway consistently included in its
12 shelf advertising. Ms. McCarty understood the reference price to be the true ordinary price of the
13 wine sold at Safeway stores, and believed that she was getting a time-limited promotion through
14 her Safeway Rewards membership by buying the wine during the duration of the sale. Ms.
15 McCarty did not realize that the “Thru” date was made up, the sale would actually be indefinite,
16 and that Safeway would not sell the wine in question to Safeway Rewards members at the reference
17 price.

18 72. Ms. McCarty would not have purchased the individual bottles of wine if she had
19 known that she was not receiving time-limited savings off a former price, as she was led to believe,
20 or she would not have purchased it on the same terms or the same price.

21 73. Ms. McCarty would buy member-priced wine from Safeway in the future, if she
22 could trust that the advertised discounts were actual time-limited markdowns from true reference
23 prices.

24 74. Ms. McCarty did not read and was not aware of an email from Safeway purporting
25 to bind her to arbitration, and she learned of this email when Safeway filed its motion to compel
26 arbitration. She promptly opted out of arbitration by sending a letter on November 15, 2024.

27 **3. Plaintiff Beam**

28 75. Plaintiff Beam is a Safeway Rewards member.

1 76. In the spring of 2024, Ms. Beam purchased a bottle of Firefly Ridge Cabernet
2 Sauvignon wine from a Safeway in Oregon. Before making her purchase, Ms. Beam observed a
3 store label similar in shape, size, and color to those shown above. These labels displayed a
4 reference price of \$11.99 in black and white, and a yellow and red tag advertising that the wine
5 would be available at a reduced “Member Price!” of \$6.88 per bottle, “Thru” a specific date. She
6 understood the “Thru” date to mean that the discounts would only be available “Thru” that date,
7 after which the wine would return to being sold at the advertised reference price. Ms. Beam bought
8 the wine using her Rewards member card, relying on the representation that the “discounted” price
9 would only be available temporarily, “Thru” a date certain, after which the wine would only be
10 available at \$11.99 per bottle.

11 77. Also in the spring of 2024, Ms. Beam purchased a bottle of Quail Oak Cabernet
12 Sauvignon wine from a Safeway in Oregon. Before making her purchase, Ms. Beam observed a
13 store label similar in shape, size, and color to those shown above. The label displayed a reference
14 price of \$6.99 in black and white, and a yellow and red tag advertising that the wine would be
15 available at a reduced “Member Price!” of \$4.88 per bottle, “Thru” a specific date. She understood
16 the “Thru” date to mean that the discounts would only be available “Thru” that date, after which
17 the wine would return to being sold at the advertised reference price. Ms. Beam bought the wine
18 using her Rewards member card, relying on the representation that the “discounted” price would
19 only be available temporarily, “Thru” a date certain, after which the wine would only be available
20 at \$6.99 per bottle.

21 78. Also in the spring of 2024, Ms. Beam purchased a bottle of Head Snapper wine
22 from a Safeway in Oregon. Before making her purchase, Ms. Beam observed a store label similar
23 in shape, size, and color to those shown above. The label displayed a reference price of \$13.99 in
24 black and white, and a yellow and red tag advertising that the wine would be available at a reduced
25 “Member Price!” of \$8.98 per bottle, “Thru” a specific date. She understood the “Thru” date to
26 mean that the discounts would only be available “Thru” that date, after which the wine would
27 return to being sold at the advertised reference price. Ms. Beam bought the wine using her Rewards
28

1 member card, relying on the representation that the “discounted” price would only be available
2 temporarily, “Thru” a date certain, after which the wine would only be available at \$8.98 per bottle.

3 79. Also in the spring of 2024, Ms. Beam purchased a bottle of Quail Oak Merlot wine
4 from a Safeway in Oregon. Before making her purchase, Ms. Beam observed a store label similar
5 in shape, size, and color to those shown above. The label displayed a reference price of \$6.99 in
6 black and white, and a yellow and red tag advertising that the wine would be available at a reduced
7 “Member Price!” of \$4.88 per bottle, “Thru” a specific date. She understood the “Thru” date to
8 mean that the discounts would only be available “Thru” that date, after which the wine would
9 return to being sold at the advertised reference price. Ms. Beam bought the wine using her Rewards
10 member card, relying on the representation that the “discounted” price would only be available
11 temporarily, “Thru” a date certain, after which the wine would only be available at \$6.99 per bottle.

12 80. Also in the spring of 2024, Ms. Beam purchased a bottle of Firefly Red Blend wine
13 from a Safeway in Oregon. Before making her purchase, Ms. Beam observed a store label similar
14 in shape, size, and color to those shown above. The label displayed a reference price of \$11.99 in
15 black and white, and a yellow and red tag advertising that the wine would be available at a reduced
16 “Member Price!” of \$6.98 per bottle, “Thru” a specific date. She understood the “Thru” date to
17 mean that the discounts would only be available “Thru” that date, after which the wine would
18 return to being sold at the advertised reference price. Ms. Beam bought the wine using her Rewards
19 member card, relying on the representation that the “discounted” price would only be available
20 temporarily, “Thru” a date certain, after which the wine would only be available at \$6.98 per bottle.

21 81. In each of these instances, Safeway’s “Thru” date representations were false. The
22 “Thru” date does not represent an actual end date of Safeway’s purported time-limited sale. In fact,
23 once the “Thru” date passes Safeway just restarts the sale and offers the “discounted” wine at the
24 same or a similar “discount,” never actually selling it to Rewards members using their membership
25 cards at the advertised reference price. Safeway thus did not offer the wines to Rewards members
26 at the stated reference prices after the “Thru” dates passed. Instead, it simply renewed the sales
27 using a new similar discount. Thus, the “Thru” dates that Ms. Beam relied on were false and
28 misleading.

1 82. Based on Safeway’s representations on its store shelves, Ms. Beam believed that
2 she was buying wine at a temporary discounted sale price and had therefore saved money on the
3 purchase by making it during the time-period for the sale that Safeway consistently included in its
4 shelf advertising. Ms. Beam understood the reference price to be the true ordinary price of the wine
5 sold at Safeway stores, and believed that she was getting a time-limited promotion through her
6 Safeway Rewards membership by buying the wine during the duration of the sale. Ms. Beam did
7 not realize that the “Thru” date was made up, the sale would actually be indefinite, and that
8 Safeway would not sell the wine in question to Safeway Rewards members at the reference price.

9 83. Ms. Beam would not have purchased the individual bottles of wine if she had
10 known that she was not receiving time-limited savings off a former price, as she was led to believe,
11 or she would not have purchased it on the same terms or the same price.

12 84. Ms. Beam would buy member-priced wine from Safeway in the future, if she could
13 trust that the advertised discounts were actual time-limited markdowns from true reference prices.

14 85. Ms. Beam did not read and was not aware of an email from Safeway purporting to
15 bind her to arbitration, and she learned of this email when Safeway filed its motion to compel
16 arbitration. She promptly opted out of arbitration by sending a letter on November 15, 2024.

17 **4. Plaintiff Lundt**

18 86. Plaintiff Lundt is a Safeway Rewards member.

19 87. On or around September 20, 2024, Mr. Lundt purchased a bottle of Lamarca
20 Prosecco Wine from a Safeway store in Washington, D.C. Before making his purchase, Mr. Lundt
21 observed a store label similar in shape, size, and color to those shown above. These labels
22 displayed a reference price of \$24.27 in black and white, and a yellow and red tag advertising that
23 the wine would be available at a reduced “Member Price!” of \$16.99 per bottle, “Thru” a specific
24 date. Mr. Lundt understood the “Thru” date to mean that the discounts would only be available
25 “Thru” that date, after which the wine would return to being sold at the advertised reference price.
26 Mr. Lundt purchased the wine, relying on the representation that the “discounted” price would
27 only be available temporarily, “Thru” a date certain, after which the wine would only be available
28 at \$24.27 per bottle.

1 88. On or around January 3, 2025, Mr. Lundt purchased a bottle of Lamarca Prosecco
2 Wine from a Safeway store in Washington, D.C. Before making his purchase, Mr. Lundt observed
3 a store label similar in shape, size, and color to those shown above. These labels displayed a
4 reference price of \$24.27 in black and white, and a yellow and red tag advertising that the wine
5 would be available at a reduced “Member Price!” of \$16.99 per bottle, “Thru” a specific date. Mr.
6 Lundt understood the “Thru” date to mean that the discounts would only be available “Thru” that
7 date, after which the wine would return to being sold at the advertised reference price. Mr. Lundt
8 purchased the wine, relying on the representation that the “discounted” price would only be
9 available temporarily, “Thru” a date certain, after which the wine would only be available at \$24.27
10 per bottle.

11 89. On or around January 6, 2025, Mr. Lundt purchased a bottle of Mionetto Prestige
12 Prosecco Brut Wine from a Safeway store in Washington, D.C. Before making his purchase, Mr.
13 Lundt observed a store label similar in shape, size, and color to those shown above. These labels
14 displayed a reference price of \$21.42 in black and white, and a yellow and red tag advertising that
15 the wine would be available at a reduced “Member Price!” of \$14.99 per bottle, “Thru” a specific
16 date. Mr. Lundt understood the “Thru” date to mean that the discounts would only be available
17 “Thru” that date, after which the wine would return to being sold at the advertised reference price.
18 Mr. Lundt purchased the wine, relying on the representation that the “discounted” price would
19 only be available temporarily, “Thru” a date certain, after which the wine would only be available
20 at \$21.42 per bottle.

21 90. On or around January 9, 2025, Mr. Lundt purchased a bottle of Butter Chardonnay
22 Wine from a Safeway store in Washington, D.C. Before making his purchase, Mr. Lundt observed
23 a store label similar in shape, size, and color to those shown above. These labels displayed a
24 reference price of \$27.13 in black and white, and a yellow and red tag advertising that the wine
25 would be available at a reduced “Member Price!” of \$18.99 per bottle, “Thru” a specific date. Mr.
26 Lundt understood the “Thru” date to mean that the discounts would only be available “Thru” that
27 date, after which the wine would return to being sold at the advertised reference price. Mr. Lundt
28 purchased the wine, relying on the representation that the “discounted” price would only be

1 available temporarily, “Thru” a date certain, after which the wine would only be available at \$27.13
2 per bottle.

3 91. Mr. Lundt bought wine from Safeway on numerous other instances. Like the wines
4 described above, these purchases were advertised as marked down from a reference price, as a
5 time-limited discount promotion for Safeway Rewards members “Thru” a particular (false) date.
6 Before purchasing individual bottles of wine from Safeway stores, Mr. Lundt saw and relied on
7 higher price affixed to the store shelf with a bright flyer beneath that advertised a time-limited
8 temporary sale price on individual bottles of wine that was several dollars less than affixed the
9 shelf price, including the “Thru” date that he reasonably believed signified the end of the discount
10 and on which he relied in making his purchases. The examples shown above are substantially
11 similar to the discounted prices that Mr. Lundt reviewed when deciding to buy wines.

12 92. In each of these instances, Safeway’s “Thru” date representations were false. The
13 “Thru” date does not represent an actual end date of Safeway’s purported time-limited sale. In fact,
14 once the “Thru” date passes Safeway just restarts the sale and offers the “discounted” wine at the
15 same or a similar “discount,” never actually selling it to Rewards members using their membership
16 cards at the advertised reference price. Safeway thus did not offer the wines to Rewards members
17 at the stated reference prices after the “Thru” dates passed. Instead, it simply renewed the sales
18 using a new similar discount. Thus, the “Thru” dates that Mr. Lundt relied on were false and
19 misleading.

20 93. For example, between at least August 8, 2024 and March 3, 2025, Safeway never
21 sold Lamarca Prosecco, which Mr. Lundt purchased on numerous occasions, at the advertised
22 reference price of \$24.27. Instead, each time the “Thru” date passed, Safeway would either renew
23 its purported “discount” of \$16.99 per bottle (which lasted between at least August 8, 2024 and
24 January 22, 2025) or offer a slightly altered discount, but never the advertised reference price.

25 94. Based on Safeway’s representations on its store shelves, Mr. Lundt believed that he
26 was buying wine at a temporary discounted sale price and had therefore saved money on the
27 purchase by making it during the time-period for the sale that Safeway consistently included in its
28 shelf advertising. Mr. Lundt understood the reference price to be the true ordinary price of the wine

1 sold at Safeway stores, and believed that he was getting a time-limited promotion through his
2 Safeway Rewards membership by buying the wine during the duration of the sale. Mr. Lundt did
3 not realize that the “Thru” date was made up, the sale would actually be indefinite and that Safeway
4 would not sell the wine in question to Safeway Rewards members at the reference price.

5 95. Mr. Lundt would not have purchased individual bottles of wine if he had known
6 that he was not receiving time-limited savings off a former price, as he was led to believe, or he
7 would not have purchased it on the same terms or the same price.

8 96. Mr. Lundt would buy member-priced wine from Safeway in the future, if Mr. Lundt
9 could trust that the advertised discounts were actual time-limited markdowns from true reference
10 prices.

11 97. Mr. Lundt did not read and was not aware of an email from Safeway purporting to
12 bind him to arbitration. He promptly opted out of arbitration by sending a letter on February 11,
13 2025.

14 **D. No Adequate Remedy At Law**

15 98. Plaintiffs and class members have suffered an injury in fact resulting in the loss of
16 money and/or property as a proximate result of the violations of law and wrongful conduct of
17 Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct
18 at issue here. Legal remedies available to Plaintiffs and class members are inadequate because they
19 are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not
20 equally certain as restitution because the standard that governs restitution is different than the
21 standard that governs damages. Hence, the Court may award restitution even if it determines that
22 Plaintiffs fail to sufficiently adduce evidence to support an award of damages. Damages and
23 restitution are not the same amount. Unlike damages, restitution is not limited to the amount of
24 money defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including
25 restitution, entitles a plaintiff to recover all profits from the wrongdoing, even where the original
26 funds taken have grown far greater than the legal rate of interest would recognize. Legal claims
27 for damages are not equally certain as restitution because claims under the statutes herein entail
28

1 few elements. In short, significant differences in proof and certainty establish that any potential
2 legal claim cannot serve as an adequate remedy at law.

3 99. Equitable relief is appropriate because Plaintiffs may lack an adequate remedy at
4 law if, for instance, damages resulting from their purchase of the product is determined to be an
5 amount less than the premium price of the product. Without compensation for the full premium
6 price of the product, Plaintiffs would be left without the parity in purchasing power to which they
7 are entitled.

8 100. Even if legal remedies may be available. Plaintiffs seek equitable remedies in the
9 alternative to legal remedies which are as of yet uncertain.

10 CLASS ACTION ALLEGATIONS

11 101. Plaintiffs bring this action on behalf of themselves and proposed Classes, defined
12 as follows:

13 **Class:** All persons residing in the United States who (1) are members of Safeway's
14 rewards program and (2) while holding membership in Safeway's rewards
15 program, purchased wine, other than for purposes of resale, from a Safeway store
that was advertised at a members-only price.

16 **California Subclass:** All persons residing in California who (1) are members of
17 Safeway's rewards program and (2) while holding membership in Safeway's
18 rewards program, purchased wine, other than for purposes of resale, from a
Safeway store within California that was advertised at a members-only price.

19 **Oregon Subclass:** All persons residing in Oregon who (1) are members of
20 Safeway's rewards program and (2) while holding membership in Safeway's
21 rewards program, purchased wine, other than for purposes of resale, from a
Safeway store within Oregon that was advertised at a members-only price.

22 **District of Columbia Subclass:** All persons residing in the District of Columbia
23 who (1) are members of Safeway's rewards program and (2) while holding
24 membership in Safeway's rewards program, purchased wine, other than for
purposes of resale, from a Safeway store within the District of Columbia that was
advertised at a members-only price.

25 102. The time period for the Classes is the applicable statute of limitations preceding the
26 filing of this action through the date a class is certified.

27 103. Excluded from the Classes are Safeway, its parents, subsidiaries, affiliates, officers,
28 and directors; any entity in which Safeway has a controlling interest; all potential Class members

1 who make a timely election to be excluded; governmental entities; and all judges assigned to hear
2 any aspect of this litigation as well as their immediate family members.

3 104. **Numerosity.** The Classes are so large that joinder of all of its members would be
4 impracticable. There are likely thousands of Class members.

5 105. **Commonality.** Safeway has acted or refused to act on grounds that apply equally
6 to all members of the Classes. Absent certification, the relief sought by this Complaint creates the
7 possibility of inconsistent judgments or obligations upon Safeway. Numerous common issues of
8 law and fact exist, including:

- 9 a. Whether Safeway’s advertising practices were and are likely to mislead consumers;
- 10 b. Whether Safeway’s members-only wine prices are false and misleading;
- 11 c. Whether Safeway continues to make false or misleading statements of fact
12 concerning the time limits on price reductions for Rewards members;
- 13 d. Whether reliance on Safeway’s misrepresentations and omissions can be presumed;
- 14 e. Whether Safeway’s acts and practices described herein are unfair;
- 15 f. Whether Safeway’s advertising practices are “business practices” under the UCL;
- 16 g. Whether Safeway’s practice of advertising falsely discounted wine is unlawful;
- 17 h. Whether Safeway’s advertisement of fabricated discounts off fictitious reference
18 prices is a misrepresentation of a material fact which has a tendency to mislead;
- 19 i. Whether Safeway’s advertised discounts use innuendo or ambiguity as to a material
20 fact, with a tendency to mislead;
- 21 j. Whether California law applies to Safeway’s practices nationwide;
- 22 k. Whether Plaintiffs and the Class Members were harmed by Safeway’s misleading
23 advertising practices;
- 24 l. Whether Plaintiffs and the Class Members are entitled to full or partial refunds;
- 25 m. Whether Plaintiffs and the Class Members are entitled to statutory damages;
- 26 n. Whether Plaintiffs and the Class Members are entitled to punitive damages; and
- 27 o. Whether Safeway should be enjoined from continuing to advertise fictitious sales
28 to its Rewards members.

1 114. Safeway’s use of false reference prices that are not the ordinary, bona fide price of
2 its wine, and advertising misleading fabricated discounts off the false reference prices for its
3 Rewards members, violate the FAL.

4 115. Safeway advertised to Safeway Rewards members that it sold wine at a particular
5 reference price, as if the reference price were the prevailing market price within the three months
6 preceding publication of the advertisement, and as if the purported “discounts” for Rewards
7 members would only be available “Thru” a particular end date. However, the reference prices that
8 Safeway advertised to Safeway Rewards members were not the prevailing price offered to Safeway
9 Rewards members within the prior three months, nor did Safeway present the dates during which
10 the reference price was offered for Safeway Rewards members. Safeway did not disclose that the
11 reference price was ever offered for Safeway Rewards members using their membership cards or
12 that the “Thru” price was a fake date such that the sale would just be renewed at its conclusion.

13 116. The use of the false reference prices, and the amount of the purported discount off
14 the false reference price (which is not a real discount because the reference price is false), is an
15 untrue or misleading advertising device. The actual reference price of the wine is material because
16 a reasonable person would attach importance to its existence or nonexistence when determining
17 his or her choice of action in the transaction, and because Safeway regards the matter as important
18 in determining the buyer’s choice of action. The “Thru” date is also material because a reasonable
19 person would attach importance to the existence or nonexistence of an end date to the alleged time-
20 limited discount, including whether the “discount” would go away after a particular time, or
21 whether it would extend indefinitely.

22 117. Safeway failed to disclose that it does not sell wine to Safeway Rewards members
23 at the reference prices, including after the passage of the “Thru” date, and that omission was
24 material as well.

25 118. By showing a discount sale price with a specified end date, Safeway used innuendo
26 or ambiguity as to a material fact (i.e. the actual price of the wine for Safeway Rewards members,
27 and the length of time it would be offered at a discount) with a tendency to mislead.
28

1 119. Finally, Safeway’s use of false reference prices is a false or misleading
2 representation of fact concerning the reasons for, existence of, or amounts of price reductions, as
3 well as the price of the wine in comparison with Safeway’s own prices at a past or future time.

4 120. Plaintiffs and the Class and California Subclass suffered actual injuries as a result
5 of Safeway’s unfair and deceptive practices. They purchased wine in reliance on the belief that
6 they were getting a true discount off a real reference price during a sale that would end on the
7 “Thru” date. None of those things were true as the reference prices were not the true prices for
8 Safeway Rewards members using their membership cards, and the sales would just renew after the
9 “Thru” date passed. Had Plaintiffs and the Class and California Subclass known the truth, they
10 would not have purchased the wines they bought, or paid less for it, or bought it on different terms.
11 Safeway acted knowingly, recklessly, and in conscious disregard of the true facts in perpetuating
12 its deceptive advertising scheme and causing injuries to Plaintiffs and the Class and California
13 Subclass.

14 121. Plaintiffs seek a permanent public injunction preventing Safeway from continuing
15 to make untrue and misleading statements in its advertising.

16 **COUNT II**

17 **Violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200**
18 **(On behalf of Plaintiffs and the proposed Class and California Subclass).**

19 122. Plaintiffs restate paragraphs 1 through 109 as though set forth in full herein.

20 123. Plaintiffs bring this claim on their own behalf and on behalf of members of the
21 Class and California Subclass.

22 124. Safeway’s practices as alleged herein are unfair competition in violation of Bus. &
23 Prof. Code § 17200. Safeway’s acts alleged herein are unfair and likely to deceive the general
24 public, and unlawful in that they violate Bus. & Prof. Code § 17500 (false and misleading
25 advertising) and Cal. Civ. Code §§ 1770(a)(13)-(14) (CLRA), along with other state and federal
26 statutes and regulations.

27 125. Safeway’s advertising practices described herein are a “business practice” within
28 the meaning of the UCL.

1 126. As a result of Safeway’s unfair, fraudulent, and unlawful business practices,
2 Plaintiffs and the Class and California Subclass have been injured.

3 **A. Fraudulent Prong**

4 127. Safeway’s use of false reference prices for Rewards members that are not the
5 ordinary, bona fide price of its wine, and advertising misleading fabricated discounts for Rewards
6 members off the false reference prices, was fraudulent.

7 128. The use of the false reference prices, and the amount of the purported discount off
8 the false reference price for a false time period (which is not a real discount because the reference
9 price is false, and so is the “Thru” date time period), is an untrue or misleading advertising device.
10 The actual reference price of the wine is material because a reasonable person would attach
11 importance to its existence or nonexistence when determining his or her choice of action in the
12 transaction, and because Safeway regards the matter as important in determining the buyer’s
13 choice of action. The “Thru” date is also material because a reasonable person would attach
14 importance to the existence or nonexistence of an end date to the alleged time-limited discount,
15 including whether the “discount” would go away after a particular time, or whether it would extend
16 indefinitely.

17 129. Safeway failed to disclose that it does not sell wine to Safeway Rewards members
18 at the reference prices, including after the passage of the “Thru” date, and that omission was
19 material as well.

20 130. By showing a discount sale price with a specified end date, Safeway used innuendo
21 or ambiguity as to a material fact (i.e. the actual price of the wine for Safeway Rewards members,
22 and the length of time it would be offered at a discount) with a tendency to mislead.

23 **B. Unfair Prong**

24 131. Safeway’s use of false reference prices for Rewards members that are not the
25 ordinary, bona fide price of its wine, and advertising misleading fabricated discounts for Rewards
26 members off the false reference prices, was unfair. It offends public policy as articulated under
27 California law and the Federal Trade Commission, and demonstrates immoral, unethical,
28

1 unscrupulous activities that caused substantial injuries, including to Plaintiffs and other members
2 of the Class and California Subclass.

3 132. Safeway's conduct also substantially harms competition. Consumers are more
4 likely to purchase products if they believe they are getting a discount. By masquerading as offering
5 discounts, Safeway is able to boost its sales to consumers, like Plaintiffs, who believe they are
6 buying products on sale. Safeway thereby undercuts its competition by taking market share from
7 stores that do not utilize fake sales to target consumers.

8 **C. Unlawful Prong**

9 133. Safeway's use of false reference prices for Rewards members that are not the
10 ordinary, bona fide price of its wine, and advertising misleading fabricated discounts for Rewards
11 members off the false reference prices, was unlawful in that it violated the FAL and CLRA as
12 alleged herein, as well as FTC regulations. *See* 16 C.F.R. § 233.1. For instance, FTC regulations
13 prohibit false or misleading "former price comparisons," making up "an artificial, inflated price
14 ... for the purpose of enabling the subsequent offer of a large reduction" off that price. 16 C.F.R.
15 § 233.1. They also prohibit false or misleading "retail price comparisons" that falsely suggest that
16 the seller is "offer[ing] goods at prices lower than those being charged by others for the same
17 merchandise" when this is not the case. 16 C.F.R. § 233.1.

18 **D. Remedies**

19 134. Plaintiffs and the Class and California Subclass Members suffered actual injuries,
20 including monetary harm, as a result of Safeway's unfair and deceptive practices. They purchased
21 wine in reliance on the belief that they were getting a true discount off a real reference price during
22 a sale that would end on the "Thru" date. None of those things were true as the reference prices
23 were not the true prices for Safeway Rewards members using their membership cards, and the
24 sales would just renew after the "Thru" date passed. Had Plaintiffs and the Class and California
25 Subclass known the truth, they would not have purchased the wines they bought, or paid less for
26 it, or bought it on different terms.

27 135. Plaintiffs seek a permanent public injunction preventing Safeway from continuing
28 to make untrue and misleading statements in its advertising.

COUNT III

**Violation of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1760 *et seq.*
(On behalf of Plaintiffs and the proposed Class and California Subclass).**

136. Plaintiffs restate paragraphs 1 through 109 as though set forth in full herein.

137. Plaintiffs bring this claim on their own behalf and on behalf of members of the Class and California Subclass.

138. Plaintiffs and the Class and California Subclass members are “consumers” within the meaning of the CLRA. Cal. Civ. Code § 1761(d).

139. Safeway is a “person” within the meaning of the CLRA, and the wine it sells are “goods” as defined in the CLRA. *Id.* § 1761(c), (a).

140. Purchases of wine from Safeway by Plaintiffs and the Class and California Subclass are “transactions” under the CLRA. *Id.* § 1761(e).

141. The CLRA makes it illegal to, among other things:

- a. Make false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions, *id.* § 1770(a)(13); and
- b. Represent that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or which are prohibited by law, *id.* § 1770(a)(14).

142. Safeway’s use of false reference prices for Rewards members that are not the ordinary, bona fide price of its wine, and advertising misleading fabricated discounts for Rewards members off the false reference prices, violated the CLRA. Safeway also violated the CLRA by using fake “Thru” dates that misled consumers as to the end dates of its purported sales.

143. Safeway’s use of false reference prices for Rewards members and false “Thru” dates are false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

144. The use of the false reference prices, and the amount of the purported discount off the false reference price for a false time (which is not a real discount because the reference price is false, as is the purported “Thru” date) are untrue or misleading statements. The actual reference price of the wine is material because a reasonable person would attach importance to its existence or nonexistence when determining his or her choice of action in the transaction, and because

1 Safeway regards the matter as important in determining the buyer’s choice of action. The “Thru”
2 date is also material because a reasonable person would attach importance to the existence or
3 nonexistence of an end date to the alleged time-limited discount, including whether the “discount”
4 would go away after a particular time, or whether it would extend indefinitely.

5 145. Safeway failed to disclose that it does not sell wine to Safeway Rewards members
6 at the reference prices, including after the passage of the “Thru” date, and that omission was
7 material as well.

8 146. By showing a discount sale price with a specified end date, Safeway used innuendo
9 or ambiguity as to a material fact (i.e. the actual price of the wine for Safeway Rewards members,
10 and the length of time it would be offered at a discount) with a tendency to mislead.

11 147. Safeway represented that Safeway Rewards members were enjoying rights and
12 benefits, including a time-limited promotional price, that they did not actually enjoy, because the
13 purported sales were not time-limited.

14 148. Pursuant to Cal. Civ. Code § 1782, Plaintiffs Tempest, McCarty, Beam, and Lundt
15 sent notification to Safeway in writing by certified mail of the particular violations of the CLRA
16 and demanded that Safeway rectify the problems associated with the actions above.

17 149. Plaintiffs seek a permanent public injunction preventing Safeway from continuing
18 to make untrue and misleading statements in its advertising.

19 **COUNT V**
20 **Quasi-Contract/Unjust Enrichment**
21 **(On behalf of Plaintiffs and the proposed D.C. and Oregon Subclasses).**

22 150. Plaintiffs restate paragraphs 1 through 109 as though set forth in full herein.

23 151. As alleged in detail herein, Safeway’s false and misleading advertising caused
24 Plaintiff and members of the D.C. and Oregon Subclasses to purchase wine at falsely discounted
25 prices. Plaintiffs conferred a benefit upon Safeway when they purchased the falsely discounted
26 wine, and Safeway received that direct and unjust benefit.

27 152. It would be unjust and inequitable to permit Safeway to retain these ill-gotten
28 benefits.

1 153. (In the alternative only), due to Defendant’s misrepresentations, its contracts with
2 Plaintiffs and members of the D.C. and Oregon Subclasses are void or voidable.

3 154. Plaintiffs and members of the D.C. and Oregon Subclasses seek restitution and in
4 the alternative, rescission.

5 **COUNT VI**

6 **Violation of Oregon Unlawful Trade Practices Act, O.R.S. 646.605 et seq.**
7 **(On behalf of Plaintiffs McCarty and Beam and the proposed Oregon Subclass).**

8 155. Plaintiffs McCarty and Beam restate paragraphs 1 through 109 as if set forth fully
9 herein.

10 156. Plaintiffs McCarty and Beam bring this claim on their own behalf and on behalf of
11 members of the Oregon Subclass.

12 157. The Oregon Unlawful Trade Practices Act (“OUTPA”) prohibits persons from
13 engaging in trade practices declared unlawful under ORS 646.608.

14 158. Persons that suffer an ascertainable loss of money or property, real or personal, as
15 a result of another person’s willful use or employment of a method, act, or practice declared
16 unlawful under ORS 646.608 may bring an action to recover actual damages or statutory damages
17 of \$200, whichever is greater. ORS 646.638(1).

18 159. Plaintiffs McCarty and Beam and the Oregon Subclass Members, are “persons”
19 under ORS 646.605(4).

20 160. Safeway is a “person” under ORS 646.605(4).

21 161. Safeway engages in “trade” or “commerce,” including when it deploys wine
22 advertising practices, within the meaning of ORS 646.605(8) because it advertises, offers, or
23 distributes goods, including in a manner that directly or indirectly affects the people of Oregon.

24 162. The OUTPA makes it illegal to, among other things:

- 25 a. Make false or misleading representations of fact concerning the reasons for,
26 existence of, or amounts of price reductions, ORS 646.608(1)(j);
- 27 b. Make false or misleading representations of fact concerning the offering price of,
28 or the person’s cost for real estate, goods or services, ORS 646.608(1)(s); or

1 c. Engage in other unfair or deceptive conduct in trade or commerce, as set forth in
2 an Administrative Rule established by the Attorney General of Oregon, ORS
3 646.608(1)(u), (4).

4 163. Oregon Administrative Rule 137-020-0010 makes it an unlawful trade practice to
5 represent that goods are available for sale or lease at an offering price less than a reference price
6 unless such reference price:

7 a. is a price at which the person, in the regular course of its business, made good faith
8 sales of the same or similar goods, or, if no sales were made, offered in good faith
9 to make sales of the same or similar goods either (i) within the preceding 30 days
10 or (ii) at any other time in the past which is identified;

11 b. is the price at which the person will offer the same or similar goods for sale in the
12 future, provided that (i) the reference price is stated or regularly ascertainable, (ii)
13 if the reference price will not be put into effect for more than 90 days after the
14 representation, the effective date of the reference price is stated; and (iii) such
15 reference price is actually put into effect;

16 c. is a price at which an identified or identifiable competitor is or has in the recent
17 regular course of business offered to make good faith sales of the same or regular
18 goods; or

19 d. is required to be affixed to the goods.

20 164. Safeway’s use of false reference prices for Rewards members that are not the
21 ordinary, bona fide price of its wine, and advertising misleading fabricated discounts for Rewards
22 members off the false reference prices, violated the OUTPA. Safeway, in fact, will only offer
23 individual bottles of wine to Rewards Members at the discount price—and will never offer the
24 individual bottles of wine to Rewards members at the original reference prices it includes in its
25 advertising. Safeway’s use of fake “Thru” dates also violated the OUTPA because it misled
26 consumers as to the end dates of its purported sales.

27 165. Safeway’s reference prices were not the prices at which Safeway “made good faith
28 sales” to Rewards members using their membership cards. Further, Safeway failed to provide the

1 “effective date of the reference price” as required because the “Thru” dates it utilized were false
2 and not the “effective date.” Nor were the reference prices actually put into effect.

3 166. Safeway made false or misleading statements of fact concerning the existence of a
4 price reduction, and concerning the offering price of goods.

5 167. Safeway also engaged in other unfair or deceptive conduct by representing that
6 goods are available for sale or lease at an offering price less than a reference price, without any of
7 the applicable exceptions.

8 168. The use of the false reference prices, and the amount of the purported discount off
9 the false reference price for a false time (which is not a real discount because the reference price
10 is false) are false or misleading statements. The actual reference price of the wine is material
11 because a reasonable person would attach importance to its existence or nonexistence when
12 determining his or her choice of action in the transaction, and because Safeway regards the matter
13 as important in determining the buyer’s choice of action. The “Thru” date is also material because
14 a reasonable person would attach importance to the existence or nonexistence of an end date to the
15 alleged time-limited discount, including whether the “discount” would go away after a particular
16 time, or whether it would extend indefinitely.

17 169. Safeway failed to disclose that it does not sell wine to Safeway Rewards members
18 at the reference prices, including after the passage of the “Thru” date, and that omission was
19 material as well.

20 170. Safeway’s violations of OUTPA were willful, reckless, or knowing. Safeway was
21 aware its “Thru” prices were not real yet it continued to display them knowing it would just refresh
22 the sale at its alleged “end.”

23 171. Plaintiffs McCarty and Beam and the Oregon Subclass Members suffered
24 ascertainable losses as a result of Safeway’s unfair and deceptive practices, in that they purchased
25 wine that they would not have purchased had they known the truth. They are entitled to recover
26 \$200 per class member plus prejudgment interest, attorneys’ fees and costs, and punitive damages.

1 172. Plaintiffs McCarty and Beam and the Oregon Subclass Members are also entitled
2 to punitive damages, as Safeway’s actions were accompanied by fraud, ill will, recklessness,
3 wantonness, oppressiveness, and willful disregard for their rights.

4 173. Plaintiffs McCarty and Beam also seek a permanent injunction preventing Safeway
5 from continuing to deploy false reference prices and fictitious discounts.

6 **COUNT VII**
7 **Violation of District of Columbia Consumer Protection Procedures Act (“CPPA”),**
8 **D.C. Code § 28-3901, *et seq.***
9 **(On behalf of Plaintiff Lundt and the proposed District of Columbia Subclass).**

10 174. Plaintiff Lundt restates paragraphs 1 through 109 as if set forth fully herein.

11 175. Plaintiff Lundt brings this claim on his own behalf and on behalf of members of the
12 District of Columbia Subclass.

13 176. The CPPA is a remedial statute that is to be broadly construed. It establishes an
14 enforceable right to truthful information from merchants about consumer goods and services that
15 are or would be purchased, leased, or received in the District of Columbia.

16 177. The goods that Safeway provides consumers are for personal, household, or family
17 purposes and therefore are consumer goods.

18 178. Safeway, in the ordinary course of business, supplies consumer goods and services
19 and therefore is a merchant under the CPPA. D.C. Code § 28-3901(a)(1)(2).

20 179. Safeway’s customers receive consumer goods for personal, household, or family
21 uses and are therefore consumers under the CPPA. D.C. Code § 28-3901(a)(3).

22 180. Safeway’s practices described herein are “trade practices” within the meaning of
23 the CPPA because they are an act that does or would create, make available, provide information
24 about, or directly or indirectly solicit or offer or effectuate a sale or transfer of goods. D.C. Code
25 § 28-3901(a)(6).

26 181. The CPPA prohibits misleading and deceptive trade practices in connection with
27 the offer, sale, and supply of consumer goods and services. D.C. Code § 28-3904.

28 182. Reliance is not a requirement under the CPPA.

183. The CPPA makes it illegal to, among other things:

- 1 a. Misrepresent as to a material fact which has a tendency to mislead (D.C. Code §
2 28-3904(e));
- 3 b. Fail to state a material fact if such failure tends to mislead (D.C. Code § 28-
4 3904(f));
- 5 c. Use innuendo or ambiguity as to a material fact, which has a tendency to mislead
6 (D.C. Code § 28-3904(f-1)); and
- 7 d. Make false or misleading representations of fact concerning the reasons for,
8 existence of, or amounts of price reductions, or the price in comparison to price of
9 competitors or one's own price at a past or future time (D.C. Code § 28-3904(j)).

10 184. The D.C. Office of the Attorney General has warned businesses like Safeway that
11 consumers “have a right to clear information about prices in advance of any purchase,” and that
12 businesses must not “make misleading claims or false statements about the price of an item for
13 sale,” including by “us[ing] ambiguous or vague language that tends to mislead a consumer.”⁷

14 185. Safeway's use of false reference prices for Rewards members that are not the
15 ordinary, bona fide price of its wine, and advertising misleading fabricated discounts for Rewards
16 members off the false reference prices, violated the CPPA.

17 186. Safeway's use of false reference prices for Rewards members is a false or
18 misleading representation of fact concerning the reasons for, existence of, or amounts of price
19 reductions, as well as the price of the wine in comparison with Safeway's own prices at a past or
20 future time.

21 187. The use of the false reference prices, and the amount of the purported discount off
22 the false reference price for a false time (which is not a real discount because the reference price
23 is false) are untrue or misleading statements. The actual reference price of the wine is material
24 because a reasonable person would attach importance to its existence or nonexistence when

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26 ⁷ D.C. Office of the Attorney General, *Business Advisory: Retail Prices Must Be Clearly Displayed*
27 *Up Front* (Dec. 6, 2023), [https://oag.dc.gov/sites/default/files/2023-12/Business-Advisory-Price-](https://oag.dc.gov/sites/default/files/2023-12/Business-Advisory-Price-Transparency.pdf)
28 [Transparency.pdf](https://oag.dc.gov/sites/default/files/2023-12/Business-Advisory-Price-Transparency.pdf).

1 determining his or her choice of action in the transaction, and because Safeway regards the matter
2 as important in determining the buyer’s choice of action. The “Thru” date is also material because
3 a reasonable person would attach importance to the existence or nonexistence of an end date to the
4 alleged time-limited discount, including whether the “discount” would go away after a particular
5 time, or whether it would extend indefinitely.

6 188. Safeway failed to disclose that it does not sell wine to Safeway Rewards members
7 at the reference prices, including after the “Thru” date, and that omission was material as well.

8 189. By showing a discount sale price with a specified end date, Safeway used innuendo
9 or ambiguity as to a material fact (i.e. the actual price of the wine for Safeway Rewards members,
10 and the length of time it would be offered at a discount) with a tendency to mislead.

11 190. Safeway represented that Safeway Rewards members were enjoying rights and
12 benefits, including a time-limited promotional price, that they did not actually enjoy, because the
13 purported sales were not time-limited.

14 191. Safeway’s misleading acts or practices harm consumers in the District of Columbia.
15 Plaintiff and the D.C. Subclass purchased wine based on the reasonable belief that they were
16 getting a true discount off a real reference price during a sale that would end on the “Thru” date.
17 None of those things were true as the reference prices were not the true prices for Safeway Rewards
18 members using their membership cards, and the sales would just renew after the “Thru” date
19 passed. Had Plaintiffs and the Class members known the truth, they would not have purchased the
20 wines they bought, or paid less for it, or bought it on different terms.

21 192. Plaintiff Lundt seeks actual, treble, and/or statutory damages as available by law,
22 and a permanent injunction, on behalf of himself and the D.C. Class.

23 **JURY DEMAND**

24 Plaintiffs demand a trial by jury on all issues so triable.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs request this Court enter judgment in favor of Plaintiffs and the
27 Classes as follows:

- 1 A. An order certifying the Classes, appointing Plaintiffs as Class Representatives, and
2 appointing Plaintiffs' counsel as Class Counsel;
- 3 B. Awarding (as to the Oregon and D.C. classes) all damages supported by law
4 including actual, statutory, treble, and punitive damages;
- 5 C. Imposing a permanent injunction banning Safeway from continuing to use false
6 reference price in its marketing of wine;
- 7 D. Awarding Plaintiffs their reasonable attorneys' fees and costs;
- 8 E. Granting any additional relief as may be necessary to restore to the Class the money
9 that was acquired by Safeway's unlawful trade practices; and
- 10 F. Awarding all such other and further relief as the Court finds necessary and proper.

11
12 Dated: January 16, 2026

Respectfully submitted,

13 /s/ Annick M. Persinger

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