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

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

Plaintiff,

v.

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

Defendants.

NO.

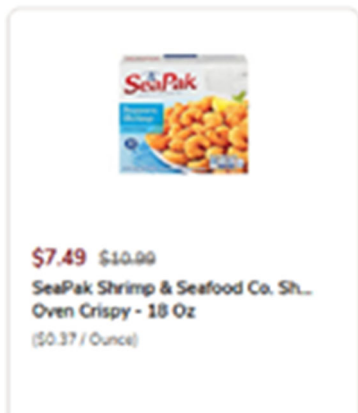
**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

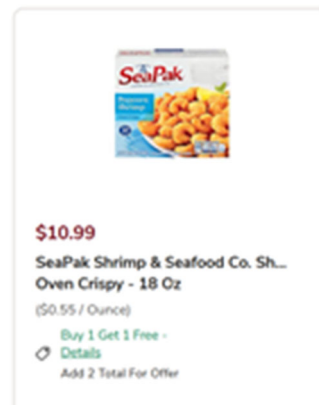
1.1 Major grocery retailer Albertson's Companies, LLC operates hundreds of Safeway branded stores in Washington. Safeway stores routinely market meat, ice cream, frozen food, coffee, and other products under Buy One, Get One Free promotions. The grocery products offered as part of "Buy One, Get One Free," or "Buy One, Get Two Free" (collectively "BOGO") sales rotate frequently. These promotions have been regularly available in Washington Safeway stores over the last four years. The "free" product is prominently promoted on special point-of-sale ads and on the packaging of the products themselves. But Albertson's and Safeway make consumers pay for the seemingly "free" product.

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

7  
8 On April 4, 2023, Safeway offered boxed  
9 frozen shrimp for \$7.49:



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



21           1.4     These “free” sales are unfair or deceptive practices under Washington’s  
22 Consumer Protection Act.

23           1.5     Kim Siflinger is a retiree who recently moved to Washington to be closer to her  
24 family. Living on a fixed income, she regularly looked for BOGO deals and purchased BOGO  
25 items from Safeway stores in Washington in an effort to stretch her dollars. She brings this  
26 action on behalf of herself and other Safeway shoppers in Washington who overpaid for  
27 products offered as part of a BOGO promotion in the last four years.

1 **II. JURISDICTION AND VENUE**

2 2.1 Jurisdiction. This Court has jurisdiction over the parties and claims in this action.

3 At all relevant times, Kim Siflinger resided in Kitsap County, Washington.

4 2.2 Venue. Venue is proper in King County under RCW 4.12.025 because Safeway  
5 and Albertson’s regularly transact business in King County.

6 **III. PARTIES**

7 3.1 Kim Siflinger is a natural person residing in Silverdale, Washington.

8 3.2 Defendant Albertson’s Companies, LLC is a foreign limited liability corporation  
9 doing business in King County and throughout Washington State. Albertson’s Companies, LLC is  
10 incorporated in Delaware and has its principal place of business in Idaho. Albertson’s  
11 Companies is one of the largest food and drug retailers in the United States.

12 3.3 Defendant Safeway, Inc. is a foreign corporation doing business in King County  
13 and throughout Washington State. Safeway is incorporated in Delaware with its principal place  
14 of business in California.

15 3.4 Albertson’s maintains centralized control and approval over all pricing and sales  
16 of groceries in Safeway stores.

17 **IV. FACTUAL ALLEGATIONS**

18 **A. Defendants inflate the regular retail price of products included in their BOGO  
19 promotions.**

20 4.1 Defendants operate approximately 181 Safeway branded store locations in  
21 Washington State. All of these stores’ BOGO programs operate under central policies put in  
22 place by Albertson’s Companies.

23 4.2 Albertson’s maintains centralized control and approval over all pricing and sales  
24 of groceries in Safeway stores.

25 4.3 The Safeway BOGO promotions require loyalty cards, which Safeway refers to as  
26 its “Club Card.” Each Safeway Club Card has a unique number.

27 4.4 Throughout the class period Defendants routinely increased the regular retail  
price of items when offering them in BOGO sales. For example, during the class period, Safeway

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

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

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

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

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

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

25 4.9 The Federal Trade Commission has warned that retailers should use “extreme  
26 care” when including the word “Free” in marketing. 16 C.F.R. § 251.1(a)(2).  
27

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

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

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

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

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

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

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

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

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

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

27

1 4.19 Ms. Siflinger paid Safeway a price premium for the boneless, skinless chicken  
2 breasts she bought as part of a BOGO promotion on March 10, 2023.

3 **V. CLASS ACTION ALLEGATIONS**

4 5.1 Ms. Siflinger brings this case on behalf of herself and of a proposed Class under  
5 CR 23. The proposed Class is defined as follows:

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

9 Excluded from the proposed class are all attorneys for the class  
10 and employees of their law firms, the officers or directors of the  
11 Defendants, any judge who presides over the case, and all jurors  
or alternate jurors who sit on the case.

12 5.2 Numerosity: Safeway is one of the largest grocery retailers in Washington. On  
13 information and belief, there are more than 600,000 members of the proposed Class. On  
14 information and belief, each class member has overpaid an average of \$2 to \$4 per BOGO  
15 purchase. Ms. Siflinger's and the Class's damages are subject to trebling, so the amount in  
16 controversy is expected to exceed \$5,000,000.

17 5.3 Commonality and Predominance: Defendants' BOGO pricing is a standard  
18 practice applied in all Safeway and Albertson's stores in Washington during the class period. As  
19 a result, Ms. Siflinger's claims raise common issues that predominate over individual issues.  
20 Adjudication of these common issues in a single action has important and desirable advantages  
21 of judicial economy.

22 5.4 Questions of law and fact common to Ms. Siflinger and the proposed Class  
23 include but are not limited to:

- 24 a. Whether Defendants regularly increase the price of BOGO products
- 25 above the regular retail price for the same products;
- 26 b. Whether Defendants' BOGO sales pricing is unfair;
- 27 c. Whether Defendants' BOGO sales pricing is deceptive;

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

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

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

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

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

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

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

## 9 VI. FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

24 6.6 Defendants' unfair acts or practices impact the public interest because they have  
25 injured at least thousands of other Washington consumers, and have the capacity to injure  
26 hundreds or thousands of other Washington consumers. Defendants continue offer BOGO  
27



1 promotions while inflating the regular retail price of products offered as part of the promotion  
2 in Washington and, as a result, are likely to continue to injure the public.

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

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

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

## 13 VII. SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

## 14 VIII. THIRD CLAIM FOR RELIEF

### 15 Injunctive Relief on Behalf of Washington Consumers

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

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

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

26  
27

1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Ms. Siflinger requests relief as follows:

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

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

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Washington Consumers Cheated by Safeway 'BOGO' Deals, Class Action Claims](#)

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