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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 DEE HENSLEY-MACLEAN and JENNIFER
17 ROSEN, on behalf of themselves and all
18 others similarly situated,

19 Plaintiffs,

20 v.

21 SAFEWAY INC. and DOES ONE through
22 TWENTY, inclusive,

23 Defendants.

Case No. 3:11-CV-01230 RS

CLASS ACTION
ORDER
STIPULATION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT AND
REVISE THE SCHEDULING ORDER

Judge: Hon. Richard Seeborg
Dept.: 3 - 17th floor

24 Pursuant to Civil Local Rule 6-2, the parties respectfully submit this Stipulation for Leave
25 to File First Amended Complaint and Revise the Scheduling Order.

26 As set forth in the accompanying Declaration of Craig Briskin, an unanticipated conflict
27 has arisen that requires one of the plaintiffs, Jennifer Rosen, to withdraw from the case,
28 substituting another plaintiff in her stead. As a result of this conflict, Plaintiff meets the standard

1 under Federal Rule of Civil Procedure 15(a) and 16(b) to modify the scheduling order and file the
2 amended complaint.

3 After the original Complaint was filed, Rosen's uncle Gary Rogers became a member of
4 Safeway's Board of Directors. Briskin Declaration, ¶ 3. None of the parties realized that this
5 unforeseeable coincidence had occurred until several months ago. Briskin Declaration, ¶ 6.
6 Rosen's continued involvement as plaintiff is causing strain in her family. Briskin Declaration, ¶
7 4. Rosen has therefore decided that the best course of action is for her to withdraw as plaintiff to
8 preserve family harmony. Briskin Declaration, ¶ 4.

9 The attached First Amended Complaint substitutes a new plaintiff, Sara Duncan, for
10 Rosen, but is otherwise the same as the current Complaint (attached hereto as Exhibit A).

11 As a result of the Amended Complaint, the parties believe that the current schedule for
12 discovery and class certification needs to be amended. The parties are in the process of meeting
13 and conferring regarding a proposed amended schedule to the relevant dates affected by the filing
14 of the Amended Complaint.

15 Accordingly, the parties stipulate and request that this Court:

- 16 1. Approve the filing of the attached Amended Complaint;
- 17 2. Vacate the current deadlines for opposing and replying to Plaintiffs' Motion for Class
18 Certification;
- 19 3. Permit the parties to file a proposed schedule modifying the relevant dates regarding
20 discovery and class certification within 10 days from this Court's Order granting leave
21 to file the Amended Complaint.

22 **Dated:** April 5, 2013 April 5, 13

23 Respectfully submitted,

24 **Rukin, Hyland, Doria & Tindall**

Robinson & Wood, Inc.

25 _____
26 /S/

/S/

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21 * * * * *

22 **PURSUANT TO STIPULATION IT IS SO ORDERED:**

23
24 Dated: April 8, 2013


RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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ATTESTATION CLAUSE

I, Whitney Stark, hereby attest in accordance with Civil L.R. 5-1(i)(3) that Gabriel G. Gregg, counsel for Defendant Safeway , provided his concurrence with the electronic filing of the foregoing document entitled STIPULATION RE REVISED JOINT PROPOSED SCHEDULE FOR CLASS CERTIFICATION.

Dated: April 5, 2013

RUKIN HYLAND DORIA AND TINDALL


By: 
Whitney Stark

EXHIBIT A

1 DANIEL T. LEBEL, SBN 246169
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13 Lead counsel for Plaintiffs

14 *Attorneys for Plaintiffs and the proposed class*
15 (additional counsel listed on signature page)

16 UNITED STATES DISTRICT COURT FOR THE
17 NORTHERN DISTRICT OF CALIFORNIA

18 DEE HENSLEY-MACLEAN and)
19 SARA DUNCAN, on behalf of themselves)
20 and those similarly situated,)

21 Plaintiffs,)

22 v.)

23 SAFEWAY, INC.,)

24 Defendant.)

Case No.: 4:11-CV-01230-RS

CLASS ACTION COMPLAINT

- 25 1. **CONSUMERS LEGAL REMEDIES ACT;**
- 26 2. **UNFAIR & DECEPTIVE BUSINESS**
- 27 **PRACTICES (CAL. BUS. & PROF. CODE**
- 28 **§§ 17200 ET SEQ.);**
3. **BREACH OF DUTY TO WARN;**
4. **BREACH OF IMPLIED WARRANTY; AND**
5. **MONEY HAD AND RECEIVED**

DEMAND FOR JURY TRIAL

1 **INTRODUCTORY STATEMENT**

2 1. Plaintiffs Dee Hensley-Maclean and Sara Duncan (“Plaintiffs”), individually and on
3 behalf of those similarly situated, bring this lawsuit because Defendant Safeway, Inc. (“Safeway”)
4 fails to provide adequate notice of recalls of dangerous food items to its Club Card customers
5 (“Customers”) who have purchased Recalled Products.¹

6 2. The Food and Drug Administration (“FDA”) and the United States Department of
7 Agriculture (“USDA”) use three classes of recall: Class 1, Class 2, and Class 3. A Class 1 recall of
8 a product occurs when there is a reasonable probability that use of the product will cause serious,
9 adverse health consequences or death.² In this action, “Recalled Products” are those subject to a
10 Class 1 recall.

11 3. Plaintiffs and those similarly situated suffered damage in that they paid for foods
12 that could cause serious, adverse health consequences or death when consumed. Safeway failed
13 and continues to fail to adequately inform its Customers that they are at risk of serious, adverse
14 health consequences or death if they consume Recalled Products.

15
16 _____
17 ¹ The USDA represents the classes by the Roman numerals I, II, and III. This Complaint refers to
18 both FDA Class 1 recalls and USDA Class I recalls as “Class 1 Recalls” and to products subject to
19 Class 1 Recalls as “Recalled Products” or “Products.”

20 The FDA and the USDA have separate definitions of recall class, but both agencies follow the
21 same general rule of Class 1/I being the most dangerous, Class 2/II being potentially dangerous,
22 and Class 3/III being the least dangerous. The FDA’s guidelines define Class 1 recalls as
23 “Dangerous or defective products that predictably could cause serious health problems or death.”
24 FDA CONSUMER HEALTH INFO., U.S. FOOD AND DRUG ADMIN., FDA 101: PRODUCT
25 RECALLS 2 (Oct. 2009).
26 www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM143332.pdf (last visited Jan. 28,
27 2011).

28 The USDA’s guidelines define Class I recalls as “[involving] a health hazard situation in which
there is a *reasonable* probability that eating the food will cause health problems or death.” Food
Safety and Inspection Serv., U.S. Dep’t of Agric., FSIS Food Recalls.
www.fsis.usda.gov/factsheets/FSIS_Food_Recalls/index.asp (last visited Jan. 28, 2011).

² www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/8080.1Rev5.pdf (last visited Jan. 28, 2011).
This is USDA’s wording. FDA describes a Class 1 recall similarly:
“Dangerous or defective products that predictably could cause serious health problems or death.”
www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM143332.pdf (last visited Jan. 28,
2011).

1 4. Plaintiffs seek damages limited to the amount that they and those similarly situated
2 paid for Recalled Products. Plaintiffs also seek declaratory and injunctive relief related to
3 Safeway's failure to inform Customers of their purchase of Recalled Products and their right to a
4 refund. This is not an action for personal injury or bodily harm.

5 5. When Safeway learns that Recalled Products have been sold in its stores, it has a
6 duty to disclose to Customers that they face serious health risks or even death if they eat the
7 Recalled Products. Safeway chooses not to notify its Customers who purchased Recalled Products,
8 thereby putting them at risk of substantial injury or death.

9 6. The form of notice and refund sought in this action will cost Safeway nothing,
10 because Safeway's suppliers agree to reimburse all costs associated with notice and refunds.

11 7. Plaintiffs seek to recover economic damages for themselves and for the members of
12 the class, in the form of refunds of all purchases of Recalled Products for which Safeway has Club
13 Card or other records showing the purchaser and the identity of the Recalled Product. Plaintiffs
14 would never have knowingly bought a Recalled Product, because it has no economic value to
15 them. In fact, a Recalled Product is worth less than zero because it is not safe for human
16 consumption.

17 8. In addition, Plaintiffs seek equitable relief to protect their own health and welfare,
18 as well as the health and welfare of those similarly situated, by compelling Safeway to provide
19 notice of Recalled Products to Customers. Plaintiffs ask the Court (1) to declare that Safeway's
20 practice of selling dangerous Products, and then failing to notify Club Card members of Recalled
21 Products and issue them a refund, is an unfair and deceptive act and practice pursuant to the
22 Consumer Legal Remedies Act and California's Unfair Competition Law, violates Safeway's duty
23 warn its Customers, and is a breach of the warranty of merchantability; and (2) to compel Safeway
24 to use the customer contact information and purchase history that it routinely collects to inform
25 Customers of Recalled Products, and issue refunds of the purchase price of the Products. To
26 effectuate this recall, Safeway should use, to the fullest extent possible, automated register
27 printouts, telephone calls, letters, e-mails and text messaging, and prominent statements in
28

1 Safeway stores on the home page (or another equally noticeable location) of its website,
2 Safeway.com.

3 **THE PARTIES**

4
5 **A. Plaintiffs**

6 9. Plaintiff Dee Hensley-Maclean is a resident of Ravalli County, Montana. Hensley-
7 Maclean regularly shops at Safeway in Hamilton, Montana, and is a regular user of Safeway's
8 Club Card Program. Hensley-Maclean purchased Recalled Products (snack foods containing
9 peanut butter) from Safeway during the Class Period (defined below).

10 10. Plaintiff Sara Duncan is a resident of Walnut Creek, California. Duncan regularly
11 shops at Safeway in Walnut Creek, and is a regular user of Safeway's Club Card Program. Duncan
12 purchased Recalled Products (eggs) during the Class Period (defined below).

13 **B. Defendant**

14 11. Safeway, Inc. is organized and incorporated under the laws of the State of
15 Delaware, with its principal place of business at 5918 Stoneridge Mall Road, Pleasanton,
16 California, 94588-3229.

17 12. Safeway operates 1,739 stores throughout the United States, including over 500
18 stores in California, its home state, and 12 stores in Montana. All Safeway stores promote the
19 same Club Card program benefits to consumers, and collect purchase information at the point of
20 sale from participating Customers.

21 13. The true names and capacities of Defendants sued as Does 1 through 20 are
22 unknown to Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
23 names. Plaintiffs will amend this Complaint to allege the true names and capacities of Does 1
24 through 20 when ascertained. Plaintiff is informed and believes, and based thereon alleges, that
25 each Defendant is jointly and severally responsible in some manner for the damages alleged
26 herein.

27 ///

28

1 **JURISDICTION AND VENUE**

2 14. This Court has jurisdiction over this action pursuant to § 410.10 of the California
3 Code of Civil Procedure. Jurisdiction is also proper under California Civil Code § 17200 *et seq.*

4 15. Venue is appropriate in the County of Alameda pursuant to California Civil Code
5 § 1780(d) and California Code of Civil Procedure § 395, because Safeway’s principal place of
6 business is in this county. Plaintiff Duncan is concurrently filing the Declaration as to Venue
7 required by California Civil Code § 1780(d).

8 16. This action was removed from California Superior Court by Safeway which alleges
9 this Court has jurisdiction pursuant to the “Class Action Fairness Act,” 28 U.S.C. §§ 1332(d),
10 1435 (“CAFA”). At least one member of the proposed class is a citizen of a state other than where
11 Safeway is incorporated and headquartered. The proposed class consists of more than 100
12 members. Further, Safeway has alleged that the amount in controversy exceeds \$5 million taking
13 into account all damages and equitable relief on behalf of the proposed class, and excluding
14 interest and costs.

15 **FACTUAL ALLEGATIONS**

16 **A. Class 1 Recalls: Food Safety In Crisis**

17 17. Food safety is high on the national agenda, particularly in light of the many recent
18 large-scale recalls. Following highly publicized recalls of spinach, peanut products, and other
19 foods over the last several years, and the more recent massive, nationwide egg recall, there have
20 been increasing calls for government and industry action to improve the safety of the American
21 food supply.³

22 18. In response to these concerns, President Obama has declared that food safety is an
23 important policy priority for his administration, stating that the current level of food safety “is a
24 hazard to public health. It is unacceptable.”⁴

25 _____
26 ³ Hallman, W. K. & Cuite, C. L. (2010). Food Recalls and the American Public: Improving
27 Communications. (Publication number RR-0310-020). p.1, New Brunswick, New Jersey: Rutgers,
The State University of New Jersey, Food Policy Institute.

28 ⁴ http://www.whitehouse.gov/the_press_office/Weekly-Address-President-Barack-Obama-Announces-Key-FDA-Appointments-and-Tougher-F (last visited Jan. 28, 2011).

1 19. On January 4, 2011, President Obama signed into law the historic Food Safety
2 Modernization Act which requires food manufacturers and farmers to implement plans aimed at
3 preventing contaminated products, improves surveillance of outbreaks of food borne illnesses, and
4 gives the U.S. Food and Drug Administration authority to recall potentially contaminated food
5 from the marketplace. The requirements of the Food Safety Modernization Act will aid in the
6 reduction of the number of outbreaks of foodborne illnesses, but the highest level of food safety
7 requires that all players in the food production and distribution chain do their part.

8 20. In addition, California maintains a strong public policy to promote food safety. The
9 policy is embodied in statutes and regulations such as the Sherman Food, Drug, and Cosmetic Act.

10 21. Approximately 48 million foodborne illnesses occur each year in the United States,
11 causing more than 128,000 hospitalizations, and 3,000 deaths.⁵

12 22. Every year, approximately 40,000 cases of salmonellosis are reported in the United
13 States.⁶ Because many milder cases are not diagnosed or reported, the actual number of infections
14 may be thirty or more times greater.⁷

15 23. There are at least 70,000 E. coli O157 infections each year in the United States, not
16 counting the many more that go unidentified and unreported.⁸

17 24. Recalled Products are health hazards and are unfit for human consumption because
18 there is a reasonable probability that the use of the Product will cause serious, adverse health
19 consequences or death.

20 25. Because a Recalled Product predictably could cause serious health problems or
21 death, the Product is both “adulterated” and “misbranded” in violation of the Federal Food, Drug
22 and Cosmetic Act, and California’s Sherman Law, California Health and Safety Code § 110660.

24 _____
⁵ www.cdc.gov/foodborneburden/2011-foodborne-estimates.html (last visited Jan. 28, 2011).

25 ⁶ www.cdc.gov/nczved/divisions/dfbmd/diseases/salmonellosis/#how_common (last visited Jan. 28,
26 2011).

27 ⁷ *Id.*

28 ⁸ www.cdc.gov/nczved/divisions/dfbmd/diseases/ecoli_o157h7/index.html#how_common (last
visited Jan. 28, 2011).

1 26. Alerting consumers to the hazards of Recalled Products they purchased is key to
2 preventing serious illness or death from use of the products.

3 27. Inadequate notice of food recalls causes unnecessary sickness, suffering, and death
4 when a Recalled Product is consumed by people who do not hear about the recall or cannot
5 identify the Products.⁹

6 28. The longer that Recalled Products remain on a customer's shelf, the greater the
7 likelihood that they will be consumed and cause illness or injury.

8 29. The success of food recalls depends on getting individual consumers to take
9 appropriate actions.¹⁰ The first step in getting consumers to take appropriate action with regard to
10 a Recalled Product is alerting them to the fact that a recall exists for a product they purchased.

11 30. It is also important to issue prompt refunds to consumers for any Recalled Product,
12 to avoid any need to use the Product, despite the Recall, due to economic distress or lack of
13 transportation to return the Product. This problem disproportionately affects lower-income
14 consumers.

15 31. Providing personalized recall messages to consumers regarding their previous
16 purchases of Recalled Products and implementing an immediate credit or refund for the sale are
17 the best ways to make sure consumers know about the risk of consuming Recalled Products and
18 will not gamble on eating them despite the Recall.¹¹

19 32. Supermarkets and club stores account for approximately 80% of food sold in this
20 country.¹² Thus, large chain grocery stores (like Safeway) are usually the point of purchase of
21 Recalled Products. From the information they collect under their club card programs, they have the
22 ability to quickly and effectively identify and alert consumers that they have purchased a Recalled
23 Product.

24
25 _____
⁹ Hallman & Cuite, at 2.

26 ¹⁰ Hallman & Cuite, at 3.

27 ¹¹ Hallman & Cuite, at 14.

28 ¹² www.ers.usda.gov/Briefing/FoodMarketingSystem/foodretailing.htm (last visited Jan. 28, 2011).

1 **B. Safeway’s Club Card Customer Loyalty Program**

2 33. Safeway’s Club Card membership program encourages and entices Customers to
3 return to Safeway through special promotions, pricing, and benefits. Online, Safeway touts its
4 Club Card membership as providing “exclusive savings all across the store AND anytime
5 [Customers] shop online at Safeway.com.”

6 34. Consumers join Safeway’s Club Card program by completing an application in the
7 store or online. The application asks for the consumer’s name, address, telephone number, and e-
8 mail address. Safeway stores this contact information in a centralized database, and monitors and
9 records Customers’ subsequent purchases made using the Club Card.

10 35. At the cash register, Customers or cashiers enter Club Card information. Safeway
11 thereby captures each Customer’s purchasing history.

12 36. Safeway requires Customers to use the Club Card to receive discounted prices on
13 their purchases thus ensuring a high level of compliance by Customers.

14 37. Safeway analyzes the recorded information and uses it to provide Customers with
15 special offers, promotions, and coupons tailored to each Customer’s purchasing habits. These
16 special offers, promotions, and coupons are instrumental in making Club Card members repeat
17 customers.

18 38. Safeway can identify which Customers purchased Recalled Products, and warn
19 them that consuming the Products puts them at risk of a serious illness or death. Safeway can also
20 easily credit Customers for the cost of the Product if it was purchased with a credit or debit card.

21 39. Many of Safeway’s competitors already use their own customer data to notify their
22 customers of Recalled Products and to offer refunds, reducing the risk of harm to their own
23 customers. Ralphps (owned by Kroger), Walmart, Sam’s Club, Costco, Giant Food Supermarkets,
24 Harris Teeter Food Markets, Wegmans Food Markets, and ShopRite Supermarkets (among others)
25 all routinely issue food safety alerts directly to customers using a variety of methods.

26 40. Safeway has engaged in unfair and deceptive acts and practices by knowingly
27 failing to inform its Customers that that they purchased Recalled Products and by failing to refund
28 the cost of the Product.

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C. Safeway’s Deliberate Disregard for Customers’ Safety

41. As the retailer of dangerous Recalled Products, Safeway is responsible for the economic injury caused by its actions.¹³

42. Consumer injury occurs in three ways, when (1) a Customer purchases a Recalled Product, (2) Safeway fails to inform the Customer that she has purchased a Recalled Product in a meaningful manner, and (3) Safeway fails to refund the cost of the Recalled Product to easily ascertainable Customers.

43. When a wholesaler or other supplier sells food to Safeway that is later found to be a Recalled Product, the supplier is responsible for all costs of the recall, including the cost of direct contacts with Customers and appropriate refunds as sought by this lawsuit.¹⁴

44. Thus, the cost to Safeway of notifying and making refunds to Customers is zero.

45. Safeway entices consumers to join its Club Card Program in exchange for discounts, then uses purchase information collected by the Club Card program to encourage repeat visits to Safeway stores and to boost sales through special marketing initiatives. But Safeway inexplicably refuses to use the very same customer contact information to notify Customers and make refunds of Recalled Products, though the cost to Safeway is zero.

D. Facts as to Plaintiff Hensley-Maclean

46. Hensley-Maclean shops at her local Safeway store frequently, because she is a

¹³ Safeway is also responsible for any physical injury caused by Recalled Products, but this Complaint does not seek any form of monetary compensation for physical injury resulting from persons physically injured by Recalled Products sold to them by Safeway.

¹⁴ See Safeway, Inc. Continuing Commodity Guaranty And Indemnity Agreement, Section IX: Recalls and Tainted Products: “If Goods, because of a condition which existed at the time of delivery (or which results from such condition), are the subject of a recall (or safety notice) initiated by [Safeway], Seller, or a government or consumer protection agency, *Seller shall be responsible for all reasonable costs and expenses associated with the recall or notice and shall reimburse [Safeway] for all reasonable costs and expenses incurred by [Safeway] in recalling, publishing notices about, shipping and/or destroying such Goods* (and, where applicable, any products with which such Goods have been packaged, consolidated or commingled) *at [Safeway’s] net landed cost therefor, including refunds to customers.* (Emphasis Supplied).

http://suppliers.safeway.com/usa/forms/CCG_Revised_cln.pdf (Last visited Jan. 28, 2011).

1 mother to two growing teens: a son, age 13, and a daughter, age 16. She regularly uses a Club Card
2 when she shops there.

3 47. In 2008, Hensley-Maclean purchased peanut butter crackers and Nutter Butter
4 Sandwich Cookies from Safeway. These were Recalled Products. She only learned that Safeway
5 had sold her Recalled Products by chance while watching a local news program.

6 48. Safeway did not notify Hensley-Maclean about the Class 1 recall of the Products, or
7 about her right to a refund of the purchase price, despite the fact that Safeway was well aware of
8 the Class 1 recall, had knowledge of Hensley-Maclean's purchase of the Recalled Products, and
9 had linked those purchases to the Club Card.

10 49. Hensley-Maclean also purchased other snack foods containing peanut butter at her
11 local Costco store. Costco uses a card system similar to that used by Safeway. Unlike Safeway,
12 Costco contacted Hensley-Maclean directly, via mail, to alert her to the fact that she had purchased
13 Recalled Products from Costco, and to notify her that she was entitled to return the Recalled
14 Products to Costco for a full refund of the purchase price.

15 50. Upon learning that the peanut butter crackers and Nutter Butter Sandwich Cookies
16 were dangerous and defective and subject to a Class 1 recall, Hensley-Maclean immediately
17 disposed of the products. She would never have purchased the products if she had known they
18 were Recalled Products. Because they were a danger to her and her family, they were no longer fit
19 for consumption, and therefore had no monetary or other value to her.

20
21 **E. Facts as to Plaintiff Duncan**

22 51. Duncan shops at her local Safeway store, located at 1972 Tice Valley Boulevard in
23 Walnut Creek. She regularly uses a Club Card when she shops there.

24 52. In 2010, Duncan purchased eggs at Safeway. Duncan consumed some of the eggs
25 before she learned that they had been recalled and Duncan was hospitalized for Salmonellosis.
26 These were Recalled Products. Duncan only learned that Safeway had sold her Recalled Products
27 after she was infected with Salmonella bacteria through news coverage of this proposed class
28 action.

1 marketing to boost its sales and revenue, without using that same information for the
2 benefit of the health and welfare of class members is unfair, fraudulent, and
unconscionable;

3 c. Whether Safeway negligently failed to adequately notify class members that they
4 purchased a Recalled Product, negligently failed to advise them not to consume the
5 Recalled Product for fear of a serious health hazard or death, and negligently failed to offer
a full refund of the amount paid for the Recalled Product;

6 d. Whether Safeway breached the warranty of merchantability implied at the time of
7 sale in that class members did not receive goods that were beneficial or that had the
8 beneficial characteristics represented and thus, the goods were not merchantable as fit for
9 the ordinary purposes for which such goods are used or as promoted, marketed, advertised,
packaged, labeled or sold; and

10 e. Whether the class has been damaged and, if so, the appropriate measure of
11 damages, including the nature of the equitable relief to which the class is entitled.

12 60. These common issues of fact and law predominate over any arguable individualized
13 issues.

14 61. Plaintiffs' claims are typical of the claims of the other members of the class because
15 Plaintiffs' and all of the class members' damages arise from and were caused by purchasing
16 Recalled Products. As a result, the facts and the law regarding Safeway's alleged wrongful conduct
17 are identical for Plaintiffs and all of the class members.

18 62. Plaintiffs will fairly and adequately protect the interests of the members of the
19 class, and Plaintiffs have no interests that are contrary to or in conflict with those of the class they
20 seek to represent. Plaintiffs have retained competent counsel experienced in class action litigation
21 to prosecute this action vigorously.

22 63. The prosecution of separate actions by individual members of the class would
23 create a risk of inconsistent or varying adjudications with respect to individual members of the
24 class, which would establish incompatible standards of conduct for the party opposing the class
25 and would lead to repetitious trials of the numerous common questions of facts and law.

26 64. Plaintiffs are not aware of any difficulty that will be encountered in the
27 management of this litigation that would preclude its maintenance as a class action.

28 65. The monetary value of individual claims is limited to refunds for Recalled Products

1 and is minuscule in relation to the costs of an individual suit. A class action is the only proceeding
2 in which class members can, as a practical matter, recover.

3 66. As a result a class action is superior to other available methods for the fair and
4 efficient adjudication of this controversy. Proper and sufficient notice of this action may be
5 provided to the class members using Club Card information and any other customer contact
6 information in Safeway's possession or control.

7 67. Plaintiffs and the members of the class have suffered irreparable harm and damages
8 as a result of Safeway's wrongful conduct as alleged herein. Absent a representative action,
9 Plaintiffs and the members of the class will continue to suffer losses, thereby allowing these
10 violations of law to proceed without remedy.

11 **FIRST CAUSE OF ACTION FOR RESTITUTION AND INJUNCTIVE RELIEF**
12 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*)**

13 68. Safeway's representations regarding the safety of foods it sold unlawfully, unfairly,
14 and unconscionably deceived Customers into believing that the foods sold at Safeway are safe for
15 consumption and of a particular quality when those foods were not. Safeway's practices as alleged
16 herein violate the California Legal Remedies Act in that Safeway:

- 17 (a) "represent[ed] that goods . . . have . . . characteristics, ingredients, uses,
18 benefits, or quantities which they do not have;" (§ 1770(a)(5)) and
19 (b) "represent[ed] that goods or services are of a particular standard, quality, or
20 grade. . . if they are of another." (§ 1770(a)(7)).

21 69. As a direct result of Safeway's unfair and deceptive business practices, Rosen and
22 those California residents similarly situated have been, and continue to suffer injuries.

23 70. Plaintiff has provided notice to Safeway of its violations of the Consumers Legal
24 Remedies Act concurrent with filing of this Complaint.

25 71. Pursuant to California Civil Code § 1780, Rosen and those similarly situated are
26 entitled to restitution of the purchase price of Recalled Products sold, are entitled to obtain an
27 order requiring Safeway to inform Customers — by automated register printouts, telephone calls,
28 letters, e-mails and text messaging , and prominent statements in Safeway stores on the home page

1 (or another equally noticeable location) of its website, Safeway.com — that Safeway sold
2 Customers Recalled Products and that Customers will receive or are entitled to receive a refund of
3 the purchase price of Recalled Products, and to recover her reasonable attorneys’ fees and costs.

4 72. Rosen, on behalf of those similarly situated, seeks restitution and injunctive relief
5 pursuant to California Civil Code § 1780. The Consumers Legal Remedies Act, Civil Code § 1750
6 *et seq.*, is designed to protect consumers against unfair and deceptive business practices. It applies
7 to Safeway’s conduct because it covers transactions that are intended to result or that result in the
8 sale or lease of goods and services to consumers.

9
10 **SECOND CAUSE OF ACTION FOR EQUITABLE RELIEF**
11 **(Violation of the Unfair Competition Law,**
12 **California Business and Professions Code § 17200 *et seq.*)**

13 73. Under the Unfair Competition Law (“UCL”), unfair competition includes any
14 “unlawful,” “unfair,” or “fraudulent” business act or practice.¹⁵ The Law authorizes equitable relief
15 for violations.¹⁶

16 74. Safeway’s sale of Recalled Products is a business practice covered by the UCL. At
17 all relevant times, Safeway acted, and continues to act, as alleged herein.

18 75. Plaintiffs, individually and on behalf of those similarly situated, seek equitable
19 relief pursuant to the UCL, California Business and Professions Code § 17200 *et seq.*, requiring
20 Safeway to inform Customers — by automated register printouts, telephone calls, letters, e-mails
21 and text messaging, and prominent statements in Safeway stores on the home page (or another
22 equally noticeable location) of its website, Safeway.com — that Safeway sold the Customers
23 products subject to Class 1 recalls.

24 76. Safeway’s course of conduct with respect to Recalled Products — selling Recalled
25 Products; failing to advise its Customers not to eat any Recalled Products; and failing to offer
26 refunds for the Recalled Products — is deceptive, unfair, and unconscionable.

27 ¹⁵ Cal. Bus. & Prof. Code § 17200 *et seq.*

28 ¹⁶ *Id.* § 17203.

1 **FIFTH CAUSE OF ACTION**

2 **(Money Had and Received)**

3 91. Safeway received money belonging to Plaintiffs when it sold them Recalled
4 Products. Safeway benefited from the receipt of their money and retained it. Safeway is obligated
5 to make restitution to Plaintiffs for their purchases of Recalled Products.

6 92. Safeway received money belonging to the other class members when it sold them
7 Recalled Products. Safeway benefited from receipt of their money and retained it. Safeway is
8 obligated to make restitution to the class members for their purchases of Recalled Products.

9 **PRAYER FOR RELIEF**

10 THEREFORE, Plaintiffs pray that the Court:

11 1. Certify this matter as a class action with the class defined as set forth above,
12 appoint Plaintiffs as representatives of the Class, and appoint their attorneys as Class Counsel;

13 2. Declare that Safeway's practice of choosing not to notify Customers who have
14 purchased Recalled Products and issue refunds or credits for the purchase price of those products
15 violates the Consumer Legal Remedies Act, Unfair Competition Law, and other causes of action
16 pleaded herein;

17 3. Preliminarily and permanently order Safeway to (1) post a readily accessible and
18 visible warning online at Safeway.com; (2) post signs in the stores that sold Recalled Products;
19 and (3) to contact each Customer — by telephone, letter, and (when possible) e-mail and text
20 messaging — to advise them not to consume the product and credit the amount paid for the
21 product if possible or, in the case of cash purchases, offer a refund;

22 4. Award monetary damages to Customers who did not receive a refund or credit for
23 Recalled Products, plus any available statutory or punitive damages, costs and attorney's fees, in
24 an amount to be determined at trial.

25 5. Enter an order for restitution and disgorgement of all profits from the sale of
26 Recalled Products;

27 6. Award Plaintiffs and those similarly situated, reasonable attorney's fees and costs
28 of suit; and

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