

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

PAULINE LONG
MARSHA HAYES
individually and on behalf
of others similarly situated

Plaintiffs

vs

SAFEWAY INC.

Defendant

Case No. 19CV45421

CLASS ACTION
COMPLAINT FOR
DAMAGES

First Amended

The Unlawful Trade Practices Act

Filing Fee Authority: ORS 21.160(1)(a)
Amount in Controversy: \$200
Not Subject to Mandatory Arbitration
Jury Trial Requested

1.

INTRODUCTION

In an effort to emphasize its opposition to a new Clean Energy Surcharge, and to profit and to obtain an unfair advantage over its competitors, Safeway misled thousands of Oregon customers into paying unlawful hidden surcharges on certain non-grocery items. Safeway intentionally concealed and failed to disclose the surcharges in its advertised prices, despite the fact that Safeway knew that it would add the surcharges on to the cost of the goods at its registers when the goods were purchased.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2.

FACTUAL ALLEGATIONS

The Circuit Court for the County of Multnomah in Oregon has jurisdiction because the behavior alleged in this complaint took place in and around Multnomah County and because plaintiffs' claim arises under the Oregon Unlawful Trade Practices Act, ORS 646.638. This complaint's allegations are based on personal knowledge as to plaintiffs' own behavior and are made on information and belief as to the behavior of others.

3.

Plaintiffs are individuals living in Portland, Oregon.

4.

Plaintiffs are each a "person" as that term is defined at ORS 646.605(4).

5.

Defendant is a Delaware corporation and is a multi-billion-dollar corporation with approximately 900 locations and over 250,000 employees.

6.

Defendant is a "person" as that term is defined at ORS 646.605(4).

7.

Defendant regularly advertises and sells consumer goods in Oregon in the course of defendant's business.

1
2 **8.**

3 Beginning in 2019, defendant advertised and sold non-grocery consumer
4 goods to plaintiffs and other class members in Oregon.
5

6 **9.**

7 On November 3, 2019 defendant advertised and sold green bags to Pauline
8 Long at defendant's store at 1010 SW Jefferson in Portland. Defendant's sticker on
9 its shelf advertised its green bags to Pauline Long as costing \$1.99. After Pauline
10 Long paid for the green bags and later read her receipt, Pauline Long discovered
11 that the price of the green bags was falsely advertised on defendant's shelves because
12 defendant failed to disclose a hidden 2 cent surcharge it added on to the advertised
13 price of the green bags at its register. As a result of defendant's willful, knowing, and
14 reckless omission of its surcharge from the advertised cost of the green bags on its
15 shelves, Pauline Long suffered an ascertainable loss of money when she paid
16 defendant's illegally undisclosed surcharge that it added on to the advertised price
17 of the green bags at its register.
18
19
20

21 **10.**

22 On January 9, 2020 defendant advertised and sold whitening rinse and
23 toothpaste and prosecco to Marsha Hayes at defendant's store at 8330 N Ivanhoe St.
24 in Portland. Defendant's sticker on its shelf advertised its whitening rinse and
25 toothpaste and prosecco to Marsha Hayes as costing a total of \$18.97. After Marsha
26 Hayes paid for the whitening rinse and toothpaste and prosecco and later read her
27 receipt, Marsha Hayes discovered that the price of the whitening rinse and
28

1
2 toothpaste and prosecco was falsely advertised on defendant's shelves because
3 defendant failed to disclose a hidden 14 cent surcharge it added on to the advertised
4 price of the whitening rinse and toothpaste and prosecco at its register. As a result
5 of defendant's willful, knowing, and reckless omission of its surcharge from the
6 advertised cost of the whitening rinse and toothpaste and prosecco on its shelves,
7 Marsha Hayes suffered an ascertainable loss of money when she paid defendant's
8 illegally undisclosed surcharge that it added on to the advertised price of the
9 whitening rinse and toothpaste and prosecco at its register.
10
11

12 **11.**

13 The consumer goods defendant advertised and sold to plaintiffs and other
14 class members were non-grocery items obtained primarily for their personal, family
15 or household purposes.
16

17 **12.**

18 Defendant's behavior as alleged in this complaint violated ORS 646.608(1)(s)
19 and ORS 646.608(1)(i) in the course of its business by making false or misleading
20 representations and omissions of fact concerning the true and total cost of the goods
21 it sold to plaintiffs and the putative class members, and by advertising goods to
22 plaintiffs and the putative class members at a certain price with intent not to provide
23 the goods at that advertised price, causing plaintiffs and the putative class members
24 an ascertainable when they paid defendant's illegally undisclosed surcharges that
25 defendant added to the price of its non-grocery goods.
26
27
28

1
2 **13.**

3 Defendant's violation of ORS 646.608 as alleged in this complaint was willful,
4 knowing, and reckless because defendant knew that its behavior as alleged in this
5 complaint was an unlawful trade practice or acted with reckless disregard that its
6 conduct could be an unlawful trade practice. Defendant knew or should have known
7 that Oregon law protects customers from unfair and deceptive surcharges.
8 Defendant also has a repeated history of violating the Oregon Unlawful Trade
9 Practices Act. Defendant knew that the cost of the goods it advertised on its shelves
10 was not the true cost of the goods because it knew it would add its hidden surcharges
11 on to the cost of the goods at its registers. Defendant's violation of ORS 646.608 was
12 also reckless because the hidden surcharges as alleged in this complaint were in
13 pursuit of profit and stood to give defendant an unfair advantage over its competitors
14 in the billion-dollar grocery business that chose to follow Oregon law.
15
16
17

18 **14.**

19 Defendant continued to violate the Oregon Unlawful Practices Act through its
20 hidden surcharges even after this lawsuit was filed. Defendant knew at the time it
21 added its hidden surcharges on to the cost of the goods at its registers that its
22 practices were misleading and likely to lead to a costly lawsuit if defendant got
23 caught.
24
25

26 **15.**

27 Defendant's behavior as alleged in this complaint was reprehensible, and
28 violated the common standards required of corporations by the people of Oregon.

1
2 **16.**

3 **CLASS ACTION ALLEGATIONS**

4 Plaintiffs seek to represent a class initially defined as: all natural persons
5 with an Oregon address, who purchased non-grocery goods from defendant, who
6 were charged a surcharge that was not included in the advertised price of the non-
7 grocery goods, on or after January 1, 2019.
8

9
10 **17.**

11 This action can be maintained as a class action under ORCP 32 because the
12 class is so numerous that joinder of all members is impracticable; there are questions
13 of law or fact common to plaintiffs and the other class members, including whether
14 defendant's collection of its hidden surcharges that were not included in the
15 advertised price of its goods violates the UTPA; plaintiffs' claims are typical of the
16 claims of the other class members; plaintiffs and their counsel will fairly and
17 adequately protect the interests of the class; plaintiffs have complied with the
18 prelitigation notice provisions of ORCP 32 H; and a class action is superior to other
19 available methods for the fair and efficient adjudication of this controversy.
20
21
22
23
24
25
26
27
28

1
2 **18.**

3 **CAUSE OF ACTION**

4 **Unlawful Trade Practices**

5
6 Thirty days or more prior to the filing of this amended complaint for damages,
7 defendant received notice as required by ORCP 32 H.

8 **19.**

9
10 As alleged in this complaint, defendant's behavior willfully, knowingly, and
11 recklessly violated ORS 646.608(i) and (s), causing plaintiff and the other class
12 members an ascertainable loss of money. Under ORS 646.638, plaintiffs request
13 actual damages or statutory damages of \$200, whichever is greater, attorney fees,
14 costs and disbursements.
15

16 **20.**

17 **REQUEST FOR JURY TRIAL**

18 Plaintiffs respectfully request a trial by a jury.
19
20
21
22
23
24
25
26
27
28

1
2 **21.**

3 **PRAYER FOR RELIEF**

4 Plaintiffs respectfully request relief against defendant as sought above, an
5 order appointing interim class counsel, an order certifying this case as a class action,
6 and any other relief the Court may deem appropriate.
7

8 March 9, 2022
9

10 **RESPECTFULLY FILED,**

11 /s/ Michael Fuller

12 **Michael Fuller, OSB No. 09357**

13 Lead Attorney for Plaintiffs

14 OlsenDaines

15 US Bancorp Tower

16 111 SW 5th Ave., Suite 3150

17 Portland, Oregon 97204

18 michael@underdoglawyer.com

19 Direct 503-222-2000
20
21
22
23
24
25
26
27
28

1
2 **CERTIFICATE OF SERVICE**

3 I certify that I cause this document to be served on:
4

5 **Safeway Inc.**
6 **c/o attorney Sarah Crooks**
7 **SCrooks@perkinscoie.com**

8 **State of Oregon**
9 **c/o Oregon Department of Justice**
10 **1162 Court St. NE**
11 **Salem, Oregon 97301-4096**

12 March 9, 2022
13

14 /s/ Michael Fuller
15 **Michael Fuller, OSB No. 09357**
16 Lead Attorney for Plaintiffs
17 OlsenDaines
18 US Bancorp Tower
19 111 SW 5th Ave., Suite 3150
20 Portland, Oregon 97204
21 michael@underdoglawyer.com
22 Direct 503-222-2000
23
24
25
26
27
28