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14 KIMBERLEE FACIANE

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF ALAMEDA

17 KIMBERLEE FACIANE, on behalf of
18 herself, all others similarly situated,

19 Plaintiff,

20 v.

21 SAFEWAY INC., a Delaware corporation
and DOES 1 through 50, inclusive,

22 Defendant.
23

Case No. RG18913668

**AMENDED STIPULATION OF CLASS
ACTION SETTLEMENT AND
SETTLEMENT AGREEMENT**

Complaint Filed: September 5, 2018

24 Subject to its terms and conditions and the approval of the Court, this Amended Joint
25 Stipulation of Class Action Settlement and Class Action Settlement Agreement and Release (the
26 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff KIMBERLEE
27 FACIANE individually and on behalf of the putative class (“Plaintiff”), and Defendant Safeway Inc.
28

1 (herein “Safeway, “Defendant”). Plaintiff and Defendant are collectively referred to in this
2 Settlement as the “Parties.”

3 **I. DEFINITIONS**

4 1. In addition to terms defined elsewhere in the Settlement, as used in this
5 Settlement the following terms have the meanings indicated below:

6 a. “Action” means the civil action initiated on July 20, 2018 in Alameda
7 Superior Court styled as *Kimberlee Faciane v. Safeway Inc., et al.*, Case No. RG18913668 (the
8 “Action”).

9 b. “Claims Administrator” means Simpluris, or an administrator mutually
10 agreed to by the Parties and approved by the Court that will perform the customary duties of a claims
11 administrator including but not limited to, the duties enumerated in this Agreement.

12 c. “Class” shall include the all current and former non-exempt employees
13 of Safeway Inc. in the State of California during the Covered Period who worked in a retail store.
14 There are approximately 107,503 class members.

15 d. “Class Counsel” shall refer to Shaun Setareh, Thomas Segal and
16 Farrah Grant of Setareh Law Group.

17 e. “Class Member” shall refer to a current or former employee of
18 Defendant who falls within the definition of the Class.

19 f. “Class Notice” means the Notice which the Claims Administrator will
20 mail to each Class Member explaining the terms of the settlement contemplated by this Agreement,
21 in a format that is mutually acceptable to the parties. The Class Notice shall be accompanied by an
22 Opt-Out Notice. The Class Notice and Opt-Out Form are collectively referred to as the “Notice
23 Materials”. The form of the Notice Materials to be used are attached collectively hereto as **Exhibit**

24 **A.**

25 g. “Class Representative” shall refer to Plaintiff Kimberlee Faciane.

26 h. “Class Representative Payment” means the Court-approved service
27 payment to Plaintiff Kimberlee Faciane for her services as Class Representative and for her
28 execution of a general release of claims known and unknown.

1 i. "Counsel for Defendant" or "Defense Counsel" means R. Brian Dixon
2 and Laura E. Hayward of Littler Mendelson, A Professional Corporation.

3 j. "Covered Period" shall be from July 13, 2014 through December 31,
4 2019.

5 k. "Defendant" means Safeway Inc.

6 l. "Employer Payroll Taxes" refers to the amount of FICA, FUTA, and
7 all other state and federal payroll taxes on the Settlement Payments Defendant is required to pay by
8 law when paying wages to employees.

9 m. "Final Approval Hearing" means the hearing contemplated by the
10 Parties, at which the Court will approve, in final, the settlement and make such other final rulings as
11 are contemplated by this Settlement Agreement.

12 n. "Final Approval Order" means the Court's order granting final
13 approval of the Settlement, which will constitute a "judgment" within the meaning of Code of Civil
14 Procedure section 577.

15 o. "Final Effective Date" shall be the first date after all of the following
16 events or conditions have been met or have occurred:

17 (1) the Court has, by entry of a Preliminary Approval Order:

18 (a) Approved the certification of the Class for settlement
19 purposes;

20 (b) Preliminarily approved the settlement set forth in this
21 Settlement Agreement, and the method of providing the Court-
22 approved Class Notice to the certified class;

23 (2) The Court has entered a Final Approval Order approving this
24 settlement and the Court has entered the Final Judgment as provided in Paragraph 1.p. below;

25 (3) No valid rescission of the Settlement Agreement has occurred
26 pursuant to Paragraph 60, below;

27 (4) The time to appeal from the Final Approval Order has expired
28 and no notice of appeal has been filed; and

1 (5) In the event that an appeal is actually filed, the latest of the
2 following, if applicable, has occurred:

3 (a) Any appeal from the Final Approval Order has been
4 finally dismissed;

5 (b) The Final Approval Order has been affirmed on appeal
6 in a form substantially identical to the form of the Final
7 Approval Order entered by the Court;

8 (c) The time to petition for review with respect to any
9 appellate decision affirming the Final Approval Order has
10 expired; or

11 (d) If a petition for review of an appellate decision is filed,
12 the petition has been denied or dismissed, or, if granted, has
13 resulted in affirmance of the Final Approval Order in a form
14 substantially identical to the form of the Final Approval Order
15 entered by the Court.

16 p. “Final Judgment” means the judgment entered by the Court in
17 conjunction with the Final Approval Order. The Parties shall submit an order of Final Judgment
18 setting forth the terms of this Settlement Agreement, by incorporation or otherwise, for execution
19 and entry by the Court at the time of the Final Approval Hearing or at such other time as the Court
20 deems appropriate.

21 q. “Gross Individual Settlement Payment” means the gross amount of the
22 Net Settlement Distribution Amount each Participating Class Member will be paid. The sum of
23 these Gross Individual Settlement Payments to individual Participating Class Members shall
24 constitute the “Class Settlement Payment.”

25 r. “Maximum Gross Settlement Amount” shall mean the maximum
26 amount that Defendant shall cause to be paid pursuant to this Settlement, which is Four Million Nine
27 Hundred Seventy Five Thousand Dollars and No Cents (\$4,975,000.00), with the exception of the
28 pro rata increase pursuant to the Escalator Clause discussed in Paragraph 14. That sum is and shall

1 be inclusive of the following: (a) the Class Representative Payments to Plaintiff KIMBERLEE
2 FACIANE in the amount of up to Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00);
3 (b) Class Counsel’s attorneys’ fees in an amount up to 33.3% of the Gross Settlement Amount,
4 incurred or to be incurred in this Action, including any appeals; (c) costs and expenses associated
5 with the Action in an amount of up to Thirty Five Thousand Dollars and Zero Cents (\$35,000.00),
6 incurred or to be incurred in this Action, including any appeals; (d) the fees and expenses of the
7 Claims Administrator estimated at Three Hundred Thousand Dollars and Zero Cents (\$300,000.00)
8 and subject to reduction or increase to correspond with the actual fees and expenses incurred; (e)
9 Fifty Six Thousand Two Hundred and Fifty Dollars and Zero Cents (\$56,250.00) which is the 75%
10 of the Private Attorney Generals Act (“PAGA”) Payment which will be paid to the LWDA in
11 recognition of the PAGA Release set forth in Paragraph 67; (f) the employee portion of all
12 applicable tax withholdings including, but not limited to, FICA, SDI, and other employment- related
13 taxes and withholding of federal, state and local income taxes; (g) the Employer Payroll Taxes
14 estimated at Seventy Thousand Dollars and Zero Cents (\$70,000.00) which is approximately 12% of
15 the amount of the wages to be paid to Class Members; and (h) the remainder of approximately Two
16 Million Eight Hundred Fifty Two Thousand and Seventy Five Dollars and Zero Cents
17 (\$2,852,075.00) which (in addition to 25% of the PAGA Payment which will be allocated to the
18 Class) is the estimated Net Settlement Distribution Amount to all Participating Class Members. To
19 the extent that the Court does not award any amounts specified in sections (a)-(f) of this paragraph,
20 the difference shall become part of the Net Settlement Distribution Amount. This Settlement is non-
21 reversionary and no amount shall revert to Defendant.

22 s. “PAGA Payment” means the amount of Seventy Five Thousand
23 Dollars and No Cents (\$75,000.00), 75% which shall be remitted to the California Labor and
24 Workforce Development Agency and 25% to the Class for the resolution of all Class Members’
25 claims under the PAGA, California Labor Code Section 2698, *et. seq.* and the PAGA Release.

26 t. “Participating Class Members” means those members of the Class who
27 do not opt out of the Settlement in response to the Class Notice.

28 u. “Preliminary Approval Order” means the order of the Court granting

1 preliminary approval of this Settlement Agreement on the terms provided herein or as the same may
2 be modified by subsequent mutual agreement of the Parties with, as appropriate, approval of the
3 Court.

4 **II. BACKGROUND AND REASONS FOR SETTLEMENT**

5 2. On July 20, 2018, Plaintiff KIMBERLEE FACIANE filed a Complaint in the
6 Superior Court of the State of California, County of Alameda, entitled *Kimberlee Faciane v.*
7 *Safeway Inc., et al.*, Case No. RG18913668, on behalf of herself and other non-exempt employees
8 who worked for Defendant in California alleging claims for: (1) failure to pay hourly wages (Lab.
9 Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (2) failure to provide accurate written
10 wage statements (Lab. Code § 226); (3) failure to timely pay all final wages (Lab. Code §§ 201, 202
11 and 203); (4) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.). On or around August 24,
12 2018, Plaintiff had sent by certified mail a letter to the California Labor and Workforce
13 Development Agency (“LWDA”) notifying the agency of her allegations that Defendant violated
14 the California Labor Code, including the theories set forth in the Complaint. On October 9, 2018,
15 Plaintiff amended her Complaint to add a claim for (5) penalties pursuant to PAGA (Lab. Code §§
16 2698 et seq.). The Action seeks lost wages, interest, penalties, injunctive relief, attorneys’ fees and
17 expenses. Defendant denies all of the allegations in Plaintiff’s Complaint and maintains that the
18 Court should not certify the class or representative action proposed by Plaintiff, other than for the
19 sole purpose of this Settlement, as set forth in its Answer and Affirmative Defenses to Plaintiff’s
20 First Amended Class Action Complaint filed November 13, 2018. In conjunction with this
21 Settlement Plaintiff will file a Second Amended Complaint, which will include the allegations set
22 forth in the First Amended Complaint in addition to a claim based on the Fair Labor Standards
23 Acts.

24 3. Plaintiff’s case is largely premised on the method that Safeway used to
25 calculate its non-exempt employees’ overtime rate of pay for overtime purposes. Under California
26 law and the FLSA, overtime is paid at an additional one-half an employee’s “regular rate of pay.”
27 The regular rate of pay calculation includes both cash wages and certain additional categories of
28 remuneration. Any amounts allegedly owed to Plaintiff and the putative class due to any alleged

1 miscalculation of the regular rate are de minimis at best. Furthermore, Defendant argued that under
2 Labor Code section 514, any employee who works under a bona fide collective bargaining
3 agreement and is paid 130% or more of the state minimum wage is exempt California's overtime
4 requirements, including the requirement for daily overtime, greatly reducing the number of pay
5 periods at issue. Moreover, Safeway argued that because it voluntarily pays numerous premiums
6 not required by law which serve as credits against any overtime many employees, including
7 Plaintiff were paid much more than what was required under the law.

8 4. The parties agreed to attempt to resolve the matters through mediation and
9 agreed to engage in informal discovery leading up to that mediation. To prepare for mediation in
10 this case, the parties chose four randomly selected stores to analyze. Sample payroll data was
11 obtained for approximately 1622 employees in these four sample stores for the time period from
12 July 13, 2014 through June 1, 2019. This data was provided to Plaintiffs' counsel for review. The
13 parties agreed that the sample was sufficient and representative of the class for the purposes of
14 analyzing key metrics, including the number of employees who were always paid at an hourly rate
15 of at least 130% minimum wage and those who ever fell below this threshold in any pay period
16 during the class period, the number of pay periods with potential overtime violations before
17 accounting for any overtime credits, whether and to what extent that employee would have overtime
18 credits within the same pay period and/or on a cumulative basis, and the number of pay periods
19 with alleged violations accounting for overtime credits, and the number of terminated employees in
20 the class.

21 5. Using the data analysis, the parties engaged in multiple sessions of mediation
22 under the guidance of an experienced wage and hour neutral, Hon. Ret. Judge Ronald Sabraw on
23 both August 26, 2019 and March 31, 2020. While a settlement of the key terms was reached on that
24 day, over the course of the next several months, the Parties continued to negotiate the details and
25 were able to sign a Memorandum of Understanding in October 2020.

26 6. Class Counsel represent that they have conducted a thorough investigation
27 into the facts of this case, and have diligently pursued an investigation of the Class Members' claims
28 against Defendant, including (1) interviewing Class Members and analyzing the results of Class

1 Member interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and
2 the potential defenses; and (4) reviewing relevant data including sample pay data and key statistics.
3 Class Counsel reviewed payroll records for the named plaintiff and other class members and
4 prepared a detailed damage analysis with input from their expert. Based on their own independent
5 investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable
6 and adequate and is in the best interest of the Class in light of all known facts and circumstances,
7 including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues.
8 Defendant agrees that the Settlement is fair, reasonable and adequate.

9 7. It is the mutual desire of the Parties to fully, finally, and forever settle,
10 compromise, and discharge all disputes and claims raised in or related in any way to the Action.
11 Thus, the entry of the Final Approval Order in this Action shall dismiss with prejudice all class
12 claims which were or which could have been alleged in Plaintiff's Complaint. The Parties agree to
13 cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of
14 this Settlement, to effectuate its terms, and to dismiss these claims with prejudice.

15 **III. NO ADMISSION**

16 8. Nothing contained in this Joint Stipulation and the Settlement contemplated in
17 the Joint Stipulation shall be construed or deemed an admission of liability, culpability, negligence,
18 or wrongdoing on the part of Defendant and Defendant denies liability therefor. While Defendant
19 believes that this Action meets the prerequisites for certification of a settlement class, the fact that
20 Defendant seeks approval of this Settlement in the form of a class action shall not be construed as an
21 admission that the underlying action was properly brought as a class action or a representative action
22 under California Business and Professions Code section 17200 or California Labor Code 2699 for
23 purposes other than settlement. Each of the Parties has entered into this Settlement with the
24 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
25 Settlement of the Action, the negotiation and execution of this Joint Stipulation, and all acts
26 performed or documents executed pursuant to or in furtherance of this Joint Stipulation or the
27 Settlement: (1) are not, shall not be deemed to be, and may not be used as, an admission or evidence
28 of any wrongdoing or liability on the part of Defendant, and each of them; (2) are not, shall not be

1 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part
2 of Defendant in any civil, criminal, administrative or arbitral proceeding in any court, administrative
3 agency or other tribunal; and (3) are not, shall not be deemed to be, and may not be used as, an
4 admission or evidence of the appropriateness of these or similar claims for class certification or
5 administration other than for purposes of administering this Joint Stipulation. This Joint Stipulation
6 is a settlement document and shall be inadmissible in evidence in any proceeding, except an action
7 or proceeding to approve, interpret, or enforce the terms of the Joint Stipulation.

8 **IV. CERTIFICATION OF A CODE OF CIVIL PROCEDURE SECTION 382 CLASS**

9 9. For Settlement purposes only, the Parties stipulate to conditional certification
10 of the Settlement Class (“Class”), an opt-out class under California Code of Civil Procedure 382,
11 that is defined as follows:

12 All current and former non-exempt employees of Safeway Inc. in the
13 State of California during the Covered Period who worked in a retail
14 store. The Covered Period shall be from July 13, 2014 through
December 31, 2019.

15 10. The Parties stipulate that Plaintiff KIMBERLEE FACIANE shall be
16 appointed as the Class Representative for the Settlement Class.

17 11. The Parties stipulate that Setareh Law Group shall be appointed Class Counsel
18 for the Settlement Class.

19 12. The stipulations to certify the Settlement Class are completely contingent
20 upon final approval of this Agreement by the Court and are made for settlement purposes only. If
21 the Settlement is not approved by the Court, is overturned on appeal, or does not become final for
22 any other reason, the Parties agree that the certification of the Settlement Class is void ab initio and
23 that, if necessary, they shall stipulate to decertification of the Settlement Class without prejudice to
24 the propriety of class certification being adjudicated on the merits.

25 **V. TERMS OF THE SETTLEMENT**

26 **A. Maximum Gross Settlement Amount**

27 13. The Maximum Gross Settlement Amount under this Settlement is Four
28 Million Nine Hundred Seventy Five Thousand Dollars and No Cents (\$4,975,000.00), with the

1 exception of any pro rata increase triggered pursuant to the Escalator Clause discussed below in
2 Paragraph 14. Class Members do not need to submit claims forms to receive their payments. Class
3 Members will be bound by the settlement unless they opt out.

4 14. There are approximately 107,503 class members. In the event that the number
5 of Class Members is more than 10% greater than 107,503, the Maximum Gross Settlement Amount
6 will be increased pro rata, that is to say that if it is 11% greater, the Maximum Gross Settlement
7 Amount will be increased by 1%, 12% greater, by 2% etc. (the “Escalator Clause”)

8 15. This Settlement does not establish a fund for the payment of claims except as
9 expressly provided for herein. The Maximum Gross Settlement Amount shall remain in the
10 possession, custody, and control of Defendant until the settlement amounts are distributed as set
11 forth herein. The Maximum Gross Settlement Amount shall not be segregated but shall remain in
12 Defendant’s general funds until distributed or shall be provided to the Claims Administrator for
13 distribution sufficiently in advance for the Claims Administrator to meet its obligations under the
14 Settlement Agreement. In the event that this Settlement Agreement is canceled, rescinded,
15 terminated, voided, or nullified, however that may occur, or the settlement of the Action is barred by
16 operation of law, is invalidated, is not approved or otherwise is ordered not to be carried out by the
17 Court or any court of competent jurisdiction, Defendant will cease to have any obligation to pay or
18 provide any portion of the Maximum Gross Settlement Amount to anyone under the terms of this
19 Settlement Agreement.

20 **B. Attorneys’ Fees and Costs**

21 16. The Action alleges a potential claim for attorneys’ fees and costs pursuant to,
22 inter alia, the California Labor Code. The Parties agree that any and all such claims for attorneys’
23 fees and costs have been settled in this Joint Stipulation subject only to approval by the Court.

24 17. Defendant understands that Class Counsel will apply to the Court for an award
25 of attorneys’ fees and costs, which will be scheduled for determination at the final fairness and
26 approval hearing described below. Class Counsel will apply for, and Defendant will not oppose, an
27 award of attorneys’ fees in an amount up to, but not to exceed, 33.3% of the Maximum Gross
28 Settlement Amount (which is equal to One Million Six Hundred Fifty Six Thousand Six Hundred

1 Seventy Five Dollars and Zero Cents (\$1,656,675.00)), and litigation costs and expenses in the
2 maximum amount of Thirty Five Thousand Dollars and Zero Cents (\$35,000.00), all of which shall
3 be paid exclusively from the Maximum Gross Settlement Amount, and will compensate Class
4 Counsel for all of the work already performed in the Action and all work remaining to be performed
5 in documenting the Settlement, securing Court approval of the Settlement, administering the
6 Settlement, ensuring that the Settlement is fairly administered and implemented, obtaining dismissal
7 of the Action with prejudice, and defending against any appeals, as well as all associated expenses.
8 The litigation costs and expenses shall be those costs and expenses incurred by Plaintiff as set forth
9 on Class Counsel's billing statement, including but not limited to mediation fees, expert and
10 consultant fees, filing fees, attorney service charges, online research charges, travel expenses,
11 copying expenses, deposition expenses and delivery charges. Neither the Class Representative,
12 Class Counsel, nor any other Class Member shall seek payment of attorneys' fees or reimbursement
13 of costs or expenses from Defendant except as expressly set forth in this Joint Stipulation.

14 18. The substance of Class Counsel's application for attorneys' fees and costs is
15 not a material part of this Joint Stipulation, and is to be considered separately from the consideration
16 of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. However,
17 all claims for attorneys' fees and costs or expenses that the Settlement Class may possess against
18 Defendant have been compromised and resolved in this Joint Stipulation. Any proceedings related
19 to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this Joint
20 Stipulation. If Class Counsel appeals an adverse ruling of the Court regarding its fee and cost
21 application, the ruling of the appellate court (regardless of its substance) shall not constitute a
22 material alteration of a term of this Joint Stipulation. Class Counsel waives and releases any claim
23 for fees and costs in excess of that which are allowed by the Court or on appellate review of the
24 Court's fees and costs decision or otherwise. The amount, if any, by which the finally approved fees
25 and costs are less than the maximum amount which can be sought pursuant to this Agreement shall
26 be a part of the wages and non-wage income provided Class Members in equal proportions.

27 19. No later than fifteen (15) calendar days after the Court's approval of Class
28 Counsel's application for attorneys' fees and costs, Class Counsel shall deliver to the Claims

1 Administrator written instructions that describe the manner and mode of payment of such attorneys’
2 fees and costs (and, in the absence of such instructions, such attorneys’ fees and costs shall be sent
3 by U.S. mail as set forth below), and fully-executed Form W-9s with respect to all persons or entities
4 to whom some or all of the attorneys’ fees and costs shall be paid.

5 20. No later than fifteen (15) calendar days after the Final Effective Date,
6 Defendant shall mail or wire transfer the Maximum Gross Settlement Amount to the Claims
7 Administrator. Assuming the conditions in Paragraph 19 have been met, no later than seven (7)
8 calendar days after the receipt of the Maximum Gross Settlement Amount from Defendant, the
9 Claims Administrator shall issue a payment to Class Counsel for the amount of attorneys’ fees and
10 costs approved by the Court and in accordance with the instructions provided by Class Counsel.

11 21. The Claims Administrator will issue to Class Counsel IRS Form 1099s for the
12 amounts paid for attorneys’ fees and costs under this Settlement.

13 **C. Payment to Claims Administrator**

14 22. The fees and expenses of the Claims Administrator are estimated at Three
15 Hundred Thousand Dollars (\$300,000.00). To the extent that the costs of administration exceed
16 \$300,000.00, the shortfall will be taken from the Net Settlement Distribution Amount and thereby
17 reduce the amount of penalties payable to the Participating Class Members. To the extent the cost of
18 administration is less than \$300,000.00, the excess shall become part of the Net Settlement
19 Distribution Amount and shall increase the amount of penalties payable to the Participating Class
20 Members.

21 23. On or before the date of the Final Approval Hearing, the Claims
22 Administrator shall deliver to counsel for Defendant a fully-executed Form W-9.

23 24. No later than fifteen (15) calendar days after the Final Effective Date,
24 Defendant shall mail or wire transfer the Maximum Gross Settlement Amount to the Claims
25 Administrator. At the time it receives the Maximum Gross Settlement, the Claims Administrator
26 may issue a payment to itself for the amount of fees approved by the Court.

27 25. Defendant will issue to the Claims Administrator an IRS Form 1099 for the
28 sum paid to it under this Settlement.

1 **D. Class Representative Payment to Class Representative**

2 26. Defendant understands that Plaintiff and Class Counsel will apply to the Court
3 for a Class Representative Payment, which will be scheduled for determination at the final fairness
4 and approval hearing. Plaintiff and Class Counsel will apply for a Class Representative Payment in
5 an amount up to, but not to exceed, Five Thousand Five Hundred Dollars and No Cents (\$5,000.00)
6 to the Class Representative, which shall be paid exclusively from the Maximum Gross Settlement
7 Amount, and will compensate Plaintiff for her services as the Class Representative. Defendant will
8 not oppose Plaintiff’s application for the Class Representative Payment up to the stated amount. The
9 amount, if any, by which the Class Representative Payment is less than the maximum amount which
10 can be sought pursuant to this Agreement shall be part of the Net Settlement Distribution Amount.

11 27. As condition precedent to the payment of this Class Representative Payment,
12 Plaintiff releases any and all claims against Defendant as set forth in the Class Representative
13 Release in Paragraph 69.

14 28. Any Class Representative Payment awarded by the Court shall be in addition
15 to the payment, if any, Plaintiff may otherwise receive as a Participating Class Member and shall not
16 be subject to payroll tax withholding and deductions.

17 29. No later than seven (7) calendar days after the receipt of the Maximum Gross
18 Settlement Amount from Defendant, the Claims Administrator shall issue the Class Representative
19 Payments to Class Counsel on behalf of Plaintiff in the amount approved by the Court, subject to all
20 authorized and required deductions.

21 30. The Claims Administrator will issue IRS Form 1099-MISC to Plaintiff for the
22 amount of the Class Representative Payment.

23 **E. Distribution to Participating Class Members**

24 31. The Gross Individual Settlement Payment to Participating Class Members will
25 be calculated and paid as follows: the total Net Settlement Distribution Amount, estimated at Two
26 Million Eight Hundred Fifty Two Thousand and Seventy Five Dollars and Zero Cents
27 (\$2,852,075.00) will be distributed on as pro-rata basis based on the number of workweeks worked
28 during the class period and on a further “weighted” basis as follows:

- 1
- 2 • Employees will receive 4 shares to every 1 share for each workweek in which they were paid a base “home” hourly rate of less than 130% the then applicable California state minimum wage.
 - 3
 - 4 • Employees who were class members in the *Altamirano v. Safeway* Settlement (which includes employees who were paid late wages during a class period from March 2, 2014 through December 27, 2018) will receive ½ of what employees who were not included in the settlement receive.
 - 5

6 32. All Gross Individual Settlement Payments shall be allocated 20% as
7 consideration for the release of wage claims and 80% for the release of non-taxable claims including
8 civil and statutory penalties, and interest. The amounts paid as consideration for the release of wage-
9 related claims shall be subject to all tax withholdings customarily made from employee’s wages and
10 all other authorized and required withholdings and shall be reported by W2 form. The amounts paid
11 as consideration for the release of penalties and interest shall be subject to all authorized and
12 required withholdings other than the tax withholdings customarily made from employees’ wages and
13 shall be reported by 1099 form. The Gross Settlement Amount includes all payments to state and
14 federal tax authorities for the employees’ and employer’s share of all payroll taxes and other
15 applicable withholdings.

16 33. Class Members may dispute the number of workweeks and whether or not
17 they were class members in the *Altamirano v. Safeway* settlement as set forth in Paragraph 31 and
18 will be given the opportunity to provide documentation to substantiate any such dispute. Any
19 dispute must be in writing and received by the Claims Administrator no later than forty-five (45)
20 days after the initial mailing of the Class Notice. If there is a dispute related to the categorization, the
21 Claims Administrator will consult with Class Counsel and Defendant’s Counsel to determine
22 whether an adjustment is warranted. Upon a dispute being made, Defendant shall provide the
23 Claims Administrator within seven (7) days any available evidence reasonably necessary to evaluate
24 the dispute. The Claims Administrator will make the final decision as to the correct categorization.

25 34. Class Members need not submit a Claims Form to participate.

26 35. The Participating Class Members shall be paid their respective Individual
27 Settlement Payments as provided in this Agreement pursuant to section IX below.
28

1 **F. PAGA Payment**

2 36. The Parties have agreed to allocate Seventy Five Thousand Dollars and Zero
3 Cents (\$75,000.00) for the resolution of all Class Members' claims under the California Private
4 Attorney General Act, California Labor Code Section 2698, et. seq. through the PAGA Release.
5 Seventy five percent of the PAGA Payment (\$56,250.00) will be remitted to the California Labor
6 and Workforce Development Agency. The remaining 25% (\$18,750) will be part of the Net
7 Settlement Distribution Amount to all Participating Class Members.

8 37. This amount is subject to review and approval by the Court as part of the
9 settlement process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the
10 Court approving the PAGA Release, set forth in Paragraph 67 and PAGA Payment. Plaintiff's
11 counsel will submit a copy of the Settlement to the LWDA at the same time the Settlement is
12 submitted to the Court in accordance with Labor Code section 2699 (1)(2).

13 38. Within ten (10) calendar days after the receipt of the Maximum Gross
14 Settlement Amount from Defendant, the Claims Administrator will remit the PAGA Payment to the
15 California Labor and Workforce Development Agency.

16 **VI. APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR**

17 39. The Claims Administrator shall perform the following duties in connection
18 with administration of the Settlement: (1) using the data provided by Defendant to prepare the
19 Notice Materials for each Class Member, as described in section VII.A of this Settlement; (2)
20 mailing the Notice Materials to Class Members; (3) tracking non-delivered Notice Materials and
21 taking reasonable steps to re-send them to Class Members' current addresses; (4) sending out
22 reminder postcards to Class Members; (5) setting up a settlement website which contains copies of
23 all papers and orders filed in connection with preliminary and final approval, including the final
24 Settlement Agreement, Complaint, and Final Judgment; (6) tracking and timely reporting to Class
25 Counsel and Counsel for Defendant about any Opt-Outs/requests for exclusion; (7) calculating and
26 paying the amounts due to each Participating Class Member pursuant to the Settlement; (8)
27 calculating the amount of employee and Employer Payroll Taxes and paying the applicable
28 employee and Employer Payroll Taxes and deductions; (9) resolving disputes (if any) by Class

1 Members regarding their categorization or other matters, after timely notice to and consultation with
2 Class Counsel and counsel for Defendant; (10) contacting all Participating Class Members who have
3 not cashed their Settlement Checks to remind them to do so before the six-month deadline for doing
4 so expires; (11) transmitting funds to resolve the PAGA claim to the State of California as
5 designated; (12) issuing payments to Class Counsel and Class Representative and associated tax
6 forms; (13) escheating the funds to the agreed upon *cy pres* recipient.

7 40. All disputes relating to the Claims Administrator’s performance of its duties
8 will be referred to the Court, if necessary, which will have continuing jurisdiction over this
9 Settlement until all payments and obligations contemplated by this Settlement have been fully
10 carried out.

11 **VII. NOTICE TO THE CLASS OF THE SETTLEMENT**

12 **A. Mailing the Notice Packets to the Class Members**

13 41. Within fifteen (15) calendar days after the Court enters its Preliminary
14 Approval Order, Defendant will provide to the Claims Administrator a database that lists, for each
15 Class Member, the individual’s name, Social Security Number, last known address and telephone
16 number; and dates of employment with Defendant during the Covered Period. This database will be
17 drawn from Defendant’s payroll and other business records and will be in a format acceptable to the
18 Claims Administrator and Defendant. Defendant will consult with the Claims Administrator prior to
19 the date for providing this information to ensure that the format will be acceptable to the Claims
20 Administrator. The data provided to the Claims Administrator and Class Counsel will remain
21 confidential and will not be disclosed to anyone, except as required to applicable tax authorities,
22 pursuant to Defendant’s express written consent, or by order of the Court.

23 42. Within fifteen (15) calendar days after Defendant provides the Claims
24 Administrator the information stated pursuant to Paragraph 41, above, the Claims Administrator will
25 mail, by first-class mail, the Notice Materials to all Class Members at their last known address,
26 unless modified by any updated address information that the Claims Administrator obtains in the
27 course of administration of the Settlement.

1 43. The Claims Administrator will use standard devices, including the National
2 Change of Address database or equivalent, to obtain forwarding addresses prior to mailing and will
3 use appropriate skip tracing to take appropriate steps to maximize the probability that the Class
4 Notice and Claim Form will be received by all Class Members. Class Members to whom the Class
5 Notice Materials are resent after having been returned undeliverable to the Claims Administrator
6 shall have ten (10) calendar days thereafter, or until the response deadline has expired, whichever is
7 later, to mail, fax or email the request for exclusion, or an objection. Notice Materials that are resent
8 shall inform the recipient of this adjusted deadline. If a Class Member's Notice Materials are
9 returned to the Claims Administrator more than once as non-deliverable, no additional Notice
10 Materials shall be sent.

11 44. Within thirty (30) calendar days after the Claims Administrator mails out the
12 Notice Materials, the Claim Administrator will mail out mutually acceptable reminder postcards to
13 Class Members reminding them of their right to submit a Claim Form, exclude themselves from the
14 settlement, object to the settlement, or dispute the Defendant's employment records used to
15 determine the Class Members' Gross Individual Settlement Payment.

16 45. The Claims Administrator shall provide regular reports to Class Counsel and
17 Defendant's counsel as to the mailings of Notice Materials, and the receipt of requests for exclusion
18 and objections prior to the close of the period in which claims can be made.

19 **B. Challenges to Information Provided In Class Notice**

20 46. The Class Notice mailed to the Class Members will include the Class
21 Member's estimated Gross Individual Settlement Payment and number of workweeks, as well as
22 whether a Class Member was part of the *Altamirano v. Safeway* Settlement.

23 47. Class Members will have the opportunity to challenge the information pre-
24 printed on their individualized Class Notice by submitting a written challenge in connection with the
25 Class Notice within the time period provided. All challenges must be received no later than forty
26 five (45) calendar days after the initial date of mailing of the Class Notice.

27 48. Timely challenges will be resolved without hearing by the Claims
28 Administrator after consultation with Class Counsel and Counsel for Defendant. Defendant's

1 records will be presumed correct, but the Claims Administrator will evaluate the evidence submitted
2 by the Class Member and will make a final determination based on its evaluation of all the evidence
3 presented. All determinations will be made no later than fifteen (15) calendar days within receipt of
4 the challenge.

5 **D. Objections to Settlement**

6 49. The Class Members will have sixty (60) calendar days after the date on which
7 the Claims Administrator mails the Class Notice to object to the Settlement by serving on the Claims
8 Administrator, by the sixty (60)-day deadline, a written objection to the Settlement.

9 50. Any Class Member who has elected to opt-out of the Settlement may not
10 submit an objection to the Settlement.

11 51. Objections to the Settlement by any Class Member may be submitted in
12 writing by the original 60-day deadline according to the procedures stated in Paragraphs 49 and 50
13 of the Settlement. Alternatively or additionally, Class Members may make an oral objection directly
14 to the Court by appearing in person at the Final Approval Hearing to do so.

15 52. The Claims Administrator shall provide the Parties a copy of any objections
16 received within one (1) day of receipt. Counsel for the Parties shall file any objections and any
17 response thereto at least seven (7) calendar days before the Final Approval Hearing.

18 **E. Election Not to Participate in the Class Settlement**

19 53. In order for a Class Member to validly and effectively request exclusion from,
20 and opt out of, this Settlement, the Class Member must submit to the Claims Administrator a request
21 for exclusion from the Settlement according to the procedures set forth in the Class Notice.
22 Substantial compliance with the requirements set forth in the Class Notice will in most cases be
23 sufficient. To the extent additional information is required the Claims Administrator will
24 communicate with the Class Member. In order to be valid, the request for exclusion must be
25 postmarked for delivery to the Claims Administrator no later than sixty (60) calendar days after the
26 date of mailing of the Class Notice. No request for exclusion will be accepted if postmarked for
27 delivery to the Claims Administrator after the deadline indicated. Any Settlement Class Member
28 who requests timely exclusion will not impact the scope of the PAGA Release.

1 54. Any Class Member who does not properly and timely submit a request for
2 exclusion will automatically be bound by all terms and conditions of the Settlement, including its
3 release of claims, if the Settlement is approved by the Court, and be bound by the Final Approval
4 Order, regardless of whether he or she has submitted a Claims Form or objected to the Settlement.

5 55. A Class Member who properly and timely submits a request for exclusion will
6 not be bound by the Settlement, and will remain free to contest any claim brought by Plaintiff that
7 would have been barred by the Settlement, and nothing in this Settlement will constitute or be
8 construed as a waiver of any defense Defendant has or could assert against such a claim.

9 56. Plaintiff may not opt-out of the Settlement Class.

10 **F. Reports and Declaration by Claims Administrator**

11 57. By not later than fifteen (15) calendar days after expiration of the 60-day
12 deadline for submission of Claims Forms and written requests not to participate in the Class
13 Settlement, the Claims Administrator will submit to Class Counsel and Counsel for Defendant a
14 report setting forth the number of individuals who as of that date have submitted (a) valid requests for
15 exclusion, and (b) invalid requests to be excluded from the Settlement. In the event that the Claims
16 Administrator subsequently receives a Claims Form or a request not to participate in the Settlement, it
17 will promptly distribute an updated report.

18 58. By not later than the date when Plaintiff files her motion for final approval of
19 the Settlement, the Claims Administrator will prepare and submit for filing in support of the motion a
20 declaration attesting to its mailing of the Class Notice, its receipt of requests for exclusion and
21 objections, and its inability to deliver the Class Notice to potential Class Members due to invalid
22 addresses. As applicable, the Claims Administrator will prepare and submit for filing in support of
23 the motion for final approval, any supplemental declaration.

24 **G. Settlement Website**

25 59. The Claims Administrator will create a settlement website which contains
26 copies of all papers and orders filed in connection with preliminary and final approval, including the
27 final Settlement Agreement and Complaint. These documents will be posted not later than the
28 mailing of the Notice Materials and will remain posted until the date of final approval. The Claim

1 Administrator will also post on its website Notice of Final Judgement.

2 **VIII. RIGHT TO RESCIND**

3 60. In the event that five percent (5%) or more of the Class Members submit valid
4 requests not to participate in the Settlement, Defendant will have the exclusive right in its sole
5 discretion to rescind the Settlement, and all actions taken in its furtherance will be null and void.
6 Defendant must exercise this right within fifteen (15) days after the date on which the Claims
7 Administrator first informs Defendant that at least five percent (5%) of the potential Class Members
8 have made valid requests to be excluded from the Settlement.

9 **IX. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

10 61. Defendant or Class Counsel shall serve the Claims Administrator with notice
11 of the Final Effective Date as soon as possible. No later than fifteen (15) calendar days after the
12 Final Effective Date, the Claims Administrator will prepare and provide counsel for Defendant and
13 Class Counsel with a report summarizing the total Participating Class Members and the Gross
14 Individual Settlement Payment for each Participating Class Member on that list. The sum of the
15 Gross Individual Settlement Payments due to the individuals on that list shall constitute the “Class
16 Settlement Payment.” The Class Administrator shall also calculate the amount of those Employer
17 Payroll Taxes based on the wage portion of the Gross Individual Settlement Payments for all of the
18 individuals on that list.

19 62. Defendant will cause the Maximum Gross Settlement Amount to be wired to
20 the Claims Administrator no later than fifteen (15) calendar days after the Final Effective Date.

21 63. Within fifteen (15) calendar days after the receipt of the Maximum Gross
22 Settlement Amount from Defendant, the Claims Administrator will distribute to every Participating
23 Class Member his or her Net Individual Settlement Payment. The Claims Administrator shall make
24 appropriate tax reporting and withholdings in accordance with this Agreement and applicable law
25 and regulations.

26 a. In order to cash their Individual Settlement Award checks,
27 Participating Class Members shall be required to affirmatively opt into the Settlement for purposes
28 of the FLSA and waive all Released Claims falling under the FLSA by endorsing their Individual

1 Settlement Award checks, which shall contain thereon the following or substantially similar
2 language: “By endorsing and cashing this check, I agree to the waiver of the Fair Labor Standards
3 Act (“FLSA”) claims set forth in the class notice in *Kimberlee Faciane v. Safeway, Inc.* and hereby
4 affirmatively opt into the FLSA claim and FLSA waiver for the purposes of 29 U.S.C. section
5 216(b).”

6 64. The Claims Administrator will timely remit the employer’s and employee’s
7 portion of the payroll and other taxes associated with the settlement payments to the proper
8 authorities, as required by law. In addition, the Claims Administrator will timely issue IRS Form W-
9 2 to each Participating Class Member that reflects the wage portion of the settlement payment and an
10 IRS Form 1099-MISC to each Participating Class Member that reflects the non-wage income portion
11 of the settlement payment to the extent required by law.

12 65. By not later than ninety (90) days after the checks are mailed to the
13 Participating Class Member the Claims Administrator will contact each Participating Class Member
14 who has not cashed his or her settlement check and remind him or her to do so before the six-month
15 deadline. The Claims Administrator will inform those individuals that if they fail to cash their
16 settlement checks by the six-month deadline, the check will be sent to a *cy pres* recipient.

17 66. If any Participating Class Member does not cash his or her settlement check(s)
18 within six (6) months after issuance, fifteen (15) calendar days after the check-cashing deadline the
19 Claims Administrator shall escheat the funds to the will be donated to a local non-profit food bank
20 organization, Alameda County Community Food Bank, to assist their efforts during the ongoing
21 covid-19 and economic crisis. The Parties agree that this obligation shall satisfy and fully discharge
22 Defendant’s obligations under California Code of Civil Procedure Section 384 and the doctrines of
23 *Cy Pres* and *escheat*. Any interest payment required by Code of Civil Procedure § 384 shall be
24 deducted from the proceeds of any uncashed checks, and in any event shall not increase the Gross
25 Settlement Amount. If the Court for any reason believes a different *cy pres* recipient should be
26 chosen, the parties will propose a different recipient.

1 **X. RELEASE OF CLAIMS**

2 **A. Released Claims by Class Members Who Do Not Opt Out**

3 67. As of the date the Final Approval Order is entered by the Court and except as
4 to such rights or claims as may be created by this Settlement, to the maximum extent allowed by
5 law, each Class Member who has not timely and effectively opted out will be deemed to have
6 released claims as both a matter of contract and judicial procedure as follows, which release shall be
7 incorporated into the Class Notice:

8 The settlement shall resolve and the class shall release all claims for
9 wages, statutory and civil penalties, damages and liquidated damages,
10 interest, fees and costs, action or causes of action and all other forms of
11 legal or equitable relief based on federal, state or local law, that are now
12 recognized by law or that may be created or recognized in the future by
13 statute, regulation, judicial decision, or in any other manner, that were
14 alleged or could have been alleged, whether such forms of relief are
15 known or unknown, based upon the factual allegations in the Action,
16 including but not limited to all claims asserted in the Second Amended
17 Complaint (which will include the allegations set forth in the First
18 Amended Complaint in addition to the allegations based upon federal law)
19 (“SAC”): (1) failure to pay hourly wages (Lab. Code §§ 223, 510, 1194,
20 1194.2, 1197, 1197.1 and 1198); (2) failure to provide accurate written
21 wage statements (Lab. Code § 226); (3) failure to timely pay all final
22 wages (Lab. Code §§ 201, 202 and 203); (4) Unfair Competition (Bus. &
23 Prof. Code §§ 17200 *et seq.*); and (5) violation of the Fair Labor Standards
24 Act (FLSA), and with respect to the penalties (other than PAGA penalties,
25 which are addressed below) claimed in the Action, any source of
26 obligation as a basis for claiming such penalties during the Covered
27 Period, (the “Released Claims”), against Safeway Inc. (“Defendant”) and
28 each and all of its past and present parent, subsidiary, and affiliated

1 corporations, entities, divisions, general and limited partners, joint
2 venturers and affiliates, and each of their respective current and former
3 directors, officers, managers, employees, principals, members, agents,
4 insurers, reinsurers, shareholders, attorneys, advisors, representatives,
5 general partners, limited partners, joint venturers, and affiliated
6 companies, and each of their respective executors, predecessors,
7 successors, assigns and legal representatives (collectively, “Released
8 Parties”). In addition, on the date that the Court issues a Final Approval
9 Order, Plaintiff, in her capacity as a representative of the LWDA, State of
10 California, and the LWDA, State of California, will forever completely
11 release and discharge the Released Parties from penalties pursuant to
12 PAGA (Lab. Code §§ 2698 *et seq.*) to the same extent that the underlying
13 wage claims are released (“PAGA Release.”) It is the intent of the Parties
14 that the Final Approval Order entered by the Court shall have full
15 equitable and collateral estoppel and res judicata effect to the fullest extent
16 permitted by law.

17 68. The Gross Individual Settlement Payment to Participating Class Members will
18 not result in any additional benefit payments beyond those provided by this Agreement to Plaintiff
19 and Participating Class Members. Participating Class Members will be deemed to have waived all
20 such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether
21 known or unknown by them, as part of their Released Claims under this Agreement.

22 **B. Released Claims by the Class Representative**

23 69. As of the date the Final Approval Order and Judgment is entered by the Court
24 and except as to such rights or claims as may be created by this Settlement, to the maximum extent
25 allowed by law, the Class Representative will be deemed to have released claims as follows:
26 The Class Representative hereby fully and finally releases and discharges the Released Parties
27 (defined in Paragraph 67, above) from any and all of the Released Claims (defined in Paragraph 67,
28 above) and from any and all claims, charges, complaints, liens, demands, causes of action,

1 obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class
2 Representative had, now has, or may hereafter claim to have against the Released Parties arising out
3 of, or relating in any way to, the Class Representative's hiring by, employment with, separation of
4 employment with, or otherwise relating to the Released Parties, arising or accruing from the
5 beginning of time up through the date of the Final Approval Hearing ("Class Representative's
6 Released Period") with the exception of claims which cannot be released by law ("Class
7 Representative's Released Claims").

8 The Parties stipulate and agree that, upon the Effective Date, the Class Representative
9 waives California Civil Code Section 1542, which provides:

10 A general release does not extend to claims which the creditor does not
11 know or suspect to exist in his or her favor at the time of executing the
12 release, which if known by him or her must have materially affected
his or her settlement with the debtor.

13 **XI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

14 70. The Parties shall submit this Joint Stipulation to the Court in support of
15 Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness,
16 adequacy, and reasonableness. As soon as reasonably possible upon execution of this Joint
17 Stipulation, the Parties shall apply to the Court for the entry of an Order Granting Preliminary
18 Approval of the Settlement and Notice which shall provide for, among other things, the following:

19 a. Scheduling a final fairness and approval hearing on the question of
20 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to
21 the Settlement Class.

22 b. Approving as to form and content the proposed Class Notice and
23 Claim Form described herein;

24 c. Directing the mailing of the Class Notice and Claim Form by first
25 class mail to the Class Members;

26 d. Preliminarily approving the Settlement;

27 e. Preliminary certifying the Class for settlement purposes only; and

28 f. Approving Shaun Setareh, Thomas Segal and Farrah Grant of Setareh

1 Law Group as Class Counsel, Plaintiff Kimberlee Faciane as Class Representative, and Simpluris, or
2 an administrator mutually agreed to by the Parties, as Claims Administrator.

3 71. After the Preliminary Approval Order is entered by the Court, and prior to the
4 deadline for objections, Plaintiff shall file the motion for an award of attorneys' fees and costs to be
5 heard on the same hearing date as set by the Court for the final fairness and approval hearing.

6 **XII. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

7 72. In connection with the final approval by the Court of the Settlement, the
8 Parties will submit a proposed Order Granting Final Approval of the Class Action Settlement and
9 Final Judgment, respectively, which shall provide, among other things, as follows:

10 a. Approving the Settlement, adjudging the terms thereof to be fair,
11 reasonable and adequate, and directing consummation of its terms and provisions;

12 b. Approving Class Counsel's application for an award of attorneys' fees
13 and reimbursement of costs;

14 c. Approving the Class Representative's service payment;

15 d. Certifying the Settlement Class for purposes of this Settlement only;
16 and

17 e. Entering Judgment pursuant to California Rules of Court, rule 3.769(h)
18 which retains jurisdiction and permanently bars the Class Members who do not timely and validly
19 exclude themselves from the Settlement from prosecuting any and all Released Claims against the
20 Released Parties, and permanently bars the Class Representative from prosecuting any and all Class
21 Representative's Released Claims against the Released Parties. Notice of the Final Judgment shall
22 be given by Plaintiff to Defendant as set forth in the Class Notice, which notice shall satisfy the
23 requirements of California Rules of Court, rule 3.771.

24 **XIII. EFFECT OF NON-APPROVAL**

25 73. If this Agreement is not preliminarily or finally approved by the Court and/or
26 if a Final Approval Order is not entered or if Defendant exercise the option to rescind pursuant to
27 Paragraph 60, above (e.g., because the Court does not approve the settlement, or the opt-outs from
28 the Class exceed five percent and Defendant revokes the Agreement), this Agreement shall be null

1 and void. In such event, (1) nothing in this Agreement shall be construed as a determination,
2 admission, or concession of any issue in the Action, and nothing in this Joint Stipulation may be
3 offered into evidence in any trial on the merits of the claims asserted in the Complaint filed in the
4 Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the
5 prosecution and defense of the Action as if this Agreement never existed; and (3) Defendant shall be
6 responsible for any costs for Notice or claims administration incurred by the Claims Administrator
7 through that date. If there is any reduction in the attorneys' fees or costs awards or the Class
8 Representative Payments, such reduction may be appealed but is not a basis for rendering this
9 Agreement void, voidable and/or unenforceable.

10 **XIV. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL**

11 74. Except for disclosures authorized by Defendant or necessary to prepare the
12 motion for preliminary approval, the terms of this Settlement shall remain confidential until they are
13 presented to the superior court in connection with the motion for preliminary approval.

14 **XV. MUTUAL FULL COOPERATION**

15 75. The Parties will fully cooperate with each other and use their best efforts,
16 including all efforts contemplated by this Settlement and any other efforts that may become
17 necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement in
18 accordance with the terms of the parties' memorandum of understanding, including but not limited
19 to, executing such documents and taking such other action as may reasonably be necessary to obtain
20 preliminary and final approval of this Settlement and to implement its terms.

21 **XVI. NO PRIOR ASSIGNMENTS**

22 76. The Parties represent, covenant, and warrant that they have not directly or
23 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
24 person or entity any portion of any claims, causes of action, demands, rights and liabilities of every
25 nature and description released under this Settlement.

26 **XVII. NOTICES**

27 77. Unless otherwise specifically provided by this Settlement, all notices,
28 demands or other communications given under this Settlement will be in writing and be deemed to

1 have been duly given as of the third business day after mailing by United States registered or
2 certified mail, return-receipt requested, addressed as follows:

3 **To Plaintiff and the Settlement Class:**

4 SHAUN SETAREH
5 THOMAS SEGAL
6 FARRAH GRANT
7 SETAREH LAW GROUP
8 9665 Wilshire Blvd., Suite 430
9 Beverly Hills, CA 90212
10 Telephone (310) 888-7771

11 **To Defendants:**

12 R. BRIAN DIXON
13 LAURA E. HAYWARD
14 LITTLER MENDELSON, P.C.
15 333 Bush Street, 34th Floor
16 San Francisco, CA 94104
17 Telephone: (415) 433-1940

18 **XVIII. CONSTRUCTION**

19 78. This Settlement is the result of lengthy, arms-length negotiations between the
20 Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent
21 to which any Party or her or its counsel participated in the drafting of this Settlement.

22 **XIX. CAPTIONS AND INTERPRETATIONS**

23 79. Paragraph and section titles, headings, or captions contained in this Settlement
24 are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
25 describe the scope of this Settlement or any of its provisions. Each term of this Settlement is
26 contractual and not merely a recital, except for those set forth in Section I, above.

27 **XX. MODIFICATION**

28 80. This Settlement may not be changed, altered, or modified, except in writing
and signed by the Parties and approved by the Court. This Settlement may not be discharged except
by performance in accordance with its terms or by a writing signed by the Parties.

XXI. APPLICABLE LAW

81. All terms and conditions of this Agreement will be governed by and
interpreted according to the laws of the State of California, without giving effect to any conflict of
law or choice of law principles.

1 **XXII. INTEGRATION CLAUSE**

2 82. This Settlement and all the attached Exhibits which by this reference are
3 incorporated into this Settlement constitutes the entire agreement between the Parties relating to the
4 Settlement and transactions contemplated by the Settlement. All prior or contemporaneous
5 agreements, understandings, representations, and statements, whether oral or written and whether by
6 a Party or a Party’s counsel, are merged into this Settlement. No rights under this Settlement may be
7 waived except in writing.

8 **XXIII. BINDING ON ASSIGNS**

9 83. This Settlement will be binding upon and will inure to the benefit of the
10 Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

11 **XXIV. CLASS MEMBER SIGNATORIES**

12 84. It is agreed that because the members of the Class are so numerous, it is
13 impossible or impractical to have each Class Member who does not timely and validly opt-out
14 execute this Settlement. The Class Notice will inform all Class Members of the binding nature of
15 the release contained herein will have the same force and effect as if this Settlement were executed
16 by each Class Member who does not timely and validly opt-out.

17 **XXV. COUNTERPARTS**

18 85. This Settlement may be executed in counterparts, and when each Party has
19 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
20 when taken together with other signed counterparts, will constitute one Settlement, which will be
21 binding upon and effective as to all Parties.

22 86. This Settlement may be signed by facsimile signature or digital signature,
23 each of which will have the same force and effect as an original signature.

24 **XXVI. PARTIES’ AUTHORITY TO SIGN**

25 87. The signatories to this Settlement hereby represent that they are fully
26 authorized to enter into this Settlement on behalf of themselves or their respective principals.

27 **EXECUTION BY PARTIES AND COUNSEL**

28 The Parties and their counsel hereby execute this document to evidence their

1 acceptance of and agreement to the Settlement.

2
3 Dated: 01/11/2022, 2022



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5 _____
KIMBERLEE FACIANE
Plaintiff

6
7 Dated: 01/11/2022, 2022



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9 _____
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
SETAREH LAW GROUP
Attorneys for Plaintiff and Settlement Class

10
11
12 Dated: _____, 2022

13
14 _____
SAFEWAY INC.
Defendant
By: _____

15
16 Dated: _____, 2022

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18 _____
R. BRIAN DIXON
LAURA E. HAYWARD
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
SAFEWAY INC.

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1 acceptance of and agreement to the Settlement.

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3 Dated: _____, 2022

4 _____
5 KIMBERLEE FACIANE
6 Plaintiff

7 Dated: _____, 2022

8 _____
9 SHAUN SETAREH
10 THOMAS SEGAL
11 FARRAH GRANT
12 SETAREH LAW GROUP
13 Attorneys for Plaintiff and Settlement Class

14 Dated: January 10, 2022

15 _____
16 *Gerald Diner*
17 SAFEWAY INC.
18 Defendant
19 By: *Chief Employment and*
20 *Field Operations*

21 Dated: _____, 2022

22 _____
23 R. BRIAN DIXON
24 LAURA E. HAYWARD
25 LITTLER MENDELSON
26 A Professional Corporation
27 Attorneys for Defendants
28 SAFEWAY INC.

1 acceptance of and agreement to the Settlement.

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Dated: _____, 2022

KIMBERLEE FACIANE
Plaintiff


Dated: _____, 2022

SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
SETAREH LAW GROUP
Attorneys for Plaintiff and Settlement Class

Dated: _____, 2022

SAFEWAY INC.
Defendant
By: _____

Dated: January 10, 2022



R. BRIAN DIXON
LAURA E. HAYWARD
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
SAFEWAY INC.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT
TO CERTAIN PERSONS WHO WORKED IN CALIFORNIA
AS NON-EXEMPT EMPLOYEES FOR SAFEWAY INC. (“DEFENDANT”)
IN A RETAIL STORE DURING THE PERIOD SPECIFIED BELOW

KIMBERLEE FACIANE v. SAFEWAY INC.
 Superior Court of the State of California, County of Alameda
 Case No. RG18913668

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHT TO A MONETARY SETTLEMENT RELATED TO YOUR EMPLOYMENT WITH DEFENDANT DURING THE PERIOD FROM JULY 13, 2014 TO DECEMBER 31, 2019 (THE “COVERED PERIOD”). THIS IS A COURT-ORDERED NOTICE AND NOT A SOLICITATION FROM A LAWYER. YOU ARE NOT BEING SUED.

IF YOU WORKED FOR DEFENDANT IN CALIFORNIA AS A NON-EXEMPT EMPLOYEE IN A RETAIL STORE, THEN YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT. DEFENDANT’S RECORDS SHOW THAT YOU WERE EMPLOYED FOR A TOTAL OF [TOTAL WEEKS] WEEKS DURING THE COVERED PERIOD, WITH [WEEKS ≥ 130% MIN WAGE] OF THOSE WEEKS PAID AT A RATE AT LEAST 130% OF THE APPLICABLE MINIMUM WAGE, AND THAT YOU [ARE/ARE NOT] A MEMBER OF THE SETTLEMENT CLASS IN *ALTAMIRANO v. SAFEWAY INC.*, ALAMEDA CASE NO. RG17851392.

BASED UPON THIS, YOUR PAYMENT UNDER THIS SETTLEMENT IS ESTIMATED TO BE \$[DOLLAR AMOUNT], PRIOR TO ANY APPLICABLE TAXES OR DEDUCTIONS. THIS AMOUNT IS ONLY AN ESTIMATE AND THE FINAL AMOUNT MAY CHANGE BASED ON THE COURT’S FINAL APPROVAL OF THE SETTLEMENT.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be considered a Settlement Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment of your Settlement Share will be mailed to you at the same address as this Notice, and you will release the Released Claims against the Released Parties covered by the Settlement.
EXCLUDE YOURSELF	Receive no payment of a Settlement Share and retain any and all rights you may have against Defendant and Released Parties as to the Released Claims.
OBJECT	Write to the Settlement Administrator about why you don’t agree with the Settlement or state your objection to the Court directly at the Final Approval Hearing. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement.

**APPEAR AT THE
FINAL APPROVAL
HEARING**

Appear at the Final Approval Hearing to speak to the Court about the fairness of the Settlement.

SETTLEMENT CLASS: The Settlement resolves Plaintiff Kimberlee Faciane’s (“Plaintiff”) alleged wage and hour claims against Defendant with respect to employees who worked for Defendant in the State of California as hourly paid, non-exempt employees between July 13, 2014 and December 31, 2019 (the “Covered Period”), claims for civil penalties against Defendant under the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, *et seq.*) (the “PAGA”) for those alleged Labor Code violations, as well as claims under the Fair Labor Standards Act (the “FLSA”) (29 U.S.C. § 201, *et seq.*). Defendant denies all of Plaintiff’s allegations and claims.

BASIC INFORMATION

1. What is this lawsuit about?

Plaintiff alleges that, during the Covered Period, Defendant failed to pay her and the Class Members all of their overtime wages because Defendant failed to base their overtime rate of pay on their regular rate of pay, including all bonuses or premium pay earned, failed to provide them with written accurate wage statements, failed to timely pay them all wages upon separation of employment, and failed to pay them interest and penalties under California and/or U.S. labor laws; Plaintiff seeks restitution under the California Unfair Competition Law (“UCL”) and civil penalties under PAGA for the alleged Labor Code violations.

Defendant denies all liability and wrongdoing of any kind associated with the claims alleged in the Action and further denies that any of the claims are appropriate for class treatment. Defendant contends that it has complied at all times with all applicable wage and hour laws in connection with its Class Members, that Class Members were properly compensated for all hours worked, and that no additional wages, compensation, or penalties of any kind are owing to any Class Members. This Settlement constitutes a compromise of highly disputed claims and should not be construed as an admission of liability on Defendant’s part.

2. Why is this a Class Action?

In a class action lawsuit, one person (or multiple persons) designated as the “Class Representative” (in this case, Plaintiff) sue on behalf of people that the Class Representative alleges have similar claims. The people together are a “Class” or “Class Members.” The Alameda County Superior Court (the “Court”) has granted preliminary approval of the proposed settlement (the Settlement”) of this class action lawsuit. If the Settlement does not receive final approval from the Court, then the Class Members will not receive – or be entitled to – the benefits of this Settlement, and Plaintiff will need to go back to court to prove her case through trial.

3. *Why is there a Settlement?*

In the interest of efficiency and economy, the Parties to the litigation decided to resolve the litigation through the Settlement. In this way, the Parties avoid the risks and costs of trial. In deciding whether to grant final approval of the Settlement, the Court will not decide who is right or wrong. Instead, it will determine whether the Settlement is fair, reasonable, and adequate.

4. *Why did I receive this Notice?*

You received this Notice because Defendant's records show that you are a Class Member in this case, as described below.

WHO IS IN THE SETTLEMENT?

5. *How do I know if I am part of the Settlement?*

You are in the Settlement if you are a Class Member. You are a Class Member if you worked for Defendant in California at any time during the Covered Period as a "non-exempt" (i.e., hourly paid) employee in a retail store. Defendant's records indicate that you are a Class Member.

6. *What are my options:*

As a Class Member, you have several options available to you. You may:

- (i) **Participate in the Settlement and receive a settlement check.** To participate in the Settlement, you do not need to do anything. You will receive a settlement check that will be mailed to you later this year or early next year after the Court grants final approval of the Settlement. The estimated amount of your settlement check is listed on Page 1 of this Notice.
- (ii) **Object to the Settlement;** or
- (iii) **Request to be excluded from the Settlement.** If you timely do so in a valid manner (explained below), then you will not receive any payment from the Settlement, but you will retain your right to pursue any of the Released Claims.

SETTLEMENT BENEFITS – WHAT YOU COULD RECEIVE?

7. *What are the Settlement terms?*

The Class in this case consists of all current and former non-exempt employees who worked for Defendant in California at any time during the Covered Period. Class Members who do not opt out of (i.e., request exclusion from) the Class, will be bound by the Settlement and will release their claims against Defendant and the Released Parties as specified in the Settlement.

Defendant has agreed to pay a maximum, non-reversionary, settlement amount of \$4,975,000.00 (the “Maximum Gross Settlement Amount” or “MGSA”) to fully resolve all claims in the lawsuit, including payments to participating Class Members, attorneys’ fees and costs, the class representative service award, the Cost. The specific settlement terms are as follows:

The Maximum Gross Settlement Amount under the Settlement is \$4,975,000.00, from which payments will be made for: (1) attorneys’ fees in an amount up to one-third of the MGSA (\$1,656,675.00) to Class Counsel, subject to Court approval; (2) actual litigation costs incurred by Class Counsel not to exceed \$35,000.00, subject to Court approval; (3) a Class Representative service award to Plaintiff of up to \$5,000.00, subject to Court approval; (4) settlement administration costs estimated to be approximately \$300,000.00 payable to KCC Class Action Services, LLC, subject to Court approval; (5) payment to the California Labor and Workforce Development Agency (“LWDA”) of \$56,250.00 for payment of penalties under the Labor Code Private Attorney General Act (“PAGA”) ; and (6) employer Payroll Taxes estimated to be approximately \$70,000.00. The GSA is non-reversionary, meaning no amount of the GSA will be retained by, or revert back, to Defendant. Any monies in the MGSA that are attributable to Class Members who opt out of the Settlement will be redistributed on a *pro rata* basis to those Class Members who participate in the Settlement. The funds for any settlement checks that are not cashed within 180 days from the date of mailing will be sent to a *cy pres* recipient, the Alameda County Community Food Bank, a 501(c)(3) nonprofit, to assist their efforts during the ongoing Covid-19 and economic crisis.

After the deductions from the MGSA for attorneys’ fees, litigation costs, settlement administration costs, the service award to Plaintiff, the payment to the LWDA under PAGA, and the deduction of Employer Payroll Taxes as described above, the remaining balance (the “Net Settlement Distribution Amount” or “NSDA”) shall be available to pay settlement checks to the Class Members based upon the formulae set forth in Paragraph 8 below.

8. How will my Settlement payment be calculated?

After deduction of the Court-approved fees and expenses set forth above, the remainder of the MGSA, the NSDA, shall be available for payment to Class Members based on the following:

Settlement Shares. In total, this is the amount of the NSDA that will be allocated to the Settlement Class. Each Class Member who participates in the Settlement will receive a *pro rata* Settlement Share based upon the number of weeks that he or she worked for Defendant in California during the Covered Period and on a further “weighted” basis as follows:

- Class Members will receive 4 shares to every 1 share for each workweek in which they were paid a base hourly rate of less than 130% the then applicable California state minimum wage; and
- Class Members who were part of the settlement class in the *Altamirano v. Safeway* Settlement (which includes employees who were paid late wages during a class period from March 2, 2014 through December 27, 2018) will receive ½ of what employees who were not included in the *Altamirano* settlement receive.

Each Settlement Share is allocated 20% to wages (for which employment taxes will be deducted and IRS Forms W-2 will be issued) and 80% to interest and penalties for which no taxes will be deducted and IRS Forms 1099 will be issued.

9. Disputing the data on your Individual Notice

You have the opportunity to dispute the data set forth on the first page of this Notice, including the number of workweeks used to calculate your Settlement payment, if you believe the data is incorrect. To dispute the data on this Notice, you must send a letter, signed under penalty of perjury, to the Settlement Administrator at KCC Class Action Services, LLC, [INSERT ADDRESS] disputing the data on this Notice and providing any supporting documentation you have. To be valid, the dispute must be submitted (postmarked) by no later than [INSERT DISPUTE DATE]. The Settlement Administrator will use Defendant's records and the information you provide to resolve any disputes about the data appearing on this Notice. The Settlement Administrator's determination will be final and binding.

10. What are the possible settlement benefits from this Settlement?

You have the right to receive money from the Settlement if you received this Notice. The estimated amount of your share of the Settlement money is listed on the first page of this Notice.

State law and Defendant's policy strictly prohibit any retaliation against you for participating in the Settlement. Defendant will not take any adverse action against you because of your decision to participate in this Settlement. Defendant wants you to participate in the Settlement. Whether you participate in the Settlement or not, no amount Defendant has agreed to pay under the terms of the Settlement will go back to Defendant.

11. How do I participate in the Settlement and get a settlement check?

You do not need to do anything to participate in the Settlement and receive a settlement payment. You will receive a settlement check that will be mailed to you later this year after the Court grants final approval of the Settlement. However, if you move you should provide the Settlement Administrator with your new address.

12. When will I get my settlement check?

Checks for the amount of each Class Member's individual settlement payment will be distributed if and when the Settlement receives final approval from the Court. Settlement checks will be sent to the address listed on this Notice. If you move after receiving this Notice, you may prepare a letter with your new address and mail the Notice or letter to KCC Class Action Services, LLC, [INSERT ADDRESS], You can also call the Settlement Administrator at [NUMBER] and advise them of your new address.

13. Will I have to pay taxes on my settlement payment?

Class Members will be responsible for paying any taxes owing for their settlement payments. The Settlement Administrator will issue Form W-2s and 1099s with respect to such payments as required by law. Without any party hereto admitting any liability of any type or kind, the Parties agree and intend that the payments made under this Settlement are compensatory payments to the Class Members intended to compensate Class Members for alleged damages. Each Settlement Share is allocated 20% to wages (for which employment taxes will be deducted and IRS Forms W-2 issued), and a combined 80% to interest and penalties, for which no taxes will be deducted and IRS Forms 1099 will be issued). The Settlement Administrator will withhold employee and employer taxes from the wage portion of the settlement payments and issue IRS Forms W-2 to the Class Members for the wage portion of the settlement payments and IRS Forms 1099 for the penalty and interest portion of the settlement payments. Individual Class Members will be responsible for the payment of any taxes owed on the amounts reported as miscellaneous income under IRS Form 1099.

RELEASE OF CLAIMS

14. Am I giving anything up by remaining in the Class?

Unless you remove yourself from the Settlement (which is called “excluding yourself” or “opting out”), you are part of the Class. By staying part of the Class, court orders will apply to you, and you will be bound by the Release of Claims set forth in the Settlement Agreement. A release means you can’t sue or be part of any other lawsuit against Defendant about the claims or issues being released in this lawsuit for the applicable Covered Period ever again.

If the Court approves the proposed Settlement, the Settlement Agreement will bind all Class Members who have not opted out of the Settlement (“Class Participants”) and will bar them from bringing the claims described in the release below against Defendant. Specifically, after Court approval, the Settlement provides for the **following release** for the time period with respect to the Class Participants between July 13, 2014 and December 31, 2019, the Covered Period:

The settlement shall resolve and the class shall release all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and costs, action or causes of action and all other forms of legal or equitable relief based on federal, state or local law, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, that were alleged or could have been alleged, whether such forms of relief are known or unknown, based upon the factual allegations in the Action, including but not limited to all claims asserted in the Second Amended Complaint (which will include the allegations set forth in the First Amended Complaint in addition to the allegations based upon federal law) (“SAC”): (1) failure to pay hourly wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (2) failure to provide accurate written wage statements (Lab. Code § 226); (3) failure to timely pay all final wages (Lab. Code §§ 201, 202 and 203); (4) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (5) penalties pursuant to PAGA (Lab. Code §§ 2698 *et seq.*) and (6) violation of the Fair Labor Standards Act (FLSA), and with respect to the penalties claimed in the Action,

any source of obligation as a basis for claiming such penalties during the Covered Period, (the “Released Claims”), against Safeway Inc. (“Defendant”) and each and all of its past and present parent, subsidiary, and affiliated corporations, entities, divisions, general and limited partners, joint venturers and affiliates, and each of their respective current and former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and each of their respective executors, predecessors, successors, assigns and legal representatives (collectively, “Released Parties”).

FLSA Opt-In: Specifically, as to the release of claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, by cashing any settlement check, Class Members thereby opt into the Settlement and expressly release their claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT AND APPEARING AT THE HEARING

15. How do I object to the Settlement?

If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to the Settlement. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection (“Objection”) to the Settlement Administrator at the following address:

Kimberlee Faciane v. Safeway Inc. Settlement
KCC Class Action Services
[Address]
[City, State Zip]

If you submit a written objection, the Objection must: (1) state your full name; (2) state the grounds for the objection in clear and concise terms; (3) be signed by you or your lawful representative; and (4) be postmarked on or before [INSERT RESPONSE DEADLINE] and returned to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection.

Any Class Member may object to the Settlement either by mailing a written objection using the process described above or by personally appearing at the Final Approval Hearing and making an oral objection before the Court, regardless of whether or not the Class Member timely mailed a written Objection to the Settlement Administrator. However, if you timely submit a written Objection, it is not necessary for you to appear at the Final Approval Hearing in order for the Court to consider your Objection. The Court, in its sole discretion, may permit any member of the Class to address the Court at the Settlement Approval Hearing and may consider any statements made by a Class Member.

If the Court rejects your objection, however, you will be bound by the terms of the Settlement. Persons who exclude themselves from the Settlement may not submit objections to the Settlement or appear at the Final Approval Hearing.

16. Who are the attorneys representing the parties?

Plaintiff and Class Members' Attorney
("Class Counsel"):

Shaun Setareh (SBN 204514)
Thomas Segal (SBN 2222791)
SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
Beverly Hills, California 90212
Telephone (310) 888-7771
Facsimile (310) 888-0109

17. Can I appear at the Final Settlement hearing?

You are not required to attend the Final Approval Hearing, but any Class Member may do so.

YOUR RIGHTS – GETTING OUT OF THE SETTLEMENT

18. Can I remove myself from the Settlement?

Any Class Member who wishes to be excluded from the Class and Settlement must return a written request to be excluded from the Settlement to the Settlement Administrator by first class U.S. mail, or equivalent, postage paid and postmarked, on or before [INSERT EXCLUSION DEADLINE], which is 60 days from the date that the Notice was first mailed to Class Members. The written notice must clearly identify the full name of the Class Member requesting exclusion and contain a statement expressly stating that he/she seeks to be excluded from the Settlement, such as "I wish to opt out of the Lawsuit and the Settlement of the case: *Kimberlee Faciane v. Safeway Inc.*, Alameda County Superior Court Case No. RG18913668. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice I have received and read," and contain the full legal signature of the requesting Class Member. By submitting such a Request for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the class action lawsuit and Settlement.

The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely returned his or her request for exclusion before the deadline. Any Class Member that timely submits a proper request for exclusion will not be entitled to any money under this Settlement. Class Members who do not timely submit a proper request for exclusion shall be bound by all terms of this Settlement, including the Release of Claims, and the Judgment entered in this Action by the Court.

Send the Request for Exclusion directly to the Settlement Administrator (KCC Class Action Services, LLC, [INSERT ADDRESS]). **Do not send the Request for Exclusion to the Court.** The judgment following approval of the Settlement by the Court will bind all Class Members who do not request exclusion from the Settlement.

Please note that the full amount of the agreed settlement payment will be allocated to those members who do not opt-out, it will not revert back to Defendant.

19. What is the difference between excluding and objecting?

Excluding yourself or opting out means removing yourself from the Class and the Settlement altogether – you will not receive any money or be bound by the terms of the Settlement, except for the parts pertaining to PAGA claims, from which aggrieved employees cannot opt out. Objecting means that you are remaining in the Class and will receive money and be bound by the terms of the Settlement but that you are complaining about some part of the Settlement that you do not like.

WHAT IF I DO NOTHING?

20. What if I do nothing?

If you do nothing, you will be bound by the terms of the Settlement, which means you will receive a settlement payment and cannot bring a lawsuit against Defendant regarding the Released Claims covered by the Settlement.

DO I NEED TO HIRE MY OWN LAWYER?

21. Do I need to hire my own lawyer?

You do not need to hire your own lawyer, but you can if you want to. Plaintiff, you, and the entire Class are already represented by the Plaintiff’s attorneys listed above, who are known as Class Counsel. Class Counsel’s services are paid for under the Settlement. If you decide to hire your own attorney, you will have to pay for your own attorney’s services.

You may contact Class Counsel if you have any questions about this Notice or the Settlement, but please *do not contact the Court or Defendant*.

FINAL APPROVAL OF SETTLEMENT

22. When will the Settlement be final?

The Final Approval Hearing on the fairness, reasonableness, and adequacy of the Settlement will be held at [INSERT TIME] on [INSERT DATE] at Department 21 of the Alameda County Superior Court, Administration Building, located at 1221 Oak Street, 4th Floor, Oakland, California 94612. The hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend.** Prior to attending, you should contact the Settlement Administrator or Class Counsel to confirm that the date and time of the Hearing has not changed. The settlement will become final after expiration of the applicable appeal period or when any appeal, if filed, is resolved.

MORE INFORMATION

23. Where can I get more information?

This Notice is only a summary of the Settlement. For more information, you may do any of the following:

You may visit the website for the settlement in this matter hosted by the Settlement Administrator, [www.websiteforthesettlement.com], where you will find copies of the pleadings and documents pertaining to this Settlement free of charge.

You may visit the public portal online for the Alameda Superior Court at [www.alameda.courts.ca.gov/exactURLforPublicPortal], where all the documents filed in this Action can be found and accessed by the public. Once on the website, enter “RG18913668” in the [“Case Number”] field, and click on [“Search”].

You may also contact Class Counsel listed above for more information.

PLEASE DO NOT CALL THE COURT, DEFENDANT, OR ITS ATTORNEYS ABOUT THIS NOTICE