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

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

Plaintiff,

v.

SAFEWAY, INC.,

Defendant.

Case No. 19CV45421

PRELIMINARY APPROVAL ORDER

Assigned Judge: Hon. Henry Kantor

Class Counsel has filed with the Court a Motion for Preliminary Approval of Class Action Settlement, seeking an Order preliminarily approving the proposed Settlement (the “Settlement”), conditionally certifying a class for purposes of the Settlement, and ordering notice pursuant to the Notice Plan, in accordance with the Settlement Agreement (the “Agreement”), entered into by the Parties on February 13, 2023.

Based on the consents of the Parties, and after review and consideration of the Motion, the Agreement, and the exhibits attached thereto, and the related submissions,

IT IS HEREBY ORDERED that:

1. The Court, for purposes of this Order, adopts all defined terms set forth in the Agreement and incorporates them by reference as if fully set forth herein.
2. The Court preliminary approves the Settlement embodied by the Agreement, subject to further consideration at the Final Approval Hearing, described below. The Court finds that the requirements of ORCP 32 are satisfied with respect to the “Settlement Class Members”

1 (as defined below and in the Agreement) and finds that the Agreement provides substantial relief
2 to the Settlement Class without the risk, cost, or delay associated with continued litigation.

3 3. The Court finds that the Settlement has been reached as a result of intensive,
4 serious, and non-collusive arms-length negotiations, facilitated and overseen by Senior Judge
5 Henry J. Kantor. The Court further finds that the Parties have conducted thorough investigation
6 and research, and that the attorneys for the Parties are able to reasonably evaluate their respective
7 positions.

8 4. The Parties' Settlement is granted preliminary approval as it meets the criteria for
9 preliminary settlement approval under ORCP 32. The Court finds that it is appropriate to notify
10 the members of the proposed Settlement Class of the terms of the proposed Settlement.

11 5. The following persons are conditionally certified as Settlement Class Members
12 solely for the purpose of entering a settlement in this matter:

13 All persons who, between September 9, 2019 and July 22, 2020, purchased
14 certain non-grocery items from a Safeway store located within the City of Portland,
15 Oregon and paid to Safeway a surcharge on certain non-grocery items related to the
16 Clean Energy Surcharge enacted by the City of Portland, effective January 1, 2019.

17 Excluded from the Settlement Class are: (1) any Judge presiding over this Action and
18 members of their families; (2) persons who properly execute and file a timely request for
19 exclusion from the Settlement Class; and (3) the legal representatives, successors, or
20 assigns of any such excluded persons.

21 6. The Court finds that Plaintiffs Pauline Long and Marsha Hayes are adequate and
22 do not have interests adverse to the Settlement Class, and the Court appoints Plaintiffs Pauline
23 Long and Marsha Hayes as Class Representatives. The Court also finds that Plaintiffs' counsel
24 are adequate, as they are experienced in consumer class action litigation and have no conflicts of
25 interest with absent Settlement Class Members, and that they adequately represented the interests
26 of absent Class Members in the Litigation. The Court therefore appoints Michael Fuller of

1 OlsenDaines, Kelly Jones of the Law Office of Kelly D. Jones, and Dan Nichol of JurisLaw LLP
2 as Class Counsel.

3 7. The Court approves, as to form and content, the proposed class action notice (the
4 “Class Notice”) (attached to the Settlement Agreement as Exhibit 2). The Parties’ proposed
5 Notice Plan complies with ORCP 32 D, is constitutionally sound, and such notice is the best
6 notice practicable under the circumstances. The Class Notice is sufficient to inform Settlement
7 Class Members of the terms of the Settlement, their rights under the Settlement, their rights to
8 object to the Settlement, their right to make a claim to receive a payment under the Settlement or
9 elect not to participate in the Settlement and the processes for doing so, and the date and location
10 of the Final Approval Hearing.

11 8. The Court hereby appoints CPT Group to act as the Settlement Administrator to
12 supervise, administer, and carry out the Notice Plan and Claims Process as set out in the
13 Agreement. The deadline for mailing the Class Notice to the Settlement Class Members shall be
14 thirty-five (35) business days after entry of this Order. The deadline by which all Claim Forms
15 must be postmarked or received by the Settlement Administrator shall be sixty (days) calendar
16 days from the initial mailing of the Class Notice to Settlement Class Members. All
17 Administration Costs, with exception of the initial \$200,000 to be paid directly by Defendant to
18 CPT Group, shall be submitted to the Court for approval and paid from the Settlement Fund.

19 9. The Court orders the Parties and Settlement Administrator to administer the
20 Notice Plan and Claims Process in accordance with the terms of the Agreement.

21 10. Neither the Agreement nor any document referred to or contemplated therein, nor
22 any negotiations, statements or proceedings in connection therewith shall be construed as, or be
23 deemed to be evidence of, an admission, concession, or indication by or against Defendant or
24 any of the Released Parties of any fault, wrongdoing, or liability whatsoever, and shall not be
25 offered or admitted into evidence or referred to in any way (orally or in writing) in any other
26 action, arbitration, or other proceeding, except as allowed by Rule 408 of the Oregon Evidence

1 Code and Federal Rules of Evidence or other similar rules (and specifically excepting the Action
2 and/or a proceeding involving an effort to enforce the Settlement, as well as reference to the
3 Settlement or Agreement in any SEC disclosure).

4 11. The Agreement shall have no precedential, collateral estoppel, or *res judicata*
5 effect on Defendant in any manner or proceeding other than in (a) this Action and/or (b) a
6 proceeding involving an effort to enforce the Agreement.

7 12. Settlement Class Members will be bound by the Agreement unless they submit a
8 timely and valid written Request for Exclusion from the Settlement in accordance with the terms
9 of the Agreement.

10 13. Any Request for Exclusion shall be submitted to the Settlement Administrator,
11 rather than filed with the Court, by the Objection/Exclusion Deadline, which is sixty (60)
12 calendar days from the initial mailing of Class Notice to Settlement Class Members. Settlement
13 Class Members are not required to send copies of the Request for Exclusion to counsel. The
14 Settlement Administrator shall file a declaration concurrently with the filing of any motion for
15 final approval, authenticating a copy of every Request for Exclusion or objection received by the
16 Settlement Administrator.

17 14. Any of the Settlement Class Members (other than the Class Representatives) who
18 has not timely elected to be excluded from the Settlement Class, and who wishes to object the
19 approval of the Settlement, including any application for attorney's fees and costs and service
20 awards to Plaintiffs, should submit any objection in writing in accordance with the Agreement by
21 the Objection/Exclusion Deadline, which is sixty (60) calendar days from the initial mailing of
22 Class Notice to Settlement Class Members. The Settlement Administrator shall file a declaration
23 concurrently with the filing of any motion for final approval, authenticating a copy of every
24 objection received by the Settlement Administrator. Any Settlement Class Member who does
25 not make an objection to the Settlement in the manner provided in the Agreement and who does
26 not appear at the Final Approval Hearing to voice his or her objection shall be deemed to have

1 waived any such objection by appeal, collateral attack, or otherwise.

2 15. The Court will conduct the Final Approval Hearing on July 14, 2023 at 9:00 a.m.,
3 to rule on any timely objections filed by a Settlement Class Member, final approval of the
4 Agreement and issuance of the General Judgment of Dismissal. The Court reserves the right to
5 continue the date of the Final Approval Hearing without further notice to Settlement Class
6 Members. Class Counsel shall give notice to any objecting party of any continuance of the Final
7 Approval Hearing.

8 16. All discovery and other pretrial proceedings in this Action are stayed and
9 suspended until further order of this Court, except such actions as may be necessary to
10 implement the Agreement and this Order.

11 17. Counsel for the Parties are hereby authorized to utilize all reasonable procedures
12 in connection with the administration of the Settlement which are not materially inconsistent
13 with either this Order or the terms of the Settlement Agreement.

14 18. Class Representatives and the Settlement Class Members are hereby enjoined
15 from prosecuting any claim in the Action and from filing actions or proceedings against
16 Defendant related to the Action.

17 19. In the event that the Settlement as provided in the Agreement is not finally
18 approved by the Court, or for any reason the parties fail to obtain a Final Approval Order and
19 General Judgment of Dismissal as contemplated in the Agreement, or the Agreement is
20 terminated pursuant to its terms, then the Agreement and all orders entered in connection
21 therewith shall become null and void and of no further force and effect, and shall not be deemed
22 an admission or offered or admitted into evidence or referred to in any way (orally or in writing)
23 in this Action or any other action, arbitration, or other proceeding, for any purpose. In such
24 event, the Agreement and all negotiations and proceedings relating thereto shall be withdrawn
25 without prejudice as to the rights of any and all parties thereto.

1 **CERTIFICATE OF READINESS - Pursuant to UTCR 5.100**

2 The submission is ready for judicial signature because:

3 1. Each opposing party affected by this order or judgment has stipulated to the order
4 or judgment, as shown by each opposing party's signature on the document being submitted.

5 2. Each opposing party affected by this order or judgment has approved the order or
6 judgment, as shown by signature on the document being submitted or by written confirmation or
7 approval sent to me.

8 3. I have served a copy of this order or judgment on all parties entitled to service and:

9 a. No objection has been served on me.

10 b. I received objections that I could not resolve with the opposing party
11 despite reasonable efforts to do so. I have filed a copy of the objections I
12 received and indicated which objections remain unresolved.

13 c. After conferring about objections _(opposing party)__ agreed to
14 independently file any remaining objection.

15 4. The relief sought is against an opposing party who has been found in default.

16 5. An order of default is being requested with this proposed judgment.

17 6. Service is not required pursuant to subsection (3) of this rule, or by statute, rule or
18 otherwise.

19 7. This is a proposed judgment that includes an award of punitive damages and notice
20 has been served on the Director of the Crime Victims' Assistance Section as required by
21 subsection (4) of this rule.

22 DATED: March 9, 2023

PERKINS COIE LLP

By: s/ Sarah J. Crooks

Sarah J. Crooks, OSB No. 971512

Attorneys for Defendant Safeway, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing PRELIMINARY APPROVAL ORDER on the
3 following:

4 Michael Fuller
5 OlsenDaines
6 111 SW 5th Avenue, Suite 3150
7 Portland, OR 97204
8 michael@underdoglawyer.com

Daniel J. Nichols
JurisLaw LLP
Three Centerpointe Drive, Suite 160
Lake Oswego, OR 97035
dan@jurislawyer.com

9 Kelly Jones
8 819 SE Morrison Street, Suite 255
9 Portland, OR 97214
10 kellydonovanjones@gmail.com

11 *Attorneys for Plaintiffs*

12 to be sent by the following indicated method or methods, on the date set forth below:

13 by **sending via the court’s electronic filing system**

14 by **email**

15 by **mail**

16 by **hand delivery**

17
18 DATED: March 9, 2023

PERKINS COIE LLP

19 By: /s/Sarah J. Crooks

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21 SCrooks@perkinscoie.com
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26 Attorneys for Defendant Safeway, Inc.