

**SETTLEMENT AGREEMENT AND RELEASE**

*Pauline Long and Marsha Hayes v. Safeway, Inc.*  
Multnomah County Circuit Court Case No. 19CV45421

This Settlement Agreement and Release (“Agreement”) is made and entered into by and among Defendant Safeway, Inc., (“Defendant”) and Plaintiffs Pauline Long and Marsha Hayes (“Plaintiffs”), on their own behalf and on behalf of a putative class and each of its Settlement Class Members (as defined herein) in *Long, et al. v. Safeway, Inc.*, Multnomah County Circuit Court Case No. 19CV45421 (“the Action”) with the assistance of counsel. Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.” The Parties agree that the Action and the Released Claims (as defined herein) shall be fully and finally compromised, settled and released, and dismissed with prejudice and/or final judgment entered, subject to the approval of the Court and the terms and provisions set forth in this Agreement.

**RECITALS**

A. On October 19, 2019, Joshua Gagnier filed a putative class action Complaint in Multnomah County Circuit Court for the State of Oregon, seeking equitable relief. The material allegations of the Complaint were that Defendant allegedly violated the Oregon Unlawful Trade Practice Act by charging Oregon consumers a surcharge on certain non-grocery items from September 9, 2019 through July 22, 2020.

B. On February 13, 2020, Defendant filed a motion to dismiss the Complaint.

C. On February 26, 2020, the Parties jointly moved for and the Court granted a 90-day stay of the Action to allow the parties to engage in mediation. The Parties engaged in formal mediation with Senior Judge Henry Kantor, but the Parties did not reach a resolution.

D. On December 2, 2020, Joshua Gagnier filed an Amended Complaint, seeking equitable relief, and on December 15, 2020, Defendant filed a motion to dismiss the Amended Complaint. After briefing and oral argument, on February 17, 2021, the Court issued an Opinion and Order denying Defendant’s motion to dismiss the Amended Complaint.

## Exhibit A

E. On March 9, 2022, Plaintiffs Pauline Long and Marsha Hayes filed a Second Amended Class Action Complaint, seeking damages. On September 9, 2022, Defendant filed a motion to dismiss the Second Amended Complaint.

F. During the pendency of the Action, the Parties exchanged formal document discovery and other information informally. The information exchanged in informal and formal discovery was sufficient to assess the strengths and weakness of the claims and defense.

G. Beginning in August 2022, the Parties re-engaged in mediation and settlement discussions with Senior Judge Henry Kantor as mediator. After several weeks of negotiations, the Parties reached agreement on key terms of a class action settlement and executed a term sheet on September 19, 2022.

H. At all times, Defendant has generally and specifically denied any and all wrongdoing or liability of any sort with regard to any of the claims alleged, makes no concessions or admissions of wrongdoing or liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission, other than for settlement purposes only, that Plaintiffs can serve as adequate Class Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class should be certified, other than for settlement purposes only.

I. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have likely prevailed at summary judgment or trial. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and negotiations resulting in it will not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the

part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

J. Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through the motion to dismiss, class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs believe it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class (defined below), and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the sufficiency of which the Parties readily acknowledge and accept, the Parties agree as follows:

## AGREEMENT

### 1. DEFINITIONS

In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

**1.1 Administration Costs:** The costs and expenses actually incurred by the Settlement Administrator in implementing the Notice Plan, including the publication of Class Notice and establishment of the Settlement Website; implementing the Claims Process, including the processing, handling, and reviewing of claims; implementing the Distribution Plan, including

paying Approved Claims; establishing the Settlement Fund; and all other expenses related to the administration of the Settlement Fund and administering this Settlement.

**1.2 Agreement, Settlement Agreement, or Settlement:** The settlement agreement reflected in this document, titled “Settlement Agreement and Release.”

**1.3 Approved Claim:** A Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

**1.4 Attorney’s Fee and Cost Award:** The amount that the Court awards to Plaintiffs as reasonable attorneys’ fees and recoverable litigation costs in this matter. The Attorney’s Fee and Cost Award shall be paid from the Settlement Fund.

**1.5 Claim Form:** The document to be submitted by Settlement Class Members seeking a cash payment pursuant to this Agreement. The Claim Form will be available online at the Settlement Website and the contents of the Claim Form will be substantially similar to the forms attached hereto as Exhibit 4 (online version) and Exhibit 5 (paper version) (without material modification unless agreed upon by the Parties), subject to Court approval.

**1.6 Claimant:** A Settlement Class Member who submits a claim for cash payment as described in Paragraph 3.4 of this Agreement.

**1.7 Claims Deadline:** The date by which all Claim Forms must be postmarked or received by the Settlement Administrator to be considered timely. The Claims Deadline shall be sixty (60) calendar days from the initial mailing of the Class Notice to Settlement Class Members. The Claims Deadline will be clearly set forth in the Preliminary Approval Order as well as in the Class Notice and Claim Form.

**1.8 Class or Settlement Class:** All persons who, between September 9, 2019 and July 22, 2020, purchased certain non-grocery items from a Safeway store located within the City of Portland, Oregon and paid to Safeway a surcharge on certain non-grocery items related to the

Clean Energy Surcharge enacted by the City of Portland, effective January 1, 2019. Excluded from the Settlement Class are: (1) any Judge presiding over this Action and members of their families; (2) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (3) the legal representatives, successors, or assigns of any such excluded persons.

**1.9. Class Counsel:** Attorneys Michael Fuller of OlsenDaines; Kelly D. Jones of the Law Office of Kelly D. Jones; and Dan Nichols of JurisLaw LLP.

**1.10 Class Member or Settlement Class Member:** Each person eligible to participate in this Settlement who is a member of the Settlement Class as defined above.

**1.11 Class Notice or Notice:** The Notice of Proposed Class Action Settlement, substantially similar to the forms attached hereto as Exhibit 2 (the long form) and Exhibit 3 (the short form) (without material modification unless agreed upon by the Parties), subject to Court approval.

**1.12 Class Representatives:** Plaintiffs Pauline Long and Marsha Hayes will ask the Court to be approved as the Class Representatives. Defendant will not oppose this request.

**1.13 Court:** The Multnomah County Circuit Court for the State of Oregon, acting in Case No. 19CV45421.

**1.14 Defendant:** Safeway, Inc.

**1.15 Defendant's Counsel:** The law firm of Perkins Coie LLP.

**1.16 Effective Date:** The date when the Settlement Agreement becomes Final.

**1.17 Final:** One business day following the latest of the following events: the Final Approval Order and General Judgment of Dismissal have been entered on the Court docket, and: (a) the date upon which the time expires for filing or noticing any appeal of the Court's Final Approval Order and General Judgment of Dismissal has expired and no appeal has been timely filed; (b) if such an appeal has been filed, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order and General Judgment of Dismissal without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review

and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (c) the Court following the resolution of the appeal enters a further order approving settlement on the material terms set forth herein and in the Final Approval Order and General Judgment of Dismissal, and either no further appeal is taken from such Final Approval Order and General Judgment of Dismissal or any such appeal results in affirmation of such Final Approval Order and General Judgment of Dismissal.

**1.18 Final Approval or Final Approval Order:** The Order approving this Agreement issued by the Court at or after the Final Approval Hearing Date and substantially similar to the form attached hereto as Exhibit 6 (without material modification unless agreed upon by the Parties), subject to Court approval.

**1.19 General Judgment of Dismissal:** The general judgment of dismissal entered by Court after Final Approval of the Agreement and substantially similar to the form attached hereto as Exhibit 7 (without material modification unless agreed upon by the Parties), subject to Court approval.

**1.20 Notice Date:** The date of publication of notice pursuant to Paragraph 3.3(b) of this Agreement.

**1.21 Objection/Exclusion Deadline:** The date by which all objections and requests for exclusion must be postmarked or received by the Settlement Administrator or the Court to be considered timely. The Objection/Exclusion Deadline shall be sixty (60) calendar days from the initial mailing of Class Notice to Settlement Class Members.

**1.22 Preliminarily Approve, Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the terms and conditions of this Agreement, certifying the Settlement Class for settlement purposes, and directing Notice of the Settlement to the Settlement Class, substantially similar to the form attached hereto as Exhibit 1 (without material modification unless agreed upon by the Parties), subject to Court approval.

**1.23 Preliminary Approval Date:** The date on which the Court enters an order granting Preliminary Approval.

**1.24 Request for Exclusion:** Election Not to Participate or Opt-out statement by a Class Member, as described further in Paragraph 3.9.

**1.25 Released Claims:** The claims that Releasing Parties are releasing in exchange for the consideration provided for by this Agreement, which include any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, controversies, extracontractual claims, damages, debts, judgments, suits, actual, statutory, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations whether in law or in equity, accrued or unaccrued, direct, individual, derivative, or representative, of every nature and description whatsoever, whether based on any federal, state, local, statutory or common law or any other law, rule or regulation—including but not limited to claims for violation of the Oregon Unlawful Trade Practices Act; injunctive relief; declaratory relief; unjust enrichment—against the Released Parties, or any of them, arising out of or related in any way to the creation, notice, implementation, assessment, imposition or collection of a surcharge on certain non-grocery items, including all facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the assessment of the surcharge, including all claims that were brought or could have been brought in the Action. Even if the Settlement Class Member discovers facts in addition to or different from those that he or she now knows or believes to be true or otherwise fails to discover facts, with respect to the subject matter of the Released Claims, those claims will remain released and forever barred.

**1.26 Released Parties:** Defendant and its past, present, and future parent companies, subsidiaries, affiliates, related entities, divisions, and agents, and all of their respective partners, principals, managers, officers, directors, employees, shareholders, members, advisors, consultants, insurers, personal or legal representatives, accountants, attorneys, trustees, assigns, real or alleged alter egos, predecessors, successors, transferees, managing agents, investors, and agents.

**1.27 Releasing Parties:** Jointly and severally, and individually and collectively, the Plaintiffs, Settlement Class Members and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, affiliates, related entities, divisions, banners, and agents, and all of their respective partners,

principals, managers, officers, directors, employees, shareholders, members, advisors, consultants, insurers, personal or legal representatives, accountants, attorneys, trustees, assigns, real or alleged alter egos, transferees, heirs, executors, managing agents, investors, agents, independent contractors, financial and other advisors, investment bankers, underwriters, and lenders, of each of the foregoing, and anyone claiming by, through, derivatively, or on behalf of them.

**1.28 Settlement Administrator:** CPT Group, the third-party administration company that has been selected jointly by the Parties and will be approved by the Court to perform the duties set forth in this Agreement.

**1.29 Settlement Website:** A website to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced in Paragraph 3.3(e), below.

**1.30 Settlement Fund:** The settlement fund to be established and controlled by the Settlement Administrator and funded by the Defendant in the amounts set out in Paragraph 2.1, below.

## **2. SETTLEMENT RELIEF AND SETTLEMENT CLASS CERTIFICATION**

**2.1 Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, Defendant will pay the following amounts to the Settlement Fund: (i) Settlement Payment of \$8,750,000.00; (ii) Administration Costs actually incurred by the Settlement Administrator up to a maximum amount of \$200,000.00, as described in Paragraph 2.9(d) below; and (iii) any Service Award to Plaintiffs, not to exceed \$6,000 total, as may be ordered by the Court and as described in Paragraph 2.9(b) below. This is the maximum gross amount Defendant can be required to pay under this Agreement. The Settlement Fund represents the total maximum extent of Defendant's monetary obligations under the Agreement. Defendant shall have no obligation to make further payments to the Settlement Fund.

**2.2 Other Relief.** As of July 23, 2020, Defendant stopped charging a surcharge on certain non-grocery items.



**2.3 Settlement of the Action and All Released Claims.** The Final Approval of this Agreement is intended to and will settle and resolve with finality on behalf of Plaintiffs and Settlement Class Members, the Action and the Released Claims and other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Released Parties by the Plaintiffs and Settlement Class Members in the Action or any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims.

**2.4 Settlement Class Certification.** Solely for the purpose of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Settlement Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Settlement Class for the purpose of settlement as defined in this Agreement.

**2.5 Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Settlement Class Members for purposes of this Settlement only. If the Settlement does not become Final, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in the Action or in any other lawsuit. If the Settlement does not become Final, Defendant reserves the right to contest any issues relating to class certification and liability.

**2.6 Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as the representatives for the Settlement Class.

**2.7 Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Settlement Class.

**2.8 Payment of Approved Claims.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a cash payment from the Net Settlement

Amount (defined below) for Approved Claims from the Settlement Fund, as described in Paragraph 3.4 below.

**2.9 Settlement Disbursements.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments from the Settlement Fund:

(a) **To Class Counsel.** Class Counsel will apply to the Court for a total Attorney's Fee and Cost Award in an amount of 25% of the \$8,750,000 payment to the Settlement Fund (i.e., \$2,187,500). The Settlement Administrator will pay the court-approved amounts for the Attorneys' Fee and Cost Award out of the Settlement Fund. IRS Form 1099 will be issued to Class Counsel firm OlsenDaines by the Settlement Administrator for these payments. In the event the Court does not approve the entirety of the application for the Attorneys' Fee and Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference to Class Counsel between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for Attorneys' Fees and Cost Award, the difference shall remain in the Settlement Fund and be available for distribution to Settlement Class Members. The approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiffs and/or Class Counsel to terminate the Settlement; however, Class Counsel retain their right to appeal any decision by the Court regarding the Attorneys' Fees and Cost Award.

(b) **To Plaintiffs.** Class Counsel will apply to the Court for Plaintiffs to be paid Service Awards, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of their efforts on behalf of the Settlement Class, in an aggregate amount of six thousand dollars (\$6,000.00), paid to Class Counsel firm OlsenDaines. The Settlement Administrator will pay the court-approved amounts for the Service Awards out of the Settlement Fund.

(c) **To Settlement Class Members.** The Settlement Administrator will pay Settlement Class Members pursuant to the Claims Process and Distribution Plan set forth below in Paragraph 3.4. All payments to Settlement Class Members shall be made from the Settlement Fund.

(d) **To the Settlement Administrator.** Defendant will pay up to a total amount not to exceed \$200,000.00 for Administration Costs. If the Administration Costs (reasonable fees and expenses) exceed \$200,000.00, the Settlement Class and Class Counsel may authorize payment from the Settlement Fund of these additional Administration Costs (reasonable fees and expenses) to the Settlement Administrator as approved by Senior Judge Kantor.

**2.10 Appointment and Responsibilities of the Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate that a Settlement Administrator will be appointed based on mutual agreement of parties. The Parties have selected CPT Group as the Settlement Administrator. Class Counsel is responsible for retaining and managing the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and distributing the Class Notice and Claim Forms; establishing the Settlement Website that posts notices, Claim Forms, and other related documents by the Notice Date; receiving and processing claims and distributing payments to Settlement Class Members; answering inquiries from Settlement Class Members and/or forwarding such written inquiries to Class Counsel; keeping track of any objections or Requests for Exclusion from Settlement Class Members and providing copies of such objections or Requests for Exclusion to Class Counsel and Defense Counsel; performing skip traces and re-mailing Notices and payments to Settlement Class Members; calculating each Claimant's settlement payment; providing weekly status reports to Class Counsel and Defendant's Counsel, which are to include weekly updates on any objections or Requests for Exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing including copies of objections and exclusions; mailing settlement payments; distributing the Attorneys' Fee and Cost Award to Class Counsel; distributing the Service Awards to Plaintiffs; printing and providing Settlement Class Members and Plaintiffs with 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; disbursing any funds remaining in the Settlement Fund as a result of uncashed checks as ordered by the Court, including the administration of related tax items; and for such other tasks as the Parties mutually agree. Within one (1) year after the completion of the Distribution Plan, the Settlement Administrator shall prepare the Final Report, which shall contain cumulative totals of all amounts actually distributed from the Settlement Fund to the

Settlement Class Members, the amount actually paid from the Settlement Fund to the Settlement Class Members, and the remaining amount from the Settlement Fund distributed to the Oregon State Bar and Oregon Consumer Justice pursuant to Paragraph 4.4. The Final Report shall be sent to the Court, Class Counsel, and Defendant's Counsel. The Settlement Administrator will carry out any additional duties as set forth in this Agreement or as ordered by the Court.

**2.11 Performance Standards of Settlement Administrator.** The contract with the Settlement Administrator will obligate the Settlement Administrator to abide by the following performance standards:

(a) The Settlement Administrator will accurately and neutrally describe, and will train and instruct its employees and agents to accurately and objectively describe, the provisions of this Agreement in communications with Settlement Class Members;

(b) The Settlement Administrator will provide prompt, accurate, and objective responses to inquiries from Class Counsel and Defendant's Counsel and will periodically report on Claims, objectors, requests for exclusion, etc.

(c) The Settlement Administrator will seek clarification, instruction, or authorization for performance of its duties and expenditure or disposition of the Settlement Fund from Class Counsel and Defendant's Counsel.

(d) The Settlement Administrator shall keep all information regarding the Settlement Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed eighteen (18) months after the Settlement Administration is complete.

### **3. PROCEDURES FOR APPROVING SETTLEMENT**

**3.1 Motion for Preliminary Approval and Conditional Certification.** As soon as reasonably practical after execution of this Agreement, Plaintiffs will file the Agreement, including the exhibits attached hereto, with the Court, and move for an order conditionally certifying the Settlement Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claims Process, and submit the Preliminary Approval Order, in substantially the same form as

Exhibit 1, to the Court for approval. Class Counsel will provide a draft of the Preliminary Approval motion to Defendant's Counsel for review prior to filing.

**3.2** Should the Court decline to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The Parties agree that if the Court declines to Preliminarily Approve non-material aspects of the Settlement, that the Parties will work cooperatively to make such changes required by the Court.

**3.3 Notice Plan.** After the Court enters the Preliminary Approval Order, Class Notice will be provided to the Settlement Class in accordance with the following procedures:

(a) Within fifteen (15) business days after entry of the Preliminary Approval Order, Defendant shall provide to the Settlement Administrator the available contact information maintained by Defendant for Settlement Class Members who are Club Card Members (based on unique household identifier) and who completed sales transactions with a surcharge on a Club Card. The Settlement Administrator will be responsible for updating, verifying and otherwise locating U.S. Mail addresses for Settlement Class Members. Defendant will not and is not obligated to take any other steps to identify Settlement Class Members, locate contact information for Settlement Class Members, or take any other steps to identify or locate Settlement Class Members.

(b) **Direct Class Notice via U.S. Mail.** Within twenty (20) business days after receipt of the available contact information, the Settlement Administrator will mail the short-form Class Notice to all identified Settlement Class Members via U.S. Mail where a last-known U.S. Mail address has been located (the Notice Date).

(c) If a Class Notice is returned because of an incorrect address, within seven (7) calendar days from receipt of the returned Class Notice, the Settlement Administrator will conduct a search for a more current address for the Settlement Class Member and re-mail the Class Notice to the Settlement Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of the Settlement Class Member for whom a Class Notice is returned by the U.S. Postal

Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to the Settlement Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.

(d) **Direct Class Notice via email address.** By the Notice Date, the Settlement Administrator will electronically transmit the short-form Class Notice to all Settlement Class Members where a last-known email address has been located.

(e) **Settlement Website.** By the Notice Date, the Settlement Administrator will provide the long-form Class Notice on the Settlement Website at OregonClassAction.com, which will be obtained from Class Counsel (and returned to Class Counsel at the conclusion of the Settlement Administration), administered, and maintained by the Settlement Administrator and will include the ability to file Claim Forms online, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The content and form of the Settlement Website shall be mutually acceptable to Plaintiffs and Defendant, and the Settlement Administrator shall give Plaintiffs and Defendant the opportunity to review the Settlement Website and any changes to it.

(f) **Digital Publication Notice.** By the Notice Date, short-form Class Notice will be provided by digital publication on social media, which will link to the Settlement Website. The final digital notice advertisements, and the overall digital publication notice program to be used, shall be subject to the final approval of Defendant.

(g) The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Class Notices mailed and emailed, the number of Class Notices returned as undeliverable, the number of Class Notices re-mailed, the number of Claim Forms received, and the number of objections and Requests for Exclusion received.

**3.4 Claims Process and Distribution Plan.** Each Settlement Class Member will be entitled to submit a claim for cash payment, consistent with this Paragraph and as determined by the Court.

(a) **Cash Payment.** Each Settlement Class Member may file a claim that will, if timely and valid, entitle him or her to a cash payment not to exceed \$200.00.

(b) **Method of Payment.** Each Settlement Class Member who files a claim electronically through the Settlement Website may choose to receive his or her cash payment via paper check or electronic means (e.g., Paypal/Venmo, ACH/Direct Deposit, etc.). Payment by paper check will be the default payment method for hard copy claims filed via email or mail or in the event that a Settlement Class Member fails to indicate a preferred method of payment or provides incomplete or inaccurate electronic payment information.

(c) **Determining Net Settlement Amount for Distribution.** The Settlement Administrator shall determine the total amount of money available for payout to Settlement Class Members, which is the Gross Settlement Amount less (1) the court-approved Attorney's Fee and Cost Award, (2) any court-approved Service Awards to Plaintiffs, and (3) Administration Costs (including any amounts in excess of the maximum \$200,000.00 that Defendant will pay to the Settlement Fund for Administration Costs). In other words, the Net Settlement Amount is the portion of the Gross Settlement Amount remaining in the Settlement Fund that will be distributed to Settlement Class Members through the Claims Process.

(d) **Settlement Class Distributions from Settlement Fund.** Settlement Class Members who submit Approved Claims will be paid a pro rata distribution of the Net Settlement Amount, not to exceed \$200.00 per Approved Claim. Claims will be paid from the Settlement Fund within forty-five (45) days after the date the Agreement becomes Final.

(e) **Pro Rata Adjustment.** If the total value of all Approved Claims exceeds the Net Settlement Amount, then the amount paid on an Approved Claim will be reduced pro rata as necessary.

(e) **Unclaimed Funds.** If the total value of all Approved Claims is less than the Net Settlement Amount, then the remaining funds in the Settlement Fund will be distributed pursuant to ORCP 32 O, with one-half of the unclaimed funds paid to the Oregon State Bar for

the funding of legal services provided through the Legal Services Program established under ORS 9.572, and the remaining one-half of the unclaimed funds paid to Oregon Consumer Justice, a not-for-profit organization, as approved by the Court.

**3.5 Proof of Claim.** A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member. A Claimant must include information in the Claim Form, completed online or in hard copy mailed to the Settlement Administrator, confirming, under penalty of perjury, that the Settlement Class Member purchased at least one of a certain non-grocery item from a Safeway store within the City of Portland between September 9, 2019 and July 22, 2020, and paid a surcharge at least once on a certain non-grocery item. Claimants must provide the address of the Safeway store(s) where purchases were made, a description of the non-grocery items purchased, the approximate date(s) of the alleged purchase(s) of non-grocery items and the alleged payment(s) of a surcharge, and a Club Card account number, if any.

**3.6 Review of Claims.** The Settlement Administrator will be responsible for reviewing all claims to determine their validity. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of Paragraphs 1.8, 3.4, and 3.5 above, or is submitted after the Claims Deadline.

**3.7 Uncleared Checks.** Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance will be ineligible to receive a cash settlement benefit from the Settlement Fund, and Defendant will have no further obligation to make any payment pursuant to this Agreement or otherwise to such Settlement Class Members. Any unclaimed funds remaining after administration of this Settlement Agreement will be paid pursuant to ORCP 32 O with one-half of the unpaid funds paid to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572, and the remaining one-half of the unclaimed funds paid to Oregon Consumer Justice, a not-for-profit organization, as approved by the Court.

**3.8 Objections to the Settlement.** The Class Notice will provide that any Settlement Class Members (other than the Class Representatives) who wish to object to the Settlement should do so in writing, signed, dated, and filed with the Court and also mailed to the Settlement Administrator by the Objection/Exclusion Deadline. Objections may also be made in person at



## Exhibit A

the Final Approval Hearing. Settlement Class Members who fail to make written objections and who do not appear at the Final Approval Hearing to voice their objections shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

(a) **Format.** Any written Objection must contain the following information so that the Court and Parties understand who is objecting, whether they have standing to object, and on what basis: (i) the objecting Settlement Class Member's full name, address, and telephone number; (ii) the word "Objection"; (iii) a statement attesting that the objecting Settlement Class Member purchased at least one of a certain non-grocery item from a Safeway store located within the City of Portland, Oregon between September 9, 2019 and July 22, 2020, and paid a surcharge at least once on a certain non-grocery item; (iv) a statement identifying (1) the Safeway store address at which the objecting Settlement Class Member claims they purchased at least one of a certain non-grocery item between September 9, 2019 and July 22, 2020, and paid a surcharge at least once on a certain non-grocery item; (2) the approximate date(s) of the purchase(s) of certain non-grocery items and payment(s) of a surcharge; (3) the objecting Settlement Class Member's Safeway Club Card account number, if any; and (4) a description of the certain non-grocery item(s) purchased on the date(s) provided above and payment(s) of a surcharge; (v) a description, in clear and concise terms, of the specific factual and legal grounds for each objection, including why the objector has chosen to object; (vi) an indication of whether the Settlement Class Member is represented by counsel, and, if so, that counsel's full name, address and bar number; (vii) a list of and copies of all documents that the Settlement Class Member may seek to use at the Final Approval Hearing, and a list of the names of any witnesses that the Settlement Class Member wants to present at the Final Approval Hearing; (viii) a list of all other objections to class settlements submitted by the Settlement Class Member or Settlement Class Member's counsel to any Court within the United States within the last 5 years, if any, including the total number of such objections and the case and court information in which each such objection was asserted; (ix) indicate whether the Settlement Class Member would like to appear at the Final Approval Hearing; (x) identify the name of the case (*Long, et al. v. Safeway, Inc.*, Multnomah County Circuit Court Case No. 19CV45421). The objection must be personally signed by the person making the objection.

(b) **Option to Appear.** Settlement Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Any counsel representing an objecting Settlement Class Member must file with the Court a notice of appearance and Points and Authorities in support of the objection, which brief shall contain any and all legal authority upon which the objector will rely and confirm whether the attorney intends to appear at the Final Approval Hearing. Copies of these documents must be filed with the Clerk of Court and delivered to Class Counsel and Defendant's Counsel no later than the Objection/Exclusion Deadline. A written objection will still be considered even if an objecting Settlement Class Member does not appear at the Final Approval Hearing, either in person or through the objector's own counsel.

(c) **Invalid Objections.** An objection will be invalid and will not be considered if the submission does not provide all of the material requested information in Paragraphs 3.8(a) and (b), is received after the Objection/Exclusion Deadline, or is not timely filed with the Court and mailed to the correct addresses for the Settlement Administrator, Class Counsel and Defendant's Counsel listed on the Class Notice.

(d) The Class Representatives agree that the Agreement is fair and reasonable to the Settlement Class Members and that they do not, and will not, object to the Agreement, and hereby waive any right that they may have had to do so.

**3.9 Request for Exclusion from the Settlement ("Opt-Out").** Settlement Class Members shall have sixty (60) calendar days from the Notice Date (and in the case of a re-mailed Class Notice, sixty (60) calendar days from the original distribution or fourteen (14) calendar days from the date of re-mailing, (whichever is greater)) to request to opt out. The Class Notice will provide that Settlement Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a Request for Exclusion. A written request to opt out should: (1) state the Settlement Class Member's name, mailing address, and email or telephone number; (2) state that the Settlement Class Member wishes to opt out from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be allowed.

(a) **Confirmation of Authenticity.** If there is a question about the authenticity of a signed Request for Exclusion, the Settlement Administrator may demand additional proof of the Settlement Class Member's identity. Any Settlement Class Member who returns a timely, valid, and executed Request for Exclusion will not participate in or be bound by the Settlement and Final Approval Order and General Judgment of Dismissal and will not receive a cash payment. A Settlement Class Member who does not complete and mail a timely Request for Exclusion will automatically be included in the Settlement and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent Final Approval Order, regardless of whether he or she has objected to the Settlement.

(b) **Report.** No later than seven (7) calendar days after the Objection/Exclusion Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Class Notices mailed and emailed to Settlement Class Members, the number of Class Notices returned as undeliverable, the number of Class Notices re-mailed to the Settlement Class Members, the number of re-mailed Class Notices returned as undeliverable, the number of Settlement Class Members who objected to the Settlement and copies of their submitted objections, the number of Settlement Class Members who returned valid Requests for Exclusion and copies of those Requests for Exclusion, and the number of Settlement Class Members who returned invalid Requests for Exclusion. The Settlement Administrator shall file a declaration with the Court, concurrently with the filing of any motion for Final Approval, authenticating a copy of every Request for Exclusion and objection received by the Settlement Administrator.

(c) If a Settlement Class Member submits both a timely and valid Request for Exclusion and timely and valid objection, the objection will be rejected and the Settlement Class Member's Request for Exclusion will be accepted.

**3.10 Motion for Final Approval.** At or before the Final Approval Hearing, Class Counsel shall apply to the Court for a Final Approval Order substantially in the form attached hereto as Exhibit 6, providing the following:

(a) finally approving this Agreement, adjudging the terms thereof to be fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Member; directing the Parties and their counsel to implement and consummate the Agreement according

## Exhibit A

to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(b) approving the notice, claims and objections procedures, and finding that the Notice Plan (1) constituted the best practicable notice under the circumstances; (2) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law;

(c) finding that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(d) approving and incorporating the Releases provided in Paragraphs 5.1, 5.2 and 5.3 and ordering that, as of the Effective Date, the Released Claims will be released and forever discharged as to the Released Parties;

(e) declaring that the Final Approval Order and General Judgment of Dismissal are binding on Class Representatives, Settlement Class Members and Class Counsel.

(f) stating that the Agreement shall not be offered or admitted into evidence and the Settlement shall not be or referred to in any way (orally or in writing) in any other action, arbitration, or other proceeding, except as allowed by OEC 408 or other similar rules (and specifically excepting the Action and/or a proceeding involving an effort to enforce the Agreement);

(g) permanently barring and enjoining all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or action in any jurisdiction based on the Released Claims;

(h) authorizing the Court to enter a General Judgment of Dismissal substantially in the form attached hereto as Exhibit 7; and

(i) retaining continuing and exclusive jurisdiction to enforce the terms of this Agreement.

**3.11** If the Court does not grant Final Approval and enter a General Judgment of Dismissal, or if the Court's Final Approval Order and General Judgment of Dismissal is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Attorney's Fee and Cost Award will not constitute a material modification to the Settlement within the meaning of this paragraph.

**3.12** After entry of the Final Approval Order and the General Judgment of Dismissal, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Agreement; (2) addressing settlement administration matters; and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

**3.13 Waiver of Right to Appeal.** Provided that the Final Approval Order and the General Judgment of Dismissal are consistent with the terms and conditions of this Agreement, if Settlement Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Final Approval Order and the General Judgment of Dismissal, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside the Final Approval Order and the General Judgment of Dismissal or any extraordinary writ, and the Final Approval Order and the General Judgment of Dismissal will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right of Class Counsel to appeal any award of their fees and costs that is less than they applied for, or to oppose any appeal, appellate proceeding, or post-judgment proceeding.

**3.14 Vacating, Reversing, or Modifying the Final Approval Order or the General Judgment of Dismissal on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Final Approval Order or the General Judgment of Dismissal such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Final Approval Order and the General Judgment of dismissal are not fully

affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount and an alteration in the calculation of the Net Settlement Amount.

#### **4. DISBURSEMENT OF THE SETTLEMENT FUND**

**4.1 Disbursement Plan.** Subject to the Court finally approving the Agreement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Class Counsel and Defendant's Counsel apprised of all distributions from the Settlement Fund. The Settlement Administrator shall respond to questions from Class Counsel and Defendant's Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

**4.2 Funding the Settlement Fund.** Defendant will make payments to the Settlement Fund established and controlled by the Settlement Administrator in accordance with the following schedule:

(a) **Settlement Payment.** Within twenty-one (21) business days after the date the Agreement becomes Final, Defendant will pay an amount equal to Eight Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$8,750,000.00) by wiring the funds into the Settlement Fund.

(b) **Administration Costs.** Amounts for the Notice Plan, Claims Process and other Settlement Administration Costs, Defendant will pay to the Settlement Fund within thirty (30) calendar days of when such amounts are invoiced to Defendant and become due and owing, up to a maximum amount of \$200,000.00. All amounts due and owing for Administration Costs in excess of \$200,000.00 will be the responsibility of the Settlement Class and Class Counsel and may be paid from other funds held in the Settlement Fund.

(c) **Service Awards.** Within twenty-one (21) business days after the date the Agreement becomes Final, Defendant will pay an amount equal to Plaintiffs' Service Awards, not to exceed \$6,000.00, as ordered by the Court, by wiring the funds into the Settlement Fund.

**4.3 Disbursements:** Within forty-five (45) business day after the date the Agreement becomes Final, the Settlement Administrator shall pay from the Settlement Fund (1) the Attorney's Fee and Cost Award, (2) the Service Awards, (3) the Administration Costs incurred to date and reasonably expected to be incurred through completion of the Settlement Administration, and (4) the Approved Claims.

**4.4 Disbursements for Uncleared Checks and Unclaimed Funds.** Claimants must cash or deposit their cash benefit checks within one hundred eighty (180) days after issuance. Any unclaimed funds remaining in the Settlement Fund after payments to Claimants and to the Settlement Administrator and any amounts unclaimed as a result of failure of a Claimant to cash or deposit a check within 180 days of issuance and any interest accrued on that amount will be paid pursuant to ORCP 32 O with one-half of these funds paid to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572, and the remaining one-half of these funds paid to Oregon Consumer Justice, a not-for-profit organization, as approved by the Court.

**4.5 Final Report by Settlement Administrator.** Within one (1) year after the completion of the Distribution Plan, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. Class Counsel will be responsible for submitting a final report to the Court pursuant to the Court's order or request.

## **5. RELEASE OF CLAIMS**

**5.1** In addition to the effect of any Final Approval Order and the General Judgment of Dismissal entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims.

**5.2** As of the Effective Date, and with the approval of the Court, all Releasing Parties hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Released Parties. As of the Effective Date, all

Releasing Parties will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims. All Releasing Parties, and anyone else purporting to act on behalf of, for the benefit of, or derivatively for any of them, are permanently barred from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim, including, without limitation, any claim that is based upon, arises out of, or relates to (i) the Action or the transactions and occurrences referred to in the Action or (ii) the surcharge charged by Defendant between September 9, 2019 and July 22, 2020.

**5.3** As of the Effective Date, Plaintiffs hereby waive and relinquish to the fullest extent permitted by law, California Civil Code section 1542. Each Plaintiff hereby certifies that they are aware of and have read and reviewed the following provision of California Civil Code section 1542:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

**5.4 Termination of Settlement.** In the event that the Settlement Agreement is terminated, cancelled, declared void or fails to become effective in accordance with its terms, or to the extent termination, cancellation, or voiding of the Settlement Agreement is otherwise provided, no payments shall be made or distributed to anyone in accordance with the terms of this Agreement. The Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. In such event, the terms and provisions of the Agreement shall have no further force and effect with respect to the Parties and shall not be used in this litigation or any other proceeding for any purpose, and any judgment or order entered by the Court in accordance



with the terms of the Agreement shall be treated as vacated, *nunc pro tunc*. In the event of a termination of Settlement, each party should bear its own costs and attorney's fees.

## 6. MISCELLANEOUS TERMS

**6.1 No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation, other than solely in connection with enforcing this Settlement, including to establish that Defendant is entitled to dismissal of Released Claims as a result of the Settlement Agreement.

**6.2 Change of Time Periods.** The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any provision of this Agreement.

**6.3 Time for Compliance.** If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

**6.4 Publicity; nondisparagement; confidentiality.** The Parties acknowledge and agree that the confidential mediation communications, including non-public information about the business practices and business records of Defendant disclosed solely during the scope of confidential mediation proceedings and settlement negotiations, and records marked confidential

and produced pursuant to the Stipulated Protective Order in this matter (“Confidential Information”) will not be disclosed to any third parties and will be returned to Defendant, with no copies retained after the Court issues Final Approval of the Settlement. The Parties further acknowledge and agree that such confidential mediation communications and Confidential Information have not and will not be used for any purpose other than for evaluating claims for purposes of entering into this Settlement Agreement. The Parties agree that if they make any written press release, announcement, disclosure or public statement, including on their websites or any social media accounts or statements to the media about the Settlement or its terms before the conclusion of the Claims Deadline, the Parties agree any such statement will be accurate and consistent with the information contained in the Class Notice and will not include or reference confidential mediation communications or Confidential Information not contained in the public record. Class Counsel and the Class Representatives agree that each of them will not make or cause to be made any statement at any time, directly or indirectly, orally, electronically or in writing, publicly or privately, post, publish, make or express any comment, view or opinion that defames, impugns, or disparages the Released Parties. If contacted by a Settlement Class Member, Class Counsel may provide advice or assistance and accurate information regarding any aspect of the Settlement requested by the Settlement Class Member. Neither Class Counsel nor the Class Representatives will solicit or otherwise encourage directly or indirectly any Settlement Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Final Approval Order or General Judgment of Dismissal. The Parties, Class Counsel and Defendant’s Counsel agree to keep the existence and contents of the term sheet and Agreement confidential until the filing of the motion for Preliminary Approval, except as the Parties may agree in writing.

**6.5 Integrated Agreement.** No oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement, and its exhibits. Notwithstanding any course of dealing to the contrary, no modification or amendment of this Agreement shall be effective until reduced to writing and signed by the Parties.

**6.6 Authorization to Enter into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

Additionally, each signatory to this Agreement who signs on behalf of another hereby warrants that it, he, or she has the authority to sign on behalf of such person or entity.

**6.7 Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written.

**6.8 Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

**6.9 Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

**6.10 Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

**6.11 No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly, or indirectly, assigned, transferred, encumbered, or purported to assign,

transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

**6.12 Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of Oregon, without giving effect to any conflict of law principles or choice of law principles.

**6.13 Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

**6.14 No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice nor making representations regarding tax obligations or consequences, if any, related to this Agreement; that Settlement Class Members will assume any such tax obligations or consequences that may arise from this Agreement; and that Settlement Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that taxes are due from any Settlement Class Member, such Settlement Class Member assumes all responsibility for the payment of such taxes. The Parties further agree that Defendant shall have no legal obligation to pay, on behalf of the Settlement Class Members, any taxes, deficiencies, levies, assessments, fines, penalties, interests, or costs, which may be required to be paid with respect to settlement payments.

**6.15 Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders in connection therewith.

**6.16 Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this

Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

**6.17 Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

**6.18 Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

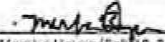
**6.19 Notices.** All notices to the Parties or their respective counsel required by this Agreement will be made in writing and communicated by email and mail to the following addresses: Michael Fuller, OlsenDaines, 111 SW 5th Avenue, Suite 3150, Portland, Oregon 97204, Michael@underdoglawyer.com; Sarah J. Crooks, Perkins Coie LLP, 1120 NW Couch Street, 10th Floor, Portland, Oregon 97209, SCrooks@perkinscoie.com.

7. EXECUTION BY THE PARTIES

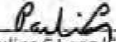
The Parties hereby execute this Agreement.

CLASS REPRESENTATIVES:

Dated: Feb 10, 2023 \_\_\_\_\_

  
Marsha Hayes (Feb 10, 2023 16:39 PST) \_\_\_\_\_

Dated: Feb 10, 2023 \_\_\_\_\_

  
Pauline C Long (Feb 10, 2023 16:51 PST) \_\_\_\_\_

CLASS COUNSEL:

Dated: Feb 13, 2023 \_\_\_\_\_

  
\_\_\_\_\_

DEFENDANT

Dated: \_\_\_\_\_

SAFEWAY, INC.

By: \_\_\_\_\_

DEFENDANT'S COUNSEL

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

PERKINS COIE LLP

By: \_\_\_\_\_

7. EXECUTION BY THE PARTIES

The Parties hereby execute this Agreement.

CLASS REPRESENTATIVES:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

CLASS COUNSEL:

Dated: \_\_\_\_\_

DEFENDANT

Dated: February 13, 2023

SAFEWAY, INC.

DocuSigned by:  
By: Jon-Peter F. Kelly  
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SVP - Head of Litigation

DEFENDANT'S COUNSEL

APPROVED AS TO FORM:

Dated: February 13, 2023

PERKINS COIE LLP

DocuSigned by:  
By: Sarah Crooks  
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