

EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

MARIA KARLA TERRAZA, individually and
on behalf of the SAFEWAY 401(k) Plan,

Plaintiff,

vs.

SAFEWAY INC., et al.,

Defendants.

Related Cases:

No. 3:16-cv-03994-JST

No. 3:16-cv-04903-JST

**SETTLEMENT AGREEMENT AND
RELEASE**

Judge: Hon. Jon Tigar

DENNIS M. LORENZ, on behalf of the Safeway
401(k) Plan,

Plaintiff,

vs.

SAFEWAY INC., et al.,

Defendants.

1 **WHEREAS**, on January 5, 2017, the Safeway Defendants filed a Motion to Dismiss the
2 Amended Complaint in the *Terraza* Action;

3 **WHEREAS**, on March 13, 2017, the Court entered an order granting in part and denying in
4 part the Safeway Defendants' Motion to Dismiss the Amended Complaint in the *Terraza* Action
5 and granting in part and denying in part the Motions to Dismiss in the *Lorenz* Action;

6 **WHEREAS**, on March 31, 2017, a Second Amended Complaint was filed in the *Terraza*
7 Action, adding Aon as a defendant, and a Third Amended Complaint was filed in the *Lorenz*
8 Action;

9 **WHEREAS**, on June 22, 2017, Aon filed a Motion to Dismiss the Second Amended
10 Complaint in the *Terraza* Action;

11 **WHEREAS**, the Court granted in part and denied in part Aon's Motion to Dismiss the
12 Second Amended Complaint in the *Terraza* Action on December 15, 2017;

13 **WHEREAS**, during the course of litigation, the Parties exchanged substantial
14 documentation and engaged in extensive fact and expert discovery (including over twenty
15 depositions), as well as other pretrial proceedings, and were able to fully evaluate the merits of the
16 Claims, and Defendants' defenses to the Claims;

17 **WHEREAS**, on July 6, 2018, Defendants filed Motions for Summary Judgment in the
18 Actions;

19 **WHEREAS**, on August 2, 2018, the Parties engaged in an in-person mediation session with
20 mediator, Robert A. Meyer (JAMS), which was unsuccessful;

21 **WHEREAS**, on April 12, 2019, the Court entered an order granting in part and denying in
22 part the Safeway Defendants' Motions for Summary Judgment in the Actions;

23 **WHEREAS**, the Parties prepared for trial, which entailed numerous Motions *in Limine* and
24 accompanying responses, a Motion for Reconsideration, the filing of a Joint Pre-trial Order, and the
25 Parties filing Proposed Findings of Fact and Conclusions of Law;

26 **WHEREAS**, on April 16, 2019, the Court granted in part and denied in part Aon's Motion
27 for Summary Judgment in the *Terraza* Action;

28

1 **WHEREAS**, on April 18, 2019, the Parties engaged in a second in-person mediation session
2 with mediator, Robert A. Meyer (JAMS), which resulted in a resolution being reached between
3 Plaintiffs and the Safeway Defendants;

4 **WHEREAS**, on May 2, 2019, Plaintiff Terraza reached a resolution with Aon based upon
5 the recommendation of the mediator, Robert A. Meyer (JAMS);

6 **WHEREAS**, the Parties have reached an agreement to settle the Claims in the Actions on
7 the terms and conditions set forth in this Agreement;

8 **WHEREAS**, Defendants have vigorously denied, and continue to vigorously deny, any
9 wrongdoing and any liability for the Claims;

10 **WHEREAS**, the Parties have decided to enter into this Settlement because it provides
11 substantial and meaningful benefits to the Members of the Class and the Plan, and to avoid the
12 uncertainties and risks of continued litigation; and

13 **WHEREAS**, entry into this Agreement is not an admission of liability by Defendants,
14 which liability each Defendant denies in its entirety.

15 **NOW, THEREFORE**, it is agreed by, between and among the undersigned that the Actions
16 shall be settled and dismissed with prejudice on the terms and conditions set forth herein, subject to
17 judicial approval.

18 **I. DEFINITIONS**

19 1.1. “Actions” shall mean the related *Maria Karla Terraza v. Safeway Inc., et al.*, N.D.
20 Cal. Case No. 3:16-cv-03994-JST (the “*Terraza Action*”) and *Dennis M. Lorenz v. Safeway Inc.,*
21 *et al.*, N.D. Cal. Case No. 3:16-cv-04903-JST (the “*Lorenz Action*”) lawsuits, and any and all
22 cases now or hereafter consolidated herewith.

23 1.2. “Active Accounts” shall mean Class Members’ accounts in the Plan, which have a
24 positive balance as of the date of the Preliminary Approval Order.

25 1.3. “Administration Costs” shall mean: (a) the costs and expenses associated with the
26 production, dissemination, and publication of the Notice; (b) all reasonable costs incurred by the
27 Settlement Administrator in administering and effectuating this Settlement, including the costs of
28 obtaining the Class Members’ contact and account information and distributing the Settlement

1 Amount, which costs are necessitated by performance and implementation of this Agreement and
2 any court orders relating thereto; and (c) all reasonable fees charged by the Settlement
3 Administrator.

4 1.4. "Alternate Payee" shall mean a person, other than a Participant or Beneficiary, who
5 is entitled to a benefit under the Plan as a result of a valid QDRO, as determined by the Plan
6 Administrator on or before the date of the Preliminary Approval Order, where the QDRO relates to
7 a Participant's or Former Participant's balance in the Plan during the Class Period.

8 1.5. "Aon" shall mean Defendant Aon Hewitt Investment Consulting, Inc.

9 1.6. "Attorneys' Fees and Expenses" shall mean any and all attorneys' fees, costs
10 (including fees and costs charged or incurred by retained experts or consultants), and expenses of
11 Class Counsel for their past, present, and future work, efforts, and expenditures in connection with
12 the Actions and Settlement.

13 1.7. "Authorized Former Participant" shall mean a Former Participant who has submitted
14 a Former Participant Claim Form by the Claims Deadline set by the Court in the Preliminary
15 Approval Order, and whose Former Participant Claim Form is accepted by the Settlement
16 Administrator and determined by the Settlement Administrator to be completed and satisfactory.

17 1.8. "Beneficiary" shall mean a person who is entitled to receive a benefit under the Plan,
18 as determined by the Plan Administrator on or before the date of the Preliminary Approval Order,
19 that is derivative of a deceased Participant's or Former Participant's interest in the Plan, other than
20 an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse,
21 domestic partner, child or other individual or trust designated by the Participant or Former
22 Participant, or determined under the terms of the Plan to be entitled to a benefit.

23 1.9. "Case Contribution Awards" shall have the meaning ascribed to it in Section 7.1.

24 1.10. "Claim(s)" shall mean the claims asserted in the Actions, or when used in the
25 singular in connection with either the *Terraza* Action or the *Lorenz* Action, the claims asserted in
26 the particular lawsuit referenced.

27 1.11. "Class" shall mean all current and former participants and beneficiaries of the Plan
28 at any time on or after July 14, 2010 through and including July 28, 2016, including any beneficiary

1 of a deceased person who was a participant in the Plan at any time during the Class Period, and any
2 alternate payees, in the case of a person subject to a QDRO who was a participant in the Plan at any
3 time during the Class Period. The Class shall exclude all Defendants.

4 1.12. "Class Counsel" shall mean: Shepherd, Finkelman, Miller & Shah, LLP;
5 Schneider, Wallace, Cottrell, Konecky, Wotkyns, LLP; Duckworth & Peters LLP; Olivier
6 Schreiber & Chao LLP; and the Law Offices of Sahag Majarian II.

7 1.13. "Class Member" in the singular shall mean an individual member of the Class
8 and "Class Members" in the plural shall mean all Members of the Class.

9 1.14. "Court" shall mean Hon. Jon S. Tigar of the United States District Court for the
10 Northern District of California.

11 1.15. "Defendants" shall mean Defendants Safeway Inc., the Safeway Benefit Plans
12 Committee (incorrectly named and sued as the "Benefit Plans Committee Safeway Inc.") (n/k/a
13 Albertsons Companies Retirement Benefit Plans Committee), Peter J. Bocian, David F. Bond,
14 Michael J. Boylan, Robert B. Dimond, Laura A. Donald, Dennis J. Dunne, Robert L. Edwards,
15 Bradley S. Fox, Bernard L. Hardy, Russell M. Jackson, Peggy Jones, Suz-Ann Kirby, Robert
16 Larson, Melissa C. Plaisance, Paul Rowan, Andrew J. Scoggin (the preceding entities and persons
17 identified in this Section 1.15 are, at times, collectively referred to as the "Safeway Defendants"),
18 and Aon.

19 1.16. "Defendants' Counsel" shall mean R. Bradford Huss of Trucker Huss, APC for
20 the Safeway Defendants, and Randall W. Edwards of O'Melveny & Myers LLP for Aon.

21 1.17. "Defendant Released Parties" shall mean (a) Defendants and, as applicable, each of
22 Defendant's predecessors, successors, shareholders, current and former parents, subsidiaries,
23 affiliates, divisions, related companies, assigns, descendants, dependents, beneficiaries, marital
24 community, heirs, executors, representatives and administrators; and (b) each of the current and
25 former officers, directors, trustees, and fiduciaries (including but not limited to the current and
26 former trustees and fiduciaries of the Plan, with the exception of the Independent Fiduciary),
27 committees, employees, investment consultants, recordkeepers (including Plan Recordkeepers),
28

1 administrators, actuaries, agents, insurers, representatives, vendors, attorneys, and retained experts
2 of the entities and individuals identified following (a) in this Section 1.17.

3 1.18. “Effective Date” shall mean (a) the date upon which the applicable period to appeal
4 the Final Approval Order and Judgment has expired, if no appeal is taken during such period; or (b)
5 if, during the appeals period, an appeal is taken from such Final Approval Order and Judgment, the
6 date upon which all appeals, including further petitions for review, rehearing, or certiorari, and any
7 proceedings resulting therefrom, have been finally disposed of, or the date upon which the
8 applicable period to initiate all such further petitions or proceedings has expired. The Parties shall
9 agree in writing when the Effective Date has occurred, and any dispute shall be resolved by the
10 Court. It is expressly agreed by the Parties and their counsel that no Party intends this Section 1.18
11 or any other part of this Agreement to establish or acknowledge that anyone is entitled to or has the
12 right to appeal from the Final Approval Order and Judgment.

13 1.19. “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as
14 amended.

15 1.20. “Escrow Account” shall mean an account at an established Financial Institution
16 agreed upon by the Parties that is established for the deposit of the Settlement Amount and
17 amounts relating to it, such as interest earned on investment of the Settlement Amount.

18 1.21. “Escrow Agent” shall mean the entity approved by the Parties to act as escrow
19 agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account
20 pursuant to this Agreement.

21 1.22. “Fee and Expense Application” shall mean the petition to be filed by Class
22 Counsel seeking approval of an award of Attorneys’ Fees and Expenses.

23 1.23. “Final Approval Hearing” shall mean the hearing to be held before the Court
24 pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should
25 receive final approval by the Court. The Parties will request that the Final Approval Hearing be
26 scheduled for a date no earlier than one hundred ten (110) calendar days after the entry of the
27 Preliminary Approval Order.

1 1.24. “Final Approval Order and Judgment” shall mean a final order entered by the
2 Court after the Final Approval Hearing, substantially the same in all material respects to that
3 attached hereto as **Exhibit A**, granting its approval of the Settlement. The Parties may agree to
4 additions or modifications to the form of the Final Approval Order and Judgment as they agree
5 are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

6 1.25. “Financial Institution” shall mean Huntington Bank, the institution at which the
7 Escrow Account is established.

8 1.26. “Former Participant” shall mean any Class Member who maintained a positive
9 balance in the Plan at any time between July 14, 2010 and July 28, 2016, but who does not have
10 an Active Account.

11 1.26.1. “Former Participant Claim Form” shall mean the form to be provided to
12 Former Participants and returned to the Settlement Administrator by Former Participants and
13 Beneficiaries.

14 1.27. “Independent Fiduciary” shall mean the person or entity selected by the Parties
15 to serve as an independent fiduciary to the Plan with respect to the Agreement as defined in
16 paragraph 2.7.

17 1.28. “Independent Fiduciary Fees and Costs” shall mean all reasonable fees, costs, and
18 expenses of the Independent Fiduciary. The Independent Fiduciary Fees and Costs shall be paid
19 from the Settlement Fund after such funds are deposited with the Escrow Agent and upon receipt
20 of an invoice from the Independent Fiduciary.

21 1.29. “Lead Counsel” shall mean Shepherd, Finkelman, Miller & Shah, LLP.

22 1.30. “Net Settlement Amount” means the Settlement Amount minus (a) all Attorneys’
23 Fees and Expenses paid to Class Counsel; (b) all Case Contribution Awards; (c) all Administrative
24 Costs (and any contingency reserve for Administrative Expenses); and (d) all Independent Fiduciary
25 Fees and Costs approved by the Court.

26 1.31. “Notice” shall mean the notice, identical in all material respects to that attached
27 hereto as **Exhibit B-1**, to be provided directly to Class Members pursuant to Section 2.6 and
28 made available on the Settlement Website and the website of Lead Class Counsel.

1 1.31.1. “Summary Notice” shall mean the notice, identical in all material
2 respects to that attached hereto as **Exhibit B-2**, to be issued as a press release by the Settlement
3 Administrator on PRNewswire.

4 1.32. “Participant” shall mean any Class Member who maintained a positive balance in
5 the Plan at any time between July 14, 2010 and July 28, 2016, and has an Active Account.

6 1.33. “Parties” in the plural shall mean Plaintiffs and Defendants and “Party” in the
7 singular shall mean one of the Parties.

8 1.34. “Plaintiffs” shall mean Plaintiffs Maria Karla Terraza and Dennis M. Lorenz,
9 individually and on behalf of the Class and the Plan.

10 1.35. “Plan” shall mean the Safeway 401(k) Plan, now known as the Albertsons
11 Companies 401(k) Plan.

12 1.36. “Plan Administrator” shall mean the Safeway Benefit Plans Committee, now
13 known as the Albertsons Companies Retirement Benefit Plans Committee.

14 1.37. “Plan of Allocation” shall mean the framework for allocating the Settlement Fund
15 that is approved by the Court, which framework shall be in the form attached hereto as **Exhibit C**.

16 1.38. “Plan Recordkeepers” shall mean The Vanguard Group, Inc. and Great-West
17 Financial Retirement Plan Services, LLC (d.b.a. Empower), or their successors, if applicable.

18 1.39. “Preliminary Approval Order” shall mean an order entered by the Court
19 preliminarily approving the Settlement, pursuant to Section 2.3, which order is
20 substantially the same in all material respects to that attached hereto as **Exhibit D**.

21 1.40. “QDRO” shall mean, for the purposes of this Agreement, a valid Qualified Domestic
22 Relations Order as defined in 29 U.S.C. § 1056(d)(3)(K), and as determined by the Plan
23 Administrator on or before the date of the Preliminary Approval Order.

24 1.41. “Released Claims” shall be any and all actual or potential claims (including any
25 Unknown Claims), actions, causes of action, demands, obligations, or liabilities (including claims
26 for attorney’s fees, expenses, or costs), for monetary, injunctive, and any other relief against the
27 Defendant Released Parties through the date the Court enters the Final Approval Order and
28 Judgment arising out of or in any way related to: (a) the conduct alleged in the Actions, including

1 conduct that was alleged in, or could have been alleged in, the Actions' operative Complaints by
2 any Class Member, whether or not the conduct was actually included as counts in those Complaints;
3 (b) the selection, retention, and monitoring of the Plan's actual or potential investment options and
4 service providers; (c) the performance, fees, and other characteristics of the Plan's investment
5 options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping and other
6 service provider fees; (e) the nomination, appointment, retention, monitoring, and removal of the
7 Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement. The
8 Released Claims shall not include claims to enforce the covenants or obligations set forth in this
9 Agreement. Because this is not a general release, the provisions of Section 1542 of the California
10 Code do not apply.

11 1.42. "Safeway" shall mean Defendant Safeway Inc.

12 1.43. "Settlement" shall mean the compromise and resolution embodied in this Agreement.

13 1.44. "Settlement Administrator" shall mean Strategic Claims Services.

14 1.45. "Settlement Allocation Score" shall have the meaning described in Section 1.5.1 of
15 the Plan of Allocation.

16 1.46. "Settlement Amount" shall mean eight million five hundred thousand dollars
17 (\$8,500,000.00). The Settlement Amount is comprised of eight million dollars (\$8,000,000.00) that
18 Safeway will pay or cause to be paid to the Settlement Fund, and five hundred thousand dollars
19 (\$500,000.00) that Aon will pay or cause to be paid to the Settlement Fund, with neither Safeway
20 nor Aon having any obligation to pay or cause to be paid the amount stated in this Section 1.46 as to
21 be paid or caused to be paid by the other.

22 1.47. "Settlement Fund" shall have the meaning set forth in Section 3.1(b).

23 1.48. "Settlement Website" shall have the meaning set forth in Section 2.6.

24 1.49. "Taxes" shall have the meaning set forth in Section 3.1(i).

25 1.50. "Tax-Related Costs" shall have the meaning ascribed to it in Section 3.1(i).

26 1.51. "Unknown Claims" shall mean any Released Claims that Plaintiffs or any Class
27 Members do not know or suspect to exist in their favor at the time of the release of the Defendant
28 Released Parties, including claims which, if known by them, might have affected their settlement

1 with the Defendants and release of the Defendant Released Parties, or might have affected their
2 decision not to object to this Settlement. Plaintiffs or any Class Member may later discover facts in
3 addition to or different from those which they now know or believe to be true with respect to the
4 subject matter of the Released Claims, but Plaintiffs and all Class Members, upon the date of the
5 Court's entry of the Final Approval Order and Judgment, shall be deemed to have, and by operation
6 of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released
7 all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent,
8 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of
9 law or equity now existing or coming into existence in the future, including, but not limited to,
10 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule,
11 without regard to the subsequent discovery or existence of such different or additional facts.
12 Plaintiffs and all Class Members shall be deemed by operation of the Final Approval Order and
13 Judgment to have acknowledged that the foregoing waiver was bargained for and is a key element
14 of the Settlement of which their release and waiver of Unknown Claims is a part.

15 **II. SETTLEMENT APPROVAL**

16 2.1. *Motions for Leave to Amend Complaint.*

17 a) Plaintiff will take no further action in the *Lorenz* Action pending preliminary
18 and final approval of the Settlement. Plaintiff will inform the Court in the *Lorenz* Action
19 that the pending settlement on behalf of a nationwide class for which approval will be
20 sought would include full and final resolution of the *Lorenz* Action, and will seek a formal
21 stay or similar administrative relief if required by the Court. Within five (5) days following
22 the Effective Date, Plaintiff in the *Lorenz* Action and the Safeway Defendants will file a
23 stipulation directing the Clerk to dismiss the *Lorenz* Action in its entirety, with prejudice,
24 pursuant to Northern District of California Civil Local Rule 77-2(c).

25 b) As soon as practicable after agreement to all settlement terms, Plaintiff shall
26 file a Third Amended Complaint in the *Terraza* Action. The Third Amended Complaint will
27 add Dennis M. Lorenz, Plaintiff in the *Lorenz* Action, as a class representative and will seek
28 certification of a nationwide class for settlement purposed pursuant to Rule 23(b)(1). These

1 class action allegations will be for settlement purposes only, and Plaintiffs will not seek
2 leave to add any other new allegations or claims to the amended complaint. The putative
3 Class will be a non-opt out Class, and will be defined as all Participants, Former
4 Participants, Beneficiaries, and Alternate Payees in the Plan at any time between July 14,
5 2010 and July 28, 2016. Defendants will stipulate to the filing of the Third Amended
6 Complaint. In the event that the Settlement does not receive final approval for any reason,
7 the Third Amended Complaint shall be deemed withdrawn and Plaintiffs and the Safeway
8 Defendants shall be restored to the position they occupied as of April 22, 2019, and Plaintiff
9 Terraza and Aon shall be restored to the position they occupied as of May 2, 2019.

10 2.2. **Motion for Class Certification.** No later than September 13, 2019, in conjunction
11 with their Motion for Preliminary Approval, Plaintiffs shall move the Court for certification of the
12 Class for settlement purposes only. Defendants will not object to Plaintiffs' motion for class
13 certification for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and
14 23(b)(1). If the Court does not issue the Final Approval Order and Judgment, then no Class shall be
15 deemed to have been certified by or as a result of this Agreement, Defendants shall not be deemed
16 to have admitted the propriety of certification of the Class under any provisions of Federal Rule 23,
17 and the Actions shall for all purposes revert to their status on April 22, 2019 as to the Claims
18 against the Safeway Defendants, and May 2, 2019 as to the Claims against Aon.

19 2.3. **Motion for Preliminary Approval.** No later than September 13, 2019, Plaintiffs
20 shall move the Court for preliminary approval of the Settlement, including entry of an order
21 identical in all material respects to the form of the Preliminary Approval Order. Defendants will not
22 object to Plaintiffs' motion for preliminary approval of the Settlement but reserve the right to make
23 a submission related to the motion.

24 2.4. **Rights of Exclusion.** Class Members shall not be permitted to exclude themselves
25 from the Class.

26 2.5. **Right to Object.** Class Members shall be permitted to object to the Settlement.
27 Requirements for filing an objection shall be set forth in the Preliminary Approval Order and in
28 the Class Notice.

1 2.6. ***Class Notice.***

2 a) Within forty-five (45) calendar days of the entry of the Preliminary
3 Approval Order or as may be modified by the Court, the Settlement Administrator shall
4 send the Notice by electronic mail (if available) or first-class mail to the Class
5 Members. The Notice shall be sent to the last known electronic mail address or last
6 known mailing address of the Class Members that are reasonably obtainable from the
7 Plan Recordkeepers. The Settlement Administrator shall update mailing addresses
8 through the National Change of Address database before mailing (with all returned mail
9 skip-traced and promptly re-mailed). The Settlement Administrator shall use
10 commercially reasonable efforts to locate any Class Member whose Notice is returned
11 and re-mail such Notice one additional time if an updated location is identified. The
12 Settlement Administrator shall also cause the Summary Notice to be issued as a press
13 release with national distribution via PRNewswire within forty-five (45) calendar days
14 of entry of the Preliminary Approval Order.

15 b) The Former Participant Claim Form must be returned to the Settlement
16 Administrator within ninety (90) days of entry of the Preliminary Approval Order by all
17 Former Participants, and Beneficiaries or Alternate Payees who do not have Active
18 Accounts, who wish to receive the benefits of this Settlement. For each such Former
19 Participant, Beneficiary, and/or Alternate Payee that has not returned the Former Participant
20 Claim Form within fifty (50) days of the entry of the Preliminary Approval Order, the
21 Settlement Administrator will send within fourteen (14) days thereafter a post card by
22 electronic mail (if available) or first class mail, postage prepaid, to such Class Member
23 notifying them again of the deadline by which to submit the Former Participant Claim Form,
24 unless the previous mailings and communications to the Class Member have been returned
25 as undeliverable and the Settlement Administrator is unable to identify a valid electronic
26 mail or physical mailing address through the exercise of reasonable and good faith efforts.

27 c) Within thirty (30) calendar days of the entry of the Preliminary Approval
28 Order and no later than the first date that the e-mailing or the mailing of the Notice occurs,

1 or as may be extended by the Court on application of the Parties, the Settlement
2 Administrator shall establish a website containing the Notice and this Agreement and its
3 exhibits, the Third Amended Complaint, the motions for preliminary approval and final
4 approval (when filed); the Motion for Attorneys' Fees and Expenses (when filed); any approval
5 order or other Court orders related to the Settlement, any amendments or revisions to these
6 documents, and any other documents or information mutually agreed upon by the Settling
7 Parties. The Settlement Website URL web address shall be mutually agreed upon by the
8 Parties. No other information or documents (other than the date, time, and location of the
9 Fairness Hearing and the toll-free number for the call center described in Paragraph 2.6(d)
10 below) will be posted on this website unless agreed to in advance by the Parties in writing. The
11 Notice will identify the web address of this website.

12 d) Within thirty (30) calendar days of the entry of the Preliminary Approval Order
13 and no later than the first date that the e-mailing or the mailing of the Notice occurs, or as
14 may be extended by the Court on application of the Parties, the Settlement Administrator
15 shall establish a toll-free telephone number to which Class Members can direct questions
16 about the Settlement. The Settlement Administrator shall develop a question-and-answer-
17 type script, with input and approval from Defendants' Counsel and Class Counsel, for the
18 use of persons who answer calls to this line.

19 **2.7. Approval of Settlement by Independent Fiduciary.** The Independent Fiduciary
20 retained by the Parties shall have the following responsibilities on behalf of the Plan:

21 a) The Independent Fiduciary shall determine whether to approve and
22 authorize the settlement of Released Claims on behalf of the Plan.

23 b) The Independent Fiduciary shall comply with all relevant conditions set
24 forth in Prohibited Transaction Class Exemption 2003-39, "Release of Claims and
25 Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the
26 United States Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"),
27 in making its determination, for the purpose of Defendants' reliance on PTE 2003-39.
28

1 c) The Independent Fiduciary shall notify Defendants of its determination in
2 writing and in accordance with PTE 2003-39, which notification shall be delivered no
3 later than thirty (30) calendar days before the Fairness Hearing.

4 d) Defendants, Defendants' Counsel, Plaintiffs and Class Counsel shall
5 provide the Independent Fiduciary with sufficient information so that the Independent
6 Fiduciary can review and evaluate the Agreement.

7 e) Should the Independent Fiduciary fail to approve and authorize the
8 Settlement or fail to give a release on behalf of the Plan, the Agreement shall be terminable,
9 pursuant to Section 8.3.

10 2.8. ***Class Action Fairness Act Notice.*** The Settlement Administrator, on behalf of
11 Defendants, shall comply with the notice requirements of 28 U.S.C. § 1715, and pursuant to the
12 Preliminary Approval Order, shall file a notice with the Court confirming compliance at least thirty
13 (30) calendar days prior to the Final Approval Hearing.

14 2.9. ***Motion for Final Approval.*** Plaintiffs shall move the Court for final approval of the
15 Settlement no later than the deadline set by the Court in the Preliminary Approval Order, or as may
16 be extended by the Court on application of the Parties. On or after the date set by the Court for the
17 Final Approval Hearing pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court shall
18 determine, among other things: (a) whether to enter the Final Order and Judgment finally approving
19 the Settlement; and (b) what, if any, Case Contribution Awards and Attorneys' Fees and Expenses
20 should be awarded to Plaintiffs and Class Counsel, respectively, pursuant to Sections 7.1 and 7.2 of
21 this Agreement.

22 **III. PAYMENTS TO THE CLASS**

23 3.1. ***The Settlement Amount.***

24 a) In consideration of all of the promises and agreements set forth in this
25 Agreement, Safeway and Aon will each pay, or cause to be paid, the Settlement Amount
26 applicable to it, as specified in Section 1.46. None of the other Defendant Released Parties
27 shall have any obligation to contribute financially to this Settlement. It is understood and
28 agreed by the Parties that, by paying the Settlement Amount, Defendants do not agree with

1 or in any way admit, and shall not be deemed to agree with or in any way admit, any of
2 Plaintiffs' or Class Counsel's theories regarding Defendants' liability in the Actions,
3 including that any of Defendants' prior or existing actions or practices are in violation of any
4 federal or state laws, statutes, or regulations. Prior to the execution of this Agreement,
5 Plaintiffs will provide a completed W-9 and wire instructions and an address for the
6 institution where the Settlement Amount will be paid.

7 b) Safeway and Aon each shall pay, or cause to be paid, its portion of the
8 Settlement Amount as set forth in section 1.46 in two segments, and the total funding, in the
9 aggregate, together with any interest and investment earnings thereon, shall constitute the
10 "Settlement Fund." First, Safeway shall pay, or cause to be paid, \$200,000 of the Settlement
11 Amount and Aon shall pay, or cause to be paid, \$10,000, with those amounts to be deposited
12 by wire transfer into the Escrow Account within fifteen (15) calendar days of the entry of
13 the Preliminary Approval Order to fund any Administration Costs and Independent
14 Fiduciary Fees and Costs that arise before the Court's entry of the Final Approval Order and
15 Judgment. Second, Safeway and Aon shall each pay, or cause to be paid, the remaining
16 portion of its respective Settlement Amount obligation to be deposited by wire transfer into
17 the Escrow Account within fifteen (15) calendar days following the Court's entry of the
18 Final Approval Order and Judgment, subject to the provisions of Section 8.5.

19 c) The Settlement Amount shall be used solely for the purposes set forth in
20 Section 3.1(j).

21 d) Subject to Court approval and oversight, the Escrow Account will be
22 controlled by the Settlement Administrator. Neither Defendants, Defendants' Counsel, the
23 Defendant Released Parties, Plaintiffs, nor Class Counsel shall have any liability
24 whatsoever for the acts or omissions of the Settlement Administrator. The Settlement
25 Administrator shall not disburse the Settlement Amount or any portion of the Settlement
26 Fund except as provided for in this Agreement, by an order of the Court, or with prior
27 written agreement of Class Counsel and Defendants' Counsel.
28

1 e) The Settlement Administrator is authorized to execute transactions on
2 behalf of Class Members that are consistent with the terms of this Agreement and with
3 orders of the Court.

4 f) All funds held in the Escrow Account shall be deemed to be in the custody
5 of the Court and shall remain subject to the jurisdiction of the Court until the funds are
6 distributed in accordance with this Agreement.

7 g) The Settlement Administrator shall, to the extent practicable and prudent,
8 invest the Settlement Fund in discrete and identifiable instruments backed by the full faith
9 and credit of the United States Government or fully insured by the United States
10 Government or an agency thereof, and shall reinvest the proceeds of these instruments as
11 they mature in similar instruments at their then-current market rates. The Settlement
12 Administrator shall maintain records identifying in detail each instrument in which the
13 Settlement Fund or any portion thereof has been invested, and identifying the precise
14 location (including any safe deposit box number) and form of holding of each such
15 instrument. Neither the Settlement Fund nor any portion thereof shall be commingled with
16 any other monies in any instruments. Any cash portion of the Settlement Fund not invested
17 in instruments of the type described in the first sentence of this Section 3.1(g) shall be
18 maintained by the Settlement Administrator, and not commingled with any other monies, in
19 a bank account, which shall promptly be identified to the Parties at any Party's request by
20 bank and account number and any other identifying information. The Settlement
21 Administrator and Class Members shall bear all risks related to investment of the Settlement
22 Fund. All income, gain, or loss earned by the investment of the Settlement Amount shall be
23 credited to the Escrow Account.

24 h) The Escrow Account is intended to be a "Qualified Settlement Fund" within
25 the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as
26 administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation
27 §1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account
28 and paying from the Escrow Account any Taxes owed with respect to the Escrow Account.

1 Safeway and Aon agree to provide the Settlement Administrator with the statement
2 described in U.S. Treasury Regulation §1.468B-3(e). Neither Defendants, Defendants’
3 Counsel, the Defendant Released Parties, Plaintiffs, nor Class Counsel shall have any
4 liability or responsibility of any sort for filing any tax returns or paying any taxes with
5 respect to the Escrow Account.

6 i) All taxes on the income of the Escrow Account (“Taxes”) and expenses and
7 costs incurred in connection with the taxation of the Escrow Account (including expenses of
8 tax attorneys and accountants) (“Tax-Related Costs”) shall be timely paid by the Settlement
9 Administrator out of the Escrow Account.

10 j) The Settlement Fund will be used to pay the following amounts associated
11 with the Settlement:

- 12 (1) Compensation to Class Members determined in accordance with
13 Section 3.2;
- 14 (2) Any Case Contribution Awards approved by the Court;
- 15 (3) All Attorneys’ Fees and Expenses approved by the Court;
- 16 (4) Independent Fiduciary Fees and Costs;
- 17 (5) Administration Costs; and
- 18 (6) Taxes and Tax-Related Costs.

19 **3.2. *Distribution to Class Members.***

20 a) The Settlement Fund will be distributed to Class Members in accordance
21 with the Plan of Allocation.

22 b) Notwithstanding anything else in this Agreement, any revisions to the Plan of
23 Allocation that would increase the Settlement Amount or require Safeway, Aon, or their
24 affiliates to incur additional expenses or costs or to provide data not reasonably available
25 shall be deemed a material alteration of this Agreement and shall entitle Safeway and Aon,
26 at their election, to terminate the Agreement. In no event, and notwithstanding anything else
27 in this Agreement, shall Defendants be required to pay any amounts other than the
28 Settlement Amount. It is understood and agreed that Defendants’ monetary obligations

1 under this Agreement will be fully discharged by paying the amounts specified in paragraph
2 1.46 above and that Defendants shall have no other monetary obligations, or obligations to
3 make any other payments under this Agreement or otherwise.

4 c) Class Members who receive a check from the Settlement Administrator under
5 the Plan of Allocation must cash their checks within one hundred and eighty (180) calendar
6 days of issuance. If they do not do so, the checks will be void, and the Settlement
7 Administrator shall be instructed to return any such funds to the Settlement Fund pursuant to
8 Section 3.4. This limitation shall be printed on the face of each check. Notwithstanding
9 these requirements, the Settlement Administrator shall have the authority to reissue checks
10 to Class Members where it determines there is good cause to do so, provided that doing so
11 will not compromise the Settlement Administrator's ability to implement the Plan of
12 Allocation. The voidance of checks shall have no effect on the Class Members' release of
13 claims, obligations, representations, or warranties as provided herein, which shall remain in
14 full effect.

15 3.3. ***Responsibility for Taxes on Distribution.*** Each Class Member who receives a
16 payment under this Agreement shall be fully and ultimately responsible for payment of any and
17 all federal, state, or local taxes resulting from or attributable to the payment received by such
18 person. Each Class Member shall hold Defendants, Defendants' Counsel, the Defendant
19 Released Parties, Class Counsel, and the Settlement Administrator harmless from (a) any tax
20 liability, including without limitation penalties and interest, related in any way to payments or
21 credits under the Agreement, and (b) the costs (including, without limitation, fees, costs and
22 expenses of attorneys, tax advisors, and experts) of any proceedings (including, without
23 limitation, any investigation, response, and/or suit), related to such tax liability.

24 3.4. ***Treatment of Undistributed Funds and Uncashed Checks.*** Any funds associated
25 with checks that are not cashed within one hundred and eighty (180) calendar days of issuance and
26 any funds that cannot be distributed to Class Members for any other reason, together with any
27 interest earned on them, and any funds remaining after the payment of any applicable Taxes by the
28

1 Escrow Agent, shall be returned to the Settlement Fund by the Settlement Administrator to be
2 distributed as described in the Plan of Allocation.

3 3.5. **Administration Costs.** The Administration Costs shall be paid from the Settlement
4 Fund. The Settlement Administrator will reserve from the Settlement Fund its estimated
5 Administration Costs. Beginning thirty (30) calendar days after the entry of the Preliminary
6 Approval Order, and on every thirtieth (30th) calendar day thereafter, the Settlement Administrator
7 shall provide the Parties with a detailed accounting of any Administration Costs expended to date
8 and an invoice for the amount of such Administration Costs. Any disputes as to whether amounts
9 billed by the Settlement Administrator are reasonable and necessary under this Agreement shall be
10 resolved by the Court.

11 3.6. **Entire Monetary Obligation.** Notwithstanding anything else in this Agreement, in
12 no event shall Defendants be required to pay any amounts under this Agreement or otherwise, other
13 than each Party's portion of the Settlement Amount applicable to it, as specified in Section 1.46.

14 **IV. SETTLEMENT ADMINISTRATION**

15 4.1. Safeway shall use reasonable efforts to cause the Plan Recordkeepers to provide to
16 the Settlement Administrator, within thirty (30) calendar days of the entry of the Preliminary
17 Approval Order, the participant data sufficient to effectuate the Notice, implement the Plan of
18 Allocation, and distribute the Settlement Fund. Subject to at least thirty (30) calendar days' written
19 notice from the Settlement Administrator, Safeway shall also use reasonable efforts to cause the
20 current Plan Recordkeeper to provide an updated list of Participants prior to the distribution, in
21 order to identify any such participants who have taken a full distribution from their Plan account
22 and no longer have a Plan account with a positive balance. Safeway shall not otherwise be
23 obligated to assist with effecting Notice, implementation of the Plan of Allocation, or distribution of
24 the Settlement Fund.

25 4.2. The Settlement Administrator shall administer the Settlement subject to the
26 supervision by Class Counsel, Defendants' Counsel, and the Court as circumstances may require.

27 4.3. Defendants, Defendants' Counsel, and the Defendant Released Parties shall have
28 no responsibility for, interest in, or liability whatsoever with respect to:

- 1 a) Any act, omission, or determination of the Settlement Administrator, Class
2 Counsel, or designees or agents of Class Counsel or the Settlement Administrator;
- 3 b) The management, investment, or distribution of the Settlement Fund;
- 4 c) The determination, administration, calculation, or payment of any claims
5 asserted against the Settlement Fund, or
- 6 d) As to any Defendant, any act, omission, or determination of other
7 Defendants or other Defendants' counsel.

8 4.4. The Settlement Administrator shall provide to Class Counsel and Defendants'
9 Counsel, no less frequently than monthly, a full accounting of all expenditures made in
10 connection with the Settlement, including Administration Costs (as noted in Section 3.5), and any
11 distributions from the Settlement Fund.

12 4.5. The Settlement Administrator shall provide such information as may be reasonably
13 requested by Plaintiffs or Defendants or their counsel relating to administration of this
14 Agreement.

15 **V. RELEASES, COVENANTS, AND JUDICIAL FINDINGS**

16 5.1. ***Release of Defendants and the Defendant Released Parties.*** Subject to Part VIII of
17 this Agreement, upon and through the date of the Court's entry of the Final Approval Order and
18 Judgment, Plaintiffs and each Class Member (on behalf of themselves and their current and former
19 beneficiaries, heirs, descendants, dependents, marital community, administrators, executors,
20 representatives, predecessors, successors, and assigns), and the Plan (by and through the Independent
21 Fiduciary pursuant to Section 2.7) absolutely and unconditionally release and forever discharge all
22 Released Claims.

23 5.2. ***Covenant Not to Sue.*** Upon and through the date of the Court's entry of the Final
24 Approval Order and Judgment, Plaintiffs, Class Members, and Class Counsel (on behalf of
25 themselves and any successors-in-interest) shall be deemed to have, and by operation of the Final
26 Approval Order and Judgment, shall have, fully, finally, and forever released, relinquished, and
27 discharged, and shall forever be enjoined from prosecution of the Defendant Released Parties from
28 any and all Released Claims.

1 Plaintiffs and Class Members further agree that, outside of the Actions, none of them will
2 institute, maintain, prosecute, sue, or assert in any claim, action, or proceeding, whether
3 individually, in a representative capacity, or on behalf of the Plan, against the Defendant Released
4 Parties based on conduct subsequent to, or any liability or damages claimed to arise or occur after,
5 the date of the Court's entry of the Preliminary Approval Order, related to the conduct or practices
6 this Agreement requires Defendants to undertake. Nothing herein shall preclude any action to
7 enforce the terms of this Agreement pursuant to the procedures set forth in this Agreement.

8 Should Plaintiffs or Class Members breach the terms of this Section 5.2, Defendants and the
9 Defendant Released Parties may recover any attorney's fees and costs that they may incur to
10 enforce the provisions of this Section 5.2 after Defendants provide notice and a reasonable
11 opportunity to cure to any alleged breaching Plaintiffs or Class Members.

12 5.3. ***Defendants' Releases of Others.*** Upon and through the date of the Court's entry of
13 the Final Approval Order and Judgment, Defendants (on behalf of themselves and any successors-
14 in-interest) each shall be deemed to have, and by operation of the Final Approval Order and
15 Judgment, shall have, fully, finally, and forever released, relinquished, and discharged, and shall
16 forever be enjoined from prosecution of the other Defendant Released Parties, Plaintiffs, the Plan,
17 Class Members, and Class Counsel from any and all actual or potential claims, actions, causes of
18 action, demands, obligations, liabilities, attorneys' fees and costs, whether under local, state or
19 federal law, whether by statute, contract, common law or equity, whether brought in an individual,
20 representative or any other capacity, whether known or unknown, suspected or unsuspected,
21 asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated,
22 relating to the Actions.

23 5.4. ***Taxation of Settlement Fund.*** Plaintiffs and Class Members acknowledge that
24 the Defendant Released Parties have no responsibility for any taxes due on funds deposited in or
25 distributed from the Settlement Fund, or on any funds that Plaintiffs, Class Members, or Class
26 Counsel receive from the Settlement Fund, including through any Case Contribution Awards or
27 Attorneys' Fees and Expenses award, as applicable.

28

1 5.5. *Use of Settlement Administrator Information.* Class Counsel, Defendants’
2 Counsel, and the Defendants shall have equal access to information held by the Settlement
3 Administrator given that such information is necessary to administer this Settlement.

4 5.6. *Use of Safeway and Plan Information.* Class Counsel and their agents, as well
5 as the Settlement Administrator, shall use any information provided by Safeway or the Plan
6 Recordkeepers pursuant to this Agreement solely for the purpose of providing the Notice and
7 administering this Settlement and for no other purpose. Such information shall be marked
8 “Confidential” and treated as such under the Protective Orders governing the Actions. *See* Case No.
9 3:16-cv-03994, Dkt. 52; Case No. 3:16-cv-04903, Dkt. 64.

10 **VI. REPRESENTATIONS AND WARRANTIES**

11 6.1. *Parties’ Representations and Warranties.* The Parties, and each of them, represent
12 and warrant as follows, and each Party acknowledges that each other Party is relying on these
13 representations and warranties in entering into this Agreement:

14 a) The Parties have diligently investigated the claims in this Action; that they
15 are voluntarily and knowingly entering into this Agreement as a result of arm’s-length
16 negotiations among their counsel; that in executing this Agreement they are relying solely
17 upon their own judgment, belief and knowledge, and the advice and recommendations of
18 their own independently-selected counsel, concerning the nature, extent and duration of their
19 rights and claims hereunder and regarding all matters that relate in any way to the subject
20 matter hereof; and that, except as provided in this Agreement, they have not been influenced
21 to any extent whatsoever in executing this Agreement by any representations, statements, or
22 omissions pertaining to any of the foregoing matters by any Party or by any person
23 representing any Party. Each Party assumes the risk of mistake as to facts or law;

24 b) The Parties have carefully read the contents of this Agreement and this
25 Agreement is signed freely by each signatory executing the Agreement on behalf of the
26 applicable Party. The Parties, and each of them, further represent and warrant to each
27 other that he, she, or it has made such investigation of the facts pertaining to this
28

1 Settlement, this Agreement, and all of the matters pertaining thereto, as he, she, or it
2 deems necessary;

3 c) That Plaintiffs have not assigned or otherwise transferred any interest in any
4 Released Claim against any Defendant Released Parties, and that they shall not assign or
5 otherwise transfer any interest in any Released Claims; and

6 d) Plaintiffs, on behalf of themselves and the Class, will have no surviving
7 claims or causes of action against any of the Defendant Released Parties for any of the
8 Released Claims, from and after the Effective Date.

9 6.2. ***Signatories' Representations and Warranties.*** Each counsel or other person
10 executing this Agreement on behalf of any Party represents and warrants that such person has
11 the authority to do so.

12 **VII. MONETARY PAYMENTS**

13 7.1. ***Case Contribution Awards.***

14 a) Plaintiffs Maria Karla Terraza and Dennis M. Lorenz intend to seek a Case
15 Contribution Award not to exceed the amount of \$10,000 each, subject to Court approval
16 (“Case Contribution Awards”). Any Case Contribution Awards approved by the Court
17 shall be paid within thirty (30) calendar days of the Effective Date. The Case Contribution
18 Awards shall be paid by the Settlement Administrator solely out of the Settlement Fund
19 and shall be deducted (to the extent approved by the Court) from the Settlement Fund on or
20 after the Effective Date and prior to the distribution of the Settlement Fund to the Class
21 Members. Plaintiffs shall also be entitled to distribution under this Settlement pursuant to
22 Section 3.2 as Class Members.

23 b) Notwithstanding any other provision of this Agreement to the contrary, the
24 procedure for and the allowance or disallowance (in whole or in part) by the Court of any
25 application for the Case Contribution Awards shall be considered by the Court separately
26 from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and
27 any order or proceedings relating to the Case Contribution Awards, or any appeal of any
28

1 order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed
2 material thereto.

3 c) Other than the Settlement Amount, Defendants shall have no obligations
4 whatsoever with respect to any Case Contribution Award to Plaintiffs, which shall be
5 payable solely out of the Settlement Fund.

6 **7.2. Attorney's Fees and Expenses.**

7 a) Class Counsel intend to submit a Motion for Attorneys' Fees and Expenses
8 seeking an award of Attorneys' Fees not to exceed 33.33% of the Settlement Amount, plus
9 reasonable litigation Expenses not to exceed \$500,000.00, at the appropriate time. Any
10 amount awarded by the Court in response to such Motion shall be paid by the Settlement
11 Administrator solely out of the Settlement Fund and shall be deducted (to the extent
12 approved by the Court) from the Settlement Fund and paid to Lead Class Counsel within
13 thirty (30) calendar days of the Effective Date. Lead Class Counsel will thereafter
14 distribute any Fees and Expenses awarded to Class Counsel.

15 b) Notwithstanding any other provision of this Agreement to the contrary, the
16 procedure for and the allowance or disallowance (in whole or in part) by the Court of the
17 Motion for Attorneys' Fees and Expenses to be paid out of the Settlement Fund shall be
18 considered by the Court separately from its consideration of the fairness, reasonableness, and
19 adequacy of the Settlement, and any order or proceedings relating to the award of
20 Attorneys' Fees and Expenses, or any appeal of any order relating thereto, shall not operate
21 to terminate or cancel this Agreement or be deemed material thereto.

22 c) Other than the Settlement Amount, Defendants shall have no obligations
23 whatsoever with respect to any Attorneys' Fees and Expenses incurred by Class Counsel,
24 which shall be payable solely out of the Settlement Fund.

25 **VIII. CONTINGENCIES, EFFECT OF DISAPPROVAL, OR TERMINATION OF**
26 **SETTLEMENT**

27 8.1. This Agreement and the Settlement shall terminate and be cancelled if, within ten
28 (10) calendar days after any of the following events, one of the Parties provides all other Parties

1 with written notification of an election to terminate the Settlement, provided that the Parties shall
2 negotiate in good faith to cure any deficiency identified by the Court:

3 a) The Court declines to permit Plaintiffs to file their Third Amended Complaint
4 as described under Section 2.1;

5 b) The Court declines to certify the Class as described under Section 2.2;

6 c) The Court declines to provide preliminary approval of this Agreement, or
7 declines to enter, or materially modifies, the contents of the Preliminary Approval Order, or
8 the Preliminary Approval Order is vacated, reversed, or modified in any material respect on
9 any appeal or other review or in a collateral proceeding occurring prior to the Effective
10 Date;

11 d) The Court declines to provide final approval of this Agreement, or declines to
12 enter, or materially modifies, the contents of the Final Approval Order and Judgment;

13 e) The Court's Final Approval Order and Judgment is vacated, reversed, or
14 modified in any material respect on any appeal or other review or in a collateral
15 proceeding occurring prior to the Effective Date; or

16 f) The Effective Date does not get triggered for some other reason by December
17 31, 2021.

18 8.2. For purposes of this Agreement, no order of the Court, or modification or reversal
19 on appeal of any order of the Court, solely concerning the administration of the Settlement or the
20 persons performing such administrative functions, or the amount or award of any Attorneys' Fees
21 and Expenses or Case Contribution Awards shall constitute grounds for cancellation or termination
22 of the Agreement, provided that such order, modification, or reversal does not increase any
23 Defendant's total financial obligation under this Settlement, including its portion of the Settlement
24 Amount, or impose injunctive relief against any Defendant.

25 8.3. This Agreement and the Settlement shall terminate and be cancelled at the sole
26 election of Safeway or Aon if the Independent Fiduciary disapproves or otherwise does not
27 authorize the Settlement or refuses to approve the release on behalf of the Plan of the Released
28 Claims. Alternatively, Safeway and Aon shall have the option to waive this condition. Unless

1 otherwise agreed by the Parties, either option is to be exercised in writing within the earlier of (a)
2 ten (10) business days after the Parties' receipt of the Independent Fiduciary's written
3 determination under Section 2.7, or (b) three (3) business days prior to the date set for the Final
4 Approval Hearing.

5 8.4. This Agreement and the Settlement shall terminate and be cancelled if: (a) any
6 federal or state authorities object to, or request material modifications to, the Agreement; and (b)
7 within ten (10) business days after the deadline set in the Preliminary Approval Order for such
8 objections or requests, or within ten (10) business days of receiving any such objection or request,
9 if later, Safeway or Aon provide written notice of their election to terminate the Settlement.

10 8.5. If for any reason this Agreement is terminated or fails to become effective, then:

11 a) The Plaintiffs and the Safeway Defendants shall be deemed to have reverted
12 to their respective status in the Actions as of April 22, 2019, and Plaintiff Terraza and Aon
13 shall be deemed to have reverted to their respective status in the *Terraza* Action as of May
14 2, 2019. The Actions shall then resume proceedings in the Court, and, except as otherwise
15 expressly provided in this Agreement, the Parties shall proceed in all respects as if this
16 Agreement and any related orders had not been entered.

17 b) Class Counsel and Defendants' Counsel shall within ten (10) business days
18 after the date of termination of the Agreement jointly notify the Financial Institution in
19 writing to return to Safeway and Aon, or its designees, the full amount contained in the
20 Settlement Fund, with all interest and income earned thereon, based on the percentage of
21 monies that Safeway and Aon contributed to the Settlement Amount as described in Section
22 1.46, after deduction of any amounts earlier disbursed and/or incurred by the Settlement
23 Fund as of the termination, and direct the Financial Institution to effect such return within
24 fourteen (14) calendar days after such notification. Prior to the return of amounts
25 contemplated by this Section 8.5(b), the Financial Institution shall fully and finally fulfill
26 and set aside for any and all tax obligations of the Settlement Fund as set forth in Section
27 3.1(i). Safeway and Aon shall have no past, present, or future liability whatsoever for any
28 such tax obligations.

1 c) Part VIII of this Agreement, and its provisions, shall survive any termination
2 of this Agreement and the Settlement, as will Sections 3.3, 4.3, 5.4, and 5.6.

3 **IX. NO ADMISSION OF WRONGDOING**

4 9.1. *No Admission of Wrongdoing.* The Parties understand and agree that this
5 Agreement embodies a compromise settlement of disputed claims, and that nothing in this
6 Agreement, including the furnishing of consideration for this Agreement, shall be deemed to
7 constitute any finding or admission of any wrongdoing or liability by any of the Defendants, or
8 give rise to any inference of wrongdoing or liability in the Actions or any other proceeding. This
9 Agreement and the consideration provided hereunder are made in compromise of disputed claims
10 and are not admissions of any liability of any kind, whether legal or factual. The Defendants
11 specifically deny any such liability or wrongdoing, and Safeway and Aon state that they are
12 entering into the Agreement solely to eliminate the burden and expense of protracted litigation.
13 Further, Plaintiffs have concluded that the terms of this Agreement are fair, reasonable, and
14 adequate to the Plan, themselves, and the Class given, among other things, the inherent risks,
15 difficulties, and delays in complex ERISA lawsuits, like the Actions. Neither the fact of this
16 Settlement nor the terms of this Agreement shall be used, offered, or received in evidence in any
17 action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement,
18 whether affirmatively or defensively.

19 **X. MISCELLANEOUS**

20 10.1. *Waiver.* The provisions of this Agreement may be waived only by an instrument
21 in writing executed by the waiving Party. The waiver by any Party of any breach of this
22 Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior,
23 subsequent, or contemporaneous, of this Agreement.

24 10.2. *Dispute Resolution.* If a dispute arises regarding compliance with any of the
25 provisions of this Agreement, it shall first be mediated in non-binding mediation by a mutually
26 agreed mediator. The cost of any mediation shall be split equally between Plaintiffs, on the one
27 hand, and Safeway and Aon, on the other hand. If mediation is unsuccessful, then any remaining
28 disputes regarding compliance with this Agreement shall be heard only by this Court.

1 10.3. **Entire Agreement.** This Agreement is the entire agreement among the Parties and it
2 supersedes any prior agreements, written or oral, between the Parties. This Agreement cannot be
3 altered, modified, or amended except through a writing executed by either (a) Plaintiffs and
4 Defendants, or (b) Class Counsel and Defendants' Counsel.

5 10.4. **Construction of Agreement.** This Agreement shall be construed to effectuate the
6 intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have
7 participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of
8 a presumption in favor of any Party. The Agreement was reached at arm's length by the Parties
9 represented by counsel. None of the Parties shall be considered to be the drafter of this Agreement
10 or any provision hereof for the purposes of any statute, case law, or rule of interpretation or
11 construction.

12 10.5. **Principles of Interpretation.** The following principles of interpretation apply to
13 this Agreement:

14 a) The headings of this Agreement are for reference only and do not affect in
15 any way the meaning or interpretation of this Agreement.

16 b) Definitions apply to the singular and plural forms of each term defined.

17 c) Definitions apply to the masculine, feminine, and neutral genders of each
18 term defined.

19 d) References to a person are also to the person's permitted successors and
20 assignees.

21 e) Whenever the words "include," "includes," or "including" are used in this
22 Agreement, they shall not be limiting but rather shall be deemed to be followed by the
23 words "without limitation."

24 10.6. **Executed in Counterparts.** This Agreement may be executed in counterparts,
25 each of which shall be considered the same as if a single document had been executed. The
26 Agreement shall be deemed executed by all Parties when such counterparts have been signed by
27 each of the Parties' counsel and delivered to the other Parties. Counterpart copies of signature
28

1 pages, whether delivered in original, by electronic mail in .pdf format or by facsimile, taken
2 together, shall all be treated as originals and binding signatures.

3 **10.7. Notices.** Unless otherwise provided herein, any notice, request, instruction,
4 application for Court approval, or application for Court order sought in connection with the
5 Agreement, shall be in writing and delivered personally or sent by certified mail or overnight
6 delivery service, postage prepaid, with copies by facsimile or e-mail to the attention of Class
7 Counsel or Defendants' Counsel, as applicable (as well as to any other recipients that a court may
8 specify). Parties may change the person(s) to whom such notices should be directed by giving
9 notice pursuant to this Section 10.7. As of the date hereof, the respective representatives are as
10 follows:

11 **For Safeway Defendants:**

12 **R. Bradford Huss**
13 TRUCKER HUSS, APC
14 One Embarcadero Center, 12th Floor
15 San Francisco, CA 94111
16 Telephone: (415) 788-3111
17 Facsimile: (415) 421-2017
18 Email: bhuss@truckerhuss.com

19 **For Aon:**

20 **Randall W. Edwards**
21 O'MELVENY & MYERS LLP
22 Two Embarcadero Center, 28th Floor
23 San Francisco, CA 94111
24 Telephone: (415) 984-8700
25 Facsimile: (415) 984-8701
26 Email:redwards@omm.com

27 **For Plaintiffs:**

28 **James E. Miller**
SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
65 Main Street
Chester, CT 06412
Telephone: (860) 526-1100
Facsimile: (866) 300-7367
Email: jmiller@sfmslaw.com

1 10.8. **Extensions of Time.** The Parties may agree, subject to the approval of the Court
2 where required, to reasonable extensions of time to carry out the provisions of the Agreement.

3 10.9. **Governing Law.** Except to the extent required by federal law, this Agreement shall
4 be governed by and construed in accordance with the laws of California without giving effect to
5 any conflict of law provisions that would cause the application of the laws of any jurisdiction other
6 than California.

7 10.10. **Fees and Expenses.** Except as otherwise expressly set forth herein, each Party shall
8 pay all fees, costs, and expenses incurred in connection with the Actions, including fees, costs, and
9 expenses incident to his, her, or its negotiation, preparation, or compliance with this Agreement,
10 and including any fees, expenses, and disbursements of its counsel, accountants, experts and other
11 advisors. Nothing in this Agreement shall require Defendants to pay any monies other than as
12 expressly provided herein.

13 10.11. **Communication with Plan Participants.** Nothing in this Agreement or
14 Settlement shall prevent or inhibit Safeway's ability to communicate with Active Participants,
15 Inactive Participants, or Former Participants of the Plan.

16 10.12. **Retention of Jurisdiction.** The Parties shall request that the Court retain
17 jurisdiction of this matter after the Effective Date and enter such orders as necessary or
18 appropriate to effectuate the terms of the Agreement.

1 DATED: September 13, 2019

TRUCKER ♦ HUSS, APC

2
3 By: /s/ R. Bradford Huss
4 R. Bradford Huss
5 Joseph C. Faucher
6 Angel L. Garrett
7 Dylan D. Rudolph
8 On Behalf of Defendants
9 *Safeway Inc., the Safeway Benefit Plans*
10 *Committee (incorrectly named and sued as the*
11 *“Benefit Plans Committee Safeway Inc.”)*
12 *(n/k/a Albertsons Companies Retirement*
13 *Benefit Plans Committee), Peter J. Bocian,*
14 *David F. Bond, Michael J. Boylan, Robert B.*
15 *Dimond, Laura A. Donald, Dennis J. Dunne,*
16 *Robert L. Edwards, Bradley S. Fox, Bernard L.*
17 *Hardy, Russell M. Jackson, Peggy Jones, Suz-*
18 *Ann Kirby, Robert Larson, Melissa C.*
19 *Plaisance, Paul Rowan, Andrew J. Scoggin*

12 DATED: September 13, 2019

O’MELVENY & MYERS LLP

13 By: /s/ Randall W. Edwards
14 Brian Boyle
15 Randall W. Edwards
16 Adam M. Kaplan
17 On Behalf of Defendant
18 *Aon Hewitt Investment Consulting Inc.*

18 DATED: September 13, 2019

SHEPHERD FINKELMAN MILLER &
SHAH, LLP

19
20 By: /s/ James E. Miller
21 James E. Miller
22 Laurie Rubinow
23 On Behalf of
24 *Plaintiff Maria Karla Terraza, the Class, and*
25 *the Plan*

23 DATED: September 13, 2019

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS, LLP

25 By: /s/ James A. Bloom
26 Todd M. Schneider
27 Jason H. Kim
28 James A. Bloom
On Behalf of
Plaintiff Dennis M. Lorenz, the Class, and the
Plan

Exhibit A

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2
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

MARIA KARLA TERRAZA,
individually and on behalf of the
SAFEWAY 401(k) Plan,

Plaintiff,

vs.

SAFEWAY INC., et al.,

Defendants.

Related Cases:

No. 3:16-cv-03994-JST

No. 3:16-cv-04903-JST

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Judge: Hon. Jon Tigar

FINAL APPROVAL ORDER AND JUDGMENT

1
2 WHEREAS, Plaintiff Maria Karla Terraza and Class Representative Dennis M. Lorenz
3 (collectively, “Plaintiffs”) in the *Maria Karla Terraza v. Safeway Inc., et al.*, N.D. Cal. Case No.
4 3:16-cv-03994-JST, (with Lorenz having also maintained the related action, *Dennis Lorenz v.*
5 *Safeway Inc., et al.*, N.D. Cal. Case No. 3:16-cv-04903-JST) (collectively, the “Actions”), on
6 their own behalf and on behalf of the Class and the Plan, on the one hand, and Defendants
7 Safeway Inc., the Safeway Benefit Plans Committee (incorrectly named and sued as the “Benefit
8 Plans Committee Safeway Inc.”), Peter J. Bocian, David F. Bond, Michael J. Boylan, Robert B.
9 Dimond, Laura A. Donald, Dennis J. Dunne, Robert L. Edwards, Bradley S. Fox, Bernard L.
10 Hardy, Russell M. Jackson, Peggy Jones, Suz-Ann Kirby, Robert Larson, Melissa C. Plaisance,
11 Paul Rowan, Andrew J. Scoggin, and Aon Hewitt Investment Consulting, Inc. (collectively, the
12 “Defendants”), on the other hand, have entered into a Settlement Agreement and Release dated
13 September 13, 2019 (the “Agreement”), which provides for a complete dismissal with prejudice
14 of all claims asserted in the Actions against Defendants by the Class on the terms and conditions
15 set forth in the Agreement, subject to the approval of this Court (the “Settlement”);

16 WHEREAS, the capitalized terms not defined in this Final Approval Order and Judgment
17 shall have the same meaning ascribed to them in Part I of the Agreement;

18 WHEREAS, by Order dated _____ (the “Preliminary Approval
19 Order”), this Court (1) preliminarily certified the Class for settlement purposes only; (2)
20 preliminarily approved the Settlement; (3) appointed a Settlement Administrator; (4) directed
21 notice be given to the Class and approved the form and manner of Notice; (5) approved the Plan
22 of Allocation; (6) scheduled a Final Approval Hearing; and (7) scheduled a hearing on Class
23 Counsel’s Fee and Expense Application and Plaintiffs’ request for Case Contribution Awards;

24 WHEREAS, the Court conducted a hearing on _____ (the “Final
25 Approval Hearing”) to consider, among other things: (1) whether the Class should be certified
26 for settlement purposes only; (2) whether the proposed Settlement on the terms and conditions
27 provided for in the Agreement is fair, reasonable, adequate, and in the best interests of the Class
28 and should be finally approved by the Court; (3) whether Class Counsel’s Fee and Expense

1 Application is reasonable and should be approved; (4) whether Plaintiffs' requests for Case
2 Contribution Awards are reasonable and should be approved; and (5) whether this Final
3 Approval Order and Judgment should be entered dismissing with prejudice all claims asserted in
4 the Actions against Defendants; and

5 WHEREAS, the Court having reviewed and considered the Agreement, all papers filed
6 and proceedings held herein in the Actions in connection with the Settlement, all oral and written
7 comments received regarding the Settlement, and the record in the Actions, and good cause
8 appearing therefor;

9 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

10 1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Actions,
11 and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties
12 and each of the Class Members.

13 2. **Incorporation of Settlement Documents:** This Final Approval Order and
14 Judgment incorporates and makes a part hereof: (a) the Agreement filed with the Court on
15 September 6, 2019, including the exhibits submitted therewith; and (b) the Notice approved by
16 the Court on _____.

17 3. **Class Certification:** The Court has held that the non-opt out Class should be
18 certified under Federal Rule of Civil Procedure 23(a) and 23(b)(1), under the terms of the
19 Agreement. The Court confirms that the class preliminarily certified under Fed. R. Civ. P.
20 23(b)(1) is appropriate for the reasons set forth in its Preliminary Approval Order, and hereby
21 finally certifies the following non-opt-out class:

22 All Participants, Former Participants, Beneficiaries, and Alternate Payees in the Plan at
23 any time on or after July 14, 2010 through and including July 28, 2016, and the
24 Beneficiaries or Alternate Payees of any such person.

25 The Class excludes all Defendants.

26 4. **Notice:** The Court finds that the dissemination of the Notice: (a) was implemented
27 in accordance with the Preliminary Approval Order; (b) constituted the best notice reasonably
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1 practicable under the circumstances; (c) constituted notice that was reasonably calculated, under
2 the circumstances, to apprise all Class Members of the pendency of the Actions, of the effect of
3 the Settlement (including the releases provided for therein), of their right to object to the
4 Settlement and appear at the Final Approval Hearing, of Class Counsel's Fee and Expense
5 Application, and of Plaintiffs' request for Case Contribution Awards; (d) constituted due,
6 adequate, and sufficient notice to all persons or entities entitled to receive notice of the
7 proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil
8 Procedure, the United States Constitution including the Due Process Clause, and all other
9 applicable law and rules.

10 5. **Objections:** The Court finds _____.

11 6. **Final Settlement Approval:** Pursuant to Fed. R. Civ. P. 23(e), the Court hereby
12 approves the Settlement and the terms therein as a fair, reasonable, and adequate settlement and
13 compromise of the claims asserted in the Class Action. The Court finds that the Settlement is
14 fair, reasonable, and adequate to the Plan and Class Members based on the following findings of
15 fact, conclusions of law, and determinations of mixed fact/law questions:

- 16 a. The Settlement resulted from arm's-length negotiations by experienced and
17 competent counsel overseen by a neutral mediator;
- 18 b. The Settlement was negotiated only after Class Counsel had conducted a pre-
19 settlement investigation and received pertinent information and documents from
20 Defendants in discovery;
- 21 c. Class Counsel and Plaintiff were well-positioned to evaluate the value of the
22 Actions;
- 23 d. If the Settlement had not been achieved, Plaintiffs and the Class Members faced
24 significant expense, risk, and uncertainty in connection with the litigation, which
25 likely would have been prolonged;
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- 1 e. The amount of the Settlement is fair, reasonable, and adequate in light of the
2 claims that were asserted, the risks of litigation, and settlements in other similar
3 cases, and the Plan of Allocation is also fair, reasonable, and appropriate;
- 4 f. The Class Representative and Class Counsel support the Settlement, and have
5 concluded that the Agreement is fair, reasonable, and adequate;
- 6 g. Class Members had the opportunity to be heard on all issues relating to the
7 Settlement and the requested Administrative Expenses, Attorneys' Fees and
8 Costs, and Class Representative's Compensation by submitting objections to the
9 Settlement Agreement to the Court. There were no objections to the Settlement.
- 10 h. The Settlement also was reviewed by an Independent Fiduciary, _____,
11 who has approved and authorized the Settlement.

12 7. The Motion for Final Approval of the Settlement Agreement is hereby
13 GRANTED, the settlement of the Class Action is APPROVED as fair, reasonable, and adequate
14 to the Plan and the Settlement Class, and the Parties are hereby directed to take the necessary
15 steps to effectuate the terms of the Agreement.

16 8. Plaintiffs' Motion for Attorneys' Fees and Expenses and request for Case
17 Contribution Awards, is hereby approved.

18 9. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil
19 Procedure, this Court fully and finally approves the Settlement set forth in the Agreement in all
20 respects including, without limitation, the terms of the Settlement; the releases provided for
21 therein; and the dismissal with prejudice of the claims asserted in the Actions, and finds that the
22 Settlement is, in all respects, fair, reasonable, and adequate, and is in the best interests of
23 Plaintiffs, the Class, and the Plan. The Parties are directed to implement, perform, and
24 consummate the Settlement in accordance with the terms and provisions of the Agreement.

25 10. The Settlement Administrator shall have final authority to determine the share of
26 the Net Settlement Amount to be allocated to each Active Participant and each Authorized
27 Former Participant pursuant to the Plan of Allocation.
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1 11. With respect to payments or distributions to Authorized Former Participants, all
2 questions not resolved by the Settlement Agreement shall be resolved by the Settlement
3 Administrator in its sole and exclusive discretion.

4 12. Within twenty-one (21) calendar days following the issuance of all settlement
5 payments to Class Members as provided by the Plan of Allocation, the Settlement Administrator
6 shall prepare and provide to Class Counsel and Defense Counsel a list of each person who
7 received a settlement payment or contribution from the Qualified Settlement Fund and the
8 amount of such payment or contribution.

9 13. **Dismissal of Claims:** As of the Effective Date, pursuant to Fed. R. Civ. P. 54(b),
10 all of the Claims against Defendants are dismissed with prejudice. The Parties shall bear their
11 own costs and expenses, except as otherwise expressly provided in the Agreement.

12 14. **Binding Effect:** The terms of the Agreement and of this Final Approval Order
13 and Judgment shall be forever binding on Defendants, Plaintiffs, and all Class Members, as well
14 as their respective current and former beneficiaries, heirs, descendants, dependents, marital
15 communities, administrators, executors, representatives, predecessors, successors, and assigns,
16 and as described under the Agreement.

17 15. **CAFA:** Pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, et seq., a
18 separate notice of the Settlement (“CAFA Notice”) was provided to the Attorneys General for
19 each of the states in which a Class Member resides, the Attorney General of the United States,
20 and the United States Secretary of Labor. All requirements of the Class Action Fairness Act
21 (“CAFA”), 29 U.S.C. § 1711, et seq., have been met, and Defendants have fulfilled their
22 obligations under CAFA.

23 16. **Releases:** The releases of the Released Claims, as set forth in the Agreement (the
24 “Releases”), are expressly incorporated herein in all respects. The Releases are effective as of
25 the date of the entry of this Final Approval Order and Judgment.

26 17. **No Admissions:** This Final Approval Order and Judgment, the Preliminary
27 Approval Order, the Agreement (whether or not consummated), including the exhibits thereto and
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1 the Plan of Allocation contained therein (or any other plan of allocation that may be agreed-upon
2 by the Parties or approved by the Court) and any other supporting papers, and any related
3 negotiations or proceedings: (a) shall not give rise to any inference of, and shall not be construed
4 or used as an admission, concession, or declaration against any of the Defendant Released Parties
5 of wrongdoing or liability in the Actions or any other proceeding; (b) are not an admission of any
6 liability of any kind, whether legal or factual; (c) shall not be used or received in evidence in any
7 action or proceeding for any purpose, except in an action or proceeding to enforce the Agreement,
8 whether affirmatively or defensively; (d) shall not be construed or used as an admission,
9 concession, or declaration by or against Plaintiffs, the Plan, or the Class that their claims lack
10 merit or that the relief requested in the Actions is inappropriate, improper, or unavailable; and (e)
11 shall not be construed or used as an admission, concession, declaration, or waiver by any Party
12 of any arguments, defenses, or claims he, she, or it may have in the event that the Agreement is
13 terminated. This Order and the Agreement and any proceedings taken pursuant to the
14 Agreement are for settlement purposes only.

15 18. **Retention of Jurisdiction:** Without affecting the finality of this Final Approval
16 Order and Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a)
17 the Parties for purposes of the administration, interpretation, implementation, and enforcement of
18 the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's Fee and Expense
19 Application and Plaintiffs' request for Case Contribution Awards; and (d) the Class Members for
20 all matters relating to the Actions.

21 19. **Modification of the Agreement:** Without further approval from the Court,
22 Plaintiffs and Defendants are authorized to agree to and adopt such amendments or modifications
23 of the Agreement or any exhibits attached thereto to effectuate this Settlement that: (a) are not
24 materially inconsistent with this Final Approval Order and Judgment; and (b) do not materially
25 limit the rights of Class Members in connection with the Settlement.

26 20. **Termination:** If the Settlement does not go into effect or is terminated as
27 provided for in the Agreement, then this Final Approval Order and Judgment (and any orders of
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1 the Court relating to the Settlement) shall be vacated, rendered null and void, and be of no
2 further force or effect, except as otherwise provided by the Agreement.

3 21. **Entry of Final Judgment:** There is no just reason to delay entry of this Final
4 Approval Order and Judgment as a final judgment with respect to the claims asserted in the
5 Actions. Accordingly, the Clerk of the Court is expressly directed to immediately enter this
6 Final Approval Order and Judgment pursuant to Fed. R. Civ. P. 54(b) as against Defendants.

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9 **SO ORDERED** this _____ day of _____, 2019.

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The Honorable Jon S. Tigar
United States District Judge
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EXHIBIT B-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you were or are a participant in the Safeway Inc. 401(k) Plan n/k/a the Albertsons Companies, Inc. 401(k) Plan, your legal rights will be affected by this class action settlement.

The case is called *Terraza v. Safeway Inc., et al.*, No. 3:16-cv-03994-JST (N.D. Cal.). A Court authorized this Notice. This is not a solicitation from a lawyer.

This Notice advises you of the settlement (“Settlement”) of a lawsuit against Safeway Inc. (“Safeway”), the Benefit Plans Committee of Safeway Inc. n/k/a Albertsons Companies Retirement Benefits Plans Committee (“BPC”), certain current and former members of the BPC (collectively, the “Safeway Defendants”), and Aon Hewitt Investment Consulting, Inc. (“Aon”) (the Safeway Defendants and Aon are collectively referred to as the “Defendants”). In the lawsuit, Plaintiff Maria Karla Terraza (“Plaintiff Terraza”) and Class Representative Dennis Lorenz (collectively, “Plaintiffs”) allege that Defendants violated the Employee Retirement Income Security Act of 1974 (“ERISA”) by, among other things, failing to perform proper oversight of the Safeway Inc. 401(k) Plan (“Plan”). Defendants deny these allegations and deny that they engaged in any improper conduct. You should read this entire Notice carefully because your legal rights will be affected by whether you act or not.

Your rights and options, and the deadline for you to object if you are opposed to the Settlement, are explained in this Notice.

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BASIC INFORMATION

1. Why did I get this Notice?

You have been identified as a Participant, Former Participant, Beneficiary or Alternate Payee of a Participant, of the Plan at any time on or after July 14, 2010 through July 28, 2016.

You are receiving this Notice because you have a right to know about the proposed Settlement of a class action lawsuit in which you are a Class Member before the Court decides whether to approve the Settlement.

This Notice summarizes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The lawsuit is pending in the United States District Court for the Northern District of California (the “Court”). It is known as *Terraza v. Safeway, Inc., et al.*, No. 3:16-cv-03994-JST (N.D. Cal.), and is brought against Defendants.

2. What is this lawsuit about?

On July 14, 2016, Plaintiff Terraza filed an action against Safeway and the BPC, alleging that they violated ERISA by, among other things, failing to perform proper oversight of the Plan. Since the filing of the action, the parties engaged in litigation, including adding certain current and former members of the BPC and Aon as defendants, exchanging substantial documentation and engaging in extensive fact and expert discovery [including over twenty (20) depositions], briefing motions to dismiss and for summary judgment and preparing for trial. In April 2019, the Parties mediated the action and ultimately were able to reach the terms of the Settlement explained in this Notice. Defendants have denied and continue to deny any wrongdoing or liability and would continue to vigorously defend the lawsuit if the proposed Settlement is not approved.

3. What is a class action lawsuit?

In a class action lawsuit, one or more people called “class representatives” sue on their own behalf and on behalf of other people who they allege may have similar claims. One court resolves all the issues for all class members in a single lawsuit. Plaintiffs, Maria Karla Terraza and Dennis Lorenz are the class representatives in this lawsuit, and are sometimes referred to in this Notice as the “Class Representatives” or as the “Plaintiffs.”

4. Why is there a Settlement?

The Parties have agreed to the Settlement after extensive negotiations. By agreeing to a Settlement, the Parties avoid the costs and risks of further litigation, and Plaintiffs and the other members of the Class will get compensation. Class Counsel have conducted an extensive review of the evidence in the case and the potential risks and benefits of continued litigation. Plaintiffs and Class Counsel agree that the Settlement is in the best interest of the Class. The Court has not made any finding that Defendants have done anything wrong or violated any law or regulation.

5. How do I get more information about the Settlement?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www._____.com, by contacting Class Counsel (*see* answer to question 12 for contact information) or the Settlement Administrator (*see* answer to question 6 for contact information), by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, James R. Browning Federal Courthouse, 450 Golden Gate Ave., San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

6. Who will administer the Settlement?

The Settlement Administrator, Strategic Claims Services, will administer the Settlement, including the processing of the Former Participant Claim Form, if applicable, that you may need to fill out and send in to receive any settlement payment. You may contact the Settlement Administrator by: (a) sending a letter to Terraza 401k Settlement Administrator, c/o _____; (b) sending an e-mail to _____; (c) visiting the Settlement website at _____; or (d) calling _____.

THE SETTLEMENT BENEFITS – WHAT DOES THE SETTLEMENT PROVIDE

7. What does the Settlement provide?

Defendants have agreed to pay a total of \$8,500,000 to the Class Members with up to 33.33% of that amount to be paid to Class Counsel in attorneys' fees to the extent approved by the Court, up to \$500,000 to be paid to reimburse Class Counsel's expenses, including expert costs, and \$10,000 to be paid to each of the two Class Representatives, to the extent approved by the Court. The amount that will be available for distribution to Class Members (known as the "Net Settlement Amount") will be the Settlement Amount *minus* the amounts used for other Settlement purposes (Case Contribution Fees, Court-approved Attorneys' Fees and Expenses to Class Counsel, Administration Expenses, and certain taxes and tax-related costs).

8. How may I benefit from the Settlement?

You may benefit by receiving payment of a portion of the Net Settlement Amount. The amount paid to each Current Participant and Authorized Former Participant will be determined by a Plan of Allocation. As explained below, if you are a Current Participant, or Beneficiary or Alternate Payees of a Plan participant and you have an active account in the Plan, you do not need to take any action in order to receive payment under the Settlement. If you are a Former Participant, or a Beneficiary or Alternate Payee of a Plan participant and you do not have an active account in the Plan, you will need to submit a Former Participant Claim Form by the deadline for submission in order to receive payment under the Settlement. Payments made to Current Participants, or to Beneficiaries or Alternate Payees of Plan participants who have active accounts in the Plan under the Settlement shall be made into these persons' individual investment accounts in the Plan. Payments made to Authorized Former Participants, or to Beneficiaries or Alternate Payees of Plan participants who do not have active accounts in the Plan under the Settlement may be made either by check or tax-qualified rollover to an individual retirement account or other eligible employer plan.

9. How do I submit a claim for a Settlement Payment?

If you are a Current Participant, or a Beneficiary or Alternate Payee of a Plan participant and you have an active account in the Plan, you do not need to submit a claim to be eligible for a payment under the Settlement. Your payment amount will automatically be calculated by the Settlement Administrator. If you are a Former Participant, or a Beneficiary or an Alternate Payee and you do not have an active account in the Plan, you must submit a Former Participant Claim Form by the deadline for submission in order to be eligible for a payment under the Settlement. "Former Participant" means a person who had an account in the Plan during the Class Period and who did not have account in the Plan with a balance greater than \$0 as of _____.

If you are a Former Participant, or a Beneficiary or Alternate Payee of a Plan participant and you do not have an active account in the Plan, and want to receive any monetary benefits from the Settlement, you must submit the Former Participant Claim Form by no later than [DATE], 2019. You must mail the Former Participant Claim Form to the address shown on the Form.

A Former Participant Claim Form will be deemed submitted when it is actually received by the Settlement Administrator at the address listed in the Form.

Even if you do not submit a Former Participant Claim Form, you will be bound by the Settlement. (See answers to question 14 below.)

10. What is the Plaintiff receiving from the Settlement?

In this case, there are two Class Representatives, Maria Karla Terraza and Dennis Lorenz. Class Counsel intends to ask the Court to award each Class Representative a Case Contribution Fee of \$10,000 in recognition of the work and effort they expended on behalf of the Class.

THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP

11. What do I give up by participating in the Settlement?

Each Member of the Class gives Defendants a “release.” A release means you give up your rights to sue Defendants or receive any benefits from any other lawsuit against Defendants if the lawsuit asserts claims or relates in any way to the practices at issue in this lawsuit.

For additional details about the scope of the release, consult the Settlement Agreement or contact Class Counsel. (See answer to question 5 for details.)

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Shepherd, Finkelman, Miller & Shah, LLP as Lead Class Counsel, and the following firms as Class Counsel: Olivier Schreiber & Chao LLP; the Law Offices of Sahag Majarian; and Schneider, Wallace, Cottrell Konecky Wotkyns LLP. You will not be charged for the work of these lawyers. If you want to be represented by a different lawyer in this case, you may hire one at your own expense.

13. How will the lawyers (Class Counsel) be paid?

Class Counsel will ask the Court for an award of attorneys’ fees and expenses of up to 33.33% of the Settlement Amount plus up to \$500,000, based upon the value of the Settlement, the time they have devoted to this engagement, and the expenses they have advanced in prosecuting this matter.

OPTING OUT OF THE SETTLEMENT

14. Can I exclude myself from the Class?

No. The Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the lawsuit for all claims that were asserted in the lawsuit or are otherwise included as Released Claims as defined in the Settlement Agreement. If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.

OBJECTING TO THE SETTLEMENT

15. What does it mean to object?

Objecting is simply telling the Court that you do not like something about the Settlement. Objecting will not have any bearing on your right to receive the benefits of the Settlement if it is approved by the Court.

16. What is the procedure for objecting to the Settlement?

You can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Fairness Hearing, either in person or through your own attorney. If you appear through

your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number *Terraza v. Safeway, Inc., et al.*, No. 3:16-cv-03994-JST (N.D. Cal.), (b) be submitted to the Court either by mailing them to the Clerk, United States District Court for the Northern District of California, James R. Browning Federal Courthouse, 450 Golden Gate Ave., San Francisco, California 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before _____ [28 days before the Fairness Hearing]. Your objection must also include (1) your full name, current address, and current telephone number, and, if represented by counsel, any of your counsel’s name and contact information; (2) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (3) a statement of the position(s) the objector wishes to assert; (4) copies of any other documents that the objector wishes to submit in support of his/her/its position; and (5) a list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years.

ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL NOT HAVE ANY RIGHT TO OBJECT TO THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT.

<u>Clerk of the Court</u>	<u>Class Counsel</u>	<u>Defense Counsel</u>
U.S. District Court for the Northern District of California Clerk of Court James R. Browning Federal Courthouse, United States District Court, 450 Golden Gate Ave., San Francisco, CA 94102	James E. Miller Shepherd, Finkelman, Miller & Shah, LLP 65 Main Street Chester, CT 06412 Tel: (860) 526-1100	For Safeway Defendants: R. Bradford Huss Trucker Huss, APC 1 Embarcadero Center, 12th Floor San Francisco, CA 94111 Tel: (415) 788-3111 For Aon: Randall W. Edwards O’Melveny & Myers, LLP 2 Embarcadero Center, 28th Floor San Francisco, CA 94111 Tel: (415) 984-8700

THE COURT'S FAIRNESS HEARING

17. When/where will the Court decide whether to approve the Settlement?

On [date], 2019 at [time] __.m., in Courtroom 9 of the United States District Court for the Northern District of California, James R. Browning Federal Courthouse and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, the Court will hold a Fairness Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The hearing may be continued from time to time by the Court without further notice.

18. Do I have to attend the Fairness Hearing?

No; however, you are welcome to attend at your own expense. If you file an objection to the Settlement, you do not have to go to Court to talk about it. As long as your objection is filed by [date] and you comply with the requirements in answer to question 16 above, the Court will consider it. You also may send your own lawyer to attend the Fairness Hearing.

19. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the hearing. Anyone wishing to appear must state in their written objection their intention to appear at the Fairness Hearing, at your own expense.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you are a Current Participant, or a Beneficiary or Alternate Payee of a Plan participant and you have an active account in the Plan, you do not need to take any action to be eligible to receive the Settlement benefits. If you are a Former Participant, or a Beneficiary or Alternate Payee of a participant in the Plan and you do not have an active account in the Plan, you must submit a Former Participant Claim Form by the submission deadline or you will not receive any of the settlement payments described above in answer to questions 7 and 8.

DATED: _____, 2019

**THIS NOTICE HAS BEEN SENT TO YOU BY ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

EXHIBIT B-2

SAN FRANCISCO, CA - ____, 2019 /PRNewswire/ --

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MARIA KARLA TERRAZA, Individually,
On Behalf of a Class of Similarly Situated
Plan Participants and On Behalf of the
SAFEWAY 401(K) PLAN,

Plaintiff,

vs.

SAFEWAY INC., *et al.*,

Defendants.

Case No. 3:16-cv-03994-JST

**SUMMARY NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND
SETTLEMENT FAIRNESS HEARING**

TO: ALL CURRENT AND FORMER PARTICIPANTS IN THE SAFEWAY 401(K) PLAN n/k/a THE ALBERTSONS COMPANIES 401(K) PLAN (THE "PLAN") WHO WERE PARTICIPANTS IN THE PLAN BETWEEN JULY 14, 2010 AND JULY 28, 2016 (THE "SETTLEMENT CLASS PERIOD").

**PLEASE READ THIS NOTICE CAREFULLY.
A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION.
YOU ARE NOT BEING SUED.**

A settlement has been preliminarily approved by a federal court in a consolidated class action lawsuit by Plaintiff Maria Karla Terraza, on behalf of herself and on behalf of the Settlement Class ("Plaintiffs") against Safeway Inc. ("Safeway"), the Safeway Benefit Plans Committee, n/k/a the Albertsons Companies Retirement Benefit Plans Committee (the "BPC"), certain current and former members of the BPC (collectively, the "Safeway Defendants"), as well as the Plan's former independent investment adviser, Aon Hewitt Investment Consulting Inc. ("Aon") (the Safeway Defendants and Aon are collectively referred to as the "Defendants"), alleging breaches of fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA"). This Settlement will provide for a payment of \$8.5 million, less any Court-approved fees and expenses, and administrative costs, to the Plan, which money will then be allocated to the accounts of participants of the Plan who had Plan accounts during the Settlement Class Period. All capitalized terms not otherwise defined in this Summary Notice of Class Action Settlement have the meaning provided in the Settlement Agreement (the "Agreement") available on the Settlement website (provided below). If you currently have a Plan account in the Plan, you will receive an allocation without taking any further action. You do not need to send in a

claim or take any other action to participate in the Settlement. If you previously had a Plan account but no longer have one, you need to file a Claim Form to obtain a payment. The United States District Court for the Northern District of California authorized this Notice.

WHO IS INCLUDED IN THE SETTLEMENT?

If you were a participant in the Plan at any time during the period from July 14, 2010 until July 28, 2016, inclusive, or you were a beneficiary or alternate payee of any such participant, then you are a member of the Settlement Class (a “Settlement Class Member”).

WHAT IS THIS CASE ABOUT?

Plaintiffs claim that Defendants breached their fiduciary duties under ERISA. Plaintiffs’ allegations are described in more detail in the Third Amended Complaint (“Complaint”) available on the Settlement website. All Defendants deny any wrongdoing. Both sides agreed to the Settlement to avoid the cost and risk of further litigation.

WHAT DOES THE SETTLEMENT PROVIDE?

Defendants have agreed to create a Settlement Fund totaling \$8.5 million to be divided among eligible Settlement Class Members after payment of attorneys’ fees to Class Counsel, Case Contribution Awards to Class Representatives Maria Karla Terraza and Dennis M. Lorenz, and payment of other costs and expenses of the Settlement, including notice and claims administration, as the Court may allow. The Agreement, other related documentation, and a list of Frequently Asked Questions, available at the Settlement website identified below, describes the details of the proposed Settlement. Your share (if any) of the Settlement Fund will depend upon the amount and value of your Plan account(s) during the Settlement Class Period. This Settlement releases certain claims against Defendants relating to the investments of the Plan’s assets during the Settlement Class Period and releases all claims that were or could have been brought in the lawsuit based upon the allegations in the Complaint.

HOW DO I RECEIVE A PAYMENT?

If you are a Settlement Class member, are a current participant in the Plan, or you are a beneficiary or alternate payee of a Plan participant who has an active account in the Plan, and you are entitled to a share of the Settlement Fund according to the Agreement, you are not required to do anything to receive a payment. The payment will be made directly to your Plan account(s). If you are no longer a participant in the Plan, or you are a beneficiary or alternate payee of a Plan participant who does not have an active account in the Plan, you will need to file a Claim Form in order to receive a payment from the Settlement Fund. If your address has changed since you closed your Plan account(s), please contact the Settlement Administrator toll-free at _____ to advise of the change of address.

CAN I OBJECT TO OR OPT OUT OF THE SETTLEMENT?

You do not have the right to exclude yourself from the Settlement in this case, but you do have the right to object by writing to the Court. You will be bound by any judgments or orders that are entered in this Action, and if the Settlement is approved, you will be deemed to have released all of the Defendants from all claims that were or could have been asserted in this case, including all Claims as defined under the Agreement, other than your right to obtain the relief provided to you, if any, by the Settlement.

The Court will hold a hearing in this case at _____ on _____, 2020, in the Courtroom of the Honorable Jon S. Tigar, United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 9 - 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, to consider whether to approve the Settlement and a request by the lawyers representing all Settlement Class Members, Class Counsel, for attorneys' fees, for Case Contribution Awards to the Plaintiffs, and for other case-related expenses. If approved, these amounts will be paid from the Settlement Fund. You may ask to speak at the hearing by filing a Notice of Intention to Appear by _____, but you are not required to do so.

Although you cannot opt out of the Settlement, you may object to all or any part of the Settlement in accordance with the instructions included in the long-form Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing available at the Settlement website below. Objections must be postmarked, or if not sent by United States Postal Service received by the Court, by _____. Please note that the time, place and date of the hearing may change without a further mailing. Class Counsel will update the Settlement website below if the hearing time or location is changed. Please check the website or contact Class Counsel if you wish to confirm that the hearing time has not been changed.

HOW DO I GET MORE INFORMATION?

If you are a Settlement Class member and would like to receive additional information or to receive a copy of the long-form Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing, call toll-free _____ or visit www._____.com.

EXHIBIT C

PLAN OF ALLOCATION

- 1.1 Each capitalized term below has the definition provided in the Settlement Agreement.
- 1.2 After the Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Authorized Former Participants as set forth in Paragraph 1.7 below, and to the Plan for payments to the accounts of Participants as set forth in Paragraph 1.6 below, both in accordance with the Plan of Allocation set forth herein and as ordered by the Court.
- 1.3 To be eligible for a payment from the Net Settlement Amount, a person must be a Participant, an Authorized Former Participant, a Beneficiary, or an Alternate Payee. Participants, and Beneficiaries or Alternate Payees with Active Accounts, shall receive their settlement payments as additions to their Active Accounts, as provided for in Paragraph 1.6 below. Authorized Former Participants, and Beneficiaries or Alternate Payees who do not have Active Accounts, shall receive their settlement payments in the form of rollovers to an individual retirement account or other eligible employer plan or in the form of checks, as provided in Paragraph 1.7 below.
- 1.4 Beneficiaries will receive settlement payments, as described in this Plan of Allocation, in amounts corresponding to their entitlement as Beneficiaries of the Participant or of the Authorized Former Participant with respect to which the payment is made. This includes settlement payments to Beneficiaries based upon the Participant's or Authorized Former Participant's Plan account during the Class Period and/or by the Beneficiary's own Plan account during the Class Period, if an account was created in the Plan for the Beneficiary. Alternate Payees will receive settlement payments if and to the extent they are entitled to receive a portion of a Participant's or Authorized Former Participant's allocation under this Plan of Allocation pursuant to the terms of the applicable QDRO, including Alternate Payees for whom an account was created in the Plan. Beneficiaries and Alternate Payees with Active Accounts will receive payments by the method described in this Plan of Allocation for Participants. Beneficiaries and Alternate Payees who do not have Active Accounts will receive payments by the method described in this Plan of Allocation for Authorized Former Participants. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth herein and as ordered by the Court.
- 1.5 **Calculation of Settlement Payments.** Payments to Authorized Former Participants, Participants, Beneficiaries, or Alternate Payees, shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:
 - 1.5.1 The Settlement Administrator shall determine a "Settlement Allocation Score" for each Participant, Authorized Former Participant, Beneficiary, or Alternate Payee by (i) determining the year-end account balances of each Participant and Authorized Former Participant during the Class Period, or, if a Beneficiary or Alternate Payee had a separate account in the Plan during the Class Period, by determining the year-end balance of each such Beneficiary or Alternate Payee, and (ii) dividing the sum of each Participant's or Authorized Former Participant's,

or to the extent applicable, each Beneficiary's or Alternate Payee's, year-end account balances during the Class Period by the total sum of year-end asset amounts in the Plan during the Class Period.

- 1.5.2 If the dollar amount of the settlement payment to an Authorized Former Participant, or a Beneficiary or Alternate Payee who does not have an Active Account, is initially calculated by the Settlement Administrator to be \$10.00 or less, then that person's payment shall be \$10.00. All such amounts shall be retained in the Qualified Settlement Fund for distribution under Paragraph 1.13.
- 1.5.3 The Plan Recordkeepers (or designee) shall provide the necessary data subject to its control as may be reasonably available and necessary to enable the Settlement Administrator to perform the above calculations.
- 1.5.4 The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Authorized Former Participants, and to Beneficiaries or Alternate Payees who do not have Active Accounts, under Paragraph 1.7 of this Plan of Allocation; and (b) instructing the Plan as to the amount of the Net Settlement Amount to be allocated to Participants, and to Beneficiaries or Alternate Payees who have Active Accounts, under Paragraph 1.6 of this Plan of Allocation and calculating the total amount to deposit into each of their Active Account(s) to fulfill this instruction.
- 1.5.5 The total amount of all rollovers or checks to be paid by the Settlement Administrator for Authorized Former Participants, and Beneficiaries or Alternate Payees who do not have Active Accounts, plus the total amount of all allocations that the Plan is instructed to make to Participants, and Beneficiaries or Alternate Payees who have Active Accounts, may not exceed the Net Settlement Amount. Nothing in this Paragraph 1.5 is intended to modify the requirements of Paragraph 1.8 below. In the event that the Settlement Administrator determines that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settlement Administrator is authorized and required to make such pro rata changes as are necessary to the Plan of Allocation such that said total does not exceed the Net Settlement Amount.

1.6 Payments to Participants and Beneficiaries or Alternate Payees with Active Accounts. Participants, and Beneficiaries or Alternate Payees who have Active Accounts, will not be required to submit a Former Participant Claim Form to receive a settlement payment.

- 1.6.1 Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Participants, and Beneficiaries or Alternate Payees who have Active Accounts, the Settlement Administrator will provide the Plan's Recordkeepers, in a format and via a delivery method mutually agreed upon by the Settlement Administrator and the Plan's Recordkeepers, with an Excel spreadsheet containing the name, Social Security number (or alternative identifier(s) mutually acceptable), and amount of the settlement payment to be

made into the Active Account(s) for each of these persons. In the event the Excel spreadsheet includes Social Security numbers, the Settlement Administrator will transmit the spreadsheet in a manner to protect the confidentiality of any such Social Security numbers.

- 1.6.2 Thereafter, within ten (10) business days' written notice to the Plan and the Plan's Recordkeepers, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the trust for the Plan of the aggregate amount of all settlement payments payable to Active Participants, and Beneficiaries or Alternate Payees who have Active Accounts, as reflected in the spreadsheet provided by the Settlement Administrator. Safeway (or its designee) shall direct the Plan's Recordkeepers to credit the individual Active Account(s) of each such person in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to each such person.
- 1.6.3 The settlement payment for each Participant who is an active participant in the Plan (i.e. has the right to make contributions to the Plan), will be invested in accordance with and proportionate to such Participant's investment elections then on file for new contributions. If the Participant is no longer an active participant in the Plan, or does not have an investment election on file, then such Participant shall be deemed to have directed such payment to be invested in the Plan's default investment option. Likewise, the settlement payment to each Beneficiary or Alternate Payee who has an Active Account will be invested in accordance with and proportionate to such person's investment elections then on file, or if such a person does not have investment elections on file, then such persons will be deemed to have directed such payments to be invested in the Plan's default investment option.
- 1.6.4 The Plan's Recordkeeper shall process all settlement payments to Participants, and Beneficiaries or Alternate Payees who have Active Accounts, as soon as administratively feasible after the Plan receives the payment from the Qualified Settlement Fund and the Excel spreadsheet containing the agreed-upon information.
- 1.6.5 The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Active Account(s) in accordance with this Plan of Allocation.
- 1.6.6 If, as of the date when payments pursuant to this Settlement Agreement are made, a Participant, or Beneficiary or Alternate Payee who had an Active Account, no longer has an Active Account, he or she will be treated as an Authorized Former Participant for purposes of the settlement distribution only and will receive his or her payment from the Settlement Administrator in the form of a check or rollover as described in Paragraph 1.7. A Participant, or Beneficiary or Alternate Payee who had an Active Account, who no longer has an Active Account on the date of his or her settlement distribution need not complete a Former Participant Claim Form.

1.7 Payments to Authorized Former Participants, and Beneficiaries or Alternate Payees without Active Accounts. Each Authorized Former Participant, and Beneficiary or Alternate Payee who does not have an Active Account, will have the opportunity to elect a rollover of his or her settlement payment to an individual retirement account or other eligible employer plan, which he or she has identified on the Former Participant Claim Form, provided that such a person supplies adequate information to the Settlement Administrator to effect the rollover. Otherwise, the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account, will receive his or her settlement payment directly by check. The distributions shall be issued as follows:

1.7.1 The Settlement Administrator will either effect from the Qualified Settlement Fund the rollover elected by the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account, in the Former Participant Claim Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to effect the settlement distribution by rollover, *or* issue a check from the Qualified Settlement Fund to the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account, and mail the check to the address of such person listed in his or her Former Participant Claim Form, or in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means.

1.7.2 With respect to settlement payments that are not rolled over, the Settlement Administrator shall (i) calculate and withhold any applicable taxes associated with the payments allocable to the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to these persons.

1.8 This Plan of Allocation is based upon preliminary data regarding the Class Members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties agree to promptly discuss modifications to the terms of this Plan of Allocation and present such modified terms to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted by the Settlement Administrator on the Settlement Website.

The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

1.9 Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel and Defense Counsel one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice and/or the Former Participant Claim Form, and the address of such mailing; (b) the date(s) upon which the Settlement

Administrator sent the Settlement Notice and/or the Former Participant Claim Form; (c) the name of each Class Member whose Settlement Notice and/or Former Participant Claim Form was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice and/or Former Participant Claim Form for each such Class Member; and (e) the name of each Class Member to whom the Settlement Administrator made a payment from the Net Settlement Amount, together with the amount and form of the payment, the name of the payee, the date of payment, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

- 1.10** The Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants and Defense Counsel will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Parties.
- 1.11** Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.
- 1.12** All checks issued pursuant to this Plan of Allocation shall expire one hundred eighty (180) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.
- 1.13** No sooner than three hundred ninety-five (395) calendar days following the Settlement Effective Date, any Net Settlement Amount remaining in the Qualified Settlement Fund after payments, including costs and taxes, shall be paid to the Plan for the benefit of the Plan's participants as set forth in the Settlement Agreement.

EXHIBIT D

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11 *Attorneys for Plaintiff, the Plan,*
12 *and the Class*

13 [Additional Counsel Listed On Signature Page]

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)**

16 MARIA KARLA TERRAZA, individually and
17 on behalf of the SAFEWAY 401(k) Plan,

18 Plaintiff,

19 vs.

20 SAFEWAY INC., et al.,

21 Defendants.

22 Related Cases:

23 No. 3:16-cv-03994-JST

24 No. 3:16-cv-04903-JST

25 **[PROPOSED] PRELIMINARY**
26 **APPROVAL ORDER**

27 Judge: Hon. Jon Tigar

PRELIMINARY APPROVAL ORDER

- 1
- 2 **(1) GRANTING PRELIMINARY CERTIFICATION OF THE CLASS;**
- 3 **(2) GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- 4 **(3) APPOINTING A SETTLEMENT ADMINISTRATOR;**
- 5 **(4) ENJOINING CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT**
- 6 **ARISE OUT OF OR RELATE IN ANY WAY TO THE RELEASED**
- 7 **CLAIMS PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- 8 **(5) DIRECTING NOTICE TO CLASS MEMBERS AND APPROVING THE**
- 9 **FORM AND MANNER OF NOTICE;**
- 10 **(6) APPROVING THE PLAN OF ALLOCATION;**
- 11 **(7) SCHEDULING A FINAL APPROVAL HEARING; AND**
- 12 **(8) SCHEDULING A HEARING ON CLASS COUNSEL’S FEE AND EXPENSE**
- 13 **APPLICATION AND PLAINTIFFS’ REQUEST FOR CASE CONTRIBUTION**
- 14 **AWARDS.**

13 The Court, having received and considered the Unopposed Motion for a Preliminary
14 Approval Order (the “Motion”) by Plaintiff Maria Karla Terraza and Class Representative
15 Dennis M. Lorenz (collectively, “Plaintiffs”) in *Maria Karla Terraza v. Safeway Inc., et al.*,
16 N.D. Cal. Case No. 3:16-cv-03994-JST (with Lorenz having also maintained the related action,
17 *Dennis Lorenz v. Safeway Inc., et al.*, N.D. Cal. Case No. 3:16-cv-04903-JST) (the “Actions”),
18 and the supporting papers, including the Settlement Agreement and Release dated September
19 13, 2019 and all exhibits thereto (the “Agreement”), and the declarations of counsel, having
20 further considered the arguments of counsel and the pleadings and record in this case, and
21 finding good cause for granting the Motion,

22 **HEREBY ORDERS AS FOLLOWS:**

- 23 1. Capitalized terms not defined in this Order shall have the meaning ascribed to
24 them in Part I of the Agreement.
- 25 2. This Court has jurisdiction to consider the Motion and the relief requested therein
26 under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).
- 27 3. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

1 4. The Court finds, on a preliminary basis and for the purposes of settlement only,
2 that the requirements for certification under Rule 23(a) and Rule 23(b)(1) are satisfied:

3 a) The Settlement Class meets the numerosity requirement of Rule 23(a)(1),
4 as it consists of over 35,000 Class Members.

5 b) The Class Representatives have asserted claims that have at least one
6 common question of law or fact to the Class and relate to the management of the Plan as a
7 whole.

8 c) The Class Representatives are a current and a former participant in the
9 Plan and are typical of other Class Members.

10 d) The Class Representatives have no conflicts with other Class Members,
11 are adequate to represent the Settlement Class, and have retained experienced and qualified
12 counsel to represent the Class as Class Counsel.

13 5. Class certification is appropriate under Rule 23(b)(1) because the Class
14 Representatives assert claims on behalf of the Plan as a whole, and prosecution of separate
15 actions by individual class members would create a risk of inconsistent or varying adjudications
16 with respect to individual class members that would establish incompatible standards of conduct
17 for Defendants and would be dispositive of the interests of other class members as a practical
18 matter or would substantially impair or impede their ability to protect their interests.

19 a) The Court appoints Shepherd, Finkelman, Miller & Shah, LLP as Lead
20 Counsel and the following firms as Class Counsel: Olivier Schreiber & Chao LLP; the Law
21 Offices of Sahag Majarian; and Schneider, Wallace, Cottrell, Konecky, Wotkyns LLP, and
22 appoints Maria Terraza, the Named Plaintiff, and Dennis Lorenz as the Class Representatives.

23 b) The non-opt out Class will be preliminarily certified for settlement
24 purposes only, under the terms of the Agreement. The Settlement Class is defined as: all
25 Participants, Former Participants, Beneficiaries, and Alternate Payees in the Plan at any time on
26 or after July 14, 2010 through and including July 28, 2016, and the Beneficiaries or Alternate
27 Payees of any such person.

1 c) If the Court does not issue the Final Approval Order and Judgment, then
2 the certification will be vacated, and Defendants shall not be deemed to have admitted the
3 propriety of Class certification under any provision of Federal Rule 23.

4 d) The terms set forth in the Agreement are preliminarily approved, subject
5 to further consideration at the hearing the Court will hold pursuant to Federal Rule of Civil
6 Procedure 23(e) to determine whether the Settlement should receive final approval by the Court,
7 as provided for below (the “Final Approval Hearing”). Having considered the terms of the
8 Settlement and the submissions in support of preliminary approval, the Court determines, in
9 accordance with Fed. R. Civ. P. 23(e)(1)(B), that it is likely that the Court will be able to grant
10 final approval of the Settlement under Fed. R. Civ. P. 23(e)(2) following notice and a hearing.
11 The Agreement therefore is sufficiently within the range of reasonableness to warrant the
12 preliminary approval of the Agreement, the scheduling of the Final Approval Hearing, and the
13 mailing of Notice to Class Members, each as provided for in this Order.

14 6. The Court approves the retention by Class Counsel of Strategic Claims
15 Services as the Settlement Administrator.

16 7. In further aid of the Court’s jurisdiction to review, consider, implement, and
17 enforce the Settlement, the Court orders that Plaintiffs, all Class Members, and the Plan are
18 preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating,
19 in whole or in part, either directly, individually, representatively, derivatively, or in any
20 other capacity, whether by complaint, counterclaim, defense, or otherwise, in any local,
21 state, or federal court, arbitration forum, or in any agency or other authority or forum
22 wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, or
23 action (including but not limited to actions pending as of the date of this Order), including,
24 without limitation, any Unknown Claims, that arises out of or relates in any way to the
25 Released Claims or the Actions.

26 8. The Court approves the Notice to Class Members in substantially the form
27 attached as **Exhibit B** to the Agreement. The Court approves the form and content of the
28 Notice and finds that the proposed Settlement Notices fairly and adequately:

1 Summarize the claims that are asserted;
2 Identify the Settlement Class;
3 Describe the terms and effect of the Settlement Agreement,
4 including the benefits of the Settlement and the class
5 release;
6 Provide information regarding who is required to submit a
7 Claim Form and the process for doing so;
8 Notify the Settlement Class that Class Counsel will seek
9 compensation from the Net Settlement Amount for
10 Administrative Expenses, Attorneys' Fees and Expenses,
11 and Case Contribution Fees;
12 Describe how the recipients of the Class Notice may object to the
13 Settlement, or any requested Administrative Expenses, Attorneys' Fees
14 and Expenses, or Case Contribution Fees; and
15 Give notice to the Settlement Class of the time and place of
16 the Fairness Hearing, and Class Members' right to appear.

17 9. The Court finds that the Plan of Allocation proposed by Plaintiffs and Class
18 Counsel for allocating the Settlement Amount to Class Members, as described in **Exhibit**
19 **C** to the Agreement, is likely to receive final approval and that the agreement is within the
20 range of reasonableness to warrant preliminary approval.

21 **Manner of Giving Notice**

22 10. The Plan shall use reasonable efforts to cause the Plan Recordkeepers to provide
23 to the Settlement Administrator, within thirty (30) calendar days of the entry of this Preliminary
24 Approval Order, the Participant Data, as defined in the Plan of Allocation as described **Exhibit**
25 **C** to the Agreement (including names and last known addresses and email addresses, if
26 available) sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute
27 the Settlement Fund on the terms provided for in the Agreement. The names and addresses
28 provided to the Settlement Administrator pursuant to this Order shall be used solely for the

1 purpose of providing Notice of this Settlement and distribution of the Settlement Fund, and for
2 no other purpose and shall be treated as “Confidential” under the Protective Order governing
3 the Actions (Case No. 3:16-cv-03994, Dkt. 52; Case No. 3:16-cv-04903, Dkt. 64).

4 11. Within thirty (30) calendar days of the entry of this Order and no later than the
5 first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator
6 shall establish a website containing, the Notice, the Agreement and its exhibits, this Order, the
7 Third Amended Complaint, and the Motions for Preliminary Approval and Final Approval
8 (when filed); the Motion for Attorneys’ Fees and Expenses (when filed); any approval order or
9 other Court orders related to the Settlement, any amendments or revisions to these documents,
10 and any other documents or information mutually agreed upon by the Parties.

11 12. Within thirty (30) calendar days of the entry of this Order and no later than the
12 first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator
13 shall establish a toll-free telephone number to which Class Members can direct questions about
14 the Settlement.

15 13. Within forty-five (45) calendar days after entry of this Order, or as may be
16 modified by the Court, the Settlement Administrator shall cause copies of the Notice to be sent
17 by first-class mail or electronic mail (if available) to all Class Members through the notice
18 procedure described in the Agreement and shall cause the Summary Notice to be issued via
19 PRNewswire for national distribution.

20 14. Not later than seven (7) business days after sending the Notice to Class
21 Members, the Settlement Administrator shall provide to Class Counsel and to Defendants’
22 Counsel a declaration attesting to compliance with the sending of the Notice, as set forth above.

23 15. The Court finds that the Notice to be provided as set forth in this Order is the
24 best means of providing notice to the Class Members as is practicable under the circumstances
25 and, when completed, shall constitute due and sufficient notice of the Settlement and the Final
26 Approval Hearing to all persons affected by or entitled to participate in the Settlement or the
27 Final Approval Hearing, in full compliance with the requirements of due process and the
28 Federal Rules of Civil Procedure.

