

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FRED MARTIN, individually and on behalf)	
of others similarly situated,)	
)	
Plaintiff,)	Case No.: 2020CH05480
)	
v.)	
)	
SAFEWAY INC., a Delaware corporation,)	
)	
Defendant.)	

**ORDER CERTIFYING SETTLEMENT CLASS, GRANTING
PRELIMINARY APPROVAL OF SETTLEMENT, AND
DIRECTING NOTICE TO THE CLASS**

THIS CAUSE came before the Court on Plaintiff, Fred Martin’s Motion for Preliminary Approval of Class Action Settlement filed on November 13, 2020. Being fully advised, it is

ORDERED AND ADJUDGED as follows:

1. The Motion for Preliminary Approval of Class Action Settlement is **GRANTED** pursuant to 735 ILCS 5/2-806, and the terms of the Agreement, including all Exhibits thereto, attached to the Motion, are preliminarily **APPROVED**, subject to further consideration at the Fairness Hearing provided for below. This Order incorporates the Agreement, including all Exhibits.

2. The terms of the Settlement Agreement and Release, dated September 18, 2020, including all Exhibits thereto (together, the “Agreement”), attached to the Motion for Preliminary Approval of Class Action Settlement, are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. This Order incorporates

herein, and makes a part hereof, the Agreement. Unless otherwise provided herein, the terms defined in the Agreement shall have the same meanings herein.

3. The Court finds the Agreement was entered into between the Class Representative, on behalf of himself and the Settlement Class and Safeway Inc. (“Safeway”) only after extensive arm’s-length negotiations by experienced counsel for the parties and following mediation efforts presided over by a professional mediator, Randall W. Wulff.

4. The Court finds that settlement embodied in the Agreement is sufficiently within the range of reasonableness so that notice of the settlement should be given as provided in this Order. In making this determination, the Court has considered the current posture of the litigation and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

I. THE CLASS, CLASS REPRESENTATIVE, AND CLASS COUNSEL.

1. The Settlement Class is defined as follows:

All persons in the United States who, between September 12, 2017 and February 26, 2019 engaged in one or more transactions using a debit card or credit card at any Safeway fuel location, and was thereupon provided an electronically printed receipt displaying the first six (6) and the last four (4) digits of the credit or debit card number used in connection with such transaction(s).

In addition, excluded from the Settlement Class is any individual who properly opts out of the Settlement Class pursuant to the procedure described herein.

2. The Court makes the following determinations as to certification of the Settlement Class:

(a) The Court preliminarily certifies the Settlement Class for purposes of settlement only, under 735 ILCS 5/2-801.

(b) The Settlement Class is so numerous that joinder of all members is Impracticable;

(c) There are questions of law or fact common to the members of the Settlement Class;

(d) Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class in connection with the Settlement Agreement and has no conflict with absent class members;

(e) This Court recognizes the experience of Class Counsel, Keith J. Keogh, Michael S. Hilicki, Scott Owens and Brett Luskin. Accordingly, the Settlement Class is adequately represented.

(f) A class action is an appropriate method for the fair and efficient resolution of this lawsuit through settlement. The Settlement Class Members' claims are based on the same material facts and assert claims under the same sections of the same law. Thus, class certification promotes judicial economy by resolving their common claims in one lawsuit instead of multiple lawsuits, it promotes fairness by ensuring consistent results, and it promotes justice by alerting all class members to the existence of their claims, and giving them the ability to resolve their claims without having to find their own counsel, file their own lawsuit, and endure the cost and rigors of litigation on their own.

II. NOTICE TO CLASS MEMBERS

1. The Court has considered the proposed forms of notice including the Summary Notice and Full Notice for the Settlement Website, (attached as Exhibit 2 and 3 to the Settlement Agreement) and Settlement Claim Form (attached as Exhibit 5 to the Settlement Agreement), and finds that the forms, content, and manner of notice proposed by the Parties and approved herein

meet the requirements of due process and 735 ILCS §5/2-803, are the best notice practicable under the circumstances, constitute adequate notice of the lawsuit and settlement to all persons entitled to the same. The Court approves the notice program in all respects (including the proposed forms of notice, Summary Notice and Full Notice for the Settlement Website, and orders that notice be given in substantial conformity therewith. The notice program shall commence on or before May 6, 2021 (the “Notice Deadline”). The costs of preparing, printing, publishing, mailing, and otherwise disseminating the notice shall be paid from the Settlement Fund in accordance with the Agreement.

2. The Court appoints Kurtzman Carson Consultants LLC (“KCC”) as Claims Administrator.

Responsibilities of the Claims Administrator shall include the following:

- (a) arranging for distribution of the Class Notice and Settlement Claim Forms to Settlement Class Members;
- (b) making any mailings to Settlement Class Members required under the terms of the Agreement;
- (c) answering written and telephonic inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee;
- (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement;
- (e) establishing the Settlement Website that posts notices, Settlement Claim Forms, and other related documents;
- (f) receiving and processing Settlement Claim Forms from and distributing Settlement payments to Settlement Class Members;
- (g) paying from the Settlement Fund any fees and costs incurred or due to

banks, credit card processing companies, or others for responding to subpoenas to locate or identify the Settlement Class Members; and

(h) otherwise assisting with implementation and administration of the terms of the Agreement.

III. REQUEST FOR EXCLUSION FROM THE CLASS

1. A Settlement Class Member who wishes to be excluded from the Settlement Class shall mail a written Request For Exclusion to the Claims Administrator, so that it is postmarked by July 6, 2021 2021 (the “Opt-Out and Objection Deadline”), and shall clearly state the following:

(a) identify the case name and number;

(b) identify the name, address, and telephone number of the Settlement Class Member;

(c) be personally signed by the Settlement Class Member requesting exclusion; and

(d) contain a statement that indicates a desire to be excluded from the Settlement Class in the Litigation, such as “I hereby request that I be excluded from the proposed Settlement Class in *Martin v Safeway Inc.*”

2. A Settlement Class Member who desires to opt out of the Settlement Class must take timely affirmative written action pursuant to this Order, even if he or she files or has filed a separate action against Safeway provided that Safeway serves the class notice in that separate action upon counsel of record or if pro se, upon the Plaintiff.

3. Any Settlement Class Member who does not properly and timely mail a Request

For Exclusion as set forth above shall be automatically included in the Settlement Class, and shall be bound by all the terms and provisions of the Agreement, including the Release and the Order of Final Approval, whether or not such Settlement Class Member received actual notice or objected to the Class Settlement and whether or not such Settlement Class Member makes a claim upon or participates in the Class Settlement.

IV. OBJECTIONS

1. Objections must be received by the Opt-Out and Objection Deadline by July 6, 2021. To be valid, the objection must include:

- (a) the case name and number;
- (b) the name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his or her counsel;
- (c) a description of the specific basis for each objection raised;
- (d) a statement of whether he or she intends to appear at the Final Approval Hearing, either with or without counsel;
- (e) any documentation in support of such objection; and
- (f) the date of the purchase for which the Settlement Class Member received a receipt containing the violative debit or credit card numbers.

In addition, a Settlement Class Member who does not complete and submit a Claim Form or a Publication Claim Form must provide, to the Claims Administrator, the first six (6) and last four (4) digits of the credit or debit card used to make the purchase. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Paragraph shall be deemed to have waived any such objection, shall not be

permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

V. PROOFS OF CLAIM

1. To effectuate the Agreement, Class Settlement, and the provisions of the Class Notice program, the Claims Administrator shall be responsible for the receipt of all Requests for Exclusion and Settlement Claim Forms. The Claims Administrator shall preserve, on paper or transferred into electronic format, all Requests for Exclusion, Settlement Claim Forms, and any and all other written communications from Settlement Class Members in response to the Class Notice for a period of three (3) years, or pursuant to further order of the Court. All written communications received by the Claims Administrator from Settlement Class Members relating to the Agreement shall be available at reasonable times for inspection and copying by Class Counsel and Counsel for Safeway, including prior to payments being mailed to each Settlement Class Member.

2. In order to be entitled to participate in the Class Settlement, if effectuated in accordance with all of the terms and conditions set forth in the Agreement, each Settlement Class Member shall take the following actions and be subject to the following requirements:

(a) A Settlement Class Member who wishes to receive a distribution from the Settlement Fund must submit a properly executed Settlement Claim Form to the Claims Administrator on or before July 6, 2021. If such Settlement Claim Form is submitted by mail via the United States Postal Service to the address indicated in the Class Notice, it shall be deemed to have been submitted as of the date postmarked. If such Settlement Claim

Form is transmitted in any manner other than the United States Postal Service, it shall be deemed to have been submitted on the date it is actually received by the Claims Administrator;

(b) Except as provided herein, each completed Settlement Claim Form must contain the following information: (i) name; (ii) physical address; (iii) phone number, which shall be optional; and (iv) email address to the extent that the Settlement Class Member has one. The website claim form will prepopulate this information as available for persons who first enter their claim ID, and will ask them to update or correct any information.

(c) The Settlement Claim Form shall require each Settlement Class Member to verify they received a printed at least one receipt at a Safeway fuel station between September 12, 2017 and February 26, 2019 as well as verify the information he or she is providing is true and correct as of the date thereof to the best of his or her knowledge and belief.

(d) Each Settlement Claim Form shall be submitted to and reviewed by the Claims Administrator, who shall make a recommendation to Class Counsel and counsel for Safeway about which claims should be allowed;

(e) The Claims Administrator will notify each person who filed a Settlement Claim Form of any recommendation of disallowance, in whole or in part, of the Settlement Claim Form submitted by such person and will set forth the reasons for any such disallowance. Settlement Class Members shall be permitted a reasonable period of time to cure any deficiency with respect to their respective Settlement Claim Form or Publication Notice Claim Form that is identified. A copy of such notification shall also be sent by the Claims Administrator to Class Counsel and Counsel for Safeway;

(f) Each Settlement Class Member who submits a Settlement Claim Form shall thereby expressly submit to the jurisdiction of the Court with respect to the claims submitted and shall, subject to final approval of the Agreement and Class Settlement, be bound by all the terms and provisions of the Agreement.

VI. CONFIDENTIALITY

1. If Plaintiff subpoenas any non-party for information about the Settlement Class Members, such as contact information, that information shall be treated as confidential and not be disclosed to any person or entity other than Class Counsel, Counsel for Safeway, the Claims Administrator, the party that Plaintiff shall subpoena and the Court. Likewise, any information received by the Claims Administrator that pertains to a particular Settlement Class Member, including transactional data of Safeway and information submitted in conjunction with a Request for Exclusion (other than the identity of the person requesting exclusion), shall not be disclosed to any other person or entity other than Class Counsel, Counsel for Safeway, and, if necessary, the Court, and shall otherwise be treated as provided for in the Agreement.

VII. FAIRNESS HEARING

1. A hearing on final settlement approval (the “Fairness Hearing”) will be held on August 11, 2021 at 9:30 a.m. before this Court, at 50 W. Washington St., Rm. 2405, Chicago, Illinois, 60602, which may be held via video conference to consider, *inter alia*, the following:

(a) determining the fairness, adequacy, and reasonableness of this Agreement and associated settlement pursuant to the applicable Rules of Civil Procedure, applicable law, and other procedural rules or and requirements; and

(b) entering the Order of Final Approval.

2. By the Notice Deadline, Class Counsel shall file with the Court any Fee Petition

as well as any request by Plaintiff for an incentive award.

3. At least 14 days before the Fairness Hearing, Class Counsel shall file with the Court any memoranda or other materials in support of final approval of the Agreement and Class Settlement.

4. Any Settlement Class Member who has not filed a Request for Exclusion in the manner set forth above and who also has timely filed an objection may appear at the Fairness Hearing in person or by counsel and may be heard to the extent allowed by the Court. However, no person shall be heard in opposition to the Agreement and Class Settlement, or the Fee Petition, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless that person files such papers and briefs with the Court and serves them upon counsel listed below by the Opt-Out and Objection Deadline. Settlement Class Members who object in the manner and by the dates provided herein and in accordance with section IV above shall be subject to the jurisdiction of this Court. Settlement Class Members who fail to object in the manner and by the dates provided herein and in accordance with section IV above shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

5. Counsel for the Parties who must be served with all documentation described above are as follows:

Counsel for the Settlement Class:

Keith J. Keogh
Michael Hilicki
Keogh Law LTD
55 W. Monroe Street
Suite 3390
Chicago, IL 60603

Counsel for Safeway Inc.:

Thomas V. Loran III
Stacie O. Kinser
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998

6. Any Settlement Class Member may hire an attorney at his or her or its own expense to appear in the action. Such attorney shall serve a Notice of Appearance on the Counsel listed above, and file it with the Court, within 60 days after the Notice Deadline.

7. The date and time of the Fairness Hearing shall be set forth in the Summary Notice, Full Notice and the Settlement Website, but shall be subject to adjournment by the Court without further notice to the Settlement Class Members other than that which may be posted at the Court, on the Court's website, and/or the Settlement Website to be established pursuant to the Class Notice program.

8. Pending Final Approval, all Settlement Class Members are hereby preliminarily enjoined from, either directly, representatively, or in any other capacity (other than a Class Member who validly and timely elects to be excluded from the Settlement Class), from:

(a) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action or proceeding based on any of the Released Claims; and

(b) organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action or proceeding (including by

seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action or proceeding) based on any of the Released Claims or the facts and circumstances relating thereto.

9. Upon Final Approval, all Settlement Class who do not file a timely Request for Exclusion shall be deemed to have forever released any and all of the Released Claims against any of the Safeway Releasees, as described in the Settlement Agreement, including, but not limited to, all claims that were or could have been asserted in the Litigation and all claims that relate to or arise from printing too much information on any receipts from a Safeway fuel station during the settlement class period, including, but not limited to, any claims under FACTA, for a violation of any consumer protection statutes, or regarding identity theft or the risk of identity theft. In addition, upon Final Approval, all such Settlement Class Members shall be forever enjoined and barred from asserting any of the Released Claims against any of the Safeway Releasees.

VIII. OTHER PROVISIONS

1. Upon Final Approval, each and every term and provision of the Agreement (except as may be modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

2. This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the proposed Settlement is not finally approved by the Court, or does not become Final (as defined in the Settlement Agreement), pursuant to the terms of the Settlement Agreement. In such event, and except as provided therein, the proposed Settlement and Settlement Agreement shall become null and void and be of no further force and

effect; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; neither the Settlement Agreement nor this Order shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification, including the right to argue that no class should be certified for any purpose.

3. This Order shall be of no force and effect if the Settlement does not become Final and shall not be construed or used as an admission, concession, or declaration by or against Safeway of any fault, wrongdoing, breach, or liability, or by or against Plaintiff, Settlement Class Members that their claims lack merit or that the relief requested in the Complaint in this action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or arguments it may have.

4. The following summarize the deadlines stated above for issuing notice and submitting claims and objections:

<u>May 6, 2021</u>	Deadline for notice of the Settlement to be sent to the Settlement Class Members
<u>May 6, 2021</u>	Plaintiffs to file attorney fee petition
<u>July 6, 2021</u>	Deadline for Settlement Class Members to request exclusion or file objections (Opt-Out and Objection Deadline)

<u>July 6, 2021</u>	Deadline for Settlement Class Members to submit a Settlement Claim Form (Claim Deadline)
<u>July 26, 2021</u>	Deadline for Parties to file the following: (1) List of persons who made timely and proper Requests for Exclusion (under seal); (2) Proof of Class Notice; and (3) Motion and memorandum in support of final approval, including responses to any objections.
<u>August 11, 2021 at 9:30 a.m.</u>	Final Approval Hearing

DONE and ORDERED in Chicago, Illinois, this 7th day of December 2020.

Honorable Judge Eve M. Reilly

cc: counsel of record

