

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into between and among Fred Martin (“Class Representative”), on behalf of himself and the Settlement Class (as hereinafter defined), and Safeway Inc. (“Safeway” and, collectively, the “Parties”). As provided herein, this Agreement fully and finally compromises and settles any and all claims for violation of the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681 *et seq.*, (“FACTA”), and any and all claims that were or could have been asserted in the lawsuit styled as *Martin v Safeway, Inc.* (originally filed as Case No. RG19021180 (Alameda County, Ca.), dismissed without prejudice and refiled as No. _____ (Cir. Ct. Cook County) (the “Litigation”).

WHEREAS, on May 31, 2019, Plaintiff Fred Martin, individually and on behalf of a putative class, filed a Complaint in Alameda County, California alleging willful violation of FACTA against Safeway (the “Alameda County Complaint”);

WHEREAS, Martin alleged receipts issued by Safeway for point-of-sale (“POS”) credit and debit card transactions displayed more than the last five digits of the credit and debit card numbers in violation of FACTA, which Martin alleged harmed him and the class by putting them at an increased risk of identity theft;

WHEREAS, the Parties conducted class discovery, including analyses of Safeway’s credit and debit card transaction data for its locations nationwide. The Parties also conducted merits discovery, including examining Safeway’s practices concerning its credit and debit card transactions, its relationship and communications with its vendor who installed the POS software, its testing and validations of the software when it was originally installed, the subsequent upgrade to the POS software that caused non-compliant receipts to be printed, and Safeway’s corrective measures and the timing of the corrective measures after receiving customer complaints of printed receipts displaying too many card numbers;

WHEREAS, the above referenced class discovery shows that the POS systems in Safeway's grocery stores were not violating FACTA and that any violation of FACTA was limited to its gas station pump POS systems, where customers can elect or decline to print a receipt for the transaction. The class discovery also revealed a software upgrade implemented by Safeway's fuel station POS vendor had caused fuel pump receipts to print more than the last five digits of the card number for a period of time, which Safeway contends was inadvertent. Discovery also revealed Safeway directed its vendor to fix the issue after notification by a customer that a receipt printed from a fuel station POS displayed too many digits. Discovery further revealed that in the regular course of business, Safeway does not maintain records of which gas station pump POS credit or debit card transactions result in a receipt being printed;

WHEREAS, the Parties have engaged in extensive arm's-length negotiations to resolve the Litigation with a view toward achieving substantial benefits for the Settlement Class as a whole while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate practice;

WHEREAS, the Parties attended a full-day in-person mediation with Randall W. Wulff that did not result in a settlement. After the in-person mediation, the Parties spent almost an additional two months conducting additional informal class discovery and negotiating via the mediator. As a result of these negotiations, an agreement in principle was reached due to a mediator's recommendation;

WHEREAS, the Parties entered into a binding Settlement Term Sheet on May 9, 2020 (the "Settlement Term Sheet"), memorializing all essential terms of the agreement in principle while the Parties documented this formal Settlement Agreement and jointly requested dismissal of the Alameda County Complaint without prejudice on May 28, 2020 so that Plaintiff could refile the

lawsuit in the Circuit Court for Cook County of the State of Illinois for purposes of settlement approval and administration;

WHEREAS, the Parties' joint request for dismissal without prejudice of the Alameda County Complaint was entered on August 5, 2020;

WHEREAS, on _____ Plaintiff refiled a substantially identical lawsuit in the Circuit Court of Cook County Illinois, styled as *Martin v Safeway, Inc.*, No. _____;

WHEREAS, for settlement purposes only, the Class Representative respectfully requests this Court certify the Settlement Class and appoint him as Class Representative. In addition, the Class Representatives request that attorneys Scott D. Owens, Bret L. Lusskin, Keith J. Keogh, and Michael Hilicki be appointed as Class Counsel in this case;

WHEREAS, based on the discovery produced and reviewed, as well as the experience and judgment of Class Counsel, the Class Representative has concluded the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class and in the best interest of the Settlement Class;

WHEREAS, the Class Representative, on behalf of himself and as the representative of the Settlement Class, and Safeway desire to forever resolve and compromise the disputes between them;

WHEREAS, the Class Representative, on behalf of himself and as the representative of the Settlement Class, and Safeway will execute this Agreement solely to compromise and settle protracted, complicated, and expensive litigation; and

WHEREAS, Safeway vigorously denies any and all liability or wrongdoing to the Class Representative and to the Settlement Class Members on grounds that include, without limitation,

Safeway never willfully, negligently, or knowingly caused the printing of any receipt disclosing more than five digits of a credit or debit card number, but has nonetheless concluded that further conduct of the Litigation would be protracted and expensive, and has taken into account the uncertainty and risks inherent in this Litigation, and has determined that it is desirable that the Litigation be fully, completely, and finally settled in the manner and upon the terms set forth herein;

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and their counsel agree that the Litigation shall be settled, compromised, and/or dismissed on the merits and with prejudice on the terms and conditions set forth in this Agreement, and without costs (except as provided herein), subject to Court approval of this Agreement after a hearing and on finding that it is a fair, reasonable, and adequate settlement.

I. SETTLEMENT CLASS DEFINITION

For purposes of settlement only, the Parties agree to certification of the following as the Settlement Class:

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).

Persons meeting this definition are referenced herein collectively as the “Settlement Class,” and individually as “Settlement Class Members.” Excluded from the Settlement Class is any individual class member who properly opts out of the Settlement pursuant to the procedure described herein.

II. OTHER DEFINITIONS

As used in this Agreement, the following terms have the meanings set forth below. Terms used in the singular shall include the plural and vice versa.

- A. “Agreement” means this Agreement and all attachments and exhibits, which the Parties understand and agree set forth all terms and conditions of the Settlement between them, supersedes the Settlement Term Sheet, and which is subject to Court approval. It is understood and agreed that Safeway’s obligations for payment under this Agreement are conditioned on, among other things, Final Approval, but in no event shall payment by Safeway exceed the Settlement Amount, as defined below.
- B. “Claims Administrator” and “Claims Office” shall mean _____, which, subject to Court approval, shall be responsible for administrative tasks, including, without limitation: (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 this 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 this Agreement.

C. “Claims Deadline” shall have the same meaning as set forth in the Preliminary Approval Order issued by the Court, in substantially the form attached hereto as Exhibit 1, the date of which shall be 60 days after the deadline for notice to be distributed to Class Members.

D. “Class Counsel” means

Scott David Owens
Patrick Christopher Crotty
SCOTT D. OWENS, P.A.
2750 N. 29th Ave., Suite 209A
Hollywood, Florida 33020

Bret L. Lusskin, Jr., Esq.
BRET LUSSKIN, P.A.
20803 Biscayne Blvd., Ste 302
Aventura, Florida 33180

Keith J. Keogh
Michael Hilicki
KEOGH LAW, LTD
55 W. Monroe St., Suite 3390
Chicago, IL 60603

E. “Class Notice” means the “Summary Notice,” and “Full Notice,” the terms of which shall be mutually agreeable to the Parties and approved by the Court substantially in the form attached hereto as Exhibits 2 and 3.

- F. “Complaint” means the Class Action Complaint for Violations of the Fair and Accurate Credit Transactions Act (FACTA) that was filed by Plaintiff on _____ in the Circuit Court of Cook County, State of Illinois. .
- G. “Counsel for Safeway” means
- Thomas V. Loran III
Stacie O. Kinser
PILLSBURY WINTHROP SHAW PITTMAN LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
- Steven P. Mandell
MANDELL MENKES LLC
One North Franklin, Suite 3600
Chicago, Illinois 60606
- H. “Court” means the Circuit Court of Cook County, State of Illinois.
- I. “Safeway Releasees” means Safeway, each of its affiliates, parents, subsidiaries, predecessors, successors, co-venturers, divisions, joint venturers, joint ventures and assigns, as well as each of those entities’ past and present owners, investors, directors, officers, employees, partners, managers, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, indemnitors, shareholders, attorneys, accountants and auditors, banks and investment banks, consultants, vendors, contractors, licensors, franchisors, and assigns.
- J. “Effective Date” means the date on which the Order of Final Approval becomes Final.
- K. “Fairness Hearing” means a hearing set by the Court to take place no sooner than 200 days after entry of the Preliminary Approval Order for the purpose of:

- (i) 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 (ii) entering the Order of Final Approval.
- L. “Final” or “Finally Approved” or “Final Approval” of this Agreement means the later of the date that (i) the time has run for any appeals from the Order of Final Approval or (ii) any such appeals have been resolved in favor of approving, or affirming the approval of, this Agreement.
- M. “Incentive Payment” means the payment to the Class Representative further described in Section III.F.2. of this Agreement.
- N. “Opt-Out Deadline” shall have the same meaning as set forth in the Preliminary Approval Order issued by the Court, in substantially the form set forth in Exhibit 1, the date of which shall be 60 days after the deadline for notice to be distributed to Settlement Class Members.
- O. “Order of Final Approval” means the order and judgment to be entered by the Court approving this Settlement Agreement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the applicable Rules of Civil Procedure, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement Agreement, including granting Final Approval of the Settlement and ruling on Class Counsel’s application for attorneys’ fees and expenses, the Incentive Payment for the Class Representative, substantially in the form attached hereto as

Exhibit 4, and dismissing with prejudice the claims of the Class Representatives and all Settlement Class Members who do not opt out as provided by this Agreement and the applicable Rules of Civil Procedure.

- P. “Parties” means Fred Martin, Settlement Class Members who do not opt out, and Safeway Inc.
- Q. “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.
- R. “Preliminary Approval Order” means an order to be entered and filed by the Court certifying the Settlement Class and granting preliminary approval to the Settlement substantially in the form attached hereto as Exhibit 1.
- S. “Released Claims” means any and all claims, actions, causes of action, rights, suits, defenses, debts, sums of money, payments, obligations, promises, damages, penalties, attorneys’ fees, costs, liens, judgments, and demands of any kind whatsoever that each member of the Settlement Class may have or may have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, 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 gas station during the settlement class period described in Section I, above, including, but not limited to, any claims under arising

under the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended by the Fair and Accurate Credit Transactions Act, Pub. L. 108–159, and 15 U.S.C. § 1681c(g), for a violation of any consumer protection statutes, or regarding identity theft or the risk of identity theft.

- T. “Request for Exclusion” means the written request that Settlement Class Members are required to timely submit in order to opt out of the Settlement Class and this Settlement Agreement.
- U. “Settlement Amount” means the sum of twenty million dollars (\$20,000,000) and includes, among other things, all costs and attorneys’ fees of Class Counsel, the Incentive Payment (if any), all costs incurred by the Claims Administrator, all payments to Settlement Class Members from the Settlement Fund, the expenses, including attorneys’ fees and costs, incurred in the defense of the settlement against objections, and any appeals of orders thereon. The Settlement Amount shall be the entire financial obligation of Safeway and the Safeway Releasees in connection with the settlement and all related proceedings, including, but not limited to, preliminary and final approval and the implementation of this Agreement.
- V. “Settlement Claim Form” means a form, substantially in the form attached hereto as Exhibit 5 (for recipients of direct notice per Section IV.B.1 below), to be completed by Settlement Class Members and submitted to the Claims Administrator. The Settlement Class Members who receive the direct Class Notice shall be able to make a claim via website or telephone IVR (as defined below) provided that they are required to enter the claim ID printed on the direct notice. Each Settlement Claim

Form shall require the Settlement Class Member to provide: (a) his or her name; (b) physical address; (c) phone number, which shall be optional; and (d) e-mail address to the extent that he or she has one. The website claim form will prepopulate this information for persons who first enter their claim ID and shall ask them to update or correct any information. All Settlement Claim Forms must also contain a verification that the claimant printed at least one receipt at a Safeway gas pump during the settlement class period described in Section I, above. The Claim Forms will also require each Settlement Class Member to state 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.

- W. “Settlement Fund” means the fund used to pay all claims relating to the settlement of the Litigation and all Released Claims pursuant to this Agreement.
- X. “Settlement Website” means the website prepared by the Claims Administrator in connection with the process of providing notice to Settlement Class Members as further described in Section II.B of this Agreement.

III. SETTLEMENT TERMS

A. Certification of Settlement Class and Conditional Nature of Agreement

For settlement purposes only, Safeway conditionally agrees and consents to certification of the Settlement Class. Safeway’s conditional agreement is contingent upon execution of this Agreement by the Parties, entry of the Order of Final Approval, and the Order of Final Approval’s becoming Final. Except as provided below, if this Agreement, for any reason, does not receive Final Approval or is otherwise terminated, it shall be null and void, it shall be of no force or effect

whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms, and entry of the Agreement shall remain subject to the applicable state law or rule of civil procedure.

Safeway denies all claims as to liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief as well as the class action allegations asserted in the Litigation. Safeway has agreed to resolve this Litigation through this Agreement, but to the extent this Agreement is deemed void or Final Approval does not occur, Safeway does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds, including without limitation the ability to challenge class action treatment on any grounds or assert any and all defenses or privileges. The Class Representative and Class Counsel agree that Safeway retains and reserves all of these rights and agree not to take a position to the contrary.

B. Settlement Amount

In full and final settlement of the Settlement Class's claims, Safeway shall pay the Settlement Amount. The Settlement Amount shall include, but is not necessarily limited to, the full and complete cost of Settlement Class benefits and compensation, all Class Notices and claims administration and all related administrative costs, the Incentive Payment (if any is authorized by the Court), and Class Counsel's attorneys' fees and expenses (as authorized by the Court). In no event, however, will the Settlement Amount exceed \$20,000,000.

C. All Released Claims Satisfied by Settlement Fund

Each Settlement Class Member shall look solely to the Settlement Fund for settlement and satisfaction of all Released Claims as provided in this Agreement.

D. Settlement Fund

Safeway will pay the Settlement Amount to the Claims Administrator after Final Approval, except that it will deposit an amount necessary to pay for the estimated cost of Class Notice and administration ten business days after Preliminary Approval is entered. The remainder of the Settlement Amount, net of the costs of Class Notice and claims administration, the attorneys' fee award, and any Incentive Payment, shall be distributed pro rata to Settlement Class Members who submit Settlement Claim Forms that are received on or before the Claims Deadline and are accepted by the Claims Administrator in compliance with the procedures set forth in the Class Notice, Preliminary Approval Order, and Order of Final Approval. A person whose claim form does not match a transaction in Safeway's records showing a receipt at a Safeway gas station that was not properly truncating receipts shall not be a class member.

The distribution shall be as follows:

- i. First Distribution. Settlement Awards shall be paid by electronic deposit or check. Within 45 days after the Effective Date, the Claims Administrator shall send payment to each claiming Settlement Class Member eligible to receive payment. The amount of each payment shall be the amount of the funds available for distribution divided by the number of Settlement Class Members to whom payments are being directed. The payment shall be made, at the option of the class member, either by electronic deposit or by check sent by first-class mail. The Claims Administrator will perform skip tracing and re-mailing as reasonably necessary. Checks will be valid for 120 days from the date

on the check. The amounts of any checks that are returned as undeliverable or that remain uncashed more than 120 days after the date on the check will be included as part of the Second Distribution (as defined below).

- ii. Second Distribution. If, after the expiration date of the checks distributed pursuant to subparagraph i. above, there remains money in the Settlement Fund sufficient to pay at least \$10 to each Settlement Class Member who received an electronic deposit or cashed his or her initial settlement check prior to the expiration date of such check, such remaining monies will be distributed on a pro rata basis to those Settlement Class Members (the “Second Distribution”). The Second Distribution shall be made within 90 days after the expiration date of the checks distributed pursuant to subparagraph i. above, and shall be paid in the same manner as the First Distribution. Checks issued pursuant to the Second Distribution will be valid for 120 days from the date on the check.
- iii. Remaining Funds. Money in the Settlement Fund that has not been distributed after the expiration of checks issued pursuant to the Second Distribution as set forth in subparagraph ii. above, including but not limited to money not distributed because there is not enough money in the Settlement Fund to justify a Second Distribution (the “Remaining Funds”), shall be paid as *cy pres* to the National Consumer Law Center

(“NCLC”) earmarked for education and efforts to strengthen consumer protections designed to prevent identity theft, and focused on consumer financial privacy efforts for low-income populations and to the Chicago Bar Foundation, which supports numerous Illinois legal aid organizations. The Parties will jointly petition the Court for a *cy pres* distribution to the two *cy pres* recipients. Based on the Parties’ input, the Court may order the Remaining Funds to be distributed equally to these two organizations. No money remaining in the Settlement Fund shall revert to or otherwise be paid to Safeway.

E. If Final Approval Does Not Occur

In the event the Agreement does not receive Final Approval, or is cancelled or terminated or otherwise becomes null and void for any reason, the remainder of the Settlement Fund, net of fees and costs paid or incurred for the Class Notice, shall revert back to Safeway.

F. Attorneys’ Fees and Class Representative Incentive Payment

To the extent that the Court orders an award of attorneys’ fees and expenses to any Class Counsel, or an Incentive Payment to the Class Representatives, such awards will be paid from the Settlement Amount within fourteen (14) days after the Effective Date.

1. Attorneys’ Fees and Expenses

Class Counsel will file a petition with the Court for an award of attorneys’ fees plus expenses to be paid solely from the Settlement Amount 30 days after the Notice is sent pursuant to section IV.B. This award shall be Class Counsel’s total recovery for attorneys’ fees, costs, and/or adequately supported expenses of any kind (including, but not limited to, mediation fees, travel,

filing fees, court reporter, expert fees and costs, and document review and production costs). Class Counsel shall be responsible for allocating and shall allocate all attorneys' fees and expenses that are awarded by the Court among Class Counsel, and Safeway shall have no responsibility, role, or liability in connection with such allocation.

2. Class Representatives Incentive Payment

Within 30 days after the Notice is sent pursuant to section IV.B, Plaintiff may petition the Court for an Incentive Payment for the service to the Settlement Class and the time and effort that the Class Representatives personally invested in this Litigation.

G. Motion for Preliminary Approval

Concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Agreement. The motion shall seek entry of a Preliminary Approval Order substantially in the form attached hereto as Exhibit 1.

IV. CLAIMS ADMINISTRATION

A. Claims Administrator/Claims Office

The Claims Administrator may appoint as many claims officers, experts, and/or advisors as are necessary to carry out the duties of the Claims Office expeditiously. The Claims Office procedures shall be subject to Court approval and under the continuing jurisdiction of the Court. The Claims Office shall be responsible for disseminating information to Settlement Class Members concerning settlement procedures. In addition, the Claims Office shall (i) assist the Court in processing and tabulating Requests for Exclusion, (ii) receive all opt-out forms and

documentation, (iii) receive, process, classify, and pay claims as provided in this Agreement and any applicable orders of the Court, and (iv) operate under the continuing supervision of the Court.

B. Notice

1. E-mail and Mail

A copy of the Summary Notice substantially in the form attached hereto as Exhibit 2, shall be e-mailed to all class members whose e-mail was provided by their card issuing banks or by Safeway. For any class member for whom there is no e-mail or whose e-mail notice was returned as undeliverable, they shall be mailed a copy of the Summary Notice by first class mail for which there is address information, by the deadline established by the Preliminary Approval Order. Such e-mail and mail shall be completed by the Claims Administrator. Safeway shall reasonably cooperate with Plaintiff's counsel in Plaintiff's counsel's efforts to retrieve Settlement Class Member information from any third party, including, but not limited to, Visa, MasterCard, American Express, Discover, and any other third party involved in processing Safeway debit or credit card transactions, with the express understanding that any reasonable costs any other entity incurs will be paid from the Settlement Amount and not in addition to the Settlement Amount. The Parties agree that any contact information, personally identifiable information, or transaction-specific information provided for purposes of identifying and/or notifying potential Settlement Class Members may be shared with the Claims Administrator, who agrees to be governed by the Protective Order in this Litigation, and any party Class Counsel decides to subpoena for the limited purpose of obtaining Settlement Class Member contact information. This information shall be kept confidential.

2. Settlement Website

By the deadline for distributing the Class Notice, the Claims Administrator shall establish and maintain the Settlement Website, which will, among other things, (i) enable Settlement Class Members to submit a claim and access and download the Settlement Claim Form, (ii) provide contact information for Class Counsel, and (iii) provide access to relevant documents. Such documents shall include this Agreement and Class Notice; the Preliminary Approval Order; the Complaint; and, when filed, the motion for attorney fees and the Order of Final Approval if granted. The Claims Administrator shall also mail the Full Notice to any class member who so requests. The Summary and Full Class Notice shall both include the address (URL) of www.SafewayFACTASettlement.com for the Settlement Website. The Claims Administrator shall maintain the Settlement Website until at least 30 days following the void date for checks.

3. IVR

By the deadline for mailing the Class Notice, the Claims Administrator shall establish and maintain a toll-free number that maintains an interactive voice response (IVR) system to answer questions and allow class members who have a claim ID form mailed notice to submit a claim.

4. Reminder Notice

For every unreturned e-mail where that class member has not submitted a claim by ten days before the Claims Deadline, the Claims Administrator shall send a reminder notice, in substantially the form attached hereto as Exhibit 2 (except that the notice may be captioned with the phrase “Reminder Notice”) by e-mail at least seven days before the Claims Deadline for the class members for whom it has an e-mail address.

5. Opt-Out

The Class Notice shall provide a procedure whereby Settlement Class Members may exclude themselves from the Settlement Class by mailing a Request for Exclusion. Any Settlement Class Member who does not validly and timely submit a Request for Exclusion before the Opt-Out Deadline shall be deemed a Settlement Class Member and shall be bound by the terms of this Agreement.

6. Objections

The Class Notice shall also provide a procedure for Settlement Class Members to object to the settlement set forth herein and any of its terms. Objections must be received by the deadline set by the Court.

7. Non-Approval of Agreement

This Agreement is conditioned on Final Approval without material modification by the Court. In the event that the Agreement is not so approved, the Parties shall return to the status quo ante as of the date of this Agreement, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of the date of the Agreement, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class. In the event that the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal, each of the Parties shall have a right to withdraw from the Agreement and return to the status quo ante as of the date of this Agreement, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have

waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class.

8. Safeway's Rights to Terminate Agreement

Safeway's willingness to settle this litigation on a classwide basis and to agree to the certification of the Settlement Class is dependent upon achieving finality in this Litigation, and the desire to avoid further expense in this Litigation. Consequently, Safeway shall have the right in its sole discretion to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to Plaintiff, Settlement Class Members, or Class Counsel if more than 5% of the Settlement Class Members request to opt-out of the Settlement pursuant to Section IV.B.5, above.

C. Claims Process

In order to make a claim, a Settlement Class Member must submit a valid and completed Settlement Claim Form in compliance with the procedures set forth in the Class Notice, Preliminary Approval Order, and Order of Final Approval. The claims shall be cross-referenced against the transaction data for the class members. Any claim that does not match the transaction data for the class members shall not be valid as that person is not a class member. For example, not all Safeway gas stations would have printed receipts containing violative information and even then, they did so in a limited window of time, such that customers engaging in transactions outside of these specific locations or outside of the window of time would not be part of this class. All Settlement Claim Forms must be submitted by the Claims Deadline as set forth in the Class Notice. Any Settlement Claim Form submitted after the Claims Deadline shall be deemed an untimely and invalid claim. Safeway agrees to provide putative class members' contact and identifying

information and transaction data that Class Counsel and the Claims Administrator determine is reasonably needed to identify or locate the class members insofar as such information and data are reasonably available to Safeway.

D. Retention of Records

The Claims Administrator shall retain all records relating to payment of claims under this Agreement for a period of three (3) years from the Effective Date. The confidentiality of those records shall be maintained in accordance with the Preliminary Approval Order and any applicable protective order.

V. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS/JURISDICTION

A. Exclusive Remedy

This Agreement shall be the exclusive remedy for any and all Released Claims, any claim arising out of the subject matter of this Agreement, and any complaint by the Settlement Class or any Settlement Class Member against the Safeway Releasees related to the Released Claims. No Safeway Releasee shall be subject to liability or expense of any kind to the Settlement Class or any Settlement Class Member related to the Released Claims except as provided in this Agreement. This Agreement shall be binding upon, and in addition shall inure to the benefit of the Parties' successors, assigns, and the Safeway Releasees.

B. Dismissal of Claims

The Parties agree that upon the Effective Date, the Litigation shall be dismissed with prejudice in accordance with the Order of Final Approval, substantially in the form attached hereto as Exhibit 4.

C. Continuing Jurisdiction of Court

The Court shall retain exclusive and continuing jurisdiction over this Litigation, the Parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

VI. RELEASES

Upon the Effective Date of this Agreement, the Safeway Releasees shall be released and forever discharged from all Released Claims by the Class Representatives, the Settlement Class, and each Settlement Class Member. The Settlement Class and each Settlement Class Member covenant and agree that they shall not hereafter seek to establish liability against any Safeway Releasee based, in whole or in part, on any of the Released Claims. The Class Representatives, the Settlement Class, and each Settlement Class Member expressly waive and relinquish any and all rights which they may have under Section 1542 of the California Civil Code or any similar statute of the United States. Section 1542 of the California Civil Code reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Class Representative, the Settlement Class, and each Settlement Class Member may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives, the Settlement Class, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Order of Final Approval shall have, nevertheless, fully, finally,

and forever waived, settled, and released any and all Released Claims, regardless of such subsequent discovery of additional or different facts.

VII. MISCELLANEOUS PROVISIONS

A. Cooperation to Facilitate this Settlement

The Parties agree that they shall work together in good faith to facilitate this Agreement, as well as undertake any required steps to effectuate the purposes and intent of this Agreement.

B. Representation by Counsel

The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement, and have been given the opportunity to review independently this Agreement with such legal counsel, and agree to the particular language of the provisions herein.

C. No Admission of Liability

Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity, of any liability or wrongdoing of any Party, or of the truth of any allegations made by the Class Representative, on behalf of himself or the Settlement Class, against Safeway. Safeway expressly denies and disclaims any liability or wrongdoing. The existence, contents, and terms of this Agreement, and any negotiations, statements, or proceedings in connection therewith, shall not be admissible in evidence for any such purpose in any proceeding, except solely for purposes of enforcement of the terms of this Agreement; however, this Agreement may be used by either Party and pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted,

prosecuted, or attempted with respect to any of the Released Claims, and may be filed, offered, and received into evidence, and otherwise used for such defense.

D. Contractual Agreement

The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents. The Parties further agree that this Agreement may be disclosed in accordance with California Evidence Code sections 1122 and 1123.

E. Change of Time Periods

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

F. Integration

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement, including the Settlement Term Sheet. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or

written representations, agreements, understandings, or undertakings with respect to the subject matter of this Agreement.

G. Drafting

This Agreement is a collaborative effort of the Parties and their respective attorneys, and the Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*.

H. Costs

Except as otherwise provided herein, each Party shall bear its own legal and other costs incurred in connection with the Released Claims, including the preparation and performance of this Agreement.

I. Modification or Amendment

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

J. No Waiver

The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

K. Severability

Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder; provided, however, that the terms of this Section VII.K shall not apply should any court or tribunal find any part, term, or provision of the release, as set forth in Section VI, to be illegal or invalid in any manner.

L. No Consent

To the Parties' knowledge and belief, except as expressly provided herein, no consent, authorization, action, or approval of, notice to or filing with, waiver, or exemption by any person or entity which has not been obtained, including, without limitation, any governmental, public or self-regulatory body or authority, is required in connection with the execution, delivery, and performance of this Agreement or consummation of the transactions contemplated hereby by the Parties hereto.

M. No Violation of Law or Agreement

The execution, delivery, and performance of this Agreement by the Parties hereto does not and will not, conflict with, violate, result in a breach of, or cause a default under (a) any applicable provision of any federal, state, or local law or regulation, (b) any provision of any order, arbitration award, judgment, or decree, or (c) any provision of any agreement or instrument applicable to the Parties.

N. Successors

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties thereto.

O. Choice of Law

All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of California, without reference to its conflict of law provisions. The adequacy of the settlement, and any determination regarding Class Counsel's fees and expenses, and any Incentive Payment, shall be governed by the Court presiding over the Preliminary and Final Approval process.

P. Fair and Reasonable

The Parties and their counsel believe that this Agreement is a fair and reasonable compromise of the disputed claims, in the best interests of the Parties, and have arrived at this Agreement as a result of extensive arm's-length negotiations.

Q. Headings

Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

R. Exhibits

The Exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.

S. Counterparts

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

T. Facsimile and E-mail

Transmission of a signed Agreement by facsimile or e-mail shall constitute receipt of an original signed Agreement by mail.

U. Warranty of Signature

Each signer of this Agreement represents and warrants that he or she is authorized to execute this Agreement in his or her official capacity on behalf of the Party to this Agreement for which he or she is signing and that this Agreement is binding on the principal represented by that signatory.

V. No Assignment

Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were, could have been, or ever could be asserted against any Party and that are released in this Agreement, or which were, could have been, or ever could be asserted against any Party. Any Party that breaches the representations and warranties set forth in this Section VII.V shall indemnify and hold harmless each other Party, its parents, subsidiaries, and affiliates, and their respective owners, agents, attorneys, successors, heirs, assigns, administrators, officers, directors, employees, and all other persons acting in concert with them from any and

every claim or demand of every kind or character arising out of a breach by any such breaching Party of its representations and warranties in this Section VII.V.

W. Confidentiality

1. The Parties agree that they will not contact the press, issue any press releases, and/or give any interviews upon this Settlement to any person other than to the Settlement Class Members in any way other than as provided in this Agreement, on the Settlement Website, or otherwise agreed upon by Safeway in writing in each instance prior to the Effective Date. Notwithstanding the foregoing, nothing in this agreement shall limit the ability of Safeway to include descriptions of the litigation and the settlement in materials where it is required to do so by law or regulation.

2. All Settlement Class Member information Safeway provides Class Counsel pursuant to the Settlement Agreement and Release, and all transaction, card account, or putative Settlement Class Member identifying or contact information Plaintiff subpoenas from any nonparty, shall be treated as confidential, and not shared with anyone other than: (a) the Parties' counsel; (b) the Claims Administrator; or (c) the Court, except that Class Counsel may also share that information with any bank, card processing entity, or other third party to facilitate the process of identifying or locating class members. If any information described in this paragraph is filed with the Court, it shall be filed under seal.


X. Settlement to Proceed Regardless of Jurisdiction

1. Safeway hereby waives any statute of limitations defense or venue objection it might have against Plaintiff or any class member created as a result of refileing the case in Cook County Illinois, provided that the case is refiled in state court within 30 days of dismissal of the California action.

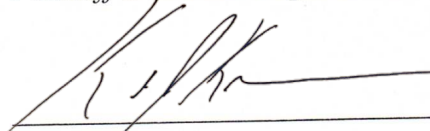
2. The Parties shall work in good faith to facilitate the Settlement, promptly secure its final approval from the Circuit Court of Cook County State of Illinois, and promptly carry out its terms.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: 9/1/2020

By: 
Fred Martin
Plaintiff and Class Representative

Dated: 9/3/2020

By: 
Keith J. Keogh
Michael Hilicki
KEOGH LAW, LTD
55 W. Monroe St., Suite 3390
Chicago, IL 60603

Scott David Owens
SCOTT D. OWENS, P.A.
2750 N. 29th Ave.
Suite 209A
Hollywood, FL 33020

Bret L. Lusskin, Jr., Esq.
BRET LUSSKIN, P.A.
20803 Biscayne Blvd., Ste 302
Aventura, Florida 33180

Counsel for Plaintiff Martin and the Class

Dated: September 11, 2020

By: SAFEWAY INC.

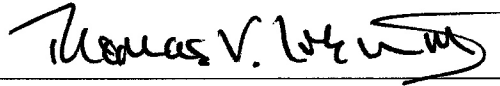
Theodore K. Bell

Name: Theodore K. Bell

Title: Senior Corporate Counsel

APPROVED AS TO FORM

Dated: September 18, 2020 By:



Thomas V. Loran III
Stacie O. Kinser
PILLSBURY WINTHROP SHAW PITTMAN LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998

Steven P. Mandell
MANDELL MENKES LLC
One North Franklin, Suite 3600
Chicago, Illinois 60606

Counsel for Safeway Inc.