



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

March 20, 2014

DMS NOTICE
QC - 14 -01
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Safeway Inc., a Delaware Corporation

Enclosed is a copy of the Final Judgment and Permanent Injunction issued against Safeway Inc., a Delaware Corporation. The case was filed on March 5, 2014, by the District Attorneys' Offices of Marin, Alameda, Fresno, Napa, Sacramento, Santa Cruz, Solano, Ventura, and Sonoma Counties for overcharging consumers and selling or advertising meat by the each, violations of California Business and Professions Code Sections 12024.2 and 12024.5, respectively.

The California Department of Food and Agriculture, Division of Measurement Standards worked with weights and measures investigators from over 21 counties on this case. The total settlement was for \$2,250,000. Civil penalties amounted to \$2,000,000, agency costs were \$200,000, and \$50,000 of cy pres restitution was placed in the Consumer Protection Trust Fund.

Marin County should be sure to report these penalties on the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

We appreciate the fine work done by the District Attorney's Offices along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



FILED

MAR - 5 2014

KIM TURKLEY, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

1 EDWARD S. BERBERIAN
2 District Attorney, County of Marin
3 Andres H. Perez, Deputy District Attorney
4 State Bar No. 186219
5 3501 Civic Center Dr., Rm. 130
6 San Rafael, CA 94903
7 Tel: (415) 473-6450

8 (For list of additional Plaintiff's counsel,
9 See attached Exhibit 1)

10 Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,

13 vs.

14 SAFEWAY INC., a Delaware Corporation,
15 Defendant.

Case No. **14 00 83 9**
CIV
**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

16 Plaintiff, the People of the State of California ("the People"), appearing through its
17 attorneys, Edward S. Berberian, Jr., District Attorney for the County of Marin, by Andres H. Perez,
18 Deputy District Attorney; Nancy E. O'Malley, District Attorney for the County of Alameda, by
19 Matthew Beltramo, Deputy District Attorney; Elizabeth A. Egan, District Attorney for the County
20 of Fresno, by Michael Brummel, Deputy District Attorney; Gary Lieberstein, District Attorney for
21 the County of Napa, by Catherine Borsetto, Deputy District Attorney; Jan Scully, District Attorney
22 for the County of Sacramento, by Ruth Young, Deputy District Attorney; Bob Lee, District
23 Attorney for the County of Santa Cruz, by William Atkinson, Assistant District Attorney; Donald
24 A. du Bain, District Attorney for the County of Solano, by Criselda Gonzalez, Deputy District
25 Attorney; Gregory D. Totten, District Attorney for the County of Ventura, by Mitchell F. Disney,
26 Deputy District Attorney; Jill R. Ravitch, District Attorney for the County of Sonoma, by
27 Mathew T. Cheever, Deputy District Attorney; and Defendant Safeway Inc., a Delaware
28 Corporation, appearing through its attorneys, Robert A. Gordon, Esquire and Valerie D. Lewis,

FILE COPY

1 Esq., and it appearing to the Court that the parties hereto have stipulated and consented to the
2 entry of this Final Judgment and Permanent Injunction ("Final Judgment") without the taking of
3 proof, and without this Final Judgment being construed as an admission by Safeway of any fact,
4 liability, issue of law, conclusion of law or violation of any statutory or regulatory law, and the
5 Court having considered the matter and the pleadings, and good cause appearing therefore, IT IS
6 HEREBY ORDERED, ADJUDGED AND DECREED:

7 **JURISDICTION**

8 1. This action is brought under California law, and this Court has jurisdiction of the
9 subject matter and the parties.

10 **APPLICABILITY**

11 2. This Final Judgment is applicable to Safeway Inc., a Delaware corporation, its
12 officers, directors, representatives, successors, assignees, and all persons, partnerships, corporations,
13 and other entities acting under, by, through, on behalf of, or in concert with Safeway Inc. as it
14 relates to its business in California only, with actual or constructive notice or knowledge of this
15 Final Judgment. This Final Judgment is also applicable to any and all subsidiaries of Safeway Inc.
16 doing business in California, including but not limited to The Vons Companies, Inc., and to any
17 stores owned and/or operated by them, including but not limited to Pavilions, and their respective
18 officers, directors, representatives, successors, assignees and all persons, partnerships, corporations,
19 and other entities acting under, by, through, on behalf of, or in concert with any such subsidiary
20 with actual or constructive knowledge of this Final Judgment. All of these defendants, persons and
21 entities shall hereinafter be referred to collectively as "Safeway."

22 **INJUNCTION**

23 3. Pursuant to Business and Professions Code §§ 17203 and 17535, Safeway is
24 permanently enjoined and restrained, with respect to any and all California stores it owns or
25 operates (hereinafter "California Stores"), from committing, directly or indirectly, any or all of the
26 following acts or omissions:

27 A. Violating Business and Professions Code § 17500 by, with the intent directly
28 or indirectly to dispose of real or personal property or to perform services or to induce any member

1 of the public to enter into an obligation relating to such property or services, making or causing to
2 be made any representation concerning that property or those services, or concerning any
3 circumstance or matter of fact connected with the proposed performance thereof, which is untrue or
4 misleading, and which is known to be, or which by the exercise of reasonable care should be known
5 to be, untrue or misleading (as used herein, the term "misleading" includes statements which
6 although true, are either actually misleading, or which have a capacity, likelihood or tendency to
7 deceive or confuse the person to whom they are directed).

8 B. Violating any of the provisions of Business & Professions Code § 12024.5.

9 C. Charging, at the time of sale of a commodity, an amount greater than the
10 advertised, posted, marked, displayed or quoted price for that commodity, in violation of Business
11 and Professions Code § 12024.2, subdivision (a)(1).

12 D. Computing, at the time of sale of a commodity, an amount greater than a true
13 extension of a price per unit, that is then advertised, posted, marked, displayed, or quoted for that
14 commodity, in violation of Business and Professions Code § 12024.2, subdivision (a)(1).

15 E. Charging, at the time of sale of a commodity, an amount greater than the
16 lowest price posted on the commodity itself or on a shelf tag that corresponds to the commodity,
17 notwithstanding any limitation of the time period for which the posted price is in effect, in violation
18 of Business and Professions Code § 12024.2, subdivision (a)(2).

19 F. Except where otherwise required by law, failing to honor any valid Safeway
20 coupons, discounts or offers, whether disseminated to the public or individuals, including, but not
21 limited to, any offers, coupons or discounts in the "Just for U", "Club Card" or other Safeway
22 electronic discount or coupon programs, wherein any eligible customer is overcharged or does not
23 receive the full amount of the valid offered or discounted price.

24 G. Failing to clearly and conspicuously disclose any inclusions, exceptions or
25 limitations to any Safeway offers, coupons or discounts, including but not limited to any Safeway
26 offers, coupons, or discounts in the "Just for U", "Club Card" or other Safeway electronic discount
27 or coupon programs.

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1 H. Making or disseminating any false or misleading statement with respect to
2 the price of any item offered for sale.

3 4. Pursuant to Business and Professions Code §§ 17203 and 17535, Safeway is hereby
4 ordered and mandated to implement and adhere to the following Price-Accuracy Policy at
5 California Stores:

6 A. If the price charged for an item is higher than Safeway's lowest applicable
7 advertised price, Safeway shall, upon notice, immediately give the customer the item for free if the
8 lowest applicable advertised price is \$5.00 or less or, if the item's lowest applicable advertised price
9 is over \$5.00, immediately give the customer a \$5.00 Safeway gift card and refund any excess
10 amount collected for the item.

11 B. Safeway's Price-Accuracy Policy shall be subject to the following terms and
12 conditions:

13 (i) Safeway's Price-Accuracy Policy shall exclude purchases of fuel,
14 alcoholic beverages, dairy, tobacco and non-OTC pharmacy products.

15 (ii) As used herein, "lowest applicable advertised price" means the
16 lowest non-retracted advertised, posted, marked, displayed or quoted price offered to the public for
17 an item at the store at which the item is scanned, and after any other coupons and discounts are
18 applied. Personalized prices (e.g. Just for U program) offered to an individual are not "offered to
19 the public" for purposes of this definition and shall constitute the lowest applicable advertised price
20 only as to those individuals who have been offered the personalized price.

21 (iii) If the consumer is overcharged for two or more items in a single
22 store visit, the policy shall apply only to the higher priced item. Only one such free item or \$5.00
23 gift card shall be provided per transaction.

24 (iv) Except as set forth herein, Safeway's Price-Accuracy Policy to
25 provide the item free or give a \$5.00 gift card shall not be limited as to the number of times it may
26 apply to any individual customer.

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1 (v) Gift cards issued pursuant to the Price Accuracy Policy shall be
2 deemed to be distributed as part of a "promotional program" within the meaning of Civil Code
3 section 1749.5(d)(1); however, the gift cards shall not contain an expiration date.

4 C. Any Safeway cashier, customer service agent or Safeway retail management
5 personnel who is aware or is made aware with reasonable certainty of an overcharge, shall take
6 immediate steps to comply with Safeway's Price-Accuracy Policy whether at the point of sale or at
7 a later time. If a cashier believes he or she is unable to resolve the issue immediately, the cashier
8 shall immediately summon a customer service agent or Safeway retail management personnel to the
9 check stand to assist the customer. If the overcharge discrepancy involves an electronic coupon
10 program, Safeway may at its discretion have the matter exclusively handled immediately by a
11 customer service agent or Safeway retail store management personnel. In all instances, Safeway
12 shall act without undue delay in confirming whether an overcharge has occurred.

13 D. Safeway shall not make any statements or take any actions which would
14 directly or indirectly prevent or discourage Safeway's Price-Accuracy Policy from being followed,
15 complied with, enforced by or adhered to by Safeway employees, nor shall they discourage
16 customers from utilizing the policy.

17 E. Safeway fuel stations may only be required to adjudicate non-Just For You
18 electronic coupon price accuracy discrepancies for items actually purchased at the specific fuel
19 station.

20 F. Price accuracy discrepancies arising from purchases made at Safeway
21 pharmacies or wellness centers may at Safeway's discretion be handled exclusively by a customer
22 service agent or Safeway retail store management personnel.

23
24 5. Pursuant to Business and Professions Code §§ 17203 and 17535, and by no later
25 than forty-five (45) days after entry of this Final Judgment, Safeway shall post signs (hereinafter
26 "Price-Accuracy Notice") in the manner and locations described below at all California Stores in the
27 following words:

28 ///

PRICE-ACCURACY GUARANTEE

If we overcharge you for any item and the lowest applicable advertised price is \$5.00 or less, we will give you the item for free.

If the lowest applicable advertised price is over \$5.00, we will give you a \$5.00 gift card and charge the correct price.

If you are overcharged for more than one of the same item, the free item or gift card is limited to one of those items.

If you are overcharged for two or more different items, the free item or gift card policy applies to the highest priced item.

Excludes Tobacco, Alcoholic Beverages, Gas, Dairy & Pharmacy.

Questions, Comments or Complaints Call: 1-800-283-9535

A. The Price-Accuracy Notice shall include a toll-free telephone number for consumer complaints, questions or comments regarding overcharges, scanning errors and Safeway's Price-Accuracy Notice. The toll-free number shall be exclusively dedicated to the taking of and creating records of complaints, questions, comments and resolution of alleged overcharges, scanning errors and Safeway's Price-Accuracy Notice. With respect to such records, Safeway shall record and retain the number and nature of the consumer contacts received for a period of no less than three (3) years from date of the consumer contact, such information to include all available identifying information for the consumer, along with the date, store number and identity of the item(s) in question.

B. The Price-Accuracy Notice shall be printed on signs posted in a clear, conspicuous and unobstructed location at each customer service desk and each place a point of sale

1 device or cash register is located. For signs located at each place a point of sale device or cash
2 register is located, Safeway shall place the sign in at least one of the three following locations: 1) on
3 the horizontal surface of all check writing pads (i.e. the flat surfaces where customers typically write
4 checks); 2) on the vertical surfaces in the customer's line of sight while waiting in the check stand
5 lane; or 3) on the surface fronting the check stand conveyer belt where the customer first enters the
6 check stand line. To ensure readability and comprehension by the consumer, these Price-Accuracy
7 Notice signs shall be no smaller than 5" x 8"; words shall be in a font size not less than 16-point;
8 against a contrasting background; and each sentence either bulleted or separated by a blank line.

9 C. The Price-Accuracy Notice shall also be printed on both sides of overhead
10 hanging sign(s), in readily legible type, in a font size not less than 96-point, against a contrasting
11 background and posted clearly and conspicuously so as to be easily read by customers immediately
12 before reaching each check stand, at each California Store and as set forth below:

13 (i) For stores having eight (8) or more check stands, Safeway shall have
14 one overhead hanging sign for every four (4) check stand lanes;

15 (ii) For stores having fewer than eight (8) check stands, Safeway shall
16 have no fewer than two overhead hanging signs spaced as evenly as possible among the check stand
17 lanes.

18 (iii) In addition to any overhead hanging signs required by (i) or (ii)
19 above, for stores with self-checkout lanes, Safeway shall be required to have only a single overhead
20 hanging sign above the self-checkout area, regardless of the number of self-checkout stations.

21 D. Safeway shall also display the Price-Accuracy Notice at additional or
22 different locations agreed to by the parties as designed to meet the compliance objectives described
23 in paragraph 9.

24 E. Fuel stations are only required to display the Price-Accuracy Notice at the
25 1) service glass window facing the customer or 2) the service counter. No overhead signage is
26 required.

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1 F. Should the Third-Party Auditor or an Inspector from any County Weights
2 and Measures Department, State of California Department of Food and Agriculture, or any District
3 Attorney's Office, find a violation regarding placement of signage, Safeway shall have seven (7)
4 days from any oral or written notice of the violation to correct the violation without said violation
5 constituting a violation of the this injunction.
6

7 6. Pursuant to Business and Professions Code §§ 17203 and 17535, and in an effort to
8 provide greater clarity to consumers regarding "local" fresh produce offered for sale in California
9 Stores, Safeway shall not make any statements, representations, or otherwise convey the impression
10 through any advertising medium including, but not limited to, store signage, newspapers, circulars,
11 internet, or any other form of media, that an item of produce is "Locally Grown," "Local" or that the
12 purchase of the item would support local growers, unless, at a minimum:

13 A. The item of produce was grown in California, with the exception of produce
14 grown in a U.S. state bordering California and grown within fifty (50) miles from the California
15 Safeway store at which the item of produce is offered and/or advertised to be offered, for sale; and

16 B. For items grown in California, the item is identified as "California Grown"
17 or "Locally Grown in California," "CA" may be substituted for "California."

18 7. Should the State of California or the United States promulgate a law or regulation
19 defining the use of the term "local" or "locally grown" or similar term for such purposes, Safeway
20 will comply with the law, this Judgment notwithstanding.
21

22 THIRD-PARTY AUDITOR

23 8. Within thirty (30) calendar days of the entry of this Final Judgment, Safeway shall
24 retain the services of a third-party auditor ("Auditor"), such Auditor to be identified to and
25 accepted by the People prior to entry of Judgment, who within a period of three (3) years will
26 conduct three annual compliance audits of California Stores as provided herein below. The
27 Auditor will submit annual reports of those audits to Safeway, with a copy to the People, within
28 fifteen (15) calendar days of each anniversary date of the entry of this Final Judgment. However,

1 during the first year, the Auditor will conduct two quarterly compliance audits prior to the
2 completion of the first annual audit. In preparation for the first quarterly compliance audit, the
3 Auditor, in conjunction with Safeway, will develop an audit protocol meeting the requirements
4 of this Final Judgment and shall provide it to the People for review and comment. In addition to
5 any other audit objectives deemed appropriate by Safeway, the compliance audits shall evaluate
6 Safeway's compliance with paragraphs 3, 4, 5, and 6 of this Final Judgment.

7 A. The audit protocol shall include, but not be limited to:

8 (i) Scan Verification: The scan-verification protocol shall include a
9 recurring program not less than once per month involving the random selection of a statistically
10 significant number of items (regular, sale and specially priced), from a randomly selected,
11 statistically significant cross-section of stores throughout the State of California. The auditor
12 shall determine the items, the number of items and stores based on the criteria set forth herein.

13 (ii) Verification of Price-Accuracy Policy compliance: The audit shall
14 verify whether the correct Price-Accuracy Notices are displayed as required; confirm that all
15 Safeway cashiers, third-party vendor cashiers, Safeway customer care and Safeway retail store
16 management personnel (applicable employees) are aware of the Price-Accuracy Policy and take
17 steps to comply. The audit shall verify that all employees and third-party vendors with the
18 ability to operate a point of sale device or register have been trained on the Price-Accuracy
19 Policy. For purposes of this Judgment, "third-party vendor" shall not include any vendor who
20 operates a point of sale device or cash register within a Safeway retail store only for the sale of
21 the vendor's own products or services (e.g., Wells Fargo Bank and Panda Express).

22 (iii) The audit reports, based on the parties' agreed upon protocol and as
23 required above shall include, but not be limited to, a complete description and discussion of all
24 audit objectives, scope, criteria, audit activities, audit findings and audit conclusions,
25 recommendations, and shall identify and discuss all audit evidence considered or relied upon to
26 support the audit conclusions. The audit reports shall contain a listing of any written
27 advisements of violation, including formal Notices of Violation and inspection reports directed at
28 and maintained at any Safeway retail store by any local or state agency that identifies any

1 violation and/or alleged violation of any consumer protection law relating to advertising, price
2 accuracy or weighing accuracy, retained at the store.

3 (iv) Such reports shall also include, but not be limited to, a brief
4 description of the disposition of any such noted violations and what corrective measures, if any,
5 were taken by Safeway.

6 (v) Within 30 days after receipt by the People of each audit report,
7 Safeway shall provide the People with a plan to correct any deficiencies raised in the audit
8 reports.

9 B. Pursuant to Business and Professions Code sections 17203 and 17535,
10 Safeway shall continue to maintain a program to minimize pricing discrepancies, which shall
11 include at least the following:

12 (i) Safeway shall designate an employee with responsibility to function as a
13 Price-Accuracy Coordinator ("PAC") at each store, who shall conduct pricing accuracy inspections
14 and audits as described herein. Safeway shall employ at least one employee in each store who is
15 specially trained to perform the PAC's job. Each store shall have a minimum of 40 hours per week
16 allocated to the duties of the PAC. Safeway may use existing personnel to execute the duties of the
17 PAC.

18 (ii) Starting no later than 30 days after the entry of this Final Judgment, and
19 continuing thereafter, the PAC shall conduct price accuracy inspections/audits of the store to
20 monitor the accuracy of pricing and removal of all expired sale and price tags. The PAC shall
21 conduct price accuracy inspections/audits of no less than 500 items per week. The PAC shall record
22 results of each inspection/audit and Safeway shall maintain records of such inspections/audits at its
23 corporate headquarters for a period of three years from the date of creation.

24 (iii) If Safeway is aware or on notice that there is any discrepancy between
25 an advertised price (e.g. an advertisement, display sign, shelf price tag, label or any other expression
26 of price) and the scan price, which discrepancy can be corrected at the store, Safeway shall institute
27 corrective action no later than four (4) hours after discovery of such discrepancy. If there is a
28 discrepancy requiring action by Safeway corporate headquarters, Safeway shall institute corrective

1 action within twenty-four (24) hours, if noticed Monday through Friday, or within thirty-six (36)
2 hours, if noticed Saturday or Sunday, and after a determination that the discrepancy has resulted
3 from a system-wide problem. Safeway corporate headquarters shall create a log of errors and
4 corrective actions, which shall be maintained for a period of three years after their creation. The
5 time to correct discrepancies provided in this paragraph shall in no way effect Safeway's
6 requirements to immediately comply with the Price Accuracy Policy provisions of this Judgment.
7 Safeway shall not be required to log errors discovered by the PAC in the course of scope of their
8 duties listed herein. Safeway shall also not be required to log errors due to unsubstantiated
9 consumer complaints.

10 C. Safeway shall make all records required to be maintained by this Judgment
11 available for inspection and copying to any District Attorney, District Attorney Investigator, City
12 Attorney, any authorized representative of the State of California Department of Agriculture,
13 Division of Measurement Standards, or any representative of the County Sealer or Director of a
14 County Agricultural Commissioner at a reasonable time and place upon reasonable notice.

15
16 **COMPLIANCE**

17 9. For the purpose of securing compliance with the terms of this Final Judgment,
18 Safeway shall do the following:

19 A. Within thirty (30) days from the date of entry of this Final Judgment,
20 provide all present officers, directors and managers directly responsible for California retail
21 pricing offers with a copy of this Final Judgment. Future officers, directors and managers in
22 these designated areas of responsibility shall be served within thirty (30) days of their
23 appointment by Safeway. Safeway shall also provide a copy of this Final Judgment or a summary
24 of its terms to all California retail advertising personnel, retail cashier supervisors, customer service
25 personnel and customer care representatives.

26 (i) Safeway shall require persons listed in this section to sign an
27 acknowledgement that they have received and read a copy of this Final Judgment or summary.

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1 (ii) Safeway shall retain the signed acknowledgements of the persons
2 listed in this section for no less than three years from the date of signature.

3 (iii) Upon request by any party, Safeway shall produce copies of the
4 signed acknowledgements within two weeks of the request as long as this Final Judgment remains
5 in effect.

6 (iv) Persons who assume such positions in the future shall be given this
7 Final Judgment within 30 days of assuming the covered position.

8 B. Within thirty (30) days from the date of entry of this Final Judgment,
9 Safeway shall serve all present employees, persons or entities responsible for advertising,
10 marketing, or development or design of California packaging for Safeway products with a copy
11 of this Final Judgment. Future employees in these designated areas of responsibility shall be
12 served within thirty (30) days of their hire date with Safeway.

13 (i) Safeway shall require persons listed in this section to sign an
14 acknowledgement that they have received and read a copy of this Final Judgment.

15 (ii) Safeway shall retain the signed acknowledgements of the persons
16 listed in this section for no less than three years from the date of signature.

17 (iii) Upon request by any party but not more than twice per year, Safeway
18 shall produce copies of the signed acknowledgements within two weeks of the request as long as
19 this Final Judgment remains in effect.

20 (iv) Persons who assume such positions in the future shall be given the
21 Final Judgment within 30 days of assuming the covered position.

22 C. Within thirty (30) days from the date of entry of this Final Judgment,
23 Safeway shall provide all current employees of Safeway, and any applicable third- party vendors
24 who operate Safeway point of sale registers or devices, or assist customers at customer service
25 inside a Safeway store, with a copy or summary of the Price-Accuracy Policy. Safeway
26 employees and applicable third-party vendors hired after the entry of this Final Judgment shall be
27 provided with a copy or summary of the Price Accuracy Policy within thirty (30) days of their
28 hire date with Safeway.

1 (i) Safeway shall provide training on complying with the Price
2 Accuracy Policy to current employees and third-party vendors within (30) days of the date of
3 entry of this Final Judgment or for future employees or third-party vendors, within thirty (30)
4 days of their hire date or beginning of service, respectively. Each employee and third-party vendor
5 shall sign an acknowledgment that they have received training on and understand the Price
6 Accuracy Policy.

7 (ii) Safeway shall keep records of training sessions given to those
8 persons listed in this section for a period of three (3) years from date of training. The records
9 shall include, but are not limited to, attendance or completion records identifying the Safeway or
10 applicable third-party vendor employee, training materials, presentations or any other
11 instructional material. Upon request by any party, Safeway shall produce copies of training records
12 within two weeks of the request as long as this Final Judgment remains in effect.

13 (iii) Safeway shall not permit any employee or third-party vendor to
14 operate any point of sale register(s) or device(s) without proof of the employee's or third-party
15 vendor's compliance with the training provisions in this section.

16 10. Nothing in this Final Judgment shall in any way prevent Safeway from developing,
17 testing or implementing new or different systems or measures regarding the subjects covered by this
18 Final Judgment. At Safeway's request, prior to implementation or proposed implementation of any
19 such new or different system or measure, the parties agree to meet and confer regarding the viability
20 or continued application of any particular affected provision of this Final Judgment and whether the
21 Final Judgment should be modified, upon consent of the court, to include the implementation of any
22 such new or different system or measure.

23 11. If there have been no violations of any injunctive provisions of this Final Judgment
24 within five (5) years from the date of its entry, Safeway may make, and the People shall not oppose,
25 a motion to modify this Final Judgment by vacating Paragraphs 5, 6, and 7. Nothing in this
26 Paragraph shall in any way limit Safeway's right to seek modification or dissolution of the
27 injunction pursuant to Code of Civil Procedure §533. Except as otherwise stated in the first sentence
28 of this Paragraph, nothing shall in any way limit the People's right to oppose such an application.

1 **MONETARY RELIEF**

2 12. Pursuant to California Business and Professions Code §§ 17203, 17206, 17207,
3 17356.5 and 17535, Safeway shall pay the People at the time of filing of this Judgment, civil
4 penalties, costs and restitution in the sum of Two Million Two Hundred and Fifty Thousand Dollars
5 (\$2,250,000.00) by a single check made payable to the "Marin County District Attorney" and
6 divided as set forth below:

7 A. The total amount of \$200,000.00 shall be paid as investigative costs and
8 shall be distributed to the agencies listed below in the following amounts:

9 <u>Agency Costs</u>	10 <u>Amount</u>
11 CA Department of Agriculture, Div. of Measurement Standards	\$40,861.80
12 Alameda County Department of Weights & Measures	\$ 1,669.15
13 Contra Costa County Department of Weights & Measures	\$16,150.00
14 Fresno County Department of Weights & Measures	\$ 867.91
15 Imperial County Department of Weights & Measures	\$ 202.26
16 Los Angeles County Department of Weights and Measures	\$ 2,918.65
17 Marin County Department of Weights & Measures	\$17,960.33
18 Napa County Department of Weights & Measures	\$ 2,574.00
19 Orange County Department of Weights & Measures	\$ 3,024.00
20 Riverside County Department of Weights and Measures	\$ 516.32
21 Sacramento County Department of Weights & Measures	\$54,000.00
22 San Benito County Department of Weights & Measures	\$ 735.52
23 San Bernardino County Department of Weights & Measures	\$ 3,322.23
24 San Diego County Department of Weights & Measures	\$ 922.13
25 San Joaquin County Department of Weights & Measures	\$ 2,606.19
26 Santa Barbara County Department of Weights & Measures	\$ 1,136.00
27 Santa Clara County Department of Weights & Measures	\$ 1,339.68
28 Santa Cruz County Department of Weights & Measures	\$ 2,132.00
Shasta County Department of Weights & Measures	\$ 299.31

1	Solano County Department of Weights & Measures	\$ 3,027.60
2	Tuolumne County Department of Weights & Measures	\$ 214.92
3	Ventura County Department of Weights & Measures	\$43,520.00

4

5 B. The total amount of Two Million Dollars (\$2,000,000.00) shall be paid as
6 civil penalties and distributed equally among the following District Attorneys' Offices: Alameda
7 County, Fresno County, Marin County, Napa County, Sacramento County, Santa Cruz County,
8 Solano County, Sonoma County and Ventura County.

9 C. The parties having stipulated, and the Court hereby finds, that it is
10 impractical and impossible to identify or to provide direct restitution to consumers who may
11 have unknowingly been overcharged by Safeway or misled by Safeway advertising such that
12 other forms of direct restitution are too impractical, costly, and would far exceed any benefit to
13 individual consumers. Thus, Safeway shall pay restitution under the doctrine of *cy pres* pursuant
14 to Business and Professions Code §§ 17203 and 17535 to the Consumer Protection Trust Fund,
15 established in the case of *People v. ITT Consumer Financial Corporation* (Alameda Superior
16 Court case no. 656038-0), in the amount of Fifty Thousand Dollars (\$50,000.00).

17 D. All checks required under the terms of this Final Judgment shall be delivered
18 to Deputy District Attorney Andres Perez, Marin County District Attorney's Office, 3501 Civic
19 Center Drive, Room 130, San Rafael, California 94903, at the time of entry of this Final Judgment.

20 **NOTICE AND RETENTION OF JURISDICTION**

21 13. The failure of the People to enforce any provision of this Final Judgment shall
22 neither be deemed a waiver of such provision or its enforceability, nor shall it in any way affect the
23 validity of this Final Judgment. The failure of the People to enforce any provision shall not preclude
24 the People from later enforcing the same or other provisions of this Final Judgment.

25 14. Except as otherwise expressly provided herein, each party shall bear its own
26 attorney's fees and costs.

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EXHIBIT 1

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2
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