



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 08 – 5

July 31, 2008

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Safeway, Inc. Settlement**

Attached is a stipulated final judgment and permanent injunction involving recent litigation against Safeway, Inc. for violations of the Business and Professions Code, and the Health and Safety Code. We are very pleased with the fine work done by the prosecution team and others representing the enforcement agencies.

The weights and measures lead prosecution counties should be sure to report these penalties in the County Monthly Report (CMR). According to the settlement Napa, Fresno, Marin, Sacramento, Santa Cruz, and Solano Counties should probably decide who will report the overall settlement information. All participating counties should record their individual investigative cost reimbursements in the appropriate columns in the report. There is currently no other way for the program to enter the settlement data into the monthly and annual activities.

Sincerely,

Edmund E. Williams
Director

Attachment

Cc: QC Special Investigators
Kevin Masuhara, Director, County Liaison Office
Ron Flores, Program Supervisor



ENDORSED

JUN 10 2008

Clerk of the Napa Superior Court
By: f. MUSS
Deputy

1 GARY LIEBERSTEIN
2 District Attorney, County of Napa
3 Daryl Roberts (SBN 111981)
4 Deputy District Attorney
5 931 Parkway Mall
6 Napa, CA 94559
7 Tel: (707) 253-4211
8 Fax: (707) 299-4322

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

26-42803

11 PEOPLE OF THE STATE OF CALIFORNIA,)
12 Plaintiff,)
13 v.)
14 SAFENAY INC.,)
15 a Delaware Corporation,)
16 Defendant.)

Case No.
FINAL JUDGMENT and
PERMANENT INJUNCTION

17 Plaintiff, the People of the State of California ("the
18 People"), appearing through its attorneys, Gary Lieberstein,
19 District Attorney for the County of Napa, by Daryl Roberts, Deputy
20 District Attorney; Elizabeth Egan, District Attorney for the County
21 of Fresno, by Roger Wilson, Deputy District Attorney; Edward S.
22 Berberian, Jr., District Attorney for the County of Marin, by
23 Robert E. Nichols, Deputy District Attorney; Jan Scully, District
24 Attorney of the County of Sacramento, by Ruth Young, Deputy
25 District Attorney; Bob Lee, District Attorney for the County of
26 Santa Cruz, by William Atkinson, Deputy District Attorney; David W.
27 Paulson, District Attorney for the County of Solano, by Dani Jo
28 Handell, Deputy District Attorney, and Defendant Safeway Inc., a

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JUN 05 2008

Napa Superior Court

1 Delaware Corporation, appearing through its attorneys, Latham &
2 Watkins, LLP, by Stephen Stablarec, Esquire. /

3 Plaintiff and Defendant, having stipulated to the entry of
4 this Final Judgment and Permanent Injunction Pursuant to
5 Stipulation ("Final Judgment") prior to the taking of any proof,
6 and without trial or adjudication of any issue of fact or law;

7 NOW, THEREFORE, THE COURT ORDERS THAT:

8 JURISDICTION

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

11 APPLICABILITY

12 2. To the extent permitted by law, this Final Judgment is
13 applicable to Safeway Inc., a Delaware corporation, its officers,
14 directors, representatives, successors, assignees, and all persons,
15 partnerships, corporations, and other entities acting under, by,
16 through, on behalf of, or in concert with Safeway Inc., with actual
17 or constructive notice knowledge of this Judgment. This Final
18 Judgment is also applicable to any and all subsidiaries of Safeway
19 Inc., including but not limited to The Vons Companies, Inc., and
20 their respective officers, directors, representatives, successors,
21 assignees and all persons, partnerships, corporations, and other
22 entities acting under, by through, on behalf of, or in concert with
23 any such subsidiary with actual or constructive knowledge of this
24 Final Judgment. All of these defendants, persons and entities shall
25 hereinafter be referred to as "Safeway".

26 INJUNCTION

27 STORE CONSTRUCTION, REMODELING, REPAIR AND ALTERATION

28 3. Pursuant to Business and Professions Code §17203, Safeway

1 is permanently enjoined and restrained, with respect to any and all
2 California Safeway and Vons stores ("all California stores"), from
3 doing, directly or indirectly, any of the following:

4 A. Building, remodeling or altering any aspect of an
5 individual store's structure or infrastructure, internal and/or
6 external (hereinafter, "store construction project"), without first
7 submitting all appropriate plans and obtaining all required
8 approvals and/or permits in compliance with all city, county,
9 state, and federal laws.

10 B. Failing to abide by each and every provision of
11 Health & Safety Code §113984, relating to the protection of food
12 from contamination.

13 C. Failing to abide by each and every provision of
14 Health & Safety Code §§113953 and 113953.2, relating to the
15 obligation to provide and maintain adequate hand washing facilities
16 and supplies.

17 D. Failing to abide by each and every provision of
18 Health & Safety Code §113996, relating to maintaining temperatures
19 of potentially hazardous foods.

20 E. Failing to abide by each and every provision of
21 Health & Safety Code §§114097, 114113 and 114115, relating to
22 cleaning food and equipment contact surfaces.

23 F. Failing to abide by each and every provision of
24 Health & Safety Code §114257, relating to the obligation to
25 maintain facilities clean and in good repair.

26 G. Failing to abide by each and every provision of
27 Health & Safety Code §114266, relating to maintaining all floors,
28 walls and overhead structures of a food facility in compliance

1 with all applicable standards.

2 H. Failing to abide by each and every provision of
3 Health & Safety Code §114268, relating to properly maintaining
4 floors.

5 I. Failing to abide by each and every provision of
6 Health & Safety Code §114271, relating to properly maintaining
7 walls and ceilings.

8 J. Failing to abide by each and every provision of
9 Health & Safety Code §114380, relating to obtaining and
10 submitting approved plans before remodeling a food facility.

11 K. Failing to abide by each and every provision of
12 Health & Safety Code §114381, prohibiting a food facility without
13 a valid permit from being open for business.

14 L. Failing to abide by each and every provision of
15 Health & Safety Code §114130, prohibiting the use of food-related
16 or utensil-related equipment that is not certified by the
17 American National Standards Institute.

18 4. Pursuant to Business and Professions Code §17203, Safeway
19 is ordered and mandated forthwith to maintain, electronically or at
20 the then current location of either the Corporate Construction
21 Department or Division Office, documentation for each store
22 construction project establishing that all required permits,
23 authorizations and approvals were obtained. Upon reasonable notice,
24 Safeway shall deliver or make available such documentation for
25 inspection or copying by the appropriate governmental officials.
26 The Corporate Construction Department is currently located at 4410
27 Rosewood Drive, Pleasanton, CA 94588. The Division office for
28 stores in the Northern California Division is currently located at

1 5006 Stoneridge Mall Road, Pleasanton, CA 94588, and the Division
2 office for stores in the Vons Division is currently located at 618
3 Michillinda Avenue, Arcadia, CA 91067. In the event any of these
4 addresses change, Safeway shall promptly notify representatives of
5 the People of the new address.

6 5. Pursuant to Business and Professions Code §17203, Safeway
7 shall:

8 A. Prior to any store construction project taking
9 place, appoint a Site Construction Director ("SCD") and an
10 Alternate Site Construction Director ("Alternate SCD") for every
11 location where a store construction project is proposed to take
12 place. The SCD and Alternate SCD may be the store manager and/or
13 other designated individuals.

14 B. Safeway shall develop a SCD manual describing the
15 various approvals, authorizations and permits necessary to comply
16 with all applicable laws required for a store construction project.
17 The manual shall also inform the SCD and Alternate SCD that he/she
18 will be responsible for assuring compliance with all plans and
19 permit conditions, authorizations and approvals. This manual shall
20 be updated on an annual basis.

21 C. Safeway shall develop a "checklist" of all permits,
22 approvals and authorizations necessary to comply with all
23 applicable laws required for a store construction project, which
24 shall be placed in the SCD manual. This checklist shall be updated
25 on an annual basis.

26 D. Prior to commencement by Safeway or any affiliate of
27 any store construction project, the SCD or Alternate SCD shall
28 review the checklist and assure that all required permits,

1 | authorizations, and approvals have been obtained. The SCD or
2 | alternate SCD shall note on the checklist next to each item on the
3 | list, either: "Permit, Authorization or Approval Obtained" or "Not
4 | Applicable." When all items on the checklist have been addressed,
5 | the SCD or alternate SCD shall sign and date the checklist, and
6 | shall preserve the checklist as part of the documentation required
7 | by Paragraph 4, above.

8 | B. The SCD or the Alternate SCD shall review all
9 | permits, authorizations and approvals and create a document
10 | entitled, "Construction Permit Conditions," which document shall
11 | list all conditions and requirements imposed for any store
12 | construction project, and shall include but not be limited to:

- 13 | (1) A description of the construction to be
14 | performed;
15 | (2) Times when construction may be performed;
16 | (3) Locations where construction will be
17 | performed;
18 | (4) Protective measures required such as
19 | temporary walls, closure of areas, closure of departments,
20 | protection of food or products from contamination or adulteration;
21 | and,
22 | (5) Rodent and vermin control.

23 | F. No store construction project shall commence or
24 | continue unless a signed and dated checklist has been completed and
25 | a Construction Permit Conditions document has been created.

26 | G. The SCD or Alternative SCD shall monitor all
27 | construction activity at the store construction project and assure
28 | that the construction activity is at all times in compliance with

1 all conditions set forth on the Construction Permit Conditions
2 document.

3 H. In the event the SCD or Alternate SCD learns that
4 construction at a store construction project is proceeding in
5 violation of any construction permit condition, the SCD or
6 Alternate SCD shall stop all construction activity that is in
7 violation of any construction permit condition, and promptly take
8 steps to remedy the violation.

9 **PRICING AND WEIGHING ACCURACY** —

10 6. Pursuant to Business and Professions Code §§17203 and
11 17535, Safeway is permanently enjoined and restrained from directly
12 and indirectly engaging in any of the following acts or practices
13 in all California stores:

14 A. Making or causing to be made any false or misleading
15 statement to the public with respect to the price of items offered
16 for sale, as prohibited by Business and Professions Code §17500.

17 B. Representing a price on an item, store shelf or sign
18 near the item and charging a greater price at the time the product
19 is purchased;

20 C. Charging a greater amount than the lowest
21 advertised, posted, marked or quoted price for that commodity, as
22 prohibited by Business and Professions Code §12024.2;

23 D. Computing at the time of sale an amount greater than
24 a true extension of a price per unit, that is then advertised,
25 posted, marked, displayed, or quoted for that commodity, in
26 violation of Business and Professions Code §12024.2;

27 E. Selling any commodity, according to gross weight or
28 measure, as prohibited by Business and Professions Code §12023;

1 F. Selling any commodity in less quantity than
2 represented, as prohibited by Business and Professions Code §17024;
3 and,

4 G. Violating any of the provisions of Business &
5 Professions Code §12024.5.

6 7. Pursuant to Business and Professions Code §§17203 and
7 17535, Safeway shall initiate and maintain a program to minimize
8 pricing discrepancies, which shall include at least all of the
9 following:

10 A. Safeway shall employ a Price Accuracy Coordinator
11 ("PAC") at each store, who shall conduct the pricing accuracy
12 inspections and audits required by subparagraph 7(B) of this Final
13 Judgment. Safeway shall employ at least one employee in each store
14 who is specially trained to perform the PAC's job. Each store
15 shall have a minimum of 40 hours per week allocated to the duties
16 of the PAC.

17 B. Starting no later than 60 days after the entry of
18 this Final Judgment, and continuing thereafter, the PAC shall
19 conduct price accuracy inspections/audits of the store to monitor
20 the accuracy of pricing and the removal of all expired sale and
21 price tags. The PAC shall conduct price accuracy inspections/
22 audits of no less than 500 items per week. Safeway shall maintain
23 records of such inspections/audits at its corporate headquarters
24 for a period of two years from the date of creation, and shall make
25 said records available for inspection and copying to any Peace
26 Officer, District Attorney, City Attorney, any authorized
27 representative of the State of California Division of Measurement
28 Standards, or any representative of the County Sealer or Director

1 of a County Agricultural Commissioner at a reasonable time and
2 place upon reasonable notice.

3 C. If there is a discrepancy between an advertised price
4 (an advertisement, display sign, shelf price tag, label or any
5 other expression of price) on the one hand and the scan price on
6 the other hand, which discrepancy can be corrected at the store,
7 Safeway shall be responsible for instituting corrective action no
8 later than four (4) hours after discovery of such discrepancy. If
9 there is a discrepancy requiring action by Safeway corporate
10 headquarters, Safeway shall institute corrective action within
11 eighteen (18) hours after a determination that the discrepancy has
12 resulted from a system problem. Safeway corporate headquarters
13 shall create a log of errors and corrective actions, which shall be
14 maintained for a period of two years after their creation. Safeway
15 shall make these records available for inspection and copying to
16 any Peace Officer, District Attorney, City Attorney, any authorized
17 representative of the State of California Division of Measurement
18 Standards, or any representative of the County Sealer or Director
19 of a County Agricultural Commissioner at a reasonable time and
20 place upon reasonable notice.

21 D. Safeway shall cause to be conducted at least one
22 price accuracy inspection in all California stores in every six
23 month calendar period following the entry of this Final Judgment.
24 Such inspections shall include 200 scan checks per store, and shall
25 be conducted in an average of 75 stores every month. In the event
26 inspections reveal a discrepancy, corrective action shall be taken
27 as described in Paragraph 7.C of this Final Judgment. Safeway
28 shall maintain records of the performance of such inspections at

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1 its corporate headquarters for a period of two years from the date
2 of their creation. Safeway shall make the records available for
3 inspection and copying to any Peace Officer, District Attorney,
4 City Attorney, any authorized representative of the State of
5 California Division of Measurement Standards, or any representative
6 of the County Sealer or Director of a County Agricultural
7 Commissioner at a reasonable time and place upon reasonable notice.

8 B. By no later than 90 days after entry of this Final
9 Judgment, Safeway shall post at a conspicuous location in all
10 checkout lanes in all California stores, a clear and legible sign,
11 no smaller than 7" x 4", which states, in substance, that if an
12 item scans at the register at a higher price than the lowest
13 advertised price, Safeway shall give the customer the item free,
14 subject to a limit of one (other items at the lower price) and
15 excluding dairy products, alcoholic beverages, tobacco products,
16 pharmacy products and fuel, provided, however, that if the lowest
17 advertised price of the item exceeds \$5.00, then Safeway shall sell
18 the item to the customer at the lowest advertised price and give
19 the customer a \$5.00 gift card. As used in this Paragraph 7.E
20 "lowest advertised price" means the current, non-retracted
21 advertised price for the item for the store at which the item is
22 scanned.

23 B. Safeway shall institute the following procedures and
24 practices with respect to weighing accuracy in all California
25 stores:

26 A. Once per day, personnel in each store shall randomly
27 select five items in each of the meat, deli and bakery departments
28 whose weights and tares shall be verified and noted in a tare log.

1 Each store shall maintain its tare log for a calendar year from the
2 date of creation. Tare logs shall be inspected quarterly by a
3 field merchandiser and audited semi-annually by Safeway. Safeway
4 shall make these tare logs available to any Peace Officer, District
5 Attorney, City Attorney, any authorized representative of the State
6 of California Division of Measurement Standards, or any
7 representative of the County Sealer or Director of a County
8 Agricultural Commissioner at a reasonable time and place upon
9 reasonable notice.

10 B. Safeway shall cause to be conducted inspections of
11 package net weights in all California stores in every six month
12 calendar period following the entry of this injunction. The
13 inspections shall include 50 net weight checks, and shall be
14 conducted in an average of 75 stores every month. In the event
15 inspections reveal a discrepancy, corrective action shall be taken
16 as described in Paragraph 7.C of this Final Judgment. Safeway shall
17 maintain records of the performance of such inspections at its
18 corporate headquarters for a period of two years from the date of
19 their creation. Safeway shall make the records available for
20 inspection and copying to any Peace Officer, District Attorney,
21 City Attorney, any authorized representative of the State of
22 California Division of Measurement Standards, or any representative
23 of the County Sealer or Director of a County Agricultural
24 Commissioner at a reasonable time and place upon reasonable notice.

25 9. Notwithstanding any provision of this Final Judgment to
26 the contrary, any records that Safeway is required by Paragraph 7
27 or 8 to create, maintain and make available for inspection and
28 copying by any Peace Officer, District Attorney, City Attorney, any

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1 authorized representative of the State of California Division of
2 Measurement Standards, or any representative of the County Sealer
3 or Director of a County Agricultural Commissioner, shall not be
4 offered or received in evidence to show any alleged violation of
5 any law or regulation, provided, however, that such records may be
6 offered only as evidence of Safeway's performance or non-
7 performance of the inspections or audits required by Paragraphs 7
8 and 8 of this Final Judgment. The disclosure of such records by
9 Safeway shall not constitute, or be asserted or considered to be, a
10 waiver of any privilege, including the attorney-client privilege
11 and the attorney work product rule that might otherwise apply.

12 10. Nothing in this Final Judgment shall in any way prevent
13 Safeway from developing, testing or implementing new or different
14 systems or measures regarding the subjects covered by this Final
15 Judgment. At Safeway's request, upon implementation or proposed
16 implementation of any such new or different system or measure, the
17 parties agree to meet and confer regarding the viability or
18 continued application of any particular affected provision of this
19 Final Judgment.

20 11. If there have been no material violations of the
21 injunctive provision of this Final Judgment within five years from
22 the date of its entry, Safeway may make, and the People shall not
23 oppose, a motion to modify this Final Judgment by vacating
24 Paragraphs 5, 7, and 8. Nothing in this Paragraph shall in any way
25 limit Safeway's right to seek modification or dissolution of the
26 injunction pursuant to Code of Civil Procedure §533. Except as
27 otherwise stated in the first sentence of this Paragraph nothing
28 shall in any way limit the People's right to oppose such an

1 application.

2 MONETARY RELIEF

3 12. Safeway shall pay the People as and for investigative
4 costs the sum of \$389,551.57 by one certified check made payment to
5 the "Marin County District Attorney." Said costs shall be
6 distributed to the agencies listed below in the following amounts:

7	<u>AGENCY</u>	<u>AMOUNT</u>
8	California Division of Measurement Standards	\$ 22,310.98
	Anador County Department of W&M	\$ 132.06
9	Contra Costa County Department of W&M	\$ 5,180.00
	Del Norte County Department of W&M	\$ 167.06
10	El Dorado County Department of W&M	\$ 856.07
	Fresno County Department of W&M	\$ 867.91
11	Imperial County Department of W&M	\$ 2,557.31
	Lake County Department of W&M	\$ 522.80
12	Los Angeles County District Attorney	\$ 100,000.00
	Los Angeles County Department of W&M	\$ 23,240.50
13	Marin County Department of W&M	\$ 9,438.95
	Marin County Environmental Health Dept.	\$ 13,668.00
14	Monterey County Department of W&M	\$ 580.34
	Napa County Department of W&M	\$ 5,742.00
15	Napa County Environmental Health Dept.	\$ 9,000.00
	Orange County Department of W&M	\$ 1,764.00
16	Placer County Department of W&M	\$ 350.00
	Riverside County Department of W&M	\$ 3,437.50
17	Sacramento Building Department	\$ 1,600.00
	Sacramento County Department of W&M	\$ 4,635.00
18	Sacramento Environmental Management Dept.	\$ 6,258.00
	San Benito County Department of W&M	\$ 1,232.48
19	San Bernardino County Department of W&M	\$ 3,835.89
	San Diego County Department of W&M	\$ 6,002.14
20	San Francisco County Department of W&M	\$ 560.00
	Santa Barbara County Department of W&M	\$ 3,750.00
21	Santa Clara County Department of W&M	\$ 24,910.75
	Santa Cruz County Department of W&M	\$ 5,240.00
22	Shasta County Department of W&M	\$ 2,788.17
	Solano County Department of W&M	\$ 5,398.60
23	Solano County District Attorney	\$ 100,000.00
	Solano County Environmental Health Dept	\$ 3,200.00
24	Sonoma County Department of W&M	\$ 2,210.00
	Stanislaus County Department of W&M	\$ 683.75
25	Tulare County Department of W&M	\$ 359.31
	Tulare County District Attorney	\$ 10,000.00
26	Ventura County Department of W&M	\$ 6,072.00
27	Total Costs	\$ 389,551.57

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1 judgment, a civil penalty of Two Million, Two Hundred Thousand
2 Dollars \$2,200,000.00 by one certified check made payable to the
3 "Marin County District Attorney" Pursuant to Government Code
4 Section 26506 said civil penalty shall be divided and paid to the
5 prosecuting agencies bringing this action as follows:

6	<u>Agency</u>	<u>Amount</u>
7	Fresno County District Attorney	\$400,000.00
8	Marin County District Attorney	\$400,000.00
9	Napa County District Attorney	\$300,000.00
10	Sacramento County District Attorney	\$400,000.00
11	Santa Cruz County District Attorney	\$400,000.00
12	Solano County District Attorney	\$300,000.00

13 Payment Method

14 15. All checks required under the terms of this Final
15 Judgment shall be delivered to Robert E. Nichols, Marin County
16 District Attorney's Office, 3501 Civic Center Drive, Room 130,
17 San Rafael, California 94903, within five business days of the
18 entry of this Final Judgment.

19 RETENTION OF JURISDICTION

20 16. Jurisdiction is retained for the purpose of enabling any
21 party to this Final Judgment to apply to the Court at any time for
22 such further orders and directions as may be necessary and
23 appropriate for the construction or carrying out of this Final
24 Judgment, for the modification or termination of any of its
25 injunctive provisions, and for the enforcement of, compliance with,
26 and punishment of violations of this Final Judgment.

27 17. Where notice to Plaintiff is required under any provision
28 of this Final Judgment, Defendant will have satisfied its

1 obligation hereunder by mailing notice to Robert Nichols, Deputy
2 District Attorney, County of Marin.

3 18. The clerk is ordered to immediately enter this Judgment.

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Dated: JUN - 9 2008

FRANCISCA P. TISHER

Judge of the Superior Court