

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (hereinafter "Settlement Agreement") and the related document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the "Full Agreement") are entered into as of the Effective Date, as defined below in Section 1.6, by and between the following parties: American Council of the Blind ("ACB"), American Foundation for the Blind ("AFB"), and California Council of the Blind ("CCB") (collectively, the "Claimants"), and Safeway Inc. ("Safeway"). Claimants and Safeway are at times referred to collectively herein as the "Parties."

## **RECITALS**

The Full Agreement is based on the following facts:

### **A.**

ACB, a non-profit corporation that provides advocacy services in the United States on behalf of individuals who are blind or have visual impairments, is dedicated to promoting the full integration of persons who are blind or have visual impairments into all aspects of society, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or visually-impaired. CCB is ACB's California affiliate serving the needs of blind and visually-impaired persons throughout the State of California. Among ACB's and CCB's board, staff and members, and those on whose behalf they advocate and provide services, are many individuals with vision disabilities within the meaning of state and federal law who have shopped and continue to shop at Safeway Stores throughout the United States. ACB is incorporated and has its place of business in Washington, D.C. CCB is incorporated and has its place of business in the State of California.

### **B.**

AFB is a national non-profit whose mission is to eliminate the inequities faced by the more than ten million blind and visually impaired persons in the United States. Among other things, AFB is: the leading publisher of professional materials on blindness and low vision through its publishing arm, AFB Press; a pioneer in the development of Talking Books; a national advocate representing the interests of blind or visually impaired people before Congress and government agencies; and home to the Helen Keller Archives. Among AFB's board, staff and those on whose behalf it advocates and provides services, are many individuals with vision disabilities within the meaning of state and federal law and who have shopped and continue to shop at Safeway Stores throughout the United States.

**C.**

Safeway operates retail stores in California and other states across the United States, including stores operating under the following names: Safeway, Vons, Randalls, Tom Thumb, Genuardi's, Pavilions, Dominick's, Pak'n Save Foods and Carrs stores (collectively, "Safeway Stores").

**D.**

Claimants contend that they and their respective boards, staff, members and clients, and other blind and visually-impaired persons, have been, are being, and continue to be denied full access to the services provided by retail establishments and are therefore being discriminated against due to alleged inaccessibility of certain Electronic Funds Transfer ("EFT") Devices (defined in Section 1.8 below) found in Safeway Stores (the "Claim(s)"). Safeway denies that it discriminates against blind and visually-impaired persons, including Claimants and their respective boards, staff, members and clients, in any way and specifically denies that it discriminates against such blind and visually-impaired persons due to alleged inaccessibility of certain EFT Devices in the Safeway Stores.

**E.**

The Parties enter into the Full Agreement in order to resolve the Claims and to avoid the burden, expense, and risk of potential litigation. In entering into the Full Agreement, Safeway does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36, and any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither the Full Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Safeway of any such violation or failure to comply with any applicable law. Neither the Full Agreement nor any of its terms and provisions shall be offered or received as evidence for any purpose whatsoever against Safeway in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement.

**NOW, THEREFORE,** the Parties hereby agree to the following provisions:

## **1. Definitions.**

As used in the Full Agreement, the following terms shall be as defined below:

### **1.1**

Access Laws means the Americans with Disabilities Act (as defined below) and any applicable laws of any state, county or municipality relating to accessibility for persons with disabilities to places of public accommodation, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable disability laws, regulations, or legal requirements, including, without limitation, California Civil Code §§ 51, et seq. and 54, et seq., California Financial Code § 13082, California

Health & Safety § 19955, and Title 24 of the California Code of Regulations.

**1.2**

Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36.

**1.3**

Ancillary Raised Button Keypad means a Raised Button Keypad that is part of a unit separate from the Electronic Funds Transfer ("EFT") Device but which is plugged into an EFT Device. An Ancillary Raised Button Keypad may be used to perform the following Functions: input, correct, cancel and enter PIN, telephone number (Club Card identification number) and cash-back amounts.

**1.4**

Claims means the contention by Claimants and their respective boards, staff, members and clients, and other blind and visually-impaired persons, that Claimants are being, have been and continue to be discriminated against due to alleged inaccessibility of certain EFT Devices in Safeway Stores pursuant to applicable Access Laws.

**1.5**

Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.

**1.6**

Effective Date means September 30, 2006.

**1.7**

EFT Device Function, or Function means a task related to payment for purchases that can be performed by the customer through the EFT Device.

**1.8**

Electronic Funds Transfer Device or EFT Device means a device used by a customer at a point of purchase that allows the customer to pay for

items with a debit, credit or other electronic funds card. EFT Device does not include other equipment that may be used by a customer in conjunction with the Device to scan, price, or weigh products.

**1.9**

Existing Safeway Store means a Safeway retail grocery store that was open to the public on or before September 30, 2006.

**1.10**

New Safeway Store means a Safeway retail grocery store that is first opened to the public after September 30, 2006.

**1.11**

Next Generation EFT Device means the EFT Device that will replace the EFT Device installed in Safeway Stores as of the Effective Date. Any such device will have an integrated keypad and will include at least the same level of functionality provided by the Ancillary Raised Button Keypad.

**1.12**

Personal Identification Number, or PIN means a unique numerical code used by individual customers that must be entered into an EFT Device before conducting certain transactions on the EFT Device.

**1.13**

Raised Button Keypad means a number keypad on which each key (button) is tactually discernable from surrounding surfaces and adjacent keys. Numeric keys shall be arranged in a 12-key ascending telephone keypad layout. The number five key shall be tactually distinct from the other keys by means of a raised dot. The following function keys on the Raised Button Keypad shall be to the right of the number keys and have raised tactile markings: Enter (Accept), Cancel and Correct. Refer to Appendix A for photograph of the Raised Button Keypad to be installed.

**1.14**

Safeway Stores means retail grocery stores operated by Safeway in California and other states across the United States.

**1.15**

Staffed Checkout Aisle means any checkout aisle (including a customer service desk, pharmacy counter, and any counter that may use EFT Devices) where an EFT Device is placed and which is staffed by a Safeway employee to assist customers in paying for products or services.

## **2. Duration and Geographic Scope of Agreement.**

The Full Agreement shall apply to Safeway Stores in every State in the United States in which Safeway operates Safeway Stores. The terms of the Full Agreement shall remain in effect from the Effective Date until December 31, 2007.

## **3. Provisions Regarding Ancillary Raised Button Keypads and Next Generation Devices.**

### **3.1 Schedule of Initial Rollout to Existing Safeway Stores Outside Texas and New Mexico with More than Six Staffed Checkout Aisles.**

**3.1.1** By no later than September 30, 2006, Safeway will install Ancillary Raised Button Keypads as designated in 3.2 in each Existing Safeway Store in California.

**3.1.2** By no later than December 31, 2006, Safeway will install Ancillary Raised Button Keypads as designated in 3.2 in an additional two hundred and fifty (250) Existing Safeway Stores outside of California. Safeway will consider Claimant's requests for installations in particular stores.

**3.1.3** By no later than June 30, 2007, Safeway will install Ancillary Raised Button Keypads as designated in 3.2 or 3.3, as applicable, in the remainder of the existing Safeway Stores in the United States, except stores in Texas and New Mexico which are addressed in Section 3.6 below.

**3.1.4** Rollout Information to Claimants. Within thirty days of each date set forth in sections 3.1.1 through 3.1.3, Safeway will provide written confirmation to Claimants that the required Ancillary Raised Button Keypads have been installed. At that time, Safeway shall also provide

Claimants with a written list of the store addresses in which the units have been installed.

### **3.2 Locations of Ancillary Raised Button Keypads.**

Ancillary Raised Button Keypads installed pursuant to Section 3.1 shall be placed in the following locations at Safeway Stores: the first at a wheelchair accessible Staffed Checkout Aisle; the second at a Staffed Checkout Express Lane; the third at the customer service desk, provided the Store has a customer service desk; and one at the pharmacy counter, provided that the Store has a pharmacy. If the Store does not have a customer service desk, the third Ancillary Raised Button Keypad shall be installed at a full service, Staffed Checkout Aisle open during all hours of Store operation.

### **3.3 Installation of Ancillary Raised Button Keypads at Safeway Stores Outside Texas and New Mexico with Six or Fewer Staffed Checkout Aisles.**

At Safeway Stores with six or fewer Staffed Checkout Aisles, except for Stores in Texas and New Mexico which are addressed in Section 3.6 below, Safeway shall install one Ancillary Raised Button Keypad pursuant to the time schedule set forth in Section 3.1 above. The Staffed Checkout Aisle to be equipped with the Ancillary Raised Button Keypad shall be the wheelchair accessible aisle that routinely has the longest hours of operation.

### **3.4 Installation of Ancillary Raised Button Keypads at New Safeway Stores.**

For New Safeway Stores, Ancillary Raised Button Keypads shall be installed in each store pursuant to the time schedule set forth in Section 3.1.3 above and the locations set forth in Sections 3.2 and 3.3 above.

### **3.5 Maintenance of Ancillary Raised Button Keypads.**

Safeway will use its best efforts to maintain all Ancillary Raised Button Keypads installed pursuant to this Agreement in operable, working condition except for isolated or temporary interruptions in service due to maintenance or repairs.

### **3.6**

Safeway is in the process of adopting an Electronic Funds Transfer Device for installation in Texas and New Mexico to comply with state statutes and regulations. Such Device shall include an integrated Raised Button Keypad with the same level of functionality provided by the Ancillary Raised Button Keypad. In each Safeway Store in Texas and New Mexico, Safeway shall either (i) install Ancillary Raised Button Keypads as designated in 3.2 or 3.3, as applicable, by September 30, 2007; or (ii) install the new Device as described in this paragraph no later than December 31, 2007 in at least the locations set forth in paragraph 3.2. Safeway will notify Claimants in writing no later than June 30, 2007 whether it expects to install the new Device or the Ancillary Raised Button Keypads.

### **3.7**

Safeway will allow Claimants to test and provide feedback on whether the Next Generation Device to be installed in states other than Texas and New Mexico provides the same basic functions for non-sighted persons as it does for sighted persons prior to any final decision being made by Safeway regarding the Next Generation Device. Claimants shall provide any feedback within fourteen days of their testing. Safeway will retain the right to decide the type and nature of the EFT Device that will be utilized in the Next Generation.

## **4. Training of Safeway Personnel.**

### **4.1**

Safeway will develop a training program and train the appropriate personnel regarding, inter alia, the roll-out of Ancillary Raised Button Keypads. The training will provide guidelines for appropriate interactions with visually impaired customers using the Ancillary Raised Button Keypads. Store communication will include keypad locations within the store. Safeway will provide Claimants with a copy of the training program prior to its implementation. Review and distribution of the



proprietary training material is to be limited to Claimants and their attorneys only for purposes of this dispute. All training material will be returned to Safeway. Safeway will consider the feedback provided by Claimants and use good faith efforts to incorporate applicable feedback provided that such feedback is submitted in a timely manner and is consistent with this Agreement. The details of the training program will be in the sole discretion of Safeway. Training pursuant to this section will occur in a timely manner.

## **5. Signage.**

Safeway will post a symbol at each checkout aisle where the Ancillary Raised Button Keypads have been installed to indicate the availability of the unit at the particular aisle. If Safeway installs the new Device set forth in Section 3.6 at less than all aisles in Safeway Stores in Texas and New Mexico, it will post the symbol at each aisle where the new Device has been installed.

## **6. Joint Press Release.**

The Claimants and Safeway will jointly issue a press release in the form attached hereto as Appendix B.

## **7. Procedures in the Event of Disputes.**

### **7.1**

Notice of Non-Compliance. If a party believes that the other party has not complied with any provision of the Full Agreement, that party shall provide the other party with Notice of Non-compliance containing the following information:

**7.1.1** the alleged act of non-compliance;

**7.1.2** a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

**7.1.3** a statement of the remedial action sought by the initiating party;

**7.1.4** a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

## **7.2 Response.**

Within forty-five (45) days of receipt of a Notice provided pursuant to Section 7.1, the non-initiating party shall respond to the initiating party in writing.

## **7.3 Meet and Confer.**

Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

## **7.4 Submission to Mediation/Binding Arbitration.**

**7.4.1** If the matters raised in a Notice provided pursuant to Section 7.1 are not resolved within forty-five (45) days of the initial meet and confer required by Section 7.3, either party may submit the unresolved matters to nonbinding mediation before a mediator affiliated with JAMS.

**7.4.2** If the dispute is not settled in mediation, it shall be submitted to binding arbitration before an arbitrator affiliated with JAMS. The arbitration hearing shall be conducted, in accordance with the JAMS Streamlined Arbitration Rules & Procedures. However, those Rules will be modified as necessary to ensure that the hearing is held as soon as practicable after the submission to arbitration, and that a written decision on the matter is rendered within sixty (60) days of the last hearing date.

## **8. Notice or Communication to Parties.**

Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by facsimile or email and United States mail, addressed as follows:

### **To Claimants:**

Linda M. Dardarian  
c/o Goldstein, Demchak,  
Baller, Borgen & Dardarian  
300 Lakeside Drive, Suite 1000

Oakland, CA 94612  
Fax No.: (510) 835-1417

Law Office of Elaine B. Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708

**To Safeway:**

Dian B. Emerson  
Senior Corporate Counsel, Safeway Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588-3229  
Fax: (925) 467-3214

**9. Modification in Writing.**

No modification of the Full Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

**10. No Other Representations.**

Each party to the Full Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in the Full Agreement.

**11. Full Agreement Has Been Read.**

The Full Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

**12. No Assignment.**

No party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

### **13. Agreement Binding on Assigns And Successors.**

The Full Agreement shall bind any assigns and successors of the Parties.

### **14. Force Majeure.**

The performance of Safeway under this Settlement Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, or unavailability of operable parts, equipment or materials through normal supply sources. If Safeway seeks to invoke this Section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Safeway will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to Section 7.4 of this Settlement Agreement.

### **15. No Admission of Liability.**

In entering into the Full Agreement, Safeway does not admit, and specifically denies, that it has violated or failed to comply with any Access Laws.

### **16. Authority.**

The persons executing the Full Agreement each represent and warrant that he or she has the authority to enter into the Full Agreement, and to resolve the matters set forth in the Full Agreement, on behalf of the

Party for whom he or she is executing the Full Agreement, and that no further approval is necessary in order for the Full Agreement to be binding on the Party for whom he or she is executing.

## **17. Integrated Agreement.**

The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

## **18. Rules of Construction.**

Each party and its legal counsel have reviewed and participated in the drafting of the Full Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Full Agreement in their entirety.

## **19. Triplicate Originals/Execution in Counterparts.**

All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

### **PARTIES:**

- **SAFEWAY INC.**
- **AMERICAN COUNCIL OF THE BLIND**  
By: Melanie Brunson, Executive Director
- **AMERICAN FOUNDATION FOR THE BLIND**  
By: Paul Shroeder, Director, Government Affairs
- **CALIFORNIA COUNCIL OF THE BLIND**  
By: Jeff Thom, President

### **APPROVED AS TO FORM:**

- **LITTLER MENDELSON**

By: William F. Terheyden, Esq.

- **GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN**

By: Linda M. Dardarian, Esq.

- **LAW OFFICE OF ELAINE B. FEINGOLD**

By: Lainey Feingold, Esq.

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