

NOTICE OF CLASS ACTION SETTLEMENT

**TO CERTAIN PERSONS WHO WORKED IN CALIFORNIA AS
NON-EXEMPT EMPLOYEES FOR SAFEWAY INC. (“DEFENDANT”)
IN A RETAIL STORE DURING THE PERIOD SPECIFIED BELOW**

KIMBERLEE FACIANE v. SAFEWAY INC.

**Superior Court of the State of California, County of Alameda
Case No. RG18913668**

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHT TO A MONETARY SETTLEMENT RELATED TO YOUR EMPLOYMENT WITH DEFENDANT DURING THE PERIOD FROM JULY 13, 2014 TO DECEMBER 31, 2019 (THE “COVERED PERIOD”). THIS IS A COURT-ORDERED NOTICE AND NOT A SOLICITATION FROM A LAWYER. YOU ARE NOT BEING SUED.

IF YOU WORKED FOR DEFENDANT IN CALIFORNIA AS A NON-EXEMPT EMPLOYEE IN A RETAIL STORE, THEN YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be considered a Settlement Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment of your Settlement Share will be mailed to you at the same address as this Notice, and you will release the Released Claims against the Released Parties covered by the Settlement.
EXCLUDE YOURSELF	Receive no payment of a Settlement Share and retain any and all rights you may have against Defendant and Released Parties as to the Released Claims.
OBJECT	Write to the Settlement Administrator about why you don’t agree with the Settlement or state your objection to the Court directly at the Final Approval Hearing. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement.
APPEAR AT THE FINAL APPROVAL HEARING	Appear at the Final Approval Hearing to speak to the Court about the fairness of the Settlement.

SETTLEMENT CLASS: The Settlement resolves Plaintiff Kimberlee Faciane’s (“Plaintiff”) alleged wage and hour claims against Defendant with respect to employees who worked for Defendant in the State of California as hourly paid, non-exempt employees from July 13, 2014 through December 31, 2019 (the “Covered Period”), claims for civil penalties against Defendant under the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, *et seq.*) (the “PAGA”) for those alleged Labor Code violations, as well as claims under the Fair Labor Standards Act (the “FLSA”) (29 U.S.C. § 201, *et seq.*). Defendant denies all of Plaintiff’s allegations and claims.

BASIC INFORMATION

1. What is this lawsuit about?

Plaintiff alleges that, during the Covered Period, Defendant failed to pay her and the Class Members all of their overtime wages because Defendant failed to base their overtime rate of pay on their regular rate of pay, including all bonuses or premium pay earned, failed to provide them with written accurate wage statements, failed to timely pay them all wages upon separation of employment, and failed to pay them interest and penalties under California and/or U.S. labor laws; Plaintiff seeks restitution under the California Unfair Competition Law (“UCL”) and civil penalties under PAGA for the alleged Labor Code violations.

Defendant denies all liability and wrongdoing of any kind associated with the claims alleged in the Action and further denies that any of the claims are appropriate for class treatment. Defendant contends that it has complied at all times with all applicable wage and hour laws in connection with its Class Members, that Class Members were properly compensated for all hours worked, and that no additional wages, compensation, or penalties of any kind are owing to any Class Members. This Settlement constitutes a compromise of highly disputed claims and should not be construed as an admission of liability on Defendant’s part.

2. **Why is this a Class Action?**

In a class action lawsuit, one person (or multiple persons) designated as the “Class Representative” (in this case, Plaintiff) sues on behalf of people that the Class Representative alleges have similar claims. The people together are a “Class” or “Class Members.” The Alameda County Superior Court (the “Court”) has granted preliminary approval of the proposed settlement (the Settlement”) of this class action lawsuit. If the Settlement does not receive final approval from the Court, then the Class Members will not receive—or be entitled to—the benefits of this Settlement, and Plaintiff will need to go back to court to prove her case through trial.

3. **Why is there a Settlement?**

In the interest of efficiency and economy, the Parties to the litigation decided to resolve the litigation through the Settlement. In this way, the Parties avoid the risks and costs of trial. In deciding whether to grant final approval of the Settlement, the Court will not decide who is right or wrong. Instead, it will determine whether the Settlement is fair, reasonable, and adequate.

4. **Why did I receive this Notice?**

You received this Notice because Defendant’s records show that you are a Class Member in this case, as described below.

WHO IS IN THE SETTLEMENT?

5. **How do I know if I am part of the Settlement?**

You are in the Settlement if you are a Class Member. You are a Class Member if you worked for Defendant in California at any time during the Covered Period as a “non-exempt” (i.e., hourly paid) employee in a retail store. Defendant’s records indicate that you are a Class Member.

6. **What are my options:**

As a Class Member, you have several options available to you. You may:

- (i) **Participate in the Settlement and receive a settlement check.** To participate in the Settlement, you do not need to do anything. You will receive a settlement check that will be mailed to you later this year or early next year after the Court grants final approval of the Settlement. The estimated amount of your settlement check is listed on Page 1 of this Notice.
- (ii) **Object to the Settlement;** or
- (iii) **Request to be excluded from the Settlement.** If you timely do so in a valid manner (explained below), then you will not receive any payment from the Settlement, but you will retain your right to pursue any of the Released Claims.

SETTLEMENT BENEFITS – WHAT YOU COULD RECEIVE

7. **What are the Settlement terms?**

The Class in this case consists of all current and former non-exempt employees who worked for Defendant in California at any time during the Covered Period. Class Members who do not opt out of (i.e., request exclusion from) the Class will be bound by the Settlement and will release their claims against Defendant and the Released Parties as specified in the Settlement.

Defendant has agreed to pay a maximum, non-reversionary, settlement amount of \$4,975,000.00 (the “Maximum Gross Settlement Amount” or “MGSA”) to fully resolve all claims in the lawsuit, including payments to participating Class Members, attorneys’ fees and costs, the Class Representative service award. The specific settlement terms are as follows:

The Maximum Gross Settlement Amount under the Settlement is \$4,975,000.00, from which payments will be made for: (1) attorneys’ fees in an amount up to one-third of the MGSA (\$1,656,675.00) to Class Counsel, subject to Court approval; (2) actual litigation costs incurred by Class Counsel not to exceed \$35,000.00, subject to Court approval; (3) a Class Representative service award to Plaintiff of up to \$5,000.00, subject to Court approval; (4) settlement administration costs estimated to be approximately \$300,000.00 payable to KCC Class Action Services, subject to Court approval; (5) payment to the California Labor and Workforce Development Agency (“LWDA”) of \$56,250.00 for payment of penalties under the Labor Code Private Attorneys General Act (“PAGA”); and (6) employer Payroll Taxes estimated to be approximately \$70,000.00. The MGSA is non-reversionary, meaning no amount of the MGSA will be retained by, or revert back to, Defendant. Any monies in the MGSA that are attributable to Class Members who opt out of the Settlement will be redistributed on a *pro rata* basis to those Class Members who participate in the Settlement. The funds for any settlement checks that are not cashed within 180 days from the date of mailing will be sent to a *cy pres* recipient, the Alameda County Community Food Bank, a 501(c)(3) nonprofit, to assist their efforts during the ongoing Covid-19 and economic crises.

After the deductions from the MGSA for attorneys’ fees, litigation costs, settlement administration costs, the service award to Plaintiff, the payment to the LWDA under PAGA, and the deduction of Employer Payroll Taxes as described above, the remaining balance (the “Net Settlement Distribution Amount” or “NSDA”) shall be available to pay settlement checks to the Class Members based upon the formulae set forth in Paragraph 8 below.

8. How will my settlement payment be calculated?

After deduction of the Court-approved fees and expenses set forth above, the remainder of the MGSA, the NSDA, shall be available for payment to Class Members based on the following:

Settlement Shares. In total, this is the amount of the NSDA that will be allocated to the Settlement Class. Each Class Member who participates in the Settlement will receive a *pro rata* Settlement Share based upon the number of weeks that he or she worked for Defendant in California during the Covered Period and on a further “weighted” basis as follows:

- Class Members will receive 4 shares to every 1 share for each workweek in which they were paid a base hourly rate of less than 130% of the then-applicable California state minimum wage; and
- Class Members who were part of the Settlement Class in the *Altamirano v. Safeway* Settlement (which includes employees who were paid late wages during a class period from March 2, 2014 through December 27, 2018) will receive ½ of what employees who were not included in the *Altamirano* settlement receive.

Each Settlement Share is allocated 20% to wages (for which employment taxes will be deducted and IRS Forms W-2 will be issued) and 80% to interest and penalties for which no taxes will be deducted and IRS Forms 1099 will be issued.

9. Disputing the data on your Individual Notice

You have the opportunity to dispute the data set forth on the first page of this Notice, including the number of workweeks used to calculate your settlement payment, if you believe the data is incorrect. To dispute the data on this Notice, you must send a letter, signed under penalty of perjury, to the Settlement Administrator at *Safeway* Settlement Administrator, P.O. Box 43208, Providence, RI 02940-3208 disputing the data on this Notice and providing any supporting documentation you have. To be valid, the dispute must be submitted (postmarked) by no later than April 22, 2022. The Settlement Administrator will use Defendant’s records and the information you provide to resolve any disputes about the data appearing on this Notice. The Settlement Administrator’s determination will be final and binding.

10. What are the possible settlement benefits from this Settlement?

You have the right to receive money from the Settlement if you received this Notice. The estimated amount of your share of the Settlement money is listed on the first page of this Notice.

State law and Defendant’s policy strictly prohibit any retaliation against you for participating in the Settlement. Defendant will not take any adverse action against you because of your decision to participate in this Settlement. Defendant wants you to participate in the Settlement. Whether you participate in the Settlement or not, no amount Defendant has agreed to pay under the terms of the Settlement will go back to Defendant.

11. How do I participate in the Settlement and get a settlement check?

You do not need to do anything to participate in the Settlement and receive a settlement payment. You will receive a settlement check that will be mailed to you later this year after the Court grants final approval of the Settlement. However, if you move you should provide the Settlement Administrator with your new address.

12. When will I get my settlement check?

Checks for the amount of each Class Member’s individual settlement payment will be distributed if and when the Settlement receives final approval from the Court. Settlement checks will be sent to the address listed on this Notice. If you move after receiving this Notice, you may prepare a letter with your new address and mail the Notice or letter to *Safeway* Settlement Administrator, P.O. Box 43208, Providence, RI 02940-3208, You can also call the Settlement Administrator at 1-800-213-1829 and advise them of your new address.

13. Will I have to pay taxes on my settlement payment?

Class Members will be responsible for paying any taxes owing for their settlement payments. The Settlement Administrator will issue Forms W-2 and 1099 with respect to such payments as required by law. Without any party hereto admitting any liability of any type or kind, the Parties agree and intend that the payments made under this Settlement are compensatory payments to the Class Members intended to compensate Class Members for alleged damages. Each Settlement Share is allocated 20% to wages (for which employment taxes will be deducted and IRS Forms W-2 issued), and a combined 80% to interest and penalties (for which no taxes will be deducted and IRS Forms 1099 will be issued). The Settlement Administrator will withhold employee and employer taxes from the wage portion of the settlement payments and issue IRS Forms W-2 to the Class Members for the wage portion of the settlement payments and IRS Forms 1099 for the penalty and interest portion of the settlement payments. Individual Class Members will be responsible for the payment of any taxes owed on the amounts reported as miscellaneous income under IRS Form 1099.

RELEASE OF CLAIMS

14. *Am I giving anything up by remaining in the Class?*

Unless you remove yourself from the Settlement (which is called “excluding yourself” or “opting out”), you are part of the Class. By staying part of the Class, court orders will apply to you, and you will be bound by the Release of Claims set forth in the Settlement Agreement. A release means you can’t sue or be part of any other lawsuit against Defendant about the claims or issues being released in this lawsuit for the applicable Covered Period ever again.

If the Court approves the proposed Settlement, the Settlement Agreement will bind all Class Members who have not opted out of the Settlement (“Class Participants”) and will bar them from bringing the claims described in the release below against Defendant. Specifically, after Court approval, the Settlement provides for the **following release** for the time period with respect to the Class Participants from July 13, 2014 through December 31, 2019, the Covered Period:

The settlement shall resolve and the class shall release all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and costs, action or causes of action and all other forms of legal or equitable relief based on federal, state or local law, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, that were alleged or could have been alleged, whether such forms of relief are known or unknown, based upon the factual allegations in the Action, including but not limited to all claims asserted in the Second Amended Complaint (which will include the allegations set forth in the First Amended Complaint in addition to the allegations based upon federal law) (“SAC”): (1) failure to pay hourly wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (2) failure to provide accurate written wage statements (Lab. Code § 226); (3) failure to timely pay all final wages (Lab. Code §§ 201, 202 and 203); (4) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and (5) violation of the Fair Labor Standards Act (FLSA), and with respect to the penalties (other than PAGA penalties, which are addressed below) claimed in the Action, any source of obligation as a basis for claiming such penalties during the Covered Period (the “Released Claims”), against Safeway Inc. (“Defendant”) and each and all of its past and present parent, subsidiary, and affiliated corporations, entities, divisions, general and limited partners, joint venturers and affiliates, and each of their respective current and former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and each of their respective executors, predecessors, successors, assigns and legal representatives (collectively, “Released Parties”).

In addition, on the date that the Court issues a Final Approval Order, Plaintiff, in her capacity as a representative of the California Labor and Workforce Development Agency (“LWDA”), and the LWDA, will forever completely release and discharge the Released Parties from penalties pursuant to PAGA (Lab. Code §§ 2698 *et seq.*) to the same extent that the underlying wage claims are released (“PAGA Release.”) It is the intent of the Parties that the Final Approval Order entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect to the fullest extent permitted by law.

FLSA Opt-In: Specifically, as to the release of claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, by cashing any settlement check, Class Members thereby opt into the Settlement and expressly release their claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT AND APPEARING AT THE HEARING

15. *How do I object to the Settlement?*

If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to the Settlement. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection (“Objection”) to the Settlement Administrator at the following address:

Safeway Settlement Administrator
P.O. Box 43208
Providence, RI 02940-3208

If you submit a written objection, the Objection must: (1) state your full name; (2) state the grounds for the objection in clear and concise terms; (3) be signed by you or your lawful representative; and (4) be postmarked on or before May 9, 2022 and returned to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection.

Any Class Member may object to the Settlement either by mailing a written objection using the process described above or by personally appearing at the Final Approval Hearing and making an oral objection before the Court, regardless of whether or not the Class Member timely mailed a written Objection to the Settlement Administrator. However, if you timely submit a written Objection, it is not necessary for you to appear at the Final Approval Hearing in order for the Court to consider your Objection. The Court, in its sole discretion, may permit any member of the Class to address the Court at the Final Approval Hearing and may consider any statements made by a Class Member.

If the Court rejects your objection, however, you will be bound by the terms of the Settlement. Persons who exclude themselves from the Settlement may not submit objections to the Settlement or appear at the Final Approval Hearing.

16. Who are the attorneys representing the parties?

Plaintiff and Class Members' Attorney ("Class Counsel"):

Shaun Setareh (SBN 204514)
Thomas Segal (SBN 222791)
SETAREH LAW GROUP
8665 Wilshire Blvd, Suite 302
Beverly Hills, CA 90211
Telephone (310) 888-7771
Facsimile (310) 888-0109

17. Can I appear at the Final Approval Hearing?

You are not required to attend the Final Approval Hearing, but any Class Member may do so.

YOUR RIGHTS – GETTING OUT OF THE SETTLEMENT

18. Can I remove myself from the Settlement?

Any Class Member who wishes to be excluded from the Class and Settlement must return a written request to be excluded from the Settlement to the Settlement Administrator by first-class U.S. mail, or equivalent, postage paid and postmarked, on or before May 9, 2022, which is 60 days from the date that the Notice was first mailed to Class Members. The written notice must clearly identify the full name of the Class Member requesting exclusion and contain a statement expressly stating that he/she seeks to be excluded from the Settlement, such as "I wish to opt out of the Lawsuit and the Settlement of the case: *Kimberlee Faciane v. Safeway Inc.*, Alameda County Superior Court Case No. RG18913668. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice I have received and read," and contain the full legal signature of the requesting Class Member. By submitting such a Request for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the class action lawsuit and Settlement.

The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely returned his or her Request For Exclusion before the deadline. Any Class Member that timely submits a proper Request For Exclusion will not be entitled to any money under this Settlement. Class Members who do not timely submit a proper request for exclusion shall be bound by all terms of this Settlement, including the Release of Claims, and the Judgment entered in this Action by the Court.

Send the Request for Exclusion directly to the Settlement Administrator (*Safeway* Settlement Administrator, P.O. Box 43208, Providence, RI 02940-3208). **Do not send the Request for Exclusion to the Court.** The judgment following approval of the Settlement by the Court will bind all Class Members who do not request exclusion from the Settlement.

Please note that the full amount of the agreed settlement payment will be allocated to those members who do not opt out, it will not revert back to Defendant.

19. What is the difference between excluding and objecting?

Excluding yourself or opting out means removing yourself from the Class and the Settlement altogether—you will not receive any money or be bound by the terms of the Settlement, except for the parts pertaining to PAGA claims, from which aggrieved employees cannot opt out. Objecting means that you are remaining in the Class and will receive money and be bound by the terms of the Settlement but that you are complaining about some part of the Settlement that you do not like.

WHAT IF I DO NOTHING?

20. What if I do nothing?

If you do nothing, you will be bound by the terms of the Settlement, which means you will receive a settlement payment and cannot bring a lawsuit against Defendant regarding the Released Claims covered by the Settlement.

DO I NEED TO HIRE MY OWN LAWYER?

21. Do I need to hire my own lawyer?

You do not need to hire your own lawyer, but you can if you want to. Plaintiff, you, and the entire Class are already represented by the Plaintiff's attorneys listed above, who are known as Class Counsel. Class Counsel's services are paid for under the Settlement. If you decide to hire your own attorney, you will have to pay for your own attorney's services.

You may contact Class Counsel if you have any questions about this Notice or the Settlement, but please *do not contact the Court or Defendant.*

FINAL APPROVAL OF SETTLEMENT

22. *When will the Settlement be final?*

The Final Approval Hearing on the fairness, reasonableness, and adequacy of the Settlement will be held at 10:00 a.m. on June 15, 2022 at Department 21 of the Alameda County Superior Court, Administration Building, located at 1221 Oak Street, 4th Floor, Oakland, CA 94612. The hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend.** Prior to attending, you should contact the Settlement Administrator or Class Counsel to confirm that the date and time of the hearing has not changed. The Settlement will become final after expiration of the applicable appeal period or when any appeal, if filed, is resolved.

MORE INFORMATION

23. *Where can I get more information?*

This Notice is only a summary of the Settlement. For more information, you may do any of the following:

You may visit the website for the Settlement in this matter hosted by the Settlement Administrator, www.safewayclassaction.com, where you will find copies of the pleadings and documents pertaining to this Settlement free of charge.

You may visit the public portal online for the Alameda Superior Court at <https://eportal.alameda.courts.ca.gov/>, where all the documents filed in this Action can be found and accessed by the public. Once on the website, enter "RG18913668" in the ["Case Number"] field, and click on ["Search"].

You may also contact Class Counsel listed above for more information.

**PLEASE DO NOT CALL THE COURT, DEFENDANT,
OR ITS ATTORNEYS ABOUT THIS NOTICE**