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9 Attorneys for Defendant  
 10 SAFEWAY INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

14 MICHAEL RODMAN, on behalf of himself  
 and all others similarly situated,  
 15 Plaintiff,  
 16 v.  
 17 SAFEWAY INC.,  
 18 Defendant.

Case No. 3:11-CV-03003-JST (JCS)

**JOINT STIPULATION AND  
 [PROPOSED] ORDER**

The Honorable Jon S. Tigar

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1 WHEREAS, on June 17, 2011, plaintiff in the above-captioned action, Michael Rodman,  
2 filed a class action complaint against Safeway Inc. (“Safeway”) (ECF No. 1); and

3 WHEREAS, on March 10, 2014, this Court certified the following class, solely for the  
4 purpose of bringing a breach of contract claim:

5 All persons in the United States who registered to purchase  
6 groceries through Safeway.com at any time prior to November 15,  
7 2011, and made one or more purchases subject to the price markup  
8 implemented on or about April 12, 2010 (the “Class”).

9 Excluded from the Class are Defendant, as well as all employees of  
10 the judges assigned to this action in this Court, their spouses and any  
11 minor children living in their households, and other persons within a  
12 third degree relationship to any such federal judge; and finally, the  
13 entire jury venire called for jury service in relation to this lawsuit.

14 Also excluded from the Class are any attorneys or other employees  
15 of any law firms hired, retained and/or appointed by or on behalf of  
16 the named Plaintiffs to represent the named Plaintiffs and/or any  
17 proposed Class members or proposed class in this lawsuit.

18 (ECF No. 163); and

19 WHEREAS, on February 12, 2015, this Court granted partial summary judgment to  
20 plaintiff and the Class and found that “Safeway breached the contract by charging Plaintiff and the  
21 Class members who registered beginning in 2006 more than the prices permitted under the terms  
22 of the contract” and that “[t]he Class is entitled to damages even for purchases which occurred  
23 after the Special Terms were amended on November 15, 2011” (ECF No. 237); and

24 WHEREAS, on August 31, 2015, this Court granted partial summary judgment to plaintiff  
25 and the Class and found that Class members who registered with Safeway.com on or after January  
26 1, 2006, were entitled to damages “in the amount of the aggregate markup,” plus prejudgment  
27 interest of 10 percent per annum from the time of breach under Cal. Civ. Code Section 3289(b),  
28 but denied summary judgment to plaintiff and the Class insofar as plaintiff sought a judgment of

1 liability for Class members who registered with safeway.com before January 1, 2006 (ECF No.  
2 331); and

3 WHEREAS, as reflected in submissions by the parties and orders of this Court (ECF Nos.  
4 371, 373, 374, 376-80, 383), trial of this case was continued from October 7, 2015 to December 7,  
5 2015 and additional discovery was permitted;

6 WHEREAS, the parties have engaged in formal and informal discovery;

7 WHEREAS, the parties now wish to stipulate to the facts and findings set out below;

8 NOW, THEREFORE, the parties to the above-captioned action hereby stipulate and agree  
9 to the following facts and findings:  
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11 1. Customers who registered with safeway.com before January 1, 2006 entered into a contract  
12 with Safeway at the time of registration containing the following language:

13 **Product Pricing and Service Charges**

14 The prices quoted on our Web site at the time of your order are  
15 estimated prices only. You will be charged the prices quoted for  
16 Products you have selected for purchase at the time your order is  
17 processed at checkout. The actual order value cannot be determined  
18 until the day of delivery because the prices quoted on the Web site  
19 are likely to vary either above or below the prices in the store on the  
20 date your order is filled and delivered.

21 2. Therefore, this Court's prior summary judgment orders (ECF Nos. 237 and 331) are  
22 equally applicable to Class members who registered before January 1, 2006, as they are to  
23 Class members who registered between January 1, 2006 and November 14, 2011.

24 3. In view of the foregoing, the parties request that the Court vacate the December 7, 2015  
25 jury trial, the November 30, 2015 pre-trial conference, and the pre-trial submission  
26 deadlines set forth in the Court's October 14, 2015 Scheduling Order (ECF No. 381).

27 4. The parties will work together to determine the amount of damages and pre-judgment  
28 interest attributable to the Class members who registered before January 1, 2006 and the

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Class members who registered between January 1, 2006 and November 14, 2011 for submission to the Court to enter in connection with final judgment. Any disputes will be submitted to the Court for resolution.

5. Safeway contests this Court's prior orders (ECF Nos. 163, 237, 331), and reserves its right to appeal from any final judgment in this action to challenge this Court's prior orders or any other order made in this action.

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Dated: November 12, 2015

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Attorneys for Plaintiff  
MICHAEL RODMAN and the Class

SO ORDERED:

  
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JON S. TIGAR  
United States District Judge

Dated: November 19, 2015

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ATTESTATION OF CONCURRENCE

I, Jonah D. Mitchell, attest that pursuant to Local Rule 5-1(i)(3), I hereby certify that I have obtained the concurrence in the filing of this document from all the signatories for whom a signature is indicated by a “conformed” signature (/s/) within this e-filed document..

Dated: November 12, 2015

REED SMITH LLP

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