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Attorneys for Defendants
GARY DOVE and DEBORAH DOVE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CONCETTA JORGENSEN

Case No. C07-3278 CW

Plaintiff,

Civil Rights

v.

SAFEWAY INC.; GARY DOVE;
DEBORAH DOVE; AND DOES 1-50,
INCLUSIVE,
Defendants,

**SETTLEMENT AGREEMENT AND
ORDER**

And related cross-claims.

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1 entry of this Order without trial or further adjudication of any issues of fact or law concerning
2 Plaintiff's claims for injunctive relief.

3 5. WHEREFORE, the parties to this Settlement Agreement hereby agree and
4 stipulate to the Court's entry of the proposed Order, which provides as follows:

5 **SETTLEMENT OF INJUNCTIVE RELIEF:**

6 6. This Order shall be a full, complete, and final disposition and settlement of
7 plaintiff's claims against Defendants for injunctive relief that have arisen out of the acts or
8 omissions alleged or which could have been alleged in the subject Complaint. The parties
9 agree that there has been no admission or finding of liability or violation of the ADA and/or
10 California civil rights laws, and this Settlement Agreement and Order should not be construed
11 as such.

12 7. The parties agree and stipulate that the corrective work will be performed in
13 compliance with the standards and specifications for disabled access as set forth in the
14 California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility
15 Guidelines, unless other standards are specifically agreed to in this Settlement Agreement and
16 Order.

17 8. Remedial Measures: The corrective work agreed upon by the parties is attached
18 to this Settlement Agreement as **Exhibit A**. Defendants agree to undertake, or to cause other
19 parties to the litigation to undertake all of the remedial work set forth in the Exhibit.

20 9. Timing of Injunctive Relief: Defendants will submit plans for all corrective
21 work to the appropriate governmental agencies within 30 days of the approval of this
22 Settlement Agreement by the parties to this Agreement. Defendants will commence work
23 within 30 days of receiving all required approvals from the appropriate agencies. Defendants
24 and/or the other parties to this litigation will use their best efforts to complete the work within
25 30 days of commencement. For work not requiring building permits, or other governmental
26 approvals or inspections, the work will be completed within 60 days of the effective date of this
27 Settlement Agreement. In the event that unforeseen difficulties prevent Defendants or other
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1 parties to this litigation from completing any of the agreed-upon injunctive relief, Defendants
2 or their counsel will notify Plaintiff's counsel in writing within 15 days of discovering the
3 delay. Defendants or their counsel will notify Plaintiff's counsel when the corrective work is
4 completed, and in any case will provide a status report no later than 120 days from the approval
5 of this Settlement Agreement.

6 10. If Plaintiff contends any or some portion of the corrective construction work to
7 be completed under this Settlement Agreement has not been carried out correctly, Plaintiff will
8 provide written notice to Defendants and their counsel detailing in what respects Plaintiff
9 contends the premises are not compliant. Within 14 calendar days of receiving this notice,
10 Defendants will respond to this notice. If the parties are not able to agree upon a course of
11 action, they will hold a meet and confer within 30 calendar days of Plaintiff's written notice
12 and will use their best efforts to resolve the dispute informally. If the parties are still not able to
13 agree, they will submit the matter to the judge then assigned to the case.

14 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:**

15 11. The parties have not yet reached an agreement regarding Plaintiff's claims for
16 damages, attorney fees, litigation expenses and costs. These issues shall be the subject of
17 further negotiation, litigation, and/or motions to the court.

18 **ENTIRE CONSENT ORDER:**

19 12. This Settlement Agreement and Order and Attachment A to this Settlement
20 Agreement, which is incorporated by this reference as if fully set forth in this document,
21 constitute the entire agreement between the signing parties on the matters of injunctive relief,
22 and no other statement, promise, or agreement, either written or oral, made by any of the parties
23 or agents of any of the parties, that is not contained in this written Settlement Agreement shall
24 be enforceable regarding the matters of injunctive relief described herein.

25 **ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

26 13. This Settlement Agreement and Order shall be binding on Plaintiff CONCETTA
27 JORGENSEN; Defendants SAFEWAY INC.; GARY DOVE; DEBORAH DOVE; and any
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1 successors in interest. The parties have a duty to so notify all such successors in interest of the
2 existence and terms of this Settlement Agreement and Order during the period of the Court's
3 jurisdiction of this Settlement Agreement and Order.

4 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO**
5 **INJUNCTIVE RELIEF ONLY:**

6 14. Each of the parties to this Settlement Agreement understands and agrees that
7 there is a risk and possibility that, subsequent to the execution of this Settlement Agreement,
8 any or all of them will incur, suffer, or experience some further loss or damage with respect to
9 the Lawsuit which are unknown or unanticipated at the time this Settlement Agreement is
10 signed. Except for all obligations required in this Settlement Agreement, the parties intend that
11 this Settlement Agreement applies to all such further loss with respect to the Lawsuit, except
12 those caused by the parties subsequent to the execution of this Settlement Agreement.
13 Therefore, except for all obligations required in this Settlement Agreement, this Settlement
14 Agreement shall apply to and cover any and all claims, demands, actions and causes of action
15 by the parties to this Settlement Agreement with respect to the Lawsuit, whether the same are
16 known, unknown or hereafter discovered or ascertained, and the provisions of Section 1542 of
17 the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
20 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
21 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
22 WITH THE DEBTOR.

23 15. For all obligations arising out of this Settlement Agreement, excluding claims
24 for damages, statutory attorney fees, litigation expenses and costs, Plaintiff Concetta Jorgensen,
25 on her own behalf, and on behalf of her agents, representatives, predecessors, successors, heirs,
26 partners and assigns, releases and forever discharges the Defendants, and all other persons or
27 entities who at any time have managed or owned the subject premises, including but not limited
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1 to D. Thomas Snow and their respective officers, directors, shareholders, joint
2 venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance
3 carriers, heirs, predecessors, and representatives from all claims, demands, actions, and causes
4 of action of whatever kind or nature, presently known or unknown, arising out of or in any way
5 connected with the Injunctive Relief portion of the lawsuit .

6 16. For all obligations arising out of this Settlement Agreement, Defendants, on
7 their own behalf and on behalf of their agents, representatives, predecessors, successors, heirs,
8 partners and assigns, release and forever discharge the Plaintiff, and her agents, attorneys,
9 insurance carriers, heirs, predecessors, and representatives from all claims, demands, actions,
10 and causes of action of whatever kind or nature, presently known or unknown, arising out of or in
11 any way connected with the Injunctive Relief portion of the lawsuit.

12 17. Nothing in this Settlement Agreement releases any claims which Safeway, Gary
13 Dove or Deborah Dove may have against any third party defendant such as Ransome Paving,
14 Olson Steel, their respective insurance carriers, Eric F. Anderson, Inc., Arch Insurance, or any
15 other person, insurance carrier, or entity.

16 **TERM OF THE SETTLEMENT AGREEMENT AND ORDER:**

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18 This Settlement Agreement and Order shall be in full force and effect for a period of
19 twelve (12) months after the date of approval of this Settlement Agreement and Order, or until
20 the injunctive relief contemplated by this Order is completed, whichever occurs later. The
21 Court shall retain jurisdiction of this action to enforce provisions of this Order for twelve (12)
22 months after the date of this Settlement Agreement, or until the relief contemplated by this
23 Order is completed, whichever occurs later.

24 **SEVERABILITY:**

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26 18. If any term of this Settlement Agreement and Order is determined by any court
27 to be unenforceable, the other terms of this Settlement Agreement and Order shall nonetheless
28 remain in full force and effect.

SIGNATORIES BIND PARTIES:

19. Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Settlement Agreement and Order. This Settlement Agreement and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

Dated: _____, 2008

Plaintiff CONCETTA JORGENSEN

Dated: _____, 2008

Defendant SAFEWAY INC.

Dated: _____, 2008

Defendant GARY DOVE

Dated: _____, 2008

Defendant DEBORAH DOVE

APPROVED AS TO FORM:

Dated: _____, 2008

PAUL L. REIN
LAW OFFICES OF PAUL L. REIN

JULIE OSTIL
LAW OFFICE OF JULIE OSTIL

BRIAN GEARINGER
GEARINGER LAW GROUP

Attorneys for Plaintiff
CONCETTA JORGENSEN

Dated: _____, 2008

MICHAEL BOLECHOWSKI
ERIC S. WONG
WILSON ELSE ET AL.

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Attorneys for Defendants SAFEWAY INC.

Dated: _____, 2008

WILLIAM F. MURPHY
JOHN N. DAHLBERG
J. CROSS CREASON
DILLINGHAM & MURPHY, LLP

Attorneys for Defendants GARY DOVE and
DEBORAH DOVE

ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

Dated: 6/30/09



HON. CLAUDIA WILKEN
U.S. DISTRICT JUDGE