

1 FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk, Esq. (SBN 109234)
2 jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
3 mlk@classactionlaw.com
William R. Restis, Esq. (SBN 246823)
4 wrrestis@classactionlaw.com
Trenton R. Kashima, Esq. (SBN 291405)
5 trk@classactionlaw.com
550 West C Street, Suite 1760
6 San Diego, California 92101
Telephone: (619) 238-1333
7 Facsimile: (619) 238-5425

8 Attorneys for Plaintiff
9

PILLSBURY WINTHROP SHAW
PITTMAN LLP
THOMAS V. LORAN (SBN 95255)
thomas.loran@pillsburylaw.com
ANDREW D. LANPHERE (SBN
191479)
andrew.lanphere@pillsburylaw.com
Four Embarcadero Center, 22nd
Floor
San Francisco, CA 94126-2824
Telephone: (415) 983-1000

PILLSBURY WINTHROP SHAW
PITTMAN LLP
BRIAN D. MARTIN (SBN 199255)
brian.martin@pillsburylaw.com
501 West Broadway, Suite 1100
San Diego, CA 92101-3575
Telephone: (619) 234-5000

Attorneys for Defendant
Safeway Inc.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 LINDA STADE, individually and on
16 behalf of all other similarly situated
California residents,

17 Plaintiff,

18 v.

19 SAFEWAY, INC., a Delaware
20 Corporation,

21 Defendant.
22

Case No.: 15 CV 1381 WQH
(BLM)

**JOINT NOTICE OF DISMISSAL
WITH PREJUDICE AS TO
PLAINTIFF'S INDIVIDUAL
CLAIMS AND WITHOUT
PREJUDICE AS TO ANY
CLAIMS OF ABSENT
PUTATIVE CLASS MEMBERS**

Fed. R. Civ. P. 41(a)(1)

23 The parties hereto, by and through their respective counsel of record,
24 hereby stipulate and agree, and jointly move the Court as follows:

25 Whereas, the parties have reached an agreement (the "Settlement
26 Agreement and Release") resolving all of the claims and causes of action
27
28

1 asserted in this case by Plaintiff Linda Stade (“Plaintiff”) individually against
2 Defendant Safeway Inc.;

3 Whereas, the parties’ Settlement Agreement and Release does not
4 purport to release the claims of absent putative class members as pled in
5 Plaintiff’s complaint; and

6 Whereas, pursuant to the Settlement Agreement and Release, the parties
7 wish to dismiss the above-captioned case:

8 N o w, T h e r e f o r e, the Parties, by and through their respective
9 counsel, hereby stipulate that the above-captioned action be dismissed
10 pursuant to Fed. R. Civil. P. 41(a)(1) with prejudice as to Plaintiff’s individual
11 claims, and without prejudice as to any claims of absent putative class
12 members.

13 Fed. R. Civ. P. 41(a)(1)(A)(ii) allows a plaintiff to voluntarily dismiss
14 an action without court order by filing a stipulation of dismissal signed by all
15 parties who have appeared. See *Duke Energy Trading & Mktg. v. Davis*, 267
16 F.3d 1042, 1049 (9th Cir. 2001) (noting that voluntary dismissal under Rule
17 41(a)(1)(A) “requires no action on the part of the court” and holding that
18 “[o]nce the notice of dismissal has been filed, the district court loses
19 jurisdiction over the dismissed claims.”)

20 Fed. R. Civ. P. 23(e) was modified in 2003 to eliminate any requirement
21 for Court approval or notice to the putative class when a class representative
22 voluntarily dismisses class allegations without prejudice before a ruling on
23 class certification:

24 Rule 23(e)(1)(A) resolves the ambiguity in former Rule 23(e)’s
25 reference to dismissal or compromise of “a class action.” That
26 language could be--and at times was--read to require court
27 approval of settlements with putative class representatives that
28 resolved only individual claims. [Citation.] The new rule requires

1 approval only if the claims, issues, or defenses of a certified class
2 are resolved by a settlement, voluntary dismissal, or compromise.
3 Subdivision (e)(1)(B) carries forward the notice requirement of
4 present Rule 23(e) when the settlement binds the class through
5 claim or issue preclusion; notice is not required when the
6 settlement binds only the individual class representatives.

6 Committee Notes on Rules—2003 Amendment; *see also* Daniels v. Bursey,
7 2004 WL 2358291, at *1 (N.D. Ill. Oct. 21, 2004) (“The settlement in this case
8 that was negotiated under Magistrate Judge Schenkier's supervision disposes
9 only of the individual claims of the named plaintiffs. The class claims are not
10 being dismissed, rather they are being withdrawn ... Each of the defendants
11 concedes that the settlement of the named plaintiffs' individual claims and
12 their withdrawal of their class allegations will have no preclusive effect on the
13 claims of any absent class members. Any of the absent class members will be
14 perfectly free to file his or her own lawsuit, unimpaired in any way by the
15 settlement of the individual claims of the named plaintiffs or the withdrawal of
16 their class claims. Moreover, because the statute of limitations is tolled for
17 absent class members while a case is pending [Citation], the claims of the
18 absent class members will not be impaired in any way by the settlement or by
19 the passage of time between the filing of the case and its disposition.”)
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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Andrew D. Lanphere, counsel for Plaintiffs, and that I have obtained Mr. Lanphere's, authorization to affix his electronic signature to this document.

Dated: October 7, 2015.

FINKELSTEIN & KRINSK LLP
JEFFREY R. KRINSK (SBN 109234)
MARK L. KNUSTON (SBN 131770)
WILLIAM R. RESTIS (SBN 246823)
Trenton R. Kashima (SBN 291405)
550 West C Street, Suite 1760
Telephone: (619) 238-1333

By /s/ William R. Restis

William R. Restis
Email: wrr@classactionlaw.com
Attorneys for Plaintiff Linda Stade,

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PITTMAN LLP
THOMAS V. LORAN (SBN 95255)
ANDREW D. LANPHERE (SBN 191479)
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Telephone: (415) 983-1000

PILLSBURY WINTHROP SHAW
PITTMAN LLP
BRIAN D. MARTIN (SBN 199255)
501 West Broadway, Suite 1100
San Diego, CA 92101-3575
Telephone: (619) 234-5000

By /s/ Andrew D. Lanphere

Attorneys for Defendant Safeway Inc.

Email:
andrew.lanphere@pillsburylaw.com

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 Jeffrey R. Krinsk, Esq. (SBN 109234)
 2 jrk@classactionlaw.com
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 9 Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 LINDA STADE, individually and on
 13 behalf of all other similarly situated
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15 v.

16 SAFEWAY, INC., a Delaware
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18 Defendant.

Case No: 15 CV 1381 WQH (BLM)

PROOF OF SERVICE

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1 I, the undersigned, declare that I am over the age of eighteen (18) years and not
2 a party to the within action. I am employed in the County of San Diego, State of
3 California. My business address is 550 W. C Street, Suite 1760, San Diego, California
4 92101.

5 I served the following document(s) on October 7, 2015:

6 **JOINT NOTICE OF DISMISSAL WITH PREJUDICE AS TO PLAINTIFF'S**
7 **INDIVIDUAL CLAIMS AND WITHOUT PREJUDICE AS TO ANY CLAIMS**
8 **OF ABSENT PUTATIVE CLASS MEMBERS**

8 By the following means:

9 **XX VIA NOTICE OF ELECTRONIC FILING (ECF):** Electronic Services via
10 the Court's CM/ECF system pursuant to CivLR 5.4(c).

11 **— VIA PERSONAL SERVICE:** I personally delivered the documents to the
12 person(s) at the address(es) listed above. (1) For a party represented by an
13 attorney, delivery was made to the attorney or at the attorney's office by leaving
14 the documents, in an envelope or package clearly labeled to identify the attorney
15 being served, with a receptionist or an individual in charge of the office,
16 between the hours of nine in the morning and five in the evening. (2) For a
17 party, delivery was made to the party or by leaving the documents at the
18 party's residence with some person not younger than 18 years of age between
19 the hours of eight in the morning and six in the evening.

16 I declare under penalty of perjury under the laws of the United State of
17 America, that the foregoing is true and correct and that I am employed in the office, at
18 whose direction the within service was made.

20 Executed: October 7, 2015, at San Diego, California.

21 
22 _____
23 Rebecka A. Garcia