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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

SAFEWAY, INC.,

Defendant.

Case No. BC317112
STIPULATED FINAL JUDGMENT

Plaintiff, the People of the State of California, through BILL LOCKYER, Attorney General of the State of California, by Deputy Attorney General Alan Lieberman, and ROCKARD J. DELGADILLO, Los Angeles City Attorney, by Deputy City Attorney Keith De La Rosa, and defendant SAFEWAY INC., appearing through its attorneys, Pillsbury Winthrop LLP, by Albert J. Boro, Jr., having stipulated to entry of this Final Judgment without the taking of proof and without this Final Judgment constituting evidence of or an admission by defendant regarding any issue of law or fact alleged in the First Amended Complaint, all parties having waived the right to appeal, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff have judgment as follows:

JURISDICTION

A. This action is brought under California law and this court has jurisdiction of the subject matter herein and the parties to this Final Judgment (hereafter, "Judgment").

INJUNCTIVE RELIEF

B. As used in this Judgment, the following terms have the following meanings:

1. The term “Attorney General” refers to the California Attorney General.

2. The term “City Attorney” refers to the Los Angeles City Attorney.

3. The term "Compliance Officer" refers to the person appointed by Safeway pursuant to paragraph G.1 of this Judgment.

4. The term "electronic age verification devices and systems" means cash registers or computerized point of sale systems that assist a clerk in verifying the age of the customer.

5. The term "Independent Entity" means an entity that is not owned by or affiliated with Safeway and that conducts the external compliance checks described in part F of this Judgment.

6. The term "minor" means a person under the legal age for purchasing tobacco products in the State of California.

7. The term "person experienced in providing youth access training" means someone who has a thorough understanding and working knowledge of the information described in paragraph D.2(b) of this Judgment and possesses the skills necessary to train others.

8. The term "third-party sale" means an adult purchasing tobacco products or tobacco paraphernalia in order to furnish it to a minor.

9. The term "tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

10. The term "tobacco product" means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

11. The term "vending machine" means a mechanical or electrical device from which one or more tobacco products are dispensed in exchange for consideration.

12. The term "youth access" is used herein as a shorthand reference to age restrictions on the sale or possession of tobacco products to or by minors.

C. Pursuant to Business and Professions Code sections 17203 and 17207(a), defendant

1 SAFEWAY INC. (hereinafter, “Safeway”), a corporation incorporated in the State of Delaware and
2 currently doing business in California under the names Safeway, Vons, Pavilions, and Pak N’Save,
3 and its successors and assigns are hereby permanently enjoined and restrained from directly or
4 indirectly engaging in any of the following acts or practices in or from California:

5 1. Selling tobacco products to any person under 18 years of age, in violation of Penal
6 Code section 308 and Business and Professions Code section 22958(a);

7 2. Failing to check the identification of tobacco purchasers who reasonably appear to be
8 under 18 years of age, in violation of Business and Professions Code section 22956;

9 3. Failing to display the required age of sale warning signs at each point of purchase, in
10 violation of Penal Code section 308(c) and Business and Professions Code section 22952(b); and

11 4. Failing to prominently display the required tobacco retail permit in its stores in the City
12 of Los Angeles, in violation of Los Angeles Municipal Code sections 46.90 through 46.101.

13 **PERSONNEL PRACTICES RELATING TO THE SALE**

14 **OF TOBACCO PRODUCTS TO MINORS**

15 D. Safeway shall implement the following personnel practices relating to the sale of tobacco
16 products to minors:

17 1. Hiring.

18 (a) Upon hiring, Safeway shall inform new employees for positions that involve selling
19 tobacco products or supervising anyone who sells tobacco products of the importance of compliance
20 with laws relating to youth access. The information Safeway provides shall include references to
21 company policies, legal consequences, and health concerns associated with youth access.

22 (b) Safeway shall attempt to minimize the use of persons under 18 years of age in
23 positions that may involve the sale of tobacco products.

24 (c) Safeway shall ask all applicants for positions that involve the selling of tobacco
25 products or supervising anyone who sells tobacco products about past convictions for violations of
26 criminal laws including prohibitions on selling or supplying tobacco products to minors by that person
27 or anyone under that person’s supervision that were not overturned on appeal or were not resolved
28 by a referral to pretrial or post-trial diversion or were not expunged. Safeway shall give any such

1 violations consideration in the hiring decision.

2 2. Training.

3 (a) Before assuming any job duties that involve or may involve the sale of tobacco
4 products, an employee shall have received the following training in the laws and company policies
5 relating to tobacco products and shall be required to provide an acknowledgment in writing or
6 electronically that he/she has read and understands the information.

7 (b) Such training shall be prepared by a person experienced in providing youth access
8 training, and shall include, at a minimum, the following components:

9 (1) A review of applicable federal, state, and local laws relating to youth access.

10 (2) A review of Safeway's policies relating to youth access.

11 (3) An explanation of the health-related reasons that the law and Safeway's
12 policies deem preventing youth access to tobacco products to be an important matter, which
13 reasons are based on numerous studies and reports, including the 1998 National Survey on
14 Drug Use & Health, the 1994 and other reports of the U.S. Surgeon General, and reports of
15 the U.S. Centers for Disease Control and Prevention, and which shall include the following
16 information:

17 (i) approximately 80% of adult smokers started smoking before the age
18 of 18;

19 (ii) nicotine is addictive and young people are more receptive to the
20 effects of nicotine than adults, making cigarette addiction more likely to occur
21 during adolescence;

22 (iii) the average age of most beginning tobacco users is 14.5
23 years old;

24 (iv) the younger a person becomes a regular tobacco user, the more likely it is that
25 he or she will become addicted to nicotine and will suffer serious long-term
26 health consequences; and

27 (v) more than 430,000 Americans die each year from tobacco-related diseases.

28 (4) A review of Safeway's disciplinary policies for failure to comply with

1 Safeway's policies relating to youth access.

2 (5) A review of the range of tobacco products and, where applicable, tobacco
3 paraphernalia, to which Safeway's policies and/or youth access laws apply.

4 (6) A review of identification ("I.D.") procedures including:

5 (i) the age that triggers the I.D. requirement (see paragraph E.5(b)
6 of this Judgment);

7 (ii) acceptable forms of I.D. (as listed in paragraph E.5(g) of this Judgment);

8 (iii) features of an I.D. that must be checked, with particular emphasis on the
9 features of a California Driver's License and on government-issued forms of
10 identification most commonly possessed by adults in the market area;

11 (iv) how to tell if an I.D. may have been altered or is being misused; and

12 (v) what to do if an I.D. appears to have been altered or is being misused.

13 (7) An explanation of the fact that many illegal sales are made to minors who
14 produce I.D.'s showing that they are in fact under the legal age, and the importance of
15 devoting the time and effort needed to perform the necessary calculation to establish that a
16 customer is of legal age.

17 (8) A review of prescribed methods, practical techniques, and stock phrases
18 (where appropriate) for handling the following recurring situations:

19 (i) asking for I.D.;

20 (ii) making the necessary age calculation;

21 (iii) declining to make a sale based on concerns relating to whether the I.D. has
22 been altered or is being misused;

23 (iv) declining to make a sale for failure to have an I.D.;

24 (v) recognizing a potential third-party sale;

25 (vi) declining to make a sale that appears to be a third-party sale;

26 (vii) declining to make a sale of tobacco paraphernalia to a minor;

27 (viii) resisting customer pressure and handling a customer's abusive conduct; and

28 (ix) contacting the police when appropriate to do so.

1 (9) Instruction that an employee is not required to make a sale of tobacco
2 products, and must decline to do so, if the circumstances reasonably suggest that doing so
3 would violate the laws or Safeway's policies relating to youth access.

4 (10) Instruction on the proper use of electronic age verification devices and any
5 other systems employed by Safeway in connection with age screening for the purchase of
6 tobacco products.

7 (c) In the case of an employee who is 19 years old or younger, training shall also
8 emphasize the special challenges associated with declining to sell tobacco products to minors who
9 are friends, acquaintances, and/or peer group members, and on techniques and methods for meeting
10 such challenges.

11 (d) Safeway shall use a written test (which may be in electronic form) to establish that its
12 employees have fully acquired the knowledge required to perform in accordance with the laws and
13 Safeway's policies relating to youth access. Employees in positions that involve selling tobacco
14 products or supervising anyone who sells tobacco products shall be required to pass this test upon
15 completion of initial training and supplemental training pursuant to paragraph D.2(e). Thereafter, on
16 at least an annual basis, Safeway shall provide additional training and obtain an acknowledgment in
17 writing or electronically from employees with responsibilities relating to the sale of tobacco products
18 that he/she understands the laws and Safeway's policies relating to youth access. Safeway shall retain
19 for three (3) years the written or electronic tests and acknowledgments completed by each employee.

20 (e) Safeway shall provide supplemental training, employing the training in paragraph D.2
21 of this Judgment, to any employee whom it desires to retain that:

22 (1) allegedly sells tobacco products to a minor or is the immediate supervisor of
23 an employee who allegedly sells tobacco products to a minor, after the date of entry of this
24 Judgment and Safeway has received notice of an alleged violation issued by a governmental
25 agency; or

26 (2) fails to pass a compliance check conducted pursuant to part F of this
27 Judgment.

28 3. Supervision.

1 (a) Supervisors of employees who sell tobacco products shall be instructed to monitor
2 staff compliance with youth access laws and policies on an on-going basis.

3 (b) Safeway shall minimize the use of persons under the age of 18 as supervisors of
4 employees involved in the sale of tobacco products.

5 **TOBACCO RETAILING POLICIES AND PRACTICES**

6 E. Safeway shall implement the following tobacco retailing policies and practices:

7 1. Vending Machines. Safeway shall not use vending machines to sell tobacco products.

8 2. Restricted Sales Area. Safeway shall display tobacco products for sale in only one
9 area of the store. Tobacco products shall be displayed and stored in a manner that requires an
10 employee's assistance in retrieving a product from a restricted access location and does not permit
11 a customer to take possession of the product until the sale is completed.

12 3. Age Limitation on Sale of Tobacco Paraphernalia. Safeway shall have a policy
13 requiring that no one under the legal age for purchasing tobacco products is permitted to purchase
14 tobacco paraphernalia.

15 4. Cooperation in Enforcement of Youth Access Laws. Safeway shall have a policy
16 requiring that store personnel make every reasonable effort to cooperate in the enforcement of
17 applicable youth access laws.

18 5. Age Verification.

19 (a) Safeway shall not sell tobacco products or tobacco paraphernalia to minors.

20 (b) Safeway shall require its employees to obtain identification before sales are made from
21 persons seeking to purchase tobacco products who appear to be under the age of 27 (or such higher
22 age as Safeway determines appropriate) in accordance with paragraph E.5(g) of this Judgment.

23 (c) Safeway agrees to implement an electronic age verification device and system by
24 completing the programming of its cash registers to:

25 (1) lock when a tobacco product is scanned;

26 (2) prompt the employee to I.D. the customer; and

27 (3) display the date on or after which the customer must have been born in order
28 to allow a legal tobacco sale to proceed.

1 (d) Safeway shall use the cash register prompts provided for in paragraph E.5(c) and the
2 signage provided for in paragraph E.9 of this Judgment, so that each person with responsibility for
3 selling tobacco products is reminded prior to a sale of tobacco products of the importance of
4 performing proper I.D. checks for tobacco purchases.

5 (e) To the extent that Safeway uses electronic age verification devices or systems that
6 have the capacity to store data that would assist in evaluating whether the systems are being properly
7 used by employees responsible for the sale of tobacco products, when appropriate, it shall review
8 such data periodically and provide remedial training and support, as necessary, for those employees
9 who appear to need it.

10 (f) Nothing in this Judgment authorizes or sanctions the retention of personally
11 identifiable information for marketing or other purposes.

12 (g) Unless otherwise permitted by law, Safeway shall have a policy that only the following
13 forms of photo-I.D. are acceptable for purposes of establishing legal age to purchase tobacco
14 products: (1) Driver's License; (2) State-Issued Identification Card; (3) U.S. Passport; (4) Military
15 Identification Card; and (5) U.S. Immigration Card. The I.D. must be current and valid.

16 6. Minimum Pack Size. Pursuant to Penal Code section 308.3, Safeway shall not offer
17 for sale single cigarettes or cigarette packages containing fewer than twenty cigarettes per pack.

18 7. Sale of Look-Alike Products. Safeway shall not offer for sale candy, chewing gum,
19 or like items designed to look like cigarettes.

20 8. Advertising.

21 (a) Safeway shall limit tobacco product signage to brand names, logos, and prices.

22 (b) Safeway shall ensure that all tobacco product advertising signage inside the store is
23 confined to the area where tobacco products are displayed.

24 9. Placement of Minimum Age Signs.

25 (a) In addition to meeting whatever signage and posting requirements or restrictions may
26 be embodied in local, state, or federal law, Safeway shall post signs stating that Safeway will not sell
27 tobacco products to persons under the minimum age for sale in California and that persons who
28 appear to be under the age of 27 (or such higher age as Safeway deems appropriate) will be asked

1 for identification before a sale is made.

2 (b) The signs shall be placed at the following locations:

3 (1) on the main front entrance door(s) by which a customer may enter the store or on a
4 front window in close proximity to such front entrance door(s) (facing out);

5 (2) at each cash register at which tobacco products may be sold;

6 (3) at each tobacco product display; and

7 (4) in the employee break area.

8 10. Free Samples. Safeway shall not permit the distribution of free samples of tobacco
9 products anywhere on store premises, including walkways and parking areas under its control.

10 11. Written policies. Safeway's policies relating to tobacco products and paraphernalia
11 shall be in written or electronic form and shall embody the standards and practices set forth in this
12 Judgment.

13 COMPLIANCE CHECKS

14 F. Safeway shall implement and maintain a program of external compliance checks in the State
15 of California designed to assist Safeway in determining whether individual stores and their employees
16 are in compliance with youth access laws and policies, as follows:

17 1. Compliance checks shall be unannounced. Procedures shall be adopted to ensure that
18 employees whose compliance is being checked (both clerks and supervisors responsible for the
19 performance of the clerks) have no reason to know that a given attempt to purchase tobacco is
20 actually a compliance check.

21 2. The compliance check will determine whether the employee selling the tobacco
22 product asked the purchaser to produce identification, whether the purchaser provided an acceptable
23 form of identification (see paragraph E.5(g) of this Judgment), whether the employee checked the
24 identification to verify whether the purchaser is of legal age, and, in the case of an attempted purchase
25 by a minor or by a person who is not a minor and does not produce proper identification, whether the
26 sale was consummated. A passed compliance check is one where the employee completes these tasks
27 and declines to make the sale.

28 3. Safeway will implement a program to recognize associates who pass external

1 compliance checks, however, there shall be no obligation to provide rewards that have any monetary
2 value.

3 4. Safeway shall arrange for an Independent Entity reasonably acceptable to the Attorney
4 General and the City Attorney to perform compliance checks at ninety (90) or more of its stores that
5 sell tobacco each year.

6 5. External checks shall be conducted in a series of consecutive six (6) month programs,
7 with each subsequent program beginning on the day after the previous program ends.

8 6. Safeway will divide its stores into two geographic sections. For each six (6) month
9 program, the Independent Entity will randomly select forty-five (45) stores in toto from the two
10 sections where external compliance checks will be conducted, provided that all of the stores shall be
11 located in California. No store selected to be checked will be identified to Safeway, directly or
12 indirectly, until after the check of that store is completed.

13 7. An external compliance check shall consist of an attempt to purchase tobacco by a
14 person chosen by the Independent Entity who:

- 15 (a) is not employed by Safeway;
- 16 (b) is unknown to the staff of the selected store; and
- 17 (c) is a person of legal age who is less than 27 years of age.

18 8. Safeway shall instruct the Independent Entity to perform the compliance checks for
19 the purpose of obtaining an accurate and reliable indication of actual employee practices in connection
20 with tobacco sales and not for the purpose of ensuring favorable results, and Safeway shall evaluate
21 the performance of the Independent Entity on this basis.

22 9. Safeway shall instruct the Independent Entity to adhere to the following protocol in
23 conducting compliance checks:

24 (a) General Principles Underlying Protocol.

25 (1) Compliance checks shall be carried out in a manner that is designed to provide
26 a reliable and realistic assessment of how Safeway employees perform when presented, in
27 the usual course of business, with typical young persons attempting to purchase cigarettes.

28 (2) Each compliance check is to be conducted in a manner that is designed not

1 to reveal to Safeway employees and managers in the store being checked that the attempted
2 purchase of cigarettes is pursuant to a compliance check or that compliance checks may be
3 simultaneously occurring at other Safeway stores in the vicinity.

4 (3) Persons who attempt to purchase cigarettes during compliance checks
5 ("checkers") are to be trained by the independent entity to ensure that each checker is able
6 to perform compliance checks in a competent and confident manner. Such training shall
7 include role-playing. The independent entity shall develop written training protocols for
8 checkers and for those who supervise checkers, and shall make those protocols available to
9 Safeway, the Attorney General, and the City Attorney upon request.

10 (4) Compliance checks shall be conducted in accordance with applicable federal,
11 state, and local laws and regulations.

12 (b) General Characteristics of Persons Employed as Checkers.

13 (1) The independent entity shall verify that the age of each checker, when he or
14 she conducts compliance checks, complies with paragraph F.7(c) of this Judgment.

15 (2) Each checker shall not appear to be older or younger than the average person
16 of his or her age, shall dress in a manner appropriate to his or her age group and social group,
17 and shall not alter his or her appearance with the intent of appearing older or younger.

18 (3) At least 40%, but not more than 60%, of compliance checks in a six month
19 program shall be conducted by a checker who is female. Persons used as checkers may
20 include otherwise suitable persons who have previously used or currently use cigarettes, but
21 a checker may not be used to perform a check at any store at which the checker purchased
22 cigarettes in the past.

23 (c) Conduct of Compliance Checks.

24 (1) The checker shall have no I.D. in his or her possession during the compliance
25 checks, but shall have a sum of money sufficient to pay for the cigarettes that the checker will
26 attempt to purchase, and for the food item, if applicable, that the checker will purchase.

27 (2) At least 60% of compliance checks shall be conducted on weekends or
28 between 3:00 p.m. and 8:00 p.m. on weekdays.

1 (3) The checker shall enter the store alone.

2 (4) On occasion, the checker shall select a food item popular with youth (e.g. a
3 popular soft drink, snack, or small food package). The food item shall vary from one
4 compliance check to another. However, compliance checks will sometimes dispense with the
5 purchase of a food item in order to ensure that the checks do not become discernable as such
6 by store personnel.

7 (5) The checker shall approach a check-out counter where cigarettes may be purchased,
8 request from the cashier a single pack of cigarettes, and place the food item, if applicable, on the
9 counter. The brand of cigarettes requested shall vary among compliance checks.

10 (6) If the cashier requests I.D., the checker shall state that he or she does not have
11 an I.D. in his or her possession but is old enough to buy cigarettes, and shall state his or her
12 actual age.

13 (7) The checker shall not attempt to persuade the cashier to sell the cigarettes by
14 taking steps other than those expressly set forth in paragraph F.9 of this Judgment.

15 (8) If the cashier provides the requested cigarettes, the checker shall pay for them
16 and the food item, if applicable, obtain the receipt and whatever change is owed, and
17 promptly leave the store.

18 (9) If the cashier declines to make the sale, the checker shall purchase only the
19 food item, if applicable, and obtain the receipt and leave the store.

20 (10) Regardless of whether a purchase of cigarettes occurs, the checker shall
21 attempt to make a mental note of the cashier's name and general appearance.

22 (d) Following the Compliance Checks.

23 (1) Immediately following each compliance check, the checker shall complete a
24 report form that includes, at a minimum, the following items:

25 (i) The checker's name, sex, and date of birth;

26 (ii) The date and time of the compliance check;

27 (iii) The address of the Safeway store checked;

28 (iv) The name or a brief description of the Safeway cashier involved;

- 1 (v) The brand of cigarettes requested;
- 2 (vi) Whether I.D. was requested;
- 3 (vii) What statements were made if I.D. was requested;
- 4 (viii) Whether the cigarettes requested were purchased;
- 5 (ix) Comments regarding any other noteworthy aspects of the transaction; and
- 6 (x) Whether an employee's assistance was required to obtain cigarettes. In the
- 7 event that an employee's assistance was not required, this shall be reported
- 8 to Safeway's compliance officer within ten (10) days of the compliance check.

9 (2) The checker shall provide the receipt to the Independent Entity, who shall

10 provide a copy of it to Safeway within ten (10) days of the compliance check.

11 (3) The Independent Entity shall retain for at least two years each written report

12 prepared pursuant to paragraph F.9(d)(1) of this Judgment.

13 (4) Any cigarettes purchased in connection with a compliance check shall be

14 retained by the Independent Entity for at least six months and shall thereafter be destroyed.

15 10. In the event that a store fails a compliance check or has received notice from a

16 governmental entity of an alleged violation of law concerning the sale of tobacco products to minors

17 that occurred after the date of entry of this Judgment, the Independent Entity shall conduct a second

18 check ("re-check") of the store within sixty (60) days.

19 11. The Independent Entity shall report promptly the results of the individual external

20 compliance checks to the Compliance Officer, who shall make these results available to the store

21 manager.

22 12. The parties recognize that a performance measure on external compliance checks of

23 90% or higher for any six-month period constitutes good performance for that period. In the event

24 that Safeway attains an external compliance check performance measure of 90% or higher for any

25 six-month period, Safeway may reduce the number of random external checks conducted in the

26 subsequent six-month period by 25%. In the event that Safeway attains an external compliance check

27 performance measure of 90% or higher for any two consecutive six-month periods, Safeway may

28 eliminate the requirement to conduct external checks.

1 DATE: December 2, 2004

JUDGE OF THE SUPERIOR COURT

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