

1 Joseph N. Kravec, Jr. (admitted *pro hac vice*)
Wyatt A. Lison (pro hac to be filed)
2 Maureen Davidson-Welling (*pro hac* to be filed)

3 **STEMBER FEINSTEIN DOYLE**

PAYNE & KRAVEC, LLC

4 Allegheny Building, 17th Floor
429 Forbes Avenue
5 Pittsburgh, PA 15219
Tel: (412) 281-8400
6 Fax: (412) 281-1007
7 Email: jkravec@stemberfeinstein.com
wlison@stemberfeinstein.com
8 mdavidsonwelling@stemberfeinstein.com

9 *Attorneys for Plaintiff Chanee Thurston*
10 *(Additional Counsel Listed on Signature Page)*

11 Trenton H. Norris (Bar No. 164781)
Angel A. Garganta (Bar No. 163957)
12 Monty Agarwal (Bar No. 191568)
Rhonda S. Goldstein (Bar No. 250387)

13 **ARNOLD & PORTER LLP**

14 Three Embarcadero Center, 7th Floor
San Francisco, California 94111
15 Tel: (415) 471-3100
Fax: (415) 471-3400
16 Email: trent.norris@aporter.com
angel.garganta@aporter.com
17 monty.agarwal@aporter.com
rhonda.goldstein@aporter.com
18

19 *Attorneys for Defendant Safeway Inc.*

20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

22 **CHANEE THURSTON, on behalf of herself**
23 **and all others similarly situated,**

24 **Plaintiff,**

25 **v.**

26 **SAFEWAY INC.,**

27 **Defendant.**

CASE NO.: 3:11-cv-04286-SC

**JOINT CASE MANAGEMENT
STATEMENT AND RULE 26(F) REPORT**

DATE: March 16, 2012
TIME: 10:00 a.m.
CTRM: 1, 17th Floor

CASE MANAGEMENT STATEMENT AND RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), counsel for the parties conducted a conference on Thursday, February 16, 2012, and Friday, February 17, 2012. Participating in the conference were Janet Linder Spielberg of the Law Offices of Janet Linder Spielberg and Joseph N. Kravec, Jr. of Stember Feinstein Doyle Payne & Kravec, LLP, for Plaintiff Chanee Thurston (“Plaintiff”), and Angel A. Garganta and Rhonda S. Goldstein of Arnold & Porter, LLP, for Defendant Safeway Inc. (“Safeway”). The parties, by and through their undersigned counsel, jointly submit this Case Management Statement and Rule 26(f) Report in anticipation of the Case Management Conference presently scheduled for March 16, 2012, in Courtroom 1, 17th floor, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.

I. JURISDICTION & SERVICE

The parties agree that this Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1332, and that no issues exist as to either jurisdiction or venue. No parties remain to be served.

II. FACTS**Plaintiff’s Description of the Case:**

During the Class Period, Safeway has marketed, distributed, and sold Safeway Select™ Whole Bean Kona Blend Coffee and Safeway Select™ Ground Bean Kona Blend Coffee (collectively, “Kona Blend Coffee”) in its retail grocery stores in California and throughout the United States. Although Safeway denominates the Kona Blend Coffee as a “Kona Blend” and promotes the benefits of Kona coffee on its labels as if Kona beans are the major portion of the Kona blend, Kona coffee beans neither constitute the majority nor a substantial proportion of the coffee beans in the Kona Blend Coffee. In fact, Safeway’s Kona Blend Coffee contains only a very small proportion of Kona beans, if any.

Throughout the Class Period, Safeway prominently displayed the moniker “Kona Blend” on the labels of its Kona Blend Coffee, creating the impression that Kona coffee beans comprise all of, or at least a substantial proportion of, the Kona Blend Coffees, in an effort to promote the sale of these products. Prior to 2011, the Kona Blend Coffee labels did not disclose that any of the coffee

1 beans contained in the Kona Blend Coffee came from regions other than the Kona region of Hawaii.
2 This is a significant omission since the overwhelming majority, if not all, of the coffee beans in the
3 Kona Blend Coffee are sourced from regions other than the Kona region of Hawaii. In 2011, the
4 Kona Blend Coffee labels still portrayed Kona beans as the majority or substantial proportion of the
5 Kona Blend, but began in a small statement on the back of the package to indicate that at least some
6 Latin American beans were being used, stating “**KONA BLEND** One of the most highly prized
7 coffees in the world, the delicate and smooth flavors of our Kona beans combine in perfect harmony
8 with our Latin American beans to create this fragrant cup.” In light of the Kona Blend Coffee’s
9 representation that it was a “Kona Blend,” one would expect the Kona Blend Coffee to be comprised
10 entirely and/or in largest part by coffees coming from the Kona region of Hawaii. Indeed, as a result
11 of this false and misleading labeling, Safeway was able to sell these supposedly “Kona Blend”
12 coffee products to thousands of unsuspecting consumers in California and throughout the United
13 States and to profit handsomely from these transactions.

14 Plaintiff alleges Safeway’s conduct gives rise to common law fraud and violates the
15 unlawful, unfair and fraudulent prongs of California’s Business and Professions Code section 17200,
16 et. seq. (the “UCL”), the California Business & Professions Code § 17500 et. seq. (the “FAL”), and
17 the Consumer Legal Remedies Act, § 1750 et. seq. (“CLRA”). Plaintiff also alleges that Safeway’s
18 conduct is grounds for restitution on the basis of quasi-contract/unjust enrichment. Plaintiff also
19 seeks declaratory and injunctive relief.

20 **Safeway’s Description of the Case:**

21 Safeway strongly disputes that its marketing of the Safeway Select™ Whole Bean Kona
22 Blend Coffee and Safeway Select™ Ground Bean Kona Blend Coffee as a “Kona Blend” is in any
23 way misleading. First, at all relevant times, the Kona Blend Coffee’s label has clearly identified the
24 product as a “blend” of coffees. Nothing on its label indicates or implies that Kona beans are the
25 sole type of coffee beans contained within that “blend,” or even the majority of the beans. To the
26 contrary, the use of the word “blend” by definition indicates that the Kona Blend Coffee contains
27 some mix of other different types of coffee beans *in addition to* Kona beans. For example, the
28 Oxford English Dictionary defines a “blend” as “a mixture formed by blending various sorts or

1 qualities (e.g. of spirits, wines, tea, tobacco, etc.).” Furthermore, there is no federal definition of
2 “blend” that would require the Kona Blend Coffee to contain a specific amount of any one of its
3 component coffee beans. Thus, the statements purportedly relied on by Plaintiff are truthful and non-
4 misleading, and there is no basis for Plaintiff’s alleged belief that the Kona Blend Coffee was
5 comprised largely or entirely of Kona beans. *See* Compl. ¶ 6. The Kona Blend Coffee does in fact
6 contain “an assortment of coffee beans from Kona.” That there are other, non-Kona beans contained
7 within the Kona Blend Coffee *in addition to* Kona beans does not change this, and does not render it
8 misleading to label the Kona Blend Coffee as a “Kona Blend.”

9 Furthermore, as a purported “routine purchase[r]” of coffee beans and a regular coffee
10 drinker, *id.*, Plaintiff presumably was aware that the Kona Blend Coffee is considerably less
11 expensive than a product that contained solely Kona beans, or even a “majority” of Kona beans.
12 Based on the price that she paid for the Kona Blend Coffee, Safeway does not believe that there is a
13 reasonable basis for Plaintiff’s purported expectation that she was purchasing a product that was
14 “comprised largely or entirely of high quality coffee beans from the Kona region of Hawaii.” *Id.*
15 Likewise, Plaintiff did not “pay[] a premium for Kona Blend Coffee because it was purportedly a
16 ‘Kona Blend’ instead of paying the lesser amount for similar non-Kona or low-Kona coffee
17 alternatives” -- indeed, similar non-Kona packages of Safeway SELECT[®] coffees are priced the
18 same as the Kona Blend Coffee. *Id.*

19 **III. LEGAL ISSUES**

20 **Plaintiff’s Statement:**

21 Plaintiff asserts that Safeway’s conduct violates, and brings claims based upon, the following:

- 22 1. Common law fraud;
 - 23 2. The unlawful, unfair and fraudulent prongs of California’s Business and Professions
24 Code §17200, et seq. (the “UCL”);
 - 25 3. The California Business & Professions Code § 17500 *et. seq.* (the “FAL”);
 - 26 4. The Consumers Legal Remedies Act (“CLRA”), California Civil Code §1750, *et seq.*;
 - 27 5. Quasi-contract and unjust enrichment.
- 28

1 Numerous courts have certified similar food mislabelling class actions both before and after
2 the *Mazza* decision referred to by Safeway. *See* Section IX, *infra.*, and cases cited therein.

3 **Safeway’s Statement:**

4 Safeway denies each of Plaintiff’s allegations, and disputes that it has violated California or
5 any other laws in its advertising and marketing of the Kona Blend Coffee. Furthermore, Safeway
6 disagrees that Plaintiff’s claims under California statutory and common law are appropriate for
7 certification, either on a nationwide or state-wide basis, *see Mazza v. American Honda Motor Co.,*
8 *Inc.*, 666 F.3d 581, 589-94 (9th Cir. 2012) (vacating district court’s order certifying nationwide
9 class because “each class member’s consumer protection claim should be governed by the consumer
10 protection laws of the jurisdiction in which the transaction took place”), and will oppose Plaintiff’s
11 motion for class certification if and when filed. Safeway notes that Plaintiff has cited no authority
12 demonstrating that any courts have certified nationwide litigation classes of consumers subsequent to
13 *Mazza*. *See* Section IX *infra.*

14 **IV. MOTIONS**

15 No motions have been filed in the case. After an appropriate period of discovery, Plaintiff
16 anticipates filing motions for class certification and summary judgment or partial summary
17 judgment. Safeway anticipates opposing Plaintiff’s motions for class certification and summary
18 judgment, and filing its own motion for summary judgment or partial summary judgment.

19 **V. AMENDMENT OF PLEADINGS**

20 Plaintiff may seek leave to amend the complaint for good cause consistent with Fed. R. Civ.
21 P. 15. If and when Plaintiff seeks leave to amend the Complaint, Safeway will evaluate whether it
22 wishes to challenge her attempt to amend, as well as the amended complaint itself.
23
24
25
26
27
28

1 **VI. EVIDENCE PRESERVATION**

2 The parties have each represented that steps have been taken to preserve evidence relevant to
3 this litigation. Plaintiff has since the inception of this lawsuit either provided documents and
4 evidence relevant to this litigation to his undersigned counsel or has acknowledged that he will retain
5 any such relevant evidence.

6 Safeway has sent litigation hold notices to appropriate records custodians. The parties agreed
7 to discuss the issue of electronically stored information going forward.

8 **VII. DISCLOSURES**

9 The parties have agreed to seek entry of a Protective Order to govern the use and disclosure
10 of confidential information in this litigation. The parties agree that the standard initial disclosures
11 required under Federal Rule of Civil Procedure 26(a)(1)(A) were made on March 2, 2012.

12 **VIII. DISCOVERY**

13 The parties have agreed on email service for purposes of discovery requests and responses,
14 with the effective date of service governed by the Federal Rules of Civil Procedure. On
15 February 23, 2012, Plaintiff propounded a first set of requests for admission, requests for production
16 and interrogatories to Safeway. As discussed below, the parties are in the process of discussing the
17 possibility of early mediation, which would include an informal exchange of limited information
18 between the parties, as well as a stay of the pending formal discovery to Safeway.

19 The parties disagree as to the phasing of discovery.

20 **Plaintiff's Statement:**

21 Plaintiff believes that discovery should occur in two phases. The first phase of discovery
22 should be focused on those matters the parties believe are germane to class certification issues and
23 the Plaintiff's individual circumstances. At the conclusion of Phase I, the Court can then address
24 Plaintiff's Motion for Class Certification and if Safeway has a summary judgment motion as to the
25 individual plaintiff, it can be presented at that time as well. Then, after the Court decides class
26 certification and any summary judgment motion as to the individual plaintiff, the parties can then
27 determine what additional merits discovery is needed in light of the Court's class certification
28 decision to be taken in Phase II. This sort of phased discovery promotes efficiency and avoids waste

1 by permitting the parties to tailor discovery to the issues at hand and in consideration of this Court's
2 rulings. Summary judgment motions as to the class can be filed during or at the conclusion of Phase
3 II discovery so that the parties are accorded ample opportunity for discovery of the issues raised by
4 any class-wide summary judgment motion in accordance with the requirements of Fed. R. Civ. P. 56.

5 Safeway's proposal that the Court put off class certification discovery in favor of some initial
6 period of limited discovery to address some yet to be filed summary judgment motion based solely
7 on Safeway's generic description below of what it "anticipates" could be the "primary[]" grounds of
8 its motion practically ensures that Plaintiff will need to file a Fed. R. Civ. P. 56(f) affidavit
9 requesting additional discovery once Safeway files its summary judgment motion and the entirety of
10 the grounds are made known to Plaintiff. Safeway's highly inefficient proposal should be rejected
11 for these reasons.

12 On the other hand, Plaintiff's proposal that the parties complete class certification and
13 individual plaintiff discovery in Phase I promotes efficiency since discovery related to both overlaps
14 and completion at the same time is most efficient. Further, it permits the parties to bring both class
15 certification and individual plaintiff summary judgment to the Court at the same time, such that these
16 key matters affecting the scope of remaining merits discovery and the rest of pre-trial and trial
17 activities can be established by the Court contemporaneously.

18 **Safeway's Statement:**

19 Plaintiff prefers to move for class certification before Safeway moves for summary
20 judgment, and therefore first proceed with discovery regarding class issues. However, Safeway plans
21 to move for summary judgment before Plaintiff's motion for class certification is filed. Safeway
22 anticipates that its summary judgment motion will be brought on grounds including, but not limited
23 to: 1) this Plaintiff has not suffered any damages resulting from her purchases of the Kona Blend
24 Coffee, and 2) the injunctive relief sought in the Complaint is moot. Safeway therefore proposes
25 that, provided that the parties fail to agree on early mediation of the case, the parties first focus their
26 discovery requests on such issues, as reflected in the proposed discovery schedule set forth below at
27 Exhibit A. Safeway believes that, absent the certification of a nationwide class of consumers,
28 Plaintiff should not be entitled to discovery pertaining to nationwide liability and damages. It is easy

1 for Plaintiff to assert that it would be efficient for the parties to proceed directly to nationwide class
2 discovery, while at the same time also conducting discovery regarding the viability of the individual
3 plaintiff's case. The discovery burden, however, in this case will be uneven, with plaintiffs tending
4 to possess few relevant documents, while defendants being asked to open up their files regarding an
5 entire line of their business, and on a nationwide basis. Safeway does not believe that it should be
6 forced to incur the considerable expense and burden of nationwide discovery on class issues without
7 knowing whether there is in fact a viable plaintiff in the case, or whether a nationwide class can be
8 certified. Furthermore, Safeway notes that the extremely broad discovery requests propounded to
9 Safeway on February 23, 2012, which include 81 document requests, are not limited to class issues.;
10 Safeway requests that, in the event the parties do not agree to early mediation, Plaintiff narrow the
11 pending discovery requests to matters relevant to the issues that will be raised in Safeway's
12 summary judgment motion, such as the individual Plaintiff's damages and the mootness of
13 injunctive relief.

14 **IX. CLASS ACTIONS**

15 **Plaintiff's Statement**

16 After a sufficient amount of time to conduct class-related discovery, Plaintiff intends to move
17 for class certification. Certification of a nationwide Class for Plaintiff's common law fraud claim in
18 this action is appropriate. See *Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 369
19 (N.D.Cal 2010) (certifying nationwide classes under common law fraud for allegedly mislabeling a
20 food product); *Eisenstat v. Ken's Foods*, 2:10-cv-02510-SVW (C.D. Cal.) (same). Similar
21 mislabeling cases have also been certified for nationwide Classes under California's consumer
22 protection laws, including at least one since *Mazza v. American Honda*. See, e.g., *Johns v. Bayer*
23 *Corp*, 2012 WL 368032 (S.D.Cal., 2012) (certifying UCL and CLRA claims on behalf of litigation
24 class of multivitamin purchasers); *In re Ferrero Litigation*, --- F.R.D. ----, 2011 WL 5557407
25 (S.D.Cal., Nov. 15, 2011) (certifying California state law claims on behalf of litigation class of
26 nutella purchasers); *Bruno v. Quten Research Inst., LLC*, --- F.R.D. ----, 2011 WL 5592880 (C.D.
27 Cal., Nov. 14, 2011) (certifying in part UCL, FAL and CLRA claims on behalf of nationwide
28 litigation class of consumers of Qunol dietary supplements), *Zeisel v. Diamond Foods, Inc.*, Case

1 No. 3:10-cv-01192 (N.D. Cal., Jan. 30, 2012), Docket Nos. 210, 212 (certifying UCL, CLRA and
2 unjust enrichment claims on behalf of a nationwide settlement class post-*American Honda*).
3 Plaintiff proposes that the deadline for filing a motion for class certification be September 3, 2012.

4 **Defendant's Statement**

5 Safeway will oppose Plaintiff's motion for class certification because this action may not
6 properly be maintained as a class action under Federal Rule of Civil Procedure 23 for a variety of
7 reasons, including but not limited to the lack of commonality and predominance of issues of fact and
8 law, and the significant manageability problems that would be raised by attempting to try this case
9 under the laws of the many states in which Safeway operates. *See Mazza v. American Honda Motor*
10 *Co., Inc.*, 666 F.3d 581, 589-94 (9th Cir. 2012) (vacating district court's order certifying nationwide
11 class because "each class member's consumer protection [and unjust enrichment] claim should be
12 governed by the consumer protection laws of the jurisdiction in which the transaction took place").

13 Although Safeway does not believe that this case management statement is the appropriate
14 place to brief substantive legal issues, Safeway notes that Plaintiff has cited no cases post-dating
15 *Mazza* that certify a nationwide litigation class of consumers. The only two cases cited by Plaintiff
16 that post-date *Mazza* are inapplicable. The first, *Johns v. Bayer Corp.*, in fact involved only a
17 *California* class of consumers. *See Johns v. Bayer Corp.*, 2012 WL 368032 (S.D. Cal. Feb. 3, 2012)
18 (certifying a class of California consumers of multivitamins under the UCL and CLRA, and
19 therefore making no mention of any of the state law consumer protection statute conflicts addressed
20 in *Mazza*). In the second, *Zeisel v. Diamond Foods, Inc.*, the court preliminarily approved a
21 nationwide class of purchasers of nuts *solely for purposes of settlement and pursuant to the parties'*
22 *stipulation*. *See Order Granting Preliminary Approval of Class Action Settlement, Zeisel v.*
23 *Diamond Foods, Inc.*, Case No. 3:10-cv-01192 (N.D. Cal. Jan. 30, 2012) (Dkt. No. 210).

24 Safeway's counsel is aware of only a single decision within the Ninth Circuit addressing the
25 certification of a nationwide litigation class of consumers post-*Mazza*. In that case, the court
26 followed *Mazza* and declined to certify a nationwide litigation class. *See Gianino v. Alacer Corp.*, --
27 - F. Supp. 2d ----, 2012 WL 724322, at *2-*5 (C.D. Cal. Feb 27, 2012) (relying heavily on *Mazza* in
28 denying motion to certify nationwide class of purchasers of Emergen-C under UCL, FAL and CLRA

1 because “California's consumer protection laws cannot be applied to a nationwide class with
2 members in all fifty states and, consequently, common issues of law do not predominate over
3 individual issues of law and litigating this case as a nationwide class action would be an unfair and
4 inefficient method for adjudicating the parties’ controversy”).

5 **X. RELATED CASES**

6 The parties are unaware of any related cases.

7 **XI. RELIEF**

8 **Plaintiff’s Statement:**

9 Plaintiff seeks the following relief:

- 10 a) An order certifying that this action is properly brought and may be maintained as a
11 class action, that Plaintiff be appointed Class Representative and Plaintiff’s counsel
12 be appointed Class Counsel.
- 13 b) Compensatory damages.
- 14 c) Punitive damages.
- 15 d) Restitution in such amount that Plaintiff and all Class members paid for Safeway’s
16 misleading and misbranded products, or the profits, charges and fees Safeway
17 obtained for them.
- 18 e) Restitution or damages in the amount that Plaintiff and all Class members paid as a
19 premium to purchase Safeway’s misbranded products over other, less expensive
20 products which were not represented to contain a significant proportion of Kona
21 coffee beans.
- 22 f) An order enjoining Safeway from continuing to unlawfully mislabel its coffee
23 products.
- 24 g) An order awarding Plaintiff the costs of suit.
- 25 h) An order awarding Plaintiff pre- and post-judgment interest on all claims.
- 26 i) An order awarding Plaintiff’s counsel’s attorneys’ fees.
- 27
- 28

1 j) An order requiring an accounting for, and imposition of a constructive trust upon, all
2 monies received by Safeway as a result of the unfair, fraudulent and unlawful conduct
3 alleged herein.

4 k) An order awarding Plaintiff pre- and post-judgment interest on all damages.

5 l) Such other and further relief as may be deemed necessary or appropriate.

6 **Safeway's Statement:**

7 Safeway disputes that Plaintiff is entitled to any relief for her claims, much less punitive
8 damages. Safeway further disputes that Plaintiff is entitled to compensatory damages, restitution, or
9 any other damages or relief of any kind. Safeway stands behind the claims it makes regarding the
10 Kona Blend Coffee, which it disputes are misleading in any way.

11 In August 2011, Safeway decided to make certain changes to the label for the Kona Blend
12 Coffee, such as stating the percentage of Kona beans in the Kona Blend Coffee (which will be at
13 least 10%) and specifying the geographical location of other beans used in the blend. These actions
14 were taken voluntarily by Safeway in response to a request by the Kona Coffee Farmers Association,
15 and were in no way in response to Plaintiff's claims or demands. Accordingly, any request for
16 injunctive relief by Plaintiff, such as a request that Safeway modify the label for the Kona Blend
17 Coffee, are now moot. Furthermore, because Plaintiff and the members of the alleged putative class
18 received exactly what was promised by the Kona Blend Coffee's label (i.e., a reasonably priced
19 blend of coffee beans including Kona beans), they have not been damaged by Safeway's marketing
20 of the Kona Blend Coffee.

21 **XII. SETTLEMENT AND ADR**

22 The parties have complied with ADR L.R. 3-5 and filed the required ADR certification
23 documents. An ADR telephone conference is presently scheduled for March 14, 2012 at 9:00 a.m.
24 Pacific Time. (Dkt. 18). The parties are in the process of discussing the possibility of early
25 mediation.
26
27
28

1 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

2 On October 12, 2011 Safeway filed a Declination to Proceed Before a Magistrate Judge and
3 Request for Reassignment to a United States District Judge. (Dkt. 10). The parties do not consent to
4 the assignment of the litigation to a U.S. Magistrate Court judge for trial.

5 **XIV. OTHER REFERENCES**

6 This case is not suitable for binding arbitration and there is no basis to refer this case to the
7 Judicial Panel on Multidistrict Litigation. At this time, the parties do not believe that this case is
8 suitable for a special master.

9 **XV. NARROWING OF ISSUES**

10 The parties anticipate cross-moving for summary judgment at a later date. The parties will in
11 good faith continue to explore the possibility of narrowing issues by agreement.

12 **XVI. EXPEDITED TRIAL PROCEDURE**

13 The parties do not believe that this litigation can be handled on an expedited basis with
14 streamlined procedures.

15 **XVII. SCHEDULING**

16 See the Chart of Dates and Deadlines at Exhibit A.

17 **XVIII. TRIAL**

18 Plaintiff has requested a jury trial with respect to claims that may be so adjudicated. The
19 parties agree that the length of trial depends on the outcome of class certification and potential
20 summary judgment motions; thus their estimate of the trial length at this time may change. At
21 present, the parties believe that trial of this matter will take one week.

22 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

23 The parties have filed certificates of interested parties. (Dkt. 2, 6).

24 **XX. PLAINTIFF'S STATEMENT PURSUANT TO LOCAL CIVIL RULE 16-9:**

25 Plaintiff brings this action on behalf of herself and on behalf of all other members of the
26 Class ("Class"), defined as all consumers who, on or after August 30, 2007, purchased Safeway's
27 Kona Blend Coffee in the United States. Plaintiff brings this Class pursuant to Federal Rule of Civil
28

1 Procedure 23(a), and (b)(1), 23(b)(2) and 23(b)(3). Plaintiff reserves the right to modify this
2 definition of the Class as may be necessary as this litigation proceeds.

3 In the event the Court does not certify a nationwide class, Plaintiff alternatively brings this
4 action on behalf of herself and on behalf of all other members of the Sub-Class (“Sub-Class”),
5 defined as all persons who, on or after August 30, 2007, purchased Safeway’s Kona Blend Coffee in
6 the State of California and in any other state with similar laws. Plaintiff brings this Sub-Class
7 pursuant to Federal Rule of Civil Procedure 23(a), and (b)(1), 23(b)(2) and 23(b)(3).

8 Excluded from the Class and Sub-Class are: (i) all persons who purchased Kona Blend
9 Coffee for resale; (ii) Safeway and its employees, principals, affiliated entities, legal representatives,
10 successors and assigns; (iii) any person who files a valid, timely request for exclusion; and (iv) the
11 judges to whom this action is assigned and any members of their immediate families.

12 Courts within this Circuit and District have certified litigation classes for similar mislabeling
13 claims both before and after the *Mazza* decision cited by Safeway. *See Johns v. Bayer Corporation*,
14 2012 WL 368032 (S.D. Cal., Feb. 3, 2012); *Zeisel v. Diamond Foods, Inc.*, 2011 WL 2221113 (N.D.
15 Cal., June 7, 2011); *Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 369 (N.D.Cal 2010).
16 Plaintiff will move for class certification according to the schedule set forth in Section XVII.

17 Plaintiff’s Complaint sets forth the basis establishing each of the requirements for
18 certification under these rules at Doc. 1, ¶¶ 21-29, as follows:

19 Upon information and belief, there are thousands of Class members who are geographically
20 dispersed throughout the United States and Sub-Class members who are geographically dispersed
21 throughout the State of California. Therefore, individual joinder of all members of the Class or Sub-
22 Class would be impracticable.

23 Common questions of law or fact exist as to all members of the Class and Sub-Class. These
24 questions predominate over the questions affecting only individual class members. These common
25 legal or factual questions include:

- 26 a. whether Safeway labels its Kona Blend Coffee as a “Kona
27 Blend;”
- 28 b. whether Safeway’s Kona Blend Coffee contains an insignificant
amount of Kona coffee;

- c. whether Safeway's "Kona Blend" labeling is likely to deceive Class or Sub-class members or the general public;
- d. whether Safeway's representations are unlawful, unfair or fraudulent;
- e. the appropriate measure of damages, restitutionary disgorgement and/or restitution.

Plaintiff's claims are typical of the claims of the Class and Sub-Class, in that Plaintiff is a consumer who purchased Safeway's Kona Blend Coffee in the United States and in California that did not contain any significant quantity of Kona coffee. Plaintiff, therefore, is no different in any relevant respect from any other Class or Sub-Class member, and the relief sought is common to the Class and Sub-Class.

Plaintiff is an adequate representative of the Class and Sub-Class because her interests do not conflict with the interests of the Class and Sub-Class members she seeks to represent, and she has retained counsel competent and experienced in conducting complex class action litigation. Plaintiff and her counsel will adequately protect the interests of the Class and Sub-Class.

A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual class member likely will be relatively small, especially given the relatively small cost of the Kona Blend Coffee products at issue and the burden and expense of individual prosecution of the complex litigation necessitated by Safeway's conduct. Thus, it would be virtually impossible for the Class and Sub-Class members individually to effectively redress the wrongs done to them. Moreover, even if the Class and Sub-Class members could afford individual actions, it would still not be preferable to class-wide litigation. Individualized actions present the potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

In the alternative, the Class and Sub-Class may be certified because Safeway has acted or refused to act on grounds generally applicable to the Class and Sub-Class, thereby making appropriate preliminary and final equitable relief with respect to the Class and Sub-Class.

Safeway's Statement:

Safeway disagrees that this case is appropriate for certification of either a nationwide or state class of consumers of the Kona Blend Coffee, and will oppose Plaintiff's motion for class certification if and when filed. This action may not properly be maintained as a class action under Federal Rule of Civil Procedure 23 for a variety of reasons, including but not limited to the lack of commonality and predominance of issues of fact and law, and the significant manageability problems that would be raised by attempting to try this case under the laws of the many states in which Safeway operates. *See Mazza v. American Honda Motor Co., Inc.*, 666 F.3d 581, 589-94 (9th Cir. 2012) (vacating district court's order certifying nationwide class because "each class member's consumer protection claim should be governed by the consumer protection laws of the jurisdiction in which the transaction took place"). As discussed above, Plaintiff has cited no case law authority within the Ninth Circuit approving a nationwide litigation class of consumers post-*Mazza*. Furthermore, Safeway notes that the operative complaint includes no allegations regarding any purported subclasses of consumers.

By: /s/ Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr.
(admitted *pro hac vice*)

By: /s/ Monty Agarwal
Monty Agarwal
(Bar No. 191568)

Wyatt A. Lison
(*pro hac* to be filed)

Trenton H. Norris (Bar No. 164781)
Angel A. Garganta (Bar No. 163957)
Monty Agarwal (Bar No. 191568)
Rhonda S. Goldstein (Bar No. 250387)

Maureen Davidson-Welling
(*pro hac* to be filed)
**STEMBER FEINSTEIN DOYLE
PAYNE & KRAVEC, LLC**
429 Forbes Avenue, 17th Floor
Pittsburgh, PA 15219
Tel: (412) 281-8400
Fax: (412) 281-1007
Email: jkravec@stemberfeinstein.com
wlison@stemberfeinstein.com
mdavidsonwelling@stemberfeinstein.com

ARNOLD & PORTER LLP
Three Embarcadero Center, 7th Floor
San Francisco, California 94111
Tel: (415) 471-3100
Fax: (415) 471-3400
Email: trent.norris@aporter.com
angel.garganta@aporter.com
monty.agarwal@aporter.com
rhonda.goldstein@aporter.com

Janet Linder Spielberg (Bar No. 221926)
**LAW OFFICE OF JANET LINDER
SPIELBERG**
12400 Wilshire Blvd., Suite 400
Los Angeles, CA 90025

1 Phone: (310) 392-8801
2 Fax: (310) 278-5938
3 Email: jlspielberg@jlslp.com

4 Michael D. Braun (Bar No. 167416)
5 **BRAUN LAW GROUP, P.C.**
6 10680 W. Pico Blvd., Suite 280
7 Los Angeles, CA 90025
8 Phone: (310) 836-6000
9 Fax: (310) 836-6010
10 Email: service@braunlawgroup.com

11 ***ATTORNEYS FOR PLAINTIFF***

12 **ECF ATTESTATION**

13 I, _____ am the ECF User whose ID and Password are being used to file this:
14 **JOINT CASE MANAGEMENT STATEMENT.**

15 In compliance with General Order 45, X.B., I hereby attest that Joseph N. Kravec, Jr. and
16 Monty Agarwal have concurred in this filing.

17 Dated: _____

18
19 By: /s/
20
21
22
23
24
25
26
27
28

EXHIBIT A**CHART OF DATES AND DEADLINES**

EVENT	DEFENDANT'S PROPOSED DEADLINE	PLAINTIFF'S PROPOSED DEADLINE
Initial Disclosures	March 2, 2012	March 2, 2012
Amended Pleadings	Safeway does not consent to any further amendment; Plaintiff will seek leave to amend upon a showing of good cause in accordance with Fed. R. Civ. P. 15. If and when Plaintiff seeks leave to amend the Complaint, Safeway will evaluate whether it wishes to challenge her attempt to amend, as well as the amended complaint itself.	If, after discovery, Plaintiff believes there is a need to amend her Complaint, she will seek leave to amend upon a showing of good cause in accordance with Fed. R. Civ. P. 15.
Discovery Cutoff for Issues Related to Safeway's Motion for Summary Judgment	September 3, 2012	September 28, 2012
Safeway's Motion for Summary Judgment	November 5, 2012 ¹	October 19, 2012
Class Certification Discovery Cutoff (non-expert)	April 1, 2013	September 30, 2012
Motion for Class Certification	June 1, 2013	October 19, 2012
*Merits Discovery Cutoff		
*Mediation		
*Expert Reports-Merits		
*Expert Discovery Cutoff-Merits		
*Dispositive Motion Cutoff		
*Other Motion Cutoff (Other than Motions in Limine)		
* Pretrial Conference (hearing on Motions in Limine, agreed jury instructions and verdict forms, proposed voir dire questions)		
* Pre-Trial Briefs		
*Trial Date		

¹ As noted above, this deadline is contingent on the parties' failure to agree on early mediation.

1 * The parties respectfully suggest that the Court schedule a Case Management Conference following
2 its ruling(s) on motions for summary judgment and class certification to schedule all additional class,
3 merits, and other remaining pre-trial proceedings.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28