

1 Chiharu Sekino (SBN 306589)
SHEPHERD FINKELMAN MILLER
& SHAH, LLP
2 1230 Columbia St., Ste. 1140
San Diego, CA 92101
3 Telephone: (619) 235-2416
Facsimile: (866) 300-7367
4 Email: csekino@sfmslaw.com

5 *Attorneys for Plaintiff, the Plan,*
and the Class

6 [Additional Counsel Listed On Signature Page]

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 MARIA KARLA TERRAZA, individually and
12 on behalf of the SAFEWAY 401(k) Plan,

13 Plaintiff,

14 vs.

15 SAFEWAY INC., et al.,

16 Defendants.

Related Cases:
No. 4:16-cv-03994-JST
No. 4:16-cv-04903-JST

**DECLARATION OF JAMES E. MILLER
IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND NAMED PLAINTIFFS' INCENTIVE
AWARDS**

Date: April 26, 2021
Time: 2:00 p.m.
Courtroom: 6, 2nd floor
Judge: Hon. Jon Tigar

1 I, James E. Miller, declare as follows:

2 1. I am a member of the State Bar of California and admitted to practice law in the
3 courts of the State of California, the United States District Court for the Northern District of
4 California, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court, as well as in the
5 state and federal courts of Connecticut, New Jersey and Pennsylvania. I also am admitted to
6 practice before numerous other federal courts in the United States. I am a member in good
7 standing with the California State Bar and with this Court. I am a partner in the law firm
8 Shepherd Finkelman Miller & Shah LLP (“SFMS”) and am counsel for Plaintiff and the Class in
9 this action.

10 2. The facts contained in this declaration are within my personal knowledge, and I
11 could and would testify truthfully to these facts if called to do so under oath. I submit this
12 declaration in support of Plaintiff’s Motion for Attorneys’ Fees and Expenses.

13 **EXPERIENCE OF CLASS COUNSEL**

14 3. I am a partner of SFMS, a law firm with offices in California, Connecticut,
15 Florida, New Jersey, New York and Pennsylvania, as well as affiliate offices in London, England
16 and Milan, Italy. SFMS specializes in complex class action and commercial litigation matters,
17 and acts for both plaintiffs and defendants in such matters. SFMS also performs certain
18 transactional work for international clients and I serve as outside general counsel for the U.S.
19 subsidiaries of over a dozen multinational corporations based in Asia and Europe. SFMS’s
20 clients include individuals, including consumers and employees, as well significant international
21 and domestic corporations in the fields of aerospace, food and wine production, financial
22 services, manufacturing and technology, as well as pension funds (both public and private). I
23 have served as the lead attorney on behalf of SFMS in this case and, in addition to supervising
24 the work of the attorneys, project analysts and legal assistants of SFMS. I also have been one of
25 the attorneys primarily responsible for working with co-counsel at Olivier Schreiber & Chao,
26 LLP and counsel in the related case of *Lorenz v. Safeway, Inc.*, 4:16-cv-04903-JST, and
27 interacting with opposing counsel. Additional information regarding our firm is available at
28 www.sfmslaw.com.

1 4. Prior to forming SFMS in 2002, I was a partner at Pelino & Lentz, P.C., a law
2 firm based in Philadelphia, Pennsylvania, where I began the practice of law in 1992 and
3 specialized in representing management and highly compensated employees in labor and
4 employment matters, including collective bargaining negotiations on behalf of a multinational
5 corporation with over 50 manufacturing facilities in the United States. While practicing at
6 Pelino & Lentz, P.C., I tried to verdict over one dozen jury trials to successful verdict. I continue
7 to represent a number of my clients from my days practicing at Pelino & Lentz, P.C. in
8 Philadelphia, Pennsylvania.

9 5. I began practicing law in 1992. Since that time, my practice has been devoted in
10 substantial part to complex litigation and class actions, especially since forming SFMS in 2002.
11 In particular, I have significant experience as lead counsel in *qui tam*, ERISA, employment,
12 securities and consumer class actions. I am currently lead counsel in over one dozen significant
13 false claims cases being prosecuted in the United States. In my *qui tam* work, I have developed
14 strong relationships working successfully with the Department of Justice and offices of United
15 States Attorneys throughout the United States and, in particular, the Southern District of New
16 York. As a result of my work in two *qui tam* cases asserting Anti-Kickback Statute claims that
17 were resolved in the last year against Novartis Pharmaceuticals Corp. and Teva Pharmaceuticals
18 USA, Inc. for \$678 million and 54 million, respectively, I was recently named “2020 Lawyer of
19 the Year” by the Taxpayers Against Fraud Education Fund based in Washington, D.C. In my
20 work in ERISA class actions, my colleagues at SFMS and I have been responsible for securing
21 some of the most significant settlements in the United States in the last ten (10) years on behalf
22 of defined contribution plans and their participants and, notably, have litigated a number of
23 groundbreaking cases (including through trial) challenging revenue sharing practices by service
24 providers to defined contribution plans.

25 6. I received my J.D. from the University of Pennsylvania School of Law (1991),
26 where I was awarded the Keedy Cup, and my B.S. from Cornell University (1988). After
27 graduating from Penn Law School in 1991, I served as a law clerk for the Honorable Daniel H.
28

1 Huyett, III, of the United States District Court for the Eastern District of Pennsylvania from 1991
2 to 1992.

3 **SFMS's SERVICES IN THIS MATTER**

4 7. SFMS has actively participated in all aspects of this litigation since its inception,
5 including (1) communicating with Plaintiff Maria Karla Terraza and other Plan participants; (2)
6 engaging in formal discovery, including extensive document review (i.e., over 80,000 pages of
7 documents) and depositions (including 19 fact depositions); (3) leading expert discovery,
8 including the review and preparation of expert reports and rebuttal reports as well as preparing,
9 conducting, and defending expert depositions; (4) performing legal research and evaluating
10 significant legal developments that could impact the litigation; (5) drafting of pleadings, motions
11 and briefs, including opposing motions to dismiss and preparing and filing complaints and
12 amended complaints; (6) preparing for and participating in court appearances; (7) participating in
13 litigation strategy decisions; (8) trial preparation (including working on a joint pretrial statement,
14 proposed findings of fact and conclusions of law, deposition designations, trial exhibit lists, and
15 preparing witnesses); and (9) participating in settlement communication and negotiations
16 (including participating in two mediation sessions on August 2, 2018 and April 18, 2019). Thus,
17 I am fully familiar with the proceedings.

18 8. Class Counsel's efforts resulted in a Maximum Settlement Fund of \$8,500,000.
19 Although the average settlement recovery per class member is likely to be less than \$1,000,
20 Plaintiffs expect that there will be Class members who receive more than \$10,000 as a result of
21 the Settlement, based upon their account balances. Moreover, non-monetary relief was not part
22 of the parties' settlement because shortly after the *Terraza* action was filed, in connection with
23 Safeway's acquisition by Albertsons Companies, Inc., Safeway changed its service provider to
24 the Vanguard Group and substantially changed the investment offerings and fee structure of the
25 Plan. As a result, the practices that Plaintiffs challenged were necessarily retrospective in nature
26 because the Plan largely remedied the issues challenged by Plaintiffs when the transition to
27 Vanguard occurred.

1 9. SFMS has dedicated significant time and resources to prosecuting the litigation on
2 behalf of the Plan. The firm's legal services were performed on a wholly contingent fee basis.

3 10. SFMS maintained detailed time records regarding the work performed in
4 connection with the prosecution of the Litigation.

5 11. Attached as **Exhibit A** are charts reflecting SFMS's lodestar to date ("SFMS
6 Lodestar Charts"). The SFMS Lodestar Charts provide (1) the name of each timekeeper; (2) the
7 title for each timekeeper (e.g., partner, associate, paralegal, law clerk.); (3) the hours incurred by
8 that timekeeper during each month; (4) the applicable hourly rate; (5) the lodestar amount for
9 each month; and (6) a categorization of the total hours spent by that timekeeper based upon the
10 nature of work performed. This chart was completed by SFMS based upon the records created
11 contemporaneously during the pendency of the Litigation.

12 12. The total number of hours spent by the attorneys, project analysts, paralegals and
13 law clerks working on behalf of SFMS relating to the Litigation as reflected in **Exhibit A** is
14 4,802.6. As reflected in **Exhibit A**, to date, SFMS has accumulated a lodestar totaling
15 \$2,503,910.00.

16 13. The hourly rates range from \$175 for certain paralegal work up to \$875 for
17 experienced senior litigation counsel. Based on my knowledge and experience, the hourly rates
18 charged by SFMS are within the range of market rates charged by attorneys of equivalent
19 experience, skill, and expertise. These rates are our normal hourly rates charged to our hourly
20 clients.

21 14. SFMS's hourly rates have been routinely approved by courts throughout the
22 United States, including by this Court. *See, e.g., In re: Caterpillar, Inc. C13 and C15 Engine*
23 *Products Liability Litigation*, MDL No. 2540 (D.N.J.) [Dkt 54]; *Q+Food v. Mitsubishi Fuso*
24 *Truck of America, Inc.* (D.N.J.), 3:14-cv-06046 [Dkt 70]; *In re: Ford Motor Co. Spark Plug and*
25 *3-Valve Engine Products Liability Litigation*, Case No. 1:12-md-02316-BYP (N.D. Oh. 2016)
26 [Dkt. 122]; *Corson v. Toyota Motor Sales U.S.A., Inc.*, Case No. 1:12-cv-8499-JGB (C.D. Ca.
27 2016) [Dkt. 107]; *Allison Gay v. Tom's of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fl.
28 2016) [Dkt. 43]; *Trewin v. Church and Dwight, Inc.*, Case No. 3:12-cv-01475-MAS-DEA

1 (D.N.J. 2015) [Dkt. 68]; *Golden Star, Inc. v. Mass Mut. Life Ins. Co.*, Case No. 3:11-30235-
2 MGM (D. Mass. 2015) [Dtk. 55]; *Butler National Corp. v. The Union Central Life Insurance*
3 *Co.*, Case No. 1-1:12-cv-00177-SJD-KLL (S.D. Oh. 2014) [Dkt. 55]; *In re Whirlpool Corp.*
4 *Front Loading Washer Products Liability Litigation*, Case No. 1:08-WP-65000 (N.D. Oh. 2016)
5 [Dkt. 656]; *Shin v. Plantronics, Inc.*, Case No. 18-cv-05626-NC (N.D.Cal. 2020)[Dkt. 96].

6 15. As reflected in Exhibit B, SFMS, to date, has also expended a total of
7 \$285,555.75 in unreimbursed expenses in connection with the prosecution of the litigation. The
8 expenses include court reporting fees, expert expenses, computer research expenses, postage and
9 overnight delivery charges, travel and related expenses and copying expenses.

10 16. These expenses are reflected in the books and records of SFMS and are a true and
11 accurate summary of the expenses for this case. The expenses for which reimbursement is
12 sought all were necessarily incurred and are reasonable in amount.

13 17. As reflected above, I am familiar with all aspects of this litigation since my firm
14 entered its appearance and have supervised my colleagues in connection with the excellent work
15 that they have performed in this case.

16 18. The following attorneys, project analysts and legal assistants have assisted SFMS
17 in performing its work in this case in addition to myself. All of these individuals were full-time
18 employees of SFMS at the time they performed work on this matter:

- 19 a. **Alec J. Berin** joined SFMS as a full-time attorney in 2019, having previously
20 worked as a Cornell ILR Credit Intern, Project Analyst and Law Clerk for the
21 firm. Mr. Berin earned his J.D. with honors from The George Washington
22 University Law School where he was a Paul A. Volcker Scholar. Mr. Berin
23 received his Bachelor of Science from Cornell University's School of Industrial
24 and Labor Relations in 2015.
- 25 b. **Anna D'Agostino** currently is law clerk for SFMS as she is completing her third
26 year at New York University Law School, after which she will be joining the firm
27 as an Associate in the Fall of 2021. Ms. D'Agostino worked full-time for SFMS
28 as a Project Analyst following her graduation from Fordham University in 2017.
- c. **Jonathan Dilger** currently is a Project Analyst for SFMS, having joined the firm
full-time following his graduation from Boston College in 2015. Jonathan began
working for SFMS during his freshman year of college, has worked for SFMS
since that time and leads the firm's in-house analytics team with respect to
employee benefits and securities matters. Jonathan has performed a number of

1 projects with outside fiduciary consultants and experts on behalf of the firm, and
2 also assists the fiduciaries of SFMS's own retirement plans in analyzing the
investments offered to plan participants, as well as plan expenses.

- 3 **d. Betsy Ferling** is a Legal Assistant with SFMS, having joined the firm in 2004. At
4 SFMS, she concentrates her work on assisting institutional investors and other
5 clients in staying abreast of legal developments and ensuring that their legal rights
6 are protected and enforced. Betsy also plays a critical role in implementing and
7 improving the Firm's systems of quality and internal controls. Betsy has a diverse
8 employment background, having worked as a copy editor and editorial assistant at
9 a weekly newspaper, as well as having worked as an executive assistant and clerk
10 in the public sector, before beginning her legal career approximately 15 years ago.
11 She is a graduate of Bacon Academy and has studied in the fields of general
12 business and business law at Middlesex Community College. She is active in
13 community affairs, and is a member of the Connecticut Down Syndrome
14 Congress.
- 15 **e. Ronald S. Kravitz** joined SFMS in January, 2014 as Senior Counsel. He
16 previously was a partner with Liner, LLP (and its predecessors) from 2001 until
17 2014. Mr. Kravitz is a graduate of Temple University School of Law (J.D. 1986),
18 and has more than 30 years of experience serving as legal counsel in complex
19 business litigation matters. He has served as Co-Chair of the American Bar
20 Association's Employee Benefits Committee for the past 15 years and is a Fellow
21 of the American College of Employee Benefits Counsel and a Life Fellow of the
22 American Bar Foundation. Mr. Kravitz's work in this case centered on defending
23 certain expert depositions in this case.
- 24 **f. Fernanda Loustaunau** joined SFMS as a paralegal in 2017 after receiving her
25 Bachelor's Degree from San Diego State University and her Paralegal Certificate
26 from UC San Diego. Prior to joining SFMS, Ms. Loustaunau worked as a legal
27 assistant for several years. Ms. Loustaunau speaks Spanish, English and
28 Portuguese, and is actively involved in the Legal Aid Society of San Diego.
- g. Michael Ols** began working as an Associate for SFMS in 2018. After earning his
Bachelor of Science from Cornell University in 2014, where he majored in
Industrial and Labor Relations, Michael graduated magna cum laude from the
University of Notre Dame Law School in May 2018. At Notre Dame, Mr. Ols
was Executive Editor of the Journal of Law, Ethics, and Public Policy and served
as a Judicial Extern to Federal Magistrate Judge Michael G. Gotsch in the
Northern District of Indiana. Mr. Ols was employed by SFMS as a Credit Intern
while attending Cornell University and as a Project Analyst following his
graduation from college and before attending law school.
- h. Bruce D. Parke** joined SFMS in 2008 and became a Partner of the firm in 2020.
Bruce earned his undergraduate degree in Administration of Justice from the
Pennsylvania State University and his law degree from the Dickinson School of
Law of the Pennsylvania State University (J.D. 2002). Prior to joining the firm he
was an associate for the law firms of Mager White & Goldstein LLP and Mager &

1 Goldstein LLP where he practiced securities, antitrust, and consumer protection
2 litigation.

- 3 **i. Jaclyn Reinhart** joined SFMS in 2016 as a summer associate. She began
4 working for the firm full-time in September 2017, after graduating cum laude
5 from Boston University School of Law in May 2017. At BU Law, Jaclyn was an
6 Articles Editor for the Boston University Law Review and a Student Director of
7 the Stone Moot Court Competition. She works primarily on class actions,
8 including consumer class actions and wage and hour disputes, as well as qui tam
9 suits. Jaclyn earned her Bachelor of Arts degree from the University of Rochester
10 in 2014, where she majored in Political Science and minored in American Sign
11 Language.
- 12 **j. Laurie Rubinow** joined SFMS in 2005. Laurie earned her undergraduate degree
13 from the University of California at Berkeley, where she was Phi Beta Kappa,
14 graduated summa cum laude, and earned her law degree from Temple University
15 School of Law. She also completed certain of her undergraduate studies at McGill
16 University and, while at Temple Law School, she served as a legal intern with the
17 United States Attorney's Office, the Public Defender's Office, the Pennsylvania
18 Attorney General's Office and for United States Magistrate Judge Powers. In
19 addition, Laurie has received a Certificate in Negotiation, Mediation and Conflict
20 Resolution from the Seton Hall University School of Law. Laurie has a diverse
21 legal background, having worked in private practice as an Associate at a law firm
22 and as a solo practitioner for approximately five years before beginning a career
23 as an in-house attorney at a nationally recognized insurance company, where she
24 worked for approximately eleven years, rising to the position of National
25 Manager. In that position, she was responsible for the management of five
26 regional field offices responsible for defending complex insurance related
27 litigation, including toxic tort and environmental actions. She also has served as
28 an Adjunct Professor in the Department of Sociology at Central Connecticut State
University. Laurie joined the Firm's Connecticut office in 2005, where she
represents clients in a variety of antitrust, consumer, securities and insurance
litigation.
- k. Chiharu Sekino** joined SFMS in 2008 as a Legal Assistant. She became an
Associate at the firm in 2015. She is admitted to practice law in the State of
California. Ms. Sekino earned her Bachelor of Arts degree from the University of
California, San Diego in 2007, where she double-majored in Political Science and
Japanese Studies. While working for the Firm, she concurrently received a law
degree from California Western School of Law, graduating cum laude, and a
Masters in Social Work from San Diego State University in 2015. Ms. Sekino is
Bilingual (Japanese/English), resides in San Diego and is active in community
affairs. She was a CASA (Court Appointed Special Advocate) for a program
called Voices for Children, an organization that advocates for children who have
been abused and/or neglected and are under the protection of the court system.
Currently, she volunteers with Reading Legacies, a nonprofit organization that
empowers children through inter-generational shared-reading experiences. She is
also currently the Co-Chair and a Board Member of the Japanese American Bar
Association, San Diego Committee.

1 **i. James C. Shah** joined SFMS as a Partner in 2002. Mr. Shah and I began
2 working together at Pelino & Lentz, P.C. in Philadelphia, Pennsylvania during the
3 Summer of 1996. He is admitted to practice law in the States of California, New
4 Jersey, New York, the Commonwealth of Pennsylvania and Wisconsin, as well as
5 numerous federal courts, including the United States District Courts for the
6 Southern, Northern, Central and Eastern Districts of California, District of
7 Connecticut, Eastern District of Pennsylvania, District of New Jersey, Eastern
8 District of Wisconsin, the United States Court of Appeals for the Second Circuit,
9 Third Circuit, Ninth Circuit and Eleventh Circuit and the United States Supreme
10 Court. In addition to these courts and jurisdictions, Mr. Shah has worked on cases
with local and co-counsel nationwide and internationally. Mr. Shah concentrates
his practice on consumer and qui tam litigation, as well as complex commercial
and employment matters. Mr. Shah earned his undergraduate degree in Political
Science from the University of Oregon and his law degree from Temple
University School of Law. Mr. Shah assisted the firm in connection with
preparation of certain pleadings, litigation strategy and expert discovery.

11 **m. Kolin C. Tang** joined SFMS in 2009 and is currently an Associate with the firm.
12 Mr. Tang is admitted to practice law in the State of California. At SFMS, Mr.
13 Tang concentrates his work on securities, employment and commercial litigation
14 throughout the United States. In addition, Mr. Tang also performs significant
15 work in the firm's whistleblower practice, on both cases arising in the United
16 States and overseas. Mr. Tang received his undergraduate degree in Economics
17 and History with honors from the University of California at Berkeley and earned
his law degree from The George Washington University Law School in 2011,
where he was a member of The George Washington International Law Review.
Mr. Tang focused his work in this case on performing legal research and the
preparation of certain pleadings.

18 **n. Alexa White** joined SFMS in 2016 as a paralegal and currently is a Law Clerk.
19 She has over 6 years of experience as a legal assistant working in both the legal
20 and non-profit sectors. Originally from Massachusetts, Ms. White graduated with
21 honors from the University of Massachusetts Boston in 2008 and holds a
22 Bachelor's Degree in Political Science and International Relations. She also
earned a paralegal certificate from Salem State College. Ms. White is currently a
third year student at California Western School of Law and will be joining the
firm full-time as an Associate in 2021 following her graduation from law school.

23 19. I have not included time spent by a number of timekeepers at SFMS who only
24 worked on this matter for less than 40 hours, including the following timekeepers: Natalie
25 Finkelman Bennett – Partner (29.5 hours @ \$850 per hour), Jillian M. Boyce – Legal Assistant
26 (31.2 hours @ \$200 per hour), Valerie Chang – Associate (0.8 hours @ \$375 per hour), Priya
27 Jupudi – Legal Assistant (3.4 hours @ \$185 per hour), Ashley Landis – Intern (10.3 hours @ \$75
28

1 per hour), Nicolas Lussier – Project Analyst (34.9 hours @ \$200 per hour), Christine Mon –
2 Legal Assistant (19.9 hours @ \$200 per hour), Sue Moss – Legal Assistant (21.6 hours @ \$200
3 per hour), John Roberts – Associate (36.2 hours @ \$325 per hour), Laurie Rubinow – Partner
4 (35.4 hours @ \$775), Isabel Vasquez – Legal Assistant (3.6 hours @ \$195 per hour), and Nathan
5 Zipperian (Partner – 39.9 hours @ \$775 per hour). The total time spent by these timekeepers
6 collectively accounted for 266.70 hours and additional lodestar of \$119,121. In addition, I
7 eliminated certain entries that were duplicative in nature. As a result, over one hundred hours of
8 time were eliminated from the time that otherwise would have been included in the summary
9 charts attached as Exhibit “A.”

10 CONTRIBUTIONS OF MARIA KARLA TERRAZA

11 20. Plaintiff, Maria Karla Terraza, made significant contributions to this litigation and
12 demonstrated an exceptional commitment to this case. She met in person with counsel on six
13 separate occasions (traveling once to Los Angeles and twice to San Francisco for such meetings)
14 and, on several occasions, personally arranged for interpreters to be present to ensure that she
15 fully understood all aspects of this complex litigation. Ms. Terraza also was regularly in contact
16 with counsel by telephone, reviewed the complaint and amended complaints, as well as other
17 pleadings before they were filed, responded fully to written discovery, prepared for and appeared
18 for deposition, participated fully in the several mediation sessions and settlement discussions and
19 prepared with counsel to testify at trial, including making work and family arrangements to be
20 present for the entirety of the trial. In my almost thirty (30) years of practicing law, I found Ms.
21 Terraza to be one of the most committed and conscientious class representatives with whom I
22 have had the privilege to work and represent.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
24 true and correct.

25 Executed this 23rd day of November, 2020 at Los Angeles, California.

26
27 /s/ James E. Miller
James E. Miller