Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	95 C 1666	**DATE**	3/31/2000
CASE TITLE	Orlowski, et al. Vs. Dominick's Finer Foods, Inc.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due ______.

(3) ☐ Answer brief to motion due______. Reply to answer brief due______.

(4) ☐ Ruling/Hearing on ______ set for ______ at ______.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on ______ set for ______ at ______.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on ______ set for ______ at ______.

(7) ☐ Trial[set for/re-set for] on ______ at ______.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to ______ at ______.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Parties appeared for fairness hearing . Parties having advised the court that there were no objections filed, their joint motion for final approval of settlement is granted . The court also approves the payment of attorneys' fees as set forth in the Settlement Agreement, as amended by counsels' agreement. Parties are authorized to mail the claim form to all members who have not filed an opt-out notice. Enter Settlement Agreement. Any pending motion in this case is terminated as moot and the case is dismissed pursuant to settlement

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

	No notices required, advised in open court.	number of notices	Document Number
	No notices required.	MAR 3 1 2000 date docketed	372
	Notices mailed by judge's staff.	docketing deputy initials	
	Notified counsel by telephone.	date mailed notice	
✓	Docketing to mail notices.	mailing deputy initials	
	Mail AO 450 form.		
	Copy to judge/magistrate judge.		
MPJ	courtroom deputy's initials	Date/time received in central Clerk's Office	

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELENE ORLOWSKI, et al.,	)	
	)	
Plaintiffs,	)	Case No. 95 C 1666
	)	
v.	)	Judge Elaine E. Bucklo
	)	
DOMINICK'S FINER FOODS, INC.,	)	Magistrate Judge Arlander Keys
	)	
Defendants.	)	

DOCKETED

MAR 31 2000

SETTLEMENT AGREEMENT

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IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELENE ORLOWSKI, MELBA J. KOCH, MARGARET MROZOWSKI, CAROL ANN SCHMALL, ALMA L. AGUIRRE, ROANN D. KEATY, GEORGINE ARVANITIES, JANET M. TRIPP, and MAUREEN GLEIXNER, on behalf of themselves and all other persons similarly situated,	)	**Case No. 95 C 1666**
Plaintiffs,	)	**Judge Elaine E. Bucklo**
v.	)	**Magistrate Judge Arlander Keys**
DOMINICK'S FINER FOODS, INC.	)	
Defendant.	)	

I. INTRODUCTION

On March 16, 1995, Plaintiffs Helene Orlowski and Melba J. Koch filed a complaint individually and on behalf of other similarly situated women against Dominick's Finer Foods, Inc. ("Dominick's") pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. ("Title VII"), 42 U.S.C. § 1981. The complaint alleged that Plaintiffs and similarly situated women have been discriminated against in promotions, training, compensation, hours, transfers and job assignments. In its answer filed on April 5, 1995, Dominick's denied that Plaintiffs and the class they sought to represent had suffered any discrimination or had been deterred from seeking advancement opportunities within Dominick's.

Plaintiffs sought leave to file an amended complaint on April 25, 1995, adding Margaret Mrozowski, Carol Ann Schmall, Alma L. Aguirre and Roann D. Keaty as named Plaintiffs. The amended complaint alleged an additional claim that Hispanic employees at

Dominick's had been discriminated against in promotions, training, compensation, hours and transfers. On May 1, 1995, the Court granted the motion.

On May 19, 1995, the Court ordered that Plaintiffs file a motion for class certification by August 14, 1995; that Dominick's file its opposition to Plaintiffs' motion on or before September 11, 1995; and that Plaintiffs file a reply to Dominick's opposition on or before September 26, 1995. The Court further ordered that all discovery necessary to determine the maintainability of a class action be completed on or before July 31, 1995.

On June 17, 1996, Plaintiffs sought leave to file a second amended complaint adding cashiers Georgine Arvanites, Janet M. Tripp, and Maureen Gleixner as named Plaintiffs. On August 9, 1996, the Court granted the motion.

On July 18, 1996, Plaintiffs filed a motion to certify a class of all female employees who had worked in Dominick's stores and grocery store organization during the period from September 23, 1993 to the present and a class of all Hispanic employees who were employed in Dominick's stores and in store area positions during the period from May 21, 1994 to the present.

On the motion of Dominick's, the Court continued the briefing schedule and Dominick's filed its opposition to the motion for class certification on November 13, 1996.

Following a recommendation from the Magistrate Judge, the Court entered an order on April 8, 1997, certifying a class of all female employees who worked in Dominick's stores during the period September 23, 1993 to the present; however, the Court denied Plaintiffs' motion to certify a class of Hispanic employees. The Court also reserved the right to entertain a motion to decertify the class at the close of discovery.

Pursuant to a motion filed by Miner, Barnhill & Galland, the Court disqualified Friedman & Holman as counsel for the class on June 9, 1998.

Plaintiffs have vigorously prosecuted the case and Dominick's has vigorously defended it. While discovery has not yet been completed, the Parties have taken extensive discovery on both class certification issues and the merits of Plaintiffs' and potential class members' claims and Dominick's defenses. Plaintiffs have taken the depositions of numerous past and present Dominick's officers and employees. Dominick's has taken the depositions of each of the nine Plaintiffs, as well as several declarants and class members. The Parties have also exchanged tens of thousands of documents relevant to the issues in this case, including vast quantities of computer data.

The Parties have engaged in settlement negotiations since late 1997. As part of the negotiation process, Dominick's has provided Class Counsel with personnel and other employment-related information. Dominick's has also produced computer-readable records of personnel decisions and records from 1990 through 1997. The Parties have also exchanged statistical analyses as well as other relevant information during these negotiations and their respective experts have reviewed these analyses. The Parties have reached an agreement that is contained in this Settlement Agreement (hereinafter, the "Agreement") as a result of these negotiations.

The Parties agree that the formal and informal discovery conducted in this action, the depositions taken by both sides, the documents produced and the information exchanged during settlement negotiations are sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. This Agreement shall constitute a resolution of all class and individual claims of sex discrimination, underlying the allegations contained in plaintiffs EEOC charges or which were or could have been asserted in Plaintiffs' Complaint as amended. As indicated by the signature of counsel at the end of this document, the Parties have consented to the entry of this Agreement.

II. PURPOSES OF THE AGREEMENT

The Parties have entered into this Agreement for the following purposes:

(a) to assure equal employment opportunities for all Dominick's employees;

(b) to demonstrate Dominick's commitment to diversity in the workplace, consistent with its employees' appropriately informed, freely-expressed, and documented job interests;

(c) to increase the awareness of all employees concerning the various career options available to them in Dominick's retail stores, and to ensure that they are fully and fairly considered for promotional opportunities for which they have indicated their interest and have properly applied;

(d) to establish an expedited procedure for providing appropriate relief to members of the settlement class;

(e) to prevent any retaliation against any person who might oppose any illegal employment practices and to assure compliance with Dominick's policies against such retaliation;

(f) to avoid further expensive and protracted litigation; and

(g) to provide finality of claims and decisions.

III. DEFINITIONS

The following terms when used in this Agreement, in addition to the terms defined elsewhere in the Agreement, shall have the following meanings:

The "Class", "Settlement Class" or "Class Members" shall refer to the persons described in Section VII.A.

"Class Counsel" refers to Miner, Barnhill & Galland and Bridget Arimond.

"Class Period" means the period between September 23, 1993 and the Preliminary Approval of this Agreement for purposes of monetary relief and the period between September 23, 1993 and the date in which this Agreement terminates in accordance with Section V infra for purposes of injunctive and declaratory relief.

"Collective bargaining agreements" means those agreements now in force or in force during the term of this Agreement between Dominick's and the United Food and Commercial Workers International Union - Locals 546, 881, 1540, and 1550.

"Court" means the United States District Court for the Northern District of Illinois.

"Defendant" or "Company" or "Dominick's" refers to Dominick's Finer Foods, Inc. and its successors and assigns.

"Discrimination" means any policy, practice, program, pattern, procedure, act and/or omission that allegedly occurred prior to the Preliminary Approval Date of this Agreement that arose out of, was related to or that allegedly affected, because of gender, a female's employment with or by Dominick's and as to which a claim was brought or could have been brought under the charges before the EEOC or was or could have been asserted under Plaintiffs' Complaint as amended and, if proven, would violate any employment law.

"Effective Date" refers to the date upon which final approval of the Agreement is granted by the United States District Court for the Northern District of Illinois.

"Employee" or "employees" means a person or persons who were on Dominick's payroll during the Class period. Information regarding such status of a person shall be verified by records of Dominick's.

"Good-faith effort(s)" means reasonable steps to realize or comply with the specified objectives to which the efforts are directed.

"Former Plaintiffs' Counsel" refers to Friedman & Holman.

"Parties" means Dominick's and the Plaintiffs.

"Plaintiffs" or "Named Plaintiffs" refers to Helene Orlowski, Melba J. Koch, Margaret Mrozowski, Carol Ann Schmall, Alma L. Aguirre, Roann D. Keaty, Georgine Arvanites, Janet M. Tripp, and Maureen Gleixner.

"Preliminary Approval Date" means December 20, 1999, the date upon which Preliminary Approval of the Agreement was granted by the United States District Court for the Northern District of Illinois.

IV. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this action. The Complaint asserts claims that, if proven, would authorize the Court to grant the monetary and equitable relief set forth in this Agreement. Venue is proper in this district. This Court shall retain jurisdiction of this action during the duration of the Agreement for the purpose of entering all orders, judgments and agreements which may be necessary to implement the relief provided herein.

V. EFFECTIVE DATE AND DURATION OF AGREEMENT

A. The injunctive provisions and agreements contained herein shall be effective immediately upon the Effective Date.

B. Except as otherwise provided herein, the provisions of this Agreement and the agreements contained herein shall remain in effect for three years from the Effective Date.

1. Unless further extensions are granted by the Court pursuant to Section V.B.2 the Agreement shall expire without further action of the Parties on the third anniversary of the Effective Date.

2. At any time prior to 120 days before the third anniversary of the Effective Date of the Agreement, Class Counsel may petition the Court to extend the Agreement for one additional year, provided that Class Counsel can demonstrate to the Court that Dominick's has materially failed to perform its obligations under the Agreement during the six-month period immediately preceding the petition to extend. Dominick's may respond to Class Counsel's application in accordance with the Local Rules of the Court. The Court may extend the Agreement for one year (or shorter) only if the conditions set forth above are established by Class Counsel by clear and convincing evidence.

VI. NO ADMISSION OF LIABILITY

The Court has made no findings concerning Dominick's alleged violations of Title VII, or any other federal, state, or local law, regulation, order, or rule prohibiting sex discrimination. Accordingly, this Agreement shall not constitute, and shall not be used in this or any other case or action as, evidence of any such violation of Title VII, or any other federal state, or local law, regulation, order, or rule. If for any reason settlement is not effectuated, no evidence of this stipulation and proposed Agreement shall be admissible for any purpose in this or any other action.

By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by the Plaintiffs or Dominick's, express or implied, that Dominick's has, or has not, in any way violated Title VII, or any other federal, state, or local law, regulation, order, or rule. This Agreement does not contain, and will not be interpreted or construed as containing, any such admission.

VII. SCOPE AND EFFECT OF SETTLEMENT

A. Definition of Settlement Class

For settlement purposes only, the Parties stipulate to the following class definitions:

For purposes of injunctive and declaratory relief only, the Parties stipulate to the certification of the class pursuant to Federal Rule of Civil Procedure 23(b)(2) described as: all females who are, were or will be employed in any store owned or operated by Dominick's (except women who worked exclusively in Omni stores), at any time between September 23, 1993 and the final termination of this Agreement.

For purposes of monetary relief only, the Parties stipulate to the certification of a class under Federal Rule of Civil Procedure 23(b)(3) described as: All females who were employed in any store owned or operated by Dominick's (except women who worked exclusively in Omni stores), and who completed their ninety (90) day probationary period at any time between September 23, 1993 and December 20, 1999 excluding any such person who released her claims against Dominick's prior to the date of the Preliminary Approval of this Agreement.

B. Settlement Scope

This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations of discriminatory, unlawful employment practices because of sex, occurring on or before the date of Preliminary Approval of the Agreement, that were or could have been brought by or on behalf of the Plaintiffs and the members of the class they purport to represent under the discrimination charges filed by the Plaintiffs with the EEOC or under the original and amended complaints filed herein, including but not limited to all claims arising under federal, state, and local laws, and all claims for attorney's fees and costs (as set forth in Section XV infra.).

C. Release of Claims

The negotiation and entry of this Agreement have been undertaken by the Parties for the purpose of settling all claims of sex discrimination which the Plaintiffs and the members of the Settlement Class brought or could have brought under the charges filed by them with the EEOC or in the original and amended complaints filed herein by the plaintiffs. On the Effective Date, the Named Plaintiffs and all Class Members, both individually and as a class, for themselves, their attorneys, spouses, executors, representatives, heirs, successors, and assigns, or any other persons who could claim through them, in consideration of the monetary and injunctive relief set forth herein, the sufficiency of which consideration is expressly acknowledged, fully and finally release and forever discharge Dominick's, its present and former parent, its affiliated or subsidiary companies, and each of their respective present, former or future officers, directors, shareholders, agents, employees, representatives, consultants, attorneys, successors, and assigns and their respective pension, profit-sharing, savings and other employee benefit plans of any nature, and those plans' fiduciaries, representatives, trustees and administrators (the "released parties") from any and all past and/or present claims, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind for individual and/or class injunctive and monetary relief based upon any and all claims of employment discrimination because of sex whether or not known, arising in any way out of the alleged facts, circumstances and occurrences underlying the allegations contained in the original and all amended complaints filed in this action or before the EEOC, whether such causes of action were or could have been based in tort; contract; any collective bargaining agreement; public policy; or any federal, state, or local law, statute, common law or administrative regulation, which arose before the Preliminary Approval Date and which were raised or could have been raised in these actions, including, but not limited to, any and all claims for alleged sex discrimination relating to initial placement, job assignments, job or department transfers, training, scheduling, allocation of hours, full-time status, promotion, or to the terms, conditions, or privileges of employment, and further including, without limitation, any such claims that any Class Member may have filed or caused to be filed in any union grievance proceeding, in any complaint before any court of law, or before any administrative agency (state, federal or local), or before any arbitrator or board, prior to the execution of this Agreement (the "Released Claims"). This Agreement releases all class and individual claims of sex discrimination, underlying the allegations contained in plaintiffs' EEOC charges or in the original complaint and all amended complaints in this action for both monetary and injunctive relief and which arose before the Preliminary Approval Date. This Agreement also resolves all claims for attorneys' fees and expenses, including claims for attorneys' fees and expenses incurred in connection with the implementation and enforcement of this Agreement (as set forth in Section XV herein). This Release shall survive the expiration of the Agreement.

This is a full and final release applying not only to all Released Claims of sex discrimination that are currently known, anticipated, or disclosed to Class Members, but also to all Released Claims of sex discrimination that are presently unknown, unanticipated, and undisclosed to any and all Class Members; provided however, nothing contained in this release shall be construed to cover claims by Class Members that are not based on sex discrimination, including but not limited to workers compensation claims, or union grievances, or any other claims of personal injuries suffered on the job.

VIII. GENERAL INJUNCTIVE PROVISIONS

A. Dominick's and its officers, management and supervisory employees are permanently enjoined and restrained from engaging in any act, policy or practice with the purpose of discriminating against any Plaintiff or member of the Settlement Class on the basis of gender, having an unlawful disparate impact upon female employees, or retaliating against any Plaintiff or member of the settlement class or other employee or former employee who has opposed, or may oppose any employment practice of Dominick's on the ground that such practice is discriminatory on the basis of gender.

B. Dominick's and its officers, management and supervisory employees shall not discriminate on the basis of gender against any female employee in making a job selection decision. Dominick's shall consider female employees for selection or promotion or any other employment opportunity on the same basis as it considers male employees, consistent with the terms of any applicable collective bargaining agreements and with this Agreement.

C. Dominick's and its officers, management and supervisory employees shall not engage in or be party to any act, policy or practice with the purpose of discriminating or retaliating against any Named Plaintiff, any member of the Settlement Class, any employee of Dominick's or any other person because he or she furnished information or participated in any respect in the implementation or monitoring of this Agreement or in the prosecution of this or any other Court, administrative or other informal or formal proceeding pertaining to allegations of gender discrimination at or by Dominick's.

D. Dominick's and its officers, management and supervisory employees shall not take any adverse action or retaliate against any employee because the employee opposed, refused to implement or otherwise objected to any practice, policy or act of gender discrimination against females by or at Dominick's.

IX. SPECIFIC INJUNCTIVE RELIEF PROVISIONS

A. CAREER CONNECTION PROGRAM

1. Purpose

The purpose of Dominick's Career Connection Program is (a) to assist employees and new job applicants in making informed choices in seeking to achieve their personal goals for career development; and (b) to assure equal employment opportunities, including career advancement and scheduling opportunities, for all employees in a manner consistent with the purposes of this Agreement.

2. Elements of the Program

Under the direction of the Compliance Officer, Dominick's shall develop and submit to Class Counsel for their review and input at least thirty days before the Effective Date of the Agreement, the following programs:

a. Career development program.

(i) Career Development Handbook. Dominick's will develop an employee handbook ("the Handbook") regarding employment opportunities and potential career development at Dominick's. The Handbook will describe generally the various jobs in Dominick's stores from entry level up through Store Manager and will include general descriptions of those district operations positions for which store employees may be eligible to apply. The information provided with respect to each job will include: (a) a general description of job duties; (b) a summary description of pay rates for all positions; (c) a description of the minimum requirements of the jobs; (d) a general description of the hours applicable to the positions (i.e., an indication of the part-time vs. full-time opportunities associated with this position, or that an employee in this position will work nights vs. days), (e) a section describing generally the seniority and claiming provisions of the applicable collective bargaining agreements; and (f) an overview section which explains career development opportunities at Dominick's and identifies the relevant HR personnel with whom employees can speak to discuss career development or related employment issues.

(ii) Career development summary handout. In addition to the Handbook, Dominick's will also develop an overview piece (of no more than three or four pages) that provides in abbreviated format, information about the various types of positions within Dominick's store and district operations pertinent to career choices ("the Overview"). The Overview should refer employees to the Handbook for further information, and indicate where employees can go to obtain a copy of the handbook.

(iii) Dissemination. The Overview shall be distributed to each applicant and employee. In addition, a copy of the Handbook shall be available in each store for review by current employees and job applicants and shall be made available upon reasonable request.

(iv) Career Development Assistance. Dominick's HR representatives shall be responsible for providing information about career development. Dominick's will provide appropriate notice to all employees as to the days during the month when these HR representatives will be available at a given store to provide information and to otherwise assist them with their career development concerns, including concerns about promotion, training, job assignments, and scheduling.

b. Initial assignment process.

(i) Job vacancy form. Prior to initiating the hiring process, Dominick's will fill out a job vacancy form that identifies each open position to be filled in a given store. This form will include a general statement about the hours and days during which an applicant for the position must be available.

(ii) Job application process. Each applicant for employment shall be given a job vacancy form(s), a copy of the Overview and a job application form for each position in which they are interested in applying.

c. Job posting and pool posting systems

(i) Job posting system ("JPS"). For retail clerk positions above utility clerk, Dominick's shall retain and operate, consistent with the goals and purposes of this Agreement and with the terms and conditions of all applicable collective bargaining agreements, a Job Posting System ("JPS") during the term of this Agreement. The JPS shall cover the in-store positions described in Exhibit A of the Handbook.

Dominick's shall post bid forms on the retail clerk positions in the relevant store for one week or such other period as may be required by the applicable collective bargaining agreement(s). The terms of the applicable collective bargaining agreements shall apply to the selection process.

(ii) Pool posting system ("PPS"). The following store positions are not filled by the terms of the collective bargaining agreements: (a) produce second, deli second, receiver, night crew chief ("premium positions"); (b) department managers (including head clerk), assistant manager, co-manager, and store managers ("managerial positions"); and (c) management trainee positions (RLDP, as described in Section IX(d) infra). ("Pool Posting Positions") To fill positions in categories (a) and (b), a pool posting program shall be established to identify in advance a pool of interested and qualified candidates for new openings coming available or likely to come available in the next six to twelve months. Position descriptions and qualifications shall be posted at each store and instructions for application shall be attached. At least once every six months in the first year of the Agreement and at least once a year thereafter, employees shall be solicited to express their interest in each such position. (Employees shall be allowed to express interest in more than one such position or opening.) Posting for managerial positions and RLDP management trainee openings shall be posted in all stores. Premium positions shall be posted in stores on a district-wide basis.

Employees who timely express interest and meet the minimum qualifications shall constitute the respective eligible pools for each of these positions ("the PPS Pool"). Using the respective total numbers of male and female applicants in the PPS pool for each Pool Posting Position during each full year following the Effective Date during the duration of the Agreement ("Agreement Year"), Dominick's shall calculate the percentage of women in the eligible pool for each position. Dominick's shall provide Class Counsel, before the Effective Date of the Agreement, a list of prerequisite or minimum qualifications for each position to which PPS is applicable for their review and input.

Vacancies in the Pool Posting Positions shall be filled from among the individuals in the applicable PPS Pool (unless there are no individuals in the PPS pool who desire a particular job or trainee opening); provided, however, that Dominick's may, at any time, continue to recruit and hire qualified applicants from the outside for open positions. In making selections for managerial or other PPS positions or management trainee openings (RLDP), either from the PPS Pool or from the outside, Dominick's shall make a good faith effort to select women from the appropriate pool approximately in proportion to their representation in that pool.

If the selection rate of female PPS Pool applicants for any particular position in any Agreement year during the duration of the Agreement is less than 90% of the selection rate of male PPS Pool applicants for that position, Dominick's will confer with Class Counsel regarding the reason(s) for the disparity (e.g., the reason why men were deemed more qualified). If the selection rate of female PPS Pool applicants for any particular position in any Agreement year after the Effective Date of the Agreement is less than 80% of the selection rate of male PPS Pool applicants for that position, Dominick's will provide Class Counsel with a written explanation of the reason(s) for the disparity, and the parties shall meet and confer regarding the reason(s) for the disparity and ways of reducing it. A determination that the selection rate of female PPS Pool applicants for any particular position is less than 80% of the selection rate of men for that position shall not, in and of itself, automatically be deemed to be a violation of this Agreement, or a finding of sex discrimination, and shall not, in and of itself, automatically require the validation of any selection mechanism; provided, however, that nothing in this provision shall be construed as limiting Dominick's obligations under Title VII. Dominick's will not be deemed to have satisfied the approximate proportionality standard of this provision if deviations from actual proportionality in selection rates between male and female PPS Pool applicants, in any Agreement year or combination of Agreement years, show a legally significant disparity between the selection rates of male and female PPS Pool applicants in favor of male applicants.

The selection rate of female PPS Pool applicants shall be calculated by dividing the total number of females selected for a particular position at the end of each Agreement year by the total number of female PPS Pool applicants for that position during that same Agreement year. The selection rate of male PPS Pool applicants shall be calculated by the same method. To illustrate the calculation of the 80% standard, if the selection rate of female PPS Pool applicants for a particular position in any Agreement year is 40% and the selection rate of male PPS Pool applicants for that position during the same Agreement year is 50%, the selection rate of female PPS Pool applicants for that position during that Agreement year would be 80% of the selection rate of male PPS Pool applicants for that position during that time period.

Dominick's shall maintain records on each job filled through JPS and PPS, including the name and gender of the person selected for the position and the name and gender of each person who applied for but was not selected for the position. Information as to gender shall be based upon voluntary self-declarations supplied by the applicants.

Because the provisions of this settlement are intended to enhance opportunities for women at Dominick's, nothing herein shall in any way be construed as to set an upper limit on the number or percentage of women whom Dominick's can promote.

Failure by Dominick's to make a good faith effort to achieve the proportionality contemplated in this section may be a basis upon which Class Counsel may seek to extend this Agreement pursuant to Section V of this Agreement.

d. Retail Leadership Development Program

(i) Since its acquisition by Safeway, Dominick's has instituted Safeway's Retail Leadership Development Program to identify and train potential senior managers ("RLDP"). Dominick's intends to continue that program during the term of this Agreement.

Dominick's has provided Class Counsel with a description of the RLDP program and the manner in which employees are selected.

(ii) Nothing in this Agreement shall be construed to require Dominick's to obtain Class Counsel's approval in order to implement changes in the RLDP program. However, any changes in the procedures for application for or selection into RLDP or the positions for which the program provides training shall be consistent with the goals of this Agreement.

e. Scheduling procedures.

In order to assist employees in claiming the hours to which their seniority entitles them under the applicable collective bargaining agreements, Dominick's will:

(i) Have each employee fill out a scheduling preference form indicating the number of hours the employee would like to work, and indicating those times during the week when the employee is available to be scheduled.

(ii) Allow an employee whose availability or preferences with respect to number of hours changes to submit a revised scheduling preference form at any time. An employee, on request, may review the form s/he has on file. To facilitate Agreement monitoring, all scheduling preference forms and all forms used to record requests for modifications will indicate the employee's gender, and will be retained during the life of this Agreement.

(iii) Describe in a simple, operational format, in the Handbook and the Overview, the way in which a more-senior employee may claim hours for which a junior employee is scheduled; and state therein that employees desiring more hours should not hesitate to claim hours to which their seniority entitles them, since the provisions for claiming hours are consistent with the principle that employees with longer service should be able to maximize their employment opportunities at Dominick's. The Handbook shall also state that any form of retaliation against an employee for exercising the right to claim hours under the applicable collective bargaining agreements is strictly prohibited by Dominick's.

(iv) Adhere to the terms of the applicable collective bargaining agreements, as they may be amended from time to time, in allocating and scheduling hours. Provided, however, that nothing contained in this Agreement shall be interpreted or construed as a guarantee that any employee shall be assigned or entitled to any certain number of hours or any particular work schedule beyond that set forth in the applicable collective bargaining agreements.

(v) Make available, on a monthly basis, a list of all store employees by seniority group and job title, that indicates: employee's name, gender and relevant seniority date. Each list will be organized in descending seniority order, so that the most senior employee in the job title is listed first, and the least senior is listed last. Upon request, employees shall be allowed to review the list.

To facilitate monitoring, Dominick's shall retain in computer readable form weekly records of hours scheduled and hours actually worked for all store employees. Such records shall be retained for a six month period.

B. NON-DISCRIMINATION/DIVERSITY TRAINING

In addition to any other training specified in this Agreement, Dominick's has developed a non-discrimination/diversity training program for all district managers and store managers and shall implement it during the first six months following the Effective Date of this Agreement. Dominick's has provided Class Counsel with a description of the content of such training program for their review and comment; however, any comments by Class Counsel shall be advisory only. New district managers and store managers shall receive the above training within six (6) months of the date of their hire or promotion into a supervisory or managerial position, and documentation of their satisfactory completion of the program shall be retained in the personnel files.

At a minimum, the subjects to be covered by the training shall include: (i) Federal and State equal employment opportunity laws, including but not limited to the general provisions of these laws and the bases on which discrimination is prohibited under these laws; (ii) the identity, roles and responsibilities of agencies established to enforce these laws, and the principles and objectives underlying these laws; (iii) the application of equal employment opportunity law to typical employment situations, including but not limited to making selection and promotion decisions, provision of work assignments, training and other career advancement opportunities, and general supervision of a diverse workforce; (iv) review of the provisions and requirements of the Agreement; (v) review of the internal complaint procedure; (vi) responding to complaints of harassment; and (vii) supervisory follow-up of EEO complaints, including but not limited to the prohibition against retaliation, working with the complainant and consideration of appropriate discipline of the offender.

C. Review and Monitoring of Internal Complaints

1. Purpose

By the Effective Date of this Agreement, Dominick's shall develop and initiate the following activities, revisions, and programs to augment the purpose and functions of its Equal Opportunity Program and to provide all employees, including female employees, with an effective internal complaint procedure in which to assert and, if possible, resolve claims of discrimination within Dominick's.

2. Policy Statement and Distribution

The Human Resources Department shall develop and disseminate annually to all employees and new hires a written statement that summarizes in simple language the rights of employees with potential claims of discrimination to file such charges internally, and their right to be free from any form of retaliation for making such allegations, filing such charges, prosecuting such claims, or pursuing any remedy therefor.

3. Internal EO Complaint Procedure

Dominick's has established an internal EO complaint procedure and it shall be maintained under the direction and supervision of the Compliance Officer. The internal EO complaint procedures shall include: a standardized complaint form, effective investigation techniques and procedures, a system for the early internal resolution of complaints, appropriate corrective and preventive remedies for discriminatory conduct found to have occurred, follow up procedures to ensure that corrective action is taken and notification to the complainant about the remedial action taken and/or other resolution of the complaint.

Nothing in this Agreement shall prohibit Dominick's from conducting privileged investigations by or under the direction of its legal department or outside counsel, which are separate from, and in addition to, the investigations conducted in accordance with this Section. Dominick's shall not be required to disclose attorney-client privileged communications or attorney work product created in connection with such privileged investigations, as part of its reporting requirements under this Agreement.

Nothing in this Agreement shall prohibit Dominick's from instituting an arbitration process for the resolution of any internal complaints or other claims, as long as the arbitration process does not foreclose an employee's rights to file and pursue (including through court action) charges with the EEOC, the Illinois Human Relations Commission, or any other governmental agency, and does not adversely impact on any provisions of this Agreement.

D. **OTHER EQUAL OPPORTUNITY COMMITMENTS AND INITIATIVES**

In order to further the goals of this Agreement and to advance equal opportunities for all employees, Dominick's has established the following additional programs:

1. A Hotline has been established to give employees access to management on issues pertaining to equal opportunity or this Agreement.
2. An enhanced communications program has been developed to convey the job opportunities and training that are available to all employees, including employee orientation programs, Career Connection brochures and the payroll check/message system.
3. Dominick's has made grants to the Chicago Foundation for Women to provide support for various women's issues.
4. Dominick's retained an executive recruiting firm to focus on the recruitment and hiring of experienced women and minorities for senior staff and store management positions.
5. Dominick's retained the services of Women's Business Development Center and the Target Group to assist it in outreach efforts on female and minority vendor issues; and
6. Dominick's evaluation of managers shall include review of their compliance with the Agreement and with EEO policies.

X. RETAINED RIGHTS

1. Nothing in this Agreement shall be construed to limit, modify, or compromise in any way the existing right of Dominick's and its management to exercise their discretion in making business decisions, including the right to decide:

(a) The number of employees to employ in any store, department, job classification (including, without limitation, part-time or full-time status), job title, or daily or weekly work schedule;

(b) The number and types of job classifications and job titles;

(c) The specific or aggregate number of hours available for work in any particular store, department, job classification, job title, or daily or weekly work schedule;

(d) The labor costs for any store or department;

(e) The number of stores and the number and types of departments and services provided within each store;

(f) The number and boundaries of its districts; and

(g) The most efficient and productive manner for operating its stores.

2. Nothing in this Agreement shall be interpreted to alter rights under any bargaining agreement between Dominick's and any Union with respect to the matters covered in this Agreement.

3. Nothing in this Agreement is intended to preclude or prevent Dominick's from developing additional programs, policies or practices that further EEO compliance or that may enable Dominick's to identify the interests or preferences of Dominick's employees through surveys or other means.

4. Nothing in this Agreement shall be construed to limit Dominick's right to transfer, demote, reassign, or take other action in accordance with the applicable bargaining agreements with regard to any bargaining unit employee who obtains a position posted pursuant to paragraph IX A (2)(c), or to discharge a bargaining unit employee in accordance with the applicable collective bargaining agreements.

5. In the event of any labor dispute, work stoppage, or boycott resulting in layoffs, or catastrophic event, the sections pertaining to particular employment practices, and related monitoring, shall not be applicable and reporting shall be modified so as to disregard personnel actions taken during the above-referenced events.

XI. IMPLEMENTATION OF INJUNCTIVE RELIEF

A. DOMINICK'S COMPLIANCE OFFICER

It shall be the responsibility of the Compliance Officer to assure Dominick's overall implementation and compliance with the provisions of this Agreement, including, without limitation, any specific duties expressly assigned to the Compliance Officer elsewhere in this Agreement.

1. Selection of Compliance Officer

Dominick's has selected Dewayne Howard to serve as the compliance officer. He shall be responsible for the implementation and monitoring of the provisions of this Agreement.

2. Removal or Replacement of Compliance Officer

Dominick's may remove the Compliance Officer for cause. The Compliance Officer may also be removed or replaced by agreement of the Parties. Any request by Dominick's or Class Counsel for the removal or replacement of the Compliance Officer shall be made in writing, and shall state the factual basis for such request. In the event that Dominick's or Class Counsel requests the removal or replacement of the Compliance Officer and the other party does not agree, Dominick's or Class Counsel may petition the Court for the removal of the Compliance Officer. The Compliance Officer shall not be removed unless the Court finds that the Compliance Officer has performed inadequately in the position by failing to implement or comply with the Agreement, and has failed to demonstrate adequate performance after receiving notice of his performance deficiencies in writing and has failed to improve after having been given a reasonable opportunity to do so.

B. COMMUNICATION OF AGREEMENT REQUIREMENTS TO OFFICERS AND EMPLOYEES

Not later than thirty (30) days after the Effective Date of this Agreement, Dominick's shall provide each of its officers and retail employees a summary of the Agreement, which has been reviewed and approved by Class Counsel, explaining the Company's duties and obligations under the injunctive provisions of the Agreement. The summary also shall expressly provide that retaliation against any Plaintiff or other person involved in this litigation or in the implementation or monitoring of this Agreement is prohibited and will not be tolerated; that any allegation regarding such conduct shall be investigated promptly; and that where warranted, appropriate disciplinary action, including termination, will be taken. The summary shall also be disseminated to newly hired employees within fifteen (15) days of the date of hire.

XII. ENFORCEMENT OF THE AGREEMENT AND DISPUTE RESOLUTION PROCEDURES

A. ENFORCEMENT OF THE AGREEMENT

For purposes of interpreting this Agreement, individual Class Members shall not be deemed to be third party beneficiaries of this Agreement, nor shall they have any right to enforce its terms. Only Class Counsel may seek to enforce this Agreement in Court.

The Court alone shall have plenary authority to resolve all disputes arising under the Agreement.

At the request of Class Counsel or Dominick's, Class Counsel and Dominick's shall confer, as necessary, and an earnest effort shall be made by the Parties to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Agreement, including Dominick's compliance with the Agreement. If any issue is not resolved informally, Class Counsel or Dominick's may seek relief from the Court.

Either Class Counsel or Dominick's shall have the right to file a motion with the Court to resolve any dispute or issue of compliance regarding any provision of the Agreement, as follows: (i) if Class Counsel or Dominick's has good reason to believe that a legitimate dispute exists, the initiating party shall promptly give written notice to the other party consisting of: (a) a reference to all specific provisions of the Agreement that are involved, (b) a factual statement of the issue, and (c) a brief statement of the facts, circumstances and any other arguments supporting the position of the initiating party; (ii) within twenty-one (21) days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and argument set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position; (iii) Class Counsel and Dominick's shall then undertake good faith negotiations, which should include a meeting by telephone or in person and the exchange of relevant documents and/or other information to attempt to resolve the areas of dispute or alleged non-compliance; (iv) if such good faith efforts fail, a motion may be filed with the Court, by either Class Counsel or Dominick's, with a supporting brief, requesting resolution of the dispute or the issue of non-compliance; (v) the non-moving party will have twenty-one (21) days to respond to any such motion; and (vi) the moving party may file a reply brief within ten (10) days of receipt of the response.

B. **STANDARD FOR ESTABLISHING CONTEMPT**

Class Counsel may petition the United States District Court to hold Dominick's and its officers, managers and supervisors in contempt of this Agreement, but only after Class Counsel: (a) has first exhausted the dispute resolution procedures set forth in this Section, without having obtained reasonably effective remedial action, and (b) has concluded in good faith, after a reasonable investigation, that the standards for a contempt citation described below have been met.

In ruling on a petition by Class Counsel, Dominick's shall not be held in contempt unless the United States District Court finds, by clear and convincing evidence, that there has been: (i) an intentional disregard or intentional violation of a term or terms of the Agreement by one or more of Dominick's corporate officers, or district personnel with responsibilities extending beyond the store level; or (ii) a showing that one or more of said corporate officers or district personnel had knowledge of an intentional disregard or intentional violation of this Agreement by an officer, manager or supervisor of Dominick's but failed to take reasonably effective remedial action, with respect to a matter within his or her area of responsibility; or (iii) a pattern of unlawful discrimination or of violations of the Agreement. The term "pattern of unlawful discrimination or of violations of the Agreement" means more than episodic, individual or isolated instances of unlawful discrimination or violations of the Agreement.

XIII. REPORTING AND RECORD KEEPING

A. DOCUMENT PRESERVATION

Dominick's shall retain employment-related records required to be created or maintained by this Agreement for the duration of this Agreement or as required by state or federal law, whichever is longer.

B. REPORTING REQUIREMENTS

Dominick's, through the Compliance Officer, shall provide semi-annual reports, including all information necessary for effective monitoring, in a computer-readable form, to Class Counsel on Dominick's compliance with the requirements of the Agreement as follows:

1. A summary report relating to the positions filled through JPS and PPS, including data regarding the respective number of female and male applicants deemed minimally qualified, and those selected, during the reporting period;

2. A summary report relating to the RLDP program, including the number of females and males who applied and were selected for, commenced and/or completed each such training program during the reporting period and for each selectee, where he/she was employed before and after the RLDP program;

3. A report relating to Dominick's retail workforce by position and gender;

4. Records of all complaints made to the Compliance Officer and their disposition;

5. A summary description of the non-discrimination/diversity training programs conducted pursuant to Section IX.B. of the Agreement during the reporting period.

XIV. MONETARY RELIEF, NOTICE AND CLAIMS PROCEDURE

A. MONETARY SETTLEMENT FUND

1. Creation of Monetary Settlement Fund

Not later than fourteen (14) days after the Preliminary Approval of this Agreement, Dominick's shall wire transfer to three interest-bearing trustee accounts (the "Accounts") at a financial institution selected by Class Counsel and under the joint control of the Company and Class Counsel the sums of: (a) $7,650,000 for the purpose of satisfying and settling claims of and making payments to (a) the Named Plaintiffs', Declarants and all Class Members' whose claims are finally determined to be adequately supported (in accordance with Section XIV.D of this Agreement) (the "Class Fund"); (b) $1,900,000 for the purpose of satisfying and settling claims of and making payments to Class Counsel as awarded by the Court; and (c) $225,000 for the purpose of satisfying and settling claims of and making payments to Former Plaintiffs' Counsel as awarded by the Court (collectively "the Funds"). All interest earned on each Account between the time of deposit and the time of distribution shall be used for the beneficiaries of that account in accordance with the provisions of this Section.

In the event that final approval of this Agreement is denied or is ultimately reversed on appeal, Class Counsel and Former Plaintiff's Counsel shall promptly release any claim to the Funds, including any interest or earnings thereon. The Funds, plus any interest or earnings thereon, shall be returned to Dominick's not later than ten (10) business days after the date of either denial of Final Approval or any order reversing Final Approval. All releases pursuant to this Agreement shall, in such circumstances, be null and void.

Dominick's shall grant Class Counsel exclusive control of the Accounts to administer and disburse in accordance with the provisions of this Agreement upon the expiration of the time to appeal an order granting final approval of the Agreement if no appeal is taken, or the resolution of any and all appeals of this Agreement in favor of final approval, whichever is later.

In administering and disbursing the Funds, Class Counsel shall be responsible for the maintenance of detailed and accurate accounts of investments, receipts, disbursements and other transactions of the Funds.

2. Allocation of the Class Fund for claims of the Named Plaintiffs, Declarants and Class Members.

The amounts deposited in accordance with Section XIV.A.(1)(a), above, together with any interest earned on said amount while in the Account, shall be allocated for payment of claims in the following manner: First, Thirty Thousand Dollars ($30,000) shall be allocated as a "Reserve Fund" to be used to pay any otherwise Adequately Supported claims (as defined in Section XIV.D.(3) below) which are excluded from the list of qualified claimants through inadvertent error or omission of Class Counsel or Dominick's. Second, any amount due to Dominick's as a credit for timely "opt-outs" as provided for in Section XIV.C.(3), below, shall be deducted. Third, payments to the Named Plaintiffs and Declarants in accordance with Sections XIV.A.(3) and (4) below, shall be made. The remainder of the Class Fund shall then be allocated to pay the claims of qualified Class Members in accordance with the terms, conditions and provisions of this Agreement.

3. Payments to the Named Plaintiffs

Not later than two (2) months after the Effective Date of this Agreement, the expiration of the date for filing of any appeal in this action if no appeal is taken, or resolution in favor of final approval of any appeal filed in this action, whichever is later, a total payment of $135,000.00 shall be made from the Class Fund to the Named Plaintiffs, Helene Orlowski, Melba J. Koch, Margaret Mrozowski, Carol Ann Schmall, Alma L. Aguirre, Roann Keaty, Georgine Arvanites, Janet M. Tripp, and Maureen Gleixner for their role as Class representatives and their assistance to Class Counsel. The Named Plaintiffs may also seek an individual class award by filling out a claim form as set forth below. In addition to their class claims of sex discrimination, certain of the Named Plaintiffs had asserted various individual, non-class claims against Dominick's, as part of this case. Those claims have been separately resolved as part of this settlement for approximately $67,000. In the event any Named Plaintiff later decides to opt-out of the Settlement Class, she shall not be entitled to any share of the monies set forth herein nor any distribution from the Class Fund.

4. Payments to Declarants/Deponents. Not later than two (2) months after the Effective Date of this Agreement, the expiration of the date for filing of any appeal in this action if no appeal is taken, or resolution in favor of final approval of any appeal filed in this action, whichever is later, the amount of $2,500 shall be paid from the Class Fund to each Class Member who provided a deposition in support of the claims of the plaintiff class and the amount of $1,500 to each Class Member who provided a sworn declaration to Class Counsel for use in any pleading in this case ("Declarants"). Declarants may also seek an additional class award by filing a claim form as set forth below. In the event any such Declarant opts out of the Settlement

Class, however, she shall not be entitled to the $1,500/$2,500 payment nor to any additional distribution from the Class Fund.

5. Basic Eligibility for Payments From the Class Fund

Eligibility for payments from the Class Fund to Settlement Class Members shall be made in accordance with the following:

To qualify for any payment from the Class Fund, an individual must:

(a) return a completed Claim Form, in the form attached hereto as Exhibit B, postmarked no later than the date established under this Agreement for submitting claims;

(b) confirm that she was an employee of Dominick's during the liability period, as stated on her claim form or, if she disputes the dates of employment set forth in her claim form, provide evidence of her dates of employment;

(c) have her claim finally approved as Adequately Supported (as defined in §XIV.D of this Agreement);

(d) not have previously released her claims against Dominick's; and

(e) not have filed an opt-out form.

Claims filed on behalf of deceased Class Members must be accompanied by a certified copy of the deceased Class Member's death certificate and must be filed by a surviving relative or an administrator of the deceased Class Member's estate.

6. Factors to Be Used in Assignment of Points Applicable to the Class Fund

Each claimant will be assigned points based on the length of time that she was employed by Dominick's as set out below:

> Women who completed their ninety (90) day probationary period, but worked less than one year shall receive one point. Women with over one year of seniority shall be allotted one additional point for each full year of employment (to a maximum of 20 years or 20 points) that she possessed as of the Preliminary Approval Date of this Agreement or, if earlier, on the last date she worked for Dominick's.

7. Determining Dollar Amounts to Award to Claimants

To determine the dollar amount to award to each claimant, all points awarded at the end of the claim determination procedure established herein to claimants with Adequately Supported claims under the Agreement shall be aggregated, and the total amount of money contained in the Fund at the end of the claim determination process, less (i) the Reserve Fund, (ii) the payments to Named Plaintiffs and Declarants, and (iii) the credit due to Dominick's for timely opt-outs as provided for in Section XIV.C.(3), shall be divided by the aggregate number of points. The resulting number shall be the value of an individual point (the "Point Value"). Each claimant shall receive the lesser of the Point Value multiplied by the number of points awarded to the claimant, or $9,000.00 ("Individual Settlement Amount") and shall also receive her respective pro rata distribution of interest pursuant to §XIV A.1, supra. In no event shall any claimant (other than the Named Plaintiffs or Declarants) receive any payment in excess of $9,000.00, exclusive of interest. In the event that the $9,000.00 per claimant limitation results in a total amount awarded to all Class Members that is less than the total amount of money remaining in the Fund, any unawarded portion of that money shall become Unclaimed Funds and shall be distributed in accordance with Section XIV.E.(3) infra.

Dominick's shall cooperate with Class Counsel in determining the appropriate withholdings under state and federal law.

B. NOTICE

1. Following Preliminary Approval by the Court on or about December 20, 1999, the following actions shall be taken to effectuate notice to the class:

On or before February 1, 2000, Dominick's shall prepare and deliver to Class Counsel a computer disk containing the full names, social security numbers, birth dates, last-known addresses and last-known telephone numbers of all potential Class Members, start date, and, if applicable, end date of employment with Dominick's (the "Class List"). On or before February 15, 2000, the Class Counsel shall mail, via first class United States Mail, postage prepaid, a Notice of the Class Settlement and the Court's Preliminary Approval of the Agreement (in the form attached hereto as Exhibit C), to each person on the Class List.

Dominick's shall pay the expenses of any mailing and cause to be published a notice of the class settlement. Such notice shall appear in the Friday, February 18, 2000 edition and the Sunday, February 20, 2000 edition of the following newspapers: the Chicago Tribune, the Chicago Sun-Times and the Daily Herald.

C. **OBJECTIONS AND EXCLUSIONS**

1. Objections

Class Members who wish to present objections to the proposed settlement must do so in writing. Written objections shall be mailed to Class Counsel and must be received by Class Counsel on or before March 15, 2000. Class Counsel shall stamp the date received on the original of any objection it receives and serve copies of the objections on the Company's counsel not later than two (2) business days after receipt thereof and shall file the date-stamped originals of any objections with the Clerk of Court no later than five (5) business days prior to the date of the Final Approval hearing, which shall be scheduled for March 31, 2000.

2. Exclusions

Consistent with Section VII of this Agreement certifying the Settlement Class under Federal Rule of Civil Procedure 23(b)(3), for purposes of monetary relief, and in accordance with the requirements of Federal Rule of Civil Procedure 23(b)(3), any potential Class Member, including the Named Plaintiffs, may request exclusion from the class for purposes of monetary relief only.

Potential Class Members who wish to exclude themselves from membership in the Settlement Class for purposes of participation in the monetary portion of the settlement must do so in writing, by filing with the Class Counsel a signed and dated "Opt-Out" statement. Written opt-out statements shall be mailed to the Class Counsel and must be received on or before March 15, 2000. The "Opt-Out" statement shall, at minimum, contain the following language:

> "I understand that by requesting to be excluded from the Class Monetary Settlement, I will receive no money from the Fund created in accordance with the Agreement entered into by Dominick's. I understand that if I am excluded from the Class Monetary Settlement, I may bring a separate action seeking damages; however, I may receive nothing or less than I would have received if I had filed a claim under the Class Monetary Settlement Procedure. I also understand that I may not seek exclusion from the class for non-monetary relief, and that I am bound by the class injunctive provisions of the Agreement entered into by Dominick's Finer Foods, Inc."

Only those Class Members who request exclusion in the time and manner set forth herein shall be excluded from the class.

Pursuant to Federal Rule of Civil Procedure 23(b)(3) and (c)(2), the terms and provisions of this Agreement concerning monetary relief shall have no binding effect on any person who makes a timely request for exclusion in the manner required by this Agreement.

3. Opt-Out Credits

In the event that any Named Plaintiff elects to "opt-out" of the Settlement Class for purposes of participation in the monetary portion of this settlement as provided by Section XIV.C(2) Dominick's shall either receive an opt-out credit from the Fund equal to the amount provided for that Named Plaintiff or Declarant or, at its option, void the Agreement in accordance with Section XIV.C(4), infra. If any other member of the Class "opts-out," Dominick's shall receive an opt-out credit equal to the dollar value awarded to a claimant with similar seniority with Dominick's; provided, however, if any Class Member affirmatively indicates that her reason for opting-out is her belief that she suffered no gender discrimination, she shall not be counted in the opt-out group for the purpose of opt-out credits. In no event shall the total amount of Opt-Out Credits exceed $1,000,000.

4. Excessive Number of Opt-Outs

In the event that any of the Named Plaintiffs or more than sixty (60) members of the Settlement Class elect to "opt-out" for purposes of participation in the monetary portion of this settlement, Dominick's may, at its option, void this Agreement. Provided, however, any person who "opts-out" but affirmatively indicates that her reason for doing so is her belief that she suffered no gender discrimination shall not be counted in the opt-out group for purposes of calculating the sixty (60) members. Dominick's shall notify Class Counsel of its decision to void this Agreement at least ten (10) days prior to the date set for the Final Approval hearing. In the event that Dominick's elects to void this Agreement, Dominick's shall notify the Class of its decision; however, it shall have no further obligations under this Agreement, and all monies (including, without limitation, any attorneys' fees) paid pursuant to this Agreement and placed in an account by Dominick's shall be refunded or released to Dominick's not later than fourteen (14) days following notice to Class Counsel and Former Plaintiffs' Counsel of Dominick's election to void this Agreement.

D. **CLAIM DETERMINATION PROCEDURE**

1. Distribution of Claim Forms

Promptly following the Effective Date of the Agreement, the Class Counsel shall mail a Claim Form to every known Class Member who has not opted out under the provisions of Section XIV(C)(2) at her last known address. The Claim Form shall state the dates the Class Member was employed by Dominick's.

2. Submission of Claim Forms

Class Members who wish to seek recovery of monetary compensation under this Agreement must confirm the accuracy of the dates of employment included on the claim form or, if the claimant disputes the employment dates set forth on the claim form, provide documentation of the dates of employment, and mail the Claim Form to Class Counsel. The Claim Form must be returned postmarked within thirty (30) days of the date it was received by the Class Member in order to be considered timely. Failure by any claimant to timely submit a Claim Form, shall bar the potential Class Member from having her claim considered and from receiving a monetary award from the Fund.

Class Counsel shall establish a toll free 800 line and be available to respond to requests from Class Members for assistance in completing and filing Claim Forms.

3. Processing of Claim Forms, Requests for Further Information From Claimants

Class Counsel shall process and initially review each Claim Form to determine if it is complete and adequately confirms or establishes the dates of employment. Class Counsel will make a preliminary determination of the assignment of points to each Class Member. Such determination shall be based upon the Claim Form submitted, and if the claimant disputes the dates of employment, any other pertinent information pertaining to the dates of employment with Dominick's presented by the claimant. In addition, Class Counsel may request additional information from the claimant which Class Counsel believes to be necessary to determine the dates of employment, if disputed. Such requests for additional information shall be made in writing and sent via first class United States Mail. Claimant must provide the requested information in writing or provide a written explanation as to why she cannot provide the requested information to Class Counsel on or before thirty (30) days after the date on which Class Counsel's request for additional information was mailed, and the written notice to the claimant for such supplemental information shall specify the date by which the information must be received by Class Counsel in order to be considered timely. Such additional information shall be deemed to be part of the claimant's Claim Form. Class Counsel shall complete its review and preliminary determination of the claims and assignment of points not later than 60 days following the expiration of the claim filing deadline set forth above.

4. Notification to the Company of Initial Claim Determination and Point Allocation

Commencing not later than sixty (60) days after expiration of the claim filing deadline set forth above, Class Counsel shall provide to Dominick's, information regarding their preliminary determination of claims and the assignment of points to all accepted claims. Class Counsel shall provide to Dominick's: a list with the names and social security numbers of all claimants whose claim or claims have been preliminary determined to be approved and the total points awarded to each Adequately Supported claimant and copies of all Claims Forms and all other non-privileged information used to preliminarily determine the claims of Class Members who disputed their employment dates at Dominick's ("Claimants' List").

5. Challenges by the Company

The Company may challenge Class Counsel's preliminary determination of claims for Class Members whose claims are based on employment dates other than those set forth in the original claim form by notifying Class Counsel in writing of the basis of the challenge together with copies of any documents or other evidence in support thereof not later than thirty (30) days after the Company's receipt of the Claimant Lists. Claims which were preliminarily determined to be Adequately Supported by Class Counsel that are not challenged by the Company under this provision shall be deemed to be final. Class Counsel and the Company shall meet and confer to attempt to resolve any challenges raised by the Company not later than thirty (30) days after Class Counsel's receipt of a written challenge from the Company. Prior to the meet and confer, Class Counsel may request from Dominick's additional information concerning the Company's challenge. If the Company and Class Counsel agree that a claim or portion thereof is Adequately Supported during the meet and confer process, such claim or portion thereof shall be finally determined to be Adequately Supported and eligible for payment.

6. Resolution of Challenged Claims

If Class Counsel and Dominick's are unable to resolve any disputes as to whether a claim(s), or a portion thereof, is Adequately Supported or is Inadequately Supported through the meet and confer process within not later than thirty (30) days of the Company's service on Class Counsel of its challenge, the challenge shall be submitted in writing to the Court or its designee for final resolution.

7. Attorneys' fees and expenses

All attorneys' fees incurred by Class Counsel in the class notice and claim determination processes set forth in Section XIV are included in the fees agreed upon in Section XV herein; however, Dominick's shall pay the expenses of printing and mailing notices and claim forms and establishing a toll-free 800 number.

E. **CLASS MONETARY DISTRIBUTION**

1. The List

Once the claim determination process is completed, Class Counsel shall prepare a final list (the "Distribution List") of all qualified claimants and the amount to be awarded to each based on the allocation of points to such claimants and shall submit it to the Company.

2. Distribution of Settlement Monies

(a) If no appeal from the District Court's final order entering this Agreement or collateral attack (i.e., any proceeding in any Court challenging this Agreement), is filed, the initial mailing of the Individual Settlement Amounts as set forth below shall commence on or about 60 days after Class Counsel sends the Distribution List to Dominick's. If any appeal or collateral attack is filed within 60 days of the Effective Date, the Settlement Fund shall not be distributed until all appeals and collateral attacks are finally resolved with no material charge to the Agreement. In that event, the distribution of the Individual Settlement Amounts shall be made within sixty (60) days of the final resolution of all appeals and collateral attacks.

No individual shall be entitled to receive any distribution from the Settlement Fund unless she has completed and submitted a Claim Form and accompanying release as shown on Exhibit B.

3. Unclaimed Funds

To the extent any monies remain in any of the three funds described in Section XIV.A.1 six months after initial distribution of Class Settlement checks, all such monies shall be deemed Unclaimed Funds. The Unclaimed Funds shall be distributed as follows: the first $300,000 shall be returned to Dominick's for use in funding the various programs established by this Agreement and all remaining monies shall be paid either to the Dominick's Foundation for the benefit of women employed by Dominick's, or used in programs designed to promote women's causes in the Chicago metropolitan area, or distributed to the members of the Class, as agreed upon by Dominick's and Class Counsel.

XV. ATTORNEYS' FEES AND EXPENSES

A. BASIS FOR AWARD OF FEES AND EXPENSES

1. The parties have agreed that it is appropriate as part of the settlement underlying this Agreement for Dominick's to pay Class Counsel, on behalf of the class representatives and the Settlement Class, and to Former Plaintiffs' Counsel, reasonable attorneys' fees, litigation expenses, and costs in this case, subject to the Court's approval thereof.

2. Dominick's has agreed to pay Class Counsel an amount up to $1,900,000 for reasonable attorneys' fees, litigation expenses, and costs as awarded by the Court for work performed and costs and expenses incurred through and including the claims distribution process of this Agreement. Included in this amount is approximately $450,000 of litigation costs and expenses incurred or to be incurred by Class Counsel. This amount fully satisfies any arguable

obligation Dominick's may have to pay attorneys' fees, litigation expenses, and costs for and on behalf of the Named Plaintiffs and the Settlement Class for any and all work performed and costs and expenses incurred through and including the claims distribution process of this Agreement.

3. Dominick's has also agreed to pay Class Counsel $12,500 per annum for administrative and monitoring work required to be performed by Class Counsel after the Effective Date under §§XII and XIII of the Agreement. In addition, Dominick's agrees to pay class counsel at their reasonable hourly rates for all work required to be performed by class counsel after the Effective Date relating to any proceedings in court which are successfully undertaken to defend, enforce, extend or modify the Agreement (under §§V, XII and XIX) or to oppose actions filed by Dominick's.

4. Dominick's has agreed to pay Former Plaintiffs' Counsel an amount up to $225,000 for reasonable attorneys' fees and expenses as awarded by the Court.

5. Under no circumstances shall Dominick's be required to pay the Named Plaintiffs or the Class any funds in excess of those set forth in Section XIV(A)(1) above nor any legal fees or expenses to Class Counsel or Former Plaintiffs' Counsel greater than those set forth in this Section XV.

XVI. CONFIDENTIALITY AND RETURN OF DOCUMENTS PROVIDED TO CLASS COUNSEL UNDER THE TERMS OF THIS AGREEMENT

The Parties acknowledge that certain information provided by Dominick's pursuant to this Agreement is required for the sole purpose of investigating, monitoring and enforcing Dominick's compliance with this Agreement. All records, reports and other documents generated, maintained or produced pursuant to the terms of §13 of the Agreement shall be kept confidential and used solely for the purposes of this Agreement. Class Counsel shall not disclose such information to any person, except as is reasonably necessary to enforce, monitor or administer the provisions of this Agreement or to comply with otherwise applicable laws.

If Class Counsel desires to disclose information made confidential by this order for any purpose other than disclosure which is necessary to enforce or monitor the provisions of this Agreement, Class Counsel shall promptly notify Dominick's of the information it seeks to disclose and the reasons for disclosing it. If Dominick's objects to the disclosure, the disclosure shall not occur unless the Parties have agreed to the disclosure or the Court has granted Class Counsel's request to disclose the information based upon a finding that good cause exists for such disclosure.

XVII. APPLICATION OF THIS AGREEMENT TO BARGAINING UNIT MEMBERS

The provisions of this Agreement shall apply to all bargaining unit members to the fullest extent permitted by law and consistent with all applicable collective bargaining agreements.

XVIII. MISCELLANEOUS PROVISIONS

A. CALCULATION OF TIME

In computing any period of time prescribed or allowed by this Agreement, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rule of Civil Procedure 6(a) and (e).

B. DEADLINES

Dominick's, Class Counsel and the Court recognize that from time to time unforeseen events, such as exigent business circumstances, personnel issues and negotiations with third parties, cause delays in the accomplishment of objectives no matter how well intentioned and diligent the Parties may be. Accordingly, with regard to the provisions of this Agreement that require certain acts to be taken within specified time periods, Dominick's and Class Counsel understand and agree that Court approval shall not be required for reasonable extensions of deadlines. In the event that either Dominick's or Class Counsel determines that an action required by this Agreement cannot be taken within the specified time period, that party shall promptly notify the other party that it anticipates a delay. Such notice shall include the reasons for the delay and a proposed alternative deadline. Dominick's and Class Counsel shall endeavor to cooperate in reasonably rescheduling such deadlines.

XIX. MODIFICATION AND SEVERABILITY OF THE AGREEMENT

Whenever possible, each provision and term of this Agreement shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event any provision or term of this Agreement should be determined to be or rendered invalid or unenforceable (by an Act of Congress, or otherwise), all other provisions and terms of this Agreement and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law. If any application of any provision or term of this Agreement to any person or circumstance should be determined to be invalid or unenforceable, the application of such provision or term to other persons and circumstances shall remain unaffected to the extent permitted by law.

Dominick's and Class Counsel shall have the right to seek relevant modification of the Agreement to ensure that its purposes are fully effectuated following good faith negotiations as to such modifications. Dominick's and Class Counsel may jointly agree to modify the Agreement with the approval of the Court.

Dominick's and Class Counsel shall make a good faith effort to defend this Agreement from any legal challenge whether by appeal, collateral attack or objection.

XX. NOTICES

All notices and other communications required under this Agreement shall be in writing and delivered either personally or by depositing the same, postage prepaid, in the United States Mail, addressed to the party hereto to whom the same is directed at the following addresses:

To the Named Plaintiffs and Settlement Class:

Judson H. Miner, Esq.
Miner, Barnhill & Galland, P.C.
14 West Erie Street
Chicago, Illinois 60610

To Dominick's:

Michael J. Boylan
Assistant General Counsel
Safeway, Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229

With a copy to:

John P. Lynch, Esq.
Latham & Watkins
5800 Sears Tower
Chicago, Illinois 60606

The Parties may from time to time change their address for the purposes of this Section by providing written notice, return receipt requested, of such change to the other Parties.

By: ____________________
Michael J. Boylan, Esq.

for Dominick's Finer Foods, Inc.

Dated: January 13, 2000

By: ____________________
Judson H. Miner, Esq.
Miner, Barnhill & Galland, P.C.
14 West Erie Street
Chicago, Illinois 60610

Class Counsel

Dated: January 25, 2000

The provisions of the foregoing Agreement are hereby approved, and compliance with all provisions thereof is HEREBY ORDERED.

Dated: 3/31, 2000

Judge
United States District Court