

Law Office of Lainey Feingold

DISABILITY RIGHTS LEGAL ADVOCACY

Trader Joe's Point of Sale Agreement and Amendment

The Trader Joe's Point of Sale Agreement posted here was negotiated by Lainey and Linda Dardarian using Structured Negotiations on behalf of the American Council of the Blind, the American Foundation for the Blind and the California Council of the Blind. In the Agreement, Trader Joe's agreed to install tactile point of sale devices at all its stores in the United States. An amendment to this agreement was signed to provide additional time for Trader Joe's to implement the agreement.

[Simplified Summary of this Document](#)

Settlement Agreement

This Settlement Agreement and the related document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the "Full Agreement") are entered into as of the Effective Date, as defined below in Section 1.5, by and between the following parties: American Council of the Blind ("ACB"), American Foundation for the Blind ("AFB"), and California Council of the Blind ("CCB") (collectively, the "Claimants"), and Trader Joe's Company, Inc. ("Trader Joe's"). Claimants and Trader Joe's are at times referred to collectively herein as the "Parties."

Recitals

The Full Agreement is based on the following facts:

A.

ACB, a non-profit corporation that provides advocacy services in the United States on behalf of individuals who are blind or have visual impairments, is dedicated to promoting the full integration of persons who are blind or have visual impairments into all aspects of society, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or visually-impaired. CCB is ACB's California affiliate serving the needs of blind and visually-impaired persons throughout the State of California. Among ACB's and CCB's board, staff and members, and those on whose behalf they advocate and provide services, are many individuals with vision disabilities within the meaning of state and federal law who have shopped and continue to shop at Trader Joe's stores throughout the United States. ACB is incorporated and has its place of business in Washington, D.C. CCB is incorporated and has its place of business in the State of California.

B.

AFB is a national non-profit, whose mission is to eliminate the inequities faced by the more than ten million blind and visually-impaired persons in the United States. Among other things, AFB is: the leading publisher of professional materials on blindness and low vision through its publishing arm, AFB Press; a pioneer in the development of Talking

Books; a national advocate representing the interests of blind or visually-impaired people before Congress and government agencies; and home to the Helen Keller Archives. Among AFB's board, staff and those on whose behalf it advocates and provides services, are many individuals with vision disabilities within the meaning of state and federal law and who have shopped and continue to shop at Trader Joe's stores throughout the United States.

C.

Trader Joe's operates retail grocery stores in California and other states across the United States.

D.

Claimants contend that they and their respective boards, staff, members and clients, and other blind and visually-impaired persons, have been, are being, and continue to be denied full access to the services provided by retail establishments and are therefore being discriminated against due to alleged inaccessibility of certain Point of Sale ("POS") Terminals (defined in Section 1.10 below) found in retail establishments throughout the United States, including in Trader Joe's stores (the "Claim(s)"). Trader Joe's denies that it discriminates against blind and visually-impaired persons, including Claimants and their respective boards, staff, members and clients, in any way and specifically denies that it discriminates against such blind and visually-impaired persons due to alleged inaccessibility of certain POS Terminals in the Trader Joe's stores. Trader Joe's contends that it does not and will not tolerate discrimination against its customers on the basis of disability, and that it values its disabled customers and treats them with the utmost respect.

E.

The Parties enter into the Full Agreement in order to resolve the Claims and to avoid the burden, expense, and risk of potential litigation. In entering into the Full Agreement, Trader Joe's does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36, and any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither the Full Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Trader Joe's of any such violation or failure to comply with any applicable law. The Full Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against Trader Joe's in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement.

NOW, THEREFORE, the Parties hereby agree to the following provisions:

1. Definitions.

As used in the Full Agreement, the following terms shall be as defined below:

1.1.

Access Laws means the Americans with Disabilities Act (as defined below) and any applicable laws of any state, county or municipality relating to accessibility for persons with disabilities to places of public accommodation, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable disability laws, regulations, or legal requirements, including, without limitation, California Civil Code §§ 51 et seq. and 54 et seq., California Financial Code § 13082, California Health & Safety § 19955, and Title 24 of the California Code of Regulations.

1.2.

Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990,

42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36.

1.3.

Claims means the contention by Claimants and their respective boards, staff, members and clients, and other blind and visually-impaired persons, that they are being, have been and continue to be discriminated against due to alleged inaccessibility of certain POS Terminals in Trader Joe's stores pursuant to applicable Access Laws.

1.4.

Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.

1.5.

Effective Date means June 30, 2006.

1.6.

Equivalent Terminal means a POS Terminal that provides a visually-impaired user the same or greater level of privacy and ability to perform Functions set forth in Section 1.12, below, as provided with the POS Terminal with Integrated Tactually Discernable Keypad, and which can be rolled out pursuant to the schedules set forth in section 3 of this Agreement.

1.7.

Existing Trader Joe's Store means a Trader Joe's store that was open to the public on or before June 30, 2006.

1.8.

New Trader Joe's Store means a Trader Joe's store that is first opened to the public after June 30, 2006.

1.9.

Personal Identification Number, or PIN means a unique numerical code used to identify an individual that must be entered into a POS Terminal before conducting certain transactions on the POS Terminal.

1.10.

Point of Sale Terminal, or POS Terminal means a device used by a customer at a point of purchase that allows the customer to pay for items with a debit, credit or cash card. Point of Sale Terminal does not include other equipment that may be used by a customer in conjunction with the Terminal to scan, price, or weigh products.

1.11.

POS Terminal Function, or Function means a task related to payment for purchases that can be performed by the customer through the POS Terminal.

1.12.

POS Terminal with Integrated Tactually Discernable Keypad means a POS Terminal with a Tactually Discernable Keypad that is an integral part of the terminal, which may be used to perform the following Functions on the integrated keypad: input, correct, cancel and enter PIN and cash-back amounts; submit card data; submit signature; and any Functions that involve inputting, correcting, canceling or entering information that is personal or affects access to personal information or resources, to the extent such Functions are available to sighted persons using the unit. Additionally, if customers are required to sign directly on the Point of Sale Terminal, there shall be no virtual function keys below the signature line, and the signature line shall be on the lowest portion of the screen.

1.13.

Staffed Checkout Aisle means any checkout aisle (including a customer service desk, and any counter that may use POS Terminals) where a POS Terminal is placed and which is staffed by a Trader Joe's employee (who may be assigned to multiple aisles simultaneously) to assist customers in paying for products or services.

1.14.

Tactually Discernable Keypad means a number keypad on which each key is tactually

discernable from surrounding surfaces and adjacent keys. Numeric keys shall be arranged in a 12 key ascending telephone keypad layout. The number five key shall be tactually distinct from the other keys by means of a raised dot. The following function keys on the Tactually Discernable Keypad shall be to the right of the number keys: Enter (Accept), colored green and marked with a raised circle; Cancel, colored red and marked with a raised "X," and Correct, colored yellow and marked with a raised left arrow. All text and numerals on all keys shall be colored to contrast with the key color.

2. Duration and Geographic Scope of Agreement.

The Full Agreement shall apply to Trader Joe's stores in every State in the United States in which Trader Joe's operates. The terms of the Full Agreement shall remain in effect from the Effective Date until December 31, 2008. The only obligations of either party that survive beyond December 31, 2008 are those described in Sections 4 and 6 of the Confidential Addendum, which shall at all times remain in effect and enforceable.

3. Provisions Regarding POS Terminals with Integrated Tactually Discernable Keypad.

3.1. Development and Testing.

3.1.1. Trader Joe's has been, and currently is, engaged in the process of developing and testing a POS Terminal with Integrated Tactually Discernable Keypad for use in Trader Joe's stores. Prior to the first Point of Sale Terminal with Integrated Tactually Discernable Keypad being placed in a Trader Joe's store for use by customers, Trader Joe's will meet with Claimants to demonstrate and test the Point of Sale Terminal with Integrated Tactually Discernable Keypad and to elicit input regarding the operation, usability and flow of the device. Trader Joe's shall consider in good faith all written comments given by Claimants regarding the demonstration, provided that such comments and suggestions are consistent with this Agreement and the ADA, and provided further that such comments are communicated by Counsel in writing on behalf of the Claimants to Trader Joe's within ten (10) days after the demonstration. Trader Joe's shall provide Counsel with a specific response in writing regarding Trader Joe's position on each such comment within ten (10) days thereafter. Claimants will participate in at least one further testing session to be conducted in a Trader Joe's store on a Point of Sale Terminal with Integrated Tactually Discernable Keypad that is operational and being used by Trader Joe's customers.

3.1.2. For thirty days, beginning no later than August 31, 2006, Trader Joe's will install three (3) Point of Sale Terminals with Integrated Tactually Discernable Keypads for testing purposes in three (3) Trader Joe's stores in California for a total of nine (9) units. Trader Joe's will accept comments from blind and visually-impaired shoppers during this testing period regarding the terminals.

3.1.3. Assuming the testing performed pursuant to paragraph 3.1.2 above is successful, by no later than September 30, 2006, Trader Joe's will install an additional three Point of Sale Terminals with Integrated Tactually Discernable Keypads in each of twelve (12) stores, for a total of thirty-six (36) additional terminals. The parties have agreed on the locations of these stores.

3.2. Initial Rollout to Existing Trader Joe's Stores.

By no later than November 15, 2006, Trader Joe's will install POS Terminals with Integrated Tactually Discernable Keypads in at least thirty-three percent of the Staffed Checkout Aisles in each Existing Trader Joe's store in the United States and at each New Trader Joe's Store. To the extent practicable, the POS Terminals with Integrated Tactually Discernable Keypads installed pursuant to this section shall be placed in at least the following aisles in each store as follows: one at the Express Aisle if the store has an Express Aisle, one at the first full service aisle closest to the entry door, and one at each aisle designated as wheelchair accessible.

- 3.3. Full Rollout of POS Terminals with Tactually Discernable Keypads in Trader Joe's Stores.
On a date during the second quarter of 2007, to be determined by the Parties, the Parties shall begin negotiating in good faith regarding the schedule for installing POS Terminals with Integrated Tactually Discernable Keypads at all of the Staffed Checkout Aisles in all of the Trader Joe's stores in the United States. Such negotiations shall continue for a period not to exceed sixty (60) days (Negotiation Period). If the Parties reach agreement on the installation schedule, that agreement will be memorialized in writing as a further Addendum to the Agreement. If the Parties have not reached agreement on the installation schedule, and if the Parties have not agreed to an extension of the Negotiation Period, this issue shall be submitted to binding arbitration pursuant to Section 5.4 of the Agreement.
- 3.4. Rollout Information to Claimants.
On December 15, 2006, Trader Joe's will provide Counsel with written confirmation that POS Terminals with Integrated Tactually Discernable Keypads have been installed pursuant to the terms of Section 3.2.
- 3.5. Maintenance of POS Terminals with Integrated Tactually Discernable Keypads and Staffed Checkout Aisles.
For any stores where fewer than all of the Staffed Checkout Aisles have POS Terminals with Integrated Tactually Discernable Keypads (or Equivalent Terminals), Trader Joe's will use its best efforts to maintain such terminals in operable, working condition except for isolated or temporary interruptions in service due to maintenance or repairs. Trader Joe's will use its best efforts to ensure that aisle closures in such stores during off hours or made for the purpose of maintenance, training or other operational needs do not result in the complete absence of a Staffed Checkout Aisle with a functioning POS Terminal with Integrated Tactually Discernable Keypad.
- 3.6. Feedback from Claimants.
On a date during the first quarter of 2007 that is mutually agreed to by the Parties, and periodically thereafter as requested by Claimants, but not more than once each year during the term of this Agreement, Trader Joe's will meet by telephone or in person with representatives of Claimants to elicit input and receive feedback regarding the implementation of this Agreement and any other issue regarding technology used by Trader Joe's customers and its effect on customers who are blind or visually impaired.

4. Training of Trader Joe's Personnel.

Trader Joe's will develop a training program and train the appropriate personnel regarding, inter alia, the roll-out of POS Terminals with Integrated Tactually Discernable Keypads, protocols for complying with Section 3.5 above, and appropriate communications with visually-impaired customers regarding use of such terminals. The details of this training will be in the sole discretion of Trader Joe's, but will include features to ensure that appropriate personnel are apprised (i) when POS Terminals with Integrated Tactually Discernable Keypads are introduced to Trader Joe's stores, (ii) where the terminals are located within the store; (iii) how and when to direct visually-impaired customers to the terminals; (iv) the manner in which persons with visual impairments will use the terminals; and (v) generally how to provide effective service to customers with visual impairments. In addition, appropriate personnel will be trained to allow visually-impaired customers to sign a paper receipt instead of the POS terminal upon request by the customer. Training pursuant to this section will occur in a timely manner to ensure effective implementation of the provisions of the Full Agreement.

5. Procedures in the Event of Disputes.

5.1. Notice of Non-Compliance.

If a party believes that the other party has not complied with any provision of the Full

Agreement, that party shall provide the other party with Notice of Non-compliance containing the following information:

5.1.1. the alleged act of non-compliance;

5.1.2. a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

5.1.3. a statement of the remedial action sought by the initiating party; and

5.1.4. a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

5.2. Response.

Within forty-five (45) days of receipt of a Notice provided pursuant to Section 5.1, the non-initiating party shall respond to the initiating party in writing.

5.3. Meet and Confer.

Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

5.4. Submission to Binding Arbitration.

5.4.1. If the matters raised in a Notice provided pursuant to Section 5.1 are not resolved within thirty (30) days of the initial meet and confer required by Section 5.3, either party may submit the unresolved matters to binding arbitration as set forth herein.

5.4.2. The arbitration hearing shall be conducted by an arbitrator affiliated with JAMS, in accordance with the JAMS Streamlined Arbitration Rules & Procedures. However, those Rules will be modified as necessary to ensure that the hearing is held within thirty (30) days of the submission to arbitration, and that a written decision on the matter is rendered within sixty (60) days of the first hearing date.

6. Notice or Communication to Parties

Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by facsimile or email and United States mail, addressed as follows:

To Claimants:

Linda M. Dardarian
c/o Goldstein, Demchak, Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Fax No.: (510) 835-1417

Elaine B. Feingold
Law Office of Elaine B. Feingold
1524 Scenic Avenue
Berkeley, CA 94708

To Trader Joe's:

Doug Yokomizo
Trader Joe's Company, Inc.
800 S. Shamrock Avenue
Monrovia, CA 91016

7. Modification in Writing

No modification of the Full Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

8. Joint Press Release to Announce the Rollout Program for POS Terminals with Integrated Tactually Discernable Keypads.

The Parties will issue a joint press release on a mutually agreed upon date within thirty days after the beginning of the roll-out described in Section 3.2, above. If the parties cannot agree on a press release, any party may issue its own release provided the release is distributed to all parties at least forty-eight hours prior to release.

9. No Other Representations

Each party to the Full Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in the Full Agreement.

10. Full Agreement Has Been Read.

The Full Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

11. No Assignment.

No party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

12. Agreement Binding on Assigns And Successors

The Full Agreement shall bind any assigns and successors of the Parties. Counsel shall be notified in writing within thirty (30) days of the existence, name, address and telephone number of any assigns or successors of Trader Joe's.

13. Force Majeure

The performance of Trader Joe's under this Settlement Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, unavailability of parts, equipment or materials through normal supply sources, or defects or other problems with the software necessary to support the POS Terminals with Integrated Tactually Discernable Keypads. If Trader Joe's seeks to invoke this Section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Trader Joe's will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to section 5 of this Settlement Agreement.

14. No Admission of Liability.

In entering into the Full Agreement, Trader Joe's does not admit, and specifically denies, that it has violated or failed to comply with any Access Laws.

15. Authority.

The persons executing the Full Agreement each represent and warrant that he or she has the authority to enter into the Full Agreement, and to resolve the matters set forth in the Full Agreement, on behalf of the Party for whom he or she is executing the Full Agreement, and that no further approval is necessary in order for the Full Agreement to be binding on the Party for whom he or she is executing.

16. Integrated Agreement.

The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

17. Rules of Construction.

Each party and its legal counsel have reviewed and participated in the drafting of the Full Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Full Agreement in their entirety.

18. Triplicate Originals/Execution in Counterparts.

All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

Parties

- **Trader Joes Company, Inc.**
By: Trader Joe's Company, Inc.
- **American Council of the Blind**
By: Melanie Brunson, Executive Director
- **American Foundation for the blind**
By: Paul Shroeder, Director, Government Affairs
- **California Council of the Blind**
By: Jeff Thom, President

Approved as to From:

- By: Doug Yokomizo, Esq., Attorney for Trader Joe's
- **GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN**
By: Linda M. Dardarian, Esq.
- **LAW OFFICE OF ELAINE B. FEINGOLD**
By: Lainey Feingold, Esq.

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