

## Complaint

## IN THE MATTER OF

**WEIDER NUTRITION INTERNATIONAL, INC.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3983; File No. 9823035**Complaint, November 15, 2000--Decision, November 15, 2000*

This consent order addresses Weider Nutrition's advertisements claiming that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. The complaint alleges that the Respondent could not substantiate its claims regarding PhenCal and PhenCal 106. The consent order requires Weider Nutrition to pay \$400,000.00 in consumer redress and to have competent and reliable scientific substantiation for any future claims that PhenCal and PhenCal 106: (1) cause significant weight loss; (2) significantly increase a person's ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as "Phen-Fen"; (6) are safe when used to promote or maintain weight loss; (7) the safety of such product or program; (8) the effect of such a product on a condition or disease; (9) the comparative affect or their product to any other product. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. The order provides a safe harbor not prohibiting representations that permitted by a standard promulgated by the Food and Drug Administration for labeling or in a drug approval.

*Participants*

For the Commission: *Lemuel W. Dowdy, Laura D. Koss, Joni Lupovitz, Richard Cleland, Elaine D. Kolish, and BE.*

For the Respondents: *Claude C. Wild III, Patton Boggs.*

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Weider Nutrition International, Inc. ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

## Complaint

1. Respondent Weider Nutrition International, Inc. is a Delaware corporation with its principal office or place of business at 2002 South 5070 West, Salt Lake City, Utah 84104.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including PhenCal and PhenCal 106, both of which contain DL-Phenylalanine, L-Tyrosine, L-Glutamine, L-5-Hydroxytryptophan, L-Carnitine, Chromium Picolinate, and Vitamin B6. PhenCal and PhenCal 106 are "foods" and/or "drugs," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for PhenCal 106 and PhenCal have appeared in numerous publications, including but not limited to, USA Today, the Washington Post, and the New York Times newspapers.

3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for PhenCal and PhenCal 106, including but not necessarily limited to the attached Exhibits A through C. These advertisements and promotional materials contain the following statements:

A. A newspaper advertisement (Exhibit A):

**Proven: Effective As Prescription Treatments** In a 90 day clinical trial, overweight subjects using PhenCal 106 and on a controlled diet and exercise regimen lost an average of 27 pounds. These results are comparable to results of similar studies performed on prescription weight loss treatments.

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**Proven: To Decrease Food Cravings** In a separate study, PhenCal 106 patients on a low calorie diet and exercise regimen reduced the average number of binges by 73% . . . .

**Proven: Safe Without a Prescription** PhenCal 106 was shown to work effectively and without any significant side effects during a two-year open controlled study.

- B. A brochure mailed to consumers who request information about PhenCal 106 (Exhibit B):

In a 90-day trial, participants using PhenCal 106 reduced carbohydrate binging and craving and lost an average of 27 pounds. When compared to similar studies of prescription treatments (Phen-Fen) PhenCal 106 was shown to be as effective.

In addition, a two-year clinical study showed that the PhenCal 106 user was 292% less likely to regain the lost weight than someone who had not used PhenCal 106. In fact, PhenCal 106 has been proven to help prevent weight regain after 2 years of use.

- C. A newspaper advertisement (Exhibit C):

**Proven Safe Without a Prescription** Unlike diet pills or prescription drug treatments, PHENCAL does not contain any stimulants or diuretics. It is not designed for you to skip meals or >burn fat=. Instead, it allows you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.\*

**Proven to Decrease Food Cravings** Feelings of hunger are controlled by regulating the neurotransmitters in the brain. If there is an imbalance of these brain chemicals, cravings and feelings of distress can occur. PHENCAL actually helps normalize the amount of these chemicals

## Complaint

and helps you resist the urge to splurge and regain, or yo-yo back and forth.\*

**Proven Safe & Effective in Clinical Trials** In a human trial, PHENCAL promoted weight loss at levels comparable to those shown in other clinical trials for prescription drug treatments for weight loss. PHENCAL subjects had reduced carbohydrate bingeing and craving and lost an average of 27 pounds in 90 days.\*

Fine print disclosure at bottom of page: "\*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat or prevent any disease."

5. Through the means described in Paragraph 4, respondents have represented, expressly or by implication, that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Significantly increase a person=s ability to maintain a reduced calorie diet and exercise regimen.
- C. Significantly reduce food cravings and eating binges.
- D. Prevent the regaining of lost weight.
- E. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- F. Are safe when used to promote or maintain weight loss.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the

## Complaint

representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that clinical studies prove that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Prevent the regaining of lost weight.
- C. Reduce food cravings and eating binges.
- D. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- E. Are safe.

9. In truth and in fact, the clinical studies referred to in respondent=s advertisements do not prove that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Prevent the regaining of lost weight.
- C. Reduce food cravings and eating binges.
- D. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- E. Are safe.

Complaint

10. Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

11. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fifteenth day of November, 2000, has issued this complaint against respondent.

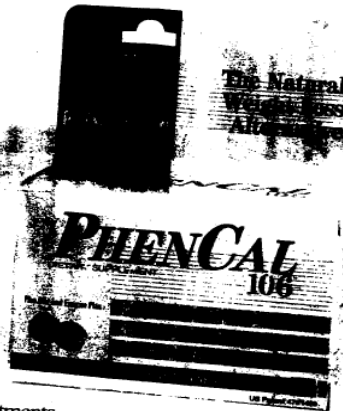
By the Commission.

Complaint Exhibits

Complaint Exhibits

EXHIBIT A

**YOU NO LONGER NEED TO CHOOSE  
BETWEEN THE DANGERS  
OF BEING OVERWEIGHT  
AND THE DANGERS  
OF DIET DRUGS**



Regulation of neurotransmitters in the brain helps control feelings of hunger. PhenCal naturally helps normalize the levels of neurotransmitters in your brain and helps you resist the urge to overeat.

**Proven: Safe Without A Prescription**

PhenCal 106™ was shown to work effectively and without any significant side effects during a two-year open controlled study.

Unlike prescription treatments, PhenCal 106™ contains all-natural ingredients and does not

**Proven: Effective As Prescription Treatments**

In a 90 day clinical trial, overweight subjects using PhenCal 106™ and on a controlled diet and exercise regimen lost an average of 27 pounds. These results are comparable to results of similar studies performed on prescription weight loss treatments.

contain any stimulants. This patented formula of amino acids, minerals and other nutrients promotes balanced levels of neurochemicals so that healthy eating patterns can be established.

PhenCal 106™ is not designed for you to skip meals or "burn" fat. Instead, it helps you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.

**Proven: To Decrease Food Cravings**

In a separate study PhenCal 106™ patients on a low calorie diet and exercise regimen reduced the average number of binges by 73%.

The amino acids in PhenCal 106™ are precursors to the brain chemicals responsible for your appetite. In other words, PhenCal 106™ naturally helps normalize your desire for food, instead of synthetically suppressing it.

Why risk the potential side effects associated with prescription treatments when PhenCal 106™ can produce comparable weight loss results? Depend on the all-natural alternative to prescription treatments - PhenCal 106™.

Not a diet supplement product. Use only when used in conjunction with an overall diet modification and exercise program. Offered with every bottle of PhenCal 106™ is a free diet and exercise plan.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

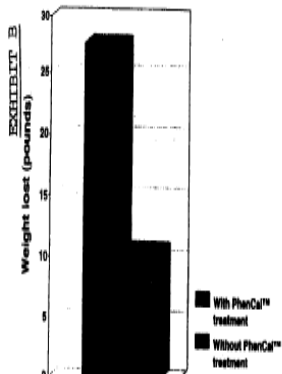
Need more proof? For free information or questions, call 1-888-PHENCAL. Exclusively from Wedder Nutrition, U.S. Patent #4,781,429 & 5,188,094 & Patents Pending.



Complaint Exhibits

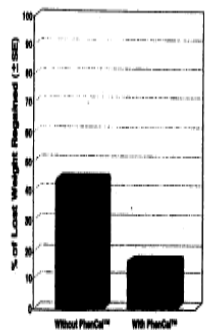
**What Have the Studies Shown?**

In a 90-day trial, participants using PhenCal 106™ reduced carbohydrate binging and craving and lost an average of 27 pounds.<sup>1</sup> When compared to similar studies of prescription treatments (Phen-Fen) PhenCal 106™ was shown to be as effective.



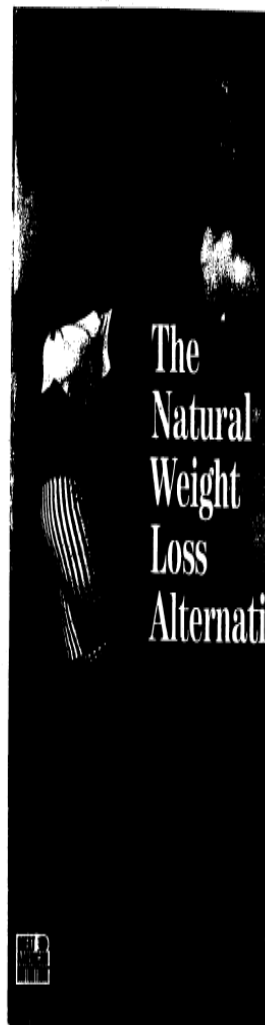
Based on a 90 day clinical trial involving 27 subjects on a controlled diet & exercise regimen

In addition, a two-year clinical study showed that the PhenCal 106™ user was 292% less likely to regain the lost weight than someone who had not used PhenCal 106™. In fact, PhenCal 106™ has been proven to help prevent weight regain after 2 years of use.<sup>2</sup>



Based on a 2 year trial involving 130 subjects

**PHENCAL**  
DIETARY SUPPLEMENT  
**106**  
Diet and Exercise Pla



Great American Diet™  
is another fine brand of  
Water-Soluble L-Carnitine!  
300 mg. 95% Pure  
Salt Lake City, Utah 84119

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## Complaint Exhibits

# PHENCAL

DIETARY SUPPLEMENT

## 106

Diet and Exercise Plan

### What Is PhenCal 106™?

PhenCal 106™ is a patented weight-loss dietary supplement containing amino acids and other nutrients that help regulate chemicals in the brain. These chemicals, called neurotransmitters, play a critical roll in appetite. When neurotransmitters are out of balance, cravings and feelings of distress can occur.

PhenCal 106™ helps balance levels of neurotransmitters, which are then utilized by the brain when needed. They normalize the body's "reward system," promoting feelings of satisfaction.

### How Does PhenCal 106™ Work?

PhenCal 106™ contains the amino acids DL-Phenylalanine, L-5 Hydroxytryptophan, and others which are precursors to the neurotransmitters responsible for appetite.

Not enough of one chemical or too much of another has a profound effect on feelings of hunger and how much we eat. PhenCal 106™ actually helps normalize the levels of neurotransmitters and helps you resist the urge to overeat.

PhenCal 106™ enhances weight loss from diet and exercise by warding off cravings and impulses to binge, particularly carbohydrates. Studies show that it works as effectively as prescription weight-loss treatments without the side effects.

### What Are The Risks Of PhenCal 106™?

The studies have not shown any significant side effects! A two-year, controlled study showed PhenCal 106™ to be effective and free of any significant side effects.<sup>1</sup>

Even after two years of human clinical studies, PhenCal 106™ has never produced a single major side effect, no heart disease, no hypertension, not even fatigue. Additionally, because it contains no stimulants or diuretics, it doesn't produce the dry mouth, diarrhea, frequent urination, or feelings of anxiety often associated with "diet pills".

In contrast, Phen-Fen consists of PhenTermine (a weak amphetamine) and Fenfluramine. The combination of these drugs, some doctors and scientists believe, is responsible for primary pulmonary hypertension, valvular heart disease, and long term changes in brain cells.

### Who Can Benefit From PhenCal 106™?

PhenCal 106™ can benefit anyone on a weight loss program consisting of proper diet and exercise. PhenCal 106™ is designed to help normalize, rather than suppress, the appetite so that healthy eating habits may be established. PhenCal 106™ is not designed to help skip meals or "burn" fat. Like any weight-loss product, it will only work with an overall diet modification and exercise plan, as is included with PhenCal 106™.

### Who Should Not Use PhenCal 106™?

Do not use PhenCal 106™ if you are phenylketonuric or taking Monoamine Oxidase Inhibitor (MAOI) drugs. PhenCal 106™ is not intended for pregnant or lactating women. People with diabetes or hypoglycemia should use PhenCal 106™ only under the direction of a physician.

### How Does PhenCal 106™ Compare to Prescription Treatments?

	PHENCAL 106™	PHEN-FEN
• Contains Stimulants	NO	YES
• Life-threatening side effects	NO	YES
• Reduces craving & bingeing	YES	UNKNOWN
• Normalizes "reward system"	YES	UNKNOWN
• Prevents weight regain after 2 years	YES	UNKNOWN
• Enhances weight loss*	YES	YES
• Supported by human clinical trials	YES	YES

\* when used with a diet & exercise program

### Where Can I Get PhenCal 106™?

PhenCal 106™ is a patented formula exclusively distributed by Great American Nutrition.

It is sold in fine drug, grocery, and health food stores throughout the U.S.

### Where Can I Get More Information?

For more information or questions call 1-800-PHENCAL

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

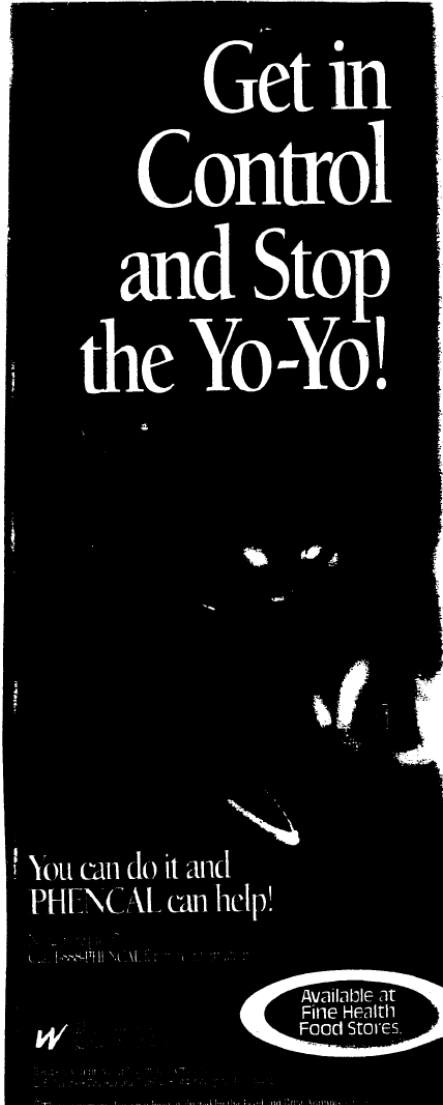
1. *Ann. Com Ther Res* 1992; 40: 217-223

2. *Ann. Com Ther Res* 1992; 40: pages 197



Complaint Exhibits

**Get in  
Control  
and Stop  
the Yo-Yo!**



You can do it and  
PHENCAL can help!

Call 1-888-PHENCAL for more information.

Available at  
Fine Health  
Food Stores.

**W**

Schiff

Leading the Way For Over 60 Years

EXHIBIT C

**PHENCAL**  
AS EFFECTIVE AS  
PRESCRIPTION TREATMENTS\*

**Proven Safe Without a Prescription**

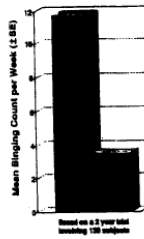
Unlike diet pills or prescription drug treatments, PHENCAL™ does not contain any stimulants or diuretics. It is not designed for you to skip meals or "burn fat". Instead, it allows you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.\*

**Proven to Decrease Food Cravings**

Feelings of hunger are controlled by regulation of neurotransmitters in the brain. If there is an imbalance of these brain chemicals, cravings and feelings of distress can occur. PHENCAL™ actually helps normalize the amount of these chemicals and helps you resist the urge to splurge and regain, or yo-yo back and forth.\*

**Proven Safe & Effective in Clinical Trials**

In a human trial, PHENCAL™ promoted weight loss at levels comparable to those shown in other clinical trials for prescription drug treatments for weight loss. PHENCAL™ subjects had reduced carbohydrate bingeing and craving and lost an average of 27 pounds in 90 days.\*



**Schiff**  
Leading the Way For Over 60 Years

Decision and Order

**DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of (30) days, now in further conformity with the procedure prescribed in ' 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Weider Nutrition International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2002 South 5070 West, Salt Lake City, Utah 84104.

## Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDERDEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondent" shall mean Weider Nutrition International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. ' 44.
4. AFood@ shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. ' 55.
5. ADrug@ shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. ' 55.
6. ADisease@ shall mean damage to an organ, part, structure, or system of the body such that it does not function properly (*e.g.*, cancer, cardiovascular disease) or a state of health leading to such dysfunctions (*e.g.*, hypertension); except that diseases resulting from essential nutrient deficiencies (*e.g.*, scurvy, pellagra) are not included in this definition.



## Decision and Order

**I.**

**IT IS ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of PhenCal 106 or PhenCal or any other product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. That such product or program causes, promotes, or assists in causing significant weight loss or fat loss;
- B. That such product or program significantly increases a person's ability to maintain a reduced calorie diet and exercise regimen;
- C. That such product or program reduces food cravings, eating binges, or the urge to overeat;
- D. That such product or program prevents the significant regaining of lost weight;
- E. That such product or program is as effective as the prescription weight loss treatment commonly known as "Phen-Fen" or any other prescription weight loss treatment; or
- F. That such product or program is safe when used to promote or maintain weight loss,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

## Decision and Order

**II.**

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

- A. The safety of such product or program;
- B. The effect of such product or program on any disease; or
- C. The comparative or superior health benefit of such product or program with respect to any other product or program,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

**III.**

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study or research.

**IV.**

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

## Decision and Order

**V.**

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

**VI.**

**IT IS FURTHER ORDERED** that, no later than the date this order becomes final, respondent shall pay to the Federal Trade Commission the sum of four hundred thousand dollars (\$400,000), under the following terms and conditions:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.
- B. The funds paid by respondent, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of PhenCal in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein



## Decision and Order

provided shall be deemed a payment of any fine, penalty or punitive assessment.

- C. Respondent relinquishes all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

**VII.**

**IT IS FURTHER ORDERED** that respondent Weider Nutrition International, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

## Decision and Order

**VIII.**

**IT IS FURTHER ORDERED** that respondent Weider Nutrition International, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

**IX.**

**IT IS FURTHER ORDERED** that respondent Weider Nutrition International, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

## Decision and Order

**X.**

**IT IS FURTHER ORDERED** that respondent Weider Nutrition International, Inc., and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

**XI.**

This order will terminate on November 15, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

## Analysis to Aid Public Comment

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Weider Nutrition International, Inc. (hereinafter "Weider").

The proposed consent order has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement=s proposed order.

This matter involves advertisements for a dietary supplement called PhenCal or PhenCal 106. Advertisements claimed that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. These advertisements appeared in major newspapers such as the New York Times, the Washington Post, and USA Today.

The proposed complaint alleges that Weider could not substantiate claims that PhenCal and PhenCal 106: (1) cause significant weight loss; (2) significantly increase a person=s ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as "Phen-Fen"; and (6) are safe when used to promote or maintain weight loss. The complaint also alleges that Weider made false representations that claims (1), (3), (4), (5), and (6) above, had been scientifically proven.

## Analysis to Aid Public Comment

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent, when advertising any food, drug, dietary supplement or program, to possess competent and reliable scientific evidence before making claims (1) through (6) above.

Part II of the proposed order requires respondent, when advertising any food, drug, dietary supplement, or program, to possess competent and reliable scientific evidence before making claims relating to:

- A. The safety of such product or program;
- B. The effect of such product or program on any disease; or
- C. The comparative or superior health benefit of such product or program with respect to any other product or program.

Part III prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study or research in an advertisement for any food, drug, dietary supplement or program.

Part IV allows the respondent to make representations for any drug that are permitted in labeling for that drug under any tentative final or final Food and Drug Administration ("FDA") standard or under any new drug application approved by the FDA.

Part V allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VI requires respondent to pay \$400,000 to the Commission. These funds will be used for consumer redress or, if that is impracticable, the funds will be paid to the United States Treasury.

Analysis to Aid Public Comment

*Analysis to Aid Public Comment*

Part VII requires respondent to retain, and make available to the Commission, upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any materials that it relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

The remainder of the proposed order contains standard requirements that the respondent distribute the order to relevant personnel, that respondent notify the Commission of any changes in corporate structure that might affect compliance with the order and that the respondent file one or more reports detailing its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way its terms.

## Complaint

## IN THE MATTER OF

**FIRSTPLUS FINANCIAL GROUP, INC.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED  
VIOLATIONS OF THE TRUTH IN LENDING ACT*Docket C-3984; File No. 9923121**Complaint, November 28, 2000--Decision, November 28, 2000*

This consent order addresses FirstPlus Financial's advertisements promoting high loan-to-value loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that the advertisements are deceptive and misleading. The consent order prohibits FirstPlus from misrepresenting the comparative savings or benefits of consolidating debt, including the circumstances the circumstances under which consumers can save money when consolidating, the monthly saving from consolidation, the eligibility of a consumer to receive a loan, the amount of loan proceeds to be distributed to consumers or to third parties on behalf of consumers. The order also prohibits Respondent from stating the comparative benefit of their consolidation program in comparison to another without accurately, clearly, and conspicuously all of the information consumers need to evaluate the comparison and from giving examples of cost saving or benefits without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable transactions. In addition, the order requires Respondent to comply with disclosures requirements of the TILA and Regulation Z when stating the amount or percentage down required, the number or payments or period of repayment, the amount of any payment, or the amount of any finance charge.

*Participants*

For the Commission: *William Haynes, Ellen Finn, Rolando Berrelez, Hannah Stires, Jessica Rich, David Medine, and BE.*

For the Respondents: *Paul H. Schieber, Blank, Rome, Comisky & McCauley and Trey Monsour, Verner, Lipfert, Bernhard, McPherson & Hand.*



## Complaint

**COMPLAINT**

The Federal Trade Commission, having reason to believe that FirstPlus Financial Group, Inc., a corporation (referred to as "respondent" or AFirstPlus@), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. ' ' 45-58, as amended, and the Truth in Lending Act, 15 U.S.C. ' ' 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. ' 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent FirstPlus Financial Group, Inc., is a Nevada corporation with its principal office or place of business at 1600 Viceroy Drive, Dallas, Texas 75235.
2. Respondent originates, purchases, services, and sells consumer finance transactions. FirstPlus=s loan products include debt consolidation or home improvement loans secured by second liens on residential real property where the total outstanding debt on the dwelling exceeds the fair market value of the dwelling (known as Ahigh loan-to-value@ or AHLTV@ loans), non-conforming home equity loans (Ahome equity loans@), and personal consumer loans.
3. Respondent has disseminated advertisements to the public that promote consumer credit transactions, as the terms Aadvertisement,@ and Aconsumer credit,@ are defined in Section 226.2 of Regulation Z, 12 C.F.R. ' 226.2, as amended.
4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. ' 44.
5. Respondent has disseminated, or has caused to be disseminated, advertisements in various media promoting HLTV loans, home equity loans, and other types of consumer credit transactions (Acredit advertisements@) including but not necessarily limited to the attached FirstPlus Exhibits A and B.

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FirstPlus Exhibits A and B are direct-mail advertisements. These credit advertisements contain the following statements:

- A. [Exhibit A contains a non-negotiable coupon, which is similar in appearance to a check, in the amount of \$34,980.]

Cash in on the savings with a FIRSTPLUS HOME EQUITY LOAN.

Pay off high-interest credit cards, eliminate personal loan payments or consolidate credit cards and other loans into one **lower** monthly payment. And SAVE money!

Here=s an example of the savings you could realize.

Credit Card #1	\$245	Paid Off
Credit Card #2	\$210	Paid Off
Department Store Cards	\$125	Paid Off
Auto Loan	\$293	Paid Off
College Loan	\$110	Paid Off

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TOTAL PAYMENTS	\$983	\$375
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**Your One Monthly Payment is now \$608 Less!**

- B. [Exhibit B contains a non-negotiable coupon, which is similar in appearance to a check, in the amount of \$42,800.00.]

AWe are pleased to inform you that your home at [address] has recently been verified as eligible for a low interest 2<sup>nd</sup> trust

## Complaint

deed in the amount shown above. If you would like this amount increased or decreased please contact your agent below.@"

AThis program is offered to a very select group of individuals in your community of [city] on a limited basis. Your eligibility allows you to receive these funds in cash within 7-14 working days.@"

## FEDERAL TRADE COMMISSION ACT VIOLATIONS

COUNT I: Misrepresentation of Cost Savings

6. In advertisements, including but not necessarily limited to FirstPlus Exhibit A, respondent has represented, expressly or by implication that:

- A. Consumers, in general, will save money when consolidating existing debts into a FirstPlus home equity loan;
- B. The examples shown in respondent=s advertisements accurately illustrate the potential monthly savings of consolidating existing credit card balances and other loans into a FirstPlus home equity loan.

7. In truth and in fact,

- A. Consumers, in many instances, will not save money when consolidating existing debts into a FirstPlus home equity loan. For many types of existing debts, depending on the interest rate and/or repayment terms of the existing debt, consumers will pay more per month and/or pay more over time when consolidating existing debts into a FirstPlus loan.

## Complaint

- B. The examples shown in respondent=s advertisements do not accurately illustrate the potential monthly savings of consolidating existing debts into a FirstPlus loan. Based on generally available interest rates and repayment terms on credit card balances and other loans, consumers would save far less than the illustrated savings, or pay more per month following the original expiration date of the existing debt.

Therefore, respondent=s representations, as alleged in Paragraph 6, were, and are, false or misleading.

8. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. ' 45(a).

COUNT II: Misrepresentation of Credit Approval

9. In advertisements, including but not necessarily limited to FirstPlus Exhibit B, respondent has represented, expressly or by implication, that each recipient of respondent=s solicitations who applies for the loan advertised will receive such a loan.

10. In truth and in fact, not each recipient of respondent=s solicitations who applies for the loan advertised will receive such a loan. Therefore, respondent=s representation as alleged in Paragraph 9, was, and is, false or misleading.

11. Respondent=s practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. ' 45(a).

Count III: Misrepresentation of Loan Disbursement

12. In advertisements, including but not necessarily limited to FirstPlus Exhibits A and B, respondent has represented, expressly

## Complaint

or by implication, that consumers will receive funds for the full loan amount stated in their advertisements (e.g., \$34,980).

13. In truth and in fact, in many instances, consumers do not receive funds for the full loan amount stated in respondent=s advertisements. In many instances, respondent deducts substantial origination fees and closing costs (e.g. 10.43%) from the advertised loan amount and disburses only the remaining amount to consumers. Therefore, respondent=s representation as alleged in Paragraph 12, was, and is, false or misleading.

14. Respondent=s practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. ' 45(a).

COUNT IV: Failure to Disclose and Failure to Disclose  
Adequately Credit Terms

15. In advertisements, including but not necessarily limited to FirstPlus Exhibit A, respondent has represented, expressly or by implication, that consumers can obtain a loan at the terms stated in the advertisements, including but not necessarily limited to the monthly payment amount.

16. These advertisements fail to disclose, or fail to disclose adequately, additional terms pertaining to the credit offer, such as annual percentage rate and terms of repayment. This additional information, if provided, appears in fine print in the advertisements and would be material to consumers in deciding whether to apply for a loan from respondent. The failure to disclose, or failure to disclose adequately, this information, in light of the representation made, was, and is, a deceptive practice.

17. Respondent=s practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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TRUTH IN LENDING ACT AND REGULATION Z  
VIOLATIONSCount V: Failure to Disclose Clearly and Conspicuously, Required  
Information

18. In advertisements, including but not necessarily limited to FirstPlus Exhibit A, respondent has stated a monthly payment amount required to repay a loan but has failed to disclose clearly and conspicuously, one or more of the following items of information required by Regulation Z: the annual percentage rate and/or the terms of repayment.

19. The credit disclosures required by Regulation Z, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

20. Respondent=s practices violate Section 144 of the Truth in Lending Act, 15 U.S.C. ' 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. ' 226.24(c).

THEREFORE, the Federal Trade Commission this twenty-eighth day of November, 2000, has issued this complaint against respondent.

By the Commission.

Decision and Order

**DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act and the Truth in Lending Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comment filed by an interested person pursuant to ' 2.34 of its Rules, now in further conformity with the procedure prescribed in ' 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent FirstPlus Financial Group, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located in the City of Dallas, State of Texas.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER DEFINITIONS

1. "Clearly and conspicuously" shall mean as follows:
  - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to notice, hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to notice, read and comprehend it.
  - b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "Respondent" as used herein shall mean FirstPlus Financial Group, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
3. "Commerce" as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 44.



## Decision and Order

**I.**

**IT IS ORDERED** that respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit in or affecting commerce, as "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. ' 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent the comparative or absolute savings or benefits of consolidating existing credit card balances and other loans into a FirstPlus loan, including but not limited to misrepresenting:
  - 1. The circumstances under which consumers can save money when consolidating existing credit card balances and other loans into a FirstPlus loan.
  - 2. The monthly savings consumers will realize over the extended life of the FirstPlus loan.
  - 3. Other terms, conditions, or costs of a FirstPlus loan.
- B. Misrepresent an individual's eligibility, creditworthiness, or prior approval to receive a loan.
- C. Misrepresent the amount of loan proceeds to be disbursed to consumers, or misrepresent the amount of loan proceeds to be disbursed on consumers' behalf to third parties.
- D. State the dollar value of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, whether actual or hypothetical, without disclosing accurately, clearly and conspicuously, all material information needed to evaluate the comparison, such as loan amount(s), terms of repayment, and annual percentage rate(s) on the balances of the credit

## Decision and Order

transactions purportedly to be paid off with the FirstPlus loan.

- E. Use any example of the cost savings or benefits of a FirstPlus loan, compared to other consumer credit transactions, whether actual or hypothetical, unless such example is based on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions, such as, but not limited to, those published in the Federal Reserve Board's Statistical Release G.19 (AConsumer Credit@).
- F. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without complying with the Truth-in-Lending Act and Regulation Z, including the disclosure, accurately, clearly, and conspicuously, of all the terms required by the Truth-in-Lending Act and Regulation Z. (TILA, 15 U.S.C. §§ 1601-1667, as amended, and Regulation Z, 12 C.F.R. § 226, as amended).

**II.**

**IT IS FURTHER ORDERED** that respondent, and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

**III.**

**IT IS FURTHER ORDERED** that respondent, and its successors and assigns, shall, within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers, directors, managers, employees,

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agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and, for five (5) years after the date of service of this order, to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

**IV.**

**IT IS FURTHER ORDERED** that respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learn less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. Materials submitted pursuant to this Consent Decree and designated confidential shall be accorded the protections accorded to materials designated confidential under Federal Trade Commission Rule 4.10(e), 16 C.F.R. ' 4.10(e).

**V.**

**IT IS FURTHER ORDERED** that respondent, and its successors and assigns, shall within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the

## Decision and Order

Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

**VI.**

This order will terminate on November 28, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order, if such complaint is filed after the order has terminated pursuant to this Part.

*Provided further*, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

**STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND  
COMMISSIONERS MOZELLE W. THOMPSON AND  
THOMAS B. LEARY**

This matter is the Commission's first action brought against a consumer finance company for misrepresenting the savings that consumers would gain by consolidating their debts into a high loan-to-value (HLTV) loan. Accordingly, this case sends an important law enforcement message to companies engaged in this multi-billion dollar financial market that the Commission will look closely at HLTV transactions and take appropriate action when consumers are victimized by those who omit or misrepresent material facts relating to such loans.

Because this principle is so important, we also note that this case does not necessarily establish the full scope of relief that the Commission may seek in future cases. While the Commission's order B by providing for strong injunctive relief B supplies the full dose of all relief feasible in light of this particular respondent's weak financial situation, we believe that the Commission may consider pursuing additional relief in future cases involving deceptive HLTV loan advertising. Specifically, we expect that the Commission, in appropriate circumstances, would seek consumer redress or other monetary relief.

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from FirstPlus Financial Group, Inc. (AFirstPlus@).

*Analysis to Aid Public Comment*

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement=s proposed order.

Through direct mail, television, and online advertisements, FirstPlus has disseminated information promoting high loan-to-value (AHLTV@) loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that many of these advertisements are deceptive and misleading, and violate various provisions of the Federal Trade Commission Act (AFTC Act@), the Truth in Lending Act (ATILA@), and Regulation Z. Specifically, the complaint alleges that FirstPlus: (1) falsely represented in its advertising that consumers would save money when consolidating existing debts in a FirstPlus loan and that the examples shown in FirstPlus=s advertising accurately illustrate potential monthly savings; (2) falsely represented that each consumer receiving a solicitation from the company would actually receive a loan; (3) misrepresented that consumers would receive loans for the full amount stated in the company=s advertisement; (4) failed to adequately disclose credit terms for its loan products; and (5) failed to disclose clearly and conspicuously key information about the terms of its credit offers as required by the TILA and Regulation Z.

The proposed consent order (1) prohibits FirstPlus from misrepresenting the comparative or absolute savings or benefits of consolidating debt, including misrepresenting the circumstances under which consumers can save money when consolidating, and misrepresenting the monthly savings consumers will realize over the extended life of the FirstPlus loan; (2) prohibits FirstPlus from misrepresenting an individual=s eligibility to receive a loan; (3) prohibits FirstPlus from misrepresenting the amount of loan

*Analysis to Aid Public Comment*

proceeds to be disbursed to consumers, or misrepresenting the amount of proceeds to be disbursed on consumers= behalf to third parties; (4) prohibits FirstPlus from stating the savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without disclosing accurately, clearly, and conspicuously all material information needed by consumers to evaluate the comparison; (5) prohibits FirstPlus from using an example of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions; and (6) requires FirstPlus to comply with the disclosure requirements of the TILA and Regulation Z when stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

## Complaint

## IN THE MATTER OF

**TYCO INTERNATIONAL LTD.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT*Docket C-3985; File No. 0010208**Complaint, December 1, 2000--Decision, December 1, 2000*

This consent order addresses the \$4.2 billion acquisition by Tyco International Ltd. of Mallinckrodt Inc., the two largest producers of endotracheal tubes. The complaint alleges that the proposed acquisition, if consummated, would substantially lessen competition and to tend to create a monopoly in the Endotracheal Tube market in the United States. The order requires Respondent to divest its Sheridan line of endotracheal tube products to Hudson RCI, and to provide employee incentives for employees from the Sheridan line to accept employment and remain employed by Hudson.

*Participants*

For the Commission: *Michael Moiseyev, Ann Malester, Elizabeth Callison, Daniel P. O'Brien, Daniel P. Ducore, and BE.*

For the Respondents: *Chuck Koob and Brandi Katz, Simpson, Thatcher & Bartlett and Steve Newborn and John Scribner, Clifford, Chance, Rogers & Wells.*

**COMPLAINT**

The Federal Trade Commission (ACommission@), having reason to believe that Respondent, Tyco International Ltd. (ATyco@), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Mallinckrodt Inc. (AMallinckrodt@), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade



## Complaint

Commission Act, as amended, 15.U.S.C. ' 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. DEFINITIONS**

1. **AAcquisition Agreement@** means the Agreement and Plan of Merger By and Among Tyco Acquisition Corp. VI (NV), EVM Merger Corp. and Mallinckrodt Inc. Including Guarantee of Tyco International Ltd., dated June 28, 2000.
2. **AEndotracheal Tube@** means a device inserted into the trachea via the nose or mouth and used to maintain an open airway and to administer anesthesia or oxygen, and any related accessories attached to the device used to accomplish those ends.
3. **ARespondent@** means Tyco.

**II. THE PARTIES**

4. Respondent Tyco International Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Bermuda with its office and principal place of business located at The Zurich Center, Second Floor, 90 Pitts Bay Road, Pembroke HM08, Bermuda. Tyco's principal operating subsidiary in the United States is located at One Tyco Park, Exeter, New Hampshire 03833. Respondent Tyco, among other things, is engaged in the manufacture and sale of Endotracheal Tubes.
5. Mallinckrodt is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its principal executive offices located at 675 McDonnell Boulevard, St. Louis, Missouri, 63134. Mallinckrodt, among other things, is engaged in the manufacture and sale of Endotracheal Tubes.

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6. Pursuant to the Acquisition Agreement, Tyco will acquire 100 percent of the outstanding voting securities of Mallinckrodt.
7. Respondent and Mallinckrodt are, and at all times relevant herein have been, engaged in commerce, as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and are corporations whose businesses are in or affect commerce, as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

**III. THE ACQUISITION**

8. On June 28, 2000, Respondent and Mallinckrodt entered into an Agreement and Plan of Merger, under which Tyco is to acquire 100 percent of the voting securities of Mallinckrodt in a stock-for-stock transaction valued at approximately \$4.2 billion (AAcquisition@).

**IV. THE RELEVANT MARKETS**

9. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of Endotracheal Tubes.
10. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

**V. THE STRUCTURE OF THE MARKET**

11. The market for the manufacture and sale of Endotracheal Tubes in the United States is highly concentrated. Tyco accounts for approximately 14% of the Endotracheal Tube market in the United States. Mallinckrodt is the leading supplier of Endotracheal Tubes in the United States with a

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market share of 72%. The proposed acquisition would provide Tyco with a combined market share in the Endotracheal Tube market of over 86%.

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**VI. BARRIERS TO ENTRY**

12. The United States market for Endotracheal Tubes is characterized by significant barriers to entry. Entry into the endotracheal tube market in the relevant geographic area requires the development of a full line of products in a range of sizes and configurations, procurement of manufacturing equipment and establishment of production practices in conformity with FDA regulations, and development of a track record and customer acceptance. Entry into the Endotracheal Tube market in the United States would be relatively costly and is not likely to occur because sales opportunities would likely be too small to justify the costs and risks associated with new entry.

**VII. EFFECTS OF THE ACQUISITION**

13. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the Endotracheal Tube market in the relevant area in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC act, as amended, 15 U.S.C. ' 45, in the following ways, among others:
  - a. by eliminating actual, direct and substantial competition between Respondent and Mallinckrodt in the relevant market;
  - b. by increasing the likelihood that the combined Tyco/Mallinckrodt would increase prices of Endotracheal Tubes unilaterally; and
  - c. by reducing innovation in the relevant market.

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**VIII. VIOLATIONS CHARGED**

14. The Acquisition agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45.
15. The Acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of December, 2000, issues its Complaint against said Respondent.

By the Commission.

**DECISION AND ORDER**

The Federal Trade Commission ("Commission") having initiated an investigation of the acquisition by Tyco International Ltd. (ATyco@) of Mallinckrodt Inc. (AMallinckrodt@), and Respondent having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45; and

Respondent, its attorneys and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (AConsent Agreement@), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid

## Decision and Order

draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (AOrder@):

1. Respondent Tyco International Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Bermuda with its office and principal place of business located at The Zurich Center, Second Floor, 90 Pitts Bay Road, Pembroke HM08, Bermuda. Tyco's principal operating subsidiary in the United States is located at One Tyco Park, Exeter, New Hampshire 03833.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent and the proceeding is in the public interest.

**ORDER****I.**

## Decision and Order

**IT IS ORDERED** that, as used in this order, the following definitions shall apply:

- A ATyco@ means Tyco International Ltd., its directors, officers, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Tyco International Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B AMallinckrodt@ means Mallinckrodt Inc., its directors, officers, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Mallinckrodt Inc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C ARespondent@ means Tyco.
- D AHudson/RCI@ means Hudson Respiratory Care, Inc, a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 27711 Diaz Road, P.O. Box 9020, Temecula, California, 92589.
- E ACommission@ means the Federal Trade Commission.
- F AAcquirer@ means Hudson/RCI or the entity approved by the Commission to acquire the Assets To Be Divested pursuant to this order.
- G AAcquisition@ means the proposed acquisition by Tyco of Mallinckrodt pursuant to the Agreement and Plan of Merger By and Among Tyco Acquisition Corp. VI (NV), EVM Merger Corp. and Mallinckrodt Inc. Including Guarantee of Tyco International Ltd., dated June 28, 2000.

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- H AArgyle Facility@ means the facility located at Route 40, Argyle, New York in which Respondent manufactures the Sheridan Product Line.
- I AAssets to Be Divested@ means all of Tyco's assets (excluding receivables) as of the date the Consent Agreement is signed by Respondent, relating to the research, development, manufacture, marketing or sale of the Sheridan Product Line, including, but not limited to, the following assets:
- 1 all assets included in the Divestiture Agreement;
  - 2 all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
  - 3 a lease for the Argyle Facility together with appurtenances, licenses and permits;
  - 4 trade names, trademarks, brand names, formulations, contractual rights, Patents, trade secrets, technology, know-how, inventions, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, marketing and distribution information, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, software, information stored on management information systems, (and specifications sufficient for the Acquirer to use such information) and all data, contractual rights, materials and information regarding Regulatory Approvals relating to the Sheridan Product Line;
  - 5 inventory and storage capacity;



## Decision and Order

- 6 all rights under warranties and guarantees, express or implied;
- 7 all books, records, and files; and
- 8 all items of prepaid expense.
- J ACost@ means direct cash cost of labor.
- K ACurity Endotracheal Tubes@ means Tyco=s Endotracheal Tube products marketed under the Curity7 brand, manufactured in Thailand, and sold exclusively outside the United States.
- L ADivestiture Agreement@ means the Asset Purchase Agreement dated September 18, 2000, by and between Tyco Healthcare Group LP and Hudson RCI and all exhibits thereof, incorporated by reference into this order and made a part hereof as Confidential Appendix I, regardless of whether the purchase and sale of assets contemplated by such agreement is consummated.
- M ADivestiture Trustee@ means the trustee appointed pursuant to Paragraph IV. of this Order.
- N AEndotracheal Tube@ means a device inserted into the trachea via the nose or mouth and used to maintain an open airway and to administer anesthesia or oxygen, and any related accessories attached to the device to accomplish those ends.
- O AFDA@ means the United States Food and Drug Administration.
- P AGPO Customer@ means a group purchasing organization that negotiates contracts with suppliers of goods or services on behalf of members or customers of the organization.
- Q AGPO Customer Contract@ means any contract between any GPO Customer and Respondent relating to Endotracheal

## Decision and Order

Tubes existing as of the date this Order is placed on the public record, excluding any contract between any GPO Customer and Mallinckrodt existing as of the date this Order is placed on the public record.

- R AKey Employees@ means the key employees listed in Confidential Appendix II.
- S ANon-Public Acquirer Information@ means any information obtained by Respondent relating to the Sheridan Product Line and any information obtained by Respondent while providing assistance to the Acquirer as required by Paragraph III. of this Order. Non-Public Acquirer Information shall not include information already in the public domain and information that subsequently falls within the public domain through no violation of this Order by Respondent.
- T APatents@ means: (1) all patents and patent rights, patent applications, patents of addition, re-examinations, reissues, extensions, granted supplementary protection certificates, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patent and patent rights and any and all continuations and continuations-in part and divisionals relating exclusively to the Sheridan Product Line; and (2)(a) exclusive licenses to use all other patents and patent rights, patent applications, patents of addition, re-examinations, reissues, extensions, granted supplementary protection certificates, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patent and patent rights and any and all continuations and continuations-in part and divisionals relating in any way to the Sheridan Product Line used for the manufacture, sale, research, development, or distribution of Endotracheal Tubes; and (b) non-exclusive licenses to such other patents and patent rights, patent applications, patents of addition, re-examinations, reissues, extensions, granted

## Decision and Order

supplementary protection certificates, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patent and patent rights and any and all continuations and continuations-in part and divisionals relating in any way to the Sheridan Product Line.

- U ARegulatory Approvals@ means approval by the FDA and any other governmental or regulatory approvals held by Tyco for the Sheridan Product Line as of the date of the Acquisition.
- V ASheridan Earnout Review@ means the receipt, review or auditing of any Non-Public Acquirer Information for the purposes of making payments pursuant to the asset purchase agreement between Tyco (as the successor-in-interest to The Kendall Company), Sheridan Catheter Corp. and David Sheridan, dated September 23, 1994.
- W ASheridan Product Line@ means all of Tyco's Endotracheal Tubes as of the date this Order is placed on the public record, excluding Tyco=s Curity Endotracheal Tubes.
- X ASheridan Sales Employees@ means any individuals who have participated in the marketing, sales or promotion of the Sheridan Product Line within twelve (12) months of the date the Consent Agreement is signed by Respondent.
- Y AThird-Party Consents@ means all consents, waivers and approvals from any person, private or public, that are necessary to effect the complete transfer to the Acquirer of the Assets To Be Divested pursuant to this Order and enable the Acquirer to manufacture and sell the Sheridan Product Line.
- Z ATransitional Services@ means any services or assistance provided by Respondent to enable or facilitate the transfer of the Assets To Be Divested to the Acquirer, including, but not limited to, all services identified in the Transition Services Agreement.

Decision and Order

AA ATransition Services Agreement@ means the Transition Services Agreement entered into by and between Tyco and Hudson RCI, attached as Exhibit E to the Divestiture Agreement.

## Decision and Order

**II.****IT IS FURTHER ORDERED** that:

- A Respondent shall divest the Assets To Be Divested to Hudson/RCI pursuant to and in accordance with the Divestiture Agreement (which agreement shall not vary from or contradict or be construed to vary from or contradict the terms of this Order). The divestiture shall be made no later than ten days after Respondent consummates the Acquisition. Failure to comply with the Divestiture Agreement shall constitute a failure to comply with this Order; *provided, however*, that if Respondent has divested the Assets To Be Divested to Hudson/RCI prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondent that Hudson/RCI is not an acceptable acquirer or that the Divestiture Agreement is not an acceptable manner of divestiture, then Respondent shall immediately rescind the transaction with Hudson/RCI and shall divest the Assets To Be Divested within six (6) months of the date the Order becomes final. Respondent shall divest the Assets To Be Divested only to an Acquirer(s) that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- B Respondent shall obtain all Third-Party Consents prior to the closing of the divestiture required by Paragraph II.A; *provided, however*, that Respondent need not obtain novations of supply contracts with the Veterans Administration and the Department of Defense prior to the closing of the divestiture; provided further, however, that Respondent shall provide the Acquirer any assistance necessary to obtain such novations.
- C If the Assets To Be Divested are divested to an Acquirer other than Hudson/RCI, Respondent shall comply with all the terms of the resulting agreement with the Acquirer and such agreement shall be deemed incorporated by reference into this Order. Any failure by Respondent to comply with the terms

## Decision and Order

of such agreement(s) shall constitute a failure to comply with this Order.

- D The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the assets in the same business in which they were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

**III.**

**IT IS FURTHER ORDERED** that:

- A No later than ten (10) days prior to the divestiture, Respondent shall provide the Acquirer with a complete list of all non-clerical, salaried employees of Tyco who are engaged, or have been engaged, in the research, development, or manufacture of the Sheridan Product Line at any time during the period from June 28, 2000 until the date of the divestiture. The list shall state each individuals' name, position or positions held from June 28, 2000 until the date of the divestiture, address, telephone number, and a description of the duties and work performed by the individual in connection with the Sheridan Product Line. Respondent shall provide the Acquirer the opportunity to enter into employment contracts with such individuals, provided that such contracts are contingent upon the Commission's approval of the divestiture.
- B Respondent shall provide the Acquirer with an opportunity to inspect, at any time, the personnel files and other documentation relating to the individuals identified pursuant to Paragraph III.A. of this order to the extent permissible under applicable laws, at the request of the Acquirer any time after the execution of the agreement between Acquirer and Respondent.

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- C Respondent shall not enforce any confidentiality or non-compete restrictions relating to the Assets To Be Divested that apply to any employee identified pursuant to Paragraph III.A. who accepts employment with the Acquirer that would interfere with the Acquirer=s ability to interview or hire any employee identified pursuant to Paragraph III.A.
- D Respondent shall provide all employees identified pursuant to Paragraph III.A. with financial incentives to continue in their positions until the date the divestiture is accomplished. Such incentives shall include a continuation of all employee benefits offered by Tyco until the date the divestiture of the Assets to Be Divested is accomplished, including regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law). In addition, Respondent shall provide Key Employees incentives to accept employment with the Acquirer at the time of the divestiture. Such incentives shall include a bonus for each Key Employee, equal to 10% of the employee=s current annual salary and commissions (including any annual bonuses) as of the date this Order is accepted by the Commission for public comment (AStay On Bonus@), who accepts an offer of employment on or prior to the date the divestiture is accomplished from the Acquirer and remains employed by the Acquirer for a period of one (1) year, payable by Respondent one (1) year after the commencement of the employee=s employment by the Acquirer.
- E For a period of one year following the date the divestiture is accomplished, Tyco shall not, directly or indirectly, solicit or otherwise attempt to induce any employees to terminate their employment relationship with the Acquirer; *provided, however,* it shall not be deemed to be a violation of this provision if: (i) Tyco advertises for employment opportunities in newspapers, trade publications or other media not targeted specifically at the employees, or (ii) Tyco hires employees who apply for employment with Tyco, as long as such employees were not solicited by Tyco in violation of this

## Decision and Order

Paragraph III E. During the one-year period following the divestiture, Tyco shall not, directly or indirectly, hire or enter into any arrangement for the services of any employees employed by the Acquirer, unless the individual's employment has been terminated by the Acquirer.

- F Respondent shall not transfer, without the consent of the Acquirer, any of the individuals identified in Paragraph III.A. of this Order to any other position until the divestiture is accomplished.
- G For the period beginning on the date the Divestiture Agreement is signed by Respondent and ending two years following the divestiture required by Paragraph II. of this Order (AExtended Restricted Period@), Respondent shall not:
- 1 solicit, induce or attempt to induce any GPO Customer to terminate or modify any GPO Customer Contract or, in the case of any GPO Customer Contract which by its terms expires or terminates within two (2) years of the date this Consent Agreement is signed by Respondent, solicit, induce or attempt to induce the GPO Customer which is a party to such GPO Customer Contract to not renew such GPO Customer Contract; or
  - 2 solicit, induce, or attempt to induce any GPO Customer to transfer to Respondent any business that is subject to any GPO Customer Contract during the term of such GPO Customer Contract.

Nothing in this paragraph shall prevent Respondent from responding to an unsolicited invitation to bid on a contract from any GPO Customer during the Extended Restricted Period.

- H Respondent shall, at the request of the Acquirer, at Cost to the Acquirer, provide: (a) for a period not to exceed six months



## Decision and Order

after the divestiture is accomplished, such Transitional Services as are necessary to enable the Acquirer to manufacture and distribute the Sheridan Product Line in substantially the same manner and quality employed or achieved by Respondent; and (b) until all necessary government approvals have been obtained, such assistance, personnel and training as are reasonably necessary to enable the Acquirer to obtain any necessary governmental approvals to manufacture the Sheridan Product Line and sell the Sheridan Product Line in each of the locations in which Respondent currently sells the Sheridan Product Line.

- I Respondent shall not provide, disclose or otherwise make available to any of its employees not involved in providing Transitional Services or Sheridan Earnout Review any Non-Public Acquirer Information, nor shall Respondent use any Non-Public Acquirer Information obtained or derived by Respondent in its capacity as provider of assistance pursuant to Paragraph III.H. or through Sheridan Earnout Review, except for the sole purpose of providing assistance pursuant to Paragraph III.H. or engaging in Sheridan Earnout Review. Respondent shall cause each individual involved in providing assistance pursuant to Paragraph III.H. and Sheridan Earnout Review and having access to Non-Public Acquirer Information to sign a statement that the individual will maintain the confidentiality of any Non-Public Acquirer Information as required by the terms and conditions of this Paragraph. No such individuals shall be involved in any way in the management, sales, marketing, or financial operations of the competing products of Respondent.
- J Respondent shall not utilize any Sheridan Sales Employees to market, sell or promote Endotracheal Tube products to any customer in North America, European Union countries, or Japan for a period of one year beginning on the date the divestiture is accomplished.
- K Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are necessary to maintain the

## Decision and Order

viability, marketability and competitiveness of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration or impairment of the Assets To Be Divested except for ordinary wear and tear.

- L During the period in which the Acquirer operates the Assets To Be Divested in the Argyle Facility, Respondent shall maintain the Argyle Facility in accordance with past practice (including regular repair and maintenance efforts) and shall use its best efforts to preserve existing relationships with suppliers, employees and others related to maintaining the entire Argyle Facility.

**IV.**

**IT IS FURTHER ORDERED** that:

- A If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time required by Paragraph II. of this order, the Commission may appoint a trustee to divest the Assets To Be Divested.
- B In the event that the Commission brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this order.

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- C If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
- 1 The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
  - 2 Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.
  - 3 Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.
  - 4 The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph IV.C.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however*, the Commission may extend the period for no more than two (2) additional periods.

## Decision and Order

- 5 The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as the trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
- 6 The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in a manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission; *provided, however*, if the trustee receives bona fide offers for the Assets To Be Divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such assets to the acquiring entity or entities selected by Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
- 7 The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such

## Decision and Order

consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

- 8 Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claims whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
- 9 If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this order.
- 10 The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

## Decision and Order

- 11 In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraph II., the trustee may divest assets similar and corresponding to the Assets To Be Divested of Respondent as necessary to achieve the remedial purposes of this order.
- 12 The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
- 13 The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture required by this order.

**V.****IT IS FURTHER ORDERED** that:

- A. After the date this Order becomes final, the Commission may appoint a monitor trustee to assure that Respondent fully performs its responsibilities in a timely manner as required by this Order.
- B. If a monitor trustee is appointed by the Commission, Respondent shall consent to the following terms and conditions regarding the monitor trustee's powers, duties, authority and responsibilities:
  1. The Commission shall select the monitor trustee, the identity of the monitor trustee being subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of the proposed monitor trustee, Respondent shall

## Decision and Order

be deemed to have consented to the selection of the proposed monitor trustee.

2. Within ten (10) days after appointment of the monitor trustee, Respondent shall execute a trust agreement, subject to the prior approval of the Commission, that authorizes and permits the monitor trustee to perform the duties set forth in this Order.
3. The monitor trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the monitor trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.
4. The monitor trustee shall prepare a written report and recommendation, if appropriate, with respect to Respondent's compliance with this Order.
5. The monitor trustee shall maintain the confidentiality of all confidential or proprietary information of Respondent and Acquirer, except that the monitor trustee may disclose to the Commission any confidential and proprietary information when reporting to the Commission on any matter bearing on compliance with the trust agreement and Order or bearing on the monitor trustee's performance of his or her duties.
6. The monitor trustee shall serve pursuant to the trust agreement from the time it is approved by the Commission for the term of the trust agreement.
7. Respondent shall give the monitor trustee full and complete access to the personnel, facilities, computers, books, and records related to the performance of his or her duties under this Order. The monitor trustee shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondent's operations.

## Decision and Order

8. The monitor trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The monitor trustee shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the monitor trustee's duties and responsibilities. The monitor trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
9. Respondent shall indemnify the monitor trustee and hold the monitor trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the monitor trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the monitor trustee.
10. The Commission may on its own initiative or at the request of the monitor trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
11. The monitor trustee may recover his or her costs of collection, including reasonable attorneys fees, if Respondent fails to pay compensation pursuant to Paragraph V.B.8. herein.
12. If at any time the Commission determines that the monitor trustee ceases to act or fails to act diligently, or is unwilling to serve, a substitute monitor trustee may be



## Decision and Order

appointed by the Commission in the same manner as provided in this Paragraph.

**VI.**

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. through IV., excluding Paragraph III.L. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. through IV. of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. through IV. of the Order, including a description of all substantive contacts or negotiations relating to the divestiture and the approval. Respondent shall include in its compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval. The final compliance report required by this Paragraph VI. shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

**VII.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order in the corporation.

## Decision and Order

**VIII.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel to all facilities and access to inspect and copy all non privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

By the Commission.

**CONFIDENTIAL APPENDIX I**  
**CONFIDENTIAL**  
**APPENDIX II**

## Analysis to Aid Public Comment

**Analysis of Agreement Containing Consent Order to Aid  
Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Tyco International, Ltd. ("Tyco"), which is designed to remedy the anticompetitive effects resulting from Tyco's acquisition of Mallinckrodt, Inc. Under the terms of the agreement, Tyco will be required to divest its endotracheal tube business within ten days of the date the Consent Agreement is placed on the public record to Hudson RCI, or to another Commission-approved buyer no later than six (6) months from the date Tyco signed the Consent Agreement. If the sale of Tyco's endotracheal tube business is not made within six (6) months, the Commission may appoint a trustee to divest it.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision & Order.

Pursuant to a July 28, 2000 Agreement and Plan of Merger, Tyco agreed to acquire Mallinckrodt in a stock-for-stock transaction valued at approximately \$4.2 billion. The Commission's Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, in the market for endotracheal tubes.

## Analysis to Aid Public Comment

Tyco, through its Kendall Division, and Mallinckrodt are the largest providers of endotracheal tubes in the United States. Endotracheal tubes are devices that are inserted through the nose or mouth into the trachea to provide oxygen or anesthesia. Hospitals and emergency personnel use endotracheal tubes to maintain a secure airway during surgical procedures and emergency situations.

The United States endotracheal tube market is highly concentrated, and the proposed acquisition would produce a firm controlling approximately 86% of the market. Mallinckrodt is the largest supplier of endotracheal tubes, claiming that its products are used in over 70% of the surgical procedures performed in the United States each year. Tyco is the next largest supplier. Both companies have product lines consisting of over one hundred different types of endotracheal tubes and related accessories, and have long track records of customer acceptance. As the two largest suppliers in the market, Tyco and Mallinckrodt frequently bid against each other for important hospital group purchasing organization contracts. Tyco and Mallinckrodt are the only two firms that have won contracts to supply members of the largest and most important group purchasing organizations. By eliminating competition between the two most significant competitors in this highly concentrated market, the proposed acquisition would allow the combined Tyco/Mallinckrodt to exercise market power unilaterally, thereby increasing the likelihood that purchasers of endotracheal tubes would be forced to pay higher prices and that innovation and service levels in the market would decrease.

Substantial barriers to new entry exist in the endotracheal tube market. Effective new entry would require the development of a full line of endotracheal tube products, obtaining approvals from the Food and Drug Administration, procurement of several million dollars worth of specialized manufacturing equipment, and the establishment of a sales and marketing force. Entry is further hampered by the fact that endotracheal tubes are critically

## Analysis to Aid Public Comment

important to customers, though relatively inexpensive, so customers would be reluctant to consider new, unproven products even in the face of higher prices. In light of the fact that the endotracheal tube market is relatively small compared to the costs that a new entrant would have to incur, new entry is not likely to occur. Additionally, new entry into the endotracheal tube market is made more unlikely because of long-term hospital group purchasing organization contracts that may reduce the amount of sales opportunities available to new entrants. Because of the difficulty of accomplishing these tasks, new entry into the United States endotracheal tube market is unlikely to deter or counteract the anticompetitive effects resulting from the transaction

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the United States endotracheal tube market by requiring Tyco to divest its Sheridan line of endotracheal tube products. Pursuant to the Consent Agreement, Tyco is required to divest the Sheridan Line to Hudson RCI within ten days of the date the Commission places the Order on the public record. If the divestiture to Hudson RCI is not accomplished, Tyco must divest the Sheridan Line to a Commission-approved acquirer within six months. Should Tyco fail to do so, the Commission may appoint a trustee to divest the business.

The Consent Agreement includes a number of provisions that are designed to ensure that the transition of Tyco's endotracheal tube business to the acquirer is successful. The Consent Agreement requires Tyco to provide incentives to certain key employees to accept employment, and remain employed, by the acquirer. Tyco employees who had been involved with selling the Sheridan endotracheal tube line are prohibited from selling the Mallinckrodt endotracheal tube products for a period of one year. Tyco is also prohibited from inducing key hospital group purchasing organizations from terminating their contracts with the acquirer for a period of two years. Finally, Tyco employees involved with the endotracheal tube business are prohibited from disclosing any confidential information to employees involved with the Mallinckrodt line.

*Analysis to Aid Public Comment*

In order to ensure that the Commission remains informed about the status of the Tyco endotracheal tube business pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires Tyco to report to the Commission within 30 days, and every thirty days thereafter until the divestiture is accomplished. In addition, Tyco is required to report to the Commission every 60 days regarding its obligations to provide transitional services and facilities management.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify in any way its terms.

Complaint

IN THE MATTER OF

**ALBERTSON=S, INC., ET AL.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT*Docket C-3986; File No. 9810339  
Complaint, December 6, 2000--Decision, December 6, 2000*

This consent order addresses the \$13 billion acquisition by Albertson=s, through its wholly owned subsidiary Abacus Holding, Inc., of American Stores Company. The complaint alleges that the proposed acquisition of all of the outstanding securities of American Stores, if consummated, would substantially lessen competition in the market for retail food and grocery items in supermarkets across the United States. The order requires Respondent to divest 144 individually identified stores and 5 identified supermarket sites to five different identified buyers. In 37 of the 57 proposed markets Respondent will divest all of either the Albertson or American stores, and in the remaining markets they will divest some combination. The order specifically requires Respondent to (1) maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers and employees; and (6) keep the supermarkets open for business and maintain the inventory of products in each store consistent with past practice.

*Participants*

For the Commission: *Kenneth A. Libby, Phillip L. Broyles, Daniel P. Ducore, Geary A. Gessler, and Daniel P. O=Brien.*

For the Respondents: *Andrew G. Berg and Daniel F. McInnis, Akin, Gump, Strauss, Hauer & Feld L.L.P. and Robert Ling, Unified Western Grocers, Inc.*

## Complaint

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Albertson=s, Inc. ("Albertson=s"), through Abacus Holdings, Inc. (AAbacus@), a wholly owned subsidiary, has entered into an agreement to acquire all of the outstanding securities of respondent American Stores Company (AAmerican Stores@), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Definition

## 1. For the purposes of this complaint:

"Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.



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Albertson=s, Inc.

2. Respondent Albertson=s is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 250 East Parkcenter Boulevard, Boise, Idaho 83726.

3. Respondent Albertson=s is, and at all times relevant herein has been, engaged in the operation of supermarkets in 25 Western, Midwestern, and Southern states. Albertson=s operates 994 supermarkets and combination supermarkets and pharmacies under the Albertson=s, Max Grocery Warehouse, Monte Mart, Seessel=s, and Smitty=s trade names. Albertson=s had approximately \$16 billion in total sales for the fiscal year that ended on January 28, 1999.

4. Respondent Albertson=s is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

American Stores Company

5. Respondent American Stores is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 299 South Main Street, Salt Lake City, Utah 84111.

6. Respondent American Stores is, and at all times relevant herein has been, engaged in the operation of supermarkets in 12 Western, Midwestern and Eastern states. American Stores operates approximately 802 supermarkets and combination supermarket and pharmacies under the Lucky, SuperSaver, Sav-On, Acme Markets, and Jewel Food Stores trade names. American Stores also operates 773 stand-alone drug stores.

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American Stores had \$19.9 billion in total sales for the fiscal year that ended on January 30, 1999.

7. Respondent American Stores is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

#### Acquisition

8. On or about August 2, 1998, Albertson=s, Abacus, and American Stores entered into an Agreement and Plan of Merger pursuant to which Abacus will acquire and convert all of the outstanding securities of American Stores into Albertson=s stock. Pursuant to the Agreement and Plan of Merger, each share of American Stores common stock would be converted into .63 shares of Albertson=s common stock. Abacus will then merge with and into American Stores, and American Stores will become a wholly owned subsidiary of Albertson=s. The total value of the proposed acquisition is approximately \$13 billion.

#### Trade and Commerce

9. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

10. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")) as well as a deep inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large

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stores that typically have at least 10,000 square feet of selling space.

11. Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices on the prices primarily of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

12. Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. These stores operate significantly different retail formats. None of these stores offers a supermarket=s distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

13. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the areas in and near the following cities and towns:

- a. Antioch/Pittsburg, California;
- b. Apple Valley/Hesperia/Victorville, California;
- c. Atascadero, California;
- d. Auburn, California;
- e. Greater Bakersfield, California;
- f. Claremont/Pomona/Rancho Cucamonga, California;

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- g. Danville/San Ramon/Dublin/Pleasanton, California;
- h. Davis, California;
- i. Encinitas, California;
- j. Escondido, California;
- k. Fallbrook, California;
- l. Grass Valley, California;
- m. Grover City/Arroyo Grande, California;
- n. Jackson, California;
- o. La Mesa/El Cajon, California;
- p. Laguna Beach, California;
- q. Lancaster/Palmdale, California;
- r. Livermore, California;
- s. Monterey/Seaside/Del Rey Oaks/Pacific Grove,  
California;
- t. Moorpark, California;
- u. Morro Bay/Los Osos, California;
- v. Murrieta/Temecula, California;
- w. Napa, California;

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- x. Northern Covina, California, an area that includes Azusa, Baldwin Park, Charter Oak, Citrus, Covina, Glendora, La Puente, Valinda, Vincent, West Covina, and West Puente;
- y. Oceanside/Vista/Carlsbad, California;
- z. Oxnard, California;
- aa. Palm Springs/Indio, California;
- bb. Paso Robles, California;
- cc. Petaluma, California;
- dd. Poway/North San Diego, California;
- ee. Ramona, California;
- ff. Redlands, California;
- gg. Rialto/Fontana, California;
- hh. Riverside/Corona, California;
- ii. Greater Sacramento, California, and narrower markets contained therein;
- jj. Salinas, California;
- kk. San Luis Obispo, California;
- ll. Santa Barbara/Goleta, California;
- mm. Santa Clarita, California;
- nn. Santa Cruz/Capitola, California;
- oo. Santa Maria/Orcutt, California;

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- pp. Santa Rosa, California;
- qq. Simi Valley, California;
- rr. Sonoma/Hot Springs, California;
- ss. South Los Angeles County/North Orange County, California, an area approximately bordered on the north by the Santa Monica and San Jose Hills/Puente Hills/Chino Hills, on the west by Interstate 710 and the Pacific Ocean, on the east by the Santa Ana Mountains, and on the south by the Laguna Hills and El Toro Marine Corps Air Base, and narrower markets contained therein;
- tt. South Orange County, California, and narrower markets contained therein;
- uu. Southern Covina, California, an area that includes the communities of Diamond Bar, Hacienda Heights, South San Jose Hills, and Walnut;
- vv. Thousand Oaks/Newbury Park/Casa Conejo, California;
- ww. Torrance, California;
- xx. Vacaville, California;
- yy. Watsonville/Freedom, California;
- zz. Eastern Albuquerque, New Mexico;
- aaa. Las Cruces, New Mexico;
- bbb. Rio Rancho/Northwest Albuquerque, New Mexico;
- ccc. Santa Fe, New Mexico; and

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- ddd. Greater Las Vegas/Henderson, Nevada, and narrower markets contained therein.

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Market Structure

14. The post-merger relevant markets are all highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by the four-firm concentration ratio. The acquisition would substantially increase concentration in each market. The post-acquisition HHIs in the geographic markets range from 2,000 to 8,090.

Entry Conditions

15. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

Actual Competition

16. Albertson's and American Stores are actual and direct competitors in and near Apple Valley/Hesperia/Victorville, Auburn, Greater Bakersfield, Claremont/Pomona/Rancho Cucamonga, Danville/San Ramon/Dublin/Pleasanton, Davis, Encinitas, Escondido, Grass Valley, Grover City/Arroyo Grande, Jackson, La Mesa/El Cajon, Laguna Beach, Lancaster/Palmdale, Livermore, Monterey/Seaside/Del Rey Oaks/Pacific Grove, Moorpark, Murrieta/Temecula, Napa, Northern Covina, Oceanside/Vista/Carlsbad, Oxnard, Palm Springs/Indio, Paso Robles, Petaluma, Poway/North San Diego, Ramona, Redlands, Rialto/Fontana, Riverside/Corona, Greater Sacramento, Salinas, San Luis Obispo, Santa Barbara/Goleta, Santa Clarita, Santa Cruz/Capitola, Santa Rosa, Simi Valley, Sonoma/Hot Springs, South Los Angeles County/North Orange County, South Orange County, Southern Covina, Thousand Oaks/Newbury Park/Casa Conejo, Torrance, Vacaville, Watsonville/Freedom, California; Eastern Albuquerque, Las Cruces, Rio Rancho/Northwest Albuquerque, Santa Fe, New Mexico; and Greater Las Vegas/Henderson, Nevada.



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Actual Potential Competition

17. Albertson=s is an actual potential competitor against American Stores in and near Antioch/Pittsburg, Atascadero, Fallbrook, and Santa Maria/Orcutt, California. American Stores is an actual potential competitor against Albertson=s in Morro Bay/Los Osos, California. But for the acquisition, Albertson=s and American Stores would have become direct competitors in and near Antioch/Pittsburg, Atascadero, Fallbrook, Morro Bay/Los Osos, and Santa Maria/Orcutt, California. The acquisition will eliminate that competition.

Effects

18. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant line of commerce in the relevant sections of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, in the following ways, among others:

- a. by eliminating direct competition between supermarkets owned or controlled by Albertson=s and supermarkets owned or controlled by American Stores;
- b. by eliminating actual potential competition between supermarkets owned or controlled by Albertson=s and supermarkets owned or controlled by American Stores;
- c. by increasing the likelihood that Albertson=s will unilaterally exercise market power; and
- d. by increasing the likelihood of, or facilitating, collusion or coordinated interaction,

each of which increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of

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food, groceries or services will decrease, in the relevant sections of the country.

Violations Charged

19. The Agreement and Plan of Merger between Albertson=s, Abacus and American Stores, pursuant to which Albertson=s and Abacus will acquire all of the outstanding securities of American Stores, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixth day of December, 2000, issues its complaint against said respondents.

By the Commission, Commissioner Leary not participating.

**DECISION AND ORDER**

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Albertson=s, Inc. ("Albertson=s") of all of the outstanding securities of American Stores Company ("American Stores") (collectively, "Respondents"), and Respondents having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18; and



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Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Albertson's, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 250 East Parkcenter Boulevard, Boise, Idaho 83726.

2. Respondent American Stores Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 299 South Main Street, Salt Lake City, Utah 84111.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

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**ORDER****I.**

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

A. "Albertson=s" means Albertson=s, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Albertson=s, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Albertson=s, after consummation of the Acquisition, includes American Stores.

B. "American Stores" means American Stores Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by American Stores, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Acquirer(s)" means Certified Grocers, Raley=s, Ralphp, Stater, Vons, and/or any other entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this Order, individually and collectively.

D. "Acquisition" means the August 2, 1998, Agreement and Plan of Merger between Albertson=s, Abacus Holdings, Inc., a wholly owned subsidiary of Albertson=s, and American Stores pursuant to which Abacus Holdings, Inc. will acquire all of the outstanding securities of American Stores; Abacus Holdings, Inc. will merge with and into American Stores; and American Stores will become a wholly owned subsidiary of Albertson=s.

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E. "Applicable Consent Decree" means (i) a consent decree in an action commenced by the State of California, under which decree Respondents will divest all or part of the Schedule A Assets, Schedule C Assets, Schedule D Assets, and Schedule E Assets; (ii) a consent decree in an action commenced by the State of Nevada, under which decree Respondents will divest all or part of the Schedule B Assets; or (iii) a consent decree in an action commenced by the State of New Mexico, under which decree Respondents will divest all or part of the Schedule B Assets and Schedule C Assets.

F. "Assets To Be Divested" means the Schedule A Assets, the Schedule B Assets, the Schedule C Assets, the Schedule D Assets, and the Schedule E Assets of this Order, or any portion thereof.

G. "Certified Grocers" means Certified Grocers of California, Ltd., now known as Unified Western Grocers, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Certified Grocers, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

H. "Certified Grocers Agreement" means the Purchase Agreement between Certified Grocers and Albertson's executed as of May 8, 1999, and amended as of May 25, 1999, and further amended as of May 28, 1999, for the divestiture by Respondents to Certified Grocers of the Schedule A Assets.

I. "Commission" means the Federal Trade Commission.

J. "Land Sites" means those Assets To Be Divested identified in Schedule B, Schedule C, Schedule D, and Schedule E at which Respondents were building, causing to be built, or intended to build or cause to be built a Supermarket.



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K. "Raley=s" means Raley=s, a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 500 W. Capital Avenue, West Sacramento, California 95605.

L. "Raley=s Agreement" means the Purchase Agreement between Raley=s and Albertson=s executed as of May 17, 1999, and amended as of May 25, 1999, for the divestiture by Respondents to Raley=s of the Schedule B Assets.

M. "Ralphs" means Ralphs Grocery Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1100 W. Artesia Boulevard, Compton, California 90220.

N. "Ralphs Agreement" means the Purchase Agreement between Ralphs and Albertson=s executed as of May 14, 1999, for the divestiture by Respondents to Ralphs of the Schedule C Assets.

O. ARemaining Assets To Be Divested@ means all portions of the Assets To Be Divested that are not divested within the time provided in Paragraph II.

P. "Respondents" means Albertson=s and American Stores individually and collectively.

Q. ASchedule A Assets@ means the Supermarkets identified in Schedule A of this Order and all assets, leases, properties, governmental permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.



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R. ASchedule B Assets@ means the Supermarkets and Land Sites identified in Schedule B of this Order and all assets, leases, properties, governmental permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

S. ASchedule C Assets@ means the Supermarkets and Land Sites identified in Schedule C of this Order and all assets, leases, properties, governmental permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

T. ASchedule D Assets@ means the Supermarkets and Land Sites identified in Schedule D of this Order and all assets, leases, properties, governmental permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

U. ASchedule E Assets@ means the Supermarkets and Land Sites identified in Schedule E of this Order and all assets, leases, properties, governmental permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

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V. "Stater" means Stater Bros. Markets, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 21700 Barton Road, Colton, California 92324.

W. "Stater Agreement" means the Purchase Agreement between Stater and Albertson=s executed as of May 7, 1999, for the divestiture by Respondents to Stater of the Schedule D Assets.

X. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

Y. ASupermarkets To Be Divested@ means the Supermarkets and Land Sites identified in Schedule A, Schedule B, Schedule C, Schedule D, and Schedule E.

Z. "Third Party Consents" means all consents from any other person, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the Assets To Be Divested.

AA. "Vons" means The Vons Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal place of business located at 618 Michillinda Avenue, Arcadia, California 91007.

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BB. "Vons Agreement" means the Purchase Agreement between Vons and Safeway Inc, the parent of Vons, and Albertson=s executed as of April 30, 1999, for the divestiture by Respondents to Vons of the Schedule E Assets.

**II.****IT IS FURTHER ORDERED** that:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets to Certified Grocers, in accordance with the Certified Grocers Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than the earlier of

1. ninety days (90) days after the date on which the Acquisition is consummated, or
2. four (4) months after the date on which the Commission accepts the Agreement Containing Consent Order for public comment.

*Provided, however,* that if Respondents have divested the Schedule A Assets to Certified Grocers pursuant to the Certified Grocers Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Certified Grocers is not an acceptable Acquirer or that the Certified Grocers Agreement is not an acceptable manner of divestiture for any or all of the Schedule A Assets, then Respondents shall immediately rescind the transaction with Certified Grocers as to such assets and shall divest such assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided, further, that Respondents shall not be required to divest any fixtures, equipment or inventory at any Supermarket

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To Be Divested of the Schedule A Assets that the Acquirer of the Schedule A Assets indicates that it does not want to acquire, if the Commission approves the divestiture to such Acquirer and approves the manner of the divestiture excluding such assets.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets to Raley=s, in accordance with the Raley=s Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than the earlier of

1. one hundred and two (102) days after the date on which the Acquisition is consummated, or September 13, 1999, whichever is later, or
2. four (4) months after the date on which the Commission accepts the Agreement Containing Consent Order for public comment.

*Provided, however,* that if Respondents have divested the Schedule B Assets to Raley=s pursuant to the Raley=s Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Raley=s is not an acceptable Acquirer or that the Raley=s Agreement is not an acceptable manner of divestiture for any or all of the Schedule B Assets, then Respondents shall immediately rescind the transaction with Raley=s as to such assets and shall divest such assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided, further, that Respondents shall not be required to divest any fixtures, equipment or inventory at any Supermarket To Be Divested of the Schedule B Assets that the Acquirer of the Schedule B Assets indicates that it does not want to acquire, if the

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Commission approves the divestiture to such Acquirer and approves the manner of the divestiture excluding such assets.

C. Respondents shall divest, absolutely and in good faith, the Schedule C Assets to Ralphs, in accordance with the Ralphs Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than the earlier of

1. one hundred and twenty (120) days after the date on which the Acquisition is consummated, or
2. four (4) months after the date on which the Commission accepts the Agreement Containing Consent Order for public comment.

*Provided, however,* that Respondents shall divest

1. Lucky store no. 262 in Orcutt, California no later than the earlier of (a) February 28, 2000, or (b) twenty-four (24) hours prior to the opening of any new Supermarket in Orcutt, California, by Respondents; and
2. Lucky store no. 273 in Atascadero, California no later than the earlier of (a) January 31, 2000, or (b) twenty-four (24) hours prior to the opening of any new Supermarket in Atascadero, California, by Respondents.

Provided, further, that if Respondents have divested the Schedule C Assets to Ralphs pursuant to the Ralphs Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Ralphs is not an acceptable Acquirer or that the Ralphs Agreement is not an acceptable manner of divestiture for any or all of the Schedule C Assets, then Respondents shall immediately rescind the transaction with Ralphs as to such assets and shall divest such assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum

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price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided, further, that Respondents shall not be required to divest any fixtures, equipment or inventory at any Supermarket To Be Divested of the Schedule C Assets that the Acquirer of the Schedule C Assets indicates that it does not want to acquire, if the Commission approves the divestiture to such Acquirer and approves the manner of the divestiture excluding such assets.

D. Respondents shall divest, absolutely and in good faith, the Schedule D Assets to Stater, in accordance with the Stater Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than the earlier of

1. eighty-five (85) days after the date on which the Acquisition is consummated, or
2. four (4) months after the date on which the Commission accepts the Agreement Containing Consent Order for public comment.

*Provided, however*, that if Respondents have divested the Schedule D Assets to Stater pursuant to the Stater Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Stater is not an acceptable Acquirer or that the Stater Agreement is not an acceptable manner of divestiture for any or all of the Schedule D Assets, then Respondents shall immediately rescind the transaction with Stater as to such assets and shall divest such assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

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Provided, further, that Respondents shall not be required to divest any fixtures, equipment or inventory at any Supermarket To Be Divested of the Schedule D Assets that the Acquirer of the Schedule D Assets indicates that it does not want to acquire, if the Commission approves the divestiture to such Acquirer and approves the manner of the divestiture excluding such assets.

E. Respondents shall divest, absolutely and in good faith, the Schedule E Assets to Vons consisting of Albertson=s store nos. 1605 and 1622 and American Stores store no. 558, in accordance with the Vons Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than the earlier of

1. thirty (30) days after the date on which the Acquisition is consummated, or
2. four (4) months after the date on which the Commission accepts the Agreement Containing Consent Order for public comment,

and the Schedule E Assets consisting of the Land Site for Albertson=s store no. 628, in accordance with the Vons Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than the earlier of

1. sixty (60) days after the date on which the Acquisition is consummated, or
2. four (4) months after the date on which the Commission accepts the Agreement Containing Consent Order for public comment.

*Provided, however*, that if Respondents have divested the Schedule E Assets to Vons pursuant to the Vons Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Vons is not an acceptable Acquirer or

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that the Vons Agreement is not an acceptable manner of divestiture for any or all of the Schedule E Assets, then Respondents shall immediately rescind the transaction with Vons as to such assets and shall divest such assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided, further, that Respondents shall not be required to divest any fixtures, equipment or inventory at any Supermarket To Be Divested of the Schedule E Assets that the Acquirer of the Schedule E Assets indicates that it does not want to acquire, if the Commission approves the divestiture to such Acquirer and approves the manner of the divestiture excluding such assets.

F. Respondents shall obtain all required Third Party Consents prior to the closing of the Certified Grocers Agreement, the Ralphs Agreement, the Raley=s Agreement, the Stater Agreement, the Vons Agreement or any other agreement pursuant to which the Assets To Be Divested are divested to an Acquirer.

G. The purpose of the divestitures is to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the Supermarket business and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's complaint.

**III.**

**IT IS FURTHER ORDERED** that Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of



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the Assets To Be Divested. Respondents shall comply with the terms of this Paragraph until such time as Respondents have divested the Assets To Be Divested pursuant to the terms of this Order. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operation of any Supermarket To Be Divested. Respondents shall continue to maintain the inventory of each Supermarket To Be Divested at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such Respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Respondents shall use best efforts to keep the organization and properties of each Supermarket To Be Divested intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Supermarket. Included in the above obligations, Respondents shall, without limitation:

- 1) maintain operations and departments and not reduce hours at each Supermarket To Be Divested;
- 2) not transfer inventory from any Supermarket To Be Divested other than in the ordinary course of business consistent with past practice;
- 3) make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations, in each case in a manner consistent with past practice;
- 4) maintain the books and records of each Supermarket To Be Divested;

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5) not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations to another location, or that indicates a Supermarket To Be Divested will close;

6) not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket To Be Divested; and

7) not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket To Be Divested, other than changes in the ordinary course of business consistent with past practice for Supermarkets of the Respondents not being closed or relocated.

**IV.**

**IT IS FURTHER ORDERED** that at any time after Respondents sign the Agreement Containing Consent Order in this matter, the Commission may appoint an Interim Trustee to ensure that Respondents expeditiously perform their respective responsibilities as required by this Order. Albertson=s shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee appointed pursuant to this Paragraph IV:

A. The Commission shall select the Interim Trustee, subject to the consent of Albertson=s, which consent shall not be unreasonably withheld. If Albertson=s has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Albertson=s of the identity of any proposed trustee, Albertson=s shall be deemed to have consented to the selection of the proposed trustee.

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B. The Interim Trustee shall have the power and authority to monitor Respondents= compliance with the terms of this Order.

C. Within ten (10) days after appointment of the Interim Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor Respondents= compliance with the terms of this Order.

D. The Interim Trustee shall serve until such time as all the divestitures required by the Order have been accomplished.

E. The Interim Trustee shall have full and complete access to Respondents= personnel, books, records, documents, facilities and technical information relating to the Assets To Be Divested, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Assets To Be Divested. Respondents shall cooperate with any reasonable request of the Interim Trustee. Respondents shall take no action to interfere with or impede the Interim Trustee=s ability to monitor Respondents= compliance with this Order.

F. The Interim Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee=s duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

G. Respondents shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee=s duties, including all reasonable fees of counsel and other expenses incurred in

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connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Trustee.

H. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph IV.A. of this Order.

I. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the divestiture agreement with the Acquirer(s).

J. The Interim Trustee shall evaluate reports submitted to it by the Respondents with respect to the Assets To Be Divested. The Interim Trustee shall report to the Commission in writing concerning compliance by Respondents to the Commission every thirty (30) days from the date the Order is accepted for public comment until all the divestitures are accomplished.

**V.****IT IS FURTHER ORDERED** that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, all of the Assets To Be Divested within the time required by Paragraph II of this Order, the Commission may appoint a trustee to divest the Remaining Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission,

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Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Remaining Assets To Be Divested.
3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect each divestiture required by this Order.

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4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph V.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however*, the Commission may extend the period for no more than two (2) additional periods.
5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Remaining Assets To Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestitures shall be made in the manner and to the Acquirer or Acquirers as set out in Paragraph II of this Order; *provided, however*, if the trustee receives bona fide offers for an asset to be divested from more than

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one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by Albertson=s from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Albertson=s, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Remaining Assets To Be Divested.
8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish each divestiture required by this Order.
11. In the event that the trustee determines that he or she is unable to divest the Remaining Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraph II, the trustee may divest additional ancillary assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The trustee shall have no obligation or authority to operate or maintain the Remaining Assets To Be Divested.
13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this Order.

**VI.**

**IT IS FURTHER ORDERED** that if Certified Grocers purchases the Schedule A Assets pursuant to Paragraph II.A.:

A. Certified Grocers shall divest, within three (3) months of the date on which Certified Grocers acquires the Schedule A Assets (or three (3) months after the date the Order becomes final, whichever is later), at least twenty (20) Supermarkets of the



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Schedule A Assets to buyers who receive the prior approval of the Commission, and only in a manner approved by the Commission. *Provided, however*, that prior approval of the Commission is not required for the following buyers to acquire the following Supermarkets, so long as the manner of the acquisition is approved by the Commission:

1. A.J. Markets, Inc. (d/b/a Amar Ranch) may acquire American Stores store no. 670;
2. Arden Group (d/b/a Gelsons and Mayfair) may acquire Albertson=s store no. 622;
3. Berberian Enterprises (d/b/a Jons Market) may acquire Albertson=s store no. 1906 and American Stores store no. 650;
4. Bianchini=s Apple Market (d/b/a Apple Market) may acquire Albertson=s store no. 720;
5. Ceiland Coast, Inc. may acquire American Stores store no. 674;
6. Colonial Shopping Center, a general partnership (d/b/a Young=s Market) may acquire American Stores store no. 281;
7. El Tigre Inc. (d/b/a El Tigre Market) may acquire American Stores store no. 211;
8. Goodwin & Sons, Inc. (d/b/a Village Market) may acquire Albertson=s store no. 1611;
9. Hope Mart, Inc. (d/b/a Best Value Grocery Warehouse) may acquire Albertson=s store nos. 1978 and 1983;

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10. K.V. Mart Co. (d/b/a Top Valu and Valu Plus Food Warehouse) may acquire Albertson=s store nos. 682, 1666, 1675, 1905, 1909, 1930, and 1953 and American Stores store nos. 431, 630, 679, and 884;
11. Rodd Mart, Inc. (d/b/a Payless Foods) may acquire Albertson=s store no. 1650;
12. Stump=s Apple Markets (d/b/a Apple Market) may acquire Albertson=s store no. 609;
13. UKA=s Big Saver Food, Inc. (d/b/a Big Saver Foods) may acquire American Stores store no. 873;
14. Vallarta Foods Enterprises, Inc. (d/b/a Vallarta Super Markets) may acquire Albertson=s store no. 1963; and
15. Ronald Ziff may acquire American Stores store no. 286.

Respondents shall use their best efforts to assist Certified Grocers in the sale of the Schedule A Assets pursuant to this Paragraph in accordance with the terms of this Order.

B. Certified Grocers shall not sell or otherwise convey, directly or indirectly, any remaining Schedule A Assets, except to an Acquirer approved by the Commission and only in a manner that receives the prior approval of the Commission. Certified Grocers shall comply with this Paragraph until three (3) years after the date this Order becomes final.

**VII.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date this Order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or

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otherwise, without providing advance written notification to the Commission:

A. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket or owned any interest in or operated any Supermarket within six (6) months prior to such proposed acquisition in Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico.

*Provided, however,* that advance written notification shall not apply to the construction of new facilities by Respondents or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Respondents' offer to purchase or lease.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other

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party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. ' 803.20), Respondents shall not consummate the transaction until twenty (20) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. ' 18a.

**VIII.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. ' 12(a)) that acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 1998, in Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Respondents.

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B. Respondents shall not remove any fixtures or equipment from a property owned or leased by Respondents in Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Respondents.

**IX.****IT IS FURTHER ORDERED** that:

A. Within thirty (30) days after the date Respondents signed the Agreement Containing Consent Order and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II, III, IV, V, and VI of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II, III, IV, V, and VI of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II, III, and V of the Order, including a description of all substantive contacts or negotiations for divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file verified written reports with

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the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

**X.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in Respondents that may affect compliance obligations arising out of the Order.

**XI.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, upon written request with five (5) days= notice, Respondents and Certified Grocers shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect the facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents or Certified Grocers relating to any matters contained in this Order; and

B. Without restraint or interference from Respondents and Certified Grocers, to interview officers, directors, or employees of Respondents or Certified Grocers in the presence of counsel.

**XII.**

**IT IS FURTHER ORDERED** that, if (i) Respondents have fully complied with all terms of Paragraphs III - XI of this Order; (ii) Respondents within forty-five (45) days after final issuance of

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this Order by the Commission have submitted a complete application in support of the divestiture of the Assets To Be Divested pursuant to Paragraph II of this Order, as the case may be (including the buyer, manner of divestiture and all other matters subject to Commission approval); and (iii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iv) Respondents have certified to the Commission within ten (10) days after the Commission's approval of the divestiture that a State, notwithstanding timely and complete application by Respondents to the State, has failed to approve the divestiture under an Applicable Consent Decree of the particular assets or businesses whose divestiture is also required under this Order, then with respect to the particular divestiture that remains unconsummated, the time in which the divestiture is required under this Order to be completed shall be extended for sixty (60) days. During such sixty (60) day period, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the particular State.

By the Commission, Commissioner Leary not participating.

**Schedule A**

## Supermarkets Divested to Certified Grocers

Supermarket in the Apple Valley/Hesperia/Victorville, California Market:

1. Albertson's store no. 1609 operating under the Albertson's trade name, which is located at 20801 Bear Valley Road, Apple Valley, California 92307 (San Bernardino County).

Supermarket in the Greater Bakersfield, California Market:

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1. American Stores store no. 281 operating under the ALucky@ trade name, which is located at 4801 White Lane, Bakersfield, California 93309 (Kern County).



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Supermarkets in the Claremont/Pomona/Rancho Cucamonga, California Market:

1. Albertson=s store no. 1675 operating under the AAlbertson=s@ trade name, which is located at 2340 Foothill Boulevard, Laverne, California 91750 (Los Angeles County);
2. Albertson=s store no. 1983 operating under the AMax Grocery Warehouse@ trade name, which is located at 1445 East Foothill Boulevard, Upland, California 91785 (San Bernardino County);
3. American Stores store no. 431 operating under the ALucky@ trade name, which is located at 4200 Chino Hills Parkway 400, Chino Hills, California 91709 (San Bernardino County);
4. American Stores store no. 670 operating under the ALucky@ trade name, which is located at 685 West Foothill Boulevard, Upland, California 91786 (San Bernardino County); and
5. American Stores store no. 679 operating under the ALucky@ trade name, which is located at 6351 Haven Avenue, Rancho Cucamonga, California 91737 (San Bernardino County).

Supermarket in the Escondido, California Market:

1. American Stores store no. 211 operating under the ALucky@ trade name, which is located at 606 North Escondido Boulevard, Escondido, California 92025 (San Diego County).

Supermarket in the La Mesa/El Cajon, California Market:

1. American Stores store no. 565 operating under the ALucky@ trade name, which is located at 7908 El Cajon Boulevard, La Mesa, California 91641 (San Diego County).

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Supermarket in the Lancaster/Palmdale, California Market:

1. Albertson's store no. 1963 operating under the AMax Grocery Warehouse@ trade name, which is located at 1111 West Avenue I, Lancaster, California 93534 (Los Angeles County).

Supermarket in the Murrieta/Temecula, California Market:

1. Albertson's store no. 1611 operating under the AAlbertson's@ trade name, which is located at 29530 Rancho California Road, Temecula, California 92591 (Riverside County).

Supermarkets in the Northern Covina, California Market:

1. American Stores store no. 620 operating under the ALucky@ trade name, which is located at 1385 North Citrus Avenue, Covina, California 91722 (Los Angeles County);
2. American Stores store no. 873 operating under the ALucky@ trade name, which is located at 13925 Amar Road, La Puente, California 90746 (Los Angeles County); and
3. American Stores store no. 884 operating under the ALucky Sav-On@ trade name, which is located at 543 North Azusa, Covina, California 91723 (Los Angeles County).

Supermarkets in the Oxnard, California Market:

1. Albertson's store no. 682 operating under the AAlbertson's@ trade name, which is located at 450 South Ventura Road, Oxnard, California 93030 (Ventura County); and
2. Albertson's store no. 1953 operating under the AMax Grocery Warehouse@ trade name, which is located at 2800 Saviers Road, Oxnard, California 93030 (Ventura County).



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Supermarket in the Petaluma, California Market:

1. Albertson=s store no. 720 operating under the AAlbertson=s@ trade name, which is located at 169 North McDowell Boulevard, Petaluma, California 94954 (Sonoma County).

Supermarket in the Rialto/Fontana, California Market:

1. Albertson=s store no. 1978 operating under the AMax Grocery Warehouse@ trade name, which is located at 515 South Riverside Avenue, Rialto, California 92376 (San Bernardino County).

Supermarket in the Riverside/Corona, California Market:

1. Albertson=s store no. 1613 operating under the AAlbertson=s@ trade name, which is located at 430 McKinley, Corona, California 91719 (Riverside County).

Supermarket in the Santa Barbara/Goleta, California Market:

1. Albertson=s store no. 622 operating under the AAlbertson=s@ trade name, which is located at 3305 State Street, Santa Barbara, California 93105 (Santa Barbara County).

Supermarket in the Simi Valley, California Market:

1. American Stores store no. 650 operating under the ALucky@ trade name, which is located at 3963 Cochran, Simi Valley, California 93063 (Ventura County).

Supermarkets in the South Los Angeles County/North Orange County, California Market:

1. Albertson=s store no. 1650 operating under the AAlbertson=s@ trade name, which is located at 1720 East 17th Street, Santa Ana, California 92701 (Orange County);

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2. Albertson=s store no. 1905 operating under the AMax Grocery Warehouse@ trade name, which is located at 4700 Cherry Avenue, Long Beach, California 90807 (Los Angeles County);
3. Albertson=s store no. 1906 operating under the AMax Grocery Warehouse@ trade name, which is located at 15300 Goldenwest, Westminster, California 92683 (Orange County);
4. Albertson=s store no. 1909 operating under the AMax Grocery Warehouse@ trade name, which is located at 12120 Carson Street, Hawaiian Gardens, California 90716 (Los Angeles County); and
5. Albertson=s store no. 1930 operating under the AMax Grocery Warehouse@ trade name, which is located at 12891 Harbor Boulevard, Garden Grove, California 92640 (Orange County).

Supermarket in the South Orange County, California Market:

1. Albertson=s store no. 609 operating under the AAlbertson=s@ trade name, which is located at 602 El Camino Real, San Clemente, California 92672 (Orange County).

Supermarket in the Southern Covina, California Market:

1. Albertson=s store no. 1666 operating under the AAlbertson=s@ trade name, which is located at 21080 Golden Springs, Walnut, California 91789 (Los Angeles County).

Supermarkets in the Thousand Oaks/Newbury Park/Casa Conejo, California Market:

1. American Stores store no. 286 operating under the ALucky@ trade name, which is located at 740 Moorpark Avenue, Thousand Oaks, California 91360 (Ventura County); and

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2. American Stores store no. 674 operating under the ALucky@ trade name, which is located at 2100 Newbury Road, Newbury Park, California 91320 (Ventura County).

Supermarket in the Torrance, California Market:

1. American Stores store no. 630 operating under the ALucky@ trade name, which is located at 4848 West 190th Street, Torrance, California 90503 (Los Angeles County).

**Schedule B**

## Supermarkets and Land Site Divested to Raley=s

Supermarkets and Land Site in the Greater Las Vegas/Henderson, Nevada Market:

1. Albertson=s store no. 611 operating under the AAlbertson=s@ trade name, which is located at 4015 South Buffalo Drive, Las Vegas, Nevada 89117 (Clark County);
2. Albertson=s store no. 614 operating under the AAlbertson=s@ trade name, which is located at 55 South Valle Verde Drive, Henderson, Nevada 89012 (Clark County);
3. Albertson=s store no. 634 operating under the AAlbertson=s@ trade name, which is located at 4790 East Flamingo Road, Las Vegas, Nevada 89121 (Clark County);
4. Albertson=s store no. 637 operating under the AAlbertson=s@ trade name, which is located at 1570 North Eastern Avenue, Las Vegas, Nevada 89101 (Clark County);

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5. Albertson=s store no. 686 operating under the AAlbertson=s@ trade name, which is located at 260 East Lake Mead Drive, Henderson, Nevada 89015 (Clark County);
6. Albertson=s store no. 1606 operating under the AAlbertson=s@ trade name, which is located at 1421 North Jones Boulevard, Las Vegas, Nevada 89108 (Clark County);
7. Albertson=s store no. 1616 operating under the AAlbertson=s@ trade name, which is located at 3160 North Rainbow, Las Vegas, Nevada 89107 (Clark County);
8. Albertson=s store no. 1618 operating under the AAlbertson=s@ trade name, which is located at 2271 North Green Valley Parkway, Henderson, Nevada 89014 (Clark County);
9. Albertson=s store no. 1621 operating under the AAlbertson=s@ trade name, which is located at 9200 West Sahara Avenue, Las Vegas, Nevada 89117 (Clark County);
10. Albertson=s store no. 1628 operating under the AAlbertson=s@ trade name, which is located at 8570 West Lake Mead Boulevard, Las Vegas, Nevada 89128 (Clark County);
11. Albertson=s store no. 1638 operating under the AAlbertson=s@ trade name, which is located at 4821 West Craig Road, Las Vegas, Nevada 89129 (Clark County);
12. Albertson=s store no. 1642 operating under the AAlbertson=s@ trade name, which is located at 3864 West Sahara Avenue, Las Vegas, Nevada 89102 (Clark County);
13. Albertson=s store no. 1659 operating under the AAlbertson=s@ trade name, which is located at 2545 South Eastern Avenue, Las Vegas, Nevada 89109 (Clark County);

## Schedules

14. Albertson=s store no. 1660 operating under the AAlbertson=s@ trade name, which is located at 8150 South Eastern Avenue, Las Vegas, Nevada 89123 (Clark County);

15. Albertson=s store no. 1664 operating under the AAlbertson=s@ trade name, which is located at 120 South Rainbow, Las Vegas, Nevada 89128 (Clark County);

16. Albertson=s store no. 1665 operating under the AAlbertson=s@ trade name, which is located at 1255 South Lamb Boulevard, Las Vegas, Nevada 89104 (Clark County);

17. Albertson=s store no. 1678 operating under the AAlbertson=s@ trade name, which is located at 1955 North Nellis Boulevard, Las Vegas, Nevada 89115 (Clark County);

18. Albertson=s store no. 1681 operating under the AAlbertson=s@ trade name, which is located at 6150 West Flamingo Road, Las Vegas, Nevada 89103 (Clark County);

19. Albertson=s store no. 1684 operating under the AAlbertson=s@ trade name, which is located at 2475 East Tropicana Avenue, Las Vegas, Nevada 89121 (Clark County);  
and

20. Land Site for Albertson=s store no. 633, which is located at the northwest corner of Eastern and Maryland Parkway, Henderson, Nevada 89012 (Clark County).

Supermarkets in the East Albuquerque, New Mexico Market:

1. Albertson=s store no. 905 operating under the AAlbertson=s@ trade name, which is located at 2200 Juan Tabo Boulevard NE, Albuquerque, New Mexico 87112 (Bernalillo County);



## Schedules

2. Albertson=s store no. 906 operating under the AAlbertson=s@ trade name, which is located at 4401 Wyoming Boulevard NE, Albuquerque, New Mexico 87111 (Bernalillo County);
3. Albertson=s store no. 912 operating under the AAlbertson=s@ trade name, which is located at 5555 Zuni SE, Albuquerque, New Mexico 87108 (Bernalillo County); and
4. Albertson=s store no. 923 operating under the AAlbertson=s@ trade name, which is located at 13150 Central Avenue SE, Albuquerque, New Mexico 87123 (Bernalillo County).

Supermarkets in the Rio Rancho/Northwest Albuquerque, New Mexico Market:

1. Albertson=s store no. 915 operating under the AAlbertson=s@ trade name, which is located at 6200 Coors Boulevard NW, Albuquerque, New Mexico 87120 (Bernalillo County); and
2. Albertson=s store no. 920 operating under the AAlbertson=s@ trade name, which is located at 1660 Rio Rancho Drive SE, Rio Rancho, New Mexico 87124 (Sandoval County).

Supermarkets in the Las Cruces, New Mexico Market:

1. American Stores store no. 668 operating under the ALucky@ trade name, which is located at 320 Wyatt Drive, Las Cruces, New Mexico 88001 (Dona Ana County); and
3. American Stores store no. 698 operating under the ALucky@ trade name, which is located at 3861 North Main, Las Cruces, New Mexico 88005 (Dona Ana County).

**Schedule C**

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Supermarkets and Land Sites Divested to Ralphs

Supermarket in the Antioch/Pittsburg, California Market:

1. American Stores store no. 122 operating under the ASuperSaver® trade name, which is located at 300 Atlantic Avenue, Pittsburg, California 94565 (Contra Costa County).

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Supermarket in the Atascadero, California Market:

1. American Stores store no. 273 operating under the ALucky@ trade name, which is located at 8665 El Camino Real, Atascadero, California 93422 (San Luis Obispo County).

Supermarket in the Auburn, California Market:

1. Albertson=s store no. 759 operating under the AAlbertson=s@ trade name, which is located at 2795 Bell Road, Auburn, California 95603 (Placer County).

Supermarket in the Greater Bakersfield, California Market:

1. American Stores store no. 280 operating under the ALucky@ trade name, which is located at 1121 Olive Drive, Bakersfield, California 93308 (Kern County).

Supermarkets in the Danville/San Ramon/Dublin/Pleasanton, California Market:

1. Albertson=s store no. 703 operating under the AAlbertson=s@ trade name, which is located at 9100 Alcosta Avenue, San Ramon, California 94583 (Contra Costa County); and
2. Albertson=s store no. 733 operating under the AAlbertson=s@ trade name, which is located at 7333 Regional Street, Dublin, California 94568 (Alameda County).

Supermarket in the Davis, California Market:

1. Albertson=s store no. 725 operating under the AAlbertson=s@ trade name, which is located at 1800 East 8th Street, Davis, California 95616 (Yolo County).

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Supermarket in the Grass Valley, California Market:

1. American Stores store no. 323 operating under the ALucky@ trade name, which is located at 11867 Sutton Way, Grass Valley, California 95945 (Nevada County).

Supermarket in the Grover City/Arroyo Grande, California Market:

1. Albertson=s store no. 1688 operating under the AAlbertson=s@ trade name, which is located at 829 Oak Park Boulevard, Pismo Beach, California 93449 (San Luis Obispo County).

Supermarket in the Jackson, California Market:

1. American Stores store no. 193 operating under the ALucky@ trade name, which is located at 555 Highway 49, Jackson, California 95642 (Amador County).

Supermarket in the Laguna Beach, California Market:

1. Albertson=s store no. 612 operating under the AAlbertson=s@ trade name, which is located at 700 South Coast Highway, Laguna Beach, California 92651 (Orange County).

Supermarket in the Livermore, California Market:

1. Albertson=s store no. 763 operating under the AAlbertson=s@ trade name, which is located at 919 East Stanley Boulevard, Livermore, California 94550 (Alameda County).

Supermarket in the Monterey/Seaside/Del Rey Oaks/Pacific Grove, California Market:

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1. Albertson=s store no. 794 operating under the AAlbertson=s@ trade name, which is located at 815 Canyon Del Ray, Monterey, California 93940 (Monterey County).

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Land Site in the Morro Bay/Los Osos, California Market:

1. Land Site for American Stores store no. 592, which is located at the northwest corner of Los Osos Valley Road and Southbay Boulevard, Los Osos, California 93402 (San Luis Obispo County).

Supermarket in the Napa, California Market:

1. Albertson's store no. 750 operating under the AAlbertson's@ trade name, which is located at 3682 Bel Aire Plaza, Napa, California 94558 (Napa County).

Supermarket in the Paso Robles, California Market:

1. American Stores store no. 266 operating under the ALucky@ trade name, which is located at 2121 Spring Street, Paso Robles, California 93446 (San Luis Obispo County).

Supermarkets in the Greater Sacramento, California Market:

1. Albertson's store no. 702 operating under the AAlbertson's@ trade name, which is located at 5001 Foothills Boulevard, Roseville, California 95678 (Placer County);
2. Albertson's store no. 761 operating under the AAlbertson's@ trade name, which is located at 2280 Sunrise Boulevard, Rancho Cordova, California 95670 (Sacramento County);
3. Albertson's store no. 762 operating under the AAlbertson's@ trade name, which is located at 9522 Greenback Lane, Folsom, California 95630 (Sacramento County);
4. Albertson's store no. 765 operating under the AAlbertson's@ trade name, which is located at 6737 Watt Avenue, North Highlands, California 95660 (Sacramento County);

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5. Albertson=s store no. 766 operating under the AAlbertson=s@ trade name, which is located at 3615 Bradshaw Road, Sacramento, California 95827 (Sacramento County);
6. Albertson=s store no. 769 operating under the AAlbertson=s@ trade name, which is located at 5330 Stockton Boulevard, Sacramento, California 95820 (Sacramento County);
7. Albertson=s store no. 770 operating under the AAlbertson=s@ trade name, which is located at 4560 Mack Road, Sacramento, California 95823 (Sacramento County);
8. Albertson=s store no. 771 operating under the AAlbertson=s@ trade name, which is located at 4080 Douglas Boulevard, Granite Bay, California 95746 (Placer County);
9. Albertson=s store no. 774 operating under the AAlbertson=s@ trade name, which is located at 6124 San Juan, Citrus Heights, California 95610 (Sacramento County);
10. Albertson=s store no. 777 operating under the AAlbertson=s@ trade name, which is located at 8122 Gerber Road, Sacramento, California 95828 (Sacramento County);
11. Albertson=s store no. 783 operating under the AAlbertson=s@ trade name, which is located at 5025 Marconi Avenue, Carmichael, California 95608 (Sacramento County);
12. Albertson=s store no. 788 operating under the AAlbertson=s@ trade name, which is located at 25000 Blue Ravine Road, Folsom, California 95630 (Sacramento County);
13. American Stores store no. 179 operating under the ASuperSaver@ trade name, which is located at 2351 Northgate Boulevard, Sacramento, California 95833 (Sacramento County);  
and

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14. American Stores store no. 195 operating under the ALucky@ trade name, which is located at 8539 Elk Grove Boulevard, Elk Grove, California 95624 (Sacramento County).

Supermarket in the Salinas, California Market:

1. Albertson=s store no. 795 operating under the AAlbertson=s@ trade name, which is located at 1030 East Alisal, Salinas, California 93905 (Monterey County).

Supermarket in the San Luis Obispo, California Market:

1. American Stores store no. 271 operating under the ALucky@ trade name, which is located at 201 Madonna Road, San Luis Obispo, California 93401 (San Luis Obispo County).

Supermarket in the Santa Cruz/Capitola, California Market:

1. Albertson=s store no. 719 operating under the AAlbertson=s@ trade name, which is located at 1710 41st Avenue, Capitola, California 95010 (Santa Cruz County).

Supermarket in the Santa Maria/Orcutt, California Market:

1. American Stores store no. 262 operating under the ALucky@ trade name, which is located at 4869 South Bradley, Orcutt, California 93455 (Santa Barbara County).

Supermarkets in the Santa Rosa, California Market:

1. Albertson=s store no. 760 operating under the AAlbertson=s@ trade name, which is located at 461 Stony Point Road, Santa Rosa, California 95401 (Sonoma County); and



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2. American Stores store no. 29 operating under the ALucky@ trade name, which is located at 390 Coddington Center, Santa Rosa, California 95401 (Sonoma County).

Supermarket in the Sonoma, California Market:

1. Albertson=s store no. 756 operating under the AAlbertson=s@ trade name, which is located at 201 West Napa Street, Sonoma, California 95476 (Sonoma County).

Supermarket in the Vacaville, California Market:

1. American Stores store no. 399 operating under the ALucky@ trade name, which is located at 615 Elmira Road, Vacaville, California 95687 (Solano County).

Supermarket in the Watsonville/Freedom, California Market:

1. Albertson=s store no. 786 operating under the AAlbertson=s@ trade name, which is located at 2010 Freedom Boulevard, Freedom, California 95019 (Santa Cruz County).

Supermarket and Land Site in the Santa Fe, New Mexico Market:

1. American Stores store no. 688 operating under the ALucky@ trade name, which is located at 2308 Cerrillos Road, Santa Fe, New Mexico 87505 (Santa Fe County); and

2. Land Site for American Stores store no. 701, which is located at the northeast corner of Airport and South Meadows, Santa Fe, New Mexico 87505 (Santa Fe County).

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## Supermarkets and Land Site Divested to Stater

Supermarket in the Encinitas, California Market:

1. Albertson=s store no. 613 operating under the AAlbertson=s@ trade name, which is located at 1048 North El Camino Real, Encinitas, California 92024 (San Diego County).

Supermarkets in the Escondido, California Market:

1. Albertson=s store no. 1672 operating under the AAlbertson=s@ trade name, which is located at 635 North Broadway, Escondido, California 92025 (San Diego County); and
2. American Stores store no. 561 operating under the ALucky@ trade name, which is located at 1330 Mission Road, San Marcos, California 92069 (San Diego County).

Land Site for Supermarket in the Fallbrook, California Market:

1. Land Site for Albertson=s store no. 1692, which is located at Mission and Pepper, Fallbrook, California 92028 (San Diego County).

Supermarkets in the Lancaster/Palmdale, California Market:

1. Albertson=s store no. 1619 operating under the AAlbertson=s@ trade name, which is located at 1840 East Avenue J, Lancaster, California 93536 (Los Angeles County);
2. Albertson=s store no. 1634 operating under the AAlbertson=s@ trade name, which is located at 37218 47th Street East, Palmdale, California 93550 (Los Angeles County);

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3. Albertson=s store no. 1670 operating under the AAlbertson=s@ trade name, which is located at 2845 West Avenue L, Lancaster, California 93536 (Los Angeles County); and

4. American Stores store no. 458 operating under the ALucky@ trade name, which is located at 2535 East Avenue South, Palmdale, California 93550 (Los Angeles County).

Supermarkets in the Murrieta/Temecula, California Market:

1. Albertson=s store no. 619 operating under the AAlbertson=s@ trade name, which is located at 31813 Highway 79 South, Temecula, California 92592 (Riverside County); and

2. American Stores store no. 504 operating under the ALucky@ trade name, which is located at 25050 Hancock Avenue, Murrieta Hot Springs, California 92563 (Riverside County).

Supermarkets in the Oceanside/Vista/Carlsbad, California Market:

1. Albertson=s store no. 1631 operating under the AAlbertson=s@ trade name, which is located at 1451 North Santa Fe Avenue, Vista, California 92083 (San Diego County);

2. Albertson=s store no. 1687 operating under the AAlbertson=s@ trade name, which is located at 780 Sycamore Avenue, Vista, California 92083 (San Diego County);

3. American Stores store no. 231 operating under the ASuperSaver@ trade name, which is located at 3770 Mission Avenue, Oceanside, California 92054 (San Diego County); and

4. American Stores store no. 298 operating under the ALucky@ trade name, which is located at 2170 Vista Way, Oceanside, California 92054 (San Diego County).

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Supermarkets in the Palm Springs/Indio, California Market:

1. Albertson=s store no. 683 operating under the AAlbertson=s@ trade name, which is located at 1717 Vista Chino, Palm Springs, California 92262 (Riverside County);
2. Albertson=s store no. 1623 operating under the AAlbertson=s@ trade name, which is located at 69255 Ramon Road, Cathedral City, California 92234 (Riverside County); and
3. Albertson=s store no. 1627 operating under the AAlbertson=s@ trade name, which is located at 78-630 Highway 111, La Quinta, California 92253 (Riverside County).

Supermarkets in the Poway/North San Diego, California Market:

1. Albertson=s store no. 1644 operating under the AAlbertson=s@ trade name, which is located at 13589 Poway Road, Poway, California 92064 (San Diego County); and
2. American Stores store no. 553 operating under the ALucky@ trade name, which is located at 9909 Carmel Mountain Road, San Diego, California 92129 (San Diego County).

Supermarket in the Ramona, California Market:

1. Albertson=s store no. 1630 operating under the AAlbertson=s@ trade name, which is located at 1674 Main Street, Ramona, California 92065 (San Diego County).

Supermarket in the Santa Clarita, California Market:

1. Albertson=s store no. 681 operating under the AAlbertson=s@ trade name, which is located at 26900 Sierra Highway, Santa Clarita, California 91355 (Los Angeles County).

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Supermarkets in the South Los Angeles County/North Orange County, California Market:

1. Albertson=s store no. 607 operating under the AAlbertson=s@ trade name, which is located at 3325 East Chapman Avenue, Orange, California 92669 (Orange County);
2. Albertson=s store no. 620 operating under the AAlbertson=s@ trade name, which is located at 610 South Brookhurst, Anaheim, California 92804 (Orange County);
3. Albertson=s store no. 627 operating under the AAlbertson=s@ trade name, which is located at 8640 East Alondra Boulevard, Paramount, California 90723 (Los Angeles County);
4. Albertson=s store no. 629 operating under the AAlbertson=s@ trade name, which is located at 851 North Harbor Boulevard, La Habra, California 90631 (Orange County);
5. Albertson=s store no. 651 operating under the AAlbertson=s@ trade name, which is located at 11815 Artesia Boulevard, Artesia, California 90701 (Los Angeles County);
6. Albertson=s store no. 666 operating under the AAlbertson=s@ trade name, which is located at 1131 State College Boulevard, Anaheim, California 92806 (Orange County);
7. Albertson=s store no. 1601 operating under the AAlbertson=s@ trade name, which is located at 7814 East Firestone Boulevard, Downey, California 90241 (Los Angeles County);
8. Albertson=s store no. 1604 operating under the AAlbertson=s@ trade name, which is located at 1111 East Imperial Highway, Placentia, California 92670 (Orange County);

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9. Albertson=s store no. 1608 operating under the AAlbertson=s@ trade name, which is located at 10051 Valley View, Cypress, California 90630 (Orange County);
10. Albertson=s store no. 1635 operating under the AAlbertson=s@ trade name, which is located at 1040 East Bastanchury Road, Fullerton, California 92635 (Orange County);
11. Albertson=s store no. 1641 operating under the AAlbertson=s@ trade name, which is located at 6501 East Spring, Long Beach, California 90808 (Los Angeles County);
12. Albertson=s store no. 1648 operating under the AAlbertson=s@ trade name, which is located at 7511 East Orangethorp, Buena Park, California 90621 (Orange County);
13. Albertson=s store no. 1652 operating under the AAlbertson=s@ trade name, which is located at 12800 La Mirada Boulevard, La Mirada, California 90638 (Los Angeles County);
14. Albertson=s store no. 1656 operating under the AAlbertson=s@ trade name, which is located at 10114 Adams Street, Huntington Beach, California 92646 (Orange County);
15. Albertson=s store no. 1668 operating under the AAlbertson=s@ trade name, which is located at 7101 Warner Avenue, Huntington Beach, California 92647 (Orange County);
16. Albertson=s store no. 1674 operating under the AAlbertson=s@ trade name, which is located at 11300 Firestone Boulevard, Norwalk, California 90650 (Los Angeles County);
17. American Stores store no. 425 operating under the ALucky@ trade name, which is located at 333 North Euclid Avenue, Fullerton, California 92632 (Orange County);

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18. American Stores store no. 442 operating under the ALucky@ trade name, which is located at 17220 South Lakewood Boulevard, Bellflower, California 90706 (Los Angeles County); and

19. American Stores store no. 473 operating under the ALucky@ trade name, which is located at 11750 East Whittier Boulevard, Whittier, California 90601 (Los Angeles County).

Supermarkets in the South Orange County, California Market:

1. Albertson=s store no. 1673 operating under the AAlbertson=s@ trade name, which is located at 22351 El Toro Road, El Toro, California 92630 (Orange County);

2. Albertson=s store no. 1677 operating under the AAlbertson=s@ trade name, which is located at 26892 La Paz Road, Laguna Hills, California 92653 (Orange County); and

3. American Stores store no. 624 operating under the ALucky@ trade name, which is located at 616 Camino de los Mares, San Clemente, California 92673 (Orange County).

Supermarket in the Southern Covina, California Market:

1. Albertson=s store no. 1662 operating under the AAlbertson=s@ trade name, which is located at 20677 Amar Road, Walnut, California 91789 (Los Angeles County).

## **Schedule E**

### **Supermarkets and Land Site Divested to Vons**



## Schedules

Supermarket in the Moorpark, California Market:

1. American Stores store no. 558 operating under the ALucky@ trade name, which is located at 4241 Tierra Rejada, Moorpark, California 93021 (Ventura County).

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Supermarket in the Redlands, California Market:

1. Albertson=s store no. 1605 operating under the AAlbertson=s@ trade name, which is located at 522 North Orange, Redlands, California 92374 (San Bernardino County).

Land Site for Supermarket in the Rialto/Fontana, California Market:

1. Land Site for Albertson=s store no. 628, which is located at Cherry and Baseline, Fontana, California 92336 (San Bernardino County).

Supermarket in the Riverside/Corona, California Market:

1. Albertson=s store no. 1622 operating under the AAlbertson=s@ trade name, which is located at 1130 West 6th Street, Corona, California 91720 (Riverside County).

Analysis to Aid Public Comment

## **Analysis of the Draft Complaint and Proposed Consent Order to Aid Public Comment**

### **I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment from Albertson=s, Inc. ("Albertson=s") and American Stores Company ("American Stores") (collectively "the Proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint that the Commission contemplates issuing. The proposed consent order is designed to remedy likely anticompetitive effects arising from Albertson=s proposed stock-for-stock acquisition of all of the outstanding securities of American Stores.

### **II. Description of the Parties and the Proposed Acquisition**

Albertson=s, a Delaware corporation headquartered in Boise, Idaho, operates approximately 994 supermarkets in 25 Western, Midwestern, and Southern states. Albertson=s supermarkets operate primarily under the "Albertson=s,@ "Max Grocery Warehouse,@ ASeessel=s@ and ASmitty=s@ trade names. Albertson=s competes with American Stores in California, Nevada and New Mexico. Albertson=s operates 177 supermarkets in California, 31 supermarkets in Nevada, and 19 supermarkets in New Mexico. Albertson=s total sales for the fiscal year that ended on January 28, 1999, were approximately \$16.0 billion. Albertson=s is the fourth largest supermarket chain in the United States, based on total sales. After the merger with American Stores, Albertson=s will become the second largest supermarket chain in the United States.

American Stores, a Delaware corporation headquartered in Salt Lake City, Utah, operates approximately 802 supermarkets and 773 stand-alone pharmacies in 31 states. American Stores operates supermarkets, including combination supermarket and pharmacies, in 12 Western, 2 Midwestern and Eastern states under

## Analysis to Aid Public Comment

the ALucky,@ ALucky Sav-On,@ ASuperSaver,@ AAcm Markets,@ and AJewel Food Stores@ trade names. American Stores operates approximately 411 supermarkets in California, 25 supermarkets in Nevada, and 11 supermarkets in New Mexico. These American Stores supermarkets are all in the company=s Lucky Division and operate under the ALucky,@ ASuperSaver@ and ALucky Sav-On@ trade names. American Stores= total sales for the fiscal year that ended on January 30, 1999, were \$19.9 billion. Based on total sales, American Stores is the second largest supermarket chain in the United States.

On August 2, 1999, Albertson=s, Abacus Holdings, Inc. (AAbacus@), a wholly owned subsidiary of Albertson=s, and American Stores entered into an Agreement and Plan of Merger pursuant to which Abacus will acquire all of the outstanding securities of American Stores. Under the merger agreement, Abacus will convert the American Stores stock into Albertson=s stock based on a 0.63 exchange rate. As a result, 100 shares of American Stores stock will be converted to 63 shares of Albertson=s stock. The transaction, at the time it was negotiated, had a total value of approximately \$11.7 billion, including an equity value of \$8.3 billion and debt of \$3.4 billion. Today, the acquisition is valued at approximately \$13 billion.

### III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")), as well as a deep inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets

## Analysis to Aid Public Comment

are large stores that typically have at least 10,000 square feet of selling space. Supermarkets in California, Nevada and New Mexico tend to have at least 20,000 square feet and carry at least 20,000 SKUs.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices on the prices primarily of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores such as club stores or limited assortment stores, and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain most prices at supermarkets. These other stores operate significantly different retail formats and sell far more limited assortments of items. None of these stores offers a supermarket=s distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the areas in and near the following cities and towns: (a) Antioch/Pittsburg, California; (b) Apple Valley/Hesperia/Victorville, California; (c) Atascadero, California; (d) Auburn, California; (e) Greater Bakersfield, California; (f) Claremont/Pomona/Rancho Cucamonga, California; (g) Danville/San Ramon/Dublin/Pleasanton, California; (h) Davis, California; (i) Encinitas, California; (j) Escondido, California; (k) Fallbrook, California; (l) Grass Valley, California; (m) Grover City/Arroyo Grande, California; (n)

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Jackson, California; (o) La Mesa/El Cajon, California; (p) Laguna Beach, California; (q) Lancaster/Palmdale, California; (r) Livermore, California; (s) Lompoc, California; (t) Monterey/Seaside/Del Rey Oaks/Pacific Grove, California; (u) Moorpark, California; (v) Morro Bay/Los Osos, California; (w) Murrieta/Temecula, California; (x) Napa, California; (y) Northern Covina, California, an area that includes Azusa, Baldwin Park, Charter Oak, Citrus, Covina, Glendora, La Puente, Valinda, Vincent, West Covina, and West Puente; (z) Oceanside/Vista/Carlsbad, California; (aa) Oxnard, California; (bb) Palm Springs/Indio, California; (cc) Paso Robles, California; (dd) Petaluma, California; (ee) Poway/North San Diego, California; (ff) Ramona, California; (gg) Redlands, California; (hh) Rialto/Fontana, California; (ii) Riverside/Corona, California; (jj) Greater Sacramento, California, and narrower markets contained therein; (kk) Salinas, California; (ll) San Luis Obispo, California; (mm) Santa Barbara/Goleta, California; (nn) Santa Clarita, California; (oo) Santa Cruz/Capitola, California; (pp) Santa Maria/Orcutt, California; (qq) Santa Rosa, California; (rr) Simi Valley, California; (ss) Sonoma/Hot Springs, California; (tt) South Los Angeles County/North Orange County, California, and narrower markets contained therein;<sup>1</sup> (uu) South Orange County, California, and narrower markets contained therein; (vv) Southern Covina, California, an area that includes the communities of Diamond Bar, Hacienda Heights, South San Jose Hills, and Walnut; (ww) Thousand Oaks/Newbury Park/Casa Conejo, California; (xx) Torrance, California; (yy) Vacaville, California; (zz) Watsonville/Freedom, California; (aaa) Eastern Albuquerque, New Mexico; (bbb) Las Cruces, New Mexico; (ccc) Rio Rancho/Northwest Albuquerque, New Mexico; (ddd) Santa

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<sup>1</sup> The draft complaint defines aSouth Los Angeles County/North Orange County@ as an area bordered on the north by the Santa Monica and San Jose Hills/Puente Hills/Chino Hills, on the west by Interstate 710 and the Pacific Ocean, on the east by the Santa Ana Mountains, and on the south by the Laguna Hills and El Toro Marine Corps Air Base.

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Fe, New Mexico; and (eee) Greater Las Vegas/Henderson, Nevada, and narrower markets contained therein.

Albertson=s and American Stores are actual and direct competitors in all of the above listed markets other than Antioch/Pittsburg, Atascadero, Fallbrook, Morro Bay/Los Osos, and Santa Maria/Orcutt. Albertson=s is an actual potential competitor against American Stores in and near Antioch/Pittsburg, Atascadero, Fallbrook, and Santa Maria/Orcutt, California. American Stores is an actual potential competitor against Albertson=s in Morro Bay/Los Osos, California. But for the acquisition, Albertson=s and American Stores would have become direct competitors in and near Antioch/Pittsburg, Atascadero, Fallbrook, Morro Bay/Los Osos, and Santa Maria/Orcutt, California. The acquisition will eliminate that competition.

The draft complaint alleges that the post-merger markets would all be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by four-firm concentration ratios.<sup>2</sup> The acquisition would substantially increase concentration in each market. The post-acquisition HHIs in the geographic markets would range from 2,000 to 8,090. Concentration levels in the geographic markets alleged in the draft complaint would not be materially different even if club stores and limited assortment stores were included in the product market.

The draft complaint further alleges that entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The draft complaint also alleges that Albertson=s proposed acquisition of all of the outstanding securities of American Stores, if consummated, may substantially lessen competition in the

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<sup>2</sup> The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

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relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, by eliminating direct competition between supermarkets owned or controlled by Albertson=s and supermarkets owned or controlled by American Stores; by eliminating actual potential competition between supermarkets owned or controlled by Albertson=s and supermarkets owned or controlled by American Stores; by increasing the likelihood that Albertson=s will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the geographic markets alleged in the proposed complaint.

**IV. Terms of the Agreement Containing Consent Order ("the proposed consent order")**

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Albertson=s and American Stores must divest 144 identified supermarkets and five identified supermarket sites in the relevant markets to five different upfront buyers. The supermarkets and sites that the Proposed Respondents must divest consist of 104 Albertson=s supermarkets and three Albertson=s sites, and 40 American Stores supermarkets and two American Stores sites. The 104 Albertson=s supermarkets consist of 96 stores that operate under the "Albertson=s" trade name and eight stores that operate under the "Max Grocery Warehouse" trade name. The 40 American Stores supermarkets consist of 36 stores that operate under the "Lucky" trade name, three stores that operate under the "SuperSaver" trade name, and one store that operates under the ALucky Sav- On@ trade name.



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In 37 of the 57 geographic markets, the Proposed Respondents will divest either all of the Albertson=s supermarkets or all of the American Stores supermarkets to buyers who do not currently operate supermarkets in these markets. In the remaining markets, the Proposed Respondents will divest some combination of Albertson=s and American Stores supermarkets or sites or both. Divesting all of one party=s assets within a particular market achieves several important competitive goals that the proposed consent order is designed to achieve. It ensures that the merger will not result in any increase in concentration in that market. The divestiture will result in the same number of players in the market holding the same relative shares of the market as existed before the merger.

However, the Commission is willing to evaluate and, under certain conditions, accept other divestiture packages if and when the parties can satisfy the Commission that the divestiture will eliminate the anticompetitive effects of concern. In order to do so, the Commission will analyze the financial and competitive condition of the proposed divestiture assets and that of the stores the Proposed Respondents intend to retain. In this instance, the Commission has declined to accept divestiture of supermarkets that are not profitable or are declining in sales or profitability, and has required that Amix-and-match@ divestitures consist solely of competitively viable stores.

In 13 of the markets in which the Proposed Respondents are not divesting either all of the Albertson=s or all of the American Stores supermarkets to buyers who do not currently operate supermarkets in these markets, there will be no significant increase in concentration. In the remaining seven markets, although there is nominally an increase in concentration from the combined effect of the merger and divestiture, the proposed increase in concentration is significant in only one market (Bakersfield). In markets where the Proposed Respondents are not divesting either all of the Albertson=s or all of the American Stores supermarkets, the proposed divestiture assets consist of

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more profitable stores, rather than a divestiture of sales volume from unprofitable stores.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. When divestiture is an appropriate remedy for a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is preliminarily satisfied that the purchasers presented by the parties are well qualified to run the divested stores and that divestiture to these purchasers poses no separate competitive issues. Public comments may address the suitability of the designated acquirers to acquire the supermarkets at issue.

The five upfront buyers and the number of stores each is acquiring are as follows: 31 stores to Certified Grocers of California; 27 stores and one land site to Raley's; 40 stores and two land sites to Ralphs (a Kroger/Fred Meyer subsidiary); 43 stores and one land site to Stater Bros.; and three stores and one land site to Vons (a Safeway subsidiary). A list of the specific supermarkets that Albertson's and American Stores must divest to each of the upfront buyers is attached at the end of this Analysis to Aid Public Comment. The proposed consent order also requires Certified Grocers, which is acquiring 31 stores, to divest at least 20 of the stores within 90 days from the time the order becomes final. Certified Grocers is a food wholesaler that does not operate many corporate-owned stores. Certified Grocers must seek prior approval from the Commission to divest, within three years of the final order, any supermarkets to any firms not preapproved in the proposed consent order to acquire specific stores. Certified Grocers is made a party to the proposed consent

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order for relief purposes and is subject to civil penalties if it does not meet its obligations under the order.

The preapproved independent buyers that Certified Grocers plans to sell identified supermarkets to include the following: A.J. Markets, Inc. (d/b/a Amar Ranch); Arden Group (d/b/a Gelsons and Mayfair); Berberian Enterprises (d/b/a Jons Market); Bianchini=s Apple Market (d/b/a Apple Market); Ceiland Coast, Inc.; Colonial Shopping Center, a general partnership (d/b/a Young=s Market); El Tigre Inc. (d/b/a El Tigre Market); Goodwin & Sons, Inc. (d/b/a Village Market); Hope Mart, Inc. (d/b/a Best Value Grocery Warehouse); K.V. Mart Co. (d/b/a Top Valu and Valu Plus Food Warehouse); Rodd Mart, Inc. (d/b/a Payless Foods); Stump=s Apple Markets (d/b/a Apple Market); UKA=s Big Saver Food, Inc. (d/b/a Big Saver Foods); Vallarta Foods Enterprises, Inc. (d/b/a Vallarta Super Markets); and Ronald Ziff.

The supermarkets that Certified Grocers plans to sell to each preapproved buyer are identified by location in the proposed consent order.

The proposed consent order requires that the divestitures must occur no later than the earlier of (1) 30 to 120 days from when the Commission accepts the agreement for public comment, depending on the business plans of the specific upfront buyer, or (2) four months after the Commission accepts the agreement for public comment.<sup>3</sup> The amount of time required for the divestitures varies with each of the acquirers based on the acquirer=s need to convert large numbers of new stores into its operations. The proposed consent order also requires Albertson=s to include rescission provisions in its upfront buyer agreements that allow it to rescind the transaction(s) if the Commission, after the comment period, decides to reject any of the upfront buyers. If, at the time the Commission decides to make the proposed

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<sup>3</sup> The Acceptance of the proposed consent order for public comment terminates the Hart-Scott- Rodino waiting period and enables Albertson=s to immediately acquire the American Stores stock.

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consent order final, the Commission notifies Albertson=s that any of the upfront buyers to which Albertson=s has divested a supermarket or site is not an acceptable acquirer, or that any upfront buyer agreement is not an acceptable manner of divestiture, then Albertson=s must immediately rescind the transaction in question and divest those assets within three months after the proposed consent order becomes final. At that time, Albertson=s must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any additional ancillary assets and effect such arrangements as are necessary to satisfy the requirements of the proposed consent order.

The proposed consent order specifically requires the Proposed Respondents to: (1) maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers and employees; and (6) keep the supermarkets open for business and maintain the inventory of products in each store consistent with past practice. The proposed consent order also contains more specific details relating to maintaining store operations.

The proposed consent order also enables the Commission to appoint an interim auditor trustee to ensure that the parties expeditiously perform their respective responsibilities as required by the agreement, including the asset maintenance provisions. This provision is included in the proposed consent order because such a large number of stores must be divested and because the

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last of these divestitures may not occur for 120 days. The interim auditor trustee shall serve until the parties have completed all of the required divestitures. The interim auditor trustee does not have any responsibilities relating to the stores being divested to Certified Grocers once such divestitures have been accomplished, even if Certified Grocers later divests 20 or more of these store to other retail operators.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Albertson=s and American Stores have not divested to satisfy the requirements of the proposed consent order. The proposed consent order also enables the Commission to seek civil penalties against Albertson=s for non-compliance with the proposed consent order. For a period of 10 years from the date the proposed consent order becomes final, the Proposed Respondents are required to provide written notice to the Commission prior to acquiring supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico. Proposed Respondents may not complete such an acquisition until they have provided information requested by the Commission. This provision does not restrict the Proposed Respondents from constructing new supermarket facilities on their own; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of 10 years, the proposed consent order also prohibits the Proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket

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at that site if such supermarket was formerly owned or operated by the Proposed Respondents in Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico. In addition, the Proposed Respondents may not remove fixtures or equipment from a store or property owned or leased in these counties that is no longer in operation as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Proposed Respondents.

The Proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty days following the date on which they signed the proposed consent, every thirty days thereafter until the divestitures are completed, and annually for a period of 10 years.

The proposed consent order also has a provision relating to the settlement agreements negotiated by California, Nevada and New Mexico. If a State fails to approve any divestiture that has not been completed, even though the parties are in compliance with the other provisions of the proposed consent order, the time period in which the divestiture must be completed will be extended 60 days, during which the parties must exercise utmost good faith and best efforts to resolve the concerns of that particular State.

**V. Opportunity for Public Comment**

The proposed consent order has been placed on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the proposed consent order and the comments received and will

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decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Certified Grocers, Raley=s, Ralphs, Stater, and Vons, and the proposed divestitures by Certified Grocers to the various independent buyers listed above, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

**Schedule A**

## Supermarkets Divested to Certified Grocers

Supermarket in the Apple Valley/Hesperia/Victorville, California Market:

1. Albertson=s store no. 1609 operating under the AAlbertson=s@ trade name, which is located at 20801 Bear Valley Road, Apple Valley, California 92307 (San Bernardino County).

Supermarket in the Greater Bakersfield, California Market:

1. American Stores store no. 281 operating under the ALucky@ trade name, which is located at 4801 White Lane, Bakersfield, California 93309 (Kern County).

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Supermarkets in the Claremont/Pomona/Rancho Cucamonga, California Market:

1. Albertson=s store no. 1675 operating under the AAlbertson=s@ trade name, which is located at 2340 Foothill Boulevard, Laverne, California 91750 (Los Angeles County);
2. Albertson=s store no. 1983 operating under the AMax Grocery Warehouse@ trade name, which is located at 1445 East Foothill Boulevard, Upland, California 91785 (San Bernardino County);
3. American Stores store no. 431 operating under the ALucky@ trade name, which is located at 4200 Chino Hills Parkway 400, Chino Hills, California 91709 (San Bernardino County);
4. American Stores store no. 670 operating under the ALucky@ trade name, which is located at 685 West Foothill Boulevard, Upland, California 91786 (San Bernardino County); and
5. American Stores store no. 679 operating under the ALucky@ trade name, which is located at 6351 Haven Avenue, Rancho Cucamonga, California 91737 (San Bernardino County).

Supermarket in the Escondido, California Market:

1. American Stores store no. 211 operating under the ALucky@ trade name, which is located at 606 North Escondido Boulevard, Escondido, California 92025 (San Diego County).

Supermarket in the La Mesa/El Cajon, California Market:

1. American Stores store no. 565 operating under the ALucky@ trade name, which is located at 7908 El Cajon Boulevard, La Mesa, California 91641 (San Diego County).

Supermarket in the Lancaster/Palmdale, California Market:



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1. Albertson=s store no. 1963 operating under the AMax Grocery Warehouse@ trade name, which is located at 1111 West Avenue I, Lancaster, California 93534 (Los Angeles County).

Supermarket in the Murrieta/Temecula, California Market:

1. Albertson=s store no. 1611 operating under the AAlbertson=s@ trade name, which is located at 29530 Rancho California Road, Temecula, California 92591 (Riverside County).

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Supermarkets in the Northern Covina, California Market:

1. American Stores store no. 620 operating under the ALucky@ trade name, which is located at 1385 North Citrus Avenue, Covina, California 91722 (Los Angeles County);
2. American Stores store no. 873 operating under the ALucky@ trade name, which is located at 13925 Amar Road, La Puente, California 90746 (Los Angeles County); and
3. American Stores store no. 884 operating under the ALucky Sav-On@ trade name, which is located at 543 North Azusa, Covina, California 91723 (Los Angeles County).

Supermarkets in the Oxnard, California Market:

1. Albertson=s store no. 682 operating under the AAlbertson=s@ trade name, which is located at 450 South Ventura Road, Oxnard, California 93030 (Ventura County); and
2. Albertson=s store no. 1953 operating under the AMax Grocery Warehouse@ trade name, which is located at 2800 Saviers Road, Oxnard, California 93030 (Ventura County).

Supermarket in the Petaluma, California Market:

1. Albertson=s store no. 720 operating under the AAlbertson=s@ trade name, which is located at 169 North McDowell Boulevard, Petaluma, California 94954 (Sonoma County).

Supermarket in the Rialto/Fontana, California Market:

1. Albertson=s store no. 1978 operating under the AMax Grocery Warehouse@ trade name, which is located at 515 South Riverside Avenue, Rialto, California 92376 (San Bernardino County).



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Supermarket in the Riverside/Corona, California Market:

1. Albertson=s store no. 1613 operating under the AAlbertson=s@ trade name, which is located at 430 McKinley, Corona, California 91719 (Riverside County).

Supermarket in the Santa Barbara/Goleta, California Market:

1. Albertson=s store no. 622 operating under the AAlbertson=s@ trade name, which is located at 3305 State Street, Santa Barbara, California 93105 (Santa Barbara County).

Supermarket in the Simi Valley, California Market:

1. American Stores store no. 650 operating under the ALucky@ trade name, which is located at 3963 Cochran, Simi Valley, California 93063 (Ventura County).

Supermarkets in the South Los Angeles County/North Orange County, California Market:

1. Albertson=s store no. 1650 operating under the AAlbertson=s@ trade name, which is located at 1720 East 17th Street, Santa Ana, California 92701 (Orange County);
2. Albertson=s store no. 1905 operating under the AMax Grocery Warehouse@ trade name, which is located at 4700 Cherry Avenue, Long Beach, California 90807 (Los Angeles County);
3. Albertson=s store no. 1906 operating under the AMax Grocery Warehouse@ trade name, which is located at 15300 Goldenwest, Westminster, California 92683 (Orange County);
4. Albertson=s store no. 1909 operating under the AMax Grocery Warehouse@ trade name, which is located at 12120 Carson Street, Hawaiian Gardens, California 90716 (Los Angeles County); and

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5. Albertson=s store no. 1930 operating under the AMax Grocery Warehouse@ trade name, which is located at 12891 Harbor Boulevard, Garden Grove, California 92640 (Orange County).

Supermarket in the South Orange County, California Market:

1. Albertson=s store no. 609 operating under the AAlbertson=s@ trade name, which is located at 602 El Camino Real, San Clemente, California 92672 (Orange County).

Supermarket in the Southern Covina, California Market:

1. Albertson=s store no. 1666 operating under the AAlbertson=s@ trade name, which is located at 21080 Golden Springs, Walnut, California 91789 (Los Angeles County).

Supermarkets in the Thousand Oaks/Newbury Park/Casa Conejo, California Market:

1. American Stores store no. 286 operating under the ALucky@ trade name, which is located at 740 Moorpark Avenue, Thousand Oaks, California 91360 (Ventura County); and

2. American Stores store no. 674 operating under the ALucky@ trade name, which is located at 2100 Newbury Road, Newbury Park, California 91320 (Ventura County).

Supermarket in the Torrance, California Market:

1. American Stores store no. 630 operating under the ALucky@ trade name, which is located at 4848 West 190th Street, Torrance, California 90503 (Los Angeles County).

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**Schedule B**

## Supermarkets and Land Site Divested to Raley=s

Supermarkets and Land Site in the Greater Las Vegas/Henderson, Nevada Market:

1. Albertson=s store no. 611 operating under the AAlbertson=s@ trade name, which is located at 4015 South Buffalo Drive, Las Vegas, Nevada 89117 (Clark County);
2. Albertson=s store no. 614 operating under the AAlbertson=s@ trade name, which is located at 55 South Valle Verde Drive, Henderson, Nevada 89012 (Clark County);
3. Albertson=s store no. 634 operating under the AAlbertson=s@ trade name, which is located at 4790 East Flamingo Road, Las Vegas, Nevada 89121 (Clark County);
4. Albertson=s store no. 637 operating under the AAlbertson=s@ trade name, which is located at 1570 North Eastern Avenue, Las Vegas, Nevada 89101 (Clark County);
5. Albertson=s store no. 686 operating under the AAlbertson=s@ trade name, which is located at 260 East Lake Mead Drive, Henderson, Nevada 89015 (Clark County);
6. Albertson=s store no. 1606 operating under the AAlbertson=s@ trade name, which is located at 1421 North Jones Boulevard, Las Vegas, Nevada 89108 (Clark County);
7. Albertson=s store no. 1616 operating under the AAlbertson=s@ trade name, which is located at 3160 North Rainbow, Las Vegas, Nevada 89107 (Clark County);

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8. Albertson=s store no. 1618 operating under the AAlbertson=s@ trade name, which is located at 2271 North Green Valley Parkway, Henderson, Nevada 89014 (Clark County);
9. Albertson=s store no. 1621 operating under the AAlbertson=s@ trade name, which is located at 9200 West Sahara Avenue, Las Vegas, Nevada 89117 (Clark County);
10. Albertson=s store no. 1628 operating under the AAlbertson=s@ trade name, which is located at 8570 West Lake Mead Boulevard, Las Vegas, Nevada 89128 (Clark County);
11. Albertson=s store no. 1638 operating under the AAlbertson=s@ trade name, which is located at 4821 West Craig Road, Las Vegas, Nevada 89129 (Clark County);
12. Albertson=s store no. 1642 operating under the AAlbertson=s@ trade name, which is located at 3864 West Sahara Avenue, Las Vegas, Nevada 89102 (Clark County);
13. Albertson=s store no. 1659 operating under the AAlbertson=s@ trade name, which is located at 2545 South Eastern Avenue, Las Vegas, Nevada 89109 (Clark County);
14. Albertson=s store no. 1660 operating under the AAlbertson=s@ trade name, which is located at 8150 South Eastern Avenue, Las Vegas, Nevada 89123 (Clark County);
15. Albertson=s store no. 1664 operating under the AAlbertson=s@ trade name, which is located at 120 South Rainbow, Las Vegas, Nevada 89128 (Clark County);
16. Albertson=s store no. 1665 operating under the AAlbertson=s@ trade name, which is located at 1255 South Lamb Boulevard, Las Vegas, Nevada 89104 (Clark County);

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17. Albertson=s store no. 1678 operating under the AAlbertson=s@ trade name, which is located at 1955 North Nellis Boulevard, Las Vegas, Nevada 89115 (Clark County);
18. Albertson=s store no. 1681 operating under the AAlbertson=s@ trade name, which is located at 6150 West Flamingo Road, Las Vegas, Nevada 89103 (Clark County);
19. Albertson=s store no. 1684 operating under the AAlbertson=s@ trade name, which is located at 2475 East Tropicana Avenue, Las Vegas, Nevada 89121 (Clark County); and
20. Land Site for Albertson=s store no. 633, which is located at the northwest corner of Eastern and Maryland Parkway, Henderson, Nevada 89012 (Clark County).

Supermarkets in the East Albuquerque, New Mexico Market:

1. Albertson=s store no. 905 operating under the AAlbertson=s@ trade name, which is located at 2200 Juan Tabo Boulevard NE, Albuquerque, New Mexico 87112 (Bernalillo County);
2. Albertson=s store no. 906 operating under the AAlbertson=s@ trade name, which is located at 4401 Wyoming Boulevard NE, Albuquerque, New Mexico 87111 (Bernalillo County);
3. Albertson=s store no. 912 operating under the AAlbertson=s@ trade name, which is located at 5555 Zuni SE, Albuquerque, New Mexico 87108 (Bernalillo County); and
4. Albertson=s store no. 923 operating under the AAlbertson=s@ trade name, which is located at 13150 Central Avenue SE, Albuquerque, New Mexico 87123 (Bernalillo County).

Supermarkets in the Rio Rancho/Northwest Albuquerque, New Mexico Market:



## Analysis to Aid Public Comment

1. Albertson=s store no. 915 operating under the AAlbertson=s@ trade name, which is located at 6200 Coors Boulevard NW, Albuquerque, New Mexico 87120 (Bernalillo County); and
2. Albertson=s store no. 920 operating under the AAlbertson=s@ trade name, which is located at 1660 Rio Rancho Drive SE, Rio Rancho, New Mexico 87124 (Sandoval County).

Supermarkets in the Las Cruces, New Mexico Market:

1. American Stores store no. 668 operating under the ALucky@ trade name, which is located at 320 Wyatt Drive, Las Cruces, New Mexico 88001 (Dona Ana County); and
2. American Stores store no. 698 operating under the ALucky@ trade name, which is located at 3861 North Main, Las Cruces, New Mexico 88005 (Dona Ana County).

**Schedule C**

## Supermarkets and Land Sites Divested to Ralphs

Supermarket in the Antioch/Pittsburg, California Market:

1. American Stores store no. 122 operating under the ASuperSaver@ trade name, which is located at 300 Atlantic Avenue, Pittsburg, California 94565 (Contra Costa County).

Supermarket in the Atascadero, California Market:

1. American Stores store no. 273 operating under the ALucky@ trade name, which is located at 8665 El Camino Real, Atascadero, California 93422 (San Luis Obispo County).

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Supermarket in the Auburn, California Market:

1. Albertson's store no. 759 operating under the Albertson's trade name, which is located at 2795 Bell Road, Auburn, California 95603 (Placer County).

Supermarket in the Greater Bakersfield, California Market:

1. American Stores store no. 280 operating under the Lucky trade name, which is located at 1121 Olive Drive, Bakersfield, California 93308 (Kern County).

Supermarkets in the Danville/San Ramon/Dublin/Pleasanton, California Market:

1. Albertson's store no. 703 operating under the Albertson's trade name, which is located at 9100 Alcosta Avenue, San Ramon, California 94583 (Contra Costa County); and
2. Albertson's store no. 733 operating under the Albertson's trade name, which is located at 7333 Regional Street, Dublin, California 94568 (Alameda County).

Supermarket in the Davis, California Market:

1. Albertson's store no. 725 operating under the Albertson's trade name, which is located at 1800 East 8th Street, Davis, California 95616 (Yolo County).

Supermarket in the Grass Valley, California Market:

1. American Stores store no. 323 operating under the Lucky trade name, which is located at 11867 Sutton Way, Grass Valley, California 95945 (Nevada County).

## Analysis to Aid Public Comment

Supermarket in the Grover City/Arroyo Grande, California  
Market:

1. Albertson=s store no. 1688 operating under the AAlbertson=s@ trade name, which is located at 829 Oak Park Boulevard, Pismo Beach, California 93449 (San Luis Obispo County).

## Analysis to Aid Public Comment

Supermarket in the Jackson, California Market:

1. American Stores store no. 193 operating under the ALucky@ trade name, which is located at 555 Highway 49, Jackson, California 95642 (Amador County).

Supermarket in the Laguna Beach, California Market:

1. Albertson=s store no. 612 operating under the AAlbertson=s@ trade name, which is located at 700 South Coast Highway, Laguna Beach, California 92651 (Orange County).

Supermarket in the Livermore, California Market:

1. Albertson=s store no. 763 operating under the AAlbertson=s@ trade name, which is located at 919 East Stanley Boulevard, Livermore, California 94550 (Alameda County).

Supermarket in the Monterey/Seaside/Del Rey Oaks/Pacific Grove, California Market:

1. Albertson=s store no. 794 operating under the AAlbertson=s@ trade name, which is located at 815 Canyon Del Ray, Monterey, California 93940 (Monterey County).

Land Site in the Morro Bay/Los Osos, California Market:

1. Land Site for American Stores store no. 592, which is located at the northwest corner of Los Osos Valley Road and Southbay Boulevard, Los Osos, California 93402 (San Luis Obispo County).

Supermarket in the Napa, California Market:

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1. Albertson=s store no. 750 operating under the AAlbertson=s@ trade name, which is located at 3682 Bel Aire Plaza, Napa, California 94558 (Napa County).

## Analysis to Aid Public Comment

Supermarket in the Paso Robles, California Market:

1. American Stores store no. 266 operating under the ALucky@ trade name, which is located at 2121 Spring Street, Paso Robles, California 93446 (San Luis Obispo County).

Supermarkets in the Greater Sacramento, California Market:

1. Albertson=s store no. 702 operating under the AAlbertson=s@ trade name, which is located at 5001 Foothills Boulevard, Roseville, California 95678 (Placer County);
2. Albertson=s store no. 761 operating under the AAlbertson=s@ trade name, which is located at 2280 Sunrise Boulevard, Rancho Cordova, California 95670 (Sacramento County);
3. Albertson=s store no. 762 operating under the AAlbertson=s@ trade name, which is located at 9522 Greenback Lane, Folsom, California 95630 (Sacramento County);
4. Albertson=s store no. 765 operating under the AAlbertson=s@ trade name, which is located at 6737 Watt Avenue, North Highlands, California 95660 (Sacramento County);
5. Albertson=s store no. 766 operating under the AAlbertson=s@ trade name, which is located at 3615 Bradshaw Road, Sacramento, California 95827 (Sacramento County);
6. Albertson=s store no. 769 operating under the AAlbertson=s@ trade name, which is located at 5330 Stockton Boulevard, Sacramento, California 95820 (Sacramento County);
7. Albertson=s store no. 770 operating under the AAlbertson=s@ trade name, which is located at 4560 Mack Road, Sacramento, California 95823 (Sacramento County);

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8. Albertson=s store no. 771 operating under the AAlbertson=s@ trade name, which is located at 4080 Douglas Boulevard, Granite Bay, California 95746 (Placer County);
9. Albertson=s store no. 774 operating under the AAlbertson=s@ trade name, which is located at 6124 San Juan, Citrus Heights, California 95610 (Sacramento County);
10. Albertson=s store no. 777 operating under the AAlbertson=s@ trade name, which is located at 8122 Gerber Road, Sacramento, California 95828 (Sacramento County);
11. Albertson=s store no. 783 operating under the AAlbertson=s@ trade name, which is located at 5025 Marconi Avenue, Carmichael, California 95608 (Sacramento County);
12. Albertson=s store no. 788 operating under the AAlbertson=s@ trade name, which is located at 25000 Blue Ravine Road, Folsom, California 95630 (Sacramento County);
13. American Stores store no. 179 operating under the ASuperSaver@ trade name, which is located at 2351 Northgate Boulevard, Sacramento, California 95833 (Sacramento County); and
14. American Stores store no. 195 operating under the ALucky@ trade name, which is located at 8539 Elk Grove Boulevard, Elk Grove, California 95624 (Sacramento County).

Supermarket in the Salinas, California Market:

1. Albertson=s store no. 795 operating under the AAlbertson=s@ trade name, which is located at 1030 East Alisal, Salinas, California 93905 (Monterey County).

## Analysis to Aid Public Comment

Supermarket in the San Luis Obispo, California Market:

1. American Stores store no. 271 operating under the ALucky@ trade name, which is located at 201 Madonna Road, San Luis Obispo, California 93401 (San Luis Obispo County).

Supermarket in the Santa Cruz/Capitola, California Market:

1. Albertson=s store no. 719 operating under the AAlbertson=s@ trade name, which is located at 1710 41st Avenue, Capitola, California 95010 (Santa Cruz County).

Supermarket in the Santa Maria/Orcutt, California Market:

1. American Stores store no. 262 operating under the ALucky@ trade name, which is located at 4869 South Bradley, Orcutt, California 93455 (Santa Barbara County).

Supermarkets in the Santa Rosa, California Market:

1. Albertson=s store no. 760 operating under the AAlbertson=s@ trade name, which is located at 461 Stony Point Road, Santa Rosa, California 95401 (Sonoma County); and
2. American Stores store no. 29 operating under the ALucky@ trade name, which is located at 390 Coddington Center, Santa Rosa, California 95401 (Sonoma County).

Supermarket in the Sonoma, California Market:

1. Albertson=s store no. 756 operating under the AAlbertson=s@ trade name, which is located at 201 West Napa Street, Sonoma, California 95476 (Sonoma County).



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Supermarket in the Vacaville, California Market:

1. American Stores store no. 399 operating under the ALucky@ trade name, which is located at 615 Elmira Road, Vacaville, California 95687 (Solano County).

Supermarket in the Watsonville/Freedom, California Market:

1. Albertson=s store no. 786 operating under the AAlbertson=s@ trade name, which is located at 2010 Freedom Boulevard, Freedom, California 95019 (Santa Cruz County).

Supermarket and Land Site in the Santa Fe, New Mexico Market:

1. American Stores store no. 688 operating under the ALucky@ trade name, which is located at 2308 Cerrillos Road, Santa Fe, New Mexico 87505 (Santa Fe County); and
2. Land Site for American Stores store no. 701, which is located at the northeast corner of Airport and South Meadows, Santa Fe, New Mexico 87505 (Santa Fe County).

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## Supermarkets and Land Site Divested to Stater

Supermarket in the Encinitas, California Market:

1. Albertson=s store no. 613 operating under the AAlbertson=s@ trade name, which is located at 1048 North El Camino Real, Encinitas, California 92024 (San Diego County).

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Supermarkets in the Escondido, California Market:

1. Albertson's store no. 1672 operating under the Albertson's trade name, which is located at 635 North Broadway, Escondido, California 92025 (San Diego County); and
2. American Stores store no. 561 operating under the Lucky trade name, which is located at 1330 Mission Road, San Marcos, California 92069 (San Diego County).

Land Site for Supermarket in the Fallbrook, California Market:

1. Land Site for Albertson's store no. 1692, which is located at Mission and Pepper, Fallbrook, California 92028 (San Diego County).

Supermarkets in the Lancaster/Palmdale, California Market:

1. Albertson's store no. 1619 operating under the Albertson's trade name, which is located at 1840 East Avenue J, Lancaster, California 93536 (Los Angeles County);
2. Albertson's store no. 1634 operating under the Albertson's trade name, which is located at 37218 47th Street East, Palmdale, California 93550 (Los Angeles County);
3. Albertson's store no. 1670 operating under the Albertson's trade name, which is located at 2845 West Avenue L, Lancaster, California 93536 (Los Angeles County); and
4. American Stores store no. 458 operating under the Lucky trade name, which is located at 2535 East Avenue South, Palmdale, California 93550 (Los Angeles County).

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Supermarkets in the Murrieta/Temecula, California Market:

1. Albertson's store no. 619 operating under the AAlbertson's@ trade name, which is located at 31813 Highway 79 South, Temecula, California 92592 (Riverside County); and
2. American Stores store no. 504 operating under the ALucky@ trade name, which is located at 25050 Hancock Avenue, Murrieta Hot Springs, California 92563 (Riverside County).

Supermarkets in the Oceanside/Vista/Carlsbad, California Market:

1. Albertson's store no. 1631 operating under the AAlbertson's@ trade name, which is located at 1451 North Santa Fe Avenue, Vista, California 92083 (San Diego County);
2. Albertson's store no. 1687 operating under the AAlbertson's@ trade name, which is located at 780 Sycamore Avenue, Vista, California 92083 (San Diego County);
3. American Stores store no. 231 operating under the ASuperSaver@ trade name, which is located at 3770 Mission Avenue, Oceanside, California 92054 (San Diego County); and
4. American Stores store no. 298 operating under the ALucky@ trade name, which is located at 2170 Vista Way, Oceanside, California 92054 (San Diego County).

Supermarkets in the Palm Springs/Indio, California Market:

1. Albertson's store no. 683 operating under the AAlbertson's@ trade name, which is located at 1717 Vista Chino, Palm Springs, California 92262 (Riverside County);

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2. Albertson=s store no. 1623 operating under the AAlbertson=s@ trade name, which is located at 69255 Ramon Road, Cathedral City, California 92234 (Riverside County); and
3. Albertson=s store no. 1627 operating under the AAlbertson=s@ trade name, which is located at 78-630 Highway 111, La Quinta, California 92253 (Riverside County).

Supermarkets in the Poway/North San Diego, California Market:

1. Albertson=s store no. 1644 operating under the AAlbertson=s@ trade name, which is located at 13589 Poway Road, Poway, California 92064 (San Diego County); and
2. American Stores store no. 553 operating under the ALucky@ trade name, which is located at 9909 Carmel Mountain Road, San Diego, California 92129 (San Diego County).

Supermarket in the Ramona, California Market:

1. Albertson=s store no. 1630 operating under the AAlbertson=s@ trade name, which is located at 1674 Main Street, Ramona, California 92065 (San Diego County).

Supermarket in the Santa Clarita, California Market:

1. Albertson=s store no. 681 operating under the AAlbertson=s@ trade name, which is located at 26900 Sierra Highway, Santa Clarita, California 91355 (Los Angeles County).

Supermarkets in the South Los Angeles County/North Orange County, California Market:

1. Albertson=s store no. 607 operating under the AAlbertson=s@ trade name, which is located at 3325 East Chapman Avenue, Orange, California 92669 (Orange County);

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2. Albertson=s store no. 620 operating under the AAlbertson=s@ trade name, which is located at 610 South Brookhurst, Anaheim, California 92804 (Orange County);
3. Albertson=s store no. 627 operating under the AAlbertson=s@ trade name, which is located at 8640 East Alondra Boulevard, Paramount, California 90723 (Los Angeles County);
4. Albertson=s store no. 629 operating under the AAlbertson=s@ trade name, which is located at 851 North Harbor Boulevard, La Habra, California 90631 (Orange County);
5. Albertson=s store no. 651 operating under the AAlbertson=s@ trade name, which is located at 11815 Artesia Boulevard, Artesia, California 90701 (Los Angeles County);
6. Albertson=s store no. 666 operating under the AAlbertson=s@ trade name, which is located at 1131 State College Boulevard, Anaheim, California 92806 (Orange County);
7. Albertson=s store no. 1601 operating under the AAlbertson=s@ trade name, which is located at 7814 East Firestone Boulevard, Downey, California 90241 (Los Angeles County);
8. Albertson=s store no. 1604 operating under the AAlbertson=s@ trade name, which is located at 1111 East Imperial Highway, Placentia, California 92670 (Orange County);
9. Albertson=s store no. 1608 operating under the AAlbertson=s@ trade name, which is located at 10051 Valley View, Cypress, California 90630 (Orange County);
10. Albertson=s store no. 1635 operating under the AAlbertson=s@ trade name, which is located at 1040 East Bastanchury Road, Fullerton, California 92635 (Orange County);

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11. Albertson=s store no. 1641 operating under the AAlbertson=s@ trade name, which is located at 6501 East Spring, Long Beach, California 90808 (Los Angeles County);

12. Albertson=s store no. 1648 operating under the AAlbertson=s@ trade name, which is located at 7511 East Orangethorp, Buena Park, California 90621 (Orange County);

13. Albertson=s store no. 1652 operating under the AAlbertson=s@ trade name, which is located at 12800 La Mirada Boulevard, La Mirada, California 90638 (Los Angeles County);

14. Albertson=s store no. 1656 operating under the AAlbertson=s@ trade name, which is located at 10114 Adams Street, Huntington Beach, California 92646 (Orange County);

15. Albertson=s store no. 1668 operating under the AAlbertson=s@ trade name, which is located at 7101 Warner Avenue, Huntington Beach, California 92647 (Orange County);

16. Albertson=s store no. 1674 operating under the AAlbertson=s@ trade name, which is located at 11300 Firestone Boulevard, Norwalk, California 90650 (Los Angeles County);

17. American Stores store no. 425 operating under the ALucky@ trade name, which is located at 333 North Euclid Avenue, Fullerton, California 92632 (Orange County);

18. American Stores store no. 442 operating under the ALucky@ trade name, which is located at 17220 South Lakewood Boulevard, Bellflower, California 90706 (Los Angeles County);  
and

19. American Stores store no. 473 operating under the ALucky@ trade name, which is located at 11750 East Whittier Boulevard, Whittier, California 90601 (Los Angeles County).

Supermarkets in the South Orange County, California Market:

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1. Albertson=s store no. 1673 operating under the AAlbertson=s@ trade name, which is located at 22351 El Toro Road, El Toro, California 92630 (Orange County);
2. Albertson=s store no. 1677 operating under the AAlbertson=s@ trade name, which is located at 26892 La Paz Road, Laguna Hills, California 92653 (Orange County); and
3. American Stores store no. 624 operating under the ALucky@ trade name, which is located at 616 Camino de los Mares, San Clemente, California 92673 (Orange County).

Supermarket in the Southern Covina, California Market:

1. Albertson=s store no. 1662 operating under the AAlbertson=s@ trade name, which is located at 20677 Amar Road, Walnut, California 91789 (Los Angeles County).

**Schedule E**

## Supermarkets and Land Site Divested to Vons

Supermarket in the Moorpark, California Market:

1. American Stores store no. 558 operating under the ALucky@ trade name, which is located at 4241 Tierra Rejada, Moorpark, California 93021 (Ventura County).

Supermarket in the Redlands, California Market:



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1. Albertson=s store no. 1605 operating under the AAAlbertson=s@ trade name, which is located at 522 North Orange, Redlands, California 92374 (San Bernardino County).

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Land Site for Supermarket in the Rialto/Fontana, California Market:

1. Land Site for Albertson=s store no. 628, which is located at Cherry and Baseline, Fontana, California 92336 (San Bernardino County).

Supermarket in the Riverside/Corona, California Market:

1. Albertson=s store no. 1622 operating under the AAlbertson=s@ trade name, which is located at 1130 West 6th Street, Corona, California 91720 (Riverside County).