

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
PATRICIA A. MADRID, ATTORNEY
GENERAL OF THE STATE OF NEW
MEXICO,

Plaintiff,

v.

ALBERTSON'S, INC., a Delaware
corporation, and
AMERICAN STORES COMPANY, a
Delaware corporation

Defendants.

CIV 99 685

Civil Action No.

DON J. SVET

FINAL JUDGMENT AND
CONSENT DECREE

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 24 1999

R. H. Thomas
CLERK

Plaintiff, the State of New Mexico, filed its Complaint herein and defendants, Albertson's, Inc. ("Albertson's") and American Stores Company ("ASC"), were duly served with copies of the Summons and Complaint. Albertson's and ASC, by and through their attorneys, have consented to the entry of this Final Judgment and Consent Decree without trial or adjudication of any issue of fact or law herein and have waived notice of presentation of this Final Judgment and Consent Decree. This Final Judgment and Consent Decree does not constitute any evidence against or an admission by any party with respect to any issue of law or fact herein, other than the jurisdictional facts alleged in the Complaint.

WHEREAS, the State of New Mexico, through its Attorney General, has determined that the merger of ASC and Albertson's is unlawful, in violation of federal and state antitrust laws;

WHEREAS, Albertson's and ASC do not admit and continue to deny such transaction is unlawful;

WHEREAS, the State of New Mexico and Albertson's and ASC wish to avoid litigation and to resolve the controversy on mutually acceptable terms;

WHEREAS, Albertson's and ASC have agreed to be bound by the provisions of this Final Judgment and Consent Decree and there is no just reason for delay in its entry;

WHEREAS, prompt and certain divestiture of certain assets is an essential element of this agreement and the parties intend that Albertson's and ASC divest these assets as viable supermarkets to ensure the assets will remain competitive, viable and on-going; and

WHEREAS, Albertson's and ASC have represented to the State of New Mexico that they can comply with the obligations set forth in this Final Judgment and Consent Decree and full relief as provided in this Final Judgment and Consent Decree can be accomplished;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Albertson's and ASC under Section 1 of the Sherman Act (15 U.S.C. § 1), Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and sections 57-1-1 and 57-1-2 of the New Mexico Antitrust Act, N.M. Stat. Ann. §§ 57-1-1 and 57-1-2 (Michie 1978, respectively amended 1987 and 1995, updated through July 1998). The Attorney General for the State of New Mexico, Patricia A. Madrid, has authority to bring this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26) and N.M. Stat. Ann §§ 57-1-3.A. and 57-1-8.

II.

DEFINITIONS

As used in this Final Judgment and Consent Decree:

A. "Acquirer" means Raley's, Smith's and/or any other entity or entities approved by the Attorney General of the State of New Mexico to acquire the Divestiture Assets pursuant to this Final Judgment and Consent Decree.

B. "Albertson's" means Albertson's, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups and affiliates controlled by Albertson's, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "ASC" means American Stores Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions,

groups and affiliates controlled by ASC, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. "Commission" means the Federal Trade Commission.

E. "Defendants" means Albertson's and ASC.

F. "Divestiture Assets" means the operating supermarkets and land sites identified in Appendices A and B attached to this Final Judgment and Consent Decree and all assets, leases, properties, permits (to the extent transferable), businesses and goodwill, tangible and intangible, related to or utilized in the supermarket business operated at those locations, but shall not include any of Albertson's or ASC's trade marks, trade dress, service marks or trade names.

G. "Raley's" means Raley's & Bel Air, 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, and its parents, subsidiaries, and affiliates, and the directors, officers, employees, agents, and representatives, successors, and assigns of each.

H. "Raley's Agreement" means the Asset Purchase Agreement executed as of May 17, 1999, and amended as of May 25, 1999, for the divestiture by defendants to Raley's of the Divestiture Assets listed in Appendix A.

I. "Smith's" means Smith's Food & Drug Centers, Inc., an affiliate of Ralphs Grocery Company, a wholly-owned subsidiary of Fred Meyer, Inc., and 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 1550 South Redwood Road, Salt Lake City, Utah 84104,

and its parents, subsidiaries, and affiliates, and the directors, officers, employees, agents, and representatives, successors, and assigns of each.

J. "Smith's Agreement" means the Asset Purchase Agreement executed between Ralphs Grocery Company, an affiliate of Smith's, and Albertson's as of May 14, 1999, for the divestiture by defendants to Smith's of the Divestiture Assets listed in Appendix B.

K. "Supermarket" means a full-line retail grocery store: (a) that carries a variety of food and grocery items in particular product categories in standard consumer sizes, including the following: bakery goods, dairy products, refrigerated and frozen foods and beverages, fresh and prepared meats and poultry, produce, beverages, shelf-stable foods, staple food stuffs (such as flour, sugar, coffee and tea) and non-food grocery items (such as soaps, detergents, paper goods and health and beauty aids); and (b) that has over \$2,000,000 in annual sales.

L. "Third Party Consents" means all consents from any other person, including all landlords, that are necessary to effect the complete transfer to the acquirer of a Divestiture Asset.

III.

APPLICABILITY

A. The provisions of this Final Judgment and Consent Decree apply to defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, representatives and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment and Consent Decree by personal service or otherwise.

B. Nothing herein shall suggest that any portion of this Final Judgment and Consent Decree is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to third parties.

C. This Final Judgment and Consent Decree is for settlement purposes only and does not constitute an admission by defendants that the law has been violated as alleged in the Complaint here attached, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true.

IV.

DIVESTITURE OF ASSETS

A. Defendants are hereby ordered and directed to divest, absolutely and in good faith: (1) the Divestiture Assets set forth in Appendix A to Raley's in accordance with the Raley's Agreement (which agreement shall not be construed to vary or contradict the terms of this Final Judgment and Consent Decree), on or before the date: (i) sixty (60) days and six (6) weeks after the date of the consummation of the defendants' merger; or (ii) September 13, 1999, whichever date is later; and (2) the Divestiture Assets set forth in Appendix B to Smith's in accordance with the Smith's Agreement (which agreement shall not be construed to vary or contradict the terms of this Final Judgment and Consent Decree), within one hundred twenty (120) days of the date of consummation of the defendants' merger. Defendants will consummate their merger within five (5) business days after the applicable Hart-Scott-Rodino waiting period, 15 U.S.C. § 18(a), is terminated or expires, provided that the defendants are not precluded by any injunction from consummating their merger. If any injunction is imposed, the defendants shall consummate their merger within five (5) business days after such injunction is lifted or removed.

B. The closing of the proposed divestiture transaction(s) may be delayed for an additional period of time if approved in writing by the plaintiff and requested by the proposed acquirer, Raley's or Smith's, or by the defendants on behalf of the proposed acquirer(s), because of the proposed acquirer's need to obtain any regulatory approvals, financing or other requirements for closing of the proposed transaction or because of the acquirer's desire for additional time to facilitate building repair, environmental remediation, or remodeling.

C. In the event that (1) and/or (2) below occurs, the defendants shall have ninety (90) days from the date either event (1) or (2) occurs or the remainder of the time for completing the divestitures as specified in Paragraph IV.A, whichever is greater, to divest the Divestiture Assets to an acquirer and in a manner that both receive the plaintiff's prior approval: (1) the defendants enter an Agreement Containing Consent Order ("Consent Order") with the Commission relating to Transaction No. 98-0339 and the Commission orders rescission of one or more divestitures required by this Final Judgment and Consent Decree, provided that, if (a) defendants fully comply with this Final Judgment and Consent Decree but for a Commission order requiring the rescission of one or more specified divestiture(s); (b) within forty five (45) days after the Commission's order of rescission of the divestiture(s), the defendants submit to the plaintiff and to the Commission a complete application in support of the rescinded divestiture(s) which is approved by the plaintiff; and (c) defendants certify to plaintiff, within ten (10) days of plaintiff's approval of a proposed acquirer and manner of divestiture, that the Commission, notwithstanding a timely and complete application by defendants has failed to approve the divestiture under the Commission's Consent Order, then the time in which the divestitures are to be made under this Paragraph IV.C.1. shall be extended by an additional sixty (60) days. During this sixty (60)

days, the defendants shall exercise the utmost good faith and best efforts to resolve the concerns of the Commission; or (2) defendants have fully complied with all material covenants and conditions precedent under the Asset Purchase Agreement(s) but the proposed acquirer(s) does not consummate the proposed divestiture(s).

D. Prior to divesting each of the Divestiture Assets, defendants shall obtain all third party consents required for the conveyance of the Divestiture Assets.

E. The purpose of these divestitures is to ensure the continued use of the Divestiture Assets as supermarkets and to remedy the lessening of competition and the combination in restraint of trade resulting from the transaction as alleged in the plaintiff's Complaint.

F. In order to obtain the approval of a proposed acquirer or acquirers for any divestiture subject to Paragraph IV.C, defendants shall establish to the satisfaction of the Attorney General of the State of New Mexico: (1) that the acquirer(s) has the managerial, operational, and financial capability to compete effectively as a viable, ongoing retailer in the supermarket industry; (2) that the divestiture(s) is for the purpose of maintaining the level of competition among supermarket competitors in the relevant geographic markets set forth in plaintiff's Complaint ; and (3) that the divestiture(s) will not adversely affect competition among supermarket competitors in the relevant geographic markets set forth in plaintiff's Complaint .

G. The Attorney General of the State of New Mexico's decision to approve or disapprove the acquirer of assets divested pursuant to Paragraph IV.C shall be based on the criteria set forth in Paragraph IV.F.

H. Pending the divestiture of the Divestiture Assets, defendants shall maintain the viability, marketability, and competitiveness of the Divestiture Assets and shall not cause the

wasting or deterioration of the Divestiture Assets, nor shall they cause the Divestiture Assets 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 the Divestiture Assets. Defendants shall conduct or cause to be conducted the business of the Divestiture Assets 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 relationship with each Divestiture Asset's suppliers, customers, employees, and others having business relations with the Divestiture Assets, in the ordinary course of the Divestiture Asset's business and in accordance with past practice. Defendants shall not terminate the operation of any Divestiture Asset supermarket. Defendants shall continue to maintain the inventory of each Divestiture Asset supermarket at levels and selection (e.g., stock keeping units) consistent with those maintained by defendants at such Divestiture Asset supermarket in the ordinary course of business, consistent with past practice. Defendants shall use their best efforts to keep business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with each Divestiture Asset supermarket. Included in the above obligations, defendants shall, without limitation: (1) maintain operations and departments and not reduce hours at each Divestiture Asset supermarket; (2) not transfer inventory from any Divestiture Asset supermarket other than in the ordinary course of business consistent with past practice; (3) maintain each Divestiture Asset supermarket's books and records; (4) 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; (5) not display any signs or conduct any advertising (e.g., direct mailing, point-of-purchase coupons)

that indicates that defendants are moving their operations to another location, or that indicate that a Divestiture Asset supermarket will close; (6) not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Divestiture Asset supermarket; and (7) not change or modify in any material respect the existing advertising practices, programs and policies for any Divestiture Asset supermarket, other than changes in the ordinary course of business consistent with past practice.

I. In accomplishing any divestiture pursuant to Paragraph IV.C, defendants shall make known to bona fide, prospective acquirers, by usual and customary means, the availability of the Divestiture Assets. Defendants shall provide a copy of the Final Judgment and Consent Decree to any person making inquiry regarding a possible purchase pursuant to Paragraph IV.C. Defendants shall also offer to furnish to any bona fide prospective acquirer, subject to customary confidentiality assurances, all customary and reasonably necessary information regarding the Divestiture Assets subject to Paragraph IV.C, except such information subject to attorney-client privilege or attorney work product immunity or other legally recognized privilege. Defendants shall make such information available to the plaintiff unless such information has been previously provided to the plaintiff. Defendants shall permit bona fide prospective acquirers of the Divestiture Assets, subject to Paragraph IV.C, to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment and Consent Decree, and is of a kind that is customarily provided in the sale of supermarkets.

J. Defendants shall take all reasonable steps to accomplish in an expeditious manner the divestitures contemplated by this Final Judgment and Consent Decree.

K. Beginning thirty (30) days from the date of entry of this Final Judgment and Consent Decree, and every thirty (30) days thereafter until the divestiture(s) has been completed or a trustee is appointed, defendants shall deliver to the Attorney General of the State of New Mexico a written report setting forth in detail the manner and form of compliance with Paragraph IV of the Final Judgment and Consent Decree. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Divestiture Assets subject to Paragraph IV.C, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period, as well as written communications to and from each person, and all internal memoranda and all reports and recommendations concerning the divestiture, except such information subject to attorney-client privilege or attorney work product immunity or other legally recognized privilege. Defendants shall maintain full records of all efforts made to divest all or any portion of the Divestiture Assets subject to Paragraph IV.C.

L. If it is necessary for any proposed acquirer(s) to file a Hart-Scott-Rodino Notification and Report Form ("HSR Form") in order to acquire any Divestiture Assets, then the defendants will expeditiously file the required HSR Form and, if the acquirer elects, the time period for the divestiture set forth in Paragraph IV.A as to that acquirer shall be extended by the number of days between the acquirer's filing of its HSR Form and the date that all waiting periods (or extensions thereof) under the Hart-Scott-Rodino Antitrust Improvements Act have expired or have been terminated.

V.

PRIOR APPROVAL AND PRIOR NOTICE

For a period of ten (10) years from the date this Final Judgment and Consent Decree is entered and provided that the defendants have consummated their merger, defendants shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to plaintiff or without the prior approval of the plaintiff where such interest is in a Divestiture Asset: (1) acquire any ownership or leasehold interest in any facility that has operated as a supermarket within twelve (12) months prior to the date of such proposed acquisition in the following New Mexico counties: Bernalillo, Dona Ana, Santa Fe, and Sandoval; or (2) 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 twelve (12) months prior to such proposed acquisition in the following New Mexico counties: Bernalillo, Dona Ana, Santa Fe, and Sandoval. Provided, however that advance written notification shall not apply to the construction of new facilities by defendants or the acquisition of or leasing of a facility that has not operated as a supermarket within twelve (12) months prior to defendants' offer to purchase or lease. Defendants shall provide written notification to plaintiff at least thirty (30) days prior to consummating any such transaction. If, within thirty (30) days after receiving such notice, the plaintiff makes a written request for additional information or documentary material, defendants shall not consummate the transaction until twenty (20) days after substantially complying with such request.

VI.

APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested the Divestiture Assets within the time periods provided in Paragraph IV and that time has not been extended by the plaintiff in writing, the plaintiff shall have the right to apply to the Court to appoint a trustee who shall be responsible for effecting the divestiture of the remaining Divestiture Assets. The trustee shall be selected by the plaintiff, and the Commission, if the Commission has the right to appoint a trustee pursuant to the Commission Consent Order, Transaction No. 98-0339. The trustee shall be selected subject to the consent of defendants, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If defendants 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 plaintiff or the Court of the identity of any proposed trustee, defendants shall be deemed to have consented to the selection of the proposed trustee.

B. Within ten (10) days after appointment of the trustee, defendants shall execute a trustee agreement that, subject to the prior approval of the Court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Final Judgment and Consent Decree.

C. The trustee shall have twelve (12) months from the date the trust agreement is approved to accomplish the divestiture. The Court, upon the Attorney General of the State of New Mexico's application, may extend the time period for divestiture, if, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes the divestiture

can be accomplished within a reasonable period of time. The plaintiff may apply to the Court to extend this period only two (2) times.

D. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the remaining Divestiture Assets. Unless the plaintiff otherwise consents in writing, the divestiture shall be made to an acquirer for whom it is demonstrated to the sole satisfaction of the plaintiff: (1) that the acquirer has the managerial, operational and financial capability to compete effectively as a viable, ongoing supermarket operator; (2) that the divestiture(s) is for the purpose of maintaining the level of competition among supermarket competitors in the relevant geographic markets set forth in plaintiff's Complaint; and (3) that the divestiture(s) will not adversely affect competition among supermarket competitors in the relevant geographic markets set forth in plaintiff's Complaint.

E. The trustee shall have the power and authority to hire, at the cost and expense of defendants, any consultants, accountants, business brokers, appraisers, investment bankers, attorneys, or other agents or assistants as are necessary, in the judgment of the trustee, to carry out the trustee's duties and responsibilities. Subject to the obligations set forth in Paragraph VI.H herein and other fiduciary obligations, the trustee shall have the power and authority to accomplish the remaining divestiture at the earliest possible time to an acquirer or acquirers and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than: (1) the trustee's malfeasance; (2) gross negligence; (3) breach of fiduciary duty; (4) that the sale is contrary to the terms of this Final Judgment and Consent Decree; or (5) the Commission has failed to approve the divestiture(s) under the Commission's Consent Order. Any such objections by defendants must be conveyed

in writing to the plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Paragraph VII.

F. The trustee shall serve at the cost and expense of defendants on such reasonable and customary terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee, and that of any professionals and agents retained by the trustee, shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive tied to the price and terms of the divestiture.

G. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee, and any consultants, accountants, attorneys, and other persons retained by the trustee, shall have, to the extent relevant to the remaining Divestiture Assets, full and complete access to the personnel, books, records, and facilities of defendants, and defendants shall develop such financial or other information as the trustee may reasonably request, subject to reasonable protection for privileged communications and shall cooperate with the trustee. Defendants may mark any non-publicly available documents furnished to the trustee as "Confidential," and the trustee shall not reveal such documents, nor divulge the information or data included in such documents ("Confidential Information") to any party ("Recipient") unless the Recipient has first entered into a confidentiality agreement approved by defendants (whose approval shall not be unreasonably withheld, delayed or conditioned) which shall require, inter

alia, that the Recipient: (1) shall use the Confidential Information only to determine if, and at what price, it may bid to purchase a Divestiture Asset; (2) shall disclose the Confidential Information only to its employees or agents on a "need to know" basis to enable them to make the decisions in the immediately preceding clause; and (3) will safeguard the confidentiality of the Confidential Information and return all copies to the trustee. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

H. The trustee shall use his or her best efforts to negotiate the most favorable price and terms for the assets to be divested, subject to defendants' absolute and unconditional obligation to make the divestiture required by this Final Judgment and Consent Decree expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in this Final Judgment and Consent Decree; provided, however, if the trustee receives bona fide offers from more than one potential acquirer, the trustee shall divest to the acquirer selected by defendants from among those approved by the plaintiff, pursuant to the provisions of Paragraph VI.D.

I. Defendants 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 liabilities, losses, damages, claims, or expenses result from malfeasance, misfeasance, gross negligence, willful or wanton acts, breach of fiduciary duty, or bad faith by the trustee.

J. 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 VI of this Final Judgment and Consent Decree.

K. 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 Final Judgment and Consent Order.

L. The trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.

M. After its appointment, the trustee shall file reports in writing every sixty (60) days with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment and Consent Decree.

N. The appointment of a trustee, or failure to appoint a trustee, is not an exclusive remedy and shall not preclude the plaintiff from seeking civil penalties, or any other relief available to it, for defendants' failure to comply with this Final Judgment and Consent Decree.

VII.

NOTIFICATION OF PROPOSED DIVESTITURE

Within five (5) business days following execution of a letter of intent or a definitive agreement for sale of the Divestiture Assets other than to acquirers identified in and in accordance with Paragraph IV.A of this Final Judgment and Consent Decree, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any such proposed divestiture. If the trustee is responsible, he or she shall likewise notify defendants. The notice shall set forth the details of the proposed transaction and list the

name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in all or a portion of the Divestiture Assets for which notice is being provided, together with a summary of the contacts with each such person. Within fifteen (15) days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture, the proposed acquirer, and any other potential acquirer. Defendants or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify, in writing, defendants and the trustee, if there is one, if it objects to the proposed divestiture, specifying the basis for the objection. If the plaintiff fails to object within the period specified, or if the plaintiff notifies, in writing, defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph VI.E. Upon objection by the plaintiff, or upon objection by defendants under Paragraph VI.E., the proposed divestiture shall not be accomplished unless approved by the Court.

VIII.

ADDITIONAL PROVISIONS

For a period of ten (10) years commencing on the date this Final Judgment and Consent Decree becomes final:

A. Defendants 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 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 defendants.

B. Defendants shall not remove any fixtures or equipment from a property owned or leased by Albertson's in 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 defendants.

IX.

COMPLIANCE INSPECTION

A. For the purpose of determining or securing compliance with this Final Judgment and Consent Decree, and subject to any legally recognized privilege, upon written request with reasonable notice to defendants, defendants shall permit any duly authorized representative of plaintiff: (1) access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment and Consent Decree; and (2) subject to the reasonable convenience of defendants and without restraint or interference from them, to interview directors, officers, employees, and agents of defendants which may have counsel present.

B. Upon the written request of the plaintiff with reasonable notice made to defendants, defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and Consent Decree as may be requested.

C. No information nor any documents obtained by the means provided in this Paragraph IX shall be divulged by any representative of the New Mexico Attorney General's Office to any person other than a duly authorized representative of the plaintiff, except in the course of legal proceedings to which the plaintiff is a party, or for the purpose of securing compliance with this Final Judgment and Consent Decree, or as otherwise required by law, provided, however, that plaintiff may communicate and share information or documents with the Commission or with any state Attorney General's Office which has also investigated this transaction.

D. If, at the time information or documents are furnished by defendants to the plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Confidential" or "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding, except in proceedings to enforce compliance with this Final Judgment and Consent Decree, in which case the confidential information shall be filed under seal.

X.

NOTICES

Any notices required by this Final Judgment and Consent Decree shall be delivered to the parties at the following addresses:

- A. For Albertson's:
Chip Cole
250 Parkcenter Blvd
Boise, Idaho 83726
- B. For ASC:
Kathleen E. McDermott
American Stores Company
299 South Main Street
Salt Lake City, Utah 84111
- C. For the State of New Mexico:
SUSAN G. WHITE
Assistant Attorney General
New Mexico Attorney General's Office
6301 Indian School Road, N.E.
Suite 400
Albuquerque, NM 87110

Any party may change the name or address of the person to receive notice by providing prior, written notice to the other parties.

XI.

COMMISSION ORDER

Any action or inaction by defendants that is required by an order of the Commission relating to Transaction No. 98-0339, In the Matter of Albertson's and American Stores Company, or the order of any courts, shall not violate this Final Judgment and Consent Decree.

XII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment and Consent Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment and Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII.

OTHER RELIEF

A. Plaintiff is awarded its attorneys' fees and investigative costs in the amount of \$55,000. Defendants shall pay this sum to the plaintiff within thirty (30) days of entry of this Final Judgment and Consent Decree.

B. If defendants fail to comply with the terms of this Final Judgment and Consent Decree, the Court, in addition to ordering any other appropriate relief, may enter an award of civil penalties, pursuant to section 57-1-7.B of the New Mexico Antitrust Act, N.M. Stat. Ann § 57-1-7.B (Michie 1978, respectively amended 1987 and 1995, updated through July 1998), for violations of this Final Judgment and Consent Decree, provided, however, it shall not be deemed noncompliance pursuant to this Paragraph if defendants' noncompliance is the result of: (1) the failure of the acquirer to take possession of the Divestiture Assets pursuant to an executed agreement; (2) the failure to divest as the result of inconsistent actions by the plaintiff and the Commission on an application for divestiture; or (3) any failure to divest as a result of the filing

of Hart-Scott-Rodino notification forms with and any subsequent investigation by the Commission related to all or part of the Divestiture Assets.

XIV.

TERMINATION OF PROVISIONS

This Final Judgment and Consent Decree will expire on the tenth anniversary of the date of its entry.

XV.

PUBLIC INTEREST

Entry of this Final Judgment and Consent Decree is in the public interest.

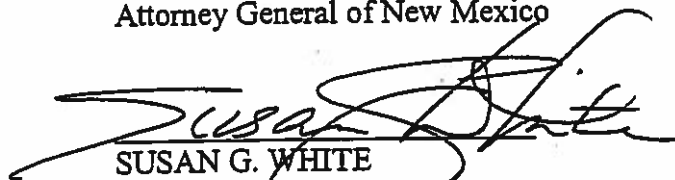
DATED this ____ day of June, 1999.

Presented by:

FOR THE PLAINTIFFS:

State of New Mexico, by:

PATRICIA A. MADRID
Attorney General of New Mexico



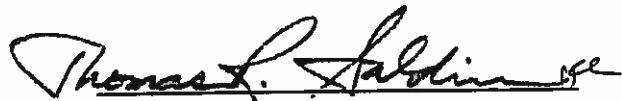
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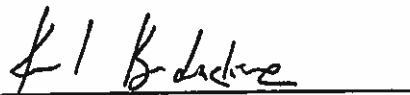
FOR THE DEFENDANTS:

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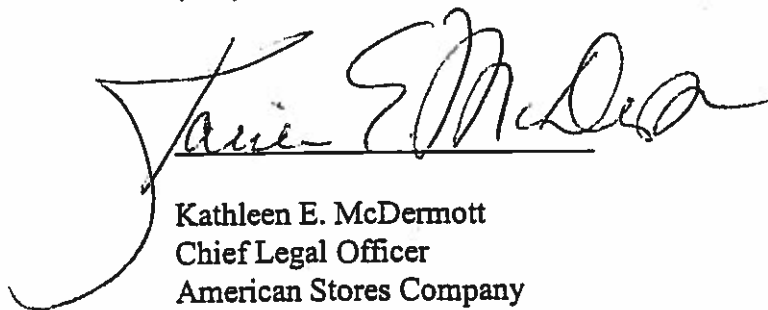
Attorneys for Albertson's

FOR THE DEFENDANTS:

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A handwritten signature in black ink, appearing to read "Kathleen E. McDermott", is written over a horizontal line. The signature is stylized and cursive.

Kathleen E. McDermott
Chief Legal Officer
American Stores Company
299 South Main Street
Salt Lake City, Utah 84111

Attorneys for American Stores Company

So ORDERED:

Original Signed By
DGN J. SVET
United States Magistrate Judge

United States District Judge

Dated: _____

APPENDIX A

SUPERMARKETS TO BE DIVESTED TO RALEY'S

Store No.	Store Name	Owner	Address	City	State	County
668	Lucky	ASC	320 Wyatt Drive	Las Cruces	NM	Dona Ana
698	Lucky	ASC	3861 N. Main	Las Cruces	NM	Dona Ana
905	Albertson's	Albertson's	2200 Juan Tabo Blvd. NE	Albuquerque	NM	Bernalillo
906	Albertson's	Albertson's	4401 Wyoming Blvd. NE	Albuquerque	NM	Bernalillo
912	Albertson's	Albertson's	5555 Zuni SE	Albuquerque	NM	Bernalillo
915	Albertson's	Albertson's	6200 Coors Blvd. NW	Albuquerque	NM	Bernalillo
920	Albertson's	Albertson's	1660 Rio Rancho Dr. SE	Rio Rancho	NM	Sandoval
923	Albertson's	Albertson's	13150 Central Avenue SE	Albuquerque	NM	Bernalillo

APPENDIX B

SUPERMARKET AND LAND SITE TO BE DIVESTED TO SMITH'S

Store No.	Store Name	Owner	Address	City	State	County
688	Lucky	ASC	2308 Cerrillos Road	Santa Fe	NM	Santa Fe
701	Lucky	ASC	NEC Airport & S. Meadows (Land)	Santa Fe	NM	Santa Fe