MERGER ANTITRUST LAW

Albertsons/Safeway Case Study

Professor Dale Collins
Georgetown University Law Center
Fall 2022

Table of Contents

The Deal

News Release

<< Back

Safeway and Albertsons Announce Definitive Merger Agreement

Merger Will Lead to an Enhanced Shopping Experience, Including Lower Prices for Customers

Safeway Shareholders Expected to Receive Total Value Estimated at $40 Per Share

Cash of $32.50 per share, plus other contingent consideration with an estimated value of $3.65 per share; Blackhawk shares with a recent value of $3.95 per Safeway share to be distributed in a separate transaction to Safeway shareholders in mid-April

PLEASANTON, Calif. and BOISE, Idaho, March 6, 2014 /PRNewswire/ -- Safeway Inc. (NYSE: SWY) and Albertsons announced today a definitive agreement under which AB Acquisition LLC ("AB Acquisition") will acquire all outstanding shares of Safeway (the "Merger"). The merger agreement was unanimously approved by the Board of Directors of Safeway.

AB Acquisition is the owner of Albertson's LLC and New Albertson's, Inc. (collectively "Albertsons") and is controlled by a Cerberus Capital Management, L.P. ("Cerberus")-led investor group, which also includes Kimco Realty Corporation (NYSE:KIM), Klaff Realty LP, Lubert-Adler Partners LP, and Schottenstein Stores Corporation.

As a result of the Merger, plus other actions to be taken by the Safeway Board of Directors as described below, including the separate sales of certain other primarily non-core assets, and the distribution of Blackhawk shares, Safeway shareholders are expected to receive total value estimated at $40 per share.

Albertsons' Chief Executive Officer Bob Miller stated, "This transaction offers us the opportunity to better serve customers by adapting more quickly to evolving shopping preferences in diverse regions across the country. It also brings together two great organizations with talented management teams. Robert Edwards and his team have done an outstanding job in positioning Safeway's core business for success, by investing in its stores and creating innovative strategic marketing programs that contribute to shareholder value. Working together will enable us to create cost savings that translate into price reductions for our customers. Together, we will be able to respond to local needs more quickly and deliver outstanding products at the lowest possible price, more efficiently than ever before."

"This Merger is one of several actions we have taken in recent months as a result of our strategic business review. The combined value of the transactions described above is expected to deliver a premium to Safeway's shareholders of 72% from one year ago, and 56% over the share price six months ago," said Robert Edwards, President & Chief Executive Officer of Safeway Inc. "Safeway has been focused on better meeting shoppers' diverse needs through local, relevant assortment, an improved price/value proposition and a great shopping experience that has driven improved sales trends. We are excited about continuing this momentum as a combined organization. We look forward to working with Bob Miller and the rest of the Albertsons team as we proceed together on a path towards becoming an even stronger organization."

Value to Safeway Shareholders

Under the merger agreement, Safeway shareholders will receive $32.50 per share in cash. Additionally, shareholders will have the right to receive pro-rata distributions of net proceeds from primarily non-core assets with an estimated value of $3.65 per share. The proceeds are from:

1. The sale of the assets of real-estate development subsidiary Property Development Centers, LLC ("PDC") comprised of its shopping center portfolio including certain related Safeway stores, and
2. The monetization of its 49% equity interest in Mexico-based food and general merchandise retailer Casa Ley, S.A. de C.V. ("Casa Ley").

If the sales of PDC and/or Casa Ley are completed prior to the closing of the Merger, the net proceeds from these sales will be paid to shareholders at or before the closing of the Merger in a special dividend. If the PDC sale and/or Casa Ley sales are not completed by the closing of the Merger, Safeway shareholders will receive a non-transferable contingent value right (a "CVR"), which will provide shareholders with their pro-rata share of the net proceeds from the PDC and/or Casa Ley sales, as applicable, subject to the terms and conditions of the CVRs. The PDC CVR will have a two-year term. The Casa Ley CVR will have a four-year term. If Safeway is unable to sell Casa Ley before the four-year expiration of the CVR, shareholders would receive a cash distribution equal to the after-tax fair market value of Safeway's interest in Casa Ley at such time. There can be no assurances that Safeway will be able to sell either or both of PDC or Casa Ley.

Distribution of Blackhawk Shares

The Merger does not alter Safeway's previously announced plan to distribute the remaining 37.8 million shares of Blackhawk stock that it owns to its shareholders in mid-April and prior to the completion of the Merger. Safeway's shares of Blackhawk are contemplated to be distributed pro-rata to the shareholders, with a current value of $3.95 per Safeway share based on the closing price of Blackhawk's common stock of $25.06 per share on March 5, 2014 and a diluted share count at Safeway of approximately 235 million shares. The final ratio and the value of the Blackhawk shares will be determined at the time of the distribution and will depend on the market value of Blackhawk at that time and the number of diluted Safeway shares. The Blackhawk distribution is not dependent upon the completion of the Acquisition, and is being undertaken for independent business reasons. The Blackhawk distribution is intended to maximize the value of Safeway's long-term investment in Blackhawk, which the Board determined to be in the best interests of Safeway, Blackhawk, and the shareholders of both companies.

In connection with the completion of the Merger, it is expected that Safeway's distribution of Blackhawk shares will be taxable to Safeway and Safeway's shareholders. AB Acquisition will assume the corporate tax on the distribution of Blackhawk shares to Safeway's shareholders. It is also anticipated that there will be a step up in Blackhawk's tax basis in assets which could generate approximately $30 million in cash tax savings per annum for Blackhawk. On a present value basis over 15 years, this tax savings, resulting from future tax deductions, is valued at approximately $4.50 per Blackhawk share and $0.70 per Safeway share.

Stock Price Premium

The combined value for Safeway shareholders who receive both a distribution of Blackhawk shares and the aggregate cash and contingent consideration in the Merger, based on Safeway's current estimates of the value of the contingent consideration, would represent a premium of 72 percent over Safeway's closing share price of $23.27 on March 6, 2013, one year ago; 56 percent over Safeway's closing price of $25.62 on September 6, 2013, six months ago; and 17 percent over Safeway's closing share price of $34.10 on February 18, 2014, the day before Safeway announced it was in discussions regarding a potential sale of the company.

About the Combined Company

The Merger will create a diversified network that includes over 2,400 stores, 27 distribution facilities and 20 manufacturing plants with over 250,000 dedicated and loyal employees. No store closures are expected as a result of this transaction.

Bob Miller, Albertsons current Chief Executive Officer, will become Executive Chairman. Robert Edwards, Safeway's current President and Chief Executive Officer, will become President and Chief Executive Officer of the combined company.

Banners will include Safeway, Vons, Pavilions, Randalls, Tom Thumb, Carrs, Albertsons, ACME, Jewel-Osco, Lucky, Shaw's, Star Market, Super Saver, United Supermarkets, Market Street and Amigos.

The Merger will enable Albertsons and Safeway to implement operational best practices in order to offer customers an enhanced shopping experience and more competitive prices, while enabling the combined company to pursue industry-leading customer service in an increasingly competitive and dynamic marketplace. Realizing substantial cost savings will allow for investments that are expected to benefit customers, including price reductions as well as store remodels and refurbishments. The diversified network of retail assets, associated distribution centers and manufacturing assets will allow for a broader assortment of products, a more efficient distribution and supply chain, enhanced fresh and perishable offerings, and expanded private label alternatives for customers.

"Albertsons has successfully transformed underperforming retail grocery stores into strong performers by focusing on enhancing the local customer experience," said Lenard Tessler, Co-Head of Global Private Equity and Senior Managing Director at Cerberus. "Similarly, Safeway has consistently provided outstanding value and customer service throughout the communities it serves. Combining these strong management teams will strengthen the ability of Safeway and Albertsons to deliver on a shared commitment to offering customers higher quality products at lower prices, which will undoubtedly yield positive results for all stakeholders in the business."

Timing and Closing Conditions

The Merger is expected to close in the fourth quarter of 2014 following the satisfaction of customary closing conditions, including approval of the Merger by the holders of a majority of the outstanding shares of Safeway common stock and regulatory approvals including expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Under certain circumstances, if the Merger fails to close, AB Acquisition would be required to pay Safeway $400 million.

Regular Quarterly Dividends

The merger agreement allows Safeway to pay its regular quarterly dividends over the next 12 months, prior to closing, and to increase the dividend within certain limits, assuming the deal is closed during that time period. If the deal is not closed within 12 months, Albertsons can extend the merger agreement by an additional three months under certain circumstances. During the extended time, Safeway would not be permitted to pay a dividend to its shareholders but shareholders would receive additional cash consideration equal to 6% per annum on the $32.50 per share cash price for the number of days that pass during the three month extension until closing.

Acquisition Funding

AB Acquisition plans to fund the Merger in part with debt financing of approximately $7.6 billion, equity contributions from its current investors and their affiliates, partners and co-investors of approximately $1.25 billion, and cash on hand of Safeway. Safeway's existing indebtedness is contemplated to be repaid at closing, other than capital leases and the company's 5.00% Senior Notes due 2019, 3.95% Notes due 2020, 4.75% Senior Notes due 2021, 7.45% Debentures due 2027 and 7.25% Debentures due 2031.

Go-Shop Period

The merger agreement includes a so-called "go-shop" period, during which Safeway, with the assistance of Goldman Sachs, its financial advisor, will actively solicit, receive, evaluate and

potentially enter into negotiations with parties that offer alternative proposals. The initial go-shop period is 21 days. For a 15-day period following the termination of the go-shop period, Safeway will be permitted to continue discussions and enter into or recommend a transaction with any person that submitted a qualifying proposal during the 21-day period. A successful competing bidder who makes a superior proposal during the go-shop period would bear a $150 million termination fee. For a competing bidder who did not qualify during the go-shop period, the termination fee would be $250 million. There can be no assurance that this process will result in a superior proposal. Safeway does not intend to disclose developments with respect to the solicitation process unless and until its Board has made a decision with respect to any potential superior proposal.

Advisors

Goldman, Sachs & Co. served as financial advisor to Safeway in connection with the Company's strategic review and the transactions. Greenhill & Co. has also served as financial advisor to Safeway. Latham & Watkins LLP served as Safeway's outside legal counsel. Citigroup, lead financial advisor, Bank of America Merrill Lynch and Credit Suisse served as financial advisors to Albertsons, Cerberus and the investor group. Schulte Roth & Zabel LLP served as lead outside legal counsel to Albertsons, Cerberus and the investor group, and Dechert LLP, Schulte Roth & Zabel LLP and Baker Botts LLP served as outside legal counsel on antitrust matters.

Property Development Centers and Casa Ley

Formed in 2008, PDC is a wholly owned subsidiary of Safeway Inc., engaged in retail shopping center development and capitalizing on Safeway's core real estate competency. PDC projects are concentrated in Safeway's urban and suburban markets, and are predominantly located in California and Hawaii. PDC's portfolio consists of 25 properties with an estimated three million square feet, and is comprised of 11 operating assets, nine projects under construction, and five projects in the due diligence and entitlement phases. Safeway will soon be initiating a process to sell PDC.

Safeway owns 49% of Casa Ley, the fifth largest food and general merchandise retailer in Mexico based on sales. Casa Ley is a private company, and does not publicly disclose financials. Safeway has begun discussions with the majority owners of Casa Ley regarding a potential sale of Safeway's interests.

On a combined basis, the value of the CVRs is estimated in the range of $3.45 to $3.85 per share. The estimated values for PDC and Casa Ley are based on analyses that Safeway has performed with the help of financial advisors, valuations from independent third parties and market information. The actual net after-tax proceeds received upon a sale could vary substantially from these estimates.

Investor Conference Call

This announcement will be discussed on a conference call with analysts and investors, which is scheduled at 5:30 p.m. Eastern Time today. The call will be webcast live at www.Safeway.com. A replay of the call will be archived at www.Safeway.com. To access the website replay, go to the "Investors" link and click on "Presentations and Webcasts."

About Safeway Inc.

Safeway Inc., which operates Safeway, Vons, Pavilion's, Randall's, Tom Thumb, and Carrs stores, is a Fortune 100 company and one of the largest food and drug retailers in the United States with sales of $36.1 billion in 2013. The company operates 1,335 stores in 20 states and the District of Columbia, 13 distribution centers and 20 manufacturing plants, and employs approximately 138,000 employees. The company's common stock is traded on the New York Stock Exchange under the symbol SWY. For more information, please visit www.Safeway.com.

About Albertsons

Established in 2006, AB Acquisition LLC ("Albertsons"), which operates ACME, Albertsons, Jewel-Osco, Lucky, Shaw's, Star Market and Super Saver, and stores under the United Family of stores, Amigos, Market Street and United Supermarkets, is working to become the favorite food and drug

retailer in every market it serves. The company is privately owned by Cerberus Capital Management, Kimco Realty Corporation, Klaff Realty, Lubert-Adler Partners, and Schottenstein Stores Corporation, and operates 1,075 stores and 14 distribution centers in 29 states and employs approximately 115,000 associates. For more information, please visit www.Albertsons.com.

About Cerberus Capital Management, L.P.

Established in 1992, Cerberus Capital Management, L.P. is one of the world's leading private investment firms. Cerberus has more than US $25 billion under management invested in four primary strategies: distressed securities & assets; control and non-control private equity; commercial mid-market lending and real estate-related investments. From its headquarters in New York City and large network of affiliate and advisory offices in the US, Europe and Asia, Cerberus has the on-the-ground presence to invest in multiple sectors, through multiple investment strategies in countries around the world.

Additional Information and Where to Find It

This document may be deemed to be solicitation materials in respect of the proposed acquisition of Safeway by AB Acquisition. In connection with the proposed merger transaction, Safeway will file with the SEC and furnish to Safeway's shareholders a proxy statement and other relevant documents. This filing does not constitute a solicitation of any vote or approval. Shareholders are urged to read the proxy statement when it becomes available and any other documents to be filed with the SEC in connection with the proposed acquisition or incorporated by reference in the proxy statement because they will contain important information about the proposed acquisition. Investors will be able to obtain a free copy of documents filed with the SEC at the SEC's website at http://www.sec.gov. In addition, investors may obtain a free copy of Safeway's filings with the SEC from Safeway's website at http://www.Safeway.com or by directing a request to: Safeway Inc., 5918 Stoneridge Mall Road, Pleasanton, California 94588, Attention: Investor Relations.

Participants in the Solicitation

Safeway and its directors, executive officers and certain other members of management and employees of Safeway may be deemed "participants" in the solicitation of proxies from shareholders of Safeway in favor of the proposed merger. Information regarding the persons who may, under the rules of the SEC, be considered participants in the solicitation of the shareholders of Safeway in connection with the proposed acquisition will be set forth in the proxy statement and the other relevant documents to be filed with the SEC. You can find information about Safeway's executive officers and directors in its Annual Report on Form 10-K for the fiscal year ended December 28, 2013 and in its definitive proxy statement filed with the SEC on Schedule 14A on April 1, 2013.

Forward-Looking Statements

This press release contains certain forward-looking statements about the future performance of Safeway, including about the combined Safeway/Albertsons business (the "Combined Entity"). These statements are based on management's assumptions and beliefs in light of the information currently available to it. These statements are indicated by words such as "expects," "will," "plans," "intends," "committed to," "estimates" and "is." No assurance can be given that any of the events anticipated by the forward-looking statements will transpire or occur. Accordingly, actual results may differ materially and adversely from those expressed in any forward-looking statements. Neither Safeway nor any other person can assume responsibility for the accuracy and completeness of forward-looking statements. There are various important factors that could cause actual results to differ materially from those in any such forward-looking statements, many of which are beyond Safeway's control. These factors include: failure to obtain shareholder approval of the proposed merger; failure to obtain, delays in obtaining or adverse conditions contained in any required regulatory or other approvals; failure to consummate or delay in consummating the transaction for other reasons; changes in laws or regulations; and changes in general economic conditions. Among other things, the Combined Entity's ability to achieve estimated price reductions from the transaction, as well as the timing of such reductions, will depend on the Combined Entity's ability to integrate its businesses in a timely fashion, including realizing synergies anticipated by reduction of duplicative systems and processes. There is no assurance that any payments will be made with respect to the sales of PDC and/or Casa Ley, including with respect to the CVRs after the closing of the Merger.

The right to receive any future payments with respect to the sales of PDC and/or Casa Ley, including with respect to the CVRs after the Closing of the Merger, will be contingent on a number of factors, including Safeway's ability to sell all or a portion of PDC and/or Casa Ley, and the amount of after-tax net proceeds realized. If Safeway is unable to sell PDC prior to the second anniversary of the closing of the Merger, no payment will be made to Safeway shareholders with respect to PDC and the CVR will expire valueless. If Safeway is unable to sell Casa Ley prior to the fourth anniversary of the Merger, Safeway shareholders will be entitled to receive the fair market value of Safeway's interest in Casa Ley at that time. There can be no assurance as to the value of PDC and/or Casa Ley or that Safeway shareholders will receive the amount of after-tax net proceeds estimated in this press release, or any amount. Safeway undertakes no obligation (and expressly disclaims any such obligation) to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. For additional information please refer to Safeway's most recent Form 10-K, 10-Q and 8-K reports filed with the SEC.

For Safeway:
Investors:
Christiane Pelz 925-467-3832, christiane.pelz@safeway.com, or Melissa Plaisance 925-467-3136, melissa.plaisance@safeway.com
Media:
Teena Massingill 925-467-3810, teena.massingill@safeway.com, or Brian Dowling 925-467-3878, brian.dowling@safeway.com

For Albertsons:
Christine Wilcox 208-395-4163
Christine.wilcox@albertsons.com

For Cerberus Capital Management:
Cerberus Media Line, 212-891-1558
Peter Duda, 212-445-8213
pduda@webershandwick.com
Liz Cohen, 212-445-8044
liz.cohen@webershandwick.com

SOURCE Safeway Inc.

Contact: Christiane Pelz
(925) 467-3832

The FTC Settlement

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Requires Albertsons and Safeway to Sell 168 Stores as a Condition of Merger

Agency's Largest Supermarket Divestiture Order to Date Requires Sales to Four Buyers

FOR RELEASE

January 27, 2015

TAGS: Retail | Grocery/Supermarkets | Bureau of Competition | Competition | Merger

Supermarket operators Albertsons and Safeway Inc. have agreed to sell 168 supermarkets to settle Federal Trade Commission charges that their proposed $9.2 billion merger would likely be anticompetitive in 130 local markets in Arizona, California, Montana, Nevada, Oregon, Texas, Washington, and Wyoming.

According to the FTC's complaint, Albertsons and Safeway compete vigorously on the bases of price, quality, product variety, and services, and offer consumers the convenience of one-stop shopping for food and other grocery products. Without a remedy, according to the FTC, the acquisition will lessen supermarket competition to the detriment of consumers in 130 local markets.

"Consumers everywhere rely on local supermarkets for their weekly shopping needs," said FTC Chairwoman Edith Ramirez. "Absent a remedy, this acquisition would likely lead to higher prices and lower quality for supermarket shoppers in 130 communities. This settlement will ensure that consumers in those communities continue to benefit from competition among their local supermarkets."

At the time the proposed acquisition was announced, Albertson's LLC operated 630 supermarkets under the Albertsons banner in 15 states, and under the Market Street, Amigos, and United Supermarkets banners in Texas. New Albertson's, Inc., operated 445 supermarkets under the Jewel-Osco, ACME, Shaw's, and Star Market banners, in the eastern United States. Safeway operated 1,332 supermarkets under the Safeway, Tom Thumb, Randall's, Pak 'n Save, The Market, Vons, Pavilions, and Genuardi's banners located throughout the country.

Under the proposed settlement, Haggen Holdings, LLC will acquire 146 Albertsons and Safeway stores located in Arizona, California, Nevada, Oregon, and Washington; Supervalu Inc. will acquire two Albertsons stores in Washington; Associated Wholesale Grocers, Inc. will acquire 12 Albertsons and Safeway stores in Texas; and Associated Food Stores Inc. will acquire eight Albertsons and Safeway stores in Montana and Wyoming. It is expected that Associated Wholesale Grocers, Inc. will assign its operating rights in the 12 Texas stores it is acquiring to RLS Supermarkets, LLC (doing business as Minyard Food Stores) and that Associated Food Stores Inc. will assign its rights in the eight Montana and Wyoming stores it is acquiring to Missoula Fresh Market LLC, Ridley's Family Markets, Inc., and Stokes Inc.

Also under the proposed settlement, the divestitures to Haggen must be completed within 150 days of the date of the merger; the divestitures to Supervalu Inc. must be completed within 100 days of the date of the merger; and the divestitures to Associated Food Stores Inc. and Associated Wholesale Grocers, Inc. must be completed within 60 days of the date of the merger.

The proposed settlement includes an Order to Maintain Assets, to help ensure that Albertsons maintains the stores until they are divested. The proposed settlement also appoints a monitor to oversee the merging parties' compliance with their obligations under the settlement agreement. Details about the divestitures, including a list of stores and the local markets affected, are set forth in the analysis to aid public comment for this matter.

The Commission vote to issue the complaint and accept the proposed consent order for public comment was 5-0. The FTC will publish the consent agreement package in the Federal Register shortly. The agreement will be subject to public comment for 30 days, beginning today and continuing through February 26, 2015, after which the Commission will decide whether to make the proposed consent order final. Comments can be filed electronically or in paper form by following the instructions in the "Supplementary Information" section of the Federal Register notice.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $16,000 per day.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust{at}ftc{dot}gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave., NW,

Contact Information

MEDIA CONTACT:
Betsy Lordan
Office of Public Affairs
202-326-3707

STAFF CONTACTS:
Alexis Gilman
Bureau of Competition
202-326-2579

Dan Ducore
Bureau of Competition
202-326-2526

ftc.gov

141 0108

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of **Cerberus Institutional Partners V, L.P.** **a limited partnership;** **AB Acquisition LLC,** **a limited liability company;** **and** **Safeway Inc.,** **a corporation.**	**Docket No. C-4504**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondents AB Acquisition LLC ("Albertson's"), and Cerberus Institutional Partners V, L.P. ("Cerberus"), both subject to the jurisdiction of the Commission, agreed to acquire Respondent Safeway Inc. ("Safeway"), 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 FTC 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. RESPONDENTS

1. Respondent Cerberus is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, New York, New York.

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

3. Respondent Cerberus, through Albertson's, of which Cerberus is the majority owner, owns and operates a number of supermarkets chains throughout the United States, including supermarkets operating under the Albertsons, Lucky, and United banners.

4. Respondent Safeway is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.

5. Respondent Safeway owns and operates a number of supermarket chains throughout the United States, including supermarkets operating under the Safeway, Vons, Pavilions, and Tom Thumb banners.

6. Albertson's and Safeway own and operate supermarkets in each of the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

II. JURISDICTION

7. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE ACQUISITION

8. Pursuant to an Agreement and Plan of Merger dated as of March 6, 2014, as amended on April 7, 2014, and June 13, 2014, Albertson's proposes to purchase all of the issued and outstanding common stock of Safeway in a transaction valued at approximately $9.2 billion ("the Acquisition").

IV. THE RELEVANT PRODUCT MARKET

9. The relevant line of commerce in which to analyze the Acquisition is the retail sale of food and other grocery products in supermarkets.

10. For purposes of this Complaint, the term "supermarket" means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed, and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer, and/or distilled spirits.

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units (SKUs), as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

12. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at other nearby competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at other types of stores and do not typically set or change their food or grocery prices in response to prices at other types of stores.

13. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores—do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These retail stores do not offer a supermarket's distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets are not likely to start shopping at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant price increase by supermarkets.

V. THE RELEVANT GEOGRAPHIC MARKETS

14. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers' grocery shopping occurs at stores located very close to where they live.

15. Respondents currently operate supermarkets under the Safeway, Vons, Pavilions, Tom Thumb, Albertsons, and United banners within approximately two-tenths of a mile to ten miles of each other in each of the relevant geographic markets. The primary trade areas of Respondents' banners in each of the relevant geographic markets overlap significantly.

16. The 130 geographic markets in which to assess the competitive effects of the Acquisition are localized areas in (1) Anthem, Arizona; (2) Carefree, Arizona; (3) Flagstaff, Arizona; (4) Lake Havasu, Arizona; (5) Prescott, Arizona; (6) Prescott Valley, Arizona; (7) Scottsdale, Arizona; (8) Tucson (Eastern), Arizona; (9) Tucson (Southwest), Arizona; (10) Alpine, California; (11) Arroyo Grande/Grover Beach, California; (12) Atascadero, California; (13) Bakersfield, California; (14) Burbank, California; (15) Calabasas, California; (16) Camarillo, California; (17) Carlsbad (North), California; (18) Carlsbad (South), California; (19) Carpinteria, California; (20) Cheviot Hills/Culver City, California; (21) Chino Hills, California; (22) Coronado Island, California; (23) Diamond Bar, California; (24) El Cajon, California; (25) Hermosa Beach, California; (26) Imperial Beach, California; (27) La Jolla, California; (28) La

Mesa, California; (29) Ladera Ranch, California; (30) Laguna Beach, California; (31) Laguna Niguel, California; (32) Lakewood, California; (33) Lemon Grove, California; (34) Lomita, California; (35) Lompoc, California; (36) Mira Mesa (North), California; (37) Mira Mesa (South), California; (38) Mission Viejo/Laguna Hills, California; (39) Mission Viejo (North), California; (40) Morro Bay, California; (41) National City, California; (42) Newbury Park, California; (43) Newport Beach, California; (44) Oxnard, California; (45) Palm Desert/Rancho Mirage, California; (46) Palmdale, California; (47) Paso Robles, California; (48) Poway, California; (49) Rancho Cucamonga/Upland, California; (50) Rancho Santa Margarita, California; (51) San Diego (Clairemont), California; (52) San Diego, (Hillcrest/University Heights), California; (53) San Diego (Tierrasanta), California; (54) San Luis Obispo, California; (55) San Marcos, California; (56) San Pedro, California; (57) Santa Barbara, California; (58) Santa Barbara/Goleta Heights, California; (59) Santa Clarita, California; (60) Santa Monica, California; (61) Santee, California; (62) Simi Valley, California; (63) Solana Beach, California; (64) Thousand Oaks, California; (65) Tujunga, California; (66) Tustin (Central), California; (67) Tustin/Irvine, California; (68) Ventura, California; (69) Westlake Village, California; (70) Yorba Linda, California; (71) Butte, Montana; (72) Deer Lodge, Montana; (73) Missoula, Montana; (74) Boulder City, Nevada; (75) Henderson (East), Nevada; (76) Henderson (Southwest), Nevada; (77) Summerlin, Nevada; (78) Ashland, Oregon; (79) Baker County, Oregon; (80) Bend, Oregon; (81) Eugene, Oregon; (82) Grants Pass, Oregon; (83) Happy Valley/Clackamas, Oregon; (84) Keizer, Oregon; (85) Klamath Falls, Oregon; (86) Lake Oswego, Oregon; (87) Milwaukie, Oregon; (88) Sherwood, Oregon; (89) Springfield, Oregon; (90) Tigard, Oregon; (91) West Linn, Oregon; (92) Colleyville, Texas; (93) Dallas (Far North), Texas; (94) Dallas (Farmers Branch/North Dallas), Texas; (95) Dallas (University Park/Highland Park), Texas; (96) Dallas (University Park/Northeast Dallas), Texas; (97) McKinney, Texas; (98) Plano, Texas; (99) Roanoke, Texas; (100) Rowlett, Texas; (101) Bremerton, Washington; (102) Burien, Washington; (103) Everett, Washington; (104) Federal Way, Washington; (105) Gig Harbor, Washington; (106) Lake Forest, Washington; (107) Lake Stevens, Washington; (108) Lakewood, Washington; (109) Liberty Lake, Washington; (110) Milton, Washington; (111) Monroe, Washington; (112) Oak Harbor, Washington; (113) Olympia (East), Washington; (114) Port Angeles, Washington; (115) Port Orchard, Washington; (116) Puyallup, Washington; (117) Renton (New Castle), Washington; (118) Renton (East Hill-Meridian), Washington; (119) Sammamish, Washington; (120) Shoreline, Washington; (121) Silverdale, Washington; (122) Snohomish, Washington; (123) Tacoma (Eastside), Washington; (124) Tacoma (Spanaway), Washington; (125) Walla Walla, Washington; (126) Wenatchee, Washington; (127) Woodinville, Washington; (128) Casper, Wyoming; (129) Laramie, Wyoming; and (130) Sheridan, Wyoming. A hypothetical monopolist controlling all supermarkets in these areas could profitably raise prices by a small but significant amount.

VI. MARKET CONCENTRATION

17. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") and relevant case law, the Acquisition is presumptively unlawful in the markets for the retail sale of food and other grocery products in supermarkets in all 130 geographic markets listed in Paragraph 16. Under the Merger Guidelines' standard measure of market concentration, the Herfindahl-Hirschman Index ("HHI"), an acquisition is presumed to create or enhance market power or facilitate its exercise if

it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The Acquisition would result in market concentration levels well in excess of these thresholds.

18. Post-acquisition HHI levels in the relevant geographic markets would range from 2,562 to 10,000, and the Acquisition would result in HHI increases ranging from 225 to 5,000. Exhibit A presents market concentration levels for each of the relevant geographic markets.

19. The Acquisition would reduce the number of meaningful competitors from two to one in 13 relevant geographic markets, three to two in 42 relevant geographic markets, and 4 to 3 (or greater) in 75 relevant geographic markets.

VII. ENTRY CONDITIONS

20. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Acquisition. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

VIII. EFFECTS OF THE ACQUISITION

21. The Acquisition, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 16 in the following ways, among others:

(a) by eliminating direct and substantial competition between Respondents Albertson's and Safeway;

(b) by increasing the likelihood that Respondent Albertson's will unilaterally exercise market power; and

(c) by increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants in each of the relevant markets.

22. The ultimate effect of the Acquisition would be to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in the relevant geographic markets.

IX. VIOLATIONS CHARGED

23. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the acquisition, if consummated, would violate 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 twenty-seventh day of January, 2015, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

EXHIBIT A

Area Number (See Para. 16 of Complaint)	City	State	Merger Result	HHI (pre)	HHI (post)	Delta
1	Anthem	AZ	4 to 3	2768	3423	655
2	Carefree	AZ	5 to 4	2298	2976	678
3	Flagstaff	AZ	5 to 4	2744	3365	621
4	Lake Havasu	AZ	4 to 3	2609	3401	792
5	Prescott	AZ	4 to 3	2675	3405	730
6	Prescott Valley	AZ	4 to 3	2828	3340	512
7	Scottsdale	AZ	3 to 2	3797	5001	1204
8	Tucson (Eastern)	AZ	4 to 3	3341	4130	789
9	Tucson (Southwest)	AZ	5 to 4	2018	2909	891
10	Alpine	CA	3 to 2	3857	5002	1145
11	Arroyo Grande/ Grover Beach	CA	3 to 2	3690	6864	3174
12	Atascadero	CA	3 to 2	3456	6242	2786
13	Bakersfield	CA	6 to 5	1923	2562	639
14	Burbank	CA	3 to 2	4199	5011	812
15	Calabasas	CA	3 to 2	3400	5415	2015
16	Camarillo	CA	5 to 4	2950	4215	1265
17	Carlsbad (North)	CA	4 to 3	2977	3888	911
18	Carlsbad (South)	CA	5 to 4	2209	3210	1001
19	Carpinteria	CA	2 to 1	5012	10,000	4988
20	Cheviot Hills/ Culver City	CA	4 to 3	2394	3914	1520
21	Chino Hills	CA	4 to 3	3596	4047	451
22	Coronado Island	CA	2 to 1	5025	10,000	4975
23	Diamond Bar	CA	3 to 2	4466	5231	765
24	El Cajon	CA	4 to 3	2983	3597	614
25	Hermosa Beach	CA	5 to 4	2752	4371	1619
26	Imperial Beach	CA	2 to 1	5869	10,000	4131

27	**La Jolla**	**CA**	**3 to 2**	**5505**	**7083**	**1578**
28	**La Mesa**	**CA**	**3 to 2**	**3382**	**5997**	**2615**
29	**Ladera Ranch**	**CA**	**2 to 1**	**5081**	**10,000**	**4919**
30	**Laguna Beach**	**CA**	**3 to 2**	**3335**	**5799**	**2464**
31	**Laguna Niguel**	**CA**	**4 to 3**	**3190**	**3883**	**693**
32	**Lakewood**	**CA**	**6 to 5**	**2073**	**2581**	**508**
33	**Lemon Grove**	**CA**	**3 to 2**	**3581**	**6059**	**2478**
34	**Lomita**	**CA**	**3 to 2**	**3695**	**5040**	**1345**
35	**Lompoc**	**CA**	**4 to 3**	**2566**	**3713**	**1147**
36	**Mira Mesa (North)**	**CA**	**5 to 4**	**2412**	**3808**	**1396**
37	**Mira Mesa (South)**	**CA**	**2 to 1**	**6904**	**10,000**	**3096**
38	**Mission Viejo/ Laguna Hills**	**CA**	**4 to 3**	**3157**	**3784**	**627**
39	**Mission Viejo (North)**	**CA**	**3 to 2**	**3933**	**5012**	**1079**
40	**Morro Bay**	**CA**	**5 to 4**	**2965**	**4056**	**1091**
41	**National City**	**CA**	**3 to 2**	**3748**	**5013**	**1265**
42	**Newbury Park**	**CA**	**3 to 2**	**3629**	**5833**	**2204**
43	**Newport Beach**	**CA**	**5 to 4**	**3160**	**3811**	**651**
44	**Oxnard**	**CA**	**4 to 3**	**2939**	**3375**	**436**
45	**Palm Desert/ Rancho Mirage**	**CA**	**6 to 5**	**2196**	**3094**	**898**
46	**Palmdale**	**CA**	**4 to 3**	**3056**	**4039**	**983**
47	**Paso Robles**	**CA**	**4 to 3**	**2851**	**5427**	**2576**
48	**Poway**	**CA**	**4 to 3**	**2540**	**3526**	**986**
49	**Rancho Cucamonga/ Upland**	**CA**	**4 to 3**	**3266**	**4118**	**852**
50	**Rancho Santa Margarita**	**CA**	**4 to 3**	**2628**	**4300**	**1672**
51	**San Diego (Clairemont)**	**CA**	**3 to 2**	**4066**	**6374**	**2308**
52	**San Diego (Hillcrest/ University Heights)**	**CA**	**3 to 2**	**4436**	**6571**	**2135**
53	**San Diego, CA (Tierrasanta)**	**CA**	**2 to 1**	**5586**	**10,000**	**4414**
54	**San Luis Obispo**	**CA**	**4 to 3**	**2896**	**5306**	**2410**
55	**San Marcos**	**CA**	**3 to 2**	**5991**	**6282**	**291**

56	**San Pedro**	**CA**	**3 to 2**	**3518**	**6442**	**2924**
57	**Santa Barbara**	**CA**	**4 to 3**	**2741**	**3462**	**721**
58	**Santa Barbara/ Goleta**	**CA**	**3 to 2**	**3909**	**7469**	**3560**
59	**Santa Clarita**	**CA**	**4 to 3**	**2646**	**3732**	**1086**
60	**Santa Monica**	**CA**	**4 to 3**	**3293**	**4879**	**1586**
61	**Santee**	**CA**	**3 to 2**	**3477**	**6133**	**2656**
62	**Simi Valley**	**CA**	**5 to 4**	**3633**	**7101**	**3468**
63	**Solana Beach**	**CA**	**3 to 2**	**3830**	**6188**	**2358**
64	**Thousand Oaks**	**CA**	**3 to 2**	**4057**	**6047**	**1990**
65	**Tujunga**	**CA**	**3 to 2**	**3688**	**3969**	**281**
66	**Tustin (central)**	**CA**	**4 to 3**	**3474**	**4348**	**874**
67	**Tustin/Irvine**	**CA**	**4 to 3**	**3939**	**4485**	**546**
68	**Ventura**	**CA**	**4 to 3**	**2732**	**3550**	**818**
69	**Westlake Village**	**CA**	**5 to 4**	**1955**	**3563**	**1608**
70	**Yorba Linda**	**CA**	**4 to 3**	**2803**	**4588**	**1785**
71	**Butte**	**MT**	**3 to 2**	**4701**	**5189**	**488**
72	**Deer Lodge**	**MT**	**2 to 1**	**5000**	**10,000**	**5000**
73	**Missoula**	**MT**	**4 to 3**	**3107**	**4063**	**956**
74	**Boulder City**	**NV**	**2 to 1**	**5051**	**10,000**	**4949**
75	**Henderson (East)**	**NV**	**4 to 3**	**2705**	**3356**	**651**
76	**Henderson (Southwest)**	**NV**	**3 to 2**	**3653**	**5042**	**1389**
77	**Summerlin**	**NV**	**4 to 3**	**3107**	**4367**	**1260**
78	**Ashland**	**OR**	**2 to 1**	**5013**	**10,000**	**4987**
79	**Baker County**	**OR**	**2 to 1**	**5102**	**10,000**	**4898**
80	**Bend**	**OR**	**6 to 5**	**2632**	**3824**	**1192**
81	**Eugene**	**OR**	**5 to 4**	**2392**	**3414**	**1022**
82	**Grants Pass**	**OR**	**4 to 3**	**2769**	**3537**	**768**
83	**Happy Valley/ Clackamas**	**OR**	**2 to 1**	**5006**	**10,000**	**4994**
84	**Keizer**	**OR**	**5 to 4**	**2852**	**3367**	**515**

85	**Klamath Falls**	**OR**	**5 to 4**	**2511**	**2917**	**406**
86	**Lake Oswego**	**OR**	**4 to 3**	**3176**	**5604**	**2428**
87	**Milwaukie**	**OR**	**3 to 2**	**5729**	**6082**	**353**
88	**Sherwood**	**OR**	**3 to 2**	**3989**	**5028**	**1039**
89	**Springfield**	**OR**	**3 to 2**	**4400**	**5197**	**797**
90	**Tigard**	**OR**	**5 to 4**	**2261**	**2984**	**723**
91	**West Linn**	**OR**	**3 to 2**	**3611**	**6268**	**2657**
92	**Colleyville**	**TX**	**5 to 4**	**2686**	**3465**	**779**
93	**Dallas (Far North)**	**TX**	**5 to 4**	**2413**	**2891**	**478**
94	**Dallas (Farmers Branch/ North Dallas)**	**TX**	**4 to 3**	**3746**	**5175**	**1429**
95	**Dallas (University Park/ Highland Park)**	**TX**	**4 to 3**	**2755**	**4261**	**1506**
96	**Dallas (University Park/ Northeast Dallas)**	**TX**	**5 to 4**	**2345**	**3065**	**720**
97	**McKinney**	**TX**	**5 to 4**	**2692**	**3613**	**921**
98	**Plano**	**TX**	**4 to 3**	**3105**	**3541**	**436**
99	**Roanoke**	**TX**	**3 to 2**	**4680**	**5351**	**671**
100	**Rowlett**	**TX**	**3 to 2**	**3386**	**5450**	**2064**
101	**Bremerton**	**WA**	**4 to 3**	**2721**	**3399**	**678**
102	**Burien**	**WA**	**5 to 4**	**1979**	**4489**	**2510**
103	**Everett**	**WA**	**5 to 4**	**2301**	**2586**	**285**
104	**Federal Way**	**WA**	**5 to 4**	**2312**	**2709**	**397**
105	**Gig Harbor**	**WA**	**3 to 2**	**3396**	**5235**	**1839**
106	**Lake Forest Park**	**WA**	**5 to 4**	**3889**	**4352**	**463**
107	**Lake Stevens**	**WA**	**5 to 4**	**2646**	**3455**	**809**
108	**Lakewood**	**WA**	**5 to 4**	**2333**	**3170**	**837**
109	**Liberty Lake**	**WA**	**3 to 2**	**3483**	**5090**	**1607**
110	**Milton**	**WA**	**3 to 2**	**3960**	**5010**	**1050**
111	**Monroe**	**WA**	**4 to 3**	**2911**	**3352**	**441**
112	**Oak Harbor**	**WA**	**3 to 2**	**4296**	**6446**	**2150**
113	**Olympia (East)**	**WA**	**6 to 5**	**2205**	**2566**	**361**

114	**Port Angeles**	**WA**	**3 to 2**	**3773**	**5588**	**1815**
115	**Port Orchard**	**WA**	**4 to 3**	**2747**	**3362**	**615**
116	**Puyallup**	**WA**	**3 to 2**	**4160**	**5072**	**912**
117	**Renton (East Hill-Meridian)**	**WA**	**4 to 3**	**3304**	**3719**	**415**
118	**Renton (New Castle)**	**WA**	**4 to 3**	**4417**	**5274**	**857**
119	**Sammamish**	**WA**	**2 to 1**	**5761**	**10,000**	**4239**
120	**Shoreline**	**WA**	**4 to 3**	**3792**	**4017**	**225**
121	**Silverdale**	**WA**	**4 to 3**	**2845**	**3516**	**671**
122	**Snohomish**	**WA**	**2 to 1**	**5595**	**10,000**	**4405**
123	**Tacoma (Eastside)**	**WA**	**4 to 3**	**3260**	**3727**	**467**
124	**Tacoma (Spanaway)**	**WA**	**5 to 4**	**2707**	**3360**	**653**
125	**Walla Walla**	**WA**	**5 to 4**	**2624**	**3417**	**793**
126	**Wenatchee**	**WA**	**3 to 2**	**3744**	**5047**	**1303**
127	**Woodinville**	**WA**	**3 to 2**	**3568**	**5192**	**1624**
128	**Casper**	**WY**	**4 to 3**	**3816**	**4353**	**537**
129	**Laramie**	**WY**	**3 to 2**	**3793**	**5000**	**1207**
130	**Sheridan**	**WY**	**3 to 2**	**4802**	**5421**	**619**

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of **Cerberus Institutional Partners V, L.P.** **a limited partnership;** **AB Acquisition LLC,** **a limited liability company;** **and** **Safeway Inc.,** **a corporation.**	**File No. 141 0108**

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondents AB Acquisition LLC ("Albertson's") and Cerberus Institutional Partners V, L.P. ("Cerberus"), of Respondent Safeway Inc. ("Safeway," and together with Albertson's and Cerberus, "Proposed Respondents"), and it now appearing that Proposed Respondents, Associated Food Stores, Inc. ("Associated Food Stores"), Associated Wholesale Grocers, Inc. ("AWG"), and Supervalu Inc. ("Supervalu") are willing to enter into this Agreement Containing Consent Order ("Consent Agreement") to divest certain assets and providing for other relief;

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, Associated Food Stores, AWG, Supervalu, and counsel for the Commission that:

1. Proposed Respondent Cerberus Institutional Partners V, L.P. is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, New York, New York.

2. Proposed Respondent AB Acquisition, LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

3. Proposed Respondent Safeway Inc. is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.

4. Associated Food Stores is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its offices and principal place of business located at 1850 West 2100 South, Salt Lake City, Utah.

4A. Associated Food Stores enters into this Consent Agreement solely for purposes of agreeing to the requirements of Paragraph V (and related reporting requirements) of the attached Decision and Order.

5. AWG is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its offices and principal place of business located at 5000 Kansas Avenue, Kansas City, Kansas.

5A. AWG enters into this Consent Agreement solely for purposes of agreeing to the requirements of Paragraph VI (and related reporting requirements) of the attached Decision and Order.

6. Supervalu is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 7075 Flying Cloud Drive, Eden Prairie, Minnesota.

6A. Supervalu enters into this Consent Agreement solely for purposes of agreeing to the requirements of Paragraph VII (and related reporting requirements) of the attached Decision and Order.

7. Proposed Respondents admit all the jurisdictional facts set forth in the draft Complaint here attached.

8. Proposed Respondents, Associated Food Stores, AWG, and Supervalu waive:

   a. any further procedural steps;

   b. any requirement that the Commission's Order to Maintain Assets and Decision and Order, both attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;

   c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order to Maintain Assets or the Decision and Order entered pursuant to this Consent Agreement; and

   d. any claim under the Equal Access to Justice Act.

9. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.

10. Proposed Respondents shall submit an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, no later than thirty (30) days after they execute this Consent Agreement. The reports shall be signed by the Proposed Respondents and shall set forth in detail the manner in which the Proposed Respondents have to date complied or have prepared to comply, are complying, and will comply with the Order to Maintain Assets and the Decision and Order. Such reports will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.

11. In the above-described reports, Proposed Respondents shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondents are in compliance with this Consent Agreement, the Order to Maintain Assets, and the Decision and Order. The reports shall be verified by a notarized signature or sworn statement, or self-verified in the manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Proposed Respondents shall file the original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division in electronic format.

12. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and issue and serve its Decision and Order, in disposition of the proceeding.

13. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

14. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft Complaint here attached, (b) issue and serve its Order to Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, Associated Food Stores, AWG,

and Supervalu, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.

15. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondents, Associated Food Stores, AWG, and Supervalu by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service (including, but not limited to, delivery to any of their respective Counsel or corporate representatives as identified on this Consent Agreement). Proposed Respondents, Associated Food Stores, AWG, and Supervalu waive any right they may have to any other manner of service. Proposed Respondents, Associated Food Stores, AWG, and Supervalu also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order (where Proposed Respondents, Associated Food Stores, AWG, or Supervalu are already in possession of copies of such Appendices), and agree that they are bound to comply with and will comply with the Decision and Order and the Order to Maintain Assets to the same extent as if it had been served with copies of the Appendices.

16. The Complaint may be used in construing the terms of the Decision and Order and the Order to Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Maintain Assets, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or the Order to Maintain Assets.

17. Proposed Respondents have read the draft Complaint and the Decision and Order contemplated hereby. By signing this Consent Agreement, Proposed Respondents represent and warrant that:

    a. they can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments and transfers, and obtaining any necessary approvals from governmental authorities, leaseholders, and other third parties to effectuate the divestitures, assignments, and transfers) and the Order to Maintain Assets;

    b. all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the attached Decision and Order and Order to Maintain Assets are parties to this Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding, the Decision and Order, and the Order to Maintain Assets; and

c. they shall interpret the Divestiture Agreements under the Decision and Order in a manner that is fully consistent with all of the relevant provisions, and the remedial purposes, of the Decision and Order.

18. Associated Food Stores represents and warrants that it will comply with Paragraph V of the Decision and Order and further represents and warrants that all parents, subsidiaries, affiliates, and successors necessary to effectuate its compliance with Paragraph V of the Decision and Order are within the control of Associated Food Stores.

19. AWG represents and warrants that it will comply with Paragraph VI of the Decision and Order and further represents and warrants that all parents, subsidiaries, affiliates, and successors necessary to effectuate its compliance with Paragraph VI of the Decision and Order are within the control of AWG.

20. Supervalu represents and warrants that it will comply with Paragraph VII of the Decision and Order and further represents and warrants that all parents, subsidiaries, affiliates, and successors necessary to effectuate its compliance with Paragraph VII of the Decision and Order are within the control of Supervalu.

21. Proposed Respondents understand that once the Decision and Order and the Order to Maintain Assets have been issued, they will be required to file one or more compliance reports showing how they have complied and are complying with the Decision and Order and the Order to Maintain Assets.

22. Proposed Respondents agree to comply with the terms of the proposed Decision and Order and the Order to Maintain Assets from the date they sign this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and the Order to Maintain Assets after they become final.

CERBERUS INSTITUTIONAL PARTNERS V, L.P. By: Cerberus Institutional Associates, II, L.L.C., its General Partner _____ Mark A. Neporent Senior Managing Director Dated: _____ **AB ACQUISITION, LLC** _____ Robert G. Miller Chief Executive Officer AB Acquisition, LLC Dated: _____ _____ Paul T. Denis Dechert LLP Attorney for Cerberus Institutional Partners V, L.P. and AB Acquisition, LLC Dated: _____ _____ James A. Fishkin Dechert LLP Attorney for Cerberus Institutional Partners V, L.P. and AB Acquisition, LLC Dated: _____ _____ Michael E. Swartz Schulte Roth & Zabel LLP Attorney for Cerberus Institutional Partners V, L.P. and AB Acquisition, LLC Dated:	**FEDERAL TRADE COMMISSION** _____ Josh Smith Paul Frangie Elisa Kantor Sam Sheinberg Chester Choi Lucas Ballet Attorneys Bureau of Competition **Approved**: _____ Alexis Gilman Assistant Director, Mergers IV Bureau of Competition _____ Kevin Hahm Deputy Assistant Director, Mergers IV Bureau of Competition _____ Daniel P. Ducore Assistant Director, Compliance Bureau of Competition

SAFEWAY INC.

_____
Robert L. Edwards
President and Chief Executive Officer
Safeway Inc.

Dated: _____

_____
Richard C. Weisberg
Law Offices of Richard C. Weisberg
Attorney for Safeway Inc.

Dated: _____

ASSOCIATED FOOD STORES, INC.

_____
Robert D. Obray
Senior Vice President and Chief Financial Officer
Associated Food Stores, Inc.

Dated: _____

_____
David F. Klomp
General Counsel
Associated Food Stores, Inc.

Dated: _____

ASSOCIATED WHOLESALE GROCERS, INC.

_____
Jerry Garland
President and Chief Executive Officer
Associated Wholesale Grocers, Inc.

Dated: _____

_____
Scott Sher
Wilson Sonsini Goodrich & Rosati
Attorney for Associated Wholesale Grocers, Inc.

Dated: _____

SUPERVALU INC.

_____
Bruce Besanko
Executive Vice President and Chief Financial Officer
Supervalu Inc.

Dated: _____

_____
Elaine Ewing
Cleary Gottlieb Steen & Hamilton LLP
Attorney for Supervalu Inc.

Dated: _____

141 0108

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of **Cerberus Institutional Partners V, L.P.** **a limited partnership;** **AB Acquisition LLC,** **a limited liability company;** **and** **Safeway Inc.,** **a corporation.**	**Docket No. C-**

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondents AB Acquisition LLC ("Albertson's") and Cerberus Institutional Partners V, L.P. ("Cerberus"), of Respondent Safeway Inc. ("Safeway"), and Respondents having been furnished thereafter with a copy of a draft of 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 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts 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 has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Maintain Assets, 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 makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Cerberus Institutional Partners V, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, New York, New York.

2. Respondent AB Acquisition LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

3. Respondent Safeway Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.

4. 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.

ORDER

I.

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

A. "Cerberus" means Respondent Cerberus Institutional Partners V, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Cerberus Institutional Partners V, L.P. (including Respondent Albertson's), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Albertson's" means Respondent AB Acquisition LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by AB Acquisition LLC (including Albertson's LLC, Albertson's Holdings LLC and, after the Acquisition is consummated, Safeway), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Safeway" means Respondent Safeway Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Safeway Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Respondents" means Cerberus, Albertson's, and Safeway, individually and collectively.

E. "Acquirer" means any entity approved by the Commission to acquire any or all of the Assets To Be Divested pursuant to this Order.

F. "Acquisition" means Albertson's proposed acquisition of Safeway pursuant to the Acquisition Agreement.

G. "Acquisition Agreement" means the Agreement and Plan of Merger by and among AB Acquisition LLC, Albertson's Holdings LLC, Albertson's LLC, Saturn Acquisition Merger Sub, Inc., and Safeway Inc., dated as of March 6, 2014, as amended on April 7, 2014, and June 13, 2014.

H. "Assets To Be Divested" means the Supermarkets identified on Schedule A, Schedule B, Schedule C, and Schedule D of this Order, or any portion thereof, and all rights, title, and interest in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Supermarket business operated at each of those locations, including but not limited to all properties, leases, leasehold interests, equipment and fixtures, books and records, government approvals and permits (to the extent transferable), telephone and fax numbers, and goodwill. Assets To Be Divested includes any of Respondents' other businesses or assets associated with, or operated in conjunction with, the Supermarket locations listed on Schedule A, Schedule B, Schedule C, and Schedule D of this Order, including any fuel centers (including any convenience store and/or car wash associated with such fuel center), pharmacies, liquor stores, beverage centers, gaming or slot machine parlors, store cafes, or other related business(es) that customers reasonably associate with the Supermarket business operated at each such location. At each Acquirer's option, the Assets To Be Divested shall also include any or all inventory as of the Divestiture Date.

Provided, however, that the Assets To Be Divested shall not include those assets consisting of or pertaining to any of the Respondents' trademarks, trade dress, service marks, or trade names, *except* with respect to any purchased inventory (including private label inventory) or as may be allowed pursuant to any Remedial Agreement(s).

Provided, further, that in cases in which books or records included in the Assets To Be Divested contain information (a) that relates both to the Assets To Be Divested and to other retained businesses of Respondents or (b) such that Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided to an Acquirer, the Respondents shall provide

to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes.

I. "Associated Food Stores" means Associated Food Stores, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its offices and principal place of business located at 1850 West 2100 South, Salt Lake City, Utah.

J. "Associated Food Stores Divestiture Agreement" means the Amended and Restated Asset Purchase Agreement dated as of December 5, 2014, by and between Respondent Albertson's and Associated Food Stores, attached as non-public Appendix I, for the divestiture of the Schedule A Assets.

K. "AWG" means Associated Wholesale Grocers, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its offices and principal place of business located at 5000 Kansas Avenue, Kansas City, Kansas, and its direct and indirect subsidiaries, including LAS Acquisitions, LLC.

L. "AWG Divestiture Agreement" means the Amended and Restated Asset Purchase Agreement dated as of December 11, 2014, by and between Respondent Albertson's, AWG, and LAS Acquisitions, LLC (a wholly owned subsidiary of AWG) ("LAS"), attached as non-public Appendix II, for the divestiture of the Schedule B Assets.

M. "Divestiture Agreement" means any agreement between Respondents and an Acquirer (or a Divestiture Trustee appointed pursuant to Paragraph III of this Order and an Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to any of the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order. The term "Divestiture Agreement" includes, as appropriate, the Associated Food Stores Divestiture Agreement, the AWG Divestiture Agreement, the Haggen Divestiture Agreement, and the Supervalu Divestiture Agreement.

N. "Divestiture Date" means a closing date of any of the respective divestitures required by this Order.

O. "Divestiture Trustee" means any person or entity appointed by the Commission pursuant to Paragraph III of this Order to act as a trustee in this matter.

P. "Haggen" means Haggen Holdings, LLC, a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2221 Rimland Drive, Bellingham, Washington.

Q. "Haggen Divestiture Agreement" means the Asset Purchase Agreement dated as of December 10, 2014, by and between Respondent Albertson's and Haggen, attached as non-public Appendix III, for the divestiture of the Schedule C Assets.

R. "Proposed Acquirer" means any proposed acquirer of any of the Assets To Be Divested submitted to the Commission for its approval under this Order; "Proposed Acquirer" includes, as appropriate, Associated Food Stores, AWG, Haggen, and Supervalu.

S. "Remedial Agreement(s)" means the following:

1. Any Divestiture Agreement; and

2. Any other agreement between Respondents and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer), including any Transition Services Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested, that have been approved by the Commission to accomplish the requirements of this Order.

T. "Relevant Areas" means: Coconino, Maricopa, Mohave, Pima, and Yavapai Counties in Arizona; Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties in California; Deer Lodge, Missoula, and Silver Bow Counties in Montana; Clark County in Nevada; Baker, Clackamas, Deschutes, Jackson, Josephine, Klamath, Lane, Marion, and Washington Counties in Oregon; Collin, Denton, Dallas, and Tarrant Counties in Texas; Chelan, Clallam, Island, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, and Walla Walla Counties in Washington; and Albany, Natrona, and Sheridan Counties in Wyoming.

U. "Schedule A Assets" means the Assets To Be Divested identified on Schedule A of this Order.

V. "Schedule B Assets" means the Assets To Be Divested identified on Schedule B of this Order.

W. "Schedule C Assets" means the Assets To Be Divested identified on Schedule C of this Order.

X. "Schedule D Assets" means the Assets To Be Divested identified on Schedule D of this Order.

Y. "Supervalu" means Supervalu Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 7075 Flying Cloud Drive, Eden Prairie, Minnesota.

Z. "Supervalu Divestiture Agreement" means the Asset Purchase Agreement dated as of December 5, 2014, by and between Respondent Albertson's and Supervalu, attached as non-public Appendix IV, for the divestiture of the Schedule D Assets.

AA. "Supermarket" means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed, and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer, and/or distilled spirits.

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

CC. "Transition Services Agreement" means an agreement that receives the prior approval of the Commission between one or more Respondents and an Acquirer of any of the assets divested under this Order to provide, at the option of each Acquirer, any services (or training for an Acquirer to provide services for itself) necessary to transfer the divested assets to the Acquirer in a manner consistent with the purposes of this Order.

II.

IT IS FURTHER ORDERED THAT:

A. Respondents shall divest the Assets To Be Divested, absolutely and in good faith, as ongoing Supermarket businesses, as follows:

1. Within 60 days of the date the Acquisition is consummated, the Schedule A Assets shall be divested to Associated Food Stores pursuant to and in accordance with the Associated Food Stores Divestiture Agreement;

2. Within 60 days of the date the Acquisition is consummated, the Schedule B Assets shall be divested pursuant to and in accordance with the AWG Divestiture Agreement to either (i) LAS or (ii) RLS Supermarkets, LLC (d/b/a Minyard Food Stores) (as LAS's assignee, pursuant to the acquisition agreement between LAS and RLS Supermarkets, LLC);

3. Within 150 days of the date the Acquisition is consummated, the Schedule C Assets shall be divested to Haggen pursuant to and in accordance with the Haggen Divestiture Agreement;

Provided, however, that if any permit or license necessary for the divestiture of pharmacy assets has not been secured by Haggen as of the divestiture deadline, then the pharmacy assets may be divested following receipt of the necessary

permit(s) and/or license(s), pursuant to and in accordance with the terms of the Pharmacy Transitional Services Agreement (attached as Exhibit 9(a) to the Haggen Divestiture Agreement);

4. Within 100 days of the date the Acquisition is consummated, the Schedule D Assets shall be divested to Supervalu pursuant to and in accordance with the Supervalu Divestiture Agreement.

B. *Provided, that*, if prior to the date this Order becomes final, Respondents have divested the Assets To Be Divested pursuant to Paragraph II.A and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. Any Proposed Acquirer identified in Paragraph II.A is not an acceptable Acquirer, then Respondents shall, within five days of notification by the Commission, rescind such transaction with that Proposed Acquirer, and shall divest such assets as ongoing Supermarket businesses, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within 90 days of the date the Commission notifies Respondents that such Proposed Acquirer is not an acceptable Acquirer; or

2. The manner in which any divestiture identified in Paragraph II.A was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee pursuant to Paragraph III of this Order, to effect such modifications to the manner of divesting those assets to such Acquirer (including, but not limited to, entering into additional agreements or arrangements, or modifying the relevant Divestiture Agreement) as may be necessary to satisfy the requirements of this Order.

C. Respondents shall obtain at their sole expense all required Third Party Consents relating to the divestiture of all Assets To Be Divested prior to the applicable Divestiture Date.

D. All Remedial Agreements approved by the Commission:

1. Shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of any such Remedial Agreement(s) shall constitute a violation of this Order; and

2. Shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligation of Respondents under such agreement. If any term of any Remedial Agreement(s) varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order.

E. At the option of each Acquirer of any Assets To Be Divested, and subject to the prior approval of the Commission, Respondents shall enter into a Transition Services Agreement for a term extending up to 180 days following the relevant Divestiture Date. The services subject to the Transition Services Agreement shall be provided at no more than Respondents' direct costs and may include, but are not limited to, payroll, employee benefits, accounting, IT systems, distribution, warehousing, use of trademarks or trade names for transitional purposes, and other logistical and administrative support.

F. Pending divestiture of any of the Assets To Be Divested, Respondents shall:

1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Divested, to minimize any risk of loss of competitive potential for 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; and

2. Not sell, transfer, encumber, or otherwise impair the Assets To Be Divested (other than in the manner prescribed in this Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Divested.

G. With respect to each Divestiture Agreement:

1. Respondents shall provide sufficient opportunity for the Proposed Acquirer to:

   a. Meet personally, and outside of the presence or hearing of any employee or agent of any Respondents, with any or all of the employees of the Supermarket Assets To Be Divested pursuant to the Divestiture Agreement; and

   b. Make offers of employment to any or all of the employees of the Supermarket Assets To Be Divested pursuant to the Divestiture Agreement; and

2. Respondents shall: not interfere with the hiring or employing by the Acquirer of employees of the divested Supermarkets; remove any impediments within the control of Respondents that may deter those employees from accepting employment with such Acquirer (including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer); and not make any counteroffer to any employee who has an outstanding offer of employment, or who has accepted an offer of employment, from such Acquirer.

H. 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 as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED THAT:

A. If Respondents have not divested all of the Assets To Be Divested in the time and manner required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the remaining Assets To Be Divested in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 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 Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.

3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestitures or transfers required by the Order.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If,

however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). 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 Divestiture Trustee, by the court.

6. The Divestiture Trustee shall use commercially reasonable 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 divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for any of the relevant Assets To Be Divested, and if the Commission determines to approve more than one such acquiring entity for such assets, the Divestiture Trustee shall divest such assets to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The Divestiture 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 Divestiture 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 Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets required to be divested by this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph III.

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 Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

12. The Divestiture Trustee shall report in writing to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).

13. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

14. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

IV.

IT IS FURTHER ORDERED THAT:

A. Richard King shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix V ("Monitor Agreement") and Non-Public Appendix V-1 ("Monitor Compensation"). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreement(s);

B. No later than one (1) day after the date the Acquisition is consummated, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order, the Order to Maintain Assets, and the Remedial Agreement(s), in a manner consistent with the purposes of the orders.

C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

    1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order, the Order to Maintain Assets, and the Remedial Agreement(s), and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission.

    2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

    3. The Monitor shall serve until at least the latter of (i) the completion of all divestitures required by this Order, (ii) the end of any Transition Services Agreement in effect with any Acquirer, and (iii) September 30, 2015.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Order to Maintain Assets, and the Remedial Agreement(s).

E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Order to Maintain Assets, and the Remedial Agreement(s).

F. The Monitor 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 Monitor shall have the 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 Monitor's duties and responsibilities.

G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph IV.G., the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph IV.F. of this Order.

H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order and the Order to Maintain Assets. Within thirty (30) days from the date the Monitor receives the first such report, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders.

I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement. *Provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

    1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.

    2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order, the Order to Maintain Assets, and the Remedial Agreement(s) in a manner consistent with the purposes of orders and in consultation with the Commission.

L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED THAT if Associated Food Stores purchases the Schedule A Assets pursuant to Paragraph II.A.1, Associated Food Stores shall not sell or otherwise convey, directly or indirectly, any of the Schedule A Assets, except to an Acquirer approved by the Commission and only in a manner that receives the prior approval of the Commission. *Provided, however,* that prior approval of the Commission is not required for the following buyers to acquire the following Supermarkets:

A. Missoula Fresh Market LLC may acquire Safeway Store Nos. 1573 and 2619, pursuant to the assignment and assumption agreement between Missoula Fresh Market LLC and Associated Food Stores;

B. Ridley's Family Markets, Inc. may acquire Albertson's Store No. 2063 and Safeway Store Nos. 433, 2468, and 2664, pursuant to the assignment and assumption agreement between Ridley's Family Markets and Associated Food Stores; and

C. Stokes Inc. may acquire Albertson's Store No. 2007 and Safeway Store No. 3256, pursuant to the assignment and assumption agreement between Stokes Inc. and Associated Food Stores.

Associated Food Stores shall comply with this Paragraph until three (3) years after the date this Order is issued.

VI.

IT IS FURTHER ORDERED THAT if LAS purchases the Schedule B Assets pursuant to Paragraph II.A.2, LAS shall not sell or otherwise convey, directly or indirectly, such Schedule B Assets, except to an Acquirer approved by the Commission and only in a manner that receives the prior approval of the Commission. *Provided, however,* that prior approval of the Commission is not required for RLS Supermarkets, LLC (d/b/a Minyard Food Stores) to acquire the Schedule B Assets, pursuant to the acquisition agreement between RLS Supermarkets, LLC and LAS. LAS shall comply with this Paragraph until three (3) years after the date this Order is issued.

VII.

IT IS FURTHER ORDERED THAT if Supervalu purchases the Schedule D Assets pursuant to Paragraph II.A.4, Supervalu shall not sell or otherwise convey, directly or indirectly, any of the Schedule D Assets, except to an Acquirer approved by the Commission and only in a manner that receives the prior approval of the Commission. Supervalu shall comply with this Paragraph until three (3) years after the date this Order is issued.

VIII.

IT IS FURTHER ORDERED THAT:

A. For a period of ten (10) years commencing on the date this Order is issued, Respondents shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:

1. 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 any of the Relevant Areas.

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 six (6) months prior to such proposed acquisition, in any of the Relevant Areas.

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

Provided, further, that advance written notification shall not be required for acquisitions resulting in total holdings of one (1) percent or less of the stock, share capital, equity, or other interest in an 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 any of the Relevant Areas.

B. Said notification under this Paragraph 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, 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 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 thirty (30) 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.

IX.

IT IS FURTHER ORDERED THAT:

A. Within thirty (30) days after the date this Order is issued and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III 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 and III of this Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all material written communications to and from such parties, all non-privileged internal memoranda, reports, and recommendations concerning completing the obligations; and

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

A. Any proposed dissolution of Respondents;

B. Any proposed acquisition, merger, or consolidation of Respondents; or

C. Any other change in the Respondents, including but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XI.

IT IS FURTHER ORDERED THAT, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents

relating to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

XII.

IT IS FURTHER ORDERED THAT this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Appendices omitted

141 0108

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of

Cerberus Institutional Partners V, L.P.,
a limited partnership;

AB Acquisition LLC,
a limited liability company;

and

Safeway Inc.
a corporation.

Docket No. C-4504

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondents AB Acquisition LLC ("Albertson's") and Cerberus Institutional Partners V, L.P. ("Cerberus"), of Respondent Safeway Inc. ("Safeway"), and Respondents having been furnished thereafter with a copy of a draft of 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 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts as set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Cerberus Institutional Partners V, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, New York, New York.

2. Respondent AB Acquisition LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

3. Respondent Safeway Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.

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

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the Consent Agreement and the Decision and Order shall apply. In addition, "Supermarket To Be Maintained" means any Supermarket business identified as part of the Assets To Be Divested under the Decision and Order.

II.

IT IS FURTHER ORDERED that:

A. 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. Respondents shall not 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 the Assets To Be Divested. 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 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.

B. Respondents shall not terminate the operation of any Supermarket To Be Maintained. Respondents shall continue to maintain the inventory of each Supermarket To Be Maintained at levels and selections consistent with those maintained by Respondents 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 Maintained intact, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Supermarket To Be Maintained, and shall not transfer store managers from any Supermarket To Be Maintained to any store that is not part of the Assets To Be Divested. Included in the above obligations, Respondents shall, without limitation:

1. Maintain all operations and departments, and not reduce hours, at each Supermarket To Be Maintained;

2. Not transfer inventory from any Supermarket To Be Maintained, 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 associated with each Supermarket To Be Maintained, in each case in a manner consistent with past practice;

4. Maintain the books and records of each Supermarket To Be Maintained;

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 at a Supermarket To Be Maintained to another location, or that indicates a Supermarket To Be Maintained 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 Maintained; and

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

III.

IT IS FURTHER ORDERED that:

A. Richard King shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix V ("Monitor Agreement") and Non-Public Appendix V-1 ("Monitor Compensation") to the Decision and Order. The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s);

B. No later than (1) day after the date the Acquisition is consummated, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s), in a manner consistent with the purposes of the orders.

C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

    1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s), and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission.

    2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

    3. The Monitor shall serve until at least the latter of (i) the completion of all divestitures required by the Decision and Order, (ii) the end of any Transition Services Agreement in effect with any Acquirer, and (iii) September 30, 2015.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s).

E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s).

F. The Monitor 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 Monitor shall have the 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 Monitor's duties and responsibilities.

G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III.G., the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph III.F. of this Order to Maintain Assets.

H. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets or the Decision and Order, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order to Maintain Assets and the Decision and Order. Within thirty (30) days from the date the Monitor receives the first such report, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders.

I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement. *Provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order to

Maintain Assets, the Decision and Order, and the Remedial Agreement(s) in a manner consistent with the purposes of the orders and in consultation with the Commission.

L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.

M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondents;

B. Any proposed acquisition, merger, or consolidation of Respondents; or

C. Any other change in the Respondents, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to Maintain Assets to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order to Maintain Assets, which copying services shall be provided by

Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondents; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. With respect to each Supermarket To Be Maintained, the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of Assets To Be Divested related to such Supermarket, as described in and required by the Decision and Order.

Provided, however, that if the Commission, pursuant to Paragraph II.B. of the Decision and Order, requires the Respondents to rescind any or all of the divestitures contemplated by any Divestiture Agreement, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture(s) of the relevant Assets To Be Divested, as described in and required by the Decision and Order.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 27, 2015

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Cerberus Institutional Partners V, L.P., AB Acquisition, LLC, and Safeway Inc. File No. 141 0108

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Order") from Cerberus Institutional Partners V, L.P. ("Cerberus"), its wholly owned subsidiary, AB Acquisition, LLC ("Albertson's"), and Safeway Inc. ("Safeway") (collectively, the "Respondents"). On March 6, 2014, Albertson's and Safeway entered into a merger agreement whereby Albertson's agreed to purchase 100% of the equity of Safeway for approximately $9.2 billion (the "Acquisition"). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from the Acquisition. Under the terms of the proposed Consent Order, Respondents are required to divest 168 stores and related assets in 130 local supermarket geographic markets (collectively, the "relevant markets") in eight states to four Commission-approved buyers. The divestitures must be completed within a time-period ranging from 60 to 150 days following the date of the Acquisition. Finally, the Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture store in the normal course of business, through the date the store is ultimately divested to a buyer.

The proposed Consent Order has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission again will review the proposed Consent Order and any comments received, and decide whether it should withdraw the Consent Order, modify the Consent Order, or make it final.

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, by removing an actual, direct, and substantial supermarket competitor in the 130 local supermarket geographic markets. The elimination of this competition would result in significant competitive harm; specifically the Acquisition will allow the combined entity to increase prices above competitive levels, unilaterally or by coordinating with remaining market participants. Similarly, absent a remedy, there is significant risk that the merged firm may decrease quality and service aspects of their stores below competitive levels. The proposed Consent Order would remedy the alleged violations by requiring divestitures to replace competition that otherwise would be lost in the relevant markets because of the Acquisition.

II. THE RESPONDENTS

AB Acquisition, LLC, owned by New York-based private equity firm Cerberus Capital Management, L.P., is the parent company of Albertson's LLC and New Albertson's, Inc. (together "Albertson's"). As of March 19, 2014, Albertson's LLC operated 630 supermarkets, primarily under its Albertson's banner. Presently, Albertson's stores are located in Arkansas, Arizona, California, Colorado, Florida, Idaho, Louisiana, Montana, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah, Washington, and Wyoming. Albertson's LLC also operates supermarkets in Texas under the Market Street, Amigos, and United Supermarkets banners. United Supermarkets is a traditional grocery store, while Market Street offers specialty and "whole-health" products, and Amigos has an international and Hispanic format. As of March 19, 2014, New Albertson's, Inc., owned and operated 445 supermarkets under the Jewel-Osco, ACME, Shaw's, and Star Market banners, dispersed throughout Iowa, Illinois, Indiana, Delaware, Maryland, Pennsylvania, New Jersey, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.

As of December 2013, Safeway owned 1,332 supermarkets, making it one of the largest food and drug retailers in the United States. Stores are operated under the Safeway banner in Alaska, Arizona, California, Colorado, District of Columbia, Delaware, Hawaii, Idaho, Maryland, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Virginia, Washington, and Wyoming. Safeway also operates stores under the following banners: Pavilions, Pak 'n Save, and The Market in California; Randall's and Tom Thumb in Texas; Genuardi's in Pennsylvania; Vons in California and Nevada; and Carr's in Alaska.

III. RETAIL SALE OF FOOD AND OTHER GROCERY PRODUCTS IN SUPERMARKETS

The Acquisition presents substantial antitrust concerns for the retail sale of food and other grocery products in supermarkets. Supermarkets are defined as traditional full-line retail grocery stores that sell, on a large-scale basis, food and non-food products that customers regularly consume at home – including, but not limited to, fresh meat, dairy products, frozen foods, beverages, bakery goods, dry groceries, detergents, and health and beauty products. This broad set of products and services provides a "one-stop shopping" experience for consumers by enabling them to shop in a single store for all of their food and grocery needs. The ability to offer consumers one-stop shopping is a critical differentiating factor between supermarkets and other food retailers.

The relevant product market includes supermarkets within "hypermarkets," such as Wal-Mart Supercenters. Hypermarkets also sell an array of products that would not be found in traditional supermarkets. However, hypermarkets, like conventional supermarkets, contain bakeries, delis, dairy, produce, fresh meat, and sufficient product offerings to enable customers to

purchase all of their weekly grocery requirements in a single shopping visit.

Other types of retailers – such as hard discounters, limited assortment stores, natural and organic markets, ethnic specialty stores, and club stores – also sell food and grocery items. These types of retailers, however, are not in the relevant product market because they offer a more limited range of products and services than supermarkets and because they appeal to a distinct customer type. Shoppers typically do not view these other food and grocery retailers as adequate substitutes for supermarkets.[1] Further, although these other types of retailers offer some competition, supermarkets do not view them as providing as significant or close competition as traditional supermarkets. Thus, consistent with prior Commission precedent, these other types of retailers are excluded from the relevant product market.[2]

The relevant geographic markets in which to analyze the effects of the Acquisition are areas that range from a two- to ten-mile radius around each of the Respondents' supermarkets, depending on factors such as population density, traffic patterns, and unique characteristics of each market. Where the Respondents' supermarkets are located in rural, isolated areas, the relevant geographic areas are larger than areas where the Respondents' supermarkets are located in more densely populated suburban areas. A hypothetical monopolist of the retail sale of food and grocery products in supermarkets in each relevant area could profitably impose a small but significant non-transitory increase in price.

The 130 geographic markets in which to analyze the effects of the Acquisition are local areas in and around: (1) Anthem, Arizona; (2) Carefree, Arizona; (3) Flagstaff, Arizona; (4) Lake Havasu, Arizona; (5) Prescott, Arizona; (6) Prescott Valley, Arizona; (7) Scottsdale, Arizona; (8) Tucson (Eastern), Arizona; (9) Tucson (Southwest), Arizona; (10) Alpine, California; (11) Arroyo Grande/Grover Beach, California; (12) Atascadero, California; (13) Bakersfield, California; (14) Burbank, California; (15) Calabasas, California; (16) Camarillo, California; (17) Carlsbad (North), California; (18) Carlsbad (South), California; (19) Carpinteria, California; (20) Cheviot Hills/Culver City, California; (21) Chino Hills, California; (22) Coronado, California; (23) Diamond Bar, California; (24) El Cajon, California; (25) Hermosa Beach, California; (26) Imperial Beach, California; (27) La Jolla, California; (28) La Mesa, California; (29) Ladera Ranch, California; (30) Laguna Beach, California; (31) Laguna Niguel, California; (32) Lakewood, California; (33) Lemon Grove, California; (34) Lomita, California; (35) Lompoc, California; (36) Mira Mesa (North), California; (37) Mira Mesa (South),

[1] Supermarket shoppers would be unlikely to switch to one of these other types of retailers in response to a small but significant increase in price or "SSNIP" by a hypothetical supermarket monopolist. *See* U.S. DOJ and FTC Horizontal Merger Guidelines § 4.1.1 (2010).

[2] *See, e.g.*, Bi-Lo Holdings, LLC/Delhaize America, LLC, Docket C-4440 (February 25, 2014); AB Acquisition, LLC, Docket C-4424 (December 23, 2013); Konkinlijke Ahold N.V./Safeway Inc., Docket C-4367 (August 17, 2012); Shaw's/Star Markets, Docket C-3934 (June 28, 1999); Kroger/Fred Meyer, Docket C-3917 (January 10, 2000); Albertson's/American Stores, Docket C–3986 (June 22, 1999); Ahold/Giant, Docket C-3861 (April 5, 1999); Albertson's/Buttrey, Docket C-3838 (December 8, 1998); Jitney-Jungle Stores of America, Inc., Docket C-3784 (January 30, 1998). *But see* Wal-Mart/Supermercados Amigo, Docket C-4066 (November 21, 2002) (the Commission's complaint alleged that in Puerto Rico, club stores should be included in a product market that included supermarkets because club stores in Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

California; (38) Mission Viejo/Laguna Hills, California; (39) Mission Viejo (North), California; (40) Morro Bay, California; (41) National City, California; (42) Newbury, California; (43) Newport, California; (44) Oxnard, California; (45) Palm Desert/Rancho Mirage, California; (46) Palmdale, California; (47) Paso Robles, California; (48) Poway, California; (49) Rancho Cucamonga/Upland, California; (50) Rancho Santa Margarita, California; (51) San Diego (Clairemont), California; (52) San Diego (Hillcrest/University Heights), California; (53) San Diego (Tierrasanta), California; (54) San Luis Obispo, California; (55) San Marcos, California; (56) San Pedro, California; (57) Santa Barbara, California; (58) Santa Barbara/Goleta, California; (59) Santa Clarita, California; (60) Santa Monica, California; (61) Santee, California; (62) Simi Valley, California; (63) Solana Beach, California; (64) Thousand Oaks, California; (65) Tujunga, California; (66) Tustin (Central), California; (67) Tustin/Irvine, California; (68) Ventura, California; (69) Westlake Village, California; (70) Yorba Linda, California; (71) Butte, Montana; (72) Deer Lodge, Montana; (73) Missoula, Montana; (74) Boulder City, Nevada; (75) Henderson, (East), Nevada; (76) Henderson (Southwest), Nevada; (77) Summerlin, Nevada; (78) Ashland, Oregon; (79) Baker County, Oregon; (80) Bend, Oregon; (81) Eugene, Oregon; (82) Grants Pass, Oregon; (83) Happy Valley/Clackamas, Oregon; (84) Keizer, Oregon; (85) Klamath Falls, Oregon; (86) Lake Oswego, Oregon; (87) Milwaukie, Oregon; (88) Sherwood, Oregon; (89) Springfield, Oregon; (90) Tigard, Oregon; (91) West Linn, Oregon; (92) Colleyville, Texas; (93) Dallas (Far North), Texas; (94) Dallas (Farmers/Branch/North Dallas), Texas; (95) Dallas (University Park/Highland Park), Texas; (96) Dallas (University Park/Northeast), Texas; (97) McKinney, Texas; (98) Plano, Texas; (99) Roanoke, Texas; (100) Rowlett, Texas; (101) Bremerton, Washington; (102) Burien, Washington; (103) Everett, Washington; (104) Federal Way, Washington; (105) Gig Harbor, Washington; (106) Lake Forest Park, Washington; (107) Lake Stevens, Washington; (108) Lakewood, Washington; (109) Liberty Lake, Washington; (110) Milton, Washington; (111) Monroe, Washington; (112) Oak Harbor, Washington; (113) Olympia (East), Washington; (114) Port Angeles, Washington; (115) Port Orchard, Washington; (116) Puyallup, Washington; (117) Renton (East Hill-Meridian), Washington; (118) Renton (New Castle), Washington; (119) Sammamish, Washington; (120) Shoreline, Washington; (121) Silverdale, Washington; (122) Snohomish, Washington; (123) Tacoma (Eastside), Washington; (124) Tacoma (Spanaway), Washington; (125) Walla Walla, Washington; (126) Wenatchee, Washington; (127) Woodinville, Washington; (128) Casper, Wyoming; (129) Laramie, Wyoming; and (130) Sheridan, Wyoming.

Each of the relevant geographic markets is highly concentrated and the Acquisition would significantly increase market concentration and eliminate substantial direct competition between two significant supermarket operators. The post-Acquisition HHI levels in the relevant markets vary from 2,562 to 10,000 points, and the HHI deltas vary from 225 to 5,000 points. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), an acquisition that results in an HHI in excess of 2,500 points and increases the HHI by more than 200 points is presumed anticompetitive. Thus, the presumptions of illegality and anticompetitive effects are easily met, and often far exceeded, in the relevant geographic markets at issue.

The relevant markets are also highly concentrated in terms of the number of remaining market participants post-Acquisition. Of the 130 geographic markets, the acquisition will result

in a merger-to-monopoly in 13 markets and a merger-to-duopoly in 42 markets. In the remaining markets, the Acquisition will reduce the number of market participants from four to three in 43 markets, five to four in 27 markets, and six to five in five markets.[3]

The anticompetitive implications of such significant increases in market concentration are reinforced by substantial evidence demonstrating that Albertson's and Safeway are close and vigorous competitors in terms of price, format, service, product offerings, promotional activity, and location in each of the relevant geographic markets. Absent relief, the Acquisition would eliminate significant head-to-head competition between Albertson's and Safeway and would increase the ability and incentive of Albertson's to raise prices unilaterally post-Acquisition. The Acquisition would also decrease incentives to compete on non-price factors, such as service levels, convenience, and quality. Lastly, the high levels of concentration also increase the likelihood of competitive harm through coordinated interaction in markets in which Albertson's will face only one other traditional supermarket competitor post-Acquisition. Given the transparency of pricing and promotional practices among supermarkets and that supermarkets "price check" competitors in the ordinary course of business, the Acquisition increases the possibility that Albertson's and its remaining competitor could simply follow each other's price increases post-Acquisition.

New entry or expansion in the relevant markets is unlikely to deter or counteract the anticompetitive effects of the Acquisition. Moreover, even if a prospective entrant existed, the entrant must secure a viable location, obtain the necessary permits and governmental approvals, build its retail establishment or renovate an existing building, and open to customers before it could begin operating and serve as a relevant competitive constraint. As a result, new entry sufficient to achieve a significant market impact and act as a competitive constraint is unlikely to occur in a timely manner.

IV. THE PROPOSED CONSENT ORDER

The proposed remedy, which requires the divestiture of Albertson's or Safeway supermarkets in the relevant markets to four Commission-approved up-front buyers (the "proposed buyers") will restore fully the competition that otherwise would be eliminated in these markets as a result of the Acquisition. Specifically, Respondents have agreed to divest:

- 146 stores and related assets in Arizona, California, Nevada, Oregon, and Washington to Haggen, Inc. ("Haggen");
- Two stores in Washington to Supervalu, Inc. ("Supervalu");
- 12 stores and related assets in Texas to Associated Wholesale Grocers ("AWG"); and
- Eight stores and related assets in Montana and Wyoming to Associated Food Stores ("Associated").

The proposed buyers appear to be highly suitable purchasers and are well positioned to enter the relevant geographic markets and prevent the increase in market concentration and likely

[3] *See* Exhibit A.

competitive harm that otherwise would have resulted from the Acquisition. The supermarkets currently owned by any of the proposed buyers are all located outside the relevant geographic markets in which they are purchasing divested stores.

Haggen is a regional supermarket chain with 18 supermarkets in Washington and Oregon. Haggen will purchase all but two of the divested stores in Washington, because Haggen already operates stores in those two geographic markets. Supervalu will purchase the two stores in Washington that Haggen is not purchasing. Supervalu is a wholesale distributor that also operates 190 corporate-owned supermarkets and previously owned these two Washington stores. AWG is a member-owned cooperative grocery wholesaler supplying nearly 3,000 supermarkets in 33 states. Although AWG does not currently own or operate any supermarkets, AWG has owned and operated corporate-owned supermarkets in the past. Finally, Associated is a member-owned cooperative grocery wholesaler that supplies and operates retail supermarkets. Associated's members operate approximately 424 grocery stores in ten states, and the cooperative, through a subsidiary, owns and operates 43 corporate-owned supermarkets located in Utah and Nevada. It is expected that AWG will assign its operating rights in the 12 Texas stores it is acquiring to RLS Supermarkets, LLC (d/b/a Minyard Food Stores) and that Associated will assign its rights in the eight Montana and Wyoming stores it is acquiring to Missoula Fresh Market LLC, Ridley's Family Markets, Inc., and Stokes Inc.

The Proposed Consent Order requires Respondents to divest: (a) the Arizona, California, Nevada, Oregon, and Washington assets to Haggen within 150 days from the date of the Acquisition; (b) the two stores in Washington to Supervalu within 100 days of the date of the Acquisition; (c) the Texas assets to AWG within 60 days of the date of the Acquisition; and (d) the Montana and Wyoming assets to Associated within 60 days of the date of the Acquisition. If, at the time before the Proposed Consent Order is made final, the Commission determines that any of the proposed buyers are not acceptable buyers, Respondents must immediately rescind the divestiture(s) and divest the assets to a different buyer that receives the Commission's prior approval.

The proposed Consent Order contains additional provisions designed to ensure the adequacy of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will be issued at the time the Proposed Consent Order is accepted for public comment. The Order to Maintain Assets requires Albertson's and Safeway to operate and maintain each divestiture store in the normal course of business, through the date the store is ultimately divested to a buyer. Since the divestiture schedule runs for an extended period of time (potentially up to 150 days following the Acquisition date), the Proposed Consent Order appoints Richard King as a Monitor to oversee the Respondents' compliance with the requirements of the Proposed Consent Order and Order to Maintain Assets. Mr. King has the experience and skill-set to be an effective Monitor, no identifiable conflicts, and sufficient time to dedicate to this matter through its conclusion. Lastly, for a period of ten years, Albertson's is required to give the Commission prior notice of plans to acquire any interest in a supermarket that has operated or is operating in the counties included in the relevant markets.

* * *

The sole purpose of this Analysis is to facilitate public comment on the proposed Consent Order. This Analysis does not constitute an official interpretation of the proposed Consent Order, nor does it modify its terms in any way.

Exhibit A

Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
1	Anthem	AZ	4 to 3	2768	3423	655	SFY 1726
2	Carefree	AZ	5 to 4	2298	2976	678	ALB 979
3	Flagstaff	AZ	5 to 4	2744	3365	621	ALB 967
4	Lake Havasu	AZ	4 to 3	2609	3401	792	ALB 1027
5	Prescott	AZ	4 to 3	2675	3405	730	ALB 953
6	Prescott Valley	AZ	4 to 3	2828	3340	512	ALB 965
7	Scottsdale	AZ	3 to 2	3797	5001	1204	ALB 983
8	Tucson (Eastern)	AZ	4 to 3	3341	4130	789	SFY 234 & 2611
9	Tucson (Southwest)	AZ	5 to 4	2018	2909	891	ALB 972
10	Alpine	CA	3 to 2	3857	5002	1145	SFY 2333
11	Arroyo Grande/ Grover Beach	CA	3 to 2	3690	6864	3174	ALB 6304
12	Atascadero	CA	3 to 2	3456	6242	2786	ALB 6390
13	Bakersfield	CA	6 to 5	1923	2562	639	ALB 6323, 6325 & 6379
14	Burbank	CA	3 to 2	4199	5011	812	ALB 6315
15	Calabasas	CA	3 to 2	3400	5415	2015	SFY 2031
16	Camarillo	CA	5 to 4	2950	4215	1265	ALB 6385
17	Carlsbad (North)	CA	4 to 3	2977	3888	911	ALB 6701
18	Carlsbad (South)	CA	5 to 4	2209	3210	1001	ALB 6720
19	Carpinteria	CA	2 to 1	5012	10,000	4988	SFY 2425
20	Cheviot Hills/ Culver City	CA	4 to 3	2394	3914	1520	ALB 6168 & 6169
21	Chino Hills	CA	4 to 3	3596	4047	451	SFY 2597
22	Coronado Island	CA	2 to 1	5025	10,000	4975	ALB 6747
23	Diamond Bar	CA	3 to 2	4466	5231	765	SFY 2062
24	El Cajon	CA	4 to 3	2983	3597	614	ALB 6771
25	Hermosa Beach	CA	5 to 4	2752	4371	1619	ALB 6127, 6138, 6153 & 6189

Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
26	Imperial Beach	CA	2 to 1	5869	10,000	4131	ALB 6228
27	La Jolla	CA	3 to 2	5505	7083	1578	ALB 6788
28	La Mesa	CA	3 to 2	3382	5997	2615	SFY 2064 & 2137
29	Ladera Ranch	CA	2 to 1	5081	10,000	4919	SFY 2703
30	Laguna Beach	CA	3 to 2	3335	5799	2464	ALB 6575
31	Laguna Niguel	CA	4 to 3	3190	3883	693	SFY 1676
32	Lakewood	CA	6 to 5	2073	2581	508	ALB 6154
33	Lemon Grove	CA	3 to 2	3581	6059	2478	SFY 2365
34	Lomita	CA	3 to 2	3695	5040	1345	ALB 6107
35	Lompoc	CA	4 to 3	2566	3713	1147	ALB 6339
36	Mira Mesa (North)	CA	5 to 4	2412	3808	1396	ALB 6742 & 6772
37	Mira Mesa (South)	CA	2 to 1	6904	10,000	3096	ALB 6770
38	Mission Viejo/ Laguna Hills	CA	4 to 3	3157	3784	627	ALB 6517
39	Mission Viejo (North)	CA	3 to 2	3933	5012	1079	SFY 1670
40	Morro Bay	CA	5 to 4	2965	4056	1091	SFY 2312
41	National City	CA	3 to 2	3748	5013	1265	SFY 2006, 2336 & 3063
42	Newbury Park	CA	3 to 2	3629	5833	2204	SFY 1793
43	Newport Beach	CA	5 to 4	3160	3811	651	ALB 6504
44	Oxnard	CA	4 to 3	2939	3375	436	ALB 6217
45	Palm Desert/ Rancho Mirage	CA	6 to 5	2196	3094	898	SFY 2383 & 3218
46	Palmdale	CA	4 to 3	3056	4039	983	ALB 6329
47	Paso Robles	CA	4 to 3	2851	5427	2576	SFY 2317
48	Poway	CA	4 to 3	2540	3526	986	ALB 6741 & 6763
49	Rancho Cucamonga/ Upland	CA	4 to 3	3266	4118	852	ALB 6523 & 6589
50	Rancho Santa Margarita	CA	4 to 3	2628	4300	1672	ALB 6521
51	San Diego (Clairemont)	CA	3 to 2	4066	6374	2308	ALB 6781
52	San Diego (Hillcrest/ University Heights)	CA	3 to 2	4436	6571	2135	ALB 6714 & 6715

Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
53	San Diego, CA (Tierrasanta)	CA	2 to 1	5586	10,000	4414	ALB 6760
54	San Luis Obispo	CA	4 to 3	2896	5306	2410	ALB 6372 & 6409
55	San Marcos	CA	3 to 2	5991	6282	291	SFY 2174
56	San Pedro	CA	3 to 2	3518	6442	2924	ALB 6160 & 6164
57	Santa Barbara	CA	4 to 3	2741	3462	721	ALB 6351 & 6352
58	Santa Barbara/ Goleta	CA	3 to 2	3909	7469	3560	SFY 2048 & 2691
59	Santa Clarita	CA	4 to 3	2646	3732	1086	SFY 1669 & 1961
60	Santa Monica	CA	4 to 3	3293	4879	1586	ALB 6162
61	Santee	CA	3 to 2	3477	6133	2656	ALB 6727
62	Simi Valley	CA	5 to 4	3633	7101	3468	ALB 6317 & 6363; SFY 2163
63	Solana Beach	CA	3 to 2	3830	6188	2358	ALB 6702
64	Thousand Oaks	CA	3 to 2	4057	6047	1990	ALB 6369
65	Tujunga	CA	3 to 2	3688	3969	281	ALB 6397
66	Tustin (central)	CA	4 to 3	3474	4348	874	SFY 2146 & 2324
67	Tustin/Irvine	CA	4 to 3	3939	4485	546	SFY 2822
68	Ventura	CA	4 to 3	2732	3550	818	ALB 6318
69	Westlake Village	CA	5 to 4	1955	3563	1608	ALB 6388
70	Yorba Linda	CA	4 to 3	2803	4588	1785	ALB 6510
71	Butte	MT	3 to 2	4701	5189	488	ALB 2007
72	Deer Lodge	MT	2 to 1	5000	10,000	5000	SFY 3256
73	Missoula	MT	4 to 3	3107	4063	956	SFY 1573 & 2619
74	Boulder City	NV	2 to 1	5051	10,000	4949	SFY 2391
75	Henderson (East)	NV	4 to 3	2705	3356	651	ALB 6014 & 6019
76	Henderson (Southwest)	NV	3 to 2	3653	5042	1389	ALB 6028
77	Summerlin	NV	4 to 3	3107	4367	1260	SFY 1688, 2392 & 2395
78	Ashland	OR	2 to 1	5013	10,000	4987	SFY 4292

Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
79	Baker County	OR	2 to 1	5102	10,000	4898	ALB 261
80	Bend	OR	6 to 5	2632	3824	1192	ALB 587 & 588
81	Eugene	OR	5 to 4	2392	3414	1022	ALB 507 & 568
82	Grants Pass	OR	4 to 3	2769	3537	768	ALB 501 & 537
83	Happy Valley/ Clackamas	OR	2 to 1	5006	10,000	4994	ALB 503
84	Keizer	OR	5 to 4	2852	3367	515	ALB 562
85	Klamath Falls	OR	5 to 4	2511	2917	406	SFY 1766 & 4395
86	Lake Oswego	OR	4 to 3	3176	5604	2428	ALB 521
87	Milwaukie	OR	3 to 2	5729	6082	353	ALB 566
88	Sherwood	OR	3 to 2	3989	5028	1039	ALB 579
89	Springfield	OR	3 to 2	4400	5197	797	SFY 311
90	Tigard	OR	5 to 4	2261	2984	723	ALB 559, 565 & 576
91	West Linn	OR	3 to 2	3611	6268	2657	ALB 506
92	Colleyville	TX	5 to 4	2686	3465	779	SFY 3555 & 3576
93	Dallas (Far North)	TX	5 to 4	2413	2891	478	ALB 4140
94	Dallas (Farmers Branch/ North Dallas)	TX	4 to 3	3746	5175	1429	ALB 4182
95	Dallas (University Park/ Highland Park)	TX	4 to 3	2755	4261	1506	ALB 4134 & 4168
96	Dallas (University Park/ Northeast Dallas)	TX	5 to 4	2345	3065	720	ALB 4132 & 4297
97	McKinney	TX	5 to 4	2692	3613	921	SFY 3573
98	Plano	TX	4 to 3	3105	3541	436	SFY 2568
99	Roanoke	TX	3 to 2	4680	5351	671	ALB 4149
100	Rowlett	TX	3 to 2	3386	5450	2064	ALB 4197
101	Bremerton	WA	4 to 3	2721	3399	678	ALB 443
102	Burien	WA	5 to 4	1979	4489	2510	ALB 411 & 473
103	Everett	WA	5 to 4	2301	2586	285	SFY 517
104	Federal Way	WA	5 to 4	2312	2709	397	ALB 496
105	Gig Harbor	WA	3 to 2	3396	5235	1839	SFY 2949

Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
106	Lake Forest Park	WA	5 to 4	3889	4352	463	ALB 425
107	Lake Stevens	WA	5 to 4	2646	3455	809	ALB 477
108	Lakewood	WA	5 to 4	2333	3170	837	ALB 465
109	Liberty Lake	WA	3 to 2	3483	5090	1607	SFY 1741
110	Milton	WA	3 to 2	3960	5010	1050	ALB 472
111	Monroe	WA	4 to 3	2911	3352	441	ALB 476
112	Oak Harbor	WA	3 to 2	4296	6446	2150	SFY 3518
113	Olympia (East)	WA	6 to 5	2205	2566	361	ALB 415
114	Port Angeles	WA	3 to 2	3773	5588	1815	ALB 404
115	Port Orchard	WA	4 to 3	2747	3362	615	SFY 1082
116	Puyallup	WA	3 to 2	4160	5072	912	ALB 468
117	Renton (East Hill-Meridian)	WA	4 to 3	3304	3719	415	ALB 470
118	Renton (New Castle)	WA	4 to 3	4417	5274	857	SFY 1468
119	Sammamish	WA	2 to 1	5761	10,000	4239	ALB 403
120	Shoreline	WA	4 to 3	3792	4017	225	SFY 442
121	Silverdale	WA	4 to 3	2845	3516	671	ALB 492
122	Snohomish	WA	2 to 1	5595	10,000	4405	ALB 401
123	Tacoma (Eastside)	WA	4 to 3	3260	3727	467	ALB 498
124	Tacoma (Spanaway)	WA	5 to 4	2707	3360	653	SFY 551
125	Walla Walla	WA	5 to 4	2624	3417	793	ALB 225
126	Wenatchee	WA	3 to 2	3744	5047	1303	ALB 244
127	Woodinville	WA	3 to 2	3568	5192	1624	ALB 459
128	Casper	WY	4 to 3	3816	4353	537	SFY 433 & 2468
129	Laramie	WY	3 to 2	3793	5000	1207	ALB 2063
130	Sheridan	WY	3 to 2	4802	5421	619	SFY 2664

The Washington State Settlement

The Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, Plaintiff, v. CERBERUS INSTITUTIONAL PARTNERS V, L.P., a limited partnership; AB ACQUISITION LLC, a limited liability company; and SAFEWAY INC., a corporation, Defendants.	NO. **COMPLAINT**

I. NATURE OF COMPLAINT

1. The State of Washington ("Plaintiff") brings this action, by and through Robert W. Ferguson, Attorney General, and Stephen T. Fairchild, Assistant Attorney General, to enjoin the proposed acquisition by Defendant AB Acquisition LLC ("Albertsons"), a subsidiary of Defendant Cerberus Institutional Partners V, L.P. ("Cerberus"), of certain assets of Defendant Safeway Inc. ("Safeway," and together with Albertsons and Cerberus, "Defendants"). Plaintiff seeks to enjoin this transaction because, if approved, it may substantially lessen competition for the retail sale of food and other grocery

ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

products in supermarkets within the relevant geographic markets in Washington and tend to create a monopoly therein, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as well as Washington's Unfair Business Practices – Consumer Protection Act, RCW 19.86.060.

II. PARTIES

2. Defendant Albertsons is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

3. Defendant Cerberus is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 875 Third Avenue, 11th Floor, New York, New York.

4. Defendant Cerberus, through Albertsons, of which Cerberus is the majority owner, owns and operates the Albertsons chain of supermarkets in the western and southwestern United States, including stores located throughout Washington.

5. Defendant Safeway is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 5918 Stoneridge Mall Rd., Pleasanton, California.

6. Defendant Safeway operates a number of supermarket chains throughout the United States, including the Safeway brand of stores located throughout Washington.

///

///

7. Albertsons, Cerberus, and Safeway own and operate supermarkets in the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

III. JURISDICTION, VENUE, AND COMMERCE

8. The State of Washington brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, and RCW 19.86.080 of Washington's Unfair Business Practices – Consumer Protection Act, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18, and RCW 19.86.060.

9. Defendants and each of their relevant operating subsidiaries and parent entities are, and at all times relevant herein have been, engaged in interstate commerce and in activities that substantially affect interstate commerce. Defendants and each of their relevant operating subsidiaries and parent entities are, and at all times relevant herein have been, engaged in intrastate commerce and in activities that substantially affect intrastate commerce.

10. This Court has subject matter jurisdiction over the federal antitrust claim under Section 16 of the Clayton Act, 15 U.S.C. § 16, and under 28 U.S.C. §§ 1331 & 1337.

11. This Court has subject matter jurisdiction over the state antitrust claim under 28 U.S.C. § 1367(a), as well as under the principles of supplemental jurisdiction, because the claims under federal and state law are based upon a common nucleus of operative fact, and the state law claim is so closely related to the federal law claim that it forms part of the same case or controversy.

12. This Court has personal jurisdiction over Defendants because Defendants transact business within the Western District of Washington. Specifically, Defendants own

and operate several supermarkets in the counties encompassed by the Western District of Washington that provide a wide variety of goods and services to Washington consumers.

13. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b).

IV. THE PROPOSED ACQUISITION

14. On March 6, 2014, and as amended on April 7, 2014, and June 13, 2014, Defendant Albertsons, together with its subsidiaries Albertson's Holdings LLC, Albertson's LLC and Saturn Acquisition Merger Sub, Inc., and Defendant Safeway entered into an Agreement and Plan of Merger pursuant to which Albertsons would purchase all of the issued and outstanding common stock of Safeway and acquire various retail supermarket locations from Safeway, including the stores operated under the "Safeway" brand in Washington, in a transaction valued at approximately $9.2 billion (the "Proposed Acquisition").

V. THE RELEVANT PRODUCT MARKET

15. The relevant line of commerce in which to analyze the Proposed Acquisition is the retail sale of food and other grocery products in supermarkets.

16. For purposes of this Complaint, the term "supermarket" means any full-line retail grocery store that is open 24 hours per day (with few exceptions), and enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh

fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household goods, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer and/or distilled spirits.

17. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as SKUs—or stock-keeping units—as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of display area or selling space.

18. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at other nearby competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at other types of stores and do not typically set or change their food or grocery prices in response to prices at non-supermarket stores.

19. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores—do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These other

retail stores do not offer a supermarket's distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets are not likely to start shopping at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant price increase by supermarkets.

VI. THE RELEVANT GEOGRAPHIC MARKET

20. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, a vast majority of consumers' grocery shopping occurs at stores located in close proximity to where they live.

21. In Washington, Defendants currently operate supermarkets under the Safeway and Albertsons banners within approximately two-tenths of a mile to ten miles of each other in each of the relevant geographic markets. The primary trade areas of Defendants' banners in each of the relevant geographic markets overlap significantly.

22. The 27 relevant geographic markets in which to assess the competitive effects of the Proposed Acquisition are localized areas in (1) Bremerton, Washington; (2) Burien, Washington; (3) Everett, Washington; (4) Federal Way, Washington; (5) Gig Harbor, Washington; (6) Lake Forest, Washington; (7) Lake Stevens, Washington; (8) Lakewood, Washington; (9) Liberty Lake, Washington; (10) Milton, Washington; (11) Monroe, Washington; (12) Oak Harbor, Washington; (13) Olympia (East), Washington; (14) Port Angeles, Washington; (15) Port Orchard, Washington; (16) Puyallup, Washington; (17) Renton (New Castle), Washington; (18) Renton (East Hill-Meridian), Washington; (19) Sammamish, Washington; (20) Shoreline, Washington; (21) Silverdale, Washington; (22)

Snohomish, Washington; (23) Tacoma (Eastside), Washington; (24) Tacoma (Spanaway), Washington; (25) Walla Walla, Washington; (26) Wenatchee, Washington; and (27) Woodinville, Washington. A hypothetical monopolist controlling all supermarkets in each of these areas could profitably raise prices by a small but significant amount.

VII. MARKET CONCENTRATION

23. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") and relevant case law, the Acquisition is presumptively unlawful in the markets for the retail sale of food and other grocery products in supermarkets in all 27 geographic markets listed in Paragraph 22. The Proposed Acquisition will substantially increase concentration in each of the relevant geographic markets, whether measured by the Merger Guidelines' standard measure of market concentration, the Herfindahl-Hirschman Index ("HHI") or by the number of competitively significant firms remaining in each market post-acquisition. Under the HHI, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points.

24. The market concentration levels in each of the relevant geographic markets give rise to a presumption that the Proposed Acquisition, if consummated, would be unlawful. Post-acquisition HHI levels in the relevant geographic markets would range from 2,566 to 10,000, and the Proposed Acquisition would result in HHI increases ranging from 225 to 4,405. Exhibit A presents market concentration levels for each of the relevant geographic markets.

///

25. The Proposed Acquisition will reduce the number of meaningful competitors from two to one in 3 relevant geographic markets, from three to two in 7 relevant geographic markets, and from four to three (or greater) in 17 relevant geographic markets.

VIII. ENTRY CONDITIONS

26. Entry into the relevant geographic markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Proposed Acquisition. Significant entry barriers include the time and costs associated with conducting necessary market research, the availability of appropriate locations for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

IX. EFFECTS OF THE ACQUISITION

27. The Proposed Acquisition, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 22 in the following ways, among others:

a. by eliminating direct and substantial competition between Defendants Albertsons and Safeway;

b. by increasing the likelihood that Defendant Albertsons will unilaterally exercise market power; and

c. by increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants in each of the relevant geographic markets.

28. The ultimate effect of the Proposed Acquisition would be to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in each of the relevant geographic markets.

X. FIRST CAUSE OF ACTION

Violation of the Clayton Act

29. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 28 of this Complaint.

30. The Proposed Acquisition described in Paragraph 14 may substantially lessen competition in the provision of supermarket goods and services in each of the relevant geographic markets in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

XI. SECOND CAUSE OF ACTION

Violation of Washington Unfair Business Practices – Consumer Protection Act

31. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 28 of this Complaint.

32. The Proposed Acquisition described in Paragraph 14 may substantially lessen competition in the provision of supermarket goods and services in each of the relevant geographic markets in violation of RCW 19.86.060.

XII. PRAYER FOR RELIEF

33. Accordingly, Plaintiff State of Washington prays that this Court:

a. Adjudge and decree that the Proposed Acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and RCW 19.86.060;

b. Permanently enjoin and restrain, pursuant to federal and state law, Defendants from consummating the proposed merger in each of the relevant geographic markets identified in Paragraph 22;

c. Award to Plaintiff State of Washington its costs in this action, including reasonable attorney's fees; and

d. Direct such other and further relief as the Court deems just and proper.

DATED this 30th day of January, 2015

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

DARWIN ROBERTS
Deputy Attorney General

JONATHAN MARK
Senior Assistant Attorney General,
Antitrust Division Chief

STEPHEN T. FAIRCHILD, WSBA No. 41214
Assistant Attorney General
800 5th Ave., Ste. 2000
Seattle, WA 98104-3188
Phone: (206) 389-2848
Fax: (206) 464-6338
stephenf2@atg.wa.gov

EXHIBIT A

Area Number (See Para. 22 of Complaint)	City	State	Merger Result	HHI (pre)	HHI (post)	Delta
1	Bremerton	WA	4 to 3	2721	3399	678
2	Burien	WA	5 to 4	1979	4489	2510
3	Everett	WA	4 to 3	2301	2586	285
4	Federal Way	WA	5 to 4	2312	2709	397
5	Gig Harbor	WA	3 to 2	3396	5235	1839
6	Lake Forest Park	WA	5 to 4	3889	4352	463
7	Lake Stevens	WA	5 to 4	2646	3455	809
8	Lakewood	WA	6 to 5	2333	3170	837
9	Liberty Lake	WA	3 to 2	3483	5090	1607
10	Milton	WA	3 to 2	3960	5010	1050
11	Monroe	WA	4 to 3	2911	3352	441
12	Oak Harbor	WA	3 to 2	4296	6446	2150
13	Olympia (East)	WA	6 to 5	2205	2566	361
14	Port Angeles	WA	2 to 1	3773	5588	1815
15	Port Orchard	WA	4 to 3	2747	3362	615
16	Puyallup	WA	3 to 2	4160	5072	912
17	Renton (East Hill-Meridian)	WA	4 to 3	3304	3719	415
18	Renton (New Castle)	WA	4 to 3	4417	5274	857
19	Sammamish	WA	2 to 1	5761	10,000	4239
20	Shoreline	WA	4 to 3	3792	4017	225
21	Silverdale	WA	4 to 3	2845	3516	671
22	Snohomish	WA	2 to 1	5595	10,000	4405
23	Tacoma (Eastside)	WA	4 to 3	3260	3727	467
24	Tacoma (Spanaway)	WA	5 to 4	2707	3360	653

25	**Walla Walla**	**WA**	**5 to 4**	**2624**	**3417**	**793**
26	**Wenatchee**	**WA**	**3 to 2**	**3744**	**5047**	**1303**
27	**Woodinville**	**WA**	**3 to 2**	**3568**	**5192**	**1624**

ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, Plaintiff, v. CERBERUS INSTITUTIONAL PARTNERS V, L.P., a limited partnership; AB ACQUISITION LLC, a limited liability company; and SAFEWAY INC., a corporation, Defendants.	NO. AGREED MOTION FOR ENDORSEMENT OF CONSENT DECREE NOTE ON MOTION CALENDAR: FRIDAY, JANUARY 30, 2015

Plaintiff, State of Washington, and Defendants, Cerberus Institutional Partners V, L.P. ("Cerberus"), AB Acquisition LLC ("Albertsons"), and Safeway Inc. ("Safeway"), jointly move that the Court endorse the Consent Decree agreed to by them and filed with the Court on January 30, 2015. The Consent Decree contains remedies that are designed to address the

///

///

///

///

ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

potential lessening of competition that may result from the transaction alleged in the Complaint, and both parties have agreed to the form and presentation of the Consent Decree.

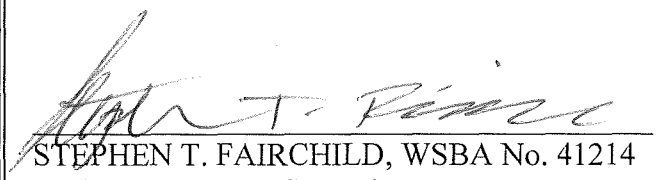
DATED this 30th day of January, 2015

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

DARWIN ROBERTS
Deputy Attorney General

JONATHAN MARK
Senior Assistant Attorney General,
Antitrust Division Chief



STEPHEN T. FAIRCHILD, WSBA No. 41214
Assistant Attorney General
800 5th Ave., Ste. 2000
Seattle, WA 98104-3188
Phone: (206) 389-2848
Fax: (206) 464-6338
stephenf2@atg.wa.gov

ROHDE & VAN KAMPEN PLLC

/s/ Al Van Kampen
Al Van Kampen, WSBA No. 13670
Attorneys for Defendants Albertsons, Cerberus, and Safeway
1001 Fourth Avenue, Suite 4050
Seattle, Washington 98154
Phone: (206) 386-7353
Fax: (206) 405-2825
avk@rvk-law.com

Of Counsel

Paul T. Denis
Dechert LLP
Attorney for Albertsons and Cerberus
1900 K Street NW
Washington, DC 20006
Phone: (202) 261-3430
Fax: (202) 261-3333
paul.denis@dechert.com

James A. Fishkin
Dechert LLP
Attorney for Albertsons and Cerberus
1900 K Street NW
Washington, DC 20006
Phone: (202) 261-3421
Fax: (202) 261-3333
james.fishkin@dechert.com

Richard C. Weisberg
Law Offices of Richard C. Weisberg
Attorney for Safeway
33 Derwen Road
Bala Cynwyd, PA 19004
Phone: (610) 664-9405
Fax: (215) 689-1504
weisberg@weisberg-law.com

The Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON Plaintiff, v. CERBERUS INSTITUTIONAL PARTNERS V, L.P., a limited partnership; AB ACQUISITION LLC, a limited liability company; and SAFEWAY INC., a corporation. Defendants.	Case No.: **CONSENT DECREE**

WHEREAS, Plaintiff State of Washington, through its Attorney General, ("Plaintiff") having initiated an investigation of the proposed acquisition by Defendants AB Acquisition LLC ("Albertsons") and Cerberus Institutional Partners V, L.P. ("Cerberus"), of Defendant Safeway Inc. ("Safeway"), filed a Complaint alleging violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Washington Unfair Business Practices – Consumer Protection Act, RCW 19.86.080; and

WHEREAS, Defendants agree that this Court has jurisdiction over them and the subject matter in this action; and

WHEREAS, Defendants agree to be bound by the provisions of this Consent Decree pending its approval by the Court and thereafter; and

WHEREAS, Defendants have agreed with the Federal Trade Commission (the "FTC" or the "Commission") to an Agreement Containing Consent Order (the "ACCO"), including a Complaint, an Order to Maintain Assets (the "OMA") and a Decision and Order (the "FTC Order") in a Related Action (defined herein), which have all been provisionally accepted by the Commission. The OMA and FTC Order are incorporated into this Consent Decree and attached as Exhibits A and B hereto to address the allegations set forth by Plaintiff in its Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without any admission or finding of wrongdoing or violation of any law, and upon consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

1. Defendant Cerberus Institutional Partners V, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, 11th Floor, New York, NY 10022.

2. Defendant AB Acquisition LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, ID 83706.

3. Defendant Safeway Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Rd., Pleasanton, CA 94588.

4. This Court has jurisdiction over the subject matter of, and each of the Parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, and under RCW 19.86.060, alleged in the Complaint as a supplemental state claim.

II. DEFINITIONS

IT IS ORDERED that, as used in this Consent Decree, all defined terms used herein shall have the meaning defined in the FTC Order. In addition, the following definitions shall apply:

A. "Defendants" means Cerberus, Albertsons, and Safeway, individually and collectively.

B. "Washington Assets To Be Divested" means the Supermarkets in Washington identified on Schedules C and D of the FTC Order, or any portion thereof, and all rights, title, and interest in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Supermarket business operated at each of those locations, including but not limited to all properties, leases, leasehold interests, equipment and fixtures, books and records, government approvals and permits (to the extent transferable), telephone and fax numbers, and goodwill. Washington Assets To Be Divested includes any of Defendants' other businesses or assets associated with, or operated in conjunction with, the Washington Supermarket locations listed on Schedules C and D of the FTC Order,

including any fuel centers (including any convenience store and/or car wash associated with such fuel center), pharmacies, liquor stores, beverage centers, store cafes, or other related business(es) that customers reasonably associate with the Supermarket business operated at each such location. At the Acquirer's option, the Washington Assets To Be Divested shall also include any or all inventory as of the Divestiture Date.

Provided, however, that the Washington Assets To Be Divested shall not include those assets consisting of or pertaining to any of the Defendants' trademarks, trade dress, service marks, or trade names, *except* with respect to any purchased inventory (including private label inventory) or as may be allowed pursuant to any Remedial Agreement(s); and

Provided, further, that in cases in which books or records included in the Washington Assets To Be Divested contain information (a) that relates both to the Washington Assets To Be Divested and to other retained businesses of Defendants or (b) such that Defendants have a legal obligation to retain the original copies, then Defendants shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided to an Acquirer, the Defendants shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes.

C. "Commission" means the Federal Trade Commission.

D. "Related Action" means the Commission's investigation of Defendants involving the merger of Defendants, resulting in the consolidation of retail Supermarket stores Chelan,

Clallam, Island, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, and Walla Walla Counties in Washington, and other areas, and its subsequent action, *In the Matter of Cerberus Institutional Partners V, L.P.; AB Acquisition LLC; and Safeway Inc.*

E. "Washington Relevant Areas" means Chelan, Clallam, Island, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, and Walla Walla Counties in Washington.

III. ASSET MAINTENANCE AND DIVESTITURE RELIEF

IT IS HEREBY ORDERED, that:

A. Defendants shall comply with the OMA and with the FTC Order.

B. All Remedial Agreements shall be deemed incorporated by reference into this Consent Decree and Defendants shall comply with all such Remedial Agreements.

C. Defendants waive any objection to reports to the Commission by the Monitor as required by Paragraph III of the OMA or Paragraph IV of the FTC Order, or by the Divestiture Trustee as required by Paragraph III of the FTC Order, to the extent such reports relate to the Washington Assets to be Divested or the Washington Relevant Areas, also being provided to Plaintiff at the same time they are provided to the Commission. Defendants further waive any objection to the Monitor consulting with or disclosing any relevant information to Plaintiff so long as Plaintiff agrees to maintain the confidentiality of such information to the fullest extent possible. In the event of a disagreement or dispute between Defendants and the Monitor that cannot be resolved, Defendants must agree to permit the Monitor to seek the assistance of the Antitrust Division of the Office of the Washington Attorney General to resolve the issue.

///

D. For the duration of this Consent Decree, Defendants shall not terminate or rescind the Limited Waiver to Permit Certain Exchanges of Confidential Information dated May 16, 2014 (Cerberus), or the Limited Waiver to Permit Exchanges of Confidential Information dated May 18, 2014 (Safeway), without the consent of Plaintiff.

IV. OTHER RELIEF

IT IS FURTHER ORDERED, that:

A. Any advance written notification to the Commission required by Paragraph VIII of the FTC Order, to the extent such notification relates to the Washington Assets To Be Divested or the Washington Relevant Areas, shall also be provided to Plaintiff.

B. Said notification under this Paragraph shall be provided in writing, and shall include a brief description of the transaction, the parties to the transaction, the anticipated closing date, specificity of location within the Washington Relevant Areas, and the contact person for follow-up information requests. Notification shall be sent via overnight express delivery to the following address:

Stephen Fairchild, Assistant Attorney General
Office of the Washington Attorney General
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Defendants shall provide the notification to Plaintiff at least thirty (30) days prior to consummating any such transaction. To comply with this Paragraph, Defendants shall provide to Plaintiff the same notification on the same day that Defendant provides such notice(s) to the Commission pursuant to Paragraph VIII of the FTC Order.

C. Plaintiff may request further information from Defendants of a transaction reported under Paragraph IV(A), subject to claims of privilege or other rights Defendants may have in response to such requests. Such requests shall be made by Investigative Demands issued pursuant to the authority of this Consent Decree and RCW 19.86.110. Nothing in this Paragraph IV shall waive, limit or compromise Plaintiff's authority and ability to pursue a subsequent enforcement action against Defendants for a transaction that may violate state or federal law.

D. Pursuant to RCW 19.86.080, Plaintiff is awarded its attorneys' fees and investigative costs in the amount of twenty-eight thousand dollars ($28,000). The Attorney General shall use the funds for recovery of the costs of any attorneys' fees incurred in investigating this matter, future enforcement of RCW 19.86, or for any lawful purpose in the discharge of the Attorney General's duties, at the sole discretion of the Attorney General. Defendants shall pay this sum to the Plaintiff within thirty (30) days of entry of this Consent Decree or March 1, 2015, whichever is later, and shall be made by cashier's check or wire transfer to the State of Washington, Office of the Attorney General.

V. COMPLIANCE AND MONITORING

IT IS FURTHER ORDERED, that:

A. Defendants shall submit to Plaintiff copies of all verified written reports required to be submitted to the Commission by Paragraph IX of the FTC Order, which copies shall be provided to the Plaintiff on the same day that Defendants provide their reports to the Commission. When Defendants provide Plaintiff a copy of a verified written report

submitted to the Commission, Defendants must state in such report that the report is responsive to and enforceable under the corresponding provisions of this Consent Decree.

B. If requested by Plaintiff, Defendants shall provide the name(s) of Defendants' employee(s) who provided and/or are responsible for providing information used and reviewed in support of the statements contained in the written report of compliance.

VI. NOTICE AND NOTICE EVENTS

IT IS FURTHER ORDERED, that:

Any notice provided by Defendants to the Commission pursuant to Paragraph X of the FTC Order shall also be provided to the Plaintiff on the same day such notice is provided to the Commission.

A. Any notices required by this Consent Decree shall be delivered to the parties at the following addresses:

For Albertsons:

AB Acquisition, LLC
250 Parkcenter Blvd.
Boise, ID 83706
Attention: General Counsel

with a copy to:

Dechert LLP
1900 K Street NW
Washington, DC 20006
Attention: Paul T. Denis
James A. Fishkin

///

///

///

For Cerberus:

Cerberus Capital Management
875 Third Avenue
11th Floor
New York, NY 10022
Attention: General Counsel

with a copy to:

Dechert LLP
1900 K Street NW
Washington, DC 20006
Attention: Paul T. Denis
James A. Fishkin

For Safeway:

Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588
Attention: General Counsel

with a copy to:

Law Offices of Richard C. Weisberg
33 Derwen Road
Bala Cynwyd, PA 19004
Attention: Richard C. Weisberg

For Plaintiff, to the same address listed in Paragraph IV(B).

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

VII. PLAINTIFF'S RIGHTS OF INVESTIGATION, INSPECTION AND EXAMINATION

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Consent Decree:

A. Plaintiff may issue an Investigative Demand pursuant to RCW 19.86.110. Defendants shall timely and fully comply with any such Investigative Demands; and

B. Subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Defendants, Defendants shall permit any duly authorized representative of Plaintiff

1. Access, during office hours of Defendants and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Defendants relating to compliance with this Consent Decree, which copying services shall be provided by such Defendant at the request of the authorized representative(s) of Plaintiff and at the expense of Defendant; and

2. Without restraint or interference from Defendants, access to interview officers, directors, or employees of Defendants, who may have counsel present, regarding any such matters.

VIII. VIOLATIONS AND ENFORCEMENT OF CONSENT DECREE

IT IS FURTHER ORDERED, that:

A. It shall be a violation of this Consent Decree if a Defendant fails to abide by the terms of this Consent Decree or, to the extent they relate to the Washington Assets To Be Divested or the Washington Relevant Areas, the FTC Order, OMA, and/or any Remedial Agreements.

B. Subject to the requirements of this Section, Plaintiff may petition the Court for relief as a result of a violation of this Consent Decree by filing a "Notice of Violation of Consent Decree" which shall set forth the alleged violation and the relief sought by Plaintiff.

C. For any violations of this Consent Decree committed by Defendant(s), Plaintiff may seek the following remedies:

1. Payment of penalties in accordance with RCW 19.86.140;
2. A civil contempt of court order from the Court retaining jurisdiction over the interpretation, modification and enforcement of this Consent Decree, and all remedies provided by law for obtaining such order; and
3. Equitable and injunctive relief, with respect to the Washington Assets To Be Divested, authorized by federal or state law that the Court deems appropriate, so long as such relief is not inconsistent with the FTC Order.

///

D. All relief requested by Plaintiff for violation of the provisions of this Consent Decree shall be supported by evidence presented to the Court in whatever form required by the Court, applying substantive Washington law in interpretation and enforcement.

E. All monetary penalties paid pursuant to this Section shall be deposited in compliance with RCW 19.86.140. Defendant(s) shall also pay to Plaintiff its reasonable attorneys' fees and costs incurred if Plaintiff is the prevailing party in a contested action to interpret, modify or enforce this Consent Decree.

F. Plaintiff shall not take enforcement action under this Consent Decree until the following has occurred:

1. Plaintiff has given a Defendant notice of the alleged violation(s) in writing;
2. Defendant has had a period of at least thirty (30) days to (a) respond to and cure the alleged violation(s); and/or (b) provide written notice disputing the alleged violation or presenting cure to Plaintiff; and
3. The respective Parties have had a period of ten (10) days after Defendant has provided notice of dispute or notice of cure to meet and confer regarding the alleged violation(s) and the respective Parties' responses. Such meeting and conferral may occur in person, by telephone, or in writing.

G. If Defendant fails to respond to and cure, or fail to provide written notice of dispute, Plaintiff may immediately seek relief from the Court. The respective parties may, but no party is required to, extend the timelines in this Paragraph by mutual consent in writing. Plaintiff may informally notify Defendant of receipt of information alleging a violation of this Consent Decree if, in Plaintiff's judgment, such notification could likely result in a prompt resolution of the alleged violation.

IX. CHANGES TO AND DIRECTIVES RESULTING FROM COMMISSION'S DECISION AND ORDER

IT IS FURTHER ORDERED, that from the date of entry of this Consent Decree, if the Commission makes any changes to the FTC Order or OMA or issues further directives pursuant to the FTC Order or OMA, and unless otherwise stipulated by the parties to this Consent Decree, Plaintiff shall have sole discretion to seek relief from this Court to incorporate into this Consent Decree the terms of the amended FTC Order or OMA and/or any subsequent directives or orders issued by the Commission. Plaintiff shall notify Defendant through its

ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

counsel in writing if Plaintiff acts in accordance with this Section and shall promptly present any such amendments to this Court.

X. GENERAL PROVISIONS

IT IS FURTHER ORDERED, that:

A. The remedies in this Consent Decree are in addition to all remedies available to Plaintiff under federal and state law. Nothing in this Consent Decree shall prohibit or in any way limit Plaintiff from seeking all damages, fines, penalties and remedies for any Defendant's conduct, actions, transactions, mergers or acquisitions that is/are otherwise unlawful under federal or state law, even if such conduct, actions, transactions, mergers or acquisitions may also violate this Consent Decree.

B. This Consent Decree shall neither be construed nor interpreted as a concession that Defendants have, or any of them has, violated any federal or state law, nor that Defendants have adopted or agreed to any allegations in Plaintiff's Complaint, except for the allegations relating to jurisdiction.

C. This Consent Decree shall terminate ten (10) years from the date of entry; provided, however, that this Consent Decree may remain in effect after completion of such ten (10) year period solely for the purpose of determining or enforcing compliance during its ten-year effective period.

D. This Court retains jurisdiction to enable any Party to this Consent Decree to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Consent Decree, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

E. If any part of this Consent Decree is hereafter adjudged by this Court to be unenforceable, the remaining provisions of this Consent Decree shall stay in full force and effect.

BASED UPON THE RECORD BEFORE THIS COURT, the Court finds that entry of this Consent Decree is fair, equitable and in the public interest.

IT IS SO ORDERED:

_____
UNITED STATES DISTRICT JUDGE

DATED: _____

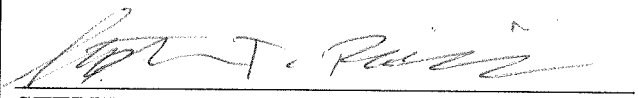
ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Presented by:

ROBERT W. FERGUSON
Attorney General

DARWIN ROBERTS
Deputy Attorney General

JONATHAN MARK
Senior Assistant Attorney General,
Antitrust Division Chief



STEPHEN T. FAIRCHILD, WSBA No. 41214
Assistant Attorney General
800 5th Ave., Ste. 2000
Seattle, WA 98104-3188
Phone: (206) 389-2848
Fax: (206) 464-6338
stephenf2@atg.wa.gov

Agreed:

ALBERTSONS and CERBERUS by:

/s/ Al Van Kampen

AL VAN KAMPEN, WSBA No. 13670
Rohde & Van Kampen PLLC
1001 Fourth Avenue, Suite 4050
Seattle, Washington 98154
Phone: (206) 386-7353
Fax: (206) 405-2825
avk@rvk-law.com

Of Counsel:
Paul T. Denis
Dechert LLP
1900 K Street NW
Washington, DC 20006
Phone: (202) 261-3430
Fax: (202) 261-3333
paul.denis@dechert.com

James A. Fishkin
Dechert LLP
1900 K Street NW
Washington, DC 20006
Phone: (202) 261-3421
Fax: (202) 261-3333
james.fishkin@dechert.com

SAFEWAY by:

/s/ Al Van Kampen

AL VAN KAMPEN, WSBA No. 13670
Rohde & Van Kampen PLLC
1001 Fourth Avenue, Suite 4050
Seattle, Washington 98154
Phone: (206) 386-7353
Fax: (206) 405-2825
avk@rvk-law.com

Of Counsel:
Richard C. Weisberg
Law Offices of Richard C. Weisberg
33 Derwen Road
Bala Cynwyd, PA 19004
Phone: (610) 664-9405
Fax: (215) 689-1504
weisberg@weisberg-law.com

Exhibit A

Order to Maintain Assets

Exhibit B

FTC Decision and Order

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, Plaintiff, v. CERBERUS INSTITUTIONAL PARTNERS V, LP, AB ACQUISITION, LLCL and SAFEWAY, INC., Defendants.	CASE NO. C15-147-JCC ORDER ENTERING CONSENT DECREE

This matter comes before the Court on the parties' stipulated motion for entry of a consent decree (Dkt. No. 4). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby **GRANTS** the motion and **ENTERS** the following consent decree:

WHEREAS, Plaintiff State of Washington, through its Attorney General, ("Plaintiff") having initiated an investigation of the proposed acquisition by Defendants AB Acquisition, LLC ("Albertsons") and Cerberus Institutional Partners V, L.P. ("Cerberus"), of Defendant Safeway Inc. ("Safeway"), filed a Complaint alleging violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Washington Unfair Business Practices – Consumer Protection Act, RCW 19.86.080; and

WHEREAS, Defendants agree that this Court has jurisdiction over them and the subject matter in this action; and

WHEREAS, Defendants agree to be bound by the provisions of this Consent Decree pending its approval by the Court and thereafter; and

WHEREAS, Defendants have agreed with the Federal Trade Commission (the "FTC" or the "Commission") to an Agreement Containing Consent Order (the "ACCO"), including a Complaint, an Order to Maintain Assets (the "OMA") and a Decision and Order (the "FTC Order") in a Related Action (defined herein), which have all been provisionally accepted by the Commission. The OMA and FTC Order are incorporated into this Consent Decree and attached as Exhibits A and B hereto to address the allegations set forth by Plaintiff in its Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without any admission or finding of wrongdoing or violation of any law, and upon consent of the Parties, it is **ORDERED**, **ADJUDGED**, AND **DECREED**:

I. JURISDICTION

1. Defendant Cerberus Institutional Partners V, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, 11th Floor, New York, NY 10022.

2. Defendant AB Acquisition LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, ID 83706.

3. Defendant Safeway Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal

place of business located at 5918 Stoneridge Mall Rd., Pleasanton, CA 94588.

4. This Court has jurisdiction over the subject matter of, and each of the Parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, and under RCW 19.86.060, alleged in the Complaint as a supplemental state claim.

II. DEFINITIONS

It is **ORDERED** that, as used in this Consent Decree, all defined terms used herein shall have the meaning defined in the FTC Order. In addition, the following definitions shall apply:

A. "Defendants" means Cerberus, Albertsons, and Safeway, individually and collectively.

B. "Washington Assets To Be Divested" means the Supermarkets in Washington identified on Schedules C and D of the FTC Order, or any portion thereof, and all rights, title, and interest in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Supermarket business operated at each of those locations, including but not limited to all properties, leases, leasehold interests, equipment and fixtures, books and records, government approvals and permits (to the extent transferable), telephone and fax numbers, and goodwill. Washington Assets To Be Divested includes any of Defendants' other businesses or assets associated with, or operated in conjunction with, the Washington Supermarket locations listed on Schedules C and D of the FTC Order, including any fuel centers (including any convenience store and/or car wash associated with such fuel center), pharmacies, liquor stores, beverage centers, store cafes, or other related business(es) that customers reasonably associate with the Supermarket business operated at each such location. At the Acquirer's option, the Washington Assets To Be Divested shall also include any or all inventory as of the

Divestiture Date.

Provided, however, that the Washington Assets To Be Divested shall not include those assets consisting of or pertaining to any of the Defendants' trademarks, trade dress, service marks, or trade names, except with respect to any purchased inventory (including private label inventory) or as may be allowed pursuant to any Remedial Agreement(s); and

Provided, further, that in cases in which books or records included in the Washington Assets To Be Divested contain information (a) that relates both to the Washington Assets To Be Divested and to other retained businesses of Defendants or (b) such that Defendants have a legal obligation to retain the original copies, then Defendants shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided to an Acquirer, the Defendants shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes.

C. "Commission" means the Federal Trade Commission.

D. "Related Action" means the Commission's investigation of Defendants involving the merger of Defendants, resulting in the consolidation of retail Supermarket stores Chelan, Clallam, Island, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, and Walla Walla Counties in Washington, and other areas, and its subsequent action, In the Matter of Cerberus Institutional Partners V, L.P.; AB Acquisition LLC; and Safeway Inc.

E. "Washington Relevant Areas" means Chelan, Clallam, Island, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, and Walla Walla Counties in Washington.

III. ASSET MAINTENANCE AND DIVESTITURE RELIEF

It is hereby **ORDERED** that:

A. Defendants shall comply with the OMA and with the FTC Order.

B. All Remedial Agreements shall be deemed incorporated by reference into this Consent Decree and Defendants shall comply with all such Remedial Agreements.

C. Defendants waive any objection to reports to the Commission by the Monitor as required by Paragraph III of the OMA or Paragraph IV of the FTC Order, or by the Divestiture Trustee as required by Paragraph III of the FTC Order, to the extent such reports relate to the Washington Assets to be Divested or the Washington Relevant Areas, also being provided to Plaintiff at the same time they are provided to the Commission. Defendants further waive any objection to the Monitor consulting with or disclosing any relevant information to Plaintiff so long as Plaintiff agrees to maintain the confidentiality of such information to the fullest extent possible. In the event of a disagreement or dispute between Defendants and the Monitor that cannot be resolved, Defendants must agree to permit the Monitor to seek the assistance of the Antitrust Division of the Office of the Washington Attorney General to resolve the issue.

D. For the duration of this Consent Decree, Defendants shall not terminate or rescind the Limited Waiver to Permit Certain Exchanges of Confidential Information dated May 16, 2014 (Cerberus), or the Limited Waiver to Permit Exchanges of Confidential Information dated May 18, 2014 (Safeway), without the consent of Plaintiff.

IV. OTHER RELIEF

It is further **ORDERED** that:

A. Any advance written notification to the Commission required by Paragraph VIII of the

FTC Order, to the extent such notification relates to the Washington Assets To Be Divested or the Washington Relevant Areas, shall also be provided to Plaintiff.

B. Said notification under this Paragraph shall be provided in writing, and shall include a brief description of the transaction, the parties to the transaction, the anticipated closing date, specificity of location within the Washington Relevant Areas, and the contact person for follow-up information requests. Notification shall be sent via overnight express delivery to the following address:

Stephen Fairchild, Assistant Attorney General
Office of the Washington Attorney General
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Defendants shall provide the notification to Plaintiff at least thirty (30) days prior to consummating any such transaction. To comply with this Paragraph, Defendants shall provide to Plaintiff the same notification on the same day that Defendant provides such notice(s) to the Commission pursuant to Paragraph VIII of the FTC Order.

C. Plaintiff may request further information from Defendants of a transaction reported under Paragraph IV(A), subject to claims of privilege or other rights Defendants may have in response to such requests. Such requests shall be made by Investigative Demands issued pursuant to the authority of this Consent Decree and RCW 19.86.110. Nothing in this Paragraph IV shall waive, limit or compromise Plaintiff's authority and ability to pursue a subsequent enforcement action against Defendants for a transaction that may violate state or federal law.

D. Pursuant to RCW 19.86.080, Plaintiff is awarded its attorneys' fees and investigative costs in the amount of twenty-eight thousand dollars ($28,000). The Attorney General

shall use the funds for recovery of the costs of any attorneys' fees incurred in investigating this matter, future enforcement of RCW 19.86, or for any lawful purpose in the discharge of the Attorney General's duties, at the sole discretion of the Attorney General. Defendants shall pay this sum to the Plaintiff within thirty (30) days of entry of this Consent Decree or March 1, 2015, whichever is later, and shall be made by cashier's check or wire transfer to the State of Washington, Office of the Attorney General.

V. COMPLIANCE AND MONITORING

It is further **ORDERED** that:

A. Defendants shall submit to Plaintiff copies of all verified written reports required to be submitted to the Commission by Paragraph IX of the FTC Order, which copies shall be provided to the Plaintiff on the same day that Defendants provide their reports to the Commission. When Defendants provide Plaintiff a copy of a verified written report submitted to the Commission, Defendants must state in such report that the report is responsive to and enforceable under the corresponding provisions of this Consent Decree.

B. If requested by Plaintiff, Defendants shall provide the name(s) of Defendants' employee(s) who provided and/or are responsible for providing information used and reviewed in support of the statements contained in the written report of compliance.

VI. NOTICE AND NOTICE EVENTS

It is further **ORDERED** that:

Any notice provided by Defendants to the Commission pursuant to Paragraph X of the FTC Order shall also be provided to the Plaintiff on the same day such notice is provided to the Commission.

A. Any notices required by this Consent Decree shall be delivered to the parties at the

following addresses:

For Albertsons:

AB Acquisition, LLC
250 Parkcenter Blvd.
Boise, ID 83706
Attention: General Counsel

with a copy to:

Dechert LLP
1900 K Street NW
Washington, DC 20006
Attention: Paul T. Denis
James A. Fishkin

For Cerberus:

Cerberus Capital Management
875 Third Avenue
11th Floor
New York, NY 10022
Attention: General Counsel

with a copy to:

Dechert LLP
1900 K Street NW
Washington, DC 20006
Attention: Paul T. Denis
James A. Fishkin

For Safeway:

Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588
Attention: General Counsel

with a copy to:

Law Offices of Richard C. Weisberg
33 Derwen Road
Bala Cynwyd, PA 19004
Attention: Richard C. Weisberg

For Plaintiff, to the same address listed in Paragraph IV(B).

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

VII. PLAINTIFF'S RIGHTS OF INVESTIGATION, INSPECTION AND EXAMINATION

It is further **ORDERED** that, for the purpose of determining or securing compliance with this Consent Decree:

A. Plaintiff may issue an Investigative Demand pursuant to RCW 19.86.110. Defendants shall timely and fully comply with any such Investigative Demands; and

B. Subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Defendants, Defendants shall permit any duly authorized representative of Plaintiff

1. Access, during office hours of Defendants and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Defendants relating to compliance with this Consent Decree, which copying services shall be provided by such Defendant at the request of the authorized representative(s) of Plaintiff and at the expense of Defendant; and

2. Without restraint or interference from Defendants, access to interview officers, directors, or employees of Defendants, who may have counsel present, regarding any such matters.

VIII. VIOLATIONS AND ENFORCEMENT OF CONSENT DECREE

It is further **ORDERED** that:

A. It shall be a violation of this Consent Decree if a Defendant fails to abide by the terms of this Consent Decree or, to the extent they relate to the Washington Assets To Be

Divested or the Washington Relevant Areas, the FTC Order, OMA, and/or any Remedial Agreements.

B. Subject to the requirements of this Section, Plaintiff may petition the Court for relief as a result of a violation of this Consent Decree by filing a "Notice of Violation of Consent Decree" which shall set forth the alleged violation and the relief sought by Plaintiff.

C. For any violations of this Consent Decree committed by Defendant(s), Plaintiff may seek the following remedies:

1. Payment of penalties in accordance with RCW 19.86.140;

2. A civil contempt of court order from the Court retaining jurisdiction over the interpretation, modification and enforcement of this Consent Decree, and all remedies provided by law for obtaining such order; and

3. Equitable and injunctive relief, with respect to the Washington Assets To Be Divested, authorized by federal or state law that the Court deems appropriate, so long as such relief is not inconsistent with the FTC Order.

D. All relief requested by Plaintiff for violation of the provisions of this Consent Decree shall be supported by evidence presented to the Court in whatever form required by the Court, applying substantive Washington law in interpretation and enforcement.

E. All monetary penalties paid pursuant to this Section shall be deposited in compliance with RCW 19.86.140. Defendant(s) shall also pay to Plaintiff its reasonable attorneys' fees and costs incurred if Plaintiff is the prevailing party in a contested action to interpret, modify or enforce this Consent Decree.

F. Plaintiff shall not take enforcement action under this Consent Decree until the

following has occurred:

1. Plaintiff has given a Defendant notice of the alleged violation(s) in writing;

2. Defendant has had a period of at least thirty (30) days to (a) respond to and cure the alleged violation(s); and/or (b) provide written notice disputing the alleged violation or presenting cure to Plaintiff; and

3. The respective Parties have had a period of ten (10) days after Defendant has provided notice of dispute or notice of cure to meet and confer regarding the alleged violation(s) and the respective Parties' responses. Such meeting and conferral may occur in person, by telephone, or in writing.

G. If Defendant fails to respond to and cure, or fail to provide written notice of dispute, Plaintiff may immediately seek relief from the Court. The respective parties may, but no party is required to, extend the timelines in this Paragraph by mutual consent in writing. Plaintiff may informally notify Defendant of receipt of information alleging a violation of this Consent Decree if, in Plaintiff's judgment, such notification could likely result in a prompt resolution of the alleged violation.

IX. CHANGES TO AND DIRECTIVES RESULTING FROM COMMISSION'S DECISION AND ORDER

It is further **ORDERED**, that from the date of entry of this Consent Decree, if the Commission makes any changes to the FTC Order or OMA or issues further directives pursuant to the FTC Order or OMA, and unless otherwise stipulated by the parties to this Consent Decree, Plaintiff shall have sole discretion to seek relief from this Court to incorporate into this Consent Decree the terms of the amended FTC Order or OMA and/or any subsequent directives or orders issued by the Commission. Plaintiff shall notify Defendant through its counsel in writing if Plaintiff acts in accordance with this Section and shall promptly present any such amendments to

this Court.

X. GENERAL PROVISIONS

It is further **ORDERED** that:

A. The remedies in this Consent Decree are in addition to all remedies available to Plaintiff under federal and state law. Nothing in this Consent Decree shall prohibit or in any way limit Plaintiff from seeking all damages, fines, penalties and remedies for any Defendant's conduct, actions, transactions, mergers or acquisitions that is/are otherwise unlawful under federal or state law, even if such conduct, actions, transactions, mergers or acquisitions may also violate this Consent Decree.

B. This Consent Decree shall neither be construed nor interpreted as a concession that Defendants have, or any of them has, violated any federal or state law, nor that Defendants have adopted or agreed to any allegations in Plaintiff's Complaint, except for the allegations relating to jurisdiction.

C. This Consent Decree shall terminate ten (10) years from the date of entry; provided, however, that this Consent Decree may remain in effect after completion of such ten (10) year period solely for the purpose of determining or enforcing compliance during its ten-year effective period.

D. This Court retains jurisdiction to enable any Party to this Consent Decree to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Consent Decree, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

//

//

DATED this 3rd day of February 2015.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, Plaintiff, v. CERBERUS INSTITUTIONAL PARTNERS V, LP, AB ACQUISITION, LLCL and SAFEWAY, INC., Defendants.	CASE NO. C15-147-JCC MINUTE ORDER STATISTICALLY CLOSING CASE

The following Minute Order is made by direction of the Court, the Honorable John C. Coughenour, United States District Judge:

Pursuant to the Court's order entering a consent decree (Dkt. No. 11), the Clerk of Court is hereby **ORDERED** to statistically close the above-captioned matter. The Court retains jurisdiction and will re-open the case in the event of a further filing by the parties.

DATED this 3rd day of February 2015.

William M. McCool
Clerk of Court

s/Tasha MacAdam
Deputy Clerk

The Closing

<< Bac

Albertsons and Safeway Complete Merger Transaction

Newly combined private company will operate 2,230 grocery stores in 34 states and the District of Columbia

BOISE, Idaho and PLEASANTON, Calif., Jan. 30, 2015 /PRNewswire/ -- AB Acquisition LLC and Safeway Inc. (NYSE: SWY, "Safeway") announced today that they have completed their proposed merger. Under the terms of the merger agreement first announced and unanimously approved by Safeway's Board of Directors in March 2014, AB Acquisition LLC, the owner of Albertson's LLC and New Albertson's, Inc. (collectively "Albertsons"), will acquire all outstanding shares of Safeway. AB Acquisition is controlled by an investor group led by Cerberus Capital Management, L.P. ("Cerberus"), which also includes Kimco Realty Corporation (NYSE:KIM), Klaff Realty LP, Lubert-Adler Partners LP, and Schottenstein Stores Corporation.

Safeway shareholders will receive $34.92 per share in cash, consisting of (i) $32.50 in initial cash consideration, (ii) $2.412 in consideration relating to the previously announced sale of the assets of Safeway's real-estate development subsidiary Property Development Centers, LLC ("PDC") and (iii) $0.008 in consideration relating to a dividend of approximately $2 million (after deduction for taxes at an assumed rate) that Safeway received in December 2014 on its 49% interest in Mexico-based food and general merchandise retailer Casa Ley, S.A. de C.V. ("Casa Ley"). In addition, shareholders will receive contingent value rights entitling them to pro rata proceeds relating to deferred consideration from the sale of PDC and any proceeds from the sale of Safeway's 49% interest in Casa Ley.

Both contingent value rights will be non-transferable and non-tradable. For tax reporting purposes, Safeway intends to report that the fair market values of the contingent value rights at the time of the merger for PDC and Casa Ley are $0.0488 and $1.0149, respectively, per share, based on third party valuations.

With respect to PDC, both the initial cash distribution ($2.412 per share) and the total estimated asset value including the CVR ($2.461 per share) have increased slightly over the estimated values set forth in Safeway's December 23, 2014 press release announcing the sale of PDC. Those earlier estimates were $2.38 per share and $2.45 per share, respectively

In addition, in April 2014, Safeway stockholders received a distribution of stock in Safeway's former Blackhawk Network Holdings, Inc. (NASDAQ: HAWKB) subsidiary valued at approximately $4.02 per Safeway share at the time of the distribution.

As a result of the completion of the merger transaction, the common stock of Safeway will no longer be listed for trading on the New York Stock Exchange or any other securities exchange. Safeway will file a Certification on Form 15 with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to suspend Safeway's reporting obligations under Sections 13(a) and 15(d) of the Exchange Act.

Merger Closing Paves Way for Enhanced Shopping Experience

"We plan to be the favorite local supermarket in every community we serve," said Safeway President and Chief Executive Officer Robert Edwards, who becomes President and CEO of the newly combined company, effective immediately. "We will do this by knowing, listening to, and delighting our customers; providing the right products at a compelling value; and

delivering a superior shopping experience. We will also continue to be active members of our local communities."

As previously announced, current Albertsons Chief Executive Officer Bob Miller will become Executive Chairman.

"This is a transformative day for both Albertsons and Safeway. This merger creates a unifie strong organization that is dedicated to bringing a better shopping experience to more customers across the country," commented Miller. "Our combined geographic footprint, vas range of brands and products, and service-oriented staff will enable us to meet evolving shopping preferences."

The merger will create a diversified network that includes 2,230 stores, 27 distribution facilities and 19 manufacturing plants with over 250,000 employees across 34 states and th District of Columbia.

The new company will be comprised of three regions and 14 retail divisions, supported by corporate offices in Boise, ID, Pleasanton, CA, and Phoenix, AZ. Banners will include Safeway, Vons, Pavilions, Randalls, Tom Thumb, Carrs, Albertsons, ACME, Jewel-Osco, Lucky, Shaw's, Star Market, Super Saver, United Supermarkets, Market Street and Amigos. In December, the companies announced the sale of 168 stores to four separate buyers, as divestitures required in order to secure U.S. Federal Trade Commission approval of the transaction.

Advisors
Goldman, Sachs & Co. served as financial advisor to Safeway in connection with the Company's strategic review and the transactions. Greenhill & Co. has also served as financia advisor to Safeway. Latham & Watkins LLP served as Safeway's outside legal counsel, and The Law Offices of Richard C. Weisberg served as outside legal counsel on antitrust matters Citigroup, lead financial advisor, Bank of America Merrill Lynch and Credit Suisse served as financial advisors to Albertsons, Cerberus and the investor group. Schulte Roth & Zabel LLP served as lead outside legal counsel to Albertsons, Cerberus and the investor group, and Dechert LLP, Schulte Roth & Zabel LLP and Baker Botts LLP served as outside legal counsel on antitrust matters.

About Safeway Inc.
Safeway Inc., which operates Safeway, Vons, Pavilions, Randalls, Tom Thumb, and Carrs stores, is a Fortune 100 company and one of the largest food and drug retailers in the Unite States with sales of $35.1 billion in 2013. The company's common stock previously traded o the New York Stock Exchange (NYSE) under the symbol SWY, and will be delisted from the NYSE as a result of the closing of the merger. For more information, please visit www.Safeway.com.

About Albertsons
Established in 2006, AB Acquisition LLC ("Albertsons"), which operates ACME, Albertsons, Jewel-Osco, Lucky, Shaws, Star Market and Super Saver, and stores under the United Famil of stores, Amigos, Market Street and United Supermarkets, is working to become the favorit food and drug retailer in every market it serves. The company is privately owned by Cerberus Capital Management, Kimco Realty Corporation, Klaff Realty, Lubert-Adler Partners and Schottenstein Stores Corporation. For more information, please visit www.Albertsons.com.

Media Contacts:
Brian Dowling
brian.dowling@safeway.com | 925-467-3787
Investor Contacts:
Christiane Pelz
christiane.pelz@safeway.com | 925-467-3832
Melissa Plaisance

melissa.plaisance@safeway.com | 925-467-3136
http://investor.safeway.com

Logo - http://photos.prnewswire.com/prnh/20140919/147280

Logo - http://photos.prnewswire.com/prnh/20140919/147279

To view the original version on PR Newswire, visit:http://www.prnewswire.com/news-releases/albertsons-and-safeway-complete-merger-transaction-300028412.html

SOURCE Safeway Inc.

The Haggen Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HAGGEN HOLDINGS, LLC Plaintiff, v. ALBERTSON'S LLC & ALBERTSON'S HOLDINGS LLC Defendants.	:	Case No.

COMPLAINT

Plaintiff Haggen Holdings, LLC ("Haggen"), files this complaint against Albertson's LLC ("Albertson's LLC") and Albertson's Holdings LLC ("Albertson's Holdings") (collectively, "Albertsons"), stating and alleging upon personal knowledge as to matters relating to itself and upon information and belief obtained during the course of its counsel's investigation as to all other matters, as follows:

NATURE OF THE ACTION

1. This action arises from Albertsons' coordinated and systematic efforts to eliminate competition and Haggen as a viable competitor in over 130 local grocery markets in five states. Albertsons' illegal campaign includes premeditated acts of unfair and anti-competitive conduct that were calculated to circumvent Albertsons' obligations under federal antitrust laws, Federal Trade Commission ("FTC") orders, and contractual commitments to Haggen, all of which acts were intended to prevent and delay the successful entry of Haggen (or

any other viable competitor) into local grocery markets that Albertsons now dominates. The result of Albertsons' conduct is (i) the reduction of competition in the affected local markets, thereby reducing consumer choice and decreasing quality while increasing prices for thousands of consumers throughout California, Oregon, Washington, Nevada and Arizona; (ii) needless loss of jobs held by innocent workers; and (iii) infliction of severe brand, reputational and financial harm on Haggen.

2. Albertsons' campaign fits hand-in-glove with its recent acquisition (the "Merger") of Safeway, Inc. ("Safeway"), its largest—and in many cases, Albertsons' *only*—competitor in the affected local markets. In March 2014, Albertsons and Safeway announced that the two supermarket chains intended to merge to create one of the largest food retailers in the United States, with over 2,200 stores and $61 billion in combined sales and the number-one or -two competitive position in over two-thirds of the markets in which it does business. The FTC's review of Albertsons' regulatory filings at the time of the announcement prompted immediate and serious concerns that the Merger could eliminate "substantial competition" and reduce the number of meaningful competitors in the affected markets. State attorneys general in California, Washington and Nevada also initiated investigations. Rather than ignoring those concerns or abandoning the Merger, Albertsons decided to sell some of the existing Albertsons and Safeway stores to competing grocers, thereby purporting to address competitive concerns in certain local markets.

3. In order to convince Haggen to purchase 146 stores, Albertsons made false representations to both Haggen and the FTC about Albertsons' commitment to a seamless transformation of the stores into viable competitors under the Haggen banner. Haggen was induced by Albertsons' false statements to seek the FTC's approval to purchase 146 stores in

five states (the "Stores"), and those false statements impacted the strategies Haggen developed for the success of *all* Stores. As noted by the FTC, Haggen was a "highly suitable" candidate for new ownership of the Stores.[1] Haggen had recently introduced a new look, "Haggen – Northwest Fresh," including store remodels, re-merchandising, signage, uniforms, and private-label goods. Haggen was also committing almost $100 million to convert the purchased Albertsons and Safeway stores to "Haggen –Northwest Fresh" and "Haggen – California Fresh." Haggen had a highly experienced management team and developed a robust integration plan. Haggen had an authentic grocery brand with over 80 years of history that stands for local fresh products within a traditional grocery store concept.

4. The mandate of the FTC is to protect consumers and competition. Consistent with its congressional authority, the FTC evaluated Albertsons' proposed Merger and concluded that it would create regional monopolies that would harm consumers and competition in scores of local markets. To remedy this potential harm, the FTC ordered Albertsons—and Albertsons agreed—to divest itself of 168 stores under detailed terms and conditions, as set forth in the FTC's Decision and Order dated January 27, 2015 ("January 27, 2015 Order"), and in its Final Decision and Order issued July 2, 2015 ("Final Order"). Additional safeguards were set forth in the FTC's Order to Maintain Assets issued on January 27, 2015 ("OMA"). The express purpose of these orders, as stated by the FTC, was to ensure that the divested stores would continue to operate as "ongoing, viable enterprises engaged in the Supermarket business and to remedy the lessening of competition resulting from the Acquisition …." *Id.* § II.H. Copies of the January

[1] A copy of the FTC's "Analysis of Agreement Containing Consent Order to Aid Public Comment, *In the Matter of Cerberus Institutional Partners V, L.P., AB Acquisition, LLC, and Safeway Inc. File No. 141 0108*," is annexed hereto as Exhibit A ("FTC Analysis"). *See also* Federal Register, Vol. 80, No. 22 Notices, at 5753 (Feb. 3, 2015), *available online at* https://www.ftc.gov/system/files/documents/federal_register_notices/2015/02/150203safewayfrn.pdf

Order, the OMA and the Final Order are annexed hereto as Exhibits B, C, and D, respectively. Collectively, the January 27, 2015 Order, the OMA, and the Final Order are hereinafter sometimes referred to as the "FTC Orders."[2]

5. Mindful of Albertsons' "incentive not to promote competition with itself,"[3] the FTC would permit Albertsons to sell stores only to buyers who demonstrated the wherewithal and commitment to convert the divested stores into formidable competitors. By affirmatively misrepresenting the manner in which it planned to implement these sales and transitions, Albertsons obtained the necessary pre-merger approvals from the FTC. Through false statements to Haggen, Albertsons secured the cooperation and commitment it needed from Haggen in order to meet the conditions that the FTC imposed on the Merger.

6. The FTC approved Haggen's purchase of the Stores, reaffirming Albertsons' obligation to divest the Stores in a manner consistent with mandated safeguards. Haggen acquired the Stores pursuant to an Asset Purchase Agreement dated December 10, 2014 (the "Purchase Agreement") for a price in excess of $300 million.

7. During the transfer process, Albertsons launched its plan to gain market power and/or monopoly power in the Relevant Markets (as defined below), acting in a manner that was designed to (and did) hamstring Haggen's ability to successfully operate the Stores after taking ownership. In all of the Relevant Markets, Haggen was a new entrant, and Albertsons' improper conduct destroyed Haggen's ability to build essential goodwill among consumers in those markets. Albertsons also critically damaged Haggen's competitive niche, which was firmly

[2] (Copies of the FTC Orders are also available at https://www.ftc.gov/enforcement/cases-proceedings/141-0108/cerberus-institutional-partners-v-lp-ab-acquisition-llc.

[3] *See* U.S. Dept. of Justice, Antitrust Division, *Policy Guide to Merger Remedies* at n. 41 (Oct. 2004), *available at* http://www.justice.gov/atr/archived-antitrust-division-policy-guide-merger-remedies-october-2004.

grounded in Haggen's 82-year history of being a neighborhood grocer that earned the trust and respect of its shoppers by: (1) providing fair pricing and healthy competition; (2) expanding the selection of local product offerings and consistently bringing a unique and broad selection of quality products to its shelves; and (3) focusing resources on supporting local communities through employing local residents, supporting community events and contributing to food banks and other worthy causes.

8. Contrary to the FTC Orders, the parties' Purchase Agreement and the law, grocer giant Albertsons engaged in anti-competitive activity against Haggen, just as Haggen was seeking to obtain a foothold in the Relevant Markets. Recognizing that its competitor's success or failure hinged on its initial fair pricing of an appropriate inventory of products, Albertsons embarked on an unlawful scheme to undermine the very competition that the FTC sought to preserve. As the Stores were nearing the dates on which they would be transitioned to Haggen stores and thereafter, Albertsons used Haggen's confidential, proprietary business information to unfairly compete with, and ultimately destroy the profitability of, Haggen's newly acquired Stores, by among other things:

a. Inducing Haggen to acquire the Stores under an aggressive time frame by (i) making false representations about (and failing to disclose material limitations of) the existing merchandising data system, back-office data system and infrastructure that Haggen would be relying on in converting the transferred stores to the Haggen brand, and (ii) falsely promising to provide to Haggen and to the Business Process Outsource provider the information, cooperation and training that was necessary for a seamless and successful transition;

b. Misusing Haggen's confidential information as to the cadence, or sequence, of Store conversions and other confidential customer data (including confidential loyalty club card data) to time and coordinate advertising campaigns, discounting, remodeling and rebranding of retained stores, and other strategies to draw customers away from Haggen Stores immediately before and after conversion and lure them to nearby Albertsons and Safeway stores;

c. Providing inaccurate data about transferred inventory that was on Store shelves, and burying relevant data in volumes of irrelevant data relating to

phantom inventory that was *not* on Stores' shelves, which was intended to disrupt the transition and to ensure an unsatisfactory customer experience upon grand opening;

d. Providing inaccurate, incomplete and misleading price information to Haggen about products on transferred Store shelves, causing Haggen to tag products with inflated prices and causing customers to conclude that Haggen was price gouging on products that, just 48 hours earlier, had been priced much cheaper;

e. Sabotaging the quantity, assortment and quality of inventory transferred to Haggen, so that new consumers would be dissatisfied with Haggen and thus shop at nearby Albertsons and Safeway stores, including (i) deliberate understocking of certain inventory at Haggen-acquired stores below levels consistent with the ordinary course of business just prior to conversion, resulting in out of stocks which negatively impacted the shopping experience upon Haggen grand openings, and (ii) deliberate overstocking of perishable inventory at Haggen-acquired stores beyond levels consistent with the ordinary course of business just prior to conversion such that Haggen had to throw away significant amounts of inventory it paid for;

f. Removing store fixtures and inventory from Haggen-acquired stores that Haggen paid for;

g. Strategically cutting off Haggen-acquired store advertising in order to decrease customer traffic prior to and leading into the conversion; and

h. Failing to perform routine maintenance on stores and equipment prior to conversion, ensuring that Haggen's grand opening would not meet customer expectations.

9. Albertsons' improper and exclusionary conduct has caused significant harm to competition, local communities, employees and consumers, and undermines the FTC's authority and the FTC Orders, which were meant to preserve competition in the Relevant Markets and protect consumers. Albertsons' anti-competitive actions critically damaged the operations, customer service, brand goodwill and profitability of the Stores from the outset. Haggen never intended to close any of the Stores it acquired. To the contrary, Haggen saw these Stores as an exciting opportunity to transform itself into a super-regional grocer with a presence up and down the west coast, and its plan was to bring new communities under the respected Haggen banner. As a result of Albertsons' anti-competitive conduct and unfair and deceptive practices, Haggen

was recently forced to close 26 of the Stores that it newly acquired as a part of the Albertsons' divestiture, and faces the potential closure of additional stores.

10. While these closures are attributable to Albertsons' wrongful conduct, it is Haggen who has suffered reputational harm. For example, "[n]ewspapers in California and Arizona reported customers complained about the cost of Haggen compared to other grocery stores." Whidbey News Times, Aug. 19, 2015, "Haggen to close, sell 27 stores." Likewise, in the Times of San Diego, it was noted that "[Haggen] was criticized by customers for its high prices when the stores began opening in the San Diego region earlier this year[.]" Times of San Diego, Aug. 14, 2015, "Haggen Plans 6 Store Closures, Layoffs in San Diego." The executive director of the Klamath County Chamber of Commerce was also quoted as saying that "There are now folks here who would not consider stopping in a Haggen anywhere else when they travel." Herald & News, Aug. 18, 2015, "Haggen fallout: Local leaders aim to fill void."

11. As the above shows, the damage to Haggen is widespread, including but not limited to the following losses caused directly by Albertsons' misconduct: (1) lost sales; (2) damage to reputation and brand; (3) lost goodwill and alienated shoppers; (4) increased conversion costs; (5) inventory expenditures; (6) supplier penalties; and (7) other losses suffered as a result of the closure of 26 Stores that were acquired from Albertsons. Albertsons' misconduct has also forced the diversion of personnel and resources away from the immediate task of establishing Haggen's competitive position in new local markets; instead, Haggen has had to focus on strategies to recover from Albertsons' wrongful acts, which include, sadly, Haggen's efforts to find new jobs for displaced employees who too are victims of Albertsons' actions. If Albertsons is successful in destroying Haggen as a viable competitor, Haggen's damages, which include the lost prospective value of the acquisition, may exceed $1 billion, with

the ultimate amount of damages to be determined at trial as Haggen continues to suffer injury from Albertsons' wrongful conduct. Haggen brings this lawsuit against Albertsons for violations of Section 7 of the Clayton Act and Section 2 of the Sherman Act, breach of contract, breach of the implied covenant of good faith and fair dealing, indemnification under the relevant agreement, fraud, misappropriation of trade secrets, conversion and violation of Washington's Consumer Protection Act to recover those damages.

PARTIES

12. Haggen Holdings, LLC is a Delaware limited liability company. The first store opened under the Haggen family name in 1933 in Bellingham, Washington. Since 1933, the Haggen brand and business has been built on providing shoppers the freshest and most local products with genuine service, while supporting the communities it serves. Haggen's excellence in the grocer industry has been routinely recognized by such awards as "Best Grocery Store of the Year," "Most Community Minded Company," "Large Business of the Year," and "Best Family-First Business," while Haggen has also been an upstanding member of every community in which it operates, participating in such charities as Multiple Sclerosis fundraisers, clothing drives, and fundraisers for such causes as Seattle's Children's Hospital and Haiti Earthquake victims, among many others. Haggen reaches these summits, in part, because of its unique partnerships with local farmers, ranchers, fisheries, and other businesses that supply Haggen stores with the highest quality products for its stores. In the first half of 2015, through the acquisition of the Stores, Haggen expanded from a Pacific Northwest company with locations in Oregon and Washington to a regional grocery store chain with locations in Washington, Oregon, California, Nevada and Arizona.

13. Albertson's LLC is a Delaware limited liability company, and is one of the largest food and drug retailers in the United States. It operates over 2,200 stores across 33 states under 18 brands including Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, ACME Markets, Tom Thumb, Randalls, United Supermarkets, Pavilions, Star Market and Carrs.

14. Albertson's Holdings LLC is a Delaware limited liability company and is the parent company of Albertson's LLC.

JURISDICTION AND VENUE

15. This Court has federal question jurisdiction pursuant to 28 U.S.C.A. § 1331 (West) because Haggen's claims under Section 2 of the Sherman Act and Section 7 of the Clayton Act arise pursuant to federal law, and this Court has exclusive jurisdiction over those claims.

16. This Court has supplemental jurisdiction of Haggen's state law claims pursuant to 28 U.S.C.A. § 1367 (West).

17. Venue is proper in this district pursuant to 15 U.S.C.A. § 22 (West) because this action arises under the federal antitrust laws and may be brought in any district where the defendant is an inhabitant and/or where it transacts business. Albertson's LLC and Albertson's Holdings LLC are both formed under the laws of Delaware, both are signatories to the Purchase Agreement, and Albertson's LLC transacts business in Delaware through its ACME brand.

FACTS COMMON TO ALL CLAIMS

A. Albertsons And Safeway Agree To Merge

18. On March 6, 2014, AB Acquisition ("AB Acquisition"), Albertsons' parent company, and Safeway announced that they had entered into an agreement whereby AB

Acquisition agreed to acquire all of the outstanding shares of Safeway for approximately $9.2 billion.

19. The Merger, as initially contemplated, would have created a nationwide super-food retailer with over 2,400 stores, 27 distribution facilities and 20 manufacturing plants.

B. Supermarket Trade and Commerce and the Relevant Product Market

20. For purposes of this Complaint, the relevant line of commerce is the retail sale of food and other grocery products in supermarkets.

21. For purposes of this Complaint, the term "supermarket" means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products; staple foodstuffs; and, to the extent permitted by law, wine, beer and/or distilled spirits.

22. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, referred to as stock-keeping units (SKUs), as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

23. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets base their food and grocery prices, in part, on the prices and selection of food and grocery products sold at other nearby

competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at stores other than supermarkets and do not typically set or change their food or grocery prices in response to prices at stores other than supermarkets.

24. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters and club stores—do not, individually or collectively, provide sufficient competition to impact prices at supermarkets. These retail stores do not offer a supermarket's distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets would not likely start shopping at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant price increase by all supermarkets in a relevant geographic market.

25. Significant barriers to entry exist in the market for supermarkets, including the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket and generating sufficient sales to have a meaningful impact on the market.

C. Relevant Geographic Markets

26. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers' grocery shopping occurs at stores located very close to where they live.

27. The relevant geographic markets for this action, defined consistently with the FTC's market definitions, include areas that range from a two- to ten-mile radius around each of

the supermarkets acquired from Defendants (depending on factors such as population density, traffic patterns, and unique characteristics of each market), in each of the following locations: Anthem, AZ; Carefree, AZ; Flagstaff, AZ; Lake Havasu, AZ; Prescott, AZ; Prescott Valley, AZ; Scottsdale, AZ; Tucson (Eastern), AZ; Tucson (Southwest), AZ; Alpine, CA; Arroyo Grande/Grover Beach, CA; Atascadero, CA; Bakersfield, CA; Burbank, CA; Calabasas, CA; Camarillo, CA; Carlsbad (North), CA; Carlsbad (South), CA; Carpinteria, CA; Cheviot Hills/Culver City, CA; Chino Hills, CA; Coronado Island, CA; Diamond Bar, CA; El Cajon, CA; Hermosa Beach, CA; Imperial Beach, CA; La Jolla, California; La Mesa, CA; Ladera Ranch, CA; Laguna Beach, CA; Laguna Niguel, CA; Lakewood, CA; Lemon Grove, CA; Lomita, CA; Lompoc, CA; Mira Mesa (North), CA; Mira Mesa (South), CA; Mission Viejo/Laguna Hills, CA; Mission Viejo (North) CA; Morro Bay, CA; National City, CA; Newbury Park, CA; Newport Beach, CA; Oxnard, CA; Palm Desert/Ranch Mirage, CA; Palmdale, CA; Paso Robles, CA; Poway, CA; Rancho Cucamonga/Upland, CA; Rancho Santa Margarita, CA; San Diego (Clairemont), CA; San Diego, (Hillcrest/University Heights), CA; San Diego (Tierrasanta), CA; San Luis Obispo, CA; San Marcos, CA; San Pedro, CA; Santa Barbara, CA; Santa Barbara/Goleta Heights, CA; Santa Clarita, CA; Santa Monica, CA; Santee, CA; Simi Valley, CA; Solana Beach, CA; Thousand Oaks, CA; Tujunga, CA; Tustin (Central), CA; Tustin/Irvine, CA; Ventura, CA; Westlake Village, CA; Yorba Linda, CA; Boulder City, NV Henderson (East), NV; Henderson (Southwest) NV; Summerlin, NV; Ashland, OR; Baker County, OR; Bend, OR; Eugene, OR; Grants Pass, OR; Happy Valley/Clackamas, OR; Keizer, OR; Klamath Falls, OR; Lake Oswego, OR; Milwaukie, OR; Sherwood, OR; Springfield, OR Tigard, OR; West Linn, OR; Bremerton, WA; Burien, WA; Everett, WA; Federal Way, WA; Gig Harbor, WA; Lake Forest, WA; Lake Stevens, WA; Lakewood, WA; Liberty Lake, WA; Milton, WA; Monroe,

WA; Oak Harbor, WA; Olympia (East), WA; Port Angeles, WA; Port Orchard, WA; Puyallup, WA; Renton (New Castle), WA; Renton (East Hill-Meridian), WA; Sammamish, WA; Shoreline, WA; Silverdale, WA; Snohomish, WA; Tacoma (Eastside), WA; Tacoma (Spanaway) WA; Walla Walla, WA; Wenatchee, WA and Woodinville, WA (the "Relevant Markets").

D. Recognizing that its Merger would have substantial anticompetitive effects in the Relevant Markets, Albertsons makes false statements to induce Haggen to purchase dozens of stores that Albertsons and Safeway needed to unload in order to consummate the Merger

28. Shortly after the Merger was announced in 2014, the FTC received extensive objections and comments that the Merger would substantially harm consumer choice and prices in the Relevant Markets. The FTC therefore investigated the Merger.

29. Recognizing that the FTC would likely require it to divest stores as part of the Merger, and that even after such a divestiture it could make a substantial profit if its Merger were approved, Albertsons entered into negotiations with Haggen regarding the purchase of 146 Stores.

30. Albertsons' success in divesting itself of the Stores hinged on its ability to convince a prospective buyer—and the FTC—that the store transition would be supported by a highly integrated electronic infrastructure platform in a very compressed time period. Albertsons therefore needed to convince Haggen that it could secure the transition by using a "proven" Business Process Outsourcing ("BPO") service provider with strong transition capabilities in order to combine a vast array of functional areas, including Customer Service; Finance / Accounting / Tax / Treasury; Payroll / Benefits / Compensation; Asset Protection & Food Safety; Logistics / Procurement / DSD; Pharmacy; Digital / Social Media; Merchandising / Pricing; Marketing / Ad Planning; Store Shelf Management; Front-End POS Systems; Vendor Management; Store Ordering; and Labor Management.

31. On November 4, 2014, at the invitation of Albertsons, Haggen executives attended a meeting at Albertsons' headquarters in Boise, Idaho. Also in attendance were representatives of the BPO provider that supported 107 of the 146 Stores (*i.e.*, the stores that operated under the Albertsons' banner pre-conversion) (the "November 2014 Meeting").

32. The purpose of the November 2014 Meeting was to convince Haggen that, through the transition and after conversion, Haggen could operate all 146 Stores (*i.e.*, both the Albertsons and Safeway stores) under a common suite of business processing systems (the "Business Processing Suite"). Albertsons represented to Haggen that the Business Processing Suite was already in place at the 107 Albertsons stores, and Albertsons promised to provide the cooperation and support to Haggen and to the BPO that was needed to "stand up" the Business Processing Suite at all Haggen Stores and provide for a seamless and successful transition at both the Albertsons and Safeway stores.

33. The capability of the BPO provider to deliver the Business Processing Suite, and Haggen's ability to effect a successful conversion to the Business Processing Suite, depended on Albertsons' cooperation with and support of the BPO provider and Haggen. Without limitation, it was Albertsons' duty, responsibility and obligation to authorize, initiate, allow and take all commercially reasonable steps to cause the efficient flow of relevant, necessary and "active" data to Haggen; to avoid and/or prevent the flow of irrelevant, extraneous, misleading and/or outdated data to Haggen; to explain the difference between relevant/necessary/active data and irrelevant/extraneous/misleading/outdated data; and to identify relevant/necessary/active data.

34. Albertsons' promise to provide the necessary cooperation and support, made to Haggen at the November Meeting and thereafter, was false, and Albertsons had no intention to keep its promise at the time it was made.

35. Albertsons knew and understood that "no immediate price change" was a key part of Haggen's transition strategy, and Albertsons knew and understood that Haggen's successful transformation of the Stores depended on the successful implementation of this short-term pricing strategy.

36. Despite this knowledge, and in complete disregard of the promises it made to Haggen, Albertsons had no intention of providing, identifying and explaining relevant/necessary/active data, and it had every intention of providing irrelevant/extraneous/misleading/outdated data. Nor did Albertsons intend to provide the level of cooperation, support and training necessary for the BPO provider to provide essential and accurate pricing information and for Haggen to implement and operate the system.

37. Had Haggen known Albertsons' true intentions, Haggen would never have purchased the Stores, nor would the FTC have permitted such a purchase.

38. Albertsons was similarly misleading with respect to certain "underperforming" stores included among the Stores purchased by Haggen. For example, by e-mail dated November 17, 2014, counsel for Albertsons represented that while those stores were not then profitable, "these stores will get a boost from the rebranding/grand re-opening by new ownership as well as any planned investments" Haggen would make. Albertsons made similar representations to the FTC only a few days prior, on or about November 14, 2014, where it emphasized that Haggen will "have an even better chance at improving the profitability of these stores" because "[r]e-branding and re-grand opening of stores will give the stores a fresh start in the eyes of consumers." Albertsons shared this presentation and, on other occasions, shared the substance of this presentation, with Haggen. At no time did Albertsons disclose to Haggen or the

FTC that it intended to take the anti-competitive steps alleged herein to undermine the grand openings and deprive Haggen of the promised "boost" and "fresh start" from rebranding.

39. Less than one month later on December 10, 2014, in reliance on these and other similar representations, Haggen entered into the Purchase Agreement with Albertsons, with a purchase price in excess of $300 million, plus inventory, pursuant to which Haggen would acquire the 146 Stores subject to FTC approval.

E. The FTC Holds That The Merger As Proposed Is Anti-Competitive And Orders Divestiture And Maintenance of Assets In Order To Preserve Competition In The Relevant Markets

40. On January 27, 2015, the FTC filed a complaint alleging that the Merger was likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the geographic markets where Albertsons would acquire stores.

41. Specifically, the FTC found that under the 2010 Department of Justice and FTC Horizontal Merger Guidelines and relevant case law, the Merger was presumptively unlawful because, in certain of the Relevant Markets, the Merger would create, enhance or facilitate the exercise of market power. Thus it was likely that the Merger, if consummated as planned, would eliminate competition by: (a) eliminating direct and substantial competition between Albertsons and Safeway; (b) increasing the likelihood that Albertsons would unilaterally exercise market power; and (c) increasing the likelihood of, or facilitating coordinated interaction between, the remaining participants in each of the markets where the Merger would eliminate Safeway as an independent competitor of Albertsons, including the Relevant Markets. The FTC also found that the ultimate effect of the Merger would be to increase the likelihood that the prices of food, groceries or services would increase, while the quality and selection of food, groceries or

services would decrease, in the Relevant Markets. A copy of the January 27, 2015 FTC Complaint is annexed hereto as Exhibit E.[4]

42. In order to alleviate the anti-competitive effects of the Merger, the FTC issued the January 27, 2015 Order, ordering Albertsons and Safeway to divest 168 stores, as listed in Schedules A through D of that Order. (Exhibit B). With express reference to and incorporation of the Purchase Agreement as a "Remedial Agreement," (*id.* § II.D.), the FTC Orders directed Albertsons to divest the Stores to Haggen in accordance with all terms and conditions of Purchase Agreement. *Id.* § II.A.3. Exhibits B and D. Also on January 27, 2015, the FTC issued its Order to Maintain Assets. Exhibit C.

43. In its published Analysis of the January 27, 2015 Order, the FTC specifically noted its view that Haggen was a "highly suitable purchaser and was well positioned to enter the Relevant Markets and prevent the likely competitive harm" that otherwise would have resulted from the Merger. (FTC Analysis, Exhibit A).[5] At the time, neither Haggen nor the FTC anticipated that Albertsons would actively seek to undermine the Stores as they transitioned to Haggen.

44. The FTC imposed safeguards, terms and conditions (the "FTC Safeguards") on the Merger between Albertsons and Safeway, the express purpose of which was "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 …." (January 27, 2015 Order and Final Order § II.H.) (Exhibit B and D). The FTC Safeguards

[4] A copy is also available at https://www.ftc.gov/enforcement/cases-proceedings/141-0108/cerberus-institutional-partners-v-lp-ab-acquisition-llc.

[5] *See also* Federal Register, Vol. 80, No. 22 Notices, at 5753 (Feb. 3, 2015), *available online at* https://www.ftc.gov/system/files/documents/federal_register_notices/2015/02/150203safewayfrn.pdf

include those set forth explicitly in the FTC Orders, as well as obligations set forth by the parties in the Purchase Agreement, each of which the FTC incorporated by reference into the FTC Orders. (January 27, 2015 Order and Final Order § II.D.1) ("All Remedial Agreements approved by the commission … shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of any such Remedial Agreement(s) shall constitute a violation of this Order."). (Exhibits B and D.)

45. Without limitation, the FTC Safeguards in the January 27, 2015 Order and the Final Order required that Albertson's LLC:

(i) "Take such actions as are necessary to ***maintain the full economic viability, marketability, and competitiveness*** of the Assets To Be Divested, to ***minimize any risk of loss of competitive potential*** for 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," (§ II.D.1);

(ii) "Not sell, transfer, encumber, ***or otherwise impair*** the Assets To Be Divested (other than ***in the manner prescribed*** in this Decision and Order) nor ***take any action that lessens the full economic viability, marketability, or competitiveness*** of the Assets To Be Divested," (§ II.F.)

(Exhibits B and D) (emphasis added).

46. Without limitation, the FTC Safeguards in the Order to Maintain Assets required that Albertson's LLC:

(i) "shall maintain the viability, marketability, and competitiveness of the Assets to be Divested" (OMA § II.A);

(ii) "shall not cause the wasting or deterioration of the Assets To Be Divested," *id.*;

(iii) "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)," *id.*;

(iv) "shall use 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," *id.*;

(v) "shall continue to ***maintain the inventory*** of each Supermarket To Be Maintained at levels and selections consistent with those maintained by Respondents at such Supermarket in the ordinary course of business consistent with past practice," (OMA § II.B.);

(vi) "shall use best efforts to keep the organization and properties of each Supermarket To Be Maintained intact, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Supermarket To Be Maintained," *id.*;

(vii) "shall not transfer store managers from any Supermarket To Be Maintained to any store that is not part of the Assets To Be Divested," *id.*;

(viii) Shall "[m]aintain all operations and departments, and not reduce hours, at each Supermarket To Be Maintained" (OMA § II.B.1);

(ix) Shall not "***transfer inventory*** from any Supermarket To Be Maintained, other than in the ordinary course of business consistent with past practice," (OMA § II.B.2.);

(x) Shall "[m]ake any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with each Supermarket To Be Maintained, in each case in a manner consistent with past practice," (OMA § II.B.3.);

(xi) Shall "[m]aintain the books and records of each Supermarket To Be Maintained," (OMA § II.B.4.);

(xii) Shall 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 at a Supermarket To Be Maintained to another location, or that indicates a Supermarket To Be Maintained will close," (OMA § II.B.5.);

(xiii) Shall "[n]ot conduct any 'going out of business,' 'close-out, 'liquidation,' or similar sales or promotions at or relating to any Supermarket To Be Maintained," (OMA § II.B.6.); and

(xiv) Shall "[n]ot change or modify in any material respect the existing pricing or ***advertising practices, programs, and policies*** for each Supermarket To Be Maintained, other than changes in the ordinary course of business consistent with current practice for Supermarkets of the Respondents not being closed, relocated, or sold," (OMA § II.B.7.)

(Exhibit C) (emphasis added).

47. Similar to the covenants imposed by the FTC's Order to Maintain Assets, the Purchase Agreement also required Albertsons to maintain each Store in its existing condition through the respective closing and to refrain from taking any steps that would undermine the profitability and competitive capability of the Stores. Albertsons agreed that, prior to Haggen's acquisition of each Store, Albertsons would operate the Store, "in all material respects, only in the Ordinary Course of Business." (Purchase Agreement § 21.4.) At a minimum, with respect to each Store, the Purchase Agreement required Albertsons:

(i) to maintain operations, customary hours of operation and departments;

(ii) to exercise good faith in pricing merchandise consistent with the Sellers' normal pricing strategy;

(iii) to ***maintain customary overall levels of Inventory***;

(iv) to perform customary repair and maintenance in accordance with the Sellers' past practices and ***not to transfer any equipment*** to other Albertsons stores;

(v) not to enter into any material amendment to any of the Store Leases;

(vi) to maintain qualified and experienced managers and workforce and not to transfer store managers and pharmacists to other Albertsons stores;

(vii) not to display any signs or ***conduct any advertising (including direct mailing, point-of-purchase coupons, etc.) that indicates Albertsons or Safeway is moving*** its operations to another location or that a Store will close;

(viii) not to conduct any "going out of business", "close-out", liquidation or similar sales promotions;

(ix) ***not to change or modify in any material respect the existing advertising practices, programs and policies*** for any Store Property; and

(x) to use commercially reasonable efforts to ***preserve the existing relationships with each Store Property's suppliers, customers and employees***.

48. In addition, the Purchase Agreement required Albertsons to cooperate in good faith and to take "all commercially reasonable actions" to ensure that the Stores would be commercially viable competitors as countenanced by the Purchase Agreement and the FTC Orders. (Purchase Agreement §§ 18.2, 24.15.)

49. The Purchase Agreement between Haggen and Albertsons contained a "Confidentiality" provision whereby the parties agreed that all information received by either party would be treated as confidential. (Purchase Agreement § 21.2.)

50. Albertsons knew that its compliance with the "Confidentiality" provision was critical. Particularly because Haggen was a new entrant to all of the Relevant Markets, it was imperative to keep the timing of Haggen's market entry confidential in order to prevent unfair competition or predatory practices, such as competitors targeting consumers with coupons or increasing advertising just as a Store was transitioning.

F. Albertsons Misuses Confidential Information About Store Transfer Dates To Engage In Anti-Competitive Conduct

51. In order to effectuate the Purchase Agreement, Haggen created a schedule whereby each Store would transfer from Albertsons to Haggen (the "Store Closing Cadence"). The first Store Closing Cadence was attached as an Exhibit to the Purchase Agreement. (Purchase Agreement Ex. 2.3.3.) Weeks in advance of the first conversion in continuing updates thereafter, Haggen provided Albertsons with an updated and more detailed Store Closing Cadence for Albertsons' review on a strictly confidential basis.

52. The Store Cadence set forth not only the sequence in which all 146 Stores would be converted, but it also provided detail as to the conversion schedule for each Store. For example, the Store Closing Cadence revealed that the Albertsons store in Oak Harbor Washington would "go dark" at 6 p.m. on Tuesday, March 3, 2015; that Haggen would take ownership on March 4 at 12:01 a.m.; that the store would be closed for a total of two days; and that the grand reopening of the store under the Haggen banner would occur on March 6 at 9:00 a.m.

53. The FTC Orders and Purchase Agreement prohibited Albertsons from displaying any signs or conducting any advertising (*e.g.*, direct mailing, point-of-purchase coupons) to indicate that any Store would close or was moving its operations to another location (OAM § II.B.5; Purchase Agreement § 21.4(a)(vii)), and Albertsons was further prohibited from conducting any "going out of business," "close-out," "liquidation," or similar sales or promotions. (OMA § II.B.6.; Purchase Agreement § 21.4(a)(viii)). Haggen did not advertise or promote the opening of a Haggen store in advance of the grand opening. Thus, only those who had access to the confidential Store Closing Cadence (*i.e.*, Haggen and Albertsons) had knowledge of the schedule and related details.

54. During the transition process, in order to effectuate transfer of ownership, Albertsons would close a Store at around 6 p.m. on the "Closing Date," as that term is defined in the Purchase Agreement. Haggen would then bring in a conversion team to handle any necessary construction, place orders, change all price tags and signage, train the employees and otherwise prepare the Store for reopening as a Haggen Store two days later. A typical team would include dozens of workers and specialists with the range of skills and talents necessary to address all aspects of store operation, preparedness, and improvement, all of which had to meet Haggen's traditional high standards. For conversion construction and build-out alone, Haggen budgeted over $59 million collectively to be spent on the transitioned Stores during this forty-eight hour window on store improvements and updates, literally from floor to ceiling. Another $22 million was budgeted and spent for IT, and more than $20 million for additional expenditures.

55. The Store transitions took place over a fifteen-week period, which meant that, in some weeks, Haggen was undertaking more than a dozen conversions, with many of them occurring simultaneously. Success required seamless coordination and sequencing of all aspects of operation in each Store, and it depended on Albertsons' compliance with all requirements under the FTC Orders and the Purchase Agreement.

56. Only Haggen and Albertsons had advance knowledge of when the Stores would go dark and when they would re-enter the market as Haggen stores. Other competitors in the market had no such knowledge. This advance knowledge gave Albertsons an unfair advantage and opportunity to develop strategies to undermine the grand opening of the new Haggen stores and hinder Haggen's market entry. It is for this very reason that the FTC Orders and Purchase

Agreements prohibited Albertsons from exploiting that knowledge to Haggen's detriment and, ultimately, to the detriment of consumers who would benefit from Haggen's successful entry.

i. Albertsons Misuses the Confidential Store Closing Cadence to time aggressive and unprecedented marketing campaigns to undermine Store grand openings.

57. Albertsons used its knowledge of when Haggen would enter the Relevant Markets – the confidential, proprietary Store Closing Cadence – to undercut and erode consumer loyalty to the Stores slated for transition to Haggen. For example, Albertsons circulated coupons for "$10 off a $50 purchase" or "$20 off a $75 purchase" before and after Haggen entered the market in at least Bakersfield, CA; Goleta CA; Santa Barbara; CA; Newbury Park; CA; San Diego, CA; San Luis Obispo; CA; Mission Viejo, CA; Laguna Beach; CA; Simi Valley, CA; and Torrance CA.

58. Albertsons' conduct violated the Purchase Agreement, including without limitation Section 21.2(c), and multiple provisions in the FTC Orders, including without limitation Albertsons' obligation to "use best efforts to preserve the existing relationships with … customers" of the Stores. (OMA § II.A.) (Exhibit C).

59. This timed, targeted and aggressive couponing activity by Albertsons occurred in additional markets beyond the ones enumerated above and was widespread throughout the Haggen closings. Albertsons timed the coupons to correspond with Haggen's Store Closing Cadence by first dropping the coupon at or just prior to a conversion and then repeating the drop in several weeks when the first coupon was expiring. The coordination and execution of these campaigns required significant advance planning at the corporate office level. Therefore, only Albertsons (who was privy to the confidential Store Closing Cadence), was able to plan and execute these campaigns at Stores across the Relevant Markets.

60. Circulating coupons prior to Haggen entering the market drove traffic to Albertsons stores that would be competing with Haggen before Haggen even had a chance to enter the Relevant Markets and build brand awareness among consumers. Albertsons also circulated deep-discount coupons immediately after closure or placed post-conversion expiration dates on coupons that it circulated immediately prior to the conversion. When customers presented those coupons to the Haggen store, Haggen was put in the "no-win" posture of either honoring an Albertsons-issued coupon that eroded all profit, or refusing to honor the coupon and alienating customers.

61. Albertsons wrongfully used Haggen's Store Closing Cadence to undermine customer loyalty to the soon-to-be-converted Stores. Albertsons did not offer these extreme discounts in the ordinary course of business but instead intentionally designed them to coincide with the timing and location of a Haggen transition. This was done to increase the likelihood that consumers would continue to visit the competing Albertsons' store due to Albertsons' artificially "lower" pricing for certain products. Those "lower" prices were based not on fair competition and a legitimate business plan, but solely on the misuse of Haggen's proprietary information.

ii. Albertsons Misuses the Confidential Store Cadence to Cut Off Store Advertising and decrease customer traffic Prior to Conversion

62. Pursuant to the Order to Maintain Assets (OMA § II.B.7) and the Purchase Agreement (§ 21.4(b)), Albertsons was required to maintain existing advertising practices, programs and policies at each Store through conversion to Haggen ownership.

63. Prior to transitioning the Stores to Haggen ownership and in the ordinary course of business, it was Albertsons' custom and practice to send advertisements for inclusion in a

larger grocery store advertising packet that was sent to customers in the zip code for a particular store location. In addition, each Store would receive advertisements to place inside the Store.

64. However, manipulating its knowledge of Haggen's Store Closing Cadence, Albertsons instructed its advertising agency to cease advertising two weeks or more prior to conversion at many Stores.

65. For example, at Store # 2203, located in Mission Viejo, CA, Albertsons failed to send advertisements to customers of the soon-to-be converted Store no less than three weeks prior to conversion, and Albertsons also failed to provide any advertisements for in-Store use.

66. At Store # 6028, located in Henderson, NV, Albertsons stopped sending any advertisements two weeks prior to conversion.

67. Only through its access to and improper exploitation of Haggen's Store Closing Cadence did Albertsons know the timing required to curtail the customary and required advertisements.

68. As a result, customers who had been receiving ads for a store location for several years no longer received those ads for the converted Store. They received nothing and/or they received ads for the nearest competing stores that Albertsons retained. In either case, the message to consumers was the same: Albertsons was leaving the Store. This adversely impacted customer traffic, sales and profitability at the converted Stores both before and after conversion, which is contrary to the FTC Order and Order to Maintain Assets, the Purchase Agreement, and fair competition.

iii. Albertsons Diverts Haggen Inventory To Albertsons Stores

69. Pursuant to the Order to Maintain Assets (OMA § II.B.) and the Purchase Agreement (§ 21.4(a)(iii)), Albertsons was required to maintain inventory at levels and selections that were consistent with the ordinary course of business at each Store.

70. However, at multiple Store locations, Albertsons manipulated to its benefit Haggen's Store Closing Cadence by charging inventory to a converted Store just prior to conversion, but then delivering or transferring that inventory to Albertsons' stores that were not converted.

71. For example, Store # 2203, located in Mission Viejo, CA, was billed for several truckloads of inventory that were never received. The ordered inventory was instead diverted and delivered to an Albertsons' store which was not being acquired by Haggen.

72. In Las Vegas, NV, only days prior to conversion of the Store, a Store manager ordered inventory prior to conversion that was meant for Haggen. However, Albertsons diverted the shipment to an Albertsons' store that was not changing ownership and billed the Haggen Las Vegas, NV Store for the inventory that it never received.

iv. Albertsons Misuses the Confidential Store Cadence to Time The Remodeling And Rebranding Of Its Retained Stores to Prevent Haggen From Breaking Into The Relevant Markets

73. Misusing the Store Closing Cadence in another fashion, Albertsons intentionally timed large-scale remodeling and rebranding projects for certain of its closest competing retained stores to closely coincide with Haggen Store openings.

74. For example, Albertsons had detailed and confidential knowledge that the Albertsons store in Oak Harbor Washington would "go dark" at 6 p.m. on Tuesday, March 3, 2015 and that it would reopen under the Haggen banner at exactly 9:00 a.m. on March 6.

75. Albertsons used its advance knowledge of Haggen's Store Closing Cadence to plan a large-scale remodeling project for its closest competing retained Albertsons store on Southwest Erie Street, less than ½ mile away from the transitioning Haggen Store. Albertsons began the extensive remodeling at the same time as Haggen's conversion of the Safeway store.

76. Albertsons not only remodeled its competing store, but also rebranded and remerchandised that store to reopen as a Safeway by early April 2015, preying on the community's familiarity with Safeway.

77. Through this targeted remodel and rebranding, Albertsons intended to (and did successfully) divert consumer traffic in the Oak Harbor community away from Haggen to Albertsons. The FTC Orders and the Purchase Agreement recognized that preserving "existing relationships with … customers" was needed if Haggen was to successfully enter the Relevant Markets, including Oak Harbor. (OMA § II.A, Exhibit C; Purchase Agreement § 21.4.) Rather than honor this commitment, Albertsons misused the Store Cadence and took extreme measures to ensure that customers of the old Safeway had no interest in the new Haggen Store, but instead flocked to the old Albertsons down the street, which Albertsons had reopened as a Safeway.

78. Albertsons similarly used knowledge of Haggen's Store Closing Cadence to time the remodeling and/or rebranding of other retained stores to undermine Haggen's conversion of the Stores and prevent Haggen from successfully entering new markets.

v. Albertsons Overstocks Inventory Beyond Levels Consistent With The Ordinary Course of Business

79. Although the FTC's Orders (OMA § II.B.) (Exhibit C) and Purchase Agreement required Albertsons to maintain Store inventory at levels and selections consistent with the ordinary course of business and past practice, Albertsons overstocked Haggen Stores with certain inventory as of the Closing Date.

80. For example, at Store #2152, located in Arroyo Grande, CA, Albertsons ordered the Store managers to overstock the perishable inventory of meat and produce although the Store would be closing for roughly two days for conversion. Similarly, at Store #2131, located in Pasa Robles, CA, and at Store #2210, located at Los Osos, CA, Albertsons ordered the meat department to "cut the cooler"on the last day, resulting in the entire meat inventory being cut on the day of conversion. Ground beef, ribeyes, and New York strips were cut in the back room, none of which ever made it to the sales floor. Albertsons knew that this perishable inventory would expire quickly, prior to or during conversion, causing an immediate and preventable loss to Haggen.

81. At Store #2160, located in Diamond Bar, CA, Albertsons' supervisors arrived at 2 p.m. on the day of conversion, just four hours before the store went "dark," and directed store employees to fill produce tables. Albertsons overstocked six hundred cases of perishable floral items at an estimated value of $50,000. Nabisco, Keebler and private label items on shelves and in storage were out of code (out of date).

82. At Store # 2161, located in Los Angeles, CA, two weeks prior to conversion, Albertsons caused the Store to receive multiple shipments of over-the-counter medicine that were out of code (*i.e.* expired). Haggen was forced to write off the expired medicine, causing an immediate and preventable loss to Haggen.

83. At Store # 2137, located in Yorba Linda, CA, Albertsons ordered excess inventory prior to transitioning the Store, which was then billed to Haggen. The Store closing was scheduled for March 26, 2015; however, the inventory invoices were dated March 27, 2015. Haggen was forced to write off that inventory, causing an immediate and preventable loss to Haggen.

84. Just prior to transitioning of Store # 2333, located in El Cajon, CA, Albertsons instructed the bakery manager to purchase and/or bake two times her normal inventory levels. Likewise, at Store # 2131, located in Pasa Robles, CA, Albertsons ordered the bakery department to "bake off everything in the freezer." As Albertsons intended, most of that excess inventory expired prior to the transitioning to Haggen of Store # 2333, causing an immediate and preventable loss to Haggen.

85. In March 2015, at Store # 2140 and Store #2148, both located in Bakersfield, CA, Haggen entered the Stores to find the meat freezers loaded with 256 *cases* of frozen turkeys that were left over from Thanksgiving and Christmas holidays. Rather than stock the meat freezer with useable and sellable merchandise that Haggen's customers would purchase, Albertsons stocked it with out-of-season and ultimately unsellable merchandise.

86. At Store # 2199, located in Simi Valley, CA, Albertsons ordered the store manager to increase production of perishable items in the bakery and in produce immediately prior to conversion, although the items would be unsellable after conversion. Haggen was forced to write off that inventory, causing an immediate and preventable loss to Haggen.

87. Albertsons' calculated and intentional overstocking of inventory affected at least 25 of the Stores.

88. As a result of Albertsons' malicious and unfair actions, Haggen was forced to either destroy the inventory or otherwise take a loss.

89. In addition, because Albertsons' malfeasance strained Haggen's resources during the conversion process (as Albertsons intended), in some instances, Haggen was not able to fully complete its expiration audits. This resulted in (as Albertsons knew it would) customers complaining to Haggen about out-of-date (or very nearly out of date) products on the Store

shelves. As Haggen was a new entrant to the Relevant Markets, Albertsons' malfeasance left consumers with a negative impression of Haggen, which ultimately impacted the profitability of the Stores and the Haggen brand.

90. Additionally, Albertsons' malfeasance created substantial distraction and diverted the attention of store-level and senior Haggen management, as Albertsons intended, during critical junctures in the conversion process, which hurt employee morale and created confusion among employees at each Store.

vi. Albertsons Deliberately Understocks Inventory Below Levels Consistent With The Ordinary Course of Business

91. Additionally, Albertsons failed to maintain the required inventory levels at certain Stores transitioning to Haggen, allowing those Stores to become understocked in quantity and selection.

92. For example, at Store # 422, located in Shoreline, Washington, prior to conversion, Albertsons failed to maintain ordinary levels of inventory and, upon taking ownership, Haggen discovered that inventory conditions were highly substandard with entire sets of stock missing from the shelves. Within ten days after the transition of Store # 422, Haggen was forced to purchase approximately $208,000 of new inventory to sufficiently stock the Store, which represented almost 24% of the total inventory value at Store # 422.

93. As a result of Albertsons' intentional understocking of inventory, Haggen was forced to place emergency orders in order to compensate for the lack of inventory. Further, Haggen was forced to divert employees away from training and programming in order to address inventory issues. Haggen also was forced to hire, at substantial cost to itself, a third-party vendor in order to get inventory onto Store shelves.

94. As a result of Albertsons' intentional understocking of inventory, many consumers who were encountering Haggen for the first time were left with the false impression that the Stores were not well operated, which inevitably drove consumer traffic away from Haggen and towards Albertsons.

95. The inventory issues further damaged Haggen because all of the money used to resolve inventory issues depleted Haggen's marketing budget for the Stores.

96. Similar to the Stores that were affected by overstocking of inventory levels, Albertsons' malfeasance created substantial distraction and diverted the attention of store-level and senior Haggen management, as Albertsons intended, during critical junctures in the conversion process, which hurt employee morale and created confusion among employees at each Store.

vii. Albertsons Improperly Removes Store Fixtures and Inventory

97. During the conversion process, Haggen discovered that Albertsons intentionally removed and discarded inventory and equipment in violation of the FTC's Order to Maintain Assets and the Purchase Agreement.

98. For example, at Store # 2048, located in Goleta, CA, Haggen discovered that Albertsons and its subsidiaries intentionally removed and discarded inventory and equipment outside of Albertsons' inventory counting system. As a result, Haggen was obligated to pay Albertsons for such inventory, without such inventory being present at Store # 2048, causing an immediate and preventable loss to Haggen.

viii. Albertsons Fails to Perform Routine Maintenance on Stores and Equipment

99. Under the FTC Orders (OMA § II.A.) and the Purchase Agreement (§ 21.4(iv)), Albertsons was required to perform customary repair and maintenance on Stores and equipment in accordance with past practices.

100. Albertsons failed to perform regular and customary maintenance in numerous respects, ranging from (without limitation) plumbing problems at Stores to non-functioning deli equipment. For example, at Store #2160 (Diamond Bar, CA), Haggen found filthy dairy containers and produce wet racks that had not been cleaned in months; mold in fish cases; service meat containers that did not hold temperature; broken refrigerators that had been converted to dry storage rather than repaired; forklift safety issues, including steering problems and dead batteries; broken plumbing; nonworking coolers in dairy, frozen, and produce; and more. At Store #2131 (Pasa Robles, CA), Haggen found broken meat scales and overall poor sanitation in the meat department and deli, with mold in all display cases; two broken ovens; a walk-in cooler with a broken door that was held closed with a trash can; roof leaks in deli and grocery backrooms, and more. Each of these failings caused Haggen to incur additional repair costs. In addition, not all of Albertsons' maintenance failures were fixable within the short window of time that Albertsons knew had been allotted for the conversion process. For example, Albertson put a hold on repairs at Store #2140, located in Bakersfield, CA prior to conversion, leaving (among many other problems) a non-functioning cake printer in the bakery department, which forced Haggen—a store that is renowned for its bakery—to decline cake orders or fill them from another store. Albertsons' failure to perform routine maintenance, therefore, further diminished customers' first impression upon entering a Haggen store after conversion, which was Albertsons' intended effect.

101. Albertsons also removed cleaning materials and supplies from Stores that interfered with efforts to spruce up Stores for grand opening. For example, on the very day of conversion at Store #2169, Albertsons removed two pallets of supplies, including floor wax, strippers, chemical cleansers, and toilet paper.

102. The above alleged conduct sets forth only some of the anticompetitive measures that Albertsons timed to the Store Cadence. Albertsons even removed shopping carts from some locations prior to conversion—*anything* to upset a customer's first experience at a Haggen store.

G. Albertsons Deliberately Provides Haggen With False, Misleading And Incomplete Retail Pricing Data, Undermining Haggen's Pricing Strategy at Grand Opening

103. As part of the conversion process, Albertsons was required to cooperate with the BPO provider and provide to Haggen its current retail pricing files on transferred inventory, primarily so that Haggen could implement its consumer-friendly "no immediate pricing change" strategy upon entry to the Relevant Markets. The retail files were also important to ensure that products would scan at the tag price upon Haggen's reopening of the Stores.

104. As part of its plan to undermine Haggen's entry into the Relevant Markets, Albertsons failed and/or refused to cooperate with the BPO provider. It either refused to provide the price information, or it provided false, misleading and incomplete pricing files to Haggen.

105. Albertsons' conduct prevented Haggen from meeting customer expectations; instead, many customers experienced "sticker shock" upon their first visit to a Haggen Store—just as Albertsons planned and intended.

106. For example, in many instances, Albertsons represented that it was providing the active or current retail prices, but Haggen later discovered that these prices were not the prices that Albertsons had charged in the ordinary course of business at the Stores prior to conversion. In fact, the customary practice of Albertsons had been to offer those products for sale with a

long-term price reduction, or a much lower *de facto* base retail price, which Albertsons concealed from Haggen.

107. The practical result of this deception was a consumer walking into a brand new Haggen store and finding the same item on the same shelf, but now priced higher than it was immediately prior to store conversion. Albertsons achieved its goal of driving away Haggen shoppers by creating an inaccurate first impression that Haggen was far more expensive than Albertsons' own nearby stores.

108. In addition, the pricing files frequently did not match the physical Store inventory. As an example, Albertsons provided retail pricing data for a Store that included nearly double the amount of items actually stocked in that Store. Alternatively, in some cases, the pricing files would be missing for thousands of items actually transferred to Haggen and physically stocked in a Store. These errors were not, and could not be, discovered by Haggen until after Haggen closed on the Store and began the conversion and retagging process.

109. The pricing files were provided to Haggen in such an unusable condition that it was impossible for Haggen to finalize new tags for all items during its short conversion windows.

110. Albertsons refused Haggen's request to enter Stores just prior to closing to conduct its own pricing audit based on the physical stock in the Store. As a result, Haggen had to rely on Albertsons' inaccurate and adulterated pricing files.

111. Albertsons' anti-competitive conduct caused significant damage to Haggen's image, brand, and ability to build goodwill during its grand openings to the public.

H. Albertsons' Conduct Causes Haggen To Close 27 Stores, with Further Potential Future Closings, Injuring Competition In Those Markets And Damaging Both Haggen And Consumers

112. As a result of Albertsons' anti-competitive conduct and breaches of the Purchase Agreement (described below), on August 14, 2015, Haggen announced that it was closing 27 stores, 26 of which were Stores Haggen had acquired from Albertsons.

113. Albertsons' anti-competitive conduct has directly and proximately harmed competition in the Relevant Markets where Haggen was forced to close Stores by eliminating a direct competitor to Albertsons, thereby clearing the way for Albertsons to raise the prices of food, groceries or services, and decrease the quality and selection of food, groceries and services, exactly as predicted by the FTC in the absence of an effective remedy to the Merger. Albertsons' actions, which have or will result in the acquisition of substantial market or monopoly power, will therefore tend to reduce competition or create a monopoly, which is exactly the type of antitrust harm to competition and consumers that the FTC sought to avoid by ordering divestiture of the Stores.

114. Additionally, Albertsons' anti-competitive conduct has directly and proximately harmed competition in the remaining Relevant Markets by diminishing Haggen's ability to constrain the prices charged by Albertsons, by diminishing Haggen's market share, damaging its brand, and deterring customers from patronizing Haggen Stores, such that Albertsons now has a dangerous probability of obtaining monopoly power in the remaining Relevant Markets which will allow it to raise the prices of food, groceries or services, and decrease the quality and selection of food, groceries and services.

115. Due to the substantial barriers to entry and expansion into each of the Relevant Markets, the effects of Albertson's conduct in marginalizing or eliminating entirely Haggen as a

viable competitor in those markets will harm competition and consumers. In those Relevant Markets where Haggen has been forced to close Stores due to Albertsons' anti-competitive conduct, the substantial barriers to entry that protect Albertsons' competitive position in each of those markets ensure that a vital competitive constraint on Albertsons will be eliminated, and will not be replaced for many years.

116. The measurements of market concentration under the Herfindahl-Hirschman Index ("HHI") as set forth in the FTC Complaint, as well as the specific HHI calculations set forth in Exhibit A to the FTC Complaint, are fully applicable to the Relevant Markets and are expressly incorporated herein by reference. (Exhibit E, ¶¶ 17-19 and Ex. A).

I. Haggen Provides Advance Notice to Albertsons of Its Wrongdoing and Albertsons Races to File in State Court

117. In an attempt to address some of the parties' disputes without the need for litigation, pursuant to Section 21.4(b) of the Purchase Agreement, on June 29, 2015, Haggen provided Albertsons with notice of Albertsons' breaches of the Purchase Agreement (the "June 29, 2015 Notice"). A copy of the June 29, 2015 Notice is annexed hereto as Exhibit F.

118. Pursuant to the Purchase Agreement, the June 29, 2015 Notice was delivered to Albertsons within thirty days of learning of Albertsons' breaches of the Purchase Agreement. Haggen was unable to provide notice earlier due to Albertsons' active concealment of its misconduct and/or Albertsons' misleading directions to Haggen at the store level.

119. In any event, such notice would have been futile, since Haggen's successful entry into the market depended on a favorable first impression with consumers at grand opening.

120. Without responding to Haggen's June 29, 2015 Notice, Albertsons raced to the courthouse and filed identical complaints in California and Delaware alleging that Haggen had breached the Purchase Agreement and committed fraud.

121. On August 21, 2015, Albertsons voluntarily dismissed without prejudice its California complaint.

122. Haggen has retained the undersigned counsel to represent it in this action and is obligated to pay its counsel a reasonable fee for services rendered and expenses incurred on its behalf.

COUNT I
(Violation of Section 7 of the Clayton Act, 15 U.S.C.A. § 18 (West))

123. Haggen repeats and realleges each and every allegation contained in paragraphs 1 through 122 as if set forth fully herein.

124. The FTC Safeguards charted a virtual roadmap by which Albertsons could consummate the Merger without violating the antitrust laws. Albertsons ignored that roadmap. Instead, it consummated the Merger as it saw fit, engaging in the anticompetitive, unfair and unlawful conduct alleged above in each of the Relevant Markets, which simultaneously harms, or tends to harm, Haggen and consumers in the Relevant Markets.

125. Each of the anticompetitive, unfair and unlawful acts alleged above was made possible by Albertsons' violation of the FTC Orders, the Purchase Agreement, and the FTC Safeguards, and by its consummation of the Merger in violation of Section 7 of the Clayton Act.

126. Albertsons' unlawful acts destroyed or substantially lessened the economic viability, marketability and competitiveness of the Stores, depriving consumers in each of the Relevant Markets of the benefits of substantial competition from a new market entrant. Albertsons' conduct has forced Haggen to close 27 stores and release hundreds of employees. Stores in remaining markets are competing well below projected levels, and due to Albertsons' conduct are less able to constrain the exercise of market or monopoly power by Albertsons.

127. Substantial barriers to entry make the timely entry of other new competitors into each of the Relevant Markets unlikely. Without limitation, and as more fully alleged above, these barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

128. The effect of the Merger as implemented and consummated by Albertsons, and the effect of the unlawful conduct made possible by the Merger, is to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the Relevant Markets in the following ways, among others:

a. by eliminating direct and substantial competition between pre-Merger Albertson's LLC and Safeway;

b. by delaying and/or hampering the entry of Haggen into the Relevant Markets, thereby eliminating and/or lessening direct and substantial competition between Albertsons and Haggen;

c. by increasing the likelihood that Albertsons will unilaterally exercise market power.

129. The ultimate effect of the Merger, and of the unlawful conduct made possible by the Merger, is to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in the Relevant Markets, due to the diminution or elimination of competition between Haggen and Albertsons in the Relevant Markets.

130. As a result of Albertsons' violations of Section 7, Haggen has been damaged in an amount to be determined at trial.

131. Further, as a result of Albertsons' violations of Section 7, Haggen is entitled to treble damages, as well as reasonable attorneys' fees pursuant to 15 U.S.C.A. § 15 (West).

COUNT II
(Attempted Monopolization Under the Sherman Act, 15 U.S.C.A. § 2 (West))

132. Haggen repeats and realleges each and every allegation contained in paragraphs 1 through 122 as if set forth fully herein.

133. In violation of Section 2 of the Sherman Act, 15 U.S.C.A. § 2, Albertsons has knowingly and intentionally, and with specific intent to do so, attempted to monopolize the Relevant Markets.

134. Albertsons' attempt to monopolize the Relevant Markets has been effectuated by the means and overt acts set forth above, among others.

135. Albertsons' actions were intended to eliminate, reduce, limit and foreclose Haggen from competing in the Relevant Markets and to injure and eliminate competition in the Relevant Markets.

136. As a result of the conduct alleged herein, Albertsons controls such a substantial share of the Relevant Markets, which are protected by substantial barriers to entry, that a dangerous likelihood exists that Albertsons will successfully monopolize the Relevant Markets, increasing the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in the Relevant Markets

137. As a result of Albertsons' violations of Section 2, Haggen has been damaged in an amount to be determined at trial.

138. Further, as a result of Albertsons' violations of Section 2, Haggen is entitled to treble damages, as well as reasonable attorneys' fees pursuant to 15 U.S.C.A. § 15.

COUNT III
(Breach of Contract)

139. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

140. Pursuant to Section 21.4 of the Purchase Agreement, Albertsons was required to refrain from changing or modifying its current existing advertising practices, programs and policies; maintain customary levels of inventory at each Store; use commercially reasonable efforts to preserve the existing relationships with each of the Store's suppliers, customers and employees; and refrain from removing equipment from the Stores.

141. Albertsons breached the Purchase Agreement by, among other things, transferring inventory out of the Stores, substantially overstocking and understocking inventory at the Stores, failing to continue normal advertising at the Stores prior to Closing and increasing discounts at Stores prior to Closing.

142. Haggen fully complied with the Purchase Agreement and performed all of its required obligations under the Purchase Agreement.

143. As a result of Albertsons' breaches of the Purchase Agreement, Haggen is entitled to damages in an amount to be determined at trial.

COUNT IV
(Indemnification)

144. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

145. Pursuant to Section 21.4 of the Purchase Agreement, Albertsons was required to refrain from changing or modifying its current existing advertising practices, programs and

policies; maintain customary levels of inventory at each Store; use commercially reasonable efforts to preserve the existing relationships with each of the Store's suppliers, customers and employees; and refrain from removing equipment from the Stores.

146. Albertsons breached the Purchase Agreement by, among other things, transferring inventory out of the Stores, substantially overstocking and understocking inventory at the Stores, failing to continue normal advertising at the Stores prior to Closing, and increasing discounts at Stores prior to Closing.

147. Pursuant to Section 21.4(b) of the Purchase Agreement, on June 29, 2015, Haggen provided Albertsons with the June 29, 2015 Notice, which detailed Albertsons' breaches of the Purchase Agreement.

148. Pursuant to Section 21.4(b) of the Purchase Agreement, the June 29, 2015 Notice was delivered to Albertsons within thirty days of learning of Albertsons' breaches of the Purchase Agreement. Haggen was unable to provide notice earlier due to Albertsons' active concealment of its misconduct.

149. Haggen fully complied with the Purchase Agreement and performed all of its required obligations under the Purchase Agreement.

150. As a result of Albertsons' breaches of the Purchase Agreement, Haggen is entitled to indemnification pursuant to Section 17 of the Purchase Agreement for all losses suffered, in an amount to be determined at trial. Due to the intentional and fraudulent conduct alleged, there is no contractual limitation applicable to these claims.

COUNT V
(Breach of Implied Covenant of Good Faith and Fair Dealing)

151. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

152. The Purchase Agreement created duties of good faith and fair dealing on the part of Albertsons to use commercially reasonably efforts to preserve the existing relationships with each Store's suppliers, employees and customers. The Purchase Agreement also created duties of good faith and fair dealing on the part of Albertsons in executing its obligations with regard to the transition of the Stores to Haggen. More specifically, and without limitation, these implied covenants and duties obligated Albertsons to:

a. Provide complete, accurate and current/active data, information, explanation, and training with respect to pricing for each item of transferred inventory;

b. Provide complete, accurate and current/active data, information, explanation, and training with respect to discounting for each item of transferred inventory;

c. Provide complete explanation and training with respect to standup of the PM2 system;

d. Maintain levels of inventory, in both quantity and selection, at levels that would meet consumer expectations upon reopening of the Stores;

e. Not target Store customers for post-transfer aggressive and unprecedented advertising and discounting that would lure those customers to retained Albertsons and Safeway stores;

f. Timely and completely perform each of the remedial obligations set forth in the FTC Orders.

153. Albertsons breached these implied obligations by, among other things, providing incomplete, inaccurate, misleading and out of date pricing information on transferred inventory, refusing to train Haggen and/or the BPO provider; transferring inventory out of the Stores,

substantially overstocking and understocking inventory at the Stores, failing to continue normal advertising at the Stores prior to Closing, and increasing discounts at Stores prior to Closing.

154. Albertsons is liable to Haggen for Haggen's damages and losses resulting from Albertsons' breaches of their duties of good faith and fair dealing toward Haggen.

155. As a result of the breach, Haggen is entitled to damages in an amount to be determined at trial.

COUNT VI
(Fraud)

156. Haggen repeats and realleges each and every allegation contained in paragraphs 1 through 122 as is set forth fully herein.

157. The acts engaged in by Albertsons, as alleged herein, constitute fraud, including fraudulent inducement, fraud by intentional misrepresentation, false promise and concealment.

158. Albertsons' success in divesting the Stores hinged on its ability to convince a prospective buyer that the store transition would be supported by a highly integrated infrastructure platform in a very compressed time period. Albertsons therefore needed to convince Haggen that it could de-risk the transition by using a "proven" Business Process Outsourcing ("BPO") service provider with strong transition capabilities in order to combine a vast array of functional areas.

159. At the November 2014 Meeting, as alleged above, Albertsons represented to Haggen that a built-out infrastructure was already in place, and that Albertson would cooperate with Haggen and the BPO provider to ensure a successful and seamless transition. In particular but without limitation, Albertsons knew that a pivotal aspect of a successful transition was accurate pricing information for transferred inventory. In connection therewith, and as Albertsons knew, a key component of the Business Processing Suite discussed at the November

2014 Meeting was the merchandising system known as "PM2." The primary function of PM2 is price management of inventory. As relevant here, PM2 provides historical and active (or current) retail prices for each product on store shelves. The efficient operation of PM2 allows for the creation of printed price tags for each item that the store displays on shelves, that consumers rely on in making purchasing decisions, and that cashiers scan at checkout. The number of "active" prices to be processed through PM2 at any given time in each Store ranged between 60,000 to 100,000 or more.

160. Albertsons developed PM2 for use at the Albertsons' stores, and since its creation, PM2 has been used exclusively at Albertsons stores. Neither Safeway nor Haggen used PM2, and neither Haggen nor the Safeway employees who would staff the Safeway stores acquired by Haggen had any expertise or working familiarity with PM2.

161. Compared to other merchandising systems, PM2 is complicated, and it requires extensive training in order to use it properly. Albertsons knew that Haggen needed extensive training in order to "standup" and operate the PM2 system at the Stores. Albertsons also knew and represented that, with respect to PM2, Albertsons' expertise and knowledge was superior even to the BPO provider that had historically supported PM2 at Albertsons' stores. Albertsons therefore promised to provide PM2 training to no fewer than six Haggen operators for a period of four to six months.

162. Haggen projected and based the success and profitability of the Stores, in large part, on the fundamental premise and business strategy that, upon entering a Haggen store for the first time, customers would see no pricing changes on familiar items—*i.e.,* the staple basket of groceries that shoppers customarily purchase. Albertsons knew and understood that the "no immediate pricing changes" was a key part of Haggen's transition strategy, and Albertsons knew

and understood that Haggen's successful transformation of the divested Stores depended on the successful implementation of this pricing strategy. Albertsons also knew that, historically and in each of the local grocery markets, even slight changes in prices have a dramatic impact on consumer purchasing.

163. Albertsons promised to authorize, initiate, allow and take all commercially reasonable steps to cause the efficient flow of relevant, necessary and "active" data to Haggen; to avoid and/or prevent the flow of irrelevant, extraneous, misleading and/or outdated data to Haggen; to explain the difference between relevant/necessary/active data and irrelevant/extraneous/misleading/outdated data; and to identify relevant/necessary/active data.

164. Albertsons' promises to provide the necessary cooperation and to allow for the free flow of essential data were false. Albertsons had no intention to honor its promise at the time it was made. In fact, Albertsons had already begun to plan its willful and malicious campaign against Haggen to undermine a successful transition. Without limitation, Albertsons had no intention of providing, identifying and explaining relevant/necessary/active data, and it had every intention of providing irrelevant/extraneous/misleading/outdated data, through PM2 or otherwise. Nor did Albertsons intend to provide the level of cooperation, support and training necessary for the BPO provider to provide essential and accurate pricing information and for Haggen to implement and operate the system, through PM2 or otherwise.

165. Albertsons acted willfully and intended that Haggen rely on its false promises, and Haggen did in fact reasonably rely to its detriment. In November 2014, in reliance on Albertsons' promises, Haggen presented its "no immediate price increase" strategy to the FTC as an essential part of its business plan before the execution of the Purchase Agreement. The "no immediate price increase" was an essential part of the overall business plan which convinced the

FTC that the Stores would succeed under the Haggen banner, and which led the FTC to approve Haggen as a buyer of the divested stores.

166. Had Haggen known Albertsons' true intentions, Haggen would have known that the transitions were sabotaged and it would not have purchased the Stores, nor would the FTC have permitted the purchase.

167. By way of further example, and in particular, in November 2014 Albertsons made false representations to Haggen with respect to 21 "underperforming" Stores that Albertsons wished to sell to Haggen. Those stores were the subject of extensive review and consideration by the FTC to determine whether, in fact, they had a realistic chance to be viable competitors after their conversion to Haggen Stores. On November 14, 2014, in a presentation to the FTC, Albertsons stated that the stores were showing signs of improvement under Albertsons ownership, and Albertsons further asserted that "the buyers have an even better chance at improving the profitability of these stores" under new ownership because "[r]e-branding and re-grand opening of stores will give the stores a fresh start in the eyes of consumers."

168. On November 17 and at other times prior to the execution of the Purchase Agreement, Albertsons shared this FTC presentation with Haggen either verbatim or in substance. For example, by e mail with attachment dated November 17, 2014, counsel for Albertsons transmitted the November 14 PowerPoint to counsel for Haggen, and in the body of the e mail confirmed that Albertsons had assured the FTC that Haggen "will get a boost from the rebranding/grand re-opening by new ownership."

169. Albertsons' assurances regarding a sales boost and other benefits from a successful grand opening were false and misleading when made: Albertsons had already begun to plan its campaign against Haggen to undermine a successful grand-opening and transition.

170. Additionally, these willful and malicious statements regarding price information and the boost Haggen would receive from a successful transition were made in the context of numerous other misrepresentations that Albertsons would not improperly interfere with or undermine Haggen's efforts to become a new competitor in the Relevant Markets. For example, Albertsons promised to refrain from changing or modifying its current existing advertising practices, programs and policies; maintain customary levels of inventory at each Store; use commercially reasonable efforts to preserve the existing relationships with each of the Stores suppliers, customers and employees; and refrain from removing equipment from the Stores.

171. However, Albertsons willfully knew at the time that it made those promises and representations to Haggen that it had no intention of fulfilling them.

172. Instead, consistent with its plan from the very beginning, during the months that ownership of the Stores transferred from Albertsons to Haggen, Albertsons deliberately and overstocked or understocked inventory at the Stores outside of the ordinary course of business; ceased existing advertising practices, programs and policies; engaged in aggressive discounting through coupon drops; provided false and misleading pricing files; and removed and diverted equipment from the Stores to stores that were not changing ownership.

173. Further, Albertsons intentionally concealed and/or omitted material information, to wit: Albertsons' intent not to allow Haggen to enter the Relevant Markets.

174. At the time the promises were made by Albertsons, Haggen was unaware of Albertsons' secret intention not to allow Haggen to enter the Relevant Markets and fairly compete, and could not, in the exercise of reasonable diligence, have discovered Albertsons' secret intention.

175. Haggen relied to its detriment upon Albertsons' aforementioned promises and representations, including acquiring the Stores and entering the Relevant Markets.

176. As a proximate result of Albertsons' willful and malicious fraud and the facts alleged herein, Haggen has suffered damages in an amount to be determined at trial. Albertsons' acts were fraudulent in nature and done with malice and willful disregard for Haggen's rights, and with the intent to cause economic injury to Haggen. As a result of such fraud, no limitation on the amount of indemnification and other recovery exists. In addition, as a result of such fraudulent intent with respect to the divested stores, Haggen is entitled to seek rescission of the Purchase Agreement. Also, as a result of such willful, intentional malicious and oppressive conduct, Haggen is entitled to an award of punitive damages.

COUNT VII
(Unfair Competition)

177. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

178. Albertsons represented to Haggen that Albertsons would, and the FTC Orders required Albertsons to, afford Haggen a fair opportunity to compete with Albertsons for customers in each of the markets where it acquired Stores.

179. Instead, Albertsons improperly used its knowledge of Haggen's Store Closing Cadence to decrease or eliminate advertising at Stores prior to conversion; decrease or increase inventory levels outside of the normal course of business; remodel and rebrand its closest competing store to unfairly compete with a newly acquired Haggen Store; and engage in an aggressive couponing campaign, all of which had the effect of diverting customers away from Haggen before Haggen had an opportunity to compete in the Relevant Markets.

180. Albertsons also undermined Haggen's pricing strategy by intentionally providing false, misleading and incomplete pricing files, and secretly accessing Haggen's private data in order to unfairly compete and gain a competitive edge in the Relevant Markets.

181. Such conduct, which was willful and malicious, constitutes unfair competition.

182. Albertsons is liable to Haggen for Haggen's damages and losses resulting from Albertsons' unfair competition.

183. As a result of Albertsons' unfair competition, Haggen is entitled to damages in an amount to be determined at trial, including but not limited to punitive damages, resulting from Albertsons' willful and malicious unfair competition.

COUNT VIII
(Misappropriation of Trade Secrets Under the Uniform Trade Secrets Acts)
(California Cal. Civ. Code § 3426 (West)**– 3426.11)**
(Arizona - Ariz. Rev. Stat. Ann. § 44-401**– 44-407)**
(Nevada - Nev. Rev. Stat. Ann. § 600A.010 (West)**– 600A.100)**
(Oregon - Or. Rev. Stat. Ann. § 646.461 (West)**– 646.475)**
(Washington - Wash. Rev. Code Ann. § 19.108.010 (West)**– 19.108.940)**

184. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

185. Haggen's Store Closing Cadence derived independent economic value from not being generally known to, and not being readily accessible by proper means by, other persons who could obtain economic value from their disclosure or use. Therefore, Haggen's Store Closing Cadence constitutes a trade secret within the meaning of the Uniform Trade Secrets Acts of California, Arizona, Nevada, Oregon and Washington. *See* Cal. Civ. Code § 3426 et seq.; Ariz. Rev. Stat. Ann. § 44-401 et seq.; Nev. Rev. Stat. Ann. § 600A.010 et seq.; Or. Rev. Stat. Ann. § 646.461 et seq.; RCW §§ 19.108.100, *et seq.* (the "Uniform Trade Secrets Acts")

186. Haggen took measures that were reasonable under the circumstances to maintain the confidentiality of the Store Closing Cadence.

187. Albertsons had access to Haggen's Store Closing Cadence pursuant to the Purchase Agreement, but such access was limited to use only for the purpose of transitioning Stores to Haggen and not for use to compete with or cause financial harm to Haggen.

188. As further described above, Albertsons misappropriated Haggen's trade secret, in violation of the Uniform Trade Secrets Acts, by using Haggen's Store Closing Cadence to decrease or eliminate advertising at Stores prior to conversion; decrease or increase inventory levels outside of the normal course of business; remodel and rebrand its closest competing store to unfairly compete with a newly acquired Haggen Store; and engage in an aggressive and unprecedented coupon campaign before and after Store conversions, all of which had the effect of diverting customers away from Haggen before Haggen had an opportunity to compete in the Relevant Markets.

189. Albertsons' misappropriation of Haggen's trade secrets was willful and malicious.

190. Albertsons was unjustly enriched and personally benefitted from the misappropriation of Haggen's trade secret.

191. As a direct and proximate result of Albertsons' unlawful conduct, Haggen has sustained damages in an amount to be determined at trial.

192. Because Albertsons' misappropriation of Haggen's trade secret was willful and malicious, Haggen is entitled to exemplary damages of twice any award of compensatory damages.

Count IX
(Conversion)

193. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

194. Albertsons transferred equipment and inventory out of Stores that were changing ownership and improperly diverted such equipment and inventory to stores that were not changing ownership.

195. Haggen had a property interest and a right of possession in the equipment and inventory located in each of the Stores it purchased from Albertsons, which were unlawfully converted by Albertsons.

196. Albertsons' conversion was willful and malicious.

197. Haggen has suffered damages as a result of Albertsons' conversion of Haggen's property.

198. As a result of Albertsons' conversion of Haggen's equipment and inventory, Haggen is entitled to damages in an amount to be determined at trial, including punitive damages resulting from Albertsons' willful and malicious acts.

Count X
(Violation of the Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86.020 (West)**)**

199. Haggen repeats and reasserts the allegations contained in paragraphs 1 through 122 above as if fully set forth herein.

200. Albertsons' misconduct as alleged herein occurred in the conduct of trade or commerce and directly and/or indirectly affects the people of the state of Washington, where Haggen is headquartered. The impact of Albertsons' conduct affected the Stores in Washington,

Oregon, California, Arizona, and Nevada, and caused damage to Haggen in each of the Relevant Markets.

201. The following intentional and calculated actions of Albertsons, as more fully alleged above, amount to unfair methods of competition and unfair and deceptive acts or practices in the conduct of trade or commerce pursuant to Wash. Rev. Code Ann. § 19.86.020, and attempts to monopolize supermarket trade or commerce pursuant to Wash. Rev. Code Ann. § 19.86.040 (West); (i) decreasing or eliminating advertising at Stores; (ii) undermining Haggen's pricing strategy by intentionally providing false, misleading and incomplete pricing files; (iii) secretly accessing Haggen's private data in order to unfairly compete and gain a competitive edge in the Relevant Markets; (iv) decreasing inventory levels in Stores; and (v) launching aggressive and unprecedented promotional and discounting campaigns to correspond with Haggen Store openings.

202. Albertsons' misconduct interfered with the promotion and conduct of Haggen's Stores, thus injuring Haggen in its business and/or property.

203. Albertsons' misconduct is injurious to the public interest because it created a likelihood of consumer confusion or misunderstanding as to the local supermarket options available in their geographic regions, with the capacity to deceive a substantial portion of the public.

204. Albertsons' misconduct harmed Haggen by diverting consumers to stores retained by Albertsons and negatively impacting Haggen's sales, profits, and good-will during the time period that was critical to Haggen's successful breakthrough into new markets.

205. Albertsons used confidential information to deceive consumers and the public at large into reasonably believing that their supermarket options were limited to the stores being retained by Albertsons around the time of Store conversions.

206. Albertsons' deceptive and unfair trade practices harmed Haggen and are injurious to the public interest because Albertsons unfairly eliminated available grocery products being offered for sale at newly opened Haggen Stores.

207. Albertsons' deceptive and unfair trade practices harmed Haggen and is injurious to the public interest because it caused the ultimate failure of at least 26 Stores recently acquired from Albertsons, thus impacting a Washington business and eliminating Haggen as an alternative supermarket option to Albertsons' retained stores in those areas.

208. As a result, Haggen is entitled to damages in an amount to be determined at trial, including actual damages, treble damages, and reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Haggen respectfully prays for judgment against Albertsons as follows:

a. Judgment in an amount to be determined at trial, including, but not limited to, compensatory damages; treble damages pursuant to 15 U.S.C.A. § 15; punitive damages for Albertsons' fraud and willful and malicious unfair competition; exemplary damages pursuant to the Uniform Trade Secrets Acts; punitive damages for Albertsons' willful and malicious conversion; and treble damages for Albertsons' violation of the Washington Consumer Protection Act;

b. Alternatively, declare Haggen has the right to rescind the Asset Purchase Agreement;

c. Prejudgment and post judgment interest;

d. Reasonable attorneys' fees, costs and expenses, pursuant to the Purchase Agreement, 15 U.S.C.A. § 15, the Uniform Trade Secrets Acts, the Washington Consumer Protection Act and otherwise; and

e. Such other relief as the Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ S. Mark Hurd
S. Mark Hurd (#3297)
Ryan D. Stottmann (#5237)
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200
Attorneys for Plaintiff Haggen Holdings, LLC

OF COUNSEL:

Stuart H. Singer
James M. Grippando
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, #1200
Fort Lauderdale, FL 33301
(301) 351-9354

Richard A. Feinstein
Christopher G. Renner
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue NW, Suite 800
Washington, DC 20015
(202) 237-6131

September 1, 2015

CLOSED

U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:15-cv-00768-GMS

Haggen Holdings, LLC v. Albertsons LLC et al
Assigned to: Judge Gregory M. Sleet
Cause: 15:25 Clayton Act

Date Filed: 09/01/2015
Date Terminated: 03/08/2016
Jury Demand: None
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

Haggen Holdings, LLC

represented by **S. Mark Hurd**
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
Email: SHurd@mnat.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan D. Stottmann
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
302-351-9430
Email: rstottmann@mnat.com
ATTORNEY TO BE NOTICED

V.

Defendant

Albertsons LLC

represented by **Blake Rohrbacher**
Richards, Layton & Finger, PA
One Rodney Square
920 N. King Street
Wilmington, DE 19801
(302) 651-7847
Email: rohrbacher@rlf.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joshua D.N. Hess
Email: joshua.hess@dechert.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kelly E. Farnan
Richards, Layton & Finger, PA
One Rodney Square
920 N. King Street
Wilmington, DE 19801
(302) 651-7705
Email: farnan@rlf.com
ATTORNEY TO BE NOTICED

Matthew L. Larrabee
Email: matthew.larrabee@dechert.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Paul T. Denis

Email: paul.denis@dechert.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Susan Marie Hannigan
Richards, Layton & Finger, PA
One Rodney Square
920 N. King Street
Wilmington, DE 19801
302-651-7578
Email: hannigan@rlf.com
ATTORNEY TO BE NOTICED

Defendant

Albertsons Holdings LLC

represented by **Blake Rohrbacher**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kelly E. Farnan
(See above for address)
ATTORNEY TO BE NOTICED

Susan Marie Hannigan
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/01/2015	1	COMPLAINT filed against Albertsons Holdings LLC, Albertsons LLC - Magistrate Consent Notice to Pltf. (Filing fee $ 400, receipt number 0311-1779960.) - filed by Haggen Holdings, LLC. (Attachments: # 1 Exhibit A-F, # 2 Civil Cover Sheet)(sar) (Entered: 09/02/2015)
09/01/2015	2	Notice, Consent and Referral forms re: U.S. Magistrate Judge jurisdiction. (sar) (Entered: 09/02/2015)
09/01/2015	3	Disclosure Statement pursuant to Rule 7.1: No Parents or Affiliates Listed filed by Haggen Holdings, LLC. (sar) (Entered: 09/02/2015)
09/02/2015		Summons Issued with Magistrate Consent Notice attached as to Albertsons Holdings LLC on 9/2/2015; Albertsons LLC on 9/2/2015. Requesting party or attorney should pick up issued summons at the Help Desk, Room 4209, or call 302-573-6170 and ask the Clerk to mail the summons to them. (sar) (Entered: 09/02/2015)
09/02/2015	4	Return of Service Executed by Haggen Holdings, LLC. Albertsons Holdings LLC served on 9/2/2015, answer due 9/23/2015. (Stottmann, Ryan) (Entered: 09/02/2015)
09/02/2015	5	Return of Service Executed by Haggen Holdings, LLC. Albertsons LLC served on 9/2/2015, answer due 9/23/2015. (Stottmann, Ryan) (Entered: 09/02/2015)
09/09/2015		Case Assigned to Judge Gregory M. Sleet. Please include the initials of the Judge (GMS) after the case number on all documents filed. (rjb) (Entered: 09/09/2015)
09/17/2015	6	STIPULATION TO EXTEND TIME to Answer Complaint to through and including November 17, 2015 - filed by Albertsons Holdings LLC, Albertsons LLC. (Rohrbacher, Blake) (Entered: 09/17/2015)
09/17/2015	7	NOTICE of Appearance by Kelly E. Farnan on behalf of Albertsons Holdings LLC, Albertsons LLC (Farnan, Kelly) (Entered: 09/17/2015)
09/17/2015	8	NOTICE of Appearance by Susan Marie Hannigan on behalf of Albertsons Holdings LLC, Albertsons LLC (Hannigan, Susan) (Entered: 09/17/2015)
09/17/2015		SO ORDERED - re 6 STIPULATION TO EXTEND TIME to Answer Complaint to through and including November 17, 2015 filed by Albertsons LLC, Albertsons Holdings LLC, Set/Reset Answer Deadlines: Albertsons Holdings LLC answer due 11/17/2015; Albertsons LLC answer due 11/17/2015. Ordered by Judge Gregory M. Sleet on 9/17/2015. (mdb) (Entered: 09/17/2015)
09/24/2015	9	ORDER REGARDING CASE MANAGEMENT IN CIVIL CASES. Signed by Judge Gregory M. Sleet on 9/24/2015. (asw) (Entered: 09/24/2015)
09/25/2015	10	MOTION for Pro Hac Vice Appearance of Attorney Matthew L. Larrabee, Paul T. Denis and Joshua D. N. Hess of Dechert LLP - filed by Albertsons Holdings LLC, Albertsons LLC. (Farnan, Kelly) (Entered: 09/25/2015)
09/30/2015		SO ORDERED - re 10 MOTION for Pro Hac Vice Appearance of Attorney Matthew L. Larrabee, Paul T. Denis and

		Joshua D. N. Hess of Dechert LLP filed by Albertsons LLC, Albertsons Holdings LLC. Ordered by Judge Gregory M. Sleet on 9/30/2015. (mdb) (Entered: 09/30/2015)
10/02/2015		Pro Hac Vice Attorney Joshua D.N. Hess for Albertsons LLC added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (dmp,) (Entered: 10/02/2015)
10/02/2015		Pro Hac Vice Attorney Matthew L. Larrabee for Albertsons LLC added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (dmp,) (Entered: 10/02/2015)
10/06/2015		Pro Hac Vice Attorney Paul T. Denis for Albertsons LLC added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (cna) (Entered: 10/06/2015)
11/16/2015	11	STIPULATION TO EXTEND TIME Answer to Complaint to through and including December 1, 2015 - filed by Albertsons Holdings LLC, Albertsons LLC. (Farnan, Kelly) (Entered: 11/16/2015)
11/17/2015		SO ORDERED - re 11 STIPULATION TO EXTEND TIME Answer to Complaint to through and including December 1, 2015 filed by Albertsons LLC, Albertsons Holdings LLC. Ordered by Judge Gregory M. Sleet on 11/17/2015. (mdb) (Entered: 11/17/2015)
11/30/2015	12	STIPULATION TO EXTEND TIME to move, answer or otherwise respond to the Complaint to January 15, 2016 - filed by Albertsons Holdings LLC, Albertsons LLC. (Farnan, Kelly) (Entered: 11/30/2015)
12/01/2015		SO ORDERED - re 12 STIPULATION TO EXTEND TIME to move, answer or otherwise respond to the Complaint to January 15, 2016 filed by Albertsons LLC, Albertsons Holdings LLC, Set/Reset Answer Deadlines: Albertsons Holdings LLC answer due 1/15/2016; Albertsons LLC answer due 1/15/2016. Ordered by Judge Gregory M. Sleet on 12/1/2015. (mdb) (Entered: 12/01/2015)
01/15/2016	13	STIPULATION TO EXTEND TIME to ANSWER complaint to January 29, 2016 - filed by Albertsons Holdings LLC, Albertsons LLC. (Rohrbacher, Blake) (Entered: 01/15/2016)
01/19/2016		SO ORDERED - re 13 STIPULATION TO EXTEND TIME to ANSWER complaint to January 29, 2016 filed by Albertsons LLC, Albertsons Holdings LLC, Set/Reset Answer Deadlines: Albertsons Holdings LLC answer due 1/29/2016; Albertsons LLC answer due 1/29/2016. Ordered by Judge Gregory M. Sleet on 1/29/2016. (mdb) (Entered: 01/19/2016)
01/29/2016	14	STIPULATION to STAY action pending approval of the settlement by the United States Bankruptcy Court for the District of Delaware by Albertsons Holdings LLC, Albertsons LLC. (Farnan, Kelly) (Entered: 01/29/2016)
02/02/2016	15	SO ORDERED - re 14 Stipulation to Stay Pending Approval of Settlement. Case stayed. Signed by Judge Gregory M. Sleet on 2/2/2016. (mdb) (Entered: 02/02/2016)
03/04/2016	16	STIPULATION of Dismissal - *with prejudice* - by Haggen Holdings, LLC. (Stottmann, Ryan) (Entered: 03/04/2016)
03/08/2016	17	SO ORDER __ t on 3/8/2016. ***Civil Case Terminated

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HAGGEN HOLDINGS, LLC, Plaintiff, v. ALBERTSON'S LLC & ALBERTSON'S HOLDINGS LLC, Defendants.	)	C.A. No. 15-768-GMS

STIPULATION AND [PROPOSED ORDER]

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto and subject to the approval of the Court that the above-captioned action is hereby dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41.

/s/ Ryan D. Stottmann
S. Mark Hurd (#3297)
Ryan D. Stottmann (#5237)
Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200
shurd@mnat.com
rstottmann@mnat.com

Attorneys for Plaintiff Haggen Holdings, LLC

/s/ Kelly E. Farnan
Blake Rohrbacher (#4750)
Kelly E. Farnan (#4395)
Susan M. Hannigan (#5342)
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
(302) 651-7700
Rohrbacher@rlf.com
Farnan@rlf.com
Hannigan@rlf.com

Attorneys for Defendant Albertson's LLC & Albertsons Companies, LLC (successor by merger to Albertson's Holdings LLC)

Dated: March 4, 2016

SO ORDERED this 8th day of March, 2016.

Honorable Gregory M. Sleet

Business | Retail

Albertsons settles Haggen's $1 billion lawsuit for $5.75 million

Originally published January 22, 2016 at 3:43 pm | *Updated January 22, 2016 at 11:25 pm*

Haggen filed for bankruptcy protection last August after its massive expansion hit the rocks. (Mark Harrison/The Seattle Times)

The settlement was reached on Thursday, according to a document filed with the Securities and Exchange Commission on Friday. It would eliminate one of the legal uncertainties hanging over the dismantling of Haggen's failed West Coast empire.

By Ángel González

Seattle Times business reporter

Albertsons has agreed to pay $5.75 million in cash to settle a lawsuit in which bankrupt grocer Haggen sought to recoup $1 billion from the supermarket giant.

The settlement was reached on Thursday, according to a document filed Friday with the Securities and Exchange Commission.

It requires approval by the federal bankruptcy judge overseeing the overhaul of Haggen's much shrunken business. The money will go to pay Haggen's creditors.

As part of the deal, Albertsons agrees to transfer its unsecured claim of $8.25 million to Haggen's other creditors in the bankruptcy.

If approved, the settlement would do away with one of the uncertainties hanging over the dismantling of Haggen's ill-fated bid for supermarket supremacy on the West Coast.

Haggen sued Albertsons as the wheels came off the vastly expanded business it acquired from the Idaho-based grocery giant when it merged with Safeway in early 2015.

Haggen claimed that Albertsons had sabotaged the transfer of the 146 stores it had sold to the Bellingham grocer. A few days after suing, Haggen filed for bankruptcy.

Albertsons said in a statement that Haggen's claims "lacked any merit," but the "settlement enables us to avoid costly litigation. We are pleased to put this matter behind us."

Albertsons doesn't need uncertainty as it seeks to go public. It delayed its initial public offering last October.

Haggen declined to comment on the settlement.

Ángel González: 206-464-2250 or agonzalez@seattletimes.com. On Twitter @gonzalezseattle

Most Read Business Stories

1 MacKenzie Bezos pledges half her fortune to charity

2 Seattle area's home-price increases lag most big cities

3 Amazon poised to unleash a long-feared purge of small suppliers

4 With Seattle's entry-level workforce in high demand, employers struggle to keep up

5 U.S. opens antitrust probe of real estate brokerage industry

Business | Retail

Judge approves sale of Haggen to Albertsons

Originally published March 29, 2016 at 11:19 am | *Updated March 29, 2016 at 6:28 pm*

A bankruptcy judge has approved the sale of the remaining 29 Haggen stores to Albertsons, ending a long supermarket saga. (Dean Rutz/The Seattle Times)

A Delaware bankruptcy judge has approved Albertsons' bid to take over what's left of Haggen. Of the 29 so-called "core" stores in Washington and Oregon that are going into Albertsons' hands, 15 in Washington will still carry the Haggen banner.

By Ángel González

Seattle Times business reporter

A bankruptcy judge in Delaware has greenlighted Albertsons' bid to take over what's left of Haggen, bringing a supermarket saga of bold ambition and rapid failure to an end.

The $106 million deal, announced earlier this month, also brings an eight-decade-old Bellingham institution into the bosom of one of America's largest grocers.

The Haggen brand will live on, however. Of the 29 so-called "core" stores in Washington and Oregon that are going into Albertsons' hands, 15 in Washington will still carry the Haggen banner. These stores will continue to be run from Bellingham, focusing on organic and local products.

The rest, mostly former Albertsons or Safeway stores, will melt back into the larger Albertsons identity.

Albertsons said in a statement that it was "pleased that the bankruptcy court has granted approval," and said it expects the transaction to close in the next several weeks.

The deal, which extends offers of employment to basically all Haggen workers at the stores being acquired, comes with the blessing of the United Food and Commercial Workers International Union (UFCW).

"With the sale of these 29 stores to Albertsons, we are optimistic that everyone who works within them will finally be able to have the certainty and stability that they deserve," UFCW said in a statement.

Haggen, a one-time family-owned grocer that in 2011 came under control of Comvest, a Florida private equity firm, saw a big opportunity for expansion when Albertsons decided to merge with Safeway. Those two companies had to shed dozens of stores if they were to see their consolidation approved by antitrust regulators.

In a late 2014 deal backed by the Federal Trade Commission, Haggen bought 146 locations, most in the unfamiliar and ultracompetitive markets of Southern California, Arizona and Nevada.

To pay for the $300 million deal and put in an additional $100 million to pay for the conversion, Comvest used a move from the old private equity playbook, raising most of the money from the sale of the real estate underlying many of the stores.

But very soon it became clear that Haggen had bitten off more than it could chew. Customers began to complain about high prices in old Albertsons and Safeway stores newly converted to Haggen, and sales dropped.

In July, layoffs began, as did lawsuits between Haggen and Albertsons. In August, Haggen announced it was shedding a first wave of stores, and in September it filed for bankruptcy and announced plans for a major retreat into its native Pacific Northwest.

The impact was felt even in stores that were part of Haggen's original footprint.

Albertsons-Haggen deal

Albertsons has bought Haggen's final stronghold of 29 "core" stores in the Pacific Northwest, but the brand will live on in 15 of these locations in Washington state.

Washington stores that will be operated as Haggen:

- 2814 Meridian, Bellingham
- 757 Haggen Drive, Burlington
- 1406 Lake Tapps Pkwy., Auburn
- 1401 12th St., Bellingham
- 1313 Cooper Point Road S.W., Olympia
- 210 36th St., Bellingham
- 2900 Woburn St., Bellingham
- 26603 72nd Ave. N.W., Stanwood
- 1301 Avenue D, Snohomish
- 1815 Main St., Ferndale
- 17641 Garden Way N.E., Woodinville
- 2601 E. Division, Mount Vernon
- 8915 Market Place N.E., Lake Stevens
- 3711 88th St. N.E., Marysville
- 31565 Sr 20 #1, Oak Harbor

Stores that will be rebranded as Albertsons in Washington and Oregon:

- 8611 Steilacoom Blvd. S.W., Tacoma
- 1128 N. Miller, Wenatchee
- 450 N. Wilbur Ave., Walla Walla
- 17171 Bothell Way N.E., Seattle
- 3520 Pacific Ave. S.E., Olympia
- 3925 236th Ave. N.E., Redmond
- 17520 SR 9 Southeast, Snohomish
- 1800 N.E. Third St., Bend, Ore.
- 1675 W. 18th Ave., Eugene, Ore.
- 16199 Boones Ferry Road, Lake Oswego, Ore.
- 1690 Allen Creek Road, Grants Pass, Ore.
- 61155 S Hwy 97, Bend, Ore.
- 14300 S.W. Barrows Road, Tigard, Ore.
- 3075 Hilyard St., Eugene, Ore.

“When they bought all the other stores, it seemed as if they made the whole company explode,” says Aron Redifer, who worked at Haggen’s Top Foods store in Aberdeen, a location that closed last year. News coverage of the debacle “was brought up several times on a daily basis by our customers,” he said.

Haggen’s demise as an independent company also marks the failure of the Federal Trade Commission’s desire to check the power of the Boise, Idaho-based Albertsons with the emergence of a strong regional competitor.

The opposite happened: Albertsons became stronger, ultimately taking over Haggen itself.

The FTC declined to comment on Tuesday.

Ángel González: 206-464-2250 or agonzalez@seattletimes.com. On Twitter @gonzalezseattle

Most Read Business Stories

1. MacKenzie Bezos pledges half her fortune to charity
2. Seattle area's home-price increases lag most big cities
3. Amazon poised to unleash a long-feared purge of small suppliers
4. With Seattle's entry-level workforce in high demand, employers struggle to keep up
5. U.S. opens antitrust probe of real estate brokerage industry