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 10 **IN THE UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

11 THE STATE OF NEVADA BY ITS ATTORNEY
 12 GENERAL ADAM PAUL LAXALT

13 Plaintiff,

14 v.

15 CERBERUS INSTITUTIONAL PARTNERS V,
 16 L.P., a limited partnership; AB ACQUISITION
 LLC, a limited liability company; and SAFEWAY
 17 INC., a corporation.

18 Defendants.

Case No.: 2:15-cv-00176-JAD-NJK

STIPULATED JUDGMENT

19 WHEREAS, Plaintiff State of Nevada, through its Attorney General, (“Plaintiff”) having
 20 initiated an investigation of the proposed acquisition by Defendants AB Acquisition LLC
 21 (“Albertsons”) and Cerberus Institutional Partners V, L.P. (“Cerberus”), of Defendant Safeway
 22 Inc. (“Safeway”), filed a Complaint alleging violations of Section 7 of the Clayton Act, 15 U.S.C.
 23 § 18, and the Nevada Unfair Trade Practices Act, Nev. Rev. Stat. 598A et seq.; and

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

26 WHEREAS, Defendants agree to be bound by the provisions of this Judgment pending its
 27 approval by the Court and thereafter; and

28 WHEREAS, Defendants have agreed with the Federal Trade Commission to an

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1 Agreement Containing Consent Order, including a Complaint, an Order to Maintain Assets (the
2 “OMA”) and a Decision and Order (the “FTC Order”) in a Related Action (defined herein),
3 which have all been provisionally accepted by the Federal Trade Commission. The OMA and
4 FTC Order are incorporated into this Judgment and attached as Exhibits A and B hereto to
5 address the allegations set forth by Plaintiff in its Complaint;

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

9 I. JURISDICTION

- 10 1. Defendant Cerberus Institutional Partners V, L.P. is a limited partnership organized,
11 existing, and doing business under and by virtue of the laws of the State of Delaware,
12 with its headquarters and principal place of business located at 875 Third Avenue, 11th
13 Floor, New York, NY 10022.
- 14 2. Defendant AB Acquisition LLC is a company organized, existing, and doing business
15 under and by virtue of the laws of the State of Delaware, with its headquarters and
16 principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho 83706.
- 17 3. Defendant Safeway Inc. is a corporation organized, existing, and doing business under
18 and by virtue of the laws of the State of Delaware, with its headquarters and principal
19 place of business located at 5918 Stoneridge Mall Rd., Pleasanton, CA 94588.
- 20 4. This Court has jurisdiction over the subject matter of, and each of the Parties to, this
21 action. The Complaint states a claim upon which relief may be granted against
22 Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, and under Nev. Rev.
23 Stat. § 598A.060(1)(e)-(f), alleged in the Complaint as pendent state claims.

24 II. DEFINITIONS

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

27 A. “Defendants” means Cerberus, Albertsons, and Safeway, individually and collectively.

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

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

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

27 C. "Commission" means the Federal Trade Commission.
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- 1 D. “Related Action” means the Commission’s investigation of Defendants involving the merger
2 of Defendants, resulting in the consolidation of retail Supermarket stores in Clark County,
3 Nevada and other areas, and its subsequent action, *In the Matter of Cerberus Institutional*
4 *Partners V, L.P.; AB Acquisition LLC; and Safeway Inc.*
- 5 E. “Nevada Relevant Area” means Clark County, Nevada.

6 **III. ASSET MAINTENANCE AND DIVESTITURE RELIEF**

7 **IT IS HEREBY ORDERED**, that:

- 8 A. Defendants shall comply with the OMA and with the FTC Order.
- 9 B. All Remedial Agreements shall be deemed incorporated by reference into this Judgment and
10 Defendants shall comply with all such Remedial Agreements.
- 11 C. Defendants waive any objection to reports to the Commission by the Monitor as required by
12 Paragraph III of the OMA or Paragraph IV of the FTC Order, or by the Divestiture Trustee as
13 required by Paragraph III of the FTC Order, to the extent such reports relate to the Nevada
14 Assets to be Divested or the Nevada Relevant Area, also being provided to Plaintiff at the
15 same time they are provided to the Commission. Defendants further waive any objection to
16 the Monitor consulting with or disclosing any relevant information to Plaintiff so long as
17 Plaintiff agrees to maintain the confidentiality of such information to the fullest extent
18 possible. In the event of a disagreement or dispute between Defendants and the Monitor that
19 cannot be resolved, Defendants must agree to permit the Monitor to seek the assistance of the
20 Antitrust Unit in the Office of the Nevada Attorney General’s Bureau of Consumer Protection
21 to resolve the issue.
- 22 D. For the duration of this Judgment, Defendants shall not terminate or rescind the Hart-Scott-
23 Rodino Limited Confidentiality Waiver and Confidentiality Agreement between Defendants
24 and Plaintiff dated June 6, 2014 without the consent of Plaintiff.

25 **IV. OTHER RELIEF**

26 **IT IS FURTHER ORDERED**, that:

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- 1 A. Any advance written notification to the Commission required by Paragraph VIII of the FTC
2 Order, to the extent such notification relates to the Nevada Assets To Be Divested or the
3 Nevada Relevant Area, shall also be provided to Plaintiff.
- 4 B. Said notification under this Paragraph shall be provided in writing, and shall include a brief
5 description of the transaction, the parties to the transaction, the anticipated closing date,
6 specificity of location within the Nevada Relevant Area, and the contact person for follow-up
7 information requests. Notification shall be sent via overnight express delivery to the
8 following address: State of Nevada, Office of Nevada Attorney General; Bureau of Consumer
9 Protection; Attention: Antitrust Unit; 10791 W. Twain Ave., Suite 100, Las Vegas, Nevada
10 89135. Defendants shall provide the notification to Plaintiff at least thirty (30) days prior to
11 consummating any such transaction. To comply with this Paragraph, Defendants shall
12 provide to Plaintiff the same notification on the same day that Defendant provides such
13 notice(s) to the Commission pursuant to Paragraph VIII of the FTC Order.
- 14 C. Plaintiff may request further information from Defendants of a transaction reported under
15 Paragraph IV(A), subject to claims of privilege or other rights Defendants may have in
16 response to such requests. Such requests shall be made by Investigative Demands issued
17 pursuant to the authority of this Judgment and Nev. Rev. Stat. § 598A.100. Nothing in this
18 Paragraph IV shall waive, limit or compromise Plaintiff's authority and ability to pursue a
19 subsequent enforcement action against Defendants for a transaction that may violate state or
20 federal law.
- 21 D. Plaintiff is awarded its attorneys' fees and investigative costs in the amount of Ninety
22 Thousand Dollars (\$90,000). Defendants shall pay this sum to the Plaintiff within thirty (30)
23 days of entry of this Judgment or March 1, 2015, whichever is later.

24 V. COMPLIANCE AND MONITORING

25 **IT IS FURTHER ORDERED**, that:

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

1 Commission. When Defendants provide to Plaintiff a copy of a verified written report
2 submitted to the Commission, Defendants must state in such report that the report is
3 responsive to and enforceable under the corresponding provisions of this Judgment.

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

7 **VI. NOTICE AND NOTICE EVENTS**

8 **IT IS FURTHER ORDERED**, that:

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

12 B. Any notices required by this Judgment shall be delivered to the parties at the following
13 addresses:

14 For Albertsons:

15 AB Acquisition, LLC
16 250 Parkcenter Blvd.
17 Boise, ID 83706
18 Attention: General Counsel

19 with a copy to:

20 Dechert LLP
21 1900 K Street NW
22 Washington, DC 20006
23 Attention: Paul T. Denis
24 James A. Fishkin

25 For Cerberus:

26 Cerberus Capital Management
27 875 Third Avenue
28 11th Floor
29 New York, NY 10022
30 Attention: General Counsel

31 with a copy to:

32 Dechert LLP
33 1900 K Street NW
34 Washington, DC 20006
35 Attention: Paul T. Denis

1 James A. Fishkin

2 For Safeway:

3 Safeway Inc.
4 5918 Stoneridge Mall Road
5 Pleasanton, CA 94588
6 Attention: General Counsel

7 with a copy to:

8 Law Offices of Richard C. Weisberg
9 33 Derwen Road
10 Bala Cynwyd, PA 19004
11 Attention: Richard C. Weisberg

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

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

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

17 **IT IS FURTHER ORDERED** that, for the purpose of determining or securing
18 compliance with this Judgment:

- 19 A. Plaintiff may issue an Investigative Demand pursuant to Nev. Rev. Stat. § 598A.100.
20 Defendants shall timely and fully comply with any such Investigative Demands; and
21 B. Subject to any legally recognized privilege, upon written request and upon five (5) days'
22 notice to Defendants, Defendants shall permit any duly authorized representative of
23 Plaintiff

- 24 1. Access, during office hours of Defendants and in the presence of counsel, to all
25 facilities and access to inspect and copy all books, ledgers, accounts,
26 correspondence, memoranda and all other records and documents in the possession
27 or under the control of Defendants relating to compliance with this Judgment,
28 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

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

4 **VIII. VIOLATIONS AND ENFORCEMENT OF JUDGMENT**

5 **IT IS FURTHER ORDERED**, that:

- 6 A. It shall be a violation of this Judgment if a Defendant fails to abide by the terms of this
7 Judgment or, to the extent they relate to the Nevada Assets To Be Divested or the Nevada
8 Relevant Area, the FTC Order, OMA, and/or any Remedial Agreements.
- 9 B. Subject to the requirements of this Section, Plaintiff may petition the Court for relief as a
10 result of a violation of this Judgment by filing a “Notice of Violation of Judgment” which
11 shall set forth the alleged violation and the relief sought by Plaintiff.
- 12 C. For any violations of this Judgment committed by Defendant(s), Plaintiff may seek the
13 following remedies:
- 14 1. Payment of penalties in accordance with Nev. Rev. Stat. § 598A.170;
- 15 2. A civil contempt of court order from the Court retaining jurisdiction over the
16 interpretation, modification and enforcement of this Judgment, and all remedies
17 provided by law for obtaining such order; and
- 18 3. Equitable and injunctive relief, with respect to the Nevada Assets To Be Divested,
19 authorized by federal or state law that the Court deems appropriate, so long as such
20 relief is not inconsistent with the FTC Order.
- 21 D. All relief requested by Plaintiff for violation of the provisions of this Judgment shall be
22 supported by evidence presented to the Court in whatever form required by the Court,
23 applying substantive Nevada law in interpretation and enforcement.
- 24 E. All monetary penalties paid pursuant to this Section shall be deposited in compliance with
25 Nev. Rev. Stat. § 598A.260. Defendant(s) shall also pay to Plaintiff its reasonable
26 attorneys’ fees and costs incurred if Plaintiff is the prevailing party in a contested action to
27 interpret, modify or enforce this Judgment. `

1 F. Plaintiff shall not take enforcement action under this Judgment until the following has
2 occurred:

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

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

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

19 **IT IS FURTHER ORDERED**, that from the date of entry of this Judgment, if the
20 Commission makes any changes to the FTC Order or OMA or issues further directives pursuant
21 to the FTC Order or OMA, and unless otherwise stipulated by the parties to this Judgment, such
22 changes and further directives are incorporated into this Judgment.

23 **X. GENERAL PROVISIONS**

24 **IT IS FURTHER ORDERED**, that:

- 25 A. The remedies in this Judgment are in addition to all remedies available to Plaintiff under
26 federal and state law. Nothing in this Judgment shall prohibit or in any way limit
27 Plaintiff from seeking all damages, fines, penalties and remedies for any Defendant's
28 conduct, actions, transactions, mergers or acquisitions that is/are otherwise unlawful under

1 federal or state law, even if such conduct, actions, transactions, mergers or acquisitions
2 may also violate this Judgment.

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

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

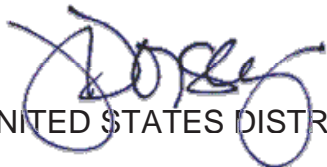
11 D. This Court retains jurisdiction to enable any Party to this Judgment to apply to this Court
12 at any time for further orders and directions as may be necessary or appropriate to carry
13 out or construe this Judgment, to modify any of its provisions, to enforce compliance, and
14 to punish violations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

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

17 Based upon the record before this court, the stipulation of the parties [#5] and good
18 cause appearing, the court finds that entry of this Judgment is fair, equitable and in the
19 public interest.

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment is
21 entered accordingly, and the Clerk of Court is instructed to close this case.

22 Dated: February 4, 2015.

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24 _____
25 UNITED STATES DISTRICT JUDGE
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