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Babbit et al. v. Albertson's, Inc.

Keywords

Babbit, Albertson's, C92 1883 SBA (PJH), Consent Decree, Disparate Treatment, Assignment, Compensation, Hostile Work Environment, Promotion, Terms and Conditions, Training/Advancement, National Origin, Sex, Female, Hispanic or Latino, Retail, Employment Law, Consent Decree

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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

17 PATRICIA BABBITT, CHERYL DAVIS,)
PAMELA FARRINGTON, KATHLEEN)
18 SMITH, LUPE VENTURA,)
JOSEPHINE LISSEBECK, ANNEMARIE)
19 BRYANT, KAREN BUNKER, and AMY SMITH)
on behalf of themselves and all)
20 other persons similarly situated,)

No. C92 1883 SBA (PJH)

21 Plaintiffs,)

22 v.)

23 ALBERTSON'S, INC.,)

24 Defendant.)
25 _____)
26)
27)

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CONSENT DECREE

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
	I	INTRODUCTION 1
4	II	PRELIMINARY MATTERS 2
5	III	JURISDICTION 3
6	IV	PURPOSES OF THE CONSENT DECREE 3
7	V	NON-ADMISSION, NON-DETERMINATION 4
8	VI	DEFINITION OF SETTLEMENT CLASS 5
9	VII	SETTLEMENT SCOPE 6
10	VIII	EFFECTIVE DATE AND DURATION OF CONSENT DECREE 6
11	IX	THE EFFECT OF CONSENT DECREE ON ISSUES 7
12		A. Release 7
13		B. Scope of Release 9
14	X	ROLE OF SPECIAL MASTER 9
15		A. Selection of the Special Master 9
16		B. Authority of the Special Master 10
17		C. Proceedings Before the Special Master 10
18		D. Proper Parties to a Proceeding Before the Special Master 14
19		E. Burdens of Proof For Special Master Proceedings 14
20		1. Burden of Proof for Articles XVI, XIX, and XXII 14
21		2. Burden of Proof for All Other Articles 17
22		
23		
24		F. Appeal from Special Master's Ruling 18
25		G. Contempt Proceedings 18
26		H. Attorneys' Fees 19
27	XI	MODIFICATION OF THE CONSENT DECREE 19
28	XII	GENERAL PRINCIPLES GOVERNING INJUNCTIVE RELIEF 20

		<u>Page</u>
1	XIII NOTICE OF SETTLEMENT AND APPROVAL PROCESS	21
2	XIV RETAINED RIGHTS	21
	XV INJUNCTIVE RELIEF FOR NAMED PLAINTIFFS	23
4	XVI ENTRY LEVEL ASSIGNMENTS	23
5	A. Brochures	23
6	B. Entry Level Application Form	24
7	C. Entry Level Assignments	25
8	XVII DESIGNATION OF PART-TIME AND FULL-TIME STATUS	25
9	XVIII ALLOCATION OF HOURS	26
10	XIX TRAINING	27
11	A. Grocery CAP Training	27
12	B. Store Director Training	27
13	C. Management Advisor Program	28
14	XX JOB POSTING AND CAREER INTEREST QUESTIONNAIRE	28
15	A. Job Posting	28
	B. Career Interest Questionnaire	29
17	XXI MOVEMENT TO FOOD CLERK POSITIONS	29
18	XXII PROMOTIONS	32
19	XXIII MANAGEMENT TRAINING AND EVALUATION	34
20	A. Management Training and Accountability	34
21	B. Annual Performance Evaluations	34
22	XXIV REPORTING OBLIGATIONS	35
23	A. Document Preservation	35
24	B. Reporting Periods	35
25	C. Entry Level Assignment	36
26	D. Allocation of Hours	36
27	E. Movement to Full-Time	36
28	F. Movement to Food Clerk	37

		<u>Page</u>
1	G. Training	37
2	H. Promotion	37
	I. Other Reporting	38
4	J. Confidentiality	38
5	XXV COLLATERAL ATTACK	39
6	XXVI CLASS COUNSEL	39
7	XXVII NO THIRD PARTY BENEFICIARY	39
8	XXVIII RELATIONSHIP BETWEEN CONSENT DECREE AND COLLECTIVE BARGAINING AGREEMENTS	40
9	XXIX SECTION HEADINGS	40
10	XXX MONETARY SETTLEMENT	40
11	XXXI ENTIRE AGREEMENT	40
12	XXXII NON-DISCRIMINATION/RETALIATION	41
13	A. Non-Discrimination	41
14	B. Enforcement	41
15	C. Prohibition Against Retaliation	42
17	XXXIII GLOSSARY OF TERMS	42
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

INTRODUCTION

3 On May 27, 1992, Plaintiffs Patricia Babbitt, Cheryl
4 Davis, Pamela Farrington, Kathleen (Crist) Smith, and Lupe Ventura
5 commenced this action by filing a class action complaint against
6 Albertson's alleging broad-based sex and national origin [Hispanic]
7 discrimination in employment. Plaintiffs filed a First Amended
8 Complaint on July 29, 1992, adding Plaintiff Josephine Lissebeck.
9 In May 1993, Plaintiffs filed a motion for leave to file the Second
10 Amended Complaint, seeking to add Plaintiffs Annemarie Bryant,
11 Karen Bunker and Amy Smith. Contemporaneous to the filing of this
12 Decree with the Court, the parties stipulate to the joinder of
13 these three (3) additional individuals as named Plaintiffs.

14 Plaintiffs' claims are brought against Albertson's for
15 sex and national origin discrimination on behalf of themselves and
16 a class of female and Hispanic past, present and future employees
17 in Albertson's retail stores in California, including all Division
18 1900, 3600, and 3700 stores located within the state. Plaintiffs
19 allege that Albertson's has discriminated against them in violation
20 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et
21 seq., as amended), the Civil Rights Act of 1866 (42 U.S.C. § 1981),
22 the Equal Pay Act (29 U.S.C. § 206(d)), and the California Fair
23 Employment and Housing Act ("FEHA") (Government Code, §§ 12940, et
24 seq.) In their complaints, Plaintiffs allege that Albertson's has
25 discriminated against all female and Hispanic employees with
26 respect to inter alia, job assignments, compensation, promotions,
27 hours allocation, training, assignment to full-time status, work
28 scheduling, and terms, conditions or privileges of employment.

1 Plaintiffs seek an order substantially changing each of the
2 challenged employment practices of Albertson's, as well as an award
of back pay, front pay, benefits, compensatory and punitive
4 damages.

5 Albertson's has denied all of the Plaintiffs' allegations
6 and maintained throughout the litigation that it provides equal
7 employment opportunities for all employees.

8 The Plaintiffs through their counsel and Albertson's have
9 concluded, after taking into account the risks involved in further
10 litigation and the likelihood that the litigation, if not settled
11 now, will be protracted, expensive, and possibly detrimental to
12 Albertson's ongoing business operations, that it would be desirable
13 and in the parties' best interests to settle this action in the
14 manner and upon the terms set forth below. This Consent Decree is
15 binding on all named Plaintiffs, Class Members as defined herein,
on Class Counsel and on Albertson's, Inc.

17 II

18 PRELIMINARY MATTERS

19 1. This Consent Decree (hereafter "Consent Decree" or
20 "Decree") is expressly conditioned upon its provisional and then
21 final approval by United States District Court Judge Sandra Brown
22 Armstrong, Northern District of California, and entry of judgment
23 thereon, which becomes final after notice to the settlement class
24 as set forth below, opportunity for Class Members (as defined in
25 Art. VI, infra) to object in writing and a fairness hearing under
26 the procedures prescribed by the Court. In the course of the
27 approval process, should the District Court or any reviewing court
28 refuse to approve this Consent Decree or refuse to certify the

1 By agreeing to and voluntarily entering into this Consent
2 Decree, there is no admission or concession by Albertson's, express
3 or implied, that Albertson's has in any way violated Title VII, 42
+ U.S.C. § 1981, the Equal Pay Act, FEHA, or any other federal or
5 state law, regulation, order, or rule. This Consent Decree does
6 not contain, and will not be interpreted or construed as containing
7 any such admission or concession.

8 Further, the Plaintiffs and Albertson's agree that their
9 stipulation to class certification in this action, as set forth in
10 Article VI below, shall not constitute an admission or concession
11 of any kind in any other proceeding that such class certification
12 is appropriate. Accordingly, neither the class certification nor
13 any of the stipulated facts on which the Court relied in certifying
14 the class shall be used by anyone in any other proceeding.

15 VI

16 DEFINITION OF SETTLEMENT CLASS

17 For settlement purposes only, the parties have agreed to
18 stipulate to a class consisting of female and Hispanic individuals
19 as set forth below. In so doing, the parties recognize that
20 Albertson's operates its California stores in three separate
21 administrative divisions, each of which have separate and distinct
22 management structures, decision-making processes, and operating
23 and personnel policies, including different collective bargaining
24 agreements.

25 Membership in the class shall be: 1) all females
26 employed on or after April 5, 1987; and 2) all Hispanics employed
27 on or after March 19, 1989; who are, have been, or will be employed
28 during the term of this Decree by Albertson's in its retail stores

1 in California, in Divisions 1900, 3600, and 3700, but excluding the
2 Meat, Bakery Production and Pharmacy Departments of such stores
3 (hereafter "Class Members").

4 VII

5 SETTLEMENT SCOPE

6 This Consent Decree is intended to and does effectuate
7 the full, final and complete resolution of all allegations of
8 unlawful employment practices and discrimination that were or could
9 have been litigated under: (1) the original discrimination charges
10 filed by the Plaintiffs; (2) the EEOC's administrative
11 investigation and subsequent dismissal at the Plaintiffs' request;
12 and (3) the original and amended complaints filed in this or any
13 other court, including but not limited to all federal, state and
14 local claims by all Plaintiffs, including all claims for attorneys'
15 fees and costs.

VIII

17 EFFECTIVE DATE AND DURATION OF CONSENT DECREE

18 This Consent Decree will become effective immediately
19 upon final approval by the District Court (the "Effective Date").
20 In the event that any appeal is filed, there shall be no stay with
21 respect to implementation of the injunctive relief terms. During
22 the pendency of any such appeal, there shall be no requirement to
23 institute a multiplier and there shall be no motion for contempt
24 filed by Class Counsel during such period. It is further agreed
25 that in the event of any claim for reverse discrimination regarding
26 implementation of this Decree, Albertson's may request the district
27 or appellate court to stay implementation of those provisions that
28 are the subject of the reverse discrimination claim. Further, the

1 Release as to the class and named Plaintiffs shall be effective on
2 the Effective Date but shall be rescinded if Albertson's exercises
3 its option to deem this Decree null and void as a result of any
4 adverse decision by a reviewing court.

5 This Consent Decree will be effective and binding on the
6 parties for a period of five (5) years immediately following the
7 Effective Date.

8 If Albertson's is found by the Special Master not to be
9 in compliance as to any Article of this Consent Decree during the
10 fourth or fifth year of the Consent Decree, and such decision is
11 not reversed by the District Court, that Article and all provisions
12 related to enforcement of that Article shall continue in full force
13 and effect for an additional one year period beyond the Consent
14 Decree's expiration date. The Consent Decree shall apply to the
15 Plaintiffs and Albertson's, as well as to each of the parties'
16 agents, successors or assignees.

17 IX

18 THE EFFECT OF CONSENT DECREE ON ISSUES

19 A. Release

20 This Consent Decree releases all class and individual
21 claims of both female and Hispanic Class Members for both
22 injunctive and monetary relief, including all claims involved in
23 this civil action as more specifically described below for back
24 pay, front pay, benefits, compensatory and punitive damages from
25 the beginning of time to the Effective Date of this Decree.
26 Plaintiffs, all Class Members, both individually and as a class,
27 for themselves, their attorneys, agents, spouses, executors,
28 representatives, heirs, successors, and assigns, in consideration

1 for the injunctive and monetary relief, set forth herein, the
2 sufficiency of which consideration is expressly acknowledged, fully
3 and finally release and forever discharge Albertson's and all other
4 affiliated, subsidiary, or related businesses, companies or
5 divisions, and each of their respective present, former or future
6 officers, directors, shareholders, agents, employees,
7 representatives, consultants, attorneys, successors, and assigns
8 and their respective pension, profit-sharing, savings and other
9 employee benefit plans of any nature, and those plans' respective
10 trustees and administrators (the "Released Parties") from any and
11 all past and/or present claims, rights, demands, charges,
12 complaints, actions, causes of action, obligations or liability of
13 any and every kind for individual and/or class injunctive and
14 monetary relief, including all claims for back pay, front pay,
15 benefits and compensatory and punitive damages, based upon any and
16 all claims of discrimination, whether or not known, on the basis of
17 sex and/or national origin, arising in any way out of the alleged
18 facts, circumstances and occurrences underlying those allegations
19 contained in the original and all amended EEOC and the California
20 Department of Fair Employment and Housing charges and complaints
21 filed in this action, whether such causes of action were or could
22 have been based on tort; contract, including without limitation,
23 any collective bargaining agreement; public policy; or any federal,
24 state, or local law, statute, or administrative regulation, which
25 arose from the beginning of time to the Effective Date and which
26 were raised or could have been raised in the Complaint, including,
27 without limitation, any and all claims for alleged discrimination
28 relating to initial placement, job assignment, job or department

CONSENT DECREE

1 transfer, training, scheduling, compensation, allocation of hours,
2 full-time status, promotion, and terms, conditions or privileges
3 of employment and further including, without limitation, any such
4 claims that any Class Member may have filed or caused to be filed
5 in any court of law, or before any state, federal or local
6 administrative agency or before any arbitrator or board of
7 adjustment, prior to the execution of this Consent Decree (the
8 "Released Claims").

9 B. Scope of Release

10 Plaintiffs understand and agree that this is a full and
11 final general release applying not only to all Released Claims that
12 are currently known, anticipated, or disclosed to Class Members,
13 but also to all Released Claims that are presently unknown,
14 unanticipated, and undisclosed to any and all Class Members.
15 Plaintiffs, for themselves and the Class Members waive any and all
16 rights or benefits that Members of the Class may now have under the
17 terms of Section 1542 of the California Civil Code, which provides
18 as follows:

19 A general release does not extend to claims
20 which the creditor does not know or suspect to
21 exist in his favor at the time of executing the
22 release, which if known by him must have
23 materially affected his settlement with the
24 debtor.

23 X

24 ROLE OF SPECIAL MASTER

25 A. Selection of the Special Master

26 The parties have selected Barbara Chvany to serve as
27 Special Master for the entire term of this Consent Decree. The
28 Special Master may be removed by the joint written request of Class

1 Counsel and Albertson's, or by order of the Court, upon motion of
2 Class Counsel or Albertson's, for good cause shown. In the event
3 that the Special Master and/or her successor ceases to function as
4 Special Master under the Consent Decree due to death, voluntary
5 resignation, the joint written request of Class Counsel and
6 Albertson's, or an order of the Court, Class Counsel and
7 Albertson's shall make a good faith effort to select a new Special
8 Master by mutual agreement. If Class Counsel and Albertson's are
9 unable to reach agreement as to a successor Special Master, the
10 Court, upon motion of either Albertson's or Class Counsel, shall
11 appoint a successor Special Master.

12 B. Authority of the Special Master

13 The purpose of the Special Master is to provide an
14 efficient and expeditious procedure for the resolution of any
15 dispute that arises under the Consent Decree as set forth below.
16 The Special Master shall have the authority to resolve all disputes
17 that involve matters of interpretation of, or compliance with, the
18 terms of this Consent Decree. The Special Master shall not have
19 the authority to modify, add to, detract from, alter or amend the
20 collective bargaining agreements or rights of Albertson's or the
21 Unions, or any provision of the Consent Decree, with the limited
22 exception set forth in subparagraph C, below. The Consent Decree
23 shall be governed by federal law, with the sole exception of any
24 provision relating to the award of attorney fees. The parties may
25 request attorneys' fees and costs pursuant to federal and
26 California state law.

27 C. Proceedings Before the Special Master

28 Unless otherwise set forth in this Consent Decree, the

1 following procedures shall apply with respect to resolving disputes
2 arising under the Consent Decree. To the extent that the following
3 procedures are inconsistent with Rule 53 of the Federal Rules of
4 Civil Procedure, these procedures shall govern. The Special Master
5 is authorized to modify the following procedures only upon joint
6 written stipulation of Class Counsel and Albertson's, or on her
7 own, where the Special Master concludes that it is necessary to
8 resolve a dispute in an expeditious manner. The Unions may oppose
9 such change in procedures if the Unions believe such changes will
10 adversely impact their ability to protect their interests as set
11 forth in this Article.

12 1. At the request of Class Counsel or Albertson's,
13 Class Counsel and Albertson's shall confer, as necessary, to
14 resolve any disputes regarding the interpretation of, or compliance
15 with, the Consent Decree as set forth below.

16 2. In the event that the parties are unable to resolve
17 the dispute informally, either Class Counsel or Albertson's shall
18 have the right to file a motion with the Special Master to resolve
19 any dispute or issue of compliance regarding any provision of the
20 Consent Decree under the following procedures.

21 a. If Class Counsel or Albertson's has good reason
22 to believe that a legitimate dispute exists, a brief written notice
23 shall be given to the other party and the Unions within sixty (60)
24 calendar days of receipt of information that discloses the alleged
25 breach. Such notice shall contain: (a) the specific provision(s)
26 of the Consent Decree that is involved; (b) a factual statement of
27 the issue; and, (c) a statement of the argument(s) supporting the
28 position of the moving party. Failure to present such written

1 notice within the sixty (60) day limitation period set forth herein
2 extinguishes the party's right to assert the dispute at any time in
3 the future; provided, however, that the parties can jointly agree
4 in writing to extend the time period.

5 b. Within ten (10) business days after receiving
6 such notice, Class Counsel or Albertson's shall submit to the other
7 party and to counsel for the Unions a short written response to the
8 statement of facts and argument set forth in the notice.

9 c. Following receipt of the short written
10 response, Class Counsel and Albertson's shall undertake good faith
11 negotiations, which may include the exchange of relevant documents
12 and/or information, to resolve the areas of dispute or alleged non-
13 compliance.

14 d. After ten (10) business days from receiving the
15 response set forth in (b), Class Counsel or Albertson's may file a
16 motion with the Special Master, with a supporting brief not to
17 exceed ten (10) pages, requesting resolution of the dispute or the
18 issue of non-compliance. A copy of such motion shall also be
19 served on the Union. The Union will have such rights to
20 participate as set forth below. Such participation shall be for
21 the limited purpose of addressing the Unions' concerns regarding an
22 applicable collective bargaining provision. The Unions shall
23 identify the provisions of the collective bargaining agreement that
24 the Unions believe will be violated or modified as a result of the
25 dispute.

26 e. A party, or the Unions, where appropriate, will
27 have ten (10) business days from the date of receipt of the motion
28 filed under subparagraph (d) to respond to any such motion with an

1 opposition brief not to exceed ten (10) pages. This time may be
2 extended by the Special Master in the event that the Union seeks to
3 participate and either party objects.

4 f. The moving party may thereafter file a reply
5 brief of not more than five (5) pages within five (5) business days
6 of receipt of the response.

7 g. Following the exchange of briefs set forth in
8 subparagraphs d-f above, the Special Master, upon motion or
9 otherwise, may permit the parties or the Unions, to the extent they
10 are participating in the dispute, to take expedited discovery
11 pursuant to the Federal Rules of Civil Procedure prior to any
12 hearing on the dispute, but only if the Special Master first
13 determines that any informal exchange of documents or information
14 has not been sufficient for either Class Counsel or Albertson's, or
15 the Unions if appropriate, to present the dispute upon a proper
16 factual record.

17 h. Subsequent to the exchange of briefs set forth
18 above, the Special Master may order a hearing to assist in the
19 resolution of the dispute. At such hearing, the Special Master may
20 permit the presentation of testimony through witnesses.

21 i. The Special Master shall issue a written
22 decision within ten (10) business days of any hearing or, if no
23 hearing is held, within ten (10) business days of submission of a
24 reply brief. The Special Master's written decision shall include
25 findings of fact and, if appropriate, conclusions of law in support
26 of her decision.

27 j. Failure of either party, or the Unions where
28 applicable, to comply with the time periods set forth in

1 subparagraphs b-f above shall constitute a waiver of that party's;
2 or the Unions', right to file the untimely written submission;
3 provided, however, that the parties and the Unions, where
4 applicable, can jointly agree in writing to extend the time period.

5 D. Proper Parties to a Proceeding Before the Special
6 Master

7 Class Counsel and Albertson's will have the sole and
8 exclusive right to present disputes to the Special Master and the
9 District Court. Neither individual employees of Albertson's,
10 including Class Members, nor any of the Unions, have the right to
11 enforce the terms of the Consent Decree. Provided, however, that
12 the Union may seek leave of the Special Master, or of the Court, to
13 intervene in any enforcement proceeding where the Special Master
14 makes a finding that modifies, adds to, detracts from, alters or
15 amends a provision of the applicable collective bargaining
16 agreement. Except as set forth in Article XXI, nothing contained
17 herein shall limit in any way the right of an individual employee
18 or the Union to file a grievance under the terms of the applicable
19 collective bargaining agreement.

20 E. Burdens of Proof For Special Master Proceedings

21 1. Burden of Proof for Articles XVI, XIX, and XXII

22 In any proceeding before the Special Master to seek
23 compliance with Albertson's obligation set forth in Articles XVI,
24 C; XIX, A and B and XXII, Class Counsel must first demonstrate that
25 Albertson's selection rate for the particular position or training
26 program at issue was not equal to the female or Hispanic
27 application rate for that particular position or training program
28 (i.e., a shortfall exists). In determining whether a shortfall
exists, the following rules apply: a) both the applicable

1 selection and application rates must be measured over two reporting
2 periods as set forth in Article XXIV; b) both the applicable
3 selection and application rates must be measured over one of the
4 three Albertson's administrative divisions with respect to those
5 divisions' retail stores in California (i.e., 3600, 3700 or 1900^{1/}
6 divisions); and, c) in any situation where the number of vacancies
7 for a particular position or training program is ten (10) or less
8 during the requisite two reporting periods and the number of female
9 employees to be selected for the particular position or training
10 program, based on the female application rate, is a fraction of
11 less than one (1), Albertson's is required to round up to one
12 female. If the fraction is above 1, then normal rounding off rules
13 govern.^{2/} In any situation where the number of vacancies is
14 greater than ten (10), and the number of female selections is a
15 fraction of less than two (2), Albertson's is required to round up
16 to the next highest number, i.e., either one (1) or two (2).
17 Thereafter, normal rounding off rules govern. This provision
18 regarding the rounding up of fractional numbers applies only to
19 female employees.

20 In the event that Class Counsel can demonstrate a
21 shortfall between the female or Hispanic application rate and
22 Albertson's selection rate for the respective group (subject to the
23

24 ^{1/} Albertson's has several stores in its 1900 division known as
25 Max food stores which are governed by a separate collective
26 bargaining agreement with the following relevant job titles:
warehouse clerk, general clerk, service deli clerk, tortillaria
clerk, bakery clerk and utility clerk.

27 ^{2/} "Normal rounding off rules" means that any fraction below
28 one half shall be rounded down to the next lowest whole number
and any fraction at or above one half shall be rounded up to the
next highest whole number.

1 rounding up provision for females set forth above) over the
2 requisite time period and administrative division, Albertson's must
3 then articulate each business reason that Albertson's contends will
4 establish "good faith". The Special Master may rely only on
5 Albertson's articulated reasons in determining "good faith". Once
6 Albertson's articulates such business reason or reasons, the burden
7 is on Class Counsel to establish that Albertson's stated reason
8 does not satisfy Albertson's "good faith" obligation to select in
9 equal proportion to the applicable application rate.

10 "Good faith" means taking reasonable steps in order
11 to accomplish or comply with the specified objectives of the
12 Article in which "good faith" is required. In determining "good
13 faith," the Special Master may evaluate the totality of the
14 circumstances, including, but not limited to, the degree of the
15 shortfall, the extent to which Albertson's has met or exceeded the
16 female or Hispanic application rate in past years, the
17 qualifications of applicants, the rejection of job offers by
18 applicants, the availability of applicants when job offers are made
19 and the bona fide seniority provisions of the applicable collective
20 bargaining agreement.

21 In the event that the Special Master finds that
22 Albertson's did exercise good faith, then the compliance motion
23 shall be denied and Albertson's will not be required to implement
24 the multiplier selection rate set forth below.

25 In the event, however, that the Special Master finds
26 that a shortfall exists and that Albertson's did not exercise good
27 faith efforts to comply with its selection obligation with respect
28 to either Hispanics or females, the Special Master shall grant

1 Class Counsel's compliance motion. In such case, the Special
2 Master shall order Albertson's to select Hispanic or female
3 employees for the subject position or training program at 110% of
+ the applicable Hispanic or female application rate for a period of
5 twelve (12) months following the Special Master's decision;
6 provided, however, that the 110% rate for Hispanics shall apply
7 only to a shortfall in entry level positions (Article XVI) or in
8 training programs (Article XIX) and shall not apply to promotions
9 (Article XXII).

10 2. Burden of Proof for All Other Articles

11 In any proceeding to enforce (i.e., to seek
12 compliance with) any provision of this Consent Decree other than
13 Articles XVI, C; XVII; XIX, A and B; and XXII, Class Counsel has
14 the burden of demonstrating that Albertson's has violated such
15 provision in a material way. If Class Counsel satisfies its
16 burden, Albertson's must then show that it acted in good faith in
17 attempting to comply with the terms that are the subject of the
18 compliance proceeding. In the event Albertson's shows its good
19 faith, then the Special Master shall deny Class Counsel's
20 compliance motion.

21 With the exception of the multiplier rate set forth
22 above, the Special Master's remedy for a finding of noncompliance
23 shall be limited to ordering either Class Counsel, on behalf of the
24 Class, or Albertson's, to comply with the specific provision of the
25 Consent Decree that was the subject of the noncompliance finding,
26 and attorney fees, where appropriate, as set forth in paragraph H.
27 below.

28 ///

1 F. Appeal from Special Master's Ruling

2 Either Class Counsel or Albertson's (or the Unions, to
3 the extent the Unions have demonstrated a right to participate, or
4 been denied a right to participate, as set forth earlier in this
5 Article, subpara D.) may appeal within thirty (30) days to the
6 District Court any ruling by the Special Master concerning
7 interpretation of or compliance with the terms of this Consent
8 Decree. Upon their issuance, rulings of the Special Master shall
9 be final and binding upon both parties and the Unions, except as
10 expressly specified in this paragraph regarding appeals from the
11 Special Master's decision.

12 The District Court shall accept the Special Master's
13 decision unless it finds that the Special Master's findings of fact
14 are clearly erroneous and/or conclusions of law are incorrect, or
15 the Court finds that the Special Master otherwise abused her
16 discretion.

17 G. Contempt Proceedings

18 Contempt proceedings before the District Court may be
19 brought only by Class Counsel on behalf of the class, and only
20 under the circumstances set forth below.

21 In the event that Albertson's has been found by the
22 Special Master to be in noncompliance with the same provision of
23 the Consent Decree in a material way on at least two separate
24 occasions, and the District Court has affirmed in full such
25 rulings, or Albertson's has not appealed such decisions, Class
26 Counsel may institute contempt proceedings with the District Court
27 against Albertson's, at the same time that it files its motion to
28 enforce the Special Master's finding of non-compliance for the

1 second violation of the same material provision of the Consent
2 Decree.

3 H. Attorneys' Fees

4 Should Class Counsel prevail in any proceeding before the
5 Special Master or the District Court under this Article, the
6 Special Master may award to Class Counsel reasonable hourly
7 attorneys' fees and costs, without interest and without any upward
8 adjustment. Should Albertson's prevail in any such proceeding, the
9 Special Master may award Albertson's its reasonable hourly
10 attorneys' fees and costs if the Special Master finds that
11 Plaintiffs' claims were frivolous. Class Counsel or Albertson's
12 may assert a claim for attorneys' fees based on then current rates,
13 regardless of when the work was done.

14 XI

15 MODIFICATION OF THE CONSENT DECREE

16 Class Counsel and Albertson's will have the sole and
17 exclusive right to seek modification of the Consent Decree from the
18 District Court under the circumstances set forth below.

19 On either Class Counsel's or Albertson's motion, the
20 District Court may modify the terms of this Consent Decree only if:

- 21 1. Any provision of this Consent Decree is determined
22 to be invalid;
- 23 2. There is a change in the operations of Albertson's
24 covered by this Consent Decree that materially impairs the purposes
25 of the Consent Decree, including any change that results from the
26 collective bargaining process;
- 27 3. Changed circumstances relating to Albertson's
28 business operations or the competitive environment will increase or

1 create additional burden on the Company with regard to continued
2 compliance with any provision of the Consent Decree.

3 Any modification must be consistent with the purposes of
4 the Consent Decree. No modification of the Consent Decree shall
5 modify, add to, delete from, alter or amend any term or provision
6 of the collective bargaining agreements, and any Union may
7 intervene where a proposed modification would have such an effect.
8 Either party, or the Unions to the extent set forth above, may
9 appeal to the United States Court of Appeals for the Ninth Circuit
10 the decision of the District Court to modify or not to modify the
11 Consent Decree.

12 The standard for an award of attorneys' fees to Class
13 Counsel or to Albertson's under this Article shall be the same as
14 set forth in Article X, para. H.

15 XII

GENERAL PRINCIPLES GOVERNING INJUNCTIVE RELIEF

17 The Plaintiffs and Albertson's have entered into this
18 Consent Decree with the following understanding:

19 A. The only injunctive relief obligations that will be
20 imposed on Albertson's regarding sex and national origin claims are
21 expressly set forth in this Consent Decree. No other injunctive
22 relief obligations are to be implied.

23 B. Compliance with the terms of this Consent Decree
24 will constitute compliance with Title VII, the Equal Pay Act, 42
25 U.S.C. § 1981 and FEHA concerning the matters described in this
26 Consent Decree.

27 C. In addition to Title VII, the Equal Pay Act, 42
28 U.S.C. § 1981 and FEHA, Albertson's is subject to other federal and

1 state laws. Nothing in this Consent Decree will be interpreted or
2 construed to conflict with such other legal obligations.

3 D. Albertson's will designate a corporate
4 representative as the individual with primary responsibility for
5 implementing this Consent Decree.

6 XIII

7 NOTICE OF SETTLEMENT AND APPROVAL PROCESS

8 The applicable procedures governing notice of this
9 Consent Decree as well as the procedures governing the approval
10 process are set forth in attached Exhibits A and B.

11 XIV

12 RETAINED RIGHTS

13 A. Nothing in this Consent Decree shall be construed to
14 limit, modify, or compromise in any way the existing right of
15 Albertson's to decide:

16 1. The number of employees to employ in any store,
17 department, job classification (including, without limitation,
18 part-time or full-time status), job title, or daily or weekly work
19 schedule;

20 2. The number and types of job classifications and
21 job titles;

22 3. The specific or aggregate number of hours
23 available for work in any particular store, department, job
24 classification, job title, or daily or weekly work schedule;

25 4. The labor costs for any store or department;

26 5. The number of stores and the number and types
27 of departments and services provided within each store;

28 6. The number and boundaries of its divisions; and

1 7. The most efficient and productive manner for
2 operating its stores.

3 B. With respect to any retail store that Albertson's
4 may open during the life of this Consent Decree, nothing in this
5 Agreement shall be interpreted to require or not to require
6 Albertson's: (1) to recognize any UFCW local (or any other union)
7 as the collective bargaining representative of its employees; or
8 (2) to bargain with any UFCW local (or any other union).

9 C. Unless specifically set forth in this Consent
10 Decree, nothing in this Agreement shall be interpreted to alter the
11 existing or future collective bargaining rights of Albertson's and
12 the Union with respect to the matters covered in this Consent
13 Decree.

14 D. Nothing in this Consent Decree is intended to
15 preclude or prevent Albertson's from developing additional
16 programs, policies or practices that further equal employment
17 opportunity objectives or that may enable Albertson's to identify
18 the interests or preferences of Albertson's employees through
19 surveys or other means, provided that such programs, policies or
20 practices do not violate the applicable collective bargaining
21 agreement.

22 E. For the duration of any labor dispute, work
23 stoppage, or other job or economic action, all provisions of this
24 Consent Decree pertaining to particular employment practices and
25 training programs as well as their related monitoring provisions
26 shall not be applicable and all related reporting provisions shall
27 be modified so as to disregard personnel actions taken during the
28 above-referenced events in this paragraph, provided that cessation

1 or suspension of such employment practices and training programs do
2 not violate the applicable collective bargaining agreement, if in
3 effect.

4 F. In addition to the specific provisions of this
5 Article, Albertson's retains all rights to operate its business in
6 any manner it deems appropriate; provided, however, that
7 Albertson's shall not take any action that violates the express
8 terms of this Consent Decree.

9 XV

10 INJUNCTIVE RELIEF FOR NAMED PLAINTIFFS

11 This Consent Decree releases any and all claims for
12 individual injunctive relief by named Plaintiffs.

13 XVI

14 ENTRY LEVEL ASSIGNMENTS

15 A. Brochures

16 Each eligible^{3/} applicant for a position at an
17 Albertson's retail store covered by this Consent Decree shall, at
18 the time of receiving an Albertson's retail store employment
19 application form, receive a Career Opportunity Brochure. The
20 Career Opportunity Brochure shall include brief descriptions of the
21 entry level positions (i.e. courtesy clerk and non-food department
22 positions only and, in Max Stores, utility, service deli,
23 tortillaria and bakery clerk) and advancement opportunities within
24 Albertson's retail stores and contain a statement of Albertson's
25 commitment to equal employment opportunity. A listing of such
26

27 ^{3/} For purposes of this Article, "eligible" means that the
28 individual must meet the minimum age requirement, if any, of the
applied for position.

1 entry level positions is attached as Exhibit C. Albertson's shall
2 provide the Career Opportunity Brochure to Class Counsel for review
3 within six weeks of the Effective Date of the Consent Decree. If
4 the parties fail to agree on the proper content of the Career
5 Opportunity Brochure, the parties may present such dispute for
6 resolution directly to the Special Master without exhausting the
7 procedures set forth in Article X herein.

8 B. Entry Level Application Form

9 Albertson's shall either modify its current retail store
10 employment application form or create a separate form to be
11 distributed with its employment application that will list the
12 entry level positions available in retail stores with a check off
13 box for each such position. The form shall not provide a listing
14 or check-off box for "any" or "other" entry-level positions. The
15 application form may also include a section or blank space for an
16 applicant with prior retail grocery experience to indicate a
17 specific job above an entry-level position for which the individual
18 is applying.

19 All entry level job boxes checked by successful and
20 eligible applicants on the application form shall be counted for
21 purposes of the entry level assignment monitoring authorized by
22 Paragraph C below, except that, in cases where an applicant marks
23 more than one entry level job box, the applicant will be required
24 to number the choices in order of preference and, in such case,
25 only the first job selected shall be counted for purposes of entry
26 level assignment monitoring. If the applicant fails to do so, none
27 of the boxes marked shall count toward entry level assignment
28 monitoring. Albertson's shall provide the above referenced portion

1 of the application form or separate form to Class Counsel for
2 review and approval prior to the Effective Date of the Consent
3 Decree.

4 C. Entry Level Assignments

5 Albertson's will make "good faith" efforts to assign
6 eligible female and Hispanic employees to entry level positions
7 (i.e., courtesy clerk and non-food department positions only and,
8 in Max Stores, utility, service deli, tortillaria and bakery
9 clerks) in equal proportion to the entry level application rate of
10 successful and eligible female and Hispanic employees.

11 XVII

12 DESIGNATION OF PART-TIME AND FULL-TIME STATUS

13 A. Within six months from the Effective Date of the
14 Consent Decree, Albertson's shall identify each food clerk and, in
15 the Max stores, warehouse and general clerk, as either a part-time
16 or full-time employee on its computerized payroll system. The
17 assignment of any part-time food clerk to full-time status shall
18 continue to be governed by the applicable collective bargaining
19 agreement.

20 B. The designation by Albertson's of part-time food,
21 warehouse and general clerks, is for purposes of this Article only
22 and for compliance with this Decree. This designation shall
23 neither affect nor create any right of employees under the
24 applicable collective bargaining agreements.

25 C. Class Counsel and Albertson's will monitor the
26 assignment of part-time employees to full-time status pursuant to
27 the recordkeeping procedures set forth in Article XXIV to
28 determine, on a Division-wide basis, during any two consecutive

1 applicable Reporting Periods, if Albertson's is assigning part-time
2 female food clerks and Hispanic food clerks to full-time status in
3 equal proportion to the proportion of female and Hispanic food
4 clerks, respectively, of comparable seniority, among all part-time
5 food clerks. In the event that Class Counsel can identify a
6 substantial pattern of discrimination by Albertson's in the
7 assignment of female and Hispanic employees to full-time status,
8 then the parties shall meet and confer to resolve such alleged
9 problem.

10 XVIII

11 ALLOCATION OF HOURS

12 A. Albertson's shall make good faith efforts to assign
13 part-time female food clerks hours in reasonable proportion to
14 their interest and availability. At the end of each reporting
15 period, a comparison between the average hours for female part-time
16 food clerks and the average hours for all part-time food clerks
17 shall be made. Albertson's shall be in compliance if the average
18 hours for part-time female food clerks equals or exceeds 87.5
19 percent of the average hours of all part-time food clerks on a
20 division-wide basis for the Decree Year. With respect to Max Store
21 jobs, the comparison for female part-time warehouse clerks and
22 part-time general clerks during the first two years of the decree
23 shall be 3 standard deviations from the average number of hours
24 assigned to all part-time warehouse clerks and part-time general
25 clerks, respectively.

26 ///

27 ///

28 ///

2 TRAINING3 A. Grocery CAP Training

4 Albertson's shall continue its present Grocery "Career
5 Advancement Program" ("CAP"). Albertson's shall post a notice on
6 store bulletin boards within the California stores of the
7 appropriate administrative division for each respective division's
8 Grocery CAP training program session at least fourteen (14) days
9 prior to its commencement.

10 Albertson's shall prepare and make available a "CAP
11 Request Form" to be completed by a journey food clerk or department
12 manager who is interested in enrolling in a particular Grocery CAP
13 training session. Albertson's will make good faith efforts to
14 assign eligible female and Hispanic employees to such training
15 sessions in equal proportion to the respective application rates of
16 eligible female and Hispanic journey food clerks and department
17 heads.

18 B. Store Director Training

19 Albertson's will make good faith efforts to assign
20 eligible^{4/} female and Hispanic Grocery Managers to the respective
21 division's Store Director Training program in equal proportion to
22 the number of female and Hispanic employees who are in the position
23 of Grocery Manager in the respective Division at the time of the
24 relevant Store Director Training program.

25
26
27 ^{4/} For purposes of this provision, "eligible" means that the
28 Grocery Manager must have served in the position for a minimum of
three (3) months prior to being eligible for Store Director
Training.

1 C. Management Advisor Program

2 Albertson's shall implement the Management Advisor
3 Program in the stores covered by this Decree. A copy of
4 Albertson's Management Advisor Program is attached hereto as
5 Exhibit D.

6 D. Nothing in this Consent Decree shall preclude or
7 limit Albertson's right to modify unilaterally the content of any
8 of its existing training programs, with the exception of
9 Albertson's EEO training program for managers and supervisors.

10 XX

11 JOB POSTING AND CAREER INTEREST QUESTIONNAIRE

12 A. Job Posting

13 Albertson's shall continue to administer its job posting
14 program during the term of this Consent Decree to announce
15 vacancies^{5/} in food clerk, produce manager, night crew supervisor
key person positions and, in Max stores, warehouse clerk and
17 general clerk. The current job posting program is set forth in the
18 attached Exhibit E.

19 For purposes of this Article, Albertson's will be deemed
20 in non-compliance with its job posting obligation only where Class
21 Counsel can show a pattern of failure to post covered jobs.

22 Nothing herein shall preclude or limit Albertson's right
23 to modify unilaterally the procedures governing its job posting
24 program; provided, however, that such changes shall not eliminate
25 or substantially diminish the actual posting requirements for the

26 _____
27 ^{5/} A vacancy occurs in a covered position where there is a need
28 to fill a particular job function for a period in excess of 90
days. A "vacancy" does not include an opening filled by an
employee laterally transferred or demoted from within the same
store or from another store.

1 job classifications set forth in this Article or violate the terms
2 of the applicable collective bargaining agreement.

3 B. Career Interest Questionnaire

4 Albertson's may continue to use periodic interest
5 questionnaires to identify the interests of its employees.
6 However, an employee's response to a career interest questionnaire
7 shall not constitute an application for a particular job vacancy
8 and shall not be counted in measuring the applicable application
9 rate for any such position.

10 XXI

11 MOVEMENT TO FOOD CLERK POSITIONS

12 A. During any two consecutive applicable reporting
13 periods set forth in Article XXIV,B, Albertson's will make good
14 faith efforts to fill with a non-food clerk 50 percent of the
15 posted food clerk vacancies for which an eligible^{6/} non-food clerk
16 applies. Positions filled through demotion or lateral transfer,
17 from within or outside the store, shall not be counted for purposes
18 of the 50 percent rate in this Article.

19 B. In the Northern California Division, a transferring
20 non-food clerk shall retain his or her employment date for all
21 purposes.

22 ///

23 ///

24

25 ^{6/} For purposes of this Article, "eligible" means a non-food
26 clerk who meets the minimum age requirement for the applied-for
27 food clerk position and who has served in a non-food position for
28 at least 12 months (1040 hours). Albertson's reserves the right
to promote a non-food clerk who has less than 12 months non-food
experience to a food clerk position, in which case such promotion
shall count towards the 50 percent selection rate, but shall not
be counted as part of the applicant rate.

1 C. The following provisions shall apply only to
2 California stores within Albertson's Southern California Division
3 [Division 3600].

4 D. The purpose of this section is to provide
5 constructive seniority placement to female non-food employees who
6 plaintiffs claim are aggrieved individuals, i.e., those who applied
7 for or were deterred from applying for food clerk positions at
8 Albertson's stores in Southern California during the Liability
9 Period and who may have been denied such positions or who may have
10 been discouraged from applying for such positions because of their
11 gender.

12 E. Except as expressly set forth in this Agreement,
13 nothing herein shall be interpreted to alter or modify rights under
14 or any provision of any collective bargaining agreements between
15 Albertson's and any union.

16 F. The provisions of this Agreement shall become
17 effective immediately upon final approval of the Consent Decree by
18 the District Court (the "Effective Date").

19 1. Thirty (30) days following the Effective Date
20 of this Agreement, Albertson's shall mail a Seniority Relief Claim
21 Form to all female non-food clerks then employed in a Division 3600
22 store in California.

23 2. Only female non-food clerk Class Members who
24 return a signed Seniority Claim Form postmarked within sixty (60)
25 days following the Effective Date of this Agreement shall be
26 eligible for seniority relief provided herein.

27 3. In order to be eligible for seniority relief, a
28 Class Member must complete the Seniority Claim Form indicating her

1 full name, Social Security Number, gender, job class, current
2 address, and telephone number. In addition, the Class Member must
3 state, under penalty of perjury, that she applied for, or was
4 deterred from applying for, a food clerk position at a specific
5 store [identified by store number] and on an approximate date
6 [month/year] during the applicable time period.

7 4. The applicable time period for establishing a
8 valid claim for seniority relief is April 5, 1987 through Final
9 Approval of the Consent Decree.

10 5. Upon receipt, Albertson's will review timely
11 submitted Claim Forms. A Seniority Claim Form will establish
12 eligibility for a constructive seniority date, if it is determined
13 by reference to Albertson's payroll history and company master
14 data, that a male filled an apprentice food clerk position at the
15 store alleged on the Seniority Claim Form within 60 days before or
16 after the date alleged on the Seniority Claim Form. The
17 constructive seniority date will be the earliest date within 120
18 day period on which a male filled an apprentice food clerk position
19 at that store.

20 6. Within ninety (90) days following the Effective
21 Date of this Agreement, Albertson's shall submit a list of all
22 constructive seniority dates established for approval by the
23 Special Master, with a copy to Class Counsel and to all Union
24 Locals. The Special Master shall issue an order confirming the
25 list of constructive seniority dates within 30 days thereafter.

26 F. The constructive seniority dates established
27 pursuant to these provisions shall apply only to "classification"
28 seniority under the terms of the UFCW Southern California Master

1 Food Agreement (collective bargaining agreement) and shall be
2 applied only to the extent that such classification seniority
3 applies under the collective bargaining agreement. The seniority
4 provisions of the collective bargaining agreement shall otherwise
5 be unaffected.

6 G. Any Class Member with a constructive seniority date
7 confirmed by the Special Master who, during the duration of this
8 Consent Decree, transfers into a food clerk position will start
9 such food clerk position with her constructive seniority date for
10 purposes of classification seniority.

11 H. The constructive seniority dates established by
12 these provisions shall not impact, in any manner, the selection of
13 employees for food clerk positions.

14 I. Nothing contained in this Article shall be construed
15 to require Albertson's to assign an ineligible non-food clerk to a
16 food clerk position. This article shall not apply to positions in
17 Max stores.

18 XXII

19 PROMOTIONS

20 Albertson's shall make "good faith" efforts, consistent
21 with the applicable collective bargaining agreement, to promote
22 eligible female and Hispanic employees, to third, fourth and fifth
23 person, produce manager and night crew supervisor positions in
24 equal proportion to their respective job application rates^{2/} for

25 _____
26 ^{2/} For purposes of determining the applicant rate, Albertson's
27 shall count only those applicants who meet the following
28 criteria:

a) for third person: three months in another Albertson's
key person position;

(continued...)

1 Applicants who are not eligible for the positions covered
2 by this Article will not be counted as part of the application
3 rate.

4 Nothing contained herein shall limit Albertson's right to
5 select any individual for any of the positions covered in this
6 Article provided that such selection does not violate the
7 applicable collective bargaining agreement. To the extent that
8 Albertson's selects any individual not defined as "eligible", such
9 selection shall still count for purposes of determining the
10 selection rate but shall not be counted as part of the applicant
11 rate.

12 XXIII

13 MANAGEMENT TRAINING AND EVALUATION

14 A. Management Training and Accountability

15 Not later than sixty (60) days after the Effective Date
16 of this Decree, Albertson's shall conduct a training program for
17 its current Division Officers/District Managers and Store
18 Directors. Persons who attend these programs will be informed of
19 their responsibility for meeting the objectives of this Consent
20 Decree and of Albertson's commitment to equal employment
21 opportunity. Thereafter, all such management personnel shall
22 receive annual training regarding these subjects. Albertson's
23 shall, prior to the effective date of this Consent Decree, provide
24 a copy of all current EEO training material to Class Counsel for
25 review.

26 B. Annual Performance Evaluations

27 As part of the regular management performance evaluation
28 process, Albertson's shall evaluate Division Officers, District

1 Managers and Store Directors on their compliance with their
2 responsibilities under this Consent Decree and on their performance
3 with respect to equal employment opportunity matters.

4 XXIV

5 REPORTING OBLIGATIONS

6 A. Document Preservation

7 For the duration of the Consent Decree, Albertson's shall
8 retain the following hard-copy and computer records for all
9 employees in its retail stores covered by this Consent Decree,
10 excluding employees in the Meat, Bakery Production and Pharmacy
11 departments: EPR files, performance appraisals, grievance files,
12 Company master and payroll history computer files.

13 B. Reporting Periods

14 1. The first reporting period shall run from the
15 Effective Date of the Decree through June 30, 1995. Thereafter,
16 each reporting period shall commence on July 1 and end on June 30,
17 except as to the last year when the reporting period will run from
18 July 1, 1998 to the end of the fifth year after the effective date.

19 2. On or about August 15th of each year covered by
20 this Consent Decree, beginning in 1995, Albertson's will provide
21 Class Counsel with the information set forth below in
22 paragraphs C - H. In addition, upon timely written request of
23 Class Counsel, Albertson's shall provide copies of all supporting
24 documentation used in preparation of the reports for the 15
25 designated stores. In the event that Class Counsel finds that such
26 supporting documentation is inadequate for purposes of determining
27 Albertson's compliance with the Consent Decree, Class Counsel and
28 Albertson's will meet and confer to decide the scope of any

1 additional information to be provided to Class Counsel. If the
2 parties fail to resolve between themselves any dispute concerning
3 the scope of such additional documentation, it shall be resolved by
4 the Special Master under the procedures set forth in Article X
5 above.

6 C. Entry Level Assignment

7 1. Albertson's shall provide a report for 15
8 retail stores (five per division)^{10/}, to be designated by Class
9 Counsel on or before May 1 of each year, showing the gender and
10 national origin (Hispanic) of all successful applicants a) who seek
11 and b) who are selected for courtesy clerk and non-food department
12 entry level positions.

13 2. Upon request of Class Counsel, Albertson's will
14 provide copies of the form prepared pursuant to Article XVI, B,
15 from which the information described in paragraph 1 above was
16 drawn.

17 D. Allocation of Hours

18 For each reporting period, Albertson's shall provide
19 Class Counsel with a report for each division showing the average
20 number of hours assigned to female part-time food clerks and, in
21 Max stores, warehouse clerks or general clerks, and the average
22 number of hours assigned to all part-time food clerks, warehouse
23 clerks and general clerks, respectively.

24 E. Movement to Full-Time

25 Albertson's shall provide Class Counsel with a report
26 showing the number of part-time and full-time employees by store

27 _____
28 ^{10/} Where Albertson's determines it is feasible, it may provide
data on a division-wide basis instead of a sample basis with
respect to the provisions of this Article.

1 (for the 15 designated stores) and by gender and national origin
2 (Hispanic).

3 F. Movement to Food Clerk

4 Albertson's shall provide Class Counsel and the Unions
5 with a report for the 15 designated stores showing the total number
6 of food clerk vacancies filled through job posting, the total
7 number of vacancies for which a non-food clerk applied and the
8 total filled by a non-food clerk.

9 G. Training

10 Albertson's shall provide Class Counsel with a report by
11 Division showing the total number of eligible persons applying and
12 selected for Grocery CAP by gender and national origin (Hispanic).
13 Albertson's will provide a report showing the total number of
14 eligible grocery managers by gender and national origin (Hispanic)
15 in each division and the number selected for Store Director
16 Training.

17 H. Promotion

18 At Class Counsel's request, Albertson's shall provide
19 Class Counsel with all job posting notices and job posting
20 applications for the 15 designated stores. Albertson's shall also
21 provide a report for the 15 designated stores showing: 1) total
22 vacancies in third, fourth and fifth key person, produce manager
23 and night crew supervisor positions; 2) total eligible employees
24 who apply for such positions, by gender and national origin
25 (Hispanic); and, 3) total employees who were selected for such
26 position, by gender and national origin (Hispanic).

27 Albertson's shall provide Class Counsel with a similar
28 report for all Store Director and Grocery Manager vacancies

1 showing: 1) the total vacancies in the Store Director and Grocery
2 Manager positions; 2) total number of female and Hispanic third
3 persons and Grocery Managers, respectively; and, 3) the total
4 number of employees who were selected for the Grocery Manager and
5 Store Director positions, respectively, by gender and national
6 origin (Hispanic).

7 I. Other Reporting

8 1. At the end of a Reporting Period, upon request
9 by Class Counsel, Albertson's shall provide Class Counsel with an
10 appropriate data tape for the Reporting Period.

11 2. Upon request, Albertson's shall provide Class
12 Counsel with its EEO-1 reports for each California retail store
13 where such report is required.

14 J. Confidentiality

15 Except as to paragraph F above, all reports and related
16 information shall be given only to Class Counsel. However, in
17 proceedings pursuant to Article X.C. in which the Union is
18 participating, the Union may obtain a copy of the report, where it
19 can demonstrate, and the Special Master finds, that such report
20 would be relevant to the Union's ability to address an alleged
21 modification or violation of the collective bargaining agreement.
22 Other than as set forth above, these reporting provisions are not
23 intended to give any rights to any union local.

24 All information provided to Class Counsel, or to a Union
25 where applicable, or to the Court pursuant to the discovery in this
26 case or to the provisions of this Consent Decree (including,
27 without limitation, reports, lists, documents, tapes, and the
28 information they contain) shall be covered by the Stipulation and

1 Order Regarding Confidentiality of Reporting Information contained
2 in Exhibit F to this Consent Decree, which shall be signed by
3 counsel for the Parties, by the Court and, where applicable, by the
4 Unions.

5 In the event that Class Counsel file in Court any action
6 to interpret or enforce the terms of this Decree, such filing shall
7 be under seal, if such filing includes copies of reporting
8 documents or information from reporting documents.

9 XXV

10 COLLATERAL ATTACK

11 In the event of a collateral attack in any forum,
12 challenging Albertson's practices prescribed by the Consent Decree,
13 or in any challenge to any or all of the terms of this Consent
14 Decree, by an individual or entity not a party to this Consent
15 Decree, Albertson's and Class Counsel shall jointly oppose and
16 shall fully cooperate in defending against any such attacks and
17 jointly defend the terms of this Consent Decree against any such
18 attack.

19 XXVI

20 CLASS COUNSEL

21 As used in this Decree, "Class Counsel" refers to the law
22 firm of Saperstein, Mayeda & Goldstein.

23 XXVII

24 NO THIRD PARTY BENEFICIARY

25 Individual Class Members and the Union are not third
26 party beneficiaries of this Consent Decree, and they shall have no
27 right to bring any action for any alleged violation of this Consent
28 Decree. Only Class Counsel, on behalf of the Class, and

1 Albertson's shall have authority to bring an action to enforce this
2 Consent Decree.

3
4 XXVIII

5 RELATIONSHIP BETWEEN CONSENT DECREE
6 AND COLLECTIVE BARGAINING AGREEMENTS

7 The obligations under this Consent Decree and the
8 obligations under any collective bargaining agreement applicable to
9 Class Members shall be construed so as to avoid any conflict
10 between such obligations, if possible. Nothing in this Consent
11 Decree is intended to create or alter any new or existing rights
12 enforceable through any collective bargaining agreement, nor shall
13 any practice(s) required by this Consent Decree become enforceable
14 through the provisions of any collective bargaining agreement.

15 XXIX

16 SECTION HEADINGS

17 The section headings in this Consent Decree shall have no
18 substantive meaning whatsoever. Only the textual provisions of
19 this Consent Decree and in its Exhibits shall be interpreted or
20 construed to have substantive meaning.

21 XXX

22 MONETARY SETTLEMENT

23 The monetary terms of the class settlement are set forth
24 in Exhibit G incorporated herein by reference.

25 XXXI

26 ENTIRE AGREEMENT

27 The terms of this Consent Decree and its Exhibits are the
28 exclusive and final expression of all agreements between the
Plaintiffs, Class Members and Albertson's with respect to any and

1 all sex and national origin (Hispanic) related claims for monetary
2 and injunctive relief as set forth in this Consent Decree. The
3 Plaintiffs, on their own behalf and on behalf of the class they
4 represent, and Albertson's accept entry of this Consent Decree
5 based solely upon its terms and not in reliance upon any
6 representations or promises other than those contained in this
7 Consent Decree.

8 XXXII

9 NON-DISCRIMINATION/RETALIATION

10 A. Non-Discrimination

11 Albertson's shall not discriminate against Class Members
12 on the basis of their sex (female) or national origin (Hispanic) in
13 regard to:

14 a. Initial assignment to entry level positions;

15 b. The allocation of additional available hours
among part-time food clerks;

17 c. Reclassification of journey-level food clerks
18 from part-time to full-time status;

19 d. Selection for the training programs designated
20 herein; and,

21 e. Promotions to positions covered by this Consent
22 Decree.

23 B. Enforcement

24 The non-discrimination provisions set forth in this
25 Article shall be enforceable by Class Counsel only and only upon a
26 showing of a substantial pattern of intentional discrimination. As
27 used in this section, the term "substantial pattern of intentional
28 discrimination" means more than episodic, individual or isolated

1 instances of discrimination, but need not be a division-wide
2 pattern and practice of discrimination. In the event that Class
3 Counsel can demonstrate such a substantial pattern of
4 discrimination, the remedy shall be limited to appropriate
5 injunctive relief only.

6 C. Prohibition Against Retaliation

7 Albertson's shall not retaliate against any of the named
8 Plaintiffs for their participation in this lawsuit or for their
9 having asserted any rights under this Decree. This section shall
10 be enforceable under the provisions set forth in Article X above.

11 XXXIII

12 GLOSSARY OF TERMS

13 A. "Named Plaintiffs" refers to the nine (9)
14 individuals who are named in the Second Amended Complaint.

15 B. "Plaintiffs" refers to the named Plaintiffs, acting
16 on their own behalf and on behalf of all Class Members, and Class
17 Counsel.

18 C. "Parties" refers to Plaintiffs, on behalf of both
19 the named Plaintiffs and the class, and to Albertson's, Inc.

20 D. The "application rate" shall be defined as the
21 number of eligible females or Hispanics who submit written
22 applications divided by the total number of all eligible applicants
23 who submit written applications for the specified position, or
24 training program, during the applicable Decree year.

25 E. The "selection rate" shall be defined as the total
26 number of females or Hispanics selected, divided by the total
27 number of persons selected for the specified position, or training
28 program, during the applicable Decree year.

1 F. "Key person" means third, fourth or fifth person in
2 the Grocery Department.

3 G. "Bakery Production" refers to production employees,
4 including bakers, bakery manager and cake decorators in the Bakery
5 Department.

6 Reporting Periods (See Article XXIV, B.)

7 Good faith (See Article X,E.)

8 Released Claims (See Article IX, A.)

9 Released Parties (See Article IX, A.)

10 Class Members (See Article VI)

11 Food clerks [defined]

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1 Dated: July 19, 1994

2 MARI MAYEDA
3 BARRY GOLDSTEIN
4 DAVID BORGEN
5 SAPERSTEIN, MAYEDA & GOLDSTEIN

6 Barry Goldstein

7 Barry Goldstein
8 On behalf of All Plaintiffs

Dated: July 19, 1994

GARY R. SINISCALCO
CYNTHIA L. REMMERS
TRISH M. HIGGINS
ORRICK, HERRINGTON & SUTCLIFFE

Gary R. Siniscalco

Gary R. Siniscalco
On behalf of Defendant
Albertson's Inc.

RICHARD N APPEL, P.C.
DANIEL L. NASH
JOEL M. COHN, P.C.
AKIN, GUMP, STRAUSS, HAUER
& FELD, L.L.P.

Richard N. Appel, P.C.

Richard N Appel
On behalf of Defendant
Albertson's, Inc.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 PATRICIA BABBITT, et al.,)
4 Plaintiffs,)
5 v.)
6 ALBERTSON'S, INC., et al.,)
7 Defendants.)

No. C-92-1883-SBA

8
9 **NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**

10 **This Notice may affect your rights.**
11 **Please read it carefully.**

12 Notice is hereby given that on October 4, 1994, at
13 10:00 a.m., in the courtroom of Judge Sandra Brown Armstrong,
14 United States District Court, 450 Golden Gate Avenue, San
15 Francisco, California, a hearing will be held to determine
16 whether the Court should approve a proposed settlement of this
17 employment discrimination class action against Albertson's, Inc.
18 The proposed settlement, which has been consented to by the
19 United Food and Commercial Workers Union ("UFCW"), would cover
20 all women and Hispanics employed at Albertson's California retail
21 stores, including the Max Stores, in all job positions except
22 jobs in the Pharmacy, Bakery Production and Meat Departments
23 during the time periods set forth below.

24 THIS NOTICE SUMMARIZES THE PROPOSED SETTLEMENT AND
25 EXPLAINS WHAT YOU MUST DO IF YOU OBJECT TO ITS APPROVAL BY THE
26 COURT (SEE SECTION E BELOW). THE NOTICE ALSO EXPLAINS WHAT
27 ELIGIBLE FEMALE CLASS MEMBERS MUST DO TO FILE A MONETARY CLAIM
28 (SEE SECTION D BELOW). PLEASE NOTE THAT ANY FEMALE CLASS MEMBER

1 WHO OBJECTS TO THE PROPOSED SETTLEMENT STILL MUST FILE A MONETARY
2 CLAIM FORM AS DESCRIBED BELOW TO RECEIVE A SHARE OF THE
3 SETTLEMENT FUND.

4 A. The Nature And History Of The Lawsuit

5 On May 27, 1992, five current or former Albertson's
6 employees filed their initial lawsuit alleging that Albertson's,
7 Inc. discriminated in employment against female and Hispanic
8 employees at its retail stores throughout California.
9 Specifically, the plaintiffs claimed that Albertson's
10 discriminated against female and Hispanic employees with regard
11 to: job assignments to desirable shifts and departments;
12 promotions to management, full-time positions, night shift and
13 other desirable job opportunities; assignment of hours; training;
14 and other terms and conditions of employment. Four females have
15 been joined as additional named plaintiffs. Albertson's has
16 denied all of plaintiffs' allegations and has maintained
17 throughout that it provides all employees with equal employment
18 opportunities.

19 Plaintiffs allege that they are entitled to maintain
20 this action on behalf of a class of current and former female and
21 Hispanic employees at Albertson's California retail stores. The
22 Court has not yet determined whether plaintiffs may represent
23 such a class, and the Court has expressed no opinion as to
24 whether Albertson's has violated the law in any respect.

25 B. The Proposed Settlement

26 Plaintiffs and Albertson's, through their attorneys,
27 and without any admission of liability by Albertson's, have
28 proposed that this lawsuit be settled by entry of a Consent

1 Decree, subject to notice to the class members and approval by
2 the Court after hearing. The Consent Decree calls for the
3 establishment of two settlement classes, defined as: (i) all
4 women who are, have been, or will be employed by Albertson's in
5 its Division 1900, 3600, and 3700 retail stores located in
6 California on or after April 5, 1987 (excluding employees in the
7 Meat, Bakery Production and Pharmacy Departments); and (ii) all
8 Hispanics who are, have been, or will be employed by Albertson's
9 in its Division 1900, 3600, and 3700 retail stores located in
10 California on or after March 19, 1989 (excluding employees in the
11 Meat, Bakery Production and Pharmacy Departments).

12 If you are a member of either of these classes and if
13 the proposed settlement is approved by the Court, you will be
14 entitled to receive such benefits, if any, as you qualify for
15 under the terms of the settlement, and you will be forever barred
16 from asserting any other rights with respect to the matters which
17 are the subject of this litigation, and the action will be
18 dismissed with prejudice as to all members of the settlement
19 classes. If the proposed settlement is not approved, the offer
20 of settlement will be deemed withdrawn and the lawsuit will
21 continue as if the settlement offer had not been made.

22 The terms of the settlement are set forth in the
23 proposed Consent Decree and several related documents. The
24 following is a brief summary of those terms. If you wish to read
25 the proposed settlement and Consent Decree and related documents,
26 they are on file with the Clerk of the United States District
27 Court for the Northern District of California, 450 Golden Gate
28 Avenue, San Francisco, California. If you have any questions

1 about the terms of the settlement, you may contact the attorneys
2 for the Plaintiffs (hereafter referred to as "Class Counsel") at
3 1-800-568-7441 and ask to speak to David Borgen.

4 C. Summary Of The Proposed Consent Decree

5 1. Entry Level Assignments: Albertson's will
6 distribute a Career Opportunity Brochure and a revised
7 application form to job applicants. Albertson's is obligated to
8 assign eligible female and Hispanic employees to entry level
9 positions (courtesy clerk and non-food department clerk and, in
10 the Max Stores, utility, service deli, tortillaria and bakery
11 clerk) in equal proportion to the application rates of successful
12 female and Hispanic applicants.

13 2. Full-Time Hours: Albertson's will identify each
14 food clerk and, in the Max Stores, each warehouse and general
15 clerk, as either a part-time or a full-time employee on its
16 computerized payroll system. Thereafter, Albertson's and Class
17 Counsel shall monitor the assignment of part-time female and
18 Hispanic food, warehouse and general clerks to full-time status.

19 3. Part-Time Hours: Part-time female food clerks
20 and, in the Max Stores, part-time female warehouse and general
21 clerks, will be assigned hours in proportion to their interest
22 and availability. The Decree establishes a compliance standard.
23 The average hours for part-time female food clerks must equal or
24 exceed 87.5% of the average hours of all part-time food clerks on
25 a division-wide basis. The Decree establishes a higher standard
26 of 92.5% for triggering incentive payments to Albertson's from
27 the Class Fund, see paragraph 12. c. below. With respect to the
28 Max Stores, the comparison for female part-time warehouse and

1 general clerks during the first two years of the decree shall be
2 three (3) standard deviations from the average number of hours
3 assigned to all part-time warehouse and general clerks,
4 respectively.

5 4. Training: Albertson's will post Grocery Career
6 Advancement Program ("CAP") training opportunities. Assignments
7 to Grocery CAP must be made in equal proportion to the respective
8 application rates of eligible female and Hispanic journey food
9 clerks and department heads. Store Director Training program
10 assignments must be made in equal proportion to the number of
11 female and Hispanic employees who are in the position of Grocery
12 Manager in each Division at the time of the relevant Store
13 Director Training Program. Further, Albertson's will extend its
14 Management Advisor Program to its California stores.

15 5. Job Posting/Promotions: Albertson's will continue
16 to post notice of food clerk, produce manager, night crew
17 supervisor, and key person vacancies. In the Max Stores,
18 warehouse and general clerk vacancies will also be posted. The
19 Decree establishes promotional goals for key person, produce
20 manager and night crew supervisor positions (equal to application
21 rates of eligible females and Hispanics). The promotional goals
22 for Grocery Managers and Store Directors are to equal the
23 proportional representation of eligible females and Hispanics in
24 the feeder job pools. The Decree provides for "rounding up" to
25 increase the female promotion goals in terms of actual promotions
26 awarded. In the event of a shortfall, the promotional goals for
27 females may be increased to 110%.

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1 6. Management Training: All Albertson's Division
2 Officers/District Managers and Store Directors will receive
3 annual EEO training. These managers will be evaluated annually
4 on their compliance with the Consent Decree.

5 7. Food Clerk Vacancies: Albertson's will fill with
6 a non-food clerk 50% of the posted food clerk vacancies for which
7 an eligible non-food clerk applies. In addition, a claims
8 procedure will be instituted for females who are employed as non-
9 food clerks in Albertson's Southern California Division retail
10 stores on the date of Final Approval of the Consent Decree, and
11 who claim that they were denied, or were deterred from applying
12 for, a food clerk position between April 5, 1987 and the Final
13 Approval date. Under this procedure, which is subject to
14 verification by reference to Albertson's payroll history and
15 company master data and confirmation by the Special Master, the
16 date on which the eligible female was denied or was deterred from
17 applying for a food clerk position will be treated as that
18 employee's "constructive" seniority date as a food clerk. This
19 constructive seniority date will be used only for purposes of
20 determining "classification" seniority under the terms of the
21 UFCW Southern California Master Food Agreement in the event that
22 the employee transfers into a food clerk position during the
23 duration of the Consent Decree.

24 8. Prohibition Against Discrimination and
25 Retaliation: Albertson's will not discriminate against female
26 and Hispanic employees in regard to initial placement;
27 reclassification of food, general and warehouse clerks from part-
28 time to full-time; allocation of part-time hours; training

1 opportunities; and promotions. The Decree also prohibits
2 retaliation against the plaintiffs for their participation in the
3 lawsuit.

4 9. Annual Reporting: Albertson's will compile data
5 regarding initial placements, allocation of hours, movement into
6 food clerk positions, movement to full-time, promotions, and
7 training and provide such data to Class Counsel on an annual
8 basis.

9 10. Duration: The Consent Decree will remain in
10 effect for a period of five (5) years from the time of final
11 approval by the District Court. The Decree may be extended for
12 one additional year if certain compliance standards are not met.

13 11. Special Master: The parties have selected Barbara
14 Chvany to serve as Special Master for the entire term of the
15 Decree. Ms. Chvany is an experienced labor arbitrator and has
16 experience serving as a Special Master in other discrimination
17 lawsuits, including cases involving the grocery industry. The
18 Special Master will have authority to resolve disputes including
19 matters of interpretation of, or compliance with, the Decree.
20 The Special Master will also oversee distribution of the class
21 fund through a claims procedure, see paragraph 12 below.

22 12. Monetary Compensation For Female Class Members: A
23 settlement fund totalling \$24,500,000 will be allocated as
24 follows:

25 a. Female Class Fund: \$23,450,000 will be
26 distributed pro-rata, based on years of service (up to a maximum
27 of 12 years), to all eligible female class members as defined

28 ///

1 below, excluding the named plaintiffs and other named individuals
2 identified in paragraph 14 below.

3 b. Training and Implementation: \$500,000 will
4 be set aside by Albertson's for conducting training programs and
5 implementation activities provided for in the Consent Decree.

6 c. Incentive Fund: Up to \$500,000 will be
7 retained by Albertson's if it meets certain promotional goals and
8 hours allocation goals for female class members each year as set
9 forth in the Consent Decree; the remainder, if any, will be
10 donated to the Impact Fund, a non-profit litigation/advocacy
11 organization.

12 d. Residual Fund: \$50,000, together with any
13 funds remaining after distribution to claimants will first be
14 used to resolve claims of error, as approved by the Special
15 Master, and any remainder will be paid to United Way as directed
16 by Albertson's and Class Counsel.

17 13. No Monetary Payments to Hispanic Class Members:
18 The Consent Decree does not provide for any monetary payments to
19 Hispanic class members who are not female.

20 14. Payments To Plaintiffs And Named Individuals:
21 The named plaintiffs in this action and several other individuals
22 named below will receive payments in settlement of their
23 individual claims as follows: \$50,000 each to Kathleen Crist
24 Smith, Patricia Babbitt, Cheryl Davis, Pam Farrington, Lupe
25 Ventura and Josephine Lissebeck; \$30,000 each to Annemarie
26 Bryant, Amy Smith, Karen Bunker and Ann Doucett; \$20,000 to
27 Kimberly Wegner; \$12,000 to Mary Ludwig; and \$10,000 to Kesha
28 Turner.

1 15. Tax Treatment of Monetary Payments: The parties
2 have agreed that 75% of all monetary payments made under the
3 settlement represents damages for personal injury, and therefore
4 should not be subject to deductions for withholding and payroll
5 taxes. The remaining 25% of the payments to female class members
6 is to be considered as backpay, which is subject to tax
7 withholding. All required withholding and payroll taxes --
8 including taxes required of both the employee and employer --
9 will be deducted from the backpay portion of the payments.
10 Moreover, recipients of will be required to indemnify Albertson's
11 in the event that Albertson's is later determined to be liable
12 for additional employee or employer withholding or payroll taxes
13 with respect to the personal injury portion of the payments.

14 16. Attorneys' Fees: Class Counsel will be paid
15 \$4,500,000 as reasonable attorneys' fees and costs incurred for
16 past legal work on this litigation and for future work through
17 Final Approval, plus additional work to be performed after Final
18 Approval in connection with distribution of the Settlement Funds,
19 and to be incurred in monitoring activities for the duration of
20 the Consent Decree. The Decree also provides for limited
21 attorneys' fees in the event of an appeal. In sum, the
22 attorneys' fees for Class Counsel covers approximately six years
23 of past work and anticipated future work. The above fees do not
24 cover work for any enforcement proceedings that may occur before
25 the Special Master.

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1 D. Process For Filing Monetary Claims
2 By Female Class Members

3 To be eligible to receive a monetary distribution under
4 the settlement, a female class member must (i) have worked, at
5 some time between April 5, 1987 and May 29, 1994, at an
6 Albertson's retail store in California in any job position except
7 jobs in the Pharmacy, Bakery Production or Meat Departments; (ii)
8 have six months continuous service with Albertson's in the
9 California retail stores before May 29, 1994; and (iii) file a
10 "Monetary Claim Form" under the procedures below.

11 ATTACHED TO THIS NOTICE IS A MONETARY CLAIM FORM, WHICH
12 MUST BE COMPLETED AND SUBMITTED BY ELIGIBLE FEMALE CLASS MEMBERS,
13 WITH A POSTMARK NO LATER THAN SEPTEMBER 9, 1994, TO RECEIVE A
14 SHARE OF THE SETTLEMENT FUND. THE CLAIM FORM MUST BE COMPLETED
15 AND MAILED TO:

16 Babbitt Settlement Administrator
17 Albertson's, Inc.
18 P.O. Box 20
19 Boise, Idaho 83726

20 FAILURE TO SUBMIT A COMPLETED MONETARY CLAIM FORM IN
21 ACCORDANCE WITH THESE PROCEDURES WILL RESULT IN A WAIVER OF ANY
22 RIGHT TO RECEIVE A MONETARY PAYMENT UNDER THE SETTLEMENT.

23 E. Hearing Regarding The Proposed Settlement And Procedure
24 For Objecting To The Proposed Settlement

25 If after reading this Notice you decide to object to
26 the proposed settlement, you should take the following steps:

27 1. On or before September 9, 1994, you or your
28 representative should mail (a) a written notification if you plan
to address the Court at the fairness hearing; (b) a written
statement of the reason(s) for your objections; and (c) any other

1 papers which you propose to submit to the Court, including any
2 legal briefs or memoranda, to each of the following:

3 Clerk
4 United States District Court for the Northern
5 District of California
6 P.O. Box 546
7 408 13th Street
8 Oakland, California 94612

9 All such objections must be signed and include your social
10 security number, address and telephone number.

11 2. If you have submitted a written statement as set
12 forth above, you or your representative have the right to address
13 the Court at the hearing on October 4, 1994, at 10:00 a.m.,
14 before the Honorable Sandra Brown Armstrong, Judge of the United
15 States District Court for the Northern District of California in
16 Courtroom No. 2, United States Courthouse, 450 Golden Gate
17 Avenue, San Francisco, California.

18 IF YOU DO NOT FOLLOW THESE PROCEDURES, YOU WILL BE
19 PRESUMED TO AGREE WITH THE PROPOSED SETTLEMENT AND YOU WILL BE
20 FOREVER BARRED FROM BRINGING ANY FURTHER CLAIM AGAINST
21 ALBERTSON'S FOR ANY MATTER OCCURRING DURING THE RELEVANT CLASS
22 PERIOD THAT WAS RAISED OR COULD HAVE BEEN RAISED IN THIS ACTION.

23 If you have any questions concerning the proposed
24 settlement or this Notice, you may contact David Borgen, Esquire,
25 SAPERSTEIN, MAYEDA & GOLDSTEIN, 1300 Clay Street, Oakland,
26 California 94612. The toll-free number is 1-800-568-7441.

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1 By Order of the United States District Court for the
2 Northern District of California.

3)

4 Richard W. Wieking, Clerk
5 United States District Court
6 Northern District of California

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8 August 2, 1994

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 PATRICIA BABBITT, et al.,)
4 Plaintiffs,)
5 v.)
6 ALBERTSON'S, INC., et al.,)
7 Defendants.)

No. C-92-1883-SBA

8 MONETARY CLAIM FORM

9 This form must be returned and postmarked
10 no later than September 9, 1994.

11 TO: Babbitt Settlement Administrator
12 Albertson's, Inc.
13 P.O. Box 20
14 Boise, Idaho 83726

15 (Please print or type.)

16 Name: _____
17 Social Security No.: _____
18 Date of Birth: _____
19 Mailing Address:* _____
20 Telephone: _____
21 Other Names Used While
22 Employed at Albertson's: _____

23 I hereby certify, under penalty of perjury, that I am a
24 female and (i) have worked, at some time between April 5, 1987
25 and May 29, 1994, at an Albertson's retail store in California in
26 any job position except jobs in the Pharmacy, Bakery Production
27 or Meat Departments; and (ii) have six months continuous service
28 with Albertson's before May 29, 1994.

By: _____
(Signature)

* In order to ensure payment you must promptly notify the
Administrator of any address change.

1 (Published Notice)

2 **NOTICE OF CLASS ACTION SETTLEMENT**

3 A settlement has been negotiated in a class action
4 employment discrimination lawsuit against Albertson's, Inc. The
5 lawsuit alleged that Albertson's discriminated against female and
6 Hispanic employees working at its California retail stores. If
7 approved by the Court, the settlement will forever bar all
8 similar existing employment discrimination claims that were or
9 could have been brought by all women who have been employed at
10 any time since April 5, 1987 and all Hispanics who have been
11 employed at any time since March 19, 1989 at Albertson's retail
12 stores in California (excluding employees in the Meat, Bakery
13 Production and Pharmacy Departments).

14 A hearing will be held on October 4, 1994, at 10:00
15 a.m., in the courtroom of Judge Sandra Brown Armstrong, United
16 States District Court, 450 Golden Gate Avenue, San Francisco,
17 California, to determine whether the Court should approve the
18 settlement. If you wish to object to the settlement, you must do
19 so in writing no later than September 9, 1994. Moreover, if you
20 are a female covered by the above class description, you may be
21 entitled to a monetary payment under the settlement provided you
22 file a Monetary Claim Form no later than September 9, 1994.

23 For more information about the settlement and the
24 objection and claim procedures, call Saperstein, Mayeda &
25 Goldstein at 1-800-568-7441. Please call this number if you have
26 not received a mailed notice of settlement and Monetary Claim
27 Form and you believe that you are entitled to participate in the
3 settlement.

1 You must act quickly. There is a time deadline for
2 filing a monetary claim form or an objection.

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Babbitt, et al. v. Albertson's, Inc.

ENTRY LEVEL POSITIONS

Albertson's—3600 and 3700

1. **Courtesy Clerk**
2. **Service Deli Clerk**
3. **Lobby Clerk**
4. **Bakery Sales Clerk**
5. **Drug/General Merchandise Clerk**
6. **Courtesy Booth Clerk**
7. **Salad Bar Clerk**
8. **Floral Clerk**

Max Food Stores—1900 Division

1. **Utility Clerk**
2. **Tortillaria Clerk**
3. **Service Deli Clerk**
4. **Bakery Sales Clerk**

ljb

**ALBERTSON'S
MANAGEMENT ADVISOR PROGRAM**

**GUIDELINES FOR ADVISORS IN HELPING
EMPLOYEES INTERESTED IN MANAGEMENT POSITIONS**

1. Be certain you give the same suggestions to all employees, without regard to gender, race, age, national origin, religion or disability.
2. Ask the employee about his/her immediate and long-term goals. Listen carefully to each employee question and statement. Be sure you understand what the employee is saying. Do not hesitate to ask for clarification. Give the employee suggestions based upon your own experience on how to reach immediate goals and steps to take to start working toward long-term goals. It may be appropriate for you to qualify your suggestions with words such as "my experience has been...", or "I am aware of other people who have...."
3. If employees ask if relocation is required to advance in the Company, you should point out that transfers are common for employees interested in store management. You should not state that employee relocation to other towns is always required (frequently, employees in metropolitan areas may transfer to other stores and progress through store management without relocating their personal residence), although sometimes it may be necessary and may help them advance more quickly. Point out the benefits of transfers -- broader experience working for different supervisors and exposure to new learning opportunities.
4. Determine whether the employee is available to work all shifts. Share with the employee your experience in working different shifts and jobs -- how it provides training and experience helpful for advancement.
5. Do not ask questions relating to or discuss marital status, number or age of children, child care arrangements, desire for additional children or pregnancy. Even if the employee is a friend or you are aware of his/her family circumstances, you must not ask these kinds of questions. However, if the employee asks how your career with Albertson's has affected your personal and/or family life, you can share your experiences, if you feel comfortable doing so.
6. If the employee tells you he/she is disabled, you should inform the employee that Albertson's makes reasonable accommodation for the physical and/or mental disabilities of employees, who are otherwise qualified to perform the essential functions of the job. You should ask the employee what accommodations, if any, the employee believes can be made to assist the employee in performing the job.

7. You will probably not be able to answer every question or solve every concern an employee shares with you. Give the employee suggestions - but, also make the employee think and develop his/her own solutions. Suggest that the employee outline a "game plan" to accomplish his/her goals. The employee should share this "game plan" with, or prepare it with the help of his/her immediate supervisor or store director. The support of the employee's goals by store management is an important factor to his/her success. Therefore, open communication with store management should be encouraged.
8. You should tell the employee to check back with you if questions arise and/or for further discussion. Do not tell the employee that you will contact him/her in the future unless you need to get back to the employee with an answer to a question that you did not initially know.
9. If an employee presents questions on a topic that you are not familiar with or which you are not certain of the answer, do not speculate about the answer. Tell the employee that you do not know the answer. If you need help or have questions, contact the EEO Specialist.
10. Do not promise or guarantee to the employee that he/she will advance with the Company, have a specified length of employment, or receive any specific benefit if he/she follows your advice. Emphasize in a positive way that you are sharing your personal experience and encouragement, not committing to anything on behalf of the Company.
11. Use division management personnel as valuable resources. Depending upon the question or issue raised, you may want to seek division management input.
12. Do not provide any materials (including any of your personal notes) to employees unless you first obtain approval to do so from the EEO Specialist.
13. Be courteous and helpful. However, stay within your own realm. Stick with what you know. Do not hesitate to say you do not know something. On complex or difficult questions, you may need time to consider the answer or find out the answer from another source. Your responses should be honest and fair.
14. Suggest that the employees utilize their public library system to obtain information on how to build self-esteem, communicate effectively with other people and develop the other skills necessary to be a manager. Review with them the Albertson's Lending Library and the Cornell Home Study Courses.

Your suggestions should help and assist employees in reaching their goals. If you have questions of any kind, please do not hesitate to contact Gaylene Austin, EEO Specialist, in Boise by calling 208/385-6347.



ALBERTSON'S, INC. NORTHERN CALIFORNIA JOB POSTING POLICY

STEPS TO BE FOLLOWED

1. Determine whether the job should be posted.
 - Post only Grocery and Produce Clerk positions, except Courtesy Clerks.
 - A "vacancy" is defined as a need to promote or assign an employee on an indefinite basis regularly to perform a specific position. A vacancy does not include an opening filled by an employee laterally transferred from another store. A vacancy does not occur when a short-term or seasonal increase in business requires additional staffing for any function of less than 90 days.
 - Vacancies in Head Clerk positions only will be posted in multiple stores according to the labor agreements (in the seniority areas).
 - The following are some of the jobs which you may be required to post: Checker, Grocery Clerk, Head Clerk, Customer Service Supervisor, Receiving Clerk, Produce Clerk, Produce Manager, Night Stocker, Head Night Stocker, Third Person, Fourth Person, Fifth Person, Frozen Food Clerk.

You are not required to post the following jobs: Non-Food Clerk, Deli Clerk, Deli Manager, Bakery Sales Clerk, Head Bakery Sales Clerk, Bakery Manager, Baker, Donut Fryer, Meatwrapper, Meatcutter, Meat Manager, Butcher Block employee.
2. If the job must be posted, you must complete the job posting form and post that form on an employee bulletin board for 3 days (5 days for Head Clerk, multiple store posting in stores covered by Contract with Local 588).
3. You should make available to employees the "application for posted job." While you wait the three or five-day posting period you should temporarily assign an employee to do the duties of the vacant position.
4. You should consider for each vacancy any qualified employee in your store who applies for the posting or who has made a written expression of interest in the vacant position through the career planning survey.
5. At the end of each quarter you must forward all job posting forms (the notice and application) to the Division Trainer.

IF YOU HAVE ANY QUESTIONS OR PROBLEMS, PLEASE CONTACT THE
INDUSTRIAL RELATIONS DEPARTMENT IN BOISE.



NOTICE TO ALL ALBERTSON'S EMPLOYEES

EQUAL OPPORTUNITIES AT ALBERTSON'S

We believe all of you know that Albertson's, Inc. has a strong policy against unlawful discrimination on the basis of sex, race, national origin, age or religious belief. Because some of you may not be taking full advantage of the opportunities which exist with our Company, this notice is to remind you of that policy and reaffirm Albertson's commitment to equal employment opportunity.

We encourage all employees to notify management of their interest in any job, position, or career path within Albertson's. All qualified employees regardless of sex, race, national origin, age, religious belief, or marital status will be fairly considered for jobs or positions based upon qualifications, ability, availability, and desires.

To be more specific, all jobs are available to both sexes, and there are no exclusively male or female jobs with Albertson's, and that includes management positions. For example, interested females are and will be fairly considered for all management positions, receiving clerk, night crew, meatcutters, and all other jobs with the Company. Likewise, all interested males will be fairly considered for jobs as bakery sales clerks, deli clerks, meatwrappers, and all other company jobs and management positions.

Naturally, some jobs require more qualifications and broader experience than others. Those jobs also give valuable experience that is considered when assistant directors and directors are selected for our stores.

If any of you desire consideration for a different job, wish to broaden your experience, or wish to pursue a management career with Albertson's, you should make your desires known to your store director or the Division Office in writing so that we can furnish you more detailed information to help you accomplish your goals. Please also watch the job posting announcements, apply for positions for which you are qualified and fill out a career planning survey.

We appreciate your good work and loyalty to Albertson's, Inc.


FRANK BRUNETTI

ALBERTSON'S IS AN EQUAL OPPORTUNITY EMPLOYER

TO: #3700 Division Store Directors
FROM: Frank Brunetti, Division Vice President/Manager
DATE: August 28, 1992
RE: Job Posting Program

As you know, we implemented a Job Posting program in our division in order to give all employees an opportunity to apply for jobs that may provide them with necessary training for advancement into store management. The purpose for this memo is to reaffirm to you that you must post all Grocery, Produce and Key Person vacancies.

You should be very familiar with our Job Posting program. If you are not, please contact our Employee Development Manager, Pat Shipley, for information. It is important that you fully understand and comply with all Job Posting requirements because henceforth we will hold Store Directors accountable for full compliance with the program. Any Store Director who fails to comply with our Job Posting program will be subject to discipline, which may include written warnings, suspension and/or discharge.

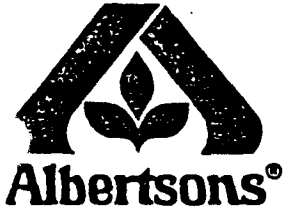
Thank you for your anticipated cooperation.

Frank

cc: Division Office staff

BPP/jb/b2731

ALBT20014



ALBERTSON'S, INC.
JOB POSTING FORM

JOB _____

STORE # _____

APPROXIMATE DATE JOB WILL BE FILLED _____

EXPECTED SHIFTS _____ EXPECTED HOURS _____

ANY AND ALL EMPLOYEES WHO ARE INTERESTED IN THE ABOVE JOB SHOULD SIGN BELOW AS WELL AS COMPLETE AN "ALBERTSON'S APPLICATION FOR POSTED JOB" AND SUBMIT IT TO THE STORE DIRECTOR AS SOON AS POSSIBLE. ALL INTERESTED EMPLOYEES SHOULD SUBMIT THEIR APPLICATIONS TO THE STORE DIRECTOR NO MORE THAN 3 THREE DAYS (5 DAYS FOR HEAD CLERK) AFTER THE NOTICE OF THE JOB OPENING IS POSTED.

FOR MORE INFORMATION CONCERNING JOB DUTIES, PLEASE REVIEW THE JOB DESCRIPTION IN THE STORE OFFICE.

ALBERTSON'S, INC. IS AN EQUAL OPPORTUNITY EMPLOYER.

DATE OF JOB POSTING _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



ALBERTSON'S, INC.
APPLICATION FOR POSTED JOB

POSTED JOB FOR WHICH YOU ARE APPLYING _____

NAME _____

CURRENT POSITION _____ STORE NO. _____

LIST PREVIOUS POSITIONS HELD AT ALBERTSON'S _____

LENGTH OF SERVICE _____

WHAT ARE YOUR OCCUPATIONAL GOALS OR INTERESTS?

AT DAYS OF THE WEEK AND/OR HOURS OF THE DAY ARE YOU AVAILABLE TO WORK?

PLEASE LIST ANY ADDITIONAL INFORMATION ABOUT YOUR JOB EXPERIENCE OR INTERESTS WHICH YOU WANT TO BE CONSIDERED.

Signature

Date

FILED

DEC 24 1992

MARI MAYEDA
JOCELYN D. LARKIN
DAVID BORGEN
SAPERSTEIN, MAYEDA, LARKIN
& GOLDSTEIN
1300 Clay Street, 11th Floor
Oakland, CA 94612
Telephone: (510) 763-9800

GARY R. SINISCALCO
ANNE G. BOOKIN
TRISH M. HIGGINS
ORRICK, HERRINGTON & CLIFFE
Old Federal Reserve Bank Building
400 Sansome Street
San Francisco, CA 94111-3144
Telephone: (415) 392-1122

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiffs

RICHARD N. APPEL, P.C.
AKIN, GUMP, STRAUSS, HAUER
& FELD, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036
Telephone: (202) 887-4000

RECEIVED

DEC 18 1992

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Defendant
ALBERTSON'S, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RECEIVED
DEC 23 1992
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA BABBITT, CHERYL DAVIS,)
PAMELA FARRINGTON, KATHLEEN)
SMITH, LUPE VENTURA, and)
JOSEPHINE LISSEBECK)
on behalf of)
themselves and all other)
persons similarly situated,)
)
Plaintiffs,)
)
v.)
)
ALBERTSON'S INC.,)
)
)
Defendants.)

No. C92 1883 SBA (PJH)
**STIPULATION AND PROTECTIVE
ORDER RE USE OF
CONFIDENTIAL INFORMATION**

Subject to and without waiving any objections any party may have as to the discoverability of any information, and solely for the purposes of providing a procedure for the handling and protection of "confidential information" as defined herein, the parties to this action have reached agreement on a procedure for handling such Confidential Information. Certain documents, things and information disclosed may constitute or contain trade

1 secrets as defined in California Civil Code Section 3426.1(d), or
2 other secret, proprietary, private, or confidential information.
3 This information may include, but is not limited to, personnel
4 data of persons not a named party to this action, earnings data,
5 competitive market data, non-public financial data, and medical
6 and psychiatric information.

7 The parties hereby agree that access to and use of such
8 documents, things and information shall be governed and limited
9 by the provisions of this Protective Order as set forth herein,
10 subject to the approval of the Court.

11 A. Definition of Confidential Information

12 1. "Confidential Information," as used herein, means
13 any type or classification of information which is designated
14 when it is produced as "Confidential" by the supplying party,
15 whether it be a document, information contained in a document,
16 information revealed during a deposition, information revealed in
17 an interrogatory answer, or otherwise. In designating
18 information as Confidential Information, the supplying party will
19 make such designation only as to that information which it
20 believes contains secret, confidential, private, and/or
21 proprietary information. Each party shall exercise good faith in
22 designating information as Confidential Information.

23 2. Designation of documents or other information as
24 confidential by counsel or receipt of documents or information so
25 designated shall not be considered as determinative of whether
26
27
28

1 the contents of the documents or the information specified are
2 publicly known or properly designated.

3 B. Procedure for Designating Material as Confidential
4 Information

5 1. "Confidential Information" shall include all
6 documents provided by a party which have been designated as
7 confidential by marking the page: "CONFIDENTIAL" or
8 "CONFIDENTIAL INFORMATION." In lieu of marking the original of
9 documents, the party may mark the copies that are produced or
10 exchanged.

11 2. The identification of information as confidential
12 shall be made at a time when an answer to an interrogatory or an
13 answer to a request for admission is served, when a copy of a
14 document is provided to the other party, and when an inspection
15 or premises or tangible things is made. The parties expressly
16 agree that this Protective Order shall apply with equal force to
17 and govern the disclosure of any documents already produced by
18 non-parties in response to discovery propounded by defendant,
19 specifically to medical and/or psychiatric records pertaining to
20 named plaintiffs.

21 3. Information disclosed at a deposition may be
22 designated as confidential by either (a) indicating on the record
23 at the deposition that the testimony is Confidential Information
24 and subject to the provisions of this Order or (b) by notifying
25 the opposing party in writing within fourteen (14) business days
26 of the receipt of the transcript of those pages and lines that
27 contain Confidential Information. No Confidential Information

1 may be read by anyone other than attorneys for the named parties
2 and the deponent during said fourteen day period. Upon being
3 informed that certain portions of a deposition disclose
4 Confidential Information, each party must cause each copy in
5 their custody or control to be so marked immediately.

6 4. If any party believes that a document or other
7 information, which has been designated as confidential, should
8 not properly be treated as confidential within this protective
9 order, that party will notify the disclosing party of its
10 disagreement with the confidential designation. Counsel for the
11 parties will then endeavor to reach an agreement regarding the
12 status of that document or information within ten days. If no
13 agreement can be reached after ten days, the party desiring to
14 maintain the confidentiality of the document shall file a notice
15 of motion for protective order within fourteen days thereafter.
16 Until the Court resolves the motion, the document will be treated
17 as subject to the terms of this protective order. If no notice
18 of motion is filed, the document will be deemed not subject to
19 this protective order at the expiration of fourteen days after
20 the ten day meet-and-confer period.

21 C. Qualified Persons with Access to Confidential Information

22 "Qualified Persons," as used herein, means:

23 1. The named parties in this litigation and their
24 attorneys, including in-house attorneys, paralegal personnel, and
25 secretaries employed by counsel to the named parties;
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27
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1 2. Consultants and experts retained or employed to
2 assist the attorneys of named parties in the preparation of this
3 litigation for trial, such as statisticians, economists,
4 accountants, or other technical or legal experts or consultants,
5 who have signed an appropriate stipulation reflecting an
6 agreement to abide by the terms of this protective order. The
7 stipulation shall be in the form set forth in Exhibit A.

8 3. Any current or former employees of Albertson's who
9 are either the author of, recipient of, or the subject of any
10 documents designated as Confidential Information, may have access
11 only to such documents which pertain to them as author, recipient
12 or subject of such documents.

13 4. The Court and the court personnel and stenographic
14 reporters at depositions taken in this action.

15 5. Any other person consulted by or interviewed by
16 attorneys or staff of named parties for the purpose of
17 investigation of and/or preparation for trial in this litigation,
18 provided that such persons have signed an appropriate stipulation
19 reflecting an agreement to abide by the terms of this protective
20 order. The stipulation shall be in the form set forth in Exhibit
21 A. Counsel for any named party who have disclosed any
22 Confidential Information designated by another party to any such
23 person pursuant to this subsection (5) shall provide opposing
24 counsel with a list of the names and addresses of any such
25 persons within 30 days of any such disclosure, along with a list
26
27
28

1 identifying the Confidential Information disclosed to each such
2 person.

3 D. Restrictions on the Use and Disclosure of Confidential
4 Information

5 1. Any information designated as "Confidential
6 Information" shall not be made available or disclosed to any
7 person other than the Qualified Persons identified in Paragraph
8 C. Persons who, by virtue of the conduct of this litigation,
9 have knowledge of the designated Confidential Information shall
10 not suffer or permit its disclosure or that of any information
11 obtained, derived, compiled, or ascertained therefrom, to any
12 person or persons not entitled under this Protective Order to
13 receive such information.

14 2. Disclosure of all items designated as Confidential
15 Information in this action shall be solely for the purposes of
16 this action, (i.e., Babbitt v. Albertson's Inc., Northern
17 District of California, No. C-92-1883-WHO), unless and until such
18 designation is removed either by stipulation by attorneys for the
19 named parties or by order of the Court.

20 3. With respect to information designated as
21 Confidential Information, no copies of documents, testimony, or
22 other information shall be received, kept, or maintained by
23 individuals other than the Qualified Persons as defined above.

24 4. Those portions of any document, answer to
25 interrogatory or request for admission, and deposition transcript
26 filed with the Court for any purpose and identified as containing
27 Confidential Information, or any pleading, motion or brief filed

1 with the Court containing or disclosing Confidential Information
2 shall be filed with the Court in a sealed, opaque container
3 including on the outside thereof the case heading of this
4 litigation, the title of the document, and a notification that
5 the contents are subject to a protective order and the contained
6 is not to be opened except upon further order of this Court.
7 Such notification shall be substantially in the following terms:

8 CONFIDENTIAL
9 SUBJECT TO PROTECTIVE ORDER

10 This envelope (or container) containing the
11 above-identified papers filed by (name of
12 party), is not to be opened nor the contents
13 thereof displayed or revealed except by the
14 Court or Court Order or by agreement of the
15 parties.

16 The clerk of this Court is directed to maintain under
17 seal all documents and transcripts of deposition testimony
18 designated as "confidential information" filed in this
19 litigation.

20 5. In the event an attorney to this litigation seeks
21 to show any documents or other information denominated as
22 "Confidential Information" to anyone other than a "Qualified
23 Person," that attorney shall first advise opposing counsel and
24 seek to reach an informal resolution of such matters. In the
25 event that agreement cannot be reached, the party seeking access
26 to Confidential Information shall apply to the Court for relief
27 from this Protective Order.

28 ///

///

1 E. Non-Applicability to the Trial of this Action

2 The terms of this Order shall not apply to the trial of
3 this action. Any party may, at or before the time of trial, seek
4 an order of the Court to restrict access to particular documents
5 or testimony at trial.

6 F. No Admission or Waivers

7 The execution of this Order shall not:

8 (a) constitute a waiver of any party's right to seek
9 from the Court at a future time an order which provides greater,
10 lesser or no restriction or access to Confidential Documents;

11 (b) be construed as an admission or agreement that any
12 document designated as Confidential, in fact, is confidential or
13 otherwise is entitled to any protective relief whatsoever.

14 G. Return of Documents

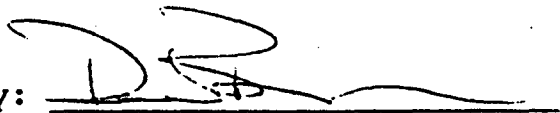
15 Within sixty (60) days of final termination of this
16 litigation, the parties to this litigation shall return to the
17 parties producing same all documents (and copies thereof) and all
18 materials which have been furnished and identified as
19 "Confidential Information" pursuant to this Protective Order.

20 Also within sixty (60) days of final termination of
21 this litigation, attorneys of record shall certify that all
22 attorney work product documents that incorporate or reference
23 Confidential Information produced by the opposing party have been
24 destroyed. Alternatively, within the sixty day period, the
25 attorneys shall certify that they have placed all attorney work
26 product documents that incorporate or reference Confidential
27

1 Information produced by the opposing party in a sealed container
2 and they shall store the container for a period up to four years.
3 At the end of the four year period, or any time before, the party
4 who created the sealed work produce documents shall certify that
5 they have been destroyed. If, at any point during the four year
6 storage period, the party who created the sealed work product
7 documents can demonstrate good cause to review those documents in
8 order to respond to or defend a professional negligence claim,
9 that party shall first contact the other party and, if unable to
10 reach a mutually satisfactory resolution, may petition this Court
11 to allow access to the sealed documents. Absent agreement of the
12 parties or court order, no person may review the contents of the
13 work product documents stored under seal and the sealed container
14 may not be opened except for the purpose of destroying the
15 documents contained therein.

16
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18
19
20 Dated: December 16, 1992

SAPERSTEIN, MAYEDA, LARKIN &
GOLDSTEIN

21
22
23 By: 
David Borgen

24 Attorneys for Plaintiffs
25
26
27
28

1
2 Dated: 12/18, 1992

GARY R. SINISCALCO
ANNE G. BOOKIN
TRISH M. HIGGINS
ORRICK, HERRINGTON & SUTCLIFFE

3
4 RICHARD N. APPEL, P.C.
5 AKIN, GUMP, STRAUSS, HAUER
6 & FELD, L.L.P.

7 By: 
8 Gary R. Siniscalco

9 Attorneys for Defendant
10 Albertson's, Inc.

11 IT IS SO ORDERED.

12 Dated: 12-23, 1992

13
14 
15 Phyllis J. Hamilton
16 United States Magistrate Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA BABBITT, CHERYL DAVIS,)
PAMELA FARRINGTON, KATHLEEN)
SMITH, LUPE VENTURA, and)
JOSEPHINE LISSEBECK)
on behalf of)
themselves and all other)
persons similarly situated,)
)
Plaintiffs,)
)
v.)
)
ALBERTSON'S INC.,)
)
_____ Defendants.)

No. C92 1883 SBA

**STIPULATION
REGARDING
PROTECTIVE ORDER**

I hereby certify that I have carefully read the
Stipulation and Protective Order in the above-captioned case and
that I fully understand the terms of that Order, and I agree to
comply with those terms. I hereby consent to be subject to the
personal jurisdiction of the United States District Court for the
Northern District of California, in respect to any proceedings

///

1 relative to the enforcement of that Order, including any
2 proceeding related to contempt of court.

3 Dated this ____ day of _____, 1992.

4 Executed at _____.

5
6
7 _____
Signature

8 Name:

9 Affiliation:

10 Business Address:

11 Home Address:
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1 **RE MONETARY TERMS, ATTORNEYS' FEES, NOTICE**
2 **PROCEDURES AND DISTRIBUTION OF CLASS FUND**

3
4 **I. MONETARY SETTLEMENT**

5 **A. Class Fund**

6 On the Class Fund Payment Date, as defined in
7 para. I.C.1, infra, Albertson's shall establish an internal
8 account ("Class Fund") in the amount of \$24,500,000. The
9 allocations set forth in paragraphs 1-5 below shall be made from
10 the Class Fund.

11 1. Payments to Class Members: \$23,450,000, plus
12 applicable interest as provided for in paragraph I.C.4, shall be
13 distributed to the class of female employees in accordance with
14 the Distribution Plan in Section III below.

15 2. Training and Implementation: \$500,000 shall
16 be retained and utilized by Albertson's for conducting training
17 programs provided for in the Decree and for implementing the
18 Consent Decree.

19 3. Incentive Fund: \$500,000 shall be set aside
20 as an Incentive Fund which may be retained by Albertson's under
21 the following conditions:

22 a. \$50,000 may be retained by Albertson's for
23 its own use, without limitation, for each Decree year in which
24 Albertson's reaches 110% of all promotion goals for female
25 employees as provided in Article XXII of the Consent Decree, up
26 to a maximum of \$250,000 over the term of the Decree;

27 b. In any year in which these incentive goals
28 are not met, Albertson's shall pay \$50,000 to the Impact Fund, a

1 non-profit entity, provided, however, that such funds shall not
2 be used to directly benefit or support litigation involving the
3 grocery industry.

4 c. \$50,000 may be retained by Albertson's for
5 its own use, without limitation, for each Decree year in which
6 Albertson's assigns part-time female food clerks in Divisions
7 3600 and 3700 to a minimum of 92.5% of the total hours worked by
8 all part-time food clerks, up to a maximum of \$250,000 over the
9 term of the Decree;

10 d. In any year in which these incentive goals
11 are not met, Albertson's shall pay \$50,000 to the Impact Fund, a
12 non-profit entity, provided, however, that such funds shall not
13 be used to directly benefit or support litigation involving the
14 grocery industry.

15 4. Employer Taxes: All applicable employee and
16 employer withholding and payroll taxes shall be deducted from
17 that portion of the Class Fund to be distributed to female class
18 members; see I.B.1.

19 5. Residual Fund: \$50,000, together with any
20 residual amounts remaining after distribution of the Class Fund
21 to Class Members, may be utilized to resolve any claims of error
22 in the settlement notice or distribution process. Any monetary
23 payments or expenditures from this residual fund shall first be
24 approved by the Special Master, Barbara Chvany. Any remainder in
25 this fund shall be paid by Albertson's as a charitable
26 contribution to the United Way as follows: 50% of remainder
27 shall be paid to the United Way umbrella agency to serve the
28 needs of women and/or Hispanics; the remaining 50% shall be paid

1 to a United Way certified agency selected by Class Counsel that
2 serves the needs of women and/or Hispanics.

3 B. Payments to Individual Plaintiffs and Other Named
4 Individuals: Albertson's shall make the following payments, in
5 a total amount not to exceed \$500,000, to Named Plaintiffs and to
6 Other Named Individuals:

7	Kathleen Crist Smith:	\$50,000
8	Patricia Babbitt:	\$50,000
9	Cheryl Davis:	\$50,000
10	Pam Farrington:	\$50,000
11	Lupe Ventura:	\$50,000
12	Josephine Lissebeck:	\$50,000
13	Annemarie Bryant:	\$30,000
14	Amy Smith:	\$30,000
15	Karen Bunker:	\$30,000
16	Ann Doucett:	\$30,000
17	Kimberly Wegner:	\$20,000
18	Mary Ludwig:	\$12,000
19	Kesha Turner:	\$10,000

20 The Named Plaintiffs and Other Named Individuals
21 shall be required to execute individual releases to be agreed
22 upon by the parties prior to distribution of these funds.

23 1. Withholding Taxes: Seventy-five percent (75%)
24 of all of the above payments to Class Members and Named
25 Plaintiffs and Other Named Individuals are related to their
26 personal injury claims. All applicable employee and employer
27 withholding and payroll taxes shall be deducted from that portion
8 not arising out of personal injury damages. Class Members and

1 Named Plaintiffs and Other Named Individuals shall be required to
2 agree to indemnify Albertson's in the event Albertson's is later
3 determined to be liable for additional employee or employer
4 payroll taxes with respect to the personal injury portion of such
5 payments.

6 C. Payment Dates:

7 1. Class Fund: Albertson's shall establish the
8 Class Fund: (a) in the event no timely appeal from the District
9 Court's Final Approval order is filed, within (7) days of the
10 Special Master's approval of all distribution amounts as
11 specified in Section III.B.10, below, or (b) in the event of any
12 appeal, immediately after all such appeals are finally resolved
13 by an order affirming in full the Final Approval Order of the
14 District Court and the time period for pursuing further appellate
15 review has expired, whichever is later ("Class Fund Payment
16 Date").

17 2. Named Individuals: In the event no timely
18 appeal from the District Court's Final Approval Order is filed,
19 Albertson's shall make the payments to the Named Plaintiffs and
20 to Other Named Individuals, within seven (7) days after the
21 expiration of the time to file an appeal of the Court's entry of
22 an order granting Final Approval.

23 3. Effect of Timely Appeal on Class and
24 Individual Payments: In the event a timely appeal is filed,
25 Albertson's shall be under no obligation to make payments to the
26 Named Plaintiffs, to Other Named Individuals, or to Eligible
27 Claimants (as defined in III.B, below) until fourteen (14) days
28 after all such appeals are finally resolved by an order affirming

1 in full the Final Approval Order of the District Court and the
2 time period for pursuing further appellate review has expired.
3 In the event that the Final Approval Order is reversed on appeal
4 or is modified such that Albertson's exercises its right to
5 declare the Decree null and void, all funds including interest
6 established by the Consent Decree for monetary payments to the
7 class and to all individuals shall be retained by Albertson's.
8 During the pendency of any such appeal, the Class Fund and all
9 funds allocated to Named Plaintiffs and to Other Named
10 Individuals shall accrue interest from the date of any such
11 appeal through the date of distribution.

12 4. Interest Rate: Unless otherwise provided, the
13 term "interest" or "interest rate" shall mean the one year
14 Treasury Bill rate [nearest equivalent to 365 days to maturity]
15 as published in the Wall Street Journal on the date any timely
16 appeal is filed.

17 II. ATTORNEYS' FEES

18 A. Albertson's shall pay Class Counsel \$4.5 million
19 in settlement of all fees and costs incurred in connection with
20 this case. Except as provided in paragraphs B and C, below, this
21 amount shall include all work performed and costs incurred in the
22 following: prosecuting the action from its inception through
23 settlement; in obtaining preliminary and final approval of the
24 Consent Decree from the District Court and any appeals therefrom;
25 in distribution of the Class Fund; and in monitoring the Consent
26 Decree throughout its term, except as set forth in paragraph B,
27 below.

8 ///

1 B. Nothing herein shall limit Albertson's obligation
2 to pay Class Counsel's fees and costs incurred in connection with
3 proceedings established under the terms of Article X of the
4 Consent Decree.

5 C. Nothing herein shall limit Albertson's obligation
6 to pay Class Counsel's fees and costs, at the firm's then current
7 hourly rates without any multiplier or interest, for work
8 performed in connection with (1) any appeal of the District
9 Court's final approval to the extent such work exceeds 50
10 attorney hours and (2) the distribution of the Class Fund to the
11 extent such work exceeds 50 attorney hours and 100 legal
12 assistant hours, subject to Court approval regarding the
13 reasonableness of any such additional fees.

14 D. If the time period for filing an appeal from the
15 District Court's Final Approval Order expires and no timely
16 appeal has been taken, Albertson's shall pay in full all
17 attorneys' fees and costs, as set forth in Section II.A. above,
18 to Class Counsel within seven (7) days.

19 E. In the event of an appeal from the Final Order
20 approving the Decree, Albertson's shall, within seven (7) days of
21 the filing of Notice of Appeal, pay 50% (i.e., \$2.25 million) of
22 the attorneys' fees and costs described in Section II.A., above,
23 to Class Counsel and shall deposit the remaining 50% (\$2.25
24 million) in an escrow account to be established jointly by
25 Albertson's and by Class Counsel at the Bank of California in
26 Oakland, California. The escrow instructions for such account
27 shall require the joint approval of the parties before any
28 proceeds of such account shall be distributed either to Class

1 Counsel or to Albertson's under the circumstances set forth
2 below. Class Counsel only shall have the right to direct
3 investments from the escrow account. The Bank of California
4 shall be responsible solely to Class Counsel as to investment
5 instructions. The risk of loss on the principal shall be borne
6 by Class Counsel.

7 In the event that the Final Approval Order of the
8 District Court has been affirmed and no further appeals are
9 permitted, Albertson's shall, within seven (7) days, direct the
10 escrow agent to release all funds in such account to Class
11 Counsel. In the event that the Final Approval Order is reversed
12 on appeal or is modified such that Albertson's exercises its
13 right to declare the Decree null and void, Class Counsel shall
14 direct that the escrow agent shall return to Albertson's the
15 principal amount of \$2.25 million, with interest at the one year
16 Treasury Bill Rate [nearest equivalent to 365 days to maturity]
17 as published in the Wall Street Journal on the day such funds are
18 deposited in the escrow account; any remaining funds shall be
19 released to Class Counsel. If there are insufficient funds in
20 the escrow account at such time to reimburse Albertson's in the
21 amount described above, then Class Counsel shall pay any such
22 deficiency to Albertson's at the time the funds are released from
23 the bank. In addition, in the event that the Final Approval
24 Order is reversed on appeal, or is modified such that Albertson's
25 exercises its right to declare the Decree null and void, Class
26 Counsel shall return the \$2.25 million in attorneys' fees
27 initially paid to Class Counsel by Albertson's, with interest
28 from the date Class Counsel received payment at the above-

1 described Treasury Bill Rate within sixty (60) days of such
2 event, together with any fees paid by Albertson's to Class
3 Counsel in connection with such appeal.

4 III. NOTICE AND DISTRIBUTION PLAN

5 A. Class Notice

6 1. Prior to the date on which the Court grants
7 Preliminary Approval of the Consent Decree, Class Counsel shall
8 provide Albertson's with a computer diskette containing names,
9 addresses, and Social Security Numbers of Albertson's current and
10 former employees for whom Class Counsel have addresses.

11 2. Within seven (7) days after the Court grants
12 Preliminary Approval of the Consent Decree, Albertson's shall
13 mail the Notice of Settlement [Exhibit 1] and the Monetary Relief
14 Claim Form [Exhibit 2] via first class mail to every class
15 member's last known address.

16 3. Albertson's shall immediately provide to a
17 tracing service acceptable to Class Counsel the names and Social
18 Security Numbers, and, if necessary, dates of birth, of all
19 female Class Members whose mail pursuant to Section III.A.2,
20 above, is returned as undeliverable. The tracing service shall
21 conduct address searches within seven (7) days. Albertson's
22 shall re-mail via first class mail the Notice of Settlement and
23 the Monetary Relief Claim Form, within seven (7) days of
24 receiving the notices from the tracing service, to all female
25 Class Members for whom the tracing service provides a new
26 address. Albertson's shall not be required to pay more than
27 \$5.00 per individual to be traced.

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1 4. Albertson's shall prepare and mail Notices,
2 Monetary Relief Claim Forms, settlement checks, replacement
3 checks, if any, and tax statements as required herein. Subject
4 to approval by Class Counsel, Albertson's may elect, at its sole
5 expense, to retain a third party accounting or escrow services
6 firm ("Administrator") to perform these duties.

7 5. Published Notice: No sooner than twelve (12)
8 days after Preliminary Approval, Albertson's shall begin
9 publication, at its cost, of the Published Notice of Settlement
10 in the form shown in Exhibit 3 as display advertisements in the
11 San Francisco Chronicle, Los Angeles Times, and Sacramento Bee.
12 Publication shall occur three times, approximately once a week,
13 concluding no later than thirty-three (33) days after Preliminary
14 Approval.

15 6. Store/Union Notice: No later than seven (7)
16 days after Preliminary Approval, Albertson's shall post the
17 Notice of Settlement [Exhibit 1] on a bulletin board commonly
18 used for employee notices in each retail store covered by this
19 Decree. This Notice shall remain posted until the expiration of
20 the period for filing timely objections. No later than seven
21 days (7) days after Preliminary Approval, Albertson's shall mail
22 a copy of the Notice of Settlement [Exhibit 1] to each union that
23 represents employees covered by the Consent Decree.

24 7. No later than forty-five (45) days after
25 Preliminary Approval, class members who wish to object to the
26 Proposed Settlement shall do so by mailing their written
27 objections to Clerk, United States District Court, 408 13th
28 Street, #546, Oakland, CA 94612. All such objections must be

1 signed and should contain the class member's name, Social
2 Security Number, and the name of this case. The objection should
3 clearly explain why the class member objects to the settlement.
4 A class member who wishes to appear at the hearing must file a
5 written objection and state his/her intention to appear.

6 8. No later than seven (7) days before the Final
7 Approval hearing, Class Counsel shall file with the Court copies
8 of objections received. The parties shall file their response(s)
9 to such objections, a proposed order ruling on any such
10 objections, and a proposed order providing for Final Approval of
11 the Consent Decree no later than seven (7) days before the Final
12 Approval hearing.

13 9. The Final Approval hearing shall be scheduled
14 on October 4, 1994 at 10:00 a.m.

15 B. Monetary Relief Claims Procedure

16 1. The Class Fund shall be allocated to eligible
17 female Class Members, other than those listed in Section I.B., as
18 set forth below.

19 2. Only female Class Members who (i) have worked,
20 at some time between April 15, 1987 and May 29, 1994, at an
21 Albertson's retail store in California in any job position except
22 jobs in the Pharmacy, Bakery Production or Meat Departments; (ii)
23 have six (6) months continuous service with Albertson's before
24 May 29, 1994; and (iii) file a "Monetary Relief Claim Form" under
25 the procedures below will be eligible to receive a monetary
26 distribution from the Class Fund. For all relevant purposes
27 herein, data contained in Albertson's Payroll History Master and
28 Company Master files shall be conclusive.

1 3. Only eligible female Class Members (see
2 preceding paragraph) who return a signed Monetary Relief Claim
3 Form [Exhibit 2] postmarked no later than forty-five (45) days
4 after Preliminary Approval shall be eligible to receive a
5 monetary distribution from the Class Fund.

6 4. In order to receive a monetary distribution
7 from the Class Fund, an eligible female Class Member must sign,
8 under penalty of perjury, the Monetary Relief Claim Form,
9 indicating her Social Security Number, date of birth, current
10 address, telephone number and any other name that Class Member
11 used as an employee while employed by Albertson's.

12 5. Albertson's, or, if applicable, the
13 Administrator, shall match against Albertson's records Social
14 Security Numbers for all female Class Members submitting a
15 Monetary Relief Claim Form prior to issuing any settlement
16 checks. If the Social Security Number on the Monetary Relief
17 Claim Form does not match the data on Albertson's Payroll History
18 Master file, the Class Member who submitted such form will be
19 required to submit a notarized Monetary Relief Claim Form.

20 6. Each female Class Member who meets all of the
21 above conditions ["Eligible Claimants"] will be assigned points
22 based on length of service with Albertson's ("Service Points").
23 One (1) Service Point will be assigned for each calendar year or
24 portion of a year in which the eligible female Class Member
25 worked as indicated on Albertson's Payroll History Master file,
26 up to a maximum of twelve (12) Service Points. Service Points
27 shall be assigned for all such employment within the Liability

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1 Period, as well as for employment which preceded but continued
2 into the Liability Period, without a break in service.

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4 7. The balance in the Class Fund available for
5 distribution to Class Members [Section I.A.1, above] shall be
6 divided by the sum of the Service Points of all Eligible
7 Claimants to determine a "Point Value." Each Eligible Claimant
8 shall be apportioned an "Individual Settlement Amount" equal to
9 the Point Value multiplied by the number of Service Points
10 assigned to her.

11 8. Within forty-five (45) days of the Final
12 Approval of the Decree, Albertson's, or if applicable the
13 Administrator, shall notify each Claimant by first class mail of
14 the determination whether such Claimant is an Eligible Claimant
15 and, if so, her allocation of Service Points. This notice shall
16 inform the Claimant of her right to challenge the allocation of
17 Service Points, by filing a written challenge to Albertson's.
18 Any such challenge must be postmarked within twenty (20) days of
19 the mailing of the determination. The notice will inform the
20 Claimant that any challenge filed after this time is waived.
21 Albertson's, or if applicable the Administrator, shall promptly
22 review such challenge, adjust it if appropriate, and notify the
23 Claimant of the result of such review within fourteen (14) days.

24 9. Any disputes as to the number of Service
25 Points assigned shall be subject to final and binding
26 determination by Special Master Barbara Chvany without right of
27 appeal; provided, however, the Special Master shall have no
28 authority to order any distribution that would cause or require
29 Albertson's to pay a total dollar amount in excess of the total

1 payment amount designated for Class Members in paragraph I.A.1,
2 above. Any such challenge must be mailed to the Special Master,
3 postmarked no later than twenty (20) days following denial of the
4 challenge by Albertson's. Any funds awarded by the Special
5 Master shall be paid only from the Class Fund. No payments shall
6 be made to Eligible Class Members until all Service Point
7 Disputes have been resolved by the Special Master.

8 10. Within 120 days of Final Approval of the
9 Decree, the parties shall submit to the Special Master for
10 approval a joint statement confirming the Individual Settlement
11 Amounts to be paid to Eligible Claimants. Upon approval by the
12 Special Master, Individual Settlement Amounts shall be
13 distributed as set forth below. The Special Master shall approve
14 the Individual Settlement Amounts within fifteen (15) days,
15 unless an extension of time is granted in writing by Albertson's
16 and Class Counsel.

17 11. Within thirty (30) days of approval of the
18 Individual Settlement Amounts by the Special Master, Albertson's
19 or the Administrator shall mail a check or checks in the total
20 amount of the Individual Settlement Amount, less applicable
21 withholding taxes, to each Eligible Claimant to the address
22 listed on the completed Monetary Relief Claim Form. Albertson's
23 shall certify to Class Counsel that all checks have been mailed
24 as provided herein. However, in the event of any appeal from the
25 District Court order granting Final Approval, see Section I.C.3.

26 12. The Individual Settlement Amount checks shall
27 include a printed notice that failure to negotiate the check
28 within six (6) months will void the check. The checks may also

1 include a pre-printed notice on the endorsement side that the
2 endorser has received notice of the waiver and release provisions
3 of the Consent Decree. Six months following certification of the
4 mailing of the checks, all uncashed, outstanding, or returned
5 checks shall be deemed void and shall be distributed to the
6 United Way in accordance with paragraph I.A.5 of this Exhibit.

7 13. Monetary Relief Claim Forms may be submitted
8 on behalf of deceased female Class Members pursuant to California
9 law.

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