

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	
)	
AB Acquisition, LLC,)	Docket No.
a limited liability company.)	
)	
)	

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by AB Acquisition, LLC (hereinafter, “Proposed Respondent”) of United Supermarkets L.L.C., and it now appearing that Proposed Respondent is willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) to divest certain assets and providing for other relief;

IT IS HEREBY AGREED by and between Proposed Respondent, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent AB Acquisition, LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.
2. Proposed Respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.
3. Proposed Respondent waives:
 - a. any further procedural steps;
 - b. any requirement that the Commission’s Order to Maintain Assets and Decision and Order, both attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order to Maintain Assets or the Decision and Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.

4. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
5. Proposed Respondent shall submit an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, no later than thirty (30) days after it executes this Consent Agreement. The report shall be signed by the Proposed Respondent and shall set forth in detail the manner in which the Proposed Respondent has to date complied or has prepared to comply, is complying, and will comply with the Order to Maintain Assets and the Decision and Order. Such report will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.
6. In the above-described report, Proposed Respondent shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondent is in compliance with this Consent Agreement, the Order to Maintain Assets and the Decision and Order. The report shall be verified by a notarized signature or sworn statement, or self-verified in the manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Proposed Respondent shall file the original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division. The copy provided to the Compliance Division may be provided in electronic format.
7. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and issue and serve its Decision and Order, in disposition of the proceeding.
8. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
9. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft Complaint here attached, (b) issue and serve its Order to Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, 16 C.F.R. § 2.34, the Commission

may, without further notice to Proposed Respondent, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.

10. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) shall constitute service (including, but not limited to, delivery to Proposed Respondent's Counsel as identified in this Consent Agreement). Proposed Respondent waives any right it may have to any other manner of service. Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order (where Proposed Respondent is already in possession of copies of such Appendices), and agrees that it is bound to comply with and will comply with the Decision and Order and the Order to Maintain Assets to the same extent as if it had been served with copies of the Appendices.
11. The Complaint may be used in construing the terms of the Decision and Order and the Order to Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Maintain Assets, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or the Order to Maintain Assets.
12. Proposed Respondent has read the draft Complaint and the Decision and Order contemplated hereby. By signing this Consent Agreement, Proposed Respondent represents and warrants that:
 - a. it can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments and transfers, and obtaining any necessary approvals from governmental authorities, leaseholders, and other third parties to effectuate the divestitures, assignments and transfers) and the Order to Maintain Assets;
 - b. all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the attached Decision and Order and Order to Maintain Assets are parties to this Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding, the Decision and Order and the Order to Maintain Assets; and
 - c. it shall interpret the Divestiture Agreement under the Decision and Order in a manner that is fully consistent with all of the relevant provisions, and the remedial purposes, of the Decision and Order.

13. Proposed Respondent understands that once the Decision and Order and the Order to Maintain Assets have been issued, it will be required to file one or more compliance reports showing how it has complied and is complying with the Decision and Order and the Order to Maintain Assets.
14. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order and the Order to Maintain Assets from the date it signs this Consent Agreement. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and the Order to Maintain Assets after they become final.

AB ACQUISITION, LLC

Robert G. Miller
Chief Executive Officer
AB Acquisition, LLC

Dated: _____

Michael E. Swartz, Esq.
Schulte Roth & Zabel LLP
Attorney for AB Acquisition, LLC

Dated: _____

FEDERAL TRADE COMMISSION

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