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UNITED STATES OF AMERICA

11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 UNITED STATES OF AMERICA,) No. CR 05-1210-PA
17 Plaintiff,)
18 v.) **PLEA AGREEMENT FOR DEFENDANT**
19 RALPHS GROCERY COMPANY,) **RALPHS GROCERY COMPANY;**
20 Defendant.) **EXHIBITS**
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1 I.

2 **INTRODUCTION**

3 1. This constitutes the binding plea agreement in the
4 above-captioned case (the "Plea Agreement") between the United
5 States Attorney's Office for the Central District of California
6 ("USAO") and defendant RALPHS GROCERY COMPANY ("RALPHS"). This
7 Plea Agreement is entered into pursuant to Federal Rule of
8 Criminal Procedure 11(c)(1)(C).

9 2. This Plea Agreement arises out of the Indictment in
10 United States v. Ralphs Grocery Company, CR 05-1210-PA (the
11 "Indictment").

12 II.

13 **DEFINITIONS**

14 3. As used in this Plea Agreement, the following terms
15 have the following meanings:

16 a. "CBA" means the Retail Food, Meat, Bakery, Candy
17 And General Merchandise Agreement, in effect from on or about
18 October 4, 1999, through on or about October 5, 2003, between, on
19 the one hand, the Unions (as defined in subparagraph 3(k) below)
20 and, on the other hand, RALPHS; Albertson's Inc. ("Albertsons");
21 Lucky Stores, Inc.; Stater Bros. Markets; and Vons, A Safeway
22 Company ("Vons").

23 b. "Eligible Employee" means any person who:

24 i. Was a RALPHS employee covered by the CBA;

25 ii. Was locked out by RALPHS during the Lockout
26 (as defined in subparagraph 3(d) below); and

27 iii. Did not work for RALPHS, Albertsons, or Vons
28 during the Strike (as defined in subparagraph 3(i) below) or

1 Lockout, under any name or identity.

2 c. "Kroger" means The Kroger Co., a publicly-traded
3 Ohio corporation headquartered in Cincinnati, Ohio, which
4 indirectly owns and controls RALPHS.

5 d. The "Lockout" means RALPHS' and Albertsons'
6 lock-out of employees covered by the CBA, beginning on or about
7 October 12, 2003, and continuing until on or about March 1, 2004.

8 e. "Lockout Benefit" means any payment that was:

9 i. Made by any of the Unions (as defined in
10 subparagraph 3(k) below) to any Eligible Employee during the
11 Lockout; and

12 ii. Intended and understood by the Union making
13 the payment and by the Eligible Employee receiving the payment to
14 replace, in whole or in part, wages not earned by the Eligible
15 Employee as a result of being locked out, or to otherwise
16 financially assist the Eligible Employee during the Lockout;
17 provided, however, that no payment of the type described in the
18 second sentence of paragraph 67 below shall be deemed a Lockout
19 Benefit.

20 f. "The NLRB" means the National Labor Relations
21 Board and all divisions, departments, and offices thereof.

22 g. "The NLRB Charges" means all of the unfair labor
23 practice charges pending before the NLRB in the following matters
24 as of the date this Plea Agreement is filed:

25 i. Case No. 31-CA-26634-2;

26 ii. Case No. 31-CA-26635-2;

27 iii. Case No. 31-CA-26637-2;

28 iv. Case No. 31-CA-26687-2; and

1 v. Case No. 31-CA-26693-2.

2 h. "The Ralphps Restitution Fund" ("The RRF") means
3 the fund established and operated pursuant to Section XIII of
4 this Plea Agreement.

5 i. The "Strike" means the Unions' strike of Vons
6 beginning on or about October 11, 2003, and continuing until on
7 or about March 1, 2004.

8 j. "The Special Master" means the person appointed by
9 the Court to administer the RRF in accordance with Section XIII
10 of this Plea Agreement. The Special Master may select one or
11 more firms to assist him in the operation and administration of
12 the RRF, the processing of claim forms sent to the RRF, and the
13 distribution of monies from the RRF.

14 k. "The Unions" means all of the following local
15 unions of the United Food and Commercial Workers Union ("UFCW"):

- 16 i. UFCW Local 135;
- 17 ii. UFCW Local 324;
- 18 iii. UFCW Local 770;
- 19 iv. UFCW Local 1036;
- 20 v. UFCW Local 1167;
- 21 vi. UFCW Local 1428; and
- 22 vii. UFCW Local 1442.

23 **III.**

24 **SCOPE OF THIS PLEA AGREEMENT**

25 4. This Plea Agreement binds the USAO and RALPHS. This
26 Plea Agreement does not bind (a) any local, state, or other
27 federal prosecuting authorities, or (b) any local, state, or
28 federal administrative or regulatory authorities.

1 IV.

2 **CONDITIONS PRECEDENT TO THIS PLEA AGREEMENT**

3 5. This Plea Agreement and the obligations it creates will
4 not become binding on the USAO unless and until each and every
5 one of the following events occurs:

6 a. Before RALPHS enters its guilty pleas, RALPHS
7 provides to the USAO the following documents, in a form
8 acceptable to the USAO:

9 i. A duly-enacted resolution of the RALPHS Board
10 of Directors providing all necessary power and authority to a
11 duly-appointed RALPHS officer, agent, or attorney to:

12 (a) Enter into this Plea Agreement and the
13 applicable Exhibits to this Agreement; and

14 (b) Appear in court and enter guilty pleas
15 on behalf of RALPHS in accordance with this Plea Agreement; and

16 ii. A certification by the Secretary of RALPHS
17 attesting to the authenticity of the resolution specified in
18 subparagraph 5(a)(i) above;

19 b. Before RALPHS enters its guilty pleas, RALPHS and
20 Kroger each executes and delivers to the USAO a Limited Attorney-
21 Client Privilege And Attorney Work-Product Waiver, in a form
22 substantially similar to Exhibits D and E to this Plea Agreement;

23 c. The Court determines to be bound by this Plea
24 Agreement under Federal Rule of Criminal Procedure 11(c)(1)(C),
25 accepts this Plea Agreement, accepts RALPHS' guilty pleas, and
26 appoints the Special Master;

27 d. No later than three business days after RALPHS
28 receives notice that the NLRB has approved the requests to

1 withdraw, and has dismissed, the NLRB Charges, RALPHS pays, or
2 causes to be paid, a \$20,000,000 criminal fine to the United
3 States Treasury, as set forth in paragraph 31 below;

4 e. No later than three business days after RALPHS
5 receives notice that the NLRB has approved the requests to
6 withdraw, and has dismissed, the NLRB Charges, RALPHS pays, or
7 causes to be paid, \$2,000 in special assessments to the United
8 States Treasury, as set forth in paragraph 33 below; and

9 f. RALPHS establishes and funds, or causes to be
10 established and funded, the RRF, for the purposes, on the terms,
11 and according to the schedule set forth in Section XIII of this
12 Plea Agreement.

13 6. Should any one of the events specified in paragraph 5
14 above not occur, the USAO will not be bound by any of its
15 obligations under this Plea Agreement.

16 7. The obligations created by subparagraphs 81(e), 81(f),
17 81(g), 81(h), and 81(i) of this Plea Agreement will not become
18 binding on RALPHS unless and until each and every one of the
19 following events occurs:

20 a. The Court determines to be bound by this Plea
21 Agreement under Federal Rule of Criminal Procedure 11(c)(1)(C),
22 accepts this Plea Agreement, accepts RALPHS' guilty pleas, and
23 appoints the Special Master;

24 b. No later than three business days after the Court
25 determines to be bound by this Plea Agreement under Federal Rule
26 of Criminal Procedure 11(c)(1)(C) and accepts this Plea
27 Agreement, but before RALPHS is sentenced, the Unions request
28 that the NLRB withdraw Case Nos. 31-CA-26634-2, 31-CA-26635-2,

1 and 31-CA-26637-2, in reliance on RALPHS' agreement to establish
2 and fund, or to cause to be established and funded, the RRF, for
3 the purposes, on the terms, and according to the schedule set
4 forth in Section XIII of this Plea Agreement, all as set forth in
5 a writing executed by all of the Presidents of the Unions in a
6 form substantially similar to Exhibit C to this Plea Agreement;

7 c. No later than three business days after the Court
8 determines to be bound by this Plea Agreement under Federal Rule
9 of Criminal Procedure 11(c)(1)(C) and accepts this Plea
10 Agreement, but before RALPHS is sentenced, the individual
11 charging parties in Case Nos. 31-CA-26687-2 and 31-CA-26693-2,
12 and/or counsel acting on behalf of such individual charging
13 parties, request that the NLRB withdraw those cases, in reliance
14 on RALPHS' agreement to establish and fund, or to cause to be
15 established and funded, the RRF, for the purposes, on the terms,
16 and according to the schedule set forth in Section XIII of this
17 Plea Agreement; and

18 d. Upon request of the Unions and the individual
19 charging parties as set forth in subparagraphs 7(b) and 7(c)
20 above, but before RALPHS funds the RRF as set forth in Section
21 XIII of this Plea Agreement, the NLRB approves the withdrawal of,
22 and dismisses, the NLRB Charges.

23 8. Should any one of the events specified in paragraph 7
24 above not occur, RALPHS will not be bound by the obligations
25 created by subparagraphs 81(e), 81(f), 81(g), 81(h), and 81(i) of
26 this Plea Agreement.

27 9. All obligations on RALPHS created by this Plea
28 Agreement, other than the obligations created by subparagraphs

1 81(e), 81(f), 81(g), 81(h), and 81(i), will become binding on
2 RALPHS at the time of RALPHS' execution of this Plea Agreement
3 and will remain binding on RALPHS unless and until this Plea
4 Agreement is rendered null and void pursuant to subparagraph
5 12(b) below.

6 10. If, after RALPHS has complied with the obligations
7 created by subparagraphs 81(a), 81(b), 81(c), and 81(d) of this
8 Plea Agreement, one or more of the events specified in
9 paragraph 7 above does not occur, then:

- 10 a. RALPHS may move to withdraw its guilty pleas;
11 b. The USAO will not oppose any motion by RALPHS to
12 withdraw its guilty pleas; and
13 c. Neither party will be bound by any of its
14 obligations under this Plea Agreement.

15 **V.**

16 **FEDERAL RULE OF CRIMINAL PROCEDURE 11(c)(1)(C)**

17 11. This Plea Agreement is entered into pursuant to Federal
18 Rule of Criminal Procedure 11(c)(1)(C). The Court is not a party
19 to this Plea Agreement and need not accept it. The USAO and
20 RALPHS will ask the Court to determine and advise them, before
21 RALPHS enters its guilty pleas pursuant to this Plea Agreement,
22 whether the Court accepts or rejects this Plea Agreement, and
23 specifically whether it will include the disposition agreed upon
24 in this Plea Agreement in the judgment that the Court will enter
25 against RALPHS.

26 12. If, before RALPHS enters its guilty pleas, the Court
27 advises the USAO and RALPHS that the Court rejects this Plea
28 Agreement:

1 a. Neither party to this Plea Agreement will be bound
2 by it or any of its terms or conditions; and

3 b. This Plea Agreement will become null and void.

4 **VI.**

5 **GUILTY PLEAS**

6 13. RALPHS agrees to plead guilty to Counts One, Four,
7 Nineteen, Twenty-One, and Fifty of the Indictment. RALPHS will
8 enter its guilty pleas through an officer, agent, or attorney
9 authorized to so act by a duly-enacted resolution of the RALPHS
10 Board of Directors. Kroger is not charged in, will not enter
11 guilty pleas to, and does not admit any liability for, any Counts
12 of the Indictment or any wrongdoing in this case.

13 **VII.**

14 **NATURE OF THE OFFENSES**

15 **A. Count One**

16 14. In order for RALPHS to be guilty of Count One of the
17 Indictment, which charges conspiracy to commit specified federal
18 offenses in violation of Title 18, United States Code, Section
19 371, the following must be true:

20 a. Beginning on a date unknown but as early as in or
21 about June 2003, and continuing until the date of the Indictment,
22 RALPHS, by and through its officers, employees, and agents,
23 agreed to commit at least one of the following crimes, the
24 elements of which are set forth in Subsections VII.B, VII.C, and
25 VII.D of this Plea Agreement:

26 i. False representation of social security
27 numbers, in violation of 42 U.S.C. § 408(a)(7)(B) and 18 U.S.C.
28 § 2;

1 ii. Identity fraud, in violation of 18 U.S.C.
2 §§ 1028(a)(7) and 2; or

3 iii. Falsification and concealment of material
4 facts within federal agency jurisdiction, in violation of 18
5 U.S.C. §§ 1001(a)(1) and 2;

6 b. RALPHS, by and through its officers, employees,
7 and agents, knew of at least one object of the conspiracy and
8 intended to help accomplish it; and

9 c. RALPHS, by and through an officer, employee, or
10 agent, committed or caused another to commit at least one overt
11 act for the purpose of carrying out the conspiracy.

12 **B. Count Four**

13 15. In order for RALPHS to be guilty of Count Four of the
14 Indictment, which charges false representation of a social
15 security number in violation of Title 42, United States Code,
16 Section 408(a)(7)(B) and Title 18, United States Code, Section 2,
17 the following must be true:

18 a. RALPHS, by and through an officer, employee, or
19 agent, caused locked-out employee Edward Wren to falsely
20 represent a number to be the social security number assigned to
21 him by the Commissioner of Social Security;

22 b. That number was not the social security number
23 assigned to Edward Wren by the Commissioner of Social Security;
24 and

25 c. RALPHS acted knowingly, with the intent to
26 deceive, and for any purpose.

27

28

1 **C. Count Nineteen**

2 16. In order for RALPHS to be guilty of Count Nineteen of
3 the Indictment, which charges identity fraud in violation of
4 Title 18, United States Code, Sections 1028(a) (7) and 2, the
5 following must be true:

6 a. RALPHS, by and through an officer, employee, or
7 agent, caused locked-out employee Raul Bonwell to transfer or use
8 the means of identification of his wife;

9 b. The transfer or use of the means of identification
10 was without lawful authority and in or affecting interstate
11 commerce; and

12 c. RALPHS acted knowingly and with intent to commit,
13 or to aid and abet, unlawful activity constituting a violation of
14 Federal law.

15 **D. Count Twenty-One**

16 17. In order for RALPHS to be guilty of Count Twenty-One of
17 the Indictment, which charges falsification and concealment of
18 material facts within federal agency jurisdiction in violation of
19 Title 18, United States Code, Sections 1001(a) (1) and 2, the
20 following must be true:

21 a. RALPHS, by and through an officer, employee, or
22 agent, falsified, concealed, or covered up, or caused another to
23 falsify, conceal, or cover up, by trick, scheme, or device, a
24 fact in a matter within the jurisdiction of the Social Security
25 Administration ("SSA") or the Internal Revenue Service ("IRS");

26 b. The fact was material to the agency's actions or
27 decisions, in that it influenced, or had the capacity to
28 influence, those actions or decisions;

1 c. SSA and IRS were agencies of the executive branch
2 of the United States government;

3 d. RALPHS, by and through its officers, employees,
4 and agents, acted knowingly and willfully, that is deliberately
5 and knowing that the fact was falsified, concealed, or covered
6 up; and

7 e. To the extent that RALPHS is charged with
8 concealing a material fact, RALPHS had a legal duty to disclose
9 the fact.

10 **E. Count Fifty**

11 18. In order for RALPHS to be guilty of Count Fifty of the
12 Indictment, which charges concealment of facts relating to
13 employee benefit plans in violation of Title 18, United States
14 Code, Sections 1027 and 2, the following must be true:

15 a. RALPHS knowingly concealed, covered up, or failed
16 to disclose, or caused another to conceal, cover up, or fail to
17 disclose, a fact;

18 b. The concealment, cover-up, or failure to disclose
19 was in a document required by Title I of the Employee Retirement
20 Income Security Act of 1974 ("ERISA") to be published, kept as
21 part of the records of any employee welfare benefit plan or
22 employee pension benefit plan, or certified to the administrator
23 of any such plan;

24 c. The disclosure of the fact was:

25 i. Required by Title I of ERISA; or

26 ii. Necessary to verify, explain, clarify, or
27 check for accuracy and completeness any report required by
28 Title I of ERISA to be published or any information required by

1 Title I of ERISA to be certified; and

2 d. The fact related to the administration of a
3 benefit plan subject to Title I of ERISA.

4 **VIII.**

5 **MAXIMUM PENALTIES**

6 **A. Count One**

7 19. The statutory maximum sentence that the Court can
8 impose on RALPHS for its conviction on Count One of the
9 Indictment is:

10 a. Pursuant to Title 18, United States Code, Section
11 3561(c)(1), a term of five years probation;

12 b. Pursuant to Title 18, United States Code, Sections
13 371, 3571(c)(3), and 3571(d), a fine consisting of the greatest
14 of:

15 i. \$500,000; or

16 ii. Twice the gross pecuniary gain derived by any
17 person or entity from the offense; or

18 iii. Twice the gross pecuniary loss resulting from
19 the offense to any person(s) or entities other than RALPHS; and

20 c. Pursuant to Title 18, United States Code,
21 Section 3013(a)(2)(B), a special assessment of \$400.

22 **B. Count Four**

23 20. The statutory maximum sentence that the Court can
24 impose on RALPHS for its conviction on Count Four of the
25 Indictment is:

26 a. Pursuant to Title 18, United States Code,
27 Section 3561(c)(1), a term of five years probation;

1 b. Pursuant to Title 42, United States Code, Section
2 408(a)(7)(B), and Title 18, United States Code, Sections
3 3571(c)(3) and 3571(d), a fine consisting of the greatest of:

4 i. \$500,000; or

5 ii. Twice the gross pecuniary gain derived by any
6 person or entity from the offense; or

7 iii. Twice the gross pecuniary loss resulting from
8 the offense to any person(s) or entities other than RALPHS; and

9 c. Pursuant to Title 18, United States Code,
10 Section 3013(a)(2)(B), a special assessment of \$400.

11 **C. Count Nineteen**

12 21. The statutory maximum sentence that the Court can
13 impose on RALPHS for its conviction on Count Nineteen of the
14 Indictment is:

15 a. Pursuant to Title 18, United States Code,
16 Section 3561(c)(1), a term of five years probation;

17 b. Pursuant to Title 18, United States Code,
18 Sections 1028(a)(7), 3571(c)(3), and 3571(d), a fine consisting
19 of the greatest of:

20 i. \$500,000; or

21 ii. Twice the gross pecuniary gain derived by any
22 person or entity from the offense; or

23 iii. Twice the gross pecuniary loss resulting from
24 the offense to any person(s) or entities other than RALPHS;

25 c. Pursuant to Title 18, United States Code,
26 Section 3013(a)(2)(B), a special assessment of \$400; and

27 d. Forfeiture to the United States of any personal
28 property used or intended to be used to commit the offense.

1 **D. Count Twenty-One**

2 22. The statutory maximum sentence that the Court can
3 impose on RALPHS for its conviction on Count Twenty-One of the
4 Indictment is:

5 a. Pursuant to Title 18, United States Code,
6 Section 3561(c)(1), a term of five years probation;

7 b. Pursuant to Title 18, United States Code,
8 Sections 1001, 3571(c)(3), and 3571(d), a fine consisting of the
9 greatest of:

10 i. \$500,000; or

11 ii. Twice the gross pecuniary gain derived by any
12 person or entity from the offense; or

13 iii. Twice the gross pecuniary loss resulting from
14 the offense to any person(s) or entities other than RALPHS; and

15 c. Pursuant to Title 18, United States Code,
16 Section 3013(a)(2)(B), a special assessment of \$400.

17 **E. Count Fifty**

18 23. The statutory maximum sentence that the Court can
19 impose on RALPHS for its conviction on Count Fifty of the
20 Indictment is:

21 a. Pursuant to Title 18, United States Code,
22 Section 3561(c)(1), a term of five years probation;

23 b. Pursuant to Title 18, United States Code,
24 Sections 1027, 3571(c)(3), and 3571(d), a fine consisting of the
25 greatest of:

26 i. \$500,000; or

27 ii. Twice the gross pecuniary gain derived by any
28 person or entity from the offense; or

1 X.

2 **WAIVER OF CONSTITUTIONAL AND OTHER RIGHTS**

3 26. By pleading guilty, RALPHS gives up the following
4 rights:

5 a. The right to persist in a plea of not guilty;

6 b. The right to a speedy and public trial by jury;

7 c. The right to the assistance of counsel at trial.

8 Despite pleading guilty, RALPHS retains the right to be
9 represented by counsel at every stage of the proceedings.

10 d. The right to be presumed innocent and to have the
11 burden of proof placed on the government to prove RALPHS guilty
12 beyond a reasonable doubt;

13 e. The right to confront and cross-examine witnesses
14 against it; and

15 f. The right to present evidence in defense of the
16 charges, including the right to call witnesses and to subpoena
17 those witnesses to testify.

18 27. By pleading guilty, RALPHS also gives up all rights to
19 raise and pursue any affirmative defenses; all Fourth Amendment
20 or Fifth Amendment challenges to the admissibility or use of
21 evidence against it; and all opportunity to bring and pursue any
22 pretrial motions that could be filed on its behalf.

23 XI.

24 **SENTENCING FACTORS**

25 28. RALPHS understands that the Court is required to
26 consider Chapter 8 of the United States Sentencing Guidelines
27 ("U.S.S.G." or "Sentencing Guidelines"), which governs sentencing
28 of organizations, and the other factors set forth in Title 18,

1 United States Code, Section 3553(a), in imposing the sentence
2 agreed upon herein.

3 29. The USAO and RALPHS agree that the sentence agreed upon
4 in this Plea Agreement is appropriate based on consideration of
5 the factors set forth in Title 18, United States Code,
6 Section 3553(a), including:

- 7 a. The nature and circumstances of the offenses;
- 8 b. The history and characteristics of RALPHS;
- 9 c. The need for the sentence imposed:
 - 10 i. To reflect the seriousness of the offenses;
 - 11 ii. To promote respect for the law;
 - 12 iii. To provide just punishment for the offenses;
 - 13 iv. To afford adequate deterrence to criminal
14 conduct; and
 - 15 v. To protect the public from further crimes of
16 RALPHS;
- 17 d. The kinds of sentences available; and
- 18 e. The kinds of sentence and the sentencing range
19 established for the offenses as committed by RALPHS, as set forth
20 in Chapter 8 of the Sentencing Guidelines.

21 **XII.**

22 **CRIMINAL FINE, SPECIAL ASSESSMENT, AND RESTITUTION**

23 30. The USAO and RALPHS agree that, pursuant to 18 U.S.C.
24 § 3571(d), the maximum fine amount for RALPHS is no less than
25 \$20,000,000.

26 31. RALPHS agrees that, no later than three business days
27 after RALPHS receives notice that the NLRB has approved the
28 requests to withdraw, and has dismissed, the NLRB Charges, RALPHS

1 will pay, or cause to be paid, a \$20,000,000 criminal fine to the
2 United States Treasury.

3 32. RALPHS agrees that should the Court find that RALPHS
4 has violated a condition of its probation, the Court may impose
5 on RALPHS an additional criminal fine of up to \$20,000,000, as
6 determined in accordance with paragraph 76 below.

7 33. RALPHS agrees that, no later than three business days
8 after RALPHS receives notice that the NLRB has approved the
9 requests to withdraw, and has dismissed, the NLRB Charges, RALPHS
10 will pay, or cause to be paid, \$2,000 in special assessments to
11 the United States Treasury.

12 34. The USAO and RALPHS agree that, as a less complicated
13 and more efficient alternative to judicial determination of
14 individual restitution at sentencing, RALPHS will establish and
15 fund the RRF in the amount of \$50,000,000, to be administered by
16 the Special Master as set forth in Section XIII of this Plea
17 Agreement.

18 35. The USAO agrees that the victims of the offenses of
19 conviction are (a) Eligible Employees; (b) the Unions; (c) SSA
20 and IRS; and (d) the employee benefit funds named in paragraph 43
21 below. The USAO agrees that no individuals, entities, or
22 agencies other than those specified in the preceding sentence are
23 entitled to criminal restitution in CR 05-1210-PA based on the
24 offenses of conviction. The USAO agrees not to seek criminal
25 restitution for SSA or IRS based on RALPHS' conviction on Count
26 Twenty-One of the Indictment.

27

28

1 XIII.

2 ESTABLISHMENT, FUNDING, OPERATION, AND ADMINISTRATION OF
3 THE RALPHS RESTITUTION FUND

4 A. Court Appointment Of The Special Master To Administer
5 The Ralphs Restitution Fund

6 36. Upon accepting this Plea Agreement and RALPHS' guilty
7 pleas, the Court shall appoint the Special Master to administer
8 the RRF. Throughout his administration of the RRF, the Special
9 Master shall report to the Court on a periodic basis, as deemed
10 necessary or appropriate by the Special Master and the Court,
11 regarding the status of, claims made upon, balance in, and
12 payments made from the RRF. All reports by the Special Master to
13 the Court shall be publicly filed and made part of the docket in
14 CR 05-1210-PA, unless the Court, upon application of, and for
15 good cause shown by, the Special Master, permits a report to be
16 filed under seal. The Special Master shall be supervised by the
17 Court, and shall not report to or take orders from RALPHS,
18 Kroger, any other Kroger subsidiary or affiliate, or any of the
19 Unions.

20 37. The Special Master shall post, or cause to be posted, a
21 bond, and/or shall obtain an insurance policy, sufficient to
22 fully insure and protect the monies to be paid by RALPHS pursuant
23 to paragraph 39 below. The Special Master may also obtain a
24 liability insurance policy to insure and protect himself against
25 claims made against him in connection with his administration of
26 the RRF.

27 38. No later than three business days after being
28 appointed, or within such other period of time granted by the
Court upon request of, and for good cause shown by, the Special

1 Master, the Special Master shall open an interest-bearing bank
2 account ("the RRF Bank Account") in order to receive the monies
3 to be paid by RALPHS pursuant to paragraph 39 below. The RRF
4 Bank Account shall be opened in the name of "The Ralphs
5 Restitution Fund." All proceeds deposited into the RRF Bank
6 Account shall be held in the form of cash, cash equivalents, or a
7 similarly safe financial instrument (such as a certificate of
8 deposit). All interest and other income of any type earned on
9 funds held in the RRF Bank Account shall become part of the RRF
10 and shall be available for distribution by the Special Master
11 according to this Section XIII. The Special Master shall have
12 signatory authority over the RRF Bank Account, and shall not
13 share any such signatory authority with, or delegate or assign it
14 to, any other person or entity, except that the Special Master
15 may, with Court approval, share any such signatory authority
16 with, or delegate or assign it to, responsible officers of any
17 firms that he selects to assist him in the operation and
18 administration of the RRF and the distribution of monies from the
19 RRF. Immediately after opening the RRF Bank Account, the Special
20 Master shall notify RALPHS of such opening and shall provide
21 RALPHS with all RRF Bank Account information necessary to enable
22 and facilitate the funding of the RRF Bank Account in accordance
23 with paragraph 39 below.

24 **B. Funding Of The Ralphs Restitution Fund**

25 39. No later than three business days after RALPHS receives
26 notice that the NLRB has approved the requests to withdraw, and
27 has dismissed, the NLRB Charges, RALPHS shall pay, or cause to be
28 paid, \$50,000,000 to the RRF Bank Account. Upon payment of that

1 \$50,000,000, neither RALPHS, Kroger, nor any other Kroger
2 subsidiary or affiliate shall have any right, title, or interest
3 in, or claim to, the \$50,000,000 or any interest or income
4 derived or generated therefrom.

5 **C. Documents, Records, And Information To Be Provided To**
6 **The Special Master**

7 40. No later than 15 calendar days after the Court appoints
8 the Special Master, RALPHS shall provide or cause to be provided
9 to the Special Master the last known addresses and contact
10 information (in a form acceptable to the Special Master for use
11 in creating a mailing list) for RALPHS employees (except
12 pharmacists) who were covered by the CBA as of October 11, 2003.

13 41. No later than 45 calendar days after the Court appoints
14 the Special Master, RALPHS shall provide or cause to be provided
15 to the Special Master the following documents, records, and
16 information in the possession, custody, or control of RALPHS,
17 Kroger, or any other Kroger subsidiary or affiliate, as well as
18 any other documents, records, and information that the Special
19 Master deems necessary or relevant to his administration of,
20 and/or disbursements of monies from, the RRF:

21 a. Payroll records for RALPHS employees (except
22 pharmacists) who were covered by the CBA as of October 11, 2003;
23 and

24 b. Information concerning the following for RALPHS
25 employees (except pharmacists) who were covered by the CBA as of
26 October 11, 2003:

- 27 i. True and correct social security numbers;
28 ii. Hourly wage rates as of October 11, 2003;

1 iii. Employee classifications as of October 11,
2 2003;

3 iv. Full-time and part-time status of employees
4 as of October 11, 2003; and

5 v. The identities of RALPHS employees (except
6 pharmacists) who were covered by the CBA and were employed by
7 RALPHS, Albertsons, or Vons during the Strike or Lockout, whether
8 or not so employed under their true identities, together with the
9 periods during the Strike or Lockout when they were so employed.

10 42. No later than 45 calendar days after the Court appoints
11 the Special Master, the USAO shall provide to the Special Master
12 information in its possession concerning the identities of RALPHS
13 employees (except pharmacists) who were covered by the CBA and
14 were employed by RALPHS, Albertsons, or Vons during the Strike or
15 Lockout, whether or not so employed under their true identities,
16 together with the periods during the Strike or Lockout when they
17 were so employed.

18 **D. Operation And Administration Of, And Distributions From,**
19 **The Ralphs Restitution Fund**

20 **1. Distributions To The Employee Benefit Funds**

21 43. No later than seven calendar days after the payment of
22 \$50,000,000 to the RRF Bank Account as set forth in paragraph 39
23 above, and before disbursing any other monies from the RRF Bank
24 Account, the Special Master shall disburse the following monies
25 to the following employee benefit funds, which monies constitute
26 the remaining unpaid contributions and other amounts due and
27 owing to these employee benefit funds based upon hours worked at
28 RALPHS during the Strike and Lockout, as calculated by the

1 auditing firm of Hemming Morse, Inc.:

2 a. \$476,181.76 to the United Food and Commercial
3 Workers Unions and Food Employers Benefit Fund, for health and
4 welfare contributions;

5 b. \$178,746.13 to the Southern California United Food
6 and Commercial Workers Unions and Food Employers Joint Pension
7 Trust Funds, for pension contributions; and

8 c. \$21,034.15 to the Southern California United Food
9 and Commercial Workers and Food Employers Individual Account
10 Plan.

11 44. Before making any disbursement from the RRF to any
12 employee benefit fund, the Special Master shall obtain from such
13 employee benefit fund an agreement that, upon accepting any such
14 disbursement, such employee benefit fund shall not seek any
15 further criminal restitution from RALPHS in CR 05-1210-PA.

16 **2. The Claims Period**

17 **a. Duration**

18 45. The Claims Period shall commence on the date that
19 RALPHS provides to the Special Master the last known addresses
20 and contact information set forth in paragraph 40 above, and
21 shall end 180 calendar days later, unless the Court extends the
22 Claims Period upon request of, and for good cause shown by, the
23 Special Master.

24 **b. Claim Forms**

25 46. The Special Master shall create a Claim Form for
26 distribution to, and return by, potential Eligible Employees.
27 Every person who returns a Claim Form to the Special Master shall
28 sign and date the Claim Form, and shall certify under penalty of

1 perjury the following facts, as well as any other facts deemed
2 necessary or appropriate by the Special Master:

3 a. The person's true name, current address, current
4 telephone number, and social security number;

5 b. The Union Local to which the person belonged
6 during the Strike and Lockout;

7 c. That the person was, as of October 11, 2003, a
8 RALPHS employee covered by the CBA;

9 d. The person's hourly wage rate, employee
10 classification, and full-time or part-time status as of October
11 11, 2003;

12 e. That the person was locked out by RALPHS during
13 the Lockout;

14 f. That the person did not work for RALPHS,
15 Albertsons, or Vons during the Strike or Lockout, under any name
16 or identity; and

17 g. Whether the person received money from any of the
18 following sources during the Strike or Lockout, and if so, the
19 itemized and total amounts of any such money:

20 i. Lockout Benefit(s);

21 ii. Any employment, including the name(s) of the
22 employer(s);

23 iii. Unemployment insurance benefits;

24 iv. Workers compensation benefits; or

25 v. Disability benefits.

26 47. The Claim Form shall quote Title 18, United States
27 Code, Sections 1001(a)(1) and 1001(a)(2) in their entirety, and
28 shall inform all persons completing the Claim Form that they may

1 be prosecuted under such Sections for any materially false,
2 fictitious, or fraudulent statements or representations of fact
3 in the Claim Form, and for falsification, concealment, or cover-
4 up of any material fact in the Claim Form.

5 48. The Claim Form shall specify:

6 a. The date on which the Claims Period will end;

7 b. That no person shall be considered for payment
8 from the RRF unless the person signs, dates, and certifies the
9 Claim Form and returns it to the Special Master within the Claims
10 Period; and

11 c. That any person's acceptance of a payment from the
12 RRF shall constitute an agreement by such person not to seek any
13 further criminal restitution from RALPHS in CR 05-1210-PA.

14 **c. Distribution And Return Of Claim Forms**

15 49. During and throughout the Claims Period, the Special
16 Master shall send Claim Forms to the last known addresses of all
17 potential Eligible Employees. The Special Master may also
18 utilize any and all resources offered or provided by the Unions
19 to distribute Claim Forms to potential Eligible Employees.

20 50. To be considered for payment from the RRF, a person
21 must:

22 a. Be an Eligible Employee; and

23 b. Within the Claims Period, sign, date, certify, and
24 return to the Special Master a Claim Form that, in the judgment
25 of the Special Master, contains sufficient information to permit
26 the Special Master to calculate the person's Gross Claim (as
27 defined in paragraph 57 below).

1 **d. Further Notice To Potential Eligible Employees**

2 51. In order to provide further notice of the existence and
3 purposes of the RRF to as many potential Eligible Employees as
4 possible, the Special Master may, in his discretion and within
5 the Claims Period, publish notice in one or more newspaper(s) of
6 general circulation. Any such notice shall contain instructions
7 to potential Eligible Employees concerning how to obtain a Claim
8 Form from, and how to return the Claim Form to, the Special
9 Master.

10 52. The Special Master may, in his discretion and within
11 the Claims Period, also establish an Internet site in order to
12 publish notice. Any Internet site established by the Special
13 Master shall include a Claim Form that potential Eligible
14 Employees may print, complete, certify, and return to the Special
15 Master.

16 **e. Determinations Of Eligibility Of Employees**

17 53. On an ongoing and rolling basis throughout the Claims
18 Period, the Special Master shall determine whether each person
19 who has returned a Claim Form is or is not an Eligible Employee.
20 The Special Master may make such determination based upon the
21 Claim Form; the documents, records, and information provided by
22 RALPHS and the USAO pursuant to paragraphs 40, 41, and 42 above;
23 any documents, records, and information provided to the Special
24 Master by the Unions; and any other information that the Special
25 Master deems necessary or appropriate to consider.

26 54. If the Special Master determines that a person is not
27 an Eligible Employee, the Special Master shall notify such person
28 in writing of such determination. Any person determined by the

1 Special Master not to be an Eligible Employee may, within 21
2 calendar days of the date that the Special Master sends such
3 written notice, provide any additional information to the Special
4 Master for the purpose of seeking reconsideration of such
5 determination. The Special Master shall consider any such
6 additional information and shall thereafter make a final
7 determination as to whether the person is or is not an Eligible
8 Employee. If the Special Master makes a final determination that
9 the person is not an Eligible Employee, the Special Master shall
10 notify the person in writing of such final determination and
11 shall disburse no monies to the person. No person shall have any
12 further right or opportunity of appeal or reconsideration from
13 any such final determination by the Special Master.

14 **3. Determination Of Distributions To Eligible Employees**
15 **And To The Unions**

16 **a. Determination Of Gross Claims**
Of Eligible Employees

17 55. The Special Master shall perform the following
18 calculations as to each Eligible Employee who has complied with
19 the requirements set forth in paragraph 50 above:

20 a. The Special Master shall multiply the following
21 figures:

22 i. The Eligible Employee's hourly wage rate as
23 of October 11, 2003; by

24 ii. The Eligible Employee's hours worked per week
25 (as defined in paragraph 56 below); by

26 iii. 20 weeks (representing the 20 weeks of the
27 Strike and Lockout).

28

1 b. The Special Master shall sum the following
2 figures:

3 i. All Lockout Benefits received by the Eligible
4 Employee (as determined in accordance with subparagraph 59(a)
5 below); plus

6 ii. Any income earned by the Eligible Employee
7 during the Lockout from any other employment; plus

8 iii. Any unemployment insurance benefits received
9 by the Eligible Employee during the Lockout; plus

10 iv. Any workers compensation benefits received by
11 the Eligible Employee during the Lockout; plus

12 v. Any disability benefits received by the
13 Eligible Employee during the Lockout.

14 56. For purposes of subparagraph 55(a)(ii) above, an
15 Eligible Employee's hours worked per week shall be:

16 a. 40, if the Eligible Employee was a full-time
17 employee as of October 11, 2003;

18 b. 27, if the Eligible Employee was a part-time
19 employee as of October 11, 2003; or

20 c. 16, if the Eligible Employee was a part-time
21 clerk's helper or a part-time courtesy clerk as of October 11,
22 2003.

23 57. An Eligible Employee's Gross Claim is, as to that
24 Eligible Employee, the amount determined by subtracting the
25 amount yielded by subparagraph 55(b) from the amount yielded by
26 subparagraph 55(a).

27 58. After the Claims Period has ended and the Special
28 Master has determined the Gross Claim for each Eligible Employee

1 who has complied with the requirements set forth in paragraph 50
2 above, the Special Master shall sum the Gross Claims of all such
3 Eligible Employees.

4 **b. Determination Of Lockout Benefits Paid To**
5 **Eligible Employees**

6 59. For Eligible Employees who have complied with the
7 requirements set forth in paragraph 50 above, the Special Master
8 shall:

9 a. Determine the total amount of Lockout Benefits
10 paid by each Union to each such Eligible Employee.

11 b. After the Claims Period has ended, determine the
12 sum of all Lockout Benefits paid by each Union to all such
13 Eligible Employees. After making this determination for each
14 Union, the Special Master shall notify each Union in writing of
15 his determination of the total Lockout Benefits paid by that
16 Union. Any Union that believes that the Special Master erred in
17 his determination of the total Lockout Benefits paid by that
18 Union may, within 7 calendar days of the date that the Special
19 Master sends such written notice, provide any additional
20 information to the Special Master for the purpose of seeking
21 reconsideration of such determination. The Special Master shall
22 consider any such additional information and shall thereafter
23 make a final determination as to the total Lockout Benefits paid
24 by such Union. The Special Master shall notify such Union in
25 writing of such final determination. No Union shall have any
26 further right or opportunity of appeal or reconsideration from
27 any such final determination by the Special Master.

1 c. After the Claims Period has ended, determine the
2 sum of all Lockout Benefits paid by all of the Unions to all such
3 Eligible Employees.

4 60. The Special Master may make the determinations set
5 forth in paragraph 59 above based upon the Claim Form; any
6 documents, records, and information provided to the Special
7 Master by the Unions; and any other information that the Special
8 Master deems necessary or appropriate to consider. The Special
9 Master shall notify all of the Unions in writing that, pursuant
10 to Title 18, United States Code, Sections 1001(a)(1) and
11 1001(a)(2), any Union may be prosecuted under such Sections for
12 any materially false, fictitious, or fraudulent statements or
13 representations of fact, and for falsification, concealment, or
14 cover-up of any material fact, in any documents, records, or
15 information that such Union provides to the Special Master. The
16 Special Master may require any Union to provide him with
17 substantiation and/or supporting evidence that the Special Master
18 deems necessary or appropriate to verify the amount of Lockout
19 Benefits paid by such Union. Any Union that provides any
20 documents, records, or information to the Special Master shall
21 certify under penalty of perjury that the facts provided in such
22 documents, records, or information are true and correct to the
23 best of such Union's knowledge.

24 **c. Total Gross Claims And Lockout Benefits**

25 61. After the Claims Period has ended, the Special Master
26 shall sum the amount determined in paragraph 58 and the amount
27 determined in paragraph 59(c) to determine the total Gross Claims
28 and Lockout Benefits.

1 **d. Determination Of Pro-Rata Percentage**

2 62. After the Claims Period has ended, the Special Master
3 shall divide the amount remaining in the RRF (as of the date that
4 the Special Master performs this calculation) by the amount of
5 the total Gross Claims and Lockout Benefits as determined in
6 paragraph 61. The resulting figure constitutes the Pro-Rata
7 Percentage.

8 **4. Distributions To Eligible Employees And To The Unions**

9 63. The Special Master shall not distribute any monies to
10 any Eligible Employee(s) or to any Union(s) as set forth in this
11 Section XIII.D.4 until the Claims Period has ended and the
12 Special Master has determined whether each person who returned a
13 Claim Form:

14 a. Is an Eligible Employee; and

15 b. Has complied with the requirements set forth in
16 paragraph 50 above.

17 64. No later than 30 calendar days after the Claims Period
18 has ended (or within such longer period of time granted by the
19 Court upon request of, and for good cause shown by, the Special
20 Master), for each Eligible Employee who has complied with the
21 requirements set forth in paragraph 50 above, the Special Master
22 shall multiply that Eligible Employee's Gross Claim by the Pro-
23 Rata Percentage determined in paragraph 62 above, and shall pay
24 to that Eligible Employee the resulting amount of money.

25 However, notwithstanding the preceding sentence, the Special
26 Master shall not pay to any Eligible Employee more than 100% of
27 such Eligible Employee's Gross Claim, except as provided in
28 paragraph 68 below. In accordance with the advisement in the

1 Claim Form set forth in subparagraph 48(c) above, any Eligible
2 Employee's acceptance of a payment from the RRF shall constitute
3 an agreement by such Eligible Employee not to seek any further
4 criminal restitution from RALPHS in CR 05-1210-PA.

5 65. No later than 30 calendar days after the Claims Period
6 has ended (or within such longer period of time granted by the
7 Court upon request of, and for good cause shown by, the Special
8 Master), the Special Master shall multiply the total amount of
9 Lockout Benefits (as determined in subparagraph 59(b) above) that
10 each Union paid to Eligible Employees who complied with the
11 requirements set forth in paragraph 50 above, by the Pro-Rata
12 Percentage determined in paragraph 62 above, and shall pay to
13 each such Union the resulting amount of money. However,
14 notwithstanding the preceding sentence, and except as provided in
15 paragraph 67 below, the Special Master shall not pay to any Union
16 more than 100% of the Lockout Benefits that such Union paid to
17 Eligible Employees who complied with the requirements set forth
18 in paragraph 50 above.

19 66. As set forth in the letter agreement from the Unions
20 attached to this Plea Agreement as Exhibit B, any Union's
21 acceptance of a payment from the RRF as set forth in paragraph 65
22 above shall constitute an agreement by such Union not to:

23 a. Seek any further criminal restitution from RALPHS
24 in CR 05-1210-PA; or

25 b. Bring or file any new claims or lawsuits against
26 RALPHS or Kroger in any forum, including any new unfair labor
27 practice charges before the NLRB, based on any of the same
28 alleged facts or conduct as are alleged in any of the NLRB

1 Charges.

2 **5. Distributions Of Any Monies Remaining In**
3 **The Ralphs Restitution Fund**

4 67. If any monies remain in the RRF after the distributions
5 set forth in paragraphs 64 and 65 above, the Special Master shall
6 distribute the remaining monies to the Unions on a pro-rata
7 basis, based upon the size of each Union's RALPHS employee
8 membership relative to that of the other Unions as of October 11,
9 2003. These distributions are to be made in recognition of the
10 payments that the Unions made during the Lockout to assist
11 Eligible Employees in defraying expenses such as residential rent
12 and mortgage expenses; automobile lease and financing expenses;
13 and medical and dental expenses, including health insurance
14 premiums. However, notwithstanding the preceding two sentences,
15 the Special Master shall not pay to any Union more than 100% of
16 the payments that such Union made to assist Eligible Employees in
17 defraying expenses such as those described in the preceding
18 sentence. The Special Master may require any Union to provide
19 him with substantiation and/or supporting evidence that the
20 Special Master deems necessary or appropriate to verify the
21 amount of such payments made by such Union.

22 68. If any monies remain in the RRF after the distributions
23 set forth in paragraph 67 above, the Special Master shall
24 distribute the remaining monies to the Eligible Employees who
25 complied with the requirements set forth in paragraph 50 above.
26 The Special Master shall make any such distributions on a pro-
27 rata basis, based upon the size of each Eligible Employee's Gross
28 Claim relative to those of the other Eligible Employees.

1 **6. Closure Of The Ralphs Restitution Fund**
2 **Bank Account And Final Report To The Court**

3 69. After making all distributions set forth in paragraphs
4 64, 65, 67, and 68 above, and when no monies remain in the RRF,
5 the Special Master shall close the RRF Bank Account and make a
6 final report to the Court.

7 **E. No Return To RALPHS Of Any Monies In**
8 **The Ralphs Restitution Fund**

9 70. Under no circumstances shall any monies in the RRF
10 revert or be returned to RALPHS, Kroger, or any other Kroger
11 subsidiary or affiliate, at any time or in whole or in part.

12 **F. Further Guidance And Instructions To The Special Master**

13 71. If at any time the Special Master determines that he
14 needs further guidance or instructions from the Court regarding
15 any aspect of the operation or administration of the RRF,
16 including how to distribute monies in the RRF, the Special Master
17 shall so notify the Court and the USAO. Any such notice by the
18 Special Master shall be publicly filed and made part of the
19 docket in CR 05-1210-PA, unless the Court, upon application of,
20 and for good cause shown by, the Special Master, permits a notice
21 to be filed under seal. The USAO shall provide the Court with
22 recommended guidance and instructions to provide to the Special
23 Master. The Court shall provide to the Special Master whatever
24 guidance and instructions the Court deems appropriate, with the
25 intent being to implement the procedures and achieve the purposes
26 set forth in this Section XIII.

27 72. Except as set forth in paragraphs 40 and 41 above,
28 neither RALPHS, Kroger, nor any other Kroger subsidiary or

1 affiliate shall provide, or be permitted to provide, any guidance
2 or instructions to the Special Master or to the Court concerning
3 any aspect of the operation or administration of the RRF,
4 including how monies in the RRF should be distributed.

5 **XIV.**

6 **PROBATION**

7 **A. Term And Conditions Of Probation**

8 73. The USAO and RALPHS agree that, pursuant to 18 U.S.C.
9 § 3561(c)(1) and U.S.S.G. §§ 8D1.1 through 8D1.4, RALPHS will be
10 placed on a term of probation of three years, commencing on the
11 date that RALPHS is sentenced. The USAO and RALPHS further agree
12 that during the term of probation, in addition to any standard
13 conditions of probation imposed by the Court, RALPHS shall be
14 subject to the "Special Conditions Of Probation For Ralphs
15 Grocery Company" set forth in Exhibit F to this Plea Agreement.

16 74. RALPHS agrees not to apply to the Court for early
17 termination of probation or any conditions thereof without the
18 consent of the USAO.

19 75. RALPHS agrees that all conditions of probation imposed
20 by the Court shall survive any change in ownership, control, or
21 management of RALPHS, and shall apply to any successor in
22 interest to RALPHS.

23 **B. Violation Of Probation**

24 76. In the event that the Court finds that RALPHS has
25 violated any condition of its probation, RALPHS agrees that the
26 Court may impose on RALPHS an additional criminal fine of up to
27 \$20,000,000 less the sum of all additional criminal fines imposed
28 for any prior violations of probation by RALPHS. For each

1 violation of probation by RALPHS, both the USAO and RALPHS will
2 be free to seek or oppose any additional criminal fine up to
3 \$20,000,000 less the sum of all additional criminal fines imposed
4 for any prior violations of probation by RALPHS. RALPHS agrees
5 that imposition of up to a total of \$20,000,000 in additional
6 criminal fines for all violations of probation by RALPHS will not
7 violate or exceed any statutory maximum penalty or maximum fine
8 amount under 18 U.S.C. § 3571(d) or any other statute, provision,
9 or legal precedent of any kind.

10 77. Should any probation violation by RALPHS involve the
11 commission of a federal criminal offense, nothing shall preclude
12 or prevent the USAO from bringing a criminal prosecution against
13 RALPHS based upon the commission of that offense.

14 **XV.**

15 **WAIVER OF PRESENTENCE INVESTIGATION AND REPORT**

16 78. RALPHS prefers that it be sentenced no later than four
17 weeks after it enters its guilty pleas. The USAO and RALPHS
18 agree that there is sufficient information in the record to
19 enable the Court to meaningfully exercise its sentencing
20 authority under 18 U.S.C. § 3553 without a presentence
21 investigation or report. To the extent that RALPHS has a right
22 to a presentence investigation and preparation of a presentence
23 report, RALPHS hereby knowingly, voluntarily, and intelligently
24 waives that right.

25 79. The USAO and RALPHS agree to ask the Court to:
26 a. Accept this Plea Agreement and RALPHS' guilty
27 pleas as soon after the execution and filing of this Plea
28 Agreement as practicable;

1 b. Find, pursuant to Federal Rule of Criminal
2 Procedure 32(c)(1)(A)(ii), that the information in the record is
3 sufficient to enable the Court to meaningfully exercise its
4 sentencing authority under 18 U.S.C. § 3553 without a presentence
5 investigation and report; and

6 c. Sentence RALPHS no later than four weeks after it
7 enters its guilty pleas.

8 80. In the event that the Court orders that a presentence
9 investigation be conducted and a presentence report prepared, or
10 in the event that the Court does not sentence RALPHS within four
11 weeks after RALPHS enters its guilty pleas (as preferred by
12 RALPHS), the USAO and RALPHS agree that:

13 a. Such order shall have no effect on the validity of
14 this Plea Agreement or any of its terms or conditions; and

15 b. The USAO and RALPHS will be free to:

16 i. Supplement the facts stipulated to in this
17 Plea Agreement and in Exhibit A by supplying relevant information
18 to the United States Probation Office and the Court; and

19 ii. Correct any factual misstatements contained
20 in the presentence report and/or relating to the application of
21 sentencing factors or the calculation of the sentence.

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1 paid, all such fees, costs, and expenses separately from, and in
2 addition to, the \$50,000,000 with which RALPHS shall establish
3 and fund the RRF.

4 i. To provide or cause to be provided to the Special
5 Master the documents, records, and information described in
6 paragraphs 40 and 41 above.

7 j. Not to retaliate against, or knowingly cause or
8 solicit any other entity or person to retaliate against, any
9 present or former officer, director, employee, agent, consultant,
10 or counsel of RALPHS, Kroger, or any other Kroger subsidiary or
11 affiliate, who has chosen, or may choose, to cooperate with the
12 USAO. As used in this subparagraph 81(j), the term "retaliate
13 against" means to take or threaten to take any adverse action,
14 including employment, financial, legal, or physical action,
15 against a person with the intent to punish or harm that person
16 for his or her anticipated, ongoing, or completed cooperation
17 with the USAO, but does not include any such action taken or
18 threatened in the ordinary course of business without such intent
19 to punish or harm. As used in this subparagraph 81(j) only, "to
20 cooperate with the USAO" means to agree to be interviewed by the
21 USAO; to provide documents, tangible evidence, or other
22 information to the USAO; to testify in any proceeding pursuant to
23 a request of, or a subpoena issued by, the USAO; to enter into
24 any agreement with the USAO, including but not limited to any
25 cooperation agreement, plea agreement, or deferred prosecution
26 agreement; or to otherwise assist the USAO in any criminal
27 investigation or prosecution.

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1 k. To cooperate fully with the USAO and with any
2 federal law enforcement agency as directed by the USAO. As part
3 of such cooperation, RALPHS will do, or cause to be done, the
4 following:

5 i. Voluntarily produce to the USAO all
6 documents, other tangible evidence, and information that:

7 (a) Are reasonably requested by the USAO and
8 reasonably obtainable by RALPHS, Kroger, or any other Kroger
9 subsidiary or affiliate;

10 (b) Are in the possession, custody, or
11 control of RALPHS, Kroger, or any other Kroger subsidiary or
12 affiliate;

13 (c) Were not already produced to the USAO
14 pursuant to any subpoena or otherwise; and

15 (d) Relate in any way to:

16 (i) RALPHS' hiring practices during or
17 leading up to the October 2003 to March 2004 strike and lockout
18 described in the Indictment; or

19 (ii) Any other event, act, policy,
20 practice, course of conduct, statement, omission, falsification,
21 concealment, or cover-up alleged, described, or referenced in the
22 Indictment;

23 ii. Provide qualified custodians of records, as
24 requested by the USAO, to authenticate and/or introduce into
25 evidence documents or other evidence produced by RALPHS, Kroger,
26 or any other Kroger subsidiary or affiliate;

27 iii. Use best efforts to make available for
28 interviews or to testify, as requested by the USAO, present and

1 former officers, directors, employees, agents, consultants, and
2 counsel of RALPHS, Kroger, and all other Kroger subsidiaries and
3 affiliates; however, any privileges not waived under this Plea
4 Agreement or the Exhibits thereto are retained;

5 iv. Agree to a limited waiver of the attorney-
6 client privilege and work-product protection by having a duly-
7 authorized officer, agent, or attorney execute a Limited
8 Attorney-Client Privilege and Attorney Work-Product Waiver, as
9 set forth in Exhibit D to this Plea Agreement; and

10 v. Use best efforts to:

11 (a) Direct any law firm that represented
12 RALPHS, Kroger, or any other Kroger subsidiary or affiliate in
13 connection with any investigations described in paragraph 82
14 below to produce to the USAO all work-product of such law firm
15 and its attorneys and agents in connection with such
16 investigations; and

17 (b) Assist the USAO in obtaining all such
18 work-product of any such law firm and its attorneys and agents.

19 82. As part of its voluntary production under subparagraph
20 81(k) (i) above, RALPHS will produce to the USAO all documents,
21 other tangible evidence, and information created, prepared,
22 obtained, or discovered during, in connection with, or as a
23 result of any and all investigations conducted by or on behalf of
24 RALPHS, Kroger, or any other Kroger subsidiary or affiliate into
25 any of the hiring practices, events, acts, policies, practices,
26 courses of conduct, statements, omissions, falsifications,
27 concealment, or cover-ups set forth in subparagraph 81(k) (i) (d)
28 above. In particular, RALPHS will produce to the USAO, no later

1 than 30 calendar days after the date that RALPHS is sentenced:

2 a. All interview reports, interview summaries,
3 interview memoranda, and notes of interviews conducted by any
4 private investigation firm or by any law firm during, in
5 connection with, or as a result of any and all such
6 investigations; and

7 b. All documents, tangible evidence, and information
8 previously noted on any privilege log and withheld by RALPHS from
9 the USAO on the grounds of any claim of privilege or attorney
10 work-product.

11 83. The documents, other tangible evidence, and information
12 that RALPHS will produce to the USAO pursuant to subparagraphs
13 81(k) (i), 81(k) (iv), 81(k) (v), and paragraph 82 above do not
14 include:

15 a. Any communications between (on the one hand)
16 RALPHS or any of its officers, directors, employees, agents, or
17 counsel, and (on the other hand) Paul, Hastings, Janofsky &
18 Walker LLP ("Paul Hastings") or any Paul Hastings attorney(s) or
19 agent(s);

20 b. Any work-product created or prepared by Paul
21 Hastings or any Paul Hastings attorney(s) or agent(s); or

22 c. Any communications occurring, or work-product
23 created or prepared, after December 15, 2005.

24 84. RALPHS reserves the right to contend that the
25 production to the USAO of any and all documents, other tangible
26 evidence, and information pursuant to subparagraphs 81(k) (i),
27 81(k) (iv), 81(k) (v), and paragraph 82 above, as well as any
28 statements made or testimony given by any present or former

1 officers, directors, employees, agents, consultants, or counsel
2 of RALPHS, Kroger, or any other Kroger subsidiaries or affiliates
3 pursuant to subparagraph 81(k)(iii) above, do not constitute a
4 waiver of any rights to assert the attorney-client privilege or
5 the protections of the attorney work-product doctrine that is:

6 a. Broader than the documents, other tangible
7 evidence, information, statements, or testimony given or
8 produced; or

9 b. Binding or enforceable against RALPHS, Kroger, or
10 any other Kroger subsidiary or affiliate in any judicial,
11 legislative, administrative, or regulatory proceeding(s) other
12 than the investigation or proceeding in which the documents,
13 other tangible evidence, information, statements, or testimony
14 are given or produced.

15 85. RALPHS' obligations set forth in this Section XVI shall
16 continue to be binding on RALPHS after the date that RALPHS is
17 sentenced.

18 **XVII.**

19 **THE USAO'S OBLIGATIONS**

20 86. If RALPHS complies fully with all of its obligations
21 under this Plea Agreement, the USAO agrees:

22 a. To abide by all sentencing stipulations contained
23 in this Plea Agreement;

24 b. At the time of sentencing, to move to dismiss all
25 Counts in the Indictment other than Counts One, Four, Nineteen,
26 Twenty-One, and Fifty, and, apart from the entry of guilty pleas
27 to, and imposition and execution of sentence on, those Counts, in
28 accordance with the provisions of this Plea Agreement, not to

1 breach. Before seeking a judicial finding of breach, the USAO
2 will notify RALPHS in writing of the breach and allow RALPHS a
3 period of thirty days from receipt of such written notice to cure
4 the breach. If, within thirty days of receipt of such written
5 notice, RALPHS cures the breach to the satisfaction of the USAO,
6 as decided by the USAO in its sole and exclusive discretion, the
7 USAO will not seek a judicial finding of breach.

8 90. The USAO and RALPHS agree that the following procedures
9 will apply should the USAO seek a judicial finding that RALPHS
10 has breached any of its obligations under this Plea Agreement:

11 a. The USAO will file a motion in CR 05-1210-PA
12 requesting that the Court determine whether the alleged breach
13 occurred;

14 b. Paul, Hastings, Janofsky & Walker LLP is
15 authorized to and will accept and serve as agent for service of
16 process upon RALPHS, unless RALPHS designates, in a writing
17 delivered to the USAO, another law office as authorized to accept
18 and serve as agent for service of process upon RALPHS; and

19 c. The USAO will have the burden of proving the
20 alleged breach by a preponderance of the evidence in an
21 evidentiary hearing in which the USAO presents evidence to the
22 Court. The Federal Rules of Evidence shall not apply at any such
23 evidentiary hearing and the USAO may meet its burden through the
24 presentation of hearsay evidence. RALPHS will have an
25 opportunity to challenge and rebut the USAO's evidence and to
26 present evidence on RALPHS' behalf.

27 91. RALPHS agrees that the United States District Court for
28 the Central District of California has personal jurisdiction over

1 it for purposes of adjudicating any motion alleging a breach of
2 this Plea Agreement, and subject matter jurisdiction over any
3 such motion as incident to RALPHS' entry of its guilty pleas and
4 sentencing.

5 92. If the Court finds that RALPHS has breached any of its
6 obligations under this Plea Agreement by failing to pay, or
7 before paying, the fine set forth in paragraph 31 above, the
8 special assessments set forth in paragraph 33 above, and/or the
9 monies to the RRF Bank Account set forth in paragraph 39 above,
10 then the USAO, in its sole and exclusive discretion, may elect to
11 proceed in either of the following two ways:

12 a. The USAO may withdraw from this Plea Agreement and
13 ask the Court to vacate RALPHS' guilty pleas. Following any such
14 vacatur, the parties to this Plea Agreement will no longer be
15 bound by it or any of its terms or conditions, the Plea Agreement
16 will become null and void, and the monetary penalty for the
17 breach shall be determined in accordance with subparagraph 94(a)
18 below; or

19 b. The USAO may maintain this Plea Agreement in full
20 force and effect, in which event the breach will not be a basis
21 for either party withdrawing from, rescinding, invalidating, or
22 moving to set aside this Plea Agreement, and will not relieve or
23 excuse either party from fulfilling its obligations under this
24 Plea Agreement, and the penalties for the breach shall be
25 determined in accordance with subparagraphs 94(a) and 94(b)
26 below.

27 93. If the Court finds that RALPHS has breached any of its
28 obligations under this Plea Agreement after RALPHS has paid the

1 fine set forth in paragraph 31 above, the special assessments set
2 forth in paragraph 33 above, and the monies to the RRF Bank
3 Account set forth in paragraph 39 above, then:

4 a. This Plea Agreement will remain in full force and
5 effect, except as provided in subparagraph 93(d) below;

6 b. The breach will not be a basis for either party
7 withdrawing from, rescinding, invalidating, or moving to set
8 aside this Plea Agreement;

9 c. The breach will not relieve or excuse RALPHS from
10 fulfilling its obligations under this Plea Agreement;

11 d. The USAO will be relieved and excused of its
12 obligations under subparagraphs 86(b) and 86(c) above; and

13 e. The penalties for the breach shall be determined
14 in accordance with subparagraphs 94(a) and 94(b) below.

15 94. If the Court finds that RALPHS has breached any of its
16 obligations under this Plea Agreement, the Court:

17 a. May impose a penalty of between \$0 and \$5,000,000
18 for each obligation breached. Both the USAO and RALPHS will be
19 free to seek or oppose any penalty within that range; and

20 b. If this Plea Agreement remains in force pursuant
21 to subparagraph 92(b) or subparagraph 93(a) above, shall order
22 RALPHS to specifically perform the obligation(s) that RALPHS has
23 breached. RALPHS will comply with any such Court order. If
24 RALPHS fails or refuses to comply with any such Court order, the
25 USAO may:

26 i. Seek an additional penalty of up to
27 \$5,000,000; and

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1 ii. Bring and prosecute any and all civil and
2 criminal contempt claims and charges against RALPHS.

3 95. Any monetary penalties imposed by the Court under
4 subparagraph 94(a) above shall be paid to the United States
5 Treasury within five business days after their imposition. Both
6 the USAO and RALPHS shall retain all rights to appeal any Court
7 order imposing or declining to impose a monetary penalty under
8 subparagraph 94(a) above for any breach of this Plea Agreement.
9 However, notwithstanding the preceding sentence, no pending or
10 contemplated appeal of any Court order imposing a monetary
11 penalty under subparagraph 94(a) above for any breach of this
12 Plea Agreement shall be grounds for a stay of such order or for
13 delay in the payment of such monetary penalty to the United
14 States Treasury within five business days after its imposition,
15 nor shall RALPHS refuse to pay, or delay in paying, any such
16 monetary penalty because of any such pending or contemplated
17 appeal.

18 96. RALPHS shall have no right of appeal from any Court
19 order that RALPHS specifically perform any obligation(s) under
20 this Plea Agreement that the Court has found RALPHS to have
21 breached. RALPHS shall have no right of appeal from any Court
22 order imposing a monetary penalty under subparagraph 94(b)(i)
23 above for refusal to comply with a Court order.

24 97. If the Court finds that RALPHS has breached any of its
25 obligations under this Plea Agreement, and if the USAO elects to
26 pursue any criminal charges or any civil or administrative claims
27 or actions that were dismissed or not filed as a result of this
28 Plea Agreement, then:

1 a. RALPHS agrees that the running of any applicable
2 statutes of limitations is tolled and suspended between the date
3 that RALPHS executes this Plea Agreement and the commencement of
4 any such prosecutions, claims, and actions; and

5 b. RALPHS gives up all defenses based on the statutes
6 of limitations, any claim of preindictment delay, or any speedy
7 trial claim with respect to any and all such prosecutions,
8 claims, and actions, except to the extent that such defenses
9 existed as of the date that RALPHS executes this Plea Agreement.

10 **XIX.**

11 **MUTUAL WAIVER OF APPEAL**

12 98. If the conditions set forth in paragraph 7 above are
13 met, and if the Court imposes sentence and enters judgment
14 against RALPHS in accordance with the disposition agreed upon in
15 this Plea Agreement, then RALPHS gives up:

16 a. All rights to appeal its convictions, the sentence
17 imposed by the Court, and the manner in which the sentence is
18 determined; and

19 b. All rights to bring a post-conviction collateral
20 attack on the convictions or sentence.

21 99. If the conditions set forth in paragraph 5 above are
22 met, and if the Court imposes sentence and enters judgment
23 against RALPHS in accordance with the disposition agreed upon in
24 this Plea Agreement, then the USAO gives up all rights to appeal
25 the sentence.

1 **XX.**

2 **NO ADDITIONAL AGREEMENTS**

3 100. This Plea Agreement and the attached Exhibits supersede
4 and render null and void any and all prior agreements,
5 understandings, promises, and conditions, whether express,
6 implied, written, or oral, between the USAO and RALPHS. Except
7 as set forth in this Plea Agreement and the attached Exhibits,
8 there are no agreements, understandings, promises, or conditions
9 of any kind between the USAO and RALPHS or RALPHS' counsel. Nor
10 may any additional agreements, understandings, promises, or
11 conditions between the USAO and RALPHS or RALPHS' counsel be
12 entered into unless in a writing signed by the USAO, a duly-
13 authorized officer or agent of RALPHS, and RALPHS' counsel.

1 **XXI.**

2 **INCORPORATION OF PLEA AGREEMENT INTO RECORD OF PLEA PROCEEDINGS**

3 101. This Plea Agreement shall be incorporated into the
4 record of the proceedings at which RALPHS enters its guilty
5 pleas, as if the Plea Agreement had been read in its entirety
6 into the record of those proceedings.

7 **AGREED AND ACCEPTED:**

8 **UNITED STATES ATTORNEY'S OFFICE**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

10 DEBRA WONG YANG
United States Attorney

11 GEORGE S. CARDONA
Chief Assistant United States Attorney

13 June __, 2006

14 _____
ADAM H. BRAUN
Assistant United States Attorney
15 Major Frauds Section

17 June __, 2006

18 _____
JEREMY D. MATZ
Assistant United States Attorney
19 Major Frauds Section

20 **RALPHS GROCERY COMPANY:**

22 June __, 2006

23 _____
By: MARY KASPER
24 Vice-President of Legal Services

25 June __, 2006

26 _____
E. LAWRENCE BARCELLA, ESQ.
KIRBY D. BEHRE, ESQ.
27 ZACHARY D. FASMAN, ESQ.
Paul, Hastings, Janofsky & Walker LLP
28 Counsel for Defendant Ralphs Grocery Company

1 6. Kroger is satisfied with the representation it has
2 received from its counsel in this matter.

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June __, 2006

THE KROGER CO.
By: Paul Heldman
Executive Vice-President, Secretary,
and General Counsel

