APPENDIX A:

UNITED STATES v. VON'S GROCERY CO., ET AL.,

CIVIL NO. 336-60-CC

JUDGMENT ENTERED: JAN. 30, 1967

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. VON'S GROCERY COMPANY and SHOPPING BAG FOOD STORES, Defendants.	)	CIVIL ACTION NO. 336-60-CC ENTERED: January 30, 1967

FINAL JUDGMENT

The Supreme Court of the United States, having rendered its Opinion on May 31, 1966, that the acquisition by defendant Von's Grocery Co. of all of the capital stock and assets of defendant Shopping Bag Food Stores violated Section 7 of the Clayton Act (15 U.S.C. §18), the Supreme Court having further directed an order of divestiture and having remanded this cause in order that this Court may fashion appropriate relief, and the parties having agreed to the terms of this Final Judgment:

NOW, THEREFORE, in accordance with the Opinion of the Supreme Court which was filed and spread on the records of this

Court on July 25, 1966, and the parties having been heard, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the plaintiff and of the defendants Von's Grocery Co. and Shopping Bag Food Stores. The judgment of this Court of December 16, 1964, in favor of defendant is hereby vacated. The Supreme Court decided that the acquisition on March 28, 1960, by defendant Von's Grocery Co. of the capital stock and assets of Shopping Bag Food Stores was in violation of Section 7 of the Clayton Act (38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. §18). The aforesaid decision of the Supreme Court is hereby entered as the judgment of this Court.

II

For the purpose of this Final Judgment:

(A) "Defendant" shall mean defendant Von's Grocery Co.

(B) A "retail outlet" shall mean the physical assets comprising a retail grocery store at a particular location and such rights as the defendant has with respect to the store location (including the right of ownership of the real property and improvements thereon or any leasehold interest with respect thereto).

III

The provisions of this Final Judgment applicable to the defendant shall apply to such defendant, its subsidiaries, successors, assigns, and to its officers, directors, employees, and to all other persons in active concert or participation with

such defendant, who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is ordered and directed, within 27 months from the date of entry of this Final Judgment, to divest itself of the retail outlets listed and described on Schedule A, plus one "additional retail outlet" (as defined in subsection V(A)(3)) for each full five month period that elapses between the date six months after the date of entry of this Final Judgment and the date of such divestiture, subject to and in the manner set forth in Sections V and VI below.

V

(A) Defendant is ordered and directed:

(1) To make bona fide efforts to sell, as a unit, to an "eligible purchaser" (as defined in Section V(E)) the combination of retail outlets listed and described on the attached Schedule A and to offer as part of such unit all rights that defendant may possess to the use of the trade name "Shopping Bag" or to sell to such purchaser the stock or assets of the new corporation described below. Defendant may enter into a contract for sale pursuant to this Section V at any time within 27 months from the date of entry of this Final Judgment provided that divestiture must occur by the close of the said period.

(2) To establish a new corporation the outstanding stock of which shall be held by defendant and to transfer to the new corpora-

tion, within six months following the date of entry of this Final Judgment, all rights which defendant may possess to the use of the trade name "Shopping Bag" and the retail outlets listed and described on the attached Schedule A, and to cause the new corporation to maintain separate records sufficient to provide a reasonable basis for ascertaining its earnings and profits; provided that if defendant, within six months following the date of entry of this Final Judgment, enters into any contract for a sale of assets pursuant to subsection (1) defendant shall not be required to comply with this subsection (2) unless such contract is not consummated, and if the contract is not consummated, defendant shall comply therewith within 6 months after the date of entry of this Final Judgment or within 90 days after defendant receives notice from the other party to the contract that consummation cannot occur, whichever is later.

(3) In the event that defendant is required pursuant to Section IV hereof to divest one or more "additional retail outlets," to transfer one such additional outlet, as required, to the new corporation no later than the close of the 12th, 17th, 22nd and 27th month following the date of entry of this Final Judgment. An "addi-

tional retail outlet" is defined as a retail outlet that: (a) has at least 23,000 square feet; (b) has a reasonable profit or a reasonable profit potential; and (c) has been opened or remodeled since January 1, 1957 or is open or prepared for opening by the close of the month by which transfer must be made. Provided that if defendant, prior to the time any "additional retail outlet" is required to be divested pursuant to Section IV, has entered into a contract for sale of stock or assets pursuant to this Final Judgment, defendant shall not be required to divest or transfer such "additional retail outlet" unless such contract is not consummated, and if the contract is not consummated, defendant shall transfer the "additional retail outlet" to the new corporation by the above time required for transfer or within 30 days after defendant receives notice from the other party to the contract that consummation cannot occur, whichever is later.

(B) In any sale pursuant to this Section V, defendant shall undertake, if the purchaser elects:

(1) To use its best efforts to make available to the purchaser the right to

acquire a participating interest in the Jerseymaid Milk Products Co. and in any cooperative organization in which defendant now has an ownership interest, and which organization supplies products to retail grocery outlets;

(2) To contract for a period not exceeding 2 years, or for such longer period as may be mutually satisfactory, to sell to the purchaser, on reasonable terms, any products manufactured by defendant;

(3) To permit the purchaser, to the extent that defendant now holds rights which allow it to grant such permission, to use the trade name or brand name (except any name which includes the word "Von's") on products sold by the defendant to the purchaser;

(4) To substitute an outlet or outlets for those listed and described on the attached Schedule A, provided that such substitution is also acceptable: (i) to the defendant; and (ii) to the plaintiff;

(5) To assist the purchaser to obtain suitable personnel, and, in connection with such undertaking, if any person employed by defendant shall, within 30 days after the completion of any divestiture hereunder

notify defendant of his desire to accept employment with the purchaser, defendant shall release such person from any employment contract to which it is a party for the purpose of permitting such person to accept employment with the purchaser.

(C) Defendant shall make generally known the availability of the assets for sale. Defendant shall furnish to bona fide prospective purchasers making inquiry to it, such information as is reasonably necessary for them to proceed with negotiations looking toward the ultimate acquisition of the assets to be divested. Defendant shall render quarterly reports to the Assistant Attorney General in charge of the Antitrust Division concerning its efforts to effectuate the divestiture required, the first such report to be rendered within 30 days of the date of entry of this Final Judgment. Such report shall include a description of the steps taken by the defendant to make known the availability of the assets for sale and a list of prospective purchasers with whom negotiations have been held or who have made inquiry with respect to any purchase.

(D) At least 60 days in advance of the closing date specified in any contract of sale, defendant shall supply plaintiff with the name of the proposed purchaser and with such available information material to the proposed sale as plaintiff may reasonably request. Defendant may close any sale to an eligible purchaser unless plaintiff serves upon defendant, at least 20

days in advance of the said closing date, written notice that plaintiff objects thereto. In the event of such notice, the sale shall not be closed unless approved by the Court.

(E) An "eligible purchaser" shall be any person except a person who:

(1) is engaged in operating retail grocery stores in Los Angeles and Orange Counties, which stores, during the full calendar year preceding the date of the execution of the contract of purchase, had a total sales volume of more than $20 million;

(2) is engaged in operating retail grocery stores in the State of California, which stores, for the said above year, had a total sales volume of more than $60 million;

(3) is engaged in operating retail grocery stores anywhere in the United States, which stores, for the said above year had a total sales volume of more than $600 million; or

(4) is disapproved by the Court in the event of objection by plaintiff pursuant to Section V(D).

VI

(A) In the event that the defendant does not

consummate a sale pursuant to Section V within fifteen months of the date of entry of this Final Judgment, defendant is ordered and directed to prepare to divest itself of the stock of the new corporation created pursuant to Section V(A)(2) by taking the following steps:

(1) Defendant shall cause the new corporation to file with the Court its agreement to be bound by any order of the Court, entered after due notice and hearing, necessary to effectuate the provisions of this Final Judgment;

(2) Defendant shall elect a board of directors of the new corporation, such board to be composed of persons selected by defendant, provided that any person serving on the board between the time of divestiture pursuant to subsection VI(B) and the first regular meeting of shareholders thereafter shall be a person acceptable to plaintiff or the Court;

(3) Defendant shall cause said board to prepare for filing a registration statement for the new corporation;

(4) Defendant shall take such other steps as may be reasonably necessary to place the new corporation in a position to commence independent operation upon the divestiture pursuant to Subsection VI(B) and, in connection therewith, defendant shall confer upon the new corporation the same options available to a purchaser under subsections V(B) (1), (2), and (3).

(B) In the event the defendant does not consummate a sale pursuant to Section V of this Final Judgment, it shall, no later than 27 months following the date of entry of this Final Judgment, divest itself of all of the stock of the new corporation, by any one of the following means or by any combination thereof:

(1) By distributing the stock of the new corporation: (i) to holders of defendant's stock on a pro rata basis; or (ii) to such holders of defendant's stock as shall elect to exchange shares of defendant's stock for shares of the new corporation; or (iii) to holders of transferable rights, distributed to defendant's stockholders, to purchase the stock of the new corporation; or

(2) By selling the stock of the new corporation in one or more sales through an underwriter or underwriters.

(C) The provisions of Section V notwithstanding, defendant may, at any time following the date of entry of this Final Judgment, elect to consummate divestiture in accordance with this Section VI and, in such event, defendant shall promptly notify plaintiff of its election.

VII

(A) The divestiture ordered and directed by Section IV of this Final Judgment shall be made in good faith and shall

be absolute and unqualified except as follows:

(1) Nothing herein contained shall be deemed to prohibit defendant from retaining, accepting and enforcing a bona fide lien, mortgage, deed or trust or any other form of security reasonably to secure to defendant full payment of the price at which the divested property is disposed of or sold or reasonably to secure any other obligations to it of a purchaser or of the new corporation;

(2) Defendant shall seek to obtain the landlord's consent, where necessary, to the full substitution of the purchaser or of the new corporation for the defendant with respect to all rights and obligations under leases for the store locations for the retail outlets to be divested. If any such required consent is not obtained, defendant shall convey to the purchaser or new corporation a lesser right to the store location, and defendant may undertake direct or contingent liability with respect thereto.

(3) If the defendant, by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or any other form of security or by enforcement or settlement of any right pursuant to any lease, sublease, or assignment of any lease or sublease, regains ownership, possession or control of a retail outlet divested

pursuant to this Final Judgment, the defendant shall be required to terminate such ownership, possession or control within 2 years thereafter;

(4) In the event that defendant receives, as consideration in any divestiture, stock of any other corporation engaged in the retail grocery business in Los Angeles or Orange Counties or of any corporation which has control of the divested assets, defendant shall be required to dispose of the said stock within 5 years following the date of receipt thereof and, pending such disposal, to cause said stock to be voted by a third party or parties not engaged in the retail grocery business, nor directly or indirectly affiliated with nor owning an interest in the defendant, provided that this subsection (4) shall not apply to stock of the new corporation.

(B) Except as otherwise provided in this Final Judgment, no person shall, in any divestiture pursuant to Section V or Section VI(B) and after three months following such divestiture:

(1) Serve as an officer, director, or employee of a person acquiring the divested assets pursuant to this Final Judgment; or

(2) Receive any interest in the divested assets or in a company owning the said assets, during such time as such person: (i) continues as an officer,

director, or executive employee of defendant; or (ii) continues to hold more than 1% of the outstanding stock of defendant. Provided that, in the event defendant effectuates a divestiture by the distribution, to its own shareholders, of all or part of the stock of the new company or any company which acquires the divested assets, such stock as may be distributed to a person disqualified above shall be held in trust and voted by a third party or parties, not engaged in the retail grocery business, not directly or indirectly affiliated with defendant, and not controlled by any officer, director, or employee of the defendant or by any member of the Von der Ahe or Hayden families. All stock held in trust shall be sold or otherwise disposed of within a period of 5 years from the date of such distribution. Any person whose stock is held or to be held in trust may elect to retain such stock upon removal of the reasons for his disqualification under this subsection.

VIII

For a period of five years from the date of entry of this Final Judgment, the defendant is enjoined, except as otherwise provided in this Final Judgment, from directly or indirectly acquiring any interest in, or any operating retail grocery outlet of, a person engaged in the retail sale of groceries in the Los Angeles area without the prior written consent of the plaintiff.

IX

For the purpose of securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives

of the Department of Justice shall, on written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding the subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of the said defendant regarding such matters. Such officers or employees may have counsel present, who may be the counsel for the said defendant.

Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division for the purpose of securing compliance with this Final Judgment and for no other purposes, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment.

No information obtained by the means provided for in this Section IX or in Section V(C) and (D) shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States except in the course of a legal proceeding to which the United States is a party for the purpose of securing

ith this Final Judgment or as otherwise required by

X

Defendant will pay such taxable costs as are appropriate under the Rules of this Court.

XI

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

Dated: January 30, 1967

/s/ CHARLES H. CARR
United States District Judge

SCHEDULE A

RETAIL OUTLETS

Street Address	City
1170 W. Garvey Blvd.	West Covina
9922 Katella Avenue	Anaheim
13730 Foothill Blvd.	Sylmar
9058 E. Firestone Blvd.	Downey
517 S. Glendora Avenue	Glendora
1111 Ave. I	Lancaster
331 N. Glendale Avenue	Glendale
19333 Victory Blvd.	Reseda
1201 W. Whittier Blvd.	Montebello
1611 W. Whittier Blvd.	La Habra
8325 Foothill Blvd.	Sunland
3100 Foothill Blvd.	La Crescenta
44816 N. Beech Avenue	Lancaster
2256 Honolulu Avenue	Montrose
920 Foothill Blvd.	La Canada
2408 Lincoln Avenue	Altadena
2222 Colorado Blvd.	Eagle Rock
304 E. Foothill Blvd.	Upland
2270 Huntington Drive	San Marino
3841 E. Sierra Madre Blvd.	Pasadena
1407 Baldwin Avenue	West Arcadia
2200 West Valley Blvd.	Alhambra
4840 N. Peck Road	El Monte
11039 E. Valley Blvd.	El Monte
140 W. Foothill Blvd.	Monrovia
546 E. Cullen Street	Whittier
9130 E. Whittier Blvd.	Pico-Rivera
1845 W. Orangethorpe Ave.	Fullerton
2150 N. Glenoaks Blvd.	Burbank
16823 Foothill Blvd.	Fontana
127 N. Garfield Avenue	Monterey Park
15427 Amar Road	La Puente
315 East Ave. Q-6	Palmdale
960 W. Arrow Highway	Covina
2470 N. Towne Avenue	No. Pomona

A group of three to five other outlets selected by defendant, provided that the aggregate gross sales volume of such group during the year 1966 shall be no less than $11.5 million. Each such outlet shall have at least 23,000 square feet, shall have been opened or remodeled after January 1, 1957 and shall have a reasonable profit or a reasonable profit potential.