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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 NANCY J. STENDER; DIANE
15 SKILLSKY; JULIE VALENTINE-DUNN;
REBA BARBER-MONEY; IRMA
16 HERNANDEZ; ANITA MARTINEZ; and
JON GOLD on behalf of themselves and
17 all others similarly situated,

18 Plaintiffs,

19 v.

20 LUCKY STORES, INC.,

21 Defendant.

22 UNITED FOOD & COMMERCIAL
23 WORKERS UNION, AFL-CIO, LOCALS
373, 428, 588, 648, 775, 839, 870, 1119,
24 1179, 1238, and 1532,

25 Non-Aligned Intervenors.

26 CAPTION CONTINUED
27

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No. C-88-1467 MHP

CONSENT DECREE
REGARDING MONETARY
RELIEF, INJUNCTIVE RELIEF
AND NOTICE FOR SEX
CLAIMS

1 RELATED TO:

2 LESLIE ANDERS; IRMA BRACY; and
3 REBA BARNES on behalf of themselves
and all other persons similarly situated,

4 Plaintiffs,

5 v.

6 AMERICAN STORES CO., LUCKY
7 STORES, INC. and DOES 1 through 50,

8 Defendants.

9 UNITED FOOD & COMMERCIAL
10 WORKERS UNION, AFL-CIO, LOCALS
11 373, 428, 588, 648, 775, 839, 870, 1119,
1179, 1288, and 1532,

12 Non-Aligned Intervenors.

No. C-91-1763 MHP

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2.	Class Certification Order
3.	Order Denying Motion for Joinder and Relating Case of <i>Anders et al. v. American Stores</i>
4.	Stipulation and Order Re Intervention of UFCW Local Unions as Non-Aligned Parties
5.	Stipulation and Order Re Dismissal of Alpha Beta Company
6.	Stipulation and Order Regarding Sexual Harassment Claims
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17.	Lucky's Anticipated Recurring Annual Costs of Implementing the Injunctive Provisions of the Decree

1 I. INTRODUCTION

2 On August 18, 1988, plaintiffs Nancy Stender, Diane Skillsky, Julie Valentine-
3 Dunn, Reba Barber-Money, Irma Hernandez, and Anita Martinez filed a First Amended
4 Complaint in an action against Lucky Stores, Inc. ("Lucky") known as *Stender et al. v.*
5 *Lucky Stores, Inc.*, Civil Action C 88 1467 MHP ("Stender Lawsuit"), on behalf of
6 themselves and a class of female, black, and hispanic past, present, and future employees in
7 Lucky's Northern California Division alleging sex, race, and national origin discrimination in
8 violation of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e *et*
9 *seq.*) ("Title VII"), 42 U.S.C. § 1981, and the California Fair Employment and Housing Act
10 (Gov't Code §§ 12940 *et seq.*) ("FEHA"). Plaintiff Martinez included an individual claim
11 under the Equal Pay Act, (29 U.S.C. § 206(d)). On September 18, 1989, plaintiffs filed a
12 Second Amended Complaint adding Jon Gold as a named plaintiff. Lucky filed Answers
13 denying the allegations of both Complaints.

14 On October 11, 1989, the *Stender* parties stipulated to class certification pursuant to
15 Federal Rule of Civil Procedure 23(b)(2) and (b)(3) by agreeing to a partial class definition
16 ("Class Certification Stipulation"). The Class Certification Stipulation is attached to this
17 Decree as Exhibit 1. The terms of the Class Certification Stipulation and the determinations
18 made by the Court with respect to the class definition disputes (*see Stender v. Lucky Stores,*
19 *Inc.*, 53 Fair Emp. Prac. Cases 160 (N.D. Cal. 1990)) ("Class Certification Order")
20 supersede the class definition found in the Second Amended Complaint. The Class
21 Certification Order is attached to this Decree as Exhibit 2.

22 Both before and after the Class Certification Stipulation, the *Stender* parties engaged
23 in extensive discovery on a formal and informal basis. Plaintiffs have taken numerous
24 depositions, including those of corporate management, district management, personnel and
25 computer employees, and store management witnesses. Lucky has taken the depositions of all
26 of the named plaintiffs. The *Stender* parties have deposed each other's expert witnesses.
27 Moreover, Lucky has produced scores of thousands of pages of documents and scores of
28

1 reels of computerized payroll data. The *Stender* parties each have served and responded to
2 requests for admissions and multiple sets of interrogatories. Finally, commencing on May 28,
3 1991, the court heard over ten weeks of lay and expert testimony in the first stage of the trial
4 in this action. On September 11, 1991, the Court issued its decision on Lucky's Fed. R. Civ.
5 Proc. 41(b) motion to dismiss. The Court denied the motion regarding sex claims, finding
6 that plaintiffs had established a *prima facie* case of classwide sex discrimination.¹ On
7 August 18, 1992, the Court issued Findings of Fact and Conclusions of Law holding Lucky
8 liable to the Stender Sex Class, as defined below, for the claims set forth in the Class
9 Certification Stipulation and the Class Certification Order.

10 On June 10, 1991, plaintiffs Leslie Anders, Reba Barnes and Irma Bracy commenced
11 an action against American Stores Co., Alpha Beta Co. and Lucky known as *Anders et al. v.*
12 *American Stores Co., Alpha Beta Co., and Lucky Stores, Inc.*, Civil Action C 91 1763 MHP
13 ("Anders Lawsuit"), on behalf of themselves and a class of female and black, past, present,
14 and future employees in Northern Region Alpha Beta stores alleging sex and race
15 discrimination in violation of Title VII, 42 U.S.C. § 1981 and the FEHA.

16 On June 18, 1991, the Court related the Anders Lawsuit to the Stender Lawsuit. The
17 Court Order relating the cases is attached as Exhibit 3 to this Consent Decree. On February
18 24, 1992, Anders, Barnes and Bracy filed a First Amended Complaint which more
19 specifically defined the class to include female and black, past, present and future employees
20 in Northern Region Alpha Beta stores prior to their sale or closure and the Alpha Beta stores
21 that became Lucky stores in Lucky's Northern California Division. Lucky, American Stores,
22 and Alpha Beta each filed an Answer denying the allegations of the First Amended
23 Complaint.

24 _____

25 1 The Court granted the motion regarding race claims, finding that plaintiffs had not
26 established a *prima facie* case of classwide race discrimination. However, the Court
27 indicated that plaintiffs could attempt to buttress their race claims by offering anecdotal
evidence of race discrimination at a later stage of the proceedings. As noted below, the
parties have entered into a separate consent decree resolving the race claims.

28

1 The *Anders* parties have engaged in discovery. Plaintiffs have served document
2 requests and interrogatories. Lucky, American Stores and Alpha Beta have produced
3 documents and computerized payroll data and responded to interrogatories. The *Anders*
4 parties agree, and the Court finds, that the discovery was sufficient to assess the merits of
5 settlement of the sex claims in the Anders Lawsuit.

6 United Food and Commercial Workers Local Unions 101, 373, 428, 588, 648, 839,
7 870, 1179, and 1288 ("Intervenors" or "UFCW Local Unions") have a collective bargaining
8 relationship with Lucky and represent class members as well as employees outside the class
9 definitions. Because the Decree and the collective bargaining agreements between Lucky and
10 Intervenors cover some of the same terms and conditions of employment, and in order and to
11 avoid unnecessary conflict between the Decree and said collective bargaining agreements, the
12 *Stender* and *Anders* parties ("Parties") have stipulated that Intervenors may intervene in the
13 *Stender* and *Anders* Lawsuits as non-aligned parties. The Stipulation and Order Regarding
14 Intervention of UFCW Local Unions as Non-Aligned Parties is attached to this Decree as
15 Exhibit 4. Intervenors have participated in negotiations and mediation in regard to the
16 Decree. (The term "Parties" and the term "Intervenors" are mutually exclusive. They do not
17 overlap in any way.)

18 On July 27, 1992, the Parties and Intervenors stipulated to the dismissal with
19 prejudice of Alpha Beta Company as a defendant in the *Anders* Lawsuit in exchange for
20 Lucky's agreement as specified in such stipulation to assume responsibility for claims
21 asserted against Alpha Beta Company in such Lawsuit. A copy of the Stipulation and Order
22 Regarding Dismissal of Alpha Beta Company is attached to this Decree as Exhibit 5.

23 Also on July 27, 1992, the Parties and Intervenors entered into a Consent Decree
24 Regarding Injunctive Relief, Monetary Relief and Notice for Race Claims ("Race Decree")
25 which fully resolved all claims of race discrimination in the *Stender* Lawsuit and *Anders*
26 Lawsuit. The Court finally approved the Race Decree on October 30, 1992.

27

28

1 On August 25, 1992, the Parties entered into the Stipulation and Order Regarding
2 Sexual Harassment Claims, attached hereto as Exhibit 6. The Stipulation states, *inter alia*,
3 that Plaintiffs make no claims of sexual harassment in the *Stender* or *Anders* Lawsuits on
4 behalf of themselves or any members of the Sex class, as defined below.

5 On September 4, 1992, the Court tentatively approved a Consent Decree Regarding
6 Injunctive Relief and Notice for Sex Claims, which became effective as a preliminary
7 injunction on October 1, 1992. On November 3, 1992, the Court resolved the outstanding
8 issues in that Consent Decree.

9 Commencing on September 29, 1992, and ending on October 16, 1992, the Court
10 heard eleven days of expert testimony regarding liability for backpay damages to the Sex
11 Class members in this lawsuit. At further hearings, the Court commented upon the
12 methodology that it believed most appropriate for the calculation of such backpay damages,
13 but has not issued formal Findings of Fact and Conclusions of Law.

14 Based on the foregoing investigations, discovery, and trial, Parties and Intervenors
15 and their attorneys have concluded, after taking into account the risks involved in further
16 litigation and the likelihood that litigation regarding the sex claims, if not settled now, will
17 be protracted and expensive, that it would be desirable and in the best interests of the
18 Parties, Intervenors and class members to settle the sex claims in these actions in the manner
19 and upon the terms set forth below.

20 The Parties, Intervenors and their attorneys are satisfied that the terms and conditions
21 of this settlement are fair, reasonable and adequate and in the best interests of the *Stender*
22 and *Anders* plaintiffs and class members. Accordingly, the Parties and Intervenors consent to
23 the entry of this Consent Decree Regarding Monetary Relief, Injunctive Relief and Notice for
24 Sex Claims ("Decree") in full settlement of all individual and class injunctive and monetary
25 relief to be granted in these actions in regard to sex claims.

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1 IT IS THEREFORE ORDERED THAT:

2 **II. JURISDICTION**

3 The Court has jurisdiction over the Parties and Intervenor to and the subject matter
4 of this action. The complaints in the Stender Lawsuit and the Anders Lawsuit ("Covered
5 Lawsuits") state claims which, if proven, would authorize the Court to grant relief against
6 Lucky pursuant to Title VII, 42 U.S.C. § 1981, and FEHA.

7 **III. PURPOSES OF DECREE**

8 The Parties and Intervenor have entered into this Decree for the following purposes:

- 9 A. To avoid protracted, expensive, disruptive, inefficient, and unnecessary
10 litigation.
11 B. To provide injunctive relief with finality for all class members in regard to sex
12 claims.
13 C. To increase the utilization of female employees in certain retail store positions
14 within Lucky's Northern California Division as encompassed within the class definition.
15 D. To provide monetary relief to plaintiffs and class members.

16 To the extent consistent with these purposes, it is the intent of the Parties and
17 Intervenor that this Decree not unnecessarily burden Lucky's competitive position in the
18 grocery industry or unnecessarily disrupt Lucky's operations.

19 **IV. NON-ADMISSION, NON-DETERMINATION**

20 This Decree will not constitute evidence of any violation of Title VII, 42 U.S.C.
21 § 1981, FEHA, or any other law, regulation, order, or rule. By agreeing to and entering
22 voluntarily into this Decree, there is no admission, express or implied, that Lucky or
23 American Stores have violated Title VII, 42 U.S.C. § 1981, FEHA, or any other law,
24 regulation, order, or rule. This Decree does not contain, and will not be interpreted or
25 construed as containing any such admission. Plaintiffs have made no allegations of
26 discrimination against Intervenor.

27

28

1 V. STANDARDS OF COMPLIANCE WITH DECREE

2 The Parties and Intervenor have entered into this Decree with the following
3 understandings:

4 A. The only obligations that shall be imposed on Lucky and American Stores in
5 regard to the sex claims are expressly set forth in this Decree. No other obligations are to be
6 implied.

7 B. Compliance with the terms of this Decree shall constitute compliance with
8 Title VII, 42 U.S.C. § 1981, and FEHA with regard to the matters set forth in this Decree.

9 C. In addition to Title VII, 42 U.S.C. § 1981, and FEHA, Lucky and American
10 Stores are subject to other federal and state laws, regulations, and rules, including without
11 limitation, the Labor Management Relations Act, 29 U.S.C. §§ 141-187, and the holdings of
12 the *Steelworkers' Trilogy* (363 U.S. 564; 363 U.S. 574; 363 U.S. 593 (1960)), as interpreted
13 by the Ninth Circuit Court of Appeals. Nothing in this Decree shall be interpreted or
14 construed to conflict with such other legal obligations.

15 D. Lucky shall designate a Vice President as the officer with primary
16 responsibility for implementing this Decree.

17 E. The Parties and Intervenor shall have the right to seek modification of this
18 Decree only as follows:

19 1. Upon motion by either Party or Intervenor, the Court shall have the
20 authority to modify this Decree consistent with the purposes of this Decree only if:

21 a. Any provision of this Decree is found invalid; or

22 b. There is a substantial and material change to ELMT or to any
23 job position or department covered by this Decree or any other substantial modification of
24 business operations, which impairs the purposes of this Decree.

25 2. No motion for modification of this Decree shall be granted unless the
26 Parties supply declarations evidencing good faith efforts to resolve their differences before
27 seeking the intervention of the Court.

1 3. The Parties shall have full rights of appeal from the decision of this
2 Court with regard to any motion for modification.

3 **VI. DEFINITION OF CLASS**

4 The class covered by this Decree shall be defined as follows:

5 A. The class of female employees in the Stender Lawsuit shall include all women
6 covered by the Class Certification Stipulation and the Class Certification Order from July 26,
7 1983 (for claims regarding movement to full-time status) and from May 2, 1984 (for all other
8 claims) through the termination of this Decree ("Stender Sex Class") and for all claims shall
9 include women who were hired or transferred on or after January 30, 1990 into a job
10 covered by the Class Certification Stipulation and the Class Certification Order in a Lucky
11 Northern Division retail grocery store that previously was a Northern Region Alpha Beta
12 retail grocery store.

13 B. The class of female employees in the Anders Lawsuit shall include all women
14 who, at any time between October 20, 1987 and January 30, 1990 were employed in a
15 Northern Region Alpha Beta retail grocery store during the ownership of such store by Alpha
16 Beta Company and after January 30, 1990 those employees in this group who continued to be
17 employed in a Lucky Northern Division retail grocery store ("Anders Sex Class").

18 C. The Anders Sex Class and the Stender Sex Class are together referred to in
19 this Decree as the "Sex Class."

20 D. The geographic scope of this Decree shall encompass Lucky's Northern
21 California Division as of July 29, 1992. The terms of this Decree shall not apply to the
22 employees of any subcontractors or lessees of Lucky, American Stores or Alpha Beta.

23 **VII. EFFECTIVE DATE AND DURATION OF DECREE**

24 This Decree shall be deemed effective as of October 1, 1992 ("Effective Date"). The
25 date of final approval of this Decree by the Court shall be referred to as the Final Approval
26 Date. The date on which the Court enters Final Judgment pursuant to Federal Rules of Civil
27 Procedure 58 and 79(a), shall be referred to as the Date of Final Judgment. The terms of this
28

1 Decree shall operate as a preliminary injunction from the Effective Date until the Date of
2 Final Judgment, and shall replace the Consent Decree Regarding Injunctive Relief and Notice
3 for Sex Claims which has operated as a preliminary injunction since October 1, 1992.

4 Each period of twelve (12) calendar months following the Effective Date of the
5 Decree shall constitute a Decree Year.

6 This Decree shall continue to be effective and binding upon the Parties and
7 Intervenor as follows:

8 The Decree shall continue to be effective and binding upon the Parties and Intervenor
9 for a period of no more than ten (10) years immediately following the Effective Date, except
10 as set forth below:

11 A. The obligations in Sections XII (Allocation of Hours) and XIV(A) (Movement
12 into Grocery and Produce Apprentice) of this Decree shall terminate five (5) years after the
13 Effective Date.

14 B. The obligations in Section XI (Initial Assignments) of this Decree shall
15 terminate six (6) years after the Effective Date.

16 C. The obligations set forth in Section XIII (Movement to Full-Time) and
17 Sections XIV(B) and XIV(C) with respect to ELMT and movement to all Covered Positions,
18 except Store Manager and Assistant Store Manager, shall terminate no more than seven (7)
19 years after the Effective Date. The obligations for movement to Store Manager and Assistant
20 Store Manager shall terminate no more than ten (10) years after the Effective Date. The
21 obligations in Section XIV(B) and XIV(C) may terminate earlier than seven (7) or ten (10)
22 years, as applicable, as follows:

23 1. For all Covered Positions except Head Clerk (Fourth Person), the
24 obligations in Section XIV(C) shall terminate, separately by Covered Position, on the date
25 that the female incumbency in the Covered Position has for a period of six (6) months
26 equalled the female incumbency in the feeder position for such Covered Position. For
27 purposes of this subsection, the feeder position for each Covered Position shall be as follows:
28

- 1 a. for Store Manager, the feeder position shall be Assistant Store
2 Manager;
3 b. for Assistant Store Manager, the feeder position shall be Head
4 Clerk (Third Person);
5 c. for Senior Produce Clerk, the feeder position shall be Produce
6 Journey Clerk;
7 d. for Head Clerk (Third Person), the feeder position shall be Head
8 Clerk (Fourth Person);
9 e. for all other Head Clerk Covered Positions, except Head Clerk
10 (Fourth Person), the feeder position shall be Grocery Journey Clerk (Full-Time, Part-Time,
11 Day, and Night).

12 2. The obligations of Section XIV(C) with respect to Head Clerk (Fourth
13 Person) and Section XIV(B) with respect to ELMT shall terminate on the date that the
14 obligations in Section XIV(C) with respect to Head Clerk (Third Person) terminate.

15 The Parties and Intervenors shall not have the right to seek to modify the
16 Decree to extend its duration beyond the periods specified in this Section VII, except as a
17 remedy to enforce its terms. Nothing in this Section VII, however, shall bar Class Counsel
18 from moving after the expiration of this Decree to enforce obligations that pertain to a final
19 Decree Year.

20 When all Decree obligations have terminated, the Court shall make an order
21 terminating its jurisdiction of this matter for all purposes and dissolving the Decree. If the
22 Decree has not been dissolved within ten (10) years following the Effective Date, the Court
23 shall dissolve this Decree and make an order terminating its jurisdiction of this matter for all
24 purposes as of September 30, 2002, except that the Court may retain jurisdiction only to the
25 extent necessary in connection with any enforcement action that Class Counsel may bring
26 pursuant to the second sentence of the preceding paragraph.

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1 All grievances filed pursuant to the complaint and resolution procedures in Sections
2 XII(C), XIII(H) and XIV(F) prior to the expiration of Section XII, XIII or XIV, as
3 applicable, shall be adjudicated according to such complaint and resolution procedures, even
4 if the adjudication is not final prior to the expiration of Section XII, XIII or XIV, as
5 applicable.

6 **VIII. THE EFFECT OF DECREE ON ISSUES**

7 Effective upon the Date of Final Judgment, plaintiffs and the Sex Class members,
8 both individually and as a class, on behalf of themselves, their attorneys, spouses, executors,
9 representatives, heirs, successors, and assigns do hereby completely release and forever
10 discharge Intervenor and do hereby completely release and forever discharge Lucky Stores,
11 Inc., American Stores Company and Alpha Beta Company and all other affiliated, subsidiary
12 or related companies or divisions, and each of their respective present, former or future
13 officers, directors, shareholders, agents, employees, representatives, consultants, attorneys,
14 successors, and assigns ("Released Parties") from any claim, right, demand, charge,
15 complaint, action, cause of action, obligation or liability of any and every kind for individual
16 and class injunctive relief and individual and class monetary relief for discrimination on the
17 basis of sex, whether based on tort; contract, including without limitation, any collective
18 bargaining agreement; public policy; or any federal, state, or local law, statute, regulation,
19 which arose prior to the Date of Final Judgment and which were raised or could have been
20 raised in the Covered Lawsuits, including, without limitation, initial placement, job
21 assignment, job or department transfer, training, scheduling, allocation of hours, full-time
22 status, promotion, and further including, without limitation, any such claims which any Sex
23 Class member may have filed or caused to be filed in any court of law, or before any
24 administrative agency, state, federal, or local, or before any arbitrator, prior to the execution
25 of this Decree ("Released Claims"). Notwithstanding the foregoing, Released Claims shall
26 not include claims for sexual harassment (as set forth in the Stipulation and Order attached as
27 Exhibit 10) or claims by Sex Class members who opt out of the Covered Lawsuits or claims
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1 asserted by Sex Class members under any collective bargaining agreement for anything other
2 than discrimination on the basis of sex.

3 It is understood and agreed that this is a full and final general release applying not
4 only to all Released Claims which are presently known, anticipated or disclosed to plaintiffs
5 and the members of the Sex Class, but also to all Released Claims which are presently
6 unknown, unanticipated, and undisclosed to plaintiffs and the members of the Sex Class.
7 Plaintiffs, on behalf of the members of the Sex Class, including, without limitation, Plaintiffs
8 themselves, hereby waive any and all rights or benefits which they or any member of the Sex
9 Class may now have, or may in the future have, under the terms of Section 1542 of the
10 California Civil Code, which provides as follows:

11 A general release does not extend to claims which the creditor
12 does not know or suspect to exist in his favor at the time of
13 executing the release, which if known by him must have
14 materially affected his settlement with the debtor.

15 **IX. RETAINED RIGHTS**

16 Nothing in this Decree shall be construed to limit, modify, or compromise in any way
17 the existing right of Lucky or American Stores to decide:

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

21 B. The number and types of job classifications and job titles, provided that the
22 Parties and Intervenors first meet and confer pursuant to Section XIV(D)(2) regarding
23 proposed changes to the number and types of job classifications and job titles;

24 C. The aggregate number of hours available for work in any particular store,
25 department, job classification, job title, or daily work schedule;

26 D. The labor costs for any store or department;

27 E. The number of stores and the number and types of departments and services
28 provided within each store in the Northern California Division; and

1 F. The number and boundaries of the districts within the Northern California
2 Division.

3 Lucky shall notify Class Counsel and Intervenor's Counsel within thirty (30) days
4 after: (1) changing the number of districts or the boundaries of districts; (2) changing the
5 boundaries of the Northern California Division; or (3) substantially altering a store
6 department covered by this Decree. In the event of such a change, either Party or Intervenor
7 may, upon motion to the Court pursuant to Section V(E)(1), seek a modification of this
8 Decree consistent with the purposes of this Decree. The right of the Intervenor to seek a
9 modification of the Decree as set forth in this paragraph shall not exceed the right of the
10 Intervenor to contest the changes specified in this paragraph under the terms of the
11 collective bargaining agreement.

12 With respect to any retail store that Lucky may open during the life of this Decree,
13 nothing in this Decree shall be interpreted to require Lucky: (1) to recognize any UFCW
14 Local (or any other union) as the collective bargaining representative of its employees; or
15 (2) to bargain with any UFCW Local (or any other union). Similarly, with respect to any
16 retail store that Lucky may open during the life of this Decree, nothing in this Decree shall
17 be interpreted to compromise any claim by the Intervenor that Lucky: (1) recognize the
18 applicable UFCW Local Union as the collective bargaining representative of its employees;
19 or (2) bargain with the applicable UFCW Local Union.

20 The terms of this Section IX shall apply to every other Section of this Decree without
21 the need to restate its applicability in each other Section. Nothing in this Section IX shall be
22 interpreted to alter the existing collective bargaining rights of Lucky and the Intervenor with
23 respect to the matters covered in this Section.

24 X. **RELIEF FOR NAMED PLAINTIFFS**

25 Individual plaintiffs in the Covered Lawsuits shall be entitled to receive monetary
26 relief and individual injunctive relief only as follows:

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1 **A. Previously Settled Individual Claims**

2 1. **Nancy Stender**

3 Ms. Stender has released all claims for monetary and injunctive relief as set
4 forth in Exhibit 7. Of the \$170,000 paid to Ms. Stender, \$150,000 has been offset against
5 the monetary relief set forth in Section XX.

6 2. **Anita Martinez**

7 Ms. Martinez has released all claims for monetary and injunctive relief as set
8 forth in Exhibit 8.

9 **B. Remaining Individual Claims**

10 1. **Monetary Relief**

11 Lucky shall pay the following sums to the following named class
12 representatives no later than ten (10) days after the Entry of Judgment in the Covered
13 Lawsuits, provided that such named class representatives have signed the general release
14 form set forth in Exhibit 9 for all claims for sex discrimination against the Released Parties
15 through Entry of Judgment. The named class representatives shall not receive any share of
16 the Class Payment specified in Section XX(A). The named class representatives, however,
17 may be entitled to a share of Contingent Front Pay, if they are unsuccessful bidders for
18 positions in which there is a shortfall of placements as specified in Section XX(B). The
19 parties intend that sums paid to the named class representatives shall be treated as nontaxable
20 pursuant to the Order of this Court dated December 15, 1993. In the event that a tax
21 authority decides that such sums, or a portion of the sums are taxable, the named class
22 representatives and Lucky each shall pay their own taxes, interest, penalties and assessments.

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1	a.	Diane Skillsky	\$275,000
2	b.	Julie Valentine-Dunn	250,000
3	c.	Reba Barber-Money	200,000
4	d.	Irma Hernandez	230,000
5	e.	Leslie Anders	150,000
6	f.	Reba Barnes	100,000

7 **2. Injunctive Relief**

8 The named plaintiffs are entitled to individual injunctive relief
9 (e.g. promotion). No later than thirty (30) days after preliminary approval of this Decree,
10 the parties shall meet and confer in order to attempt to settle any disputed claims for such
11 relief. If the parties cannot resolve their disputes the issue(s) shall be submitted for binding
12 and expedited arbitration before Barbara Chvany. The sole arbitration issue shall be the
13 specific injunctive relief to be awarded to each named class representative. Any arbitration
14 award shall be incorporated into this Decree as an enforceable order of the Court.

15 Class Counsel shall be entitled to reasonable attorneys' fees and costs incurred
16 in resolving these individual injunctive issues as follows. Up to five (5) days before the date
17 of any arbitration, Class Counsel shall be entitled to reasonable attorneys' fees as set forth in
18 Section XXI. On the fifth (5th) day before any arbitration, and thereafter Class Counsel
19 shall be entitled to reasonable attorneys' fees on a prevailing party basis. For purposes of
20 this paragraph, prevailing means that the order of the arbitration is for a higher or
21 substantially better position than the last offered by Lucky at least one (1) week before the
22 arbitration is scheduled to commence. The arbitrator shall resolve any disputes regarding
23 prevailing status. The payment schedule and procedure for any fees awarded to Class
24 Counsel shall be the schedule and procedure set forth in Section XXI.

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1 **XI. INITIAL ASSIGNMENTS**

2 **A. Entry Level Positions**

3 As used throughout this Decree, "Entry Level Positions" refers to the following
4 positions:

- 5 1. Courtesy Clerk;
- 6 2. Grocery Day Apprentice Clerk;
- 7 3. Grocery Night Apprentice Clerk (Night Crew);
- 8 4. Produce Apprentice Clerk;
- 9 5. Deli/Bakery Apprentice Clerk;
- 10 6. General Merchandise Apprentice Clerk;
- 11 7. Floral Apprentice Clerk;
- 12 8. UFCW Utility Clerk.

13 The Deli/Bakery Apprentice Clerk, General Merchandise Apprentice Clerk and Floral
14 Apprentice Clerk positions are referred to collectively in this Decree as "Non-Foods
15 Apprentice Clerk" positions.

16 The term Grocery Journey Clerk as used in this Decree refers to an employee
17 classified as a Journeyman Food Clerk under the collective bargaining agreement who is
18 assigned to work in the Grocery Department. The term Produce Journey Clerk as used in this
19 Decree refers to an employee classified as a Journeyman Food Clerk under the collective
20 bargaining agreement who is assigned to work in the Produce Department. The term Non-
21 Foods Department Head as used in this Decree refers to an employee working as a Non-
22 Foods Head Clerk under the collective bargaining agreement who is assigned to work in the
23 Deli/Bakery, General Merchandise or Floral Departments. Nothing in this paragraph shall be
24 interpreted to alter the meanings of any of the job titles or job classifications contained in the
25 collective bargaining agreements.

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1 **B. Notice of Vacancies**

2 Lucky shall notify the public of vacancies in Entry Level Positions by posting a notice
3 conspicuously in the front of the store in which the vacancy occurs in an area normally used
4 for public notices. The notice for each vacancy shall remain posted for no fewer than five (5)
5 days.

6 **C. Brochures**

7 Each applicant for a position at a Lucky retail store covered by this Decree shall, at
8 the time of receiving a Lucky retail store Application Form, receive a Career Planning
9 Brochure. The Career Planning Brochure shall include descriptions of the Entry Level
10 Positions and advancement opportunities within Lucky's retail stores and contain a statement
11 of Lucky's commitment to equal employment opportunity and to this Decree. Lucky shall
12 provide the Career Planning Brochure to Class Counsel and Intervenors' counsel for review
13 prior to the Effective Date of the Decree.

14 **D. Application**

15 1. **Application Forms**

16 Lucky's retail store Application Form shall include a section which: (1) lists, *inter*
17 *alia*, the Entry Level Positions with a check-off box for each such position; and (2) instructs
18 applicants that they will be considered only for the vacancies posted in the store window.
19 The Application Form shall not provide a listing or check-off box for "any" position. Only
20 the entry-level boxes checked by applicants on the Application Form for vacancies posted in
21 the store window shall be counted for purposes of the applicant flow tracking required by
22 Section XIX(C) of this Decree. Lucky shall provide the Application Form to Class Counsel
23 for review prior to the Effective Date of the Decree.

24 2. **Applicants**

25 Lucky shall consider for initial placement to an Entry Level Position only those
26 individuals who on their Application Form mark the check-off box for the Entry Level
27 Positions posted as vacancies in the store window.
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1 3. **Outside Hiring**

2 Lucky may not engage in outside hiring to fill openings in Grocery Apprentice,
3 Produce Apprentice, or Courtesy Clerk positions until Lucky has exhausted the following
4 procedures:

5 a. **Openings in Covered Apprentice Positions**

6 i. Lucky first must exhaust the posting and bidding
7 procedures set forth in Section XIV(A)(5)(e).

8 ii. If Lucky cannot fill the vacancy through the procedures
9 set forth in Section XIV(A)(5)(e), Lucky then must offer the vacancy, in seniority order, to
10 General Merchandise Clerks and Floral Clerks with less than one (1) year of seniority
11 measured from the date of the posting and to Deli/Bakery Clerks with more than one (1) but
12 less than two (2) years of seniority measured from the date of the posting. If the offer is
13 accepted, the offeree will receive the rate of pay specified in Section XIV(A)(5)(g) of this
14 Decree, except that Lucky shall have no obligation to pay the \$.50 per hour supplement
15 specified in Section XIV(A)(5)(g)(iii)(C).

16 iii. If Lucky still cannot fill the vacancy, Lucky may hire
17 from the outside.

18 b. **Openings in Courtesy Clerk Positions**

19 i. Lucky must offer the opening, in seniority order, to all
20 General Merchandise, Deli/Bakery, and Floral Apprentice Clerks with less than sixty (60)
21 days of seniority measured from the date of the posting. If the offer is accepted, the offeree
22 will receive the Courtesy Clerk rate of pay set forth in the applicable collective bargaining
23 agreement. Nothing shall prevent Lucky from simultaneously posting the vacancy to outside
24 applicants to speed the hiring process in the event that no Lucky employee accepts the
25 position.

26 ii. If Lucky still cannot fill the vacancy, Lucky may hire
27 from the outside.

1 **E. Non-Discrimination**

2 1. Lucky shall not discriminate against class members on the basis of sex
3 (female) in regard to:

4 a. initial assignment to Entry Level Positions;

5 b. discouraging or deterring individuals from applying for Entry
6 Level Positions; and

7 c. providing false or misleading information to applicants for Entry
8 Level Positions.

9 2. Section XI(E)(1) shall be enforceable under this Decree only:

10 a. upon a showing of a substantial pattern of intentional
11 discrimination (The term "substantial pattern of intentional discrimination" means more than
12 episodic, individual or isolated instances of discrimination, but need not be a division-wide
13 pattern and practice of discrimination. Individual claims of discrimination are not actionable
14 under this Decree.); or

15 b. upon a showing of a substantial pattern of disparate impact, in
16 which case the sole remedy for such disparate impact shall be supplemental injunctive relief
17 only and not damages or contempt. (The term "substantial pattern of disparate impact" means
18 more than episodic, individual or isolated instances of discrimination, and must be at least a
19 district-wide pattern of discrimination, but need not be a division-wide pattern of
20 discrimination. If Lucky is in prima facie compliance with the terms of this Section XI of the
21 Decree, a disparate impact case is not met merely by showing a disparity in initial
22 placements of male and female employees. Individual claims of discrimination are not
23 actionable under this Decree.)

24 **XII. ALLOCATION OF HOURS**

25 **A. Part-time Employees**

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1 Lucky shall allocate Regularly Scheduled Hours and Additional Available Hours, as
2 those terms are defined below, among part-time apprentice and journey-level employees in
3 the Grocery Department ("Part-Time Employees") as provided by this Section XII.

4 1. Notice of Availability Form

5 a. Part-Time Employees will be required to complete a Notice of
6 Availability Form (attached to this Decree as Exhibit 10) which asks such employees to
7 declare:

8 i. the maximum number of hours up to which they are
9 available to work in any five (5) days of the work week;

10 ii. whether they are available to work any Additional
11 Available Hours on the Day Shift (7:00 a.m. to 10:00 p.m.); and

12 iii. whether they are available to work Additional Available
13 Hours on the Night Shift (10:00 p.m. to 7:00 a.m.)

14 b. Part-Time Employees who answer the first question by stating a
15 maximum of forty (40) hours shall be referred to as "available." Part-Time Employees who
16 answer the first question by stating a maximum number of hours less than (40) shall be
17 referred to as "restricted."

18 c. The declaration will be a permanent selection. However, Part-
19 Time Employees may change their selections by completing a new Notice of Availability
20 Form six (6) times per year during the third full working weeks of October, December,
21 February, April, June, and August. Lucky shall inform all Part-Time Employees of their
22 right to submit Notice of Availability Forms during these same weeks by posting a notice
23 next to the Weekly Work Schedule. The revised availability declarations will be effective on
24 the first day of the first full working weeks in November, January, March, May, July and
25 September. Beginning such effective dates, Lucky shall record on the Weekly Work
26 Schedule the maximum hours up to which each store employee has declared her/his
27 availability, whether s/he is available to work any Additional Available Hours, and whether
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1 s/he is available to work Additional Available Hours on the Night Shift. Lucky shall retain
2 for eighteen (18) months one Weekly Work Schedule for each store for each of the sixty (60)
3 day availability selection periods.

4 d. Part-Time Employees who fail to submit a timely original
5 Notice of Availability Form will be deemed to have filed a Notice of Availability Form
6 seeking unrestricted Regularly Scheduled Hours.

7 e. Lucky shall provide blank Notice of Availability Forms to
8 Intervenors and to Part-Time Employees in a pad or receptacle on or next to the bulletin
9 board that contains the Weekly Work Schedule. Intervenors shall have the right to distribute
10 the Notice of Availability Forms to Part-Time Employees.

11 f. Part-Time Employees may request the withdrawal of their
12 additional available hours designation, but, if so withdrawn in whole or in part, the
13 designation becomes void and may not be reactivated until the next bi-monthly declaration
14 period.

15 g. Part-Time Employees who transfer to another store will carry
16 their selections to the new location.

17 2. **Regularly Scheduled Hours**

18 a. **Definition**

19 An employee's Regularly Scheduled Hours are all work hours
20 which are assigned and posted on the Weekly Work Schedule for the week in which such
21 hours are to be worked. Store management shall include all hours on the Weekly Work
22 Schedule that it reasonably anticipates will be available for regular scheduling, except that
23 store management may refrain from scheduling a portion of such hours for legitimate
24 business purposes, provided that such action is not intended to evade the obligations of this
25 Section XII.

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b. Allocation Standard

Lucky shall schedule all Regularly Scheduled Hours according to seniority, subject only to the following standards:

- i. Lucky will comply with the minimum hours provisions of the applicable collective bargaining agreements;
- ii. Lucky will schedule Full-Time Employees for forty (40) hours of work, pursuant to the applicable collective bargaining agreement and Section XII(B) below;
- iii. Lucky will schedule Part-Time Employees for up to the maximum number of hours of work designated in their Notice of Availability Forms, to the extent that sufficient work hours are available;
- iv. Lucky will attempt to schedule more senior Part-Time Employees for more hours than junior Part-Time Employees, subject to the requirements of this Section XII, the terms of Section IX, and the terms of the applicable collective bargaining agreement. Lucky may not engage in "Flat Scheduling" for the purposes of avoiding the allocation standards set forth in this Section XII. Flat Scheduling shall be understood to refer to the scheduling of all or substantially all Part-Time Employees for the same number of hours of work in a work week;
- v. These allocation standards do not apply to the bookkeeping hours of Part-Time Employees scheduled to work as bookkeepers, to the step-up hours of Part-Time Employees scheduled to work at a step-up rate of pay, to the hours of work in the Produce Department assigned to apprentice and journey-level employees in the Produce Department, or to the hours of graduates of ELMT for six months of training following graduation from ELMT; and
- vi. The declarations of Part-Time Employees on their Notice of Availability Forms that they are "available" or "restricted" shall not be interpreted to permit employee selection of specific job assignments or to ensure any specific hours of

1 duty. Employees will continue to be assigned any hours of the day and any days of the week
2 as necessitated by business operations and consistent with the appropriate collective
3 bargaining agreement.

4 c. **Posting Obligations**

5 The Weekly Work Schedule shall list each Part-Time Employee by department and by
6 Lucky job classification within such department and by seniority within such Lucky job
7 classification. The Weekly Work Schedule also shall identify the bookkeeping hours
8 scheduled for bookkeepers, the step-up hours for employees assigned to step-up rates of pay,
9 the Grocery hours of Produce employees, and ELMT graduates (for six months following
10 graduation from ELMT).

11 The Weekly Work Schedule shall be posted not later than noon on Friday of the week
12 preceding the week in which such hours are to be worked and shall remain posted until the
13 next week's Weekly Work Schedule is posted.

14 d. **Claiming of Weekly Work Schedules**

15 i. A Part-Time Employee who has been allocated fewer
16 hours than a less senior Part-Time Employee on the Weekly Work Schedule may claim the
17 entire weekly schedule of such less senior Part-Time Employee by notifying the store
18 manager or the store manager's designee in writing on a form to be provided by Lucky
19 ("Schedule Claiming Form"). Intervenors shall have the right to distribute Schedule Claiming
20 Forms to Part-Time Employees. Schedule Claiming Forms must be received by the store
21 manager or the designee no later than 3:00 p.m. on Friday of the week preceding the week
22 in which the challenged schedule is to be effective.

23 ii. Part-Time Employees shall list on the Schedule Claiming
24 Form in order of preference the names of not more than three (3) less senior Part-Time
25 Employees whose schedules are being claimed. The granting of a claimed schedule only
26 occurs if all of the following conditions are met:

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1 (A) Part-Time Employees can only claim a schedule
2 in the same store where they are assigned.

3 (B) The schedule being claimed must have a greater
4 number of hours than the schedule of the Part-Time Employee claiming the schedule.

5 (C) Except as set forth in Section XII(A)(2)(d)(v)
6 below, the schedule for the entire week must be claimed. Individual days or shifts cannot be
7 claimed, and the Part-Time Employee must be willing and able to work the entire schedule.

8 (D) An "available" Part-Time Employee may claim
9 the schedule of a less senior Part-Time Employee who is "available" or "restricted."

10 (E) A "restricted" Part-Time Employee may claim
11 only the schedule of another less senior Part-Time Employee if the challenging employee has
12 been scheduled fewer than her/his declared maximum hours and fewer hours than the
13 challenged employee.

14 (F) A "restricted" Part-Time Employee may not
15 claim the schedule of another Part-Time Employee if the claim would result in a schedule
16 that contains more than the maximum number of hours that the challenging employee
17 requested on his or her Notice of Availability Form.

18 (G) The schedules of Full-Time Employees, the
19 schedules of ELMT graduates (for six months following graduation from ELMT), the
20 bookkeeping hours of employees who are scheduled to work as bookkeepers, the step-up
21 hours of employees who are scheduled to work at a step-up rate of pay, and the hours of
22 work in the Produce Department for apprentice and journey-level Produce employees who
23 are assigned hours of work in the Grocery Department cannot be claimed. Moreover,
24 apprentice and journey-level employees in the Produce Department who are assigned hours of
25 work in the Grocery Department may not claim additional hours of work in the Grocery
26 Department. Nonetheless, Part-Time Employees who are scheduled to work as bookkeepers,
27 who are graduates of ELMT (for the six months following such graduation), and who are
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1 scheduled to work at a step-up rate of pay may themselves seek to obtain additional hours of
2 work under the terms of this Section.

3 (H) The non-bookkeeping hours of employees who are
4 scheduled to work as bookkeepers, the non-step-up hours of employees who are scheduled to
5 work at a step-up rate of pay, and the hours of work in the Grocery Department assigned to
6 apprentice and journey-level employees in the Produce Department may be claimed. Lucky
7 shall adjust the Weekly Work Schedule covered by the claim(s) so that the Regularly
8 Scheduled Hours of the challenging employee(s) equal or exceed the Regularly Scheduled
9 Hours of the challenged employee(s), provided that such adjustments create no overtime, no
10 split shifts, and no schedules of less than twenty (20) hours.

11 (I) If a Part-Time Employee has requested to be
12 scheduled for fewer than her/his normally scheduled hours during the week to which the
13 claim is applicable, the claim will not be granted.

14 (J) A senior Part-Time Employee may claim the
15 schedules of no more than three (3) junior Part-Time Employees who have been scheduled
16 more hours, but a senior Part-Time Employee may receive only one such schedule. More
17 senior Part-Time Employees have priority over the claims of more junior Part-Time
18 Employees. If more than one Part-Time Employee claims the schedule of a junior Part-Time
19 Employee, the claim shall be granted to the most senior claiming Part-Time Employee.

20 iii. Employees who submit timely Schedule Claiming Forms
21 that meet all of the conditions in Section XII(A)(2)(d) will receive the claimed schedule and
22 the junior employee shall receive the senior employee's schedule for the following week. The
23 store manager or designee shall make the appropriate changes and post the revised Weekly
24 Work Schedule no later than 4 p.m. on Friday of the week preceding the week in which such
25 schedule is to be effective. The store manager or designee also shall notify affected
26 employees of any such changes in their work schedules.

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1 iv. If the transfer of schedules leaves a Part-Time Employee
2 with fewer hours than a Part-Time Employee with less seniority, the senior Part-Time
3 Employee cannot then claim the schedule of the junior Part-Time Employee that week.

4 v. Nothing in this paragraph shall be interpreted to alter the
5 terms of Section 10.1.2 of the collective bargaining agreement pertaining to the staffing of
6 stores on New Year's Day, Labor Day, and Thanksgiving Day with volunteers in order of
7 their seniority.

8 e. **Eight Hour Guarantee**

9 Nothing in this Section XII is intended to alter any existing rights in regard to any
10 eight (8) hour guarantee that may exist in the collective bargaining agreements of UFCW
11 Locals 870 and 1179, except as set forth below.

12 i. The schedules of employees in UFCW Locals 870 and
13 1179 who are covered by an eight-hour guarantee may not be claimed by more senior
14 employees who are not covered by an eight-hour guarantee.

15 ii. Both "available" and "restricted" employees covered by
16 an eight-hour guarantee may claim the schedule of a junior employee who has been allocated
17 more Regularly Scheduled Hours on the Weekly Work Schedule even where the schedule
18 contains shifts of fewer than eight hours. Only "available" employees who are covered by
19 an eight-hour guarantee shall be paid for eight hours work for all such shifts. (In which case
20 Lucky can adjust the scheduled shift to provide for eight hours work.)

21 iii. Employees covered by an eight-hour guarantee who are
22 requested to work Additional Available Hours shall be compensated for a minimum of eight
23 hours work on each day that they are so requested to work.

24 3. **Additional Available Hours**

25 Additional Available Hours are all work hours in increments of one (1) or more hours
26 which are not Regularly Scheduled Hours.

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1 a. **Allocation Procedure**

2 Additional Available Hours shall be allocated to Part-Time Employees as follows:

3 i. **By Shift Extension**

4 Store management may allocate Additional Available Hours of one (1) hour to less
5 than four (4) hours by holding over from a prior shift the most senior employee willing to
6 work an extended shift or by calling in early for an upcoming shift the most senior employee
7 willing to work on extended shift ("Shift Extension"). Store Management, however, may not
8 resort to Shift Extension by calling an employee to work early unless Store Management has
9 first attempted a Shift Extension by holding an employee over. Store management may grant
10 such Shift Extension on the day that it learns of the Additional Available Hours or on a
11 future day to accommodate Additional Available Hours of which it has been notified. If such
12 senior employee cannot work the entire number of Additional Available Hours which store
13 management is attempting to allocate, store management may resort to the Availability List
14 to distribute all of the Additional Available Hours or it may give the senior employee an
15 extended shift for as many hours as he or she can accept. If store management elects to give
16 the senior employee an extended shift for as many hours as he or she can accept but for less
17 than the Additional Available Hours which store management is attempting to allocate, store
18 management may resort to the Availability List to distribute all of the remaining Additional
19 Available Hours or it may grant an extended shift to the most senior employee who is
20 available when the previous employee's extended shift has ended.

21 ii. **By Call-In**

22 Store management may request employees to work Additional Available Hours of four
23 (4) or more hours that do not constitute an extension of such employees' regularly scheduled
24 work shifts as follows:

25 (A) If the Additional Available Hours are on the Day
26 Shift, store management shall call or otherwise attempt to contact Part-Time Employees who
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1 are designated as available for Additional Available Hours for that store in seniority order to
2 work such hours.

3 (B) If the Additional Available Hours are on the
4 Night Shift, store management shall call or otherwise attempt to contact Part-Time
5 Employees who are designated as available for Additional Available Hours on the Night Shift
6 for that store in seniority order to work such hours.

7 (C) If the Additional Available Hours fall on both the
8 Day Shift and the Night Shift, store management shall call or otherwise attempt to contact
9 employees who are designated as available for Additional Available Hours if at least one-half
10 of such hours are on the Day Shift or employees who are designated as available for
11 Additional Available Hours on the Night Shift if the majority of such hours are on the Night
12 Shift.

13 (D) If no employee who is designated as available for
14 Additional Available Hours is available to work the Additional Available Hours, store
15 management may assign those Additional Available Hours to any available employee from
16 any store without regard to the procedures of this Section XII(A)(3).

17 Notwithstanding the above procedures, Lucky shall not be required to call in an
18 individual who is designated as available for Additional Available Hours if the Additional
19 Available Hours would result in having to compensate that employee for overtime hours on a
20 daily or weekly basis. Nor shall Lucky be required to call in a "restricted" employee if the
21 Additional Available Hours would result in Regularly Scheduled Hours and Additional
22 Available Hours that exceed the employee's declared maximum or that are inconsistent with
23 the employee's declared Day/Night restrictions. An employee who is not designated as
24 available for the Additional Available Hours in question is still subject to work Additional
25 Available Hours if no employee who is designated as available for the hours in question is
26 available to work.

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1 b. **Recordkeeping**

2 Each store manager shall maintain a log ("Hours Log") which reflects the following
3 information for each week:

4 i. the names of Part-Time Employees who received
5 Additional Available Hours in increments of one (1) or more hours and the specific hours
6 received;

7 ii. the names of Part-Time Employees who turned down
8 Additional Available Hours in increments of one (1) or more hours when contacted pursuant
9 to Section XII(A)(3)(a) above and the specific hours declined;

10 iii. the names of Part-Time Employees whom store
11 management attempted to contact pursuant to Section XII(A)(3)(a) above but could not reach,
12 including the date and the time of the attempted contact; and

13 iv. The name of Part-Time Employees who received
14 Additional Available Hours by extension of their shift (the Hours Log shall designate such
15 Additional Available Hours with an "E").

16 The store manager shall post the Hours Log no later than noon on Monday of the
17 week immediately following the week to which the Hours Log pertains. The Hours Log shall
18 be posted in a conspicuous place and shall remain posted until 3:00 p.m on Friday.

19 B. **Full-Time Employees**

20 The provisions of this Section XII(B) shall apply only to journey-level employees in
21 the Grocery Department who are classified as full-time ("Full-Time Employees").

22 1. Lucky shall post a notice in a conspicuous place in all retail stores
23 covered by this Decree informing Full-Time Employees that:

24 a. they have a right to work forty (40) hours per week except as
25 provided by the collective bargaining agreement;

26 b. they cannot be scheduled for fewer than forty (40) hours per
27 week (including paid and unpaid leave and holiday pay) without their voluntary consent; and
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1 c. if they feel that their right to a forty (40) hour week has been
2 violated, they may file a Schedule Claiming Form in which they assert their claim to a forty
3 (40) hour work week.

4 2. Full-Time Employees who feel that their right to a forty (40) hour work
5 week has been violated must file a Schedule Claiming Form with the store manager no later
6 than 3:00 p.m. on Friday of the week preceding the week in which the challenged schedule
7 is to be effective. The Store Manager shall make the appropriate changes and post the revised
8 Weekly Work Schedule no later than 4:00 p.m. on the Friday of the week preceding the
9 week in which such schedule is to be effective.

10 **C. Complaint and Resolution Procedure**

11 1. **Scope of Section**

12 This Section XII sets forth the sole and exclusive rights and
13 responsibilities of Lucky and its employees with respect to the allocation of all work hours.

14 2. **Complaint Filing Procedures**

15 a. **Who May File Complaint**

16 Except as specified in Section XII(D) below, the terms of
17 Section XII must be enforced only by the UFCW Local Unions.

18 b. **Content of Complaint**

19 The UFCW shall notify Lucky in writing of alleged
20 violations of Section XII by filing grievances which specify the name, date and location of
21 the alleged violation, and a description of the alleged violation.

22 c. **Timing of Complaint**

23 i. **Claims Regarding Regularly Scheduled Hours and**
24 **Full-Time Employees**

25 A UFCW grievance alleging a violation of the terms of Section XII(A)(2) or XII(B) is
26 timely only if received by Lucky's Industrial Relations Department no later than 5 p.m. on
27 the Friday following the posting of the challenged schedule. Any grievance not timely
28

1 received is void. If no grievance is timely received by Lucky's Industrial Relations
2 Department, Lucky shall be deemed in prima facie compliance with Section XII(A)(2) and
3 XII(B) for the week to which the challenged schedule is applicable.

4 ii. **Claims Regarding Additional Available Hours**

5 A UFCW grievance alleging a violation of the terms of Section XII(A)(3) is timely
6 only if received by Lucky's Industrial Relations Department no later than 5 p.m. on the
7 second Friday following the posting of the challenged Hours Log. Any grievance not timely
8 received is void. If no grievance is timely received by Lucky's Industrial Relations
9 Department, Lucky shall be deemed in prima facie compliance with Section XII(A)(3) for the
10 week to which the challenged Hours Log is applicable.

11 iii. **Claims Regarding Notice of Availability**

12 A UFCW grievance alleging a violation of the Notice of Availability declaration
13 procedures in Section XII(A)(1) is timely only if received by Lucky's Industrial Relations
14 Department no later than 5 p.m. on the Friday following the effective date of the challenged
15 bi-monthly availability declarations. Any grievance not timely received is void. If no
16 grievance is timely received by Lucky's Industrial Relations Department, Lucky shall be
17 deemed in prima facie compliance with Section XII(A)(1).

18 3. **Resolution Procedures**

19 a. **Board of Adjustment**

20 i. Grievances filed pursuant to this Section XII shall first be
21 heard by a Board of Adjustment.

22 ii. The Board of Adjustment shall be composed of one (1)
23 Lucky representative and one (1) UFCW Local Union representatives.

24 iii. The parties shall make themselves available to convene a
25 Board of Adjustment within fourteen (14) days after Lucky's receipt of a grievance filed
26 pursuant to the procedures in Section XII(C)(2) above. The parties may agree to conduct the
27 Board of Adjustment meeting by telephone.

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1 b. **Expedited Arbitration .**

2 If the grievance is not resolved prior to or at the Board of
3 Adjustment, the grievance shall proceed to arbitration, as follows:

4 i. Barbara Chvany shall serve as the Expedited Grievance
5 Arbitrator for all grievances filed pursuant to Section XII(C). If Barbara Chvany becomes
6 unavailable to serve as the Expedited Grievance Arbitrator, the parties shall agree upon a
7 replacement. The replacement Expedited Grievance Arbitrator shall be the person who best
8 fits the qualifications of being a neutral attorney admitted to practice before the United States
9 District Court for the Northern District of California, and who has experience in employment
10 discrimination litigation.

11 ii. Within five (5) days after the Board of Adjustment, any
12 party desiring further review of the grievance shall notify the Expedited Grievance Arbitrator
13 in writing of the grievance and shall send a copy of the notification to the other party. A
14 grievance filed beyond this five-day deadline is void and arbitration is foreclosed. The
15 Expedited Grievance Arbitrator shall be available by telephone or in person to resolve such
16 grievance within fourteen (14) days after receipt of such notification.

17 iii. For grievances involving factual disputes only, and not
18 involving disputes relating to interpretation of the terms of the Decree, the following
19 procedures shall apply:

20 (A) the parties shall present their arguments to the
21 Expedited Grievance Arbitrator orally, by telephone or in person as mutually agreed by the
22 parties;

23 (B) the parties may present exhibits and live witnesses
24 or sworn witness statements;

25 (C) the parties shall not submit briefs to the Expedited
26 Grievance Arbitrator;

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1 (D) there shall be no transcript of the arbitration
2 hearing;

3 (E) appearances for the parties shall not be made by
4 attorneys or outside representatives; and

5 (F) the Expedited Grievance Arbitrator shall, orally
6 or in writing, notify the parties of the award within seven (7) days following the arbitration
7 hearing.

8 iv. For grievances involving a dispute relating to
9 interpretation of the terms of the Decree, the following procedures shall apply:

10 (A) The Expedited Grievance Arbitrator shall act as a
11 "master" pursuant to Federal Rule of Civil Procedure 53;

12 (B) the parties may agree to submit simultaneous pre-
13 arbitration briefs to the Expedited Grievance Arbitrator, however the briefs shall not exceed
14 fifteen (15) pages in length;

15 (C) the parties may present exhibits and live
16 witnesses;

17 (D) there shall be a transcript of the arbitration
18 hearing, and the parties shall request that the court reporter deliver the transcript within
19 fourteen (14) days after the hearing;

20 (E) no later than seven (7) business days after receipt
21 of the transcript, a party, at its option, may file a post-arbitration brief not to exceed ten (10)
22 pages in length;

23 (F) the Expedited Grievance Arbitrator shall submit a
24 written decision within ten (10) days following receipt of the transcript or briefs, whichever
25 is later; and

26 (G) Lucky shall deliver all decisions to Class Counsel
27 within seven (7) days of their receipt from the Expedited Grievance Arbitrator.

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1 v. Each party shall bear their own attorneys fees and costs
2 in connection with any arbitration under this Section XII(C)(3)(b), except that the Expedited
3 Grievance Arbitrator's fee and the court reporter's fee shall be borne on a prevailing party
4 basis. The Expedited Grievance Arbitrator shall determine prevailing party status.

5 vi. All decisions of the Expedited Grievance Arbitrator shall
6 be final and binding without right of review or reconsideration, except that Decree
7 interpretation decisions may be appealed to the Court as set forth in Sections V and XXVIII.

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9 **4. Compliance**

10 If Lucky complies with the procedures set forth in this Section XII(C) and abides by
11 the dispute resolution decisions of the Board of Adjustment and Expedited Grievance
12 Arbitrator, Lucky shall be deemed in prima facie compliance with the terms of Section XII
13 of this Decree.

14 **D. Non-Discrimination**

15 1. Lucky shall not discriminate against Sex Class members on the basis of
16 sex (female) in regard to:

17 a. the allocation of Regularly Scheduled Hours or Additional
18 Available Hours among Part-Time Employees;

19 b. the allocation of hours among Full-Time Employees;

20 c. the scheduling of Full-Time Employees for forty (40) hours per
21 week;

22 d. discouraging or deterring employees who wish to apply for
23 Additional Available Hours or object to the allocation of Regularly Scheduled Hours;

24 e. discouraging or deterring Full-Time Employees from working
25 forty (40) hours per week; and

26 f. providing false or misleading information to employees
27 regarding Additional Available Hours or the allocation of Regularly Scheduled Hours.

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1 2. If Lucky complies with the procedures set forth in Section XII(C) and
2 with the decisions of the Boards of Adjustment and the Expedited Grievance Arbitrator, then
3 no class member and no Intervenor shall have standing to file any grievance, complaint, or
4 action against Lucky under this Section XII(D). Section XII(D)(1) shall be enforceable under
5 this Decree only by Class Counsel only:

6 a. upon a showing of a substantial pattern of intentional
7 discrimination (The term "substantial pattern of intentional discrimination" means more than
8 episodic, individual or isolated instances of discrimination, but need not be a division-wide
9 pattern and practice of discrimination. Individual claims of discrimination are not actionable
10 under this Decree.); or

11 b. upon a showing of a substantial pattern of disparate impact, in
12 which case the sole remedy for such disparate impact shall be supplemental injunctive relief
13 only and not damages or contempt. (The term "substantial pattern of disparate impact" means
14 more than episodic, individual or isolated instances of discrimination, and must be at least a
15 division-wide pattern of discrimination. If Lucky is in prima facie compliance with the terms
16 of this Section XII of the Decree, a disparate impact case is not met merely by showing a
17 lack of parity or merely by showing a disparity in hours. Individual claims of discrimination
18 are not actionable under this Decree.)

19 **XIII. MOVEMENT TO FULL-TIME**

20 The provisions of this Section XIII apply only to movement from part-time status to
21 full-time status in the Grocery and Produce Departments.

22 **A. Covered Positions**

23 The positions covered by this Section XIII include only the following full-time
24 journey-level positions in the Grocery and Produce Departments ("Covered Full-Time
25 Positions"):

- 26 1. Full-Time Grocery Day Clerk;
27 2. Full-Time Grocery Night Clerk;

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1 3. Full-Time Produce Clerk. .

2 B. **Eligibility**

3 Only the following employees ("Eligible Clerks") are eligible to bid for Covered Full-
4 Time Positions;

5 1. for Full-Time Grocery Night Clerk and Full-Time Grocery Day Clerk,
6 only part-time journey-level clerks in the Grocery Department; and

7 2. for Full-Time Produce Clerk, only part-time journey-level clerks in the
8 Produce Department.

9 C. **Bid Procedure**

10 Eligible Clerks may bid for the appropriate Covered Full-Time Position openings in
11 their own store only by submitting a Full-Time Request Form concurrently to the Union and
12 to the employee's store manager or the store manager's designee. Such employees must
13 specify on the Full-Time Request Form the particular Covered Full-Time Position(s) that
14 they desire (*i.e.*, Full-Time Grocery Day Clerk, Full-Time Grocery Night Clerk, or Full-
15 Time Produce Clerk). Eligible Clerks in the Grocery Department simultaneously may submit
16 bids for Full-Time Grocery Day Clerk and Full-Time Grocery Night Clerk positions.

17 Full-Time Request Forms must be submitted every six (6) months during the first
18 two (2) full working weeks in February and August ("Full-Time Request Periods"). Full-
19 Time Request Forms may not be submitted outside the Full-Time Request Periods.

20 Lucky shall inform all Eligible Clerks of their right to submit Full-Time Request
21 Forms by posting an agreed notice next to the Weekly Work Schedule during the first and
22 second full working weeks preceding the Full-Time Request Periods. Lucky shall provide
23 blank Full-Time Request Forms to Intervenors and to Eligible Clerks in a pad or a receptacle
24 on or near the bulletin board that contains the Weekly Work Schedule. The UFCW Local
25 Unions shall have the right to distribute Full-Time Request Forms to Eligible Clerks.

26 Lucky shall provide the Full-Time Request Form to Class Counsel and to Intervenors'
27 Counsel for review prior to the Effective Date of the Decree.

1 D. **Bid Lists**

2 The names of the Eligible Clerks in each store who bid in accordance with
3 Section XIII(C) above shall be placed on a list ("Full-Time Request List") for that store in
4 order of their Lucky seniority. There shall be a separate Full-Time Request List for each
5 Covered Full-Time Position. The effective date of Full-Time Request Lists shall be the first
6 day of the first full working week in March and September. Lucky shall post the Full-Time
7 Request List next to the Weekly Work Schedule for one week beginning on such effective
8 date.

9 E. **Selection Process**

10 1. If Lucky decides to create or fill an opening in a Covered Full-Time
11 Position (and nothing in this Decree shall require or not require Lucky to do so), then Lucky
12 shall offer the Covered Full-Time Position to the most senior Eligible Clerk on the relevant
13 Full-Time Request List for such position who works in the same store as the opening and
14 who meets the following minimum qualifications:

15 a. is available to work the shift of the Covered Full-Time Position;
16 and

17 b. has not received any ungrieved disciplinary suspension or
18 termination from work for any reason within six (6) months prior to the date of the award. A
19 disciplinary suspension or termination grieved but not reversed before the award of a
20 Covered Full-Time Position shall be deemed ungrieved for purposes of this Section. Nothing
21 in this paragraph shall be interpreted to alter the scope of the remedies available to UFCW
22 employees who elect to challenge their disciplinary suspension or termination under the terms
23 of the appropriate collective bargaining agreement.

24 2. Covered Full-Time Positions may be filled on a temporary basis during
25 the vacation, sick leave or other temporary absence of the regular incumbent of such
26 positions without resort to the procedures of this Section XIII, provided such action is
27 consistent with the appropriate collective bargaining agreement, if applicable.

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1 3. Nothing in this Section XIII shall affect any existing right of Lucky to
2 transfer employees without loss of classification.

3 4. After each award of a Covered Full-Time Position to an Eligible Clerk,
4 Lucky shall post a Notice of Award in the store in which the placement has been made
5 identifying the name of the Covered Full-Time Position, the name of the Eligible Clerk, and
6 the effective date of the placement. The Notice of Award shall be posted next to the Weekly
7 Work Schedule no later than seven (7) days after the effective date of the placement and shall
8 remain posted for ten (10) days.

9 5. Nothing herein shall alter any obligation that may or may not exist
10 under any applicable collective bargaining agreement as to whether Lucky has any obligation
11 to consider Eligible Clerks from the appropriate Union Seniority Area if there are no Eligible
12 Clerks on the bid list for the store where the Covered Full-Time Position exists.

13 **F. Removal from Full-Time Request List**

14 Eligible Clerks who refuse an offer of a Covered Full-Time Position shall be removed
15 from the Full-Time Request List for such Position for the remainder of that bid period.

16 **G. Sole Provisions for Reclassification**

17 Reclassification from part-time to full-time in the Grocery and Produce Departments
18 shall occur only in accordance with the procedures set forth in this Section XIII.

19 1. If there are no Eligible Clerks on the applicable Full-Time Request List
20 who meet the minimum qualifications for a Covered Full-Time Position, or if no such clerks
21 want to fill such position, then no employee shall be reclassified to full-time status in
22 connection with such position.

23 2. The scheduling of a part-time Grocery or Produce Department clerk for
24 forty (40) hours per week for any duration shall not entitle such employee to a Covered Full-
25 Time Position or otherwise to be reclassified to full-time status, provided that such
26 scheduling is not a subterfuge to avoid the obligations of this Section XIII.

1 3. The terms of this Section XIII extinguish all grievances alleging
2 violations of the collective bargaining pertaining to movement to full-time status filed before
3 October 1, 1992 ("Surviving Grievances"). As to such Surviving Grievances, nothing in the
4 Decree shall alter how such grievances would have been adjudicated prior to the Decree.

5 H. **Complaint and Resolution Procedures**

6 1. **Scope of Section**

7 This Section XIII sets forth the sole and exclusive rights and responsibilities of
8 Lucky and its part-time journey level clerks in the Grocery and Produce Departments with
9 respect to reclassification to full-time status.

10 2. **Complaint Filing Procedures**

11 a. **Who May File Complaint**

12 Except as specified in Section XIII(I) below, the terms of
13 Section XIII may be enforced only by the UFCW Local Unions.

14 b. **Content of Complaint**

15 The UFCW shall notify Lucky in writing of alleged violations of
16 Section XIII by filing grievances which specify the name, date and location of the alleged
17 violation and a description of the alleged violation.

18 c. **Timing of Complaint**

19 i. A UFCW grievance alleging a violation of the terms of
20 Section XIII, excluding Sections XIII(C), (D), or (G)(2), is timely only if received by
21 Lucky's Industrial Relations Department no later than 5:00 p.m. on the seventeenth (17th)
22 day after the day that the Notice of Award is posted for the challenged full-time award. Any
23 grievance not timely received is void. If no grievance is timely received by Lucky's
24 Industrial Relations Department, Lucky shall be deemed in prima facie compliance with
25 Section XIII of this Decree with respect to the challenged full-time award.

26 ii. A UFCW grievance alleging a violation of the terms of
27 Section XIII(C) or (D) is timely only if received by Lucky's Industrial Relations Department
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1 that the arbitration procedures applicable to grievances alleging a violation of Section
2 XIII(G)(2) shall be the arbitration procedures set forth in the applicable collective bargaining
3 agreement. All decisions of the Expedited Grievance Arbitrator or other arbitrator shall be
4 final and binding without right of review or reconsideration.

5 4. **Compliance**

6 If Lucky complies with the procedures set forth in this Section XIII(H) and abides by
7 the dispute resolution decisions of the Board of Adjustment, Expedited Grievance Arbitrator,
8 or other arbitrator, Lucky shall be deemed in prima facie compliance with the terms of
9 Section XIII of this Decree.

10 I. **Non-Discrimination**

11 1. Lucky shall not discriminate against Sex Class members on the basis of
12 sex (female) in regard to:

13 a. reclassification of Grocery and Produce journey-level employees
14 from part-time to full-time status;

15 b. discouraging or deterring individuals from bidding for Covered
16 Full-Time Positions; and

17 c. providing false or misleading information to potential bidders
18 for Covered Full-Time Positions.

19 2. If Lucky complies with the procedures set forth in Section XIII(H) and
20 with the decisions of the Boards of Adjustment and the Expedited Grievance Arbitrator, then
21 no Party and no class member shall have standing to file any grievance, complaint, or action
22 against Lucky under this Section XIII(I). Section XIII(I)(1) shall be enforceable under this
23 Decree only by Class Counsel only:

24 a. upon a showing of a substantial pattern of intentional
25 discrimination (The term "substantial pattern of intentional discrimination" means more than
26 episodic, individual or isolated instances of discrimination, but need not be a division-wide
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1 pattern and practice of discrimination. Individual claims of discrimination are not actionable
2 under this Decree.); or
3 b. upon a showing of a substantial pattern of disparate impact, in
4 which case the sole remedy for such disparate impact shall be supplemental injunctive relief
5 only and not damages or contempt. (The term "substantial pattern of disparate impact" means
6 more than episodic, individual or isolated instances of discrimination, and must be at least a
7 district-wide pattern of discrimination, but need not be a division-wide pattern of
8 discrimination. If Lucky is in prima facie compliance with the terms of this Section XIII of
9 the Decree, a disparate impact case is not met merely by showing a disparity in placement
10 rates of male and female employees into Covered Full-Time Positions. Individual claims of
11 discrimination are not actionable under this Decree.)

12 **XIV. PROMOTIONS**

13 **A. Movement into Grocery and Produce Apprenticeship**

14 Lucky shall make Apprenticeship Promotions into Covered Apprenticeship Vacancies, as
15 those terms are defined below, in accordance with this Section XIV(A).

16 **1. Covered Positions**

17 The positions covered by this Section XIV(A) shall include the following positions
18 ("Covered Apprenticeship Positions"):

- 19 a. Grocery Day Apprenticeship Clerk;
20 b. Grocery Night Apprenticeship Clerk (Night Crew);
21 c. Produce Apprenticeship Clerk.

22 For purposes of this Section XIV(A), a Night position is a position for which the regularly-
23 scheduled shift commences between the hours of 10:00 p.m. and 2:00 a.m. and a Day
24 position is a position which commences at any other time.

25 **2. Covered Vacancies**

26 The vacancies covered by this Section XIV(A) ("Covered Apprenticeship Vacancies")
27 shall include all openings in Covered Apprenticeship Positions, except such openings filled by:
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- 1 a. Temporary assignment during the vacation, sick leave or other
2 absence or unavailability of the employee who regularly holds or who has been awarded the
3 Covered Apprentice Position;
- 4 b. Temporary assignment pursuant to the "Step Up Rules" of the
5 appropriate collective bargaining agreement, if applicable;
- 6 c. Assignment prior to 15 days after the opening to the public of a
7 new store pursuant to the New Store clause of the appropriate collective bargaining
8 agreement provided nothing in this Section XIV(A)(2)(c) shall be interpreted to alter the
9 rights of Lucky or Intervenors under the applicable collective bargaining agreements;
- 10 d. Lateral transfer from another store;
- 11 e. Step down;
- 12 f. Recall of an employee from layoff or involuntary economically
13 motivated step down pursuant to the terms of the appropriate collective bargaining
14 agreement;
- 15 g. Hire of an individual from outside Lucky after exhausting the
16 obligations set forth in this Section XIV and XI(D)(3);
- 17 h. Temporary assignment during a strike; and
- 18 i. Transfer, promotion, or otherwise where there are no qualified
19 bidders from the store where the Covered Apprentice Vacancy occurs.

20 The above openings that are excluded from the definition of Covered Apprentice
21 Vacancy shall be filled in a manner consistent with the appropriate collective bargaining
22 agreement, if applicable.

23 3. **Promotions Defined**

24 For purposes of this Section XIV(A), the term "Apprentice Promotion" shall be
25 defined as any non-temporary movement into any Covered Apprentice Vacancy from Non-
26 Foods Clerk positions, as that term is defined below, Courtesy Clerk, or UFCW Utility
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1 Clerk. Further, Apprentice Promotions shall encompass only movements from and to
2 positions in the retail stores.

3 4. **Eligible Employees**

4 a. Only employees in the following positions shall be eligible to
5 bid for Covered Apprentice Vacancies, provided they meet the minimum qualifications set
6 forth in Sections XIV(A)(4)(c) and (d) below ("Eligible Employees (Apprentice)");

7 i. Courtesy Clerks;

8 ii. General Merchandise Apprentice Clerks, Journey Clerks
9 and Department Heads, including those employees who work in Lucky "Tortilla Factories,"
10 and including those employees who work in Store 191 (Merced) and Store 192 (Atwater) as
11 Combination Clerks as that term is defined in the UFCW collective bargaining agreement
12 between Lucky and UFCW Union Local 1288 ("General Merchandise Clerks");

13 iii. Deli/Bakery Apprentice Clerks, Journey Clerks, and
14 Department Heads ("Deli/Bakery Clerks");

15 iv. Floral Apprentice Clerks, Journey Clerks, and
16 Department Heads ("Floral Clerks"); and

17 v. UFCW Utility Clerks.

18 The positions in Sections XIV(A)(4)(a)(ii)-(iv) above are collectively referred to in this
19 Section XIV(A) as "Non-Foods Clerk" positions.

20 b. As a sole and exclusive exception to the terms of Section
21 XIV(A)(4)(a), employees who are, and were prior to the Tentative Approval Date, paid or
22 classified as Grocery Journey Clerks or Department Heads or Produce Journey Clerks or
23 Department Heads assigned to work in the General Merchandise Department, the
24 Deli/Bakery Department, or the Floral Department in other than department head positions
25 shall be transferrable to Grocery or Produce Journey Clerk positions without otherwise
26 required posting and bidding, so long as the ratio of female to male transfers is at least as
27 great as the ratio of female to male incumbents in such positions.

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1 c. In order to be eligible to bid for Covered Apprentice Vacancies,
2 employees must: (1) be at least 18 years of age; (2) possess any necessary work permits;
3 (3) be employed in the store in which the Covered Apprentice Vacancy occurs as of the date
4 of bid; (4) be able to perform the essential functions of the posted Covered Apprentice
5 Position, which means, for purposes of this Decree, that the individual must possess the
6 physical and mental ability to perform essential job functions according to standards
7 applicable under the Americans with Disabilities Act of 1990; (5) be available not later than
8 seven (7) days after the date of the job award to work the shift of the posted Covered
9 Apprentice Position, as stated on the posting notice; and (6) not have received any ungrieved,
10 disciplinary suspension or termination from work for any reason within six months prior to
11 the date of the job posting. A disciplinary suspension or termination grieved but not reversed
12 before the award of a Covered Apprentice Position shall be deemed ungrieved for purposes
13 of this Section XIV(A). Nothing in this paragraph shall be interpreted to alter the scope of
14 the remedies available to UFCW employees who elect to challenge their disciplinary
15 suspension or discharge under the terms of the applicable collective bargaining agreement.

16 d. In addition, in order to be eligible to bid for Covered
17 Apprentice Vacancies, Courtesy Clerks must be employed by Lucky for a minimum of ninety
18 (90) days prior to bid, General Merchandise Clerks, Floral Clerks, and UFCW Utility Clerks
19 must be employed by Lucky for a minimum of one (1) year prior to bid, and Deli-Bakery
20 Clerks must be employed by Lucky for a minimum of two (2) years prior to bid.

21 **5. Posting and Bidding Procedures**

22 a. **Geographic Scope of Posting**

23 Covered Apprentice Vacancies shall be posted within the store in which the Covered
24 Apprentice Vacancy occurs.

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1 b. **Location and Content of Posting Notice**

2 Notices of Covered Apprentice Vacancies ("Apprentice Posting Notices") shall be
3 posted conspicuously on bulletin boards customarily used for employee notices in the store in
4 which the Covered Apprentice Vacancy occurs.

5 c. **Duration of Posting**

6 Apprentice Posting Notices shall remain posted for a minimum of five (5) calendar
7 days from the date of posting.

8 d. **Completion of Job Bids**

9 Eligible Employees (Apprentice) who wish to be considered for a Covered Apprentice
10 Vacancy must complete a Job Bid and, no later than the closing date on the Apprentice
11 Posting Notice, hand deliver or send the Job Bid by inter-office mail to the person designated
12 on the Posting Notice. Lucky shall provide a sample Posting Notice to Class Counsel and to
13 Intervenors for review prior to the Effective Date of the Decree. The scope of Intervenors'
14 right to bargain over the content of the sample Posting Notice shall be no greater than their
15 existing right to bargain over such matters under the collective bargaining agreement.

16 e. **Posting Rotation**

17 Lucky shall post Covered Apprentice Vacancies on a rotating basis within each store
18 first to Non-Foods Clerks only and then to Courtesy Clerks and UFCW Utility Clerks only
19 ("Bid Groups") in a one-to-one ratio. This bidding rotation shall be separate for each
20 Covered Apprentice Position (*e.g.*, one of every two vacancies in Grocery Night Apprentice
21 Clerk must be posted for bid by Non-Foods Clerks, one of every two vacancies in Produce
22 Apprentice Clerk must be posted for bid by Non-Foods Clerks, and so on). The proportion
23 set forth in this Section XIV(A)(5)(e) is a minimum only, and Lucky may, at its option,
24 allocate a larger proportion of Covered Apprentice Vacancies for bid by Non-Foods Clerks.

25 If there are no bids from Eligible Employees (Apprentice) within the Bid Group to
26 which a Covered Apprentice Vacancy is posted, Lucky shall post said vacancy to the other
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1 Bid Group. There after, the next Covered Apprentice Vacancy for the same position shall be
2 posted to the next Bid Group on the rotation.

3 If Lucky promotes an employee to a Covered Apprentice Position pursuant to the
4 exceptions set forth in Sections XIV(A)(2)(c) and (i), such Apprentice Promotion shall be
5 counted in the appropriate rotation for that Covered Apprentice Position in the store in which
6 the Apprentice Promotion occurred, based upon the Bid Group from which such employee
7 was promoted; and the next vacancy for such Covered Apprentice Position in that store shall
8 be posted for bid by the Bid Group that is next in the rotation.

9 f. **Selection**

10 Lucky shall award Apprentice Promotions to Covered Apprentice Vacancies to the
11 most senior Eligible Employee (Apprentice) who bids in accordance with
12 Section XIV(A)(5)(d) above ("Eligible Bidder (Apprentice)").

13 g. **Pay Rates and Status of Successful Bidders**

14 The employee awarded the Covered Apprentice Position ("Successful Bidder") shall
15 receive the following status and rate of pay upon their placement into such position:

16 i. Successful Bidders who are Courtesy Clerks shall receive
17 First Stage Grocery or Produce Apprentice Clerk status (and no hours credited toward
18 Grocery or Produce Journey Clerk status) and the corresponding rate of pay for such status
19 as set forth in the appropriate collective bargaining agreement;

20 ii. Successful Bidders who are UFCW Utility Clerks,
21 Deli/Bakery Clerks or Floral Clerks shall receive First Stage Apprentice Grocery or Produce
22 Clerk status (and no hours credited toward Grocery or Produce Journey Clerk status) and the
23 higher of either: (1) the corresponding rate of pay for such status as set forth in the
24 appropriate collective bargaining agreement; or (2) their rate of pay as of the date that they
25 are promoted;

26 iii. Successful Bidders who are General Merchandise Clerks
27 shall receive the appropriate pay rate and status as follows:

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1 (A) if awarded a Produce Apprentice Clerk position,
2 they shall receive First Stage Produce Apprentice status (and no hours credited toward
3 Produce Journey Clerk status) and the higher of either: (1) the corresponding rate of pay as
4 set forth in the appropriate collective bargaining agreement; or (2) their rate of pay as of the
5 date that they are promoted;

6 (B) if awarded a Grocery Apprentice Clerk position
7 from the position of General Merchandise Department Head, they shall receive full credit
8 toward Grocery Journey Clerk status for all hours worked as such General Merchandise
9 Clerk, but not to exceed 1,560 hours of credit and they shall be paid the higher of either:
10 (1) the rate of pay which corresponds to such status as set forth in the appropriate collective
11 bargaining agreement; or (2) their rate of pay as of the date that they are promoted;

12 (C) if awarded a Grocery Apprentice Clerk position
13 from the position of General Merchandise Apprentice Clerk or Journey Clerk, they shall
14 receive full credit toward Grocery Journey Clerk status for all hours worked as a General
15 Merchandise Clerk, but not to exceed 1,040 hours of credit and they shall be paid: (1) if
16 credited with 1,040 hours of credit, the higher of either (a) \$.50 per hour above the rate paid
17 to third stage Grocery Apprentice Clerks as set forth in the appropriate collective bargaining
18 agreement or (b) their rate of pay as of the date that they are promoted; or (2) if credited
19 with fewer than 1,040 hours of credit the higher of either (a) the rate of pay that corresponds
20 to such status as set forth in the appropriate collective bargaining agreement or (b) their rate
21 of pay as of the date that they are promoted.

22 Employees awarded Covered Apprentice Positions pursuant to this Section XIV(A)
23 shall be classified as part-time, without regard to their status prior to the award.

24 Nothing herein is intended to alter any existing rights under any collective bargaining
25 agreement, if applicable, in regard to the rate of pay for any person who was a journey food
26 clerk with some other employer before employment by Lucky and who after joining Lucky
27 was assigned to a Non-Foods department.

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1 **6. Job Descriptions**

2 Prior to the Effective Date, Lucky shall adopt job descriptions for the Grocery
3 Apprentice Clerk, Produce Apprentice Clerk, and Non-Foods Apprentice Clerk positions.
4 Lucky shall provide such job descriptions to Class Counsel and to Intervenors for review
5 prior to the Effective Date. The scope of Intervenors' right to bargain over the content of
6 such job descriptions shall be no greater than their existing right to bargain over such matters
7 under the collective bargaining agreement.

8 **7. Compliance**

9 For each Covered Apprentice Vacancy, if Lucky awards that vacancy to the most
10 senior Eligible Bidder (Apprentice), then Lucky shall be in compliance with Section XIV(A)
11 of this Decree and with any applicable collective bargaining agreement with respect to that
12 award.

13 **B. ELMT**

14 **1. ELMT Training Program**

15 Lucky shall adopt a training program ("ELMT") to provide training to qualify
16 employees for promotion into the Head Clerk (Fourth Person) or Head Clerk (Fifth Person)
17 positions. Lucky currently contemplates that: (1) there will be an ELMT training store in
18 each district; (2) the program will consist of formal training of at least four (4) weeks'
19 duration in a training store and up to six (6) months of on-the-job training thereafter; (3) the
20 formal training will include training on customer service, checking, front-end management,
21 stocking (including night crew), ordering, inventory control, pricing, merchandising,
22 bookkeeping, and emergency, safety, closing and audit procedures; and (4) the on-the-job
23 training will consist of working with and filling in for the assigned Head Clerk (Fourth
24 Person) in the trainee's assigned store. Lucky may change the program during the life of this
25 Decree, but shall give Class Counsel and Intervenors' Counsel notice of any change that is
26 substantial.

1 2. **Eligible Employees**

2 Employees eligible to bid for openings in ELMT ("Eligible Employees (ELMT)")
3 shall include only the following persons:

- 4 a. Grocery Journey Clerks who have been employed by Lucky for
5 a minimum of two (2) years prior to bidding;
6 b. Produce Journey Clerks who have been employed by Lucky for
7 a minimum of two (2) years prior to bidding;
8 c. Grocery Department Heads other than Head Clerk (Fourth
9 Person), Head Clerk (Fifth Person) or Head Clerk (Third Person);
10 d. Non-Foods Department Heads, including Deli/Bakery
11 Department Heads, General Merchandise Department Heads, and Floral Department Heads;
12 e. Senior Produce Clerks; and
13 f. Meat Department Heads, consistent with the appropriate
14 collective bargaining agreement, if applicable.

15 Further, Eligible Employees (ELMT) shall include only persons who: (1) are
16 available to fill the ELMT opening on the date of the award; (2) are employed in the district
17 in which the opening is posted as of the date of the posting; and (3) have not received any
18 ungrieved disciplinary suspension or termination from work for any reason within the six (6)
19 months prior to the date of the job posting. A disciplinary suspension or termination grieved
20 but not reversed before the award of the ELMT opening shall be deemed ungrieved for the
21 purposes of this Section XIV(B)(2). Nothing in this paragraph shall be interpreted to alter the
22 scope of the remedies available to UFCW employees who elect to challenge their disciplinary
23 suspension or discharge under the terms of the applicable collective bargaining agreement.

24 The term Grocery Journey Clerk as used in this Decree refers to an employee
25 classified as a Journeyman Food Clerk under the collective bargaining agreement who is
26 assigned to work in the Grocery Department. The term Produce Journey Clerk as used in this
27 Decree refers to an employee classified as a Journeyman Food Clerk under the collective
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1 bargaining agreement who is assigned to work in the, Produce Department. The term Non-
2 Foods Department Head as used in this Decree refers to an employee working as a Non-
3 Foods Head Clerk under the collective bargaining agreement who is assigned to work in the
4 Deli/Bakery, General Merchandise or Floral Departments. Nothing in this paragraph shall be
5 interpreted to alter the meanings of any of the job titles or job classifications contained in the
6 collective bargaining agreements.

7 3. **Posting and Bidding Procedures**

8 a. **Geographic Scope of Posting and Required Notices**

9 Notices of openings in ELMT shall be posted conspicuously on bulletin boards
10 customarily used for employee notices in all stores within the district in which the opening
11 occurs. Such notices shall remain posted for a minimum of five (5) days from the date of
12 posting.

13 b. **Completion of ELMT Bids**

14 Eligible Employees (ELMT) who wish to be considered for an ELMT opening must
15 complete an ELMT Bid and, no later than the closing date on the posting notice, hand
16 deliver or send the ELMT Bid by inter-office mail to the person designated on the posting
17 notice.

18 4. **Selection Process**

19 a. Lucky may award ELMT openings to the Eligible Employees
20 (ELMT) who have bid in accordance with Section XIV(B)(3)(b) ("Eligible ELMT Bidders")
21 and whom it considers most qualified for such openings, provided such selection is consistent
22 with the selection standards adopted pursuant to Section XIV(E). If the two or more most
23 qualified Eligible ELMT Bidders for the same opening have approximately equal
24 qualifications, then Lucky shall award such opening to the most senior such employee.
25 Notwithstanding anything in this Section XIV(B)(4) to the contrary, however, Lucky may
26 award an ELMT opening to a female Eligible ELMT Bidder if necessary to meet its ELMT
27 Rate Goal under this Decree.

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1 b. If there are no Eligible ELMT Bidders, Lucky may fill the
2 opening by any other means consistent with the preceding paragraph and consistent with the
3 appropriate collective bargaining agreement, if applicable. Such placements, however, shall
4 be included in determining Lucky's compliance with this Decree, as set forth in
5 Section XIV(B)(6)(d).

6 c. Lucky shall not reject any eligible ELMT Bidder on the ground
7 that such person previously has turned down the award of an ELMT opening, unless such
8 turndown was in bad faith.

9 **5. ELMT Rate Goal**

10 During the life of this Decree, Lucky shall award ELMT openings to women at 125%
11 of the ELMT Bid Rate as defined below, for women ("ELMT Rate Goal").

12 **6. Measurement**

13 a. **ELMT Bid Rate**

14 At the end of each Decree Year, Lucky shall compute an ELMT Bid Rate for women,
15 which shall be equal to the ratio of:

16 i. the number of female Eligible ELMT Bidders in that
17 Decree Year, excluding Eligible ELMT Bidders who are Meat Department Heads; and

18 ii. the total number of Eligible ELMT Bidders in that
19 Decree Year, excluding Eligible ELMT Bidders who are Meat Department Heads.

20 At any time after six (6) months from the Effective Date of the Decree, Class
21 Counsel may move for reconsideration of whether the computation of the ELMT Bid Rate
22 for women shall exclude Produce Journey Clerks, and Senior Produce Clerks.

23 b. **ELMT Goal**

24 At the end of each Decree Year, Lucky shall determine the total number of ELMT
25 awards during the Decree Year. The ELMT Goal shall be the product of the ELMT Rate
26 Goal multiplied by the total number of ELMT awards during the Decree Year, rounded to
27 the nearest whole number.

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1 c. **Actual ELMT Awards** .

2 At the end of each Decree Year, Lucky shall determine the number of women
3 awarded ELMT openings during the Decree Year ("Actual ELMT Awards"). The award of
4 an ELMT opening to an Eligible ELMT Bidder shall be included in the computation of
5 Actual ELMT Awards and/or total number of ELMT awards, as appropriate, even if that
6 employee declines the award.

7 d. **Compliance**

8 The determination of Lucky's compliance with the ELMT Goal shall be made at the
9 conclusion of each Decree Year. Lucky shall be in compliance with the ELMT Goals if the
10 Actual ELMT Awards equals or exceeds the appropriate ELMT Goal.

11 In the event that Lucky fails to achieve an ELMT Goal in any Decree Year, Lucky
12 shall carry the shortfall forward to the next Decree Year, and, in that next Decree Year,
13 Lucky must exceed its ELMT Goal by at least the amount of the shortfall from the prior
14 year. In the event that Lucky exceeds an ELMT Goal in any Decree Year, Lucky may carry
15 the surplus forward to the next Decree Year, and, in that next Decree Year, Lucky may use
16 the surplus to offset any shortfall in its ELMT Goal for that year. In the final Decree Year,
17 Lucky must meet its ELMT Goal for that year as well as any shortfall carried forward from
18 the prior Decree Year.

19 7. **ELMT Participants and Graduates**

20 a. Employees participating in the formal in-store training segment
21 of ELMT are referred to herein as ELMT Participants. Employees who successfully have
22 completed the formal in-store training segment ("ELMT Graduation") are referred to herein
23 as ELMT Graduates.

24 b. ELMT Participants shall receive the greater of: (1) the rate of
25 pay that they received prior to their participation in ELMT; or (2) the Grocery Journey Clerk
26 rate of pay as set forth in the appropriate collective bargaining agreement.

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1 c. Until the earlier of promotion to Head Clerk (Fourth Person) or
2 Head Clerk (Fifth Person) or six (6) months following ELMT Graduation, ELMT Graduates
3 shall:

4 i. work as Grocery Journey Clerks; and

5 ii. receive the greater of:

6 (A) the Grocery Journey Clerk rate of pay as set forth
7 in the appropriate collective bargaining agreement; or

8 (B) their rate of pay immediately prior to entering
9 ELMT.

10 d. An ELMT Graduate who is not promoted to Head Clerk (Fourth
11 Person) or Head Clerk (Fifth Person) by the close of the six (6) months following ELMT
12 Graduation shall receive the Grocery Journey Clerk rate of pay as set forth in the appropriate
13 collective bargaining agreement.

14 e. Upon promotion to a Head Clerk (Fourth Person) or Head Clerk
15 (Fifth Person) position, the ELMT Graduate shall receive the rate of pay for that position as
16 set forth in the appropriate collective bargaining agreement.

17 f. If an ELMT Participant fails successfully to complete the formal
18 in-store training segment of ELMT, Lucky may, at its option, assign such participant to the
19 grocery department at the Grocery Journey Clerk rate of pay or return such participant to the
20 position and pay rate held immediately prior to his or her participation in ELMT.

21 g. If an ELMT Participant or ELMT Graduate steps up to a
22 department head position, such participant or graduate shall receive not less than the rate of
23 pay specified for that position in the appropriate collective bargaining agreement, if required
24 by the terms of such collective bargaining agreement.

25 h. ELMT Graduates, for six (6) months following the date of
26 ELMT Graduation, and ELMT Participants may not bid for or bump the assigned number of
27 hours or schedule of other employees. Further, no employee may bid for or bump the
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1 assigned number of hours or schedule of such an ELMT Graduate or ELMT Participant
2 during the formal in-store training segment of the ELMT program and for six (6) months
3 thereafter. Lucky shall not schedule ELMT Graduates so as to displace the schedule of a
4 more senior employee, who regularly performs the duties given to the ELMT Graduate, for a
5 period longer than two (2) weeks unless there is a legitimate training need to schedule said
6 Graduate for a longer period.

7 **C. Store Management**

8 For all Covered Vacancies, Lucky shall make Promotions to Covered Positions, as
9 those terms are defined below, pursuant to the procedures in this Section XIV(C).
10 Promotions to fill Covered Vacancies for all Covered Positions shall be subject to posting as
11 provided herein. Promotions to fill Covered Vacancies for all Covered Positions except Store
12 Manager and Assistant Store Manager shall be subject to posting and bidding ("Bid Covered
13 Positions"), as provided herein.

14 **1. Covered Positions**

15 The positions covered by the job posting procedures described in this Section XIV(C)
16 are the following ("Covered Positions"):

- 17 a. Store Manager;
- 18 b. Assistant Store Manager;
- 19 c. Senior Produce Clerk;
- 20 d. Head Clerk (Third Person);
- 21 e. Head Clerk (Fourth Person);
- 22 f. Head Clerk (Receiving Clerk);
- 23 g. Head Clerk (Night Crew Manager);
- 24 h. Head Clerk (Fifth Person);
- 25 i. any other presently existing Grocery Department-Head Level
26 positions, including Front-End Clerk ("Other Department Head Positions").

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1 2. **Covered Vacancies**

2 Covered Vacancies shall include all openings in Covered Positions except openings
3 filled by:

4 a. The temporary assignment of a Covered Position during the
5 vacation, sick leave or other absence of the employee who regularly holds the Covered
6 Position;

7 b. The temporary assignment of a Covered Position pursuant to the
8 "Step Up Rules" of the appropriate collective bargaining agreement;

9 c. The assignment of a Covered Position prior to 15 days after the
10 opening to the public of a new store pursuant to the New Store clause of the appropriate
11 collective bargaining agreement, except that such assignment, if it is a Promotion, shall be
12 included in determining Lucky's compliance with this Decree, as set forth in
13 Section XIV(C)(7)(d); provided, nothing in this Section XIV(C)(2)(c) shall be interpreted to
14 alter the rights of Lucky or Intervenors under applicable collective bargaining agreements.

15 d. The lateral transfer of an employee from another store;

16 e. The step down of an employee;

17 f. The recall of an employee from layoff or involuntary
18 economically motivated step down pursuant to the terms of the appropriate collective
19 bargaining agreement;

20 g. The hire of an individual from outside Lucky, except that such
21 hire shall be included in determining Lucky's compliance with this Decree, as set forth in
22 Section XIV(C)(7)(d); and

23 h. The assignment of a Covered Position to a strike replacement,
24 except that such assignment shall be included in determining Lucky's compliance with this
25 Decree, as set forth in Section XIV(C)(7)(d), if such strike replacement becomes permanently
26 assigned to a Covered Position as a regular employee.

1 3. **Promotions Defined**

2 For purposes of this Section XIV(C), the term "Promotion" shall be defined as any
3 non-temporary movement: (a) into any Covered Positions from Journey Clerk in the Grocery
4 or Produce Departments or from any position in the Deli/Bakery or General Merchandise
5 Departments; (b) into Head Clerk (Fifth Person) from any position except Head Clerk
6 (Fourth Person), Head Clerk (Third Person), Assistant Store Manager and Store Manager;
7 (c) into Head Clerk (Fourth Person) from any position except Head Clerk (Third Person),
8 Assistant Store Manager and Store Manager; (d) into Head Clerk (Third Person) from any
9 position except Assistant Store Manager and Store Manager; (e) into Assistant Store Manager
10 from any position except Store Manager; (f) into Senior Produce Clerk from any position
11 except Assistant Store Manager or Store Manager; or (g) into Store Manager from any
12 position. Further, Promotions shall encompass only movements from and to positions in the
13 retail stores.

14 4. **Eligible Employees**

15 Eligibility to bid for the following positions shall be limited as follows ("Eligible
16 Employees"):

- 17 a. for Head Clerk (Night Crew Manager), only Grocery and
18 Produce Journey Clerks who have a minimum of six (6) months' night crew experience prior
19 to bid;
- 20 b. for Head Clerk (Receiving Clerk) and Other Department Head
21 Positions, only Grocery and Produce Journey Clerks;
- 22 c. for Head Clerk (Fifth Person), only employees who have
23 graduated from ELMT;
- 24 d. for Head Clerk (Fourth Person), only Head Clerks (Fifth
25 Person) and employees who have graduated from ELMT;

1 e. for Head Clerk (Third Person), only Head Clerks (Fourth
2 Person) or employees who have graduated from ELMT or ELMT-1 and who formerly held a
3 Head Clerk (Fourth Person) position; and

4 f. for Senior Produce Clerk, only Grocery Journey Clerks or
5 Produce Journey Clerks who in either case have a minimum of one (1) year of produce
6 experience prior to bid.

7 Further, Eligible Employees shall include only employees who: (1) are available to
8 fill the Covered Vacancy on the date of the job award; (2) work within the Geographic Scope
9 of the posting, as that term is defined below; and (3) have not received any ungrieved
10 disciplinary suspension or termination from work for any reason within the six months prior
11 to the date of the job posting. A disciplinary suspension or termination grieved but not
12 reversed before the award of the Covered Vacancy shall be deemed ungrieved for the
13 purposes of this Section XIV(C)(4). Nothing in this paragraph shall be interpreted to alter the
14 scope of the remedies available to UFCW employees who elect to challenge their disciplinary
15 suspension or discharge under the terms of the applicable collective bargaining agreement.

16 After the close of the first Consent Decree Year, Class Counsel may, upon noticed
17 motion pursuant to Section V(E)(1), move for reconsideration as to whether Produce Journey
18 Clerks should be eligible to bid for Promotions to Head Clerk (Receiving Clerk) and Head
19 Clerk (Night Crew Manager).

20 **5. Posting and Bidding Procedures**

21 **a. Geographic Scope of Posting and Required Notices**

22 Notices of Covered Vacancies ("Posting Notices") shall be posted conspicuously on
23 bulletin boards customarily used for employee notices in all stores within the district in which
24 the Covered Vacancy occurs ("Geographic Scope"). The Posting Notice shall include a
25 description of the relevant Covered Position, the normal work shift of such position, and the
26 anticipated location of such position. Posting Notices shall remain posted for a minimum of
27 five (5) calendar days from the date of posting. Nothing herein shall affect Lucky's right to
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1 cancel such posting if Lucky decides either not to fill said position or to fill it in a manner
2 outside the posting system as permitted by Section XIV(C)(2).

3 b. **Completion of Job Bids**

4 Employees who wish to be considered for a Bid Covered Position must complete a
5 Job Bid and, no later than the closing date on the Posting Notice, hand deliver or send the
6 Job Bid by inter-office mail to the person designated on the Posting Notice.

7 c. **Selection Process**

8 i. Lucky may award Promotions to Covered Positions to
9 the Eligible Employee who has bid in accordance with Section XIV(C)(5)(b) ("Eligible
10 Bidder") and whom Lucky considers to be most qualified for such position, provided such
11 selection is consistent with the selection standards adopted pursuant to Section XIV(E).
12 Whether an Eligible Employee works in the store in which the Covered Vacancy occurs shall
13 be a substantial factor in the selection process for Promotions to fill Covered Vacancies for
14 Bid Covered Positions. Lucky may consider whether the Eligible Employee works in the
15 same union seniority area within the same district as the store where the Covered Vacancy
16 occurs. If the two or more most qualified Eligible Bidders for the same Covered Position
17 have approximately equal qualifications, then Lucky shall award such position to the most
18 senior such employee. Notwithstanding anything in this Section XIV(C)(5)(c) to the contrary,
19 however, Lucky may award a Covered Position to a female Eligible Bidder if necessary to
20 meet its Promotion Goals under this Decree.

21 ii. If there are no Eligible Bidders for a Covered Vacancy
22 in a Bid Covered Position, Lucky may fill the vacancy by any other means consistent with
23 the preceding paragraph and consistent with the appropriate collective bargaining agreement,
24 if applicable. Such placements, however, shall be included in determining Lucky's
25 compliance with this Decree, as set forth in Section XIV(C)(7)(d).

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1 iii. In awarding Bid Covered Positions to Eligible
2 Employees, Lucky shall not consider prior rejections of such Promotions unless such
3 rejections were made in bad faith.

4 6. **Promotion Rate Goals**

5 During the life of this Decree, Lucky shall select women to fill Covered Vacancies at
6 the following percentages of the female employee Job Bid Rate, as defined below, for such
7 Covered Vacancies ("Promotion Rate Goals"). Lucky may, at its option, select women to fill
8 Covered Vacancies at a rate greater than the Promotion Rate Goals for a Covered Position.

- 9 a. For Head Clerk (Fifth Person), 115%.
- 10 b. For Head Clerk (Fourth Person), 115%.
- 11 c. For Head Clerk (Receiving Clerk), 135%.
- 12 d. For Head Clerk (Night Crew Manager), 135%.
- 13 e. For Senior Produce Clerk, 135%.
- 14 f. For Head Clerk (Third Person), 125%.
- 15 g. For Other Grocery Department Head Positions, 100%.
- 16 h. For Assistant Store Manager, 125%.
- 17 i. For Store Manager, 140%.

18 7. **Measurement**

19 a. **Job Bid Rate**

20 At the end of each Decree Year, Lucky shall compute a Job Bid Rate for women
21 separately for each Covered Position, as follows:

- 22 i. For each Bid Covered Position, the annual Job Bid Rate
23 shall be determined by computing the ratio of the number of female Eligible Bidders for each
24 Covered Vacancy in a Bid Covered Position, separately by each vacancy, to the total number
25 of Eligible Bidders for such Covered Vacancy. The average of such ratios for all vacancies
26 in the Northern California Division in the Decree Year for a particular Bid Covered Position
27 shall be the Job Bid Rate for that Bid Covered Position.

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1 At any time after six (6) months from the Effective Date of the Decree, Class
2 Counsel may move for reconsideration of whether the computation of the Job Bid Rate for
3 Head Clerk (Receiving Clerk) and Head Clerk (Night Crew Manager) should exclude
4 Produce Journey Clerks.

5 ii. For Store Manager, the annual Job Bid Rate shall be
6 equal to the percentage of female employees incumbent in the Assistant Store Manager
7 position in the Northern California Division at the beginning of the Decree Year in question;
8 and

9 iii. For Assistant Store Manager, the annual Job Bid Rate
10 shall be equal to the percentage of female employees incumbent in the Head Clerk (Third
11 Person) position in the Northern California Division at the beginning of the Decree Year in
12 question.

13 b. **Promotion Goals**

14 i. At the end of each Decree Year, Lucky shall determine
15 for each Covered Position the total number of promotions awarded during the Decree Year
16 ("Total Promotions"). This number shall include persons hired directly into Covered
17 Positions, placements made pursuant to Section XIV(C)(5)(c)(ii) provided that such
18 placement is a Promotion, placements made pursuant to Section XIV(C)(2)(c), provided such
19 placement is a Promotion, and permanent placements made pursuant to Section XIV(C)(2)(h)
20 of this Decree.

21 ii. For each Covered Position, the promotion goal for
22 women shall be the product of the appropriate Promotion Rate Goal for such position,
23 multiplied by the Total Promotions for such position, rounded to the nearest whole number
24 ("Promotion Goal").

25 c. **Actual Promotions**

26 At the end of each Decree Year, Lucky shall determine for each Covered Position the
27 number of women promoted into each such position during the Decree Year ("Actual
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1 Promotions"). This number shall include women hired directly into Covered Positions,
2 placements of women made pursuant to Section XIV(C)(5)(c)(ii), placements made pursuant
3 to Section XIV(C)(2)(c), provided such placement is a Promotion, and permanent placements
4 of women made pursuant to Section XIV(C)(2)(h) of this Decree.

5 The award of a Covered Position to an employee shall be included in the computation
6 of the Actual Promotions and/or Total Promotions, as appropriate, for such position,
7 provided such award is a Promotion, even if that employee declines the award.

8 d. **Compliance**

9 i. The determination of Lucky's compliance with the
10 Promotion Goals specified in Section XIV(C)(7)(b) shall be made at the conclusion of each
11 Decree Year.

12 ii. For each Covered Position, Lucky shall be in compliance
13 with such goal if the Actual Promotions of women into each such position equals or exceeds
14 the Promotion Goal for such position.

15 iii. In the event that Lucky fails to achieve a Promotion Goal
16 in any Decree Year, Lucky shall carry the shortfall for such Promotion Goal forward to the
17 next Decree Year, and, in that next Decree Year, Lucky must exceed such Promotion Goal
18 by at least the amount of the shortfall from the prior year. In the event that Lucky exceeds a
19 Promotion Goal in any Decree Year, Lucky may carry the surplus for such Promotion Goal
20 forward to the next Decree Year, and, in that next Decree Year, Lucky may use the surplus
21 to offset any shortfall in such Promotion Goal for that year.

22 8. **Step Downs**

23 Any employee who steps down to a journey-level position within one year of
24 promotion pursuant to this Decree to a department head level position shall revert to the
25 same part-time or full-time status that he or she held immediately prior to the promotion to
26 such position. After the close of the first Decree Year, the Parties or Intervenors may move
27 for reconsideration of whether employees who step down more than one year after promotion
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1 to a department-head level position shall retain their full-time status as provided in this
2 Section XIV(C)(8).

3 D. Miscellaneous

4 1. In promoting any woman, or in considering the relative qualifications
5 of competing candidates for any Covered Position, Lucky shall not be required to do any of
6 the following:

- 7 a. Displace any current employee from his or her current position;
- 8 b. Promote any specific individual to any Covered Position;
- 9 c. Promote any individual who is not an Eligible Employee or
10 Eligible Employee (ELMT), as applicable; or
- 11 d. Create any Covered Position.

12 2. If Lucky creates new Grocery department head level positions during
13 the life of this Decree, counsel for Lucky, Class Counsel, and Intervenors shall meet and
14 confer regarding whether the posting and bidding procedures set forth in this
15 Section XIV(C)(5) shall apply to such positions and, if so, how they shall apply. If counsel
16 are unable to agree on whether or how such procedures shall apply, the issue shall be
17 submitted to the Court for its determination pursuant to the provisions of Section V(E)(1).
18 The scope of Intervenors' right to bargain over the creation of a new Grocery department
19 head level position shall be no greater than their existing right to bargain over such matters
20 under the collective bargaining agreement.

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1 3. Notwithstanding the provisions, of any collective bargaining agreement
2 to the contrary, an employee who accepts the award of a promotion to a Covered Position
3 outside of his or her UFCW Local Seniority area shall not suffer any loss of seniority by
4 virtue of accepting such promotion.

5 E. **Job Descriptions and Selection Factors**

6 1. Prior to the Effective Date, Lucky shall adopt:

7 a. professionally-developed job descriptions for Covered Positions;

8 and

9 b. professionally-developed selection factors for Covered Positions
10 and for ELMT. Nothing in this Decree precludes the inclusion of subjective selection factors
11 so long as such factors are consistent with professional standards.

12 2. If there is a substantial and material change in a Covered Position, the
13 job description and selection factors for such position shall be revised in accordance with
14 professional standards.

15 3. Lucky shall adopt a job description and selection factors for each new
16 Grocery department head level position that it creates during the life of this Decree, provided
17 that the posting and bidding procedures set forth in Section XIV(C)(5) are determined to be
18 applicable to such position pursuant to Section XIV(D)(2) above.

19 4. Lucky shall provide Class Counsel and Intervenor's Counsel with a
20 copy of the job descriptions and selection factors adopted pursuant to this Section XIV(E)
21 within fifteen (15) days of the adoption of such job descriptions and selection factors.

22 5. Whether the selection of a particular individual for ELMT or a Covered
23 Position is consistent with the selection factors referred to in this Section XIV(E) shall not be
24 subject to review under this Decree except as provided in Section XIV(F).

25 F. **Complaint and Resolution Procedures**

26 1. **Scope of Section**

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1 This Section XIV sets forth the sole and exclusive rights and responsibilities of Lucky
2 and its employees with respect to movement to Covered Apprentice Positions, ELMT, and
3 Covered Positions.

4 **2. Complaint Filing Procedures**

5 **a. Who May File Complaint**

6 Except as specified in Section XIV(G) below, the terms of Sections XIV(A)(2), (4)
7 and (5), Sections XIV(B)(2), (3), (4) and (7), and Sections XIV(C)(4), (5) and (8) may be
8 enforced only by the UFCW Local Unions. Store Manager and Assistant Store Manager
9 positions are not covered by the UFCW contract. Therefore, employees who are denied Store
10 Manager and Assistant Store Manager positions are not automatically entitled to seek the
11 filing of contract grievances. Nonetheless, employees who are denied Store Manager and
12 Assistant Store Manager positions may file a complaint with the Human Resources
13 Department no later than twenty (20) days after the filling of the vacancy. If the complaint
14 is not resolved satisfactorily to the employee within twenty (20) days of its filing, the
15 employee may invoke binding arbitration as the exclusive means of resolving her/his dispute.
16 The complaining employee may seek representation of her/his choosing in this complaint
17 procedure. Notice of the availability of this procedure shall be included on postings for
18 Store Manager and Assistant Store Manager Covered Vacancies.

19 **b. Content and Timing of Complaint**

20 The UFCW shall notify Lucky of alleged violations of Sections XIV(A)(2), (4) and
21 (5), Sections XIV(B)(2), (3), (4) and (7), and Sections XIV(C)(4), (5) and (8) by filing
22 grievances in accordance with the procedures for filing non-disciplinary grievances in the
23 applicable collective bargaining agreement.

24 Any grievance not timely received is void. If no grievance is timely filed, Lucky
25 shall be deemed in prima facie compliance with Sections XIV(A)(2), (4) and (5), Sections
26 XIV(B)(2), (3), (4) and (7), and Sections XIV(C)(4), (5) and (8) of this Decree with respect
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1 to the challenged selection or with respect to the bidding procedure for a particular position,
2 as applicable.

3 **3. Resolution Procedures**

4 All grievances filed pursuant to Section XIV(F)(2) above shall be resolved
5 pursuant to the non-disciplinary grievance Board of Adjustment and arbitration procedures in
6 the applicable collective bargaining agreement. All arbitration decisions shall be final and
7 binding without right of review or reconsideration.

8 **4. Compliance**

9 If Lucky complies with the procedures set forth in this Section XIV(F) and abides by
10 the dispute resolution decisions of the Board of Adjustment and arbitrators, Lucky shall be
11 deemed in prima facie compliance with the terms of Sections XIV(A)(2), (4) and (5),
12 Sections XIV(B)(2), (3), (4) and (7), and Sections XIV(C)(4), (5) and (8).

13 **5.** Nothing herein is intended to add to or subtract from the rights of
14 Lucky or Intervénors under applicable collective bargaining agreements in regard to training
15 programs other than ELMT, including, without limitation, the creation of, content of,
16 eligibility for, selection for, or termination of such programs.

17 **G. Non-Discrimination**

18 **1.** Lucky shall not discriminate against Sex Class members on the basis of
19 sex in regard to:

- 20 a. selection for ELMT;
- 21 b. promotions to Covered Apprentice Positions or Covered
22 Positions;
- 23 c. demotions of individuals promoted to such positions;
- 24 d. discouraging or deterring individuals from bidding for such
25 positions or for ELMT; and
- 26 e. providing false or misleading information to potential bidders
27 for such positions or for ELMT.

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1 2. If Lucky complies with the procedures set forth in Section XIV(F) and
2 with the decisions of the Boards of Adjustment and arbitrators, then no Party and no class
3 member shall have standing to file any grievance, complaint, or action against Lucky under
4 this Section XIV(G). Section XIV(G)(1) shall be enforceable under this Decree only by Class
5 Counsel only:

6 a. upon a showing of a substantial pattern of intentional
7 discrimination (The term "substantial pattern of intentional discrimination" means more than
8 episodic, individual or isolated instances of discrimination, but need not be a division-wide
9 pattern and practice of discrimination. Individual claims of discrimination are not actionable
10 under this Decree.); or

11 b. upon a showing of a substantial pattern of disparate impact, in
12 which case the sole remedy for such disparate impact shall be supplemental injunctive relief
13 only and not damages or contempt. (The term "substantial pattern of disparate impact" means
14 more than episodic, individual or isolated instances of discrimination, and must be at least a
15 district-wide pattern of discrimination, but need not be a division-wide pattern of
16 discrimination. If Lucky is in prima facie compliance with the terms of this Section XIV of
17 the Decree, a disparate impact case is not met merely by showing a disparity in placement
18 rates of male and female employees into Covered Positions or into ELMT. Individual claims
19 of discrimination are not actionable under this Decree.)

20 **XV. MANAGEMENT TRAINING AND EVALUATION**

21 **A. Management Training and Accountability**

22 Prior to the Effective Date of this Decree, Lucky shall conduct a training program for
23 its current District Managers, Merchandisers, Store Managers, Assistant Store Managers,
24 Head Clerks (Third Person), and Head Clerks (Fourth Person). Persons who attend these
25 programs will be informed of their responsibility for meeting the objectives of this Decree
26 and of Lucky's commitment to equal employment opportunity and will be provided with the
27 job descriptions and selection factors adopted pursuant to Section XIV(E).

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1 B. **Augmentation of Existing Training Programs**

2 Within sixty (60) days of the Effective Date, Lucky shall augment its existing ELMT
3 and RMDP training programs to include training on Lucky's responsibility for meeting the
4 objectives of this Decree and on Lucky's commitment to equal employment opportunity.

5 C. **Annual Performance Evaluations**

6 As part of the regular management performance evaluation process, Lucky shall
7 evaluate Vice Presidents of Operations, District Managers, Merchandisers, Store Managers
8 and Assistant Store Managers on their compliance with their responsibilities under this
9 Decree and on their performance with respect to equal employment opportunity matters.

10 XVI. **NON-DISCRIMINATION**

11 A. Lucky shall not discriminate against Sex Class members on the basis of sex in
12 regard to:

- 13 1. job, task, shift, and temporary step-up assignments;
14 2. granting overtime, alternate and premium hours; and
15 3. training opportunities

16 B. This Section XVI shall be enforceable only by Class Counsel only:

17 1. upon a showing of a substantial pattern of intentional discrimination
18 (The term "substantial pattern of intentional discrimination" means more than episodic,
19 individual or isolated instances of discrimination, but need not be a division-wide pattern and
20 practice of discrimination. Individual claims of discrimination are not actionable under this
21 Decree.), in which case the remedy for the first offense may include supplemental injunctive
22 relief or damages, but shall not include contempt (a contempt remedy shall be available only
23 for subsequent similar offenses); or

24 2. upon a showing of a substantial pattern of disparate impact, in which
25 case the sole remedy for such disparate impact shall be supplemental injunctive relief only
26 and not damages or contempt. (The term "substantial pattern of disparate impact" means
27 more than episodic, individual or isolated instances of discrimination, and must be at least a
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1 district-wide pattern of discrimination, but need not be a division-wide pattern of
2 discrimination. The remedy for a successful showing of disparate impact shall not be
3 imposed upon a greater geographic area than the geographic area of the showing. Individual
4 claims of discrimination are not actionable under this Decree.)

5 **XVII. PROHIBITION AGAINST RETALIATION**

6 A. Lucky shall not retaliate against Sex Class members for their participation in
7 either of the Covered Lawsuits or for their having asserted any rights under this Decree.

8 B. Section XVII(A) above shall be enforceable under this Decree only upon either
9 a showing of a substantial pattern of intentional retaliation violating the provisions of
10 Section XVII(A) or as provided in Section XVII(C).

11 C. Individual claims of retaliation are not actionable under this Decree, except as
12 follows:

13 1. By the existing named plaintiffs.

14 2. By Sex Class members, provided that for such class members Class
15 Counsel must show that Lucky had knowledge that the class member affected had contacted
16 Class Counsel in connection with either of the Covered Lawsuits.

17 a. For such contacts occurring between the initial filing of the
18 Covered Lawsuits and the Date of Final Judgment, the alleged retaliatory action must occur
19 no later than six (6) months after the Date of Final Judgment in order to be actionable under
20 this Decree; and

21 b. For such contacts occurring after the Date of Final Judgment,
22 the alleged retaliatory action must occur within six (6) months of such contact in order to be
23 actionable under this Decree.

24 3. Within ninety (90) days of the alleged retaliatory action, Class Counsel
25 must initiate in writing a meet and confer process with Lucky in regard to such complaint.

26 4. If an individual claim of retaliation is settled or filed with the Court
27 pursuant to this Section XVII, such named plaintiff or class member waives any other rights
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1 he or she might have had to file a complaint of retaliation with respect to the alleged
2 retaliatory action under any state, federal or local law.

3 D. Nothing in this Section shall be interpreted to bar Lucky from asserting any
4 defense to a claim of retaliation, including, without limitation, a defense that the person(s)
5 responsible for the action(s) alleged to be retaliatory had no knowledge that the class member
6 had contacted Class Counsel in connection with either of the Covered Lawsuits.

7 **XVIII. UNION OBLIGATIONS**

8 The Intervenor acknowledge their obligation under federal and state law to refrain
9 from discriminating against employees because of their sex. Accordingly, Intervenor agree
10 that they shall:

11 A. Enforce the collective bargaining agreement rights of collective bargaining
12 employees covered by the class definition to be free from discrimination in regard to
13 promotion because of their sex;

14 B. Not discriminate on the basis of sex in the handling of grievances filed
15 pursuant to the provisions of this Decree; and

16 C. Retain copies of all written grievances filed which relate to alleged violations
17 of this Decree.

18 **XIX. REPORTING OBLIGATIONS**

19 **A. Document Preservation**

20 For the duration of the Decree, Lucky shall retain the following hard-copy (paper or
21 fiche) and computer records for all employees in its Northern California Division retail
22 stores, excluding employees in the Meat and Pharmacy departments and in non-UFCW
23 janitor positions: 801 forms, personnel files, and performance appraisals.

24 **B. Reporting Intervals**

25 On a semi-annual basis for the Decree Year commencing October 1, 1993 and on an
26 annual basis thereafter, Lucky shall provide to Class Counsel, Intervenor and the Court the

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1 data set forth in the following subsections, no later than sixty (60) days after the close of the
2 reporting period.

3 **C. Initial Assignment Reporting**

4 Lucky shall maintain for two (2) years all Application Forms received for Entry Level
5 Positions and applicant flow data for each store as specified in subsections (2) and (3) of this
6 Section XIX(C). Lucky shall maintain for two (2) years the records of initial placements
7 (including notices of openings and records of rejected offers) made pursuant to Section XI of
8 this Decree. Lucky shall maintain for two (2) years following termination of employment the
9 Application Forms of all hires. On its semi-annual and annual reports, Lucky shall provide
10 the following data pertaining to initial assignments:

- 11 1. a copy of a sample posting for each Entry Level Position;
- 12 2. the number of men and the number of women who applied for each
13 Entry Level Position during the Decree Year, totaled separately by district, by store, by
14 position, and by sex;
- 15 3. the number of men and the number of women who were initially
16 assigned upon hire into each Entry Level Position during the Decree Year, separately by
17 position and by position applied for; and
- 18 4. the number of General Merchandise and Deli/Bakery Apprentices by
19 gender placed in Courtesy Clerk vacancies pursuant to Section XI of this Decree.

20 Notwithstanding the terms of this Section, Lucky shall have no obligation to retain
21 Application Forms or the "tear-off" sheets in hard copy for rejected applicants for more than
22 two (2) years from the date of their creation.

23 **D. Allocation of Hours Reporting**

24 Lucky shall maintain Weekly Work Schedules, Schedule Claiming Forms, and Hours
25 Logs only for the grievance periods set forth in Section XII(C). If a grievance is timely
26 received under Section XII(C), Lucky shall maintain for one year following their resolution
27 all such grievances filed under Section XII(C), the dispositions of such grievances, and the
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1 records that are applicable to such grievances. On its' annual and semi-annual reports, Lucky
2 shall provide the following data pertaining to allocation of hours broken down by sex:
3 (1) average total hours by job classification; (2) average night hours by job classification;
4 (3) average alternate and overtime hours by district, by store, and by job classification.

5 **E. Movement to Full Time Reporting**

6 Lucky shall maintain for one year following their resolution all grievances filed under
7 Section XIII(H) and the dispositions of such grievances. Lucky also shall maintain Full-Time
8 Request Forms and Full-Time Request Lists. On its semi-annual and annual reports, Lucky
9 shall provide the following data pertaining to movement to Covered Full-Time Positions:

- 10 1. the total number of placements into each of the Covered Full-Time
11 Positions, by sex and by store;
- 12 2. the total number of persons by sex to whom Lucky awarded a Covered
13 Full-Time Position, but who declined such award, separately by Covered Full-Time Position;
- 14 3. a list of the persons by sex who submitted Full-Time Request Forms
15 but who were not Eligible Clerks and the reasons for their ineligibility, separately by
16 Covered Full-Time Position; and
- 17 4. for each instance in which Lucky awarded a Covered Full-Time
18 Position to someone other than the most senior Eligible Clerk, the sex of the person selected
19 and an explanation of the reasons therefor.

20 **F. Movement into Apprentice**

21 Lucky shall maintain for two (2) years job posting notices and bidding records for all
22 Apprentice Promotions into Covered Apprentice Vacancies for the Covered Apprentice
23 Positions. On its semi-annual and annual reports, Lucky shall provide the following data
24 pertaining to Apprentice Promotions:

- 25 1. a copy of a sample Covered Apprentice Position posting for each
26 Covered Apprentice Position and for each Bid Group;

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- 1 2. the total number of Apprentice Promotions into each of the Covered
- 2 Apprentice Positions, by district and store;
- 3 3. the total number of Apprentice Promotions into each of the Covered
- 4 Apprentice Positions by district that were filled through posting, the sex of the individuals
- 5 promoted, and the Bid Groups from which they were promoted;
- 6 4. the total number of Apprentice Promotions into each of the Covered
- 7 Apprentice Positions by district that were not filled by posting, broken down by district and
- 8 sex and an explanation of how each such Covered Apprentice Position was filled (*e.g.*
- 9 outside hire);
- 10 5. the incumbency by sex and district for each Covered Apprentice
- 11 Position;
- 12 6. the total number of persons by sex whom Lucky awarded a Covered
- 13 Apprentice Position, but who declined such award, separately by Covered Apprentice
- 14 Position;
- 15 7. a list of the persons by sex who submitted Job Bids but who were not
- 16 Eligible Employees (Apprentice) and the reasons for their ineligibility, separately by Covered
- 17 Apprentice Position;
- 18 8. for each instance in which Lucky awarded a Covered Apprentice
- 19 Position to someone other than the most senior Eligible Bidder (Apprentice), the sex of the
- 20 person to whom the position was awarded, and an explanation of the reasons therefor; and
- 21 9. the total number of persons by sex whom Lucky placed in a Covered
- 22 Apprentice Position pursuant to Section XI of this Decree, including records of offers,
- 23 acceptances, and rejections.

24 **G. ELMT Reporting**

25 Lucky shall maintain for two (2) years posting notices, bidding records, and records

26 of selection decisions for all ELMT openings. On its semi-annual and annual reports, Lucky

27 shall provide the following data pertaining to ELMT:

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- 1 1. a copy of a sample ELMT posting;
- 2 2. the total number of ELMT openings filled by district;
- 3 3. the ELMT Bid Rate by sex by district (including number and percent);
- 4 4. the total number of persons admitted to ELMT by sex and district;
- 5 5. the total number of ELMT Graduates by sex and district;
- 6 6. the total number of persons and a list of such persons, by name, sex,
- 7 and district who did not complete ELMT and the reason for their failure to complete the
- 8 program;
- 9 7. the total number of persons by sex to whom Lucky awarded an ELMT
- 10 opening, but who declined such opening; and
- 11 8. a list of the persons who submitted ELMT Bids, but who were not
- 12 Eligible Employees (ELMT) and the reason for their ineligibility.

13 **H. Promotion to Management Reporting**

14 Lucky shall maintain for two (2) years job posting notices and bidding records for all

15 Promotions into Covered Vacancies for the Covered Positions. On its semi-annual and annual

16 reports, Lucky shall provide the following data pertaining to Promotions into Covered

17 Vacancies for Covered Positions:

- 18 1. a copy of a sample Covered Position posting for each Covered
- 19 Position;
- 20 2. the total number of Promotions into each of the Covered Positions, by
- 21 district and store;
- 22 3. the total number of Promotions into each of the Covered Positions by
- 23 district that were filled through posting, and the sex of the individuals promoted;
- 24 4. the total number of Promotions into each of the Covered Positions by
- 25 district that were not filled by posting, broken down by district and sex and an explanation of
- 26 how each such Covered Position was filled (e.g. outside hire);
- 27 5. the incumbency by sex and district for each Covered Position;
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1 6. the Job Bid Rate by sex and district for each of the Covered Positions
2 (including number and percent);

3 7. the total number of persons by sex whom Lucky awarded a Covered
4 Position, but who declined such award, separately by Covered Position;

5 8. a list of the persons by sex who submitted Job Bids, but who were not
6 Eligible Employees and the reasons for their ineligibility, separately by Covered Position;
7 and

8 9. a list of persons by sex who stepped down from or were demoted from
9 a Covered Position.

10 I. **Other Reporting**

11 1. On an annual basis, Lucky shall provide Class Counsel its master
12 payroll tapes in substantially the same form as provided previously during discovery in the
13 Stender Lawsuit.

14 2. On an annual basis, Lucky shall provide Class Counsel and the Court
15 with the consolidated EEO-1 report for the Northern California Division retail store
16 operations.

17 3. Class Counsel may obtain other compliance information: (1) only after
18 meeting and conferring with Lucky; and, if unresolved, (2) only upon a showing of good
19 cause in a properly noticed motion to the Court.

20 J. **Proprietary Report Information**

21 In the event that any information provided to Class Counsel, Intervenor's Counsel, or
22 the Court pursuant to this Section XIX (including, without limitation, reports, lists,
23 documents, tapes, and the information they contain) is proprietary and/or contains trade
24 secrets, Lucky may move the Court for an order that such information be filed under seal.

25 K. **Receipt of Information by Intervenor's**

26 Nothing in this, or any other, Section of this Decree pertaining to the receipt of
27 notices and information by Lucky, the Intervenor's or Intervenor's Counsel shall be
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1 interpreted to: (1) alter the existing rights or responsibilities of Lucky or the Intervenor to
2 provide information to one another under the terms of their collective bargaining agreements
3 or applicable law; or (2) create any duty on the part of Lucky or the Intervenor to bargain
4 over the subject matter of such notices or information, unless such duty currently exists
5 under the terms of their collective bargaining agreements or applicable law.

6 **XX. MONETARY RELIEF**

7 As consideration for a complete release of all remaining individual and class claims of
8 members of the Sex Class for monetary relief in the Covered Lawsuits, Lucky shall pay or
9 be contingently obligated to pay the following sums:

- 10 1. A maximum of \$59,145,000 to all non-representative members of the
11 Sex Class as set forth in Sections XX(A) below;
- 12 2. \$1,205,000 to the named plaintiffs as set forth in Section X above;
- 13 3. \$13,750,000 to Class Counsel for their case-in-chief fees and costs as
14 set forth in Section XXI below;
- 15 4. A maximum of \$13,000,000 in front pay contingent upon non-
16 compliance with specified goals as set forth in Section XX(B) below; and
- 17 5. \$20,000,000 for the administration of the terms of this Decree as set
18 forth in Section XX(C) below.

19 **A. Class Relief**

20 **1. Class Payment**

21 In full settlement of all claims for monetary relief by members of the Sex
22 Class other than named plaintiffs, Lucky shall pay the sum of \$59,145,000 ("Class
23 Payment") on or before January 2, 1995, less the value of payments attributable to those Sex
24 Class members who have opted out of the Covered Lawsuits pursuant to Section XX(A)(9).

25 The Class Payment shall be divided among three funds. Fund 1 shall receive
26 \$56,329,698. Fund 2 shall receive \$2,555,064. Fund 3 shall receive \$260,238. The Class
27 Payment (and the amount in each fund) shall be reduced as described in Section XX(A)(20)

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1 below to reflect opt-outs and unclaimed shares. Interest earned after January 2, 1995 on the
2 Class Payment shall be distributed along with other unclaimed funds in the manner described
3 in Section XX(A)(20) below.

4 Distribution of the three funds shall be in accordance with formulas described
5 in Exhibit 11, hereto. Defendants' payroll data shall be used in applying the formulas
6 subject to the revisions and corrections resulting from the procedures described below.

7 To be eligible for a share of Fund 1, a woman must be a member of the
8 Stender Sex Class (as defined in Section VI above), have been employed for more than
9 twelve (12) weeks in a Northern California Division Lucky store at some time between
10 May 2, 1984 and October 1, 1992, and during any calendar year within this period have
11 received earnings less than the average earnings of employees with approximately the same
12 seniority and active or inactive status. Eligible women who (according to the formula in
13 Exhibit 11) in every year from 1983 to October 1, 1992 earned more than the average
14 earnings of employees with similar seniority and active status will not be entitled to a share
15 of Fund 1. Eligible women who in any year earned less than the average earnings of
16 employees with similar seniority and active status shall receive a share of Fund 1 reflecting
17 their share of the total such lost earnings for all eligible women in all years (as computed
18 using the formula in Exhibit 11), except that no such woman shall be entitled to more than
19 \$50,000 or less than \$100 from Fund 1.

20 To be eligible for a share of Fund 2, a woman must be a member of the
21 Anders Sex Class (as defined in Section VI above), have been employed for more than
22 twelve (12) weeks in a Northern California Region Alpha Beta store at some time between
23 October 20, 1987 and January 30, 1990, and during any calendar year within this period
24 have received earnings less than the average earnings of employees with approximately the
25 same seniority and active or inactive status. Eligible women who (according to the formula
26 in Exhibit 11) in every year from 1987 to October 1, 1992 earned more than the average
27 earning of employees with similar seniority and active status will not be entitled to a share of
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1 Fund 2. Eligible women who in any year earned less than the average earnings of employees
2 with similar seniority and active status shall receive a share of Fund 2 reflecting their share
3 of the total such lost earnings for all eligible women in all years (as computed using the
4 formula in Exhibit 11), except that no such woman shall be entitled to more than \$20,000 or
5 less than \$100 from Fund 2.

6 To be eligible for a share of Fund 3, a woman must be a member of the
7 Stender Sex Class (as defined in Section VI above), have worked as a part-time Grocery
8 Journey Clerk between July 1, 1982 and April 1, 1983 where there was a full-time opening
9 in the Grocery Department in the woman's store during this period and the full-time position
10 went to a man with equal or less seniority. Fund 3 will be divided pro rata among such
11 eligible women (in accordance with the formula in Exhibit 11).

12 a. **Tax Treatment**

13 It is the intent of the Parties that the Class Payment shall be treated as a non-
14 taxable sum pursuant to the Order of this Court dated December 15, 1993. If the tax
15 authorities challenge the settlement, however, and determine that all or a portion of the
16 shares are taxable, Sex Class members and Lucky shall be responsible for paying their
17 respective taxes, interest, penalties and assessments.

18 b. **Reduction**

19 The Class Payment shall be reduced, dollar for dollar, by the value, pursuant
20 to the formula and procedures set forth in Section XX(A)(18) below, of the shares of the
21 class members who file timely opt-out notices with the Court, pursuant to the procedures set
22 forth in Section XX(A)(9) below.

23 c. **Unclaimed Shares**

24 Unclaimed portions of the Class Payment shall be distributed in the manner set
25 forth in Section XX(A)(20) below.

1 2. **Third Party Administrator**

2 Within thirty (30) days after the Preliminary Approval of this Decree by the
3 Court, the Parties shall jointly select a Third Party Administrator. The Third Party
4 Administrator may be an accounting or escrow services firm and shall be responsible for:
5 (a) mailings to the Sex Class regarding the distribution of the Class Payment; (b) tracking the
6 return of Acknowledgement Forms; (c) arranging for tracing the addresses of Sex Class
7 members whose Acknowledgement Forms are returned as undeliverable; (d) engaging the
8 services of private investigators to locate Sex Class members whose Acknowledgement
9 Forms are returned as undeliverable; (e) verifying the identity of Sex Class members;
10 (f) preparing claim checks and replacement claim checks; (g) preparing reports for the
11 Parties and the Court regarding the distribution process; (h) verifying fund balances; and
12 (i) such other duties as agreed by the Parties and which are needed to distribute the Class
13 Payment.

14 3. **Timetable**

15 The deadlines for completion of the tasks associated with the distribution of
16 monetary relief are set forth briefly in this Section XX(A)(3) and more expansively in
17 Sections XX(A)(4)-(20). These deadlines may be modified by stipulation or by Court order
18 for good cause shown.

- 19 a. January 11, 1993: Date to file Application for Preliminary
20 Approval;
21 b. January 14, 1993: Date for hearing to consider Application for
22 Preliminary Approval;
23 c. Thirty (30) Days After Preliminary Approval: Date for Parties
24 jointly to select a Third Party Administrator;
25 d. Five (5) Days After Preliminary Approval: Last date for Class
26 Counsel to furnish Lucky with a list of additional names, social security numbers and
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1 addresses of Sex Class members to be used for Notice of Settlement (see Section XX(A)(4)
2 below);

3 e. Fourteen (14) Days After Preliminary Approval: Last date for
4 Class Counsel to furnish Lucky with a request for a search of hard-copy files to verify the
5 information on its computerized payroll system (see Section XX(A)(5) below);

6 f. Fourteen (14) Days After Preliminary Approval: Last date for
7 Lucky to furnish Class Counsel with names, addresses and social security numbers of Sex
8 Class members to receive Notice of Settlement (see Section XX(A)(6) below);

9 g. Fourteen (14) Days After Preliminary Approval: Last date to
10 mail Notice of Settlement and to post Notice of Settlement and Approval Process (see
11 Section XX(A)(7) below);

12 h. Twenty-Eight (28) Days After Preliminary Approval: Last date
13 to begin publication of published Notice of Settlement (see Section XX(A)(8) below);

14 i. Sixty (60) Days After Preliminary Approval date for Lucky to
15 respond to request by Class Counsel to verify information in its computerized payroll system
16 (see Section XX(A)(5) below);

17 j. Seventy-five (75) Days After Preliminary Approval: Last date
18 to file Notice of Election to Opt-Out of Class (see Section XX(A)(9) below);

19 k. Seventy-five (75) Days After Preliminary Approval: Last date
20 to file objections to terms of Settlement (see Section XX(A)(10) below);

21 l. One Week Before Fairness Hearing: Last date to file Notices of
22 Election to Opt-Out of Class and to file objections to terms of Settlement;

23 m. Date of hearing to consider Final Approval of Settlement (see
24 Order Granting Preliminary Approval);

25 n. Date of Final Approval of Settlement, if entered later than Final
26 Approval hearing and last date for Lucky to post Notice of Consent Decree (see Section
27 XX(A)(11) below);

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- 1 o. Date of Final Judgment, if entered later than Final Approval
2 hearing and last date for Lucky to post Notice of Consent Decree (see Section XX(A)(11);
- 3 p. Ten (10) Days After Final Judgment: Last date for Lucky to
4 pay Class Counsel's case-in-chief fees (see Section XXI below);
- 5 q. Ten (10) Days After Final Judgment: Last date for Lucky to
6 pay named plaintiffs their individual monetary settlement sums (see Section X(B) above);
- 7 r. Twenty (20) Days After Final Judgment: Last date for Class
8 Counsel to furnish Lucky with their calculations of individual claim shares and for Lucky to
9 post Notice of Consent Decree (see Section XX(A)(12) below);
- 10 s. Forty (40) Days After Final Judgment: Last date to file
11 Preliminary Class Monetary Distribution List with Court (see Section XX(A)(12) below);
- 12 t. Date of Approval of Preliminary Class Monetary Distribution
13 List by Court (see Section XX(A)(12) below);
- 14 u. Five (5) Days After Approval of Preliminary Class Monetary
15 Distribution List: Last date for Class Counsel to furnish Lucky with additions and
16 corrections to the names, social security numbers and addresses shown on the Final Notice
17 List (see Section XX(A)(13) below);
- 18 v. Ten (10) Days After Approval of Preliminary Class Monetary
19 Distribution List: Last date for Lucky to furnish to Class Counsel and the Third Party
20 Administrator with the names, addresses and social security numbers of Sex Class members
21 to receive Acknowledgement Forms (see Section XX(A)(14) below);
- 22 w. Thirty (30) Days After Final Approval of Preliminary Class
23 Monetary Distribution List: Last date for Third Party Administrator to mail Notice of Final
24 Approval of Settlement and Acknowledgement Forms (see Section XX(A)(15) below);
- 25 x. Fifty (50) Days After Approval of Preliminary Class Monetary
26 Distribution List: Last date for Third Party Administrator to make second mailing of Notice
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1 of Final Approval of Settlement and Acknowledgement Forms and Reminder Notices (see
2 Section XX(A)(15) below);

3 y. Sixty-five (65) Days After Approval of Class Monetary
4 Distribution List: Last date for Third Party Administrator to begin tracing of addresses of
5 Sex Class members who have failed to return their Acknowledgement Forms (See
6 Section XX(A)(16) below);

7 z. Eighty-five (85) Days After Approval of Preliminary Class
8 Monetary Distribution List: Last date for Third Party Administrator to begin use of private
9 investigators to trace the location of Sex Class members whose Acknowledgment Forms have
10 been returned as undeliverable (see Section XX(A)(16) below);

11 aa. October 1, 1994: Last date for Third Party Administrator to
12 begin the remailing of Notice of Final Approval of Settlement and Acknowledgement Forms
13 to Sex Class members located by tracing or the efforts of private investigators (see
14 Section XX(A)(16) below);

15 bb. November 1, 1994: Last date for Sex Class members to return
16 Acknowledgment Forms, excepting those Sex Class members located through the efforts of
17 private investigators, and last date for Sex Class members who do not appear on the
18 Preliminary Class Monetary Distribution List or who believe that the facts used to calculate
19 their fund shares are in error to file objections (see Section XX(A)(17) below);

20 cc. January 2, 1995: Last date for Special Master to determine
21 validity of objections to Preliminary Class Monetary Distribution List (see
22 Section XX(A)(17) below);

23 dd. January 2, 1995: Last date for Lucky to deposit Class Payment
24 into interest bearing account (see Section XX(A)(18) below);

25 ee. January 9, 1995: Last date for Class Counsel to file the order
26 of the Special Master regarding the Class Monetary Distribution List (see Section XX(A)(17)
27 below);

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- 1 ff. January 9, 1995: Last date for Class Counsel to generate a final
2 Class Monetary Distribution List (see Section XX(A)(17) below);
- 3 gg. January 20, 1995: Last date for Third Party Administrator to
4 begin mailing of fund shares to Sex Class members (see Section XX(A)(19) below);
- 5 hh. February 15, 1995: Last date for Third party Administrator to
6 complete mailing of fund shares to Sex Class members (see Section XX(A)(19) below);
- 7 ii. April 15, 1995: Last date for Sex Class members to negotiate
8 checks for fund shares (see Section XX(A)(19) below); and
- 9 jj. May 1, 1995: Last date for Third Party Administrator to
10 release the unclaimed portion of the Class Payment account (see Section XX(A)(20) below).

11 **4. Supplementation by Class Counsel of Payroll**
12 **Records for Mailing of Notice of Settlement**

13 No later than five (5) days after Preliminary Approval, Class Counsel shall
14 furnish Lucky, in a computer-readable form designated by Lucky, with a list of additions and
15 corrections to the names, addresses, and social security numbers shown on Lucky's
16 computerized payroll records.

17 **5. Verification of Computerized Payroll Data**

18 No later than fourteen (14) days after Preliminary Approval, Class Counsel
19 shall furnish Lucky with a written request for a search of specific hard-copy personnel files
20 to verify certain information on Lucky's computerized payroll system. No later than sixty
21 (60) days after Preliminary Approval, Lucky shall respond by providing copies of documents
22 responsive to Class Counsel's request for verification.

23 **6. Production by Lucky to Third Party**
24 **Administrator of Name and Address List for**
25 **Notice of Settlement**

26 No later than fourteen (14) days after Preliminary Approval, Lucky shall
27 furnish Class Counsel, in computer-readable and hard copy form, with the names, addresses,
28 and social security numbers of all Sex Class members to receive the Notice of Settlement
("Final Notice List").

1 **7. Mailed and Posted Notice of Settlement**

2 No later than fourteen (14) days after Preliminary Approval, Lucky shall send
3 via first class mail to all individuals on the Final Notice List a Notice of Settlement. The
4 Notice of Settlement shall be in the form shown in Exhibit 12.

5 No later than fourteen (14) days after the Preliminary Approval Date, Lucky
6 also shall post the Notice of Settlement and Approval Process in each retail store covered by
7 this Decree through the Date of Final Judgment and shall send a copy of such Notice to each
8 union representing for purposes of collective bargaining the employees covered by this
9 Decree.

10 **8. Published Notice of Settlement**

11 No later than twenty-eight (28) days after Preliminary Approval, Lucky shall
12 begin publication, at its cost, of the Published Notice of Settlement. The Published Notice
13 shall be in the form shown in Exhibit 13 and shall be published in display advertisements in
14 the San Francisco Chronicle, the San Jose Mercury News, the Sacramento Bee and the
15 Fresno Bee on the two Sundays following the lapse of two weeks after the mailing of the
16 Notice of Settlement.

17 **9. Election to Opt Out of Class**

18 No later than seventy-five (75) days after Preliminary Approval, Sex Class
19 members who wish to be excluded from the Anders or Stender classes must fill out an
20 Exclusion Form (Appendix B to Notice of Settlement) and mail it to Clerk, United States
21 District Court, 408 13th Street, #539, Oakland, CA 94612. If the value of the monetary
22 relief attributable to Sex Class members who have opted out of the Covered Lawsuits
23 exceeds \$3,000,000 either Party may void the settlement of the Covered Lawsuits, if notice
24 is given in writing no later than five (5) days before the date of the Final Approval Hearing.

1 **10. Objections to Settlement Terms**

2 No later than seventy-five (75) days after Preliminary Approval, Sex Class
3 members who wish to object to the proposed settlement shall do so by mailing their
4 objections to Clerk, United States District Court, 408 13th Street, #539, Oakland, CA 94612.
5 As described in the Notice of Settlement, all such objections must be signed and should
6 contain the Sex Class member's name and social security number, and the name of this case.
7 The objection should clearly explain why the Sex Class member objects to the settlement. A
8 Sex Class member who wishes to appear at the hearing must file a written objection and state
9 her intention to appear.

10 **11. Final Approval and Final Judgment**

11 No later than five (5) days after the Final Approval hearing, Class Counsel
12 shall file with the Court a proposed order ruling on any objections made by Sex Class
13 members and providing for final approval of the Consent Decree and, as a separate
14 document, a proposed Final Judgment. The date of entry of the proposed Final Judgment
15 pursuant to Federal Rules of Civil Procedure 58 and 79(a) is the Date of Final Judgment in
16 the Covered Lawsuits.

17 No later than the date the Final Judgment approving the Consent Decree is
18 entered by the Court, Lucky shall post in each retail store covered by this Decree a Notice of
19 Consent Decree informing employees of the Decree, as contained in Exhibit 14 to this
20 Decree. The notice shall remain posted for the duration of this Decree.

21 **12. Calculation of Individual Claim Shares**

22 No later than twenty (20) days after the Final Judgment approving the Consent
23 Decree is entered by the Court, Class Counsel shall furnish to Lucky, in hard copy and
24 computer-readable form, its preliminary calculations of the amounts of the shares of Funds 1,
25 2 and 3 to be paid to eligible Sex Class members as well as the information contained on the
26 Acknowledgment Forms.

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1 No later than forty (40) days after the Final Judgment, Class Counsel shall file
2 with the Court: (a) a Preliminary Class Monetary Distribution List providing for each Fund,
3 in alphabetical order, the names, social security numbers and other information to be
4 included on the Acknowledgment Forms; (b) the names and social security numbers of
5 Stender Sex Class members determined to be ineligible for Fund 1 and Anders Sex Class
6 members determined to be ineligible for Fund 2; (c) a declaration from the expert selected by
7 Class Counsel to make the share calculations that, in his or her opinion, the calculations were
8 made in accordance with the formulas specified in Exhibit 11 hereto; and (d) a proposed
9 order approving the Preliminary Class Monetary Distribution List and authorizing the parties
10 to prepare and distribute to Sex Class members Acknowledgement Forms (as described
11 below) in accordance with the information contained in the Preliminary Class Monetary
12 Distribution List.

13 **13. Supplementation by Class Counsel of Class List**
14 **for Mailing of Acknowledgement Forms**

15 No later than five (5) days after approval of the Preliminary Class Monetary
16 Distribution List, Class Counsel shall furnish Lucky, in a computer-readable form to be
17 designated by Lucky, with a list of additions and corrections to the names, addresses, and
18 social security numbers shown on the Final Notice List.

19 **14. Production by Lucky to Third Party**
20 **Administrator of Name and Address List for**
21 **Acknowledgement Forms**

22 No later than ten (10) days after approval of Preliminary Class Monetary
23 Distribution List, Lucky shall furnish Class Counsel and the Third Party Administrator with
24 the names, addresses, and social security numbers of Sex Class members to receive
25 Acknowledgement Forms.

26 **15. Mailing of Acknowledgement Forms**

27 No later than thirty (30) days after approval of the Preliminary Class Monetary
28 Distribution List, the Third Party Administrator shall mail to each Sex Class member via
first class mail, together with an addressed and stamped return envelope, the Notice of Final

1 Approval of Settlement and Acknowledgement Form in the form shown in Exhibit 15. No
2 later than fifty (50) days after approval of the Preliminary Class Monetary Distribution List
3 an identical second Notice of Final Approval of Settlement and Acknowledgement Form
4 along with a Reminder Notice in the form shown in Exhibit 16, shall be sent to each Sex
5 Class member entitled to receive at least \$100 from Fund 1, 2 or 3 who has not returned the
6 Acknowledgement Form.

7 16. **Tracing and Private Investigators**

8 No later than sixty-five (65) days after Approval of the Preliminary Class
9 Monetary Distribution List, the Third Party Administrator shall begin tracing through IRSC
10 the addresses of Sex Class members entitled to receive at least \$100 from Fund 1, 2 or 3
11 who have failed to return Acknowledgement Forms. The cost of the IRSC search shall not
12 exceed an average of \$10 per Sex Class member searched.

13 No later than eighty-five (85) days after Approval of the Preliminary Class
14 Monetary Distribution List, the Third Party Administrator shall begin the use of private
15 investigators to trace the location of Sex Class members whose Acknowledgment Forms have
16 been returned as undeliverable and whose individual shares exceed \$5,000. On November 1,
17 1994, the Third Party Administrator shall begin the use of private investigator to trace the
18 location of Sex Class members who have failed to return Acknowledge Forms and whose
19 individual shares exceed \$5,000. Payment to the investigators shall be made out of the
20 principal balance of that Sex Class member's award but shall not exceed 10% of the balance
21 of the award up to a maximum of \$5,000.

22 No later than October 1, 1994, the Third Party Administrator shall begin the
23 remailing of the Notice of Final Approval of Settlement and Acknowledgement Forms to all
24 complete addresses of Sex Class members located by tracing through IRSC or through the
25 efforts of private investigators. Thus, if tracing or the efforts of private investigators
26 produce multiple addresses for a single Sex Class member, all such complete addresses shall
27 be used.

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1 17. **Return of Acknowledgement Forms and**
2 **Objections to Calculations of Claim Shares**

3 Sex Class members who do not return an Acknowledgement Form postmarked
4 on or before November 1, 1994, shall not receive a share of the Class Payment, excepting
5 those Sex Class members located through the efforts of private investigators.

6 Sex Class members who do not appear on the Preliminary Class Monetary
7 Distribution List or who believe that the facts used to calculate their fund shares are in error
8 shall file objections no later than November 1, 1994. Upon the receipt of any such
9 objection, Lucky promptly will investigate the claim and write to Class Counsel regarding
10 the outcome of the investigation. Class Counsel promptly will evaluate the claim and
11 write to the objecting Sex Class member regarding its conclusion. If Sex Class member does
12 not agree with the conclusion, the objection may be pursued in binding arbitration before
13 Special Master Barbara Chvany by making a formal request for arbitration, using the
14 procedures specified in Class Counsel's letter, no later than ten (10) days after mailing of
15 Class Counsel's letter. The share formula itself shall not be subject to arbitration. The only
16 relief the arbitrator may grant is correction of the data to be used in the formula for that Sex
17 Class member.

18 No later than January 2, 1995, Special Master Chvany shall determine the
19 validity of the objections to the Preliminary Class Monetary Distribution List. No later than
20 January 9, 1995 Class Counsel shall file with the Court (a) copies of Special Master
21 Chvany's opinions and orders on the objections, (b) a Final Class Monetary Distribution List
22 reflecting any changes to the Preliminary Class Monetary Distribution List resulting from
23 objections approved by Special Master Chvany, or the Parties, (c) a declaration from the
24 expert selected by Class Counsel to prepare the Final Class Monetary Distribution List that,
25 in his or her opinion, the list was prepared in accordance with the formulas described in
26 Exhibit 11, and (d) a proposed order ("Order Approving Monetary Distribution").

1 18. **Deposit of Class Payment** .

2 No later than January 2, 1995, Lucky shall deposit the Class Payment into an
3 interest bearing account mutually selected by Lucky and Class Counsel and under the control
4 of the Third Party Administrator. The Class Payment deposited shall be reduced dollar for
5 dollar by the value of the monetary relief attributable to Sex Class members who have opted
6 out of the Covered Lawsuits pursuant to Section XX(A)(9). The amount of the reduction
7 shall be calculated by Dorgin & Kakigi and verified by Lucky. The amount of the reduction
8 shall be deducted from the deposit and revert to Lucky.

9 19. **Mailing of Fund Shares**

10 Commencing by January 20, 1995, but in no event before the entry of the
11 Order Approving Monetary Distribution, the Third Party Administrator shall begin mailing
12 via certified mail, return receipt requested, checks for fund shares to Sex Class members
13 who have returned valid Acknowledgment Forms.

14 An Acknowledgment Form is valid for purposes of payment of fund shares if
15 two conditions are met. First, the Sex Class member who has returned the form must have
16 provided, under penalty of perjury, her signature, social security number, date of birth,
17 current address, and daytime telephone number. Second, the Third Party Administrator must
18 have verified that the social security numbers provided by claimants match the social security
19 numbers and names of Sex Class members entitled to receive the designated fund shares. If
20 the social security number on an Acknowledgment Form does not match the social security
21 number of a Sex Class member, or if the number matches, but the name or fund share does
22 not, the Third Party Administrator will notify Lucky and Class Counsel and shall attempt to
23 reconcile the conflict with Lucky, Class Counsel, and the claimant. The Third Party
24 Administrator shall have the right to ask the claimant to provide further proof of identity,
25 including, for example, a notarized statement of identity and/or a valid driver's license.

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1 The Third Party Administrator shall complete the mailing of the fund shares
2 no later than February 15, 1995. Sex Class members shall negotiate checks for fund shares
3 no later than April 15, 1995.

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1 20. **Distribution of Unclaimed Portion of Class Payment**

2 No later than May 1, 1995, the Third Party Administrator shall distribute the
3 balance of the Class Fund deposited on January 2, 1995 (after deduction of class payments
4 and investigator fees), together with accrued interest, ("Unclaimed Funds") as follows:

5 a. The first \$200,000 of Unclaimed Funds shall be distributed as a
6 grant to Equal Rights Advocates of San Francisco, to be used for advocacy against sex
7 discrimination.

8 b. The next \$300,000 of Unclaimed shall be distributed pro rata to
9 Sex Class members who held Non-Foods Journey or Department Head positions as of
10 October 1, 1992 and who continued to hold such Non-Foods positions through the date of
11 April 1, 1995. Not eligible are employees who, prior to October 1, 1992, were paid or
12 classified as Grocery Journey Clerks or Department Heads or Produce Journey Clerks or
13 Department Heads but assigned to work in the General Merchandise Department, the
14 Deli/Bakery Department, or the Floral Department.

15 c. Any excess over \$500,000 shall be apportioned two-thirds (2/3)
16 to Lucky and one-third (1/3) to front pay as specified in the following sentence. The one-
17 third (1/3) portion shall be distributed pro rata to Sex Class members who, between
18 October 1, 1992 and April 1, 1995, were eligible to bid for openings in ELMT (as eligibility
19 is defined in Section XIV(B)(2)), who bid for ELMT openings during that period, but who
20 were not selected.

21 **B. Front Pay**

22 1. **Scope of Section**

23 Lucky shall be subject to potential front pay obligations of no more than
24 \$13,000,000 ("Front Pay"), of which \$9,000,000 is allocated to Decree Goal Objectives and
25 \$4,000,000 is allocated to Non-Foods and Management Promotion objectives. If Lucky
26 meets the Decree goal Objectives described in Section XX(B)(2)(b) below for a particular
27 Decree Year, Lucky shall have no obligation to pay the \$9,000,000 allocated to those
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1 Objectives for that Decree Year. If Lucky does not meet the Decree Goal Objectives
2 described in Section XX(B)(2)(b), a portion of the \$9,000,000 shall be distributed at the
3 close of such Decree Year as described in Section XX(B)(2)(b)(iii). Similarly, if Lucky
4 meets the Non-Foods and Management Promotion Objectives described in
5 Section XX(B)(2)(c) below for a particular Decree Year, Lucky shall have no obligation to
6 pay the \$4,000,000 allocated to those Objectives for that Decree Year. If Lucky does not
7 meet the Objectives described in Section XX(B)(2)(c), a portion of the \$4,000,000 shall be
8 distributed at the close of such Decree Year as described in Section XX(B)(2)(c)(iii).

9 **2. Distribution of Front Pay**

10 a. **Objectives**

11 The determination whether, at the close of each Decree Year,
12 Lucky shall have the obligation to pay a portion of the Front Pay shall be based upon
13 Lucky's compliance with the Decree Goal Objectives and Non-Foods and Management
14 Promotion Objectives set forth below.

15 b. **Decree Goal Objectives**

16 i. **Definition**

17 The Decree Goal Objectives are the Promotion Goals and the
18 ELMT Goal as set forth at Sections XIV(C)(7) and XIV(B)(6) of this Decree.

19 ii. **Compliance**

20 Lucky shall be in compliance with the Decree Goal Objectives
21 for a Decree Year if it meets the Promotion Goals and ELMT Goal for that Decree Year. In
22 the event that Lucky exceeds a Promotion Goal or ELMT Goal in a Decree Year, the excess
23 may be carried over to any subsequent Decree Year to offset any shortfall in the Promotion
24 Goal or ELMT Goal for such Decree Year.

25 iii. **Amount of Distribution**

26 Subject to the maximum annual amounts described below, the
27 amount of Front Pay to be distributed at the close of a Decree Year shall be determined by
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1 multiplying any shortfall in a Promotion Goal times the average earnings in that Decree Year
2 for the Covered Position to which that Promotion Goal is applicable, except that for ELMT,
3 any shortfall in the ELMT Goal shall be multiplied by the average earnings in that Decree
4 Year for Head Clerk (Fourth Person). Average earnings shall be determined exclusively by
5 reference to Lucky's payroll data tapes. The maximum annual amounts that shall be
6 distributed from the \$9,000,000 of the Front Pay in any Decree Year for Lucky's failure to
7 meet the Decree Goal Objectives shall be as follows:

8 (A) for the Decree Year ending September 30, 1994,
9 the maximum distribution shall be \$2,000,000;

10 (B) for the Decree Year ending September 30, 1995,
11 the maximum distribution shall be \$1,500,000;

12 (C) for the Decree Year ending September 30, 1996,
13 the maximum distribution shall be \$1,250,000;

14 (D) for the Decree Year ending September 30, 1997,
15 the maximum distribution shall be \$1,250,000;

16 (E) for the Decree Year ending September 30, 1998,
17 the maximum distribution shall be \$1,000,000;

18 (F) for the Decree Year ending September 30, 1999,
19 the maximum distribution shall be \$1,000,000; and

20 (G) for the Decree Year ending September 30, 2000,
21 the maximum distribution shall be \$500,000.

22 (H) for the Decree Year ending September 30, 2001,
23 the maximum distribution shall be \$500,000.

24 **iv. Persons to Whom Distributed**

25 The Front Pay sums determined in Section XX(B)(2)(b)(iii) shall
26 be distributed to all Sex Class members who, for that Decree Year, (a) were active
27 employees of Lucky before October 1, 1992; and (b) were Eligible Bidders for the Covered
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1 Position for which there was a shortfall in a Promotion Goal, but who were not promoted in
2 such Year to such Covered Position, or (c) were Eligible Bidders (ELMT) for ELMT in a
3 Decree Year in which there was a shortfall in the ELMT Goal, but who were not promoted
4 to ELMT in such Year. The procedures for such distribution are set forth at Section
5 XX(B)(3).

6 c. **Non-Foods and Management Promotion Objectives**

7 i. **Definition**

8 The Non-Foods Promotion Objectives for each Decree Year are
9 the numbers of women to be moved from Non-Foods Clerk Positions to Covered Apprentice
10 Positions specified at Section XX(B)(2)(c)(ii) below. The Management Promotion Objectives
11 for each Decree Year are the numbers of women to be promoted to Head Clerk (Fourth
12 Person), Head Clerk (Third Person), Assistant Store Manager and Store Manager or the
13 female incumbency percentages for such positions specified in Section XX(B)(2)(c)(ii) below.

14 ii. **Compliance**

15 Lucky shall be in compliance with the Non-Foods Promotion
16 Objectives for a Decree Year if the cumulative movement of women from Non-Foods Clerk
17 Positions to Covered Apprentice Positions for the period October 1, 1992 through the end of
18 the indicated Decree Year is as follows:

19 (A) for the Decree Year ending September 30, 1994,
20 the cumulative number of women moved shall be 50;

21 (B) for the Decree Year ending September 30, 1995,
22 the cumulative number of women moved shall be 75;

23 (C) for the Decree Year ending September 30, 1996,
24 the cumulative number of women moved shall be 90;

25 (D) for the Decree Year ending September 30, 1997,
26 the cumulative number of women moved shall be 100.

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1 Lucky shall be in compliance with the Management Promotion Objectives for a
2 Decree Year if the cumulative number of women promoted to the stated positions for the
3 period October 1, 1992 through the end of the indicated Decree Year or if the female
4 incumbency for the stated positions at the end of the Decree Year are as follows:

5 (A) for the Decree Year ending September 30, 1994,
6 the cumulative number of women promoted or the female incumbency percentage shall be for
7 Head Clerk (Fourth Person), 40 or 40%; for Head Clerk (Third Person), 20 or 23%; for
8 Assistant Store Manager, 8 or 20%; and for Store Manager, 4 or 10%;

9 (B) for the Decree Year ending September 30, 1995,
10 the cumulative number of women promoted or the female incumbency percentage shall be for
11 Head Clerk (Fourth Person), 60 or 42%; for Head Clerk (Third Person), 30 or 25%; for
12 Assistant Store Manager, 12 or 22%; and for Store Manager, 6 or 12%;

13 (C) for the Decree Year ending September 30, 1996,
14 the cumulative number of women promoted or the female incumbency percentage shall be for
15 Head Clerk (Fourth Person), 80 or 42%; for Head Clerk (Third Person), 40 or 27%; for
16 Assistant Store Manager, 16 or 24%; and for Store Manager, 8 or 14%;

17 (D) for the Decree Year ending September 30, 1997,
18 the cumulative number of women promoted or the female incumbency percentage shall be for
19 Head Clerk (Fourth Person), 100 or 42%; for Head Clerk (Third Person), 50 or 30%; for
20 Assistant Store Manager, 20 or 26%; and for Store Manager, 10 or 16%;

21 (E) for the Decree Year ending September 30, 1998,
22 the cumulative number of women promoted or the female incumbency percentage shall be for
23 Head Clerk (Fourth Person), 120 or 42%; for Head Clerk (Third Person), 60 or 33%; for
24 Assistant Store Manager, 24 or 28%; and for Store Manager, 12 or 18%;

25 (F) for the Decree Year ending September 30, 1999,
26 the cumulative number of women promoted or the female incumbency percentage shall be for
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1 Head Clerk (Fourth Person), 140 or 42%; for Head Clerk (Third Person), 70 or 35%; for
2 Assistant Store Manager, 28 or 30%; and for Store Manager, 14 or 20%.

3 In the event that Lucky exceeds a specified Non-Foods or Management
4 Promotion Objective in a Decree Year, the excess may be carried over to any subsequent
5 Decree Year to offset any shortfall in the Non-Foods and Management Promotion Objectives
6 for such Decree Year. If Lucky meets either the promotion target or the incumbency target
7 for a given Decree Year, it shall be in compliance with the Management Promotion Objective
8 for such Decree Year.

9 **iii. Amount of Distribution**

10 Subject to the maximum annual amounts described below, the
11 amount of Front Pay to be distributed at the close of a Decree Year shall be determined
12 (1) for the Non-Foods Promotion Objectives by multiplying any shortfall in the target
13 number for a Decree Year times the average earnings for part-time Grocery Journey Clerks;
14 and (2) for the Management Promotion Objectives, by multiplying any shortfall(s) in the
15 target number(s) for a Decree Year times the average earnings in the respective target
16 position(s). Average earnings shall be determined exclusively by reference to Lucky's
17 payroll data tapes. The maximum annual amount that shall be distributed from the
18 \$4,000,000 of Front Pay in any Decree Year for Lucky's failure to meet the Non-Foods and
19 Management Promotion Objectives shall be as follows:

20 (A) for the Decree Year ending September 30, 1994,
21 the maximum distribution shall be \$500,000 for Non-Foods Promotion Objectives and
22 \$750,000 for Management Promotion Objectives;

23 (B) for the Decree Year ending September 30, 1995,
24 the maximum distribution shall be \$250,000 for Non-Foods Promotion Objectives and
25 \$750,000 for Management Promotion Objectives;

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1 (C) for the Decree Year ending September 30, 1996,
2 the maximum distribution shall be \$250,000 for Non-Foods Promotion Objectives and
3 \$500,000 for Management Promotion Objectives;

4 (D) for the Decree Year ending September 30, 1997,
5 the maximum distribution shall be \$250,000 for Non-Foods Promotion Objectives and
6 \$250,000 for Management Promotion Objectives;

7 (E) for the Decree Year ending September 30, 1998,
8 the maximum distribution shall be \$0 for Non-Foods Promotion Objectives and \$250,000 for
9 Management Promotion Objectives; and

10 (F) for the Decree Year ending September 30, 1999,
11 the maximum distribution shall be \$0 for Non-Foods Promotion Objectives and \$250,000 for
12 Management Promotion Objectives.

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1 a. Within ninety (90) days after the close of the Decree Year in
2 which Lucky did not meet an Objective, Lucky shall provide Class Counsel with a list of the
3 names, social security numbers, and amount of Front Pay for each Sex Class member who,
4 according to Sections XX(B)(2)(b)(iv) and (c)(iv) above, is eligible to receive Front Pay in
5 that Decree Year ("Front Pay List"). The women shall be listed separately by Objective and
6 by position bid.

7 b. Within thirty (30) days after receipt from Lucky of the Front
8 Pay List, Class Counsel shall notify Lucky in writing of their agreement or disagreement to
9 the Front Pay List. Any dispute shall be resolved pursuant to the terms of Section
10 XX(B)(5).

11 c. Within thirty (30) days after the notice of agreement or
12 resolution by the Special Master as specified in the previous paragraph, Lucky shall mail to
13 each woman on the Front Pay List, at her current or last-known address according to the
14 payroll data tapes:

- 15 i. a check for her front pay amount;
16 ii. a notice of her front pay; and
17 iii. a notice that the check must be negotiated within 90 days
18 of the date of the check.

19 d. There shall be no obligation to trace any women whose checks
20 are returned as undelivered, except as follows. Lucky shall personally deliver to its current
21 employees the checks of such employees that are returned as undeliverable. Lucky or the
22 Third Party Administrator also shall conduct one (1) address search through IRSC for those
23 recipients who are not current employees. The Parties shall meet and confer to decide how
24 to distribute the front pay shares that remain undeliverable despite these efforts.

25 e. One hundred five (105) days after the completion of the mailing
26 of the Front Pay checks, stop notices shall be issued as to those checks not yet negotiated.

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1 **4. Preclusion from Double Recovery**

2 In the event that Lucky fails to meet a Decree Goal Objective and a
3 Management Promotion Objective in any Decree Year for the same position, there shall be
4 no double recovery for such position for such breach. Lucky shall be obligated to distribute
5 for such position the greater of the Front Pay sum for the Decree Goal Objective and the
6 Management Promotion Objective, but not both. For example, if at the end of a Decree
7 Year Lucky has a shortfall of 1 person in regard to the Decree Objective for Head Clerk
8 (Fourth Person) and a shortfall of two persons in regard to the Management Promotion
9 Objective for this same position, then the required Front Pay payment would be based on the
10 greater shortfall (i.e., two persons), but not both.

11 **5. Dispute Resolution**

12 All disputes between Sex Class members and Class Counsel regarding
13 distribution of Front Pay shall be resolved by Special Master Barbara Chvany, or, if she is
14 unavailable, by another Special Master mutually agreed upon by the Parties. The decisions
15 of the Special Master shall be final and binding upon Sex Class members without right of
16 review or appeal. Lucky shall pay the Special Master's fees.

17 **C. Costs of Decree Administration**

18 During the period from June, 1992 to October 1, 1999, Lucky shall spend at least
19 \$20,000,000, exclusive of attorneys fees, to implement the terms of this Decree. For the
20 purposes of this Section, the Parties shall meet and confer regarding (a) the Decree
21 implementation costs that Lucky expended before the start of the first Decree Year; (b) the
22 Decree implementation costs expended in the first Decree Year; and (c) the categories of
23 Decree implementation costs that Lucky may claim under this Section for the second and
24 succeeding Decree Years. See Exhibit 17. At the conclusion of the second and succeeding
25 Decree Years, Lucky shall inform Class Counsel and the Court of the Decree implementation
26 costs expended in such years.

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1 **D. Security for Class Payment**

2 As security for the deposit of the Class Payment on January 2, 1995, American Stores
3 agrees as follows:

4 1. American Stores shall guarantee all payments under this Decree.

5 2. Each fiscal quarter, American Stores shall furnish Class Counsel with
6 its Certification of Compliance with Debt Covenants.

7 3. If, in any fiscal quarter, American Stores defaults on any of its debt
8 covenants, American Stores shall purchase for the benefit of the Sex Class a letter of credit
9 in the amount of \$31.75 million due and payable on January 2, 1995.

10 **XXI. ATTORNEYS FEES AND COSTS**

11 **A. Case-In-Chief Fees**

12 No later than ten (10) days after Final Judgment as described in Section XX(A)(3)(p)
13 above, Lucky shall pay Class Counsel the sum of \$13,750,000 in attorneys fees and costs for
14 all work performed in this action through entry of Final Judgment, including expert fees and
15 costs, and excluding only attorneys fees and costs claimed pursuant to Section XXI(B) below.

16 **B. Decree Approval, Monitoring, Implementation and Monetary Distribution**
17 **Fees**

18 1. For work performed in connection with the Decree approval process,
19 negotiation of individual injunctive relief for named class representatives up to five (5) days
20 before the arbitration of any disputes regarding such relief, appeals from the entry of this
21 Decree, implementation or monitoring of this Decree, defense of the Decree upon collateral
22 attack, or the distribution of monetary relief ("Decree Approval, Monitoring, Implementation
23 and Monetary Distribution Fees"), Class Counsel shall recover reasonable attorneys fees and
24 costs with no multiplier, without regard to who is the prevailing party. Lucky shall pay all
25 costs and fees of the monetary distribution process (including fees or costs incurred before
26 entry of Final Judgment), including the costs and fees of the Third Party Administrator, the
27 Special Master who resolves distribution claims by Sex Class members, Class Counsel,
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1 Drogin & Kakigi, mailings, tracing by IRSC, and bank fees. All disputes regarding Decree
2 Approval, Monitoring, Implementation and Monetary Distribution Fees shall be resolved by
3 Fees Monitor David Heilbron on a schedule mutually acceptable to the Parties and to the
4 Fees Monitor, except that Special Master Barbara Chvany shall decide prevailing party status
5 in disputes involving injunctive relief for named class representatives.

6 2. So as to minimize Class Counsel's attorneys fees and costs in
7 connection with the fairness process, Lucky may, at its option, assume a primary role in
8 preparing jointly-filed court papers in connection with the fairness process.

9 **C. Enforcement Fees**

10 For work performed in connection with any action to modify, enforce or interpret this
11 Decree and for work performed in connection with any attorneys fees disputes regarding
12 same or regarding Decree Approval, Monitoring, Implementation and Monetary Distribution
13 Fees ("Enforcement Fees"), Class Counsel shall recover reasonable attorneys fees and costs
14 on a prevailing party basis. The Parties dispute the entitlement of Class Counsel to a
15 multiplier on such fees. All disputes regarding Enforcement Fees shall be resolved by Judge
16 Patel on a schedule mutually acceptable to the Parties and to the Fees Monitor.

17 **D. Payment of Fees**

18 Every two (2) months during the first two and one half Decree Years and every six
19 (6) months thereafter through the termination of this Decree, Class Counsel shall submit to
20 Lucky a statement and supporting documentation for Decree Approval, Monitoring,
21 Implementation and Monetary Distribution Fees and for Enforcement Fees. Lucky shall pay
22 or object to such fees and costs within thirty (30) days of receipt of such statement and all
23 supporting documentation (including invoices for costs incurred). If Lucky objects to such
24 fees and costs, Lucky shall pay the undisputed portion or seventy-five (75) percent of the
25 invoice, whichever is greater. Disputes that are not resolved informally by the Parties within
26 thirty (30) days of any such objection shall be resolved by binding arbitration before Fees
27 Monitor David Heilbron. Residual fees due to Class Counsel after resolution of payment
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1 disputes shall be furnished to Class Counsel with interest at the rate specified at 28 U.S.C.
2 § 1961.

3 **XXII. RETURN OF DOCUMENTS**

4 A. Upon request by Lucky after this Consent Decree has terminated, Class
5 Counsel shall, within sixty (60) days of such request:

6 1. return to Lucky or destroy all documents (including, without limitation,
7 computer-readable data), and all copies thereof, which were furnished to Class Counsel
8 during discovery, both formal and informal, in the Covered Lawsuits, including all
9 documents, notes, tapes, papers, and any other medium, and all copies thereof, which
10 contain, whether in summary, excerpt, or other form, Confidential Information, as that term
11 is defined below, with the exception of work product memoranda or pleadings containing
12 Confidential Information;

13 2. return to Lucky or destroy all deposition transcripts, exhibits or other
14 material containing Confidential Information, and all copies thereof, that are returned to
15 plaintiffs or Class Counsel by the Court;

16 3. return to Lucky or destroy all documents, pleadings or other material,
17 and all copies thereof, which were filed with the Court under seal (excepting the Pretrial
18 Statements of the Parties); and

19 4. certify in writing to Lucky and to the Court that the obligations set
20 forth in this Section XXII(A) have been met.

21 B. Immediately upon Lucky's request for return or destruction of documents or
22 other materials pursuant to Section XXII(A), Class Counsel shall not thereafter:

23 1. use for any purpose any of their work product memoranda or pleadings
24 containing Confidential Information; or

25 2. disclose any of their work product memoranda or pleadings containing
26 Confidential Information to any person. However, Class Counsel may disclose such work
27 product memoranda or pleadings to Class Counsel's partners, associates and employees,
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1 provided that any such partners, associates and employees do not disclose the information to
2 any other person.

3 C. The term "Confidential Information" as used in this Section XXII shall include
4 the following types of information unless such information was admitted into evidence during
5 the trial of either of the Covered Lawsuits or filed (not under seal, but excepting the Pretrial
6 Statements of the Parties) with the Court in connection with the Covered Lawsuits:

- 7 1. computer-readable payroll data and other payroll data;
- 8 2. personnel files and other employee personnel materials, including,
9 without limitation, letters or memoranda to or from employees;
- 10 3. notes of grievance hearings;
- 11 4. strategic planning reports and information; and
- 12 5. internal complaints of discrimination and materials relating to the
13 investigation of such complaints.

14 D. Upon the Date of Final Judgment, the obligations in this Section XXII shall
15 supersede all confidentiality obligations in the Covered Lawsuits, and the definition of
16 Confidential Information in this Section XXII shall constitute the definition of Confidential
17 Information to be used by the Parties and Intervenors in all proceedings under this Decree.

18 E. The obligations of this Section XXII shall survive termination of this Decree.

19 F. All disputes regarding the interpretation and implementation of the terms of
20 this Section XXIII shall be resolved by the Court.

21 G. Class Counsel shall not use the Confidential Information received from Lucky
22 in connection with the Covered Lawsuits in any proceeding not pertaining to the Covered
23 Lawsuits.

24 **XXIII. COLLATERAL ATTACK**

25 In the event of a collateral attack on any or all of the terms of this Decree by an
26 individual or entity not a Party to this Decree, Lucky and Class Counsel shall jointly oppose
27 any such attacks and jointly defend the terms of this Decree against any such attack.

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1 **XXIV. CLASS COUNSEL**

2 As used in this Decree, "Class Counsel" refers to Saperstein, Mayeda & Goldstein
3 and its successors (the "Law Firm") and to Brad Seligman.

4 **XXV. INTERVENORS' COUNSEL**

5 As used in this Decree, "Intervenors' Counsel" refers jointly to Steve Stemerman for
6 Davis, Cowell & Bowe and Brian C. Walsh for McTernan, Stender & Walsh. Intervenors'
7 Counsel represent the interests of the UFCW Local Unions.

8 **XXVI. STRIKE CLAUSE**

9 In the event of a strike, work stoppage, or other job action ("Strike") by or affecting
10 any employees covered by this Decree, the obligations set forth in Sections XI, XII, XIII,
11 XIV and XIX, but not Sections XI(E), XII(D), XIII(I) and XIV(G), shall be suspended for
12 the duration of the Strike, and all measurement and compliance provisions contained in such
13 sections shall be modified as necessary so as to disregard any personnel actions taken during
14 the Strike. Nothing in this Section XXVI shall be interpreted to alter the existing rights of
15 Lucky or the Intervenors with respect to their preparations for, conduct of, or resolution of a
16 Strike.

17 **XXVII. NO THIRD PARTY BENEFICIARIES**

18 Individual class members are not third party beneficiaries of this Decree, and they
19 shall have no right to bring any action for any alleged violation of this Decree. Class
20 Counsel shall have authority to bring an action to enforce this Decree only as expressly set
21 forth in this Decree, and, except as provided in Section XVII, Class Counsel shall not bring
22 any action to enforce this Decree on behalf of any individual. No other Decree enforcement
23 rights are to be implied.

24 **XXVIII. RELATIONSHIP BETWEEN DECREE AND COLLECTIVE**
25 **BARGAINING AGREEMENT**

26 A. The obligations under this Decree and the obligations under any applicable
27 collective bargaining agreements shall be construed so as to avoid conflict between such
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1 obligations, if possible. All conflicts between this Decree and any collective bargaining
2 agreement shall be resolved in favor this Decree so as to give broad scope to the remedial
3 purposes of the Decree. All provisions of this Decree shall be deemed integral to achieving
4 its remedial purposes.

5 B. In the event of any conflict between the terms of this Decree and the terms of
6 any such collective bargaining agreements:

7 1. The terms of this Decree shall be supreme;

8 2. Lucky's exclusive obligation shall be to comply with this Decree with
9 respect to such term(s);

10 3. The relevant conflicting term(s) in any such collective bargaining
11 agreements shall not be enforceable against Lucky for the life of this Decree;

12 4. No claim, grievance, or relief of any kind whatsoever shall lie for
13 failure to adhere to the conflicting terms of any such collective bargaining agreement; and

14 5. The Court shall not have jurisdiction to adjudicate such conflicts that
15 pertain to non-class members.

16 C. As used throughout this Decree, the phrase "consistent with the appropriate
17 collective bargaining agreement, if applicable" means only that if the terms of any collective
18 bargaining agreement apply to the action described by the clause in question (and inclusion of
19 the phrase is not intended to imply that it does), then this Decree is not intended to displace
20 any independent rights guaranteed by such collective bargaining agreement with respect to
21 the described action, so long as such rights neither conflict with the terms of this Decree nor
22 impede the remedial purposes of this Decree.

23 D. If a grievance filed under this Decree raises an issue regarding interpretation
24 or application of the Decree and/or whether the Decree conflicts with the collective
25 bargaining agreement, an arbitrator may decide such issue pursuant only to the terms of
26 Sections XII(C), XIII(H), or XIV(F). Any interpretation of the Decree by an arbitrator and
27 any determination by an arbitrator that the Decree does or does not conflict with a collective
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1 bargaining agreement shall be subject to de novo review by the Court. Fact determinations
2 by an arbitrator are not reviewable by the Court. Lucky shall deliver to Class Counsel within
3 seven (7) days of their receipt from an arbitrator all decisions which interpret the terms of
4 the Decree.

5 E. Except as otherwise expressly provided in this Decree, nothing in this Decree
6 is intended to create any new rights enforceable through any collective bargaining agreement,
7 nor shall any practice(s) required by this Decree become enforceable through the provisions
8 of any collective bargaining agreement.

9 **XXIX. INTERVENOR ENFORCEMENT RIGHTS**

10 The procedures in Sections XII(C), XIII(H) and XIV(F) contain the sole enforcement
11 rights of Intervenors with respect to this Decree. No other enforcement rights are to be
12 implied.

13 **XXX. SECTION HEADINGS**

14 The Section headings in this Decree shall have no substantive meaning whatsoever.
15 Only the textual provisions in this Decree and in its Exhibits shall be interpreted or construed
16 to have substantive meaning.

17 **XXXI. APPEAL OF FINAL JUDGMENT**

18 In the event that a Sex Class member appeals the entry of this Decree as a judgment
19 by the Court, the signatories to this Decree shall meet and confer regarding the impact of the
20 appeal upon the implementation of the terms of the Decree. If the signatories cannot resolve
21 any disputes that they may have regarding the impact of the appeal upon the implementation
22 of the terms of the Decree, all such disputes shall be submitted to the Court by properly-
23 noticed motion.

24 **XXXII. ENTIRE AGREEMENT**


25 The terms of this Decree and its Exhibits are the exclusive and final expression of all
26 agreements by the Parties and Intervenors with respect to any and all sex-related claims for
27 injunctive relief by the named plaintiffs and by the members of the class. The Parties and
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1 Intervenor accept entry of this Decree based solely upon its terms and not in reliance upon
2 any representations or promises other than those contained in this Decree. The terms of this
3 Decree may not be contradicted either by evidence of any prior or contemporaneous
4 agreement or by the use of any form of extrinsic evidence whatsoever in any judicial,
5 administrative, or other legal proceeding involving this Decree.

6 The undersigned consent to entry of this Decree:

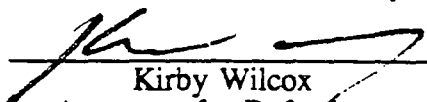
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8 Dated: 1/11/94

9
10 BRAD SELIGMAN
11 DAVID BORDEN
12 SAPERSTEIN, MAYEDA,
13 & GOLDSTEIN

14 By 
15 Brad Seligman
16 Attorneys for Plaintiffs

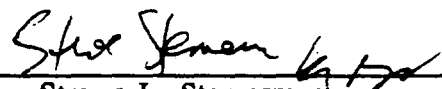
Dated: 1/11/94

KIRBY WILCOX
JAMES E. BODDY, JR.
CAROLYN RASHBY
MORRISON & FOERSTER

By: 
Kirby Wilcox
Attorneys for Defendants
LUCKY STORES, INC. and
AMERICAN STORES CO.

17 Dated: 1/11/94

18 STEVEN L. STEMERMAN
19 DAVIS, COWELL & BOWE

20
21 By: 
22 Steven L. Stererman
23 Counsel for UFCW Union Locals