

FILED

FOR PUBLICATION

FEB 11 2011

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

**STATE OF CALIFORNIA, ex rel.
Edmund G. Brown Jr.,**

Plaintiff - Appellant,

v.

**SAFEWAY, INC., a Safeway Company
doing business as Vons; ALBERTSONS,
INC.; RALPHS GROCERY
COMPANY, a division of the Kroger
Company; FOOD 4 LESS FOOD
COMPANY, a division of the Kroger
Company; VONS COMPANIES, INC.,
an indirect, wholly owned subsidiary of
Safeway, Inc.,**

Defendants - Appellees.

No. 08-55671

D.C. No. 2:04-cv-00687-AG-SS

ORDER

**STATE OF CALIFORNIA, ex rel.
Edmund G. Brown Jr.,**

Plaintiff - Appellee,

v.

**SAFEWAY, INC., a Safeway Company
doing business as Vons; ALBERTSONS,
INC.; RALPHS GROCERY
COMPANY, a division of the Kroger
Company; FOOD 4 LESS FOOD
COMPANY, a division of the Kroger
Company; VONS COMPANIES, INC.
an indirect, wholly owned subsidiary of
Safeway, Inc.,**

Defendants - Appellants.

No. 08-55708

D.C. No. 2:04-cv-00687-AG-SS

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judges Bybee and Murguia did not participate in the deliberations or vote in this case.