

**FOR PUBLICATION**  
**UNITED STATES 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;  
ALBERTSON'S, 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

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-Appellees.*

No. 08-55708  
D.C. No.  
2:04-cv-00687-AG-  
SS  
ORDER

Filed February 11, 2011

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**ORDER**

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.