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The Honorable \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
CERBERUS INSTITUTIONAL  
PARTNERS V, L.P., a limited  
partnership; AB ACQUISITION LLC, a  
limited liability company; and  
SAFEWAY INC., a corporation,  
  
Defendants.

NO.  
  
**COMPLAINT**

**I. NATURE OF COMPLAINT**

1. The State of Washington (“Plaintiff”) brings this action, by and through Robert W. Ferguson, Attorney General, and Stephen T. Fairchild, Assistant Attorney General, to enjoin the proposed acquisition by Defendant AB Acquisition LLC (“Albertsons”), a subsidiary of Defendant Cerberus Institutional Partners V, L.P. (“Cerberus”), of certain assets of Defendant Safeway Inc. (“Safeway,” and together with Albertsons and Cerberus, “Defendants”). Plaintiff seeks to enjoin this transaction because, if approved, it may substantially lessen competition for the retail sale of food and other grocery

1 products in supermarkets within the relevant geographic markets in Washington and tend to  
2 create a monopoly therein, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as  
3 well as Washington's Unfair Business Practices – Consumer Protection Act, RCW  
4 19.86.060.

5  
6 **II. PARTIES**

7 2. Defendant Albertsons is a limited liability company organized, existing, and  
8 doing business under and by virtue of the laws of the State of Delaware, with its headquarters  
9 and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

10 3. Defendant Cerberus is a limited partnership organized, existing, and doing  
11 business under and by virtue of the laws of the State of Delaware, with its corporate  
12 headquarters and principal place of business located at 875 Third Avenue, 11th Floor, New  
13 York, New York.

14  
15 4. Defendant Cerberus, through Albertsons, of which Cerberus is the majority  
16 owner, owns and operates the Albertsons chain of supermarkets in the western and  
17 southwestern United States, including stores located throughout Washington.

18 5. Defendant Safeway is a corporation organized, existing, and doing business  
19 under and by virtue of the laws of the State of Delaware, with its corporate headquarters and  
20 principal place of business located at 5918 Stoneridge Mall Rd., Pleasanton, California.

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22 6. Defendant Safeway operates a number of supermarket chains throughout the  
23 United States, including the Safeway brand of stores located throughout Washington.

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1 7. Albertsons, Cerberus, and Safeway own and operate supermarkets in the  
2 geographic markets relevant to this Complaint and compete and promote their businesses in  
3 these areas.

4 **III. JURISDICTION, VENUE, AND COMMERCE**

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6 8. The State of Washington brings this action under Section 16 of the Clayton  
7 Act, 15 U.S.C. § 26, and RCW 19.86.080 of Washington's Unfair Business Practices –  
8 Consumer Protection Act, to prevent and restrain Defendants from violating Section 7 of the  
9 Clayton Act, 15 U.S.C. § 18, and RCW 19.86.060.

10 9. Defendants and each of their relevant operating subsidiaries and parent  
11 entities are, and at all times relevant herein have been, engaged in interstate commerce and in  
12 activities that substantially affect interstate commerce. Defendants and each of their relevant  
13 operating subsidiaries and parent entities are, and at all times relevant herein have been,  
14 engaged in intrastate commerce and in activities that substantially affect intrastate commerce.

15  
16 10. This Court has subject matter jurisdiction over the federal antitrust claim  
17 under Section 16 of the Clayton Act, 15 U.S.C. § 16, and under 28 U.S.C. §§ 1331 & 1337.

18 11. This Court has subject matter jurisdiction over the state antitrust claim under  
19 28 U.S.C. § 1367(a), as well as under the principles of supplemental jurisdiction, because the  
20 claims under federal and state law are based upon a common nucleus of operative fact, and  
21 the state law claim is so closely related to the federal law claim that it forms part of the same  
22 case or controversy.

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24 12. This Court has personal jurisdiction over Defendants because Defendants  
25 transact business within the Western District of Washington. Specifically, Defendants own  
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1 and operate several supermarkets in the counties encompassed by the Western District of  
2 Washington that provide a wide variety of goods and services to Washington consumers.

3 13. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C.  
4 § 22, and 28 U.S.C. § 1391(b).

5  
6 **IV. THE PROPOSED ACQUISITION**

7 14. On March 6, 2014, and as amended on April 7, 2014, and June 13, 2014,  
8 Defendant Albertsons, together with its subsidiaries Albertson's Holdings LLC, Albertson's  
9 LLC and Saturn Acquisition Merger Sub, Inc., and Defendant Safeway entered into an  
10 Agreement and Plan of Merger pursuant to which Albertsons would purchase all of the  
11 issued and outstanding common stock of Safeway and acquire various retail supermarket  
12 locations from Safeway, including the stores operated under the "Safeway" brand in  
13 Washington, in a transaction valued at approximately \$9.2 billion (the "Proposed  
14 Acquisition").

15  
16 **V. THE RELEVANT PRODUCT MARKET**

17 15. The relevant line of commerce in which to analyze the Proposed Acquisition  
18 is the retail sale of food and other grocery products in supermarkets.

19 16. For purposes of this Complaint, the term "supermarket" means any full-line  
20 retail grocery store that is open 24 hours per day (with few exceptions), and enables  
21 customers to purchase substantially all of their weekly food and grocery shopping  
22 requirements in a single shopping visit with substantial offerings in each of the following  
23 product categories: bread and baked goods; dairy products; refrigerated food and beverage  
24 products; frozen food and beverage products; fresh and prepared meats and poultry; fresh  
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1 fruits and vegetables; shelf-stable food and beverage products, including canned, jarred,  
2 bottled, boxed and other types of packaged products; staple foodstuffs, which may include  
3 salt, sugar, flour, sauces, spices, coffee, tea and other staples; other grocery products,  
4 including nonfood items such as soaps, detergents, paper goods, other household goods, and  
5 health and beauty aids; pharmaceutical products and pharmacy services (where provided);  
6 and, to the extent permitted by law, wine, beer and/or distilled spirits.  
7

8 17. Supermarkets provide a distinct set of products and services and offer  
9 consumers convenient one-stop shopping for food and grocery products. Supermarkets  
10 typically carry more than 10,000 different items, typically referred to as SKUs—or stock-  
11 keeping units—as well as a deep inventory of those items. In order to accommodate the  
12 large number of food and non-food products necessary for one-stop shopping, supermarkets  
13 are large stores that typically have at least 10,000 square feet of display area or selling space.  
14

15 18. Supermarkets compete primarily with other supermarkets that provide one-  
16 stop shopping opportunities for food and grocery products. Supermarkets base their food and  
17 grocery prices primarily on the prices of food and grocery products sold at other nearby  
18 competing supermarkets. Supermarkets do not regularly conduct price checks of food and  
19 grocery products sold at other types of stores and do not typically set or change their food or  
20 grocery prices in response to prices at non-supermarket stores.  
21

22 19. Although retail stores other than supermarkets may also sell food and grocery  
23 products, these types of stores—including convenience stores, specialty food stores, limited  
24 assortment stores, hard-discounters, and club stores—do not, individually or collectively,  
25 provide sufficient competition to effectively constrain prices at supermarkets. These other  
26

1 retail stores do not offer a supermarket's distinct set of products and services that provide  
2 consumers with the convenience of one-stop shopping for food and grocery products. The  
3 vast majority of consumers shopping for food and grocery products at supermarkets are not  
4 likely to start shopping at other types of stores, or significantly increase grocery purchases at  
5 other types of stores, in response to a small but significant price increase by supermarkets.  
6

## 7 VI. THE RELEVANT GEOGRAPHIC MARKET

8 20. Customers shopping at supermarkets are motivated by convenience and, as a  
9 result, competition for supermarkets is local in nature. Generally, a vast majority of  
10 consumers' grocery shopping occurs at stores located in close proximity to where they live.

11 21. In Washington, Defendants currently operate supermarkets under the Safeway  
12 and Albertsons banners within approximately two-tenths of a mile to ten miles of each other  
13 in each of the relevant geographic markets. The primary trade areas of Defendants' banners  
14 in each of the relevant geographic markets overlap significantly.  
15

16 22. The 27 relevant geographic markets in which to assess the competitive effects  
17 of the Proposed Acquisition are localized areas in (1) Bremerton, Washington; (2) Burien,  
18 Washington; (3) Everett, Washington; (4) Federal Way, Washington; (5) Gig Harbor,  
19 Washington; (6) Lake Forest, Washington; (7) Lake Stevens, Washington; (8) Lakewood,  
20 Washington; (9) Liberty Lake, Washington; (10) Milton, Washington; (11) Monroe,  
21 Washington; (12) Oak Harbor, Washington; (13) Olympia (East), Washington; (14) Port  
22 Angeles, Washington; (15) Port Orchard, Washington; (16) Puyallup, Washington; (17)  
23 Renton (New Castle), Washington; (18) Renton (East Hill-Meridian), Washington; (19)  
24 Sammamish, Washington; (20) Shoreline, Washington; (21) Silverdale, Washington; (22)  
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1 Snohomish, Washington; (23) Tacoma (Eastside), Washington; (24) Tacoma (Spanaway),  
2 Washington; (25) Walla Walla, Washington; (26) Wenatchee, Washington; and (27)  
3 Woodinville, Washington. A hypothetical monopolist controlling all supermarkets in each of  
4 these areas could profitably raise prices by a small but significant amount.

## 6 VII. MARKET CONCENTRATION

7 23. Under the 2010 Department of Justice and Federal Trade Commission  
8 Horizontal Merger Guidelines (“Merger Guidelines”) and relevant case law, the Acquisition  
9 is presumptively unlawful in the markets for the retail sale of food and other grocery  
10 products in supermarkets in all 27 geographic markets listed in Paragraph 22. The Proposed  
11 Acquisition will substantially increase concentration in each of the relevant geographic  
12 markets, whether measured by the Merger Guidelines’ standard measure of market  
13 concentration, the Herfindahl-Hirschman Index (“HHI”) or by the number of competitively  
14 significant firms remaining in each market post-acquisition. Under the HHI, an acquisition is  
15 presumed to create or enhance market power or facilitate its exercise if it increases the HHI  
16 presumed to create or enhance market power or facilitate its exercise if it increases the HHI  
17 by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points.

18 24. The market concentration levels in each of the relevant geographic markets  
19 give rise to a presumption that the Proposed Acquisition, if consummated, would be  
20 unlawful. Post-acquisition HHI levels in the relevant geographic markets would range from  
21 2,566 to 10,000, and the Proposed Acquisition would result in HHI increases ranging from  
22 225 to 4,405. Exhibit A presents market concentration levels for each of the relevant  
23 geographic markets.  
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1 25. The Proposed Acquisition will reduce the number of meaningful competitors  
2 from two to one in 3 relevant geographic markets, from three to two in 7 relevant geographic  
3 markets, and from four to three (or greater) in 17 relevant geographic markets.

4 **VIII. ENTRY CONDITIONS**

5 26. Entry into the relevant geographic markets would not be timely, likely, or  
6 sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Proposed  
7 Acquisition. Significant entry barriers include the time and costs associated with conducting  
8 necessary market research, the availability of appropriate locations for a supermarket,  
9 obtaining necessary permits and approvals, constructing a new supermarket or converting an  
10 existing structure to a supermarket, and generating sufficient sales to have a meaningful  
11 impact on the market.  
12

13 **IX. EFFECTS OF THE ACQUISITION**

14 27. The Proposed Acquisition, if consummated, is likely to substantially lessen  
15 competition for the retail sale of food and other grocery products in supermarkets in the  
16 relevant geographic markets identified in Paragraph 22 in the following ways, among others:  
17

- 18 a. by eliminating direct and substantial competition between Defendants  
19 Albertsons and Safeway;
- 20 b. by increasing the likelihood that Defendant Albertsons will unilaterally  
21 exercise market power; and
- 22 c. by increasing the likelihood of, or facilitating, coordinated interaction between  
23 the remaining participants in each of the relevant geographic markets.  
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1 28. The ultimate effect of the Proposed Acquisition would be to increase the  
2 likelihood that the prices of food, groceries, or services will increase, and that the quality and  
3 selection of food, groceries, or services will decrease, in each of the relevant geographic  
4 markets.

5  
6 **X. FIRST CAUSE OF ACTION**

7 **Violation of the Clayton Act**

8 29. Plaintiff incorporates herein by reference all of the allegations contained in  
9 Paragraphs 1 through 28 of this Complaint.

10 30. The Proposed Acquisition described in Paragraph 14 may substantially lessen  
11 competition in the provision of supermarket goods and services in each of the relevant  
12 geographic markets in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §  
13 18).  
14

15 **XI. SECOND CAUSE OF ACTION**

16 **Violation of Washington Unfair Business Practices – Consumer Protection Act**

17 31. Plaintiff incorporates herein by reference all of the allegations contained in  
18 Paragraphs 1 through 28 of this Complaint.

19 32. The Proposed Acquisition described in Paragraph 14 may substantially lessen  
20 competition in the provision of supermarket goods and services in each of the relevant  
21 geographic markets in violation of RCW 19.86.060.  
22

23 **XII. PRAYER FOR RELIEF**

24 33. Accordingly, Plaintiff State of Washington prays that this Court:  
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- 1 a. Adjudge and decree that the Proposed Acquisition would violate Section 7 of  
2 the Clayton Act, 15 U.S.C. § 18, and RCW 19.86.060;  
3  
4 b. Permanently enjoin and restrain, pursuant to federal and state law, Defendants  
5 from consummating the proposed merger in each of the relevant geographic  
6 markets identified in Paragraph 22;  
7  
8 c. Award to Plaintiff State of Washington its costs in this action, including  
9 reasonable attorney's fees; and  
10  
11 d. Direct such other and further relief as the Court deems just and proper.


DATED this 30th day of January, 2015

12 Respectfully submitted,

13 ROBERT W. FERGUSON  
14 Attorney General

15 DARWIN ROBERTS  
16 Deputy Attorney General

17 JONATHAN MARK  
18 Senior Assistant Attorney General,  
19 Antitrust Division Chief

20   
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## EXHIBIT A

Area Number (See Para. 22 of Complaint)	City	State	Merger Result	HHI (pre)	HHI (post)	Delta
1	Bremerton	WA	4 to 3	2721	3399	678
2	Burien	WA	5 to 4	1979	4489	2510
3	Everett	WA	4 to 3	2301	2586	285
4	Federal Way	WA	5 to 4	2312	2709	397
5	Gig Harbor	WA	3 to 2	3396	5235	1839
6	Lake Forest Park	WA	5 to 4	3889	4352	463
7	Lake Stevens	WA	5 to 4	2646	3455	809
8	Lakewood	WA	6 to 5	2333	3170	837
9	Liberty Lake	WA	3 to 2	3483	5090	1607
10	Milton	WA	3 to 2	3960	5010	1050
11	Monroe	WA	4 to 3	2911	3352	441
12	Oak Harbor	WA	3 to 2	4296	6446	2150
13	Olympia (East)	WA	6 to 5	2205	2566	361
14	Port Angeles	WA	2 to 1	3773	5588	1815
15	Port Orchard	WA	4 to 3	2747	3362	615
16	Puyallup	WA	3 to 2	4160	5072	912
17	Renton (East Hill- Meridian)	WA	4 to 3	3304	3719	415
18	Renton (New Castle)	WA	4 to 3	4417	5274	857
19	Sammamish	WA	2 to 1	5761	10,000	4239
20	Shoreline	WA	4 to 3	3792	4017	225
21	Silverdale	WA	4 to 3	2845	3516	671
22	Snohomish	WA	2 to 1	5595	10,000	4405
23	Tacoma (Eastside)	WA	4 to 3	3260	3727	467
24	Tacoma (Spanaway)	WA	5 to 4	2707	3360	653

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<b>25</b>	<b>Walla Walla</b>	<b>WA</b>	<b>5 to 4</b>	<b>2624</b>	<b>3417</b>	<b>793</b>
<b>26</b>	<b>Wenatchee</b>	<b>WA</b>	<b>3 to 2</b>	<b>3744</b>	<b>5047</b>	<b>1303</b>
<b>27</b>	<b>Woodinville</b>	<b>WA</b>	<b>3 to 2</b>	<b>3568</b>	<b>5192</b>	<b>1624</b>