

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

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.