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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GROCERY OUTLET INC.,

Plaintiff,

No. C 06-02173 JSW

v.

ALBERTSON'S, INC., AMERICAN STORES  
COMPANY, LLC, and LUCKY STORES,  
INC.,

**NOTICE OF TENTATIVE  
RULING AND QUESTIONS**

Defendants.

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE OF THE FOLLOWING **TENTATIVE** RULING AND QUESTIONS FOR THE  
HEARING SCHEDULED ON APRIL 4, 2006 AT 9:30 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties  
reargue matters addressed in those pleadings. If the parties intend to rely on authorities not  
cited in their briefs, they are **ORDERED** to notify the Court and opposing counsel of these  
authorities reasonably in advance of the hearing and to make copies available at the hearing. If  
the parties submit such additional authorities, they are **ORDERED** to submit the citations to the  
authorities only, without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d).  
The parties will be given the opportunity at oral argument to explain their reliance on such  
authority.

The Court **tentatively GRANTS** Defendants' motion for temporary restraining order.

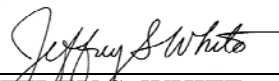
**United States District Court**  
For the Northern District of California

1 The parties shall have 15 minutes to address the following questions:

- 2 1. What is the status of Plaintiff Grocery Outlet's intent to use application filed  
3 with the Patent and Trademark Office on January 23, 2006? Is there any reason  
4 Plaintiff opened the store in Rocklin prior to adjudication of its entitlement to  
5 use the LUCKY mark either by this Court or by the PTO?
- 6 2. Whose burden is it in this procedural posture to come forward with evidence  
7 regarding the abandonment defense? If Plaintiff can demonstrate by clear and  
8 convincing evidence that Albertson's has not used the disputed mark in the past  
9 three years, in the context of a temporary restraining order, does the burden shift  
10 to Albertson's to rebut the prima facie evidence of abandonment by nonuse?  
11 What evidence is there of use or nonuse? What evidence is there of intent to  
12 resume or not to resume its use?
- 13 3. What specific discovery and schedule for discovery would both parties request  
14 should the Court grant the motion? What is the parties' preferred briefing and  
15 hearing schedule for Defendants' motion for a preliminary injunction in light of  
16 the Court's intent to grant expedited reciprocal discovery?
- 17 4. What would be the appropriate bond amount should the Court grant the  
18 temporary restraining order?
- 19 5. Do the parties have anything further they wish to address?

20 **IT IS SO ORDERED.**

21 Dated: April 3, 2006

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24 JEFFREY S. WHITE  
25 UNITED STATES DISTRICT JUDGE