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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE STATE OF NEVADA BY ITS ATTORNEY
GENERAL ADAM PAUL LAXALT

Plaintiff,

v.

CERBERUS INSTITUTIONAL PARTNERS V,
L.P., a limited partnership; AB ACQUISITION
LLC, a limited liability company; and SAFEWAY
INC., a corporation.

Defendants.

Case No.:

COMPLAINT

Pursuant to the Nevada Unfair Trade Practice Act, NRS 598A.010, et seq., and by virtue of the authority vested in it by said Act, Plaintiff State of Nevada, through its Attorney General, complains against Defendants AB ACQUISITION LLC (“Albertsons”), CERBERUS INSTITUTIONAL PARTNERS V, L.P. (“Cerberus”), and SAFEWAY INC. (“Safeway”) as follows:

I. INTRODUCTION

1. This lawsuit challenges Albertsons' acquisition of certain supermarkets currently owned and operated by Safeway, and which are located in Clark County, Nevada.

2. Defendant Albertsons, of which Defendant Cerberus is the majority owner, and Defendant Safeway, all of whom are subject to the jurisdiction of the Nevada Attorney General, entered into an agreement and plan of merger pursuant to which Albertsons will acquire all outstanding and issued shares of Safeway, thereby acquiring assets of Safeway. The proposed acquisition, as described below, may substantially reduce competition in the provision for retail supermarket goods and service in certain geographic markets, in violation of NRS 598A.060(1)(f) and applicable federal law.

II. PARTIES

3. Plaintiff State of Nevada is a sovereign state of the United States of America. Plaintiff brings this action by and through its Attorney General (a) as *parens patriae* on behalf of natural persons residing in the State of Nevada under federal antitrust law, (b) as *parens patriae* on behalf of persons residing in the State of Nevada pursuant to the Nevada Unfair Trade Practice Act, and (c) as the chief antitrust law enforcement agency in the State of Nevada to the extent violations of the Nevada Unfair Trade Practice Act are alleged herein.

4. Defendant Albertsons is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho 83706.

5. Defendant Cerberus is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 875 Third Avenue, 11th Floor, New York, NY 10022.

6. Defendant Cerberus, through Albertsons, of which Cerberus is the majority owner, owns and operates the Albertsons chain of supermarkets in the west and southwestern United States, including stores located in Nevada.

7. Defendant Safeway is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 5918 Stoneridge Mall Rd., Pleasanton, CA 94588.

8. Defendant Safeway operates a number of supermarket chains throughout the United States, including the VONS brand of stores located in Nevada.

9. Albertsons, Cerberus, and Safeway (“Defendants”) own and operate supermarkets in the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

III. JURISDICTION, VENUE AND COMMERCE

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

11. This lawsuit is filed by Plaintiff State of Nevada pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. This Court has subject matter jurisdiction over the federal antitrust claim pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337(a).

12. Plaintiff State of Nevada also alleges violation of the Nevada Unfair Trade Practice Act, NRS 598A.010, et seq., specifically Nev. Rev. Stat. § 598A.060. The claims under federal and state law are based upon a common nucleus of operative fact, and this Court has

pendent jurisdiction over the state law claim because this claim is so closely related to the federal law claim that it forms part of the same case or controversy. 28 U.S.C. § 1367(a).

13. This Court has personal jurisdiction over Defendants because Defendants transact business within the District of Nevada. Specifically, Defendants own and operate several supermarkets in Clark County, Nevada that provide a wide variety of goods and services to Nevada consumers.

14. Venue is proper in this District pursuant to 15 U.S.C. § 22, and 28 U.S.C. § 1391(b).

IV. THE PROPOSED ACQUISITION

15. On March 6, 2014, Defendant Albertsons, together with its subsidiaries Albertson's Holdings LLC, Albertson's LLC and Saturn Acquisition Merger Sub, Inc., and Defendant Safeway entered into an agreement pursuant to which Albertsons proposes to purchase all of the issued and outstanding common stock of Safeway in a transaction valued at approximately \$9.2 Billion (including all amendments or restatements of such agreement, the "Proposed Acquisition"). As a result of the Proposed Acquisition, Albertsons would acquire various retail supermarket locations currently owned Safeway, including 14 stores operated under the "VONS" brand in Clark County, Nevada, and at least one undeveloped parcel of real property owned by Safeway in Clark County, Nevada which is planned for future use as a supermarket.

V. THE RELEVANT PRODUCT MARKET

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

17. For purposes of this complaint, the term "supermarket" means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the

following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea and other goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer and/or distilled spirits.

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

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

20. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores – including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores – do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These other retail stores do not offer a supermarket's distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of

consumers shopping for food and grocery products at supermarkets are not likely to start shopping at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant price increase by supermarkets.

VI. THE RELEVANT GEOGRAPHIC MARKET

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

22. Defendants currently operate supermarkets under the VONS and Albertsons banners within approximately six-tenths of a mile to three miles of each other in each of the relevant geographic markets. The primary trade areas of Defendants' banners in each of the relevant geographic markets overlap significantly.

23. The relevant geographic markets in which to assess the competitive effects of the Proposed Acquisition are all located within Clark County, Nevada, specifically (i) the community commonly known as "Summerlin" located generally in the northwest area of the City of Las Vegas, (ii) that portion of the City of Henderson located east of U.S. Highway 95 and south of Sunset Road, (iii) the community within the City of Henderson commonly known as "Anthem Village", and (iv) Boulder City, Nevada. A hypothetical monopolist controlling a dominant share of supermarkets in each of these areas could profitably raise prices by a small but significant amount.

VII. MARKET CONCENTRATION

24. The Proposed Acquisition will substantially increase concentration in each of the relevant geographic markets, whether measured by the Herfindahl-Hirschman Index ("HHI") or by the number of competitively significant firms remaining in each market post-acquisition.

25. The market concentration levels in each of the relevant geographic markets give rise to a presumption that the Proposed Acquisition, if consummated, would be unlawful. Post-

acquisition HHI levels in the relevant geographic markets would range from 3,356 to 10,000, and the Proposed Acquisition would result in HHI increases ranging from 651 to 4,949. Exhibit A presents market concentration levels for each of the relevant geographic markets. Both the post-acquisition HHI concentration levels in the relevant geographic markets, and the increase attributed to the acquisition, far exceed the established thresholds under the standard measures applied by the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines.

26. The Proposed Acquisition will reduce the number of meaningful competitors from two to one in Boulder City, from three to two in the relevant market within the City of Henderson commonly known as “Anthem Village”, and from four to three in each of the area commonly referred to as “Summerlin” and the relevant market within the City of Henderson located east of U.S. Highway 95 and south of Sunset Road.

VIII. ENTRY CONDITIONS

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

IX. EFFECTS OF THE ACQUISITION

28. The Proposed Acquisition, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 23 in the following ways, among others:

- a) by eliminating direct and substantial competition between Defendants Albertsons and Safeway;
- b) by increasing the likelihood that Defendant Albertsons will unilaterally exercise market power; and
- c) by increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants in each of the relevant geographic markets.

29. The ultimate effect of the Proposed Acquisition would be to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in each of the relevant geographic markets.

X. FIRST CAUSE OF ACTION

Violation of the Clayton Act

30. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 29 of this Complaint.

31. The agreement described in Paragraph 15 may substantially lessen competition in the provision of supermarket goods and services in each of the relevant geographic markets in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

XI. SECOND CAUSE OF ACTION

Violation of the Nevada Unfair Trade Practice Act

32. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 31 of this Complaint.

33. The agreement described in Paragraph 15 may substantially lessen competition in the provision of supermarket goods and services in each of the relevant geographic markets in violation of Nev. Rev. Stat. § 598A.060(1)(f).

34. The Proposed Acquisition, if consummated, would violate Nev. Rev. Stat. §§ 598A.060(1)(f).

XII. PRAYER FOR RELIEF

Accordingly, Plaintiff State of Nevada prays for relief as follows:

1. An order for injunctive relief prohibiting Defendant Albertsons' acquisition of Defendant Safeway's supermarket locations in each of the relevant geographic markets identified in Paragraph 23;
 2. An order awarding Plaintiff its reasonable attorneys fees and costs of this action;
- and
3. All other relief as this Court may deem just and proper.

Dated: January 30, 2015.

Respectfully submitted,

PLAINTIFF STATE OF NEVADA

ADAM PAUL LAXALT, Attorney General of the State of Nevada
ERIC WITKOSKI, Consumer Advocate and Chief Deputy Attorney General

/s/ Lucas J. Tucker
LUCAS J. TUCKER
Senior Deputy Attorney General
Bureau of Consumer Protection

EXHIBIT “A”

EXHIBIT “A”

EXHIBIT A
Post-Acquisition Concentration in Relevant Geographic Markets

Area Number (See Para. 23 of Complaint)	City	State	Merger Result	HHI (pre)	HHI (post)	Delta
1	Boulder City	NV	2 to 1	5051	10,000	4949
2	Henderson (East)	NV	4 to 3	2705	3356	651
3	Henderson (Anthem Village)	NV	3 to 2	3653	5042	1389
4	Summerlin	NV	4 to 3	3107	4367	1260

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2015, I caused a true and complete copy of Plaintiff's Complaint to be served on the following counsel of record via electronic mail (as previously stipulated) and through the Case Management/Electronic Case Files (CM/ECF) system (to the extent counsel has registered with the CM/ECF for this action).

ADAM PAUL LAXALT , Attorney General
ERIC WITKOSKI, Consumer Advocate and
Chief Deputy Attorney General

By: /s/ Lucas Tucker
LUCAS TUCKER
Senior Deputy Attorney General
Bureau of Consumer Protection

Recipients:

Attorney for Defendants Cerberus Institutional Partners V, L.P., Safeway Inc., and AB Acquisition, LLC

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