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8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
11

12 STATE OF CALIFORNIA,  
13

14 Plaintiff,  
15

16 v.  
17

18 ALBERTSON'S, INC., a Delaware  
corporation, and AMERICAN STORES  
COMPANY, a Delaware corporation,  
19

20 Defendants.  
21

Civil Action No.

COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF UNDER  
THE SHERMAN ACT, THE  
CLAYTON ACT, AND PENDENT  
STATE CLAIMS

22 I.  
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24 JURISDICTION AND VENUE  
25

26 1. This Complaint is filed and these proceedings are  
27 instituted under the provisions of Section 1 of the Sherman Act  
28 (15 U.S.C. § 1), Section 7 of the Clayton Act (15 U.S.C. § 18)  
and the California Unfair Competition Act (California Business &  
Professions Code § 17200 et seq).

2. Jurisdiction for the Attorney General to commence this  
action for injunctive relief is conferred by the Clayton Act (15

1 U.S.C. §§ 18 and 26). This court has jurisdiction over these  
2 claims pursuant to 28 U.S.C. § 1337.

3 3. This court has pendent jurisdiction over the claims of  
4 plaintiff arising out of alleged violations of California  
5 Business and Professions Code § 17200 *et seq.*, commonly known as  
6 the Unfair Competition Act.

7 4. Venue is proper in the Central District of California  
8 under Section 12 of the Clayton Act. (15 U.S.C. § 22) and under  
9 28 U.S.C. § 1391(b) since the defendant either transacts  
10 business, maintains an office, has an agent or is found within  
11 this district. The defendant is within the jurisdiction for  
12 service of this complaint.

13 5. The violations alleged herein have a substantial effect on  
14 interstate commerce.

15 II.

16 PLAINTIFF

17 6. Bill Lockyer is the Attorney General of the State of  
18 California and, as such, is the chief law enforcement officer of  
19 the state and as such is empowered to bring this suit on behalf  
20 of the state and on behalf of its general economy and natural  
21 persons residing in the state.

22 III.

23 DEFENDANTS

24 7. Defendant Albertson's, Inc. ("Albertson's") is a Delaware  
25 corporation with its principal place of business in Boise, Idaho.  
26 Albertson's is engaged in the business of operating supermarkets  
27 the State of California and elsewhere. Albertson's conducts  
28 business in the Central District of California under its name.

8. Defendant American Stores Company ("ASC") is a Delaware corporation with its principal place of business in Salt Lake City, Utah. ASC is engaged in the business of operating supermarkets and other retail establishments in the State of California and elsewhere. ASC conducts business in the Central District of California under the names of "Lucky Markets" and "Sav-On," among others.

IV.

ALBERTSON'S/ASC MERGER

9. Albertson's and ASC entered into a merger agreement on August 2, 1998. Under this agreement, Albertson's agreed, pursuant to a stock transaction, to effectively purchase ASC, including ASC's supermarkets and other retail establishments operating in California under the trade names "Lucky," "SuperSaver," and "Sav-On."

V.

## TRADE AND COMMERCE

10. Supermarkets are full-line retail grocery stores: (a) that carry a wide variety of food and grocery items in particular product categories in standard consumer sizes, including the following: bakery goods, dairy products, refrigerated and frozen foods and beverages, fresh and prepared meats and poultry, produce, beverages, shelf-stable foods, staple food stuffs (such as flour, sugar, coffee and tea) and non-food grocery items (such as soaps, detergents, paper goods and health and beauty aids); and (b) that have over \$2,000,000 in annual sales.

11. The relevant geographic markets for the operation of supermarkets in California are local. The local geographic

1 markets listed on Exhibit A to this complaint constitute the  
2 relevant geographic markets for purposes of this action.

3 12. Albertson's and ASC are significant actual and  
4 potential competitors in the supermarket retailing industry  
5 throughout California.

6 13. Supermarket retail markets referred to above are  
7 moderately or highly concentrated, and the merger between  
8 Albertson's and ASC will significantly increase concentration and  
9 will substantially lessen competition in these markets.

10 14. Entry into the supermarket retail markets in certain  
11 geographic areas of California effected by the merger would not  
12 be timely, likely or sufficient to prevent the anticompetitive  
13 effects of the merger.

14 15. The operation of supermarkets constitutes a line of  
15 commerce and a relevant product market.

16 16. Defendant's business involves a substantial and  
17 continuous flow of commodities and payments in interstate  
18 commerce, including but not limited to the following: Albertson's  
19 each year makes significant purchases of equipment and products,  
20 which flow in and affect interstate commerce. This equipment is  
21 used in Albertson's supermarket operations and these products are  
22 sold by Albertson's supermarkets to consumers.

23 VI.

24 FIRST CAUSE OF ACTION

25 17. Plaintiff realleges paragraphs 1 through 15 above.  
26 The effect of the proposed merger between Albertson's and ASC may  
27 be to substantially lessen competition in the operation of  
28 supermarkets in the relevant product and geographic markets

1 described above, by eliminating actual and potential competition  
2 between Albertson's and ASC.

3 18. As a result of the proposed merger, the State of  
4 California and its citizens will suffer irreparable injury.

5 19. Such conduct constitutes a violation of Section 7 of  
6 the Clayton Act, 15 U.S.C. § 18.

7 VI.

8 SECOND CAUSE OF ACTION

9 20. Plaintiff realleges paragraphs 1 through 18 above.  
10 Such conduct constitutes a contract, combination or conspiracy in  
11 restraint of trade in violation of Section 1 of the Sherman Act,  
12 15 U.S.C. § 1.

13 VIII.

14 THIRD CAUSE OF ACTION

15 Pendent State Claims

16 21. Plaintiff realleges paragraphs 1 through 21 above.  
17 In doing the things hereinabove alleged, defendants have proposed  
18 to engage in and have engaged in unfair competition, in violation  
19 of California Business and Professions Code § 17200 et seq., by  
20 engaging in and proposing to engage in unlawful business act(s)  
21 or practice(s).

22 PRAYER AND RELIEF

23 WHEREFORE, Plaintiff prays:

24 A. That the proposed merger between Albertson's and ASC be  
25 adjudged to be in violation of Section 1 of the Sherman Act (15  
26 U.S.C. § 1), Section 7 of the Clayton Act (15 U.S.C. § 18), and  
27 California Business and Professions Code § 17200 et seq.

1 B. That an injunction be issued against the defendant  
2 ordering divestiture and other relief as necessary to prevent  
3 irreparable harm to the State of California and its consumers.

4 C. That plaintiff be awarded the costs of suit, including  
5 reasonable attorneys' fees; and

6 D. That, plaintiff have such other and further relief as the  
7 Court deems just and proper.

8 DATED this 21<sup>st</sup> day of June, 1999.

9  
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18 Attorneys for Plaintiff  
19 State of California  
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EXHIBIT A

<u>GEOGRAPHIC MARKET<sup>1/</sup></u>	<u>COUNTY IN WHICH LOCATED</u>
Antioch	Contra Costa
Atascadero	San Luis Obispo
Auburn	Placer
Bakersfield	Kern
Claremont/Pomona	Los Angeles
Danville	Contra Costa
Davis	Yolo
Encinitas	San Diego
Escondido	San Diego
Fallbrook	San Diego
Grass Valley	Nevada
Grover City	San Luis Obispo
Jackson	Amador
Laguna	Orange
Lancaster/Palmdale	Los Angeles
La Mesa/El Cajon	San Diego
Livermore	Alameda
Lompoc	Santa Barbara
Monterey	Monterey
Moorpark	Los Angeles
Morro Bay/Los Osos	San Luis Obispo
Murietta/Temecula	Riverside
Napa	Napa

1. These geographic markets are generally described by the municipality or community they encompass, but are not necessarily limited to the legal boundaries of those areas.

<u>1</u>	<u>GEOGRAPHIC MARKET<sup>2/</sup></u>	<u>COUNTY IN WHICH LOCATED</u>
2	North Covina	Los Angeles
3	Oceanside	San Diego
4	Oxnard	Ventura
5	Palm Springs/Indio	Riverside
6	Paso Robles	San Luis Obispo
7	Petaluma	Sonoma
8	Poway	San Diego
9	Ramona	San Diego
10	Redlands	San Bernadino
11	Rialto-Fontana	San Bernadino
12	Riverside/Corona	Riverside
13	Sacramento	Sacramento
14	Salinas	Monterey
15	San Luis Obispo	San Luis Obispo
16	Santa Barbara	Santa Barbara
17	Santa Clarita	Los Angeles
18	Santa Cruz	Santa Cruz
19	Santa Maria/Orcutt	Santa Barbara
20	Santa Rosa	Sonoma
21	Simi	Ventura
22	Sonoma	Sonoma
23	South Covina	Los Angeles
24	North Orange/So. Los Angeles	Los Angeles/Orange
25	South Orange	Orange

26

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27        2. These geographic markets are generally described by  
28 the municipality or community they encompass, but are not  
necessarily limited to the legal boundaries of those areas.



<u>1</u>	<u>GEOGRAPHIC MARKET<sup>3/</sup></u>	<u>COUNTY IN WHICH LOCATED</u>
<u>2</u>	Thousand Oaks	Ventura/Los Angeles
<u>3</u>	Torrance	Los Angeles
<u>4</u>	Vacaville	Solano
<u>5</u>	Victorville/Hesperia	San Bernardino
<u>6</u>	Watsonville	Santa Cruz
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27           3. These geographic markets are generally described by  
28 the municipality or community they encompass, but are not  
necessarily limited to the legal boundaries of those areas.