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8 Attorneys for Defendant
9 THE VONS COMPANIES, INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 STATE OF CALIFORNIA, ex rel
14 BILL LOCKYER,

15 Plaintiff,

16 v.

17 SAFEWAY, INC., dba Vons, a
Safeway Company, ALBERTSON'S,
18 INC., RALPHS GROCERY
COMPANY, a division of Kroger
19 Company, FOOD 4 LESS FOOD
COMPANY, a division of the Kroger
20 Company, and DOES 1 through 100,
inclusive,

21 Defendants.
22

CASE NO. CV-04-0687 GHK (SSx)

**DECLARATION OF RICHARD D.
COX IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Date: September 27, 2004
Time: 9:30 a.m.
Courtroom: 650
Honorable George H. King

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25 **FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER**
26 **AND LOCAL RULE 79-5.1**
27
28

1 I, Richard D. Cox, declare and state as follows:

2 1. I have been employed in the Labor Relations department at
3 Safeway Inc. ("Safeway") since 1994. Since October of 2002, I have been Group
4 Vice President for Labor Relations. Safeway is the parent company to Safeway
5 Southern California, Inc. which in turn is the parent company to The Vons
6 Companies, Inc. ("Vons"). In my capacity as Group Vice President for Labor
7 Relations, I have ultimate responsibility for agreements with other employers to
8 form multi-employer bargaining units and for collective bargaining with unions. I
9 have first-hand personal knowledge of the facts set forth in this declaration, unless
10 otherwise noted.

11 2. I am informed and believe that Vons operates 289 grocery
12 stores in Southern California. Thirty-two of these stores are operated under the
13 Pavilions banner.

14 3. In the summer of 2003 Vons (including Pavilions) was party to
15 a collective bargaining agreement with seven unions local unions affiliated with
16 the United Food & Commercial Workers ("UFCW"). That agreement was set to
17 expire on October 5, 2003.

18 4. In July and August, 2003 Vons, Ralphs Grocery Company, Inc.
19 ("Ralphs") and Albertson's, Inc. ("Albertson's") (collectively the "Employers")
20 entered into Memoranda of Agreement ("MOA") with the seven unions requiring
21 the Employers to operate as a single multi-employer bargaining unit and requiring
22 six of the unions to operate as a single multi-union bargaining unit for purposes of
23 negotiating a successor to the seven collective bargaining agreements. Copies of
24 those MOAs are included as Exhibits F and G in the Exhibits Filed in the Public
25 Record in Support of Defendants' Motion for Summary Judgment.

26 5. By agreeing to multi-employer collective bargaining, Vons
27 placed itself at risk of union tactics designed to divide the multi-employer unit.
28 For example, picketing one of the Employers but not the others.

1 6. Anticipating the possibility that these particular unions would
2 engage in such "whipsaw" strike tactics, Vons entered into agreements designed to
3 insure that the Employers could organize themselves to bargain effectively even in
4 the face of union pressure to whip-saw the members of the multi-employer group.
5 On or about September 5, 2003, Vons, Ralphs and Albertson's entered into two
6 Mutual Strike Assistance Agreements, one related to UFCW Local No. 770 and the
7 other related to UFCW Local Nos. 135, 324, 1036, 1167, 1428 and 1442. The
8 MSAAs set forth the understanding that a strike against one of the employers
9 would be deemed a strike against all of them. The MSAAs provide that during the
10 term of any strike or employee lock-out related to the collective bargaining
11 negotiations the Employers would share certain revenues, according to a pre-
12 established formula, so that the Employers' pre-strike market shares would remain
13 intact, thereby preserving the Employers' aligned financial incentives in
14 negotiating with the unions. The Employers were able to maintain a cohesive
15 bargaining position because we knew that the revenue sharing would help protect
16 against one employer benefiting disproportionately from the lost sales of the
17 others. The MSAAs are included as Exhibits A and B in the Exhibits Filed Under
18 Seal in Support of Defendants' Motion for Summary Judgment.

19 7. In early October, the negotiations with the unions broke down.
20 On or about October 11, 2003 the seven unions struck Vons and Pavilions stores.
21 Ralphs and Albertson's responded by locking out union employees. An agreement
22 ending the strike was entered into on February 26, 2004 and was ratified by the
23 unions on February 29, 2004. Most employees returned to work beginning March
24 5, 2004.

25 8. In Safeway's experience, following the conclusion of a strike,
26 particularly a long strike, consumers do not immediately return to their pre-strike
27 shopping patterns. Accordingly, an MSAA must reflect this reality to achieve its
28 objective. Thus, the draft MSAA proposed by Safeway defined the


1 "Strike/Lockout Period" as "the period beginning at 12:01 a.m. on the Monday at
2 the start of the week in which the strike or lockout against the Employer(s)
3 commences and continuing for two (2) full weeks following the week in which
4 each strike or lockout ends." This language was based on language in similar
5 agreements that Safeway has used in other collective bargaining situations. As far
6 as I am aware Safeway first used this language in an MSAA with Dillon
7 Companies, Inc. from 1996 covering the stores in the Denver area.

8 9. Part of the duties of the Labor Relations department during a
9 labor dispute is to monitor and record union activities at our stores which may be
10 in violation of our labor agreements. During the course of the Southern California
11 labor dispute our store managers received copies of UFCW flyers seeking to
12 influence customers to shop elsewhere. This union activity was not limited to our
13 stores in Southern California but also included stores in our Northern California
14 Division, Portland Division, Seattle Division, and Eastern Division. Our records
15 indicate that there was UFCW activity at 42 of our stores in our Northern
16 California Division, 12 of our stores in the Portland Division, 12 of our stores in
17 the Seattle Division, and 17 stores in our Eastern Division. During these activities
18 the collective bargaining agreements of the UFCW union employees in these
19 Divisions had not expired and in some cases still have not expired. Exhibit L in
20 the Defendants' Joint Set of Exhibits is a copy of some of the flyers that were
21 distributed at stores in our Northern California Division asking customers not to
22 shop at Safeway. Exhibit M is a copy of a flyer that was distributed in the Seattle
23 Division asking customers not to shop at Safeway. Exhibit N is a copy of a flyer
24 that was distributed to customers in the Eastern Division regarding the strike. I am
25 informed and believe that the UFCW also ran radio spots in Northern California
26 and Seattle. Attached as Exhibit O is a copy of a UFCW press release announcing
27 the Northern California radio campaign and relaying the text of the ads. The press
28 release also notes that picket lines will go up at selected Northern California

1 Safeway stores. Attached as Exhibit P is a UFCW newsletter displaying the text of
2 radio spots in the Seattle area. The newsletter also notes that the Washington State
3 UFCW raised \$200,000 for striking union members in California and that the
4 California Teachers Association donated \$500,000 for a statewide radio campaign
5 and that the International Longshore and Warehouse Union pledged to raise \$1
6 million for the striking union members in Southern California. Each of these
7 documents were kept in the ordinary course of business in Safeway's Labor
8 Department.

9 I declare under penalty of perjury under the laws of California that the
10 foregoing is true and correct.

11 Executed this 24th day of August, 2004, at Pleasanton, California.

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14 _____
15 Richard D. Cox
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