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Case No. 9461-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PIPEFITTERS LOCAL 636 DEFINED BENEFIT FUND and OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. SAFEWAY INC., ROBERT EDWARDS, T. GARY ROGERS, JANET E. GROVE, MOHAN GYANI, FRANK C. HERRINGER, GEORGE J. MORROW, KENNETH W. ODER, ARUN SARIN, WILLIAM Y. TAUSCHER, CERBERUS CAPITAL MANAGEMENT, L.P., AB ACQUISITION, LLC, ALBERTSON'S HOLDINGS, LLC, ALBERTSON'S, LLC, and SATURN ACQUISITION MERGER SUB, INC., Defendant(s).	Case No.

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Pipefitters Local 636 Defined Benefit Fund and Oklahoma Firefighters Pension and Retirement System ("Plaintiffs"), individually and on behalf of all other similarly situated shareholders of Safeway Inc. ("Safeway" or the "Company"), bring this class action complaint (i) for breach of fiduciary duties by the members of the board of directors (the "Board") of the Company, and (ii) for aiding and abetting the directors' breach of fiduciary duties by the Company's proposed acquirer, Cerberus Capital Management, L.P. ("Cerberus"), and its affiliates. The allegations of the complaint are based on the knowledge of Plaintiffs as to themselves, and on information and belief, including the investigation of counsel and publicly available information, as to all other matters.

NATURE OF THE ACTION

1. This shareholder class action arises from a private equity buyout of a public corporation in which the target management team and Board adopted a series of measures, before and with the deal's announcement, that powerfully favored the private equity buyer who will maintain management's jobs over other strategic buyers who could offer more money for shareholders but provide few or no jobs for management. The Board's actions to favor the private equity buyer, taken as a whole, are inconsistent with their obligation to reasonably seek out and obtain the highest value reasonably attainable for the Company's shareholders.

2. Private equity fund Cerberus is the buyer in a merger transaction (the "Proposed Merger") between Safeway and Cerberus' existing grocery chain assets held under its Albertson's corporate umbrella. Cerberus-controlled affiliates will acquire 100% of the outstanding public common stock of Safeway in exchange for consideration purportedly valued at $40 per share.

3. That supposed value is a myth, however. Safeway shareholders are only guaranteed to receive a mere $32.50 per share in cash. The rest of the Proposed Merger's hypothetical consideration consists of (1) a pro-rata distribution of Safeway's 37.8 million shares of its recently spun-out publicly traded subsidiary Blackhawk Network Holding, Inc. ("Blackhawk"), valued at $3.95 per Safeway share, ***a distribution that the Board agreed to make and had already announced <u>before</u> the Proposed Merger's announcement***, and (2) proceeds from future sales of Safeway non-core assets that Cerberus is not interested in acquiring -- sales that may never take place, but for which Safeway and Cerberus nevertheless value without any apparent support at $3.65 per Safeway share.

4. Both of these non-cash aspects of the Proposed Merger consideration are illusory. First, the deals postulates returning Blackhawk shares to Safeway shareholders – shares these

shareholders already own and were set to receive without the contemplation of any deal. Moreover, as set forth below, Safeway's and Cerberus's purported valuation of $3.65 per share through certain non-transferrable contingent value rights ("CVRs") is improper and misleading.

5. The CVRs come from two potential asset sales: (i) real estate owned by Safeway through its subsidiary Property Development Centers, LLC ("PDC"), and (ii) a 49% interest in Mexican grocery retailer Casa Ley, S.A. de C.V. ("Casa Ley"). The Casa CVR is slated to have a four-year term during which Cerberus will "attempt" to sell it. If Cerberus is unable to sell Casa Ley within that time, Safeway stockholders would receive a cash distribution equal to the after-tax fair market value of Safeway's interest in Casa Ley at that time, whatever that may be. Moreover, the PDC CVR has a two-year term, and, unlike Casa Ley, the stockholders are not promised anything if Cerberus fails to sell PDC in that period. In fact, Cerberus, who will be responsible for selling PDC and Casa Ley, will gain nothing from selling those businesses, since the proceeds from the sale go only to Safeway stockholders (net of costs expended by Cerberus to sell the assets). Nor does Cerberus owe Safeway stockholders any fiduciary duties to obtain a fair price for, much less maximize the value of, these assets for Safeway stockholders.

6. When viewing the Proposed Merger based simply on the consideration of $32.50 per share in cash – the only consideration guaranteed and specifically contingent on the Proposed Merger – it becomes clear that the Safeway Board failed to maximize value for its shareholders when it agreed to sell the Company. The Board then further breached its fiduciary duties by agreeing to lock up the Proposed Merger with an array of preclusive deal protections, including an unreasonable termination fee of over 4.15% of the deal's tangible value, unlimited matching rights, the maintenance of a poison pill despite the Board's assertion that the consideration it obtained is a fair price, and an executive severance plan adopted strictly to deter strategic buyers

by increasing the cost of launching an unsolicited bid while not imposing the same cost on Cerberus. Each of these provisions, working in unison, deters other bidders, especially strategic buyers, from making a superior offer for Safeway.

7. Even at $40 per share, the Proposed Merger consideration provides a paltry premium of 1.3% to Safeway's closing price of $39.47 per share on March 6, providing the lowest profit multiple for a food retail merger deal of more than $1 billion since 2004, according to data compiled by *Bloomberg*. In fact, at most the $40 per share price amounts to approximately a 22% premium using the unaffected stock price on October 22, 2013 – the day before rumors circulated that Safeway was considering selling itself. This price further amounts to an approximately 15% premium with respect to the Company's stock price on February 19, 2014 – the date that Safeway confirmed that it was engaging in discussions to sell itself. Considering that the transaction would result in a grocery retail giant combining the assets of Safeway and Albertson's, with approximately 2,400 stores and 250,000 employees and the increased scale to benefit from cost synergies, from any of these points in time, the consideration is patently inadequate.

8. The market's reaction to the announcement of the Proposed Merger is telling. Despite trading as high as $40.25 on March 6, 2014 prior to the after-market close announcement of the Proposed Merger, the Company's stock immediately sank more than 3% in after-market trading once the Proposed Merger was announced, opening at $38.19 on March 7.

9. As described above, the members of the Board, in breach of their fiduciary duties, have also locked up the inadequately priced Proposed Merger with preclusive deal protections that would deter a competing bidder from offering a higher price to acquire the Company. Beyond these deal protections, the Definitive Agreement and Plan of Merger entered into by the

parties to the Proposed Merger (the "Merger Agreement") also creates another hurdle for any potential bidders with respect to making a bid that qualifies as a "superior proposal." Under the terms of the Merger Agreement, an acquisition proposal must "result in a transaction more favorable in the aggregate to the Company and its stockholders than the transactions contemplated by this [Merger] Agreement" to constitute a "superior proposal." As such, the definition of superior proposal requires a potential bidder to exceed the $40 per share consideration purportedly offered by the Proposed Merger in order for the Board to terminate the deal with Cerberus. Considering the uncertainty in the value of the CVRs, the Board has therefore unreasonably constricted its ability to consider what may constitute a superior proposal under the Merger Agreement by foreclosing potential offers that could present greater up front value in cash for the Company's shares, but which might be below $40 per share.

10. In addition, Safeway's window-dressing "go-shop" period does nothing to alleviate the Board members' breaches of their fiduciary duties. A 21-day period for a go-shop is unreasonably short in duration. The Merger Agreement also provides numerous protections designed to advantage Cerberus in any potential bidding war that may occur during the go-shop period or any time afterwards.

11. The Merger Agreement provides Cerberus with unlimited matching rights, so that a competing bidder can never force Cerberus to put a "best and final" offer on the table.

12. Additionally, Safeway and Cerberus announced that Safeway's senior management would be employed in similar positions in the newly combined company, with Robert Edwards, Safeway's current President and Chief Executive Officer, becoming President and Chief Executive Officer of the merged entity. This announcement has two effects. First, it gives Safeway's management something that Safeway's public stockholders will not receive –

continued employment and likely equity in the post-merger entity. Second, the promise of post-merger employment to Safeway's senior management would effectively handicap a competing strategic bidder like Kroger Co. ("Kroger") – which already has its management in place – that would be unwilling to make employment promises in connection with a superior bid.

13. Critically, on the eve of announcing the deal with Cerberus, Safeway's Board adopted an Executive Severance Plan, which is based on a "double-trigger" model. Thus, while Cerberus will not have to pay anything since it will keep all or almost all of the recipients of these change of control golden parachutes, any strategic buyer must take into account this additional cost (potentially tens of millions of dollars) because it will surely replace those same executives. These factors, particularly when their effects are combined with the Merger Agreement's provisions, unreasonably tip the balance in favor of Cerberus's existing merger proposal and against any superior third-party bid that would oust Safeway management.

14. Finally, despite the Board's decision to sell itself for the consideration Cerberus was offering, Safeway continues to maintain the "poison pill" shareholder rights plan that it implemented in September 2013. The poison pill effectively prevents any third party acquirer from presenting an acquisition offer directly to Safeway's stockholders without the support of Safeway's Board. While the poison pill made sense while Safeway was marketing itself to prospective buyers, the auction process for Safeway has effectively concluded, and there is no longer any current justification or corporate purpose served by maintaining the poison pill. Instead of functioning as a tool to prevent a hostile bidder from coercively acquiring the Company for an inadequate price, the poison pill is now just another sword that Safeway management can use against strategic acquirers to protect their lucrative post-merger interests in the combined company.

15. Plaintiffs thus bring this action, seeking injunctive and other equitable relief and damages to remedy Defendants' breach of fiduciary duties and/or aiding and abetting that breach.

PARTIES

16. Plaintiff Pipefitters Local 636 Defined Benefit Fund is, and was at all times relevant hereto, a holder of Safeway common stock.

17. Plaintiff Oklahoma Firefighters Pension and Retirement System is, and was at all times relevant hereto, a holder of Safeway common stock.

18. Defendant Safeway is a Delaware corporation, with its principal executive offices located at 5918 Stoneridge Mall Road, Pleasanton, California 94588. Safeway is the second largest U.S. mainstream grocery store operator, with 1,335 stores located throughout the western and central United States, 195 stores in northwestern Mexico, 13 distribution centers and 20 manufacturing plants. Safeway also owns and operates GroceryWorks.com Operating Company, LLC ("GroceryWorks"), an online grocery channel doing business under the names Safeway.com, Vons.com and Genuardis.com.

19. Defendant Robert Edwards ("Edwards") is a director, President and Chief Executive Officer of Safeway. Edwards joined Safeway in 2004 as Executive Vice President and Chief Financial Officer. Edwards was promoted to President of the Company in April 2012. Following consummation of the Proposed Merger, Edwards will become President and Chief Executive Officer of the combined company.

20. Defendant T. Gary Rogers has been a member of the Board since March 15, 2011.

21. Defendant Janet E. Grove has been a member of the Board since October 21, 2004.

22. Defendant Mohan Gyani has been a member of the Board since October 21, 2004.

23. Defendant Frank C. Herringer has been a member of the Board since March 6, 2008.

24. Defendant George J. Morrow has been a member of the Board since May 14, 2013.

25. Defendant Kenneth W. Oder has been a member of the Board of Directors since March 6, 2008.

26. Defendant Arun Sarin has been a member of the Board of Directors since August 25, 2009.

27. Defendant William Y. Tauscher has been a member of the Board since May 12, 1998. In early 2010, Tauscher served as Blackhawk's Chairman of the Board and thereafter became its CEO in August 2010.

28. Defendants Edwards, Rogers, Grove, Gyani, Herringer, Morrow, Oder, Sarin, and Tauscher are collectively referred to as the "Individual Defendants."

29. Defendant Cerberus Capital Management L.P. ("Cerberus"), a Delaware limited partnership, is one of the world's leading private investment firms with its principal executive offices headquartered at 875 Third Avenue, New York, NY 10022. Cerberus has more than $25 billion under management that is invested in four primary strategies: distressed securities & assets; control and non-control private equity; commercial mid-market lending and real estate-related investments. In the retail grocery space, Cerberus acquired New Albertson's, Inc. in January 2013, which operates grocery and retail chains under the Albertson's name and the Acme, Jewel-Osco, Shaw's, and Star Market brands.

30. Defendant AB Acquisition LLC ("AB Acquisition LLC"), a Delaware limited liability company, is the owner of Albertson's LLC and New Albertson's, Inc. and is controlled

by a Cerberus-led investor group, which also includes Kimco Realty Corporation, Klaff Realty LP, Lubert-Adler Partners LP, and Schottenstein Stores Corporation.

31. Defendant Albertson's Holdings LLC ("Albertson's Holdings"), a Delaware limited liability company, is a wholly-owned subsidiary of AB Acquisition LLC.

32. Defendant Albertson's LLC ("Albertson's LLC"), a Delaware limited liability company, is a wholly-owned subsidiary of Albertsons Holdings LLC.

33. Defendant Saturn Acquisition Merger Sub, Inc. ("Saturn Acquisition Merger Sub") is a subsidiary of Albertsons Holdings LLC formed for the purpose of effectuating the Proposed Merger.

34. Defendants Cerberus, AB Acquisition LLC, Albertson's Holdings, Albertson's LLC, and Saturn Acquisition Merger Sub are collectively referred to as the "Cerberus Defendants." The Individual Defendants and the Cerberus Defendants are collectively referred to herein as the "Defendants."

SUBSTANTIVE ALLEGATIONS

Background and Historical Information

35. Safeway operates about 1,400 grocery stores in the U.S. Safeway also maintains a 49% interest in Casa Ley, a food and general merchandiser with 200 stores in western Mexico. Safeway is the nation's second largest grocery chain, with Kroger being the largest.

36. Safeway has been attempting to adapt to a changing supermarket industry, where people increasingly shop at large department stores like Target and Walmart. Accordingly, in April 2013, Safeway spun off its gift-card business into Blackhawk, raising approximately $230 million in an initial public offering, while Safeway retained its majority ownership stake in Blackhawk.

37. Then, in June 2013, in an effort to exit lower profit margin areas, Safeway decided to divest its business operations in Canada. It, therefore, sold Canada Safeway Limited to Canadian food retailer Sobeys Inc. for $5.68 billion in cash, plus the assumption of certain liabilities. The news of the divestiture caused Safeway stock to rise 7.4%.

38. In September 2013, Jana Partners LLC ("Jana Partners"), an activist hedge-fund firm that pushes for corporate changes, acquired an approximately 6.2% position in Safeway. Jana Partners generally invests in companies undergoing significant structural changes such as mergers, spinoffs and bankruptcies, and is known for pushing management to consider implementing changes. Jana representatives spoke with Safeway management about getting rid of unprofitable regions and returning more capital to Safeway shareholders for what it considered undervalued shares.

39. On September 16, 2013, as a purported strategic defense against outside influence over managerial decisions, the Board adopted a one-year Rights Agreement ("Rights Agreement"), dated as of September 17, 2013. Safeway instituted this shareholder rights plan, otherwise known as a "poison pill," to effectively block any investor from acquiring more than 10% of common stock outstanding and exercising control over the Company.

40. Under the plan, one preferred stock purchase right was distributed for each share of common stock held by stockholders of record on September 30, 2013. Under certain circumstances, each right will entitle stockholders to buy one one-thousandth of a share of newly-created Series A Junior Participating Preferred Stock of the Company at an exercise price of $100. The Board is entitled to redeem the rights at $0.01 per right at any time before a person or group has acquired 10% or more (15% or more in the case of a passive institutional investor) of the outstanding common stock. Subject to limited exceptions, if a person or group acquires 10% or more of Safeway's outstanding common stock, then each right (other than those held by

that person or group) will become exercisable and entitle its holder to purchase, at the right's then-current exercise price, a number of shares of common stock having a market value at that time of twice the right's exercise price. Moreover, if the Company is acquired in a merger or other business combination transaction that has not been approved by the Board, each right will entitle its holder to purchase, at the right's then-current exercise price, a number of shares of the acquiring company's common stock having a market value at that time of twice the right's exercise price. The Rights Agreement expires on September 15, 2014, subject to the Company's right to extend such date, unless earlier redeemed or exchanged by the Company or terminated.

41. About a month after adopting the Rights Agreement, on October 18, 2013, the Board authorized an additional $2 billion in stock repurchases, adding to the roughly $800 million that Safeway had left under its existing authorization for share repurchases at the end of the third quarter of 2013. At this time, Safeway's stock was trading in the low to mid-$30s per share, and the Board's authorization to increase share repurchases suggests that the Board believed that Safeway's stock was undervalued at this price range. Indeed, in the fourth quarter of 2013, Safeway repurchased 19.5 million shares of its common stock at an average price of $33.93 per share.

42. In October 2013, sources reported that Cerberus and other buyout firms were considering a leveraged buyout of Safeway, and that Safeway knew of the interest and was discussing matters with its financial advisor Goldman Sachs Group, Inc. ("Goldman").

43. Then, on February 19, 2014, in connection with reporting positive fourth quarter earnings which beat analysts' estimates, Safeway announced both that it was in talks with potential bidders to acquire the Company and that the Board had decided to distribute its 37.8 million shares of Blackhawk to Safeway stockholders. In connection with the Blackhawk

distribution, the Company stated that its current "plan is to make the distribution on a pro rata basis to all Safeway stockholders in a transaction intended to be tax-free to Safeway and its stockholders."

44. Following this announcement, *Bloomberg News* and *Reuters* reported that Safeway did not run a broad sales process, and had limited its discussions with a few equity buyers. In addition, *mergermarket* further reported that an industry source claims that Goldman had rebuffed inbound expressions of interest from prospective strategic and private equity sources since Safeway's announcement on February 19, 2014.

<u>The Proposed Merger</u>

45. On March 6, 2014, after several weeks of silence, Safeway and Cerberus jointly issued a press release announcing that the Company had agreed to be acquired by Cerberus's grocery chain Albertson's in the Proposed Merger. The merger itself is structured as an acquisition of Safeway shares by AB Acquisitions, LLC, which is the owner of Albertson's, as well as ACME, Jewel-Osco, Shaw's and Star Market, among others. The investor group that owns AB Acquisitions is also led by Cerberus.

46. The press release further disclosed that upon consummation of the Proposed Merger, Defendant Edwards, Safeway's CEO, will become President and CEO of the combined company. In addition, the March 6th press release confirms that Safeway's senior management will also maintain their employment in the post-transaction entity.

47. Notably, in an Interoffce Communication dated March 6, 2014, Edwards made clear that the Board had focused on "our employees' long-term growth and success" in making the decision to sell the Company. In fact, this communication makes no mention of whether the Board considered its shareholders' best interests when agreeing to the Proposed Transaction.

48. Safeway expects to close the merger in the fourth quarter of 2014, subject to customary closing conditions. The merger between Safeway and Albertson's will create a company with over 2,400 stores and 27 distribution facilities.

49. Under the Merger Agreement, Safeway shareholders will receive $32.50 in cash per share for the sale of the grocery operations, and the right to receive pro-rata distributions of net proceeds from sales of PDC and Safeway's 49% interest in Casa Ley. Safeway estimates the net proceeds of these sales to equate to $3.65 per Safeway share, with a range between $3.45 and $3.85. According to the March 6th press release, "[t]he estimated values for PDC and Casa Ley are based on analyses that Safeway has performed with the help of financial advisors, valuations from independent third parties and market information. The actual net after-tax proceeds received upon a sale could vary substantially from these estimates."

50. In addition, Safeway shareholders will receive the distribution of the 37.8 million shares that Safeway owns of Blackhawk with an estimated value of $3.95 per share based on March 5, 2014 closing prices. Safeway expects to distribute these shares in mid-April, and then Safeway shares will trade exclusive of Blackhawk after the distribution. Notably, Safeway had announced its decision to distribute its ownership interests in Blackhawk to Safeway shareholders on February 19, 2014, prior to the announcement of the Proposed Merger, and thus the inclusion of this distribution as merger consideration is inaccurate.

51. Also on March 6, 2014, Safeway filed a Form 8-K with the SEC disclosing the Merger Agreement entered into by the Company. The following is the chart from Safeway's 8-K, laying out the components for the total estimated value per share:

SWY Stockholders to Receive An Estimated $40 Per Share For Merger and Blackhawk Distribution

$32.50	Cash consideration for merger
$3.65	Mid-point of estimated net after-tax proceeds from sales of primarily non-core assets, PDC and Casa Ley, either paid in cash by closing or through Contingent Value Rights post-closing
$3.95	Estimated value of Blackhawk (NASDAQ: HAWK) shares distributed in the previously announced spin-off, which is independent of the Merger **In addition, step-up in tax basis equal to ~$0.70 per Safeway share (or ~$4.50 per HAWK share)*
$40.10	TOTAL ESTIMATED VALUE PER SHARE

52. As is clear from Safeway's chart, nearly 19% of the total estimated value of the Proposed Merger's per share consideration is derived from the proposed sale of PDC and Casa Ley and the distribution of Blackhawk shares. Thus, nearly 19% of the value received per share is not guaranteed, but rather a projected value based on uncertain estimates. With regard to the sales of Safeway's interests in PDC and Casa Ley, if they are sold before the transaction closes, then shareholders will receive a special dividend of the pro rata cash proceeds, net of corporate taxes and expenses. As is far more likely, however, if either sale is not completed until after the Proposed Merger closes, which is likely at a minimum for PDC considering that the Company has stated that it has not yet initiated a sales process, then shareholders will merely have the right to receive CVRs entitling them to future proceeds on the asset sales.

53. There will be a two-year CVR for PDC and a four-year CVR for Casa Ley. In the case that the CVR expires without completing the sale of Casa Ley, shareholders will be paid fair market value. However, no guarantee exists with respect to the payment of any consideration to Safeway shareholders should the PDC CVR expire prior to a sale of the PDC assets. Moreover,

as opposed to a typical security, these CVRS are not transferable or tradable and are issued only to shareholders of record at the closing of the Proposed Merger. Edwards himself admits that, "[w]e can make no assurance that we will achieve an acceptable sales agreement for PDC or Casa Ley." In other words, the CVRs are an illiquid option to be paid in the future, in the event that Cerberus is able to sell certain assets in which Cerberus will have no economic interest.

<u>Safeway's Selection of Goldman as its Financial Advisor Improperly Tilted the Playing Field in Favor of Cerberus</u>

54. The Board engaged in a flawed negotiation process that resulted in the Proposed Merger. Specifically, Safeway's retention of Goldman to advise it on a potential transaction all but guaranteed a sale to Cerberus to the exclusion of other potential bidders.

55. Goldman has a longstanding relationship with Cerberus, and has acted on numerous occasions as a financial advisor to grocery chain targets that have been acquired by Cerberus. Specifically, in 2006, Goldman served as financial advisor to Albertson's when it was bought out by Cerberus. Then, in 2013, Goldman again served as financial advisor to SuperValu, which owned numerous grocery chain holdings, when it was acquired by Cerberus and merged with Cerberus' existing Albertson's portfolio to form AB Acquisition LLC.

56. Goldman has had numerous other relationships with Cerberus over the last 5 years as well. For example, prior to 2010, Goldman co-owned the Wittur Group with Cerberus and Credit Suisse. Then, in late 2012, Goldman refinanced a $1.85 billion loan for Cerberus. Finally, in October 2013, Goldman served as the lead underwriter for the initial public offering for one of Cerberus' spinoff companies.

57. Considering Goldman's historic and ongoing lucrative relationships with Cerberus and its affiliates, Goldman is unlikely to have been able to provide truly independent

advice to the Safeway Board in connection with the Proposed Merger calling into question the fairness and reasonableness of the negotiation process.

The Proposed Merger Substantially Undervalues Safeway and Presents Substantial Risks and Uncertainties

58. Safeway touts the purported $40 per share consideration as representing substantial premiums to the Company's historic stock prices. These premiums are, however, almost completely misleading because, in order to present shareholders with these premiums, Safeway must meet several contingent factors. These include the sale of PDC and Casa Ley at a pro-rata distribution of net proceeds equal to $3.65 per share, and the distribution of the remaining 37.8 million shares of Blackhawk stock based on Blackhawk's March 5, 2014 closing price of $25.06 per share.

59. Thus, the Proposed Merger presents many risks and uncertainties to current Safeway shareholders and the total estimated value per share can vary greatly depending on unsubstantiated assumptions, about which Defendant Edwards himself readily admits uncertainty. An investors' call following the announcement of the Proposed Merger corroborated the many potential pitfalls of the already too low total value per share.

60. In regards to the $3.65 per share valuation, neither Safeway nor Cerberus has articulated any basis for that valuation. A Deutsche Bank analyst addressed Edwards with the following observation:

> Just doing the math here, it seems like you are selling the supermarket component of the business for a fairly low multiple. It would seem that that's why your stock is trading down after this announcement. And in addition, it would seem that there is some risk on the $3.65 component of the transaction…any comments on that multiple? I[t] seems really too reasonable. On the $3.65, is there any risk that you are not going to be able to achieve the $3.65 from Casa Ley and PDC? And/or are you maybe being conservative on that value?

Edwards simply replied that "as we indicated, we can't give assurances, we can't give 100% certainty that those numbers will be achievable." Rather than providing any concrete numerical encouragement for the stock value, Edwards simply reiterated that they "feel" good about the Proposed Merger.

61. Regarding a sales process for PDC and Casa Ley, little information is known. Cerberus alone will be responsible for selling PDC and Casa Ley, with all the proceeds going to Safeway shareholders. Consequently, unlike the Safeway Board that owes fiduciary duties to the Safeway shareholders to maximize the value of these assets in any sale process, Cerberus has no duty or incentive to produce the best possible sale process.

62. The Casa Ley component of the CVR will have a four-year term. If Safeway is unable to sell Casa Ley within that time, shareholders will receive a cash distribution equal to the after-tax fair market value of Safeway's interest in Casa Ley at that time, whatever it may turn out to be in the future (given Cerberus' lack of incentive to create or even maintain its value).

63. Cerberus has only two years to sell PDC and Safeway shareholders are not promised any consideration in the case that Cerberus fails to sell PDC during that period. Indeed, Cerberus either has no incentive to run the PDC assets well during the two year period, but if those assets increase in value, Cerberus can just wait out the CVR and pay out nothing to Safeway's shareholders.

64. Thus, the ultimate payout to stockholders may be far less than $3.65 per share. The only component of the Proposed Merger consideration that has a guaranteed value is the $32.50 per share in cash that Safeway shareholders will receive, which is substantially below Safeway's average trading price over the past four months prior to the announcement of the Proposed Merger.

65. But, even if Safeway overcomes all the uncertainties and risks present in the Proposed Merger, the one-day premium over the Company's March 5, 2014 closing stock price of $39.47 is a paltry 1.4% premium, represents merely an approximately 15% premium from the time the Company publicly disclosed that it was in discussions to sell itself on February 19, 2014, and constitutes an approximately 22% premium from when rumors began circulating that the Company was considering selling itself on October 23, 2013.

66. The Proposed Merger also deprives shareholders of significant share repurchases which were expected to come about in the near future. Safeway had saved proceeds from the sale of its Canadian operations in the fiscal year of 2013, and in late 2013 had announced its decision to use $1.5 billion of the proceeds to retire debt and to spend $1.4 billion in share repurchases, which would have totaled about 15.4% of the company's total market capitalization. As one analyst commented, "[s]ince Safeway has already closed the deal with Albertson's, the cash will no longer be used to purchase shares or to retire debt, which will negatively impact shareholders' value."

67. Although Safeway's stock price had rallied about 14.2% since the Company announced financial results for the fourth quarter of its fiscal year 2013 and disclosed that it was in negotiations to sell the Company, the Company's stock price fell more than 3.2% after the Proposed Merger's announcement. The drop in Safeway's share price following the Proposed Merger's announcement confirms the market's apprehension that the Proposed Merger severely undervalues Safeway stock.

<u>The Merger Agreement Substantially Handicaps Prospective Third-Party Bidders</u>

68. The Merger Agreement contains an unusually short 21-day "go-shop" period expiring on March 27, 2014, during which time the Board, with the assistance of its conflicted

advisor Goldman Sachs, which has already skewed the process in favor of Cerberus, may solicit superior merger proposals from third parties. However, the definition of "Superior Proposal" in the Merger Agreement eviscerates any chance of a superior offer because a potential acquirer must top the flawed $40 valuation of the Proposed Merger consideration. Specifically, for a proposal to be considered superior to the Proposed Merger pursuant to the Merger Agreement, it has to "result in a transaction more favorable in the aggregate to the Company and its stockholders than the transactions contemplated by this Agreement."

69. The Merger Agreement further provides that, even if a superior proposal emerges during this short shopping window, Safeway must give notice to Cerberus of the particulars of any such proposal and give Cerberus three days to match the third party's proposal. Furthermore, Cerberus can exercise this "matching right" repeatedly, such that it never has to put its "best and final" offer on the table and can simply slightly outbid any offer that would constitute a superior proposal until the third party folds up its tent.

70. Moreover, if a third party were to offer greater than $40 per share and win the matching rights battle with Cerberus during the go-shop period, it would still have to pay AB Acquisition LLC a $150 million dollar termination fee substantially increasing the cost of the acquisition. In the case that Safeway accepts a superior offer after the go-shop window closes, the termination fee rises to $250 million.

71. Additionally, any offer presented during the go-shop period must be for the whole Company, not for specific parts or subsidiaries of the Company.

72. In addition, Safeway recently adopted an "Executive Severance Plan," which acts as another deal protection for Cerberus while discouraging potential strategic buyers, like Kroger, from bidding for the Company. Prior to adopting the Executive Severance Plan,

Safeway had repeatedly stated that it "do[es] not provide contractual change in control or severance benefits to any executive officer." Safeway reversed its position on this long-standing policy after engaging in sales discussions with Cerberus.

73. Specifically, on February 21, 2014, Safeway disclosed that the Board's Executive Compensation Committee adopted the Executive Severance Plan on February 12, 2014, and that such plan became effective as of February 19, 2014. According to the Executive Severance Plan's terms, it applies to all Company employees at the level of Vice President or above, including the Company's executive officers. If a "Qualifying Termination" (*i.e.*, an officer loses his position as a result of a change of control in Safeway's ownership) occurs for an officer, then such officer could be entitled to up to two years of his or her base salary, along with a payment equal to the officer's target cash bonus opportunity for the fiscal year of termination and the payment of COBRA premiums.

74. Consequently, the Executive Severance Plan acts as another deal protection for Cerberus because in the event that a strategic bidder, like Kroger, makes an offer for Safeway, it is very likely that the Executive Severance Plan would apply if Safeway accepted a deal with Kroger, costing Kroger tens of millions of dollars in additional costs. In this regard, as a strategic buyer, Kroger already has a CEO and other senior executives who would remain in charge after the companies merged. Kroger, therefore, at a minimum would need to terminate the employment of many of Safeway's top executives. The consequence of those terminations would amount to tens of millions of dollars in severance payments due to those executives under the Company's Executive Severance Plan – all costs that a strategic buyer would have to pay.

75. For example, if a strategic buyer terminated Safeway's CEO, Edwards, and its other Executive Vice President officers, those terminations alone would impose more than $10

million in additional costs for that buyer. In addition, Safeway has approximately thirty-five employees at the level of Senior Vice President, and an undisclosed amount of employees at the level of Vice President, who are also entitled to payments under the Company's Executive Severance Plan. Payments to any of those employees, who are terminated as a result of a merger with a strategic buyer, will also add potentially tens of millions of dollars of additional costs for such buyer.

76. In contrast, Cerberus has already announced that Safeway's CEO, along with its other executives, will maintain their jobs after the closing of the Proposed Merger. As a result, the Executive Severance Plan does not affect Cerberus, while it serves as another deal protection to lock up the Proposed Merger from strategic buyers, who likely would terminate many of Safeway's executives' employment, thus subjecting them to tens of millions dollars of additional costs to acquire Safeway.

77. Moreover, the termination fee built into the Proposed Merger is unduly large and effectively precludes any competing bidder for the Company from emerging. Any bidder must absorb a $250 million termination fee after the illusory go shop period has closed. But Safeway fails to account for tens of millions of dollars that any non-Cerberus buyer would incur if it were to acquire the Company and, as discussed above, Safeway's ostensible $9 billion deal price includes sums that are properly accounted for separately, if at all.

78. <u>First</u>, the 21-day go-shop period is woefully insufficient to allow for a credible alternative bidder to emerge. There is simply no way that Kroger or any other potential buyer could or would undertake the requisite due diligence to present a bid during the go-shop period. For that reason, the $150 million termination fee is pure window dressing. No competing bidder

could reasonably emerge until after the go-shop period, meaning that the baseline termination fee is $250 million.

79. Second, as discussed above, the Executive Severance Plan imposes a cost of tens of millions of dollars on any competing bidder, assuming that a strategic acquirer such as Kroger would keep its own management team in place.

80. Third, as discussed above, the $40 per share price – for a total deal value of $9 billion – is patently illusory. $910 million of the purported deal value, or $3.95 per share, consists of the independent distribution of Blackhawk shares following the Blackhawk spinoff. Since shareholders will receive that distribution regardless of whether Cerberus buys Safeway, there is no reason to include the Blackhawk distribution in the total deal value.

81. Fourth, another $840 million of the purported deal value, or $3.65 per share, consists of the non-transferable CVRs that may ultimately prove to be worthless to shareholders. As discussed above, instead of cash or any marketable security, shareholders will receive the wholly contingent right to be paid out following potential asset sales that are independent of the Proposed Merger and simply do not constitute consideration for the sale of Safeway to Cerberus. Given the independent nature of those potential sales, without any reason to credit Safeway's and Cerberus's valuation of the CVRs, they should be disregarded. Moreover, Cerberus possesses absolutely no incentive to maximize consideration for the PDC or Casa Ley assets as it will never receive even a penny from those sales. In fact, Cerberus will be responsible for the expenses related to selling those assets, which will only serve to further drive down the sales price for Safeway shareholders, as Cerberus will be reimbursed for such expenses. In addition, Cerberus owes no fiduciary duties to Safeway shareholders to obtain a fair price for those assets, much less to seek maximum value for them. Accordingly, there is no valid reason to include

approximately $840 million as purportedly reflecting the value of the CVRs in any accounting of the Proposed Merger's price.

82. As a consequence of these improper accountings and failures to include certain other expenses, any alternative buyer is not simply paying a $150 million termination fee on a $9 billion deal (or a 1.7% fee), or even a $250 million termination fee on a $9 billion deal (or a 2.8% fee). Conservatively valuing the cost of the Executive Severance Plan at $50 million, while subtracting the Blackhawk shares already due shareholders and the highly contingent and dubious CVRs, the real termination fee built into the Proposed Merger is approximately $300 million on a $7.25 billion deal – or an unreasonable ***4.15%*** fee. In general, termination fees only amount to 3% or less of a deal's price. Moreover, if the Executive Severance Plan buyouts amounted to sums significantly higher than a conservative estimate of $50 million, such buyer would need to pay a termination fee with a much higher percentage than the current unreasonable termination fee of 4.15%.

83. Finally, despite months-old reports that Safeway was actively looking to sell itself and had engaged in an auction process that has now come to a close, Safeway has continued to maintain the Rights Agreement that it purportedly implemented to protect against outside interference with Safeway's management decisions. However, now that Safeway has signed up a deal to sell the Company following an auction process, the Rights Agreement is nothing more than an impermissible means to prevent potential strategic bidders, such as Kroger, from making a superior offer that would not involve keeping management on after closing. Any competing bidder is effectively precluded from making an offer directly to Safeway's shareholders, even with more cash or an otherwise more valuable offer, by the poison pill. To be sure, given that Safeway's shopping process yielded the Proposed Merger's terms with Cerberus, it is

unreasonable and a violation of the Board's fiduciary duties to continue to maintain the poison pill. No valid corporate purpose could possibly be served by maintaining the poison pill under these circumstances.

CLASS ACTION ALLEGATIONS

84. Plaintiffs bring this action individually and as a class action, pursuant to Court of Chancery Rules 23(a) and (b)(1) and (2), on behalf of the "Class" consisting of all other holders of Safeway common stock. Excluded from the Class are Defendants herein and their affiliates.

85. This action is properly maintainable as a class action.

86. The Class is so numerous that joinder of all members is impracticable. The Company has thousands of shareholders who are scattered throughout the United States. As of March 6, 2013, as set forth in the Merger Agreement, there were approximately 230.3 million shares of Safeway common stock outstanding.

87. There are questions of law and fact common to the Class including, *inter alia*, the following:

(a) whether the Proposed Merger consideration maximizes shareholder value for Plaintiffs and the Class;

(b) whether the Individual Defendants have breached their fiduciary duties owed to Plaintiffs and other members of the Class;

(c) whether the Cerberus Defendants have aided and abetted the Individual Defendants' breaches of their fiduciary duties;

(d) whether Plaintiffs and the other members of the Class will suffer irreparable harm by the wrongs complained of herein;

(e) whether Plaintiffs and the Class are entitled to injunctive relief, damages, or other relief as a result of the Defendants' wrongful conduct.

88. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of other members of the Class, and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs are adequate representatives of the Class.

89. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class, which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

90. Defendants have acted or refused to act on grounds generally applicable to, causing injury to, the Class and, therefore preliminary and final injunctive relief on behalf of the Class, as a whole, is appropriate.

FIRST CAUSE OF ACTION

For Breach of Fiduciary Duty Against the Individual Defendants

91. Plaintiffs incorporate each allegation set forth above as if fully set forth herein.

92. As Safeway directors, the Board members owe Plaintiffs and the other public stockholders of Safeway duties of loyalty and due care. As a result, in connection with a sale of the Company, these individuals had an obligation to maximize stockholder value. They likewise were required to refrain from benefitting themselves at the expense of Safeway's common stockholders.

93. In breach of these obligations, the Individual Defendants failed to safeguard the best interests of the common shareholders of Safeway by negotiating a sale of the Company at an inadequate price. The Individual Defendants' compounded this breach by failing to redeem the

Rights Plan and agreeing to preclusive deal protections, potentially excluding acquirers from offering greater consideration to acquire the Company. The Individual Defendants did this for the benefit of Safeway management who will continue on in their current executive positions upon consummation of the Proposed Merger.

94. As a result of the Individual Defendants' breaches of their fiduciary duties, Plaintiffs and the Class will suffer harm as alleged herein, for which there is no adequate remedy at law.

<u>SECOND CAUSE OF ACTION</u>

For Aiding and Abetting Breaches of Fiduciary Duty Against the Cerberus Defendants

95. Plaintiffs repeat and re-allege all previous allegations as if fully set forth herein.

96. As alleged in detail herein, the Individual Defendants have breached their fiduciary duties to Plaintiffs and the other members of the Class.

97. The Cerberus Defendants have aided and abetted the Individual Defendants in their breaches of fiduciary duties. As participants in the fundamentally flawed negotiation process, the Cerberus Defendants were aware of the Individual Defendants' breaches of fiduciary duties and in fact actively and knowingly encouraged and participated in said breaches in order to obtain a substantially lower price for Safeway to the detriment of the Company's common stockholders.

98. As a result of the conduct of the Cerberus Defendants, Plaintiffs and the Class have suffered and will suffer harm as alleged herein, for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment, and preliminary and permanent relief, including injunctive and other equitable relief, in its favor and in favor of the Class and against Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Declaring that the Individual Defendants breached their fiduciary duties in agreeing to the Proposed Transaction and are liable to Plaintiffs and the Class for such breaches;

C. Declaring that the Cerberus Defendants aided and abetted the Individual Defendants' breaches of fiduciary duties and are liable to Plaintiffs and the Class for aiding and abetting those breaches;

D. Enjoining Defendants from consummating the Proposed Merger unless and until the Rights Plan is terminated and the go-shop period is extended;

E. Following termination of the Rights Plan, directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that maximizes shareholder value;

F. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

G. Granting such other and further relief as this Court deems just and proper.

DATED: March 20, 2014

LOCAL COUNSEL

/s/ Michael J. Barry

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PIPEFITTERS LOCAL 636 DEFINED BENEFIT FUND and OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

SAFEWAY INC., ROBERT EDWARDS, T. GARY ROGERS, JANET E. GROVE, MOHAN GYANI, FRANK C. HERRINGER, GEORGE J. MORROW, KENNETH W. ODER, ARUN SARIN, WILLIAM Y. TAUSCHER, CERBERUS CAPITAL MANAGEMENT, L.P., AB ACQUISITION, LLC, ALBERTSON'S HOLDINGS, LLC, ALBERTSON'S, LLC, and SATURN ACQUISITION MERGER SUB, INC.,

Defendants.

C.A. No.

AFFIDAVIT AND VERIFICATION OF FRANK WEICHERT IN SUPPORT OF VERIFIED CLASS ACTION COMPLAINT

Frank Weichert, being duly sworn, does hereby state as follows:

1. I am Chairman of the Pipefitters Local 636 Defined Benefit Fund (the "Fund"), plaintiff in the above-captioned class action and a continuous holder of common stock of Safeway, Inc. during all relevant times alleged in the Verified Class Action Complaint (the "Complaint"). I am a resident of Michigan, and am of full legal age. I make this affidavit in support of the Complaint that the Fund filed as plaintiff in the above-captioned case.

2. I make this affidavit under penalty of perjury.

3. I have read the Complaint and consulted with counsel.

4. The facts alleged in the Complaint are true and correct to the best of my knowledge, information and belief.

5. In accordance with Delaware Court of Chancery Rule 23(aa), the Fund has not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this class action except for:

(a) such damages or other relief as the Court may award the Fund as a member of the class;

(b) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of the Fund; or

(c) reimbursement, paid by its attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

PIPEFITTERS LOCAL 636 DEFINED BENEFIT FUND

By: Frank Weichert
Frank Weichert
Chairman

STATE OF MICHIGAN)
): SS.
COUNTY OF Wayne)

SWORN TO AND SUBSCRIBED before me, a Notary Public in the State and County aforesaid, this 19 day of March, 2014.

Nina M Volk
Notary Public

NINA M. VOLK
Notary Public, State of Michigan, County of Wayne
My Commission Expires November 26, 2016
Acting in the County of Wayne

My Commission Expires: 11-26-2016

VERIFICATION TO CLASS ACTION
COMPLAINT AND AFFIDAVIT PURSUANT TO RULE 23(aa)

STATE OF OKLAHOMA)
) :SS.
COUNTY OF OKLAHOMA)

I, Robert E. Jones, Jr., do hereby depose and say on this 19th day of March 2014 that:

1. I am Executive Director of the Oklahoma Firefighters Pension and Retirement System, which is a holder of common stock of Safeway Inc. and was a holder of such common stock at the time of the wrongs complained of in the foregoing Verified Class Action Complaint ("Complaint").

2. The Oklahoma Firefighters Pension and Retirement System is a plaintiff in this matter.

3. I have read the Complaint and have authorized its filing.

4. The facts alleged in the Complaint are true and correct to the best of my knowledge, information and belief.

5. In accordance with Delaware Court of Chancery Rule 23(aa), the Oklahoma Firefighters Pension and Retirement System has not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this class action except for:

(a) such damages or other relief as the Court may award to members of the class;

(b) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of the Oklahoma Firefighters Pension and Retirement System; or

(c) reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

Robert E. Jones, Jr.

SWORN TO AND SUBSCRIBED before me, a Notary Public in the State and County aforesaid, this 19 day of March 2014.

Notary Public

My Commission Expires: 2/22/15

NOTARY SEAL PUBLIC
TERRI L. WILLIAMS
Notary Public
State of Oklahoma
Commission # 11001494 Expires 02/22/15

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. **Caption of Case:** Pipefitters Local 636 Defined Benefit Fund and Oklahoma Firefighters Pension and Retirement System v. Safeway Inc., Robert Edwards, T. Gary Rogers, Janet E. Grove, Mohan Gyani, Frank C. Herringer, George J. Morrow, Kenneth W. Oder, Arun Sarin, William Y. Tauscher, Cerberus Capital Management, L.P., AB Acquisition, LLC, Albertson's Holdings, LLC, Albertson's, LLC and Saturn Acquisition Merger Sub, Inc.

2. **Date Filed:** March 20, 2014

3. **Name and address of counsel for plaintiff:** Michael J. Barry (DE Bar 4368), GRANT & EISENHOFER P.A., 123 Justison Street, Wilmington, DE 19801

4. **Short statement and nature of claim asserted:**
Breach of fiduciary duties in connection with proposed merger transaction.

5. **Substantive field of law involved (check one):**

____Administrative law	____Trade secrets/trade mark/ or other intellectual property
____Commercial law	____Trusts
____Constitutional law	____Wills and estates
_X_ Corporation law	____Zoning
____Guardianships	____Real Property
____Labor law	____Other

6. **Related case(s), including any Register of Wills matters (which requires copies of all documents in this matter to be filed with the Register of Wills):** *Barnhard v. Safeway Inc., et al.*, Del Ch. C.A. No. 9445-VCL (filed March 13, 2014); *Morales v. Safeway Inc., et al.*, Del Ch. C.A. No. 9455-VCL (filed March 18, 2014); *Ogurkiewicz v. Safeway Inc., et al.*, Del. Ch. C.A. No. 9454-VCL (filed March 18, 2014)

7. **Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):**
8 *Del. C.* § 111; 10 *Del.C.* §§ 341, 3114

8. **If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought**.

9. **If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceeding, check here ____. (If #9 is checked, a Motion to Expedite must accompany the transaction.)**

10. **If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. __X__**

/s/ Michael J. Barry
Michael J. Barry (DE Bar 4368)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PIPEFITTERS LOCAL 636 DEFINED BENEFIT FUND and OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. SAFEWAY INC., ROBERT EDWARDS, T. GARY ROGERS, JANET E. GROVE, MOHAN GYANI, FRANK C. HERRINGER, GEORGE J. MORROW, KENNETH W. ODER, ARUN SARIN, WILLIAM Y. TAUSCHER, CERBERUS CAPITAL MANAGEMENT, L.P., AB ACQUISITION, LLC, ALBERTSON'S HOLDINGS, LLC, ALBERTSON'S, LLC, and SATURN ACQUISITION MERGER SUB, INC., Defendant(s).	Case No.

COUNSEL'S STATEMENT OF GOOD CAUSE

I am a director of Grant & Eisenhofer P.A. and a member in good standing of the Bar of the State of Delaware. With my firm, I am counsel to Plaintiffs in this action. We respectfully submit that this action is inappropriate for submission to a Master in the first instance, as it involves complex issues of Delaware corporate law.

Dated: March 20, 2014

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

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Counsel for Plaintiffs