

**PUBLIC**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of:**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**DOCKET NO. D-9428**

**ALBERTSONS COMPANIES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES**

Edward D. Hassi  
Debevoise & Plimpton LLP  
801 Pennsylvania Avenue N.W.  
Washington, D.C. 20004  
(202) 383-8000

Michael Schaper  
Shannon Rose Selden  
J. Robert Abraham  
Natascha Born  
Marieugenia Cardenas  
Jaime Freilich-Fried  
Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001  
(212) 909-6000

*Counsel for Respondent Albertsons  
Companies, Inc.*

James A. Fishkin  
Michael G. Cowie  
Dechert LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
Telephone: (202) 261-3300  
james.fishkin@dechert.com  
mike.cowie@dechert.com

*Co-Counsel for Respondent Albertsons  
Companies, Inc.*

**PUBLIC****ALBERTSONS COMPANIES INC.'S ANSWER AND AFFIRMATIVE DEFENSES**

Respondent Albertsons Companies, Inc. (“Albertsons”) hereby answers Plaintiff Federal Trade Commission’s (“FTC”) Complaint, related to the proposed merger (“Merger”) between itself and The Kroger Company (“Kroger”) (collectively with Kroger, “Respondents”), and asserts affirmative and other defenses.

Any allegation in the Complaint that is not expressly admitted below is denied.<sup>1</sup>

**PRELIMINARY STATEMENT**

The Commission’s claims are premised entirely on the Commission’s distortion and willful ignorance of basic but critical facts. The Commission’s challenge to the Merger should be rejected for multiple reasons.

*First*, the Commission entirely ignores the commercial realities of the fiercely competitive landscape in which Respondents participate and the evolution of that landscape in recent years. The Commission has handcrafted a narrowly defined set of “traditional supermarket” competitors as one of the relevant product markets for the purposes of this litigation, but omits obvious competition from other grocery retailers that public documents and ordinary course business documents confirm are engaged in vigorous competition with Respondents. These competitors include big box retailers such as Walmart — the largest grocer in the U.S. — and Target, club stores such as Costco — one of Respondents’ most fervent competitors — specialty and organic grocers like Trader Joe’s and Sprouts, as well as other competitors such as Amazon (which owns Whole Foods and Amazon Fresh and operates a significant online grocery business via Amazon.com) and dollar stores.

---

<sup>1</sup> The Complaint contains section titles and organizational headings to which no response is required. To the extent that the headings may be construed to contain allegations of fact to which a response is required, Albertsons denies all such allegations.

**PUBLIC**

*Second*, in claiming the Merger will substantially lessen competition, the Commission entirely ignores the impact of Respondents’ proposed divestment to C&S Wholesale Grocers (“C&S”), a leading grocery wholesaler. Indeed, the Commission alleges that the “proposed acquisition would eliminate substantial head-to-head competition between Respondents in the communities in which both firms operate *today*,” Compl. ¶ 40 (emphasis added), but fails to account for the hundreds of stores that Defendants have already proposed to divest (and the possibility of additional divestments) — divestitures which will preserve competition in local geographies and address any competitive concerns raised by the Merger. Instead, the Commission casts aside the proposed divestiture package, ignoring that C&S is a large, sophisticated, and well-financed company with deep grocery industry experience, and is well-positioned to successfully operate the significant assets that it will receive as part of any divestiture package and execute on its business plans. Contrary to the Commission’s allegations, C&S will receive the assets necessary to ensure its success, including physical stores, distribution centers to supply the divested stores, store and management personnel, banner rights, popular private label brands and critical transition services.

The Commission also focuses on previous divestitures made in separate transactions in the past decade or so that bear no resemblance to the robust divestiture package Respondents have proposed here (and which is subject to change and further refinement). Specifically, the Commission myopically focuses on the limited divestitures to Haggen, made in connection with Albertsons’ 2015 acquisition of Safeway, and to Lawrence Bros., made in connection with Albertsons’ 2013 acquisition of United Supermarkets, suggesting that the failure of those divestiture plans necessarily means that *any* divestiture to C&S in connection with *this* Merger is necessarily bound to fail. But contrary to the Commission’s allegations, Respondents’ proposed

**PUBLIC**

divestiture to C&S bears no resemblance to the 2015 Haggen divestiture or 2013 Lawrence Bros. divestiture, and the Commission's utter failure to account for the proposed divestiture's preservation of any purported loss to local competition is ultimately fatal to its claim.

*Third*, the Commission has also handcrafted a second product market, "union grocery labor." This unprecedented product market completely ignores the labor market in which Respondents compete, which includes non-union as well as non-grocery retailers, as indicated in Respondents' ordinary course documents. Moreover, the Commission's allegations regarding the impact of the Merger on the union's bargaining power takes negotiations with the unions out of context and ignores that the Merger is actually likely to increase the union's bargaining power.

Simply put, although the Commission alleges that the Merger is likely to harm competition in both of the alleged relevant product markets, the so-called "facts" it has offered in support of this bold assertion completely ignore the commercial realities of a marketplace that is both highly competitive and rapidly evolving and the actual transaction Respondents seek to close (inclusive of proposed divestitures). For this and many other reasons, the Commission's challenge to the Merger should fail on its flimsy merits.

Against this backdrop, Albertsons hereby answers the specific allegations in the Complaint. The Complaint improperly mixes factual averments with legal argument and rhetoric such that admissions or denials of the factual averments are difficult or impossible to make. Moreover, many of the allegations in the Complaint are overbroad, vague, or conclusory, include terms that are undefined and that are susceptible to various interpretations, which Albertsons cannot meaningfully respond to.

Accordingly, by way of a general response, all allegations in the Complaint are denied unless specifically admitted, and any factual averment that is admitted is admitted only as to the

**PUBLIC**

specific facts and not as to any conclusions, characterizations, implications, or the like which are contained in the averment or in the Complaint as a whole.

These comments and objections are incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

## **I. NATURE OF THE CASE**

1. Albertsons admits that Albertsons and Kroger entered into a merger agreement on October 13, 2022 and refers to the merger agreement for its complete content and context. Albertsons is unable to respond to the allegations in the second sentence of Paragraph 1 because the term “supermarket” is vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 1 and therefore denies the same. Albertsons denies the remaining allegations in Paragraph 1.<sup>2</sup>

2. Albertsons is unable to respond to the allegations in Paragraph 2 because the terms “grocery prices,” “food insecure,” and “low-income” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies the same.

3. Albertsons denies the allegations in the first sentence of Paragraph 3. Albertsons is unable to respond to the allegations in the second sentence of Paragraph 3 because the term “traditional supermarket” is vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 3 and therefore denies the same. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the

---

<sup>2</sup> References to paragraph numbers in the Complaint correlate to the numbered paragraphs in the Complaint.

**PUBLIC**

third sentence of Paragraph 3 and therefore denies the same, except admits that as of December 2, 2023, Albertsons operated 2,271 stores and 1,726 pharmacies and that as of December 11, 2023, Albertsons employed approximately 285,600 individuals across 34 states and the District of Columbia.

4. Albertsons denies the allegations of the first sentence of Paragraph 4, except admits that Albertsons has been involved in past mergers. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 4 and therefore denies the same, except admits that it operates stores under the banners Safeway, Vons, Jewel-Osco, Haggen and Carrs, among others.

5. Albertsons denies the allegations of the first sentence of Paragraph 5, except admits that Albertsons fiercely competes for consumers with numerous other retailers in local geographies, including, but not limited to, Kroger, and for workers with a wide range of union and non-union employers including, but not limited to, retailers of all sizes, formats, and types, distribution centers, factories, delivery services, rideshare companies, pharmacies, and restaurants in the geographies within which it operates. To the extent the second sentence of Paragraph 5 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 5, including to the extent they are redacted, and therefore denies the same. Albertsons denies the remaining allegations in Paragraph 5.

6. Albertsons denies the allegations in the first and last sentences of Paragraph 6. To the extent the second and third sentences of Paragraph 6 purport to quote from or characterize

**PUBLIC**

documents, Albertsons refers to the documents for their complete content and context.

Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 6, including to the extent they are redacted, and therefore denies the same.

7. Albertsons denies the allegations in the first sentence of Paragraph 7. Albertsons denies the remaining allegations in Paragraph 7, except admits that Albertsons competes for workers with a wide range of union and non-union employers including, but not limited to, retailers of all sizes, formats, and types, distribution centers, factories, delivery services, rideshare companies, pharmacies, and restaurants in the geographies within which it operates and that it negotiates and enters into collective bargaining agreements (“CBAs”) in localized areas of the country, which typically govern wages, benefits and workplace conditions for covered workers.

8. Albertsons denies the allegations of the first sentence of Paragraph 8. To the extent the second and third sentences of Paragraph 8 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 8, including to the extent they are redacted, and therefore denies the same.

9. Albertsons denies the allegations in the first sentence of Paragraph 9. The second sentence of Paragraph 9 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in the second sentence of Paragraph 9.

**PUBLIC**

10. Albertsons denies the allegations in the first sentence of Paragraph 10, except admits that Kroger has proposed a divestiture package which would transfer hundreds of stores and other assets to C&S Wholesale Grocers, LLC (“C&S”), refers to the proposed divestiture package for its complete content and context, and avers the divestiture package remains subject to change. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 and therefore denies the same.

11. Albertsons denies the allegations in Paragraph 11.

## **II. JURISDICTION**

12. Paragraph 12 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 12.

13. Paragraph 13 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 13.

## **III. RESPONDENTS**

14. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore denies the same.

15. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies the same.

16. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 16 in any meaningful way because the terms “traditional supermarket chain” and “union grocery workers” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 16 and therefore denies the same. Albertsons denies the remaining allegations in Paragraph 16, except admits: (i) for fiscal year 2022, Albertsons had annual revenues of \$77.65 billion; (ii) as of December 2, 2023, Albertsons

**PUBLIC**

operated 2,271 stores and 1,726 pharmacies under numerous banners including Albertsons, Safeway, Haggen, Acme, Andronico's, Amigos, Balducci's Food Lovers Market, Carrs, Jewel-Osco, Kings Food Markets, Lucky, Market Street, Pavilions, Randalls, Shaw's, Star Market, Tom Thumb, United Supermarkets, and Vons across 34 states and the District of Columbia; and (iii) as of December 11, 2023, Albertsons employed approximately 285,600 individuals, many of whom are covered by collective bargaining agreements.

17. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 17 in any meaningful way because the term "serial acquisitions" is vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in first sentence of Paragraph 17, except admits that: (i) Albertsons has been involved in past mergers; (ii) in 1998, Albertsons acquired American Stores Company and refers to the relevant transactional documents for their complete content and context; (iii) in 2004, Albertsons acquired Shaw's Supermarkets and refers to the relevant transactional documents for their complete content and context; (iv) in 2013, Albertsons acquired United Supermarkets and refers to the relevant transactional documents for their complete content and context; (v) in 2015, Albertsons acquired Safeway and refers to the relevant transactional documents for their complete content and context; and (vi) in 2016, Albertsons acquired Haggen, including certain stores it had previously divested to Haggen, and refers to the relevant transactional documents for their complete content and context.

#### **IV. THE ACQUISITION**

18. Albertsons admits that Albertsons and Kroger entered into a merger agreement on October 13, 2022 and refers to the merger agreement for its complete content and context.

PUBLIC

**V. THE PROPOSED ACQUISITION MAY SUBSTANTIALLY LESSEN  
COMPETITION IN LOCAL MARKETS FOR THE SALE OF FOOD AND GROCERY  
PRODUCTS AT SUPERMARKETS**

19. Albertsons is unable to respond to the allegations in the first, second and third sentences of Paragraph 19 in any meaningful way because the terms “supermarket,” “hundreds of communities” and “substantial head-to-head competition” are vague and ambiguous. The second sentence of Paragraph 19 also states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in the first, second and third sentences of Paragraph 19. To the extent the last sentence of Paragraph 19 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

20. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 20 in any meaningful way because the phrase “unique in their scale and size” is vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 20. Albertsons is unable to respond to the allegations in the second sentence of Paragraph 20 in any meaningful way because the terms “ecosystem,” “benefit,” and “local brand recognition” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 20 and therefore denies the same, except admits that Albertsons operates stores under a number of banners including Safeway. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 20, including to the extent they are redacted, and therefore denies the same. To the extent the last sentence of Paragraph 20 purports to quote from or characterize

**PUBLIC**

documents, Albertsons refers to the documents for their complete content and context.

Albertsons denies any characterizations inconsistent with the documents themselves.

21. Albertsons is unable to respond to the allegations in the first, second, third and fourth sentences of Paragraph 21 in any meaningful way because the terms “supermarkets,” “geographic organizational units,” “operational autonomy,” “operational division-level,” “continuous growth,” and “data science capabilities” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, third and fourth sentences of Paragraph 21 and therefore denies the same, except admits that Albertsons has 12 divisions which are organized by region. To the extent the last sentence of Paragraph 21 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context.

Albertsons denies any characterizations inconsistent with the documents themselves.

22. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 22 in any meaningful way because the term “supermarket customers” is vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 22, except admits that Albertsons operates pharmacies and fuel stations in certain locations. Albertsons denies the remaining allegations in Paragraph 22, except admits that in fiscal year 2022, pharmacies and fuel stations accounted for 8.7% and 6.3% of Albertsons’ revenue, respectively.

23. Albertsons is unable to respond to the allegations in the first and third sentence of Paragraph 23 in any meaningful way because the terms “head-to-head,” and “in response to each other” are vague and ambiguous. To the extent a response is required, Albertsons admits that it fiercely competes for consumers with numerous other retailers in local geographies, including,

**PUBLIC**

but not limited to, Kroger, on the basis of price, product quality, product selection, customer service, and loyalty programs, among other things. To the extent the second sentence of Paragraph 23 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons denies the allegations in the last sentence of Paragraph 23.

**A. SUPERMARKETS ARE A RELEVANT PRODUCT MARKET**

24. Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 24.

25. Albertsons is unable to respond to the allegations in the first, third, and fourth sentences of Paragraph 25 in any meaningful way because the terms “supermarkets,” “one-stop-shopping,” “broad,” and “deep” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first, third, and fourth sentences of Paragraph 25. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 25 and therefore denies the same.

26. Albertsons is unable to respond to the allegations in Paragraph 26 in any meaningful way because the terms “supermarkets,” “food and grocery shopping requirements,” and “substantial” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in Paragraph 26.

27. Albertsons is unable to respond to the allegations in the first, second, third, fourth, and last sentences of Paragraph 27 in any meaningful way because the terms “supermarkets,” and “pricing program” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the

**PUBLIC**

allegations in the first, second, third, fourth and last sentences of Paragraph 27 and therefore denies the same, except admits that Albertsons monitors the pricing decisions of many competitors in order to inform its pricing decisions. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fifth sentence of Paragraph 27, including to the extent they are redacted, and therefore denies the same.

28. Paragraph 28 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 28.

29. Albertsons is unable to respond to the allegations in Paragraph 29 in any meaningful way because the terms “supermarket(s),” “non-supermarket,” “differentiated customer experience,” and “SSNIPT” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in Paragraph 29, except admits that there are differences between its stores and other retailers it competes for consumers with.

30. Albertsons is unable to respond to the allegations in the first and second sentences of Paragraph 30 in any meaningful way because the term “supermarkets,” “non-supermarkets,” “SSNIPT,” and “competitive constraint” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first and second sentences of Paragraph 30. The last sentence of Paragraph 30 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in the last sentence of Paragraph 30.

31. The first sentence of Paragraph 31 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 31. Albertsons lacks knowledge or information sufficient to form a belief

**PUBLIC**

as to the truth of the allegations in the second and third sentences of Paragraph 31 and therefore denies the same.

**B. LOCAL AREAS AROUND STORES ARE RELEVANT GEOGRAPHIC MARKETS**

32. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 32 and therefore denies the same. Albertsons is unable to respond to the allegations in the second and third sentences of Paragraph 32 in any meaningful way because the terms “supermarket,” “retail supermarkets,” and “localized areas” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the second and third sentences of Paragraph 32, except admits that competition for grocery sales typically occurs at a local level and varies based on local conditions. Albertsons denies the remaining allegations in Paragraph 32.

33. The first sentence of Paragraph 33 asserts legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 33. Albertsons is unable to respond to the remaining allegations in Paragraph 33 in any meaningful way because the terms “localized markets,” “SSNIPT” and “supermarkets” are vague and ambiguous. To the extent a response is required, Albertsons denies the remaining allegations in Paragraph 33.

**C. THE PROPOSED ACQUISITION IS PRESUMPTIVELY UNLAWFUL**

34. Albertsons denies the allegations in Paragraph 34, except admits that the Merger Guidelines, which are not binding on the FTC or courts, measure market concentration using the Herfindahl-Hirschman Index (“HHI”) and that Paragraph 34 summarizes how the “HHI” calculation is described in the Merger Guidelines, and refers to the Merger Guidelines for their complete content and context.

**PUBLIC**

35. Albertsons is unable to respond to the allegations in Paragraph 35 in any meaningful way because the terms “caselaw” and “widely accepted economic thinking,” “analytical frameworks,” “economic methodologies,” and “court decisions,” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in Paragraph 35, except admits that the Department of Justice and the Federal Trade Commission jointly publish the Merger Guidelines, which are not binding on the FTC or courts, and refers to the Merger Guidelines for their complete content and context.

36. Albertsons denies the allegations in Paragraph 36 except admits that Paragraph 36 summarizes how the “HHI” calculation is described in the Merger Guidelines, which are not binding on the FTC or courts, and refers to the Merger Guidelines for their complete content and context.

37. Paragraph 37 asserts legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 37.

38. Paragraph 38 asserts legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 38.

**D. THE PROPOSED ACQUISITION WOULD ELIMINATE HEAD-TO-HEAD COMPETITION BETWEEN RESPONDENTS**

39. Paragraph 39 asserts legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 39. To the extent the last sentence of Paragraph 39 purports to quote from or characterize the Merger Guidelines, which are not binding on the FTC or courts, Albertsons refers to the Merger Guidelines for their complete content and context.

40. Albertsons denies the allegations in Paragraph 40.

**PUBLIC**

41. Albertsons is unable respond to the allegations in the first sentence of Paragraph 41 in any meaningful way because the terms “customer base” and “local communities” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 41, except admits that Albertsons and Kroger compete against each other in certain local geographies and that Albertsons fiercely competes for consumers with other retailers, including, but not limited to, Kroger, on the basis of price, product quality, product selection, customer service, and loyalty programs, among other things. Albertsons is unable to respond to the allegations in the second, third, fifth, and sixth sentences of Paragraph 41 in any meaningful way because the terms “aggressive price competition,” “price check,” “tracks,” “base pricing,” “non-promotional price,” “promotional pricing,” and “sale price” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the second, third, fifth, and sixth sentences of Paragraph 41, except admits that Albertsons monitors the pricing decisions of many competitors in order to inform its pricing decisions. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth sentence of Paragraph 41, including to the extent they are redacted, and therefore denies the same. Albertsons denies the allegations in the last sentence of Paragraph 41.

42. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, including to the extent they are redacted, and therefore denies the same.

43. Albertsons is unable to respond to the allegations in the first, second, third and last sentences of Paragraph 43 in any meaningful way because the terms “primary competitor,” “pricing areas,” “high,” “low,” and “price competition” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first, second, third and last

**PUBLIC**

sentences of Paragraph 43, except admits that Albertsons monitors the pricing decisions of many competitors in order to inform its pricing decisions. To the extent the fourth sentence of Paragraph 43 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

44. Albertsons is unable to respond to the allegations in the first, second, and third sentences of Paragraph 44 in any meaningful way because the terms “promotional pricing discounts,” “promotional programs,” “discounts,” and “promotional offers” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first, second, and third sentences of Paragraph 44, except admits that Albertsons monitors the pricing decisions of many competitors in order to inform its pricing decisions. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 44, including to the extent they are redacted, and therefore denies the same. To the extent the last sentence of Paragraph 44 purports to quote from or characterize testimony from investigational hearings, Albertsons refers to the testimony for its complete content and context. Albertsons denies any characterizations inconsistent with the testimony itself.

45. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 45 in any meaningful way because the terms “promotional competition” and “regular occurrence” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 45, except admits that Albertsons monitors the pricing decisions of many competitors in order to inform its pricing decisions. To the extent the second, third and fourth sentences of Paragraph 45 purport to quote from or characterize

**PUBLIC**

documents, Albertsons refers to the documents for their complete content and context.

Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons denies the allegations in the last sentence of Paragraph 45.

46. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 46 in any meaningful way because the terms “quality” and “variety” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 46, except admits that Albertsons and Kroger compete against each other in certain local geographies and that Albertsons fiercely competes for consumers with other retailers, including, but not limited to, Kroger, on the basis of product quality and product selection, among other things. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 46, including to the extent they are redacted, and therefore denies the same. To the extent the last sentence of Paragraph 46 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

47. Albertsons is unable to respond to the allegations in the first and second sentences of Paragraph 47 in any meaningful way because the terms “freshest,” “highest quality,” and “regularly benefit” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first and second sentences of Paragraph 47, except admits that Albertsons and Kroger compete against each other in certain local geographies and that Albertsons fiercely competes for consumers with other retailers, including, but not limited to, Kroger, on the basis of product quality and product selection, among other things. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the

**PUBLIC**

third sentence of Paragraph 47, including to the extent they are redacted, and therefore denies the same. To the extent the last sentence of Paragraph 47 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context.

Albertsons denies any characterizations inconsistent with the documents themselves.

48. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences of Paragraph 48, including to the extent they are redacted, and therefore denies the same, except admits that Albertsons monitors branded and private-label products sold by other competing retailers, including, but not limited to, Kroger. Albertsons denies the allegations in the last sentence of Paragraph 48.

49. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 49 in any meaningful way because the terms “store re-models” and “robust competition,” are vague and ambiguous. To the extent a response is required, Albertsons admits that Albertsons and Kroger compete against each other in certain local geographies and that Albertsons fiercely competes for consumers with other retailers, including, but not limited to, Kroger, on the basis of price, product quality, product selection, customer service, and loyalty programs, among other things. To the extent the second and third sentences of Paragraph 49 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 49, including to the extent they are redacted, and therefore denies the same.

50. Albertsons is unable to respond to the allegations in the first and third sentences of Paragraph 50 in any meaningful way because the terms “superior customer services” and

**PUBLIC**

“improved customer services” are vague and ambiguous. To the extent a response is required, Albertsons admits that Albertsons and Kroger compete against each other in certain local geographies and that Albertsons fiercely competes for consumers with other retailers, including, but not limited to, Kroger, on the basis of price, product quality, product selection, customer service, and loyalty programs, among other things. To the extent the second and last sentences of Paragraph 50 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth, fifth, sixth, and seventh sentences of Paragraph 50, including to the extent they are redacted, and therefore denies the same, except admits that Albertsons offers curbside pickup.

51. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 51 in any meaningful way because the terms “supermarket customers” and “robust in-store services” are vague and ambiguous. To the extent a response is required, Albertsons admits that Albertsons and Kroger compete against each other in certain local geographies and that Albertsons fiercely competes for consumers with other retailers, including, but not limited to, Kroger, on the basis of price, product quality, product selection, customer service, and loyalty programs, among other things. To the extent the second, third and fourth sentences of Paragraph 51 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 51, including to the extent they are redacted, and therefore denies the same.

**PUBLIC**

52. Albertsons denies the first sentence of Paragraph 52, except admits (i) that Albertsons operates pharmacies; (ii) that pharmacies made up 8.7% of Albertsons' revenue in fiscal year 2022; and (iii) that Albertsons is in fierce competition with many pharmacies, including, but not limited to Kroger in certain geographies, on the basis of price, product quality, production selection, customer service, and loyalty programs, among other things. To the extent the second, third and fourth sentences of Paragraph 52 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 52, including to the extent they are redacted, and therefore denies the same.

53. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53, including to the extent they are redacted, and therefore denies the same, except admits that in 2023, Albertsons offered customers a discount for grocery items with a new or transferred prescription and that Albertsons is in fierce competition with many pharmacies, including, but not limited to Kroger in certain geographies, on the basis of price, product quality, production selection, customer service, and loyalty programs, among other things.

54. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54, including to the extent they are redacted, and therefore denies the same, except admits that Albertsons is in fierce competition with many pharmacies, including, but not limited to Kroger in certain geographies, on the basis of price, product quality, production selection, customer service, and loyalty programs, among other things.

**PUBLIC**

55. Albertsons denies the allegations in Paragraph 55.

56. Albertsons denies the allegations in Paragraph 56.

**VI. THE PROPOSED ACQUISITION MAY SUBSTANTIALLY LESSEN  
COMPETITION FOR LABOR**

57. Paragraph 57 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 57.

58. Albertsons denies the allegations in Paragraph 58, except admits that Albertsons employed approximately 285,600 individuals across the country as of December 11, 2023 and fiercely competes for workers with a wide range of union and non-union employers, including Kroger in certain local geographies.

59. Albertsons denies the allegations in Paragraph 59, except admits that Albertsons fiercely competes for workers with a wide range of union and non-union employers, including Kroger in certain local geographies, on the basis of compensation, benefits, and other criteria.

60. Albertsons denies the allegations in the first sentence of Paragraph 60. To the extent the second and third sentences of Paragraph 60 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 60, including to the extent they are redacted, and therefore denies the same.

61. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 61 in any meaningful way because the term “union grocery workers” is vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 61. Albertsons lacks knowledge or information sufficient to form a belief

**PUBLIC**

as to the truth of the allegations in the second, third, and fourth sentences of Paragraph 61 and therefore denies the same, except admits that the majority of Albertsons' in-store associates are represented by United Food and Commercial Workers ("UFCW").

62. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 62 and therefore denies the same.

Albertsons denies the allegations in the last sentence of Paragraph 62.

**A. UNION GROCERY LABOR IS A RELEVANT MARKET**

63. The first sentence of Paragraph 63 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 63. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 63 and therefore denies the same, except admits that Albertsons negotiates and enters into CBAs with local unions representing its associates, and that the CBAs typically govern wages, benefits and workplace conditions for covered workers.

64. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and therefore denies the same, except admits that pension benefits vest as provided in the relevant CBAs.

**B. LOCAL CBA AREAS ARE RELEVANT GEOGRAPHIC MARKETS**

65. Albertsons is unable to respond to the allegations in Paragraph 65 in any meaningful way because the terms "defined localized areas" and "union supermarkets" are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in Paragraph 65, except admits that Albertsons negotiates and enters into CBAs in localized areas of the country, Albertsons considers wages and benefits offered by other employers, both union

**PUBLIC**

and non-union, in connection with CBA negotiations, and that store-level hiring decisions are typically made locally.

66. Paragraph 66 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 66.

67. Albertsons is unable to respond to the allegations in Paragraph 67 in any meaningful way because the terms “competing grocery chains,” “SSNIPT” and “union grocery stores” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in Paragraph 67.

**C. THE PROPOSED ACQUISITION IS PRESUMPTIVELY UNLAWFUL**

68. Albertsons is unable to respond to the allegations in Paragraph 68 in any meaningful way because the terms “union grocery labor,” “union grocery employers,” “local CBA areas,” and “largest” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences in Paragraph 68 and therefore denies the same, except admits that Albertsons negotiates with local unions in many states and that Kroger negotiates with some of the same local unions. The remaining allegations in Paragraph 68 also state legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the remaining allegations in Paragraph 68.

**D. THE PROPOSED ACQUISITION WOULD ELIMINATE COMPETITION BETWEEN RESPONDENTS FOR UNION GROCERY LABOR**

69. Paragraph 69 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 69.

70. Albertsons is unable to respond to the allegations in Paragraph 70 because the term “union grocery labor” is vague and ambiguous. To the extent a response is required,

**PUBLIC**

Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 and therefore denies the same.

71. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 71 in any meaningful way because the terms “union grocery operators,” “union grocery workers,” and “largest” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence in Paragraph 71 and therefore denies the same. Albertsons denies the remaining allegations in Paragraph 71, except admits that Albertsons negotiates and enters into CBAs with unions representing its associates.

72. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 72 in any meaningful way because the terms “union grocery operations” and “often” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 72, except admits that it sometimes negotiates CBAs with local unions around the same time that those same unions are in negotiations with Kroger. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 72 and therefore denies the same. Albertsons denies the allegations in the third sentence of Paragraph 72. To the extent the fourth sentence of Paragraph 72 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves. Albertsons denies the allegations in the last sentence of Paragraph 72.

73. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 73 and therefore denies the same, except admits that the ability of local unions to strike or threaten to strike is a form of leverage during

**PUBLIC**

CBA negotiations. Albertsons is unable to respond to the allegations in the second and third sentences of Paragraph 73 in any meaningful way because the terms “competing supermarkets” and “union grocery employer” are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 73 and therefore denies the same. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 73, including to the extent they are redacted, and therefore denies the same.

74. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 and therefore denies the same.

75. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 75, including to the extent they are redacted, and therefore denies the same. To the extent the remaining allegations of Paragraph 75 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

76. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 76, including to the extent they are redacted, and therefore denies the same. To the extent the remaining allegations of Paragraph 76 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

**PUBLIC**

77. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in in the first sentence of Paragraph 77 and therefore denies the same. Albertsons denies the remaining allegations in Paragraph 77, except admits that Albertsons negotiates and enters into CBAs with UFCW Local 7.

78. Albertsons denies the allegations in the first and second sentences of Paragraph 78. To the extent the allegations in the third sentence of Paragraph 78 purport to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

79. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 79 in any meaningful way because the terms “coordinate” and “align” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 79, and avers that Albertsons has not engaged with Kroger in CBA negotiations in any illegal or anticompetitive manner. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 79, including to the extent they are redacted, and therefore denies the same. To the extent the third sentence of Paragraph 79 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

80. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 80 in any meaningful way because the term “coordination efforts” is vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 80, and avers that Albertsons has not engaged with Kroger in CBA negotiations in any illegal or anticompetitive manner. Albertsons lacks knowledge or

**PUBLIC**

information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 80, including to the extent they are redacted, and therefore denies the same.

81. Albertsons is unable to respond to the allegations in the first sentence of Paragraph 81 in any meaningful way because the phrase “lack of alignment” is vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first sentence of Paragraph 81. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 81, including to the extent they are redacted, and therefore denies the same.

82. Albertsons denies the allegations in Paragraph 82.

## **VII. LACK OF COUNTERVAILING FACTORS**

### **A. ENTRY WOULD NOT DETER OR COUNTERACT THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION**

83. Albertsons denies the allegations in Paragraph 83.

84. Albertsons is unable to respond to the allegations in Paragraph 84 in any meaningful way because the terms “union grocery employers” and “union grocers” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in Paragraph 84.

### **B. RESPONDENTS CANNOT DEMONSTRATE EFFICIENCIES SUFFICIENT TO REBUT THE PRESUMPTION OF HARM**

85. Paragraph 85 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 85.

### **C. THE PROPOSED DIVESTITURE DOES NOT SUFFICIENTLY MITIGATE THE LIKELY ANTICOMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION**

86. Albertsons denies the allegations in Paragraph 86, except admits that Kroger has proposed a divestiture package which would transfer hundreds of stores and other assets to C&S,

**PUBLIC**

refers to the proposed divestiture package for its complete content and context, and avers the divestiture package remains subject to change.

87. Albertsons denies the allegations in Paragraph 87, except admits that divestiture package proposed by Kroger does not include stores in certain local areas where both Kroger and Albertsons currently have stores and avers the presence of other competitors will continue to ensure robust competition post-merger.

88. Albertsons denies the allegations in Paragraph 88.

89. Albertsons is unable to respond to the allegations in Paragraph 89 in any meaningful way because the terms “competitive diminution,” “outright failure,” “ongoing business units,” and “scale,” among others, are vague and ambiguous, and to the extent the allegations are redacted. To the extent a response is required, Albertsons denies the allegations in Paragraph 89, except admits that Kroger has proposed a divestiture package which would transfer hundreds of stores and other assets to C&S, refers to the proposed divestiture package for its complete content and context, and avers the divestiture package remains subject to change.

90. Albertsons is unable to respond to the allegations in the first, second, and third sentences of Paragraph 90 in any meaningful way because the terms “supermarket business,” “popular,” “self-manufacturing facilities,” “established data-analytics capabilities,” among others, are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences of Paragraph 90, including to the extent they are redacted, and therefore denies the same, except admits that Kroger has proposed a divestiture package which would transfer hundreds of stores and other assets to C&S, refers to the proposed divestiture

**PUBLIC**

package for its complete content and context, and avers the divestiture package remains subject to change. Albertsons denies the allegations in the last sentence of Paragraph 90.

91. Albertsons is unable to respond to the allegations in the first and last sentences of Paragraph 91 in any meaningful way because the terms “coordinate,” “competitively relevant services,” “pricing and promotional activities,” and “entanglement” are vague and ambiguous. To the extent a response is required, Albertsons denies the allegations in the first and last sentences of Paragraph 91. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 91, including to the extent they are redacted, and therefore denies the same.

92. Albertsons denies the allegations in the first sentence of Paragraph 92. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second, third, fourth, and fifth sentences of Paragraph 92, including to the extent they are redacted, and therefore denies the same. Albertsons denies the allegations in the last sentence of Paragraph 92.

93. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 93 and therefore denies the same. Albertsons denies the remaining allegations in Paragraph 93, except admits that C&S has represented that it is a seasoned, well-positioned supermarket operator that has stated its intent to operate any divested stores in the future.

94. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94, including to the extent they are redacted, and therefore denies the same, except Albertsons admits it is unaware of any planned store closures in connection with the merger or divestiture plan. To the extent the first sentence of Paragraph 94

**PUBLIC**

purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents themselves.

95. Albertsons denies the allegations in the first sentence of Paragraph 95. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 95, including to the extent they are redacted, and therefore denies the same. Albertsons denies the allegations in the third sentence of Paragraph 95.

96. Albertsons denies the allegations in the first sentence of Paragraph 96. Albertsons denies the allegations in the second sentence of Paragraph 96, except admits that Albertsons acquired United Supermarkets in 2013 and Safeway in 2015 and refers to the relevant transactional documents for their complete content and context. Albertsons admits that two stores were divested to Lawrence Bros pursuant to a consent order with the Federal Trade Commission entered in connection with Albertsons' acquisition of United Supermarkets. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth and fifth sentences of Paragraph 96 and therefore denies the same, except admits that Albertsons reacquired one of the stores that had been previously divested to Lawrence Bros. Albertsons denies the allegations in the sixth sentence of Paragraph 96. Albertsons also denies the allegations in the seventh, eighth, and ninth sentences of Paragraph 96, except admits that certain stores were divested to multiple buyers, including Haggen, pursuant to a consent order with the Federal Trade Commission entered in connection with Albertsons' acquisition of Safeway. To the extent the tenth sentence of Paragraph 96 purports to quote from or characterize documents, Albertsons refers to the documents for their complete content and context. Albertsons denies any characterizations inconsistent with the documents

**PUBLIC**

themselves. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the eleventh and twelfth sentences of Paragraph 96 and therefore denies the same. Albertsons denies the last sentence of Paragraph 96, except admits that Albertsons reacquired from Haggen certain stores that had been divested to Haggen in connection with the Albertsons-Safeway transaction and that Albertsons acquired certain additional stores from Haggen as well as rights to the Haggen banner.

97. Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97 and therefore denies the same.

98. Albertsons denies the allegations in the first sentence of Paragraph 98 of the Complaint. The last sentence of Paragraph 98 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 98.

## **VIII. VIOLATIONS**

### **Count I – ILLEGAL AGREEMENT**

99. Albertsons repeats and incorporates by reference each and every preceding answer above as if fully set forth herein.

100. Paragraph 100 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 100.

### **Count II – ILLEGAL ACQUISITION**

101. Albertsons repeats and incorporates by reference each and every preceding answer above as if fully set forth herein.

102. Paragraph 102 states legal conclusions to which no response is required. To the extent a response is required, Albertsons denies the allegations in Paragraph 102.

**PUBLIC****NOTICE OF CONTEMPLATED RELIEF**

Albertsons denies that the FTC is entitled to any of the contemplated relief sought. Albertsons denies any and all allegations in the Complaint in their entirety that are not specifically admitted above, including any allegations contained in section and subsection headings and footnotes of the Complaint.

**ALBERTSONS' AFFIRMATIVE AND OTHER DEFENSES**

Albertsons asserts the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof or persuasion where such burden rests on the Commission. Albertsons has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Albertsons reserves the right to supplement its defenses as discovery progresses.

1. The Commission's claims are barred, in whole or in part, because the Commission fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The Commission's claims are barred, in whole or in part, because the Commission fails to allege a plausible relevant product market or markets.
4. The Commission's claims are barred, in whole or in part, because the Commission fails to allege a plausible geographic market.
5. The Commission's claims are barred, in whole or in part, because the Commission fails to allege undue share in any plausibly defined relevant market.

**PUBLIC**

6. The Commission's claims are barred, in whole or in part, because the Commission fails to allege any plausible harm to competition particularly when accounting for the proposed divestitures.

7. The Commission's claims are barred, in whole or in part, because the Commission fails to allege any plausible harm to consumers particularly when accounting for the proposed divestitures.

8. The Commission's claims are barred, in whole or in part, because the Commission fails to allege any plausible harm to consumer welfare particularly when accounting for the proposed divestitures.

9. The Commission's claims are barred, in whole or in part, because divestitures will eliminate any purported anticompetitive effects.

10. Expansion by existing competitors can be swift, likely, and sufficient, such that it will ensure that there will be no harm to competition, consumers, or consumer welfare.

11. Customers have a variety of tools available to ensure that they receive competitive pricing and terms.

12. The Merger will be procompetitive and will benefit consumers. It will result in substantial merger-specific efficiencies, including cost synergies, which will allow Albertsons and Kroger to compete for consumers more effectively than they can alone against competition from other retailers.

13. The Commission's claims are barred, in whole or in part, because the Complaint reflects improper selective enforcement of the antitrust laws.

14. These proceedings are invalid because the structure of the Commission as an independent agency that wields significant executive power, and the associated constraints on

**PUBLIC**

removal of the Commissioners and other Commission officials, violates Article III of the U.S. Constitution and the separation of powers.

15. The Commission's procedures arbitrarily subject Albertsons to administrative proceedings rather than to proceedings before an Article III judge, in violation of Albertsons' right to Equal Protection under the Fifth Amendment.

16. The Commission's procedures violate Albertsons' right to procedural due process under the Due Process Clause of the Fifth Amendment.

17. The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint against Albertsons, violates Albertsons' Fifth Amendment Due Process right to adjudication before a neutral arbiter.

18. These administrative proceedings violate Albertsons' Fifth Amendment Due Process right to adjudication before a neutral arbiter as applied to Albertsons because the Commission has prejudged the merits of the instant action.

19. The Commission's charges under Section 5 of the Federal Trade Commission Act are unlawful to the extent the Commission purports to apply Section 5 beyond the metes and bounds of the Sherman and Clayton Acts.

**PUBLIC**

**NOTICE OF CONTEMPLATED RELIEF**

WHEREFORE, Albertsons requests that the Administrative Law Judge enter a judgment in its favor as follows:

- A. The Complaint be dismissed with prejudice;
- B. None of the Complaint's contemplated relief issue to the FTC;
- C. Any and all other relief as the Commission may deem just and proper.

Dated: March 11, 2024

Respectfully submitted,

/s/ Edward D. Hassi  
Edward D. Hassi  
Debevoise & Plimpton LLP  
801 Pennsylvania Avenue N.W.  
Washington, D.C. 20004  
(202) 383-8000

Michael Schaper  
Shannon Rose Selden  
J. Robert Abraham  
Natascha Born  
Marieugenia Cardenas  
Jaime Freilich-Fried  
Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001  
(212) 909-6000

*Counsel for Respondent Albertsons Companies, Inc.*

**PUBLIC****CERTIFICATE OF SERVICE**

I certify that on March 11, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Rm. H-113  
Washington, D.C. 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Rm. H-110  
Washington, D.C. 20580

I also certify that I cause the foregoing documents to be served via email to:

Charles Dickinson  
James H. Weingarten  
Emily Blackburn  
Paul Frangie  
Laura Hall  
Janet Kim  
Kenneth A. Libby  
Eric Olson  
Rohan Pai  
Harris Rothman  
Katherine Drummonds  
Albert Teng  
Joshua Smith  
Jacob Hamburger  
Elizabeth Arens  
Katherine Bies  
Lily Hough

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Telephone: (202) 326-2222  
cdickinson@ftc.gov  
jweingarten@ftc.gov  
ebackburn@ftc.gov  
pfrangie@ftc.gov

James A. Fishkin  
Michael G. Cowie  
Dechert LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
Telephone: (202) 261-3300  
james.fishkin@dechert.com  
mike.cowie@dechert.com

*Co-Counsel for Respondent Albertsons  
Companies, Inc.*

Matthew M. Wolf  
Michael B. Bernstein  
Sonia Kuester Pfaffenroth  
Joshua M. Davis  
Jason C. Ewart  
Matthew M. Shultz  
Yasmine Harik  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue, N.W.  
Washington, D.C. 20001  
Telephone: (202) 942-5000  
matthew.wolf@arnoldporter.com  
michaelb.bernstein@arnoldporter.com  
sonia.pffafenroth@arnoldporter.com

**PUBLIC**

lhall1@ftc.gov  
jkim3@ftc.gov  
klibby@ftc.gov  
eolson@ftc.gov  
rpai@ftc.gov  
hrothman@ftc.gov  
kdrummonds@ftc.gov  
ateng@ftc.gov  
jsmith3@ftc.gov  
jhamburger1@ftc.gov  
earens@ftc.gov  
kbies@ftc.gov  
lthough@ftc.gov

*Complaint Counsel*

joshua.davis@arnoldporter.com  
jason.ewart@arnoldporter.com  
matthew.shultz@arnoldporter.com  
yasmine.harik@arnoldporter.com

John Holler  
Arnold & Porter Kaye Scholer LLP  
250 W. 55th St.  
New York, NY 10019  
(212) 836-7739  
john.holler@arnoldporter.com

Luna Barrington  
Lisa Madalone Pieters  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10053  
Telephone: (212) 310-8000  
Luna.Barrington@weil.com  
Lisa.Pieters@weil.com

Bambo Obaro  
Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shoes, CA 94065  
Telephone: (650) 802-3000  
Bambo.Obaro@weil.com

Sarah Sternlieb  
Weil, Gotshal & Manges LLP  
700 Louisiana St., Suite 3200  
Houston, TX 77002  
Telephone: (713) 546-5000  
Sarah.Sternlieb@weil.com

**PUBLIC**

Mark A. Perry  
Jason Kleinwaks  
Luke Sullivan  
Weil, Gotshal & Manges LLP  
2001 M Street NW Suite 600  
Washington, D.C. 20036  
Telephone: (202) 682-7000  
Mark.Perry@weil.com  
Jason.Kleinwaks@weil.com  
Luke.Sullivan@weil.com

*Counsel for Respondent The Kroger Company*

Dated: March 11, 2024

By: /s/ Edward D. Hassi  
Edward D. Hassi

*Counsel for Respondent Albertsons  
Companies, Inc.*

**PUBLIC**

**CERTIFICATE FOR ELECTRONIC FILING**

I hereby certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 11, 2024

By: /s/ Edward D. Hassi  
Edward D. Hassi

*Counsel for Respondent Albertsons  
Companies, Inc.*