

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FEDERAL TRADE COMMISSION,)	
et al.,)	
)	
Plaintiffs,)	Case No. 3:24-cv-00347-AN
)	
v.)	
)	
THE KROGER COMPANY and)	August 26, 2024
ALBERTSONS COMPANIES, INC.,)	
)	
Defendants.)	Portland, Oregon
_____)	

PRELIMINARY INJUNCTION HEARING
DAY 1 - AFTERNOON SESSION
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ADRIENNE NELSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

1

2

3 FOR PLAINTIFF FEDERAL
4 TRADE COMMISSION:

Ms. Susan Musser
Mr. Charles Dickinson
Federal Trade Commission
400 7th Street S.W.
Washington, DC 20024

5

6

7

8

9

10

11 FOR PLAINTIFF STATE
12 OF ARIZONA:

Ms. Jayme L. Weber
Office of the Arizona Attorney General
400 W. Congress Street, Suite S-215
Tucson, AZ 85701

13

14

15

16 FOR PLAINTIFF STATE
17 OF CALIFORNIA:

Ms. Nicole Gordon
Office of the California Attorney
General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

18

19

20

21 FOR PLAINTIFF DISTRICT
22 OF COLUMBIA:

Ms. Estefania Yulianny Torres Paez
Office of Attorney General for the
District of Columbia
400 6th Street N.W., 10th Floor
Washington, DC 20001

23

24

25

1 FOR PLAINTIFF STATE
OF ILLINOIS: Mr. Brian Yost
2 Mr. Paul Harper
Office of the Illinois Attorney General
3 115 S. LaSalle Street
Chicago, IL 60603
4

5 FOR PLAINTIFF STATE
OF MARYLAND: Mr. Byron Warren
6 Office of the Maryland Attorney General
200 St. Paul Place
7 Baltimore, MD 21202
8

9 FOR PLAINTIFF STATE
OF NEVADA: Mr. Lucas J. Tucker
10 Nevada Attorney General's Office
8945 W. Russell Road, Suite 204
11 Las Vegas, NV 89148

12 FOR PLAINTIFF STATE
OF NEW MEXICO: Mr. Jeff Dan Herrera
13 New Mexico Office of the Attorney
General
14 Consumer Protection Division
408 Galisteo Street
15 Sante Fe, NM 87501

16 FOR PLAINTIFF STATE
OF OREGON: Mr. Christopher J. Kayser
17 Larkins Vacura Kayser LLP
121 S.W. Morrison Street, Suite 700
18 Portland, OR 97204

19 Mr. Tim D. Nord
Oregon Department of Justice
20 Civil Enforcement
1162 Court Street NE
21 Salem, OR 97301
22

23 FOR PLAINTIFF STATE
OF WYOMING: Mr. William Talley Young
24 109 State Capitol
Cheyenne, WY 82002
25

1 FOR DEFENDANT KROGER
2 COMPANY:

Mr. B. John Casey
Stoel Rives LLP
760 S.W. Ninth Avenue, Suite 3000
3 Portland, OR 97205

4 Mr. Bambo Obaro
Weil, Gotshal & Manges LLP
5 201 Redwood Shores Parkway
Redwood Shores, CA 94065

6 Ms. Luna Ngan Barrington
7 Weil, Gotshal & Manges LLP
767 Fifth Avenue
8 New York, NY 10153

9 Mr. Matthew M. Wolf
Ms. Sonia Kuester Pfaffenroth
10 Mr. Christian Schultz
Mr. Joshua Davis
11 Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, N.W.
12 Washington, DC 20001

13 Mr. Mark Andrew Perry
Weil, Gotshal & Manges
14 2001 M Street NW, Suite 600
Washington, DC 20036

15
16 Ms. Christine Wheatley
Kroger General Counsel
17 The Kroger Company
1014 Vine Street
18 Cincinnati, OH 45202

19
20
21
22
23
24
25

1 FOR DEFENDANT
2 ALBERTSONS COMPANIES,
3 INC.:

Mr. David H. Angeli
Angeli Law Group LLC
121 S.W. Morrison Street, Suite 400
Portland, OR 97204

4
5 Ms. Enu Mainigi
6 Mr. Jonathan Bradley Pitt
7 Mr. Adam Joshua Podoll
8 Ms. Beth A. Stewart
9 Mr. Michael Cowie
10 Mr. Tyler Infinger
11 Ms. Adwea Seymour
12 Mr. Thomas Moriarty
13 Williams & Connolly
14 680 Maine Avenue S.W.
15 Washington, DC 20024
16
17
18

19 COURT REPORTER:

Dennis W. Apodaca, RMR, RDR
United States District Courthouse
1000 S.W. Third Avenue, Room 301
Portland, OR 97204
dennis_apodaca@ord.uscourts.gov

22
23
24
25

1		INDEX		
2	On behalf of the FTC:	Direct	Cross	ReDirect
3	Peter Van Helden	160	208	218
4	Anthony Silva	219	240	
5	Andrew Groff	266		
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (August 26, 2024)

2 P R O C E E D I N G S

3 (Open court:)

4 THE COURT: You may call your first.

5 MR. PAI: Thank you, Your Honor. Good afternoon.

6 Rohan Pai on behalf of plaintiffs and the Federal
7 Trade Commission. The plaintiffs call Mr. Peter Van Helden to
8 the stand.

9 Your Honor, Mr. Van Helden is represented by counsel
10 today -- he is a third party -- Mr. Richard Marca.

11 THE COURT: Where is he?

12 MR. PAI: He is getting the witness, Your Honor.

13 Your Honor, pursuant to this Court's order on Friday,
14 Mr. Marca will be sitting in the well to make any objections
15 regarding confidentiality.

16 THE COURT: Absolutely. Just make sure we get him
17 close enough to a mic so he can be heard.

18 (The witness was duly sworn.)

19 THE CLERK: Would you please state your name for the
20 record, spelling your last.

21 THE WITNESS: Sure. Peter James Van Helden.
22 P-E-T-E-R, J-A-M-E-S, V-A-N H-E-L-D-E-N.

23 MR. PAI: Your Honor, may we approach the witness
24 with a binder of materials that we may use?

25 THE COURT: Yes.

P. Van Helden - D

1 DIRECT EXAMINATION

2 BY MR. PAI:

3 Q Good afternoon. Who is your employer?

4 A Stater Brothers Market.

5 Q What is your current title?

6 A I am chairman of the board and chief executive officer.

7 Q How long have you had your current roles?

8 A I became chairman of the board two years ago and CEO for
9 about five-and-a-half years.

10 Q Could you briefly describe your current role and
11 responsibilities?

12 A Currently I have total responsibility for the financial
13 performance of the company, the strategic planning, and
14 responsibility to manage the board.

15 Q Did you ever have any prior roles at Stater Brothers?

16 A I joined the company in 2013 as president and chief
17 operating officer.

18 Q And in your roles as president and chief operating
19 officer, did you have similar responsibilities to what you have
20 today?

21 A I did. At the time the chairman and CEO was also the
22 owner of the company, and he was struggling with health issues,
23 and so I essentially stepped in and pretty much had to run the
24 company.

25 Q Prior to being at Stater Brothers, did you hold any other

P. Van Helden - D

1 positions at any other supermarkets or food retailers?

2 A Yes.

3 Q What were those options?

4 A Prior to Stater Brothers Markets, I worked for Super
5 Value. Super Value is a wholesaler based out of Minneapolis.
6 That was part of the acquisition of Albertsons, and I worked
7 there for six years. My last job was executive vice president
8 of retail operations for which I had responsibility for 1,100
9 stores. Prior to that, I had 28 years with Albertsons.

10 Q You mentioned the Super Value is a wholesaler. Is it a
11 grocery wholesaler?

12 A Correct.

13 Q Approximately how long were you an executive at Super
14 Value?

15 A I was hired as a vice president and two years later
16 promoted to executive vice president.

17 Q And you mentioned that was part of an acquisition with
18 Albertsons. What were your responsibilities in connection with
19 that acquisition?

20 A At the time that Albertsons decided to make a strategic
21 change in direction, I was what was called president of
22 California at the time. We had operations in Northern
23 California and Southern California. I was based in Southern
24 California at the time. And when the company was split up in
25 2006, they were split up in three components. One of the

P. Van Helden - D

1 components would be loosely defined as the profitable part of
2 Albertsons of which Super Value acquired. They ended up
3 offering me a job, and so that's when I joined the company.

4 Q That was in 2006; is that right?

5 A Correct.

6 Q And you testified previously you were at Albertsons,
7 correct?

8 A I was, for 28 years.

9 Q Did you have any other roles in supermarkets in your
10 career?

11 A My entry level with a small company in Northwest Montana,
12 I bagged groceries.

13 Q Mr. Van Helden, is it safe to say you have had over 40
14 years of experience in the supermarket industry?

15 A Yeah. I think I'm pushing 47.

16 Q Mr. Van Helden, I would like to ask you some questions
17 about Stater Brothers and supermarkets generally. How many
18 stores does Stater Brothers currently own?

19 A 169.

20 Q And where are those stores located?

21 A All of them are located in Southern California.

22 Q Could you briefly describe the Stater Brothers store for
23 the Court?

24 A Sure. We are typically 25,000 square feet to 50,000
25 square feet. We operate what we call a full-service

P. Van Helden - D

1 supermarket. We've got specialty departments like sushi, cut
2 fruit, service deli, bakery. We have a specialized meat
3 department that provides full-service meat cutting for the
4 customer through actually an accredited program; a produce
5 department. And then typically you would see what he would
6 call center store, which would be frozen, you know, center
7 store grocery. We pride ourselves on operating very clean
8 stores, great locations, and exceptional customer service and
9 well-trained employees.

10 Q Mr. Van Helden, would you describe Stater Brothers as a
11 traditional supermarket?

12 A I would.

13 Q And what is a traditional supermarket?

14 A What I just described. Typically you see some traditional
15 supermarkets pushing 55- or 60,000 square feet. But beyond
16 that, they become much more of a discounter. So I would say 25
17 to 60 floor would be a good description for a typical
18 supermarket.

19 Q Mr. Van Helden, are you familiar with the term "one-stop
20 shop"?

21 A I am.

22 Q Could you explain what that means in the context of the
23 supermarket industry or Stater Brothers' business?

24 A Well, the idea is that customers would choose to shop with
25 a single retailer and do the bulk of their shopping at one

P. Van Helden - D

1 time, and so that would mean that they would not only have to
2 have all of the things that they want, all the services they
3 want, but it would be a place or an environment where they
4 would appreciate shopping at.

5 While the market gives lots of choices, we certainly
6 try to provide for our customer a good reason to come to shop
7 with us, so they choose us as that one-stop shop where they can
8 pick up pretty much everything they need. We don't operate
9 pharmacies. So if they have to get prescriptions, we couldn't
10 satisfy that. But pretty much everything else on their list we
11 think we can satisfy.

12 Q So does this concept of a one-stop shop still have
13 salience for Stater Brothers' business today?

14 A Absolutely.

15 Q You mentioned that Stater Brothers stores are roughly
16 between, I think you said 25,000 and 65,000 square feet. Why
17 is it necessary to have a store that size for your business?

18 A Correction. Our stores are 25 to 50. So we don't have
19 anything beyond 50. We need a store that size to operate the
20 breadth of service departments that we have as well as the
21 assortment of items in the center store that the customer would
22 expect us to have.

23 Q Could you describe the breadth of the product assortment
24 that Stater Brothers offers in your stores today.

25 A We typically today offer around 30,000 SKUs or single-item

P. Van Helden - D

1 stock keeping units. That's the breadth we offer today across
2 the store today broken up across the departments that I've
3 described.

4 Q Can you define that? What do you mean by a SKU?

5 A A stock keeping unit is an individual item. When you see
6 the UPC on the back of a package, that's a license plate of
7 that product that's unique to itself. So even if somebody has
8 multiple flavors, it'll have a different SKU for each flavor,
9 so those are counted as unique and different items. So in
10 total we have about 30,000 that are active.

11 Q Does Stater Brothers offer a wide variety of national
12 brand customers for its customers for each product category
13 that you sell?

14 A Yes, we do.

15 Q Why?

16 A Well, the national brand was really the innovation for a
17 lot of categories and a lot of items. The national brands put
18 together the R&D and created new items more so than, say,
19 private label. Private label is a bit more of a take -- a
20 follow-on. So the national brand items purportedly receive
21 national and local advertising, promotions, price promotions,
22 those kinds of things. So they represent over 30 percent of
23 our business, so we really need to be part of that.

24 Q Do you offer multiple national brands, I guess for each
25 type of product, so, for example, for mustard?

P. Van Helden - D

1 A Yes.

2 Q Why would you offer national multiple brands for any
3 individual type of product?

4 A It creates competition between the brands.

5 Q Do your customers expect to see multiple national brands
6 for each type of product?

7 A They do.

8 Q And what value does that provide to your customers?

9 A Well, again, if they're loyal to a particular brand and we
10 didn't carry, it is harder to achieve that one-stop shop,
11 they'd have to go somewhere else.

12 Q You mentioned private label products. Could you just
13 describe briefly what are private label products?

14 A Sure. Private label products are typically exclusive to
15 the retailer that sells them, although that has changed
16 somewhat over the years. To help describe, let me back up a
17 little bit. 20, 25 years ago, you would see a private label
18 product almost always reflect the name on the building. So in
19 our case, Stater Brothers is on the building; the product
20 themselves would say Stater Brothers.

21 Over the years that has changed significantly, and
22 we're having to now acquire brands that are shared with other
23 retailers similar to us. There is still a private brand but
24 not as private, because they aren't as exclusive. But we have
25 had to do that in order to meet minimum order quantities that

P. Van Helden - D

1 some of these manufacturers require. Most of those brands are
2 procured through a co-op organization called Topco. There's
3 many brands that they offer and we participate with many of
4 those brands.

5 Q I'll ask you more about that in a moment, sir. But for
6 most products that Stater Brothers offers in its stores, do you
7 carry both national brands and private label options?

8 A For most, yes.

9 Q And why would you want to offer both a national brand and
10 a private label option?

11 A Well, typically there are two advantages to a private
12 label brand. One, because that private label brand doesn't
13 have all of the R&D and marketing efforts that the national
14 brand item would have, those are offered at a lower cost to us,
15 and so we can reflect a lower retail. So when the consumer is
16 at shelf comparing a national brand and an equivalent private
17 brand, every time they will find that the private brand is a
18 lower retail.

19 Additionally, those private brands allow us to
20 capture more profit margin as well. So for both of those
21 reasons, we want to sell private brands whenever we can.

22 I guess one last thing I would add, if the private
23 brand is still my label, or in this case Stater Brothers label,
24 they can't buy it anywhere else. So if they fall in love with
25 that product, they can't get it anywhere else, not at Costco,

P. Van Helden - D

1 nowhere, so they would have to come to my store.

2 Q Do you find that customers like the option of having both
3 a private and national brand?

4 A They do.

5 Q Do you have a sense of what portion of Stater Brothers'
6 business is private label versus national brand?

7 A Yeah. All in, from a dollar perspective, about 28 percent
8 of our sales are private brand.

9 Q Mr. Van Helden, earlier when you were describing the
10 Stater Brothers market, you mentioned that you offered
11 full-service departments. Could you give us a couple of
12 examples of those departments.

13 A Sure. Sushi, for example, is a full-service department.
14 You have got live sushi chefs there that can custom make
15 anything that a customer wants. Cut fruit is very similar. We
16 cut fruit in the store. If a customer wants a unique item, we
17 can prepare it right there. Service deli is almost sold mostly
18 across the counter, so meats and cheeses are behind a closed
19 case. So it's a service counter. The customer asks for what
20 they would like, and we would slice it right there in front of
21 them. Fried chicken. All these things are done fresh. They
22 are done at the moment. We have got people behind the counter.
23 Bakery, the same.

24 The meat department is even more so. Most
25 conventional supermarkets have actually moved to a much more

P. Van Helden - D

1 efficient processing in meat departments where they don't have
2 the interaction with the meat cutter and the customer.

3 Half of our meat is sold over a service counter. We
4 have expert meat cutters who are accredited by the state who
5 can cut anything on request. They can give food preparation
6 guidelines, suggestions, all kinds of things that you wouldn't
7 get if they weren't there.

8 Q Is it more expensive for Stater Brothers to offer the
9 staff departments -- or staff service counters than just having
10 products in a display case?

11 A Yes.

12 Q How so?

13 A You have the cost of labor. We are a hundred percent
14 unionized, and it's not cheap.

15 Q Why does Stater Brothers then offer staff service
16 counters?

17 A Because our customers expect it. It's why they shop with
18 us. Not everyone wants to shop in an environment where they
19 can't get help, and we've got people that are willing to help
20 where they need it.

21 Q And what benefit -- you touched on this before. Just to
22 clarify, what benefit is there to the customer in having a
23 staff service counter for meat or seafood or whatever other
24 items you mentioned?

25 A It is customization. They can get exactly what they want.

P. Van Helden - D

1 They can get the size they want. If they only want a half
2 pound of a particular cheese, they can ask for that. They can
3 get great advice. They can get meal solution ideas; those
4 kinds of things.

5 Q Mr. Van Helden, do you find that other traditional
6 supermarkets offer similar services to the ones you just
7 described?

8 A I do.

9 Q Does Stater Brothers offer customers a unique shopping
10 experience that they can't get at other types of retail
11 formats?

12 A Well, as it relates to some other types of formats, yes, I
13 would say we are similar to a conventional supermarket.

14 Q How would you describe the differences between a
15 conventional supermarket and other formats in terms of the
16 customer base?

17 A Well, you can pick the competitor, but let me talk about a
18 couple. Let's use an Aldi, for example. The price is very,
19 very inexpensive, virtually no service. They don't even
20 publish their telephone number so you could call the store if
21 you wanted to. They only carry 1,200 items across the stores
22 compared to our 30,000 items, and they don't have the service
23 departments that we offer. So for a customer looking for
24 service and the service departments and someone there to help
25 them with their needs, they wouldn't go to an Aldi.

P. Van Helden - D

1 Dollar Store is similar as well.

2 Q Mr. Van Helden, who do you consider to be Stater Brothers'
3 main competitors?

4 A Albertsons, Vons, and Ralphs.

5 Q Is Albertsons a traditional supermarket like Stater
6 Brothers?

7 A Yes.

8 Q Is Vons a traditional supermarket like Stater Brothers?

9 A Yes.

10 Q For clarity of the record, is Vons owned by Albertsons?

11 A Yes.

12 Q You mentioned Ralphs. Is Ralphs also a traditional
13 supermarket?

14 A Yes.

15 Q And is Ralphs owned by Kroger?

16 A Yes.

17 Q Why do you consider Albertsons, Vons, and Ralphs to be
18 your main competitors?

19 A Because they look like we do, and they offer similar
20 services.

21 Q We touched on this already. Are you familiar with other
22 types of grocery retail formats?

23 A Yes.

24 Q What are some examples of other kind of categories of
25 retail formats that you're familiar with in Southern

P. Van Helden - D

1 California?

2 A Well, you could look at a membership format, like Costco
3 or Sam's. You can look at a large discounter like Walmart or
4 Target. They offer very large stores and very low prices.
5 There are some unique ethnic operators in the market.
6 Northgate Gonzalez, for example, really tailors their offering
7 towards the Latino customer.

8 Then there are a couple of upscale companies like
9 Bristol Farms and Gelson's, who provide a larger expansion of
10 organic items and prepared items but at a much higher retail.
11 Those would be different categories.

12 Q You mentioned membership stores like Costco and
13 Sam's Club. Do you also refer to those as "club stores"?

14 A Yes.

15 Q I think you might have answered this question already. Do
16 you consider club stores to be traditional supermarkets?

17 A No.

18 Q Can you explain the differences in your experience between
19 a club store and a traditional supermarket like
20 Stater Brothers?

21 A Well, first of all, you have to pay them money to have the
22 privilege to shop with them. That's different. They offer
23 very, very different products in terms of package size. It may
24 be the same product, but you have to buy a much larger
25 quantity. Their service is different. A lot of it is not near

P. Van Helden - D

1 as much over the counter. I'll use the meat department, for
2 example. You don't have live butchers across the counter to
3 talk to. There are butchers there, but they're behind the
4 scenes, cutting meat, and putting it out in the case. Very,
5 very large buildings. It's not easy for some customers to
6 walk. And just real lack of service.

7 Q I would like to unpack those things, if I may.

8 A Sure.

9 Q You mentioned package size. Can you expand what you mean,
10 the larger package size that Costco or club stores may offer?

11 A So let's just keep it simple. Let's use a can of beans.
12 I will sell one can of beans. They will put it in a six-pack
13 or a twelve-pack, and that's the minimum you can buy. And they
14 do that with virtually every item in the store.

15 Q Does Costco offer the same breadth or assortment and the
16 same number of SKU for grocery products that a Stater Brothers
17 offers?

18 A I don't know what their total SKU count is. I would say
19 they cover most of the same categories, but within those
20 categories we have more variety.

21 Q Generally speaking, would a Costco or other club store
22 offer the same variety of national brands that a Stater
23 Brothers offers?

24 A No.

25 Q Does Costco offer a comparable shopping experience to a

P. Van Helden - D

1 customer relative to shopping at a traditional supermarket like
2 a Stater Brothers?

3 A Not even close.

4 Q What are some of the key differences?

5 A First of all, I'll try to find a place to park. They are
6 very busy. They do a lot of business, granted. But as soon as
7 you walk in, you have to be checked for your membership. And
8 you have got to be ready to buy everything in large quantity,
9 at least in the food categories, because everything is offered
10 in large quantities. After you check out, once again, they
11 search to make sure you didn't -- make sure you paid for
12 everything. Then you have a long trip to your car.

13 Q Mr. Van Helden, you spoke about Aldi a few minutes ago.
14 Is Aldi -- what kind of grocer is Aldi?

15 A Very low price; very, very limited item selection. Most
16 of what they sell is an own-brand or a private brand item, but
17 they operate on a very, very low-cost structure. They're
18 nonunion. Virtually there's no one there to help you. You
19 even have to pay 25 cents to get a grocery cart to shop, and so
20 it is a very different operating model.

21 Q Does Aldi offer a comparable range of product variety
22 relative to Stater Brothers?

23 A Not even close.

24 Q Could you explain the distinction?

25 A Again, they carry 1,200 items as opposed to, say, my

P. Van Helden - D

1 30,000, to start with. The vast majority of those 1,200 will
2 be their own private brands. They carry very little national
3 brand.

4 Q So could a customer -- I think you answered my question.
5 Could a customer find the same range of national brands at a
6 Aldi that they could find at a Stater Brothers?

7 A No.

8 Q Does Stater Brothers consider Aldi a significant
9 competitor in Southern California?

10 A No.

11 Q Why not?

12 A Because we are competing for a different customer.

13 Q And could you explain the kind of customer that Stater
14 Brothers is competing for as a traditional supermarket relative
15 to an Aldi?

16 A Again, we're looking for that 35 to 45-year-old female
17 head of household with a family in that one-stop shop, so she
18 can virtually buy everything she needs in that one-stop shop.
19 She appreciates a clean store. She appreciates a high level of
20 service. She appreciates having someone available to answer
21 questions, help find an item, whatever she needs help with, and
22 even carry your groceries out to the car.

23 Q Would you expect that some of your shoppers would also
24 shop at an Aldi on occasion?

25 A Sure, from time to time.

P. Van Helden - D

1 Q Given the fact that they might also shop at an Aldi, why
2 would you still not view them as a competitor?

3 A Because my operating model doesn't attract that type of
4 customer who is so focused on price. She may shop there
5 occasionally. I don't know. But the core customer that we're
6 after is not an Aldi customer.

7 Q Are you familiar with Dollar Stores?

8 A Yes.

9 Q And do Dollar Stores offer grocery products?

10 A Some.

11 Q Do you consider Dollar Stores to be a key competitor for
12 Stater Brothers?

13 A No.

14 Q Why not?

15 A They have a limited variety, typically lower quality, not
16 nearly as broad on a fresh offering in meat and produce and
17 deli and bakery, if any, and virtually no service.

18 Q Does a Dollar Store offer a different shopping experience
19 for a customer?

20 A Yes.

21 Q You mentioned lower product quality. Could you describe
22 the differences in product quality between Stater Brothers or a
23 traditional supermarket and a Dollar Store?

24 A There are a number of food manufacturers out there who
25 will produce a lower quality product, maybe sell it under a

P. Van Helden - D

1 different name, not necessarily a private label per se, because
2 they make it available to anybody. But it's a lower quality at
3 a lower cost of goods, and it's often reflected in a lower
4 retail price, some of it coming from overseas.

5 Q Do Dollar Stores typically offer as broad an assortment of
6 products as a traditional supermarket?

7 A No.

8 Q And do Dollar Stores offer -- is it the same type of
9 customer services or staff counters that a traditional
10 supermarket would offer?

11 A Not even close.

12 Q Mr. Van Helden, I would like to ask you a few questions
13 about Stater Brothers' pricing. Does Stater Brothers check the
14 prices at other supermarkets?

15 A We do it thorough a service.

16 Q And why does Stater Brothers check prices at other
17 supermarkets?

18 A Well, price is important, and we need to know where in
19 particular conventional supermarkets are priced to make sure
20 that we are priced below them.

21 Q In price checking other supermarkets, which stores does
22 Stater Brothers focus on?

23 A Albertsons, Vons, and Ralphs.

24 Q Approximately how many items does Stater Brothers check at
25 Albertsons?

P. Van Helden - D

1 A Well, what we do with these price checks, we start with
2 that active list of about 30,000 items. Then we remove from
3 that greeting cards, which are over 10,000 SKUs. Then the
4 balance of that we only price check on exact match basis, so
5 UPC for UPC. So if there isn't an exact match on the UPC, we
6 don't check. If there is, then we do. I think we're checking
7 about 15,000 items at Albertsons.

8 Q And approximately how many items are you checking at Vons?

9 A About the same.

10 Q Approximately how many items do you check at Ralphs?

11 A About the same. I don't have it in front of me, but they
12 are pretty close.

13 Q You mentioned that -- is it a service that does the price
14 checking for you?

15 A Yes.

16 Q Does that service also price check club stores like a
17 Costco?

18 A They do.

19 Q And roughly how many SKUs does the service price check for
20 Stater Brothers and Costco?

21 A 243.

22 Q Why so few?

23 A Because even with that 243, only roughly 95 of them are
24 what I would call a match. But they're close enough for
25 comparison purposes. But the closest we can -- really, the

P. Van Helden - D

1 largest number we can get up to in comparison is 243 out of the
2 30,000.

3 Q Why is it not worth it to you to also price check the
4 other products that might not be a one-for-one match between a
5 Stater Brothers and a Costco?

6 A It's not items that we carry.

7 Q Does Stater Brothers focus on the price checks at limited
8 assortment stores like an Aldi or a Lidl?

9 A No.

10 Q Why not?

11 A It's not our customer. I already know they're cheaper.

12 Q Does Stater Brothers price check at Dollar Stores?

13 A No.

14 Q Does Stater Brothers price check at convenience stores?

15 A No.

16 Q In doing the price check, does Stater Brothers ever adjust
17 its own prices in response to the prices you're seeing from
18 those checks?

19 A Yes. Always.

20 Q Does Stater Brothers have any sort of rules or guidelines
21 on how they implement those price adjustments?

22 A Yes. All of our pricing is managed in our corporate
23 office by category managers, so every category manager has
24 several categories that they manage. They manage all the
25 pricing. Pricing is a component of two things: One is cost of

P. Van Helden - D

1 goods. So when of the cost of goods change, we look at can we
2 move on the retail as well. Then we also want to make sure
3 that we're priced appropriate for conventional supermarkets in
4 our market.

5 Q Which competitors does Stater Brothers most frequently
6 adjust prices in response to?

7 A Albertsons, Vons, and Ralphs.

8 Q Do you ever adjust your pricing or base it on the sort of
9 store like an Aldi or Lidl?

10 A No.

11 Q Do you ever adjust your pricing or base your pricing off
12 of Dollar Stores?

13 A No.

14 Q Do you ever adjust your pricing based on club stores like
15 a Costco?

16 A We have a handful of items like I mentioned -- that 95 --
17 that are a close match. We don't match them head-to-head
18 because we often find that their retail is lower than our cost
19 of goods. So we can't sell things below cost and remain
20 profitable. But we try to stay within a reasonable range on
21 those items, but it's a very small number though.

22 Q Do you ever adjust your prices based on prices at
23 convenience stores?

24 A No.

25 Q Mr. Van Helden, I would like to return to your testimony

P. Van Helden - D

1 earlier about private label products that we were discussing?

2 A Sure.

3 Q Is selling a private label product generally more
4 profitable to Stater Brothers than selling the equivalent
5 national brand product?

6 A Generally, yes.

7 Q How much more profitable?

8 A We usually see on a percentage basis about 10 percent.

9 Q Is that 10 percent an average across all products?

10 A Every item is going to be somewhat different. Again, we
11 price based upon the cost of goods for that item. Then it also
12 has to have a relative spread from the national brand. If it
13 was only a penny or two difference, the consumer would be
14 willing to buy the national brands, so we've got to make sure
15 we have a good enough spread between the two that it would
16 encourage the customer to buy the private label.

17 Q You mentioned this earlier, but why are sales of private
18 label products more profitable for Stater Brothers than sales
19 of the equivalent national brand?

20 A Well, again, national brand products have a lot of
21 overhead attached to them -- the R and D, the marketing, and
22 big corporate overhead, and so that is all reflected in the
23 cost of goods to us. So it's just a higher cost of goods. For
24 private label -- private label is simply going after a
25 competitive -- a national brand item and creating an equivalent

P. Van Helden - D

1 to it. A lot of work has already been done and reflects a much
2 lower cost of goods, and we can offer a lower retail.

3 Q Is it important for Stater Brothers to have private label
4 brands that are familiar to its customers?

5 A Yes.

6 Q Why?

7 A Well, customers are picky about what they buy, and
8 encouraging that first try is sometimes not always easy. But
9 once they try a national brand, they realize the quality is
10 there, and they really like that product, they're paying less,
11 then what's not to like? That encourages loyalty.

12 Q You might have misspoke, Mr. Van Helden. Is it the first
13 time they try a private label product not a national brand
14 product?

15 A Well, either. A private label, because it's lower price,
16 if they have never tried it before, there is some connotation
17 that maybe it is a lower quality. So the first time they try
18 it they might be a bit skeptical, thinking it's a lower quality
19 because it has a lower price. But once they try the product,
20 they realize the quality is every bit as good or in some cases
21 even better than the national brand, and they paid a lower
22 price, then we can have their loyalty on that product.

23 Q Does Stater Brothers take affirmative steps to make sure
24 that its private label offerings are attractive or familiar for
25 its customers?

P. Van Helden - D

1 A Yeah. We're always looking at different categories and
2 what items should have private representation. Then, of
3 course, we negotiate the cost of goods through Topco to receive
4 the lowest cost of goods to make sure we have that spread
5 between -- on the retail between the national brand and the
6 private label item.

7 Q How long does it typically take for a new private label
8 item you might introduce into a Stater Brothers store for it to
9 gain a following among customers?

10 A It's typically -- to really get that following, it's a
11 year to a year-and-a-half.

12 Q Is that a year to a year-and-a-half with the Stater
13 Brothers name on the product?

14 A Either that or -- probably a little less if it has a
15 Stater Brothers name on the product, because they're more
16 familiar with that. But if it is one of Topco brands, like
17 Crav'n Flavor or Simply Done, for example, that might take
18 longer because they're not as familiar with it. And that brand
19 can transport across categories. So if I have a Stater Brother
20 brand in pasta, for example, and then I had a Stater Brother
21 brand in canned vegetables, if they like the pasta, and it
22 comes with the quality, they're more likely to transition to
23 another Stater Brothers brand, because they're familiar with
24 it. When I bring in a new brand from Topco that they're not
25 familiar with, that's a harder transition.

P. Van Helden - D

1 Q What sort of efforts do you take when you are offering
2 something that's not the Stater Brothers brand to get a
3 following?

4 A Typically on launch we reduce the price. We do
5 promotions. We use social media to talk about it. We will do
6 in-store testings -- samplings to show the customer the quality
7 of the product.

8 Q Is that always effective when you're not using your
9 store's brand on the product?

10 A I'm sorry?

11 Q I'll rephrase. Is it always effective -- is the attempt
12 to make a product attractive to a customer effective when it's
13 not the Stater Brothers brand name on the product?

14 A Not always.

15 Q You mentioned Topco a few times. What exactly is Topco?

16 A Topco is essentially a co-op that's made up of members
17 similar to our company, regional operators, who pool their
18 buying power together so we can have a larger buying power
19 against manufacturers, and they're more willing to offer a
20 lower cost of goods.

21 Q Are Topco's products sold across all those retailers under
22 the same name?

23 A Topco does two things: They have a family of brands of
24 their own that would be spread across all members. By the way,
25 not everybody is a member. But for those that are members,

P. Van Helden - D

1 they would have access to those brands based upon certain
2 criteria. It would also be helpful with managing some
3 manufacturers for the brands that have our name on it as well.

4 Q Does Stater Brothers have a preference for offering
5 private label products carrying your own store's name?

6 A Yes, we would love to, and that's exclusive to us only.

7 Q What benefit is there to that exclusivity?

8 A If they like it and they like the price, they can't buy
9 anywhere else; nowhere. They have to come to us.

10 Q Has there ever been a time when Stater Brothers had to
11 stop offering a Stater Brothers private label product?

12 A Yeah. Unfortunately too often recently.

13 Q Why did this occur?

14 A Because manufacturers are trying to be incredibly --
15 manufacturers of private label items, like everybody else, want
16 to be incredibly efficient. And when they are producing our
17 label, they're also producing other companies' labels as well.
18 But when they change to produce for somebody else, they have to
19 often change the quality spec of the product, and it also has
20 to change the label. So that means an entire shutdown or
21 change over a production run.

22 What has happened over the years is large companies
23 show up, and they're essentially taking over these production
24 lines for long periods. And companies are recognizing they
25 don't have time now. They can't take the downtime to change

P. Van Helden - D

1 over to a small company like Stater Brothers for a different
2 quality spec and for a different label.

3 So what they do and what we've seen in the last five
4 or six years is these manufacturers start raising a minimum
5 order quantity. So in other words, we will do your Stater
6 Brothers label -- making up a number here -- that you have to
7 buy 10,000 cases. If you don't buy 10,000 cases, we are not
8 going to stop the line in order to make that product. These
9 minimum order quantities have been around for a while, but they
10 haven't been enforced until the last five years or so. And now
11 they're becoming forceful. And so there's times that we will
12 literally get a phone call from a manufacturer and just say,
13 "You know what, we can't do you anymore. You take up too much
14 of our time." More of our time is now allocated to large
15 companies that have longer production runs that are much more
16 efficient, and so they discontinued doing it.

17 Q What does Stater Brothers do when you can no longer source
18 your proprietary private label product?

19 A Well, that's when we turn to Topco. The pooled buying
20 power of all the Topco members can get you to that minimum
21 order quantity. So, for example, our Stater Brothers frozen
22 potatoes are now Crav'n Flavor, because Crav'n Flavor is the
23 Topco brand, and with all the members buying that, we've now
24 been able to meet the minimum order quantity, when we couldn't
25 do it with our brand.

P. Van Helden - D

1 Q Was there any downside to switching any of your products
2 over from your proprietary Stated Brothers private label to the
3 Topco product?

4 A Yeah. There is a lot of downside -- a couple of things.
5 First of all, it is usually not a one-for-one match on the SKU.
6 For example -- and we went through this with cereal recently.
7 We had 18 varieties of cereal with the Stater Brothers label.
8 When Post gave us notice that they were no longer going to
9 produce cereal, we moved over to a Topco brand called Food
10 Club, but there were only sixteen matching SKUs. So instantly
11 two of the items are just gone. So the sales associated with
12 those two items is gone.

13 Even more critical is when we lost our one of our
14 dairy manufacturers. We went from 18 items to 11. So we lost
15 a significant portion of the item count. That's one.

16 Two, now we have to reestablish a whole new brand
17 that a customer may not be familiar with. So in the case of
18 cereal and Food Club, we had never carried a Food Club cereal.
19 So we have to aggressively promote it and gain that trust with
20 the customer. In every case we typically lose about 15 percent
21 of sales immediately. Then we have to work our way back over
22 the course of the year or a year-and-a-half to get back to
23 where we were before we lost the Stater Brothers brand.

24 Q To clarify one thing you said at the very end, what has
25 been your experience in terms of the drop in sales when you had

P. Van Helden - D

1 to switch over from the Stater Brothers label to a Topco or
2 other label?

3 A Typically we see a 15 percent drop in sales.

4 Q Do you have a sense of what factors contribute to that
5 loss in sales?

6 A Well, again, it's a new brand to the consumer, and so we
7 essentially have to market that new brand all over again to
8 gain their trust. Again, when they see a brand that's priced
9 less than the national brand, where they may have confidence in
10 quality, they're a bit skeptical until they try it. So it
11 means we have to market heavily, sample it, do those kinds of
12 things to gain that trust, and it takes time.

13 Q Would you prefer to continue stocking a Stater Brothers
14 private label product instead of a Topco private label product?

15 A Absolutely. I wish every one of our private labels were
16 Stater Brothers.

17 Q Mr. Van Helden, I would like to ask you about opening
18 stores. Has Stater Brothers opened new stores during your
19 tenure with the company?

20 A Yes.

21 Q Are you generally familiar with the process of opening a
22 brand-new supermarket?

23 A Very.

24 Q Can you describe the process of opening a new store from
25 your perspective at Stater Brothers?

P. Van Helden - D

1 A Sure. There are a couple of different events that would
2 prompt us to look for a new store. One might be a growing
3 contiguous market associated with where we're at, but a lot of
4 new homes planned, a lot of new growth planned, and an
5 opportunity for us to extend our market share into a growing
6 market. That would be one example.

7 Another example might be where we want to replace a
8 smaller, older store where we're not able to take, say, a
9 25,000 square foot store and have the space to remodel it to
10 say for 45-, which is our prototype size. So we would look to
11 replace that store. That would be another example.

12 And then lastly, fortunately, we have some markets
13 where we're doing very well and some of the stores in that
14 market are at capacity. And as the market continues to grow --
15 and we have stores that are already at capacity -- we don't
16 provide a very good shopping experience because we're just so
17 busy, and so we'll actually put a new store in a growing market
18 where we have excellent market share just to give relief to
19 those existing stores because that shopping experience is
20 really important to us.

21 Q How long does it typical take for Stater Brothers to open
22 a store in a brand-new location?

23 A If it's a greenfield site, nowadays anything under four
24 years we are pretty excited. I have seen them go as long as
25 eleven. It is getting to be very complicated with zoning,

P. Van Helden - D

1 environmental, and permitting.

2 Q And what do you mean by "greenfield"?

3 A Well, if we were to start with a vacant lot, for example,
4 and build from the ground up as opposed to acquiring a building
5 from perhaps a former grocery store that has been closed. In
6 those cases the buildings exists, the zoning exists. It's
7 really a matter of getting construction permits, and so that
8 process is much faster. It doesn't happen very often. Most of
9 our new stores are what I called greenfield.

10 Q How much does it cost to build a store in a greenfield
11 expansion scenario?

12 A It takes about \$20 million in capital.

13 Q Is Stater Brothers consider expanding its footprint
14 outside of Southern California?

15 A No.

16 Q Why not?

17 A Because the cost of distribution is too high. It costs
18 roughly \$6 a mile to run one of our trucks. We're a hundred
19 percent self-distributed. So from our business model, a
20 hundred miles from a distribution center is about as far as we
21 can go. Beyond that, the cost becomes prohibitive, and I can't
22 hold the retails that we want for that market. So we pretty
23 much stay within a hundred miles. Our preference is to be
24 within 50 miles of our distribution center. Of course, that
25 doesn't get you outside of Southern California, so that's why.

P. Van Helden - D

1 Q Does Stater Brothers consider the presence of other
2 grocery retailers when deciding where to locate the new store?

3 A Of course.

4 Q Which grocery retailers would you consider in making that
5 assessment?

6 A Well, we look at Albertsons, Vons, and Ralphs, first of
7 all. There might be a Food 4 Less. There might be a Gelson's.
8 There might be a Walmart. There might be a Costco. We look at
9 all of that. But the way we look at it is we hire a firm to
10 assess what is the food dollar being spent in that market.
11 Then when we know what that total food dollar is being spent in
12 that market, we look to see if we think we have -- can attract
13 a big enough piece of it to sustain a brand-new store and \$20
14 million. The Costco customer is not an easy acquisition, not
15 one that we count on. The Walmart customer is a very difficult
16 acquisition because of price, so we don't count on that. When
17 we move into a market that Albertsons, Vons, and Ralphs has a
18 lot of market share, that's a better proposition for us because
19 that's our kind of customer.

20 Q You mentioned Costco. Has Stater Brothers ever built a
21 store in close proximity to a Costco?

22 A Yes, we have. In fact, we have one under construction
23 right now.

24 Q Where is that store being built?

25 A It is being built in Highland. The Costco is essentially

P. Van Helden - D

1 in the parking lot, and they're under construction now. We
2 will finish construction a little bit after them next year.

3 Q Were you aware that there was going to be a Costco near
4 you when you started construction of that site?

5 A Yeah. The developer brought the deal to us and explained
6 that Costco was going in essentially the same development
7 across the street. Again, we looked at the whole market and
8 decided it would still be a good fit for us.

9 Q Why did the presence for an adjacent Costco not deter you
10 from building a new Stater Brothers location -- a new Stater
11 Brothers market at that location?

12 A Well, we take an existing store, and a Costco opens
13 nearby, we don't see a significant effect. We would see a much
14 larger effect if an Albertsons, Vons, and Ralphs opened nearby
15 versus a Costco, No. 1. No. 2, over time we find that we
16 sponge a bit off of the traffic that a Costco attracts.
17 Costcos are a pretty hard one-stop shop because the quantities
18 are so large. So for customers who are wanting smaller sizes
19 or smaller quantities, they went to a Costco for some of their
20 items. "Oh, Stater Brothers is literally in the same parking
21 lot; let me go finish my shopping with them." So we sponge off
22 the traffic with a Costco.

23 Q Mr. Van Helden, I would like to ask you a little bit about
24 Stater Brothers' workforce. Approximately how many workers are
25 there in a typical Stater Brothers store?

P. Van Helden - D

1 A On average about a hundred.

2 Q Generally speaking, what are the job categories that exist
3 within a Stater Brothers supermarket?

4 A Well, we have got a store manager and an assistant store
5 manager. Those are the only two nonunion positions in the
6 store. Then you have got department managers, who are in
7 charge of each individual department, like meat, produce, deli,
8 bakery. And then we have what's called key carriers, and those
9 are people that are responsible for the whole store when the
10 store manager or the assistant manager is not there. Then we
11 have a clerk classification, a general merchandise clerk
12 classification, and a courtesy clerk classification below that.

13 Q Do any of these roles require specialized skills or
14 accreditation?

15 A Yes. Obviously the store manager and the assistant
16 manager typically are veterans of the company for 15-plus
17 years, so that's the learning process they go through. The
18 meat department in particular, we have an accredited meat
19 cutter program that nobody else is doing. It is a two-year
20 program accredited by the state that the meat clerk would go
21 through. And once they're an accredited meat cutter, now they
22 are allowed to use the knife and understand meat cutting much
23 better than a meat clerk would. That would be the most obvious
24 example of a formal program. However, even in deli and in
25 bakery, we have internal programs that we have to train for

P. Van Helden - D

1 those departments. They're relatively complicated departments.

2 Q What sort of specialized skills would you expect for an
3 employee to have in your bakery department?

4 A Well, first of all, they have got to have a food handlers
5 card. That's produced by the state. They have to take a test.
6 They have to understand food safety. They have to understand
7 the products that they sell. Some of the products are baked
8 and prepared in the store. We have cake decorators, for
9 example. That's a skill set all on its own. So those are the
10 kind of skill sets specific to that department.

11 Q Does Stater Brothers offer specialized training within the
12 bakery department?

13 A Not as it relates to what we do in the meat department,
14 but we have our own internal training program.

15 Q Going back to the meat department, you mentioned it is an
16 accredited program. Can you explain what you meant by
17 "accredited"?

18 A It's accredited by the state, approved by the state, with
19 credits that carry into further education.

20 Q Do employees in the deli department need any special
21 skills or certifications?

22 A Similar to what we would have in the bakery department,
23 food handlers card, they handle a lot of hot foods, prepared
24 foods that have special food safety, and, frankly, employee
25 safety requirements. So there is training, I would say even

P. Van Helden - D

1 more -- even more than we would have in a bakery.

2 Q Who does Stater Brothers consider to be its main
3 competition in recruiting or retaining workers in the
4 supermarkets?

5 A Well, since we're unionized, it is likely that we would --
6 a new employee would come from another union, so Albertsons,
7 Vons, and Ralphs.

8 Q Why is the fact that you are unionized make a difference?

9 A People are looking for that level of pay and that level of
10 benefits if they are working for one of those competitors. The
11 only exception to that for the most part would be courtesy
12 clerks. These are typically high school kids with first job,
13 so they have no experience. But beyond that, we look for
14 experience within the union. In fact, sometimes if we have got
15 a number of openings we can't fill, we ask the union if they're
16 aware of folks that might want to switch companies.

17 Q Do you have any responsibilities for labor relations for
18 Stater Brothers?

19 A I do.

20 Q And are you involved in labor negotiations with the union?

21 A Indirectly, yes.

22 Q Can you describe what your role is.

23 A So we typically have contracts -- we have three contracts.
24 We have retail clerks contract. We have a janitors -- a very
25 small janitors contract. Then we have the Teamsters. The

P. Van Helden - D

1 Teamsters is a five-year contract. The clerks is a three-year
2 contract. So when those contracts expire, then we begin
3 negotiating for a new contract. I don't sit in the negotiating
4 room. I don't do the negotiating, but I work with our team to
5 define the kinds of strategies that we want to deploy against
6 those negotiations. Those strategies have to do also with
7 where we are trying to go with the company. So they need to
8 make sure as they negotiate contracts that we're going to live
9 with for a while that align with the strategy of the company.

10 Q In helping pick through the strategy of the company, do
11 you have a general sense of similarities and differences in
12 union and nonunion compensation in Southern California?

13 A Yes.

14 Q How does the pay and benefits you offer to your union
15 employees compare to the nonunion?

16 A Much better.

17 Q Can you explain sort of along what conventions they're
18 better.

19 A So other than minimum wage, which everybody has to pay,
20 once you get above that, our wages are typically better than a
21 nonunion competitor. And the same would be true of health and
22 welfare benefits, pensions, those kinds of things as well.

23 Q Do your union workers enjoy any sort of workplace
24 protections that nonunion stores would not offer?

25 A Yeah. They have got representation. If we terminate an

P. Van Helden - D

1 employee, for example, there is a very critical number of steps
2 we have to take before we would actually terminate an employee.
3 When we get to that point, if we do, they have automatic
4 representation from the union.

5 Q Do union employees enjoy any benefits based on their
6 seniority?

7 A Yes.

8 Q What are some examples of those benefits?

9 A Typically the more senior employees will have
10 availability -- they will have more hours, and they will have a
11 better schedule preference -- weekends and things like that.

12 Q If union grocery workers move from an Albertsons or a Vons
13 or a Ralphs to a Stater Brothers store, do they get to retain
14 any of their benefits from being in the union?

15 A They retain all of them.

16 Q Would that include seniority-related benefits?

17 A Yes. But they won't have time with the company. That's
18 kind of irrelevant. In terms of seniority with hours and work
19 schedules, they would still retain those.

20 Q I would like to ask you about negotiations over collective
21 bargaining agreements. Generally speaking, what are the
22 material terms related to employment that are covered by
23 collective bargaining agreement?

24 A Wages, benefits, and work rules.

25 Q Mr. Van Helden, is it okay if I refer to a collective

P. Van Helden - D

1 bargaining agreement as a CBA?

2 A Sure.

3 Q During negotiations over CBA with the union, what are the
4 sources of union leverage -- or leverage. Pardon me. Let me
5 rephrase.

6 During negotiation with the union, what sources of
7 leverage does the union bring to the bargaining table?

8 A Well, they're representing the voice of the workforce.
9 Ultimately they have the ability to strike, if they can't reach
10 a deal that they find acceptable.

11 Q And I know this might seem like a silly question, but for
12 the record, what is a strike?

13 A A strike is when they call all the workers off the job.
14 Workers protest out in front and encourage customers not to
15 shop with us. It puts a great deal of pressure on the company
16 to settle the contract.

17 Q Does the threat of a strike give the union leverage even
18 though they don't actually call for a strike?

19 A A little less nowadays, because they do it all the time.
20 It's getting a little bit familiar.

21 Q Does the size of an employer give it leverage in its
22 negotiations with the union?

23 MR. WOLF: Objection. Foundation.

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: Yes. Size does matter in negotiation,

P. Van Helden - D

1 because they're representing more of the union's workforce.

2 BY MR. PAI:

3 Q In your view, does a bigger company have a better ability
4 to withstand a strike relative to Stater Brothers?

5 A Yes, particularly if they have operations outside of that
6 CBA, because only the stores in that CBA would be affected in
7 the case of a strike. A national company, for example, is
8 going to be unaffected in other parts of the country, and so
9 they can carry the losses of that market by operations from
10 elsewhere in the country. For Stater Brothers' market, it is
11 one hundred percent of our stores, they're under the same CBA,
12 and a strike would bury our company. We have no other way to
13 support ourselves if there was a strike.

14 Q Mr. Van Helden, shifting gears one more time. I would
15 like to ask you about supermarket transactions. In your
16 40-year career, have you had any experience in corporate
17 transactions involving supermarkets and grocery stores?

18 A I have.

19 Q Could you describe what your experience is. Could you
20 identify your experiences.

21 MR. WOLF: Your Honor, based on his deposition, I'm
22 concerned this witness is about to get into an area that should
23 have been subject to expert disclosure and expert reports. He
24 is being asked about his experience. If he wants to talk about
25 what he saw and heard, I'm fine. But if he starts opining

P. Van Helden - D

1 about generally, that's undisclosed expert testimony.

2 MR. PAI: Your Honor, I will do my absolute best to
3 keep Mr. Van Helden to what he saw and experienced.

4 THE COURT: What I'm going to have you do is rephrase
5 your question so it is clear what he's being asked so he can
6 answer it.

7 MR. PAI: Absolutely, Your Honor.

8 BY MR. PAI:

9 Q Mr. Van Helden, have you personally been involved in
10 corporate transactions where your company was involved as an
11 acquirer or a seller?

12 A Yes.

13 Q Could you list those transactions?

14 A Sure. In 1999, when Albertsons was broken apart, I was
15 part of that transaction -- well, excuse me. In 1999, when
16 Albertsons acquired American Stores, I was part of that
17 transaction. Then in 2005-2006, when Albertsons was broken up
18 into several pieces, I was part of that transaction as well.
19 Those were two examples that I was part of.

20 Q Let's start with the example in 1999. What stores did
21 Albertsons acquire from American Stores in 1999?

22 A American Stores had different what we call banners around
23 the country. So here in California -- not here -- but where I
24 live in California, the Lucky brand was a banner in California.
25 Jewel-Osco, Shaw's. There were others. But they were all part

P. Van Helden - D

1 of -- American Stores operated more as a holding company and
2 allowed these individual banners to operate more on their own,
3 and so part of that acquisition is all of them.

4 Q Approximately how many stores did Albertsons acquire as
5 part of that transaction?

6 A I'm going to guess it was 700 or 800. I don't have the
7 number. I don't remember.

8 Q Were you involved at all in integrating those stores into
9 Albertsons at the time?

10 A I was. I was running our Florida division for Albertsons
11 at the time, and they promoted me to vice president of
12 integration and having me move to Boise, Idaho, headquarters.

13 Q Could you describe the steps required to integrate stores
14 when they were purchased in that transaction.

15 A It was a challenge from multiple levels. First of all,
16 just the company cultures, melding those two together. There
17 is an inherent belief in one company and how things should be
18 done and a different in another company. And when you try to
19 bring those together with the employees, it's a significant
20 challenge with employees and the leadership. Then you've also
21 got the customer that you're trying to transition as well,
22 particularly in the case of the Lucky store conversion where we
23 converted the Lucky stores to Albertsons and training that
24 customer all about Albertsons was a significant challenge.

25 Q Mr. Van Helden, are you familiar with the term

P. Van Helden - D

1 "re-bannering"?

2 A Yes.

3 Q What does that mean to you?

4 A When you acquire a company or a number of stores under one
5 banner, for example, and then you change that banner, you're
6 really changing not only the banner on the front of the
7 building, but you're changing how it operates and in many cases
8 what it presents to the customer. For example, when -- as part
9 of the 1999 Albertsons acquisition of American Stores -- Stater
10 Brothers -- I wasn't there at the time -- I was on the other
11 side -- but Stater Brothers acquired 43 stores out of that
12 transaction and re-bannered them to make them Stater Brothers
13 stores.

14 Q Are there challenges to re-bannering a store?

15 A Significant.

16 Q Can you explain what some of those challenges are?

17 A Well, particularly, as I mentioned on the employee side,
18 you have got cultural differences. It is almost a battleground
19 with how to run a store or run a business. But it's more
20 difficult for the customer. Let's use Stater Brothers and
21 Albertsons, because that's an example that happened when --

22 MR. WOLF: Your Honor, I think we're now leading into
23 expert testimony and not specific knowledge. If he wants to
24 testify and lay a foundation that he has personal
25 understanding.

P. Van Helden - D

1 THE WITNESS: I do.

2 BY MR. PAI:

3 Q Mr. Van Helden, have you personally been involved in
4 efforts to re-banner stores at a company that you have worked
5 at?

6 A Yeah. As to that question, I would have to go back to the
7 Albertsons re-bannering of Lucky stores.

8 Q So when you were at Albertsons, did Albertsons re-banner
9 Lucky stores?

10 A Yes.

11 Q Were there challenges re-bannering Lucky stores?

12 A Significant.

13 Q Could you explain what those challenges were?

14 A Okay. Let me use that as an example. If an Albertsons
15 and a Lucky store were, let's say, three miles apart or five
16 miles apart, or whatever, and the Albertsons acquired a Lucky
17 store and wanted to re-banner it, prior to the acquisition
18 there was a reason that the customers preferred that Lucky
19 store -- whatever it might be -- and weren't shopping the
20 Albertsons. Now that store becomes an Albertsons, the customer
21 is like, "Well, if I want to shop at Albertsons, I would have
22 went there." Now that you changed, there's a lot of work to do
23 to win that customer over. There was a reason that she was
24 shopping under the other banner.

25 Q When Albertsons structured to re-banner Lucky stores, did

P. Van Helden - D

1 you permanently lose customers?

2 A Yes.

3 Q In your experience within the Lucky acquisition of
4 re-bannering, were there other operational frictions in terms
5 of running the store?

6 A Yeah. How things were different, different types of
7 reporting, products you carried, training procedures. Just
8 pretty much everything is at least slightly different, and it
9 is difficult for the employees of one company to transition to
10 a whole new set of rules. It's as if they started for a new
11 company.

12 Q Mr. Van Helden, did you work at Albertsons when it was
13 acquired by Super Value?

14 A Yes, I did.

15 Q Did you have any role in that transaction and/or
16 subsequent integration?

17 A I had a role in the transaction -- well, I had a role in
18 pitching the company to potential buyers. I didn't have a role
19 in the decision to go with Super Value. I did have some
20 interaction -- a fair amount of interaction when I joined
21 Super Value, but Super Value didn't re-banner, so I can't use
22 that as an example.

23 Q When Super Value acquired Albertsons stores, did you join
24 Super Value?

25 A I did.

P. Van Helden - D

1 Q What was your role with the company after it acquired --
2 after Super Value acquired Albertsons?

3 A Initially I was responsible for about a third of the
4 stores across the country, primarily Albertsons-branded stores.
5 Like I say, I was working for Albertsons in Southern
6 California. I had experience particularly in the West. So at
7 the time of the acquisition, the CEO split retail into three
8 distinct regions across the country, and I had the West region.
9 I think it was around 600-some stores.

10 Q Were you responsible for trying to help integrate Super
11 Value and the western region of Albertsons stores?

12 A Yeah. But we didn't do any re-bannering, so that wasn't
13 as difficult. What was more difficult is about two years after
14 I joined the company, and I was promoted to the executive VP of
15 retail operation, so I had all of the stores across -- all the
16 retail stores across the country, some 1,100 stores. And
17 the -- one of the reasons that Super Value wanted to acquire
18 all of the Albertsons stores is because they wanted to
19 centralize things. They wanted to do things in a more
20 efficient way. So rather than having regional operations that
21 were duplicative around the company, the idea was they would
22 consolidate all of that to Minneapolis and run everything
23 centrally, presumably with a lesser headcount. That was one of
24 the big reasons for the merger.

25 One of the challenges -- and part of that comes from

P. Van Helden - D

1 the fact that in my view, because I was there, was that Super
2 Value was very much a wholesale company. While they did have
3 retail stores, they didn't operate them as directly. They had
4 ownership of them, but they each had their own individual
5 presidents that operated in each of those individual markets.

6 The idea of consolidation and efficiency I found,
7 after I joined Super Value, was very much a culture within a
8 distribution company, and that was the point of conflict for
9 me, because I was very accustomed to regional operations that
10 were very effective to the markets that they operated in. And
11 when you tried to centralize things, you lost that localized
12 approach. That was a constant point of conflict when I was in
13 that role. Trying to keep some of that local connection in the
14 markets that we were in and fighting this culture that said we
15 are going to do everything from Minneapolis.

16 Q Were there other cultural challenges in trying to
17 integrate a wholesaler with a retailer?

18 A Well, in this case Super Value was the acquiring company.
19 While again, they did have some retail operations, they were
20 largely a wholesaler, and their business philosophy is very
21 different. It is very much about efficiency. That's what made
22 it really difficult, because they were never really in tune to
23 local markets, and dealing on a one-to-one with that local
24 customer, it was much more of a corporate level, focused on
25 efficiencies. And because Super Value was the acquiring

P. Van Helden - X

1 company, and they were largely a distribution company. They
2 had two -- that's just how things went.

3 Q What ultimately happened with the Albertsons store that
4 Super Value acquired?

5 A They eventually sold them.

6 Q Mr. Van Helden, I'm going to ask you about your
7 experiences in Southern California following the Albertsons/
8 Safeway transaction. I want to be mindful of counsel's
9 objections, so limit yourself only to your first-hand
10 knowledge, okay?

11 A I'll do my best.

12 Q Mr. Van Helden, were you working at Stater Brothers when
13 Albertsons bought Safeway?

14 A Yes.

15 Q Were you working at Stater Brothers when Albertsons
16 divested its stores to Haggen?

17 A Yes.

18 Q What did you observe in the Southern California market
19 following that divestiture to Haggen?

20 A Haggen made the attempt to -- well, not attempt -- they
21 had to. They were given a very tight window of conversion.
22 They had to re-banner to Haggen, and so they were re-bannering
23 all 146 stores. I believe they had a 40-hour turnaround
24 time --

25 MR. WOLF: Your Honor, I am going to object to

P. Van Helden - X

1 foundation. Is this what the witness read in the newspaper, or
2 is this his first-hand experience in the industry?

3 THE COURT: Sustained.

4 BY MR. PAI:

5 Q Mr. Van Helden, what ultimately happened with the Haggen
6 stores, if you have first-hand knowledge based on what you
7 observed?

8 A Well, initially within six months they closed a number of
9 stores. Six weeks later they closed another 106 stores, and
10 then ultimately filed bankruptcy.

11 Q What effect, if any, did you observe in the communities
12 that you served in Southern California?

13 A A lot of stores were closed.

14 MR. PAI: Thank you, Your Honor. I'll pass the
15 witness.

16 CROSS-EXAMINATION

17 BY MR. WOLF:

18 Q Good afternoon, Mr. Van Helden.

19 A Good afternoon.

20 Q My name is Matt Wolf. We have not met.

21 A We have not.

22 Q It's a pleasure. I'm going to start by asking you a few
23 questions about pricing and about how you go about checking
24 prices. First of all, you set at Stater Brothers at
25 headquarters; is that right?

P. Van Helden - X

1 A That's correct.

2 Q Store managers have no discretion over price?

3 A Typically not.

4 Q And you don't have any geographic diversity in your
5 pricing approach, correct?

6 A We are a bit unique in that way. We have one price
7 approach for all 169 stores.

8 Q Price zones are common in the industry, right?

9 A They are. That's why I said we are unique.

10 Q Are prize zones common? Have you experienced that before?

11 A Yes.

12 Q So there is nothing unusual about a 10 or 40 or in your
13 case a 100-plus store price zone; is that right?

14 A Let me be clear: The way we price with one zone across
15 169 stores is unique. Most companies do it differently. Most
16 companies have multiple price zones for a geographical area,
17 and we do not.

18 Q But it is common to have price zones for geographical
19 areas as opposed to going store by store by store for pricing?

20 A Yes.

21 Q When you are setting prices, you price check. I think you
22 testified to that with counsel; is that right?

23 A That's correct.

24 Q For example, you price check against Walmart and Target,
25 correct?

P. Van Helden - X

1 A Yes.

2 Q And you use Walmart and Target as a guideline so you can
3 see what's happening on the discount side of grocery sales,
4 right?

5 A Yes.

6 Q You need to be aware of that, right?

7 A Of course.

8 Q Just so we have a complete list, you price check against
9 Walmart and Albertsons and Vons and Ralphs and Costco and
10 Target and Food 4 Less and Smart & Final, and Northgate
11 supermarkets?

12 A That's correct.

13 Q Northgate, I believe, you characterized it is as a Latino
14 market?

15 A Correct.

16 Q It is a growing part of your market, correct?

17 A Yes.

18 Q And it would be a mistake for you at Stater Brothers to
19 ignore Northgate when analyzing your market, right?

20 A Correct.

21 Q Now, markets for an individual store are sometimes thought
22 of in terms of trade areas; is that right?

23 A Yes.

24 Q Can you define for Her Honor what a "trade area" is,
25 roughly speaking?

P. Van Helden - X

1 A It depends on what level you want to go to. But we would
2 look at a store trade area to be a geographical area. It might
3 be boundaried by geography. It could be demographics. It
4 could be the highway infrastructure, things like that.

5 Q Exactly. And is it fair to say that a trade area is
6 another way to say the area in which a given store competes?

7 A Not necessarily by distance. So, for example, a trade
8 area in a very dense area might be half a mile in a city. In a
9 very rural area, it might be 20 miles. So geography is not the
10 only way you'd look at a trade area.

11 Q Absolutely. It could be multiple factors to consider, but
12 geographic or the scope of the focus that a given store
13 competes with, right?

14 A Right.

15 Q You're not familiar with the term "catchment area," are
16 you?

17 A No.

18 Q And Stater Brothers, I think this goes without saying,
19 defines "trade areas" in the ordinary course of its business?

20 A Yes.

21 Q When Stater Brothers is looking at trade areas, you said
22 you look at a combination of factors. These include density;
23 is that right?

24 A Uh-huh.

25 Q I'm sorry?

P. Van Helden - X

1 A Yes.

2 Q A poorly phrased question. You include density --
3 population density is one factor when considering trade areas;
4 is that right?

5 A Yes.

6 Q Geography?

7 A Yes.

8 Q Highway infrastructure?

9 A Yes.

10 Q And competitor. The nature of competitors also factors
11 in, right?

12 A Yes. But I want to be clear: When we define "trade
13 areas," we primarily use that definition around the building of
14 new stores, not an ongoing basis.

15 Q Okay. But the nature of the competitors in the
16 surrounding area bears into how you draw the metes and bounds
17 of a trade area, right?

18 A When I'm looking at a new store.

19 Q For example, a trade area that includes a Costco would be
20 larger than a trade area that didn't have a Costco, right?

21 A Yes.

22 Q A trade area that includes a Costco would be larger than
23 one that did not, because customers are willing to drive
24 farther to go to a Costco, correct?

25 A Yes.

P. Van Helden - X

1 Q When looking at a trade for a given store, the location of
2 Costco is considered, not just the distance but also the
3 highway infrastructure, geography, population base, those kinds
4 of things, right?

5 A Correct.

6 Q You have 118 stores at Stater Brothers that are close
7 enough to a Costco to have sales impacted by a Costco, correct?

8 A Not necessarily sales impact. It's just that's the
9 geography. I don't know that they impact my sales. I think
10 it's not a fair to say that a store ten miles away in all cases
11 has impact. That 118 number was a pure geographical
12 difference. It was not a trade area measurement. It was pure
13 distance. So, no, not in all cases.

14 Q Not in all cases. So let me ask the question so there is
15 no controversy. You would agree that about 118 of your stores
16 are impacted by Costco?

17 A No, I didn't say that. I said 118 stores are within ten
18 miles. That's just as a proximity. I didn't say they were
19 impacted.

20 Q So you did not testify, "We see about 118 of our stores,
21 for example, are impacted by Costco"?

22 A I don't that have a measurement of every one of those 118
23 stores was impacted from the sales perspective. They're
24 impacted to the extent they're within ten miles.

25 Q I don't think it is worth going to the deposition, but you

P. Van Helden - X

1 don't deny that testimony in the deposition?

2 A No, I don't. If those are the words I used -- I don't
3 think that was the best word to use, "impacted," because that
4 assumes there was some sales degradation, and I don't have any
5 evidence of that.

6 Q Speaking of that, you were asked at your deposition about
7 documents produced by Stater Brothers that talked about
8 leakage, correct?

9 A Yes.

10 Q You said you weren't familiar with those documents?

11 A Yes.

12 Q In the interim between your deposition and today, did you
13 go back and figure out what those documents meant?

14 A I'm better at it today.

15 Q So it would be fair to say -- better to say you did a
16 little investigating?

17 A I did some. I will have to go to the experts.

18 Q It would be fair to say that Stater Brothers does leak
19 sales to Costco?

20 A Some, yes.

21 Q And Ralphs?

22 A Of course.

23 Q Walmart?

24 A Yes.

25 Q Sam's Club?

P. Van Helden - X

1 A Yes.

2 Q Pavilion?

3 A Yes.

4 Q Food 4 Less?

5 A I would say anybody that sells food within a reasonable
6 distance, we are going to have some leakage.

7 Q "Leakage" is kind of a strange term --

8 A It is kind of a strange term, and I agree. It is really
9 just a portion of consumer's budget of food going to different
10 places.

11 Q And you heard -- were you here for opening statements?

12 A I was not.

13 Q The phrase "share of wallet" was used. Have you heard
14 that phrase before?

15 A I have.

16 Q Is that something you use in the ordinary course?

17 A That essentially describes what I just said, what they
18 this have budgeted for --

19 Q You talked a little bit about Topco. Topco allows Stater
20 Brothers and other folks that use Topco to compete with stores
21 like Walmart, correct?

22 A What do you mean they allow us to compete with them? I
23 don't know what that means. How they could stop me from
24 competing with a Walmart?

25 Q Let me rephrase that. There must be some mistake here. I

P. Van Helden - X

1 am sure it is on my part. Topco allows you to pull volume
2 together to try to compete with larger grocers; Walmart and
3 such, right?

4 A Yes. Correct.

5 Q You would agree with me that the grocery industry is
6 highly competitive, correct?

7 A It always has been.

8 Q You testified that Stater Brothers competes with Kroger
9 banners?

10 A Yes.

11 Q And Stater Brothers competes with Albertsons banners,
12 correct?

13 A Yes.

14 Q And we just talked about leakage. There are Albertsons
15 stores right down the street from your stores, right?

16 A Correct.

17 Q And if as a result of this merger the prices that those
18 Albertsons stores went down, that would put competitive
19 pressure on Stater Brothers, right?

20 A It could.

21 Q And if because of this merger Kroger efficiencies allowed
22 it to reduce its own prices, that would put in a real world
23 competitive pressure on Stater Brothers, right?

24 A If they chose to do that. They could do it today.

25 Q If a -- well, I don't want to ask you hypotheticals,

P. Van Helden - X

1 because I objected to you becoming an expert originally.

2 A I'll hold you to that.

3 Q The pot and kettle rule applies.

4 You would agree that if Albertsons' and/or Kroger's
5 prices went down, that would be good for consumers in your
6 market, right?

7 A Yeah. Sure.

8 Q Just a few questions then on labor. What percentage of
9 your workforce are meat cutters?

10 A I don't know for sure.

11 Q Less than 5 percent?

12 A I would really be guessing. I'm sorry.

13 Q Fair enough. Do you know what percent are deli?

14 A I don't break them apart by department. I don't have
15 that.

16 Q Just one more on the other side. Maybe this is the same
17 answer. Do you know what percentage of your workers are
18 clerks?

19 A It would be the majority of the unionized, but I don't
20 have the number.

21 Q Fair enough. Would you agree with me that Walmart and
22 Costco are the leading sellers of food in the country?

23 A In the country, yes.

24 Q And would you agree that in the last 20 years there has
25 been a shift in the grocery industry to discount nonunion

P. Van Helden - X

1 operators?

2 A Nationally, but not all markets.

3 Q In your market, Stater Brothers is union?

4 A Yes, we are.

5 Q Albertsons is union?

6 A Yes.

7 Q And Kroger is union, right?

8 A Correct.

9 Q And I assume by your testimony, but I don't want to make
10 an assumption without clarifying, you think it's really
11 important that the grocery industry stay in the hands, as best
12 it can, of union operators, don't you?

13 A I don't have a choice.

14 Q But do you think it is a good thing as well?

15 A It can be.

16 MR. WOLF: No further questions.

17 THE COURT: Any redirect?

18 MR. PAI: Very brief, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. PAI:

21 Q Mr. Van Helden, my colleague asked you about a trade area.
22 I want to make sure it's very clear. The trade areas he is
23 referring to, for what purpose were they used?

24 A It was just to get a sense of the proximity of other
25 competitors to our store. It was simply a distance

A. Silva - D

1 measurement. It did not include the other attributes that we
2 talked about.

3 Q And do you use those trade areas in the ordinary course
4 for setting pricing strategy?

5 A No.

6 MR. PAI: No further questions.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you.

9 THE COURT: Do you want to get the binder, because he
10 didn't have to use it.

11 THE WITNESS: That's why I said "thank you."

12 MR. SMITH: Your Honor, the FTC calls Mr. Tony Silva
13 to the stand.

14 Your Honor, may we approach with a binder for the
15 Court and the witness.

16 (The witness was duly sworn.)

17 THE CLERK: Would you please state your name for the
18 record, spelling your last.

19 THE WITNESS: Anthony Reed Silva. A-N-T-H-O-N-Y,
20 R-E-E-D; last name is S-I-L-V-A.

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Mr. Silva, who is your current employer?

24 A Albertsons, Incorporated.

25 Q You are the vice president of strategic initiatives at

A. Silva - D

1 Albertsons Companies, Inc.?

2 A That's correct.

3 Q Are you also the lead of the national pricing team?

4 A Yes.

5 Q You have been in this position since 2018?

6 A Roughly, yes.

7 Q The responsibility of your team, the national pricing
8 team, is to provide support to the various Albertsons divisions
9 on pricing?

10 A Amongst other people, yes.

11 Q Albertsons has its stores divided into different divisions
12 across the country, yes?

13 A Yes.

14 Q There are 14 divisions total, right?

15 A Yes.

16 Q The Portland division, for example, operates the stores in
17 Oregon?

18 A That's correct.

19 Q In some divisions, like the Shaw's division, it operates
20 stores with the same banner name?

21 A Yes.

22 Q So the national pricing team is a group of employees who
23 help provide the Albertsons division support in how to price
24 products sold at Albertsons stores, right?

25 A Yes.

A. Silva - D

1 Q Let's talk briefly about how prices are set at Albertsons
2 stores. Are you familiar with the term "base pricing"?

3 A I am.

4 Q Base pricing is the price of an item when it is not on a
5 discount?

6 A Is that a question?

7 Q It is. Base pricing is the price of an item when it is
8 not on a discount, right?

9 A That's correct.

10 Q Every product sold at Albertsons stores, like eggs and
11 milk, has a base price, right?

12 A Correct.

13 Q The main tool that Albertsons uses to set up base prices
14 is called price advisor, right?

15 A That is correct.

16 Q And in every division of Albertsons, except for one, uses
17 price advisor to set prices of products sold at Albertsons
18 stores?

19 A That's correct.

20 Q The one division that does not use price advisor is the
21 United division, which has about a hundred stores in West Texas
22 and New Mexico. Is that about right?

23 A That sounds correct, yes.

24 Q In about what year did Albertsons decide to use the price
25 advisor tool?

A. Silva - D

1 A We started our rollout -- if you go back to when you
2 started, you can start with the contract, the RFP, which could
3 probably have been sometime in 2022. The actual rollout, we
4 piloted a year in the Portland division in January of '23.

5 Q Albertsons' CEO Mr. Sankaran approved the price advisor
6 for pricing the products at Albertsons stores, right?

7 A Yes.

8 Q Let's talk about how price advisor works. Is it fair to
9 say that price advisor is essentially an electronically based
10 tool to help Albertsons price products sold at its stores?

11 A Yes. From a simplistic form, yes.

12 Q Price advisor has two related functions I want to ask you
13 about. One thing that it does is that it will issue an alert
14 when the price of an Albertsons product is higher than a
15 competitor, correct?

16 A That is one type of alert that we have.

17 Q Another function that price advisor does, it issues
18 recommended prices for each product sold at Albertsons stores,
19 right?

20 A That is the primary function of the tool -- is to
21 recommend pricing for the divisions to make decisions on
22 pricing.

23 Q Let's talk briefly about what data price advisor uses.
24 Price advisor uses price checks to generate its alerts and
25 recommendations, correct?

A. Silva - D

1 A It is one of the inputs into the recommendation of prices.

2 Q And the price check is when Albertsons obtains the price
3 of an item that is sold at a competitor's store, right?

4 A Publicly available competitive information that is
5 selected as an input to the price advisor tool, yes.

6 Q So we're clear, this publicly available input is the price
7 of an item that is sold at a competitor store?

8 A Correct.

9 Q There is something called a full book price check. What
10 is that?

11 A Full book is a type of check where we are going to collect
12 all the items in the physical store or on a website in a
13 certain location on a certain day.

14 Q Albertsons gets full book price checks at Kroger's store
15 for use in its price advisor tool; is that right?

16 A Yes.

17 Q Albertsons gets a full book price check of the Kroger
18 stores on a weekly basis?

19 A That's typically the frequency that we collect for Kroger
20 and many other competitors.

21 Q The weekly full book price check of Kroger can deliver the
22 prices of as many as 40,000 items sold in a Kroger store; is
23 that right?

24 A It can be whatever is sold in store that we can collect on
25 a website. We account and it will vary by store by collection

A. Silva - D

1 and by date.

2 Q Is it fair to say for Kroger stores, when you price check
3 Kroger stores, it can be up to 40,000 that you get?

4 A Give or take. It could be more; it could be less.

5 Q The Kroger prices that are obtained are then fed into the
6 price advisor?

7 A Eventually, yes.

8 MR. SMITH: Your Honor, we are going to introduce a
9 document here in a moment, but I want to let the defendants
10 know that we plan to use a redacted version for confidentiality
11 purposes on the screen. But on the binders you will have a
12 redacted version. We received a redacted version from counsel
13 late last night.

14 THE COURT: All right.

15 BY MR. SMITH:

16 Q So I'm going to ask you to turn to your binder or look at
17 the screen that will be coming up there shortly the redacted
18 version on the screen of PX12359. PX12359 is an exhibit that
19 has a cover email with an attached Excel. The Excel is not in
20 your binder because -- it's impossible to print in a way that's
21 cognizable, so we provided an electronic copy that we will be
22 able to look at.

23 I plan to ask questions about the Excel, not the
24 cover email. Albertsons provided this information to the FTC
25 on December 4th, 2023. It was after your investigational

A. Silva - D

1 hearing that was in October of 2023 but before your deposition
2 in this litigation in May 24, Mr. Silva. The Excel, when we
3 get to it, will have three tabs. When you've found this
4 document, Mr. Silva, please let me know.

5 A I see the document.

6 Q So if we could show the redacted version of the Excel,
7 please. Do you remember -- this is the redacted one.

8 Mr. Silva, can you see it on your screen, the Excel
9 document?

10 A I can.

11 Q Do you remember answering questions about this information
12 in your deposition?

13 A I do.

14 Q Is the information in this document familiar to you?

15 A It is.

16 Q Is it fair to say that your team maintains this
17 information reflected in this Excel in the regular course of
18 its business?

19 A We do.

20 MR. SMITH: Your Honor, we move to admit PX12359.

21 MR. PITT: No objection, Your Honor.

22 THE COURT: It will be received.

23 It will be received.

24 BY MR. SMITH:

25 Q You can see this on your screen. In a bit we will look at

A. Silva - D

1 a demonstrative that hopefully makes looking at this
2 information a bit easier. But for now let's see some column
3 titles just to get familiar with it. There is a column here
4 titled "Division" that has the names of the divisions. As we
5 talked earlier, Albertsons has 14 divisions across the country,
6 right?

7 A Yes.

8 Q There is another column here that is a price area; a price
9 area name. Each division's stores are subdivided into price
10 areas, yes?

11 A Only stores that do fall into price areas. That is a
12 classification for it, yes.

13 Q In a price area, stores are clustered together based on
14 customer shopping patterns?

15 A That's the primary driver for how we cluster our stores,
16 is based on customer cross-shop internally.

17 Q By "cross-shop" you mean that a customer might shop more
18 than one of your locations, right?

19 A It is only focused to our internal data and not external
20 data when I mention "cross-shop" here.

21 Q And the stores with the given price area will share the
22 same base prices, right?

23 A Correct.

24 Q Just so it is clear, not all the stores at Albertsons
25 nationwide share the same base pricing?

A. Silva - D

1 A They do not. Just to clarify, in some small instances,
2 while they do share the same base price, sometimes we have
3 store-specific pricing even inside a price area for limited
4 amounts of items.

5 Q Thank you for that clarification.

6 A Definitely.

7 Q Let's move to the column titled "primary food competitor."
8 This column has the name of the primary food competitor, yes?

9 A It does. The primary food competitor to us means a
10 traditional grocer. It doesn't necessarily mean the biggest
11 food competitor we have in a price area. Its main designation
12 from a nomenclature standpoint is a class of trade, which is
13 the supermarket. Just like AC Nielsen or Circana Syndicated
14 Providers, it is talking about food. That's our traditional
15 supermarket or our competitor --

16 THE COURT REPORTER: Mr. Silva, will you speak
17 directly into the microphone.

18 THE WITNESS: Yes.

19 BY MR. SMITH:

20 Q The primary food competitor, I believe I heard you say, is
21 a traditional supermarket.

22 A That's the way we define it for the sheet.

23 Q I believe you said that you define a traditional
24 supermarket the same way as the industry does?

25 A It's typically similar to what a syndicated provider like

A. Silva - D

1 a AC Nielsen or Circana, yes.

2 Q So traditional supermarkets are banners like your Kroger
3 banners, Albertsons banners, banners like Rally's and Lucky?

4 A Yes.

5 Q Going back to the spreadsheet and looking at a primary
6 food competitor, is it fair to say that Albertsons price checks
7 the primary food competitor, which is a traditional
8 supermarket?

9 A It is one of a lot of checks that we have, yes.

10 Q And the primary food competitor is most often a Kroger
11 store, correct?

12 A It depends on the price area, but, yes, as listed here.

13 Q For example, if I highlight this row to try to minimize
14 the burden of viewing it, in the Portland division there is a
15 price area named Eugene, and in that price area Kroger's
16 Fred Meyer -- has an address that has been redacted -- is the
17 store that is price checked, right?

18 A That is correct.

19 Q And all of these stores are listed as a primary competitor
20 are price checked, right?

21 A They are.

22 Q They're price checked weekly?

23 A Not necessarily.

24 Q So the stores in the primary food column are not price
25 checked weekly?

A. Silva - D

1 A As many as we can possibly get. Not all stores are
2 available to be collected on a weekly basis. Some we do in
3 store, but our primary method, if we can collect information,
4 is through web collection or web scraping, which is much easier
5 and more efficient and cheaper for us. But not all stores are
6 we able to collect information on a weekly basis. Some
7 cadences are monthly. Some stores we can't even collect, as
8 crazy as that sounds in the modern age. Some groceries don't
9 even have a website that we can check.

10 Q For the Kroger stores listed in the primary food
11 competitor column are you able to price check them weekly?

12 A We are.

13 Q And are you able to give them a full book price check?

14 A Yes.

15 Q And this competitor price check data goes into the price
16 advisor tool, right?

17 A It's an input and data loaded into the tool, yes.

18 Q Okay. I promised a demonstrative. Again, I want to
19 provide some comfort that this demonstrative will respect the
20 confidentiality that counsel expressed to us in the form of
21 redaction late last evening. So this demonstrative is in the
22 binder, and it is marked as PDX1. I believe it is the last tab
23 of the binder.

24 Would you look for that, Mr. Silva.

25 Have you found it Mr. Silva?

A. Silva - D

1 A I found the document.

2 MR. SMITH: Your Honor?

3 THE COURT: I have it.

4 BY MR. SMITH:

5 Q In this demonstrative we have the information from
6 PX12359, the spreadsheet we just talked about. Here, if you
7 would see page 2. Do you see that, Mr. Silva?

8 A I do.

9 Q All right. If we could then turn to page 3. Every price
10 area in the Portland division has Fred Meyer as the primary
11 food competitor?

12 A Is that a question?

13 Q Yes, it is.

14 Fred Meyer is a Kroger store, just to be clear,
15 right?

16 A It is.

17 Q Turn to the next page, page 4. Are you there?

18 A I am.

19 Q In the Shaw's division there are no Kroger stores listed
20 as primary food competitor, correct?

21 A That is correct.

22 Q Your Shaw stores are located in the New England states,
23 right?

24 A That is correct.

25 Q Kroger doesn't have stores in the New England states,

A. Silva - D

1 right?

2 A Not that I'm aware of.

3 Q So let's go to page 5. Are you there?

4 A I am.

5 Q In the Denver Division, all but one price area has Kroger
6 as a primary food competitor. Do you see that?

7 A I do.

8 Q And that price area for Kroger is not the primary food
9 competitor -- are your stores located in South Dakota; is that
10 right?

11 A That's the general area, yes, for the price area.

12 Q There are three Albertsons stores in that South Dakota
13 price area?

14 A That is correct.

15 Q Does Kroger have stores in South Dakota?

16 A I'm not certain of their exact location of every store
17 that they have. I'm not certain.

18 Q We will come back to the exemplar in a little bit. We
19 won't show the remaining slides to everybody in the courtroom.
20 But for now I would like to go back to the spreadsheet. That
21 is PX12359. That will be shown on your screen. Do you have
22 it, Mr. Silva?

23 A I do. Thank you.

24 Q Let's take a look at the price areas that are in the
25 Southwest division. Mr. Silva, are all the primary food

A. Silva - D

1 competitors for the Southwest division stores?

2 A Yes. They are Kroger banners.

3 Q Let's take a look at the Seattle division. Mr. Silva, are
4 all the primary food competitors for the Seattle division
5 Kroger stores?

6 A Yes.

7 Q Let's go look at the InterMountain division. Mr. Silva,
8 are all the primary food competitors for the InterMountain
9 division Kroger stores?

10 A Yes.

11 Q In each of these divisions, Portland, Southwest, Seattle,
12 and InterMountain, Albertsons competes against Kroger, right?

13 A They do.

14 Q Would it be fair to say that for Albertsons stores the
15 primary food competitor is mostly a Kroger banner?

16 A It is the one we list here for checking. Then in some
17 cases -- again, this is not the largest food competitor that we
18 face in our markets, but it is the traditional grocer that
19 we're checking. In some cases we check for a variety of
20 reasons. One is ease of use to collect. Some of it is the
21 density of the competition. Some of it also is cost. We still
22 have a budget. We check a lot of competitors, and it's
23 expensive. And we have a budget too. So Kroger is an easy
24 check for us too.

25 Q So you choose to price check the stores that are listed in

A. Silva - D

1 the primary food competitor column?

2 A Correct.

3 Q And that price check data is fed into price advisor?

4 A It is.

5 Q In a moment we will go back to the demonstrative, but I
6 don't want to show it on the big screen; just for the Court
7 only.

8 MR. SMITH: If that's okay with Your Honor.

9 THE COURT: It is.

10 BY MR. SMITH:

11 Q Mr. Silva, I'm going to ask you to look at page 7 of the
12 demonstrative. We can show this page but nothing further,
13 okay. Okay. This here is titled what it is.

14 Mr. Silva, we discussed earlier that there are two
15 related functions of price advisor. One is that it's adding an
16 issue with an alert when an Albertsons product is priced higher
17 than the target price range. Another is that price advisor
18 issues recommended prices for the products sold at Albertsons
19 stores. Is that accurate?

20 A The data inputs create price recommendations that the
21 divisions have to either accept or override in the normal
22 course of business.

23 Q Is it accurate that price advisor issues an alert when an
24 Albertsons product is priced higher than the target price
25 ranges?

A. Silva - D

1 A Either higher or lower for CPI ranges. If it is above or
2 in the range, that would be anywhere.

3 Q Let's talk about the mechanics about how that happens.
4 Are you familiar with the term "competitor price index" or CPI?

5 A I am.

6 Q Competitor price index is a comparison of a competitor's
7 price to Albertsons' price, correct?

8 A That is correct.

9 Q In your demonstrative, please turn to page 8.

10 A Is there a document, or is it only on the screen?

11 Q It is also on the screen. It has "PDX-008" on the bottom
12 right-hand corner. If you prefer to look at the screen.

13 A Let's look at the screen.

14 Q It is the same thing.

15 A Thank you, sir. I see the document. Thank you.

16 Q This document is referring to CPI target ranges, right?

17 A Yes. These are CPI target ranges and guidelines.

18 Q The CPI target price ranges are based off of the primary
19 food competitor?

20 A They are.

21 Q Albertsons corporate guidance is to have prices fall
22 within these target price ranges, right?

23 A That would be our recommendation based on the category and
24 item role intersection of an item.

25 Q You might have said this earlier. Does CPI target price

A. Silva - D

1 ranges have lower and upper boundaries, right?

2 A They do, as listed in the chart. A minimum and maximum is
3 a guideline or recommended range that we provide them.

4 Q To help the Court understand what these numbers mean,
5 hypothetically speaking, if a CPI score is 1, that means it is
6 a price match, correct?

7 A That's what we would like from a recommended range
8 standpoint, but typically, yes.

9 Q And, for example, hypothetically if a CPI score was 1.10,
10 that would mean that Albertsons is priced 10 percent higher
11 than the same price as the competitor?

12 A We are talking about targets here, so it doesn't mean that
13 there is an actual price. These are ranges. So it doesn't
14 mean our price is higher, but that is the range we would like
15 to fall in between, an upper and a lower range.

16 Q Albertsons has loaded the CPI target price ranges into the
17 price advisor tool, right?

18 A Yes.

19 Q And the competitor that the CPI target price ranges that
20 are in price advisor, it's based off of the primary food
21 competitor, right?

22 A As of today. Capabilities of the tool let us have a
23 blended range against all competitors or another competitor.
24 As it is set up today, it is running off of primary food
25 competitor with its target ranges.

A. Silva - D

1 Q Okay. Let's talk about how the CPI affects alerts that
2 price advisor issues. So if an item falls outside the CPI
3 target range, price advisor will make an alert about that,
4 correct?

5 A Yes.

6 Q So even if just one product sold in an Albertsons store
7 that has Kroger designated as the primary food competitor, if
8 even one product is priced too high, then with these targets,
9 price advisor is going to sound the alert?

10 A We would have an item alert for whomever the primary food
11 competitor is in the tool or the item in the price area.

12 Q This alert that goes off can be seen by many Albertsons
13 employees, correct?

14 A Anybody who is using the system, yes.

15 Q That would include pricing managers?

16 A Yes.

17 Q Sales managers?

18 A Yes.

19 Q Assistant sales managers?

20 A Yes.

21 Q Department specialists?

22 A Yes.

23 Q Albertsons divisions are making efforts to achieve the CPI
24 target price ranges in price advisor, right?

25 A Yes.

A. Silva - D

1 Q And the goal is that the divisions will achieve prices
2 within these CPI ranges in price advisor, right?

3 A That is the goal. We are not there yet. We have a ways
4 to go, but that is the goal.

5 Q And as we talked about earlier, Kroger's pricing is the
6 most frequent of the primary food competitors to be an input
7 for these CPI ranges, right?

8 A For the primary food competitor.

9 Q If we could go to the next page in the demonstrative.
10 Does this page reflect what I just asked you about with the
11 alerts and CPI target ranges?

12 A Yes. These are target ranges. And if you are on the
13 outside, you are above or below in the launch pad and an alert
14 will be in the tool, yes. Thank you. Sorry.

15 Q Okay. So that's price alerts.

16 Now let's talk about CPI recommended prices and price
17 advisor. As you mentioned earlier, price advisor gives the
18 user a recommended price for each item, correct?

19 A That's correct.

20 Q But there is a term that is relevant to price advisor
21 called a guardrail; is that right?

22 A Yes.

23 Q A guardrail based on the CPI target ranges will influence
24 what price advisor recommends, right?

25 A Yes.

A. Silva - D

1 Q So the guardrail will force price advisor to recommend
2 prices that are within the target range, right?

3 A I will attempt to land inside the middle of range, or if
4 it was potentially a hard guardrail, it would go to a certain
5 price point recommended price.

6 Q The price advisor recommendation is based off of the
7 primary food competitor, right?

8 A Today, it is.

9 Q Which, as you testified earlier, is often a Kroger store?

10 A Yes.

11 Q So when price advisor is paying a recommendation for the
12 thousands of products sold in Albertsons stores, it's trying to
13 make sure it is not too high or low compared to Kroger, right?

14 A Well, it is taking many forces. It is taking internal
15 forces and external forces, internal forces such as cost of
16 goods and margin as well as competitor forces, and then
17 consumer friendly rules like rounding rules to come up with a
18 price. So there are many things that go into that recommended
19 price. Again, that recommended price is just a recommended
20 price. It is a price that the division personnel have the
21 ability to override at any given time.

22 Q Lots to unpack there. I will ask my question. So when
23 price advisor is making the price recommendations for the
24 thousands of products sold at Albertsons stores, it's trying to
25 make sure it's not too high or low compared to Kroger?

A. Silva - D

1 A For the CPI guardrail that's in there today, the CPI
2 guardrail is not in all products today. It is only in our
3 critical and access key items. And with product matches, we
4 don't match every item. So in some cases there's no
5 competitive match on product. A competitive match is an item
6 match, not a price match. We don't match every item because we
7 don't have the same assortment our competitors do, so not every
8 product has a competitive price point even in part of the
9 recommendation.

10 Q Just to reiterate some things said earlier, about every
11 week price advisor gets the new Kroger price check data, right?

12 A It does, for the items that we both sell and match, which
13 isn't every item. We sell different things than other
14 competitors.

15 Q You match Kroger on up to about 20,000 items, right?

16 A On the tip, it could be anywhere from 12- to 20,000,
17 depending on the check, and depending on the store, it could
18 maybe carry 30- to 50,000 items in a store.

19 Q And each week that price advisor gets this price check
20 data from Kroger, it has to recalculate whether to send an
21 alert, right?

22 A Yes.

23 Q And it does this for every store in the price areas where
24 Kroger is the primary food competitor?

25 A And for every primary.

A. Silva - X

1 MR. SMITH: Thank you, Your Honor. I will pass the
2 witness.

3 THE COURT: Cross-examination.

4 MR. PITT: Your Honor, may I let my colleague
5 approach to hand out one exhibit and one possible
6 demonstrative?

7 THE COURT: Yes.

8 MR. PITT: Thank you, Your Honor. May I proceed?

9 THE COURT: Yes.

10 MR. PITT: Just to be clear about what has been
11 handed up, we have provided a version of one exhibit that I may
12 use, DX1087, which has some modified redactions, just as we had
13 sent some modified redactions last night to the FTC we sent
14 them last night to be clear, because we only got their exhibits
15 last night. It is sort of "first day of school" type thing.
16 So that's fine. Great.

17 CROSS-EXAMINATION

18 BY MR. PITT:

19 Q Mr. Silva, I want to give you a little bit of chance to
20 talk about your background since so you didn't have that chance
21 with Mr. Smith. Can you tell us when did you start working in
22 the grocery industry?

23 A I started in May of 1987.

24 Q And where did you do that? Where was your first role?

25 A I started as a food clerk, which is a cashier in store 582

A. Silva - X

1 in California.

2 Q Were you a union employee?

3 A Yes, I was.

4 Q How long have you worked at Safeway?

5 A A long time. Since '87. I worked all the way up to the
6 merger with Albertsons-Safeway in 2015. Then I went to another
7 company for a small stint for about three years, and I came
8 back to the Albertsons Companies in March of, I think, 2018.

9 Q Just to be clear, why did you leave during that sort of
10 roughly three-year period?

11 A Well, I had a job to go to Idaho, but I couldn't leave. I
12 could not move my family. We had family situation where I
13 couldn't leave the state of California.

14 Q And you mentioned earlier that you're vice president of
15 strategic initiatives. Could you describe for the Court what
16 some of your job responsibilities are in that position?

17 A Sure. We support the organization on all things pricing.
18 Our biggest customer is our division personnel, that is not --
19 it includes the SLT and all kinds of other parts. We cover
20 base pricing, promo pricing. We have some personalized loyalty
21 marketing and competitive intelligence, lots of data, clearly
22 tools and change management. That is intelligence, as we just
23 discussed, plus reporting analytics and insights and business
24 intelligence. So we cover a lot of ground for the
25 organization. We are like an internal consulting firm.

A. Silva - X

1 Q Now, my colleague, Mr. Smith, asked you some questions
2 about Albertsons' pricing system. What I would like to do is
3 give you an opportunity to explain a bit to the Court about
4 where Albertsons has been and where Albertsons is trying to
5 head in its pricing strategy. So let me begin that by asking
6 you when you, when you rejoined Albertsons in 2018, did you
7 develop an understanding how customers perceived Albertsons'
8 pricing in relation to the pricing of Albertsons' competitors?

9 A I did.

10 Q What was that understanding based on? How do you develop
11 it?

12 A Well, we have that CPI, which is that competitor price
13 index. We have a lot of internal reporting. So that gave me a
14 good understanding of where we were in terms of our price
15 position and the markets that we serve. But we also have
16 internal customer surveys and also external surveys that you
17 get all the time from financial institutions. Everybody talks
18 about price. So there is a lot of sources you can collect
19 information on and understand price position.

20 Q And what did that information tell you about how
21 Albertsons' prices were perceived by its customers?

22 A Well, we have the sales prices but any the aggregate -- we
23 are priced pretty high in the markets that we compete in for
24 the most part. In the aggregate, we have good sales items and
25 win on some things, but we are perceived as a high-price

A. Silva - X

1 player.

2 Q Since you rejoined the company in 2018, has Albertsons
3 tried to change the way that its stores price?

4 A Yes.

5 Q When did Albertsons start to change its pricing strategy?

6 A Well, we first started -- probably our pricing
7 transformation started with a promo tool. But really as we
8 were thinking about price and knowing that we have to get
9 better on price and we are trying to use tools and technology
10 and getting smarter about it, its people, its process, and it's
11 focused on the items that matter most to the customer, and that
12 gets into things like creating category and item walls. So
13 those are things that we have been building since 2019, but it
14 all started with the promo planning application that we
15 purchased from a third-party provider.

16 Q And did you personally play a role in changing Albertsons'
17 pricing strategy?

18 A I played a part in that with others for sure.

19 Q How, if at all, did the competitive environment that
20 Albertsons was facing factor into Albertsons' decision to
21 change the way it stores price?

22 A It was huge. I mean, the grocery industry has fierce
23 competition. You know, I've been around for a long time, and
24 it has changed dramatically over the years. Walmart, Target,
25 Costco, Amazon, discounters like Aldi, Lidl, Trader Joe's are

A. Silva - X

1 now in the mix. You have Homeo Replacement (phonetic) and
2 e-commerce. Homeo Replacement can't be lost. I mean, they
3 take from us too as well. There's lots of competition, and it
4 has only gotten more aggressive even after COVID, with online
5 picking up too. So it's a fiercely competitive market and
6 continues to get more fierce every day.

7 Q How did what you just described as a fiercely competitive
8 market, how did that play into Albertsons' decision to change
9 the way it stores its pricing?

10 A Pricing is really important to our customers. Most of the
11 people that I just mentioned growing and getting bigger have
12 low price positions so it's putting a lot of pressure on price
13 for us too to compete. So we have to have a better way of
14 doing it and more systemic way to land processes and focus on
15 the data to help drive the decisions and really hone in on
16 making price better again in the markets we serve.

17 Q Has Albertsons solved its pricing problems?

18 A No.

19 Q Do you feel that you're improving?

20 A We are improving, yes, absolutely. But not at the pace
21 that we really need to, in my opinion.

22 Q I'm going to ask my colleague, Mr. Simmons if he could --
23 if you could first put it on the screens for the witness and
24 counsel and the Court, DX1087.

25 MR. SMITH: Your Honor, we don't have an unredacted

A. Silva - X

1 version of this document. May we get one?

2 MR. PITT: Sorry. Do we have one here? That is the
3 redacted version that Mr. Smith was asking. He is asking for
4 an unredacted which we may exchange. I think maybe through
5 oversight, I've not brought the unredacted version to the
6 Court. If Your Honor would therefore prefer, I can try to go
7 to a different part of what I was going to ask him, or I can
8 simply address some of those issues without the document?

9 THE COURT: If you don't want to utilize the
10 document, you can ask questions. That's your choice.

11 MR. PITT: Yes. I'm going to use the document, if
12 that's all right, but I guess not move to admit it. Would that
13 be acceptable to plaintiffs?

14 MR. SMITH: No. I won't be able to effectively cross
15 the witness. So many pages are redacted.

16 THE COURT: You're not crossing the witness.

17 MR. SMITH: I am sorry. Redirect. I'm concerned
18 without being able to see what has been --

19 THE COURT: He can answer ask any questions he wants.

20 MR. SMITH: Okay. It's a part that has been
21 redacted.

22 MR. PITT: Your Honor, I can represent the parts that
23 have been redacted are the parts that have very specific
24 information that is competitively sensitive. What I'm prepared
25 to ask this witness about are the general statements at the

A. Silva - X

1 beginning of the document that really don't touch upon anything
2 competitively.

3 THE COURT: That's fine.

4 MR. PITT: Thank you, Your Honor.

5 BY MR. PITT:

6 Q So what I would like to do first, sir, is ask you -- do
7 you recognize this document?

8 A I do.

9 Q What is it?

10 A It is a roadmap document that was prepared in the spring
11 of '22 probably talking about the pricing journey that we were
12 going on.

13 Q Did you prepare this document?

14 A I would have had a hand in it, plus my team members. My
15 associates who worked for me would have helped me prepare that,
16 but I definitely played a part in it for sure.

17 Q Did Albertsons prepare and maintain pricing roadmaps like
18 this in the usual course of its business?

19 A We do.

20 Q Did you help prepare this document in 2022 in the course
21 of your regularly conducted job responsibilities?

22 A I did.

23 MR. PITT: Your Honor, what I may do is wait to move
24 it into evidence until we have been able to actually provide
25 physically the unredacted, just so they can be satisfied we are

A. Silva - X

1 not doing anything unusual here.

2 THE COURT: Absolutely.

3 BY MR. PITT:

4 Q Mr. Silva, if I could ask you to look at page 3 of that
5 document, which has the heading "preface of our journey." And
6 there are sort of two boxes -- there is a "today" box and a
7 "tomorrow" box. Under "today," I would like to direct your
8 attention to the last paragraph, which reads: "This perception
9 was compounded, as we saw increased competition from discount
10 operators, and an acceleration in online competition with
11 Walmart, Target, Costco, Kroger, leveraging pickup, and
12 Amazon."

13 Do you see that?

14 A I do.

15 Q Could you just explain to the Court in your own words,
16 what does that mean?

17 A Well, again, we just touched on that. Competition is
18 fierce. Here, I listed "but not limited to some of the
19 previous competitors," that I previously mentioned here. It is
20 a fiercely competitive market. These are a lot of price
21 operators who are putting pressure on lowering prices, and its
22 forcing us to work harder on getting their prices down, again,
23 even in the markets that we serve. So that's part of why we're
24 putting such an emphasis on tools, technology, people, and
25 process to help us and assist us on that path.

A. Silva - X

1 Q If we could zoom back out and look at the "tomorrow" box,
2 can you tell the Court what is the purpose of that box?

3 A Well, that box -- there is a lot of words in that box.
4 That box, simply put, where we are headed. It talks about the
5 tools, the process, the piece that we just mentioned, and where
6 we are headed as an organization to try to focus on price and
7 how we are planning to get there.

8 Q And it states in that first paragraph in the second line,
9 "Base pricing strategy that drives positive price perception
10 with the customer and is achieved through an imperceptible
11 price gap (against Kroger or primary competitor) and wins on
12 locally relevant items while delivering sustainable revenue
13 growth for the stores."

14 That's sort of a mouthful. Again, could you explain
15 in your own words what is that talking about.

16 A Well, we know we have a high CPI in the marketplace, and
17 we know that we want an attainable goal. Our attainable goals
18 are really focused on our primary grocers, because that's the
19 closer goal that we have that whatever it is going to be in the
20 market. I don't want to say here it in the actual courtroom.
21 But that's our first step going against our long-term -- our
22 bigger competitor, which the biggest competitor on selling
23 groceries in the United States is Walmart. And so we need to
24 get closer to our primary food competitors because we know it
25 eventually chips away at the price position against Walmart --

A. Silva - X

1 Q Okay. So why can't you just price at Walmart's prices
2 today?

3 A We don't have the cost structure to actually compete with
4 Walmart. We're much smaller than Walmart. We can't purchase
5 the size and scale that we have -- Walmart is significantly
6 bigger than in what they sell on a grocery standpoint.
7 Actually, two, on the labor side of it, our salaries are much
8 more expensive and our health and welfare, which puts us at a
9 cost disadvantage and impacts the pricing of our goods.

10 Q Just to make sure we understand, why focus on primary food
11 competitor if your ultimate goal, the real goal is Walmart?

12 A Well, the primary food is a more attainable goal. It is a
13 shorter term goal that we can rally the teams to get closer to.
14 But the other thing too is that the traditional supermarket
15 also has the same kind of products, and it looks like our
16 stores, and they sell the same type of things. But at the end
17 of the day for us it's really getting a gauge and trying to
18 have something that's attainable that we can again chip away
19 at, and it is a shorter term goal for us.

20 Q When Mr. Smith was questioning you, you talked a little
21 bit about price checks and a little bit about web scraping.
22 Can you just define or describe for the Court what are the
23 different ways that you collect competitors' price information
24 to do price checking?

25 A There are three technical ways that we do it. The old way

A. Silva - X

1 usually was an in-store check, which someone would go in the
2 store and check. It would three days; a lot of time and very
3 expensive. But now with technology and public information, we
4 can do what we call web scraping. We have a service that
5 actually does that, a vendor partner that does that for us.
6 And the third way is we can send an associate out and get a
7 limited amount of SKUs on an app. So there are three primary
8 ways we can collect information publicly available depending on
9 the price information.

10 Q And are there advantages to web scraping?

11 A Fast and cheap.

12 Q Does your ability to collect and use pricing information
13 have any limitations?

14 A It does. Even with web scrapes, we mentioned earlier in
15 this discussion here that -- as crazy as it is, not everybody
16 has a commerce site that you can scrape from, and they don't do
17 business that way. So you have to physically go into a store.
18 Again, it is super expensive on that.

19 Not everybody sells the same -- even if it's the same
20 vendor or the same brand, it is not the same size. Like if we
21 go into a Costco, they're bigger sizes, but it's the same
22 brand, And we have to manipulate that information to get it to
23 a size comparison -- pardon the pun -- an apples-to-apples
24 comparison. We call that equalization. And then there's
25 probably a third approach that some competitors have a

A. Silva - X

1 third-party that sells their e-commerce, like an Instacart.
2 And again, that makes it challenging too, because when
3 Instacart gets involved, there's a mark-on factor and upcharge
4 associated goods and services, and it's not typically a
5 standard mark-on factor. It's different by item. It's varied
6 and dynamic, which makes it difficult for us to back into what
7 the price was at the actual physical format, where somebody
8 could find that in an order. So those are three of the bigger
9 challenges that we face, even if it is more efficient and more
10 cheaper.

11 Q Do you use third parties to collect some of this price
12 check information?

13 A We do.

14 Q I'm guessing those third parties don't perform this as a
15 free service?

16 A They do not.

17 Q So do they charge you or do you have to pay more for
18 certain price checks than other price checks?

19 A Yes.

20 Q Can you explain that a little bit? Which kinds of price
21 checks are more or less expensive for you to do?

22 A Well, the in-store check, again, it is super expensive.
23 It is a human going into a store. It is three days. Can I say
24 how much it costs, here in court?

25 THE COURT: He has not asked you that question.

A. Silva - X

1 THE WITNESS: Okay. Thank you, Your Honor.

2 BY MR. PITT:

3 Q Could you compare the price of doing an in-store check
4 versus a web scrape check?

5 A Yes.

6 Q Please do so.

7 A So that in store check, it can range on a full boat from
8 6- to \$8,000 per check. The other part of the question was in
9 comparison to a web scrape. I would have to think about my
10 annual contract and divide it by full book checks. It's
11 negligible. I would say it is under \$100 per unit.

12 Q Do you have a budget that you have to live with?

13 A I do.

14 Q All right. You mentioned this a little bit. But what
15 happens when items that are sold by a competitor aren't exact
16 matches to the items sold by Albertsons? For example, the
17 package size and the like? What is it that you have to do?

18 A Well, what we do in that case is we do what we call
19 product link. So we want to get the item into the tool to help
20 get the recommendation, because we want as much information to
21 feed those engines as possible. So what we will try to do is
22 create an equivalization. It takes our resources to actually
23 try transform that product and make that product so that it
24 will actually fit into the system, because it's a different --
25 it's a different calculation, and you have to convert it, so it

A. Silva - X

1 takes a bit more time.

2 Q And do those kinds of conversions have an effect on the
3 efficiency of your price checking activities?

4 A They do. They make it harder to check items, and it takes
5 time to do things. So we prioritize things according based on
6 how hard something is sometimes.

7 Q I would like to talk specifically about Kroger pricing
8 information. Is Kroger information difficult for you to
9 obtain?

10 A No.

11 Q Do you need to have somebody physically go into a Kroger
12 store to collect their price information?

13 A No.

14 Q Do you need to do a lot of conversions of Kroger
15 information to create meaningful comparisons?

16 A No. The things we do convert are standard, like the
17 private label items. We have private label. They have private
18 label. We have to do our job to separate them.

19 Q So with that said, can you compare the cost and difficulty
20 of obtaining Kroger price information to the cost and
21 difficulty of obtaining information from, say, Costco?

22 A Kroger is much easier. Costco is much harder, especially
23 if I have to use Instacart, because you really -- can't really
24 get a reliable price. So it forces me to potentially have to
25 go back to the store at that 6- to 8,000 check which is cost

A. Silva - X

1 and budget prohibitive on any kind of scale, level.

2 Q Does the ease of using Kroger information as compared to
3 the ease of using other competitors' information have any
4 relationship to the amount of Kroger price information that is
5 in Albertsons' pricing systems?

6 A It definitely has an a impact. In some cases, by using an
7 example like -- a WinCo is one of my competitors that doesn't
8 have a website. So if I have a WinCo, and I have a Kroger,
9 because WinCo would cost me 6- to 8,000 to get it, I probably
10 will take the Kroger over to WinCo in that example because I
11 have a budget at the end of the day too that I have to be
12 responsible for in addition to all the other stuff.

13 Q Mr. Silva, do you know which competitors Albertsons
14 collects price data from?

15 A I do, yes. It's a lot.

16 Q Can you list them all without the aid of a demonstrative?

17 A I can do it with a demonstrative. I couldn't do it
18 without. It would be a memory test, and I would fail. Sorry.

19 Q So have you in fact prepared a demonstrative to help you
20 explain to the Court which competitors Albertsons collects
21 price data from?

22 A Yes.

23 Q Could I have -- is this the demonstrative that you helped
24 create to explain to the Court which competitors Albertsons
25 collects price data from?

A. Silva - X

1 A It is.

2 Q Does this show the competitors for whom you do full book
3 price checks?

4 A It does.

5 Q Let's just walk through some of the companies that are
6 listed here. We see Walmart, Kroger, Instacart, Amazon,
7 Whole Foods, and others kind of towards the top there; is that
8 right?

9 A Yes.

10 Q And you collect full book price checks from all of them?

11 A Yes.

12 Q And then we also see other companies like Target, Meijer,
13 Total Wine & More, Wine.com, Walgreens, Chewy, CVS, and a whole
14 bunch of others. Do you see that?

15 A I do.

16 Q And do you also collect price check information from those
17 competitors?

18 A We do.

19 Q So is that list or the group of competitors from whom you
20 collect price check information static or does it change?

21 A It is changing all the time. I mean, I collect more
22 information on competitor intelligence today in a week than I
23 did three or four years ago, and we're rapidly expanding every
24 week because our old systems didn't allow us to collect as much
25 as we can now, and we have modernized our staff, which allows

A. Silva - X

1 us to collect more people and more often, more competitors,
2 more locations. We're growing every week.

3 Q I think you mentioned frequency, which is actually where I
4 was going to go next and to ask you do you conduct price checks
5 of each of Albertsons' competitors with the same frequency?

6 A No.

7 Q So overall which competitor do you price check most
8 frequently?

9 A Walmart.

10 Q Do you collect price check information from Walmart in
11 every price area where there is a Walmart to collect
12 information from?

13 A Where there is one available, yes.

14 Q Are there competitors also listed here whom you price
15 check less frequently?

16 A Yes.

17 Q So, for example, some of the competitors toward the bottom
18 you would do collections less frequently from those?

19 A Yes.

20 Q And why is that?

21 A Some of them are reference points because we don't collect
22 them all. Some are brand-new. We just started collecting
23 7-Eleven and QuickTrip like two weeks ago. So some are
24 reference points; some are emerging; and some are difficult.
25 The other part is the difficulty. Again, if we go back to

A. Silva - X

1 WinCo, and it's a very expensive and something that takes a lot
2 of conversion right now, from a time and resources standpoint,
3 I don't all the capacity do everything all at once, so we're
4 continuing to prioritize what we can get and as much as we can.

5 Q My colleague, Mr. Smith, asked you a number of questions
6 about a term that is used in some of Albertsons' systems. That
7 term is "primary food competitor." You talked about it a
8 little bit, but I would like to give you an opportunity in your
9 own words to explain would is "primary food competitor"? What
10 does it mean?

11 A It is a traditional supermarket. We try to have a
12 traditional supermarket collection point, because we get a lot
13 of items from traditional supermarkets in our chats. They are
14 typically easy to collect for the most part, not always, but
15 for the most part. We want a representative sample of a
16 grocery store from a primary checkpoint. It does not mean it
17 is our biggest competitor in the marketplace, but it is a
18 primary food as a possible trade check for it.

19 Q So if it is not your biggest competitor in a given
20 marketplace, why is it that you look to a primary food
21 competitor?

22 A Again, the primary food competitor for us, typically are
23 the same departments, the same type of items, and so we get a
24 good representative sample for what the pricing in the market
25 is.

A. Silva - X

1 Q Now, Mr. Smith a few moments ago showed you a table, and
2 he asked you to identify which banners are Kroger banners or in
3 which price areas is Kroger listed as the primary food
4 competitor. Could you just explain why Kroger is listed as the
5 primary food competitor in so many price areas?

6 A Some of it is the ease of spray. Then some of it is
7 competitive intensity. There's are a number of reasons that go
8 into that why that is actually listed so much.

9 Q As you think about your future plans, will you be focusing
10 on different competitors to compare Albertsons' prices to?

11 A As I said we, continue to expand all the time, yes.

12 Q So why hasn't that occurred before now?

13 A Largely, time and resources for us. We have been very
14 busy launching software and tools and training and education
15 with our divisions, and it is still something we are continuing
16 to tackle as we can.

17 Q So the plaintiffs asked you a number of questions.
18 Mr. Smith asked you some questions about a tool called price
19 advisor. Just so you have an opportunity, in your own words,
20 what is price advisor? What's its function?

21 A It is a rules-based pricing engine that was designed to
22 provide recommended price points for our divisions to price and
23 execute pricing, and the division is designed to do some of the
24 heavy lifting in fact-based/data driven to provide focus on the
25 items that matter most to our customers', including price so we

A. Silva - X

1 can price right in the market too.

2 Q And you were asked about a metric called CPI and about CPI
3 targets. Do you recall that?

4 A I do.

5 Q And CPI is competitor price index?

6 A Yes.

7 Q The CPI targets that you were discussing, are those
8 targets binding on the people who use price advisor?

9 A No. They are guidelines.

10 Q As a general matter, what is it that the national pricing
11 team recommends to divisions as to how they set their prices
12 for important item categories?

13 A For important items, we would -- when we think about
14 critical and super-sensitive key value items -- those are
15 important items. So we would prefer that they -- as we showed
16 and targets, either match the primary food or be very close to
17 the primary competitor on points or percentages.

18 Q And is that ultimate goal of the pricing transformation
19 journey that you described?

20 A That's our short-term goal, which is becoming more of a
21 long-term goal to get to those food competitors, because we
22 hope to chip away at the bigger target, which is Walmart, but
23 it is very far away.

24 Q Will Albertsons be able to catch up with Walmart?

25 A Not under its current structure, no.

A. Silva - X

1 Q Why not?

2 A As previously stated, it would be much smaller in terms of
3 size and scale than Walmart. So purchasing power of a company
4 like Walmart on groceries is significantly bigger or better
5 than what we can actually provide, and we are at a labor
6 disadvantage too in terms of salary and for what we pay our
7 employees, which pushes our prices up.

8 Q Are there times when Walmart is able to sell items at a
9 price that is actually lower than Albertsons is able to buy
10 those products from its distributors?

11 A Yeah. We can see that in the system, because we have a
12 Walmart price check in our system, in addition to primary food.
13 So we can see from a primary standpoint what the price of that
14 item is. Yes, our costs in some cases is higher than the price
15 that Walmart sells it in retail.

16 Q Can you think of an example?

17 A There are couple that come to mind. There is one we did
18 months ago that -- can I name the product, or am I not -- what
19 are the rules of engagement?

20 Q You may name the product. You may name the public-facing
21 sales price. What you may not do is name the cost of
22 Albertsons of acquiring the product.

23 A It is a rules-based courtroom here.

24 THE COURT: It is. It is. It is.

25 THE WITNESS: The one I'm thinking about now would

A. Silva - X

1 have been a Kraft Mac and Cheese product. In the region that
2 we -- that popped up in the tool, Walmart sold it under \$3. I
3 think 2.98. Our inner cost was higher than that.

4 BY MR. PITT:

5 Q It cost you more than 2.98 in order to buy the product. I
6 mean, would it just have been cheaper for you to buy that
7 product from Walmart than your own distributor?

8 A I don't want to buy anything from Walmart. In that case,
9 if it is more expensive, in following that logic, yeah.

10 Q Is that the only example?

11 A No. There's others. It is readily available in the
12 system. There are many examples where you can see that
13 happening.

14 Q Just a couple more questions, Mr. Silva. Can a user
15 choose a different price than the one that's recommended by
16 price advisor?

17 A Absolutely.

18 Q And you talked about that a little. But what I would like
19 to understand from you, do you have a sense of how often the
20 division pricing personnel deviate from the price that price
21 advisor recommends?

22 A Just to be clear, are you asking me how many times they
23 override? Is that what you are saying?

24 Q How often is it -- or how common is it for the divisions
25 to override the recommendation that price advisor provides?

A. Silva - X

1 A You know, it varies by division, by department. If I had
2 to generalize that right now, where we are at, I would say that
3 users are overriding approximately 60 percent of the time
4 today.

5 Q 6-0?

6 A 60 on a recommended price.

7 Q So in other words, only 40 percent the time did the
8 divisions actually accept the price that's recommended by price
9 advisor?

10 A Yeah, probably so. I think that's right.

11 Q When Mr. Smith was questioning you, he asked about whether
12 price advisor recommended prices based on the primary food
13 competitor. Are there plans to allow price advisor to
14 recommend prices based on more than one competitor?

15 A Yeah. The tools set up is configurable. The tool is set
16 up to actually do that today, but we are not in a position to
17 do that at this given moment.

18 Q Why not?

19 A Largely because the focus right now is closing that gap.
20 We already established we are high priced against primary food.
21 We need to close that gap first before we go even more
22 aggressive. But we do have Walmart in every price area in the
23 tool where it's available. Then we are going to have all the
24 other competitors on that list that will eventually be in the
25 tool, which, again, we are just not there yet.

A. Silva - X

1 MR. PITT: Thank you very much, Mr. Silva. I have no
2 further questions at this time, Your Honor.

3 THE COURT: Any redirect?

4 MR. SMITH: No, Your Honor. We have nothing further.

5 THE COURT: You may step down. Thank you.

6 THE WITNESS: Thank you very much.

7 THE COURT: We are going to take an afternoon break.
8 I know you need one. I wanted to make sure I had finished the
9 two witnesses. I understand we have one more witness. So we
10 will be in recess for 15 minutes.

11 (Recess.)

12 (Proceedings resumed:)

13 THE COURT: You may call your next witness.

14 MR. WOLF: Your Honor, we have a couple of
15 housekeeping matters related to the witness.

16 MS. MUSSER: Sure. I wanted to let Your Honor know
17 that we received some additional redactions this afternoon. We
18 are -- for this witness -- from counsel for Kroger. We are
19 going to do our level best to display as many redacted copies
20 as we can. We will work together. If we step over the line,
21 we will do our level best. We will smooth this out in the
22 upcoming days.

23 THE COURT: Thank you.

24 MR. WOLF: We appreciate the Government's good-faith
25 efforts today. We have no doubt they will continue it.

1 Anything that goes askew certainly will be correctable
2 immediately.

3 We want to know Your Honor's preference if this
4 witness goes long.

5 THE COURT: About how long?

6 MS. PFAFFENROTH: Our understanding -- and I don't
7 mean to make representations on behalf of the Government. They
8 have probably 45 minutes-plus with the witness. I have at
9 least an hour with the witness.

10 THE COURT: We are not going to go that long.

11 MR. Pfaffenroth: Our preference would be to not cut
12 my examination in half, if possible. We wanted to ask the
13 Court --

14 THE COURT: I don't understand. Are we talking about
15 45 minutes total?

16 MS. PFAFFENROTH: 45 minutes for the total direct.

17 MS. MUSSER: The Government anticipates going 45
18 minutes. Maybe less. We will see how it goes.

19 THE COURT: Then you won't do your cross-examination
20 until tomorrow, because I'm stepping out, unless you can do it
21 in a portion. Let me ask you this question: Is this a joint
22 witness? Can we do -- I know you are sharing him. I get that.
23 But can you do at least what FTC needs to do?

24 MS. PFAFFENROTH: Certainly.

25 THE COURT: Then we can start with the same witness

1 tomorrow morning.

2 MR. Pfaffenroth: Absolutely.

3 THE COURT: How long will that take?

4 MS. MUSSER: I think for us we again probably half an
5 hour, maybe 45 minutes longer today. I don't know what we will
6 need on cross tomorrow.

7 MS. PFAFFENROTH: I would anticipate about an hour
8 tomorrow.

9 THE COURT: Why don't we do this: Let's do direct,
10 end for the day. And I know it has been a long day for you.
11 Then we will start up again at nine o'clock.

12 Are you feeling good with the time?

13 MR. WOLF: Yes, Your Honor.

14 THE COURT: All right. Then let's do that.

15 MR. PERRY: Your Honor, one more thing. C&S is a
16 nonparty, but they are deeply involved in the case. They have
17 asked whether their off-site persons could use the party line.
18 I recognize --

19 THE COURT: No. They cannot. They are a nonparty.

20 MR. PERRY: Thank you, Your Honor.

21 THE COURT: You know, I'm going to be consistent.

22 MR. PERRY: I said I would ask.

23 THE COURT: The next witness that you're calling.

24 MS. ARENS: Good afternoon, Your Honor. My name is
25 Elizabeth Arens for the Federal Trade Commission. At this time

A. Groff - D

1 the Federal Trade Commission calls Andy Groff.

2 I believe we have binders that are about to be
3 distributed.

4 THE COURT: All right. I hope you heard you are
5 going to be tomorrow as well.

6 THE WITNESS: I did. That's what I hear. Twice the
7 fun.

8 (The witness was duly sworn.)

9 THE CLERK: Would you please state your name for the
10 record, spelling your last.

11 THE WITNESS: Andrew Groff. A-N-D-R-E-W, G-R-O-F-F.

12 DIRECT EXAMINATION

13 BY MS. ARENS:

14 Q Good afternoon, Mr. Groff.

15 A Good afternoon.

16 Q Mr. Groff, your position at Kroger is senior director for
17 pricing and execution?

18 A That is correct.

19 Q You have held your current position since around
20 August 2020?

21 A The current title, yes. I have been in a version of this
22 role since joining Kroger in 2015.

23 Q And prior to 2015 you were employed at Harris Teeter; is
24 that correct?

25 A That's correct.

A. Groff - D

1 Q That's another grocery chain that was acquired by Kroger?

2 A Yes.

3 Q In your current position you are responsible for helping
4 Kroger leadership set and maintain Kroger prices, right?

5 A Yes.

6 Q Do you lead a team of approximately 45 people?

7 A Yes. At the present time it is 44.

8 Q And Kroger has both everyday pricing and promotional
9 pricing, right?

10 A Kroger does, yes.

11 Q And everyday pricing is also called regular or white tag
12 pricing.

13 A Yes. That's correct.

14 Q And you work on Kroger's everyday pricing; is that right?

15 A Yes.

16 Q But you and your team do you not have responsibility for
17 setting promotional pricing, right?

18 A No, we do not.

19 Q Your responsibilities do include setting the strategy for
20 Kroger's price check with competitors, right?

21 A Yes.

22 Q And those price checks are input into Kroger's pricing?

23 A Yes, they are.

24 Q Would you please open your binder to the tab marked
25 PX1130. I'll note at the outset that there is a fair amount of

A. Groff - D

1 redaction on this document, so before we get too far into it,
2 we will likely need to switch to a nonpublic screen to discuss
3 this document. Are you able to locate the document, Mr. Groff?

4 A Yes, I have it.

5 Q You have seen this document before, right?

6 A Yes, I have.

7 Q And the first page of this document is a cover email from
8 you to Stuart Aitken and several others?

9 A That's correct.

10 Q And Stuart Aitken is a senior executive at Kroger,
11 correct?

12 A Yes.

13 Q Your email is dated November 29, 2022, and subject
14 "pricing info."?

15 A Yes. That's correct.

16 Q And there is a presentation attached to this email. You
17 prepared this presentation, right?

18 A Yes, I did.

19 Q And you sent this document to Mr. Aitken to provide
20 information on Kroger's pricing strategy and pricing programs
21 for the majority of its division?

22 A Yes. That's correct.

23 MS. ARENS: Your Honor, I move to admit PX1130 into
24 evidence.

25 MS. PFAFFENROTH: No objection.

A. Groff - D

1 THE COURT: It will be received.

2 BY MS. ARENS:

3 Q Please turn to the third slide ending in -003. You see
4 the heading is "core pricing program." There is a date of
5 November 29th, 2022. Mr. Groff, this document accurately
6 represented Kroger's pricing strategy for its pricing program
7 at the time you sent it in the fall of 2022, right?

8 A Yes.

9 Q In the fall of 2022 is around when Kroger's merger with
10 Albertsons was announced, right?

11 A I believe it was about that time, yes.

12 Q And between then and now there have been no major changes
13 for Kroger's strategy for its pricing program, right?

14 A Correct.

15 Q So after today Kroger has approximately ten different
16 pricing programs?

17 A It is a few more than ten, but that's close.

18 MS. ARENS: So, Your Honor, the remainder of the
19 slides I plan to ask about have information that Kroger has
20 designated as confidential. For that reason, I respectfully
21 request that the clerk turn off public displays before
22 displaying the slide.

23 THE COURT: Are you asking that only the slides shown
24 to the witness and the Court and counsel?

25 MS. ARENS: Yes.

A. Groff - D

1 THE COURT: Okay.

2 BY MS. ARENS:

3 Q Can you please turn to the page that ends in -008, please.

4 Mr. Groff, one of Kroger's pricing programs is known
5 as Everyday Essentials, right?

6 A Yes, that's right.

7 Q The Everyday Essentials categories consists of five
8 products?

9 A Yes.

10 Q Those are milk, eggs, sugar, bananas and iceberg lettuce?

11 A Yes.

12 Q Kroger sets the prices for the Everyday Essential category
13 at the level of micro-zone?

14 A Correct.

15 Q Micro-zone consists of about one to five Kroger stores?

16 A Our largest is six stores, and there are a couple of
17 those. Most of them are single-store zones.

18 Q The primary focus for Kroger's price checking for Everyday
19 Essentials category is Walmart, Aldi, and traditional
20 retailers, right?

21 A That's correct.

22 Q And traditional retailers, as discussed here, are the
23 retailers you and local division leaders have agreed are the
24 ones driving pricing within that market, right?

25 A Yes. We try and capture all the competition from each

A. Groff - D

1 local micro-zone.

2 Q And Albertsons is one of the key traditional retailers
3 that Kroger price checks for the Everyday Essentials price
4 category, right?

5 A Yes, they are.

6 Q And looking down at the chart at the bottom of the slide,
7 ACI stands for Albertsons, right?

8 A Yes.

9 Q Albertsons' price checks are important for Everyday
10 Essentials, because lots of individuals micro-zone include an
11 Albertsons store, right?

12 A I don't know how you would define "lots." But everywhere
13 there is an Albertsons and a Kroger within ten minutes of one
14 another, they would be included, yes.

15 Q In addition to the Everyday Essentials program, Kroger has
16 about nine other pricing programs, right?

17 A There is more -- there would be nine core additional ones.
18 There are some additional non-core programs, but yes.

19 Q And the core programs include programs like grocery
20 critical, produce critical, and packaged meat critical, right?

21 A Yes. They are examples.

22 Q The pricing for these other programs is that in larger
23 zones known as execution levels, right?

24 A That is correct.

25 Q For each of these pricing programs, Kroger benchmarks

A. Groff - D

1 prices to Walmart, right?

2 A Yes, we do.

3 Q Kroger also conducts checks against traditional
4 competitors to ensure that Kroger is in line, right?

5 A Yes, we do.

6 Q And the traditional competitors Kroger price checks for
7 these pricing programs includes Albertsons, right?

8 A Yes. They do include Albertsons.

9 Q And that's true in each area where Kroger and Albertsons
10 both operate, right?

11 A Yes.

12 Q For these nine other core pricing programs, Kroger does
13 not price check Costco, right?

14 A No, we do not.

15 Q And for these nine other core pricing programs, Kroger
16 does not price check Sam's Club, right?

17 A Correct.

18 Q For eight of these nine other core pricing programs,
19 Kroger does not price check Aldi, right?

20 A Correct.

21 Q And of these nine core pricing programs, Kroger does not
22 price check Lidl, right?

23 A That's right.

24 Q And of these nine pricing core pricing programs, Kroger
25 does not price check Trader Joe's?

A. Groff - D

1 A Correct.

2 Q And of these nine core pricing programs, Kroger does not
3 price check Dollar Store, right?

4 A That's correct also.

5 Q And for these nine core pricing programs, Kroger does not
6 price check online-only retailers except in areas where Kroger
7 deliveries products and does not have physical stores, right?

8 A Yes, that's correct also.

9 Q And Kroger does not price check CVS or other drugstores
10 for its core pricing program, right?

11 A No, we do not.

12 Q And Kroger does not price check 7-Eleven or other
13 convenience stores for its core pricing programs, right?

14 A No, we do not.

15 Q Convenience stores are typically priced well above where
16 Kroger is priced, right?

17 A Yes, they are.

18 Q I would like to take a look at an example slide here,
19 which would be PX1130-001 -- sorry, 011. This is the grocery
20 critical program. Are you on the right slide?

21 A Yes.

22 Q I want to look at the third bullet of this slide where it
23 states that Kroger performs checks against traditional
24 competitors to ensure we are in line.

25 Do you see that?

A. Groff - D

1 A Yes, I do.

2 Q And that's true for Kroger's other core pricing programs
3 as well, right?

4 A Yes, along with Walmart as the primary benchmark.

5 Q And the phrase "to ensure we are in line with traditional
6 competitors" is to ensure that Kroger isn't priced above those
7 competitors, right?

8 A That's correct.

9 Q So if Kroger spread strategy versus Walmart would place
10 you higher than those other competitors, then you would lower
11 your price, right?

12 A In most cases, with some exceptions.

13 Q So let's take an example. Let's say, for example, that
14 Kroger planned to set a product price at 10 percent above
15 Walmart, but Kroger saw that another traditional competitor was
16 priced at only 5 percent above Walmart. In that situation
17 Kroger might lead its price down to match the traditional
18 competitor, right?

19 A We might. And it depends on which traditional competitor
20 and which market, because there are slightly different rules
21 that we apply based upon the position with that competitor.
22 But in general speaking terms, yes, you're correct.

23 Q We can take that document down. The next document that
24 I'm about to use has a fair amount of redactions as well. So I
25 think we would likely need to show that document just to the

A. Groff - D

1 screen being displayed to counsel, the Court, and the witness?

2 THE COURT: That's fine.

3 MS. ARENS: Thank you.

4 BY MS. ARENS:

5 Q Mr. Groff, in your binder, please turn to PX1110. You
6 have seen this document before, right?

7 A Yes, I have.

8 Q I would like to take a look at the bottom email, which was
9 written by Andy Bottoms on July 6th, 2021. Do you see that at
10 the beginning of the first page?

11 A Yes. Uh-huh.

12 Q Andy Bottoms reports to you, right?

13 A Yes, he does.

14 Q And Mr. Bottoms works with the merchandising team that
15 sets retail prices for Kroger's pricing program items, right?

16 A Yes.

17 Q And you were copied on this email from Mr. Bottoms?

18 A Yes, I was.

19 Q And I would like to look at the first sentence in
20 Mr. Bottoms' email. So Mr. Bottoms' email discusses a change
21 in pricing strategy at Kroger, right?

22 A Yes.

23 Q And you oversaw the acceptance and alignment around this
24 new strategy, right?

25 A Yes.

A. Groff - D

1 MS. ARENS: Your Honor, I move to admit PX1110.

2 MS. PFAFFENROTH: No objection.

3 THE COURT: It will be received.

4 BY MS. ARENS:

5 Q Mr. Groff, this email from Mr. Bottoms accepted the
6 pricing rule at Kroger called the HPR rule, right?

7 A Yes.

8 Q HPR is short for "high-price retailer"?

9 A Yes.

10 Q And the HPR rule ensures that Kroger's prices aren't
11 higher than the prices of traditional competitors, right?

12 A Yes. That is the reason for the rule.

13 Q And this email from Mr. Bottoms says that at some point
14 for 2021 Kroger has been straight away and strictly enforcing
15 the HPR rule, correct?

16 A Yes.

17 Q In 2021, your group proposed that Kroger be more
18 competitive by investing funds to institute the HPR rule,
19 right?

20 A Yes.

21 Q And that meant Kroger lowered prices for the HPR
22 retailers, right?

23 A Yes.

24 Q And you expected that by investing in price, Kroger would
25 win additional sales volume, right?

A. Groff - D

1 A Yes. That's the intentional with the price investments.

2 Q And Kroger started implementing these pricing investments
3 around July or August of 2021, right?

4 A Did you say '21?

5 Q I did. July or August of 2021?

6 A Yes. Thank you. I'm sorry. I was getting thrown by the
7 line talking about the budget for 2022. You're correct. July
8 of 2021.

9 Q Let's look further down Mr. Bottoms's email to the section
10 with the bullets. Do you see that?

11 A Uh-huh. Yes.

12 Q I would like to refer you to the third bullet. There is a
13 statement about Publix, Safeway, Albertsons, Tom Thumb, and
14 Hyvee. Do you see that statement?

15 A Yes.

16 Q And here, where it says "ensure retails," that refers to
17 retail prices?

18 A Yes, it does.

19 Q And Safeway is an Albertsons banner, right?

20 A Yes.

21 Q And Tom Thumb is also an Albertsons banner, right?

22 A Yes.

23 Q And obviously Albertsons is an Albertsons banner, right?

24 A Yes.

25 Q And this rule about ensuring retail prices are no higher

A. Groff - D

1 applies to other Albertsons banners as well, right?

2 A Yes, it would.

3 Q I would like you to please turn in your binder to the
4 document marked PX1109. There are some redactions on this
5 document, but I don't believe that the specific sections that
6 we are asking are redacted, so I think we will be able to
7 proceed with showing the document generally.

8 Mr. Groff, you have seen this document before, right?

9 A Yes, I have.

10 Q And this is a June 25, 2021, email from you to Mike Murphy
11 CCing Matt Meyer?

12 A Yes.

13 Q And it has the subject draft slides for "VP call next
14 week-price investments."

15 A Yes.

16 Q This document was dated a couple of weeks earlier than the
17 document we just looked at, which was dated July 6th, 2021.

18 Mr. Groff, Mike Meyer is who you report to, right?

19 A Yes.

20 Q And Mike Murphy is who Matt Meyer reports to?

21 A Yes.

22 Q And you prepared the document attached to the email,
23 right?

24 A Yes, I did.

25 MS. ARENS: Your Honor, I move to admit PX1109 into

A. Groff - D

1 evidence.

2 MS. PFAFFENROTH: No objection.

3 THE COURT: It will be received.

4 BY MS. ARENS:

5 Q I would like to turn to the second page of document -- the
6 cover page, and this is fiscal year 2021 incremental price
7 investments.

8 Do you see that?

9 A Yes, I do.

10 Q And the term "price investments" refers to lowering
11 prices, right?

12 A Yes.

13 Q Which generally lowers Kroger's gross margins, right?

14 A Yes.

15 Q Let's turn to the slide ending in 007. Mr. Groff, this
16 slide is about the HPR rule, right?

17 A Yes, it is.

18 Q And it is about incremental pricing investments that
19 Kroger made to enforce the HPR rule, right?

20 A Yes. This was an advance of the execution of them. But
21 yes, this is what that's about.

22 Q Let's look at the second bullet. It states, "The HPR rule
23 will ensure we are not priced significantly higher than the
24 traditional retail competitor."

25 Do you see that?

A. Groff - D

1 A Yes.

2 Q Let's look at the next bullet, please. Here it says that
3 the HPR rule put additional pressure on Kroger's traditional
4 competitors, right?

5 A Yes.

6 Q And that's by not allowing them to undercut Kroger's
7 prices?

8 A Correct.

9 Q And one of the traditional retailers to which the HPR rule
10 applies is Albertsons, right?

11 A Yes.

12 Q And there is typically one retailer that is the primary
13 HPR in each Kroger division?

14 A Yes. We try to designate one.

15 Q I would like to look at the chart at the bottom of this
16 slide and focus on some of the areas where Kroger overlaps
17 Albertsons. In the middle column, let's look at Dallas.
18 Albertsons is present in Dallas?

19 A Albertsons and Tom Thumb banners are both in Dallas.

20 Q Tom Thumb is an Albertsons banner, right?

21 A Yes.

22 Q And the HPR listed for Dallas is Tom Thumb?

23 A That's correct.

24 Q Looking a few rows below, Dallas, King Soopers, which is a
25 Kroger division in Colorado?

A. Groff - D

1 A Right.

2 Q And Safeway is listed as an HPR for King Soopers?

3 A Yes, it is.

4 Q And Safeway is an Albertsons banner?

5 A Yes.

6 Q Right below King Soopers is Frys, which is a Kroger banner
7 in Arizona, right?

8 A Yes.

9 Q And Safeway is listed as HPR for Frys?

10 A Yes, it is.

11 Q I would like to look at the third column on this chart,
12 which the top row is for Fred Meyer stores. That's a Kroger
13 banner in the Pacific Northwest, right?

14 A That's correct.

15 Q And Safeway is listed as HPR for Fred Meyer stores, right?

16 A Yes.

17 Q Below that Fred Meyer Alaska lists Safeway and Carrs as
18 the HPR, right?

19 A Yes.

20 Q And Carrs is another Albertsons banner?

21 A Yes, it is.

22 Q Below that Smiths is another Kroger banner, right?

23 A That's correct.

24 Q And Smith's Las Vegas and Smiths Albuquerque both list
25 Smiths as HPR?

A. Groff - D

1 A Yes.

2 Q Under that, Ralphs is a Kroger banner in California,
3 right?

4 A That's correct.

5 Q For Vons and Stater Brothers are listed as HPR?

6 A Yes.

7 Q And Vons is an Albertsons banner?

8 A Yes.

9 Q And today as well, Albertsons banners are the primary HPR
10 in those state divisions, right?

11 A Yes, that's true.

12 Q Now, I would like to look back up toward the top of the
13 next slide next to the phrase "enforce HPR rule." So this is
14 depicting money that Kroger invested to invoke the HPR rule?

15 A That's correct. That was our forecast.

16 Q The first number in parenthesis, 21-and-a-half million, is
17 the amount that Kroger plans to invest to implement the HPR
18 rule over the rest of fiscal year 2021, right?

19 A Yes.

20 Q And the section amount for 40 million is Kroger's
21 anticipated investment over a full year, right?

22 A Yes. That's correct.

23 Q And that's, again, the investment Kroger would make to
24 lower prices under the HPR rule, right?

25 A Yes.

A. Groff - D

1 Q We can take that document down.

2 MS. ARENS: Your Honor, the next document I plan to
3 use I believe has some redactions. I think we should be able
4 to use the redacted version for the examination we will give
5 that a try. I think it is not working. We will figure out
6 another way.

7 BY MS. ARENS:

8 Q Mr. Groff, if you could please turn to the tab in your
9 binder marked PX1115. You have seen this document before,
10 right?

11 A Yes, I have.

12 Q And this is a January 31, 2022, email from you to Carlo
13 Baldan, copying several others?

14 A Yes.

15 Q Carlo Baldan is the vice president of center store
16 merchandizing, right?

17 A That's correct.

18 Q And the title of your email is CSD 20-ounce pricing
19 recommendation, right?

20 A Yes.

21 Q And CSD refers to carbonated soft drinks?

22 A That's right.

23 Q And carbonated soft drinks is one of the products that
24 Mr. Baldan is responsible for?

25 A That's correct.

A. Groff - D

1 MS. ARENS: Your Honor, I move to admit PX1115 into
2 evidence.

3 MS. PFAFFENROTH: No objection.

4 THE COURT: It will be received.

5 BY MS. ARENS:

6 Q So I would like to look further at your email on the first
7 page of this document. Here, you've presented three pricing
8 options for 20-ounce carbonated soft drinks, right?

9 A Yes.

10 Q And option 2 is the option that you recommended, right?

11 A That's right.

12 Q And that's to move to \$2.09 unless Publix and Safeway or
13 Albertsons is below \$2; stay at 1.999 at these markets, right?

14 A Yes.

15 Q And I would like to look further down the email that you
16 gave for the recommendation. So looking to the bottom
17 paragraph where it states, "I recommend option 2," and you gave
18 the reason that you thought Kroger needed to stay at parity and
19 not above high-priced retailers like Publix, Safeway, and
20 Albertsons, right?

21 A Yes. As we were taking cost increase from the
22 manufacturer, we wanted to make sure we stayed under or at
23 parity with those retailers.

24 Q And staying at parity and not above Albertsons is
25 consistent with Kroger's general application of the HPR rule,

A. Groff - D

1 right?

2 A Yes, it is. Well, this item is not on one of the lists
3 that we apply to HPR rule too, so we wouldn't internally call
4 it "the HPR rule," but it has the same spirit.

5 Q To best of your recollection, Kroger adopted the
6 recommendation that you put forward here, right?

7 A To the best of my knowledge, we did, yes.

8 Q Did Kroger's price perception worsen relative to the price
9 perception of Albertsons and Kroger risks losing customers to
10 Albertsons, right?

11 A Yes, that's true.

12 Q We can take that document down.

13 Mr. Groff, just for today we have been discussing
14 pricing strategy followed by a majority of the Kroger
15 divisions, but there are some Kroger divisions that benchmark
16 prices directly to Albertsons store prices, right?

17 A Yes.

18 Q And Kroger's Mariano's's division is one of those devices,
19 right?

20 A Yes, it is.

21 Q Mariano's in Illinois?

22 A Yes, in the Chicago area.

23 Q And Mariano's generally sets its regular prices in
24 reference to Jewel-Osco, right?

25 A That's right.

A. Groff - D

1 Q And Jewel-Osco is an Albertsons banner?

2 A Yes.

3 Q And QFC is another Kroger division that benchmarks its
4 prices directly to Albertsons banner, right?

5 A Yes.

6 Q QFC operates in Washington and Oregon?

7 A Yes, we do.

8 Q And QFC's pricing strategy is either to match or remain
9 slightly below Safeway's, right?

10 A Yes, that's correct.

11 Q I want to switch gears a little bit now and talk about the
12 times when Kroger has been increasing prices. Kroger used a
13 pricing process known as rebalance, right?

14 A Yes, we do.

15 Q And Kroger calls an earlier version of this process "super
16 SPI," right?

17 A Yes, that's right.

18 Q And price rebalance includes a process to raise prices
19 when Kroger thinks prices are too low, right?

20 A That's correct.

21 Q Please turn in your binder to the tab marked PX1129. I
22 don't believe there is any redactions on this document, so I
23 believe we can show this document on the public screen.

24 Mr. Groff, you have seen this document before, right?

25 A Yes, I have.

A. Groff - D

1 Q This is an email chain, which starts with an email from
2 you, which begins on the second page ending in -002. And this
3 email is sent to a large number of Kroger employees, and it is
4 dated February 28, 2020. Turning to the next page, you can see
5 that your email has the subject pricing project gross margin
6 opportunity.

7 Do you see that?

8 A Yes, I do.

9 MS. ARENS: Your Honor, I move to admit PX1129 into
10 evidence.

11 MS. PFAFFENROTH: No objection.

12 THE COURT: It will be received.

13 BY MS. ARENS:

14 Q So in this email subject that we saw, you use the phrase
15 "gross margin opportunity." That refers to an opportunity to
16 improve Kroger's gross margin, right?

17 A Yes.

18 Q And I want to look now at the first sentence of your
19 email. That states, "I wanted to share with you a pricing
20 initiative that your senior VP may have recently shared with
21 you." And now I would like to look at your next sentence.
22 There, you explain that Kroger's pricing team had built a model
23 to identify price gaps to competition and that enable quick-win
24 price moves on non-pricing program items, right?

25 A That's right.

A. Groff - D

1 Q And "non-pricing program items" refers to items that are
2 not part of the Kroger pricing programs that we discussed
3 earlier today, right?

4 A Correct.

5 Q So I would like to look now at the next sentence where you
6 stated, "Simply put, we are searching for items where we may be
7 priced lower than we need to be compared to our competition."

8 Do you see that?

9 A Yes.

10 Q Here, Kroger was looking to define items that were priced
11 too low relative to competitors, right?

12 A Yes.

13 Q That's in order to increase prices on those items, right?

14 A Yes. So that we could invest in the items that are on our
15 pricing programs.

16 Q And so you could improve gross margins, right?

17 A On these particular items, yes.

18 Q Now, identifying items priced too low often requires
19 Kroger to look at another competitor in addition to Walmart,
20 right?

21 A We always do, yes.

22 Q And that other competitor is typically the HPR competitor,
23 including Albertsons, where Albertsons is located right?

24 A It would include those, but oftentimes we would look at as
25 many as we have price checks for in every market area that

A. Groff - D

1 we're in.

2 Q And I would like to scroll down at your second paragraph
3 beginning "in total" and the last sentence of that paragraph.
4 There you stated -- there you gave a dollar figure for the
5 overall margin improvement that Kroger expected to achieve in
6 2020 from that initiative, correct?

7 A That's correct.

8 Q And that dollar amount was 20 million?

9 A Yes.

10 Q And to your recollection Kroger achieved this margin
11 improvement, right?

12 A Yes, I believe we did.

13 Q We can take that document down, please.

14 Let's talk a little bit about cost increases and
15 inflation. Mr. Groff, when Kroger sees cost increases,
16 Kroger's strategy is to lead on cost changes, right?

17 A Our goal is to pass through that inflation to customers,
18 if that's what you mean by "lead."

19 Q What I mean is increasing prices and seeing whether your
20 competitors respond, right?

21 A We increase prices. And if our competitors don't respond,
22 then we need to come back down in price.

23 Q This process at Kroger is known as a "probe," correct?

24 A That is a word that would be used for it, yes.

25 Q And again that refers to Kroger increasing its prices and

A. Groff - D

1 looking to see if other retailers raised their prices?

2 A Yes.

3 Q And sometimes Kroger raised its prices by more than cost
4 inflation, right?

5 A We generally try and raise it by the amount of inflation,
6 but we also try to end in price points that we would typically
7 end in, so it could be pennies difference.

8 Q Please turn in your binder to the tab marked PX11337. I
9 don't believe this document has any redaction, and we can show
10 this on the public screen.

11 MS. PFAFFENROTH: I believe this document was to be
12 withheld in the public screen in its entirety or at least in
13 that majority?

14 MS. ARENS: We can show the documents just on the
15 screens to counsel, the Court, and the witness, if that's okay
16 with Your Honor.

17 BY MS. ARENS:

18 Q Mr. Groff, you see this document before, correct?

19 A Yes, I have.

20 Q And this is an email that you wrote to Mike Murphy and
21 Matt Meyer on February 9, 2021, with the subject quarter 4
22 pricing notes, right?

23 A That's right.

24 Q You began your email, "Good morning. Below are some notes
25 on the quarter 4 pricing. I have also attached the Walmart,

A. Groff - D

1 Meijer and ALB/SFY full books."

2 Do you see that?

3 A Yes .

4 Q And "ALB/SFY" refers to Albertsons/Safeway?

5 A Yes.

6 Q Here you are providing information up the chain on
7 Kroger's pricing for the fourth quarter of fiscal year 2020,
8 right?

9 A Correct.

10 MS. ARENS: Your Honor, I move to admit PX11137 into
11 evidence.

12 MS. PFAFFENROTH: No objection.

13 THE COURT: It will be received.

14 BY MS. ARENS:

15 Q I would like to start on the first page of this document
16 under quarter 4/summary. I would like to look at the bottom
17 bullet point there. And there you wrote, "While we need to
18 pass through as much inflation as we can, we need to recognize
19 the watch the impact this has on our spread positioning."

20 Do you see that?

21 A Yes.

22 Q So in early 2021 your view is that Kroger needs to pass
23 through as much inflation as we can, right?

24 A Yes. That was during the excessive inflation that we were
25 experiencing over that time.

A. Groff - D

1 Q And passing through inflation means increasing product
2 prices, right?

3 A Yes.

4 Q But when increasing prices to pass through inflation,
5 Kroger needed to make sure its spreads to Walmart and
6 Albertsons didn't get too large?

7 A Yes. As well as Meijer.

8 Q Let's turn to the second page under "price program
9 performance." I would like to look at the fourth bullet, P13
10 retail inflation. I won't read those numbers, but period 13
11 here is an example where Kroger's retail inflation exceeded its
12 cost inflation, right?

13 A Yes, that's correct.

14 Q Which again has Kroger pricing to consumers going up
15 faster than Kroger's cost, right?

16 A In that particular period, yes.

17 Q Now, two products where Kroger's prices have gone up more
18 significantly than Kroger's cost are milk and eggs, right?

19 A I'm sorry? Is that on the document?

20 Q It is not on the document. I apologize. Let me repeat
21 the question.

22 Two products where Kroger's have gone up
23 significantly than Kroger's costs over the past several years
24 are milk and eggs, right?

25 A At various times, that would be true. But eggs have gone

A. Groff - D

1 sky high and low and back to sky high and low several times
2 over the last couple of years. So your statement is true part
3 of the time. On milk, I don't believe that we have exceeded
4 cost inflation dramatically on milk.

5 Q Let's look at a document, please. Let's turn to tab
6 PX11093. I don't have the redactions on this, so I'm going to
7 request that it be kept on the screen that's visible on the to
8 witness, the Court, and counsel.

9 Mr. Groff, you have seen this document before, right?

10 A Yes, I have.

11 Q This is another email from you to Stuart Aitken,
12 Mike Murphy, and Matt Meyer, right?

13 A That's right.

14 Q This one is from March 5 of this year?

15 A Yes.

16 Q And I would like to look at the first sentence in your
17 email. Highlight that. This sentence makes clear in this
18 email you are responding to questions from Mr. Aitken about
19 inflation, right?

20 A Yes.

21 Q I would like to look at the next paragraph; the first
22 sentence of that paragraph. "You will see that OB retail
23 inflation exceeds NB inflation."

24 Do you see that?

25 A Yes.

A. Groff - D

1 Q This paragraph states, "To my point yesterday, on milk and
2 eggs impacts you can see that retail inflation has been
3 significantly higher than cost inflation."

4 Do you see that?

5 A Yes, I do.

6 Q Again, "retail inflation" refers to increases in Kroger's
7 prices, right?

8 A Yes. That's correct.

9 Q And "cost inflation" refers to increases in Kroger's
10 costs, right?

11 A Yes, that's right.

12 MS. ARENS: Your Honor, I would like to move to admit
13 PX11093 into evidence?

14 MS. PFAFFENROTH: No objection.

15 THE COURT: It will be received.

16 BY MS. ARENS:

17 Q We can take that document down. Mr. Groff, within the
18 last few years Kroger created a new price execution level
19 within Colorado, right?

20 A Yes, we did.

21 Q And Kroger did so for a group of stores that were in a
22 no-competition zone, right?

23 A It was a zone with limited competition.

24 Q The area where Kroger stores states little to no
25 competition, right?

A. Groff - D

1 A That's correct.

2 Q And Kroger believes it could move retail prices up in
3 Colorado in no-competition zones without hurting sales volume,
4 right?

5 A That's right.

6 Q And Kroger did increase its prices on products in those
7 stores, right?

8 A Yes, we did.

9 Q And Kroger's prediction turned out to be correct, right?

10 A Yes. In this case it did.

11 Q Because Kroger achieved higher sales growth and gross
12 margin growth in new Colorado and no-competition price zones
13 compared to other Colorado stores, right?

14 A That is correct.

15 MS. ARENS: Your Honor, I pass the witness.

16 THE COURT: We are going to end for today. Court
17 will be adjourned until 9:00 a.m. tomorrow.

18 MS. HALL: Your Honor, may we ask that counsel not
19 communicate with the witness on the subject of his testimony.

20 MR. WOLF: Your Honor, those are the rules of the
21 road. I don't think we would ever do that, and I don't think
22 they would ever do that. I think we know the rules of evidence
23 and civil procedure.

24 THE COURT: Absolutely.

25 Court is adjourned.

A. Groff - D

(Court adjourned.)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

--oOo--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca
DENNIS W. APODACA, RDR, RMR, FCRR, CRR
Official Court Reporter

August 26, 2024
DATE