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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 27, 2024
ALBERTSONS COMPANIES, INC.,)	
)	
Defendants.)	Portland, Oregon
_____)	

PRELIMINARY INJUNCTION HEARING
DAY 2 - AFTERNOON SESSION
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ADRIENNE NELSON
UNITED STATES DISTRICT COURT JUDGE

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1 (August 27, 2024)

2 (Open court:)

3 THE COURT: It occurred to the Court that some of the
4 counsel may not have formally stated their appearances on the
5 record as we do every morning. So could they do that, if they
6 are here and haven't put those appearances on the record.

7 MS. MAINIGI: Your Honor, we certainly have a handful
8 of people that are new today compared to yesterday.

9 THE COURT: Fair enough.

10 MS. MAINIGI: That includes Will Ashberg, Your Honor,
11 and Allie Nickerson.

12 THE COURT: Okay. Two people stood up. I don't know
13 if those were the two people.

14 No? Okay. One of the two.

15 MS. MAINIGI: Ms. Nickerson is out right now. She
16 was here for the morning.

17 THE COURT: Fair enough.

18 MR. PERRY: Good afternoon, Your Honor. Mark Perry
19 for Kroger. We have two new people here today, Kathleen
20 Maldonado and Sara Pfaffenroth.

21 THE COURT: All right.

22 MR. KAYSER: Good afternoon, Your Honor. We have for
23 the State of Oregon one new person here, the Attorney General
24 for the State of Oregon, Ellen Rosenblum.

25 THE COURT: Welcome.

M. Marx - X

1 MR. ROTHMAN: Harris Rothman on behalf of the Federal
2 Trade Commission.

3 MS. MUSSER: Ms. Lily Hough was here this morning.
4 She left to go back to the office.

5 THE COURT: All right.

6 You may begin your cross-examination. You have been
7 here.

8 MR. OBARO: Yes. Bambo Obaro. Thank you,
9 Your Honor.

10 Your Honor, may we approach with binders for the
11 witness?

12 THE COURT: Yes.

13 MR. OBARO: Thank you.

14 THE COURT: You remain under oath.

15 THE WITNESS: Yes.

16 CROSS-EXAMINATION

17 BY MR. OBARO:

18 Q Good afternoon, Mr. Marx.

19 A Good afternoon.

20 Q Welcome back.

21 A Thank you.

22 Q I would like to start where Mr. Rothman ended his
23 examination. Mr. Rothman this morning asked you a number of
24 questions about pricing strategies with respect to Mariano's
25 division. Do you remember that?

M. Marx - X

1 A I do.

2 Q In fact, I think all of the questions he asked you about
3 pricing were related just to Mariano's store; is that correct?

4 A That's correct.

5 Q Mr. Marx, what's happening with the Mariano's stores and
6 the banner if this transaction were to go through?

7 A The majority of Mariano's stores will be divested. The
8 banner will be divested. The associates that are part of the
9 stores that are being divested will also go to C&S. We also
10 have all the intellectual property that basically has taken us
11 14 years to develop. That will go to C&S. And then there is
12 also a TSR agreement in the interim that will also be utilized
13 by C&S.

14 Q You said TSR. Do you mean TSA agreement?

15 A TSA. Excuse me.

16 Q And to be clear, the majority of the Mariano's stores will
17 be divested to C&S if the transaction would proceed --

18 A That's correct. Along with 6,000-plus associates.

19 Q Thank you, Mr. Marx. I would like to take a step back.
20 You've been in the grocery industry for a long time?

21 A A long time, yes.

22 Q How long have you been in the grocery industry?

23 A Well, it doesn't seem like it, but almost 50 years.

24 Q Can you tell the Court a little bit about what you have
25 been up to in the last 50 years in the grocery industry?

M. Marx - X

1 A Sure. I actually started as a stocker in Houston, Texas,
2 and I just needed a part-time job. I worked through school, as
3 I was going to college, working nights. And then I migrated
4 into a lot of different roles within the organization, from an
5 assistant manager, a store director, a district manager. I
6 moved into an area as operations director and then took on some
7 different roles, vice president of operations for Texas,
8 managing two states, Louisiana and Texas, and then I spent time
9 in corporate as well doing organizational design; transition,
10 which was integration work, and I eventually ended up with a
11 spot managing people with vice president of people for
12 operations for Kroger. Then I had the opportunity to come
13 around Roundy's.

14 Q And your current title at Roundy's is?

15 A President.

16 Q You started stocking shelves at one of the store, and now
17 you're president of the Roundy division?

18 A Yeah, that's true.

19 Q I think you talked a little earlier about some of your
20 responsibilities as president of the Roundy's division. Can
21 you briefly summarize your responsibilities as president of the
22 Roundy's division?

23 A Sure. I oversee all aspects of the Roundy's division:

24 All strategic planning, short-term, long-term, all the

25 merchandising components, the operational elements. And as I

M. Marx - X

1 mentioned, the customer experience is a big part of that. The
2 associate experience is a big part of that. And all the things
3 that go with that, including eComm and social media and
4 government relations, all of that.

5 Q How many banners do you manage in the Roundy's division?

6 A Three banners.

7 Q What are they?

8 A Pick 'N Save and Metro Market in Wisconsin and Mariano's
9 in Illinois.

10 Q What are the geographic markets that the Roundy division
11 covers?

12 A Pick 'N Save and Metro Market are in the state of
13 Wisconsin and then Mariano's is in Chicago Illinois.

14 Q So were no questions about the state of Wisconsin this
15 morning, so I would like to start there. How many stores in
16 the Roundy division are managed in Wisconsin?

17 A 105.

18 Q And how many stores do you manage in your division?

19 A 149.

20 Q So most -- is it fair to say that the substantial majority
21 of the stores you manage are in Wisconsin?

22 A Two-thirds of the stores are in Wisconsin.

23 Q Can you describe the competitive landscape in Wisconsin?

24 MR. ROTHMAN: Your Honor, objection. Beyond the
25 scope. I asked Mr. Marx no questions about Wisconsin or the

M. Marx - X

1 competitive landscape there.

2 THE COURT: Sustained.

3 BY MR. OBARO:

4 Q So, Mr. Marx, let's talk about the Chicago market, which
5 is part of your division, Chicago; is that correct?

6 A That's correct.

7 Q And how many stores out of the 149 stores that you
8 manage -- how many of those stores are in Chicago?

9 A 44.

10 Q And can you talk about the competitive landscape in the
11 Chicago market?

12 A Sure. I mean, it is robust. We compete against -- oh,
13 it's over a thousand retailers in Chicago. It's each and every
14 player that you can possibly think of, including a lot of
15 independents.

16 Q And I would like to have you look at DX2875, which is in
17 your binder.

18 Mr. Marx, do you recognize DX2875?

19 A I do.

20 Q What is DX2875?

21 A Well, it was a business review that we put together that
22 highlighted kind of the current state of the business for
23 Roundy's both in Wisconsin and Illinois. We looked at a number
24 of things that we needed to do strategically to improve our
25 return on invested capital. So this was an improvement plan we

M. Marx - X

1 put together to have a long-range outlook.

2 Q Mr. Marx, I would like to have us turn to slide 53 of
3 DX2875, if we could. What's reflected on slide 53, Mr. Marx?

4 A Well, these are key competitors within the state -- or
5 within the trade area that we operate.

6 Q I see that the first competitor listed is Jewel?

7 A It is.

8 Q I think you testified this morning that Jewel is an
9 Albertsons banner?

10 A Yes, they are.

11 Q I think you testified this morning that Jewel has a lot of
12 stores that are around where Mariano's operates; is that right?

13 A Yeah, a tremendous amount of overlap with our stores. The
14 majority of our stores have overlap with Jewel.

15 Q Let's look at some of the other competitors on the list.
16 Aldi is listed as a competitor?

17 A They are, yes.

18 Q Can you describe the competitive dynamics with Aldi?

19 A Well, they obviously continue to build stores. This
20 information is a little dated. I think since then they've
21 added somewhere close to 19 stores in the market, but Aldi is a
22 smaller format store that has, I would say, less assortment
23 than what we have at Mariano's.

24 Q Why is Aldi listed as a top competitor?

25 A Well, they are certainly focused on price and value, and

M. Marx - X

1 so they play in that space, and they sell groceries, just like
2 all the other players on this page.

3 Q I notice Costco is listed as a top competitor as well?

4 A They are, indeed.

5 Q Can you speak to the competitive dynamics of Costco in the
6 Chicago market?

7 A Well, a huge volume on those stores. Then they sell an
8 assortment of groceries, whether it's dry groceries,
9 refrigerated, frozen. They have a broad scope of products that
10 they sell, so typically some of the larger packs. But the
11 bakeries have an assortment of all sorts of items, and they
12 compete against us in that space.

13 Q Whole Foods is also listed here?

14 A Whole Foods is.

15 Q Is Whole Foods owned by Amazon?

16 A They are, yes.

17 Q Can you tell us about the competitive dynamics with
18 Whole Foods in the Chicago market?

19 A Sure. Well, I mean they focus primarily on natural. I
20 mean, they sell conventional and natural, organic, and then
21 they also are introducing their Amazon Fresh into the city,
22 where they have built eleven Amazon Fresh since this slide was
23 created.

24 MR. OBARO: I would like to move to enter DX2875 into
25 evidence.

M. Marx - X

1 MR. ROTHMAN: No objection, Your Honor.

2 THE COURT: It will be received.

3 BY MR. OBARO:

4 Q Mr. Marx, the FTC asked you a number of questions about
5 the Chicago market. Can you tell the Court, is there anything
6 that distinguishes the Chicago market from the other markets
7 that are at the Roundy's division and also within Kroger?

8 A Yes. You know, when I look at the two markets that I
9 operate, you know, in Wisconsin, my competitive landscape is
10 very fragmented. When I look at the Chicago and the Chicago
11 area, I mean, there's obviously a thousand competitors, but
12 there is a -- there is not that widespread dynamic of
13 retailers, so in Wisconsin we will have pockets across the
14 state where there is predominant players that are competing in
15 those areas, such as in the Madison market, it would Hyvee. In
16 the Appleton/Fox Valley market, it would be Festival. In
17 Milwaukee proper, it would be Walmart. But Walmart is in a lot
18 of places, both in Wisconsin and Illinois. In Chicago, there
19 is a lot of players, but there is obviously a high
20 concentration of Jewel.

21 Q Earlier you were asked some questions about the pricing
22 strategies for the Chicago market and Kroger's general pricing
23 strategies, and Mr. Groff testified in depth about Kroger's
24 pricing strategy. But at a high level, can you describe to the
25 Court your understanding of Kroger's overall general pricing

M. Marx - X

1 strategy?

2 A Sure. I mean, as a retailer, we are very focused on a lot
3 of different dynamics. Total customer value. So giving the
4 customer a value proposition that enhances the shopping
5 experience; that they can save money; that they can have
6 certain perks as they do business with us, like fuel discounts
7 and a loyalty card. But price is certainly an aspect that is
8 first and foremost on the customer's mind, and so we are always
9 striving to be close to the lowest price leader, and that is
10 Walmart.

11 Q Does Kroger corporate office provide pricing
12 recommendations to each of the Kroger divisions?

13 A Yes, they do.

14 Q And do you follow the Kroger pricing recommendations for
15 all of the banners within your division?

16 A I do not.

17 Q Do you follow the Kroger -- which divisions do you follow
18 the Kroger pricing strategy for?

19 A I follow Kroger pricing in Wisconsin. In Chicago, it is a
20 different dynamic.

21 Q So do you follow the Kroger pricing throughout your
22 strategy in Chicago?

23 A I use it as a data point, but, no, we actually manage our
24 own pricing in Chicago.

25 Q What is the pricing strategy that you follow in Chicago?

M. Marx - X

1 A Well, with the amount of overlap that we have with Jewel,
2 we pay very close attention to Jewel. We also pay attention to
3 Walmart and Meijer, but when I look at the amount of stores
4 that overlap and compete directly with Jewel, Jewel is
5 definitely a point of focus for us.

6 Q And, Mr. Marx, the FTC showed you some documents about
7 pricing earlier today. They showed you three specific
8 documents. I just wanted to confirm with you that each of the
9 documents that they showed you, were any of them discussing the
10 pricing strategy in Wisconsin where you follow corporate
11 pricing strategy?

12 A No, they were not.

13 Q And what area were the three pricing emails discussing?

14 A They were all in Illinois, Mariano's.

15 Q Out of the 149 that you manage, how many of those stores
16 are Mariano's?

17 A 44.

18 Q I think, as you testified, the majority of those 44 stores
19 are getting divested; is that right?

20 A That's correct.

21 Q Now, Mr. Rothman asked you some questions -- you can take
22 this down. Mr. Rothman asked you some questions about
23 Mariano's reliance on Kroger corporate to run its business. Do
24 you remember those questions?

25 A Yes.

M. Marx - X

1 Q Mr. Marx, do you think that C&S will be able to run the
2 business divested to them without Kroger corporate support?

3 MR. ROTHMAN: Your Honor, objection. Beyond the
4 scope. I didn't ask any questions regarding C&S operating.

5 THE COURT: It is an issue in the case. I'm going to
6 allow that. Overruled.

7 BY MR. OBARO:

8 Q Mr. Marx, you can answer.

9 A Yes, I do.

10 Q Why do you think that?

11 A Well, they have a very robust infrastructure. I mean,
12 they supply. They have a distribution network. They supply
13 multiple retailers across the United States. They have
14 intellectual property of their own.

15 MR. ROTHMAN: Objection, Your Honor. Lack of
16 foundation. We don't have any sense of how Mr. Marx has any
17 knowledge of any of this.

18 THE COURT: That, I'm sustaining.

19 MR. ROTHMAN: I move to strike.

20 THE COURT: It will be stricken.

21 MR. OBARO: I'll attempt to lay a foundation,
22 Your Honor.

23 THE COURT: Yes.

24 BY MR. OBARO:

25 Q Mr. Marx, were you part of -- were you part of Kroger when

M. Marx - X

1 Kroger -- when Kroger acquired Roundy's?

2 A I was, yes.

3 Q Can you tell me what your role was at Kroger when Kroger
4 acquired Roundy's?

5 A Well, I was leading the transformation part of the
6 business, which was integration at Kroger.

7 Q Can you explain to the Court what your role -- your
8 involvement in the integration of Roundy's into Kroger?

9 A Certainly. I took the leadership role as president, and
10 then we started working toward the elements of migrating the
11 Roundy's group under the Kroger umbrella, which meant that we
12 were using the data and the technology to actually bring
13 Roundy's within Kroger, so that would have been warehouse
14 conversions, assortment selection, you know, the retail
15 environment, technology, the customer experience, the loyalty
16 card introduction. So basically we transformed Roundy's into
17 the -- into the Kroger umbrella.

18 Q Mr. Marx, do you also have experience competing with
19 independents both in the Chicago and Wisconsin market as part
20 of your role as president of Roundy's?

21 A I do, yes.

22 Q And based on that experience do you have -- have you
23 observed independents operating in the Chicago market area?

24 A Absolutely. With success.

25 Q Based on the experience that you have incorporating

M. Marx - X

1 Roundy's into the Kroger corporate umbrella and your experience
2 with the independents in the Chicago market, do you have any
3 thoughts on whether or not C&S would be able to operate the
4 divested stores without support from Kroger corporate?

5 MR. ROTHMAN: Objection, Your Honor. There has been
6 no foundation laid as to the witness's knowledge for how C&S
7 will handle this divestiture.

8 THE COURT: Sustained.

9 BY MR. OBARO:

10 Q Mr. Marx, how do you think -- what will happen to
11 competition from your perspective in the Chicago market after
12 the Mariano's stores are divested to C&S?

13 MR. ROTHMAN: Objection. I didn't ask any questions
14 about post-divestiture. All my questions today were about
15 competition today and in the past.

16 MR. OBARO: Your Honor, he was asked about his
17 experience as the president and competition generally in the
18 Chicago market, which is the question.

19 THE COURT: I'm going to overrule the objection. But
20 be very clear: He can only talk about his experience base. He
21 cannot talk about anything that will be speculative. And if he
22 doesn't know, he needs to respond "I don't know."

23 BY MR. OBARO:

24 Q Mr. Marx, from your experience, what impact do you think a
25 transaction would have on competition in Chicago?

M. Marx - X

1 THE COURT: If he has an opinion.

2 BY MR. OBARO:

3 Q If you have an opinion.

4 A I do. I don't think that the competition will change in
5 Chicago. There is still 1,100 retailers competing for share of
6 wallet. I don't see that changing with the merger, including
7 the element that we are divesting 35 stores in that market.

8 Q Mr. Marx, my last question is: What is your expectation
9 of what would happen to the Jewel stores that Kroger would
10 acquire if the transaction were to go through?

11 A Well, I can speak to what we did at Roundy's in totality,
12 and that was we invested heavily into a lot of different parts
13 of the business. We invested in infrastructure. We invested
14 in the people and wages. We invested heavily on price, as we
15 did the merger. So there were many components that we focused
16 on, including remodeling 150 stores. So the capital
17 investments were made. The pricing investments were made. The
18 people investments were made. And I believe that, with our
19 commitment, investing a billion dollars in price, that will be
20 exactly how we will handle this transaction.

21 MR. OBARO: Thank you, Mr. Marx. No further
22 questions.

23 THE COURT: Any redirect?

24 MR. ROTHMAN: None, Your Honor.

25 THE COURT: You can step down.

K. Unkelbach - D

1 MS. MUSSER: Thank you, Your Honor.

2 The FTC calls Kurt Unkelbach from Dollar Tree as its
3 next witness.

4 THE COURT: All right.

5 MS. MUSSER: Your Honor, may we approach the bench
6 with witness binders?

7 THE COURT: Yes.

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: It is Kurt Unkelbach. K-U-R-T,
12 U-N-K-E-L-B-A-C-H.

13 DIRECT EXAMINATION

14 BY MS. MUSSER:

15 Q Good afternoon, Mr. Unkelbach.

16 A Good afternoon.

17 Q My name is Susan Musser. I'm an attorney at the Federal
18 Trade Commission. I will be asking you a few questions today.

19 First, can we start where you work?

20 A Dollar Tree Corporation.

21 Q At Dollar Tree Corporation, what is your title?

22 A Vice president of merchandise strategy and analytics.

23 Q And how long have you worked at Dollar Tree?

24 A Just over seven years.

25 Q During those seven years have you had the same title?

K. Unkelbach - D

1 A I have, yeah.

2 Q Can you describe your role?

3 A My team, we manage all the insides, all the research,
4 analytics, and the strategy for the organization for both
5 Dollar Tree and Family Dollar.

6 Q How do you manage the strategy for the organization?

7 A A lot of collaboration, discussions with all sorts of
8 departments, a lot of data, a lot of presentations.

9 Q And are you familiar with the term "banners,"
10 Mr. Unkelbach?

11 A Yes.

12 Q What does that mean?

13 A For me, it means two different banners that we manage
14 across Dollar Tree and Family Dollar.

15 Q What are the two different banners you manage?

16 A Dollar Tree and Family Dollar.

17 Q Are both banners Dollar stores?

18 A Yes.

19 Q What is a Dollar store?

20 A Historically it has been something that is right around
21 the dollar price point, but that has evolved over time. It can
22 be an opening price point, low price items. Most things are
23 below \$5. It is kind of like a general store, a small store.

24 Q I'm going to start by asking you some questions about your
25 Dollar Tree banner, if that's okay.

K. Unkelbach - D

1 A Okay.

2 Q At a high level, what types of products do you sell the
3 Dollar Tree?

4 A Seasonal products for different seasons of the year.
5 Party products for upcoming parties and gatherings. Consumable
6 products from health and beauty to food. Those are probably
7 the big buckets there.

8 Q How does Dollar Tree decide what to sell in its stores?

9 A I'm trying to think how to answer that question. The
10 product -- the category has to sell at a certain threshold for
11 us to carry that and bring that into our stores, and so
12 velocity, sales rates.

13 Q And you earlier spoke about particular price points for
14 Dollar stores. Do you recall that?

15 A Yes.

16 Q Does Dollar Tree have a particular price point it likes to
17 stay close to?

18 A Most of the items in the store are now \$1.25.

19 Q So does trying to sell products for \$1.25 influence the
20 type of products you're trying to stock in your store?

21 A Yeah.

22 Q How does it do that?

23 A We just -- we can't carry items priced over \$5. It is
24 just not part of what the consumer expects at a Dollar store.

25 Q And on average, what is the square footage of a typical

K. Unkelbach - D

1 Dollar Tree store?

2 A It is about 8,000 square feet.

3 Q What is the average number of SKUs at an average

4 Dollar Tree store?

5 A It is probably around -- it's probably maybe 8,000 SKUs,
6 give or take. It fluctuates quite a bit.

7 Q Why does it fluctuate quite a bit?

8 A The season. If the cost is where we need to be, and the
9 suppliers are continuing to carry that product or make that
10 product, it kind of varies.

11 Q And at a typical Dollar Tree store, how many staff work at
12 that store?

13 A At a given time?

14 Q Yes, sir?

15 A About two.

16 Q Is that for the entire store?

17 A Correct.

18 Q I think you mentioned that Dollar Tree sells food. Do I
19 have that right?

20 A Correct.

21 Q What types of food does Dollar Tree sell?

22 A A little bit of -- what I call center store dry grocery,
23 so nonperishable products, then a little bit of frozen, a
24 little bit of dairy. A little bit of pet food. And then like
25 what we call immediate-consumption-type products that you would

K. Unkelbach - D

1 consume on the go.

2 Q And of those food items that you just spoke to, is there a
3 particular category or type that accounts for the most volume
4 of sales?

5 A I don't think so.

6 Q Within a particular type of food product, let's say salad
7 dressing, for example, how many choices does a typical
8 Dollar Tree offer?

9 A Well, I guess it depends. There may be four or five at
10 one time; four or five SKU/items. But it could go down to
11 zero, or it could be eight.

12 Q Is it fair to say it fluctuates quite widely?

13 A Yes.

14 Q And can a customer consistently get the same product very
15 time she visits a Dollar Tree store?

16 A No.

17 Q For example, if a shopper is looking to purchase
18 Hidden Valley Ranch for a Sunday dinner, can she go into a
19 Dollar store knowing she is going to get that bottle of Hidden
20 Valley Ranch?

21 A She cannot.

22 Q You also mentioned frozen food. Does Dollar Tree use the
23 number of doors to measure space that it allots to frozen food?

24 A Can you say that a little bit differently?

25 Q Sure. How does Dollar Tree measure the amount of frozen

K. Unkelbach - D

1 food it has in its stores?

2 A Just -- it depends on the square footage of that store.

3 There may be anywhere from five to nine corridors in that

4 store. It varies a little bit.

5 Q Why is size a limiting factor to the amount of choice that

6 Dollar Tree can offer in its frozen foods?

7 A There's just a -- as I mentioned earlier, it's about 8,000

8 square feet, give or take. If it is a 6,000 square feet store,

9 there may not be any frozen doors. If it is 12,000 square

10 feet, there may be like ten.

11 Q Can you give me some examples of frozen products that a

12 typical Dollar Tree store offers.

13 A Did you say frozen?

14 Q Yes, sir.

15 A So pot pies, frozen pizzas, fish sticks, ice cream, a

16 little bit -- I'm hesitating because you never know what you

17 are going to get when you go into a Dollar Tree in the frozen

18 area, but it is mostly those kind of products.

19 Q Do Dollar Tree stores offer fresh produce?

20 A No.

21 Q Do Dollar Tree stores offer fresh meat?

22 A No.

23 Q Do Dollar Tree stores offer fresh seafood?

24 A No.

25 Q And do Dollar Tree stores offer eggs?

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1 A Sometimes.

2 Q How frequently?

3 A We strive to have it as much as possible.

4 Q And you mentioned "sometimes." Why might a Dollar Tree
5 store not sell eggs?

6 A If the cost goes up too high. There are a lot of reasons.
7 If the cost is too high. If the doors are not properly cooled.
8 There may be several weeks where we don't have refrigeration
9 correct, so there may not be eggs there. But typically if the
10 cost is too high, we won't carry it for months and months.

11 Q And does Dollar Tree offer milk?

12 A Typically.

13 Q When you say similarly (phonetic), just for the record,
14 can you describe when or how frequently a Dollar Tree offers
15 milk?

16 A It's similar to eggs. It won't be a gallon typically. It
17 is a pretty small size. Again, the cost, the price point. But
18 there may be situations where we can't get the right price for
19 our shopper, or it just may not be available in that part of
20 the country at that time. We are not -- we are not prioritized
21 as high as some other larger retailers for that milk.

22 Q Do Dollar Tree stores offer a staffed deli?

23 A No.

24 Q Do Dollar Tree stores offer an in-store bakery?

25 A No.

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1 Q Do Dollar Tree stores offer an in-store butcher?

2 A No.

3 Q Does Dollar Tree break down its revenue by food
4 specifically?

5 A Yes.

6 Q Approximately what percentage of Dollar Tree sales are
7 accounted for by food?

8 A Probably its -- maybe about a fourth of the sales.

9 Q Are you familiar with the term "fill-in shop"?

10 A Yes.

11 Q What is that?

12 A It is kind of like an in between your stock-up trips. So
13 maybe you're going to a big box store or a grocery store once a
14 week, but maybe in the middle of the week you need to get a few
15 things.

16 Q And when you say "stock-up trip," what do you mean?

17 A It can be just a larger basket of goods. Maybe it's \$50,
18 maybe it's a hundred, maybe it's \$200 worth of goods.

19 Q Does Dollar Tree offer a fill-in shopping experience for
20 shoppers?

21 A It can be.

22 Q Are you familiar with the term "treasure hunt"?

23 A Yes.

24 Q What does that mean to you?

25 A To me, that's where Dollar Tree is focused and sells with

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1 the seasons. So again, right now we are going into harvest and
2 Halloween, and so there is a treasure hunt feel of different
3 products that Americans are excited to see in a Dollar Tree.
4 So that's kind of a heritage of Dollar Tree.

5 Q And based on your experience, is it typical for Dollar
6 Tree shoppers to get their weekly groceries at a Dollar Tree?

7 A No.

8 Q Why not?

9 A Dollar Tree doesn't carry a lot of -- there is no produce.
10 There is very limited frozen products. There's just not enough
11 available.

12 Q Now, turning to your Family Dollar banner, how does the
13 Family Dollar banner differ from the Dollar Tree banner?

14 A Family Dollar is a little bit more consumable focused, and
15 consumable is nondiscretionary. So kind of your CBG categories
16 of food, health and beauty, nonfood consumable products, that's
17 a higher piece of the business, and it's kind of your store to
18 go to for your basics.

19 Q And what is the average square footage of a Family Dollar
20 store?

21 A It's about the same as Dollar Tree, about 8,000.

22 Q How many employees on average staff a Family Dollar store
23 at any time?

24 A It is about two, maybe less.

25 Q That's, again, for the entire store?

K. Unkelbach - D

1 A Correct.

2 Q And you mentioned that Family Dollar sells food and
3 beverages; is that correct?

4 A Yes.

5 Q What type?

6 A So frozen and dairy, what I call dry grocery, center store
7 products, cookies, crackers, salty snacks; immediate
8 consumption beverage but also beverage down the aisle. It is
9 not immediate consumption. Candy. Those are probably the big
10 ones.

11 Q And you mentioned frozen food. On average how many doors
12 of frozen food does Family Dollar banners have?

13 A I do not know what the average is.

14 Q Can you give me an approximate range?

15 A It can be zero doors to -- did you say frozen doors or did
16 you say refrigerated? So anywhere from zero to maybe 18 doors.

17 Q Can you give me an example of the types of frozen food
18 that Family Dollar sells?

19 A Ice cream, frozen protein, especially frozen chicken, pot
20 pies, frozen pizzas, frozen vegetables. Those are some big
21 ones there.

22 Q Is there a price range that Family Dollar likes to price
23 its frozen food?

24 A Anywhere from a dollar to -- definitely below \$10. But it
25 is probably in the \$3 to \$6 range is probably the main price

K. Unkelbach - D

1 points.

2 Q Are there certain types of frozen foods that Family Dollar
3 doesn't offer because they're too expensive?

4 A Yes.

5 Q Can you give me some examples?

6 A Like the larger frozen pizzas; the bigger bags of frozen
7 chicken. Just larger bags of pretty much any of those
8 categories, we will not carry.

9 Q Does Family Dollar sell fresh produce?

10 A No.

11 Q Does Family Dollar sell fresh meat?

12 A No.

13 Q Does Family Dollar sell fresh seafood?

14 A No.

15 Q Are eggs consistently available at Family Dollar?

16 A Pretty much, yes.

17 Q When you say "pretty much, yes," can you explain that for
18 the Court.

19 A It may take six to twelve days if it's out of stock for us
20 to replenish that one or two or three items that we have in the
21 store. So it takes a lot longer to get that product back in
22 stock. We have one truck a week.

23 Q And does Family Dollar stores offer a staffed deli?

24 A No.

25 Q And what percentage of Family Dollar's revenue comes from

K. Unkelbach - D

1 food specifically?

2 A It is about 40-ish percent.

3 Q So still a minority of its sales?

4 A Yeah. It might be up to 45 percent now; something around
5 there, yeah.

6 Q We previously spoke about "fill-in shop" when referring to
7 Dollar Tree. Is Family Dollar also a fill-in shop?

8 A Yes.

9 Q And typically do Family Dollar customers get the majority
10 of their weekly groceries at a Family Dollar?

11 A Not typically.

12 Q Are you familiar with a company called Engage3?

13 A Yes.

14 Q What is it?

15 A It's a vendor that provides price -- competitive pricing
16 to retailers.

17 Q When you say "competitive pricing to retailers," what are
18 you referring to?

19 A Other retailers' pricing that is shareable to the -- to
20 the client.

21 Q Is it a type of price checking?

22 A Correct.

23 Q And currently who does Family Dollar price-check?

24 A Currently we price-check Dollar General.

25 Q So currently you do not price-check any traditional

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1 grocery retailer?

2 A We do not.

3 Q You do not currently price-check Kroger?

4 A We do not.

5 Q And you do not currently price-check Albertsons?

6 A We do not.

7 Q Are you familiar with the term "price zones"?

8 A Yes.

9 Q What does that mean to you?

10 A It's a group of stores that have a strategy of pricing.

11 There can be a whole host of reasons for it, but it is a

12 different set of pricing.

13 Q How does Family Dollar determine price zones?

14 A Competitive interaction to that local store.

15 Q And today what retailers factor into the determination of

16 price zone at Family Dollar?

17 A It is just Dollar General.

18 Q So it's not any traditional grocery retailer?

19 A Correct.

20 Q And currently Family Dollar does not use Kroger or

21 Albertsons in determining price zones; is that right?

22 A That's correct.

23 Q How does product selection at a Family Dollar or

24 Dollar Tree differ from selection at a traditional grocery

25 store?

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1 A There is no -- like a perishable -- so basically around
2 the grocery store perimeter, none of that is carried. Other
3 than a little bit of bread, none of that is carried. Then the
4 dry grocery center store section is maybe one-tenth the size or
5 maybe even smaller than that compared to a grocery store.

6 Q And how many people are staffed at a traditional grocery
7 store compared to the number staffed at a Family Dollar or
8 Dollar Tree store?

9 A I have no idea.

10 Q And how does the store size of a traditional grocery store
11 compare to a Family Dollar or Dollar Tree store?

12 A I'm not sure what the average square footage -- if it's
13 40- to 50,000 square feet, I guess that would be five, six,
14 seven times larger.

15 Q So five to seven times as large?

16 A Yeah. But I'm not an expert to know exactly what the
17 average is.

18 Q And how else does a traditional grocery store differ from
19 a Family Dollar and a Dollar Tree store?

20 A I don't know. We talked about products. We talked about
21 the -- I'm not sure.

22 Q And you mentioned earlier that Dollar Tree tries to price
23 for 1.25?

24 A Correct.

25 Q Is that different from pricing at a traditional grocery

K. Unkelbach - D

1 store?

2 A The way I would answer that is a good amount of those
3 items are not carried in most of those retailers. A lot of
4 those items are not available in most retail outlets outside of
5 the Dollar investment trade.

6 Q In other words, a lot of the Dollar class of trade items
7 are not found in traditional grocery stores? Is that fair?

8 A It depends. But in a lot of cases there may not be in the
9 majority of the stores.

10 Q You also testified that a family does not typically do
11 their weekly grocery stop at either Family Dollar or
12 Dollar Tree.

13 Do you recall that?

14 A Yes.

15 Q Can a family get its food for a week at a traditional
16 grocery store?

17 A Yes.

18 Q At a high level are you familiar with Kroger stores?

19 A Yes.

20 Q Are they traditional grocery stores, in your experience?

21 A Certainly.

22 Q Can shoppers purchase their groceries for a week at a
23 Kroger?

24 A They can.

25 Q Are you familiar with Albertsons stores?

K. Unkelbach - X

1 A Yeah.

2 Q And the same question: Can shoppers get their weekly
3 groceries for the week at an Albertsons store?

4 A I believe so, yeah.

5 MS. MUSSER: No further questions.

6 THE COURT: Cross-examination.

7 MR. OBARO: Yes, Your Honor. Thank you. May we
8 approach with binders for the witness?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. OBARO:

12 Q Good afternoon, Mr. Unkelbach. We haven't met before. I
13 am Bambo Obaro. I am an attorney for Kroger. I would like to
14 start where Ms. Musser left off. You were talking about you're
15 familiar with Kroger?

16 A Yes.

17 Q And you're familiar with Albertsons?

18 A Yes.

19 Q I think you identified them as traditional grocery stores?

20 A Yes.

21 Q You would agree that Dollar Tree competes with traditional
22 grocery stores?

23 A Sure.

24 Q You would agree that Family Dollar competes with
25 traditional grocery stores?

K. Unkelbach - X

1 A Yeah.

2 Q That's because you sell food items at Dollar Tree?

3 A Correct.

4 Q You also sell food items at Family Dollar?

5 A Yes.

6 Q You were asked some questions about price checking that
7 you do at Family Dollar and Dollar Tree, and I think you
8 mentioned that you use Engage3 for price checking?

9 A We don't price check for Dollar Tree.

10 Q So for Family Dollar you use Engage3 for price checking?

11 A Correct.

12 Q I think you said during direct examination that Engage3
13 price-checks with Dollar General; is that right?

14 A Correct.

15 Q Isn't it true that Engage3 also price-checks with Walmart?

16 A I don't know. I would assume so. They probably work with
17 a lot of different retailers.

18 Q Do you remember that your deposition was taken in this
19 case?

20 A We used to price-check Walmart with Engage3, but I don't
21 think we're doing that recently.

22 Q So at some point in time for Family Dollar you utilized
23 Engage3 to price-check against Walmart?

24 A Yes.

25 Q But you currently price-check against Dollar General?

K. Unkelbach - X

1 A Correct.

2 Q And Dollar General is another type of Dollar store,
3 correct?

4 A Correct.

5 Q And you would agree that Dollar General competes more in
6 the grocery space than Dollar Tree or Family Dollar; is that
7 right?

8 A Yes.

9 MR. OBARO: No further questions.

10 THE COURT: Any redirect?

11 MS. MUSSER: Nothing from us, Your Honor.

12 THE COURT: All right. You can step down.

13 Before counsel leaves for Dollar Tree, can you state
14 your appearance for the record.

15 MR. BURNS: Yes, Your Honor. James M. Burns at
16 Williams Mullen for Dollar Tree.

17 THE COURT: Thank you.

18 MR. KAYSER: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MR. KAYSER: For our next witness, we are going to
21 call Todd Kammeyer.

22 MR. SCHULTZ: Your Honor, Christian Schultz for
23 Kroger. One of our colleagues, Kyle Angelotti, will be joining
24 us today.

25 MR. BRYSON: Your Honor, I'm Alex Bryson on behalf of

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1 the FTC.

2 MR. KAYSER: Your Honor, I believe we have a binder
3 of exhibits to present to the witness.

4 THE COURT: All right. While she is passing it out,
5 you can swear him in.

6 (The witness was duly sworn.)

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

9 THE WITNESS: Yes my name is Todd Kammeyer. T-O-D-D
10 K-A-M-M-E-Y-E-R.

11 DIRECT EXAMINATION

12 BY MR. KAYSER:

13 Q Good afternoon. My name is Chris Kayser. I represent the
14 State of Oregon in this matter.

15 Mr. Kammeyer, why don't we start with, where are you
16 currently employed?

17 A I am employed with the Fred Meyer Company, a division of
18 Kroger.

19 Q How long have you been with Fred Meyer?

20 A I have been with Fred Meyer since June of 2019, so just
21 over five years.

22 Q And you're currently the division president for
23 Fred Meyer; is that right?

24 A Yes.

25 Q And what do you do as the division president for

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1 Fred Meyer?

2 A As the president of Fred Meyer, I oversee the operations
3 of the division throughout the four states in which we operate.
4 I have a team that oversees those operations as well as the
5 merchandising efforts as well as all the people that we have
6 part of our team as well.

7 Q How many stores are you responsible for?

8 A We have 132 stores throughout the Northwest and Alaska:
9 51 stores in Oregon, 59 in Washington state, 11 in Alaska and
10 Idaho.

11 Q So the states you operate in are Idaho, Alaska, Oregon,
12 and Washington; is that correct?

13 A Correct.

14 Q And you consider Fred Meyer store to be a one-stop shop,
15 right?

16 A By a definition that we use internally, we would classify
17 Fred Meyer as a store where customers have access to many
18 different food items as well as general merchandise items as
19 well, so in a sense -- in that sense we would have many items
20 under one roof for customers to take advantage of.

21 Q You referred to Fred Meyer in your deposition as a
22 one-stop shop, didn't you?

23 A I believe so.

24 Q And you said that -- by that you meant it sells an
25 assortment of goods and services, correct?

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1 A Yes.

2 Q There is a strategic reason for being a one-stop shop,
3 isn't there?

4 A Yes. We have many items that customers can come in and
5 find within one building.

6 Q Because having an assortment of offerings provides ease of
7 shopping rather than having a shopper have to go to multiple
8 locations for multiple different items, right?

9 A It may be true, yeah.

10 Q And it provides a good overall shopping experience,
11 doesn't it?

12 A We believe so.

13 Q Shoppers can essentially purchase all of their household
14 food and nonfood requirements by going to Fred Meyer, correct?

15 A Yes.

16 Q And that would include fresh meat?

17 A Correct.

18 Q Including a staffed butcher counter?

19 A Yes.

20 Q Fresh seafood?

21 A Yes.

22 Q Including a staffed seafood counter?

23 A Yes.

24 Q Fresh produce?

25 A Yes.

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- 1 Q Dairy products?
- 2 A Yes.
- 3 Q Pet food and supplies?
- 4 A Yes.
- 5 Q Health and beauty supplies?
- 6 A Yes.
- 7 Q Beverages, including wine and beer?
- 8 A Yes.
- 9 Q Household products, like paper towels, brooms, and mops?
- 10 A Yes.
- 11 Q And Fred Meyer also typically has a staffed deli
12 department too, right?
- 13 A Yes.
- 14 Q And a staffed floral department?
- 15 A Yes.
- 16 Q And Fred Meyer offers private label brands, right?
- 17 A Yes.
- 18 Q What is a private label brand?
- 19 A Those are brands that are produced or sourced from within
20 inside the company that we sell under several different brands
21 within our brand portfolio.
- 22 Q And private label brands on average are cheaper than
23 national brands, aren't they?
- 24 A In many cases, yes.
- 25 Q And by "national brands," you know what I mean, right?

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1 A Yes.

2 Q What's your understanding of a national brand?

3 A National brands would be produced by larger supplier
4 manufacturing companies, and those brands are typically
5 available in many other retailers as well as ours.

6 Q Private label products also help drive customer loyalty,
7 don't they?

8 A Yes.

9 Q And that's because those are products that customers can't
10 get at any other stores, right?

11 A Potentially, yes.

12 Q On average private label items have a higher gross margin
13 than national brands, don't they?

14 A It can depend on the item; the category they're in.

15 Q But on average they usually have a higher gross margin,
16 don't they?

17 A Yes.

18 Q And private label products help drive Fred Meyer's
19 profitability, don't they?

20 A One part of many different factors that drive
21 profitability.

22 Q Is it fair to say that private label brands help make
23 Fred Meyer more competitive?

24 A I would say we have a similar offer of our brand items
25 that may compare to other retailers that have their own set of

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1 particular items as well.

2 Q But it helps to compete against other retailers who also
3 have private label brands to have your own set, right?

4 A Yes.

5 Q In your deposition you testified that Fred Meyer has a
6 broad range of vendors, right?

7 A Yes.

8 Q That would include warehouse stores, like Costco and
9 Sam's Club?

10 A Yes.

11 Q Walmart and Target?

12 A Yes.

13 Q Traditional supermarkets, like WinCo, Albertsons,
14 Safeways, and Haggen?

15 A Yes.

16 Q Premium and specialty stores, like Whole Foods and
17 Trader Joe's?

18 A Yes.

19 Q Dollar stores?

20 A Yes.

21 Q You even said CVS and Walgreens are competitors, right?

22 A Yes.

23 Q And convenience stores, like 7-Eleven and even Chevron can
24 be a competitor, right?

25 A Yes.

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1 Q And in certain circumstances you said fast-food
2 restaurants could be a competitor of Fred Meyer, right?

3 A In a sense, yes.

4 Q But some of those competitors are more important than
5 others, aren't they?

6 A That's true.

7 Q For example, if "Johnny Shopper" is on his way home and
8 wants to get dinner and grab a fresh salmon and a bottle of
9 wine and get fresh sliced deli meat for lunch and fresh flowers
10 for his wife, he could get all those at Fred Meyer, couldn't
11 he?

12 A Yes.

13 Q But he couldn't get those at CVS, right?

14 A That's correct.

15 Q Or Walgreens?

16 A Yes.

17 Q Or Trader Joe's?

18 A I'm sure many of those items at a Trader Joe's could
19 likely overlap.

20 Q He could go to a fresh seafood counter at Trader Joe's?

21 A I don't believe a fresh seafood counter.

22 Q So he couldn't get all those items at a Trader Joe's,
23 could he?

24 A I'm sure like items. Depending on that customer and what
25 their needs -- that person's needs may be, I'm sure there's

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1 definitely complementary items that one could find.

2 Q But Trader Joe's doesn't have a deli counter either, do
3 they?

4 A I don't believe so.

5 Q So he couldn't get fresh customized cut deli meat at
6 Trader Joe's?

7 A No. But to my knowledge, a customer could find other meat
8 and deli options that would likely fit those same needs.

9 Q But for the money, "Johnny Shopper" who wants to spend on
10 groceries, CVS, Walgreens, Trader Joe's, and Target would not
11 be competition, right?

12 A I guess it depends on the type of items that the customer
13 might be looking for and what's available in those retailers.
14 I would look at it -- we would overlap with different retailers
15 in different ways.

16 Q I understand. But for the specific items I'm talking
17 about, Trader Joe's, Walgreens, Target, and CVS wouldn't be
18 competitors. He couldn't get fresh fish at any of those
19 places, could he?

20 A No. They don't operate in that space, although they do in
21 other areas that we do as well.

22 Q For that matter Costco and Sam's Clubs wouldn't be
23 competitors either, right?

24 A No. We definitely view Costco and Sam's Clubs as
25 competitors.

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1 Q You can get a six-ounce fillet of fish at Costco?

2 A I'm not sure if you can get exactly a six-ounce fillet,
3 but you have a vast choice of different seafood and meat
4 options at Costco.

5 Q But what if he also wanted to pick up a half gallon of
6 milk. Could he get that at Costco?

7 A I'm not sure if you can get a half gallon, but you could
8 get a gallon at a really good price.

9 Q That may be. But what if he is a bachelor and doesn't
10 want a gallon; he wants just a half gallon?

11 A Well, he would have the choice to come to a Fred Meyer, if
12 he wanted, or another retailer.

13 Q That's right. And in those circumstances Costco wouldn't
14 be a legitimate competitor?

15 A I would not agree that Costco is not a big competitor to
16 us in the market.

17 Q But "Johnny Shopper" could get all of those items at
18 Albertsons, couldn't he?

19 A The items that you described in your list before, yes.

20 Q And Albertsons operates many supermarkets in areas where
21 Fred Meyer also operates, right?

22 A That's correct.

23 Q And a supermarket is a retail operation that sells food
24 ranging from fresh items to shelf-grade stable goods and other
25 items that would be associated with food and household needs,

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1 right?

2 A Yes, by that definition.

3 Q And Albertsons operates under the banners for Safeway,
4 Albertsons, and Haggen, correct?

5 A Yes.

6 Q And you often visit competing Albertsons stores, don't
7 you?

8 A Yes, on occasion.

9 Q On average once or twice a month?

10 A That's fair to say, yes.

11 Q To check out the competition?

12 A Yes.

13 Q You also receive pricing spreads from Fred Meyer's
14 competitors, right?

15 A Yes.

16 Q What is a pricing spread?

17 A A pricing spread would be reporting that we receive from
18 our general office out of -- that would show us where
19 Fred Meyer's prices are in relationship to other competitors
20 within the same market.

21 Q And you receive pricing spreads comparing Fred Meyer's
22 pricing to Albertsons' banners, don't you?

23 A Yes. If an Albertsons store is near one of our markets,
24 which in many instances they are, we would receive that report
25 as well.

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1 Q And it's important to understand Fred Meyer's pricing
2 compared to Albertsons', isn't it?

3 A If they are a competitor within that market, yes.

4 Q And that's because Fred Meyer competes against many
5 different Albertsons and Safeway stores in your markets, right?

6 A Yes.

7 Q For the trade areas that Fred Meyer competes with
8 Albertsons, you receive pricing spreads on Albertsons' banners
9 once or twice a month?

10 A Yes.

11 Q And those pricing spreads would typically include prices
12 for what is known as "everyday essentials"?

13 A Yes.

14 Q What is an everyday essential?

15 A Everyday essentials are items that we feel customers are
16 very sensitive to on price. They would include items such as
17 milk, eggs, maybe bread, chicken, other essential-type items.

18 Q And customers are very sensitive to those on price because
19 they may end up making it where they shop based on those
20 prices -- making those shopping decisions?

21 A Yes. We believe there are certain customers that are more
22 price-sensitive than others that may make that decision on
23 where they shop based on prices in those different retailers.

24 Q So it's particularly important to be price competitive on
25 everyday essentials, isn't it?

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1 A Yes. With that group of shoppers, we feel being priced
2 right on those items is important.

3 Q And for that reason you price compare everyday essentials
4 on a more frequent basis, don't you?

5 A Yes.

6 Q To assess where Fred Meyer's pricing would be in
7 relationship to its competitors, right?

8 A Yes. That's the way I understand the everyday essential
9 process. We are -- our teams help gather that information and
10 then the general office team sets the prices accordingly.

11 Q For those everyday essentials you also check Albertsons'
12 and Safeway's prices, right?

13 A If their stores are within that relevant market, then,
14 yes. If not, then they would not be checked.

15 Q And Fred Meyer will sometimes change its prices in
16 response to Albertsons' price changes, right?

17 A Through that everyday essentials program -- again, that
18 the general office team oversees and implements, it is my --
19 I'm aware that prices would change based on Albertsons/Safeway,
20 along with other retailers within the market.

21 Q I would like to bring up now the exhibit that we
22 pre-marked as PX1743. That should be in your binder. It is
23 also going to be here on the screen. Let me know when you're
24 there.

25 A Got it.

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1 Q This is an email dated December 27th, 2022, right?

2 A Yes.

3 Q From Carol Jones. Do you know who Carol Jones is?

4 A I do.

5 Q Who is she?

6 A She is the pricing analyst that oversees the everyday
7 essentials and other pricing initiatives for Fred Meyer.

8 Q And you are listed as one of several recipients of this
9 email, correct?

10 A Yes.

11 Q And the subject of the email is "Fred Meyer everyday
12 essentials retails executed effective December 28, 2023."

13 Do you see that?

14 A Yes.

15 Q Now I would like to direct your attention down to where it
16 says, "Overall weekly impact."

17 Do you see that?

18 A Yes.

19 Q First, it says "WM." What does WM represent?

20 A That would represent Walmart.

21 Q It says, "Walmart moved up 20 cents; we probed;" right?

22 A Yes.

23 Q What is meant by "we probed"?

24 A That would mean that either followed Walmart with that
25 20-cent change or we went up to see if they would change.

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1 Q Yeah, because probing means you might go up and test the
2 market to see if anybody follows, right?

3 A Yes.

4 Q And then the next sentence there, it says, "If no WM" --
5 meaning Walmart -- "we followed ACI, Safeway, and Albertsons,"
6 right?

7 A That's what it states, yes.

8 Q And you understood that to mean that if there was not a
9 Walmart in the store's trade area, then Fred Meyer decided
10 pricing according to what Albertsons' and Safeway's prices
11 were, right?

12 A That's what it states. I believe it varies by the
13 different markets that are checked and what other retailers
14 exist within those markets.

15 Q But at least in this instance Fred Meyer was following
16 Safeway and Albertsons' pricings on the everyday essentials,
17 right?

18 A That's what it states on that line. Going through the
19 vast number of markets and checks that were done, I would have
20 to validate if that in fact occurred, but that's what it
21 states.

22 Q But there are certainly instances where Fred Meyer's
23 pricing would be adjusted based on Albertsons' pricing; isn't
24 that correct?

25 A Potentially, yes.

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1 Q And if the merger goes through, that will no longer be the
2 case, will it?

3 A I'm sure that we would follow the next highest retailer.
4 To my knowledge, the everyday essentials primarily -- the
5 biggest look is that Walmart is really that floor level where
6 we would set pricing.

7 Q But if the merger goes through, you won't be -- Albertsons
8 will no longer be affecting Fred Meyer's prices, will they?

9 A They wouldn't, but I'm sure someone else would.

10 MR. KAYSER: I would like to move to admit this
11 exhibit, Your Honor.

12 MR. SCHULTZ: No objection?

13 THE COURT: It will be received.

14 BY MR. KAYSER:

15 Q I would next bring up Exhibit PX1726.

16 A I don't see a 1726 in my book, but I can look at the
17 screen.

18 Q We can follow it on screen. It's the right one. This is
19 an email dated January 23rd, 2023, correct?

20 A Yes.

21 Q Again, it is from Carol Jones, and you are in the "to"
22 field.

23 Do you see that?

24 A Yes.

25 Q And if you go down to the overall weekly impact on this

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1 email -- do you see that?

2 A I do.

3 Q It states, "On eggs we are using Safeway/Albertsons' as a
4 ceiling," right?

5 A Yes.

6 Q By "ceiling," you understood that to mean that was a price
7 that Fred Meyer would not exceed, right?

8 A Yes.

9 Q So if that price goes up, Fred Meyer could go up, right?

10 A In a sense. If there was a ceiling, we would not exceed
11 what they were priced at within those markets they may be.

12 Q And if they go down, Fred Meyer is going to go down,
13 right?

14 A It would depend on other factors within that market,
15 depending on if a Walmart or another store or a WinCo may be
16 there. But we would not exceed that, as noted.

17 Q Because if you exceeded Safeway and Albertsons' prices,
18 Fred Meyer would run the risk of losing shoppers, right?

19 A It would depend on other factors, I'm sure. That could be
20 true.

21 Q And is it fair to say too that when this merger goes
22 through, Albertsons and Safeway will no longer serve as a
23 ceiling on Fred Meyer's prices?

24 MR. SCHULTZ: Objection. Foundation.

25 THE COURT: Overruled. He can answer.

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1 THE WITNESS: Would you repeat the question?

2 BY MR. KAYSER:

3 Q Isn't it true if this merger goes through and Albertsons
4 and Kroger become one entity, Albertsons will no longer serve
5 as a ceiling for Fred Meyer's prices, correct?

6 A That would be correct in that they would be there to set
7 the ceiling. But again, if I look at the program and the way
8 that it's designed, it's really meant to follow Walmart, WinCo,
9 and other competitors on their low price retail to make sure we
10 have the right spread to them.

11 Q Within the ceiling set by Albertsons and Safeway?

12 A The way that I understand the program's design is that
13 there is a ceiling -- in this case Albertsons/Safeway -- that
14 we would not exceed that. But again, we price according to the
15 floor just as much as we would price to a ceiling.

16 MR. KAYSER: Your Honor, I move to admit PX1726.

17 MR. SCHULTZ: No objection.

18 THE COURT: It will be received.

19 BY MR. KAYSER:

20 Q Now, I would like to move to Exhibit DX0588. This is an
21 email dated March 10th, 2023, from Kendra Doyel to what Latasha
22 Stevens.

23 Do you see that?

24 A Yes.

25 Q Latasha Stevens is the produce and floral merchandiser for

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1 Fred Meyer; is that correct?

2 A Yes.

3 Q And you were CC'd on this email, right?

4 A Yes.

5 Q And this email is responding to an earlier email dated
6 March 10th, 2023?

7 A Yes.

8 Q And it's an email from Latasha Stevens to Kendra -- and if
9 you look at the second sentence there, it says, "Below I
10 mentioned that we only index with Walmart at a redacted
11 percentage and our true competition is Safeway."

12 Do you see that?

13 A Yes.

14 Q And then if you go down, there's a table that shows
15 Safeway and our new price.

16 Do you see that?

17 A Yes.

18 Q So she is then comparing Safeway prices to Fred Meyer's on
19 produce, right?

20 A Yes.

21 Q And in each case it appears that Fred Meyer is attempting
22 to offer lower prices than Safeway, right?

23 A Yes.

24 Q And there is no Walmart mentioned there at all, is there?

25 A Not in that table. But if I read through the thread of

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1 notes throughout this document, many references to Walmart's
2 pricing is -- I'll stop there. There are many references to
3 Walmart as well.

4 Q Well, isn't it true that the reason why Walmart isn't
5 there is because Safeway is Fred Meyer's true competition?

6 A I wouldn't infer that from this email, if I read through
7 it, as I recall. We at the time were following Walmart
8 pricing, and that's what she alludes to in the first line
9 there -- the first two lines. But in an attempt to help close
10 the gap on sales and margin, Latasha was suggesting that we
11 move closer to Safeway/Albertsons in pricing.

12 Q So in this instance, once again, Safeway and Albertsons is
13 influencing Fred Meyer's prices, right?

14 A It served as a guide to help us understand our spreads to
15 Albertsons, Safeway, and Walmart, along with other competitors.

16 Q So, yes, it was influencing Fred Meyer's prices, correct?

17 A It could be influencing, yes.

18 Q And that would no longer be the case if this merger goes
19 through, correct?

20 A I'm sure, again, that we would definitely visit the
21 marketplace and make sure that we're priced right to all
22 competition, as we do.

23 MR. KAYSER: Your Honor, we move to admit DX0588.

24 MR. SCHULTZ: No objection.

25 THE COURT: It will be received.

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1 BY MR. KAYSER:

2 Q I would like to bring up our next exhibit, which is
3 PX1675.

4 A Okay.

5 Q This is an email dated Wednesday, February 8th, 2023. It
6 is from -- the original email is from you to Bill Cassels.

7 Do you see that?

8 A Yes.

9 Q And Bill Cassels is the grocery and natural foods and
10 adult beverage merchandiser?

11 A Yes.

12 Q Do you recall receiving this email?

13 A I do.

14 Q And what was this email about?

15 A This email was an interesting instance where it was
16 Super Bowl week. Super Bowl is the biggest beer sales holiday
17 or sales week of the entire year. We received notification
18 that Safeway/Albertsons had advertised beer at a shockingly low
19 retail, and this note, as I recall, was correspondence about
20 that.

21 Q And that shockingly low retail was below cost, right?

22 A Yes.

23 Q And this is what you would call a promotional price,
24 correct?

25 A Yes.

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1 Q And they were offering 30-packs of beer at 14.97 after a
2 \$5 digital coupon, right?

3 A Yes.

4 Q And you thought that was pretty crazy?

5 A For this particular week and for the volume of beer
6 retailers sale, this was a big move.

7 Q It was probably a good weekend for people who were
8 shopping at Albertsons and Safeway, right?

9 A Yes.

10 Q But Fred Meyer chose to match that price, right?

11 A We did in that instance. Because of that price and
12 because it was a front-page feature item, we felt it was in our
13 best interest to do the same.

14 Q And you ultimately would be losing money on the beer sales
15 alone, right?

16 A Excuse me?

17 Q You would be losing money on the beer sales because you
18 were selling the beer for less than the cost, right?

19 A Yes.

20 Q But that's not the objective. The objective wasn't to
21 make money on the beer sales. It was to make money on all the
22 other things that they would come in and buy at the store,
23 right?

24 A Yes. The objective was to encourage customers to come to
25 Fred Meyer for that particular week.

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1 Q Because then they might choose Fred Meyer for their fresh
2 fish and deli meat and fresh flowers?

3 A Those, along with a lot of other items that Fred Meyer
4 sells.

5 Q And that's where you would make your money?

6 A We would make it up through the sales of other items, yes.

7 Q So it's fair to say that you compete with Safeway and
8 Albertsons on promotional pricing as well too, right?

9 A Yes.

10 Q And their promotional pricing impacts or influences
11 Fred Meyer's promotional pricing, right?

12 A Because Fred Meyer and Albertsons/Safeway have
13 traditionally competed with promotional retails and weekly
14 circulars and other things done within the market, yes, it
15 would be fair to say.

16 Q And if this merger goes through, then the next Super Bowl
17 you won't have to worry about losing money on the beer sales
18 because Albertsons or Safeway has chosen to price their
19 promotion below cost, right?

20 A This was, again, one instance that happened this
21 particular year, this particular event. As we have gone
22 through other holidays and events, we've not always taken the
23 same action, but this particular instance we did.

24 Q What is an ad circular?

25 A An ad circular is a similar format to a newspaper in that

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1 it has -- it typically folds and features promotional items or
2 sale items from retailers.

3 Q That's what we were referring to before, right, with the
4 beer as an ad circular?

5 A Yes.

6 Q And the ad circular has historically been an important way
7 in which Fred Meyer competes with Albertsons, right?

8 A Yes.

9 Q And in 2022, when Kroger was thinking of pulling the ad
10 circulars, that was a concern to you, wasn't it?

11 A It was, because at the time they were the only other
12 retailer that used that means of communicating sales prices
13 through that channel.

14 Q And you were concerned that it might give
15 Albertsons/Safeway a competitive advantage if you could no
16 longer compete with them with ad circulars, right?

17 A At the time that occurred, I was pretty new in my position
18 as president. We were in a time where we were facing some soft
19 sales trends and anything that would have deterred customers
20 from potentially coming to Fred Meyer would have given me
21 concern.

22 Q I would like to bring up now Exhibit PX1420.

23 A Okay.

24 Q This is an email dated November 5th, 2022, from you to
25 Kenny Kimball?

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1 Do you see that?

2 A Yes.

3 Q Who is Kenny Kimball?

4 A Kenny Kimball is the senior vice president of Kroger and
5 my supervisor.

6 Q And the title of this email is "2023 circular distribution
7 strategy," right?

8 A Yes.

9 Q And this was related to a meeting where they were
10 proposing to pull the ad circulars, correct?

11 A Yes.

12 Q If you look down, on November 4th, 2022, kind of on the
13 lower half of this first page, it looks like you are emailing
14 Kenny.

15 Do you see that?

16 A Yes.

17 Q And you say, "I have some big concerns with pulling all
18 circular distributions with Fred Meyer," right?

19 A Yes.

20 Q "I'm not sure how they think we are not in direct
21 competition with" -- and that's referring to Albertsons and
22 Safeway, right?

23 A Yes.

24 Q And then you go on to say, "They are our biggest
25 competitors with 300-plus stores," right?

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1 A Yes.

2 Q And that is in fact true; they are your biggest
3 competitors with 300-plus stores, isn't it?

4 A They are a large competitor in that they have 300-plus
5 stores. But my concern here was the fact that we would not be
6 using the same means we had in the past to communicate our
7 weekly promotions if we had made this change.

8 Q You didn't say "Walmart is our biggest competitor," did
9 you?

10 A I didn't in this instance because Walmart was -- is not a
11 competitor that uses this same channel of communication.

12 Q And you didn't say "Costco is our biggest competitor," did
13 you?

14 A I did not, for the same reason as Walmart.

15 Q Fred Meyer is currently in negotiations with Local Union
16 555 over the collective bargaining agreement, right?

17 A Yes.

18 Q Is it fair to say that negotiations aren't going so well?

19 A Well, we are currently in negotiations. And, yeah, we
20 will see what the outcome is in the coming days.

21 Q The union has authorized to strike?

22 A They have.

23 Q And they've given you notice that they intend to file
24 unfair labor practice charges for bargaining in bad faith?

25 A Yes.

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1 Q The union is also negotiating with Albertsons, isn't it?

2 A Yes.

3 Q But it hasn't authorized a strike against Albertsons yet,
4 has it?

5 A I don't believe so.

6 MR. KAYSER: I'm just about to wrap up. Just a
7 housekeeping matter. I would like to move to admit PX1420?

8 MR. SCHULTZ: No objection?

9 THE COURT: It will be received.

10 MR. KAYSER: No further questions -- oh, and PX1725.

11 MR. SCHULTZ: No objection.

12 THE COURT: It will be received.

13 Question. I don't want to -- are you checking?

14 MR. SCHULTZ: I'm sorry. Did you say 1725?

15 MR. KAYSER: 1675. Sorry.

16 MR. SCHULTZ: No objection. I'm sorry.

17 THE COURT: A quick question: I was wondering how
18 long were your cross-examination will be, because I did realize
19 that I pushed you all very hard this morning with a very long
20 morning with a very shortened break.

21 MR. SCHULTZ: I think 15 or 20 minutes, but I would
22 not be opposed to a break.

23 We will take our afternoon break.

24 (Recess.)

25 (Proceedings resumed:)

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1 THE COURT: All right. You are still under oath.

2 MR. SCHULTZ: Your Honor, may my colleague approach
3 with an exhibit?

4 THE COURT: Yes.

5 MR. SCHULTZ: This is Mr. Angelotti who joined us
6 today.

7 Your Honor, you will see it's a very large document.
8 We will display it on the screen. In the event of a
9 technological breakdown, I had our paralegal extraordinaire
10 make a nice big one so we can all see it in paper. Everybody
11 has a great team, but I just wanted to acknowledge Christina.

12 CROSS-EXAMINATION

13 BY MR. SCHULTZ:

14 Q Good afternoon, Mr. Kammeyer. How are you?

15 A Good afternoon.

16 Q You just answered a number of questions for Mr. Kayser. I
17 want to go back for a little bit. Would you tell us what your
18 first job was in the grocery industry?

19 A Yes. I started at the age of 16. I was a courtesy clerk
20 bagging groceries and taking care of many other things within a
21 store back in South Ogden, Utah, where I grew up.

22 Q What store was that?

23 A It was Smith's Food and Drugstore. They're in South Ogden
24 close to where I grew up.

25 Q What family of stores is that?

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1 A Smith's Food and Drug at the time -- well, when I started,
2 it was -- it was part of Smith's Company. Later it became part
3 of Fred Meyer and then part of Kroger.

4 Q So 32 years later you're the president of Fred Meyer up
5 here in Portland, right?

6 A Yes. Many different positions on that path, but I'm here
7 today in Portland.

8 Q Would you tell us about your career progression from
9 bagging groceries at age 16 to being the president of
10 Fred Meyer today?

11 A Sure. I started at 16, as I mentioned, bagging groceries.
12 I later became a cashier and spent my high school and college
13 years really working in the store. After I graduated from
14 college, I took on a number of district and division-type roles
15 within the Smith's Food and Drug division.

16 Years later, in 2013, I transferred down to the Fry's
17 Food Store division in Arizona to be a district manager, and I
18 helped oversee stores down in that market. And then later I
19 served as the vice president of operations and later as the
20 vice president of merchandising for that division. And then in
21 2019 I had the opportunity to come to Fred Meyer to also run
22 operations. I later switched over to merchandising and
23 fulfilled that role as well. Then in October of 2022 I assumed
24 my current position.

25 Q Would you tell us a little bit about Fred Meyer and what

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1 your stores are like?

2 A Yes. Our 132-store chain is comprised of larger format
3 stores similar to what you would compare to a Walmart or
4 Target. We carry a full assortment of food items but also a
5 lot in the general merchandise space. We sell housewares,
6 domestics, automotive items, furniture, a full garden center
7 assortment, home electronics, apparel, and we also have 112
8 fuel centers and nearly 120 jewelry locations as well.

9 Q You mentioned electronics. What does the electronics
10 department look like?

11 A Yes. Our electronics department features TV, game
12 consoles, other modern technology devices that customers are
13 interested in, iPads, and many other accessories that go right
14 along with personal electronics.

15 Q Could you remind us, what are your responsibilities as the
16 president of Fred Meyer?

17 A Yes. I oversee the operations of the division. My team
18 and I work together to ensure that we operate the stores in a
19 way that is pleasing to customers. We also are responsible for
20 implementing the sales plan that comes from the Kroger Company
21 as well as responsible for overseeing the 36,000 associates and
22 the financial aspects that go along with that as well.

23 Q I believe you mentioned you have a fuel -- you offer fuel
24 at Fred Meyer. Could you tell us about that.

25 A Yes. As I mentioned, we have 112 fuel sites often

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1 attached or nearby our stores. We also offer customers an
2 opportunity as they purchase items within the store to accrue
3 rewards points that they can in turn use for discounts on fuel.

4 Q So if they buy goods in a Fred Meyer store, they accrue
5 points, and they can use that at a pump to get a discount?

6 A Yes.

7 Q How many employees does Fred Meyer have?

8 A We have over 36,000 associates.

9 Q How many of those associates are part of the union?

10 A Over 21,000. Approximately 65 percent of our associates
11 belong to a union.

12 Q Let's talk a little bit about competition. Mr. Kayser ran
13 you through a number of competitive retailers. Would you
14 describe for the Court the competitive landscape for Fred Meyer
15 when it comes to selling groceries?

16 A Yes. The landscape in the Pacific Northwest and Alaska is
17 vast and wide. We compete against up to 1,700 other retailers.
18 Those retailers range from the larger chain companies, such as
19 Walmart, Target, Whole Foods, Trader Joe's, amongst others;
20 also many big regional players, WinCo, for example,
21 New Seasons, Met Market, PCC; also many different independents
22 or smaller players within the markets as well, not to mention
23 especially in the last decade we have seen a major shift with
24 online shoppers as well and really see that's a huge part of
25 the competitive landscape with customers having such easy

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1 access to food and general merchandise items through
2 E-commerce. That is also a part of that competitive landscape.

3 Q You mentioned New Seasons. What is New Seasons?

4 A New Seasons is a chain that operates primarily in the
5 Oregon -- and also I know they have stores in Vancouver,
6 Washington, but they have a 25-store chain that focuses on
7 natural, organic, and full-service departments as well.

8 Q And what is Met Market?

9 A Similar to New Seasons, Met Market is primarily found in
10 the Seattle and Tacoma area.

11 Q How does -- strike that. Excuse me. Is there an Asian
12 market presence in your region?

13 A Yes. Part of that independent, I guess grouping that I
14 mentioned, is a large presence of many Asian markets,
15 especially in Seattle, but we also have some -- several that we
16 compete against in the Portland market as well.

17 Q How does Fred Meyer go about competing with the stores
18 that you just mentioned?

19 A Yes. In competing against such a broad landscape, we
20 focus on doing a lot of things right. We focus on, one, having
21 stores with good prices, a full assortment of goods across the
22 food spectrum, but also in many of the general merchandise
23 categories that I mentioned. We also have many different
24 loyalty programs that we help encourage customers to take part
25 of. We focus on running stores that are stocked with items

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1 that customers are looking for that have the freshest product
2 available within the market and also really want to make sure
3 we provide great, friendly experiences as well.

4 Q You have been in the grocery industry for over 30 years.
5 Could you share with us how you've seen the competitive
6 landscape for groceries change over your career?

7 A Yes. It has dramatically changed in the 30-plus years.
8 Prior to, say, a decade ago, most shopping was done in
9 brick-and-mortar locations. Customers would go either to one
10 store or store-to-store to get the goods and services that they
11 were looking for.

12 The primary change that we've seen especially at
13 Fred Meyer with general merchandise in particular is that
14 rising E-commerce dynamic that has come into the market.
15 Customers today, as we all know, have easy access to see the
16 full assortment, the pricing, the availability of items online
17 and often can get those items in a very easy and convenient way
18 that just didn't exist more than a decade ago.

19 Q Can we pull up 588 again.

20 Mr. Kammeyer, you were shown Exhibit 588 by
21 Mr. Kayser in his examination. You made some references to
22 Walmart being reflected in this email from Ms. Stevens to
23 Ms. Doyel. Mr. Kayser directed you to the second sentence of
24 the first paragraph. Would you just read into the record for
25 us what the third sentence of that first paragraph says that

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1 begins with "up until."

2 A "Up until now we have been allowed to go closer to Safeway
3 pricing even though they have us listed as Walmart as our true
4 competition."

5 Q And what does the last sentence of that paragraph say?

6 A "That is almost 70 to 80 percent of the department,
7 because we index with Walmart, we need to consider the VPS
8 customer."

9 Q And I apologize. In that previous sentence there is a
10 "they" in there. Who do you understand the "they" to be
11 referencing?

12 A "They" would be referring to the general office pricing
13 and promotion team.

14 Q If you look at the -- if we could pull up the second
15 paragraph where it starts with "Today."

16 A It says, "Today I was told that the retails that we raised
17 on Monday needed to be changed and that they would be lowering
18 retails throughout the department. We must now follow the
19 Walmart strategy, which means we can't be more than 10 percent
20 from their retail."

21 Q Are these the Walmart references that you were referring
22 to when Mr. Kayser used this document with you?

23 A Yes.

24 Q I'm going to show you a new document marked as Exhibit 61
25 that I provided in a paper version with an attachment that has

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1 been marked as 61A.

2 For the record, this is a February 23rd, 2022, email
3 from Brad Cope to you, David Richard, Dennis Gibson, with the
4 subject "competition update" and an attachment.

5 Do you see that?

6 A Yes.

7 Q Is this an email and an attachment that you received on
8 February 23rd, 2022?

9 A Yes.

10 MR. SCHULTZ: Your Honor, we move to admit Exhibit 61
11 and 61A.

12 MR. KAYSER: No objection.

13 THE COURT: It will be received.

14 BY MR. SCHULTZ:

15 Q Mr. Kammeyer, who is Brad Cope?

16 A Brad Cope is the customer and marketing communications
17 manager for Fred Meyer.

18 Q What was your role at Fred Meyer in February of 2022?

19 A At this time I was the vice president of merchandising.

20 Q Did Mr. Cope report to you as the vice president of
21 merchandising?

22 A He did.

23 Q Who are Dennis Gibson and David Richard?

24 A Dennis Gibson at the time was the president of Fred Meyer,
25 and David Richard was the vice president of operations for

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1 Fred Meyer.

2 Q Was one of them or both of them your supervisor at the
3 time?

4 A Yes. Dennis Gibson was.

5 Q And after your role as vice president of merchandising, is
6 that when you became the vice president of operations? Or do I
7 have that backwards?

8 A Yeah. I came to Fred Meyer as the vice president of
9 operations and then later switched.

10 Q The subject of this says "competition update." What is a
11 competition update?

12 A This note was Brad giving us an update on upcoming
13 competitive activity that we anticipated and some of the
14 actions he was preparing to take.

15 Q Did Mr. Cope at the time regularly maintain and update
16 this spreadsheet?

17 A He did.

18 Q Did you receive them periodically as the vice president of
19 merchandising?

20 A Yes.

21 Q Do you still receive them as president of Fred Meyer?

22 A Yes.

23 Q Would you read for us what Mr. Cope wrote in his email to
24 you and Mr. Richard and Mr. Gibson?

25 A The email states, "Good morning. So you all have it in

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1 your back pocket. We are sending a mailer to the south Salem
2 store ZIP Codes on big pack in March for the Costco opening.
3 Keeping a close eye on WinCo in Eugene and McKay's in
4 Brookings. Trader Joe's has broken ground at Salmon Creek."

5 Q In that first sentence, there is a word "mailer." What is
6 a mailer?

7 A A mailer is typically a two-sided postcard, if you will,
8 larger format postcard that features several coupons for
9 different eyes that we would hopefully entice customers to come
10 to Fred Meyer to take advantage of buying.

11 Q What is a big pack?

12 A A big pack would be referring to larger quantity packs.
13 It could be large packs of toilet paper, paper towel, water,
14 soda, and so on.

15 Q Why was Fred Meyer sending out a mailer on big pack in
16 advance of a Costco opening?

17 A Well, as we know, a Costco store typically sells and
18 specializes in many big-pack quantity items. This was our
19 attempt to get customers to come to Fred Meyer to buy some of
20 these items rather than go to Costco.

21 Q What would your reaction be if somebody came into the
22 court and said that Costco is not a competitor of Fred Meyer
23 when it comes to selling groceries?

24 A I would strongly disagree.

25 Q Why would you disagree?

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1 A Just being in the market and operating against many
2 Costcos, I know the volume that their stores sell and the
3 strong impact that they have on the competitive landscape
4 within each of those markets.

5 Q Mr. Cope's emails also mentions WinCo, McKay's and Trader
6 Joe's. Do you see that?

7 A Yes.

8 Q What is McKay's?

9 A McKay's is a smaller independent store that opened up
10 within a mile of the Brookings Fred Meyer.

11 Q Is McKay's a Fred Meyer competitor when it comes to
12 groceries?

13 A They would be in the fact that they also sell fresh and
14 stable foods and other household items.

15 Q What is WinCo?

16 A WinCo is another -- a large regional player that sells a
17 tremendous volume of food items as well and that we compete
18 very directly against in the Pacific Northwest.

19 Q Why was Fred Meyer keeping an eye on these WinCo and
20 McKay's locations?

21 A We were anticipating an opening of these stores and were
22 preparing our stores to be at their best to, again, keep
23 customers coming to Fred Meyer. And also, where I believe Brad
24 was referencing is indicating any competitive activity that we
25 may have prepared to communicate to customers and offer various

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1 promotions.

2 MR. SCHULTZ: If we could pull up 61A, the big
3 spreadsheet, Your Honor.

4 BY MR. SCHULTZ:

5 Q Mr. Kammeyer, would you explain to us from a big-picture
6 perspective what this spreadsheet represents.

7 A This spreadsheet is a tracker that we use to identify and
8 keep track of competition that we have confirmation or rumor of
9 coming to the market in the future.

10 Q It may be easier to read it on the paper rather than on
11 the screen. But on the far left there is a column that says
12 "competitor name."

13 Do you see that?

14 A Yes.

15 Q Would you read for us the competitors that are the
16 companies that are listed under "competitor name."

17 A Yes. I will use each competitor once rather than list
18 many several times.

19 Just starting from the top, Albertsons, Safeway,
20 Target Fresh, Trader Joe's, PCC, Carrs, Smart Food Service,
21 Rosauers, Natural Grocers, Grocery Outlet, Ridley's Family
22 Market, Sprouts, Costco Wholesale, Smart and Final, Walmart,
23 Market of Choice, WinCo, Amazon Fresh, Saar's Super Saver, Met
24 Market, New Seasons, Amazon Fresh, McKay's Market. 3 Bears,
25 and Amazon Go.

T. Kammeyer - D

1 Q Are all of the companies that you just read off from
2 Exhibit 61A competitors with Fred Meyer when it comes to
3 selling groceries?

4 A Yes.

5 Q Is that why you're tracking new store locations for
6 potential mailers?

7 A Yes. That was the purpose of this tracking.

8 Q We already talked about Costco, WinCo, McKay's, and
9 Trader Joe's. I'm going to direct you to look at a couple of
10 other lines on here.

11 MR. SCHULTZ: Your Honor, for the record, before we
12 came in, I highlighted a couple of those rows so when we're
13 looking at them on paper, and I already discussed that with
14 Mr. Kayser.

15 THE COURT: All right.

16 BY MR. SCHULTZ:

17 Q Mr. Kammeyer, if you look at the line that says --
18 actually, strike that. I'm going to pull up side-by-side the
19 green area and the columns that say "mailer/ad version." If
20 you look at the line, Mr. Kammeyer, for Rosauers, would you
21 tell us what that indicates?

22 A Looking across the columns on the right, it indicates that
23 we sent a mailer on January 15th of 2020.

24 Q There's a column next to where it says "mailer," and it
25 says "miles to FM." Is that miles to Fred Meyer?

T. Kammeyer - D

1 A Yes. That would indicate the distance to, likely, our
2 closest store.

3 Q And how many miles is that?

4 A In this instance it was 15 miles to the Battle Ground
5 Fred Meyer.

6 Q If you look at a little bit further down, there's a Costco
7 Wholesale.

8 Do you see that?

9 A Yes.

10 Q What does that line indicate?

11 A That indicates on the right that the store was 1.8 miles
12 from the Fred Meyer in Idaho Falls and that we sent a mailer on
13 August 14th of 20207.

14 Q Three lines below that it says "Target Fresh." What does
15 that indicate?

16 A Again, a Target Fresh was opening 2.2 miles from our
17 Bellevue, Washington, store. A mailer was sent November 19th,
18 2020.

19 Q A few lines down below that there are two WinCos next to
20 each other. What do those indicate?

21 A We had a WinCo open up 4.4 miles from our Bend Fred Meyer;
22 mailer and ad version activity launched February 1st, 2021, and
23 that included on a side note the Redmond, Oregon, area. The
24 next line indicates an additional WinCo opening near by our
25 Wenatchee, Washington, store 2.95 miles away with similar

T. Kammeyer - D

1 activity and an ad version put in place for several weeks.

2 Q What is an ad version?

3 A An ad version would be where we would take our traditional
4 ad, and we would version typically items or prices. We would
5 oftentimes offer even stronger promotions to entice customers
6 to come to Fred Meyer.

7 Q And then down here at the bottom there's one that says
8 "Met Market." What does that indicate?

9 A Met Market had a store that opened up a .33 miles from our
10 Gig Harbor location. A mailer ad and email was launched. The
11 note says, "Mailers set for Labor Day. Ad version set for
12 period 9, week 4. New mailer set for period 10, week 3."

13 Q What would your reaction be if someone came into the court
14 and said that Rosauers is not a competitor of Fred Meyer when
15 it comes to selling groceries?

16 A I would disagree.

17 Q What would be your reaction if someone came into the
18 courthouse and said that Target Fresh was not a competitor with
19 Fred Meyer when it comes to selling groceries?

20 A I would disagree.

21 Q What would your reaction be if someone came into the
22 courthouse and said that Met Market is not a competitor when it
23 comes to selling groceries?

24 A I would disagree.

25 MR. SCHULTZ: No further questions, Your Honor.

T. Kammeyer - ReD

1 THE COURT: Any redirect?

2 MR. KAYSER: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. KAYSER:

5 Q And I believe you've also said that convenience stores
6 like 7-Eleven and Chevron aren't competitors of Fred Meyer; is
7 that right?

8 A In the fashion that they sell some of the same similar
9 goods, yes, they would be a competitor.

10 Q I believe on direct we talked about how there are 300
11 Safeway and Albertsons stores that compete with Fred Meyer; is
12 that right?

13 MR. SCHULTZ: Objection, Your Honor. It's beyond the
14 scope of my cross.

15 MR. KAYSER: I'm going to wrap this up.

16 THE COURT: Okay. Go ahead.

17 BY MR. KAYSER:

18 Q I believe on direct you had testified that there was about
19 300 Albertsons and Safeway stores that compete with Fred Meyer;
20 is that right?

21 A Yes.

22 Q How many WinCo stores are there that compete with
23 Fred Meyer?

24 A I believe -- and I would have to confer -- but 61 stores
25 within the Northwest that compete against our stores.

T. Kammeyer - ReD

1 Q How about McKay's?

2 A I believe it's around 20 stores, if I'm not mistaken.

3 Q How about Rosauers?

4 A Around that 20 mark as well.

5 Q And I think you testified on cross that obviously Costco
6 is a competitor, right?

7 A A substantial competitor.

8 Q But it wouldn't be a competitor for those who don't have
9 memberships to Costco, would it?

10 A If a customer doesn't have access, then they change the
11 dynamic. But my experience in visiting many Costcos and seeing
12 the number of stores they have within the market, people are
13 finding a way to Costco.

14 Q But again, you are not competing with Costco for people
15 who are not members of Costco, right?

16 A I'm sure that many of those membership holders also shop
17 at Fred Meyer and have options to do both.

18 MR. KAYSER: No further questions.

19 THE COURT: You can step down.

20 MR. KAYSER: Your Honor, for our next witness we
21 would like to call Carl Huntington.

22 THE COURT: All right.

23 (The witness was duly sworn.)

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

C. Huntington - D

1 THE WITNESS: Good afternoon. By name is
2 Carl Huntington. It is spelled C-A-R-L, H-U-N-T-I-N-G-T-O-N.

3 DIRECT EXAMINATION

4 BY MR. KAYSER:

5 Q Good afternoon.

6 A Good afternoon.

7 Q My name is Chris Kayser. I represent the State of Oregon.
8 I will be asking you a few questions today. Let's start with,
9 where do you currently work?

10 A I currently work in the Southwest division based out of
11 Phoenix, Arizona.

12 Q For what company?

13 A Albertsons Companies.

14 Q And how long have you been the Southwest division
15 president?

16 A I have been president of Southwest divisions since
17 February of 2023.

18 Q And in that capacity, what do you do?

19 A In that capacity, as president, I oversee all operations
20 and merchandising and marketing.

21 Q Before then, you were president of the Portland division,
22 is that correct, of Albertsons?

23 A Yes, sir.

24 Q And that was from November 2021 through February of 2023.
25 Did I get that right?

C. Huntington - D

1 A Yes, sir.

2 Q And how many stores does the Portland division have?

3 A Just over 140 stores here in Portland.

4 Q Where are all those stores located?

5 A Yeah. So the Portland division encompasses all of the
6 state of Oregon and parts of southern Washington as well.

7 Q And what banners does the Portland division operate out
8 of?

9 A Here in the Portland division, they operate Safeways, and
10 they operate Albertsons' banners.

11 Q What were your responsibilities as the president of the
12 Portland division?

13 A Yes. Overall similar responsibilities to what I'm doing
14 in Southwest, overseeing operations and overseeing the
15 merchandising and marketing.

16 Q How many years have you been with Albertsons?

17 A Just over 21 years with ACI.

18 Q Albertsons operates supermarkets, correct?

19 A Yes, sir.

20 Q And supermarkets sell groceries and general merchandise?

21 A Yes. We sell groceries and general merchandise. Yes,
22 sir.

23 Q Generally speaking, how many SKUs does Albertsons sell?

24 A Generally speaking, it would depend on the size of the
25 store. Without any data in front of me, it would be an average

C. Huntington - D

1 of probably 40,000 SKUs; right in that range.

2 Q What is a SKU?

3 A A SKU would be a specific item in the store that we would
4 sell.

5 Q Why would you have so many SKUs?

6 A We would have an assortment of SKUs to fit the customers'
7 needs in each market.

8 Q The broader assortment of SKUs you have, more competitive
9 you are, right?

10 A Generally speaking, you would want to provide an
11 assortment that best fits the needs of your customer base.

12 Q To attract them into your stores?

13 A Generally speaking, yes.

14 Q And the Albertsons supermarkets you were responsible for,
15 they sell general health and beauty products?

16 A Yes, sir.

17 Q Offer fresh produce?

18 A Yes, sir.

19 Q And fresh meat?

20 A Yes, sir.

21 Q You usually have a staffed butcher counter?

22 A Yes. The majority of our stores, but not all would have a
23 butcher counter, yes, sir.

24 Q And the majority of your stores would have a seafood
25 counter too, right?

C. Huntington - D

1 A Yes, sir. Not all, but the majority would have a seafood
2 offering as well.

3 Q And the majority of the stores would also have a deli
4 counter?

5 A Yes, sir. Not every store, but the majority would offer a
6 deli counter.

7 Q And about 95 percent have a bakery?

8 A Yes, sir. In the southwest division I'd say approximately
9 95 percent would offer bakeries.

10 Q And the majority offer a full assortment of flowers?

11 A I can't speak on behalf of the total company, but in my
12 division, yeah, the majority would offer some form of flowers
13 or floral arrangements.

14 Q And most of the stores have pharmacies?

15 A In the Southwest division about 75 percent would have
16 pharmacies, so not all of them.

17 Q Is that any different from the Portland division?

18 A Without any data in front of me, I wouldn't be able to
19 give an exact number, but directionally accurate.

20 Q Albertsons also offers private label brands?

21 A Yes, sir.

22 Q And is offering private label brands important to the
23 supermarkets you oversee?

24 A Yes. I would say that an Own Brand assortment is
25 important in our stores and our competitors. Yes, sir.

C. Huntington - D

1 Q Why is that?

2 A Generally speaking, Own Brand products can be secured at a
3 bit lower cost, which we could pass on to our customer with a
4 lower retail.

5 Q And they also generate customer loyalty as well, right?

6 A Generally speaking, there are own brands that customers
7 could be loyal to. Yes, sir.

8 Q And having all those products and services helps attract
9 and retain customers for the long-term, correct?

10 A Having a great own brands portfolio may attract customers.

11 Q But in addition to the own brands, having a staff deli and
12 a staffed meat counter and flowers and national brands, all of
13 that broad assortments help attract customers, correct?

14 A I would say all of those things, along with many other
15 facets would attract customers and help us retain customers.

16 Q And Albertsons offers all of that with the ultimate
17 objective to grow the business, right?

18 A I would say our objective, along with our competitors, is
19 to get more customers in our stores, sell more products, and
20 ultimately grow. Yes, sir.

21 Q And if you grow the business, you also grow your market
22 share, correct?

23 A Yes. If you grow the business at a faster rate than your
24 competitors, mathematically you would gain market share. Yes,
25 sir.

C. Huntington - D

1 Q And in addition to offering a broad assortment of
2 products, there are other ways that Albertsons competes as
3 well, right?

4 A Yes. In addition to the products we offer, we compete in
5 other ways. Yes, sir.

6 Q Customer service is huge?

7 A I would say customer service would be one really important
8 part of that overall value equation for a customer, yeah.

9 Q Cleanliness is important?

10 A I would say shoppers definitely prioritize a clean store
11 over a dirty store. Yes, sir.

12 Q And being part of the local community also attracts
13 customers?

14 A I would say it's hard to quantify, but stores that have
15 that great neighborhood feel would tend to attract folks and
16 retain them long-term. Yes, sir.

17 Q I think you testified in your deposition that ultimately
18 customers would be more apt to visit a well run-store with
19 great selection and great service and a clean environment where
20 you feel like it's a neighborhood store if you were closer to
21 your home.

22 Would you agree with that statement?

23 A I do remember saying that, so I think a well-run store
24 that's clean and well-stocked and has the right assortment with
25 just great service and a nice feel would attract customers and

C. Huntington - D

1 keep customers. Yes, sir.

2 Q And price perception is also important, right?

3 A I would say that price perception of a store would be one
4 facet of that overall value equation to attract customers and
5 keep them.

6 Q What is price perception?

7 A Price perception would be the perception of the overall
8 kind of value of what a customer would spend in your store.

9 Q And price perception is important because you want
10 customers to perceive that they're purchasing commodities at a
11 fair price, right?

12 A Yes, sir. So essentially we sell a lot of commodities,
13 but you want to be priced appropriately on those commodities.
14 But then later on, it's well-run stores and great cleanliness
15 and fantastic service to win the overall value equation for
16 these customers.

17 Q Sure. And is it fair to say that you want to offer prices
18 that are equal to or lower than your biggest competitors?

19 A I would say aspirationally we would want to be priced
20 appropriately versus all competitors, including our biggest
21 competitor. Yes, sir.

22 Q You worked on something called the "Winning Model," right?

23 A Yes, sir.

24 Q What was that project?

25 A So that project I helped lead for about one year. That

C. Huntington - D

1 project was initially called Project Edison. It was
2 essentially an effort to restructure our national merchandising
3 team, at the best and brightest minds, utilize the leverage and
4 scale of ACI to negotiate with suppliers in order to ultimately
5 run more efficient business, lower cost of goods, and hopefully
6 pass it on to our customers.

7 Q And you were part of that process as well, right?

8 A Yes, sir. I was part of that process for a short time,
9 approximately one year, along with many other folks to help
10 build out that model.

11 Q Is that a model that's continuing to this day?

12 A Yes, sir. That structure has maintained since I left.
13 Again, I was only on that project for about one year. I had
14 the opportunity to get promoted and move here to Portland and
15 be the president right after that.

16 Q Sounds good. If we could bring up Exhibit PX12485.

17 MS. MAINIGI: Excuse me, Counsel. Do you have a
18 binder?

19 MR. KAYSER: Sorry.

20 BY MR. KAYSER:

21 Q You got it?

22 A Yes, sir. Thank you.

23 Q And this is an email dated February 5th, 2021, from you to
24 Maribel Baca; is that right?

25 A Yes, sir. May I have 15 seconds to look at this?

C. Huntington - D

1 Thank you for your time. Thank you.

2 Q If you'd look down before the email to Maribel Baca, there
3 is an email from Mikey Vu, Susan Morris, you, and a few others.

4 Do you see that?

5 A Yes, sir.

6 Q Who is Mikey Vu?

7 A Well, Mikey Vu was a consultant with the Bain Consulting
8 Group. He helped develop this, along with many others. But in
9 this role I really acted as an intermediary between our senior
10 leadership team, our division, president teams, and the Bain
11 Consulting Group.

12 Q And you worked along with the Bain Consulting Group to
13 develop the winning program -- or the Winning Model?

14 A Yes, sir. I worked alongside the Bain Consulting Group
15 amongst others to help roll out this new model. Yes, sir.

16 Q And if you'll see, attached to that email, it looks like
17 it is a PowerPoint.

18 Do you see that?

19 A Yes, sir.

20 Q And is this part of the Winning Model that you were
21 working on as well?

22 A Yes. This would be a PowerPoint that the Bain Consulting
23 Group would have developed from the day -- it looks like an
24 early launched, early communication for this Edison Project.

25 Q The Bain Consulting Group, they're a competent consulting

C. Huntington - D

1 group, correct?

2 A I would say they are competent, yes.

3 Q In fact, Albertsons continues to hire them for a variety
4 of consulting reasons, right?

5 A I don't have any facts on what they would be hired for,
6 but I believe so.

7 Q Have you found that they have done good work when you have
8 retained them to do projects?

9 A This is the only project that I have worked with them on.
10 I think it was the first consulting group I've ever worked with
11 either. I don't have much perspective on others.

12 Q Did you believe that they did a good job?

13 A Again, I was on this project for such a short time. I
14 guess in my humble opinion, they helped us launch it and create
15 it, so I think they did an okay job.

16 MR. KAYSER: Your Honor, we move to admit
17 Exhibit PX12485.

18 MS. MAINIGI: No objection, Your Honor.

19 THE COURT: It will be received.

20 BY MR. KAYSER:

21 Q What I would like to do now, if you'd look at the exhibit
22 in the lower right-hand corner, there are page numbers. I
23 would like you to turn to the page number ending in 007.

24 Are you there?

25 A Yes, sir.

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1 Q This slide is entitled "Albertsons has a compelling case
2 for change."

3 Do you see that?

4 A Yes, sir.

5 Q And if you go down to the second line there, it says, "We
6 must invest in our customer value proposition."

7 Do you see that?

8 A Yes, sir.

9 Q And then the second bullet point says, "It is not just
10 customer perception. Our prices are higher" -- "higher than
11 Kroger" -- "higher than Walmart," right?

12 A Yes, sir.

13 Q And that was a problem for the price perception, right?

14 A Yes. So again, price perception would be one part of that
15 value equation. Factually this shows that we are higher
16 priced.

17 Q Because customers who perceive Albertsons have prices that
18 are higher than Kroger and Walmart might be more likely to shop
19 at those locations, right?

20 A Generally speaking, customers have more options to shop
21 now than ever, so that could be a reason why they would go to
22 one of our many competitors.

23 Q So at this time in 2021 Albertsons was looking at a way to
24 reduce its prices, right, and price perception?

25 A Yes, sir.

C. Huntington - D

1 Q And if you look at the line right below there, it says,
2 "There is a significant value at stake in cost of goods sold
3 improvement."

4 Do you see that?

5 A I do. Yes, sir.

6 Q And then the first bullet point says, "We have identified
7 an opportunity to reduce cost of goods by a redacted amount or
8 more."

9 Do you see that?

10 A Yes, sir.

11 Q And the amount has been redacted. And what I would like
12 to be able to do, because I think it is important -- you see
13 that -- and we have some testimony on it without going into the
14 specifics. If we could pull up the unredacted version on the
15 nonpublic screen.

16 Now, do you see the non-redacted version?

17 A Yes, sir.

18 Q So you can see the amount that they were seeking to reduce
19 the cost of goods sold, right?

20 A Yes, sir. I can see it.

21 Q And it's a pretty significant amount, right?

22 A Yes, sir. It's significant.

23 Q And if that was achieved, it would help you with your
24 price perception, because it would lower cost and therefore it
25 would translate to lower prices, right?

C. Huntington - D

1 A Potentially achieving that number could allow us to reduce
2 prices. Again, this was a forecast that Bain Consulting Group
3 came up with. I didn't create it.

4 Q And do you have any reason to doubt that it was a good,
5 workable solution to bringing down cost of goods sold?

6 A I don't have much frame of reference on how they came up
7 with it, so I'm not sure I can answer that appropriately, sir.

8 Q But the ultimate objective there of that model and why
9 Albertsons -- at least one of the reasons they hired Bain was
10 to come up with a way to bring down the cost of goods sold,
11 right?

12 A I think that's one facet to reduce cost of goods. Another
13 facet would be to align a new structure of national leaders to
14 get the best assortment and be much more efficient with how we
15 go to business.

16 Q And again, reducing cost of goods sold would help reduce
17 prices and compete against competitors like Kroger, right?

18 A Yes, sir. One part of reducing cost of goods sold could
19 be to reduce prices, yes, sir.

20 Q At least in 2021 Bain believed that Albertsons could
21 reduce the cost of goods sold by a very significant amount
22 without having to merge with Kroger, right?

23 A Again, this would be their financial forecast, that number
24 that was redacted yes, sir.

25 Q And the Winning Model did experience some success in

C. Huntington - D

1 reducing the cost of goods sold, didn't it?

2 A I don't have much frame of reference. Again, I was on
3 that project for such a short time. Again, I was kind of the
4 middle person for communication between all the stakeholders
5 and the Bain Consulting Group. It would be hard for me to
6 answer appropriately what was actually achieved, because I got
7 promoted right after.

8 Q Fair enough. Can we bring up Exhibit PX -- oh, we moved
9 to admit that one. We moved to admit that one. Bring up
10 Exhibit PX12472. This is an email chain that begins -- that
11 ends again with Mikey Vu sending an email to you,
12 Anderson Madison, and Herrero Ramon.

13 Do you see that?

14 A Yes, sir.

15 Q And this one is dated April 29th, 2021, which is just
16 about two months after that PowerPoint we were just looking at,
17 right?

18 A Yes, sir.

19 Q And Mikey Vu begins the email with, "Thanks, Carl," and
20 then down at the second paragraph, he says, "We haven't even
21 launched the full model yet, but initial categories show it is
22 working. We have already generated a redacted amount of
23 annualized savings."

24 Do you see that?

25 A Yes, sir.

C. Huntington - D

1 Q And if we can bring up the unredacted on the nonpublic
2 screen. Do you see the unredacted on the nonpublic screen now
3 right in front of you, and you see it on the document you have
4 too, right?

5 A Yes, sir.

6 Q The amount that they already generated in annualized
7 savings in two months was significant, wasn't it?

8 A I would say that his forecast -- again, this is Mikey's
9 note, not mine. This was over three years ago too. That is a
10 substantial amount. Yes, sir.

11 Q He says, "We have already generated it," right?

12 A That is what he wrote. I'm not sure if that came to
13 fruition though. I couldn't tell you.

14 Q It is about 10 percent of that much larger number we were
15 just talking about, right?

16 A Yes, sir.

17 Q And if you could go down to the next email in this email
18 chain. It is an email from you to Mikey Vu with the subject of
19 "Town hall deck changes."

20 Do you see that?

21 A Yes, sir.

22 Q And if you -- your email starts, "Team, I have had a small
23 group of presidents look at this so we can be perfect for the
24 town halls," right?

25 A Yes, sir.

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1 Q And what were the town halls?

2 A Again, this was over three years ago. If I remember
3 correctly, we had a series of meetings with each division to
4 help roll this out.

5 Q And it was important to be perfect, right?

6 A Perfect is tough to be, but we definitely wanted to do our
7 best. Yes, sir.

8 Q And you had a comment on slide 4 that said, "We are the
9 second largest 'traditional' grocer." You put "traditional" in
10 quotation marks, right?

11 A I did write that, yes, sir.

12 Q Kroger is larger than Albertsons, isn't it?

13 A I can't speak on behalf of the company, but in my specific
14 division we are about the same size.

15 Q But in terms of traditional grocers, Kroger would probably
16 be the largest traditional grocer, wouldn't it?

17 A Yeah. You know what, this is definitely an antiquated
18 term that I don't generally use anymore. At the time I did
19 write this -- this is almost three-and-a-half years ago; if I
20 could go back, I wouldn't have used that term.

21 Q But you do consider Kroger a competitor of Albertsons,
22 right?

23 A Yes. I would consider Kroger a competitor along with
24 many, many others.

25 Q And you've also referred to Kroger as a major competitor

C. Huntington - D

1 of Albertsons, right?

2 A I'm sure I have said that. They definitely are a
3 competitor along with many other competitors in the market.

4 MR. KAYSER: Your Honor, I would like to move to
5 admit Exhibit PX12485.

6 MS. MAINIGI: No objection, Your Honor.

7 THE COURT: It will be received.

8 BY MR. KAYSER:

9 Q I would like to now bring up PX12472.

10 MS. MAINIGI: Counsel, I believe that's the one you
11 just referred to.

12 MR. KAYSER: That's the one we just admitted. Sorry.
13 PX12469.

14 BY MR. KAYSER:

15 Q This is an email from you dated October 13th, 2020, to
16 Michelle Larson.

17 Do you see that?

18 A Yes, sir. I see it. Thank you.

19 Q And what was your position in 2020?

20 A If my memory serves me correctly, I believe I was senior
21 vice president of merchandising and marketing at this time.

22 Q In which division?

23 A Southwest division.

24 Q Southwest division. Who was Michelle Larson?

25 A I believe at the time she was the president. I could be

C. Huntington - D

1 mistaken though.

2 Q And this is an outline of a presentation that you and
3 Michelle were presenting to the board of directors, right?

4 A Yes, sir. It looks like it's kind of a rough draft of
5 potential talking points for a board meeting. Again, this is
6 almost -- gosh, almost four years old now. It is hard to
7 remember.

8 Q And that was the board of director of Albertsons, right?

9 A Yes, sir. It was our ACI board of directors.

10 Q And at that time Michelle Larson was your boss, right?

11 A Yes, sir.

12 Q And in this email you provided your boss notes of what you
13 intend to say to the board of directors of Albertsons, correct?

14 A Yes, sir. This is just a rough draft of bullet points for
15 this potential board of directors meeting.

16 Q Is it safe to say that presentations to the board of
17 directors are a pretty big deal?

18 A That is very safe to say.

19 Q How many presentations have you given to the board of
20 directors since you have been at Albertsons?

21 A Goodness. I would be guessing. Maybe six to eight.

22 Yeah.

23 Q But it's a big deal?

24 A Definitely a big deal.

25 Q And you want to make sure that what you say is accurate

C. Huntington - D

1 and true, right?

2 A Of course. To the best of my ability, yes, sir.

3 MR. KAYSER: Your Honor, I would move to admit
4 PX14269 into evidence.

5 MS. MAINIGI: No objection, Your Honor.

6 THE COURT: It will be received.

7 MR. KAYSER: And I've just gotten a note that I need
8 to move into evidence PX12472.

9 MS. MAINIGI: Also no objection, Your Honor.

10 THE COURT: It will be received.

11 BY MR. KAYSER:

12 Q Directing your attention back to this email. If you
13 looked at about four bullet points down -- and this is in the
14 section called "Carl's section."

15 Do you see that?

16 A Yes, sir.

17 Q So this is the section you are responsible for?

18 A As far as I remember, it looks like it. Based on context,
19 yes, sir.

20 Q And if you look at the fourth bullet point, it says, "The
21 team has been focused on being consistent with our exciting
22 promotions, fair and everyday pricing, and excellent branding
23 initiatives."

24 Is that a true statement?

25 A Yes, sir.

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1 Q And those are all examples of ways you try to compete
2 against your competitors to gain market share, right?

3 A I would say these amongst many other things would be ways
4 to gain share. Yes, sir.

5 Q And if you turn to page 2, I would like to focus your
6 attention down towards the bottom of the page. There is a
7 bullet point that begins, "These retails seem crazy, but the
8 math behind these retails actually makes sense due to the take
9 rate and average item value."

10 Do you see where we are at?

11 A Yes, sir.

12 Q The next bullet point is, "Imitation is the greatest form
13 of flattery."

14 A Yes, sir.

15 Q Then the next point you're going to make to the board of
16 directors is, "We have noticed that our largest competitor,
17 Kroger, has started to use this exact strategy," right?

18 A Yeah. I do see that was written. What I can say is that
19 is factually inaccurate. I'm not sure why that was written. I
20 don't even know if this was delivered to the board, but it's
21 just wrong, because they are not our biggest competitor.

22 Q How long had you been at Albertsons at this time?

23 A Let me do the math backwards. Probably 17, 18 years,
24 right in that range.

25 Q So after being there 17 or 18 years, you emailed your boss

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1 a presentation to the board that inaccurately described Kroger
2 as the largest competitor?

3 A Based on this email, it looks like I made an honest
4 mistake and -- this quote/unquote of Kroger being the largest
5 competitor, because, again, factually they weren't at this
6 time, and they're not for Southwest.

7 Q Is it possible that you meant is the largest competitor as
8 a traditional grocer?

9 A Again, this was four years ago. I would be speculating as
10 to what I was thinking at that time.

11 Q But again, Kroger is an important competitor of
12 Albertsons, right?

13 A Kroger is definitely a competitor of Albertsons, amongst
14 many others. Yes, sir.

15 Q And in Portland, Kroger operates under the Fred Meyer and
16 QFC banners?

17 A Yes, sir.

18 Q And when you were the Portland division president, you
19 visited Fred Meyer 20 times a year?

20 A Yeah. Generally speaking that range sounds accurate;
21 20-ish times a year. Yes, sir.

22 Q And you were visiting Fred Meyer because it's a competitor
23 of Albertsons, right?

24 A I would visit Fred Meyer amongst many other competitors on
25 a regular basis. Yes, sir.

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1 Q And when Fred Meyer workers threatened to go on strike in
2 2021, you thought it could benefit Albertsons and Safeway,
3 didn't you?

4 A Yes, sir. Any strike of a competitor or any major closure
5 of a competitor would definitely have an impact on the market.

6 Q And that the strike would result in Fred Meyer customers
7 being diverted to nearby Albertsons, right?

8 A Yes, sir. A strike from Fred Meyer or any competitor
9 would have an impact on the market. Yes, sir.

10 Q I would like to bring up Exhibit PX2448.

11 A I have it, sir.

12 Q Do you see this is an email from Chris Lanoue?

13 A It's Lanoue (enunciating).

14 Q It's from Chris Lanoue? Who is Chris Lanoue?

15 A At the time Chris Lanoue would have been the president of
16 marketing and merchandising in the Portland division.

17 Q And this is an email dated December 11th, 2021, right?

18 A Yes, sir.

19 Q And if you'd look at the first email of this chain, which
20 starts down at the bottom of the page, it is from Brent Bohn.
21 Did I pronounce that right?

22 A Yes, sir.

23 Q And the public version is redacted. But just to
24 summarize, Brent was just giving you an update on the status of
25 the negotiations with the local union, right?

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1 A Yeah. Brent, amongst others, helped lead negotiations for
2 Albertsons Companies, so he's provided an update.

3 MR. KAYSER: Your Honor, I would like to move Exhibit
4 PX2248 into evidence.

5 MS. MAINIGI: No objection, Your Honor.

6 THE COURT: It will be received.

7 BY MR. KAYSER:

8 Q And if you look back at the first page of this exhibit,
9 the second email is an email from you to Chris Lanoue dated
10 December 11, 2021.

11 Do you see that?

12 A Yes, sir.

13 Q You say, "Keeping you in the loop on this one. Nothing
14 you need to do on your end yet. This would be massive for us
15 if they actually went on strike," right?

16 A Yes, sir. I see that.

17 Q And it could be massive for you, because it could drive a
18 lot of sales to Albertsons, right?

19 A Potentially any strike like this from a competitor could
20 deliver more sales and more customers to our stores. Yes, sir.

21 Q And, in fact, an analysis was done of the actual potential
22 sales upside to Albertsons if the strike went through, wasn't
23 it?

24 A I think Chris provided me with his form of analysis at
25 some point, if I remember correctly. Yes, sir.

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1 Q And let's turn to PX2795. This is an email from Chris
2 Lanoue?

3 A Yes, sir.

4 Q Dated December 15th, 2021, so just four days after the
5 email where you said it could be massive for you?

6 A Yes, sir. I guess I would like to provide some context on
7 that use of language. I was a division president for about a
8 month at this point, and so this probably overreacted with that
9 term.

10 Q Fair enough. But this is -- you recognize this document,
11 right?

12 A Yes, sir.

13 Q This is the analysis that Chris Lanoue did to evaluate the
14 impact the strike could have on Albertsons' sales, right?

15 A This is the analysis that he provided.

16 Q And he says, "Levi, better buckle up."

17 A Yes, sir. He wrote that.

18 Q And then he says, "You can expand out the impact by
19 Fred Meyer, by our store, if you toggle the subtotal."

20 Do you see that?

21 A Yes, sir, I do.

22 Q What did you understand what he meant by "Levi, better
23 buckle up"?

24 A If my memory serves me correctly, Levi was a store
25 director at one of our stores that, based on his analysis, may

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1 have had the biggest kind of sales upside if the strike were to
2 happen.

3 Q And that's what Mr. Lanoue was anticipating with this
4 spreadsheet, right?

5 A I think he was just trying to be proactive with that
6 potential strike and the effect on sales for us and other
7 competitors, and that's why he wrote that. Yes, sir.

8 Q And if you turn to the next page as the spreadsheet here.
9 Do you see that?

10 A Yes, sir.

11 Q And this is the spreadsheet that Chris Lanoue prepared,
12 correct?

13 A Yes, sir.

14 MR. KAYSER: Your Honor, we would like to move to
15 admit PX2795 into evidence.

16 MS. MAINIGI: No objection, Your Honor.

17 THE COURT: It will be received.

18 BY MR. KAYSER:

19 Q Now, we are looking on the public screen on a redacted
20 version of this. If you look at the unredacted, which you
21 should have in front of you, I want to focus your attention
22 on -- there are two columns. One is the venue; one is the
23 competitor location, right?

24 A Yes, sir.

25 Q Under the venue it lists the Albertsons stores, correct?

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1 A Yes, sir.

2 Q And then the -- what has been redacted on the screen is
3 the address of the Albertsons store, right?

4 A Yes, sir.

5 Q And then next to that it lists the Fred Meyer stores near
6 that Albertsons store, right?

7 A Yes, sir.

8 Q But it redacts the addresses of those Fred Meyer stores,
9 right?

10 A Correct. Yes, sir.

11 Q Are the addresses of Fred Meyer stores something that is
12 confidential?

13 A I'm not sure how to answer that one, sir.

14 Q Let me ask you this: So on the first Albertsons store, I
15 assume the fact that there is an Albertsons at 16199
16 Boones Ferry Road, Lake Oswego, Oregon, is not something that's
17 not public, right?

18 A Locations of our stores would be public. Yes, sir.

19 Q Then next to that it lists one, two, three, four, five
20 Fred Meyer stores that are related, right?

21 A Yes, sir. So again, I didn't create this document. That
22 is what is listed. Yes, sir.

23 Q You were Chris Lanoue's boss at the time, right?

24 A Yes, sir.

25 Q And he was trying to anticipate the impact, right?

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1 A Yeah. This is his way to, I guess, proactively estimate
2 this term "contested dollars," which I had never even heard
3 before. So he's just trying to be proactive.

4 Q And if you look down on this spreadsheet, there are -- it
5 looks like every single Albertsons store in Portland, right?
6 It goes on for several pages?

7 A Yeah. It is a long list. I'm not sure if it is
8 all-inclusive, but I assume it is.

9 Q But it includes a lot of Albertsons stores, right?

10 A Yes, sir.

11 Q And for each Albertsons stores, there is a Fred Meyer
12 competitive counterpart, right?

13 A Correct. So he is aligning our store and their potential
14 store that would maybe go on strike and trying to forecast with
15 his own math, which I couldn't explain to you, what the impact
16 would be.

17 Q And for some Albertsons stores or for a lot of them there
18 are multiple Fred Meyer stores that could be competitors,
19 right?

20 A Yes. For some Albertsons stores there would be more than
21 one, and some wouldn't have any.

22 Q Do you know if there are any other competitors in the
23 Portland division that have union workers that could go on
24 strike?

25 A To the best of my knowledge, I'm not aware, sir.

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1 Q But Albertsons has union workers that could go on strike,
2 right?

3 A Yes. I can't speak on behalf of the whole company, but in
4 the division I'm in now, we do have union stores in some
5 locations. Yes, sir.

6 Q And ultimately this analysis, even though I understand you
7 don't completely understand the math, but ultimately the
8 analysis is trying to put a specific number on the Fred Meyer
9 shoppers being diverted to Albertsons stores as a result of the
10 strike, right?

11 A In this specific instance with this specific competitor,
12 due to the nature of them potentially going on strike, this is
13 a proactive approach to try and quantify what it would be.

14 Q Then if we could go back to the first page of this Excel
15 spreadsheet. At the very top, if we could have that
16 highlighted, where it says "grand total." Do you see where it
17 says "grand total" up there?

18 A Yes, sir.

19 Q Then you slide all the way across, and there's a number
20 that has been redacted, right?

21 A Yes, sir. I see that number.

22 Q We're not going to say out loud specifically what that
23 number is, but it's a lot of money, right?

24 A Yeah, I would say that's a lot of money. Again, it's a
25 forecast, and it didn't come to fruition because the strike

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1 ended up being extremely short.

2 Q It lasted only one day in Portland, right?

3 A If I remember correctly, yeah, it was short. One day.

4 Q But it lasted a lot longer in Denver, didn't it?

5 A I can't give you the dates for Denver. Definitely
6 Denver's was longer than a day. I can assure you that.

7 Q I would like to pull up Exhibit PX12484. This is an email
8 from you to Todd Broderick dated December 21st, 2022.

9 Do you see that?

10 A Yes, sir. I see that.

11 Q It's about a month after the threat of strike was in
12 Portland, correct?

13 A Yes, sir. About a month.

14 Q And who is Todd Broderick?

15 A Todd Broderick serves as the president of the Denver
16 division for ACI.

17 Q And you write: "Hello, Todd. Hope you are doing well.
18 I'm assuming that Kroger is still on strike in your market,
19 given the massive sales IDs," right?

20 A Yes, sir. That's what I wrote.

21 Q What's a sales ID?

22 A A sales ID is a comparison of sales year over year.

23 Q And you were attributing the massive sales ID -- in other
24 words, the increase in sales ID for the current year to the
25 Denver strike, right?

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1 A Based on the context of this note, I am assuming, based on
2 what I said, Kroger is still on strike due to the sales that I
3 noticed.

4 Q And is that what you meant when you said "massive" in the
5 other email too that you were referring to when you just took
6 over as president; that it could be massive for the Portland
7 division?

8 A I'm not sure if I meant to say the same thing. I can't
9 recall.

10 Q But at least here you attributed the massive sales
11 increases to Denver strike, right?

12 A Based on the context of this, it looks like I'm offering
13 assistance with the sales influx that they may have been seeing
14 at that time and just trying to be a -- trying to be nice and
15 help them.

16 Q Because Kroger shoppers were being diverted to Albertsons
17 stores and Albertsons stores were absorbing a lot more
18 business, right?

19 A I don't have any facts with that. I wasn't running that
20 division, so I couldn't answer that appropriately, sir.

21 MR. KAYSER: Your Honor, we would like to move to
22 admit Exhibit PX12484.

23 MS. MAINIGI: No objection, Your Honor.

24 THE COURT: It will be received.

25

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1 BY MR. KAYSER:

2 Q Next I would like to bring up PX2791.

3 Do you see this?

4 A Yes, sir.

5 Q It is an email from you dated August 5th, 2022, to
6 Chris Lanoue, and it is commenting on an email from
7 Susan Morris to what looks like the division president's email
8 addresses.

9 Do you see that?

10 A Yes, sir. It looks like she is sending a note to the
11 presidents of our marketing and merchandising VPs. Yes, sir.

12 Q Who is Susan Morris?

13 A Susan serves as the COO of ACI.

14 Q And you didn't report directly to Ms. Morris at the time,
15 did you?

16 A No, sir.

17 Q And you do not now, right?

18 A No, sir.

19 Q She is essentially your boss's boss, right?

20 A Yes, sir.

21 Q Is it fair to say that when you receive an email from your
22 boss's boss, it's probably important?

23 A That's fair to say. Yes, sir.

24 Q It also includes an attachment entitled "pricing review
25 quarter 2, 2019 through 2022."

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1 Do you see that?

2 A Yes, sir. I see the attachment.

3 Q That was what Susan Morris was forwarding to all the
4 division presidents, correct?

5 A Yes, sir. It looks like she is forwarding the attachment
6 from Chris Cowgill to the folks mentioned.

7 Q Who is Chris Cowgill?

8 A Chris Cowgill leads our pricing team for ACI.

9 MR. KAYSER: Your Honor, I would like to move to
10 admit PX2791.

11 MS. MAINIGI: No objection, Your Honor.

12 THE COURT: It will be received.

13 BY MR. KAYSER:

14 Q So the first page is entitled -- well, if you look at the
15 page numbers down at the bottom right, I would like to turn
16 your attention to 004, and it's the first substantive of the
17 report.

18 Do you see that?

19 A Yes, I see that.

20 Q The title of the page is "Albertsons Company CPI compared
21 to primary competitors."

22 Do you see that?

23 A Yes, sir. I see it.

24 Q I think we learned earlier today that "CPI" stands for
25 competitive price index.

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1 Does that sound right?

2 A I'm not an expert. It is either competitive or consumer
3 price index. Yes, sir.

4 Q And what do you understand it to be?

5 A I understand it to be a comparison of our pricing versus a
6 specific competitor.

7 Q And I know it's redacted on the screen, but that's
8 essentially what is being analyzed underneath, right, is the
9 competitive pricing with other competitors, right?

10 A It looks like this is generally from Chris and an overview
11 of CPI compared to a competitor. Yes, sir.

12 Q For a three-year period, correct?

13 A It looks like this starts back in 2019, so that's
14 accurate. Yes, sir.

15 Q And if you turn to page 16 of this exhibit -- and you're
16 currently the Southern division -- Southwest division
17 president, right?

18 A Yes, sir.

19 Q And page 16 is comparing Albertsons prices to Fry's,
20 correct?

21 A Yes, sir.

22 Q And Fry's is a Kroger banner, is it not?

23 A Fry's is a Kroger banner we compete with.

24 Q Then if you look at page 15, it's comparing the Southern
25 division prices to Kroger as well, correct?

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1 A This is kind of tough to read, but yeah. Did you ask -- I
2 apologize. Did you ask for Southern or Southwestern?

3 Q It says, "Southern CPI compared to Kroger." That's page
4 15.

5 A I'm looking at the wrong page. I apologize. Sorry about
6 that.

7 Q No worries.

8 A Yes, sir. It does.

9 Q And so here, it's comparing the Southern division prices
10 to Kroger, which is a Kroger banner obviously, right?

11 A Yes, sir.

12 Q And then on page 14 it's comparing the SoCal division to
13 Ralphs, correct?

14 A Yes, sir.

15 Q Another Kroger division?

16 A Yes, sir.

17 Q Or a Kroger banner.

18 And then if you look to page 12, it's comparing the
19 Seattle division prices to Fred Meyer, right?

20 A Yes, sir.

21 Q And that's another Kroger banner, correct?

22 A Yes, sir.

23 Q And then if you look at page 11, it's comparing the
24 Portland Albertsons' prices to Fred Meyer, right?

25 A Yes, sir.

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1 Q And at this time in 2022 you were the Portland division
2 president, correct?

3 A Yes, sir.

4 Q And then if you look at page 9, it's comparing Jewel,
5 right, which is an Albertsons banner?

6 A Yes, sir.

7 Q To Mariano's, a Kroger banner?

8 A Yes, sir.

9 Q Then if you look at page 8, it's comparing the
10 InterMountain division of Albertsons' prices to Fred Meyer,
11 right?

12 A Yes, sir.

13 Q And if you look at page 7, it is comparing Denver prices
14 to King Soopers?

15 A Yes, sir.

16 Q Another Kroger banner?

17 A Yes, sir.

18 Q Is it fair to say that this three-year pricing review from
19 Albertsons' chief operating officer is highlighting Kroger as a
20 major competitor of Albertsons?

21 A I would say that is fair, but I didn't create this
22 document. I guess context is everything. They use the term
23 "primary competitors," which would be one subset of competitors
24 that as a national pricing team they track. We use that almost
25 as like a weigh point or a middle ground to get to where we

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1 eventually want to be with the likes of Walmart.

2 Q A primary competitor is going to be an important
3 competitor, right?

4 A I mean, it is kind of an antiquated term too that I don't
5 usually use. Again, I think our national team uses a data set.

6 Q What I would like to do now is pull up Exhibit PX478.

7 MS. MAINIGI: Counsel, do you mean 12478?

8 MR. KAYSER: I'm sorry. 12478.

9 BY MR. KAYSER:

10 Q Are you there?

11 A I am.

12 Q I'm there now too. This is an email from Chris Lanoue to
13 you dated June 7th, 2022, right?

14 A Yes, sir.

15 Q And he says, "Is this what you think Kelly is looking
16 for?"

17 Do you see that?

18 A Yes, sir.

19 Q And who is Kelly?

20 A Chris was referring to Kelly Griffith, who at the time
21 would have been my boss. He was the executive vice president
22 of the West Coast at the time.

23 Q And if you turn to page 3 of this exhibit, there is a
24 PowerPoint. It begins "meat pricing and competitive recap
25 Portland division."

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1 Do you see that? Are you familiar with this
2 document?

3 A I'm familiar with it. It is a couple of years old, but I
4 am familiar with it. Yes, sir.

5 MR. KAYSER: Your Honor, at this time we would like
6 to move into evidence Exhibit PX12478?

7 MS. MAINIGI: No objection, Your Honor.

8 THE COURT: It will be received.

9 BY MR. KAYSER:

10 Q If you turn to page 4 of this Exhibit, you see this is
11 comparing Albertsons' prices to Fred Meyer, correct?

12 A Yes, sir.

13 Q And the first bullet point under "Key Comments" says,
14 "Total CPI within target range for white tag and TVI," right?

15 A Yes, sir. That's what he wrote.

16 Q And "white tag" refers to a base price, not a promotional
17 price, correct?

18 A Generally speaking, white tag is just the base price or
19 that everyday price. Yes, sir.

20 Q So for the base price for the meat department, the
21 Portland division had predetermined thresholds to be within of
22 Fred Meyer's prices, correct?

23 A I don't know if I would say "predetermined threshold." It
24 would be an aspirational goal to get to would be better.

25 Q Fair enough. But it's fair to say that Fred Meyer's

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1 prices on meat was influencing prices that Albertsons was
2 offering its meat at, right?

3 A I think it's fair to say that price of meat from any
4 competitor would have an influence on us, yes, sir.

5 Q But you weren't talking about any competitor here; you
6 were talking about Fred Meyer?

7 A So in this specific instance Chris was doing an analysis
8 of Fred Meyer. I'm not sure why he didn't have other
9 competitors on here.

10 Q Well, it's hard to be within a price threshold of multiple
11 competitors, isn't it?

12 A Well, again, we use Fred Meyer almost as a weigh point or
13 an aspirational goal to get to the low price like the Walmarts
14 of the world.

15 Q Then if you turn to the next page, page 005, this is
16 showing something a little bit different, correct?

17 A Yes, sir.

18 Q This is what you would call promotional pricing?

19 A This looks like a print ad comparison. So a promo price,
20 yes, sir.

21 Q Is this what you would call an ad circular?

22 A I guess this would be a representation of one of the ads
23 that would be printed. Yes, sir.

24 Q Is it fair to say this is one of the mechanisms that
25 Albertsons uses to compete with its competitors?

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1 A I would say it's fair to say on a promotional retails in
2 the ads that we deliver are one facet to gain customers to get
3 to our store, yes, sir.

4 Q In this instance it's comparing Albertsons' promotional
5 ads to Fred Meyer, right?

6 A Yes. So in this specific instance Chris did compare those
7 two. Yes, sir.

8 Q And then if you look at the third bullet point on this
9 slide, it says, "Use history and trends to predict Fred Meyer
10 CY retails and beat it on holidays," right?

11 A Yes, sir. That's what Chris wrote.

12 Q And so the goal is to beat Fred Meyer on promotional
13 pricing on holidays, isn't it?

14 A I would say the ultimate goal is to beat every competitor
15 on key holidays.

16 Q In this instance you're referring to Fred Meyer?

17 A In this specific instance -- again, I didn't create the
18 document. Chris was doing that comparison. I'm not sure why
19 he didn't add anybody else.

20 Q Because ultimately you want to drive shoppers away from
21 Fred Meyer to Albertsons, right?

22 A I think ultimately we want to drive as many customers as
23 possible from every competitor into our stores. Yes, sir.

24 Q And in this instance the way you were competing with
25 Fred Meyer was through the promotional pricing, right?

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1 A So in this specific instance Chris did a comparison with
2 promotional pricing. Yes, sir.

3 Q This wasn't the only time you had ever done that with
4 Fred Meyer?

5 A I would assume there are other comparisons against
6 Fred Meyer, amongst others. Yes, sir.

7 Q In fact, this says, "Use history and trends to predict
8 Fred Meyer." So it sounds like it is attempting to predict
9 what will happen in the future on promotional pricing with
10 Fred Meyer, right?

11 A Again, I didn't create the document. Chris did so. I'm
12 not exactly sure.

13 MR. KAYSER: Your Honor, at this time we move to
14 admit PX12478.

15 MS. MAINIGI: No objection, Your Honor.

16 THE COURT: It will be received.

17 BY MR. KAYSER:

18 Q I would like to bring up next Exhibit PX12483. This is an
19 email dated June 17th, 2022, and it's from PDX communications,
20 right?

21 A Yes, sir.

22 Q And PDX communications is the internal direction of
23 communications, and this email went to a broad group of folks,
24 including you, right?

25 A Yes, sir. That's accurate.

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1 Q And attached to it is an attachment that states "Portland
2 express store management."

3 Do you see that?

4 A Yes, sir. I see that.

5 Q Are you familiar with these types of documents?

6 A I'm familiar with this specific document based on what I
7 was shown during the deposition. I don't remember seeing this
8 prior to that, so --

9 Q Fair enough. But this is something that is produced in
10 the ordinary course of Albertsons' business, correct?

11 A This would be a normal communication broadly to the team.
12 Yes, sir.

13 MR. KAYSER: At this time, Your Honor, we would like
14 to move into evidence PX12483.

15 MS. MAINIGI: Your Honor, I do object to the
16 admission of this document with this witness because the
17 witness's name is not on it like other documents, and he
18 specifically testified at his deposition that he had not seen
19 this document prior to his deposition, and he wasn't familiar
20 with it. I would object at this point.

21 MR. KAYSER: Your Honor, I'm not sure why it wouldn't
22 be admitted.

23 THE COURT: He's saying he didn't have any --

24 MR. KAYSER: It's the company's document. It's an
25 admission of party-opponent. It's relevant. I can go

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1 through -- he knows a lot of the information on it.

2 THE COURT: Well, I think you need to establish the
3 foundation.

4 MR. KAYSER: Sure.

5 BY MR. KAYSER:

6 Q If you'd turn to the second page of this exhibit --
7 actually it's a third page. The first sentence there on the
8 message says, "Each produce department will receive 50 'low
9 price' talker signs in your mail bag," right?

10 A Yes, sir.

11 Q You know what a low price talker tag is, right?

12 A Yes, sir. I do.

13 Q What is a low price talker tag?

14 A It's just a tag that they would attach to the normal price
15 point to highlight either -- a deal.

16 Q And why would you want to be highlighting -- this is a tag
17 they would put in the store?

18 A I think in this specific instance it would be based on the
19 context. It would be something that goes in our produce
20 departments on some of the tags that were specific items. Yes,
21 sir.

22 Q So in this instance, there would be 50 low price talker
23 tags, right?

24 A Based on what it says, yes, sir.

25 Q Then the next sentence says, "These are items where we

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1 have lowered our retails, and we are equal to or better than
2 Fred Meyer," right?

3 A Yes, sir. That's what it says.

4 Q And it's important to be equal or better to Fred Meyer and
5 advertise that, because you're competing with Fred Meyer on
6 price, right?

7 A Again, I didn't write this. I'm not sure why they call
8 out Fred Meyer specifically. It would behoove us to showcase
9 lower prices against every competitor, of course.

10 Q You were the Portland division president at this time,
11 right?

12 A Yes, sir.

13 Q And this was going to each produce department in your
14 division, right?

15 A Yes, sir. Based on what it says here, it is. Yes, sir.

16 Q And this is going to be 50 different prices with a low
17 price taker where you have lowered your retails to equal or
18 better than Fred Meyer, correct?

19 A Yes, sir. Based on the context specifically here, that's
20 what it says.

21 MR. KAYSER: Your Honor, we now move to admit
22 PX12483. Additionally, I just got a reminder that we have
23 stipulated that no sponsoring witness is required for the
24 admission of exhibits.

25 MS. MAINIGI: Your Honor, I'm not quite sure the

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1 scope of what Mr. Kayser is just specifically referring to.
2 But as it relates to this particular document right now, I
3 don't think the line of questioning that he just engaged in
4 after my last objection did anything more to establish
5 foundation. He just read more parts of the document and asked
6 Mr. Huntington whether he agreed or not. But I don't think he
7 has laid a foundation for this document with this particular
8 witness. I'm more than happy to talk to my team after this
9 testimony and consult with Mr. Kayser about the last point he
10 just made.

11 THE COURT: I think we need to take a break and let
12 you do it now.

13 MS. MAINIGI: Okay. That's fine.

14 THE COURT: I'll just let you do a conferral. You
15 can step outside, and I'm staying on the bench.

16 MS. MAINIGI: Okay. Thank you, Your Honor.

17 (Pause.)

18 (Proceedings resumed:)

19 THE COURT: We can go back on the record.

20 MS. MAINIGI: Your Honor, we have agreed with the
21 Government, with Your Honor's permission, to table this
22 document because it is part of a larger discussion that we're
23 going to meet and confer on this evening.

24 THE COURT: I see.

25 MS. MAINIGI: If needed, we will come back to the

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1 Court on it, but I believe we have agreed with Ms. Musser and
2 her colleagues to table it for now.

3 THE COURT: Very good.

4 All right. You may continue.

5 MR. KAYSER: Thank you, Your Honor.

6 BY MR. KAYSER:

7 Q We are going to move on to another exhibit. We will bring
8 up Exhibit PX12476. This is an email from Chris Lanoue to you
9 dated January 10th, 2022.

10 A Yes, sir.

11 Q And it includes a PowerPoint that he received from
12 Anthony Silva; is that right?

13 A Yes, sir.

14 Q And who is Anthony Silva?

15 A So Tony Silva is someone that works on Chris Cowgill's
16 pricing and analytics team.

17 Q And Chris says -- Mr. Lanoue says, "Had a call with the
18 dream team today. Here is some data that was shared with the
19 SLT."

20 Do you see that?

21 A Yes, sir. I do.

22 Q And SLT is the senior leadership team?

23 A Yes, sir.

24 Q And then he says, "Proof positive that we did what we said
25 we were going to do in the PI stores."

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1 Do you see that?

2 A Yes, sir.

3 Q Do you know what he is referring to with "PI stores"?

4 A I believe he is referring to the "price investment"
5 stores.

6 Q And then he goes on to say, "We can review in person, if
7 you would like, but wanted to get you the information ahead of
8 time in case someone on the senior leadership team reaches
9 out," right?

10 A Yes, sir.

11 Q So he's making sure you're apprised of these slides,
12 because they're important enough that at least somebody from
13 the senior leadership team might reach out to you and discuss
14 it, right?

15 A Based on the context, that makes a lot of sense. Yes,
16 sir.

17 MR. KAYSER: Your Honor, we would like to move into
18 evidence Exhibit PX12476.

19 MS. MAINIGI: No objection, Your Honor.

20 THE COURT: It will be received.

21 BY MR. KAYSER:

22 Q Then if you would turn over to page 003 on this, and the
23 third bullet point down starts, "In the price investment
24 markets, both base and shelf CPI dropped sharply versus their
25 control areas."

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1 Do you see that?

2 A Yes, sir.

3 Q And then it says, "Customers now see pricing for key
4 priority items that lines up nicely with our top food
5 competitor, Fred Meyer," right?

6 A Yes, sir. I see that.

7 Q So the senior leadership team is being told that the top
8 food competitor is Fred Meyer, correct?

9 A This is a document that Tony compiled. I didn't create
10 it, but that is what it says.

11 Q And it went to the senior leadership team, correct?

12 A Based on the context, it looks like it was sent, but I'm
13 not certain.

14 Q And if you turn to page 2 on this -- I'm sorry. Page 4.
15 Page 2 of the PowerPoint; page 4 of the exhibit. If you look
16 at four bullet points down, it says, "These items now match our
17 primary food competitor, Fred Meyer, in the price investment
18 markets."

19 Do you see that?

20 A Yes, sir. I see it.

21 Q So this is referring to Fred Meyer as both the top food
22 competitor and primary food competitor, right?

23 A Based on the context this was written, again, I believe
24 that national pricing team uses those terms as a data point,
25 and we use it as almost as a weigh point to eventually get to

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1 the low price leader of the Walmarts.

2 Q Why is it called a price investment?

3 A So if I remember correctly, this price investment actually
4 started before I came to the Portland division, and I believe
5 the company invested, through reducing an earnings expectation,
6 to do this specific price investment test.

7 Q So when you lower the prices, you make less profit, and
8 that less profit is the investment; is that right?

9 A I'm not a pricing expert, but generally speaking, if you
10 lower prices, it takes a while for the customers to respond and
11 eventually buy more goods.

12 Q Yeah. But what you're investing is a decline in your
13 profits, right? That's the money that you are doing away with?

14 A I think generally speaking it's a short-term investment in
15 pricing that hopefully generates more sales of units long-term
16 to grow the business.

17 Q But in the short-term you're taking a hit on your bottom
18 line profits, right?

19 A In certain instances -- again, I'm not an expert -- it may
20 do that.

21 Q In addition to being Portland division president and
22 Southwest division president, are you also an Albertsons
23 shareholder?

24 A Yes, sir.

25 Q And so you're aware in 2023 Albertsons issued a \$4 billion

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1 dividend to its shareholders?

2 A I can't answer with much specificity on that. I do recall
3 something along those lines. Yes, sir.

4 Q And do you have any reason to know why that \$4 billion in
5 dividend couldn't have been used at least in part for a price
6 investment?

7 A I wouldn't be able to answer that appropriately. I
8 wouldn't know.

9 MR. KAYSER: No further questions.

10 THE COURT: Any cross?

11 MS. MAINIGI: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MAINIGI:

14 Q Good afternoon, Mr. Huntington.

15 A Good afternoon.

16 MS. MAINIGI: Your Honor, I would like to go ahead,
17 with your permission, and pass out DDX4, if I might.

18 BY MS. MAINIGI:

19 Q We got a little bit of your background, Mr. Huntington,
20 with Mr. Kayser, but let me just try to get the rest of it. So
21 you have been with Albertsons about 21 years; is that right?

22 A Yes, ma'am.

23 Q And what was your first position when you began at
24 Albertsons?

25 A My first position was actually a seafood clerk at an

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1 Albertsons store in Lake Havasu City, Arizona.

2 Q And I believe the first page of DDX4 tracks the different
3 roles you had from seafood clerk to president of Southwest
4 division. Is that fair?

5 A Yes, ma'am.

6 Q And could you just very quickly just run through some of
7 the major positions you've had in those 21 years?

8 A Certainly. So I started as a clerk. I worked many jobs
9 in the store, including department manager. I ended up running
10 a store as a store director at several stores in the
11 Kings Valley. I became an assistant sales manager. I
12 ultimately became a sales manager and then was promoted to
13 director of fresh, overseeing all the fresh departments, so the
14 meat department and produce and bakery and floral. Then I
15 transitioned to the director of center store, so I was
16 overseeing the grocery departments and liquor departments and
17 general merchandise. I was promoted to the SVP of marketing
18 and merchandising in the Southwest division, so I oversaw the
19 entire merchandising team. I transitioned to oversee the
20 entire operations team in the Southwest division as SVP of
21 operations. I had that brief stint as SVP of national
22 merchandising. Then I am proud to say I was promoted to be
23 president right here in Portland; then back home, the president
24 of Southwest division.

25 Q Thank you, Mr. Huntington. And if you'd look at the

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1 second page of the demonstrative, DDX4, can you tell me what
2 that page reflects.

3 A Yes. This is a page that reflects some of the competitors
4 in our market.

5 Q And which market specifically?

6 A The Southwest division market.

7 Q Mr. Huntington, could you just review for us -- don't go
8 through all of them. But could you run through a few of these
9 for us, please, and just explain in particular how they compete
10 with Albertsons?

11 A Yeah. Certainly. In the Southwest division, Walmart is
12 our biggest competitor; over twice our size. We have WinCo
13 Foods in the market, which is just a great low-price operator.
14 Dollar General has almost 150 stores now. We have
15 Trader Joe's, a very, very great assortment of goods. We also
16 have a beat with Kroger. We also have the Fry's banner. We
17 also have the Smith's banner we compete against. Bashas is a
18 local hometown grocer. It has just over a hundred stores in
19 Arizona. We compete against Costco in our market. We have
20 over 60 Sprouts, and they're actually based out of Phoenix,
21 Arizona. And you see Aldi too. There's just about a dozen of
22 those but continue to grow and kind of act as a disruptor with
23 regards to price.

24 Q And those names, do you view all of those names as your
25 competitors in the market?

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1 A I would say that these, amongst others, would be
2 competitors in our market.

3 Q Now, you mentioned Sprouts. Sprouts is headquartered in
4 Arizona; is that right?

5 A That's correct.

6 Q Now, why -- what do you -- one of the things that you do
7 as group president is you visit the stores; is that right?

8 A That's correct. Yes, ma'am.

9 Q Why do you visit the stores? And to be clear, not your
10 stores, but competitor stores. Why do you visit competitors'
11 stores?

12 A I would visit competitors regularly, first and foremost,
13 to look at the things they are doing great. Maybe glean some
14 insights; maybe copy some things they are doing well.
15 Potentially look at things where they would have opportunities.
16 I would look at specific pricing in stores. I would look at
17 overall merchandising ideas in stores. I guess I would look at
18 the overall customer service and kind of the feel of each store
19 and how they serve their guests.

20 Q Have you ever visited a Sprouts store?

21 A Yes. Many times.

22 Q And have you ever a visited because you're visiting the
23 competition?

24 A Of course. Yes, ma'am.

25 Q Do you -- I think Mr. Kayser was asking you a number of

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1 questions with kind of the litany of different departments in
2 the stores you all have. Do you remember that he mentioned
3 fresh meat? He mentioned fresh produce. Do you remember that
4 conversation?

5 A Yes, ma'am.

6 Q So with the Sprouts stores that you visited, do they have
7 a bakery department, the ones you compete with in Arizona?

8 A Yes, ma'am.

9 Q Do they have a deli department?

10 A Yes, ma'am.

11 Q Do they have a produce department?

12 A Yes, ma'am.

13 Q Is produce one of their key features?

14 A Yeah, I'd say they are definitely known for having great
15 produce and great prices. Yes.

16 Q Do they have frozen foods?

17 A Yes, ma'am.

18 Q Do they have florals?

19 A Yes, they do. Yes, ma'am.

20 Q Do they have liquor or wine?

21 A Yes, ma'am.

22 Q And would you say that you compete as Albertsons with
23 Sprouts in all of those departments?

24 A I would absolutely say we compete with Sprouts. Yes,
25 ma'am.

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1 Q And do you believe that Sprouts is an entity that could
2 take share away from Albertsons?

3 A Absolutely. Yes, ma'am.

4 Q And why do you believe that?

5 A They are a great grocer that sells high-quality goods.
6 They provide fantastic service. They run clean stores, and
7 they sell a multitude of things that we do the same.

8 Q Now, you also mentioned Aldi. Is Aldi in the Southwest
9 division as a competitor also?

10 A Yes, ma'am.

11 Q Now, Mr. Huntington, does the fact that an Aldi may not
12 look exactly like an Albertsons, does that in your mind affect
13 whether they are a competitor or not?

14 A The fact that they may look a little different, they would
15 still be a competitor. Yes, ma'am.

16 Q And why is that?

17 A They offer a lot of the same goods that we sell and many
18 times at a very, very low price.

19 Q And are they, to your knowledge, expanding in the
20 Southwest region?

21 A To the best of my knowledge, they are expanding.

22 Q If you could take a look at the third page of this
23 demonstrative, Mr. Huntington, and just explain to us what that
24 is.

25 A Yes, ma'am. It looks like a comparison of some

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1 competitors here in the Portland division.

2 Q Could you review some of those at a high level, please.

3 A Certainly. A lot of the same competitors as Southwest,
4 with Costco and Walmart and Whole Foods, WinCo, Trader Joe's,
5 Dollar General, obviously Amazon with their E-commerce
6 presence. Some different players here, you have
7 Market of Choice, which is a little more high-end natural
8 retailer. You have Grocery Outlet, which is a fantastic
9 bargain retailer. You also have Bi-Mart here, which is a
10 strong presence in certain areas.

11 Q And would you say all the stores reflected on this page
12 are entities, when you were division president of Portland, you
13 would have viewed as competitors?

14 A Yes, ma'am.

15 Q So today, in 2024, as division president of the Southwest
16 division, who are the competitors that keep you up at night?
17 Who are you most worried about?

18 A Yeah. I would say there are three key competitors that
19 keep me up at night that I'm worried about. I think one is
20 Walmart. Again, in my division they're more than twice our
21 size. They have done a fantastic job of amplifying their fresh
22 departments. They have done a fantastic job with their
23 E-commerce platform. They are fierce. I would say Costco is
24 someone that keeps me up at night. They almost have a cult
25 following, and they just do a fantastic job. And another one

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1 that really keeps me up at night is Amazon with the
2 advancements they've made with their E-commerce platform,
3 specifically fresh, great groceries. They are doing a
4 wonderful job.

5 Q With Amazon, did you have a recent experience with them
6 just from a personal perspective?

7 A Yes. Last week I wanted to try their platform for fresh
8 products. So I was in my office. It was about 2:00 p.m., and
9 I placed an order for three items. It was a gallon of milk, it
10 was chicken breasts, and it was ground beef. I got free
11 delivery same day. When I got home from work, I was astounded
12 that there were two beautiful bags all sealed up, and the bags
13 were kept cold. They were insulated, but they were kept cold
14 with ten frozen water bottles. The kicker is the price that I
15 paid as a customer would be very similar to what my cost would
16 be as ACI, and so free delivery, fantastic, and just fast.

17 Q Let's switch over to price. Mr. Kayser was asking you
18 about Project Edison and the Winning Model.

19 Do you recall that?

20 A Yes, ma'am.

21 Q And I think you indicated that you had begun work on that
22 project, but you never really saw it through to the end because
23 you switched jobs and were promoted; is that right?

24 A Yes, ma'am.

25 Q Can you tell me generally, though, with all of your recent

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1 roles, and just tell me about this generally right now, what
2 have you observed about the pricing of your competitors
3 compared to Albertsons pricing?

4 A Yes. So Albertsons would be significantly higher priced
5 than a Walmart. We would also be higher priced than Kroger.

6 Q So I'm going to ask you to go back to your binder. There
7 is a document that was redacted that Mr. Kayser showed you. It
8 is PX12485. If you could turn to that.

9 I believe Mr. Kayser was discussing with you page 7.

10 So, Matt, perhaps you could put the redacted version
11 on the screen. I'm sorry. That is the redacted version.

12 So you see that there is a sentence here -- and the
13 unredacted version on the Court's screen, please.

14 So on one of the things that is redacted, which I
15 think Mr. Kayser was discussing a line down with you -- one of
16 the items redacted, the bullet says, "It is not just customer
17 perception - our prices are higher." Then there is a number
18 that's described for Kroger in terms of how much higher, and
19 then there is a number that's described for Walmart in terms of
20 how much higher -- again, both in percentages.

21 Without saying those numbers out loud, could you tell
22 the Court whether your experience is consistent with what those
23 numbers reflect in this document.

24 A Yes, ma'am. These percentages are accurate and consistent
25 with what I see right now.

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1 Q And this document was from the 2021 time period. Are
2 those numbers consistent with what you saw in that time period
3 as well?

4 A Yes, ma'am.

5 Q Now, Project Edison, do you think that there were savings
6 that came across or were realized as a result of Project
7 Edison?

8 A I guess due to the brevity of my role with Project Edison,
9 it is hard to tell you a specific number.

10 Q Do you agree with the proposition, Mr. Huntington, that
11 given inflationary pressures over the last several years, that
12 the costs that have been experienced by Albertsons, as well as
13 other grocers in the grocery industry, may have offset any
14 savings that were achieved?

15 MR. KAYSER: Your Honor, I'm going to object on the
16 grounds of foundation. She hasn't established that he knows
17 what the cost savings were from Project Edison.

18 MS. MAINIGI: Your Honor, I believe that Mr. Kayser
19 got into the record, and I think that was the primary purpose
20 of him using this document, the numbers reflecting the cost
21 savings of Project Edison. So I'm just trying to present the
22 complete picture in terms of the cost savings and what other
23 numbers exist.

24 MR. KAYSER: Just to be clear, the cost savings I was
25 referring to was only in the first two months of Project

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1 Edison. He said he didn't have any understanding of what
2 happened after that.

3 MS. MAINIGI: I can lay some further foundation,
4 Your Honor, if you would like.

5 THE COURT: No. You will be limited to that. If he
6 testified that he only knows two months, he is limited to two
7 months.

8 MS. MAINIGI: That's fine, Your Honor. May I
9 continue questioning?

10 THE COURT: Yes.

11 BY MS. MAINIGI:

12 Q Mr. Huntington, let me step back. Can you tell me in your
13 role as president of the Portland division as well as president
14 of the Southwest division over the last several years, have you
15 experienced increase costs due to increased labor costs,
16 energy costs, inflationary costs?

17 A Yeah. I don't have any specifics in front of me, but it
18 is fair to say that the cost of doing business has run up.

19 Q Now, just coming back to one more question about Project
20 Edison. Did Project Edison have to do with trying to improve
21 scale at Albertsons?

22 A I think Project Edison -- one facet was to leverage our
23 scale appropriately through supplier negotiations, amongst
24 other things.

25 Q And can you explain that further in terms of what the goal

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1 was with scale?

2 A Sure. So in our old model, each specific division would
3 negotiate with suppliers. In this Winning Model, we had
4 elected some of the brightest merchandising minds to negotiate
5 on behalf of every division to essentially get better costs and
6 be more efficient.

7 Q Now, if you could pull that binder back in front of you.
8 I know Mr. Kayser reviewed a number of documents with you, and
9 I just want to run through those.

10 By the way, just to round out your history, if the
11 merger closes, do you know where you will be working?

12 A Yes, ma'am.

13 Q Where is that?

14 A I'll serve as the go-forward president for C&S for
15 Southwest.

16 Q And that would be the Southwest division?

17 A Yes, ma'am.

18 Q Do you have any idea whether there are significant number
19 of stores from that division that are potentially going to C&S
20 if the merger closes?

21 A Yeah. Based on my recollection, it's 117 out of our 193
22 stores that would be divested if this happens.

23 Q And are you the only one who would be going from that
24 division, or are there others?

25 A I am very proud to say that my entire division office

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1 team, so everybody on my org. chart that reports up into me is
2 going to transition into C&S too.

3 Q Okay. So let's look at -- and we may not -- just to save
4 time, we may not even need to pull out the document. But you
5 were asked about the term "traditional grocer."

6 Do you recall that?

7 A Yes, ma'am.

8 THE COURT: Let me stop. Can you be quiet and not
9 have side conversations.

10 (The Court addressed expert witnesses in the jury
11 box.)

12 THE COURT: Thank you. Continue.

13 MS. MAINIGI: I'm sorry, Your Honor. Thank you.

14 BY MS. MAINIGI:

15 Q I believe PX12472 was the document that Mr. Kayser used
16 with you, but you don't need to bring it out, just to save
17 time. That was a document, if you recall, Mr. Huntington, that
18 used the term "traditional grocer."

19 Do you recall that?

20 A Yes, ma'am.

21 Q Can you tell me what that term means to you in your job
22 today?

23 A It is an antiquated term. It is not something that I
24 typically use today. We live in a MULO+, omni-channel
25 competitive scope, so it's such a narrow word I typically don't

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1 use.

2 Q You used a term "MULO+." Can you explain what that means?

3 A Yes. So MULO+ is "multi-outlet plus," which basically
4 encompasses every competitor that sells groceries. The "plus"
5 is Amazon and Costco.

6 Q So just to step back, that's a form of data that you
7 receive in your role; is that right?

8 A Yes, ma'am.

9 Q And how long have you had the opportunity to receive the
10 "plus" part of MULO+?

11 A I would say directionally maybe four to six months we have
12 perceived that data, MULO+.

13 Q Prior to four to six months ago, you just had MULO; is
14 that right?

15 A That's correct. There was no "plus."

16 Q Did that mean that you did not have access to Amazon and
17 Costco numbers?

18 A Again, not being an expert, that's correct.

19 Q To be clear, are your competitors today, Mr. Huntington,
20 limited to traditional grocers?

21 A Absolutely not. We would look at every single competitor.

22 Q Now, I'm going to ask you to turn to PX12469, and I would
23 like you to turn to this particular document, Mr. Huntington.
24 It is another document that Mr. Kayser showed you.

25 This document, I think as you will recall, was what

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1 Mr. Kayser asked you about the notes that you and Michelle
2 Larson prepared for a presentation to the board of directors.

3 Do you recall that conversation with Mr. Kayser?

4 A Yes, ma'am.

5 Q And I believe that Mr. Kayser was focused on Kroger as
6 largest competitor.

7 Do you recall that?

8 A Yes, ma'am.

9 Q I'd ask you to take a look at the date of the document, if
10 you could. What's the date of the email?

11 A It looks like the email is dated October 13th; the year
12 2020.

13 Q And in 2020, I'm sure we can all stipulate that we were
14 going through COVID; is that right?

15 A That's accurate. Yes, ma'am.

16 Q Was there a temporary change that happened in the grocery
17 industry during COVID?

18 A Yes.

19 Q And was it your experience that for some period of time
20 consumers did go back to preferring to shop at just one or two
21 stores if they could, for safety reasons?

22 A I think it is fair to say that folks wanted to shop fewer
23 places as opposed to more, out of health concerns.

24 Q So when you wrote this, you were experiencing, I'll call
25 it, the benefit of that at Albertsons; is that right?

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1 A I would say that's accurate, yes.

2 Q Then did you find in your various roles thereafter that
3 that trend reversed back to consumers wanting to shop at a
4 number of different stores?

5 A I think it is fair today. In this environment, folks have
6 more options than ever to purchase groceries, and that's
7 accurate. Yes, ma'am.

8 Q And is it fair to say, Mr. Huntington, that -- well,
9 Mr. Kayser pointed out a number of documents that referenced a
10 Kroger banner or Kroger as a competitor, correct?

11 A Yes, ma'am.

12 Q Is it fair to say that we can look in your files and find
13 documents that reference other entities besides the Kroger
14 entity as a competitor?

15 A Yes, ma'am.

16 Q And who would some of those entities be?

17 A It would be many of the entities that I listed earlier.

18 Q Now, you were also asked, Mr. Huntington, about the
19 Fred Meyer strike.

20 Do you recall that?

21 A Yes, ma'am.

22 Q And I think you already indicated this on direct, but is
23 it fair to say that lasted about a day in Portland?

24 A Yes, ma'am.

25 Q Can you think of an example when Albertsons responded to a

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1 disruption at a non-Kroger competitor?

2 A Certainly. So right here in the Portland market, as I was
3 transitioning, there was talk of two Walmarts in the city
4 closing. So we would do similar preparation for local stores.
5 I had taken over as the president of Southwest when those two
6 stores closed-based on my memory. I don't have any data of
7 what happened.

8 Q But suffice it to say, Albertsons stores reacted to the
9 closure of the Walmart stores in order to take advantage of
10 those consumers coming to Albertsons instead?

11 A Yes, ma'am.

12 MS. MAINIGI: Mr. Huntington, I have no further
13 questions. Thank you.

14 THE COURT: How much redirect?

15 MR. KAYSER: Maybe two minutes.

16 THE COURT: Fair enough. I don't want to keep you
17 guys past the deadline, the time frame we agreed to every day.

18 MS. MAINIGI: If we could put this witness back on a
19 plane tonight, Your Honor, that would be terrific.

20 REDIRECT EXAMINATION

21 BY MR. KAYSER:

22 Q Mr. Huntington, you testified about a lot of other
23 competitors that you have out there in the market, right?

24 A Yes, sir.

25 Q And I think you even just testified that if you had gone

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1 into your file, you might have been able to find some documents
2 that discuss those other competitors, right?

3 A Yes, sir.

4 Q But we haven't seen today any documents describing what
5 you think is the largest competitor, top food competitor, or
6 primary competitor other than Kroger, right?

7 A Based on the subset of the documents here, yes, sir.

8 Q And we haven't seen any other documents showing how
9 closely you track Kroger's prices with any other competitor,
10 have we?

11 A Based on these specific documents listed here today, yes,
12 sir.

13 Q I understand that Albertsons has other competitors, but
14 isn't it true there is no other single competitor as
15 significant as Kroger who you have called the largest
16 competitor with Albertsons and so closely compete with on
17 price?

18 A I can't speak on behalf of the company, but based on my
19 knowledge as president of Southwest, actually Walmart is the
20 biggest competitor, over twice our size.

21 MR. KAYSER: No further questions, Your Honor.

22 THE COURT: All right. You can step down. You can
23 leave everything.

24 We are going to end for today. I will see you again
25 at nine o'clock.

(Court adjourned.)

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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 27, 2024
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