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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 29, 2024
ALBERTSONS COMPANIES, INC.,	)	
	)	
Defendants.	)	Portland, Oregon
_____	)	

PRELIMINARY INJUNCTION HEARING  
DAY 4 - AFTERNOON SESSION  
BEFORE THE HONORABLE ADRIENNE NELSON  
UNITED STATES DISTRICT COURT JUDGE

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1 (August 29, 2024)

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

3 (Afternoon session; open court:)

4 THE COURT: Good morning. I mean, good afternoon.  
5 Please be seated.

6 All right. You may call your next witness.

7 MS. DRUMMONDS: Katie Drummonds for the Federal  
8 Trade Commission.

9 THE COURT: I'm not sure your mic is on.

10 MS. DRUMMONDS: Your Honor, would you like us to  
11 state our appearances?

12 THE COURT: I would.

13 MS. DRUMMONDS: Katie Drummonds for the Federal  
14 Trade Commission.

15 MR. TENG: Albert Teng on behalf of the Federal  
16 Trade Commission.

17 MS. DRUMMONDS: Your Honor, before we call our  
18 next witness, we would like to raise a confidentiality  
19 procedure with you.

20 THE COURT: Go right ahead.

21 MS. DRUMMONDS: We have been trying to come up  
22 with a method that would satisfy all the parties involved so  
23 that the Court can receive needed evidence regarding the  
24 proposed divestiture without violating C&S' confidentiality  
25 designations. So we met and conferred with C&S counsel and

1 came up with a method that we hope will work for all parties  
2 involved. My understanding is defendants do not oppose it  
3 either.

4 For portions of the deposition transcript that  
5 have been redacted as confidential, we would, given that we  
6 cannot question a witness about it in open court, we would  
7 ask the witness to refer to their prior testimony, confirm  
8 it, and then we would ask the Court to receive just those  
9 portions of the transcript as evidence.

10 THE COURT: You will have to identify that.

11 MS. DRUMMONDS: Yes, Your Honor.

12 THE COURT: He's in the hallway. I just want to  
13 make sure, did you hear everything they were saying?

14 THE WITNESS: Yes.

15 THE COURT: Fair enough. I was thinking that was  
16 important information to share.

17 MS. DRUMMONDS: Is that acceptable to Your Honor?

18 THE COURT: It is.

19 MR. OBARO: Your Honor, only thing I would add is  
20 we don't object to that, but we reserve the right to object  
21 to any portions of the testimony.

22 THE COURT: Absolutely. Understood.

23 MR. OBARO: Thank you, Your Honor.

24 MS. DRUMMONDS: Your Honor, at this time we would  
25 call Mark McGowan, and my colleagues will proceed to hand

M. McGowan - D

1 out the binders.

2 THE COURT: That's fine. As he is coming forward,  
3 if his counsel who is coming with him would state his  
4 appearance for the record, because I'm sure you are going to  
5 be sitting close.

6 MR. HOLLEY: Yes, Your Honor. Good afternoon.  
7 Steven Holley from Sullivan & Cromwell for C&S Grocers and  
8 the witness.

9 THE COURT: Thank you. Come forward.

10 (The witness was duly sworn.)

11 THE CLERK: Have a seat here. Would you please  
12 state your name for the record, spelling your last.

13 THE WITNESS: My name is Mark McGowan. M-A-R-K,  
14 M-C-G-O-W-A-N.

15 DIRECT EXAMINATION

16 BY MS. DRUMMONDS:

17 Q Good morning, Mr. McGowan.

18 THE COURT: It is afternoon. We keep making that  
19 mistake.

20 BY MS. DRUMMONDS:

21 Q Mr. McGowan, who is your current employer?

22 A My current employer is C&S Wholesale Grocers.

23 Q And what's is your role at C&S?

24 A My role is president of retail.

25 Q And C&S is seeking to acquire assets from Kroger and



M. McGowan - D

1 Albertsons as a part of the divestiture agreement; is that  
2 right?

3 A Yes, it is.

4 Q And C&S's acquisition of those divestiture assets will  
5 only occur if Kroger indeed does acquire Albertsons?

6 A That's correct.

7 Q Mr. McGowan, could you please describe your work  
8 history prior to joining C&S?

9 A I have been a career retailer. I spent 35 years in the  
10 grocery industry, primarily at retail, starting as an  
11 assistant store manager right out of college, and finishing  
12 my -- the last role I had in my old company where I worked  
13 for 30 years, which was Ahold Delhaize, as president of Stop  
14 & Shop supermarket company.

15 Q And did you work at Ahold Delhaize from 1991 to 2019?

16 A That's correct.

17 Q And when were you hired by C&S?

18 A I was hired by C&S as a consultant in January of 2021  
19 and became a permanent employee in June of that year.

20 Q And what was your role when you became a permanent  
21 employee in June of 2021?

22 A My role was senior vice president of retail and general  
23 manager of Piggly Wiggly Midwest.

24 Q When did you become president of retail at C&S?

25 A Last October.

M. McGowan - D

1 Q Mr. McGowan, at the time you were hired in 2021, did  
2 C&S own and operate any retail stores?

3 A No, they did not.

4 Q And C&S has a wholesale organization and a retail  
5 organization that are separate, correct?

6 A That is correct.

7 Q You do not have any responsibilities for the wholesale  
8 organization?

9 A I do have responsibility for the wholesale organization  
10 that runs our Midwest franchise business, but no other  
11 responsibilities there.

12 Q And C&S continues to run its wholesale organization  
13 generally separately from the retail organization?

14 A That is true.

15 Q And C&S reports its wholesale profitability separate  
16 from the retail profitability?

17 A It does, yes.

18 Q Now, as president of retail, you're responsible for  
19 operating today approximately 25 retail stores; is that  
20 correct?

21 A We operate 25 retail stores that are corporately owned.

22 Q And those 25 stores are split between the Piggly Wiggly  
23 Midwest and Grand Union business units; is that right?

24 A Yes, they are.

25 Q Let's discuss Piggly Wiggly Midwest first. C&S

M. McGowan - D

1 acquired Piggly Wiggly Midwest shortly after you were hired  
2 in 2021; is that correct?

3 A That is correct.

4 Q The Piggly Wiggly Midwest acquisition included  
5 wholesale distribution assets, right?

6 A Yes, it did.

7 Q And the acquisition also included 12 owned and operated  
8 retail stores?

9 A That is correct.

10 Q Those stores are located in Wisconsin, correct?

11 A Correct.

12 Q C&S closed one of the Piggly Wiggly Midwest stores  
13 located in Milwaukee, Wisconsin, about 18 months ago?

14 A That is correct.

15 Q And C&S closed that store because it was  
16 underperforming?

17 MR. OBARO: Objection, Your Honor. Leading. This  
18 is the FTC's witness.

19 THE COURT: I understand that. You can rephrase.

20 MS. DRUMMONDS: Your Honor, I believe --

21 THE COURT: You can rephrase. It's leading, so  
22 you can ask the question in a different way.

23 MS. DRUMMONDS: Sure, Your Honor. I believe C&S  
24 has a common-interest agreement with the defendants and  
25 so --

M. McGowan - D

1 THE COURT: I've made my ruling.

2 MS. DRUMMONDS: Yes, Your Honor.

3 BY MS. DRUMMONDS:

4 Q Did C&S close that Piggly Wiggly Midwest store because  
5 it was underperforming?

6 A C&S closed -- well, Piggly Wiggly Midwest, which  
7 operated that store, closed it because it had invested  
8 numerous months in an improvement plan, which did not work.  
9 The store needed a tremendous amount of capital. It was not  
10 profitable, and we were approached by the landlord to return  
11 the building because he had a better use for it. That's why  
12 we closed the store.

13 Q And was that store meeting an acceptable level of  
14 profitability?

15 A No, it was not.

16 Q And how would you define "acceptable profitability"?

17 A It was not covering its operating expenses, so it was  
18 not -- it didn't generate cash.

19 Q Did the Piggly Wiggly Midwest retail stores meet their  
20 2024 budget expectations?

21 A Our 2024 year hasn't ended.

22 Q Are the Piggly Wiggly Midwest retail stores on track to  
23 meet their 2024 budget expectations?

24 A They will be slightly short of their budget  
25 expectations.

M. McGowan - D

1 Q Is that true for every one of the Piggly Wiggly Midwest  
2 retail stores?

3 A No. That would be as a collective group.

4 Q Are a majority of the Piggly Wiggly Midwest stores on  
5 track to be short of their budget in 2024?

6 A I would say about 50/50.

7 Q And is performance in the perishable departments at  
8 Piggly Wiggly Midwest generally better or worse than other  
9 departments?

10 A Normally better, although prior -- earlier this year --  
11 we had a particularly bad meat experience where our meat  
12 margins were quite short. We were forced to make some  
13 personnel changes to address that issue, and we have made  
14 improvements in those margins since then.

15 Q Is it fair to say that performance in 2024, as you  
16 stated for the perishable departments, was relatively poor?

17 A I would say that the meat department profitability was  
18 poor, yes.

19 Q Let's now discuss the Grand Union stores. When did C&S  
20 acquire those stores?

21 A In 2022.

22 Q From whom did C&S acquire those stores?

23 A They were acquired from Tops supermarket company.

24 Q Was C&S the wholesaler distributor for those stores  
25 before you acquired them?

M. McGowan - D

1 A C&S was a wholesale distributor for some of them, not  
2 all of them. Some of them were part of their  
3 self-distributed operations.

4 Q And why were those 12 stores sold to C&S?

5 A Those stores became available as divestiture assets in  
6 the Price Chopper/Tops merger.

7 Q Did the sellers have to get approval from the FTC to  
8 sell those stores to C&S?

9 A Yes, they did.

10 Q And did C&S provide sales projections for those Top  
11 stores to the FTC prior to acquiring them?

12 A Yes, they did.

13 Q Did the stores that C&S ultimately acquired end up  
14 meeting those growth projections?

15 A No, they did not.

16 Q So they did not meet -- did they meet the growth  
17 projections that C&S provided to the FTC?

18 A No, they did not.

19 Q Mr. McGowan, what is a re-banner?

20 A A re-banner is when you change the brand and name of a  
21 retail outlet or something else, for that matter, from one  
22 to another.

23 Q From one brand to another?

24 A Yes.

25 Q After the Tops acquisition C&S re-bannered eleven of

M. McGowan - D

1 the Tops stores to Grand Union; is that right?

2 A That's correct.

3 Q And did C&S re-banner one of those stores to  
4 Piggly Wiggly?

5 A Yes, we did.

6 Q When was the last time that the Grand Union banner had  
7 been present in New York state prior to the acquisition?

8 A Approximately 15 years.

9 Q Did those Top stores that were re-bannered to Grand  
10 Union experience sales declines following C&S's acquisition  
11 in 2022?

12 A Yes, they did.

13 Q Were those sales declines significant?

14 A They were. They were primarily driven by changes in  
15 the market, reduction in SNAP benefits, and a shrinking  
16 population.

17 Q And at the time that C&S acquired those Top stores that  
18 became Grand Union, would you say they had deep internal  
19 resources with retail experience?

20 A Yes, I would.

21 Q So your testimony is that C&S had internal resources  
22 with deep retail experience?

23 A Oh, no. I thought you were referring to the prior  
24 owner. No. I would say that C&S's retail experience varied  
25 greatly from internal retail resources as well as our

M. McGowan - D

1 internal teams that support our independent business, which  
2 often utilizes the same services that a chain company would  
3 use.

4 Q In 2022, C&S's internal retail resources, would you say  
5 they were deep?

6 A They were not.

7 Q Mr. McGowan, I would like to direct you to a tab in  
8 your binder that has been premarked as PX3515. I believe  
9 you can review the document on your screen, if that's easier  
10 for you. For the record, PX3515 is in the email from Jake  
11 Kundert to yourself and Robert Matthews on April 22, 2024,  
12 attaching a presentation entitled "Grand Union retail  
13 4-22-24."

14 Do you see that, Mr. McGowan?

15 A Yes, I do.

16 Q Mr. McGowan, who is Jake Kundert?

17 A Jake Kundert is a financial director in our corporate  
18 finance department.

19 Q And he wrote to you, "Attached is the deck for today's  
20 EC review."

21 What does "EC" stand for?

22 A It stands for executive committee.

23 Q So just to clarify, Mr. McGowan, was PX3515 a  
24 presentation prepared for C&S executive committee regarding  
25 Grand Union?



M. McGowan - D

1 A It was a business update for our executive committee.

2 Q Does C&S regularly prepare business updates for the  
3 executive committee?

4 A C&S rotates different businesses because we have  
5 multiple divisions and businesses and bring them into our  
6 executive committee on a rotating basis.

7 Q Is it important to be accurate in presentations to the  
8 executive committee?

9 A Yes, it is.

10 MS. DRUMMONDS: Your Honor, at this time I would  
11 like to move PX3515 into evidence.

12 MR. OBARO: No objection, Your Honor.

13 THE COURT: It will be received.

14 BY MS. DRUMMONDS:

15 Q Mr. McGowan, could you please turn to page 19 of PX3515  
16 titled "EBITDA outlook; retail plus wholesale." This slide  
17 has been redacted for confidentiality reasons.

18 Now, Mr. McGowan, for the portion of the slide  
19 that's not redacted, is it fair to say it shows the  
20 historical EBITDA performance from fiscal year 2022 through  
21 mid-fiscal year 2023?

22 A Yes, it is.

23 Q Is EBITDA a generally accepted measure of  
24 profitability?

25 A Yes, it is.

M. McGowan - D

1 Q Is it true that the green line on this slide depicts  
2 Grand Union's EBITDA performance, including both the retail  
3 and wholesale business?

4 A Yes, it does.

5 Q If you reference the green line, Mr. McGowan, has the  
6 Grand Union EBITDA been consistently negative, including the  
7 wholesale business since C&S acquired it?

8 A It has been inconsistent. It is not consistently  
9 negative, but it has been inconsistent up and down.

10 Q From fiscal year 2022 through midyear fiscal year 2023,  
11 at what point was the EBITDA --

12 A It has been negative for that period of time.

13 Q Mr. McGowan, have you been involved in preparing  
14 business plans related to C&S potential acquisition of  
15 divested stores from Kroger and Albertsons?

16 A Yes, I have.

17 Q Are you familiar with divestiture business plans C&S  
18 presented to the FTC?

19 A Yes, I am.

20 Q Are you aware, Mr. McGowan, that C&S presented a  
21 business plan related to the proposed divestiture in early  
22 October of 2023?

23 A Yes, I am.

24 Q Were you involved in C&S's meetings with the FTC?

25 A Yes, I was.

M. McGowan - D

1 Q Mr. McGowan, could you please reference the document in  
2 your binder premarked as PX3107.

3 For the record, PX3107 is a presentation titled  
4 "Walnut Business plan, October 3rd, 2023."

5 Do you see that, Mr. McGowan?

6 A Yes.

7 Q Mr. McGowan, do you recognize PX3107?

8 A Yes, I do.

9 Q Is this the divestiture business plan C&S presented to  
10 the FTC in October of 2023?

11 A Yes, it is.

12 Q What does "Walnut" refer to?

13 A Walnut was the project name for the divestiture  
14 acquisition.

15 MS. DRUMMONDS: Your Honor, I would like to move  
16 PX3107 into evidence.

17 MR. OBARO: No objection, Your Honor.

18 THE COURT: It will be received.

19 BY MS. DRUMMONDS:

20 Q Mr. McGowan, could you please turn to slide 17 of  
21 PX3107 titled "The Grand Union acquisition."

22 Does slide 17 of PX3107 present a summary of C&S's  
23 acquisition of the Grand Union stores we were just  
24 discussing?

25 A Yes, it does.

M. McGowan - D

1 Q Does slide 17 of PX3107, the last bullet point, state:  
2 "The acquisition has always been profitable when including  
3 the wholesale profitability"?

4 Do you see that?

5 A Yes, I do.

6 Q So in October of 2023 did C&S tell the FTC that the  
7 Grand Union acquisition has always been profitable when  
8 including the wholesale profitability?

9 A Yes, we did.

10 Q Mr. McGowan, can you please refer back to page 19 of  
11 PX3515.

12 Charles, if you're able to put both documents up  
13 on the screen.

14 So, Mr. McGowan, you just stated that C&S told the  
15 FTC in October of 2023 that the Grand Union acquisition has  
16 always been profitable when including the wholesale  
17 profitability. But as you testified, isn't it true that  
18 Grand Union's total EBITDA was actually consistently  
19 negative, even including wholesale?

20 A That's what this chart indicates, yes.

21 Q And do you have reason to believe this chart is  
22 accurate?

23 A I don't believe it's inaccurate, but it is incomplete,  
24 looking at it through '23. So we're looking at it for four  
25 quarters, including our startup, and I'm not looking at it

M. McGowan - D

1 from beyond there.

2 Q But isn't it true that the EBITDA performance of  
3 Grand Union was consistently negative from fiscal year 2022  
4 from midyear fiscal year 2023?

5 A That is true.

6 Q Charles, we can put down PX3107, but please keep up  
7 PX3515.

8 Mr. McGowan, could you please reference the blue  
9 trend line at the top of the chart there. Does that refer  
10 to C&S's wholesale profitability from supplying the Grand  
11 Union stores?

12 A Yes, it does.

13 Q And has C&S Wholesale had positive EBITDA supplying  
14 product to the Grand Union stores?

15 A Yes, it has.

16 Q Does C&S charge the Grand Union stores a markup on its  
17 wholesale products?

18 A Yes, they do.

19 Q And does C&S choose to do that even though the Grand  
20 Union stores are losing money?

21 A C&S services the Grand Union stores out of distribution  
22 centers that support independent businesses, and the  
23 Grand Union business is set up on an independent contract,  
24 so they're billed the same as independent customers.

25 Q So am I understanding you correctly that the Grand

M. McGowan - D

1 Union stores are charged the same wholesale prices as C&S's  
2 other customers?

3 A That is correct.

4 Q In 2024, is Grand Union's financial performance still  
5 challenged?

6 A Grand Union's performance is not meeting our  
7 expectations. While improving, it will not achieve its  
8 budget for the year.

9 Q Mr. McGowan, if you could refer to the right-hand side  
10 of this slide and the top gray box. It states, "YTD actuals  
11 tied to sales down 13 percent YOY."

12 Do you see that?

13 A Yes, I do.

14 Q Mr. McGowan, does this refer to Grand Union's sales  
15 declined 13 percent from March 2023 to March 2024?

16 A Yes, it does.

17 Q And in 2024, is it fair to say that Grand Union is  
18 still underperforming C&S's financial forecasts?

19 A Yes, it is. The business continues to make  
20 improvement, but it has not met our targets.

21 Q Is it true that if you include wholesale profits, the  
22 Grand Union stores lose about \$1 million annually?

23 A Yes, it is.

24 Q And is it true that if you exclude the wholesale  
25 profits, the Grand Union stores lose approximately

M. McGowan - D

1 \$3 million annually?

2 A Approximately. As I said, improving. But that's  
3 reflective of what I testified to, yes.

4 Q Mr. McGowan, let's discuss C&S current retail  
5 operations. Could you please describe your responsibilities  
6 as president of retail?

7 A As president of retail, our Piggly Wiggly business, a  
8 fellow manager, the leader of our Grand Union business  
9 report to me as well as several additional support leaders,  
10 and I am responsible for those two businesses as well as  
11 helping to lead in the divestiture purchase from Kroger and  
12 Albertsons.

13 Q Do you ever see pricing strategy for C&S's retail  
14 stores?

15 A Yes, I do.

16 Q Do you ever see marketing and merchandising for C&S's  
17 retail stores?

18 A The people that oversee them report to me, yes.

19 Q Are you responsible for sourcing for C&S?

20 A No, I'm not.

21 Q Who is responsible for sourcing?

22 A Michael Papaleo, who is our chief procurement officer  
23 for C&S.

24 Q Mr. McGowan, how large is C&S's retail management team  
25 today?

M. McGowan - D

1 A It is approximately six or seven direct reports and  
2 then -- the entire retail team is approximately 50 people.  
3 The management team is less than that. We have a business  
4 that supports Grand Union and one that supports not all of  
5 our retail stores but our franchise stores in Wisconsin and  
6 then some central support as well.

7 Q Who was responsible for C&S's retail pricing strategy?

8 A The leaders of the businesses at the Midwest and at  
9 Grand Union are responsible for them, but they report to me.

10 Q Is it fair to say that Grand Union's retail strategy is  
11 set by yourself and Rick Greene?

12 A It was. But it is -- the framework was set by us, yes.

13 Q Are Rick Greene and yourself no longer responsible for  
14 pricing strategy?

15 A Rob Matthews and Rick Greene manage the pricing  
16 strategy today; however, they both report to me.

17 Q How many employees does C&S have that work on pricing  
18 for Piggly Wiggly Midwest?

19 A Approximately five.

20 Q Does C&S retail employ data scientists?

21 A We do not have -- at retail, we do data scientists that  
22 work in our IT department.

23 Q Mr. McGowan, I would like to now discuss Grand Union's  
24 pricing strategy.

25 For confidentiality reasons, Mr. McGowan, could



M. McGowan - D

1 you please refer to your deposition transcript in your  
2 binder that has been marked as PX 4050. Could you please  
3 first refer to page 38, line 23 through page 39, line 19.  
4 If you'd prefer, I believe this will be shown on your screen  
5 but not to the public gallery.

6 A Excuse me. Could you restate that?

7 Q Sure. It is page 38, line 23 through page 39, 19. I  
8 believe it should be displayed on your screen to your left  
9 if you prefer to view it that way.

10 Without disclosing the contents of this testimony,  
11 Mr. McGowan, does this relate to Grand Union's pricing  
12 practices?

13 A I'm sorry. I still have not found the right page.

14 Q Is the excerpt displayed on your screen, Mr. McGowan?

15 (Pause.)

16 A Yes. That appears accurate.

17 Q Without disclosing the contents of the testimony, does  
18 this relate to Grand Union's pricing practices?

19 A Yes, it does.

20 Q And do you recall giving this testimony under oath on  
21 May 31st of this year?

22 A Yes, I do.

23 MS. DRUMMONDS: Your Honor, I would ask that this  
24 section of the transcript be admitted into evidence.

25 MR. OBARO: No objection.

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1 THE COURT: It will be received.

2 BY MS. DRUMMONDS:

3 Q Mr. McGowan, could you now please refer to page 39,  
4 line 19 through page 40, line 11. It should, in a moment,  
5 be displayed on your screen. Again, without disclosing the  
6 contents of this testimony, does this also relate to  
7 Grand Union's pricing practices?

8 A Yes, it does.

9 Q And you gave this testimony under oath?

10 A Yes, I did.

11 MS. DRUMMONDS: Your Honor, I ask that this  
12 section of the transcript be admitted into evidence.

13 MR. OBARO: No objection, Your Honor.

14 THE COURT: It will be received.

15 BY MS. DRUMMONDS:

16 MS. DRUMMONDS: Your Honor, just to clarify, would  
17 you prefer that we note the page and line of the testimony  
18 that has been admitted after you've agreed to admit it into  
19 evidence for the record?

20 THE COURT: No. They have already captured it.  
21 You don't need to be repetitive.

22 MS. DRUMMONDS: Sure.

23 BY MS. DRUMMONDS:

24 Q Mr. McGowan, would you please now refer to page 45,  
25 lines 13 through 20, which should again be displayed on your

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1 screen momentarily.

2 Without disclosing the contents of the testimony,  
3 does this also relate to Grand Union's pricing practices?

4 A Yes, it does.

5 Q And you gave this testimony under oath?

6 A Yes, I did.

7 MS. DRUMMONDS: Your Honor, I ask this section of  
8 the transcript be admitted into evidence.

9 MR. OBARO: No objection.

10 THE COURT: It will be received.

11 BY MS. DRUMMONDS:

12 Q Mr. McGowan, could you please now refer to page 41 of  
13 your deposition transcript line 25 through page 42, line 11.

14 Without disclosing the contents of the testimony,  
15 does this relate to Grand Union's pricing capabilities?

16 A Yes, it does.

17 Q And you gave this testimony under oath?

18 A Yes, I did.

19 MS. DRUMMONDS: Your Honor, I ask that this  
20 section of the transcript be admitted into evidence.

21 MR. OBARO: No objection.

22 THE COURT: It will be received.

23 BY MS. DRUMMONDS:

24 Q And finally, Mr. McGowan, could you please refer to  
25 page 46 of your transcript, lines 6 through 18. Without

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1 revealing the contents of the testimony, does this relate to  
2 Piggly Wiggly Midwest pricing practices?

3 A Yes, it does.

4 Q And you gave this testimony under oath?

5 A Yes, I did.

6 MS. DRUMMONDS: Your Honor, I would ask that these  
7 portions of the transcript be admitted into evidence.

8 MR. OBARO: No objection, Your Honor.

9 THE COURT: They will be received.

10 BY MS. DRUMMONDS:

11 Q Mr. McGowan, I would like to switch gears now and  
12 discuss the proposed divestiture. What role do you have in  
13 planning with respect to the proposed divestiture?

14 A I lead our integration management office with a  
15 colleague. I work with our associates, contractors, our  
16 third-party partners in developing our business plans and  
17 our day one execution plans along with the sellers.

18 Q You mentioned you lead the integration management  
19 team with a colleague. Who is that colleague?

20 A That colleague is Alona Florenz.

21 Q Are you familiar with C&S's deal model for the  
22 divestiture?

23 A Yes, I am.

24 Q Are you generally familiar with C&S business plans for  
25 the divested stores?

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1 A Yes, I am.

2 Q Are you familiar with the transition services provided  
3 as a part of the divestiture agreement?

4 A Yes, I am.

5 Q Are Kroger and Albertsons providing C&S with pricing  
6 algorithms as a part of the divestiture package?

7 A No, they are not.

8 Q During the commercial transition services period, will  
9 Kroger need to provide sales forecasting data to C&S?

10 A Yes, they will.

11 Q And what is sales forecasting data?

12 A During the TSA period, Kroger will be providing data  
13 for us in order to ensure that we have the right product  
14 level in our stores to meet our customers' needs.

15 Q Mr. McGowan, what is a base pricing plan?

16 A Excuse me? Could you restate that question.

17 Q Sure. Mr. McGowan, are you familiar with the term  
18 "base pricing plan"?

19 A Base?

20 Q Yes.

21 A Base pricing is the everyday regular retail price  
22 that's at the shelf, which doesn't include any sort of  
23 promotions.

24 Q And during the commercial transition services periods,  
25 will Kroger also need to provide C&S with base pricing

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1 plans?

2 A They will provide C&S with base pricing services.

3 Q So will Kroger be providing C&S with base pricing that  
4 C&S could adjust; is that fair?

5 A Correct. Yes.

6 Q If C&S wants to change that base pricing, who will  
7 execute those changes during the commercial transition  
8 services period?

9 A Those prices will be executed in a clean room.

10 Q And who will be the members of that clean room?

11 A The clean room will have associates, which will  
12 eventually convey to C&S, as well as third-party folks as  
13 well.

14 Q Will C&S have to provide instructions to Kroger in  
15 order to change the base price?

16 A C&S will provide instruction into the leader of the  
17 clean room to make those price adjustments.

18 Q I just want to make sure I'm understanding. Will C&S  
19 have to provide instructions to Kroger in order to execute  
20 price changes?

21 A C&S will provide instructions into the clean room for  
22 the associates that are committed to the C&S business to  
23 execute that pricing.

24 Q Mr. McGowan, could you please turn to your deposition  
25 transcript from page 111, lines 8 through 11. Let me know

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1 when you are there.

2 I asked you, "Will C&S have to provide  
3 instructions to Kroger in order to change those prices?"

4 And you responded, "Yes."

5 Do you see that?

6 A Yes, I do.

7 Q Let's now discuss e-commerce briefly. What is a  
8 first-party e-commerce solution?

9 A First-party e-commerce solution is a retailer's direct  
10 site where consumers come to shop digitally -- whether  
11 that's for pickup or home delivery or inventory extensions,  
12 and it is a retailer-focus site.

13 Q And by "retailer-focus site" do you mean that the site  
14 is associated with the specific banner?

15 A Yes, it is.

16 Q Do the Grand Union stores have any-first party  
17 e-commerce capabilities today?

18 A Very limited, and they partner with Instacart Solution.

19 Q Is it your testimony that Grand Union stores have some  
20 limited first-party e-commerce capabilities?

21 A They have a website, but it's very limited, yes, that  
22 runs through Instacart.

23 Q Mr. McGowan, could you please refer to page 47 of your  
24 deposition transcript, lines 15 through 17.

25 I asked you, "And do Grand Union stores have any

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1 first party e-commerce capabilities?"

2 And you responded, "They do not."

3 Do you see that?

4 A I do see that, but I was incorrect. We do have a  
5 website with direct ordering, but it is fairly limited, and  
6 it is powered through and delivered by Instacart.

7 Q Is C&S acquiring any first-party e-commerce assets from  
8 Kroger or Albertsons?

9 A C&S has contracted with Instacart to build a complete  
10 first-party site and will also link with them for a  
11 third-party site. We will have a robust e-commerce solution  
12 for our customers.

13 Q So is it true that C&S is not acquiring any first-party  
14 e-commerce from Kroger or Albertsons?

15 A C&S is being covered by the TSA service and will stand  
16 up its own first party, which is already in development with  
17 Instacart, which is first party, and what they call a plain  
18 label and third party for many large retailers in the  
19 United States.

20 Q So just to clarify, after the transition services  
21 period, will C&S have to establish its own first-party  
22 e-commerce solution in conjunction with Instacart?

23 A C&S is well on its way to having that already for  
24 post-TSA, yes.

25 Q Mr. McGowan, I believe you testified just now that the



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1 Grand Union stores use Instacart for e-commerce delivery  
2 today. How did Grand Union's e-commerce sales perform after  
3 C&S acquired those stores?

4 A Poorly.

5 Q Mr. McGowan, to comply with C&S confidentiality  
6 designations, I would ask you to please refer back to your  
7 deposition transcript at page 51, line 23 through page 52,  
8 line 4. I believe it should display on your screen  
9 momentarily.

10 Without disclosing the testimony, does this  
11 provide the detail regarding how much Grand Union's  
12 e-commerce sales declined following C&S's acquisition of the  
13 Grand Union stores?

14 A That is correct, at the time I was deposed, yes.

15 Q And you gave this testimony under oath?

16 A Yes, I did.

17 MS. DRUMMONDS: Your Honor, I would ask to move  
18 this section of the transcript into evidence.

19 MR. OBARO: No objection.

20 THE COURT: It will be received.

21 BY MS. DRUMMONDS:

22 Q Mr. McGowan, without revealing the exact figures, which  
23 are confidential, is it fair to say that the Grand Union  
24 e-commerce sales declined about 80 to 90 percent after C&S  
25 acquired those stores?

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1 A Approximately, although they continue to grow on a  
2 weekly basis with some of our improvement plans we've put in  
3 place, but that is fair.

4 Q Let's shift gears and discuss private label products  
5 for a moment. Does C&S have any full-time retail employees  
6 dedicated to private label products today?

7 A C&S has an entire wholesale team of private label  
8 associates that support our wholesale and our retail  
9 business.

10 Q Are there any full-time retail employees dedicated to  
11 the private label business in your organization?

12 A No, it's a shared service.

13 Q Does C&S stock its Grand Union retail stores with the  
14 same private label products it provides to its wholesale  
15 customers?

16 A Yes, it does.

17 Q So is it fair to say that C&S's private label products  
18 are not exclusively offered at its owned and operated retail  
19 stores?

20 A No, they're not.

21 Q Mr. McGowan, about how many grocery private label SKUs  
22 does C&S offer today?

23 A Under our Best Yet label, we are -- we were at 800 and  
24 growing to approximately 1,600. We have been building out  
25 our center store offering and continue to do so. So we've

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1 made great progress in that area and will continue to work  
2 through that.

3 Q So just to clarify, how many grocery private label SKUs  
4 does C&S offer today approximately?

5 A When I testified, I testified, I believe, between 8-  
6 and 900. It is probably closer to 1,300 now and growing, so  
7 we've made some significant additions to it, as we knew that  
8 was an opportunity for our business.

9 Q Is it fair to say today you offer about 1,300?

10 A In our grocery label, which is our private label, and  
11 then we offer a multitude of Topco private label brands as  
12 well. But in our exclusive brand, Best Yet, it is about  
13 1,300, yes.

14 Q What percentage of C&S's private label offerings today  
15 are fresh, perishable products?

16 A It is a small percentage primarily focused in packaged  
17 meat and dairy.

18 Q So outside of packaged meat and dairy, how many fresh,  
19 perishable products such as produce does C&S offer in its  
20 private label?

21 A We offer packer labels, which are similar, but we do  
22 not have a large number of Best Yet fresh produce items in  
23 our assortment today.

24 Q Does C&S operate any private label manufacturing  
25 facilities today?

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1 A No, we do not.

2 Q As a part of the divestiture agreement, is C&S  
3 acquiring ownership to any Kroger private label products?

4 A We are getting ownership of five Albertsons private  
5 label brands.

6 Q So C&S is not acquiring ownership to any Kroger private  
7 label products; is that right?

8 A No, it is not.

9 Q After the transition services lapse, is it true that  
10 C&S will then need to replace all of the private label  
11 products at the QFC, Mariano's, and Harris Teeter stores it  
12 will acquire?

13 A Yes, it is.

14 Q I believe you just testified that C&S is acquiring five  
15 private label brands from Albertsons, correct?

16 A That is correct.

17 Q Is C&S acquiring ownership of Albertsons' Signature or  
18 O Organics private label brands?

19 A We are not acquiring them, but we have significantly  
20 long-term temporary service agreements to allow us to stand  
21 up our own brands.

22 Q Are the Albertsons' Signature and O Organics private  
23 label brands the majority of Albertsons private label sales  
24 volume?

25 A I would assume so, yes.

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1 Q So after the transition services end, is it true that  
2 C&S would need to replace the majority of private label  
3 sales at the Albertsons divestiture stores?

4 A Yes, it is. And that is a three-year TSA.

5 Q In its divestiture deal model, does C&S assume whether  
6 or not it will be able to maintain Kroger and Albertsons'  
7 existing private label margins?

8 A We actually assume a decrement to those margins.

9 Q Does C&S expect to get the same scale as the divested  
10 stores for private label products?

11 A We believe that we will be able to build that scale  
12 with our retail business and all of our consolidated  
13 independent wholesale business, and we also believe that we  
14 have a road map to get us where we need to be prior to when  
15 markup increases on the temporary service agreements.

16 Q So just to clarify, does C&S expect to get to the same  
17 scale as the divested stores for private label products?

18 A We decremented that we would not, but we believe that  
19 we can, yes. And it would be on about 8,800 items.

20 Q Mr. McGowan, could you please refer to your deposition  
21 transcript, page 128, beginning at lines 18 through 129,  
22 line 10. I asked you: "You were listed as the team owner  
23 for the dis-synergy labeled 'private label manager  
24 investment.' Do you see that?"

25 You replied, "Yes. That is correct."

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1           And I asked you, "And the description of that work  
2 stream is 'price investment on label products.' C&S will  
3 not reach the same scale as K-A. Do you see that?"

4       A     I do.

5       Q     And you replied, "I do."

6           Then I asked you, "What does it mean that C&S will  
7 not reach the same scale for K-A for private label  
8 products?"

9           And you replied, "Our expectation is that we will  
10 not get to the -- the same scale the divestiture stores are  
11 at and that we will invest money, which is in our business  
12 case in order to make sure we are priced effectively."

13           Do you see that?

14       A     I do.

15           MR. OBARO:  Objection, Your Honor.  That's  
16 improper impeachment.  I think his testimony is consistent  
17 with what he testified in his deposition.

18           MS. DRUMMONDS:  Your Honor, I believe he testified  
19 that they expect they will get to the same scale, but his  
20 prior testimony was that "our expectation is that we will  
21 not get to the same scale."

22           MR. OBARO:  I think he testified now they budgeted  
23 a detriment, but his hope is that they would work to get to  
24 the same scale.

25           THE COURT:  Overruled.

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1 BY MS. DRUMMONDS:

2 Q Mr. McGowan, to comply with C&S's confidentiality  
3 redactions, could you please refer back to your deposition  
4 transcripts at page 131, line 3 through 7 and then line 17  
5 through 20.

6 I believe it should display on your screen in just  
7 a moment.

8 Without revealing the exact confidential figures,  
9 does this testimony provide the details of the financial  
10 impact C&S models from reduced private label margins at the  
11 divested stores?

12 A Yes, it does.

13 Q And you gave this testimony under oath?

14 A Yes, I did.

15 MS. DRUMMONDS: Your Honor, I would ask to move  
16 these portions of the transcript into evidence.

17 MR. OBARO: No objection.

18 THE COURT: They will be received.

19 BY MS. DRUMMONDS:

20 Q Mr. McGowan, I would like to discuss pharmacy and fuel  
21 services briefly. Is C&S seeking to acquire hundreds of  
22 pharmacies from Kroger and Albertsons?

23 A Yes.

24 Q How many pharmacies does C&S operate today?

25 A One.

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1 Q Where is the pharmacy located?

2 A In Upstate New York.

3 Q How many full-time corporate employees does C&S have  
4 dedicated to the pharmacy business today?

5 A We have three registered pharmacists assigned to that  
6 store, and we have a retail services leader that supports  
7 our pharmacy business.

8 Q So it's fair to say that C&S has one full-time  
9 corporate employee that you just mentioned dedicated to the  
10 pharmacy business?

11 A That's correct.

12 Q Is C&S seeking to acquire hundreds of fuel centers from  
13 Kroger and Albertsons as a part of the divestiture?

14 A Yes.

15 Q How many fuel centers does C&S operate today?

16 A Zero.

17 Q To your knowledge, has C&S ever operated fuel centers?

18 A Not to my knowledge, no.

19 Q Mr. McGowan, do you know how much revenue pharmacy and  
20 fuel services currently contribute to the divestiture store  
21 revenues?

22 A I'm not familiar with the exact amount, but I know it's  
23 significant.

24 Q Mr. McGowan, I would like to discuss loyalty programs.

25 Are Kroger and Albertsons giving C&S any permanent rights to



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1 loyalty programs of the current divested stores?

2 A We are not getting permanent rights, but the loyalty  
3 programs will be managed through the TSA period.

4 Q And how long is the TSA period for loyalty programs?

5 A It is between six and twelve months.

6 Q So is it fair to say that, after one year, customers at  
7 the divested stores will no longer be able to use their  
8 current loyalty program with the divested stores?

9 A That is correct. Yes.

10 Q Do you know how many loyalty plan members Kroger and  
11 Albertsons have today?

12 A I do not.

13 Q Do the Grand Union and Piggly Wiggly Midwest stores  
14 have loyalty programs today?

15 A Yes, they do.

16 Q Do you know how many active loyalty members use those  
17 programs?

18 A Approximately 50,000 members for Grand Union, and I  
19 believe 3- to 400,000 at Piggly Wiggly. The numbers of  
20 cardholders are significantly bigger, but the active members  
21 are not.

22 Q I would like to talk briefly about vendor funds.

23 Mr. McGowan, could you please describe what a vendor fund is  
24 to the Court.

25 A Vendor funds are dollars or product or discounts that

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1 are invested in retailers by CPG companies or consumer  
2 package goods companies and others to help drive business to  
3 secure placements or incremental displays through high  
4 pricing, launch new items, work on retail media, work on  
5 digital and loyalty. So it is -- they're funds that come in  
6 different buckets and different shapes and sizes that are  
7 used by companies to drive their business.

8 Q Is it fair to say that the CPG manufacturers provide  
9 these funds to retailers to promote their products  
10 generally?

11 A Generally, yes.

12 Q And I believe you just testified that retailers use the  
13 vendor funds to offer promotions to shoppers; is that fair?

14 A Yes.

15 Q Does the amount of vendor funding a retailer receives  
16 impact its ability to offer promotions to shoppers?

17 A Yes.

18 Q I believe you just used the term "retail media." Could  
19 you please describe what that is for the Court.

20 A Retail media is primarily marketing and advertising  
21 dollars that companies will invest in retailers either to  
22 promote, to communicate, to target, to launch, and that can  
23 show up physically in store. It can show up digitally. It  
24 can show up online. It can show up on the Internet. And it  
25 is -- and it is a source that retailers will use to fund

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1 multiple things.

2 Q Do manufacturers expect their retailing partners to  
3 have functioning retail media networks?

4 A Yes.

5 Q Is C&S acquiring a retail media program that's part of  
6 the divestiture?

7 A C&S is building its own retail media program as part of  
8 the acquisition, yes.

9 Q But to clarify, is C&S acquiring a retail media program  
10 from Kroger or Albertsons?

11 A No, it is not.

12 Q So just to clarify, I believe you just stated that C&S  
13 will have to stand up its own retail media organization; is  
14 that fair?

15 A We are in the process of doing that, yes.

16 Q How long does C&S estimate it will take to build a  
17 mature retail media capability?

18 A Our current timeline has approximately three years to  
19 get to full maturity with revenue starting on day one.

20 Q Could you please turn to your deposition transcript at  
21 page 100, Mr. McGowan, lines 9 through 18. I asked you --  
22 let me know when you are there.

23 I asked you, "Is it your understanding that it  
24 will take five or more years for C&S to build a mature  
25 retail media capability?"

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1           You answered, "That is -- that is the current  
2 perspective stated on the slide, yes. Ideally it comes  
3 faster, but yes."

4           And I asked, "So that's the current perspective of  
5 the steering committee?"

6           And you replied, "I can only speak from my  
7 perspective."

8           Do you see that?

9       A     I do.

10           MR. OBARO:  Objection, Your Honor.  Improper  
11 impeachment.  He testified that's what is stated on the  
12 slide, and his perspective was that it would come faster.  
13 And I think he is testifying today that he thinks it is  
14 going to be three years.

15           MS. DRUMMONDS:  Your Honor, I was just  
16 clarifying --

17           THE COURT:  It's sustained.

18       BY MS. DRUMMONDS:

19       Q     Mr. McGowan, are retail media capabilities an important  
20 way for retailers to generate revenue?

21       A     Yes, they are.

22       Q     Do you know how much Kroger currently earns in revenue  
23 from its retail media programs?

24       A     A significant amount.

25       Q     Do you know about how significant the revenue is?

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1 A I do not.

2 Q To comply with C&S's confidentiality redactions,  
3 Mr. McGowan, could you please refer to your deposition  
4 transcript at page 103, lines 10 through 16.

5 Without revealing the exact figure, does this  
6 testimony provide C&S's estimate of the revenue it will  
7 generate from retail media in year one of your new program?

8 A Yes, it does.

9 Q And was this testimony provided under oath?

10 A Yes, it was.

11 MS. DRUMMONDS: Your Honor, I would ask to move  
12 this portion of the transcript into evidence.

13 MR. OBARO: No objection.

14 THE COURT: It will be received.

15 BY MS. DRUMMONDS:

16 Q Mr. McGowan, does C&S's deal model for the divestiture  
17 assume whether or not the amount of vendor funding at the  
18 divested stores will remain the same as today or change?

19 A It assumes it will remain the same.

20 Q And will C&S need to renegotiate contracts with CPG  
21 manufacturers following the divestiture?

22 A Yes, we will.

23 Q Mr. McGowan, are you involved with integration planning  
24 related to labor relations?

25 A Yes, I am.

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1 Q Have you had the opportunity to meet with any local  
2 unions?

3 A Yes, I have.

4 Q Have you had the opportunity to meet with the UFCW  
5 International?

6 A Yes, I have.

7 Q Are you familiar with what's called a bumping  
8 provision?

9 A Yes, I am.

10 Q What is a bumping provision generally?

11 A A bumping can vary by contract, but a bumping provision  
12 allows for -- in the event of a workforce change -- provides  
13 for more senior bargaining members to be able to bump into  
14 either a less senior role or a different role or location  
15 due to that change.

16 Q I believe you stated the term "workforce change" would  
17 trigger the ability to bump. Did I hear you correctly?

18 A That is correct.

19 Q And would a merger and acquisition potentially be such  
20 a change?

21 A Depending on the language in the contract, it could be  
22 considered one, yes.

23 Q Would it be a risk for C&S if senior union employees  
24 had the opportunity to stay at Kroger instead of working for  
25 C&S following the divestiture?

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1 A It could be a risk. However, the management teams and  
2 the support teams that are currently in those stores and  
3 lead those stores will be staying there. So is there a risk  
4 that people could bump out and new people come in? It is.  
5 But I believe in the team and the people and that there will  
6 be minimal risk with it.

7 Q Are you aware of whether any unions have advised their  
8 members to exercise bumping rights and "let's not go work  
9 for C&S after the divestiture"?

10 A I'm not aware, although in meetings with some of the  
11 union presidents they've suggested they may do that, yes.

12 Q Which union presidents have suggested that they may  
13 advise their members to exercise bumping rights?

14 A I heard that in California and Washington state.

15 Q Do you recall which unions specifically in California  
16 and Washington state?

17 A I do not recall -- it was the -- the large Southern  
18 California union. It was Local 3000 in Washington state  
19 that raised those issues.

20 Q Mr. McGowan, I would like to switch gears one more time  
21 to discuss re-bannering. Are you familiar with the term  
22 "brand equity"?

23 A Yes, I am.

24 Q And how would you define "brand equity"?

25 A Brand equity is the value that is created between a

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1 brand and a consumer, and it is driven by after number of  
2 factors. But brand equity is what normally really truly  
3 helps drive a customer relationship and maintain a more than  
4 just a transactional relationship.

5 Q Does strong brand equity have any type of an emotional  
6 tie?

7 A It does, yes.

8 Q Is familiarity with consumers a part of brand equity,  
9 in your view?

10 A Yes.

11 Q How many stores is C&S seeking to acquire as a part of  
12 the divestiture agreement?

13 A 579 stores.

14 Q And how many of those stores would C&S need to  
15 re-banner?

16 A 286.

17 Q I would like to introduce a demonstrative just to aid  
18 our conversation here that has been premarked as PDX6.

19 Mr. McGowan, what stores, if any, will need to  
20 re-banner in Alaska?

21 A We will re-banner seven stores. Do you want the  
22 specifics?

23 Q Sure. For the record, are you referring to the six  
24 Safeways and one Eagle Quality Center?

25 A Yes.



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1 Q And C&S will need to re-banner those stores?

2 A They will be re-bannered to Carrs, yes.

3 Q And which banners is C&S acquiring in Alaska?

4 A Carrs.

5 Q Will C&S need to re-banner any stores in Arizona?

6 A Yes, we will.

7 Q Which stores?

8 A We will have to re-banner 25 Albertsons stores.

9 Q And is C&S acquiring a license to any banner in  
10 Arizona?

11 A C&S has a perpetual license for Safeway in Arizona.

12 Q Will C&S need to re-banner stores in California?

13 A Yes.

14 Q Which stores will C&S need to re-banner in California?

15 A C&S will need to re-banner Vons, Pavilions, and  
16 Safeway.

17 Q Just for clarity and the record, are you referring to  
18 the 31 Vons, 16 Pavilions, and one Safeway that C&S is  
19 seeking to acquire in California?

20 A Yes, I am.

21 Q Is C&S acquiring a license to use the Albertsons banner  
22 in California?

23 A Yes, it is.

24 Q Is it true that after the merger with Albertsons,  
25 Kroger would own the Ralphs, Vons, Pavilions, and Safeway

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1 banners in California?

2 A That is true.

3 Q Mr. McGowan, to comply with C&S confidentiality  
4 redactions could you please refer to page 90 of your  
5 deposition transcript, lines 1 through 22.

6 Without disclosing the contents of this  
7 transcript, does this testimony relate to C&S's potential  
8 banner plans with respect to the Pavilion stores it is  
9 seeking to acquire in California?

10 A That is correct, yes.

11 Q And this testimony was given under oath?

12 A Yes, it was.

13 MS. DRUMMONDS: Your Honor, I would ask to move  
14 this portion of the transcript into evidence.

15 MR. OBARO: No objection.

16 THE COURT: It will be received.

17 BY MS. DRUMMONDS:

18 Q Charles, would you mind re-displaying the demonstrative  
19 PDX6.

20 Mr. McGowan, will C&S need to re-banner any stores  
21 in Colorado?

22 A Yes.

23 Q Are you referring to the two Albertsons stores that C&S  
24 would acquire?

25 A Yes.

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1 Q Is C&S acquiring a license to use the Safeway banner in  
2 Colorado?

3 A Yes.

4 Q Will C&S need to re-banner any stores in Illinois?

5 A Yes.

6 Q Are you referring to the four Jewel-Osco stores that  
7 C&S is seeking to acquire?

8 A Yes, I am.

9 Q Is C&S acquiring the Mariano's banner in Illinois?

10 A Yes, we are.

11 Q Will C&S need to re-banner any stores in the state of  
12 Washington?

13 A Yes.

14 Q Are you referring to the 59 Safeways and three  
15 Albertsons listed here?

16 A Yes, I am.

17 Q What banners is C&S acquiring that currently have a  
18 presence in the state of Washington?

19 A QFC.

20 Q Is C&S also acquiring the Haggen banner?

21 A Yes, we are.

22 Q To comply with C&S's confidentiality redactions,  
23 Mr. McGowan, can you please refer to page 97 of your  
24 deposition transcript, beginning at line 18 through page 98,  
25 line 3.

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1           Without reviewing the testimony, Mr. McGowan, does  
2 this relate to C&S's potential plans for the Safeway and  
3 Albertsons stores it's acquiring in Washington?

4     A     Yes, it is.

5     Q     And you gave this testimony under oath?

6     A     Yes, I did.

7           MS. DRUMMONDS: Your Honor, I would ask that this  
8 portion of the transcript be moved into evidence.

9           MR. OBARO: No objection, Your Honor.

10          THE COURT: It will be received.

11     BY MS. DRUMMONDS:

12     Q     Will C&S need to re-banner any stores it is seeking to  
13 acquire in the State of Oregon -- apologies, Charles. Would  
14 you mind re-displaying PDX6?

15     A     Yes.

16     Q     Are you referring to the 49 Safeways and nine  
17 Albertsons stores listed here?

18     A     Yes, I am.

19     Q     What banner is C&S acquiring with existing presence in  
20 the state of Oregon?

21     A     QFC.

22     Q     Is it true that there are only four QFCs in the State  
23 of Oregon today?

24     A     I believe that is true. Yes.

25     Q     Is it true that after the merger with Albertsons,

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1 Kroger would own the Fred Meyer, Safeway, and Albertsons  
2 banners in Oregon?

3 A Yes.

4 Q Mr. McGowan, would C&S need to re-banner any stores in  
5 the Mid-Atlantic states of Delaware, Maryland, Virginia or  
6 the District of Columbia?

7 A Yes.

8 Q Are you referring to the nine Harris Teeter stores  
9 listed here?

10 A Yes, I am.

11 Q Is C&S acquiring any banner currently present in those  
12 Mid-Atlantic states?

13 A No, it is not.

14 Q Again, to comply with C&S's proposed redactions,  
15 Mr. McGowan, could you please refer to page 91 of your  
16 deposition transcript beginning at line 10 through page 92,  
17 line 13.

18 Without revealing the testimony, does this relate  
19 to C&S's plans for re-bannering the Harris Teeter stores in  
20 those Mid-Atlantic states and the District he Columbia?

21 A Yes, it does.

22 Q And you gave this testimony under oath?

23 A Yes, I did.

24 MS. DRUMMONDS: Your Honor, I would ask to move  
25 this portion of the transcript into evidence.

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1 MR. OBARO: No objection, Your Honor.

2 THE COURT: It will be received.

3 BY MS. DRUMMONDS:

4 Q Again, without disclosing the exact name of the banner,  
5 Mr. McGowan, is the banner C&S is considering use in the  
6 Mid-Atlantic, does it have any established brand equity  
7 there?

8 A It has brand recognition there, which surprised us, but  
9 I can't speak to the brand equity for it, but there was  
10 brand awareness around it. But from a brand equity  
11 standpoint, our data -- we have not gotten that far along  
12 with it.

13 Q If you would refer back to your deposition transcript,  
14 Mr. McGowan. Do you see where I asked you at page 92,  
15 beginning at line 7: "Is it fair to say that it does not  
16 have established brand equity in the Mid-Atlantic?" I will  
17 skip the portion of the transcript that reveals the name of  
18 the banner. But you replied, "Interesting enough, it has a  
19 pretty wide-scale awareness factor than more I would have  
20 expected in the U.S., but it has not had a brand equity  
21 presence in the Mid-Atlantic, no."

22 MR. OBARO: Objection, Your Honor. Improper  
23 impeachment and his testimony is inconsistent with what he  
24 said here today.

25 THE COURT: Sustained.

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1 BY MS. DRUMMONDS:

2 Q Mr. McGowan, will C&S seek to re-banner any stores in  
3 Louisiana?

4 Charles, will you please put back up PDX6.

5 A Yes.

6 Q Are you referring to the two Albertsons listed in the  
7 box on the left-hand side of the slide?

8 A Yes.

9 Q Will C&S need to re-banner any stores it is seeking to  
10 acquire in Texas?

11 A Yes.

12 Q Are you referring to the seven Albertsons -- sorry. It  
13 would be five Albertsons in Texas, 15 Tom Thumbs, six Market  
14 Streets, and two Randalls stores?

15 A Yes.

16 Q Is C&S acquiring the rights to any current Kroger/  
17 Albertsons banner in Texas or Louisiana in the divestiture  
18 agreement?

19 A No, we are not.

20 Q Mr. McGowan, to comply with C&S's confidentiality  
21 redactions, could you please refer to page 93 of your  
22 deposition transcript beginning at line 22 through page 94,  
23 line 18.

24 Without reviewing the contents of the testimony,  
25 does this relate to C&S's potential re-bannering plans for

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1 the stores that it is seeking to acquire in Texas and  
2 Louisiana?

3 A Yes.

4 Q And you gave this testimony under oath?

5 A Yes, I did.

6 MS. DRUMMONDS: Your Honor, I would ask to move  
7 this portion of the transcript into evidence.

8 MR. OBARO: No objection, Your Honor.

9 THE COURT: It will be received.

10 BY MS. DRUMMONDS:

11 Q Mr. McGowan, will C&S need to re-banner any stores in  
12 the state of Idaho?

13 A Yes.

14 Q Are you referring to the 10 Albertsons stores listed in  
15 the box in the slide?

16 A Yes.

17 Q Will C&S need to re-banner any stores in the state of  
18 New Mexico?

19 A Yes.

20 Q Are you referring to the two Safeway stores and seven  
21 Albertsons listed on the box on the slide?

22 A Yes.

23 Q Will C&S need to re-banner any stores in the state of  
24 Montana?

25 A Yes.



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1 Q Are you referring to the one Albertsons and one Safeway  
2 store listed in the box on the slide?

3 A Yes.

4 Q Will C&S need to re-banner any stores it would acquire  
5 in the state of Nevada?

6 A Yes.

7 Q Are you referring to the three Vons and 13 Albertsons  
8 stores listed in the box on the slide?

9 A Yes.

10 Q Would C&S need to re-banner any stores in the state of  
11 Utah?

12 A Yes.

13 Q Are you referring to the two Lucky and two Safeway  
14 stores in the state of Utah?

15 A Yes.

16 Q As a part of the divestiture agreement, is C&S  
17 acquiring any banner with current presence in Idaho,  
18 Montana, New Mexico, Nevada, or Utah?

19 A No.

20 Q Is it true that after the merger with Albertsons,  
21 Kroger would own the Smiths, Safeway, and Albertsons banners  
22 that are currently present in all of those states?

23 A Yes.

24 Q Is it also true that Kroger would own the Vons and  
25 Lucky banners that are currently present in Nevada and Utah,

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1 respectively?

2 A Yes.

3 Q Mr. McGowan, for confidentiality reasons, could you  
4 please refer to page 92 of your deposition transcript, lines  
5 14 through 24.

6 Without disclosing the testimony, does this state  
7 which banner C&S plans to use for the Idaho stores it must  
8 re-banner?

9 A Yes.

10 Q And you gave this testimony under oath?

11 A Yes.

12 MS. DRUMMONDS: Your Honor, I ask to move this  
13 portion of the transcript into evidence.

14 MR. OBARO: No objection.

15 THE COURT: It will be received.

16 BY MS. DRUMMONDS:

17 Q Mr. McGowan, could you please now refer to page 95 of  
18 your deposition testimony beginning with line 13 through  
19 page 96, line 22.

20 Without disclosing the exact testimony, does this  
21 state which banner C&S plans to use for the stores it must  
22 re-banner in Montana, New Mexico, and Nevada?

23 A Yes, it does.

24 Q And you gave this testimony under oath?

25 A Yes, I did.

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1 MS. DRUMMONDS: Your Honor, I ask to move this  
2 portion of the transcript into evidence.

3 MR. OBARO: No objection, Your Honor.

4 THE COURT: It will be received.

5 BY MS. DRUMMONDS:

6 Q Mr. McGowan, finally, would you please refer to page 97  
7 of your deposition transcripts from lines 9 through 17.

8 Without disclosing the exact testimony, does this  
9 state which banner C&S plans to use for the stores it must  
10 re-banner in Utah?

11 A Yes.

12 Q And you gave this testimony under oath?

13 A Yes.

14 MS. DRUMMONDS: Your Honor, I would ask that this  
15 portion of the transcript be admitted into evidence.

16 MR. OBARO: No objection, Your Honor.

17 THE COURT: It will be received.

18 BY MS. DRUMMONDS:

19 Q Just for clarity, Mr. McGowan, without revealing the  
20 name of the banner, please, is it true that C&S plans to  
21 introduce the same banner in Idaho, Montana, New Mexico,  
22 Utah, and Nevada?

23 A Yes.

24 Q Is it also true that that banner does not have any  
25 existing presence in those states?

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1 A Yes.

2 Q Is it true that, in total, C&S is seeking to acquire  
3 stores in ten states and the District of Columbia where it  
4 would not be acquiring any banner currently present in those  
5 states as part of the divestiture agreement?

6 A Yes.

7 MS. DRUMMONDS: I pass the witness, Your Honor.

8 THE COURT: All right.

9 MR. OBARO: Good afternoon, Your Honor. May we  
10 approach with binders?

11 THE COURT: Yes.

12 CROSS-EXAMINATION

13 BY MR. OBARO:

14 Q Good afternoon, Mr. McGowan.

15 A Good afternoon.

16 Q You went into this a little bit with Ms. Drummonds, but  
17 why don't you tell the Court about your background in the  
18 retail grocery industry.

19 A I started working for Stop & Shop supermarkets in 1991  
20 as an assistant store manager trainee. I spent 30 years  
21 with them and worked in various functions, divisions, and  
22 lead businesses for Stop & Shop, Ahold USA, and Delhaize.

23 Q I don't think we have lettered about Stop & Shop. Can  
24 you describe what Stop & Shop is.

25 A Sure. Stop & Shop is a supermarket company and was

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1 founded as economy stores; 110-year-old brand from  
2 Cambridge, Massachusetts. And it was the largest regional  
3 grocer in the Northeast. We operated 425 stores with 65,000  
4 employees and at about \$14 billion in annual revenue.

5 Q At some point in time did Stop & Shop ultimately get  
6 acquired?

7 A Stop & Shop was acquired by Ahold, which is a Dutch  
8 retail company, in 1996, and then Ahold and Delhaize, which  
9 is a Belgium retail food company, merged in 2017. So Stop &  
10 Shop was acquired by Ahold and then Ahold and Delhaize  
11 merged.

12 Q Mr. McGowan, did you stay on at Stop & Shop after Stop  
13 & Shop by Ahold?

14 A I did.

15 Q What role did you have at Stop & Shop and Ahold after  
16 Stop & Shop was acquired?

17 A I held multiple roles. When Stop & Shop was acquired,  
18 I led the re-bannering of stores in Massachusetts and  
19 Connecticut that were being re-bannered to Stop & Shop. And  
20 additionally, I held merchandiser roles, procurement roles,  
21 four operations roles, and division director, sales and  
22 merchandising roles.

23 Q You mentioned you helped with some re-bannering efforts  
24 at Stop & Shop. How many stores at Stop & Shop were  
25 re-bannered as part of that effort?

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1 A The first effort was 35. Then my second wave of  
2 re-bannering was approximately 160 stores, which was, as a  
3 director and vice president, re-bannering stores in metro  
4 New York and New Jersey to Stop & Shop as well. That was  
5 approximately 160 stores re-bannered in six months.

6 Q And I understand at some point you became the executive  
7 vice president of operations for Ahold USA, and you were  
8 also the president of Stop & Shop in the New England  
9 division; is that correct?

10 A I was. I was president of Stop & Shop in the New  
11 England division in 2009 when our company was restructured.  
12 2011, I became the executive vice president of supply chain  
13 for Ahold USA. I added merchandising to my responsibilities  
14 the following year. And then I went to be the EVP of retail  
15 operations and divisions for Ahold USA, so I was responsible  
16 for -- in those roles -- approximately 850 stores across  
17 about ten states from Virginia to New Hampshire.

18 Q There were some questions Mr. McGowan about pharmacies  
19 and fuel stations. Did the stores that you managed have  
20 fuel stations and pharmacies?

21 A Yes. So at Stop & Shop we had north of 300. In Ahold  
22 USA we had north of 300 pharmacies. And we had  
23 approximately 300 fuel centers. As executive vice president  
24 of merchandising, I ran fuel procurement and fuel  
25 operations, and I was also responsible pharmacy and standing

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1 up and building up a new pharmacy prototype and a new  
2 pharmacy operating system.

3 Q This might be an understatement, but is it fair to say  
4 you have experience in managing pharmacies and fuel  
5 stations?

6 A I do.

7 Q Mr. McGowan, when did you join C&S?

8 A I joined C&S as a consultant in January of '21 and  
9 became a full-time employee in June of 2021.

10 Q And what was the reason why you joined C&S?

11 A I joined C&S -- No. 1, in my prior career, I was a  
12 customer of C&S for 25 years, so I knew the team at C&S, and  
13 I had a long-term relationship with them. C&S was looking  
14 to do two things when they talked to me in December of 2020.  
15 One was to look at Piggly Wiggly Midwest as an acquisition.  
16 It had more retail than C&S was currently operating, and we  
17 were looking to build our retail muscle, recognizing that we  
18 were making a strategic change. So I did the diligence on  
19 that acquisition. I also helped our leadership team start  
20 to think about our diversity into retail. And then when we  
21 completed the -- or came close to completing the  
22 acquisition, I came on board as a full-time associate.

23 Q And what is your current role at C&S, Mr. McGowan?

24 A My current role is president of retail employees for  
25 C&S.

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1 Q And have you played a role in the acquisition at issue  
2 in this case?

3 A Yes, I have.

4 Q You have touched on this a little bit, but can you  
5 explain C&S's business model to the Court, please.

6 A C&S is primarily a wholesaler. We do business across  
7 the country -- not in every state. And we are primarily a  
8 wholesaler. We supply regional chains. We supply some  
9 bigger chains. We supply independent grocers and franchise  
10 grocers in numerous markets, and then we also operate retail  
11 stores under the Grand Union and the Piggly Wiggly banner.

12 As a wholesaler, we not only provide goods, we  
13 also provide systems, back-office management, marketing,  
14 advertising, pricing systems. Pretty much if you think  
15 about independents, every independent may or may not want  
16 something different, and we provide the services for  
17 different levels of independent's needs for them to operate  
18 a store. In a franchise world, that means that the store  
19 owners really run the stores and the community face, and  
20 most of the back office stuff gets done by our team. In  
21 other cases, we just send them product.

22 Q Understood. When you say "independents," that's not a  
23 term we have used very much so far in this case. Can you  
24 explain what you mean by that.

25 A Sure. An independent grocer could be a single store.



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1 It could be small group of stores. It could be a specialty  
2 store. But they are not affiliated with another group, or  
3 if they are, it is not really in a structured way.

4 Sometimes they are small local markets that exist in small  
5 communities, and other times you have independents that are  
6 absolutely enormous. But they're non-chain grocery stores  
7 that are normally owned by a family or a small group of  
8 investors that run those stores, and they exist everywhere  
9 in the United States.

10 Q So I think what you testified to just earlier was that  
11 the services that you provide for those independents range  
12 from supplying products for those independents to supplying  
13 products and back-office services and additional support  
14 services for those independents.

15 Do I have that right?

16 A That's correct.

17 Q What is your understanding, Mr. McGowan, why C&S is in  
18 the process of expanding into the retail business?

19 A C&S lost its biggest customer in 2019, which also  
20 happened to be my former employer. Ahold Delhaize America  
21 decided to bring some of their distribution inside to go  
22 self-distributor. So that was answer C&S's largest  
23 customer. They still remain a very large customer today.

24 But that was a very large pivot point for C&S.

25 And as we evaluated our company and where we wanted to go

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1 and where our opportunities were, the management team  
2 started to think about acquisitions -- whether it be in the  
3 wholesale space, the retail space, a combination of both.  
4 You know, that's how we ended up buying Piggly Wiggly, and  
5 we also bought another wholesale business that year.

6           And it was really a shift trajectory from  
7 wholesale/wholesale independents. Our other main wholesale  
8 competitors both have bigger spaces in retail. And as a  
9 company, a family-owned business, our owner wants the  
10 company to grow. And as we looked out at business and the  
11 future of the business, we also felt we needed to diversify.  
12 We needed to get better at serving our independents, and we  
13 needed to get better at retail. So for us it's  
14 transformational change, which our owners and our team are  
15 incredibly passionate about. We have the opportunity to  
16 double our size and be the largest wholesaler and one of the  
17 largest traditional food retailers in the United States.

18 Q    So you mentioned, Mr. McGowan, that you lost a large  
19 customer in 2019. Was that part of a trend that you noticed  
20 in the industry with grocery retailers transitioning to  
21 self-distribution?

22 A    There are -- yes. I mean, Ahold was really the last  
23 major chain that was not a hundred percent self-distributed,  
24 or if not pockets, but there are a number of regional chains  
25 that are also part wholesale and part self-distributed as

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1 well.

2           So recognizing that the change -- the change --  
3 whether they be regional or national, running in that  
4 direction, we knew we needed to make sure that we widened  
5 our -- widened our view of opportunity for the business to  
6 grow.

7 Q    Is it fair to say that there has been an evolution with  
8 the company in terms of the strategy over the last couple of  
9 years to think about expanding into retail?

10 A    It has really been amazing. And the retail business  
11 and the divestiture opportunity is incredibly exciting for  
12 us, but it is not the first one that we were going towards.  
13 We were on a fairly large -- fairly well down the road on a  
14 fairly large retail acquisition when the Kroger and  
15 Albertsons divestiture was announced, and that became a more  
16 attractive target for us because of the size of the retailer  
17 and also because of the geography.

18 Q    And what do you mean by the "geography"?

19 A    Well, if you look at -- we were all looking at the map  
20 that was up on the wall. C&S is pretty much a perimeter  
21 company when you look at the United States. So we're  
22 coastal. We've got Texas and the southeast and Wisconsin,  
23 and we get a little bit in off the Pacific. But this gives  
24 us an opportunity to get into Arizona, Colorado, the  
25 InterMountain areas and a much broader area in the West

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1 Coast as well as a bigger presence in the Chicago market.

2           And why is this such an amazing opportunity for  
3 us, we absolutely believe it's going to make us a successful  
4 retailer, but equally a better wholesaler. Our wholesale  
5 footprint with the distribution centers that we're going to  
6 acquire and build as part of this transaction will open up  
7 more markets for us as a wholesaler. It will allow us to  
8 help independents.

9 Q       And why don't you explain a little bit more about that.  
10 How will diversifying your business into retail further help  
11 the independents that C&S currently serves?

12 A       I think that independents will struggle to compete in a  
13 lot of markets. Most independents don't have the size or  
14 the scale to make the kind of investments in loyalty systems  
15 or in pricing systems or the retail media networks. All of  
16 the sophistication, some of which we provide today but not  
17 at the level that we believe we will get from this  
18 acquisition, so -- I mean, for us we view it as we are going  
19 to open up the wholesale market in some areas that currently  
20 only have one wholesaler, and they don't have choice. And  
21 we will be a competitor to them.

22           We also view it as an opportunity to be a very  
23 good wholesaler because we will have built or acquired state  
24 of the art retail operating systems that don't -- that an  
25 independent would never have access to, and we think that

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1 would be a huge enabler for us and for our independents at  
2 the same time of becoming a major U.S. retailer.

3 Q So you said a lot, and I want to make sure I have it.  
4 One of the benefits that you have in expanding into retail  
5 would give C&S an opportunity to expand its distribution  
6 footprint because C&S would be able to support the new  
7 retail locations that it acquires as a distributor. Is that  
8 fair to say?

9 A Yes, that's correct.

10 Q If I heard you correctly, that would allow C&S to be in  
11 new markets where currently there is perhaps only one  
12 distributor in that market?

13 A That is correct.

14 Q And that creates competition between C&S and the  
15 current distributors in that market?

16 A That is correct.

17 Q Which, in your mind, will help C&S be able to better  
18 serve the independents that are in that market?

19 A That's correct.

20 Q Now, Mr. McGowan, Ms. Drummonds asked you some  
21 questions about C&S's prior acquisition of Tops that became  
22 the Grand Union facilities.

23 Do you remember that?

24 A Yes.

25 Q And C&S provided a budget to the FTC, as you recall,

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1 with respect to those transactions, and Ms. Drummonds asked  
2 you about that?

3 A Yes.

4 Q As you testified before, the transaction was a part of  
5 the divestiture; is that correct? Do I understand that  
6 correctly?

7 A That is correct.

8 Q I think you also testified that the Grand Union  
9 stations were not able to meet the budget they put forward  
10 at the time of the acquisition; is that fair?

11 A That's correct.

12 Q Now, I imagine it's the purchase of the Grand Union  
13 stations are part of a divestiture that C&S has made  
14 representations to the FTC about its intent to keep those  
15 stores?

16 A That is correct.

17 Q And since C&S acquired those stores, has C&S kept those  
18 stores?

19 A Yes, we have.

20 Q Has C&S continued to operate and run those stores?

21 A Yes, we have.

22 Q And those stores have not been profitable, yet C&S  
23 continues to run those stores?

24 A Yes, we have. Those stores are also continuing to  
25 provide us insights into this transaction around TSA

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1 services and gaps and how we build our structure so we  
2 acquire the right systems and people and process to go along  
3 with our TSA to be successful. So I would say it has been  
4 an opportunity for us to learn and build stronger  
5 infrastructure and more retail muscle.

6 Q And I imagine the lessons that you've learned through  
7 the Grand Union acquisitions are lessons you would apply to  
8 the current acquisition that we're discussing today,  
9 correct?

10 A Correct.

11 Q Now, Ms. Drummonds showed you a document. It is  
12 PX3107. We are going to put that up. This is the Walnut  
13 Business Plan as of October 3rd, 2023.

14 Do you remember this document?

15 A Yes, I do.

16 Q And just to make sure we understand what this document  
17 is, this document is an internal business plan for C&S; is  
18 that correct?

19 A That's correct.

20 Q So this was not a document that was created for the  
21 FTC, but this was a document that was created for internal  
22 business purposes; is that correct?

23 A That's correct.

24 Q This document was ultimately produced to the FTC?

25 A Yes, it was.

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1 Q Understood. Did you individually draft the contents of  
2 this document?

3 A No, I did not.

4 Q So slide 17 is a slide that Ms. Drummonds showed you.  
5 I think the focus of the discussion with Ms. Drummonds was  
6 the last bullet point on the slide 17.

7 Do you remember that?

8 A Yes, I do.

9 Q That was discussing the profitability of the Grand  
10 Union acquisition that we had talked about; is that right?

11 A That's correct.

12 Q We can take this down for now.

13 During the conversation with Ms. Drummonds, there  
14 was no discussion about the updated business plan that was  
15 made in 2024.

16 MS. DRUMMONDS: I would object at this point,  
17 Your Honor. Because C&S has a common interest agreement  
18 with the defendant, I believe that the defendant should not  
19 be leading the witness during the examination.

20 THE COURT: You can rephrase your question.

21 BY MR. OBARO:

22 Q During the discussion with Ms. Drummonds, did -- was  
23 there a discussion about the 2024 business plan that C&S  
24 created? Do you recall a discussion with Ms. Drummonds  
25 about the 2024 business plan?



M. McGowan - X

1 A Yes, I do.

2 Q Do you recall -- I'll put the 2024 business plan up,

3 DX1058. I'll put this on the private screen. Thank you.

4 Mr. McGowan, this is an updated -- is this an updated 2024

5 business plan from C&S?

6 A Yes, it is.

7 Q So is this the same business plan that we saw, but it's

8 just the more updated one, correct? Is that your

9 understanding?

10 A This was a revised business plan obviously, because

11 many things change from October to June.

12 Q And again, is it fair it is similar to the prior

13 business plan; that this was an internal document that was

14 created by C&S? Do I understand that correctly?

15 A Yes, you do.

16 Q I would like to turn to slide 18. Do you see the

17 bullet point that's at the bottom of slide 18?

18 A Yes, I do.

19 Q And is this consistent with the Grand Union performance

20 to date?

21 A Yes, it is.

22 Q And do you understand that this document was also

23 produced to the FTC. Do I have that correct?

24 A Yes, it was.

25 MS. DRUMMONDS: Objection, Your Honor. I would

M. McGowan - X

1 object at this point. This document was not produced to us  
2 during the course of fact discovery. It was actually  
3 produced to us after the close of fact discovery, and we  
4 didn't have an opportunity to question the witness about the  
5 document. I think it is unfair to characterize they  
6 produced it to us in that form.

7 MR. OBARO: Your Honor, this was subject to a  
8 motion in limine -- I've forgot my days now -- but I think  
9 one week ago this was subject to a motion in limine, which  
10 they moved to have not in evidence, and you denied the  
11 motion.

12 MS. DRUMMONDS: Your Honor, to clarify, we have no  
13 objection to it being in evidence. The objection is to the  
14 characterization that it was ordinarily produced to us when  
15 it was produced after the close of fact discovery, and we  
16 didn't have the opportunity to question Mr. McGowan.

17 THE COURT: Your objection is to the form of  
18 question?

19 MS. DRUMMONDS: Yes, Your Honor.

20 THE COURT: Sustained.

21 BY MR. OBARO:

22 Q Mr. McGowan, do you understand that at some point in  
23 time this document was produced to the FTC?

24 A Yes, I do.

25 MR. OBARO: I will move to enter DX1058 into

M. McGowan - X

1 evidence.

2 MS. DRUMMONDS: No objection.

3 THE COURT: It will be received.

4 BY MR. OBARO:

5 Q Mr. McGowan, do you recall that you had some  
6 discussions with Ms. Drummonds about C&S's current retail  
7 resources?

8 A Yes, I do.

9 Q And I think the term that was used is the current  
10 retail resources is "not deep."

11 Do you remember that discussion?

12 A Yes, I do.

13 Q Mr. McGowan, we are going to hear tomorrow from the CEO  
14 of C&S. He is going to talk to us about C&S's capabilities,  
15 but in the meantime --

16 MS. DRUMMONDS: Objection, Your Honor. I believe  
17 counsel is starting to lead again.

18 MR. OBARO: Your Honor, I haven't asked the  
19 question.

20 THE COURT: I know. You were anticipating  
21 something. Wait for him to finish.

22 MS. DRUMMONDS: Yes, Your Honor.

23 BY MR. OBARO:

24 Q My question, Mr. McGowan, is, does C&S intend to use  
25 the same, current retail resources that it has right now

M. McGowan - X

1 running the Grand Union stations to run the 579 stores it  
2 attempts to acquire if this transaction were to go through?

3 A No, that is not our intention. We currently have in  
4 excess of 300 people, give or take a few, that are working  
5 on this divestiture alone between our own associates,  
6 contractors, and third parties. And we will -- as I  
7 mentioned, we have learned quite a bit in our last two  
8 retail acquisitions, but we are acquiring very talented and  
9 deep group of associates from both Kroger and Albertsons who  
10 have the expertise, the experience, and knowledge, and the  
11 trust of the team members. And we are very focused on that  
12 structure, that organization, and those people to make this  
13 a smooth and positive transition for the team and for our  
14 customers.

15 Q Is one of those people Susan Morris?

16 A Yes. Susan Morris will be the CEO of C&S retail.

17 Q What are your thoughts about Ms. Morris and her ability  
18 to lead the C&S retail team?

19 A Well, I didn't know Susan Morris until not all that  
20 long ago. She has a tremendous industry reputation; very  
21 seasoned and experienced. She is probably one of the few  
22 retail executives that I know that has had even more  
23 different jobs than me. But most of all what I know is she  
24 knows these stores. She knows these markets. She knows  
25 these people, and they trust her. And I think that is a

M. McGowan - X

1 huge opportunity for C&S to have an executive like Susan  
2 Morris to join our team, and I personally can't wait to get  
3 to know her better and work with her and help support her in  
4 her journey with our company.

5 Q Mr. McGowan, Ms. Drummonds asked you a number of  
6 questions about C&S's re-bannering strategy. Do you  
7 remember those questions?

8 A Yes.

9 Q And I want to take a step back and talk about your  
10 experience at Grand Union -- actually at Ahold with respect  
11 to re-bannering. Can you give the Court a sense of  
12 experience that you had at Ahold with respect to  
13 re-bannering?

14 A At Ahold --

15 MS. DRUMMONDS: Objection, Your Honor. I believe  
16 this is outside the scope of my direct examination. I  
17 didn't question the witness about any re-bannering at Ahold.

18 MR. OBARO: Your Honor, she asked him questions  
19 about his background. She asked him questions about C&S's  
20 abilities to re-banner. This goes directly to that.

21 MS. DRUMMONDS: I would just say, Your Honor,  
22 Ahold capabilities to re-banner is not relevant to C&S's  
23 ability to re-banner. I didn't ask the witness about that.

24 MR. OBARO: It is relevant because he was at Ahold  
25 and led those efforts.

M. McGowan - X

1 THE COURT: I'm going to allow it.

2 BY MR. OBARO:

3 Q Mr. McGowan, can you please tell us about your  
4 experience with re-bannering at Ahold?

5 A At Ahold, in 1996, as a field merchandiser, I led the  
6 re-bannering of 35 stores in New England primarily focused  
7 in our fresh areas.

8 In 2000, Ahold shifted ownership of its business  
9 in metro New York, Long Island, New Jersey. They were  
10 bannered as Edwards Food Stores. They were all re-bannered  
11 to Stop & Shop supermarkets. I was a director and  
12 eventually became vice president during those transitions  
13 and re-bannered those stores.

14 There were 70 shutdowns, so five to seven days  
15 depending, and a fairly significant amount was done. As our  
16 chief merchant, I supported the re-bannering of 30 Pathmarks  
17 in metro New York and then -- and some other things here and  
18 there. I have had experience re-bannering stores at junior  
19 level, mid-tier levels to senior levels, and doing it in a  
20 relatively quick pace and actually learning quite a bit  
21 along the way.

22 Q And towards the end of your tenure at Ahold, was there  
23 a re-bannering or a reinvention effort that was underway?

24 A There was.

25 Q Can you tell us about that, please.

M. McGowan - X

1 A As the president of Stop & Shop, we -- right after our  
2 merger with Delhaize, we made some significant investment at  
3 Stop & Shop to reposition our brand, and that was an  
4 18-month journey with a full brand repositioning and  
5 developing a customer proposition. And prior to my  
6 departure from Ahold, we had redone a market. We had redone  
7 our Hartford, Connecticut, market with our new position.  
8 They continue to reposition with that format today, and the  
9 plans and early investment to push that forward.

10 Q Do you consider yourself to be intimately familiar with  
11 the process of re-bannering or reinventing grocery stores?

12 A Yes.

13 Q Which re-banners is C&S getting as part of this  
14 divestiture package?

15 A C&S gets the Safeway banner licensed in Colorado and  
16 Arizona. It gets the Albertsons banner in California. It  
17 gets the QFC in Oregon and Washington. Carrs in Alaska.  
18 Hagen in Washington state. Mariano's in Chicago.

19 Q Does C&S currently have a re-bannering plan?

20 A We have a re-bannering plan that we continue to fine  
21 tune. Part of the reason why we have been really taking our  
22 time is because of research. As I mentioned before, great  
23 equity and customer awareness are super support for a brand.  
24 And we have several of our agencies and marketing partners  
25 who continue to research in those markets so that when we

M. McGowan - X

1 are ready to go, we do make the right choice, and also  
2 thinking that there is a refresh capability that needs to  
3 happen as part of some of these brands we are acquiring and  
4 build a foundation around that as well.

5 Q Mr. McGowan, I would like you to look in the binder for  
6 DX1058. It will be on the private screens, because there is  
7 some confidential information of C&S in this document. This  
8 is, again, the business plan that we looked at a little  
9 earlier; is that right?

10 A That's correct.

11 Q I would like to direct your attention to slide 43, if I  
12 could. Is this a high-level slide, 43, that depicts the  
13 preliminary re-bannering plans you have?

14 A Yes, it does.

15 Q Can you describe it to the Court at a high level.

16 A We need to be able to convert our distribution centers  
17 first, because distribution centers are servicing that core  
18 nucleus of stores around it.

19 Q Is this what you were talking about earlier when you  
20 mentioned the need to create and expand distribution  
21 capabilities?

22 A Yes, it is.

23 And we also have score systems in the acquired  
24 Albertsons stores that are going to have to be changed --  
25 I'm sorry -- the acquired Kroger stores, so as we stand up



M. McGowan - X

1 our new technology system, the operating systems in those  
2 stores of the acquired stores will be swapped out. We will  
3 do several pilots, single-store pilots, market pilots, and  
4 then we will start to convert our stores by market. We will  
5 be able to do multiple markets at a time through multiple  
6 geographies. Then we will realize those markets. So the  
7 thought process being you refresh the market, you rebrand  
8 the market, and then you go out with your really big  
9 marketing push, and then you begin to aggressively build  
10 your business on the new brand.

11 Q And will C&S re-banner all of the divested stores at  
12 the same time?

13 A No, we will not.

14 Q In light of your experience, Mr. McGowan, are you  
15 concerned with the number of stores that C&S needs to  
16 re-banner?

17 A No, I'm not.

18 Q And if we look at slide 51, is C&S accounting for the  
19 costs it believes is associated with re-bannering?

20 A Yes, we have.

21 Q And is that some of what's depicted on slide 51?

22 A Yes, it is.

23 Q Mr. McGowan, do you think the timing built in the TSA  
24 is -- will be beneficial for C&S in its re-bannering  
25 efforts?

M. McGowan - X

1 A Yes, I do.

2 Q By "the TSA," I mean the transaction services  
3 agreement.

4 A Understood.

5 Q And why do you think it would be beneficial, the time  
6 to re-banner?

7 A I think the timeline or re-banner would give us the  
8 right amount of time to get our distribution centers  
9 completed and transitioned as well as complete our market  
10 research and our tests and our pilots so that when we are  
11 more ready to go, we are ready to go. And we absolutely  
12 believe that the time that is -- that part of our TSA is  
13 adequate to do that.

14 Q Prior to your employment at C&S, I believe you  
15 testified that you had experience with strategies around  
16 private label products. Am I right about that?

17 A That is correct.

18 Q And does C&S have any current private label brands?

19 A Yes, we do. We own the Best Yet brands and the Piggly  
20 Wiggly brands. And then we also sell a variety of the Topco  
21 private brands.

22 Q And what is Topco?

23 A Topco is a buying consortium that's based in Chicago  
24 that has a number of primarily regional retailers and some  
25 larger-scale players, and they provide multiple things, but

M. McGowan - X

1 they provide private brand products which either carry a  
2 Topco label or in some cases that individual retailer's  
3 label. And they provide pharmacy services. And they also  
4 provide services for not-for-resale purchasing. So they're  
5 a big player in the private brand space.

6 Q Does Topco allow smaller retailers to pull together  
7 purchasing power for private label?

8 A Yes, they do.

9 Q How many stores does C&S currently supply private  
10 labels to?

11 A It would vary, but the vast majority of our  
12 independents -- we service 7,000 stores today. The vast  
13 majority of our independents and our chain business -- or  
14 our retail business. And then we really depend on the  
15 regional grocers, who they are buying their private label  
16 from. But we carry private brands in all of our  
17 distribution centers across the U.S.

18 Q Is C&S acquiring private label assets in this  
19 acquisition?

20 A Yes, we are.

21 Q What assets?

22 A We are acquiring Open Nature, Debi Lilly Design.  
23 Waterfront Bistro, Ready Meals, and Primo Taglio. Those  
24 brands are coming from ACI, and we will own those and have  
25 the IP for them.

M. McGowan - X

1 Q Are there brands that are coming on a temporary basis?

2 A No. Those brands are not coming on a temporary basis.

3 Those will become part of our assortment.

4 Q I would like to turn your attention to slide 55 of

5 DX1058 -- just screen to the witness because it is

6 confidential information here. Without going into the

7 details of it, Mr. McGowan, does slide 55 reflect C&S's

8 integration strategy for the private labels?

9 A Yes, it does.

10 Q Mr. McGowan, is C&S planning to invest dollars into

11 expanding its private label offerings?

12 A We are investing -- we have already started to invest

13 in our organization from a headcount perspective, from a

14 marketing perspective. We have added another third party

15 that is working with us, the David & Company, who is a

16 expert in corporate brand space. We will be investing -- so

17 we are in annual overhead and marketing resources and also

18 investing in price and in promotions.

19 So as I mentioned earlier today, we will be

20 relaunching our own internal Best Yet products starting in,

21 I think, the next two or three weeks, but we have already

22 had those new items developed. And we are really energized

23 by the opportunity. We see this again as an item where it

24 will not only help us in the retail space, but really help

25 our independent retailers with the number of brands and

M. McGowan - X

1 extensions and will also get us significantly into fresh.

2           You know, there are many regional brands that use  
3 Topco products, and their most generic one is Food Club. So  
4 you could be in a market with four different retailers all  
5 selling Food Club. And some of these brands that we are  
6 acquiring are going to be a little bit more unique, as are  
7 the ones we are developing. Again, we really believe that  
8 this will be an enabler not only for our retail business but  
9 our wholesale and independent business.

10 Q    Thank you, Mr. McGowan. Does C&S offer loyalty  
11 programs?

12 A    C&S -- we have a proprietary loyalty system at  
13 Piggly Wiggly Midwest, and then we offer a loyalty system  
14 with two third-party partners. One is AppCard; the other is  
15 Shop to Cook. They run the third-party platforms. We do  
16 background work. We do their digital and targeting work,  
17 but Shop to Cook and AppCard are really the technology  
18 platforms, and that's currently what we have available for  
19 our customers today.

20 Q    And will C&S stand up its own loyalty systems  
21 post-merger?

22 A    Yes, we will.

23 Q    I understand that C&S has engaged Nielsen to help --

24 A    Nielsen is the data provider. We're a data aggregator  
25 and analyzer. And they are our partner from a data

M. McGowan - X

1 perspective, and we are planning to engage with Nielsen.  
2 And NCR will be the platform that we use and the tool that  
3 we use. We've actually upgraded NCR, so it is the next  
4 version of the NCR loyalty system currently used by  
5 Albertsons. So with the bulk of stores coming from  
6 Albertsons and the bulk of our resources coming from  
7 Albertsons, there will be familiarity with that system as  
8 well.

9 Q Mr. McGowan, Ms. Drummonds asked you some questions  
10 about pricing practices at Grand Union stores. I think  
11 there was some testimony from your deposition that you read  
12 about pricing strategies.

13 Do you remember that?

14 A Yes, I do.

15 Q And I would like to have you turn to your deposition.  
16 That's PX4050. We can put on the screen page 74, lines 11  
17 to 25.

18 Mr. McGowan, can you read lines 11 to 25 on page  
19 74 and let me know if that's consistent with your  
20 understanding of C&S's current pricing strategies.

21 A Yes.

22 Q You gave this testimony under oath?

23 A Yes, I did.

24 MR. OBARO: I would move to admit page 74, 11 to  
25 25 of PX4050.

M. McGowan - X

1 MS. DRUMMONDS: No objection.

2 THE COURT: It will be received.

3 BY MR. OBARO:

4 Q Mr. McGowan, Ms. Drummonds asked you some questions  
5 about your experience with unions. Do you remember that?

6 A Yes, I do.

7 Q Do you remember you had a discussion about your  
8 meetings with some of the union representatives.

9 Do you remember those questions?

10 A Yes, I do.

11 Q And did you have a meeting with UFCW Local 555?

12 Do you remember that?

13 A Yes, I do.

14 Q And do you remember that UFCW Local 555 initially  
15 supported C&S as the divestiture buyer?

16 Do you remember that?

17 A Yes.

18 Q In fact, there was a press release that Local 555  
19 issued.

20 Do you remember that?

21 A Yes, I do.

22 Q This is already in evidence. Take a look at DX0908.

23 Do you recognize this document, Mr. McGowan?

24 A Yes, I do.

25 Q What do you recognize that as?

M. McGowan - X

1 A I recognize it as a press release from Local 555  
2 regarding why they supported the merger, and Dan Clay,  
3 president of that local, and our team had a very productive  
4 session, and we relied on our future, and we were very  
5 grateful they supported us.

6 Q I want you to take a look at the last paragraph on the  
7 page. Do you remember -- do you remember why Local 555  
8 supported C&S as the divestiture buyer?

9 A Local 55 supported C&S because their perspective was we  
10 would be the most preferable buyer to that transaction;  
11 that the private equity company that owned Albertsons was  
12 going to get out and having some new space and some  
13 consistency in a partner that wants to grow the business was  
14 a partner that they wanted to support more.

15 Q Thank you. We can take this down.

16 Next, I want to put up PX3515. I want you to take  
17 a look at it, Mr. McGowan. I would like us to go to  
18 slide -- let's go to 31, if we can, please.

19 Mr. McGowan, what's reflected on slide 31 of  
20 PX3515?

21 A The operating results of our Grand Union stores through  
22 our second quarter.

23 Q And this is the same Grand Union stores that we were  
24 talking about earlier with some poor performances in Grand  
25 Union stores?



M. McGowan - X

1 A Yes. That is correct.

2 Q And the first -- the first two lines under the heading  
3 is not confidential, so I don't want to talk about that,  
4 which is the basis for some of the poor performance for  
5 those stores.

6 Do you see that?

7 A Yes, I do.

8 Q The top bullet point says, "Topline sales impacted by  
9 SNAP reductions."

10 Do you see that?

11 A Yes, I do.

12 Q Can you explain what that means?

13 A SNAP is government assisted food benefits for folks in  
14 need, and they were extremely high coming out of the  
15 COVID-19 -- or higher than normal. And they reset. And  
16 Grand Union operates in some rural areas, and Grand Union,  
17 like many retailers, saw a sales reduction in their food  
18 sales when those SNAP benefits were reduced.

19 Q Does that explain some of the decline in the sales  
20 numbers for the Grand Union stores?

21 A Some of it, I think. Not all of it. But it was  
22 definitely a significant piece that was reported in  
23 earnings, I believe, by most major retailers at the same  
24 time.

25 Q Then the next point there is economic conditions. Can

M. McGowan - X

1 you explain that component of it.

2 A Sure. Obviously we are in a world with inflation, but  
3 our stores in Upstate New York are, as I said, are somewhat  
4 rural. The population is shrinking, and that area is  
5 somewhat economically challenged. So some of our customers  
6 are more challenged. So it has been a tough ride up there.

7 Q The third point is some pricing initiatives --  
8 discussing some pricing initiatives. Can you explain what  
9 that is.

10 A Our pricing -- when we launched the Grand Union stores,  
11 we had some systematic challenges with our pricing system  
12 and pricing in general. And we migrated to a new price  
13 zone. In some cases we were way overpriced on items, and in  
14 other cases we were underpriced. In doing that reset, there  
15 were some challenging challenges, but we were very much also  
16 able to stabilize our margin performance and our expense  
17 performance. So the No. 1 and chief priority for that  
18 business is growing topline sales.

19 Q Next I want to take a look at slide 21, which includes  
20 some discussions about plans to improve the performance of  
21 the Grand Union stores.

22 Can you talk at a high level about the plans to  
23 improve the performance at the Grand Union stores?

24 A Yes, I can.

25 Q Go ahead.

M. McGowan - X

1 A We have launched a new EDLP pricing program, our Fresh,  
2 and we are in the process of adding groceries to it. And we  
3 are seeing pretty solid preliminary results and looking to  
4 deploy across our business at the beginning of next year.

5 Q EDLP does that mean everyday low pricing?

6 A It s our everyday low price.

7 Q Is that what is reflected on this screen? On this  
8 page?

9 A Yes, it is.

10 Q And next, I would like to turn to the next slide. Does  
11 this reflect another strategy that's being implemented by  
12 Grand Union to improve pricing -- to improve performance of  
13 the stores?

14 A Yes, it does.

15 Q I would like to turn to the next slide as well. Does  
16 this include -- reflect another strategy that's being  
17 implemented by Grand Union stores to improve performance?

18 A Yes, it does.

19 Q If we could turn to the next slide. Operational  
20 enhancements. Does that also include strategies to improve  
21 the performance of the Grand Union stores?

22 A Yes, it does.

23 Q We can take the slide down, please.

24 Ms. Drummonds asked you some questions about  
25 e-commerce and the e-commerce platform for C&S.

M. McGowan - X

1 Do you remember that?

2 A I do.

3 Q And I want to make sure I have it right. Is the plan  
4 for C&S to develop a first party solution with Instacart; is  
5 that correct?

6 A Yes. That work is underway.

7 Q Can you explain what that work is.

8 A So Instacart will be the engine that drives our  
9 e-commerce initially as we stand up our own, and it will  
10 appear to be a C&S bannered website, which will take people  
11 directly to that Instacart site for digital pickup/delivery  
12 and digital activation.

13 It will be transparent to the consumer that it is  
14 run by Instacart. It will just feel like C&S, and it will  
15 also help drive our third-party operation as we ramp up. So  
16 it is -- although there will be a little interruption for  
17 customers, it is a much smoother transition than we thought  
18 it was going to be.

19 Q Mr. McGowan, I appreciate you have been on the stand  
20 for a long time. I have a few more questions.

21 Do you feel confident that the retail business  
22 that C&S will be acquiring will be successful?

23 A Yes, I do.

24 Q And why do you feel that?

25 A I think we have a really good set of stores and

M. McGowan - ReD

1 high-performance stores and new markets that will be very  
2 beneficial to us. I think we have the right TSA to support  
3 us to make sure that when the TSA services are over, that  
4 we're kicking and firing on all cylinders.

5 I believe that the people that are going to join  
6 C&S from Albertsons and Kroger are going to be very  
7 passionate about joining our company, and the ones that we  
8 have gotten a chance to talk to already are excited and  
9 energized. And I also know that grocers want to win. And  
10 grocers compete. And I know the people that are going to  
11 join that C&S team are going to want to be on the winning  
12 side.

13 MR. OBARO: Thank you, Mr. McGowan. No further  
14 questions.

15 THE COURT: Any redirect?

16 MS. DRUMMONDS: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. DRUMMONDS:

19 Q Mr. McGowan, it is fair to say, based on your  
20 discussions with myself and my colleague, would you agree  
21 you have decades of experience in the grocery industry?

22 A I do.

23 Q Would you agree that you have deep knowledge of the  
24 grocery industry?

25 A Yes, I would.

M. McGowan - ReD

1 Q I believe you testified earlier in our conversation  
2 though, that when you joined C&S, its internal resources  
3 related to retail were not deep.

4 Do you recall that?

5 A Yes, I do.

6 Q And it is true that the Grand Union stores you run with  
7 C&S's resources are losing money, right?

8 MR. OBARO: Objection. Leading.

9 MS. DRUMMONDS: I can rephrase, Your Honor.

10 THE COURT: Rephrase.

11 BY MS. DRUMMONDS:

12 Q And is it true that the Grand Union stores you run are  
13 losing money today with C&S's resources?

14 A Yes. That's true.

15 Q Mr. McGowan, when you spoke to my colleague, you used a  
16 term "traditional food retailer." Did you state that C&S  
17 through the divestiture would become one of the largest  
18 traditional food retailers?

19 A One of the largest traditional food retailers, not one  
20 of the largest food retailers.

21 Q What is a traditional food retailer?

22 A If you look at a traditional food retailer, it's what  
23 would be considered a traditional grocery store, whereas  
24 food retail is anything but that today. But when you look  
25 at the market, you see it described as all food and then

M. McGowan - ReD

1 traditional food.

2 Q I believe you mentioned in your testimony that C&S  
3 would need to swap out distribution centers for Kroger  
4 stores before re-bannering them; is that correct?

5 A It would be correct, yes.

6 Q Is C&S acquiring any distribution centers from Kroger?

7 A They are not.

8 Q So for the QFC and Mariano's and Harris Teeter stores  
9 that C&S is acquiring, is C&S is also acquiring distribution  
10 centers for those stores?

11 A C&S is acquiring distribution centers in Washington  
12 state that will serve QFC.

13 Q And are those distribution centers currently serving  
14 Albertsons stores?

15 A Yes. They are. Uh --

16 Q Will the --

17 THE COURT: I'm not sure he is finished. He said,  
18 "Uh."

19 Were you finished answering?

20 THE WITNESS: I am, Your Honor.

21 BY MS. DRUMMONDS:

22 Q Mr. McGowan, is it true that you just testified to my  
23 colleague that you're not concerned about the number of  
24 stores that C&S will need to re-banner?

25 A I am not concerned about it, no.

M. McGowan - ReD

1 Q Could you please refer to slide 51 of DX1058. Without  
2 disclosing the contents of this slide, as I believe it is  
3 designated to be confidential by C&S, does this slide  
4 include sales detriment estimates as a result of  
5 re-bannering that C&S is projecting?

6 A I don't see the slide.

7 Q Would you please -- could you refer to your binder to  
8 DX1058, slide 51, that you spoke with my colleague.

9 A Excuse me. Could you restate the document?

10 Q It is DX1058.

11 A Which slide?

12 Q 51.

13 Is it possible to re-display that slide on the  
14 screen. The version I received, it's very hard to read the  
15 slide numbers.

16 THE COURT: She has asked for it to be displayed  
17 on the screen.

18 MS. DRUMMONDS: Thank you.

19 BY MS. DRUMMONDS:

20 Q Mr. McGowan, are you now able to view slide 51 of  
21 DX1058?

22 A Yes, I am.

23 Q Again, please don't disclose the contents of the slide,  
24 as it has been designated confidential. But does this show  
25 projected re-banner sales impact by region that C&S has



M. McGowan - ReD

1 projected?

2 A Yes. We built it into our models. When we re-banner,  
3 you see a decline before you re-launch for customer  
4 interruption. So we do expect that to be part of the  
5 conversion, and the re-banner will have an impact, and then  
6 we also expect sales to come back.

7 Q Mr. McGowan, I believe you testified earlier in our  
8 conversation that C&S would need to replace all of the  
9 private label products at Kroger stores and the majority of  
10 private label sales at Albertsons stores. Is it true that  
11 C&S is planning to create new private label brands for fresh  
12 and other major categories?

13 A We will -- C&S will create some, and we are acquiring  
14 some.

15 Q And C&S -- is it true that C&S is primarily a  
16 wholesaler today?

17 A C&S is primarily a wholesaler today, yes.

18 Q And I believe you stated just now to my colleague that  
19 the divestiture would open up markets for C&S as a  
20 wholesaler where it is not currently present today. What  
21 are those geographies?

22 A Currently we don't operate in Southern California as a  
23 wholesaler. We are in Northern California. We are not in  
24 Arizona. We are not in Colorado. We are not really in any  
25 of the InterMountain areas at all. We are certainly not in

M. McGowan - ReD

1 Alaska.

2           So a number of markets where we will add  
3 distribution centers, where particularly in certain parts of  
4 the U.S. there are maybe one or two choices, not three or  
5 four, from a wholesaler perspective. So we think that that  
6 distribution capability, because we are going to acquire and  
7 build those distribution centers, will definitely help us  
8 reach new customers, bringing better value to those  
9 customers, and with our retail acquisition, bring them the  
10 tools and the platforms they need to be able to compete much  
11 more aggressively than they do too.

12 Q     And so is it true that C&S currently does not have  
13 distribution volumes in the geographies you just stated?

14 A     For the most part, yes.

15 Q     And is the divestiture an amazing opportunity to  
16 improve C&S's wholesale business?

17 A     It is an amazing opportunity to improve C&S's business  
18 in total.

19           MS. DRUMMONDS: Thank you. I pass the witness.

20           THE COURT: We are going to take our afternoon  
21 break.

22           We will be in recess for 15 minutes.

23           (Recess.)

24           (Proceedings resumed:)

25           THE COURT: Please be seated. You may call your

A. Florenz - D

1 next witness.

2 MS. HALL: Mr. Obaro, did you have a housekeeping  
3 matter?

4 MR. OBARO: No. Go ahead.

5 Thank you.

6 MS. HALL: Your Honor, we have with us another  
7 Attorney General. Paul Frangie. Plaintiff's call Alona  
8 Florenz to the stand.

9 May we approach with binders, Your Honor?

10 THE COURT: Yes.

11 (The witness was duly sworn.)

12 THE CLERK: Thank you. Please be seated. Would  
13 you please state your name for the record, spelling your  
14 last.

15 THE WITNESS: Alona Florenz. A-L-O-N-A,  
16 F-L-O-R-E-N-Z.

17 DIRECT EXAMINATION

18 BY MS. HALL:

19 Q Good afternoon, Ms. Florenz. I'm Laura Hall  
20 representing the Federal Trade Commission. I have some  
21 questions for you today.

22 By whom are you currently employed?

23 A C&S Wholesale Grocers.

24 Q Will you understand if I call it C&S?

25 A Yes.

## A. Florenz - D

1 Q When did you start working at C&S?

2 A 2008.

3 Q What is your title at C&S?

4 A Senior vice president of corporate development and  
5 financial planning.

6 Q What responsibilities do you have in that role?

7 A I'm in charge of financial analytic around M&A  
8 transactions and customer contracts as well as strategic  
9 planning and budgets.

10 Q You're aware that C&S has executed a divestiture asset  
11 purchase agreement to acquire 579 stores and other assets  
12 from Kroger and Albertsons?

13 A I'm aware.

14 Q What responsibilities have you had in connection with  
15 the potential divestiture?

16 A I was responsible for -- I describe it as  
17 quarterbacking the deal, so making certain that we completed  
18 the diligence in order to get to a signed agreement, and now  
19 I'm also in charge of the integration.

20 Q I would like to talk a bit about services C&S would  
21 receive under a transition services agreement. You're aware  
22 that C&S has entered into a transition service agreement in  
23 connection with the divestiture?

24 A I am.

25 THE COURT: May I have you slow down a little bit.

A. Florenz - D

1 I am sure that this is a lot for the court reporter.

2 MS. HALL: Thank you, Your Honor.

3 BY MS. HALL:

4 Q If I refer to the transition services agreement as  
5 "TSA," will you understand what I mean?

6 A I will.

7 Q Are you familiar with the term "commercial TSA"?

8 A I am.

9 Q What does commercial TSA refer to?

10 A The activities across certain functions like  
11 merchandising, promotional planning, pricing, retail  
12 customer-facing activities.

13 Q Are you aware of something called the tech stack clone?

14 A I am aware.

15 Q What is that?

16 A That is the activity to copy the set of IT systems that  
17 are at Albertsons in order to roll off the IT TSA. So that  
18 will be a copy of the technology.

19 Q And are the commercial TSA and the tech stack clone  
20 related in some way?

21 A They are related in that the commercial activities will  
22 need to use some of the systems that are part of the tech  
23 stack.

24 Q And so is the commercial TSA period connected to the  
25 availability of the tech stack?

## A. Florenz - D

1 A It is.

2 Q And when is the tech stack clone expected to be  
3 available?

4 A 12 months from close.

5 Q And what will happen with regards to the commercial TSA  
6 services if the tech stack clone is not available at that  
7 time?

8 A They could extend.

9 Q They could extend, or do they automatically extend?

10 A They automatically extend.

11 Q And under the transition services agreement, does C&S  
12 have the right to sell certain Kroger private label products  
13 in QFC stores?

14 A It does.

15 Q And for what period of time can C&S sell Kroger private  
16 label products in the QFC stores it is acquiring?

17 A C&S has the right for up to -- no later than 24 months.  
18 So the base time period is 18 months; however, it can go up  
19 to 24 months, assuming the stores can move into the  
20 Albertsons Auburn distribution center.

21 Q And for how long does C&S plan to stock the Kroger  
22 private label products in the QFC stores it is acquiring?

23 A That will depend on the progress of our private label  
24 strategy, but it will be at the -- no longer than the time  
25 periods offered by the TSA.

A. Florenz - D

1 Q Is C&S considering stocking Albertsons' private label  
2 products in its QFC stores?

3 A It is.

4 Q And how does the Albertsons private label product  
5 stocking fit in with the Kroger private label products and  
6 the C&S private label products? What's the sequence?

7 A So the sequence would be, once we no longer have access  
8 to the Kroger private label products, we would introduce  
9 Albertsons' private label products from the distribution  
10 center where the stores are going to be serviced from, and  
11 then at the point when the C&S new private label for the  
12 places where they need to add products is ready, we will  
13 replace those Albertsons' products at that point. Although  
14 we are looking at one option of using C&S warehouses to  
15 stock C&S products so we don't have to necessarily switch  
16 two times in the QFC stores.

17 Q But it's possible that C&S will have three different  
18 private label brands in its QFC stores in a three- to  
19 four-year period?

20 A It is possible.

21 Q Let's talk a little about the technology that C&S will  
22 be receiving in the divestiture package. What customer data  
23 will C&S receive as part of the divestiture?

24 A So we will receive three years of customer  
25 transactional data as part of the package for our divested

A. Florenz - D

1 stores -- any customers that are shopping at the divested  
2 stores.

3 Q So just to be clear, that's only transaction data for  
4 customers who shopped at the stores that C&S is acquiring?

5 A Yes.

6 Q And is that raw history data?

7 A It is raw.

8 Q And what does "raw" mean in this context?

9 A It means sort of the generic output of the data for the  
10 transactions.

11 Q Will C&S receive data that Kroger or Albertsons have  
12 derived through data analytics from the raw history data?

13 A They will not -- we will not receive analytical tools.

14 Q Or information derived from those analytical tools?

15 A Or information derived, correct.

16 Q For how long will C&S have a license to the custom code  
17 in the tech stack clone?

18 A We will have a license for four years from tech stack  
19 readiness.

20 Q So that's expected to be five years, assuming the tech  
21 stack is ready on time?

22 A That's correct.

23 Q Does that license include models or algorithms related  
24 to loyalty programs?

25 A No.



## A. Florenz - D

1 Q Does that include models or algorithms for pricing?

2 A No.

3 Q Does that include models or algorithms for marketing?

4 A No.

5 Q Does that include optimization inputs for inventory  
6 management support?

7 A No, it does not.

8 Q Does that include optimization inputs for forecasting?

9 A No, it does not.

10 Q Does that include optimization inputs for replenishment  
11 or replacement?

12 A No.

13 Q So C&S is getting the raw data, but not Albertsons' or  
14 Kroger's analysis of that data and not the tools they use to  
15 analyze the data, right?

16 MR. OBARO: Objection. Leading.

17 MS. HALL: I'm just attempting to summarize her  
18 testimony, Your Honor.

19 THE COURT: I would like you to rephrase and slow  
20 down.

21 MS. HALL: Thank you. I'm sorry, Your Honor.

22 BY MS. HALL:

23 Q What does C&S plan to do when the license to the tech  
24 stack expires?

25 A So during the license period, C&S will be working on

A. Florenz - D

1 what its ultimate tech stack solution is in the stores, and  
2 so we will be migrating to our new tech stack at the end of  
3 the license period.

4 Q Is Kroger also getting data from its acquisition of  
5 Albertsons?

6 A Yes, I assume so.

7 Q So after the acquisition, will Kroger have customer  
8 data from its stores and also from Albertsons' stores?

9 A It will not have the data for the Albertsons stores or  
10 the Kroger stores that are coming over to C&S.

11 Q Is your understanding that it won't have the historic  
12 sales data for those stores?

13 A It will not -- it will not have the T-log data for  
14 those stores, correct.

15 Q Did you say "T-log"?

16 A Yes. The transaction data that we talked about  
17 earlier.

18 Q And do you have an understanding of how many households  
19 that Kroger will have data on as a result of the acquisition  
20 of Albertsons?

21 A I do not know that number.

22 Q Is the term "exclusive customer" defined in the  
23 divestiture or transition services agreement?

24 A It is.

25 Q And what is an exclusive customer?

## A. Florenz - D

1 A It is a customer who has shopped a hundred percent in  
2 the divested stores for the three years prior to closing.

3 Q So if a customer shopped all the time at a divested  
4 store, but one time on vacation visited a retained store,  
5 they wouldn't be an exclusive customer, right?

6 A Yeah. That would be called a nonexclusive customer.

7 Q And under the divestiture agreement, Kroger can use all  
8 of the data from both Kroger and Albertsons except for data  
9 on exclusive customers?

10 MR. OBARO: Objection, leading.

11 BY MS. HALL:

12 Q Is it your understanding that under the divestiture  
13 agreement Kroger can keep any customer data that is not an  
14 exclusive customer?

15 A My understanding is that during the TSA period they can  
16 only use the data of the exclusive customers and the  
17 non-exclusive customers that shop at our stores for the  
18 purposes of supplying TSA services.

19 Q And do you recall being deposed in this action?

20 A I do.

21 Q And in your deposition you testified that Kroger can  
22 keep any customer data that is not an exclusive customer,  
23 correct?

24 A Yes. I was assuming we were talking about the TSA  
25 period.

A. Florenz - D

1 Q And you testified -- subsequent to your deposition, did  
2 you submit errata on July 9th?

3 A We did.

4 Q Did you clarify your understanding of exclusive  
5 customer data in that errata?

6 A No, we did not.

7 Q Who is "we"?

8 A Our attorneys.

9 Q Prior to testifying at the deposition, you already had  
10 personal knowledge of the exclusive customer data provisions  
11 in the agreements, right?

12 A I did.

13 Q And were you also designated as a corporate  
14 representative on the topic of the customer data provisions  
15 of the divestiture and transition services agreement?

16 A I was.

17 Q And do you recall testifying at your deposition that in  
18 preparation for testifying, you had met with counsel to  
19 supplement your personal knowledge?

20 A I did.

21 Q And have you subsequently signed an amended errata  
22 sheet on August 23rd?

23 A I did.

24 Q Whose idea was it for you to submit an amended errata  
25 sheet?

A. Florenz - D

1 A Our attorneys discussed it with me.

2 Q Prior to seeing the amended errata sheet, what did you  
3 do to confirm the accuracy of the statements about the use  
4 of customer data by Kroger under the divestiture agreement  
5 and the TSA?

6 A Well, after the deposition, when I was rethinking the  
7 answers, I went and asked our head of technology about that  
8 question to confirm.

9 Q Who is your head of technology?

10 A Sudhakar Lingineni.

11 Q So Mr. Lingineni explained to you what the divestiture  
12 and TSA agreement provisions were about exclusive customer  
13 data?

14 MR. OBARO: Objection. Leading.

15 THE COURT: I'll ask you to restate. I understand  
16 you prepared, but no more leading.

17 MS. HALL: Yes, Your Honor.

18 BY MS. HALL:

19 Q Did you ask Mr. Lingineni to explain to you the  
20 contractual provisions about exclusive customer data?

21 A No. I was just trying to clarify, because it's kind of  
22 a confusing topic about the TSA period versus exit, so I  
23 wanted to make certain I understood those concepts.

24 Q When did you have that conversation with Mr. Lingineni?

25 A Maybe two weeks ago.

A. Florenz - D

1 Q Do you have a percentage Kroger and Albertsons  
2 customers over the past three years who are exclusive  
3 customers?

4 A I do not.

5 Q And can Kroger use any customer data that they keep in  
6 connection with their loyalty programs?

7 A They can only use our data during the TSA services for  
8 the purposes of providing those services.

9 Q And do you recall during your deposition testifying in  
10 response to the question: "And Kroger can use any customer  
11 data they keep in connection with their loyalty programs; is  
12 that right?"

13 And you answered, "Correct."

14 A Yes. Again, I was thinking of the TSA period.

15 Q Will the customers who shopped at Kroger and Albertsons  
16 who weren't exclusive customers, do they remain enrolled in  
17 loyalty programs at Kroger and Albertsons after the  
18 divestiture?

19 A After the -- if you mean after closing, during the TSA  
20 services, they will remain enrolled in the loyalty programs.

21 Q What do you think happens to people who are currently  
22 enrolled in Kroger and Albertsons' loyalty programs after  
23 TSA exit?

24 A Well, a TSA -- the exit of a TSA for loyalty, when C&S  
25 introduces its own loyalty program, customers for our stores

A. Florenz - D

1 will have to re-enroll.

2 Q What about customers that shopped at retained stores  
3 and C&S stores? Are they going to be kicked off the Kroger/  
4 Albertsons loyalty programs?

5 A I would assume if they are shopping at both stores,  
6 they can be in both programs.

7 Q So Kroger -- does Kroger have to delete their data  
8 because some of their shopping was with a store that was  
9 transferred to C&S?

10 A Kroger needs to delete the data as it relates to  
11 exclusive or nonexclusive customer history in the stores  
12 that divest over to C&S.

13 Q When you say "history," are you referring to the period  
14 prior to the divestiture, or are you referring to their  
15 transactions that occur between divestiture close and the  
16 exit of the TSA?

17 A Exit back.

18 Q So every transaction -- I'm sorry. Do you believe that  
19 Kroger has to delete all the transaction data of anyone who  
20 has ever shopped at a divested stores from the date of TSA  
21 exit all the way into the past?

22 A All the way to the three-year marker from close.

23 Q Let's talk a little bit about re-bannering. How many  
24 stores will Kroger be re-bannering?

25 A I don't know that number.

## A. Florenz - D

1 Q I'm sorry. Very fair. How many stores will C&S be  
2 re-bannering that are included in the divestiture?

3 A I know that number. 286.

4 Q And in how many states are those stores?

5 A It is about 19 states.

6 Q Are you included in the District of Columbia as a  
7 state?

8 A I am, yes.

9 Q Do you know of any precedent in the grocery industry  
10 for re-bannering 286 stores across 18 states and the  
11 District of Columbia?

12 A I can't think of that. No.

13 Q Has C&S retained Bain in connection with the  
14 divestiture?

15 A We have.

16 Q For what purpose?

17 A They are -- they have two purposes. One, they helped  
18 us with commercial diligence to assess the banners and do  
19 customer survey work, and they are also helping us with the  
20 integration.

21 Q Has Bain advised you about re-bannering?

22 A They have.

23 Q Have they advised about any revenue risks connected  
24 with re-bannering?

25 A They have.



A. Florenz - D

1 Q And what is "revenue risk"?

2 A So revenue risk represents the idea that if a store  
3 changes names, a customer will reduce shopping purchases  
4 there.

5 Q So would revenue risk be the risk of revenue going  
6 down?

7 A Yes.

8 Q Did Bain advise you about introducing a new banner to a  
9 region?

10 A They did.

11 Q Did they give you any advice about the effect that  
12 might have on revenue risk?

13 A Yes.

14 Q What was that advice?

15 A So their advice was -- based on some customer survey  
16 work, they came up with a percentage loss in revenue by  
17 banner for specific banners as they change depending on the  
18 banner name. So they gave us some scenarios on how much  
19 revenue would be lost.

20 Q And did Bain distinguish between general re-bannering  
21 revenue risk and risk from introducing a banner that was  
22 unknown in a region?

23 A No. What they did, they said if a Safeway is  
24 re-bannered this would be the percentage potentially lost on  
25 a revenue side.

A. Florenz - D

1 Q Do you recall testifying at your deposition in response  
2 to the question, "So Bain advised you that introducing new  
3 banners to regions creates revenue risks?"

4 And you said, "Yes."

5 You were asked, "And revenue risks in addition to  
6 the base risk associated with any re-bannering?"

7 And you said, "Yes"?

8 A I can't remember that. Sorry.

9 Q Do you have any reason to doubt that you testified  
10 that? Would you like to look at your deposition testimony?

11 A No. I believe you.

12 Q Did you -- strike that. Did you also hire a firm  
13 called Consolidated Affiliates in connection with the  
14 divestiture?

15 A Yes, we did.

16 Q And what was their role?

17 A They are real estate consultants, so they help assess  
18 leases, value of owned property, real estate matters.

19 Q Did you ask them whether it would be riskier to change  
20 a store's banner or its IT system?

21 A Yes. I asked one of the partners in a casual chat what  
22 was his opinion would be more risky.

23 Q And what was his opinion?

24 A Slipping my mind at the moment.

25 Q Did he tell you the changing the banner was riskier

A. Florenz - D

1 than changing the IT system?

2 A If that's what I said, that's what I said.

3 Q Well, I want your testimony. We can go to your  
4 deposition if that would assist.

5 A Sure. Let's do that.

6 Q If you look in the binder, it should be the  
7 second-to-last tab. It should be PX4072. I think we can  
8 bring it up on the screen as well. That's at page 239, line  
9 2.

10 A Yes, I see that.

11 Q Does reading that portion of your deposition refresh  
12 your recollection about what Consolidated -- a partner at  
13 Consolidated Affiliates told you?

14 A Yes. He said, "Changing banner."

15 Q Specifically that changing banner was riskier? Is that  
16 what he said? I'm scrolling down.

17 THE COURT: Can you give the page numbers and line  
18 numbers again.

19 MS. HALL: Page 239, and I think it starts at 2.  
20 Then it goes through line 21 on that page. Sorry, not 12.

21 THE WITNESS: Yes, I see that.

22 BY MS. HALL:

23 Q And does that refresh your recollection on which she  
24 said was riskier? Re-bannering or changing the IT system?

25 A Yes. I would note that this was a quick text. We were

A. Florenz - D

1 just surveying -- I was just surveying a couple of folks.

2 Q What banners is C&S acquiring from Kroger in the  
3 divestiture?

4 A We will receive Mariano's and QFC from Kroger.

5 Q And is C&S acquiring any QFC stores?

6 A We are.

7 Q Where are the QFC stores that Kroger owns currently  
8 located?

9 A In Washington state and Oregon.

10 Q And I believe you mentioned that you're also acquiring  
11 the Mariano's banner from Kroger?

12 A Yes, I am -- yes, we are.

13 Q Where are the Mariano's stores located?

14 A They are in Illinois.

15 Q Were they included in the original divestiture  
16 agreement that was executed in September 2023?

17 A Yes, they were.

18 MS. HALL: I would like to introduce a document  
19 that has been premarked as PX3699. There is a small  
20 redaction on the face. It is just to remove people's phone  
21 numbers.

22 BY MS. HALL:

23 Q Do you recognize this document?

24 A I do.

25 Q And what is it?

## A. Florenz - D

1 A It is a chat with Jonathan Granger.

2 Q Who is Jonathan Granger?

3 A He is one of my employees in corporate development.

4 MS. HALL: Your Honor, we would move to admit  
5 PX3699 into evidence.

6 MR. OBARO: No objection.

7 THE COURT: It will be received.

8 BY MS. HALL:

9 Q Turning to the next page. Mr. Granger messaged you:  
10 "Have you all looked into the market perception of QFC?  
11 Everyone on those forums says their pricing is terrible and  
12 they have a bad reputation because of it."

13 Do you see that?

14 A I do.

15 Q Then you reply "yes"?

16 A I did.

17 Q Did that mean you had looked into the market perception  
18 of QFC?

19 A Yes.

20 Q And you went on to say -- did you go on to say, "Kroger  
21 gave us their worst chains"?

22 A "Including Ralphs from a perception standpoint."

23 Q Is that "yes" -- did you say, "Kroger gave us their  
24 worst chains in this document"?

25 A I said that.

## A. Florenz - D

1 Q At the time did the divestiture package include QFC  
2 stores?

3 A It did.

4 Q And did it include Mariano's stores?

5 A It did.

6 Q We can take that document down. Did you get advice  
7 from Consolidated Affiliates about the QFC banner?

8 A I can't remember.

9 Q Did they advise you that you shouldn't acquire the QFC  
10 banner?

11 A I can't remember.

12 Q If you would turn to your deposition, PX4072, at page  
13 220, lines 10 to 21.

14 A Could you give that reference again.

15 Q Page 220, lines 10 to 21. It will come up on the  
16 screen if that's easier.

17 MR. OBARO: Objection, Your Honor. This is  
18 improper impeachment. I think in the answer she said he she  
19 can't remember.

20 MS. HALL: I wasn't attempting to impeach. I was  
21 attempting to refresh. I apologize if that was  
22 misunderstood.

23 THE COURT: Overruled.

24 BY MS. HALL:

25 Q Ms. Florenz, does this portion of your deposition

## A. Florenz - D

1 refresh your recollection about what Consolidated Affiliates  
2 advised with respect to the QFC banner?

3 A Yes. This refreshes it.

4 Q What did they advise?

5 A They said they -- that we need to assess the QFC brand.

6 Q Did they also advise against acquiring QFC, Mariano's,  
7 and Harris Teeter stores?

8 A That looks like what my deposition said at the time.  
9 Remember, these are real estate consultants. They are  
10 coming from a particular perspective.

11 Q Was their perspective specifically the value of the  
12 stores in question?

13 A I don't know what they were using in their calculations  
14 to say that.

15 Q Are QFC, Mariano's, and Harris Teeter stores included  
16 in the final divestiture package?

17 A They are.

18 Q Do you recall whether part of Consolidated Affiliates'  
19 concern was about performance trends about those stores?

20 A They had a chart about performance trends in those  
21 stores. I don't know if that had anything to do with a  
22 specific banner as much as store performance.

23 Q And has C&S also retained the Bastion firm in  
24 connection with the divestiture?

25 A We did.

A. Florenz - D

1 Q And Bastion advised on the strength of the QFC brand?

2 A They did.

3 Q What was their description of the strength of the QFC  
4 brand?

5 A Can I see their document specifically?

6 Q The Bastion document is under seal, it might be easier  
7 to go to your deposition again at page 243, line 20 to 244,  
8 line 2.

9 Does that refresh your recollection of what  
10 Bastion advised about the strength of the QFC brand?

11 A It does.

12 Q And what did they advise?

13 A They advised: "Focus separate on strengthening the QFC  
14 brand will be crucial, especially if we want to expand the  
15 geography of the brand."

16 What I would say, since the time of all of the  
17 analytics, we have done a lot more work on that particular  
18 brand, and so the teams have continued to look at the QFC  
19 brand. We have had other advisors do customer focus groups.  
20 People have gotten very excited about it. It will be a  
21 major brand for us. It will appear digitally as well,  
22 because the comments that these advisors are making are  
23 places that our team feels we can surmount.

24 Q Did Bastion also advise C&S about the strength of the  
25 Albertsons banner in California and Wyoming?



## A. Florenz - D

1 A They did advise it in the four licensed states based on  
2 the old deal, yes.

3 Q And how did they describe the strength of the  
4 Albertsons banner in California and Wyoming?

5 A They said it varies by market.

6 Q And did they tell you that within the licensed states  
7 it is relatively weak?

8 A Yes. But they listed all four states -- and our deal  
9 has changed since then. We now have Safeway in Colorado and  
10 Arizona.

11 Q Is C&S still receiving a license to the Albertsons  
12 banner in California and Wyoming?

13 A It is. The five stores in Wyoming are already bannered  
14 Albertsons, so they wouldn't have to be re-bannered. And  
15 then, yes, California, we are still going to have that.

16 Q Was California one of the license states that Bastion  
17 was looking at at that time?

18 A It was one of the states.

19 Q What is market density in the context of re-bannering?

20 A I would say number of stores that are grouped together  
21 in a particular market.

22 Q And how is that relevant to selecting a banner to use  
23 in a particular market?

24 A That's relevant in terms of awareness to the  
25 population.

## A. Florenz - D

1 Q I would like to talk a little about C&S's acquisition  
2 of stores in connection with the Price Chopper merger. Were  
3 you involved at all in that acquisition?

4 A I was.

5 Q And when did that take place?

6 A I think we acquired them in '22.

7 Q Was that in the context of an FTC process?

8 A It was.

9 Q And do you recall C&S making representations to the FTC  
10 about involving two existing stores in Pennsylvania in the  
11 same division as the Tops stores?

12 A I don't recall that specifically.

13 Q Do you recall at that time C&S owned two stores in  
14 Pennsylvania acquired from Nell's Shurfine?

15 A Yes. We had two locations there, yeah.

16 Q Did C&S tell the FTC that the Nell's Shurfine stores  
17 would be operated together with the Tops stores?

18 A We did.

19 Q Did C&S subsequently sell the store in Spry,  
20 Pennsylvania, to Weis Markets?

21 A We did.

22 Q Was that in connection with the wholesale supply  
23 contract?

24 A I believe so.

25 Q Did C&S ever tell the FTC that it had sold that store?

## A. Florenz - D

1 A I don't know.

2 Q Did C&S have a financial evaluation of -- strike that.  
3 Did C&S ascribe a financial value to the Spry's store in  
4 connection with including it in the Weis contract?

5 A I don't know.

6 Q Did you tell then CEO Bob Palmer that you "threw it in  
7 to sweeten the pot and get term"?

8 A I don't know what you're referring to.

9 Q We can pull up -- would it refresh your recollection to  
10 look at an email between you and Bob Palmer?

11 A Sure.

12 Q If Mr. Dunkin could pull up PX3293. I don't believe we  
13 put this in the binder. This is just for refreshment.

14 If you can look at the top email there. Does that  
15 refresh your recollection about what you said to Mr. Palmer  
16 about the Spry store?

17 A Yes.

18 Q And did you tell Mr. Palmer that you threw it in to  
19 sweeten the pot and get term?

20 A Sure. But can I read the bottom of the email?

21 Q Sure.

22 Mr. Dunkin, can you pull up the rest of the email?

23 (Pause.)

24 A Yes, I see that.

25 Q When you use the phrase "get term," what does that

A. Florenz - D

1 mean?

2 A "Get term" means extend a supply agreement for a period  
3 of time.

4 Q Do you know whether Weis ever operated the store in  
5 Spry, Pennsylvania?

6 A I don't know that.

7 Q Do you know whether it is open or closed today?

8 A I believe it is closed now.

9 Q I would like to introduce what has been premarked as  
10 PX13034. And again, this has been redacted to remove a  
11 personal phone number.

12 Do you recognize this document?

13 A I think so.

14 Q It is a transcript of text messages between you and Dan  
15 Franceschelli on April 20th, 2021?

16 A Yes, I see that.

17 MS. HALL: Your Honor, we offer PX13034 into  
18 evidence.

19 MR. OBARO: No objection.

20 THE COURT: It will be received.

21 BY MS. HALL:

22 Q Turning to page 3 of PX13034, you write: "Right now I  
23 think we should buy all the Tops stores. LOL."

24 Do you see that?

25 A I do.

A. Florenz - D

1 Q Then about five messages down you write: "I figure if  
2 we buy them, then they are happy, and you could spend a year  
3 or so finding other buyers."

4 Who is the "they" in "they are happy"?

5 A I don't know. I don't remember.

6 Q Would it have made Tops happy for you to acquire the  
7 stores so it could proceed with the Price Chopper  
8 acquisition?

9 A It would have benefited them.

10 Q Was Tops a customer of C&S at that time?

11 A Yes, it was.

12 Q And Mr. Franceschelli responds: "Uhh, there are no  
13 buyers. They are dogs. And it's a run-out-the-clock  
14 situation."

15 Is it your understanding that he is speaking about  
16 the Tops stores?

17 A Yes. I don't know how he made that assessment though.  
18 I don't know what went into his judgment.

19 Q And then you respond, "Haha." Then turning to the next  
20 page, you say, "You are counting out people like Big Jimmy."

21 Do you see that?

22 A I am.

23 Q Who is Big Jimmy?

24 A He was an independent owner who wanted to grow.

25 Q Had he previously purchased grocery stores from C&S?

## A. Florenz - D

1 A He bought a meat market.

2 Q And then Mr. Franceschelli responds, "But don't say  
3 that; otherwise, the FTC don't approve it."

4 Do you have an understanding of what  
5 Mr. Franceschelli meant when he wrote that?

6 A I'm not sure what he was referring to.

7 Q Did you think at the time that the FTC wouldn't approve  
8 the acquisition if it told the FTC that it was going to sell  
9 all the stores?

10 A I didn't think that.

11 Q Mr. Franceschelli continues: "Beau can run them since  
12 he thinks we can run retail."

13 Do you see that?

14 A I do.

15 Q Who is Beau?

16 A Beau is someone in Mark McGowan's organization.

17 Q Did Mr. Franceschelli doubt C&S's ability to run retail  
18 stores?

19 A That was his opinion.

20 Q And turning to the next page, the fifth message down,  
21 Mr. Franceschelli wrote: "Yep. We would lose money on the  
22 retail, take on the least liability, and any pension/union  
23 issues, but make out on the wholesale side."

24 Do you see that?

25 A I do. But remember, he's a salesperson, and I don't

A. Florenz - D

1 think he did any financial analysis, because this email goes  
2 on for me to ask, let's look at the numbers.

3 Q What did you understand Mr. Franceschelli to mean by  
4 "make out on the wholesale side"?

5 A I'm interpreting that as part of being able to benefit  
6 on the wholesale supply side.

7 Q To date, has supplying the acquired Tops stores been  
8 profitable for C&S on the wholesale side?

9 A Yes, it has.

10 Q Has it been profitable on the retail side?

11 A It has not.

12 Q Do you know what Mr. Franceschelli meant in this  
13 message about "pension/union" issues?

14 A He was probably talking about underfunded pensions,  
15 since that's a liability that we look at when we look at  
16 financial analytics.

17 Q Was there a deal model prepared for the Tops  
18 divestiture?

19 A There was.

20 Q Was any deal model or business plan presented to the  
21 FTC?

22 A Yes, it was.

23 Q Did you have a role in connection with the preparation  
24 of that deal model or business plan?

25 A I did.

A. Florenz - D

1 Q What base year did that deal model use for its  
2 projections?

3 A We used 2019 as our base for sales at the time.

4 Q Did you consider the assumptions in that deal model  
5 conservative?

6 A We did.

7 Q You can take this document down, Mr. Dunkin. Thank  
8 you.

9 Did that deal model forecast a decline in sales as  
10 against the prior year?

11 A It did forecast a decline against 2020, which was the  
12 elevated year due to COVID.

13 Q Has C&S underperformed that deal model?

14 A We have.

15 Q Has its performance returned to 2019 levels?

16 A It has not.

17 Q Okay. I would like it turn to C&S's deal model for the  
18 divestiture in this case?

19 A Sure.

20 Q Does C&S have a primary deal model for this  
21 divestiture?

22 A Yeah. We use a conservative deal model.

23 Q Does that distinguish it from other versions of the  
24 deal model that C&S has prepared?

25 A Yes. It's distinguished from -- we had a strategic



## A. Florenz - D

1 initiatives case and then we had a financing model.

2 Q Prior to preparing the strategic initiatives case and  
3 the financing model, did you refer to your primary deal  
4 model as the "base model"?

5 A Yes. That's the base model.

6 Q What was the date of the final version of the deal  
7 model?

8 A End of April.

9 Q Of this year?

10 A Yes.

11 Q And who was involved in the preparation of the deal  
12 model?

13 A So the deal model is prepared by my team to develop the  
14 financial analytics and it then we also incorporate  
15 third-party assistance or advice in some of the numbers and  
16 get management by -- in different assumptions.

17 Q Were you involved in preparing the deal model?

18 A I was.

19 Q I would like to show you what has been previously  
20 marked as PX3602. This is only for the Court, the witness,  
21 and counsel due to confidentiality, and we will open it to  
22 the model tab, which it is opened to.

23 Do you recognize this as the April 30th, 2024,  
24 deal model you called "the conservative model"?

25 A Yes. This looks right.

## A. Florenz - D

1 MS. HALL: Your Honor, we move to admit PX3602.

2 MR. OBARO: No objection, Your Honor.

3 THE COURT: It will be received.

4 BY MS. HALL:

5 Q Does this deal model outline what C&S expects will  
6 happen post-close on a EBITDA sales and cash flow basis?

7 A It does.

8 Q Did C&S have store-by-store EBITDA data from Kroger and  
9 Albertsons in developing this model?

10 A We did.

11 Q And what is EBITDA?

12 A You could call it a proxy for profit.

13 Q Does the deal model project EBITDA on a store-by-store  
14 basis for the divested stores?

15 A No. We use the individual store EBITDA to roll up to  
16 our total.

17 Q So does the deal model project which stores may have  
18 negative EBITDA in the future?

19 A It does not look at it on a store-by-store basis.

20 Q And what was the starting point for the deal model?  
21 What data?

22 A We took fiscal '23 data.

23 Q And if you look in the upper left-hand corner, there is  
24 a figure next to "total retail sales" under the heading  
25 "P12-23-LTM." Is that the prior year data that you're

A. Florenz - D

1 referring to?

2 A That's right.

3 Q And does that total include pharmacy and fuel sales of  
4 the divested stores?

5 A It does.

6 Q Does C&S's deal model calculate a separate growth rate  
7 for pharmacy sales?

8 A It uses the same growth rate as the overall grocery.

9 Q And what does C&S's deal model predict for fuel sales  
10 going forward?

11 A Flat.

12 Q Turning to the "assumptions" tab, in the upper  
13 left-hand corner next to year one, it says "negative  
14 1.5 percent."

15 Do you see that?

16 A I do.

17 Q What does that indicate?

18 A That was our initial step-down from that fiscal '23  
19 figure. We wanted to realign the sales to be lower at the  
20 point of close.

21 Q Did the deal model for the prior divestiture package  
22 use a different percentage for year one decline?

23 A It did.

24 Q What was that?

25 A It used 3 percent.

## A. Florenz - D

1 Q And turning back to the "assumptions" tab, there is a  
2 3 percent here. It says, "Long-term." What does that  
3 reflect?

4 A That's future growth -- long-term growth.

5 Q And long-term growth for whom?

6 A For these stores.

7 Q Does C&S also have a view what the long-term growth  
8 rate is for the grocery market as a whole?

9 A Yes. It's that 3 percent.

10 Q And is that 3 percent growth rate made up of particular  
11 components?

12 A Inflation and population growth.

13 Q And what percentage do you attribute to inflation?

14 A 2 percent.

15 Q And does that mean that 1 percent of that is population  
16 growth?

17 A Yes.

18 Q Turning to the "inputs" tab, does the deal model tab  
19 calculate growth rates separately for eight different  
20 regions?

21 A It does.

22 Q And it calculates a different growth rate for each  
23 region for each year; is that correct?

24 A Yes.

25 Q Within a region does that growth rate apply to all the

## A. Florenz - D

1 stores in that region?

2 A It does.

3 Q So if one store is growing really fast, one store not  
4 performing, but in the same region, would they have the same  
5 growth rate?

6 A Yes. That would mean the lowest profitability stores  
7 that would grow in its loss, and the highest profitability  
8 stores would grow in that same rate.

9 Q And looking at the year two regional growth rates,  
10 these are all below 3 percent, right?

11 A Yes.

12 Q And why is that?

13 A We made a management assumption on that.

14 Q And did you make an assumption about how those stores  
15 would compare to the market growth rate?

16 A We did. And we subtracted competitive opening  
17 detriments on that rate.

18 Q Where is the -- strike that. Then beginning in year  
19 three, does the model start deducting a re-bannering  
20 detriment?

21 A Yes.

22 Q What is the -- I believe it's called expected re-banner  
23 sales detriment. What is that?

24 A So for each region where we had to re-banner a store,  
25 we applied a detriment per store that was being changed and

A. Florenz - D

1 it rolled up to that reduction in sales that we should show  
2 in years three and four.

3 Q And then -- I would like to just put up a demonstrative  
4 we prepared -- also, again, for the Court, the witness, and  
5 counsel -- PDX4, which is a screen capture of these  
6 re-bannering rates. What was the origin of the rates shown  
7 in the column to the left?

8 A So that was tied to the Bain survey assumptions for  
9 re-bannering those stores.

10 Q And then C&S modify those survey assumptions in any way  
11 in including them in its deal model?

12 A Yes. We reduced them by a third after we negotiated  
13 the new transaction, because we had a more favorable way to  
14 re-banner. There is a concept in the new deal that we can  
15 slowly re-banner using a variation on our banner names, and  
16 so we don't have a cold cutoff. So we felt we needed to  
17 take the full re-bannering detriment.

18 Q Is that detriment also divided over more than one year  
19 of the deal model?

20 A It is.

21 Q And are those years three and four of the deal model?

22 A That's right.

23 Q Why years three and four?

24 A So we are assuming that we are going to start the  
25 re-bannering program, and they have to be re-bannered by the

## A. Florenz - D

1 end of year three. So if you start in year two, you are  
2 going to see year two here, 25 to 36 months, and then year  
3 three afterwards having a detriment.

4 Q Are there some regions where the deal model doesn't  
5 have a re-banner detriment?

6 A That's right.

7 Q Is C&S re-bannering any stores in those regions?

8 A We are re-bannering, yes.

9 Q And turning back to --

10 A Like two in Colorado and 25 in Arizona.

11 Q Turning back to PX3062 at the "inputs" tab, looking at  
12 the year three in column D, are the regions that don't have  
13 a re-banner detriment the only regions you forecast to grow  
14 at the market rate?

15 A Which year are you talking about?

16 Q Year three.

17 I think Mr. Dunkin has highlighted the numbers on  
18 the screen.

19 A Yes. That's correct.

20 Q And some of those growth rates are less than 2 percent?

21 A That's right.

22 Q So if you're projecting 2 percent inflation and the  
23 sales revenue is growing less than 2 percent, what does that  
24 mean about what's happening to the sales volumes?

25 A So the volumes would be growing less than market.

A. Florenz - D

1 Q Next, I would like to show you another demonstrative  
2 just to try to get to the deal model a little easier to  
3 handle. It is PDX7 for the Court, the witness, and counsel.  
4 This just shows the base year revenues and then the total  
5 revenues for each of the five years of the deal model.

6 Do you see that?

7 A I do.

8 Q Does PDX7 correctly show that the annual revenues grow  
9 at an average of 1 percent per year over the first five  
10 years?

11 A Yeah. This looks right.

12 Q Thank you. We can put that document down.

13 What is 4-wall retail EBITDA?

14 A So that's the profit in the individual store before you  
15 apply corporate overhead against it.

16 Q I would like to show you another demonstrative, PDX8 --  
17 again, for the Court, the witness, and counsel -- which just  
18 graphs the 4-wall retail EBITDA figure for the base year and  
19 each of the eleven years of the deal model.

20 Does C&S project 4-wall retail EBITDA to decline  
21 over the first three years?

22 A We do.

23 Q Why is that?

24 A So we were very careful in this deal model to be very  
25 conservative in how the stores would perform. And it was



## A. Florenz - D

1 part of the lessons learned from Grand Union. And we wanted  
2 to make certain that we took a lot of care in how we laid  
3 out what we could expect for these stores, because this was  
4 the model by which we chose to invest behind. And so we  
5 didn't want to invest behind something that was going to be  
6 overly optimistic, so we tried to put in a very modest  
7 growth rate. We put in price investment here. We put in  
8 extra costing based on our ownership, because we really  
9 wanted to be conservative.

10 Q But you testified earlier that this deal model is what  
11 you actually happen on an EBITDA revenue and cash-flow  
12 basis, correct?

13 MR. OBARO: Objection. Leading.

14 MS. HALL: I'm just trying to bring her back to  
15 her prior testimony.

16 THE COURT: I'm going to allow it.

17 THE WITNESS: Does that mean I can answer it?

18 THE COURT: It does mean that you can answer it.

19 THE WITNESS: Thank you, Your Honor.

20 So we talked about multiple cases. We had a case  
21 by which we wanted to decide whether or not we were going to  
22 invest behind this deal, and that was the conservative case.  
23 That, to me -- call it the worst case. It is the case that  
24 we wanted to be very, very cautious about, because it's such  
25 a large transaction.

A. Florenz - D

1           Again, in other cases, like our strategic  
2 initiatives, which would be the model that we challenge our  
3 leaders towards in order to reach higher than what we're  
4 estimating here. It is so important to be prudent on this  
5 because this is such a big deal impacting our business and  
6 customers, and we did not want to go out with something that  
7 was overly aggressive.

8 BY MS. HALL:

9 Q       On what basis does the strategic initiatives deal  
10 model project more favorable revenues?

11 A       We put a profit target. There is no specific  
12 outline/plan of how to get to that profit target. It could  
13 be we do better in sales in the stores; therefore, you have  
14 more profit. It could be you went out and got more income  
15 from advertising. It is just a way to push a business to do  
16 better than what we outlined initially here.

17 Q       So the model -- does PDX8 accurately depict the deal  
18 model projection that 4-wall retail EBITDA will not reach  
19 base year levels until year eleven?

20 A       That's right.

21 Q       And I would like to talk a bit about the stores C&S is  
22 going to acquire, so we can put that document down.

23           Are you familiar with defendants' expert,  
24 Mr. Galante, and his report?

25 A       I am certain who that is.

A. Florenz - D

1 Q I'll take that as a "no."

2 And your real estate advisor we discussed earlier,  
3 they also have done some analysis of individual stores; is  
4 that right?

5 A That's right.

6 Q Have they evaluated stores at one time for a potential  
7 sale-leaseback of the store real estate?

8 A They did make that analysis.

9 Q And did they categorize some of the stores as  
10 poor-performing?

11 A They did.

12 Q Do you recall about how many were poor-performing?

13 A I don't know.

14 Q Was it about 30?

15 A I don't remember that chart.

16 Q Do you recall the value they ascribed to the store real  
17 estate included in divestiture?

18 A In the 579 is what you're asking?

19 Q Yes.

20 A So the 579, they estimated a value of 1.9 billion.

21 Q Is that over two-thirds of the total divestiture price?

22 A If that's the math, sure.

23 Q And for the divestiture stores where C&S will own the  
24 real estate, can C&S sell the real estate the day after the  
25 divestiture closes?

## A. Florenz - D

1 A We have gotten our financing right now for the deal. I  
2 don't know what the lenders would allow.

3 Q Okay. But does C&S have any contractual obligation to  
4 anyone other than its lenders with respect to whether it can  
5 sell the real estate?

6 A There is nothing in the APA, if that's what you're  
7 asking.

8 Q Could C&S sell the stores to independents to build  
9 upscale for its distribution business?

10 A There is nothing contractual preventing it.

11 Q In the past has C&S sold stores to obtain wholesale  
12 business?

13 A Yes. In the past, yeah.

14 Q Is Sandeep Heda one of the Bain consultants you have  
15 worked with?

16 A Yes.

17 Q I would like to introduce a document that has been  
18 premarked PX3348.

19 Again, we have redacted phone numbers from this.  
20 Do you recognize this document?

21 A I do.

22 Q Is this a transcript of text messages between you and  
23 Mr. Heda?

24 A Yes.

25 MS. HALL: Your Honor, we move to admit PX3348

A. Florenz - D

1 into evidence.

2 MR. OBARO: No objection.

3 THE COURT: It will be received.

4 BY MS. HALL:

5 Q Turning to page 2 of this document. Mr. Heda writes:  
6 "And I think what we could do is hit on some considerations  
7 for post acq. on how to improve the package that you get;  
8 e.g., future acquisitions you can rebrand, selling to  
9 independents to build scale for the DC, potential divest to  
10 another strategic if they exist, et cetera."

11 Do you see that?

12 A I do.

13 Q What do you understand Mr. Heda to mean, "selling to  
14 independents to build scale for the DC"?

15 A He was talking about the idea of selling stores to  
16 independents.

17 Q Would that build scale for C&S's wholesale business?

18 A If we own the stores, it's the same amount of scale.

19 Q When you say it is the same amount of scale, does that  
20 mean C&S will charge the same wholesale prices to the stores  
21 it owns and its independent customers?

22 A You know, what I was talking about was building scale.  
23 I was thinking just of case volumes.

24 Q But would selling the stores to independents increase  
25 wholesale revenues potentially?

## A. Florenz - D

1 A I'm not certain I understand that.

2 Q Okay. Was Mr. Heda laying out different options C&S  
3 would have for the assets in the divestiture?

4 A Yes. He was laying them out about a year ago.

5 Q Going to the next message, you respond: "Yes. Just be  
6 careful with FTC. We want to say we can run them."

7 Do you see that?

8 A I do.

9 Q At that time did you understand that the divestiture  
10 would incur in the context of an FTC process?

11 A I did.

12 Q Thanks. That's all for that document.

13 Does the deal model project benefits to C&S's  
14 wholesale business from the divestiture?

15 A Yes. There is benefits on the wholesale side from the  
16 divestiture.

17 Q Does C&S -- does the deal model calculate a wholesale  
18 EBITDA derived from the divestiture stores?

19 A It does.

20 Q And does that model also include a wholesale gross  
21 profit?

22 A It does.

23 Q And what does that represent?

24 A That represents money that we earn on the wholesale  
25 side from vendors. It's a synergy in the deal.

1 Q Is that a decreased cost of acquiring those products  
2 from the vendors because you're acquiring them for the  
3 divested stores?

4 A It's income that we receive from vendors, so that would  
5 reduce your cost of goods.

6 Q Do you recall being asked at your deposition,  
7 "Wholesale gross profit represents the wholesale profits  
8 that C&S will derive from the divested stores"? Is that  
9 right?

10 A Yes.

11 Q And you said "correct."

12 A Yes.

13 MS. HALL: Your Honor, it is five o'clock, and I'm  
14 not done. And I do have more than would be fair to subject  
15 the entire courtroom to. So I would suggest that we --

16 THE COURT: Oh, we're stopping at 5:00. I said we  
17 have a hard stop every day at 5:00 and that's happening  
18 because we have so many people in this courtroom that have  
19 to get out of the courthouse before it closes for the  
20 evening. And no one wants to spend the night. So Court is  
21 adjourned until 9:00 a.m. tomorrow morning.

22 MR. WOLF: Your Honor, we are trying to figure out  
23 the schedule. How much time roughly?

24 MS. HALL: Hopefully 15 to 20.

25 MR. WOLF: We have one more witness tomorrow who

1 is going to be a significant witness.

2 THE COURT: Okay.

3 MR. WOLF: I'm hoping maybe an hour and an hour  
4 fifteen. We should be able to get this done. Your Honor,  
5 if we need an extra 15 minutes at lunchtime --

6 THE COURT: I will give it to you. It is just  
7 that we have to end at 5:00. Remember, we had a truncated  
8 lunch on Monday and maybe other days in the week. You had a  
9 long one today, but definitely otherwise we have  
10 flexibility.

11 MR. WOLF: Thank you, Your Honor. We will get  
12 done at lunchtime tomorrow. We just wanted some  
13 flexibility.

14 THE COURT: All right.

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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 29, 2024  
DATE

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