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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 30, 2024
ALBERTSONS COMPANIES, INC.,)	
)	
Defendants.)	Portland, Oregon
)	

PRELIMINARY INJUNCTION HEARING

DAY 5

BEFORE THE HONORABLE ADRIENNE NELSON

UNITED STATES DISTRICT COURT JUDGE

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TRANSCRIPT OF PROCEEDINGS

(August 30, 2024)

(In open court:)

THE COURT: Please be seated. Good morning.

We're in day five of the hearing involving case number 3:24-cv-00347, the Federal Trade Commission, et al. v. the Kroger Company and Albertsons Company, Incorporated.

The plan is that we will have testimony until it ends, even if it goes into the noon hour, as indicated yesterday.

We will have a morning break.

If counsel will state new counsel appearances, because the current appearances remain. We'll continue -- we'll begin.

MS. MAINIGI: Your Honor, for Albertsons, Yosef Weitzman from Dechert, and Farrah Bara from Williams & Connolly.

THE COURT: Good morning. All right.

MR. PERRY: Your Honor, Mark Perry for Kroger. One housekeeping matter, for the Court's indulgence.

THE COURT: All right.

MR. PERRY: Yesterday, during Mr. McGowan's testimony, Mr. Obara referred to DX908, which was the Local 555 press release, as already being in evidence. It is in evidence, but under a different name: DX2846. It was introduced during Mr. Clay's testimony by Ms. Barrington,

1 and I just wanted to clarify that. The two documents are
2 materially identical. They have different dates. One is
3 dated February 15th, and one is dated February 19th.

4 THE COURT: All right. So that's corrected.

5 MR. PERRY: And I've discussed that with the
6 Government. I believe there's no objection.

7 MS. HALL: No objection, Your Honor.

8 THE COURT: All right.

9 MR. PERRY: Thank you.

10 THE COURT: So let's bring the witness back.
11 Swear her in again, because there's been a break in the
12 proceedings.

13

14

ALONA FLORENZ,

15 called as a witness in behalf of the Plaintiff, being first
16 duly sworn, is examined and testified as follows:

17

18 MS. HALL: Your Honor, may we approach the witness
19 with a binder?

20 THE COURT: Yes.

21 MS. HALL: I believe the Court still has the
22 binders from yesterday, but I think we retrieved the one
23 from the witness.

24 THE COURT: I understand. Go ahead, yes.

25 Just so you all know, you don't have to ask for

Florenz - D

1 permission. If you just want to speed things up and start
2 passing those out, it's perfectly fine.

3 MS. HALL: Thank you, Your Honor.

4

5

DIRECT EXAMINATION

6

(Continuing)

7

BY MS. HALL:

8

Q. Good morning, Ms. Florenz.

9

A. Good morning.

10

Q. Do you recall yesterday that we discussed the stores
11 C&S acquired in the Tops-Price Chopper merger?

12

A. Yes.

13

Q. Does C&S still own those stores?

14

A. The 12 stores? Yes.

15

Q. Was C&S's acquisition of those stores subject to an FTC
16 consent order?

17

A. It was.

18

Q. Could C&S have sold those stores in the past three
19 years without FTC approval?

20

A. No, it could not.

21

Q. Let's talk about costs in the deal model. I would like
22 to show the Court, the witness, and counsel a demonstrative
23 listing some of the costs in the deal model, which has been
24 marked as PDX3.

25

It should come up on the screen for you.

Florenz - D

1 A. Okay.

2 Q. I don't know. For me, it's easier. Do you have that
3 there?

4 A. I can look at the screen, but there's nothing up.

5 THE COURT: There's nothing on there for us.

6 MS. HALL: Oh, it hasn't come up on your screens?

7 THE COURT: No.

8 MS. MAINIGI: It's come up on yours -- or on ours,
9 Your Honor.

10 THE COURT: It's not up, and I don't see it in the
11 binder either.

12 MS. HALL: Okay. I think -- it looks like
13 Ms. Florenz has --

14 THE COURT: No, we have -- did you say -- what I
15 have in the binder is PDX4, -8, and -7.

16 MS. HALL: I believe PDX3 -- is it now up on your
17 screen?

18 THE COURT: It is not.

19 MS. HALL: Let me hand up a copy.

20 THE COURT: We're all human beings. Thank you.

21 BY MS. HALL: (Continuing):

22 Q. Do you have that now, Ms. Florenz?

23 A. I do.

24 Q. Do you recognize these as some of the costs that are
25 included in C&S's primary deal model that we looked at

Florenz - D

1 yesterday?

2 A. Yes. Yes, I do. But this isn't a C&S --

3 Q. No. You're correct. The FTC has prepared this just to
4 put some of the costs all in one place, as compared to the
5 deal model.

6 A. Okay.

7 Q. Looking in the first section, labeled OpEx, what does
8 OpEx mean?

9 A. Those are expenses that hit your P&L.

10 Q. The first one there, "Add Back Rent for Construction,"
11 what is that -- what does that cost reflect?

12 MR. OBARO: Objection, Your Honor. Lacks
13 foundation with respect to this document. This document was
14 prepared by the FTC, not the witness, and if the witness --
15 if the FTC wants the witness to testify about the deal
16 model, I think they should show her the deal model, not a
17 document that was prepared by the FTC.

18 MS. HALL: Mr. Obaro, this demonstrative was sent
19 over in advance, and we did not receive an objection to the
20 use of this demonstrative with this witness.

21 MR. OBARO: I'm objecting to the way that it's
22 used. I think if she wants -- if you want to use the deal
23 model with her to show her where the information is coming
24 from, I'm okay with that.

25 MS. HALL: I can ask a different question,

Florenz - D

1 Your Honor.

2 THE COURT: Fair enough.

3 BY MS. HALL: (Continuing):

4 Q. Ms. Florenz, is there an item called "add back rent for
5 construction" in the deal model?

6 A. There is.

7 Q. What does that item reflect?

8 A. So we'll need to build warehouses in this transaction.
9 And the current way that we have it -- we're assuming we'll
10 have to pay rent for those facilities.

11 Q. What warehouses does C&S need to build in connection
12 with this transaction?

13 A. We'll be building warehouses in Alaska, Southern
14 California, and the Illinois area.

15 Q. Is there a call -- an OpEx cost in the deal model
16 called "deleverage from rebanner sales decline"?

17 A. Yes.

18 Q. And what does that cost represent?

19 A. I would describe it as more expense as sales come out
20 because you have a little bit less volume in the -- in the
21 network.

22 Q. Is there a cost in the deal model called "wholesale
23 cost to serve detriment"?

24 A. Yes, there is.

25 Q. What does the wholesale cost to serve detriment

Florenz - D

1 represent?

2 A. It represents -- as we are moving stores into the
3 network, we'll have some stores it will cost more to service
4 because the transportation costs will be a little farther
5 away or the warehouse might be a little bit more expensive.

6 Q. Are the increased transportation costs because the
7 acquired distribution centers aren't the ones currently
8 serving some of the acquired stores?

9 A. Yes. Some of the stores are serviced by different
10 warehouses, and we have to work on realigning and putting
11 the stores into the acquired distribution centers.

12 Q. Is the wholesale cost to serve detriment in C&S's deal
13 model an increased cost relative to the divestiture store's
14 current supply chain cost?

15 A. It's an increase in costs, yes.

16 Q. By including those costs in OpEx, does that mean C&S
17 includes the supply chain costs in the retail P&L?

18 A. It does, yeah.

19 Q. Is there a cost in the deal model called "PL margin
20 investment"?

21 A. That's right.

22 Q. What is PL margin investment?

23 A. So we'll need to transition -- C&S will need to
24 transition to its own private label, and we are building in
25 added expense on the cost-of-goods side for having that new

Florenz - D

1 private label over time.

2 Q. Does that mean that C&S will have lower margins on its
3 private label products than Kroger and Albertsons do today?

4 A. I don't know about the Kroger/Albertsons margins, but
5 it does mean we are anticipating extra costs on those
6 products that we will be absorbing in our profit.

7 Q. The next category shown on PDX3 is "one-time." Is
8 there a set of one-time expenses in the C&S deal model?

9 A. Yes, there is.

10 Q. And what are one-time expenses in the context of the
11 C&S deal model?

12 A. I would describe them as costs that we're incurring in
13 order to engage in this transaction. They won't be ongoing,
14 but we need to spend that money in order to complete the
15 transaction.

16 Q. Does the deal model include costs labeled "retail
17 transition expenses"?

18 A. It does.

19 Q. What costs are included in that category?

20 A. So the bulk of that expense is the monies needed to
21 secure the technology stack. So you need to pay license
22 fees to the vendors. You also need to have third parties do
23 the work to put it together, and then the balance of the
24 cost is general integration expense need during the first
25 couple of years.

Florenz - D

1 Q. Does the retail transition expense also include the
2 cost of building ecommerce capabilities?

3 A. It does.

4 Q. I'm sorry. I skipped over one of the OpEx items, it
5 looks like.

6 There's -- is there an OpEx cost in the C&S deal model
7 labeled "TSA"?

8 A. There is cost for TSA.

9 Q. What did those costs represent?

10 A. So for the period of time that we're using services
11 from the seller, we'll be paying a per-store per-month fee,
12 depending on the service.

13 Q. Will C&S be paying those fees to Kroger?

14 A. Yes.

15 Q. Turning back to the one-time cost category, what -- is
16 there a cost labeled "private brands launch" in the C&S
17 model?

18 A. There is.

19 Q. What does that cost item represent?

20 A. That's the money spent to market and put together a new
21 private label program.

22 Q. Is there a category of cost in the C&S deal model
23 labeled "warehouse transition expenses"?

24 A. Yes.

25 Q. What are the warehouse transition expenses?

Florenz - D

1 A. That's cost for -- we talked about that network
2 realignment that needs to occur on an ongoing -- in order to
3 do that, we're going to have one-time expenses to sort of
4 refit the warehouses.

5 Q. In the context of the C&S deal model, what does "CapEx"
6 mean?

7 A. Capital expenditures are monies that don't hit the
8 profit but are expenses in the cash flow that most companies
9 have.

10 Q. Is there a CapEx cost in the C&S deal model labeled
11 "DC investment"?

12 A. There is.

13 Q. What does that refer to?

14 A. So that's the cost of -- we talked about we're going to
15 have to build warehouses, so we'll have investment behind,
16 you know, building those warehouses, including IT and
17 racking.

18 That number looks really high, though.

19 Q. Other than the number for DC investment, are the costs
20 shown on PDX3 consistent with the costs in the C&S deal
21 model?

22 A. I think so. I would have to tick and tie, but it looks
23 right.

24 Q. Do you have an understanding of generally what costs in
25 the C&S deal model are over the first three years?

Florenz - D

1 A. For these one-time expenses?

2 Q. For the OpEx, one-time, and CapEx expenses?

3 A. Yes.

4 Q. And what is that total?

5 A. Well, so the one-time expenses is about a billion
6 dollars.

7 Q. And do you have an understanding about the total of the
8 other categories of expenses?

9 A. For the ongoing, I'd have to tick and tie. I
10 apologize. I don't have that.

11 Q. That's perfectly fine.

12 Are the costs on PDX3, that we've discussed this
13 morning, incurred by the divestiture stores today?

14 A. No, they're not.

15 The only thing I would point out that's slightly
16 different is the TSA costs. So the TSA is a proxy for
17 corporate overhead, and so while we're building out our own
18 corporate overhead, we'll be paying TSA services; and so
19 corporate overhead will be added, and grocery retailers have
20 corporate overhead. So the four-wall doesn't have that, but
21 the business does.

22 MS. HALL: Okay. Thank you, Mr. Duncan. You can
23 take that exhibit down.

24 BY MS. HALL: (Continuing):

25 Q. Ms. Florenz, do you recall testifying yesterday that

Florenz - D

1 you were very careful in this deal model to be very
2 conservative in how the stores would perform?

3 A. Yes.

4 Q. In its deal model, has C&S modeled any impact on sales
5 from the loss of transition services?

6 A. We did not put an impact on sales, but we built in
7 costs.

8 Q. In its deal model, has C&S modeled any impact on sales
9 after customers can no longer use Kroger or Albertsons
10 loyalty cards at C&S?

11 A. No, we did not.

12 Q. In its deal model, has C&S modeled any impact on sales
13 after C&S customers are no longer able to use the current
14 Kroger and Albertsons ecommerce apps to order from C&S
15 stores?

16 A. No, we did not on sales.

17 Q. Has C&S modeled any impact on sales after C&S no longer
18 receives TSA support relating to store operations?

19 A. No, we did not.

20 Q. Has C&S modeled any impact on sales after C&S no longer
21 receives support from Kroger for promotions?

22 A. No, we do not.

23 Q. Has C&S modeled any impact on sales after C&S no longer
24 receives support from Kroger for pharmacy services?

25 A. No, we did not.

Florenz - D

1 Q. Has C&S modeled any impact on sales after C&S no longer
2 receives support from Kroger for the divested fuel centers?

3 A. No, we did not.

4 Q. Do you recall that you testified yesterday that C&S has
5 modeled no sales impact from rebannered stores in Arizona?

6 A. That's correct.

7 Q. Did C&S's consultant, Bain, calculate a sales detriment
8 from rebannered those stores in Arizona?

9 A. They have a -- they did have a sales detriment for
10 rebannered a particular banner.

11 Q. Did that apply to the Arizona stores?

12 A. Well, their model wasn't state-specific.

13 Q. If you could turn to your deposition PX4072, page 111,
14 line 10 to 18.

15 A. Could you repeat the reference?

16 Q. Yes. It is PX4072, page 111, lines 10 to 18.

17 A. Yes, I see that.

18 Q. At your deposition were you asked, "Bain's rebanner
19 detriment rate for Albertsons stores was" -- redacted. Is
20 that correct?

21 And did you answer, "So that Bain number referenced in
22 that file appears specific to Arizona. We visited the
23 Arizona stores, and they feel the same between Safeway and
24 Albertsons, and so it was our judgment that there would not
25 be a rebannered sales detriment." Correct?

Florenz - D

1 A. Yes.

2 Q. Did C&S include that detriment Bain being provided for
3 the Arizona stores in the deal model?

4 A. We did not.

5 MS. HALL: Thank you, Mr. Duncan. You can take
6 that down.

7 BY MS. HALL: (Continuing):

8 Q. Did Bain also provide a range of potential rebannerings
9 sales losses between best-case and worst-case scenarios?

10 A. Yes. Base-case or worst-case, yeah.

11 Q. Did C&S include Bain's worst-case scenarios for
12 rebannerings sales impact in its conservative model?

13 A. No, we did not.

14 Q. Beyond the base rebannerings risk in each region, does
15 C&S's deal model include any sales losses specifically from
16 rebannerings to a banner not currently used in Idaho?

17 A. Sorry. Could you rephrase that question?

18 Q. Sure. I understand that the deal model regionally
19 applies a base rebannerings risk, but is there a separate
20 risk calculated for using a banner that is not currently
21 used in Idaho?

22 A. So the -- the rebannerings sales detriment is the amount
23 of sales that's lost because you change over that store.

24 There's nothing on top of that that is specific to
25 Idaho.

Florenz - D

1 Q. Is there anything on top of that that is specific to
2 using a banner not currently used in New Mexico?

3 A. No, there's not.

4 Q. Or Nevada?

5 A. No, there's not.

6 Q. Or Utah?

7 A. No.

8 Q. Or Louisiana?

9 A. No.

10 Q. Or Texas?

11 A. No.

12 Q. Or in the District of Columbia region, including
13 Delaware, Maryland, and Virginia?

14 A. There's not.

15 Q. Did Bain's customer survey indicate how customers would
16 respond to a change in store-brand products?

17 A. It did.

18 Q. How did that customer response to a change in
19 store-brand products compare to their response to changing
20 the store name?

21 A. I -- I don't remember.

22 Q. Were they roughly the same level of lost sales?

23 A. I don't remember.

24 Q. Okay. Let's turn to your deposition. PX4072,
25 page 125, lines 15 to 20.

Florenz - D

1 A. Yes, I see that.

2 Q. At your deposition, were you asked, "So the results of
3 Bain's survey indicated that consumers would have a similar
4 response if the store-branded products changed to a
5 different brand name as they would if the store name
6 changed?"

7 And you said, "Seems reasonable"?

8 A. I see that.

9 The only thing about the survey, though, is that it
10 doesn't give context to how that change is happening or how
11 long you have to do it or how it's introduced. It's sort of
12 binary of what happens if it changes; and, you know they
13 talked about there's a way to do it in a measured way so it
14 doesn't have as much impact.

15 Q. Does C&S's deal model include any impact from changing
16 private label product brands at the divested stores?

17 A. We didn't feel we needed to put a sales impact -- you
18 saw that large cost expense we put in our P&L, and we have
19 a -- up to four-year transition period in order to replace
20 these brands, so we didn't feel we needed to do, in
21 addition, another sales impact.

22 MS. HALL: Thank you, Mr. Duncan. You can take
23 that down.

24 BY MS. HALL: (Continuing):

25 Q. Does the deal model we have been discussing outline

Florenz - D

1 what C&S expects will happen post-close on an EBITDA, sales,
2 and cash flow basis?

3 A. Yes.

4 Q. Let's return to transition services under the TSA.

5 During the commercial TSA period, will Kroger provide
6 C&S with a base pricing and promotional plan?

7 A. It will.

8 Q. Can C&S make changes to the base pricing and
9 promotional plan that Kroger provides?

10 A. We can through a clean room.

11 Q. Will there be regions in which C&S and Kroger are
12 operating stores under the same banner during the commercial
13 TSA period?

14 A. There will be.

15 Q. If C&S makes changes to the pricing and promotional
16 plans that Kroger provides, will customers see different
17 pricing at stores with the same banner, depending on whether
18 they're owned by C&S or owned by Kroger?

19 A. They could.

20 Q. Do stores with the same banner having different prices
21 create a risk of customer confusion?

22 A. It could, but I -- I wonder if -- if today, like at a
23 grocery store, they have different price zones for
24 similar -- the same bannered stores. So customers do see
25 different prices today across stores.

Florenz - D

1 Q. Will C&S and Kroger share banners within what are
2 currently existing price zones?

3 A. I don't know the answer to that.

4 Q. Will C&S and Kroger own stores with the same banner
5 within a single city?

6 A. Yes.

7 Q. Do you have any of reason to believe that those stores
8 today are in different price zones?

9 A. I wouldn't know that.

10 Q. Can C&S choose not to alter the base pricing or
11 promotional plan that Kroger provides?

12 A. Yes.

13 Q. Is C&S planning to use the base pricing and promotional
14 plan that Kroger provides until C&S rebanners the stores
15 that share a banner with Kroger?

16 A. I don't -- I know that during the TSA that will be
17 offered to us, but once the TSA services are done, we won't
18 be able to use that base program.

19 Q. What is C&S's plan during the commercial TSA period?

20 A. So the -- the leaders of that function will determine
21 their best path to work on that promotional merchandising
22 plan.

23 I know that folks right now are trying to think through
24 how that will work with the clean room.

25 MS. HALL: Mr. Duncan, can you pull up DX1058 at

Florenz - D

1 slide -- at page 45? And that, I believe, is non -- a non
2 confidential document. I believe in your binder it's marked
3 as PX3956. It's the same document.

4 THE WITNESS: I'll just look over here.

5 BY MS. HALL: (Continuing):

6 Q. Ms. Florenz, do you recognize this DX1058, at page 45,
7 as a page of the June 2024 C&S business plan?

8 A. Yes, I do.

9 Q. And in the last bullet that says, "We will run the same
10 program between where we share markets until banner brands
11 are separated. Pricing, promotion, loyalty, and other
12 customer-facing programs."

13 Does this indicate that C&S's current plan is to use
14 the base pricing and promotional plan Kroger provides?

15 A. C&S during the TSA will use -- will use the base
16 program; but, again, I would defer to the leaders who are
17 going to run this function as to how they will negotiate the
18 promotion and run the ads at that point.

19 Q. If C&S uses the Kroger base pricing and promotional
20 plan, without altering it, does that mean that all the
21 stores with a particular banner in a particular region will
22 have the same prices regardless of whether Kroger or C&S
23 owns them?

24 A. If we didn't alter it, it would be the same.

25 MS. HALL: Thank you. I pass the witness.

Florenz - X

1 THE COURT: Did it come up on your screen? It
2 came up on mine.

3 THE WITNESS: Yeah, it did. It did.

4 THE COURT: It came up on mine.

5 THE WITNESS: I was, like, "I need better
6 glasses."

7

8

CROSS-EXAMINATION

9 BY MR. OBARO:

10 Q. Good morning, Ms. Florenz.

11 A. Good morning.

12 Q. I just have a few questions for you.

13 THE COURT: I don't think your microphone is on.

14 MS. HALL: I think I inadvertently turned it off
15 when I was moving my stuff.

16 BY MR. OBARO: (Continuing):

17 Q. Good morning, Ms. Florenz.

18 A. Good morning.

19 Q. I have a few questions for you, and I think I'll start
20 where Ms. Hall left off.

21 A. Okay.

22 Q. Ms. Hall asked you a number of questions about pricing
23 strategies post- -- during the TSA and post-TSA.

24 Do you remember that?

25 A. Yes.

Florenz - X

1 Q. I think in your response you said the leaders of C&S
2 will make those determinations; is that correct?

3 A. That's right.

4 Q. And were the leaders that you're thinking about
5 Susan Morris and the rest of her team?

6 A. Yes. Yeah.

7 Q. Okay. So after the -- during the TSA period and
8 post-TSA, Susan Morris and the rest of her team are going to
9 lead the retail function at C&S?

10 A. She will absolutely lead the retail function.

11 Q. Okay. I would like to go back to some of the
12 discussions that you had yesterday.

13 Ms. Hall asked you yesterday about a text message
14 between you and Sandeep Heda?

15 A. Yeah.

16 Q. But I don't think you had a chance to explain what you
17 meant in the text message.

18 So my question to you is: What did you mean when you
19 told Mr. Heda that you wanted the FTC to know that C&S
20 wanted to run the stores?

21 A. So when we first met, that consultant, he was providing
22 lots of ideas of what we could do at the stores, and I was
23 really worried that he would present all these options that
24 would cast doubt on our desire or our ability to run the
25 stores. So I just -- I didn't want to present something

Florenz - X

1 that didn't -- didn't align with us strategically.

2 Q. And, strategically, was C&S's incentive strategic
3 position that they were going to run the stores?

4 MS. HALL: Objection, Your Honor. He continues to
5 lead this witness, who shares a common interest agreement
6 with his client.

7 MR. OBARO: I will rephrase the question.

8 THE COURT: Yes. Do.

9 BY MR. OBARO: (Continuing):

10 Q. What was C&S's strategic decision at that point in time
11 with respect to the stores?

12 A. We're going to run these stores. This is an enormous
13 business.

14 Q. And, Ms. Florenz, do you feel confident that C&S will
15 be able to run and operate these stores?

16 A. Yes.

17 Q. And what -- why do you feel confident that C&S will be
18 able to run and operate these stores?

19 A. So I'd start with the people factor. I mean, to have
20 the leaders who run this business today and these associates
21 that see those leaders, just that powerful drive and
22 know-how and knowledge of how to compete in the space.

23 I'd also say the technology aspect. One of the things
24 about the tech stack that is so powerful is that the stores
25 aren't going to have to change their processes and the way

Florenz - X

1 they go about doing business; and so, to me, having that
2 technology married with the folks who are familiar with this
3 space.

4 And then the last piece I would say is just that we do
5 have a TSA. I mean, that was something in Grand Union that
6 we did not, and those hard cutoffs or places where you have
7 cliffs makes it so much harder to reestablish your presence.

8 And what the TSA does is it bridges you that time that
9 you need to have a plan full way to sort of step away.

10 Q. Ms. Florenz, Ms. Hall asked you some questions about
11 the rebannered sales detriment in Arizona and Colorado.

12 Do you remember that?

13 A. I do.

14 Q. And is there a sales detriment in the deal model for
15 rebannered in Colorado and Arizona?

16 A. There's not.

17 Q. And why not?

18 A. So the thing about the stores in those regions is,
19 first of all, they've flipped between those banners in the
20 past, and they appear, in the way that they go to the
21 market, to customers in a similar fashion; so we didn't feel
22 that changing that name to the other name would cause the
23 kind of dissonance that you might have with another kind of
24 store.

25 So this is where -- you can't just take consultants and

Florenz - X

1 just use their numbers because it -- just at face value.
2 You need -- they're not the leaders who are going to run the
3 business.

4 And so, for us, we take all those inputs and weigh and
5 judge them and put them in the model.

6 Q. Ms. Florenz, speaking about consultants, one of the
7 questions you were asked was whether or not the C&S used
8 Bain's worst-case sales detriment for the rebannered
9 stores. And I understand -- and did C&S use Bain's
10 worst-case analysis?

11 A. No. And that's because it didn't really make sense
12 because, if you look at the respondents in the survey, if
13 they said, "We would slightly change our purchases," you
14 know, "slightly lower, based on a rebannered change," the
15 worst case assumed it went to zero, and that -- it just
16 seemed so strong, given that it's a slight -- you know, the
17 consumer is responding just in a slight way, and so we just
18 didn't think that that was a reasonable assumption to make.

19 Q. Ms. Florenz, you've been asked a lot about the deal
20 model and whether the deal model is conservative. Do you
21 think the conservative deal model is appropriately
22 conservative?

23 A. Yeah. I mean, we internally talk about it, like, that
24 is -- that is -- that is our worst case, and I know
25 individual assumptions may feel that we could have done

Florenz - ReD

1 something different, but when you pull back and you step and
2 you look at that pathway, I feel highly confident that we
3 will do better than that.

4 And we talked about yesterday that strategic
5 initiatives model. That's what we'll put in front of our
6 leaders so we do better.

7 MR. OBARO: Thank you, Ms. Florenz. I have no
8 further questions.

9 THE COURT: Any redirect?

10 MS. HALL: Yes, Your Honor. Just a few questions.

11

12

REDIRECT EXAMINATION

13 BY MS. HALL:

14 Q. Ms. Florenz, when you were texting with Mr. Heda, did
15 you say, "We want the FTC to know we'll run the stores," or
16 did you say, "We want to say we can run them"?

17 A. That's what I said.

18 THE COURT: Which one?

19 THE WITNESS: The "say."

20 BY MS. HALL: (Continuing):

21 Q. You testified in response to Mr. Obara's questions that
22 won't need to change processes.

23 Did I get that correctly?

24 A. I'm sorry. Could you remind me?

25 Q. Yes. In discussing the tech that C&S has acquired, did

Florenz - ReD

1 you say that the stores won't need to change processes?

2 A. I'm not sure. I mean, they will have --

3 MR. OBARO: I didn't ask about tech.

4 BY MS. HALL: (Continuing):

5 Q. I believe, Ms. Florenz, you said, "There's also the
6 technology aspect. One of the things about the tech stack
7 that is so powerful is that the stores aren't going to have
8 to change their processes and the way they go about doing
9 business."

10 Did you say that?

11 THE COURT: Objection. Overruled. She will
12 answer.

13 THE WITNESS: Sorry. I didn't mean to be too
14 generalistic. There will be process change. But if an
15 Albertsons store has an Albertsons system and the leaders
16 know how to use that system, and it's the same system,
17 they're going to -- they're going to have that same
18 experience.

19 BY MS. HALL: (Continuing):

20 Q. How many Kroger stores are in the divestiture package?

21 A. There are 94.

22 Q. Will the 94 Kroger stores need to change their systems
23 and processes?

24 A. They will have to change to the Albertsons tech stack.

25 Q. What tech will C&S use for its human resources at all

Florenz - ReD

1 of the acquired stores?

2 A. It will use the new Oracle HCM system.

3 Q. Is C&S acquiring the Kroger human resources systems in
4 the divestiture?

5 A. Yes. Yes.

6 Q. Does that mean over 400 Albertsons stores will have to
7 change the systems by which they pay their associates?

8 A. Yes, it would.

9 Q. I believe you stated that Bain's worst-case rebanner
10 scenario had sales going to zero; is that correct?

11 A. What I -- in order to calculate that 22 percent loss,
12 what they do is they look at the -- basically, they're
13 saying that the 22 percent worst respondents -- it's as if
14 that goes to zero.

15 Q. Is it your testimony that the Bain's worst-case
16 scenario rebanner sales detriment was 22 percent, not
17 zero?

18 A. Yes. 22 percent blended, yeah.

19 MS. HALL: No further questions, Your Honor.

20 THE COURT: You can step down.

21 THE WITNESS: Thank you, Your Honor.

22 MR. TENG: Good morning, Your Honor.

23 At this time, plaintiffs would call Eric Winn, CEO of
24 C&S.

25 THE COURT: Can you state your name for the

Winn - D

1 record?

2 MR. TENG: Sure. My name is Albert Teng. I'm
3 with the FTC on behalf of the plaintiffs.

4 MR. WOLF: Your Honor, while we wait, we'll be
5 adding Josh Davis to the list of attorneys appearing.

6 THE COURT: Fair enough.

7 MR. WOLF: Thank you.

8 THE COURT: So while we're waiting, why don't you
9 pass out binders, if you have binders.

10 MR. TENG: That's a great idea, Your Honor.

11

12 ERIC WINN,
13 called as a witness in behalf of the Plaintiffs, being first
14 duly sworn, is examined and testified as follows:

15

16 THE WITNESS: Yes.

17 DEPUTY COURTROOM CLERK: Thank you.

18 Please have a seat. Can you state and spell your first
19 and last name for the record.

20 THE WITNESS: Eric Winn. E-r-i-c. W-i-n-n.

21

22 DIRECT EXAMINATION

23 BY MR. TENG:

24 Q. Good morning, Mr. Winn. Who's your current employer?

25 A. C&S Wholesale Grocers.

Winn - D

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

2 A. 2004.

3 Q. Is C&S a privately held company?

4 A. We are.

5 Q. Where is C&S based?

6 A. The location -- the headquarters location is Keene,
7 New Hampshire.

8 Q. And who is C&S owned by?

9 A. The Cohen family.

10 Q. What is your position at C&S?

11 A. Chief executive officer.

12 Q. And what was your position before that?

13 A. Chief operations officer.

14 Q. Have you had other positions at C&S?

15 A. Yes. A number of them.

16 Q. What are some of those?

17 A. The prior role to that was chief commercial officer.

18 Prior to that, I was senior vice president and general
19 manager of the West region, and it goes on.

20 Q. And what responsibilities do you have in your role as
21 C&S's CEO?

22 A. So I'm responsible, obviously, for our people and our
23 customers but, ultimately, the financial performance of the
24 company.

25 Q. And, obviously, you're here today because of the

Winn - D

1 divestiture. What role did you play in that divestiture?

2 A. I would say I was very active. And certainly active
3 from the time we began the diligence, all the way through to
4 the process of signing the agreements.

5 Q. Did you play any role in negotiations with Kroger and
6 Albertsons?

7 A. Yes.

8 Q. Did you report to anyone on those negotiations?

9 A. Yes. So I took over as CEO in October of last year,
10 and so I reported to our CEO, you know, up until that point.

11 Q. Did you also report to Rick Cohen?

12 A. Yes. So I report to Rick Cohen and the board now.

13 Q. And were you C&S's lead negotiator on the divestiture?

14 A. I think that's fair to say.

15 Q. Do you also have involvement with C&S's divestitures
16 steering committee?

17 A. I do.

18 Q. And does C&S have a common interest agreement with
19 Kroger and Albertsons?

20 A. We do.

21 Q. Will C&S's acquisition of the divestiture stores only
22 occur if Kroger acquires Albertsons?

23 A. Yes.

24 Q. And does the divestiture agreement require C&S to use
25 its reasonable best efforts to demonstrate that it's an

Winn - D

1 acceptable purchaser of the divestiture?

2 A. Yes.

3 Q. Based on your time at C&S and as CEO of C&S, are you
4 aware that C&S has acquired retail stores at other points in
5 its history?

6 A. I am.

7 Q. And did C&S's history of retail operations inform at
8 all your decision to bid on these assets?

9 A. I would say yes. It informed us, in terms of learning
10 from the past; and, you know, certainly the experience in
11 the industry in general informed our process now.

12 Q. And did those acquisitions -- did you testify to those
13 acquisitions dating back to 2001 during both your
14 investigational hearing and deposition in this matter?

15 A. I did.

16 Q. And did you answer a number of questions about those
17 acquisitions in both of those proceedings?

18 A. I did.

19 MR. TENG: Let's put on the screen, Mr. Duncan,
20 PDX005.

21 BY MR. TENG: (Continuing):

22 Q. That's also in your binder close to the end.

23 So we've created a demonstrative.

24 MR. TENG: And this can be displayed for the
25 gallery as well.

Winn - D

1 BY MR. TENG: (Continuing):

2 Q. We've created a demonstrative of how many stores C&S
3 has acquired -- operated in any one year -- at the end of
4 any one year, and it's labeled for identification as PDX5.

5 Did C&S acquire over 300 supermarkets in the 2000s?

6 A. Yes.

7 Q. In what geographic regions did C&S acquire those over
8 300 stores?

9 A. Predominantly, the Northeast and in the Southeast.

10 Q. And from 2001 to 2003, did C&S acquire approximately
11 220 Grand Union, A&P, and SuperValu stores in the Northeast?

12 A. Yes.

13 Q. And by 2005, had C&S closed or sold approximately 190
14 of those 220 supermarkets?

15 A. I believe that's the right number.

16 Q. And from 2005 to 2006, did C&S acquire over 100
17 Winn-Dixie and BI-LO supermarkets in the Southeast?

18 A. I believe they were Bruno's and some BI-LOs, yes.

19 Q. And what banner did C&S put those stores under?

20 A. Originally, they were under Southern Family Markets.

21 Q. By 2006, had C&S sold or closed approximately 50 of
22 those 100 stores?

23 A. I believe that's right.

24 Q. For instance, in 2006, did C&S close approximately 40
25 stores?

Winn - D

1 A. Yes.

2 Q. In the 2000s, did C&S also close stores that became
3 cash flow negative under C&S's ownership?

4 A. Yes.

5 Q. In the 2000s, besides those approximately 200 --
6 approximately 300 Grand Union, BI-LO, Bruno's, A&Ps, and
7 SuperValu stores, did C&S make other retail acquisitions?

8 A. Can you list those out again, please?

9 Q. Sure. Those stores were Bruno's, BI-LO, Grand Union,
10 SuperValu, and A&P.

11 A. I don't think we had any others.

12 Q. Did C&S, in 2006, acquire eight Clemens stores in the
13 Northeast?

14 A. Yes. Sorry. I forgot that.

15 Q. And then at some point in the 2010s did C&S make a
16 decision not to be in retail any longer?

17 A. We did.

18 Q. And did C&S sell or close all but three stores in 2012?

19 A. Yes.

20 Q. And were C&S's stores in the Northeast profitable when
21 C&S made the decision to exit retail in 2012?

22 A. In aggregate, I don't recall. There were certainly a
23 number of unprofitable stores.

24 Q. Okay. And were C&S stores in the Southeast profitable
25 when C&S made the decision to exit retail?

Winn - D

1 A. I believe we had just turned them profitable when we
2 exited.

3 Q. And taking a step back, was C&S's history from 2001 to
4 2015 buying and then selling or closing stores?

5 A. That's what the numbers show.

6 Q. Did C&S make any money selling or closing those stores?

7 A. That's a good question. I wasn't involved that closely
8 during those years. I mean, certainly, some of that
9 predated my time at the company.

10 In terms of the -- if you say "make money," do you mean
11 was the ultimate sale price higher than our purchase price,
12 net of the cash flow in the interim? I don't actually know.

13 Q. Do you know if C&S made any money selling any real
14 estate from those -- associated with those stores?

15 A. I don't know.

16 Q. From 2001 to 2015, who was C&S's CEO and chairman?

17 A. Rick Cohen.

18 Q. And is he also the owner of C&S today?

19 A. Yes.

20 Q. At any point in time, moving forward to 2015, what's
21 the most stores C&S operated at any one time between 2015
22 and 2021?

23 A. I'm going to go with 10. That's what the chart shows.

24 Q. After -- C&S also operated union warehouses?

25 A. Yes.

Winn - D

1 Q. Has C&S closed any union warehouses?

2 A. Yes.

3 Q. Has C&S closed union warehouses and replaced those
4 union warehouses with nonunion warehouses?

5 A. We have moved work from union warehouses that closed,
6 in some cases, to both union and nonunion warehouses.

7 Q. Are you aware that the Teamsters International is
8 opposed to this merger and divestiture?

9 A. I'm only aware through what I've read in the press.

10 Q. Are you aware that, in a press release regarding the
11 merger and divestiture, the Teamsters International
12 characterized C&S as, quote, "The most notorious anti-union
13 employer in the industry"?

14 A. I do recall reading that statement.

15 Q. Let's move to the divestiture.

16 What are the divestiture stores' total sales per year?

17 A. Right around 20 billion.

18 Q. Okay. And what were C&S's revenues in fiscal year
19 2023?

20 A. Just over \$20 billion. Around 21-, 22 billion.

21 Q. And have C&S's revenues declined since 2017?

22 A. Yes.

23 Q. Do you know by what percentage?

24 A. Approximately -- as we project forward for next year,
25 Approximately 33 percent.

Winn - D

1 Q. Okay. And is C&S projecting a reduction in revenue
2 again in fiscal year 2024?

3 A. In 2024?

4 Q. Fiscal year 2024.

5 A. We're just about to complete that year.

6 Q. Okay. And will C&S have a reduction in revenue
7 compared to fiscal year 2023?

8 A. Yes.

9 Q. You know what C&S's credit rating is?

10 A. I'm forgetting. I know we spent time on it. I don't
11 remember.

12 Q. Is C&S's credit rating not investment grade?

13 A. I don't think so. I just --

14 Q. Is C&S financing the majority of the investment with
15 debt?

16 THE COURT: Hold on a second. He said --

17 THE WITNESS: I just want to be clear. Did you
18 say "non-investment grade"?

19 BY MR. TENG: (Continuing):

20 Q. Yeah. Have the credit agencies rated C&S's credit as
21 non-investment grade?

22 A. I'm not an expert in credit ratings, but I don't
23 believe so.

24 Q. Is C&S financing the majority of the investment with
25 debt?

Winn - D

1 A. Two-thirds, yes.

2 Q. And what is the interest rate on that debt?

3 A. It varies. Our revolver and our term loan have
4 different interest rates.

5 Q. And what is the interest rate for both?

6 A. The revolver is currently -- it's SOFR plus 200 basis
7 points, if I recall. Maybe it's 300 basis points. So that,
8 obviously, fluctuates, and then the term loan is SOFR plus
9 550 basis points.

10 Q. And you -- sorry. You said SOFR plus 500 basis points.
11 What does -- I guess, what does that work out to?

12 A. It's around 11 percent right now. I think it's 10.8
13 today.

14 Q. Are you aware that Albertsons had close to 80 billion
15 in revenue last year?

16 A. Yes.

17 Q. Are you aware that Kroger had approximately \$150
18 billion in revenue last year?

19 A. Yes.

20 Q. Are you aware that Albertsons had \$4 billion in EBITDA
21 last year?

22 A. I actually thought it was higher, but yes.

23 Q. Are you aware that Kroger had close to \$8 billion in
24 EBITDA last year?

25 A. Yes.

Winn - D

1 Q. And I don't want to get into information that C&S has
2 designated as confidential, so I won't say the exact number,
3 but does C&S have a small fraction of Albertsons' EBITDA of
4 approximately \$4 billion?

5 A. You mean our current EBITDA?

6 Q. Yes.

7 A. I would characterize it as a small fraction, yes.

8 Q. Does C&S's EBITDA, is that an even smaller fraction of
9 Kroger's EBITDA today?

10 A. Yes.

11 Q. Does C&S expect the combined Kroger and Albertsons to
12 have scale advantages over it?

13 A. Can you repeat that question?

14 Q. Sure. Does C&S expect the combined Kroger and
15 Albertsons have -- will have scale advantages over it?

16 A. Over us?

17 Q. Yes.

18 A. In certain ways, perhaps.

19 Q. Is C&S, for example, assuming a higher cost of goods
20 for private label products compared to the divestiture
21 stores today?

22 A. Yes.

23 Q. Are there any suppliers that have agreed to provide C&S
24 with the current level of funding to the divestiture stores
25 that they get today?

Winn - D

1 A. Yes.

2 Q. Which ones?

3 A. Kraft, Heinz, Procter & Gamble, and others have talked
4 to us about that.

5 Q. And have they guaranteed that they'll provide you with
6 the same level of funding that those stores get today?

7 A. I'd rather not get into the details of our trade fund
8 negotiations, but I can assure you that we will be
9 competitive.

10 Q. I guess, just -- have they -- have they -- you don't
11 have to identify which one, but have any of those that
12 you've mentioned guaranteed that they'll receive the same --
13 that you'll receive the same level of funding, after the
14 divestiture, as the divestiture stores get today?

15 A. I'll speak in generality -- again, not to get into our
16 trade fund negotiations -- but it's possible that we believe
17 we can get more trade funds.

18 Q. Are negotiations in contracting with consumer packaged
19 goods suppliers, like Pepsi, a risk for C&S?

20 A. A risk and an opportunity.

21 Q. Let's talk about the stores in the package.

22 Did Kroger present the stores in the package to C&S?

23 A. Yes.

24 Q. Did C&S have a role in selecting the 579 stores in the
25 package?

Winn - D

1 A. We did not.

2 Q. Would having a package of stores C&S chose, instead of
3 Kroger, reduce execution risk for C&S?

4 A. I don't know.

5 Q. Do you recall testifying at your investigational
6 hearing, in response to a question: "Would having a package
7 of stores that C&S chose reduce execution risk?" and you
8 answered yes? Do you recall that testimony?

9 A. I didn't specifically recall that, but thank you for
10 reminding me.

11 Q. And do you agree that having a package of stores that
12 C&S chose would reduce execution risk?

13 A. I don't know. That's what I said then.

14 I would say, based on how things have evolved since
15 then, I can't really answer that. It's hard to know.

16 Q. But that was your testimony then?

17 A. Yes.

18 Q. Let's talk about the mix of stores C&S is acquiring
19 from Kroger and Albertsons.

20 Mr. Winn, do you know how many -- in how many states
21 C&S is acquiring stores?

22 A. It's around 30 states.

23 Q. Does C&S have experience operating supermarkets in
24 those states and the District of Columbia?

25 A. No.

Winn - D

1 Q. Is C&S acquiring a mix and match of stores from Kroger
2 and Albertsons?

3 A. Can you define "mix and match"?

4 Q. Is C&S acquiring stores from both Kroger and
5 Albertsons?

6 A. Yes.

7 Q. In that sense, is C&S acquiring a mix and match of
8 stores from Kroger and Albertsons?

9 A. Yes.

10 Q. How many stores is C&S acquiring from Kroger?

11 A. I believe it's 96.

12 Q. And how many stores is C&S acquiring from Albertsons?

13 A. 483.

14 Q. Do the divestiture stores come from a number of
15 divisions within Kroger and Albertsons?

16 A. Yes.

17 Q. Will C&S have to integrate both Kroger and Albertsons
18 stores into its operations?

19 A. Yes.

20 Q. Is integrating stores from two different sellers more
21 difficult than integrating stores from just one seller?

22 A. By definition, yes.

23 Q. For example, do the Kroger -- is C&S acquiring both
24 Kroger and Albertsons stores in the Pacific Northwest?

25 A. Yes.

Winn - D

1 Q. Do the Kroger and Albertsons stores that C&S is
2 acquiring in the Pacific Northwest have two different
3 operating models?

4 A. Yes.

5 Q. Do those stores have two different IT systems?

6 A. Yes.

7 Q. Do those stores have two different supply chains?

8 A. Yes.

9 Q. Do those stores have two different division leadership
10 structures?

11 A. Yes.

12 Q. And does the mix and match of the package also increase
13 execution risk for C&S?

14 A. Relative to what?

15 Q. Relative to -- I guess, does -- relative to the package
16 that you get -- the mix and match of the package that you're
17 getting.

18 A. Well, you said "increase execution risk." Relative to
19 what? What am I comparing it against?

20 Q. Maybe the better question is does mix and match create
21 execution risk for C&S?

22 A. Not necessarily.

23 Q. Does mix and match increase execution risk relative to
24 if there was not mix and match?

25 A. In this particular case, I wouldn't say that.

Winn - D

1 Q. Okay. Let's go to your investigational hearing
2 transcript.

3 That's PX4030 in your binder, and it should also come
4 up on your screen, page 61 of that transcript?

5 MR. WOLF: Your Honor, I'm going to object. Just
6 for clarification, the investigational hearing was done at a
7 time when the package was much smaller, and so counsel is
8 mix and matching -- to use his term -- questions from today
9 versus questions from a prior package, and so I'm going to
10 object to this as improper impeachment.

11 MR. TENG: Your Honor, the mix and match was
12 present in both packages, so his testimony from the
13 investigational hearing is just as valid.

14 THE COURT: I'm going to overrule the objection,
15 allowing him to answer.

16 BY MR. TENG: (Continuing):

17 Q. All right. So line 3 of page 61, I asked: Does mix
18 and match increase execution risk?

19 You answered: Yes.

20 Do you see that?

21 A. Yes.

22 Q. That was your testimony?

23 A. It was.

24 Q. How many retail stores does C&S operate today?

25 A. 23.

Winn - D

1 Q. And what percentage of C&S total sales come from those
2 23 stores?

3 A. Under 10 percent, and it's at 6 percent.

4 Q. You testified in your deposition that about one percent
5 of C&S total sales come from those 23 operated stores. Do
6 you recall that testimony?

7 A. If that's what I said, I was wrong.

8 Q. Generally speaking, are those stores --

9 A. I'm sorry -- let me correct myself. I was doing math
10 in my head. That is right. I apologize.

11 Q. So one percent of C&S's total revenues come from its 23
12 owned and operated stores?

13 A. Yes. I apologize. My math was fuzzy this morning.

14 Q. No worries at all.

15 Generally speaking, are the stores that C&S owns and
16 operates today smaller than the divestiture stores?

17 A. They are.

18 Q. And, generally speaking, do the stores that C&S
19 operates today offer fewer services than the divestiture
20 stores?

21 A. That's fair to say, yes.

22 Q. And for the 12 Grand Union stores that C&S has
23 acquired, have their sales decreased since C&S acquired
24 them?

25 A. They have.

Winn - D

1 Q. And did C&S rebanner those stores from Tops to Grand
2 Union?

3 A. Yes.

4 Q. And did rebannered the stores cause any losses in
5 store sales?

6 A. That would be one of the contributors, yes.

7 Q. Let's also talk about the nature of the assets C&S is
8 acquiring.

9 Do the assets that Kroger and Albertsons are conveying
10 to C&S exist right now as a freestanding business?

11 A. No.

12 Q. Is C&S acquiring the full set of distribution centers
13 and manufacturing plants that supply the divestiture stores
14 today?

15 A. No.

16 Q. Is C&S getting a full management team from Kroger and
17 Albertsons as part of the divestiture?

18 A. Nearly full.

19 Q. But not a full management team?

20 A. No.

21 Q. Okay. Is C&S getting ownership of all the store
22 banners that are on the divestiture stores today?

23 A. No.

24 Q. Is C&S acquiring one of Kroger or Albertsons' existing
25 private label brands businesses is in its entirety?

Winn - D

1 A. Can you repeat that question?

2 Q. Sure. Is C&S acquiring one of Kroger or Albertsons
3 existing private label brands businesses in its entirety?

4 A. Yes. We're acquiring five.

5 Q. Do you recall testifying at your deposition, in
6 response to my question, "They're not conveying their
7 existing private brands businesses to C&S; is that right?"
8 and you answered, "Not in their entirety"?

9 MR. WOLF: Your Honor, I renew my objection. Now
10 we're talking about things that have clearly changed from
11 the package he was testifying at the time to the package --
12 the amended package in April.

13 MR. TENG: Your Honor, I'm quoting from his
14 deposition, which was taken after the current package.

15 THE COURT: But give us the page and the line.

16 MR. TENG: I can certainly do that, Your Honor.

17 THE COURT: And it's a different exhibit.

18 MR. TENG: Yes, a different exhibit.

19 THE COURT: We all have to look at the
20 information.

21 MR. WOLF: Thank you, Your Honor.

22 MR. TENG: So this is PX4060, which is Mr. Winn's
23 deposition transcript. Page 222, line 21.

24 BY MR. TENG: (Continuing):

25 Q. And I asked you: "And you would agree that Kroger and

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1 Albertsons are not conveying a private label business to
2 C&S; is that right?"

3 You answered, "They are conveying those prior private
4 brands we discussed."

5 And then the question is, "But we are not conveying
6 their existing private brands business -- businesses to C&S;
7 is that right?"

8 And, Mr. Winn, you answered, "Not in their entirety."

9 Do you see that?

10 MR. WOLF: Renewed objection. Improper
11 impeachment. The witness answered exactly this today.

12 MR. TENG: I wasn't impeaching, Your Honor.

13 THE COURT: What were you using it for then?

14 MR. TENG: I was using to refresh his -- refresh
15 his recollection.

16 THE COURT: Then it will be allowed.

17 You can answer if it refreshes your recollection.

18 THE WITNESS: So this -- what we were talking
19 about at my deposition was -- at least my understanding of
20 the question you were asking at the time was about the
21 entirety of -- so if I take Kroger, all of their private
22 brands, their entire private brands portfolio, their entire
23 brands business, no, we're not acquiring that. We are
24 acquiring five brands in their entirety individually.

25 ///

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1 BY MR. TENG: (Continuing):

2 Q. Yes. I was asking the former. Apologies for any
3 misunderstanding.

4 Okay. Is C&S acquiring any loyalty programs from
5 Kroger or Albertsons?

6 A. We're acquiring the data but not the program.

7 Q. Is C&S buying a fully functioning company?

8 A. We're acquiring assets and in a number of supporting
9 assets that we will -- that create a company, yes.

10 Q. But it's not -- C&S is not acquiring a fully
11 functioning company as it stands today?

12 A. No. By definition, not.

13 Q. Let's talk about rebannering.

14 Is C&S having to rebanner stores here also an execution
15 risk?

16 A. Yes.

17 Q. Would acquiring the Safeway banner nationwide from
18 Kroger have reduced execution risk for the divestiture?

19 A. Yes.

20 Q. Is Kroger providing C&S with that Safeway banner on a
21 nationwide basis?

22 A. No.

23 Q. And did C&S ask for -- ask Kroger for a number of
24 banners C&S is not receiving either on a state-level basis
25 or nationally?

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1 A. Are you asking what we talked about throughout the
2 course of the negotiation?

3 Q. I'm asking if C&S asked Kroger for any banners that it
4 did not receive either nationally or on a state-level basis?

5 A. There are any number of things that we would have asked
6 for throughout a negotiation as we do in every commercial
7 negotiation. I can tell you where we ended up, and I can
8 tell you that we had a long negotiation to get to that
9 point.

10 Q. Did Kroger give C&S all of the banners it asked for?

11 A. No.

12 Q. Which banners did Kroger not give C&S that C&S asked
13 for?

14 MR. WOLF: Your Honor, we're now getting close to
15 the privilege issues that were ruled on by the FTC -- the --
16 Judge Chappell. I think the way it was phrased it would
17 call for privileged information.

18 THE COURT: I'll ask you to rephrase.

19 BY MR. TENG: (Continuing):

20 Q. How many banners did C&S ask for that Kroger did not
21 give it?

22 MR. WOLF: Same objection, Your Honor. There are
23 time frame issues here as well. I'd just ask, if he has a
24 document he wants to point to, or anything like that, but
25 this has been ruled on multiple times by multiple courts.

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1 MR. TENG: Your Honor, I'm simply asking for a
2 fact of whether C&S asked --

3 THE COURT: I don't want information that has
4 already been determined to not be part of this case to be
5 asked.

6 So if you need to rephrase, do so. If you need to
7 refer to a document, do so.

8 MR. TENG: I can move on, Your Honor.

9 BY MR. TENG: (Continuing):

10 Q. Let's talk about private label brands.

11 Are or private label brands important to the success of
12 the divestiture stores?

13 A. Yes.

14 Q. Generally speaking, do customers look for private label
15 alternatives to national brands like OREOs or Coke?

16 A. Yes.

17 Q. Do the divestiture stores need to carry a broad
18 assortment of private label brands?

19 A. Yes.

20 Q. And as established before, Kroger and Albertsons are
21 not conveying their existing private label businesses in
22 their entirety to C&S?

23 A. Is that a question?

24 Q. Are they?

25 A. No.

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1 Q. Is C&S acquiring any Kroger private label brands
2 for the -- I believe you said before 96 -- Kroger stores
3 that C&S is acquiring?

4 A. No.

5 Q. And you mentioned before C&S is acquiring five private
6 label brands from Albertsons?

7 A. We are.

8 Q. Are any of those five brands that C&S is acquiring from
9 Albertsons considered national brand equivalent?

10 A. Yes.

11 Q. And let's go to your investigational hearing
12 transcript. Page 37, starting at line 15. That's PX4030.
13 The question is, "So the next -- the last sentence under
14 number 2 on PX306-001, C&S writes, quote, 'Because it is not
15 getting a full portfolio of private brands from
16 Kroger/Albertsons, C&S will need to augment substantially
17 its current range of private brand products by adding
18 hundreds of additional products.' Do you see that?"

19 Answer: "Yes."

20 "Do you agree with that statement?"

21 "Yes."

22 Question: "And what did C&S mean when it wrote that
23 statement?"

24 "In the divestiture package that we signed or the deal
25 that we signed, there are five private brands that we

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1 acquired. None of them are what would be considered
2 national brand equivalent."

3 Do you see that?

4 A. Yes.

5 Q. Was that your testimony?

6 A. It was.

7 Q. And have the five national brands changed from the
8 original divestiture package to now?

9 A. No. But our research that we've done would suggest
10 that some of the brands we've acquired can replace national
11 brands, what you would consider as a national brand. So
12 this was probably a more generic discussion of the total
13 store, but if I think about Open Nature or Primo Taglio,
14 they certainly will be alternatives to what you would
15 consider a national brand.

16 Q. And as of the date of your investigational hearing, you
17 testified that none of them are what would be considered
18 national brand equivalent?

19 A. I did.

20 Q. With regard to -- what percentage of Albertsons' total
21 private label sales do the five private label brands C&S is
22 acquiring from Albertsons make up?

23 A. What percentage of the private label sales?

24 Q. Yeah. Albertsons' private label sales.

25 A. I'm going to be doing some math in my head here, so

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1 give me a minute.

2 I believe, if my memory would serve, it's about -- it's
3 between 10 and 20 percent of the total private brand
4 portfolio.

5 Q. And with regard to C&S's own private labels, does C&S
6 currently have its own private label brand that it sells to
7 wholesale customers?

8 A. Yes.

9 Q. Does that private label have lower volume than Kroger's
10 and Albertsons' private label brands?

11 A. Yes.

12 Q. And I'm now going to discuss specific numbers showing
13 that C&S's private label have lower volume than Kroger's and
14 Albertsons' private label brands.

15 Because of C&S's confidentiality designations, I can't
16 read those aloud; but, Mr. Winn, if you could refer to your
17 investigational hearing transcript at page 215, lines 15
18 through 20.

19 MR. TENG: If we could keep that off the public
20 screen.

21 THE WITNESS: Do I need to go to the paper
22 version?

23 MR. TENG: I think Mr. Duncan can pull it up for
24 you.

25 THE COURT: He should. He should.

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1 BY MR. TENG: (Continuing):

2 Q. It's should come up for you, but you can also go to the
3 paper version.

4 It's PX4030, Mr. Winn. Your investigational hearing
5 transcript.

6 A. Remind me what page again.

7 Q. Sure. 215, lines 15 through 20.

8 A. It just came up.

9 Q. Without disclosing the specific numbers, does this
10 relate to how much C&S currently sells in private label
11 sales at wholesale per year and how much the 413 stores, in
12 their original package, bring in at private label at retail
13 per year?

14 A. Yes.

15 Q. And did you give this testimony under oath?

16 A. Yes.

17 MR. TENG: Your Honor, we would move that this
18 section of the transcript be submitted into evidence.

19 MR. WOLF: No objection, Your Honor.

20 THE COURT: It will be received.

21 BY MR. TENG: (Continuing):

22 Q. And without revealing the numbers, do C&S's current
23 total private label sales represent a fraction of the
24 private label sales of just the divestiture stores?

25 A. Yes.

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1 Q. And how many private label items does C&S plan to
2 launch for the divestiture stores?

3 A. The answer to that question is still under development,
4 but I would say it's in the 2- to 3,000 range.

5 Q. And will there be challenges for C&S in developing
6 private label products?

7 A. I'm pretty excited about it, so I don't view it as a
8 challenge; I view it as an opportunity.

9 Q. But are there any challenges associated with that?

10 A. In every business venture there could be challenges,
11 but we're in business to have fun and be successful, and I
12 think that's what we're gonna do.

13 Q. Do those challenges include C&S having to find the
14 right source of supply?

15 A. Yes.

16 Q. And just wrapping this private brand discussion up, is
17 not getting a full portfolio of private brands from Kroger
18 and Albertsons an execution risk?

19 A. Yes.

20 Q. And moving to the customer experience, did C&S ask for
21 additional marketing and loyalty personalization support
22 from Kroger beyond what it is receiving in the current
23 agreement?

24 MR. WOLF: Same objection as before, Your Honor,
25 regarding privileged information.

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1 MR. TENG: Your Honor, I believe Kroger has waived
2 this particular privilege, given that they submitted a
3 third-party document from a consultant that contained this
4 very information.

5 MR. WOLF: Your Honor, if there's a document, as I
6 said, he's free to ask about any document he wants.

7 THE COURT: The earlier ruling remains.

8 MR. TENG: Okay. I can move on, then.

9 BY MR. TENG: (Continuing):

10 Q. Let's introduce what has been marked -- sorry. Let's
11 put on the screen PX3068. That should also be in your
12 binder.

13 Is this a letter from C&S to the California Attorney
14 General's Office from the end of October.

15 A. Yes.

16 Q. Does this letter lay out assets that C&S believed would
17 reduce risk in the original divestiture package?

18 A. Yes.

19 Q. Were you a contributor to the content of the document?

20 A. Yes.

21 Q. Is it important to be truthful and accurate in
22 submissions to the California Attorney General's Office?

23 A. Yes.

24 MR. TENG: We move to admit PX3068.

25 MR. WOLF: No objection, Your Honor.

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1 THE COURT: It will be received.

2 BY MR. TENG: (Continuing):

3 Q. Let's go to page 2 of this document, which is
4 PX3068-002, about three-fourths down the page, C&S wrote,
5 quote, "The following changes would substantially reduce
6 execution risks for C&S in running the divested stores."

7 Do you see that?

8 A. Yes.

9 Q. And then the first item you wrote in October, under
10 what would substantially reduce execution risk for C&S, is,
11 quote, "C&S acquires only stores and distribution centers
12 that are owned by Albertsons."

13 Do you see that?

14 A. Yes.

15 Q. Is C&S acquiring only stores that are owned by
16 Albertsons?

17 A. No.

18 Q. And, as discussed, are you acquiring stores from
19 Kroger?

20 A. Yes.

21 Q. Are you acquiring 96 stores from Kroger?

22 A. We are.

23 Q. And will those Kroger stores also need new distribution
24 centers from what they have today?

25 A. Yes.

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1 Q. Second item, in italics, on PX3068-003, that would
2 substantially reduce execution risks for C&S in running the
3 divested stores is, quote, "C&S acquires exclusive rights on
4 a nationwide basis to certain banners owned by Albertsons,
5 including Safeway, Carrs, Vons, Tom Thumb, and Jewel-Osco."

6 Do you see that?

7 A. Yes.

8 Q. Is C&S acquiring exclusive rights, on a nationwide
9 basis, to any of those banners owned by Albertsons?

10 A. Yes.

11 Q. Besides Carrs?

12 A. No.

13 Q. And then the third item, C&S wrote, in italics, on
14 PX3068-003, that would substantially reduce execution risk
15 is, quote, "C&S acquires the Signature and O Organics
16 private brands owned by Albertsons."

17 Do you see that?

18 A. Yes.

19 Q. Is C&S acquiring the Signature and O Organics private
20 brands owned by Albertsons?

21 A. No.

22 Q. Under that, did C&S write, "C&S would get private
23 brands that are recognized by consumers"?

24 A. Yes.

25 Q. And then under that, did C&S write, "C&S would need to

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1 develop its full range of -- would not need to develop its
2 full range of private brand products"?

3 A. Yes.

4 Q. And then under that, C&S wrote, "C&S could compete more
5 effectively against Kroger/Albertsons, which will have
6 access to Kroger's full range of private brands and does not
7 need two."

8 Do you see that?

9 A. Yes.

10 Q. And then the fourth item you write, in italics, that
11 C&S wrote would substantially reduce execution risk, is,
12 "C&S acquires a larger package of stores and associated
13 distribution centers."

14 Do you see that?

15 A. Yes.

16 Q. And under that, C&S wrote, "C&S would have the scale in
17 particular regions that would allow it to operate more
18 efficiently," in the second bullet down there.

19 A. Yes.

20 Q. Does having more stores in a region help all stores
21 within that region?

22 A. Yes.

23 Q. Does having more stores in a region mean more efficient
24 marketing and promotional programs in that region?

25 A. Yes.

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1 Q. Does having more stores in a region mean any fixed
2 costs can be allocated over more stores in that region?

3 A. Yes.

4 Q. If C&S has fewer stores or closes stores in a region,
5 would that mean you have less volume of fresh products in
6 that region?

7 A. Yes.

8 Q. Does fewer stores and less volume of fresh products
9 mean it's harder to keep freshness of products?

10 A. Yes.

11 Q. Does fewer stores and less volume of fresh products
12 also mean -- make it harder to keep good costs of good --
13 goods for fresh products?

14 A. Generally, yes.

15 Q. We can put this document aside, and let's look at
16 PDX006. This is the last document in your binder, which is
17 a representation of all the divestiture stores and
18 distribution centers that C&S is acquiring.

19 It's pulled from a C&S document we discussed during
20 your deposition.

21 Is C&S only acquiring nine stores on the entire East
22 Coast?

23 A. Yes.

24 Q. Is C&S only acquiring one store in the entire state of
25 Delaware?

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1 A. Yes.

2 Q. And are you aware that that store in Delaware is an
3 hour-and-a-half drive away from the next nearest divestiture
4 store in Easton, Maryland?

5 A. Yes. I never made the drive myself, but I believe you.

6 Q. Is C&S only acquiring one store in the District of
7 Columbia?

8 A. Yes.

9 Q. Is C&S only acquiring 16 stores in Nevada?

10 A. Yes.

11 Q. Is C&S acquiring only four stores in the entire state
12 of Utah?

13 A. Yes.

14 Q. Is C&S only acquiring two stores in the entire state of
15 Louisiana?

16 A. Yes.

17 Q. Is C&S only acquiring two stores in Houston?

18 A. Yes.

19 Q. In other states -- Idaho, Wyoming, New Mexico,
20 Virginia, and Maryland -- is C&S receiving 10 or fewer
21 stores?

22 A. Yes.

23 Q. Did C&S ask for certain stores from Kroger?

24 A. No.

25 MR. TENG: If we can pull up Mr. Winn's

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1 deposition, page 249, line 12 through 18.

2 BY MR. TENG: (Continuing):

3 Q. Mr. Winn, again, this is PX4060.

4 Are you there?

5 A. We're here.

6 Q. And I asked you, "Okay. Did C&S have a role in
7 selecting the 579 stores?"

8 You answered, "No."

9 Question: "Did C&S ask for certain stores?"

10 You answered, "Yes"?

11 A. I did. I think I -- I think I was answering the two
12 questions from different perspectives.

13 We very specifically asked for clean sweeps of QFC and
14 Haggen, as an example, which we got, effectively, almost all
15 of. So we didn't ask for, you know, store number one, two,
16 three on this address. So when you say "certain stores," I
17 might have thought about it that way. Clearly, I didn't
18 then. So we asked for groups of stores.

19 Q. But that was your testimony at your deposition?

20 A. Yes.

21 Q. Let's also talk about the transition services
22 agreement, or TSA, you'll have -- let's also talk about the
23 transition services agreement, or TSA, you'll have with
24 Kroger post-transaction.

25 Is C&S depending on Kroger complying with the TSA for a

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1 successful divestiture?

2 A. Yes.

3 Q. Is the only way for C&S to enforce the TSA with Kroger
4 litigation?

5 A. That would be the last resort. I tend to think people
6 follow their contracts.

7 Q. Are there any other ways for C&S to enforce the TSA?

8 A. Again, that would be the last resort.

9 Q. Is suing Kroger an attractive option for C&S?

10 A. No. Litigation is not attractive for anybody.

11 Q. And after the divestiture closes, will C&S have to go
12 through Kroger employees to alter the divestiture plans for
13 the -- or alter the promotional plans for the divestiture of
14 stores?

15 A. What do you mean when you say "go through"?

16 Q. Will C&S have to communicate to Kroger employees to
17 alter the promotional plans for the divestiture stores?

18 A. Yes. They're intended to be in the clean room and
19 ultimately will be folks that will convey to our company.

20 Q. Is Kroger also providing C&S labor planning and other
21 commercial services under the TSA for at least 12 months?

22 A. Yes. I would describe it more as the tools. We
23 ultimately have the final decisions.

24 Q. Is Kroger also providing C&S distribution services for
25 up to three years under the TSA?

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1 A. Yes.

2 Q. And is that because C&S is not receiving all of the
3 distribution centers that serve the divestiture stores
4 today?

5 A. Correct.

6 Q. Is Kroger also providing C&S access to Albertsons'
7 Signature and O Organic private brands for two years at
8 cost?

9 A. Yes.

10 Q. Does C&S then have an option to extend that supply
11 agreement at markup for a third year and then a higher
12 markup for a fourth year?

13 A. Yes.

14 Q. Until all of these TSA services cease, will C&S be
15 decoupled from Kroger?

16 A. Can you define "decoupled"?

17 Q. Completely independent.

18 A. We'll be commercially independent as a competitor.

19 Obviously, we'll be using tools that Kroger will be
20 providing.

21 Q. So will C&S be completely independent from Kroger until
22 all of the TSA services cease?

23 A. No.

24 Q. Is the longest TSA service private label supply active
25 for up to four years?

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1 A. Yes.

2 Q. So for up to four years, will C&S be decoupled from
3 Kroger?

4 A. No.

5 Q. While the TSA is going on, will C&S be actually
6 competing fully?

7 A. I believe so.

8 Q. Do you recall testifying at your investigational
9 hearing that, quote, "We appreciate and respect and agree
10 with" -- well, actually, let's put this up on the screen.

11 So this is PX4030, pages -- page 135, starting at line
12 21.

13 And if you look at line 7 on page 136, you said, "We
14 appreciate and respect and agree with the need to decouple
15 so that we are effectively competing, and so the TSA can't
16 go on forever -- we understand that -- in which case, we are
17 not actually competing fully."

18 Do you see that?

19 A. I do.

20 Q. Is it true that the TSA can't go on forever, in which
21 case, C&S is not actually competing fully?

22 A. I think I have a different perspective than I did when
23 I answered that question.

24 Q. Okay. But this was your sworn testimony? "We
25 appreciate and respect and agree with the need to decouple

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1 so that we are effectively competing, and so the TSA can't
2 go on forever -- we understand that -- in which case, we are
3 not actually competing fully"?

4 A. That's what I said then.

5 Q. Will C&S be competing fully until C&S is fully
6 standalone?

7 A. Yes.

8 Q. Okay. Let's go back to that -- that same page.

9 So this is page 136, starting at line 18.

10 And the question is, "So if I'm understanding you
11 right, during the TSA, you will be competing fully with the
12 combined Kroger/Albertsons because they will be in charge of
13 some of your services?"

14 Answer: "Well, as an example, we'll be responsible for
15 running the stores. We have final choice on pricing. We
16 certainly have decision rights on assortment; but, for
17 example, the merchandising, you know, will be largely use --
18 use their merchandising services for the first several
19 months. So you all are the experts in what competition
20 means. I would suggest that, until we are fully decoupled,
21 we are not a separate-functioning company. So I would guess
22 that that's a continuum. Competition means a continuum.
23 We'll be competing day one in some dimensions but not fully
24 until we are fully standalone."

25 Is that your testimony?

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1 A. Yes.

2 Q. We can put that down and move to tab PX3111, which is
3 an email from you to Rob Palmer on September 8, 2023,
4 titled: "Re: Walnut customer Communications."

5 Is this an email you sent to Mr. Palmer, then-CEO of
6 C&S?

7 A. Yes.

8 Q. Is this an email preparing wholesale customer
9 communications for the day C&S announced the original
10 divestiture agreement?

11 A. Yes.

12 Q. Is it important to be accurate in statements to
13 Mr. Palmer?

14 A. Yes.

15 Q. And does C&S communicate with customers regularly?

16 A. Yes.

17 Q. Is it important to be accurate and truthful in
18 statements to customers?

19 A. Yes.

20 MR. TENG: Your Honor, we move to admit PX3111.

21 MR. WOLF: No objection.

22 THE COURT: It will be received.

23 BY MR. TENG: (Continuing):

24 Q. And let's look at the third section down in your email
25 of September 8th at 4:36 a.m. That starts with, "If asked

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1 about process and/or ability to buy stores and/or for
2 specific customers." Do you see that?

3 A. Yes.

4 Q. Is that what you wrote in customer talking points for
5 the divestiture?

6 A. Yes.

7 Q. And then the third bullet down you wrote, "We are
8 committed to being a much larger wholesaler than retailer."

9 Do you see that?

10 A. Yes.

11 Q. Is that what you wrote?

12 A. Yes.

13 Q. Then you write, after that, "So we're focused on
14 excellence in being a wholesaler and growing our wholesale
15 business."

16 Do you see that?

17 A. Yes.

18 Q. That's what you wrote?

19 A. Yes.

20 Q. And then the last sub-bullet there starts, "If asked if
21 we could sell, at this point, that isn't something we can
22 discuss."

23 Is that what you wrote?

24 A. Yes.

25 Q. At this point of September of 2023, when you wrote, "If

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1 asked if we could -- would sell, at this point that isn't
2 something we can discuss," did you understand the
3 transaction was under FTC review?

4 A. The merger?

5 Q. Yes?

6 A. Yes.

7 Q. And then you wrote in your customer communication
8 email, "But we have always viewed you as a potential partner
9 in that regard, and we definitely want to support your
10 growth."

11 Do you see that?

12 A. Yes.

13 MR. TENG: You can put that document away.

14 BY MR. TENG: (Continuing):

15 Q. Have Kroger, Albertsons, and C&S made a public
16 commitment -- or a public announcement that no stores will
17 close as a result of the merger?

18 A. Yes.

19 Q. Does that announcement have binding effect?

20 A. No.

21 Q. Does that announcement that no stores will close as a
22 result of the merger have a duration attached to it?

23 A. No.

24 Q. Can C&S close a store after the merger if the reason
25 doesn't have to do with the merger?

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1 A. Yes.

2 Q. Is poor performance of a store something that C&S could
3 close a store for?

4 A. Yes.

5 Q. Did C&S close a Piggly Wiggly Midwest store just last
6 year?

7 A. Yes.

8 Q. Was that store closed because it was poor-performing
9 and losing money?

10 A. Yes.

11 Q. All right. I'm going to -- let's flip to PX3115.
12 This is an email sent from you to yourself titled:
13 "Re: Comments on PR," dated September 3, 2023.

14 Are these notes that you took from a call between you
15 and C&S's then-CEO Bob Palmer to discuss the press release
16 for the announcement of the initial divestiture?

17 A. Yes.

18 Q. Are these comments Mr. Palmer made to you that you
19 wrote down in your phone at the same time so you had a
20 record of what his comments were?

21 A. Yes.

22 Q. Was Mr. Palmer C&S's CEO?

23 A. Yes.

24 Q. For how long was Mr. Palmer C&S's CEO?

25 A. Three years.

Winn - D

1 Q. Did Mr. Palmer then leave in a retirement that had been
2 planned for a long time?

3 A. Yes.

4 Q. Is Mr. Palmer currently still on C&S's board?

5 A. Yes.

6 MR. TENG: Your Honor, we move to admit PX3115.

7 MR. WOLF: No objection.

8 THE COURT: It will be received.

9 BY MR. TENG: (Continuing):

10 Q. Then let's look at the fifth section of the email to
11 yourself. You noted that Mr. Palmer, C&S's then-CEO, told
12 you, "Do we have to say that we won't close doors?"

13 Do you see that?

14 A. Yes. One clarification: I did not take verbatim notes
15 these were shorthand notes from a conversation.

16 Q. And then you noted he told you that, quote, "The 'all'
17 is a problem"?

18 A. That's what we discussed.

19 Q. You then noted that Mr. Palmer, a current C&S board
20 member, told you, "The trick is that they stay open as they
21 transition, but then what?"

22 A. These are notes I took from a discussion. Nothing was
23 verbatim.

24 Q. And then you noted Mr. Palmer told you, "Are we
25 committed to this?"

Winn - D/X

1 A. Again, notes from a discussion, not verbatim.

2 MR. TENG: All right. I pass the witness.

3 MR. WOLF: Your Honor, just question on timing.

4 Do you want to take the morning break now, or do you
5 want to wait for a little bit? It's your pleasure.

6 THE COURT: When you stand, you tend to want a
7 break, so I'm going to give you that break. All right.
8 We're going to stand in recess.

9 MR. WOLF: Honor my, children would say, "Busted."

10 (Recess taken.)

11 DEPUTY COURTROOM CLERK: All right.

12 THE COURT: Please be seated. All right.

13 MR. WOLF: Thank you, Your Honor.

14 THE COURT: You're welcome.

15

16 CROSS-EXAMINATION

17 MR. WOLF:

18 Q. Good morning, Mr. Winn.

19 A. Good morning.

20 Q. Counsel asked you a little bit about your background,
21 but why don't you introduce yourself to the Court a little
22 more. Can you tell Her Honor about yourself, about where
23 you grew up and what you did?

24 A. Sure. I'd like to think I started in the food
25 industry. My father was a lobster fishermen in Rhode

Winn - X

1 Island, and so I grew up working on lobster boats. So I
2 guess I began as a harvester. But I had an opportunity to
3 join C&S right out of college, and I've been in the food
4 industry my whole life.

5 Q. And you have an MBA as well?

6 A. I do.

7 Q. Can you tell us a little bit about your early years at
8 C&S?

9 Counsel talked about perhaps your more-senior
10 positions, but I gather you weren't hired as the CEO.

11 A. I was not, no.

12 I began in the company -- my first role was as a buyer,
13 a procurement buyer, and then I spent time in demand
14 planning. I spent time in warehouse operations,
15 transportation, warehouse technology. Really, basically
16 every facet of the company in my early years, the first
17 10 -- 10 or so years, or 12 years.

18 I'd like to think my formative positions were when I
19 had an opportunity to be out West for two years. I was
20 living in California, but responsible for the West region of
21 the company. I got to spend a lot of time up here in Oregon
22 and Washington, responsible for all of our customer
23 development and operations on the West Coast.

24 Then I -- and from that role, I became the chief
25 commercial officer and then the chief operating officer.

Winn - X

1 Q. So you mentioned the company. Let's talk about the
2 company. What is C&S?

3 A. C&S provides supply chain services behind grocery
4 stores all over the country, and that's -- we -- we provide
5 that to every customer, regardless of size. So we're
6 running the warehouses, the trucks. We're buying the
7 inventory. We're interfacing with the consumer packaged
8 goods companies or vendors -- in short, being General Mills
9 and Procter & Gamble, and the like -- and provide -- making
10 sure that those stores are in full, that their shelves are
11 in full, effectively.

12 For the smaller customers -- we'll call them
13 "independents" -- they could be mom-and-pop one-store
14 owners, all the way up to several stores, independents.
15 We're providing many more services for them.

16 Q. How long has C&S been around?

17 A. We were founded in 1918, 106 years ago, and we're now
18 into our fourth generation of family ownership.

19 Q. You're family-owned by the Cohen family?

20 A. That's correct.

21 Q. And are there are multiple Cohens on the board, or have
22 there been multiple Cohens on the board?

23 A. That's right.

24 So Rick Cohen, who is third generation, is the
25 chairman; and then his son Perry is also on the board.

Winn - X

1 MR. WOLF: If we could put DX2-2628 on the screen,
2 please.

3 BY MR. WOLF: (Continuing):

4 Q. And we're just going to use this document to orient the
5 Court to the company, but what is the document?

6 A. This was a meeting -- this is a document we prepared
7 for a meeting with SoftBank earlier this year to go
8 through this -- well, the company in total, but also this
9 acquisition itself.

10 MR. WOLF: Your Honor, we would move the admission
11 of DX2628.

12 MR. TENG: No objection, Your Honor.

13 THE COURT: It will be received.

14 MR. WOLF: Thank you.

15 BY MR. WOLF: (Continuing):

16 Q. And SoftBank -- we'll talk about SoftBank in a minute,
17 who they are, but if we could go to Slide 7 of DX2628, what
18 are we looking at on Slide 7? Particularly, the right-hand
19 map.

20 A. Yes. So this is a map we use -- this is in every one
21 of our prospective customer presentations. It's in a lot of
22 internal documents as well.

23 We use it to illustratively show our geographic reach,
24 where our warehouses are. So all of the black dots are
25 where we have distribution centers. All of the blue shaded

Winn - X

1 states are where we have customers or where we're delivering
2 to customers, and then we have names of many of our
3 customers on the screen as well.

4 Q. So counsel was asking you about density issues. Do you
5 recall that discussion?

6 A. Yes.

7 Q. Could we zoom in -- he asked you about, I believe,
8 Delaware and D.C.; is that right?

9 A. That's right.

10 Q. Can we zoom in on Delaware and D.C.? Do you see black
11 dots near Delaware and D.C.?

12 A. We do. We have a distribution center in Delaware. We
13 have two distribution centers in Maryland.

14 Q. And then we also see that Delaware and D.C. are in
15 blue.

16 A. That's right. We're delivering to hundreds of
17 storefronts across those states.

18 Q. So would it be accurate if someone would suggest that
19 you were a stranger to Delaware and D.C.?

20 A. That'd be strongly inaccurate.

21 Q. All right. Let's go to -- I think he also asked you
22 about Louisiana. Could we look at Louisiana?

23 And I see a black dot and that Louisiana's colored in
24 blue. What does that mean?

25 A. That's right.

Winn - X

1 So we have a distribution center in Hammond, Louisiana.
2 That's outside of New Orleans, as most people would know it.
3 We have customers, obviously, in that whole area.

4 In Louisiana, we have two different types of customers.
5 We have independent customers. We actually deliver them out
6 of our Houston warehouses. They're part of our grocer
7 supply business, which is the logo you see there, and we're
8 delivering to a number of states. Predominantly, Texas, but
9 also Louisiana, Arkansas, Oklahoma. And then we also
10 service Southeastern Grocers, which has, obviously, stores
11 in Louisiana, but also into some of the states east of
12 there.

13 Q. So if someone were to suggest that you're a stranger to
14 Louisiana, leading into this divestiture, would that be
15 accurate?

16 A. It would be strongly inaccurate.

17 Q. Let's zoom out again.

18 So, generally speaking, do you cover the vast majority
19 of the country?

20 A. We do.

21 Q. A few more questions about cross.

22 Counsel showed you a number of deposition clips, I
23 guess in an effort to suggest you were not being consistent
24 in your view of whether C&S would compete with Kroger during
25 the TSA period.

Winn - X

1 Could you contextualize or could you explain what you
2 were getting at when you said your views had changed?

3 A. Yes.

4 So, first of all, we are going to compete very
5 aggressively from day one. We have to, to be successful,
6 first of all. We owe it to our people. We owe it to the
7 consumers. We owe it to ourselves to compete strongly. And
8 if we don't do that, we won't be successful.

9 The other thing I'd say is, as we've -- and most of
10 that testimony was from December of last year. We had just
11 kicked off our integration planning. We are now almost nine
12 months into integration planning since that testimony. We
13 have thousands of processes we've now designed. Thousands
14 of things were prepared to do. I would say we are much more
15 prepared today than we were nine months ago; and, gosh,
16 you'd expect us to be.

17 Q. There were also questions about an email where former
18 CEO raised the prospect of potentially selling stores.

19 From time to time, especially early in the divesture,
20 did people say, within the company, "Is -- can we sell
21 stores?"

22 Did that happen occasionally?

23 A. I think if you go back to maybe the winter and spring
24 of 2023, when we were first getting into the process, did we
25 look at, you know, what would a sale-leaseback strategy look

Winn - X

1 like. Of course we are not going to be sale-leasebacking
2 these stores. We've never contemplated selling them.

3 Q. Sitting here today, can you assure the Court and the
4 Federal Trade Commission that you intend to operate these
5 stores?

6 A. Absolutely. We have to. In order to be a successful
7 business, we have to.

8 Q. So let's continue talking about C&S.

9 MR. WOLF: We can take this down.

10 Well, actually, leave it up, because it gives some nice
11 context.

12 BY MR. WOLF: (Continuing):

13 Q. How many customers do you support in blue on the
14 screen?

15 A. About 7,500 storefronts of all sizes, from, you know,
16 80,000 square foot grocery stores, down to small carnicerias
17 in Texas.

18 Q. So, literally, single stores all the way up to dozens
19 of store chains?

20 A. That's right.

21 Q. And how many people does C&S employ?

22 A. About 14,000.

23 Q. How many -- well, before I ask the question, let me
24 make sure we get the terms right.

25 Do you know what a vendor is?

Winn - X

1 A. Yes.

2 Q. What is a vendor?

3 A. We use the word "vendor" to describe who we're buying
4 product from. They're known in the industry as consumer
5 packaged goods companies, or CPGs, but they're the General
6 Mills of the world, the Procter & Gambles of the world, the
7 PepsiCo's of the world.

8 THE COURT REPORTER: Could you slow down just a
9 little bit?

10 THE WITNESS: Yes. I'm sorry.

11 BY MR. WOLF: (Continuing):

12 Q. So how many vendors do you deal with?

13 A. Thousands.

14 Q. And with those vendors, do you purchase the product
15 from the vendor?

16 A. That's right.

17 Q. And then do you, in turn, for at least many of your
18 customers, take the products that you purchase and put it on
19 the store shelves?

20 A. We don't physically put it on the shelf, but we bring
21 it right to the store.

22 Q. So you take it from Procter & Gamble and take it to the
23 loading dock of the store?

24 A. That's correct.

25 MR. TENG: I'm going to object to that as leading,

Winn - X

1 Your Honor.

2 This is a witness that's on their witness list and --

3 THE COURT: It's a shared witness, so don't --
4 don't use leading questions.

5 MR. WOLF: Understood, Your Honor.

6 THE COURT: Both of you, since it's a shared
7 witness.

8 MR. WOLF: Understood completely. I was speeding
9 things up, but I will -- I will --

10 THE COURT: Don't feel like you've got to speed
11 up. Not for the Court.

12 MR. WOLF: It's Friday, Your Honor. I'm trying.

13 THE COURT: Okay. But not for the Court.

14 BY MR. WOLF: (Continuing):

15 Q. So let me just ask the open-ended question.

16 For in the context of distribution, what does that
17 mean?

18 A. Sure. So we absolutely buy product from the vendors.
19 We're responsible for stocking the warehouse. So it's
20 important to maintain inventory levels in the warehouses to
21 ensure that, when the stores order product from us, we can
22 deliver it.

23 Am I too fast again? I'm sorry.

24 Okay. So our expectation would be that when Fiesta or
25 Holiday Markets or Tops orders from us, we're delivering 95,

Winn - X

1 96, 98 percent of what they order.

2 So that -- maintaining that inventory is really
3 important. We run the warehouses. So when the store orders
4 from us, we're picking the order. Meaning we're running
5 around the warehouse, literally picking the cases that
6 they're ordering from us, building the pallets, and then
7 we're delivering those via truck, obviously. Although we
8 have some boats in Hawaii; but, generally speaking, via a
9 truck to the back of the store, and then helping unloaded at
10 the store as well.

11 Q. So let's turn the page to Slide 8. We see a wheel on
12 the left-hand side. If we could zoom in on the wheel.

13 And maybe -- first of all, generally speaking, what
14 does this wheel represent?

15 A. This represents services beyond the supply chain that
16 we provide for many of our customers.

17 You can think about it, in terms of a continuum, the
18 smaller the customer, the more of the services they need
19 from us because they don't have the scale to have their own
20 category management, as an example. We'll get to that in a
21 moment.

22 The larger customers use fewer of the services. All of
23 our independent customers use a vast majority of this wheel.

24 Q. So in addition to being a distribution company, do you
25 also provide all of these services to some of your

Winn - X

1 customers?

2 A. That's right.

3 Q. So let's start at fresh products, and if we could very
4 briefly go around and tell Her Honor what these services
5 mean.

6 A. Sure. So fresh products -- obviously, you see a
7 picture of an apple, so produce. Meat, deli, those types of
8 things.

9 Our independents, in particular, are competing in fresh
10 because they believe, and we support them in this, that they
11 can differentiate from the big chains with fresh. It's the
12 first department you walk into as a consumer. You tend to
13 be higher service in those departments. And so it's
14 important for us, as their wholesaler or their distributor
15 and their partner, that we're providing the right items,
16 which might be different, depending on the store, at the
17 right freshness, of course, and of course at the right cost.

18 We actually help them cultivate their assortment.

19 Right? So if you have an independent store in rural
20 California, of which we have many, the assortment there
21 might be different than what somebody would expect in Los
22 Angeles.

23 Obviously, California, pretty diverse state, as an
24 example. You know, Hispanic stores are different than, you
25 know, others.

Winn - X

1 And so we're helping them actually cultivate the
2 assortment as well as providing all the other things I
3 mentioned.

4 Q. So let's keep going around the circle. Supplies and
5 service. What does that mean?

6 A. So "supplies and service" could mean a lot of things,
7 but let's use the most basic, which would be the shopping
8 bag or the grocery bag in which you put your groceries after
9 you shop.

10 So independent customers, in particular, will actually
11 provide those supplies to them, not for resale supplies, but
12 you can imagine there are hundreds, if not thousands, of
13 those types of items that are needed for a store.

14 Q. So the guy behind the deli counter, his gloves?

15 A. That's right.

16 Q. Store design and construction. What that's -- what's
17 that all about?

18 A. Many of our independents are very interested in growth,
19 but they also, obviously, have to do remodels to keep their
20 stores refreshed. But, again, they may have one store.
21 They may have two stores. They may have five stores. They
22 don't have a design and construction team, and so we're
23 providing any number of services, including real estate
24 assessments, as they think about new store development;
25 contractors to help them do that work. It could be as

Winn - X

1 simple as we order the signs for them when they remodel the
2 store.

3 Q. Next, retail technology?

4 A. That's a big topic.

5 The picture shown is actually the ordering gun that the
6 stores used to order from us, so it's basically their
7 ordering technology.

8 But we're also, for example, with the vast majority of
9 our independent stores, providing the service -- for
10 example, the checkout lane, including self-checkout but also
11 staffed checkout. We're providing the hardware but also the
12 software that connects into the rest of the store and then
13 back through us.

14 So -- and you can think about anything in the store
15 that requires technology. They're coming to us for those
16 services.

17 Q. Professional services.

18 A. Predominantly, there where we're talking about
19 accounting. So, again, a five-store operator doesn't have
20 an accounting department and a controller. Right? So we're
21 providing those services for them.

22 There may be other professional services as well, but
23 accounting would be the largest.

24 Q. Retail marketing?

25 A. So really -- and really the next -- those two and

Winn - X

1 creative services kind of go together, but you can think
2 about, again, marketing as a broad topic. So it could be
3 print marketing. Signs in the store. It could be the
4 promotional flier. It could be direct mail by a digital or
5 physical paper.

6 Obviously, the world has moved digital. We're
7 providing all of that support for them. We're designing
8 their ads, designing their campaigns; and, actually, in many
9 cases, executing their campaigns.

10 Q. So digital marketing, presumably, is just the digital
11 version of what you just discussed?

12 A. That's right.

13 And, in digital, we would include ecommerce as well.

14 Q. Oh, so talk to me about ecommerce. What are you doing
15 on the ecommerce side of things?

16 A. Sure. So many of our independents obviously have to
17 compete in the ecommerce space. Their large-chain
18 competitors all have ecommerce capabilities. But, again,
19 because they're smaller, they don't have the scale to
20 negotiate with Instacart, negotiate with DoorDash or,
21 frankly, build a website.

22 And so we actually provide the services to build their
23 websites, their apps, and also give them access to our --
24 think about it as like -- sort of like a group discount with
25 Instacart, as an example.

Winn - X

1 Q. Next is "data insights." What does that refer to?

2 A. So a lot of our independent customers are really
3 operated by their owners, and so they've got a lot of things
4 to do. And so how do they stay current? Whether
5 assortment, as an example, or what kinds of marketing works
6 best, et cetera. So we're doing that for them. In some
7 cases, it's advisory; in some cases it's execution.

8 Q. Creative services. You've already touched on this. Is
9 there anything you wanted to add to that?

10 A. No. I think we've covered it.

11 Q. Food shows and buying programs.

12 A. These are opportunities -- and we do them twice a year
13 in every region, so we have -- I think we're up to eight or
14 nine total buying shows that we do. We do one that is
15 annual, so -- but what the idea is there is we bring all of
16 the vendors together in a region, and then we bring all of
17 our customers from that region together for, you know, a
18 couple of days, and it's an opportunity for them to buy as a
19 group as if they were a chain.

20 So it gives them a bit more buying power to get better
21 trade funds, effectively.

22 Q. So we've already talked with my colleague, to some
23 degree, about private brand products.

24 If you could talk very briefly about that.

25 A. All of our independents and some of our chains take

Winn - X

1 advantage of our private brand portfolio because, again,
2 they don't have the scale to do that themselves.

3 Q. And, finally, category management.

4 A. So that's everything from -- a little bit of the
5 insights that we talked about. It's data insight power, but
6 it's really what assortment should every store carry and
7 what should the layout of the shelf be?

8 So we're actually designing the layout of the shelves.
9 So you can imagine you're walking through the condiments
10 aisle, and you have Heinz ketchup, and Hunt's ketchup, and
11 Best Yet ketchup, and then, you know, some specialty
12 ketchup, and which one should be on which shelf, and which
13 sizes should be on which shelf, et cetera. So we're
14 actually designing that.

15 And we also have boots on the ground actually
16 physically resetting the aisles in the stores.

17 Q. Yesterday we heard testimony from various folks that
18 run supermarket chains, that they average 35- or 40,000 SKUs
19 per store. Can we put that in context?

20 How many SKUs do you manage for your clients'
21 customers?

22 A. Because we have incredible diversity of customers
23 around the country, we carry about 100,000 SKUs.

24 Q. C&S is responsible for 100,000 SKUs?

25 A. That's right.

Winn - X

1 Q. And how many of those SKUs are private label, roughly?

2 A. Several thousand. I would say probably around -- the
3 average store is carrying 2- to 3,000, but we have access to
4 5- to 6-.

5 Q. You talked a fair amount about independents when we
6 were going around the wheel. You also mentioned, though,
7 that you do work for larger folks. What are some of the
8 names? Would Her Honor recognize some of the names of the
9 larger folks that you do work for?

10 A. Our largest customer is Southeastern Grocers, but you
11 would know them as Winn-Dixie, predominantly. Another big
12 customer of ours would be Northeast Grocers, but you would
13 know them as Tops and Price Chopper.

14 And here on the West Coast, in California, we just --
15 we just signed a new agreement and started servicing
16 Save Mart. They run about 200 stores in Northern California
17 and Central Valley.

18 Q. And what do you do for folks in Oregon?

19 A. We have a number of independents in Oregon. Our two
20 biggest customers here are C&K Markets. They run a couple
21 of different banners. Ray's Food Place would be the one you
22 would -- you would know the most, and then McKay's Market,
23 as well, on the Coast. Those are two largest customers in
24 Oregon.

25 But we have a number of single-store independents as

Winn - X

1 well.

2 Q. And do you know whether you do any work for the parties
3 in this case?

4 A. We do. We service, on a supply chain basis, all of the
5 frozen for all of the Albertsons divisions on the East
6 Coast, and then we service wall-to-wall the Kroger Northern
7 California Division of food scale.

8 Q. So is this a recent phenomenon? Is this the result of
9 the merger that you've been doing work for Albertsons and
10 Kroger?

11 A. Next year we'll celebrate our 20th year in servicing
12 Foods Co., and in Albertsons' case, it's been over ten
13 years.

14 Q. Broadly speaking, why do customers come to you?

15 A. Generally speaking, they're trying to save money.
16 Right? So we create efficiencies in the supply chain,
17 efficiencies in procurement, efficiencies in overhead.

18 In general, it's a cost question.

19 Obviously, our service has to be high. Our quality has
20 to be high. Our people have to be amazing, which they are;
21 but, generally speaking, we're helping -- we're helping
22 companies stay competitive.

23 Q. Now, earlier in my colleague's direct of you, he showed
24 a chart of a number of stores that C&S has owned over time.

25 Are there stores that you don't technically own but you

Winn - X

1 effectively run?

2 A. We have about -- within their independent base, we have
3 about 165 what we call franchisees. They are predominantly
4 in Wisconsin and then the Carolinas. We have a few in
5 Georgia as well.

6 The franchisees -- if we could use this wheel again --
7 so it's good that we still have it up -- the franchisees are
8 getting, you know, sort of the most from the wheel, and they
9 get a bit more of a playbook from the wheel.

10 They're getting more of a -- sort of a -- I guess
11 "playbook" is the best word to use, where they're getting,
12 sort of, "Here's your go-to market strategy," and we're
13 providing so many services, such that, you know, their
14 responsibilities are still significant and running the
15 physical stores and managing the people and dealing --
16 working with their customers, but we're giving them all the
17 back office support.

18 Q. So if I had changed the title of my colleague's slide
19 from "Number of stores C&S owns" to "C&S owns and does much
20 of the work of," what would the number be?

21 A. 188.

22 Q. We talked a little bit about unions this morning. How
23 many union workers does C&S employ?

24 A. Right about 2,000.

25 Q. And how would you characterize your relationships with

Winn - X

1 unions?

2 A. I would say they're productive. We've had a number of
3 really positive relationships over the past several years
4 and renewed a number of CBAs just in the last 12 months.

5 Q. Are there some unions that historically C&S has gotten
6 along better with than other unions?

7 A. Just like every employee. You have a different
8 relationship with everybody.

9 Q. As a whole, is union labor important to C&S?

10 A. It's vital.

11 Q. Why do you say it's vital?

12 A. You don't have a company without your people. You need
13 your people and your customers; and, obviously, with 2,000
14 of our employees being unionized, they're really important
15 to our company.

16 Q. All right. So let's broaden the lens historically now,
17 and we heard a little of this from Mr. McGowan, so I
18 apologize if we're retreading ground for the Court, but can
19 you take us through the recent history of C&S? And I'd ask
20 you whether there have been any inflection points or
21 important moments?

22 A. You know, this industry is so dynamic. In my 20 years,
23 it's changed so much.

24 That being said, five years ago the company had a real
25 moment. And in 2019, Ahold Delhaize, which you would know

Winn - X

1 the banners of Stop & Shop and Giant and Food Lion and
2 Hannaford, et cetera, on the East Coast.

3 Ahold Delhaize represented 44 percent of our volume,
4 our sales. They made a decision in 2019 to move their
5 business to self-distribution.

6 What that really meant was they were moving their
7 business away from C&S into kind of their own distribution
8 centers, their own procurement. They made the announcement
9 then.

10 It was going to be a multi-year journey. But, still,
11 in a moment where 44 percent of your business has said
12 they're going to walk out the door, that was an important
13 moment for us to reassess our path forward.

14 You can imagine, that customer -- we began with them in
15 1985, I believe, was the year. So almost 40 years, at that
16 point 35 years, of history, you can imagine at the point of
17 44 percent of volume -- our business -- they were the
18 nucleus. Our processes, our organizational design was so
19 much built around Ahold Delhaize, and we had -- we had a
20 decision to make of what kind of company we were going to
21 be.

22 Q. What happened next?

23 A. So that was late 2019. Obviously, we all know what
24 happened in early 2020 with COVID, so that -- I think that
25 took everybody's focus for a period of time.

Winn - X

1 As we get to late 2020, into 2021, we launched,
2 basically, a strategic process.

3 And, you know, regardless of what all the documents at
4 the time -- I would -- I would really boil it down to three
5 things. The first was we knew we had value in the industry.
6 Regardless of a large customer deciding to do something
7 making a strategic decision, we knew we still had value in
8 the industry, and we knew we could provide that value to a
9 number of customers.

10 I would say we shifted our focus to what I would call
11 regional chains and independents, as opposed to large
12 chains. The reason is a regional chains -- so Save Mart is
13 a great example in California. We can provide more value to
14 them on a relative basis than we can a large chain, because
15 we bring scale.

16 So we said we have to go win new customers. Now,
17 that's easy to say. Everybody wants to win new customers
18 when you're in any -- any company, of course; but I'm proud
19 to say our teams added over \$5 billion in the last 26 months
20 with new customers, and that's remarkable.

21 So we've shifted our customer mix, and we knew we had
22 to. We knew we could, and we did it.

23 The second thing, I would say, is we knew we had a
24 great team. Great incredible heritage. At that point, 101
25 years, 102 years. Incredible history. Incredible team.

Winn - X

1 So, again, notwithstanding a customer making a
2 decision, like Ahold Delhaize did, we still knew we had a
3 place in the world.

4 And so we knew, not only could we bring that value to
5 other customers, of which we've done, we also felt we could
6 bring that value to other businesses. And so we knew we
7 needed to look for some acquisitions, and we did a number.

8 So we acquired the Piggly Wiggly Midwest business,
9 which is predominantly a franchise business --

10 THE COURT REPORTER: Could you slow down again?

11 THE WITNESS: I'm sorry. I'm really bad at this.

12 -- which is predominantly a franchise business, also
13 includes some corporate retail stores. We acquired Burris
14 Logistics or -- sorry -- a component of the Burris Logistics
15 business, which included the warehouse we looked at in
16 Delaware, and then we acquired the twelve top stores that
17 we've converted to Grand Union and one Piggly Wiggly. We
18 also made another investment in another retail business.

19 And so every one of those cases we knew we could bring
20 value to those businesses, and we're always on the hunt for
21 those kind of smaller, but meaningful, acquisitions.

22 So that was -- that was prong two.

23 Prong three, which really we got into as -- really in
24 2022. We had a lot to get done in 2021. We started looking
25 for what we'll call a "transformational acquisition."

Winn - X

1 So Piggly Wiggly Midwest, great business for us.
2 Helped our company. Didn't change our company.

3 And so we looked at a number of things in 2022, and we
4 were in -- basically, in that exploration phase when Kroger
5 and Albertsons announced their merger in October.

6 BY MR. WOLF: (Continuing):

7 Q. So we'll shift gears to the divestiture and the merger
8 in a moment, but before we leave the topic of your history,
9 if someone were to suggest that C&S is, quote, "A wholesaler
10 that has repeatedly failed at running supermarkets," end
11 quote, what would your reaction be to that?

12 A. It's insulting, and it's incomplete. We're in a
13 transformational moment.

14 Q. All right. Let's talk about the divestiture and what
15 brought you to the courtroom today.

16 How did you learn about the prospect that you might be
17 involved in a broader merger?

18 A. So we learned about it the way everybody else did,
19 which is we read about it. We read about Kroger and
20 Albertsons announcing their intent to merge in the news,
21 like everybody else did, in October of 2022.

22 That day, Bob Palmer, the CEO at the time; Kevin
23 McNamara, our CFO; and I looked at each other and said, "We
24 need to throw our hat in the ring," because we knew, or we
25 guessed, that there would need to be a divestiture, and we

Winn - X

1 thought we could be a really -- I would say a really great
2 fit, maybe a perfect fit, for that divestiture.

3 So we knew, from that day, that we were -- we were
4 going to be a participant.

5 Again, we were looking at some other things at the
6 time, including another retail acquisition, that we backed
7 out of to focus on this.

8 Q. Were you at all concerned that getting into retail
9 might alienate your existing wholesale customers?

10 A. It's something we think about, and so when we -- when
11 we looked at, you know, all the maps that you could possibly
12 have back in October and November of '22, in terms of where
13 the divestitures were likely to occur, one of the things we
14 looked for was overlap with our existing customer base.

15 And what gave us great confidence was that there's very
16 limited overlap with our existing customers in this
17 divestiture.

18 Q. So let's keep going with the process.

19 You learn about it. You talk about it. What happens
20 next?

21 A. We quickly -- and it may have happened before that
22 calendar year closed, or it may have been early the next
23 calendar year, but we got in touch with Kroger's bank --
24 banker or advisor, Wells Fargo, who is going to lead the
25 process, and we said, basically, "We want to throw our hat

Winn - X

1 in the ring, and let us know when it gets started."

2 Q. Did you focus on how you were going to finance the deal
3 in those times? Did you start to come together, put
4 together a financing plan?

5 A. We did.

6 Q. Could you outline -- first of all, what is the purchase
7 price? I don't think we've talked about that yet, or maybe
8 I missed it. How much are you buying this for?

9 A. Including closing costs and its -- working capital, et
10 cetera, it's \$2.9 billion.

11 Q. So where is that \$2.9 billion coming from?

12 A. The most important thing is the Cohen family has
13 committed to putting in \$500 million of their equity, of
14 their money, in -- as equity into the business. So
15 500 million from the Cohen family. SoftBank has committed
16 to \$400 million in equity. So we have \$900 million in total
17 equity going into the business. The remaining 2 billion
18 will be funded from debt.

19 Q. So fully a third of the purchase price is actually just
20 coming straight out of people's pockets?

21 A. That's right.

22 Q. Is it significant that the deal is being funded so
23 substantially by equity?

24 A. I believe so. For two reasons: One, is it shows our
25 commitment. This is -- this is real -- this is a family's

Winn - X

1 wealth. And, you know, they've earned it and good for them,
2 but it's their wealth that they've committed to this which,
3 to me, suggests a long-term commitment. And one of the
4 reasons why I feel so fortunate and proud to be a member of
5 this company and to work for the Cohen family is their
6 commitment to the business in the next 106 years.

7 So I don't know what else you can do, other than put
8 your money where your mouth is, which they've done.

9 The other reason why equity is important versus debt is
10 it de-risks the business. The more debt you have, the more
11 your interest payments are. And so this mix of debt and
12 equity, we believe, de-risks the business.

13 Q. Who's providing the debt part of the deal, at least the
14 big players?

15 A. It's two sources. We have an existing revolver, our
16 asset -- asset-backed loan. That's -- the primary banks in
17 that are Wells Fargo and Bank of America. There are a
18 handful of other banks that participate in smaller tranches.

19 We'll fund about 750 million from our revolver, which
20 we had in place already. We're just -- we're basically
21 accessing more of it. And then \$1.25 billion will come from
22 a term loan from Blue Owl.

23 Q. So let me ask briefly about each of these sources of
24 funding.

25 Did Mr. Cohen and the family more broadly do any

Winn - X

1 diligence on the deal to decide whether it was worth their
2 while to put \$500 million in?

3 A. Every time I talk to Mr. Cohen, we talk about the deal.

4 Q. Did that Mr. Cohen and his colleagues -- and family
5 members, rather, determined that the deal makes sense from
6 the perspective of running a 600-store retail grocery
7 business?

8 A. Yes.

9 Q. Did SoftBank do diligence on the deal?

10 A. Significant diligence on the company and the deal
11 itself.

12 Q. Did SoftBank determine that the deal makes sense to run
13 a retail grocery business?

14 A. Yes.

15 Q. Did Blue Owl, one of your debt sources -- did they do
16 diligence on the deal?

17 A. Significant diligence.

18 Q. Did Blue Owl determine that the deal makes sense from
19 the perspective of running a 600-store retail grocery
20 business?

21 A. Yes.

22 Q. Did Wells Fargo and Bank of America do diligence on the
23 deal?

24 A. Again, significant diligence.

25 Q. Did they determine that the deal makes sense, again,

Winn - X

1 from the perspective of actually running the retail stores
2 talking about?

3 A. That's right.

4 Q. All right. When were you selected by Kroger as the
5 buyer?

6 A. Finally, on September 8, 2023 -- obviously, we had a
7 number of discussions leading up to that point, and we
8 believe about a week before that we had a handshake deal,
9 but we officially signed the morning of September 8th.

10 Q. And we've heard about a first package and a second
11 package. How many -- how many stores were in the original
12 package?

13 A. There were 413 stores.

14 Q. Did you agree at the time to buy more stores,
15 potentially?

16 A. We did. We had what we called the flex provision in
17 that deal, which provided certain conditions around how we
18 could buy up to 650 total stores.

19 Q. And was there a time when you agreed to buy more than
20 the original 413 stores?

21 A. We did. We signed a revised agreement, APA, in April
22 of this year.

23 Q. APA: Asset purchase agreement?

24 A. Yes.

25 Q. By the way, I have no idea why I'm asking this question

Winn - X

1 now, but we've heard a lot in this case about clean rooms,
2 and no one ever defined what a clean room is. Could you
3 tell me what a clean room is?

4 A. Sure. So a clean room would be a place to have -- the
5 best way to say would be where there is a lot of data that
6 only certain eyes can see for competitively sensitive
7 reasons.

8 And so, for example, we'll have team members who
9 provide merchandising services, who work at Kroger and
10 Albertsons today, will go into the clean room during the
11 TSA, will be providing merchandising services for us in the
12 clean room. We, C&S, will have access to certain amounts of
13 information. Kroger and Albertsons will have access to less
14 of that information, and then that happens through the clean
15 room. And then once they become our employees, they come
16 out of the clean room.

17 Q. So it's kind of like an escrow for information?

18 A. I think that's a good way to describe it.

19 Q. All right. Sorry for that digression.

20 How many stores were in the amended asset purchase
21 agreement that you signed in April of this year?

22 A. 579.

23 Q. Were they limited to just stores? Were the assets you
24 acquired just stores?

25 A. No. There are a significant number of supporting

Winn - X

1 assets around the stores.

2 MR. WOLF: So if we can call up DX1058, which is
3 previously admitted, Your Honor, the June 2024 Walnut
4 Business Plan, can you call up the first page?

5 BY MR. WOLF: (Continuing):

6 Q. First, I was curious when I saw this. In the upper
7 right-hand corner I see the name "Winter Street Partners."
8 What does that refer to?

9 A. That's the name of the retail entity.

10 Now, C&S family of companies, which is the total
11 company, we have a number of subsidiaries as part of that.
12 Our retail business is Winter Street Partners. 1918 Winter
13 Street Partners. So the year we were founded, and then
14 Winter Street was the location of our first headquarters.

15 Q. Will Winter Street Partners be part of the same
16 corporate family as the wholesale business?

17 A. Yes.

18 Q. Does Winter Street -- excuse me -- let's turn to
19 Slide 3.

20 Lots of words. Lots of pictures. We'll focus on
21 specific parts of it. But is this a general summary of the
22 April 2024 asset purchase agreement that's at issue in this
23 case?

24 A. That's right.

25 Q. Let's look at the bottom right first, and specifically

Winn - X

1 the right-hand side of the bottom right.

2 That's good enough.

3 We see "Banner rights C&S could receive." 579 package
4 on the right-hand side.

5 Could you describe to Her Honor what is listed with
6 those six banners?

7 A. Sure. So in the case of Carrs, QFC, Haggen, and
8 Mariano's, we are acquiring the brand and the intellectual
9 property and the ability to use -- of course, because we're
10 acquiring them, the ability to use them anywhere, including
11 on our stores or even licensing them to our customers, if we
12 wanted to, from a brand perspective; but we can use those
13 brands anywhere we want in the country.

14 In the case of Albertsons, we have exclusive licensing
15 rights to that banner name in California and Wyoming; and in
16 the case of Safeway, we have exclusive licensing rights in
17 Colorado and Arizona.

18 Q. We heard a couple of days ago from the Kroger manager
19 who currently runs, in part, the Mariano's division. He was
20 very proud of Mariano's.

21 What is your view of the Mariano's banner?

22 A. There -- you know, I don't know if, Your Honor, you've
23 ever been in one of the Mariano's stores, but they're kind
24 of fun to shop. They're big. They have a lot of items.
25 They have a lot of really interesting, I would say, food

Winn - X

1 experiences in the store. We've done a lot of diligence on
2 the Mariano's stores. We're excited about that brand.

3 Q. Are you contemplating that some of the stores will
4 be -- that are currently other banners will be rebranded to
5 Mariano's to take advantage of that?

6 A. Yes.

7 Q. What is your general opinion of the selection of
8 banners C&S is receiving in the -- in the deal?

9 MR. TENG: Objection, Your Honor. We were not
10 permitted discovery into their negotiations and the delta
11 between what C&S asked for and what it got, and so under
12 sword and shield, I don't believe this testimony should be
13 permitted.

14 MR. WOLF: Your Honor, let me cut to the chase.
15 I'll ask the final question.

16 THE COURT: Okay.

17 BY MR. WOLF: (Continuing):

18 Q. Do you believe you have the banners you need to
19 succeed?

20 A. Yes.

21 MR. TENG: Same objection.

22 MR. WOLF: That's been --

23 THE COURT: Overruled. He can answer that
24 question.

25 ///

Winn - X

1 BY MR. WOLF: (Continuing):

2 Q. Looking at the left side of the document --

3 MR. WOLF: Can we pull out -- yeah. Thank you.

4 BY MR. WOLF: (Continuing):

5 Q. We see three more categories. We've talked about
6 bannerling. Let's talk about private brands very briefly,
7 because we've heard an awful lot about it.

8 Can you summarize again what private brands you're
9 getting in the deal?

10 A. Right. So we're getting five brands in their entirety,
11 the individual brands in their entirety, which are for
12 different parts of the store.

13 So, for example, Open Nature, which is one of the ones
14 we're really -- we're excited about all five, but it's
15 probably the one we're most excited about, is -- you think
16 about it as a "free from" organic label, and so not to get
17 too much into our commercial plans with my competitor in the
18 room, but we're pretty excited about leveraging that brand
19 as we go forward.

20 And so there are five in total, and they all have the
21 place in the store.

22 Q. The third bullet describes the TSA, and we're going to
23 be hearing next week from Yael Cosset, who's going to
24 explain in some detail the TSA, but at a high level, we've
25 used "transition services agreement," that term, a lot.

Winn - X

1 What is -- what is it designed to do?

2 A. It's really designed for continuity. So, you know, I
3 think everybody's mission here is that the day this
4 transaction closes, the next morning our team members go
5 into the stores and our customers is into the stores, and
6 they don't have disrupted operations. Right? It's just the
7 same continuous. It's a new owner, and we're competing as a
8 new owner, but nothing kind of goes wrong, so to speak.

9 And so the TSA ensures that that -- for that
10 continuity, there are many, many elements to the TSAs that
11 we have, and so they cover different services. We talked
12 about some of them earlier. But that would be what I'd say
13 at a high level.

14 Q. And then we see IT. We will be transitioning to an ACI
15 tech stack clone and Oracle HCM system. We heard a lot
16 about that right before you got on the stand. Of course,
17 you weren't in the courtroom.

18 Very briefly, what's the IT package comprising --
19 comprised of?

20 A. So it's a combination -- I mean, it's many different
21 systems. Some third party, some homegrown or proprietary to
22 Albertsons that will be -- that come together in how
23 Albertsons' IT stack today operates. We're effectively
24 copying that or cloning it, of course per the word, and then
25 we'll be running all of the stores off of that clone.

Winn - X

1 And then over time, of course, because every company
2 does this, we'll continue to innovate in IT, and we'll
3 advance those systems.

4 Q. In addition to what's on the screen, are you gaining
5 distribution assets as part of the divestiture?

6 A. We are. Six distribution centers.

7 Q. Where are those distribution centers?

8 A. One in Washington, one in Utah, one in Arizona, and
9 three in Denver.

10 Q. Are you receiving a dairy facility?

11 A. There's a dairy manufacturing plant in -- it's
12 co-located to the distribution centers in Denver.

13 Q. And will that dairy facility be able to service, not
14 only your existing stores, but your existing customers?

15 A. That's right.

16 Q. Are there any supply agreements you're also gaining as
17 part of the asset purchase agreement?

18 A. We have distribution -- I think of it as core
19 distribution. Well, really everywhere for day one. So
20 every store, again, from a continuity standpoint, will be
21 serviced from the distribution centers. It's serviced from
22 today.

23 There are three geographies where have a bit of an
24 extension there. One is Alaska, two is Illinois, three is
25 Southern California.

Winn - X

1 There wasn't, in any of those cases, what I would
2 describe as a fit-for-purpose distribution center that we
3 could acquire from Kroger, and so we chose not to. And,
4 instead, we'll have a multi-year distribution supply
5 agreement, and we'll be building a fit-for-purpose DCs, or
6 distribution centers -- sorry -- in each of those locations.

7 Q. We've heard about people in this case that you'll be
8 getting. Is that an important part of this deal?

9 A. It's the most important part.

10 Q. So let's turn to Slide 25 of this document and zoom in.
11 What are we looking at here on Slide 25?

12 A. Very high-level illustrative organizational structure
13 for the retail division.

14 Q. So you've laid out what your org structure is going to
15 look like?

16 A. All the way down to the individual contributor level,
17 yes.

18 Q. And will any of these roles in this structure be filled
19 by current Kroger or Albertsons employees moving over to
20 C&S?

21 A. Yes. We are in the ballpark of about 1,000 team
22 members. Outside of the physical stores, about 1,000 team
23 members will come over from Kroger and Albertsons.

24 Q. How many?

25 A. 1,000.

Winn - X

1 Q. 1,000 people?

2 A. Yes.

3 MR. WOLF: Let's move on to Slide 29 and 30.

4 Start with 29, please.

5 BY MR. WOLF: (Continuing):

6 Q. Is this the leadership team depicted here?

7 A. Part of it, yes.

8 Q. You're on top. Next, we see Susan Morris. Who is
9 Susan Morris?

10 A. Susan is the current chief operating officer at
11 Albertsons. She's been there for -- it says 35-plus. I
12 think she's at 39 years at Albertsons, and she's agreed to
13 join our company as our retail division CEO.

14 Q. Is that a big deal?

15 A. It's a really big deal.

16 Q. Why?

17 A. Continuity. I mean, she knows everybody there. She
18 knows all the stores. So from a continuity perspective --
19 and, obviously, she's been successful, so we're excited to
20 have her join the team in that regard; but, obviously, from
21 a continuity perspective -- and, you know, I think a number
22 of the Albertsons team members are excited to join the team
23 and be a part of her team.

24 Q. She's going to be the boss of the retail division?

25 A. That's right.

Winn - X

1 Q. And if we all have questions about the day-to-day
2 operations of C&S going forward, is she probably the best
3 person to ask?

4 A. I think that's fair.

5 Q. So it's good that she'll be here next week?

6 A. That's right.

7 Q. And just to be clear, this shows, among the titles,
8 marketing, talent management, store operations,
9 merchandising. These are all executives lined up to take
10 the jobs?

11 A. With one edit. So Mark Messier will actually -- we've
12 hired Michelle Larson, who is currently the EVP of the West
13 for Albertsons, to come on as our chief merchant for the
14 retail division.

15 Q. So you're bringing over even more senior management
16 from Albertsons to help you out?

17 A. That's right.

18 MR. WOLF: And next slide. Just, if we could blow
19 that up.

20 BY MR. WOLF: (Continuing):

21 Q. Are these some of the folks that'll handle chief
22 information office, loyalty, ecommerce. We see two for
23 pharmacy, adult beverage, and strategic sourcing?

24 A. That's right.

25 Q. I don't want to belabor this, but you have folks in

Winn - X

1 place for each of these positions?

2 A. And some we've hired independently, already are part of
3 our team. So Joel is a great example of that. He's running
4 adult beverage. Nicole Leiter is another example on the
5 pharmacy side. So those are folks that we require --
6 recruited and have been a part of our team for a while, and
7 then there are others that are coming from Kroger and
8 Albertsons.

9 Q. If you were planning to flip these stores for real
10 estate value -- and we'll talk more about this in a
11 minute -- but would you have bothered to hire all these
12 really experienced folks?

13 A. That would be -- no.

14 MR. WOLF: Let's turn to Slide 26.

15 BY MR. WOLF: (Continuing):

16 Q. What are we looking at here?

17 A. This is sort of a high-level map of our divisional
18 structure. So I think a prior slide, when Mr. Teng was
19 questioning me, we actually showed three divisions.

20 We've decided to have a fourth division to manage the
21 business a bit better. So there are four divisions. You
22 can think about those as geographies. In those geographies
23 a number of stores and districts. So a district would be --
24 think about it as 20 to 30 stores that have a district
25 leader, the district director, and then rolling up to a

Winn - X

1 division. Divisions will make decisions around go-to-market
2 strategy, pricing strategies, merchandising strategies.

3 And so we'll have the Pacific Northwest, which is here
4 in Oregon, the state of Washington and Alaska; the
5 Southwest, which is predominantly California and Arizona
6 from a store-based standpoint, but also includes Nevada; the
7 Mountain division, which, of course, is predominantly
8 Colorado, but also the other -- the stores in the other
9 states; and then we'll call it broadly "the East," but that
10 includes Texas, Louisiana, Illinois, and the mid-Atlantic.

11 Q. Could you describe briefly the layers of folks on
12 the -- on the org chart that'll be filling in and running
13 all these stores?

14 A. So each division will have a division president, and,
15 in fact, two current Albertsons division presidents will
16 have agreed to join the team. So Carl Huntington, who
17 currently runs the southwest division, is joining our team
18 to run the Southwest division. And Todd Broderick, who
19 currently runs the Denver division, what is the Mountain
20 division, will be -- will be joining our team to run that.

21 And then within the division -- reporting to the
22 division presidents will be, obviously, store operations
23 leaders, merchandising leaders, pricing leaders, assortment
24 leaders, et cetera.

25 Q. And what's the most important component of all of this?

Winn - X

1 The folks in the store?

2 A. The people in the store.

3 Q. How many folks are actually coming to help you run the
4 stores?

5 A. About 67,000.

6 Q. 67,000 people?

7 A. That's correct.

8 Q. And they're going to be reporting, ultimately, to
9 Susan Morris, who they currently ultimately report to?

10 A. That's right.

11 Q. Is it important to you that these folks are part of the
12 C&S family?

13 A. Absolutely.

14 Q. Why is that?

15 A. Well, I think I said earlier, you know, the most
16 important part of any business are your people and your
17 customers, and you don't have customers if you don't have
18 great people taking care of them.

19 So, you know, every business is people first, and so,
20 obviously, we're excited to have these folks join our
21 family.

22 Q. So you've taken some folks from Kroger and some from
23 Albertsons as part of this process. Did Kroger tell you who
24 to take?

25 A. They did not.

Winn - X

1 Q. How did that work? How did it work that you chose some
2 folks and not others?

3 A. We have an org structure. Right? And, as I said, all
4 the way down to the individual contributor level. We
5 provided that file, basically, of the org structure and all
6 the roles to Kroger and Albertsons and asked them to match
7 talent to those roles. They did that. Then we have an
8 opportunity to assess that talent, in terms of whether we
9 believe those folks are good fits for those roles, and we
10 have -- it's ultimately our decision whether we will hire
11 them or not.

12 Q. Are some of the folks represented by the map on this
13 screen in unions?

14 A. The vast majority of the 67,000 are.

15 Q. And what commitments has C&S made with regard to those
16 folks that are currently in unions?

17 A. Well, they're all under collective bargaining
18 agreements today, so we -- our intent -- well, no, we have
19 to assume the existing collective bargaining agreements, and
20 then as those come up for renewals, we'll be going through
21 that process.

22 Q. Talk briefly about pharmacies. And there was some
23 question yesterday, when you weren't here, about pharmacy
24 and experience. What's your reaction or your thoughts about
25 the pharmacy business?

Winn - X

1 A. We're really excited about the pharmacy business.
2 There are -- I believe the number is 493 pharmacies in these
3 stores, and we think the pharmacy customer is actually a
4 better customer in the store.

5 So the data would suggest that the consumers who
6 utilize their grocery store for also as a pharmacy buy a
7 bigger basket, meaning their average purchases are higher
8 than a non-pharmacy customer. They also specifically by
9 more products within certain categories of a store. You can
10 imagine it's the category that surrounds the pharmacy, which
11 is the health and beauty section.

12 And so, for those reasons, we think the customers are
13 stickier. They spend more. They're really important to
14 those stores.

15 Q. Again, Mr. Cosset will be here next week to talk about
16 the back and forth of data, but broadly speaking, is C&S
17 receiving the assets it needs to build and expand a loyalty
18 program?

19 A. Yes.

20 Q. Can you explain what you're getting?

21 A. We're getting three years of consumer transaction data,
22 which, Your Honor, you can imagine you shop in a store and
23 we're getting all of the shopping --

24 THE COURT: So I want you to face outward. You're
25 not talking directly to me.

Winn - X

1 THE WITNESS: I'm sorry.

2 So we're getting three years of consumer transaction
3 data. So all of the consumers are -- you know, what they
4 purchase in the stores over the course of those three years,
5 and using that data will build a -- will build a loyalty
6 program. That's really what the go-forward is. But it
7 also -- the data we'll use to build personalized promotions
8 and pricing.

9 BY MR. WOLF: (Continuing):

10 Q. What will -- what would you say to someone that
11 suggested you don't have the scale to compete at the end of
12 the divestiture process?

13 A. Well, we'll be a top-ten grocery retailer. You combine
14 that with our wholesale business. We'll be very large.

15 There are -- I mean, the vast majority of our customers
16 are smaller than that, and they compete very successfully.

17 So I think we'll be plenty big.

18 Q. Let's talk, in general terms, about C&S's plans going
19 forward.

20 What are C&S's plans for the new business?

21 A. The most important thing is, day one, continuity, and
22 running these stores really, really, really well. Right?
23 So we're getting all of the capabilities stood up that we've
24 talked about; and then, from there, we're going to grow the
25 business.

Winn - X

1 Q. Is C&S planning new investments for the new business?

2 A. Hundreds of millions of dollars in investment. I mean,
3 IT alone will spend, you know, almost \$500 million sort of
4 upfront to get the right IT programs in place.

5 But all retail businesses require ongoing investment,
6 and so we'll be spending 2 percent of sales on an ongoing
7 basis every single year to invest in the business.

8 Q. In the first five years, say, roughly, how much do you
9 expect to spend on IT?

10 A. I think it's \$470 million.

11 Q. Are you planning to invest in new distribution centers
12 to help service the divested stores?

13 A. The three we talked about in Illinois, California, and
14 Alaska, but we'll also be expanding some of our existing
15 distribution centers elsewhere in the country.

16 Q. And how much do you anticipate spending on those?

17 A. All in, it's over \$100 million.

18 Q. Now, recognizing that your future competitors are in
19 the room, and so I can't ask you to be too specific, what
20 are your expectations for C&S's prices going forward?

21 A. We tend to view, at least in certain markets, the --
22 some of the Albertsons stores as being higher priced, and
23 maybe they should be on a go-forward basis, and so we have
24 planned pricing investments, targeted pricing investments in
25 many regions, to the tune of over \$150 million, and that's

Winn - X

1 an ongoing investment in margin.

2 Q. So when you say invest \$150-plus million, is that every
3 single year?

4 A. That's right.

5 Q. And that's to bring prices down?

6 Well, let me ask you. What's the purpose of that?

7 A. The purpose is to bring the prices down to be more
8 competitive. Predominantly, with Walmart. I mean, they're
9 the one we're all chasing, of course, but also other
10 competitors in the market.

11 Q. Generally speaking, across the categories, will C&S's
12 prices, after the acquisition, be higher or lower than the
13 Albertsons stores they're acquiring?

14 A. Lower.

15 Q. Are you personally working on the divestiture day to
16 day these days?

17 A. Day and night.

18 Q. Can you give me a sense of what you're working on this
19 week, last week, whatever the case may be?

20 A. Sure. So I -- I'm effectively the chair of the Walnut
21 Steering Committee. I'm sorry. That -- Walnut is the term
22 we use for the acquisition. So I'm effectively the chair of
23 our steering committee of that, and we meet weekly, which is
24 sort of just, sort of, management cadence, but I'm also
25 doing, personally, deep dives into many of the individual

Winn - X

1 functions. So I'm spending -- I don't know -- probably 75
2 percent of a lot of hours every week on this.

3 Q. But you're not doing it alone, are you?

4 A. We have a great team.

5 Q. Let's talk about that team briefly.

6 MR. WOLF: If we could turn to Slide 35 and blow
7 that up, please. Thank you.

8 BY MR. WOLF: (Continuing):

9 Q. We see references, in the second paragraph, to Bain,
10 and KPMG, and Consolidate Affiliates, Sullivan & Cromwell,
11 Centerview.

12 Broadly speaking, what are all these folks doing?

13 A. I'd really zoom in on Bain, in particular.

14 So Bain's supporting us. They're running our
15 integration office. What that means is they're helping us
16 build our integration plans and also providing a lot of
17 expertise because they've done this in a lot of other places
18 before.

19 They're also running our commercial strategy planning.

20 So, again, with our team, but helping us build the
21 commercial plans and our merchandising plans, which are
22 really important as we launch.

23 KPMG's providing, I would say, more analytics support
24 behind Bain, around a lot of the -- you know, all the
25 analytics we have to do, better said.

Winn - X

1 Q. How would you characterize, in total, the amount of
2 time, money, resources, C&S has put into getting us to where
3 you are today?

4 A. Right. So, I mean, I don't think any better way to
5 show commitment -- we've spent an entire year of this
6 company's cash flow on this integration plan.

7 Q. If someone were to suggest that this whole process is
8 somehow an elaborate plan for C&S to buy and flip the stores
9 to collect money for the real estate value, how would you
10 respond to that?

11 A. As I said earlier on another topic, it's a bit
12 insulting, because we wouldn't have done all -- we wouldn't
13 be doing everything we're doing if that was just our plan,
14 but also the math doesn't work.

15 Q. What do you mean by "the math doesn't work"?

16 A. Well, the purchase price is 2.9 billion, and we think
17 the underlying asset value of the real estate is maybe
18 2 billion. So we'd lose \$900 million if we did that.

19 Q. If someone were to suggest that you are disincentivized
20 to compete effectively because, quote, "the divestiture
21 purchase price is extremely low compared to defendants'
22 current profits from these assets," how would you react to
23 that statement?

24 A. Again, the math doesn't work.

25 So the purchase price of \$2.9 billion is around two

Winn - X

1 times, quote/unquote, "Four-wall EBITDA."

2 What that really means is -- four-wall is just what the
3 stores themselves spend and earn. We have to spend hundreds
4 of millions of dollars around corporate infrastructure. So
5 once you take all of our investments we talked about and all
6 of the infrastructure we're installing, we're, you know,
7 closer to 4 to 5 billion dollars.

8 Q. We've talked about what the deal will mean for your --
9 for the stores that you're acquiring.

10 Will the deal mean anything to your existing customers?

11 A. I would like to think -- I mean, one of the reasons why
12 we're excited about this transaction for our existing
13 wholesale customers is they're fighting to survive. Our
14 independents down the street are up against Walmart. I
15 mean, imagine what that feels like. And they need our help.

16 And so we're already fighting hard to help them survive
17 and thrive. Our customers of all sizes, as we talked about
18 earlier, in terms of the value we provide, I'd like to think
19 that now, as we great wholesaler who also is a great
20 retailer, every one of those things on that wheel, we're
21 going to make world class, and we'll be able to provide
22 those service -- services to our independents and our
23 other -- our regional chains, and I'd like to think that's
24 the reason they're going to be surviving and thriving for
25 years to come.

Winn - X

1 Q. What will the deal mean in total for current Albertsons
2 customers who, if the deal goes through, will now shop at
3 C&S?

4 A. We're excited about a number of things that we'll do in
5 these stores.

6 One of the things we observed in our diligence --
7 again, not to get too into it in front of our competitors,
8 but one of the things we observed in diligence was a need to
9 improve localized assortment.

10 So I always like to use the example, when I'm in the
11 Pacific Northwest, of Tillamook cheese or Tillamook ice
12 cream. It's like a cult brand up here. I say "cult brand"
13 because elsewhere in the country nobody knows what it is,
14 but it's the number one -- Tillamook cheese is the number
15 one brand of cheese in this region.

16 That's an example where you need to make sure you're
17 not just carrying the items, but featuring them in your
18 stores, because your consumers expect it.

19 And we see -- we see an opportunity in a lot of the
20 regions -- we work a lot of the regions where we've done
21 diligence to improve that.

22 Q. Do you think, if this deal goes through, that you'll be
23 able to compete as effectively as Albertsons has in the
24 current environment?

25 A. And in some ways more so.

Winn - X

1 Q. How would you be more effective, in your mind, in some
2 ways?

3 A. Well, I mentioned the assortment piece, and also we
4 talk about pricing investments earlier. Both of those
5 things should make us stronger in the consumer's eyes.

6 Q. Is C&S committed to operating every store it will
7 acquire?

8 A. Yes. We have to.

9 Q. Is C&S committed to offering the same or better
10 benefits to every employee in the stores and distribution
11 centers it acquires?

12 A. Yes.

13 Q. Is C&S committed to stepping into every collective
14 bargaining agreement?

15 A. Yes.

16 Q. On day one, will C&S be competing with Kroger?

17 A. Yes.

18 Q. Even though Kroger will have a TSA?

19 A. Yes.

20 Q. Plaintiffs in this case have suggested to, be blunt,
21 that you can't execute this divestiture.

22 Could you tell Her Honor what your reaction is.

23 A. I mean, I don't know what to say, other than we've
24 invested time, money, people. We're planning for the next
25 106 years of this company. Our team members are relying on

Winn - X

1 that. Our consumers are relying on that. We're not just
2 going to do this. We're going to do this really, really
3 well.

4 Q. Finally, has C&S received any support from its home
5 state senators with regard to this deal?

6 A. We did.

7 Q. Can you describe, briefly, what you're aware of.

8 A. Yeah. Senators Shaheen and Hassan wrote a letter to
9 Chairperson Khan in support of our company, but also in
10 support of this acquisition.

11 MR. WOLF: Can we put on the screen DX2972,
12 please.

13 BY MR. WOLF: (Continuing):

14 Q. Is this the correspondence you are referring to?

15 A. Yes.

16 MR. WOLF: Move the admission of DX2972,
17 Your Honor.

18 MR. TENG: No objection.

19 THE COURT: It will be received.

20 BY MR. WOLF: (Continuing):

21 Q. Second -- it starts, Dear Chair Khan, for your
22 consideration, we write to share our experience with C&S
23 Wholesaler Grocers, LLC, which is headquartered in Keene,
24 New Hampshire -- New Hampshire and has been selected as
25 divestiture partner in the proposed merger between Kroger

Winn - X

1 and Albertsons.

2 It states, "C&S was founded in 1918 and has provided
3 good jobs ever since."

4 Do you agree with that?

5 A. Yes.

6 Q. C&S now employs 14,000 people nationally and supports
7 the community in New Hampshire.

8 Do you agree with that?

9 A. Yes.

10 Q. They say at the bottom, the two senators, "We have seen
11 firsthand the strong commitment that C&S brings to the
12 communities they serve in New Hampshire. C&S has a strong
13 reputation in New Hampshire, and we hope you will consider
14 that as you evaluate this transaction."

15 When you first saw those sentences, what was your
16 reaction?

17 A. It certainly made me proud to be a member of the C&S
18 team, and then I reflected that, you know, Senators Shaheen
19 and Hassan -- they see that in New Hampshire, but what they
20 don't know is we do that in every community in which we
21 operate across the country.

22 Q. And do you intend to do that in every new community you
23 will be operating if this deal goes through?

24 A. Yes.

25 MR. WOLF: Pass the witness, Your Honor.

Winn - ReD

1 Thank you for your time.

2 THE COURT: Any redirect?

3 MR. TENG: Yes, Your Honor.

4

5 REDIRECT EXAMINATION

6 BY MR. TENG:

7 Q. Mr. Winn, if we can just start with that last document
8 that Mr. Wolf showed you.

9 MR. TENG: Could you put that up? Thank you.

10 MR. WOLF: 2972.

11 BY MR. TENG: (Continuing):

12 Q. Is there anywhere in this letter that says that the FTC
13 should approve C&S as a divestiture buyer?

14 A. No.

15 Q. Are there any stores being sold in New Hampshire, the
16 state where the senators are from?

17 A. No.

18 MR. TENG: You can put that down. Thank you.

19 BY MR. TENG: (Continuing):

20 Q. Now, you also testified on direct along the lines of
21 "We knew" or "We guessed that they would need to be a
22 divest."

23 Do you recall that testimony?

24 A. Yes.

25 Q. What did you mean by that?

Winn - ReD

1 A. Well, I think that, you know, when we all saw the
2 announcement of the merger back in October of 2022 -- first
3 of all, all of the coverage of it suggested where there were
4 market overlaps, and so I think it was sort of acknowledged
5 in the moment that there would be a divestiture needed.

6 MR. TENG: And could you put up -- could you put
7 up the SoftBank document? PX1058. Slide 17.

8 Sorry. DX -- the SoftBank document.

9 I think it's DX2628. My apologies.

10 And Slide 17.

11 Oh, great.

12 BY MR. TENG: (Continuing):

13 Q. That slide, under "Project Walnut - Anticipated Deal
14 Metrics," it says, quote, "Project Walnut is an
15 exceptionally attractive deal, given its low purchase
16 price."

17 Do you see that?

18 A. Yes.

19 Q. Do you agree that the divestiture has a low purchase
20 price?

21 A. The headline purchase price, as I mentioned earlier.

22 Q. And you also talked about SoftBank's --

23 MR. WOLF: Counsel, can we take that down for a
24 second? That was the unredacted copy your tech put up. If
25 we could -- there it is. Thank you.

Winn - ReD

1 MR. TENG: We can put that away.

2 MR. WOLF: Thank you.

3 Feel free to use our tech person, if it helps to
4 expedite that process. Thanks.

5 BY MR. TENG: (Continuing):

6 Q. You also talked about SoftBank investing money in this
7 transaction; is that right?

8 A. Yes.

9 Q. Is part of SoftBank's interest in the divestiture
10 transaction to drive value creation via AI-driven automation
11 of warehouse services?

12 A. Potentially. I don't know.

13 Q. And does C&S's owner, Mr. Cohen, also own a warehouse
14 automation company?

15 A. He's a --

16 MR. WOLF: Objection. Beyond the scope,
17 Your Honor.

18 THE COURT: Sustained.

19 BY MR. TENG: (Continuing):

20 Q. And if -- if there are -- if the warehouses are -- if
21 the warehouses are converted to AI-driven automation, does
22 that mean there will be loss of human jobs?

23 MR. WOLF: Same objection, Your Honor.

24 MR. TENG: Your Honor, I asked him about the
25 SoftBank interest. In that investment, they opened the door

Winn - ReD

1 to SoftBank, given that they spent several minutes talking
2 about a SoftBank presentation as well as SoftBank's
3 investment in the divestiture.

4 MR. WOLF: Your Honor, this is well beyond the
5 scope.

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

7 THE WITNESS: Can you ask the question again?

8 BY MR. TENG: (Continuing):

9 Q. Yeah. Will there be human job losses if SoftBank's
10 interest in the divestiture is fulfilled and there's
11 AI-driven automation of the warehouse services involved
12 here?

13 A. I don't know. We haven't done any plans. We haven't
14 made any plans to automate any of these warehouses.

15 Q. You also testified on direct that C&S supports
16 approximately 165 franchise stores.

17 Do you recall that?

18 A. Yes.

19 Q. Is there a difference in owning and operating stores
20 versus franchising them?

21 A. Yes.

22 Q. For instance, when you are a franchise provider, are
23 you actually running the physical store?

24 A. No.

25 Q. And when C&S is a franchise provider, is C&S

Winn - ReD

1 responsible for the consumer welfare in a store?

2 A. No.

3 Q. Will the folks -- you also testified about C&S's retail
4 services. For example, store design, retail tech, things
5 like that.

6 A. Yes.

7 Q. Will the folks in the commercial organization for C&S's
8 wholesale customers, that are working on retail services, be
9 working in C&S's retail organization post-divestiture?

10 A. The vast majority will not be.

11 Q. Is C&S's plan for its retail and wholesale segments to
12 be managed independently?

13 A. Yes.

14 Q. And does C&S primarily provide retail services to its
15 independent grocer customers?

16 A. Yes.

17 Q. Do those grocers tend to run smaller stores with fewer
18 services than chain groceries?

19 A. On balance, yes.

20 Q. So does C&S tend to provide the most retail services to
21 customers on the small side?

22 A. Yes.

23 Q. And would you also agree that there are differences in
24 providing retail services to a store versus operating it?

25 A. Yes.

Winn - ReD

1 Q. Is C&S running the physical store when it is providing
2 retail services?

3 A. No.

4 Q. Is -- when C&S is a retail services provider, are you
5 interacting directly with the customers of those stores?

6 A. No.

7 Q. And does C&S generate tens of millions of dollars from
8 retail services?

9 A. In profit?

10 Q. In revenue.

11 A. In revenue? It's -- it's more than 10 in revenue.

12 MR. TENG: Let's pull up page 337, and let's not
13 put this on the public screen.

14 BY MR. TENG: (Continuing):

15 Q. But let's pull up page 337 of your investigational
16 hearing. Page 337, line 10.

17 THE COURT: Which exhibit number?

18 MR. TENG: This is PX4030, Your Honor. And line
19 337.

20 THE WITNESS: You said page 10, line 337, you
21 said?

22 BY MR. TENG: (Continuing):

23 Q. Page 337, line 10.

24 A. Got it.

25 Q. And the question I asked, "And then I saw in the data

Winn - ReD

1 that C&S produced to the FTC that C&S's retail services,
2 besides the Piggly Wiggly services, brought in" -- redacted.

3 "Does that figure sound right?"

4 You answered, "If it was in our data, I'm sure it was
5 accurate."

6 Question: "I guess I'm asking you if sort of that
7 magnitude, like tens of millions of dollars in retail
8 service revenue, does that sound like an accurate investment
9 to you?"

10 You answer, "It does."

11 Do you see that?

12 A. Yes.

13 Q. Does that refresh your recollection as to how much
14 revenue C&S's retail services brings in?

15 A. Yes.

16 Q. And you testified earlier that C&S's total revenues in
17 fiscal year were 22 billion?

18 A. Yes.

19 Q. Does that mean the revenue generated by retail services
20 represents less than .5 percent of C&S's total revenues?

21 A. Yes.

22 Q. Does C&S provide retail services to its own Grand Union
23 stores?

24 A. Yes.

25 Q. Have sales at those stores declined after C&S acquired

Winn - ReD

1 them?

2 MR. WOLF: We're clearly beyond the scope now,
3 Your Honor.

4 THE COURT: Sustained.

5 BY MR. TENG: (Continuing):

6 Q. You also testified about the various retail services
7 that you provide independent customers.

8 Do you recall that?

9 A. Yes.

10 Q. And one of those services that you provide is IT
11 systems?

12 A. Yes.

13 Q. And C&S is receiving IT systems from Kroger in the
14 divestiture?

15 A. I would reclassify it as we together are building a
16 clone.

17 Q. But it is receiving services from Kroger and
18 Albertsons?

19 A. Yes.

20 Q. You also testified that you provide private brands to
21 those independents.

22 Do you recall that?

23 A. Yes.

24 Q. But C&S is receiving private brands at a private label
25 supply agreement from Kroger and Albertsons?

Winn - ReD

1 A. Yes.

2 Q. You also testified about the union employees that are
3 coming over from Kroger and Albertsons to C&S. Do you
4 recall that?

5 A. Yes.

6 Q. And as part of the divestiture, will C&S adopt over --
7 adopt collective bargaining agreements for 35 local unions?

8 A. Yes.

9 Q. On C&S's -- and is C&S treating that as a deal
10 requirement, that those unions consent to transfer of those
11 CBAs?

12 A. No.

13 Q. Is it your testimony that C&S is not treating those
14 union consents or transfer of those CBAs as if it's a
15 requirement on C&S's end?

16 A. I'm sorry. Say that again.

17 Q. Is C&S not treating those union consents or transfers
18 of those CBAs as if it's a requirement on C&S's end?

19 A. We're operating as if it's a requirement, because it's
20 really important.

21 Q. Has C&S received union consents for transfer of those
22 CBAs?

23 A. No.

24 Q. Is there a possibility that a union could declare a CBA
25 no longer in force after C&S acquires the stores, if C&S has

Winn - ReD

1 not obtained consent?

2 A. Yes.

3 Q. Okay. And you testified, on Mr. Wolf's questioning, to
4 C&S's retail capabilities and commitment to the transaction?

5 A. Yes.

6 Q. I want you to turn to your binder, the middle of your
7 binder, PX3948.

8 This is -- this is a C&S Group Enterprises, LLC, 2023
9 annual report.

10 MR. TENG: And, Mr. Duncan, I would ask that you
11 not put this on the public screen.

12 THE WITNESS: Did you say 3948?

13 BY MR. TENG: (Continuing):

14 Q. Yes. Should be closer to the beginning of your binder.

15 A. The beginning. Okay.

16 Is this our annual report?

17 Q. Yes.

18 A. I think I know our annual report pretty well. I got
19 it. Okay.

20 Q. Is it important for C&S to be accurate in its annual
21 reports?

22 A. Yes.

23 MR. TENG: Your Honor, I would move to admit
24 PX3948.

25 MR. WOLF: No objection, Your Honor.

Winn - ReD

1 THE COURT: It will be received.

2 MR. TENG: And, Mr. Duncan, again, please don't
3 share this page on the public screen.

4 BY MR. TENG: (Continuing):

5 Q. But on page 12 of the annual report, I guess sixth
6 paragraph down --

7 A. Yes.

8 Q. -- it says, quote, "Our grocery retailing segment
9 accounted for net sales of" -- redacted figure -- "and
10 adjusted EBITDA of" -- redacted figure -- "in fiscal year
11 2023."

12 Do you see that?

13 A. Yes.

14 Q. I won't say the adjusted EBITDA number because C&S has
15 designated it as confidential, but is that a negative
16 number?

17 A. Yes.

18 Q. Did C&S's grocery retail segment lose money in fiscal
19 year 2023?

20 A. Yes.

21 Q. And then, if we could go to the previous page -- so
22 this is the bottom of PX3948-011 --

23 MR. TENG: And, again, let's leave the public
24 screens off of this.

25 ///

Winn - ReD/ReX

1 BY MR. TENG: (Continuing):

2 Q. Does the last paragraph of this page describe the
3 original Kroger and Albertsons divestiture to C&S of 413
4 stores?

5 A. Yes.

6 Q. And then right before that, does C&S write, quote,
7 "From time to time, we may acquire retail store locations in
8 connection with strategic transactions to maintain or expand
9 our grocery wholesaling and distribution business"?

10 A. Yes.

11 Q. Is that what C&S wrote in its annual report?

12 A. Yes.

13 MR. TENG: No further questions, Your Honor.

14 MR. WOLF: One question, Your Honor.

15

16 RE CROSS - EXAMINATION

17 BY MR. WOLF:

18 Q. Could you just -- could you just explain what that
19 means, what you just -- what counsel just had you read but
20 not explain?

21 A. Sure. We are always looking across this industry, and
22 there are always stores being sold and being bought, and
23 there are opportunities sometimes for us to help our
24 customers acquire stores, and so that's what that meant. It
25 had nothing to do with the broader transaction. Clearly,

Winn - ReX

1 we're not doing that with the broader transaction.

2 Q. Are those two separate paragraphs describing two
3 separate business interests?

4 A. Completely separate.

5 MR. WOLF: Your Honor, thank you.

6 Thank you, Mr. Winn.

7 THE COURT: I think you are right at noon. Well,
8 a few minutes over, but not as far as you thought.

9 So we will be in recess until 9:00 a.m. Tuesday because
10 Monday is a national holiday. It is Labor Day.

11 MR. WOLF: Have a wonderful weekend, Your Honor.

12 THE COURT: You too. Safe travels.

13 (Day 5 adjourned 12:06 PM.)

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C E R T I F I C A T E

Federal Trade Commission v. Kroger, et al.

3:24-cv-00347-AN

Preliminary Injunction Hearing - Day 5

August 30, 2024

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 8/30/2024
CSR Expiration Date: 9/30/2026

BY MR. OBARO:

(Continuing): [2]

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BY MR. TENG:

(Continuing): [28]

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1173/16 1176/24 1177/25
1179/19 1180/9 1184/1
1184/21 1186/9 1187/2
1192/2 1197/23 1199/14
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1258/12 1259/5 1259/19
1260/8 1262/14 1262/22
1264/5 1266/13 1267/4
1267/25

BY MR. WOLF:

(Continuing): [17]

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1210/11 1211/14 1226/6
1233/5 1235/17 1235/25
1236/4 1240/5 1241/20
1242/15 1247/9 1250/8
1255/13 1255/20

BY MS. HALL:

(Continuing): [9]

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1144/7 1146/24 1149/5
1155/20 1156/4 1156/19

DEPUTY COURTROOM

CLERK: [2] 1158/17

1202/11

MR. OBARO: [5]

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1155/7 1156/3

MR. PERRY: [4] 1131/18

1131/21 1132/5 1132/9

MR. TENG: [43] 1157/22

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1176/16 1176/18 1176/22
1177/12 1177/14 1180/1
1180/8 1183/19 1183/23
1184/17 1186/1 1186/8

1186/24 1191/25 1197/20

1199/13 1201/6 1202/2

1205/12 1210/25 1235/9

1235/21 1255/18 1257/3

1257/9 1257/18 1258/6

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1262/18 1266/10 1266/23

1267/2 1267/23 1268/13

MR. WOLF: [46] 1158/4

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1176/21 1177/10 1179/14

1179/22 1184/19 1185/24

1186/5 1186/25 1197/21

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