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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	)	September 4, 2024
ALBERTSONS COMPANIES, INC.,	)	
	)	
Defendants.	)	Portland, Oregon
	)	

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PRELIMINARY INJUNCTION HEARING  
DAY 7 - MORNING SESSION  
BEFORE THE HONORABLE ADRIENNE NELSON  
UNITED STATES DISTRICT COURT JUDGE

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## INDEX

WILLIAM RODNEY MCMULLEN

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## TRANSCRIPT OF PROCEEDINGS

(September 4, 2024)

(In open court:)

DEPUTY COURTROOM CLERK: All rise.

THE COURT: Good morning. Please be seated. We are continuing in Case No. 3:24-cv-00347. Federal Trade Commission, et al. v. the Kroger Company and Albertsons Companies, Incorporated. We're in day seven.

If counsel will state the appearances of their new counsel that have appeared, we'll have that for the record; otherwise, the other appearances continue.

And if there are any preliminary matters, I'll address those. Otherwise, we'll start with witnesses' testimony.

MS. MAINIGI: We have nobody new today, Your Honor.

MR. PERRY: Nobody new today for Kroger, Your Honor.

MS. MUSSER: No one new for the plaintiffs.

THE COURT: All right. Look at that. Look at that.

You may call your next witness.

MS. MUSSER: Well, I don't think we have any preliminaries, but the plaintiffs reserve the right to call witnesses in rebuttal, but we rest our case.

THE COURT: As you had indicated might be the case

1 yesterday, thank you.

2 All right. So the defendants can call their first  
3 witness.

4 MR. PERRY: Thank you, Your Honor. Mark Perry for  
5 Kroger.

6 As a preliminary in the defendants' case-in-chief, as  
7 the Court is aware, the parties have been working  
8 cooperatively on the confidentiality issues that are  
9 inevitable in a case like this. We think it's gone in  
10 pretty smoothly so far.

11 Cross-examination of the Kroger and Albertsons  
12 witnesses present a slightly different situation, because we  
13 don't get the Government's documents in advance, but we are  
14 consulting with them on general subjects and we have some  
15 parameters set up. We don't anticipate any issues; and,  
16 again, the parties continue to discuss. It just may go a  
17 little bit differently, given it's the nature of cross,  
18 there may be a pause or taking things off the public  
19 document to make sure that --

20 THE COURT: Understood. Understood. I think the  
21 tech people -- I don't know if you are telling them this,  
22 but I'll take the opportunity to say to all the people who  
23 are providing technical support. I appreciate how diligent  
24 you're being. I can see how you're clicking and checking  
25 the cords and trying to make sure that everything is going



1 as the attorneys are saying from the lecturn, because  
2 sometimes there's some interpretation that is needed, but I  
3 think they're doing a very good job.

4 Thank you so much.

5 MR. PERRY: Thank you, Your Honor.

6 With that, defendants would call their first witness,  
7 Rodney McMullen.

8 THE COURT: All right.

9 DEPUTY COURTROOM CLERK: Good morning.

10 MR. McMULLEN: Good morning.

11 DEPUTY COURTROOM CLERK: Come right up here.

12 Please remain standing and raise your right hand.

13

14 WILLIAM RODNEY MCMULLEN,

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

17

18 THE WITNESS: Yes.

19 DEPUTY COURTROOM CLERK: Thank you. Please have a  
20 seat.

21 THE WITNESS: Thank you.

22 DEPUTY COURTROOM CLERK: Please state and spell  
23 your first and last name for the record.

24 THE WITNESS: William Rodney McMullen. I go by  
25 "Rodney." R-o-d-n-e-y. M-c-M-u-l-l-e-n.

McMullen - D

1 THE COURT: Thank you. You may go.

2 MR. WOLF: Thank you, Your Honor.

3

4 DIRECT EXAMINATION

5 BY MR. WOLF:

6 Q. Good morning, Mr. McMullen.

7 A. Good morning, Mr. Wolf.

8 Q. Who is your current employer?

9 A. Kroger.

10 Q. What is your title?

11 A. Chair and CEO.

12 Q. When did you become CEO?

13 A. 2014.

14 Q. And can you tell the Court a little bit about yourself?

15 Where you grew up; where you live now?

16 A. Sure. My parents moved around quite a bit. I grew up  
17 in Kentucky and Ohio, and I started working for an IGA store  
18 when I was in high school. My parents bought a farm. They  
19 had worked in a factory until they bought a farm.

20 Part of the things that caused me to be who I am is my  
21 father especially got laid off a lot in jobs, and it  
22 certainly influenced me.

23 Fortunately, I was the first person in my family to be  
24 able to go to college.

25 Q. Was that IGA job in high school your first experience

McMullen - D

1 with the grocery industry?

2 A. Yes. Other than as a shopper and bagging groceries  
3 when I was with my mom.

4 Q. And have you been involved in groceries ever since high  
5 school?

6 A. Yes.

7 Q. And you tell the Court, first, your educational  
8 experience, and then we'll go through your work experience.

9 A. I went to the University of Kentucky, undergrad. I  
10 have a degree in finance and accounting. Then I have my  
11 master's in accounting, and I worked for Kroger in various  
12 jobs in a store throughout that period of time.

13 Q. So did you work to put your way through college?

14 A. Yes.

15 Q. So you start doing what? What were you doing in  
16 college for Kroger?

17 A. My first job for Kroger was putting prices on product.

18 Q. Roughly, what year was that?

19 A. 1978.

20 Q. And then could you track your history through -- from  
21 there to your position today?

22 A. Sure. I worked in the stores while I was in college  
23 and graduate school. When I finished, I became an  
24 accounting supervisor and then a financial analyst. And in  
25 1988, KKR tried to do a takeover of the company, when I was

McMullen - D

1 a financial analyst, and I always say they had to have  
2 somebody young enough that could stay up all night on  
3 putting the models together. I went from a financial  
4 analyst to assistant treasurer, to corporate controller,  
5 to -- or to vice president of planning and capital  
6 management, corporate controller, CFO, group vice president,  
7 senior vice president, executive vice president, then became  
8 president of the company in 2009.

9 Q. I don't want to age or date you or me, but how long  
10 have you been at Kroger?

11 A. 46 years.

12 Q. Were you a board member before or after you were  
13 chair -- CEO?

14 A. Before. I became a board member in 2003.

15 Q. Then you became a CEO in --

16 A. 2014.

17 Q. So you're in a pretty good position to talk to us about  
18 what Kroger is all about?

19 A. Yes.

20 Q. Can you tell us, at a high level, what Kroger's  
21 business is?

22 A. To me, it's really -- fundamentally, it's about feeding  
23 people and helping families eat together as a family within  
24 the budget that they aspire to, and we have amazing  
25 associates that help people have better days; and sometimes

McMullen - D

1 the better day is living within a budget, sometimes a better  
2 day is a smile, some days it's helping somebody understand  
3 what's for dinner or something.

4 And for Kroger, we love serving people. Our purpose is  
5 to feed the human spirit. And the reason that that's our  
6 purpose is, what we find, our associates really do like  
7 serving people.

8 Q. How many different items would I find if I walked into  
9 a Kroger store?

10 A. Well, there's no such thing as a typical Kroger store,  
11 but if you look at a 60,000 square foot store, it would be  
12 about 60,000 different item. If you look at our bigger  
13 stores, it would be 140- to 160,000 different items.

14 Q. Are all of these different items brand -- national  
15 brands?

16 A. No.

17 Q. How many stores does Kroger operate?

18 A. A little over 2,700.

19 MR. WOLF: If we can go to DX2626 and if we can  
20 put it on the screen, please.

21 BY MR. WOLF: (Continuing):

22 Q. What are we looking at here, Mr. McMullen?

23 A. It's a map where Kroger operates.

24 Q. It's apparent, I think, from the face of the map, but  
25 how would you characterize where Kroger is strong and where

McMullen - D

1 they're not as present?

2 A. Predominantly, a Midwest company and a West company.

3 Q. Do you have any presence in the Northeast, for example?

4 A. No.

5 MR. WOLF: We can take that down.

6 BY MR. WOLF: (Continuing):

7 Q. How many associates does Kroger employ?

8 A. Approximately 414,000.

9 Q. And of those 414,000, how many are in unions?

10 A. About two-thirds.

11 Q. Is that unusual among your competitors in the grocery  
12 market today?

13 A. Yes. If you look at our number one competitor, it's  
14 Walmart; Costco would be number two; and Amazon, obviously,  
15 is an increasing competitor.

16 Q. And Walmart, what's their union situation?

17 A. My understanding is zero.

18 Q. So 65 percent versus zero?

19 A. Yes.

20 Q. And how about Amazon? What's their union situation?

21 A. My understanding is they have a couple of warehouses  
22 that are unionized, but it's less than five percent.

23 Q. And how about Costco?

24 A. I believe a similar-type number. Less than  
25 five percent.

McMullen - D

1 Q. Does Albertsons have unions?

2 A. Yes.

3 Q. We're going to talk more in a little bit about why the  
4 merger made sense, but is the cultural fit, especially with  
5 regard to unions, is that one of the things that attracted  
6 to you?

7 A. Yeah. Any time you look at doing a merger, you're  
8 looking at -- you start with culture and making sure the two  
9 companies have similar values, the two companies have  
10 similar talent, and things like that. So it's just one of  
11 those things where everything really lines up.

12 Q. Has Kroger committed to honoring all of the union  
13 collective bargaining agreements that Albertsons is  
14 currently a party to if this merger is allowed to go  
15 through?

16 A. Absolutely.

17 Q. For those who might be skeptical, who say, "We can't  
18 trust CEO's guarantee for these things," what would you  
19 respond?

20 A. If you look at when we merged with Fred Meyer, we  
21 honored all of those contracts. If you look at when we  
22 merged with Roundy's, we honored all of those labor  
23 contracts.

24 Q. Now, recognizing you might be a little biased,  
25 Mr. McMullen, is there something that sets Kroger employees

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1 apart from the rest of the industry?

2 A. Well, I definitely would agree bias; but, you know, I  
3 mean, Kroger -- a ton of people -- one of the things about  
4 our culture is people come for a job and discover a career.

5 When I started, I had -- I had zero intentions of  
6 working for college -- for Kroger once I got finished with  
7 college. And what you find is, if people like -- if people  
8 enjoy food and they enjoy the people they're with, it's a  
9 wonderful company.

10 And our associates -- it's fast-paced. It's  
11 continually changing. What customers want today is  
12 different than yesterday, and tomorrow will be different.

13 All of those things allow somebody to be challenged  
14 every single day, and you get to engage with people in the  
15 public, and you get to help people have a better day.

16 Q. Does Kroger invest in its associates beyond just paying  
17 them wages?

18 A. Yes.

19 Q. Can you describe those investments?

20 A. It gets back to the comment I made earlier that so many  
21 people come for a job and discover a career.

22 So, obviously, we invest in associates from a pay  
23 standpoint, and we have world-class benefits, but we also  
24 support people on continuing education. We call it Feed  
25 Your Future. And what we find is, if somebody stays at



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1 Kroger for a year, the turnover significantly declines.

2 So on Feed Your Future, what we're trying to do is to  
3 help somebody continuing their education. And I always say  
4 we will support somebody from a GED to a Ph.D. It does not  
5 need to be specific to their job, but it's just helping them  
6 grow on -- on the things that they want to grow on.

7 Q. Can you we put a dollar figure to your commitment to  
8 each associate? How much is available on Feed Your Future?

9 A. If you look, it's \$3,500 per year and \$21,000.

10 Q. And is that \$21,000 -- will that \$21,000 be available  
11 to Albertsons' associates that join the Kroger family if the  
12 merger goes through?

13 A. Absolutely.

14 Q. In 2018 there was a corporate tax and Job Acts passed.  
15 Are you familiar with that?

16 A. Yes.

17 Q. Could you describe for the Court what that was and what  
18 Kroger did vis-à-vis its associates with regard to that?

19 A. Yeah. There was a lowering of the federal tax rate.

20 If you look at the lower tax rate, what we did was we  
21 took a third, a third, a third. So a third we supported  
22 investing in our associates, and it is when we started Feed  
23 Your Future; a third we accelerated some of our price  
24 investments; and a third we let flow to the bottom line.

25 Q. So you split up the benefits between your customers,

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1 your associates, and your investors?

2 A. Yes. And, obviously, that's a conversation that you  
3 engage in the board -- with the board with as well, in terms  
4 of what's -- what is a fair mix of how you share those  
5 benefits.

6 Q. So let's look a little bit more at Kroger as a  
7 business. How is the corporation structured?

8 A. We would have a corporate office.

9 Now we have corporate functions in different cities  
10 across the U.S. We have approximately 20 divisions. And  
11 then if you look in the corporate offices, most procurement,  
12 finance functions, HR would be coordinated in a general --  
13 we call it general office.

14 Q. Let's go from national to local.

15 You have you and the board and your executive team.  
16 Then we have the division presidents. Is that the next  
17 level down?

18 A. Yes.

19 Q. And then, as we get closer and closer to the local  
20 stores, can you describe how the corporation is set up?

21 A. First of all, I would always say the board, then me,  
22 then the senior team, then you would have each functional  
23 area and the division presidents. You would -- within each  
24 division, you would have a vice president of merchandising,  
25 a vice president of operations for each region, along with a

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1 staff of a couple of hundred people, and they would be  
2 responsible for district managers.

3 So they would have the direct relationship with a store  
4 manager on successor planning, helping people grow and  
5 develop them, and really understand the local market, what  
6 products are important for the local market, things like  
7 that.

8 Q. How were the divisions created? How do they -- how are  
9 they structured, generally?

10 A. Generally, they're by geographic.

11 Q. So let's take Portland, for example. Are there folks  
12 here in Portland, other than the folks we interact with when  
13 we go shopping?

14 A. Oh, yes.

15 And we would -- we would have a little over 900 people  
16 here. A couple of hundred of those would be focused on the  
17 Fred Meyer stores. We would also have corporate functions  
18 here.

19 So when we merged with Fred Meyer, they had their  
20 corporate headquarters here. So if you look at general  
21 merchandise, Fred Meyer is significantly better than Kroger  
22 ever was. So we moved all of those functions from  
23 Cincinnati to Portland.

24 We would also have technology teams here, and then I  
25 think there's probably 20 different other departments that

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1 we have people here as well.

2 Q. So you're talking about the Portland community, and  
3 we've talked a little bit about associates, a little bit  
4 about your shoppers. We'll talk a lot more about both in a  
5 minute. But communities, what role, interaction commitment,  
6 does Kroger make to the communities it finds itself in?

7 A. If you look at the principal thing that we always talk  
8 about, it's Zero Hunger/Zero Waste, and it's -- obviously,  
9 we're in the food business, so the Zero Hunger is -- Kroger  
10 was one of the original founding members of Feeding America.  
11 We've always viewed that that partnership with about 300  
12 food banks is important -- incredibly important to  
13 communities and important to our associates because they get  
14 to help others.

15 As part of that Zero Hunger/Zero Waste, we had  
16 committed to 3 billion meals, and we were able to accomplish  
17 that about a year and a half early.

18 The Zero Waste is to reduce the waste usage of our  
19 stores.

20 Q. To limit the carbon footprint, for example?

21 A. Yes.

22 Q. If the merger goes through, what will that mean for  
23 Zero Hunger/Zero Waste?

24 A. First of all, the combined companies we've committed to  
25 10 billion meals by 2030. There are things that Albertsons

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1 does in that regard better than Kroger, and there's things  
2 that Kroger does better than Albertsons. So we believe by  
3 combining our two companies and the strengths, we'll be able  
4 to accelerate the number of meals that we're able to support  
5 on partnering with local food banks.

6 Q. So, roughly, a billion -- billion meals a year?

7 A. It's a little more because it's by 2030 for 10 billion,  
8 yeah.

9 Q. Does Kroger pay particular attention to active and  
10 former service members in its communities?

11 A. Yes. First of all, we would be aggressive on hiring  
12 veterans through -- all across the country, and then we also  
13 have a deep partnership with USO, and we build -- I believe  
14 we're one of the largest, if not the largest, financial  
15 supporter of the USO as well.

16 Q. And, again, if the merger occurs, will those  
17 commitments to service members be expanded to the broader  
18 Kroger family?

19 A. Oh, absolutely.

20 Q. So we've heard a little bit about why you're proud of  
21 Kroger, but I want to -- I want to dig a little deeper.

22 You've used the phrase, in the press, "No compromise,"  
23 quite a bit. What do you mean when you say, "No  
24 compromise," with regard to Kroger's business?

25 A. We think so many of our competitors -- you have to give

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1 up something to shop.

2 So, in some cases, it wouldn't be having as much fresh  
3 product, in some cases it's price, in some cases it's  
4 friendly. The "no compromise" means that the customer  
5 doesn't have to give up any of those things when they shop  
6 with us.

7 Q. Does Kroger structure the very way it organizes its  
8 business? Does it help deliver on that "no compromise"  
9 commitment?

10 A. Yes.

11 Q. How?

12 A. We have people in every community, and I mentioned it  
13 before, but they're involved in local boards. They're  
14 involved in local food banks. They see the stores every  
15 day, and, you know, they're -- they're -- I call it a  
16 feedback loop, but what they're trying to do is every day  
17 get feedback, in terms of what's going right and what's not  
18 going -- and what can be done better, and when you look at  
19 all of that together, we believe that puts us in a unique  
20 position.

21 Q. What does it mean, if anything, your -- your structure  
22 or the way you interact with communities for local farmers,  
23 local dairymen, local cattle ranchers, whatever the case may  
24 be?

25 A. Yeah. You know, in all of those examples, you're --

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1 you're trying to make sure that you have an outlet for the  
2 farmer.

3 And last year I had a chance to spend some time with a  
4 farmer that sells Grainger County tomatoes to us, and it's  
5 outside of Knoxville, Tennessee. And when we first started  
6 working with the farmer, we sold Grainger County tomatoes in  
7 Knoxville and around. It's an outstanding tomato that is  
8 almost as good as what you can grow in your garden.

9 Through the success of the quality product that he  
10 grew, we were able to expand that to other divisions. That  
11 would be true for, like, the corn, Rocky Ford cantaloupe.  
12 You know, here in Portland, Snoqualmie Falls pancake mix,  
13 things like that; but all of those things -- you know, I  
14 realize Kroger is a big company, but it's -- it's one  
15 interaction, one person at a time, and you're working with  
16 local farmers to support them and support their success.

17 Q. Do you find it a challenge to strike a balance between  
18 being a big national company and supporting the local  
19 farmer?

20 A. Yeah. You used the word "challenge." I would use the  
21 word "fun." Because what you're trying to do is -- you  
22 know, our customers typically only shop one to three stores  
23 of ours. They will shop a lot of competitors. Four or five  
24 competitors, or whatever. And what you're trying to do is  
25 to make sure that, from a supply chain, you have the supply

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1 chain efficiencies. You can compete against a Walmart or an  
2 Amazon. But from that store standpoint, it's our local  
3 associates, with local products, supporting that local  
4 community.

5 Q. So you started talking about your competitors in that  
6 answer. It's a good segue to maybe talk about the  
7 competition more broadly, which is what brings us to this  
8 courtroom.

9 Has the market for groceries evolved in over your  
10 nearly five decades?

11 A. Absolutely.

12 And if you look at people that were -- most of the  
13 people that were in our industry when I joined our industry  
14 are no longer in business. Most of the people -- the people  
15 that we consider our biggest competitors, many of them were  
16 very, very small or didn't exist.

17 Q. So one of those that didn't exist a while ago or at  
18 least was very small was Walmart.

19 You're familiar with Walmart?

20 A. Yes.

21 Q. Was Walmart in business when you first entered the  
22 industry 50 or so -- 48 years, or so, ago?

23 A. Yes.

24 Q. When did they first enter your consciousness as a  
25 competitor, a meaningful competitor?



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1 A. It would be when they started opening supercenters and  
2 before that they had a joint venture with a grocery company  
3 where they were opening hypermarkets.

4 So it was really those two that really caused us to  
5 start paying attention to them in a different way.

6 Q. But when Kroger -- excuse me -- when Walmart first  
7 opened in Arkansas, was it a meaningful grocery purveyor?

8 A. No.

9 Q. When did those supercenters start to crop up get your  
10 attention?

11 A. It would have been in the '80s, and that's when they  
12 started scaling the format, once they had figured it out.

13 Q. Was there a moment in time where you first realized  
14 Walmart was a real competitor of Kroger?

15 A. If -- Yeah. For me, personally -- I'm sure other  
16 people at different times, but Walmart opened a store up in  
17 Dickson, Tennessee. And it took about 30 to 35 percent of  
18 our business away from us overnight, and that was -- you  
19 know, if we keep doing what we were doing, we would go out  
20 of business.

21 Q. And when was that, roughly?

22 A. That would have been in the '90s or -- or early '90s.

23 Q. Has Walmart been progressively gaining market share  
24 since they almost put you out of business in Tennessee?

25 A. Yes.

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1 Q. Is it -- has Walmart's competition with Kroger grown  
2 year over year over year?

3 A. Yes.

4 Q. Do you consider Walmart a major grocery competitor?

5 A. Yes. We would consider Walmart our number one  
6 competitor.

7 Q. We were talking about unions before.

8 Has Walmart had any effect on union grocery membership  
9 beyond its own four walls?

10 A. Well, yes. If you look at the full industry, union  
11 membership has declined for a long period of time. It's one  
12 of the things that we're proud of. Because if you look at  
13 over the last 11 years, we've actually added over 100,000  
14 union jobs.

15 The one market that -- to me, that's easiest to look at  
16 is Kansas City, and if you go back at one point, Kansas City  
17 was represented 100 percent by union operators. Today it's  
18 zero.

19 Q. Is that the Walmart effect?

20 A. Yes.

21 Q. If we could bring up 2626 briefly.

22 Again, this is your footprint?

23 A. Yes.

24 Q. Where does Walmart compete with you and -- compared to  
25 this 2626?

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1 A. I'd have to look at the data, but I'm guessing at least  
2 99 percent. It could be 100, but I'd have to look at the  
3 data. It's everywhere.

4 MR. WOLF: Your Honor, we would move to admit  
5 2626, DX2626.

6 MS. MAINIGI: No objection.

7 THE COURT: It will be received.

8 BY MR. WOLF: (Continuing):

9 Q. Does Walmart's pricing affect Kroger's pricing?

10 A. Yes.

11 Q. How?

12 A. We would price-check Walmart on a -- I always say  
13 weekly, but in some cases it's daily, and it is the company  
14 that influences our pricing strategy.

15 Q. Could you talk a little bit more about what you mean  
16 when you say, "It influences our pricing strategy"?

17 A. If you look at -- if you look at Kroger, we go to  
18 market with what we would call a "promotional approach."  
19 Walmart is what they would call EDLP, but it's everyday low  
20 prices.

21 So we would want to make sure there's different  
22 categories of products and the spreads would be different  
23 on -- so on some items, the spread would be 1 or 2 percent,  
24 other items that would be more. Then we would promote  
25 items, and then we also have fuel rewards and other reward

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1 programs as well.

2 When you look at the total, it's almost the same. The  
3 way we get there is different than Walmart because you don't  
4 try to compete against somebody doing exactly what they do.

5 Q. And is Stuart Aitken the person that's the architect of  
6 the day-to-day pricing approach?

7 A. Yes.

8 Q. And we'll hear from him, I think, later today, so I  
9 won't belabor this too much, but does Albertsons play the  
10 same role for Kroger's pricing that Walmart does?

11 A. Not from my perspective, no.

12 Q. What do you mean by that?

13 A. When we're working on where does the -- for the company  
14 to be successful in 10 years, we believe that we continually  
15 need to be more aggressive on pricing and continue to narrow  
16 the pricing versus Walmart. That's been the case for the  
17 last 15 years, but it's also the case as you look forward,  
18 because low-priced retailers always gain share.

19 Q. Surely someone at Kroger monitors Albertsons' prices?

20 A. Oh, I'm very comfortable they do.

21 Q. Do you have a sense of what the relative prices are  
22 between Kroger and Albertsons?

23 A. Yes. If you look at overall, Albertsons' prices would  
24 be 10 to 12 percent higher than Kroger.

25 Q. Do you view that as a significant spread? 10 to 12

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1 percent difference?

2 A. Absolutely. We would not -- I mean, we've been working  
3 for years to not have that kind of spread versus Walmart.

4 Q. Remind me how many products you said. Between 60- and  
5 how many hundred -- a hundred thousand?

6 A. 60,000 to 160,000, and obviously it depends on the  
7 store size.

8 Q. Notwithstanding your obsession or focus on Walmart, is  
9 it conceivable that on any given day for any given product  
10 in any given store in any different geography there could be  
11 a product or two that's cheaper at an Albertsons than at a  
12 Kroger?

13 A. Yes. I would expect that.

14 Q. Does it matter the numbers?

15 A. I have no idea on the numbers; but, you know, when you  
16 look at it overall, it's the 10 to 12 percent.

17 Q. So it wouldn't surprise you if, in one store, milk  
18 might be cheaper one day for Kroger -- for Albertsons than  
19 Kroger, or meat, or whatever the case may be?

20 A. In some cases, it could be just the day of the week  
21 that price changes are done as well.

22 Q. If Albertsons were to go out of business tomorrow, just  
23 snap them out of business, would Kroger be able to raise its  
24 prices without losing customers?

25 A. Absolutely not.

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1 Q. And why is that?

2 A. We -- it really gets back to the comments before. Our  
3 base competitor that we're looking at pricing is Walmart and  
4 the spread to Walmart.

5 So that's really the -- you know, if we raised our  
6 prices that much, we think we would lose a significant  
7 amount of business to, you know, Aldi, Walmart, Costco, and  
8 others.

9 Q. You're talking about margins and bringing them close to  
10 Walmart. Can you talk, in general terms, how Kroger's gross  
11 margins changed over time?

12 A. As I mentioned earlier, if you look at over the last  
13 15 years, it's continually to -- declined.

14 Q. Has it happened, essentially, every year?

15 A. Almost every year, yes.

16 Q. How do you run a business if your gross margins are  
17 declining year over year over year?

18 A. That's the reason I always say this industry is so much  
19 fun, because every single day you have got to be at the top  
20 of your game, and every day you have to do a better job  
21 today than yesterday and tomorrow than today, and you're  
22 continually looking at process changes.

23 And if you look at energy costs as an example, we've  
24 reduced our energy usage by square foot well over  
25 30 percent, and it's understanding how you capture heat and

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1 have that to heat the store or turn off lights from motion  
2 detectors, and you're looking -- you know, there's -- you  
3 know, they always say "retail is detail." There's thousands  
4 of things that our teams are working on every day just  
5 trying to find a basis point, trying to find where -- if you  
6 look at back stock, where you can stock it above the shelf,  
7 as opposed to putting it in the back room.

8 But there's thousands of things that you're doing every  
9 day to figure out a way to reduce cost and then also to  
10 improve freshness from a supply chain standpoint.

11 When you take the cost out, you invest that cost  
12 reduction in pricing and your associates and you improve  
13 your supply chain by having fresher product, what we found  
14 is the customer rewards us, and that creates higher-volume  
15 stores. So you get the leverage of the higher-volume  
16 stores.

17 Q. So in addition to trying to take cost out of the  
18 process, are you looking at ways to try to find alternative  
19 sources of revenue?

20 A. Yes, and we would call it "alternative profit."

21 And, you know, we have about 11 million people a day  
22 coming into our stores and 4.5 million people a day coming  
23 to our website. How can you identify things that are a  
24 benefit to those customers that they actually view as a help  
25 that you make money on?

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1           So if you look at our media business it -- the margins  
2 in that is meaningfully better than the grocery business.  
3 If you look at Kroger personal finance, if you look at our  
4 data analytics group as well, all of those things would be  
5 things that are a meaningful part of our alternative profit  
6 businesses.

7 Q.    So let me just give an example.  If I walk into a store  
8 and see an ad for Pepsi, does the money you get from Pepsi  
9 help you lower prices just on Pepsi?

10 A.   No.  We would -- we would use that across all  
11 categories, and it would also be true for the website as  
12 well.

13 Q.    Has this approach to drive down margins always be  
14 Kroger's business model?

15 A.   For the last 15 years, yes.

16           So it really gets back to the comment I made earlier  
17 about Dickson, Tennessee.  I mean, we were losing our  
18 business.  You know, most of the people that were the  
19 biggest retail -- when I joined the industry, A&P was the  
20 largest grocery retailer.  They don't even exist today.

21           So you're -- we made the strategic decision in order to  
22 be -- we call it survive and then thrive.  We fundamentally  
23 had to take that approach.

24 Q.    We have all been experiencing, everyone in this  
25 courtroom, food prices going up in this country over the



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1 last three, four, five years at a rate we're not used to.

2 If you've been driving down margins every year, why have  
3 your food prices, in absolute terms, gone up?

4 A. Well, it's one of the things that's so tough, and the  
5 price -- if we hadn't done those things, the prices would  
6 have gone up even more. But if you look at our suppliers --  
7 we call them CPGs -- they've continually increased their  
8 prices. If you look at fuel costs, it's increased. If you  
9 look at utility costs, credit card fees. Obviously, we've  
10 continued to support wage improvements as well.

11 Q. So I think it's inherent in your answer, but if you  
12 hadn't been reducing gross margins year over year over the  
13 last three or four years, what would the prices in the  
14 stores your customers had been seeing, what would have  
15 happened to them?

16 A. They would have increased even more.

17 Q. All right. Let's shift back, then, to other  
18 competitors. Are you familiar with the concept of a club  
19 store?

20 A. Yes.

21 Q. What is a club store?

22 A. It would be -- they would have a more limited number of  
23 items, a significantly -- a larger store, usually about  
24 140,000 square feet, and a lot of the merchandising is on  
25 pallets. It's to be to able to have lower costs.

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1 Q. Are there any club stores on that board to your right  
2 that you see?

3 A. Yes. Costco, Sam's, and BJ's.

4 Q. Are those the three biggest club stores out there right  
5 now?

6 A. It is currently. That industry -- if you go back --  
7 you know, one of the things about being around so long -- if  
8 you go back 25 or 30 years ago, there would have been a lot  
9 more, and they really consolidate it down to those three.

10 Q. Do you consider club stores to be competitors of  
11 Kroger?

12 A. Oh, absolutely.

13 Q. When did club stores first enter your industry?

14 A. In a big scale, it would have been in the '90s. In the  
15 '80s is when they first started opening up in Southern  
16 California and a few spots.

17 Q. Have they been gaining market share since you became  
18 aware of their presence in your industry?

19 A. Yes.

20 Q. When did they first start concerning you as a potential  
21 threat, from a competitive perspective, to Kroger?

22 A. It would have been in the -- in the '90s, and it's just  
23 the -- you know, the continually open every year and their  
24 average volume continues to grow every year, and they have  
25 an incredibly efficient structure, in terms of pricing.

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1 Q. Are grocery stores, like Kroger, is their market  
2 presence threatened by club stores?

3 A. Yes.

4 Q. Do you consider, sitting here today, club stores to be  
5 a major competitor of Kroger?

6 A. Yes.

7 Q. Has Kroger responded to the club store threat in any  
8 particular way?

9 A. Yes. And you would see us starting to carry larger  
10 pack products; and, obviously, on those products, you have a  
11 lower margin as well.

12 Q. So is that part of your "no compromise" model? You try  
13 to make -- we've talked about Walmart. You meet their  
14 prices. You talked about Costco. You try to meet their  
15 business model?

16 A. Yes.

17 Q. Let's shift to talk about natural and organic stores.  
18 Are you familiar with that category?

19 A. Yes.

20 Q. What are some examples?

21 A. Whole Foods, Sprouts, Natural Grocer. And in that  
22 industry, there would be a lot of local regional chains as  
23 well.

24 Q. Who owns Whole Foods?

25 A. Amazon.

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1 Q. Does Amazon's ownership of Whole Foods affect its  
2 competitive position in the market?

3 A. Yes. I mean, Amazon -- I guess, no company has an  
4 unlimited balance sheet, but Amazon pretty much has an  
5 unlimited balance sheet that they can do whatever they want.

6 Q. Did you consider natural and organic stores to be  
7 significant competitors when you first entered Kroger's  
8 management in the '90s?

9 A. No.

10 Q. What about today?

11 A. Yes.

12 Q. What changed?

13 A. The -- if you look over time, they've continually built  
14 stores, and the customers that like that type of format  
15 continue to grow as well; and, strategically, several years  
16 ago, we made the decision to start pricing the product at a  
17 margin that looks like a traditional grocery, a nonorganic  
18 or nonnatural item. That's really when we were able to be  
19 successful against Whole Foods and others.

20 Q. For folks that shop at natural and organic stores, do  
21 you consider yourself a competitor for their shopping  
22 dollar?

23 A. Yes.

24 Q. You mentioned Amazon, so now let's talk about Amazon.  
25 Are you familiar with Amazon?

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1 A. Yes.

2 Q. Was Amazon in business when you first started working  
3 at Kroger?

4 A. No.

5 Q. Was Amazon selling groceries when it first came online?

6 A. No. It was a -- obviously, they sold books.

7 Q. Did you consider Amazon a significant competitor in its  
8 early years?

9 A. None.

10 Q. What about now?

11 A. Absolutely.

12 Q. What changed?

13 A. Amazon has figured out how to sell pretty much  
14 anything, and they have a financial model that works.

15 And I know yesterday, when I was going for a walk, I  
16 saw -- I don't know what was inside the truck, but I saw  
17 four different Amazon trucks making deliveries; and, you  
18 know, they call it "The Everything Store" for a reason.

19 Q. And how did the emergence of Amazon affect the grocery  
20 industry?

21 A. It's a creeping one. Because if you look at -- they  
22 acquired a company called Diapers.com, and they went from  
23 being almost non-existent on selling diapers to the largest  
24 seller of diapers, and if you look at -- they sell -- they  
25 cover the United States, and so they sell product

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1 everywhere. And then you add Whole Foods, Amazon Fresh, and  
2 Amazon Go stores to that; so, I mean, they're -- they're  
3 everywhere.

4 MR. WOLF: Can we bring up DDX10?

5 BY MR. WOLF: (Continuing):

6 Q. And I'd ask you, Mr. McMullen, to tell us what we're  
7 looking at.

8 A. Yeah. This is something that's been on my desk since  
9 2017, and it's a Cincinnati Business Career article when  
10 Amazon purchased Whole Foods.

11 Q. Is this a picture of the actual physical newspaper  
12 that's been on your desk for eight years?

13 A. Yes. And I think you can see that from the color, the  
14 yellowing.

15 Q. The headline is: How Amazon is Crashing Kroger's  
16 Party.

17 What was your reaction when you saw this headline, and  
18 why have you kept it on your desk for eight years?

19 A. It's two perspectives, and one of the things on  
20 Amazon -- I call it a creeping competitor. So they just  
21 keep adding categories. If you think about the comments you  
22 asked me earlier about Walmart, originally -- Walmart  
23 completely changed paper, totally changed diapers back then,  
24 totally changed pet food, and they kept adding categories.  
25 And it's one of those things where you really didn't pay

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1 attention to them until they became a huge competitor when  
2 they first started opening supercenters, and I would argue  
3 that we should have been worrying about them 10 years before  
4 we did in an aggressive way.

5 For me, on Amazon, it's to remind me every day that  
6 Amazon is just like Walmart, where they're going to keep  
7 adding things every single day, and they have a balance  
8 sheet that they can continue acquiring things as well.

9 And, to me, I realize -- I would say you probably  
10 shouldn't need something to remind you; but, for me, every  
11 day it reminds me that Amazon is going to be a bigger  
12 competitor tomorrow than yesterday, and we cannot ever lose  
13 sight of that.

14 MR. WOLF: Can take that down.

15 BY MR. WOLF: (Continuing):

16 Q. Has Amazon made shopping for groceries more convenient  
17 for customers?

18 A. Yes. And the definition of "convenience" has changed  
19 as well.

20 Q. What do you mean by that?

21 A. If you go back years ago, somebody would have called  
22 "convenience" stopping at Walgreen or CVS or a convenience  
23 store. Today, "convenience" is getting something the way  
24 you want to get it. We would call it seamless, but what we  
25 find is customers' lives are obviously incredibly busy.

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1 Sometimes they find it easier to get a delivery. Sometimes  
2 it's because they forgot something. Sometimes it's dinner.  
3 Other times they want to pick up, and other times they still  
4 like to go into a store and shop.

5 Q. Has Kroger reacted to the threat it perceives  
6 competitively from Amazon?

7 A. Yes. And it really gets back to what we would call our  
8 seamless strategy, and what we're trying to do is to make  
9 sure the customer can be able to engage with us any way they  
10 want to engage with us.

11 And in business, once something is obvious, it's too  
12 late.

13 And for many of our competitors, them recognizing the  
14 competitive threat of Walmart, it was too late. I believe  
15 some of our competitors may do that with Amazon, but it  
16 won't be us.

17 Q. For folks that shop at Amazon.com, do you consider  
18 yourself to be a competitor for their shopping dollars?

19 A. Yes.

20 Q. Not to get melodramatic here, Mr. McMullen, but over  
21 the last 20 to 30 years, has the emergence of global  
22 companies, like Amazon, Costco, and Walmart, threatened the  
23 existence of the corner grocery store?

24 A. Yes.

25 Q. Can you explain?



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1 A. You know, when you talk about the corner grocery store,  
2 it's one of the few things that still remains in many  
3 communities because, you know, your associates -- our  
4 associates stay connected with the local community.

5 It is one of the things that we're trying to make sure  
6 that we don't lose and to try to make sure that we stay  
7 connected because we think that is an opportunity to be able  
8 to compete against the global competitors.

9 Q. Does the growing threat of Amazon, et cetera, does it  
10 present a challenge to whether grocery stores will exist in  
11 the future?

12 A. Yes.

13 Q. Are you familiar -- we're shifting gears a little bit.  
14 Are you familiar with discounters or what some people call  
15 value retailers?

16 A. Yes.

17 Q. Who are they?

18 And let me ask you with regard to your -- the board you  
19 write -- are any of them on the board you write?

20 A. Yeah. The principal ones would be Lidl and Aldi.  
21 Grocery Outlet. I'm not quite sure how much of -- it's a  
22 discounter, but which category would you put it in?

23 Q. And so, more broadly, how would you characterize what  
24 their place in the market is? What they do.

25 A. It's principally private label or we would call it "our

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1 brands." The stores would be fewer selection, but somebody  
2 could still do their total shop, and it's price-focused.

3 Q. Did you consider these discounters to be significant  
4 competitors when you first became -- first entered Kroger  
5 management in the '90s?

6 A. No. And I would not -- the thing that caused me to  
7 look at them differently is for work, and personally I've  
8 had the opportunity to travel to Europe, and it's really  
9 looking at both of those chains and what has happened in  
10 Europe over time by what they have done. And if you look  
11 at, like, an Aldi, they've added almost 2,000 stores over  
12 the last 20 years.

13 Q. So starting in the U.S., what -- you said they've added  
14 stores; but, generally, are Aldi and Lidl significant  
15 competitors of yours today?

16 A. Aldi, especially; Lidl, in certain regions.

17 Q. And you mentioned Europe. Why is Europe a touch point  
18 or a data point for you?

19 A. If you look at Germany, as an example, if you go back  
20 30 years ago, the grocery industry there would look very  
21 similar to the U.S. If you look at it today, Aldi and Lidl  
22 control about 50 percent of that market.

23 Q. So that market has been transformed by those two  
24 players?

25 A. Totally.

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1 Q. For folks that shop at discount stores, do you consider  
2 yourself a competitor for their shopping dollar?

3 A. Yes.

4 Q. In light of that, how, if at all, have you reacted to  
5 the emergence of Aldi and Lidl at Kroger?

6 A. We've been much more focused on entry price-point items  
7 and narrowing that gap on entry price-point items.

8 Q. Let me talk to you, then, about dollar stores.

9 The experts have -- in this case, haven't talked much  
10 about, but can you explain what effect dollar stores --  
11 first of all, who are the dollar stores?

12 A. If you look, the dollar store that we would compete  
13 against the most would be Dollar General and Dollar General  
14 Market; then you also have Dollar Tree and Family Dollar,  
15 which is owned by the same company now.

16 Q. Do you view these stores as competitors?

17 A. Yes.

18 Q. Are they competitors on the same scale or in the same  
19 way as Walmart and Amazon and Costco?

20 A. I would say no and the -- but that I would add is just  
21 the sheer numbers because Family Dollar, you know -- or  
22 Dollar General -- excuse me -- has close to 20,000 stores,  
23 and they're almost on every street corner where they  
24 operate. So it's sheer number.

25 Q. Do you consider a dollar store customer to be one of

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1 your potential customers?

2 A. Yes.

3 Q. Let's talk about the category from the data called  
4 "Ethnic Stores."

5 Do you have understanding when the -- when the -- when  
6 Nielsen has a category called "Ethnic Stores," what that  
7 means?

8 A. Yeah. And they -- yes. And they lump a lot of things  
9 together. So you would have Asian stores, like an H-Mart or  
10 a 99 Ranch Market. They would also include Hispanic stores  
11 like a Cardenas, Pete's, things like that. They're all  
12 grouped together.

13 Q. Are there markets -- are these stores competitors of  
14 Kroger?

15 A. Absolutely.

16 Q. Can you give examples of where you compete aggressively  
17 with stores that fall in this category?

18 A. If you look, one of -- one of the areas that we focus  
19 on is fresh. One of the areas that we focus even more on  
20 fresh is produce. If you look at the -- pretty much all the  
21 ethnic grocers do an amazing job in produce, and you would  
22 see us changing assortment.

23 Obviously, from a pricing standpoint, you would look as  
24 well.

25 Q. You've talked about your responses to Walmart and

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1 Amazon and the like, how you've reacted in your "no  
2 compromises" policy. Have you been as successful with  
3 regard to the ethnic stores, responding to their competitive  
4 threat, as to some of the others?

5 A. No. No. They do an amazing job of connecting with  
6 customers within their neighborhoods, and we aspire to get  
7 better, but if you look at today, they are definitely  
8 connecting better than we do.

9 Q. For folks that shop at these stores, do you consider  
10 yourself a competitor for their shopping dollar?

11 A. Yes.

12 Q. Talk a little bit about more recent history. What did  
13 the pandemic mean for you and your fellow -- the folks that  
14 run Kroger?

15 A. Well, customers -- if you look at our online business,  
16 basically, we had three years' worth of growth in three  
17 weeks. Our associates did an amazing job of being agile to  
18 deal with an environment that just changed overnight; and,  
19 you know, how do you make sure you keep your customers safe  
20 and how do you make sure that they stay safe at well?

21 Q. Was COVID a challenging time to be CEO of a grocery  
22 company?

23 A. Not for me, because I realized the responsibility that  
24 I have, but our associates, to me, just did an amazing job.

25 And early in COVID no one knew how dangerous it was or

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1 could be, and they still went to work every single day,  
2 keeping our shelves full and being able to keep America fed.

3 Q. Were you proud of your folks?

4 A. That's an understatement.

5 Internally, one of the things I would say -- I would  
6 have never been greedy enough to ask what they did, because  
7 they did so much beyond anything that I could have ever  
8 imagined.

9 Q. So we've talked about what the grocery market used to  
10 look like and what it means to you today. What keeps you up  
11 at night, in terms of keeping your stores on the corner,  
12 keeping them open? What's -- what is the future -- what  
13 concerns you about the future from a competitive  
14 perspective?

15 A. Well, we've -- you know, we've talked a lot about the  
16 changes in the industry, and that's going to continue to  
17 happen. And we know that Amazon is going to be a bigger  
18 competitor in five years or ten years than they are today.

19 How do we make sure that we're able to be successful,  
20 to create job security and job opportunities for people, and  
21 connect with local communities and feed people in terms of  
22 where it's going?

23 I mentioned before we all, in our industry, prices have  
24 all -- if you look at every time there's a new format, it's  
25 always a new format with lower pricing. We know that

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1 pricing is going to continue to go down.

2 We also believe in society today, and it gets back to  
3 our purpose, feed the human spirit, we do think those things  
4 are more important when you can actually connect with  
5 somebody individually.

6 Q. If we now talk about that, the transaction that brings  
7 us to the courtroom today, did there come a time where you  
8 learned, through the press, that Albertsons was available  
9 for a strategic transaction?

10 A. Yes.

11 Q. How did you learn about that, formally?

12 A. Well, formally, it was -- would have been when  
13 Albertsons announced that they had put themselves up for  
14 sale. There had been rumors; but, formally, it's when they  
15 announced that they had put themselves up for sale.

16 Q. How did you, subsequent to that, come to talk to  
17 Albertsons about the possibility of a merger?

18 A. We had done a lot of work, understanding the overlaps,  
19 how to manage the overlaps, and can you get comfortable that  
20 you can find a strong buyer for those stores.

21 After we got comfortable with that, we had an -- our  
22 investment banker reach out to Albertsons' investment banker  
23 to say that we would like to have conversations about  
24 merging.

25 Q. And, roughly, when was that?

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1 A. That would have been in March of '22.

2 Q. So you talked about overlaps.

3 MR. WOLF: If we can call up DX2627.

4 BY MR. WOLF: (Continuing):

5 Q. What are we looking at here, Mr. McMullen?

6 A. This is a map where Albertsons operates.

7 MR. WOLF: Move DX2627 into evidence.

8 MS. MUSSER: No objection.

9 THE COURT: It will be received.

10 BY MR. WOLF: (Continuing):

11 Q. So you say this is an Albertsons map.

12 What did you take away from -- or what -- what does it  
13 mean to look at this Albertsons map when you looked at that  
14 time as a CEO of Kroger?

15 A. Albertsons is strong in a lot of markets where we have  
16 none -- no or limited presence.

17 MR. WOLF: Can we call up 2626 and just put them  
18 side by side?

19 Thank you, Mr. Rennick.

20 BY MR. WOLF: (Continuing):

21 Q. So on the left we see Albertsons, where they are today;  
22 and on the right, Kroger, where it is today.

23 Can you just give some examples where the maps are  
24 complementary, in your mind?

25 A. Well, if you look at the Northeast, Kroger wouldn't



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1 have anything until you get to D.C. If you look at Northern  
2 California, and then if you look at Chicago, Albertsons  
3 would have a much stronger presence. And then, obviously,  
4 in Hawaii as well.

5 MR. WOLF: We can take that down.

6 BY MR. WOLF: (Continuing):

7 Q. Prior to the investment bankers talking about the  
8 possibility of a merger, did Kroger ever analyze purchasing  
9 Albertsons?

10 A. I would not say officially, but you're always looking  
11 at different potential opportunities in -- in the -- in the  
12 industry, you know, both restaurants and other grocery  
13 retailers.

14 Q. So we've talked about this a little already, but why  
15 was Kroger interested in merging with Albertsons?

16 A. If you look, first of all, the values of the two  
17 companies are very similar, and we've been very impressed  
18 with the team that Mr. Sankaran has put together and the way  
19 they've connected -- improved their connection with the  
20 customers, building upon what Mr. Miller had done before.

21 When you bring the two companies together, it really  
22 gives national coverage, and it allows us to be able to  
23 better compete against Costco and Amazon and Walmart.

24 And if you look -- and the alternative profit  
25 businesses, which is a heavy -- it's critical in order to

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1 execute the overall strategy, it allows that scale where  
2 somebody can advertise with us nationally rather than us  
3 only being able to care of part of the country and a CPG has  
4 to find someone else for the rest of the country.

5 Q. If you bring the two companies together, does it  
6 provide opportunities for cost savings?

7 A. Yes.

8 Q. Can you give some examples?

9 A. Yeah. I mean, first of all, I'm sure there's a lot of  
10 things that Albertsons does better than Kroger, that we'll  
11 be able to learn from; but if you look at -- like, every  
12 time we've merged with companies in the past, we always find  
13 things, like on bags, one company will be buying cheaper  
14 than the other. Anything that's really good is not for  
15 resale.

16 We also find that CPGs routinely charge different  
17 companies different prices and different classes of trade on  
18 what they charge. So those would be examples.

19 Obviously, you would only have one board of directors.  
20 You'll save a lot on insurance costs, and we think there'll  
21 be a great sharing of best practices.

22 Q. If the merger happens, how many Albertsons stores will  
23 Kroger be bringing in to their family?

24 A. Approximately, 1,700.

25 Q. And, roughly, 500 Albertsons stores would be operated

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1 by C&S?

2 A. Yes.

3 Q. So let's focus on the Albertsons stores that would be  
4 part of Kroger.

5 We've talked about pricing, but just to remind everyone  
6 and the Court, what is the current relative pricing?

7 Albertsons and Kroger.

8 A. Albertsons would be 10 to 12 percent higher than  
9 Kroger.

10 Q. Is the plan, if this merger goes through, to raise  
11 Albertsons' prices to Kroger levels?

12 A. I think you have that --

13 Q. No. I'm asking the question. Is the plan to raise  
14 Albertsons prices to Kroger levels?

15 A. Well, it's to reduce Albertsons' prices to Kroger.

16 Q. Oh, I'm sorry. You're absolutely right. I did have  
17 that backwards. Thank you, Mr. McMullen, for correcting me.

18 Let me -- let me try again.

19 Is the plan to raise Kroger prices to Albertsons'  
20 levels?

21 A. Absolutely not.

22 Q. Why not?

23 A. We just -- we just believe over time it gets back to --  
24 we believe over time value will increasingly be important,  
25 and it's -- you will not be successful with pricing that

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1 much higher than the market.

2 Q. So what do you plan to do about that price discrepancy  
3 between Kroger and Albertsons?

4 A. We will start, day one, investing in prices to lower  
5 prices to help the Albertsons prices get closer to Kroger.

6 Q. If you lower prices at these Albertsons stores, what  
7 will that do to the competitive pressure or the pricing  
8 situation for folks like Giant Eagle or Stater Bros. or  
9 Raley's or other traditional supermarket competitors?

10 A. We would assume --

11 MS. MUSSER: Lack of foundation.

12 THE COURT: I'm going to ask him to restate that.  
13 I'm not sure he does have a foundation for that.

14 BY MR. WOLF: (Continuing):

15 Q. Do supermarkets respond to price pressure from other  
16 supermarkets?

17 A. Yes.

18 Q. If Kroger lowers the prices at Albertsons, will that  
19 put price pressure on other supermarkets?

20 MS. MUSSER: Same objection. Object to  
21 foundation.

22 MR. WOLF: Your Honor, he's been in the industry  
23 for 48 years.

24 THE COURT: I'm going to allow him to answer that  
25 question.

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1 MR. WOLF: Thank you, Your Honor.

2 THE WITNESS: Yes.

3 BY MR. WOLF: (Continuing):

4 Q. Will the lowering of Albertsons' prices start on day  
5 one, or will it take time?

6 A. It will start on day one.

7 Q. And what do you mean it'll start on day one?

8 A. The day that we merge is the day that we will begin  
9 lowering prices.

10 Q. Just so I understand, the goal is to bring Albertsons'  
11 prices closer to Kroger?

12 A. Yes.

13 Q. And therefore closer to Walmart?

14 A. Yes.

15 Q. Did there come a time when you thought that  
16 \$500 million annual price investment would be sufficient?

17 A. I would -- I wouldn't -- never say that we thought it  
18 was sufficient, but it was a starting point.

19 Q. And did there come a time when you realized that  
20 \$500 million price investment in Albertsons stores was not a  
21 sufficient starting point?

22 A. Yes.

23 Q. Now, we've heard the billion-dollar annual price  
24 investment referred to in this case, and of course you  
25 weren't in court, as empty promises or wishful thinking.

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1 I'm going to ask you a bunch of questions about that,  
2 but is the billion-dollar price investment just something  
3 you talk about around the watercooler back in Cincinnati?

4 A. No. It would have been something that we would have  
5 had conversations with our board, obviously after internal  
6 conversations, and -- and we obviously talked about it  
7 publicly as well.

8 MR. WOLF: Alex -- excuse me -- Mr. Rennick, I'd  
9 ask you to call up DX1727 on the private screens only, and  
10 let's start on the first page.

11 BY MR. WOLF: (Continuing):

12 Q. Can you orient us, Mr. McMullen, as to what we're  
13 looking at, what this document is?

14 A. This is the Kroger board meeting on May 6th.

15 Q. So this is just a few months ago?

16 A. Yes. And it would have been the agenda for that  
17 meeting.

18 Q. And we see, by category, not by individual, who -- who  
19 were the folks indicated as present? Who are those people?

20 A. It would be the senior team that's directly involved in  
21 the merger.

22 Q. The board was present at this meeting?

23 A. Yes.

24 Q. And there were various presentations on various aspects  
25 of the merger?

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1 A. Yes.

2 MR. WOLF: Your Honor, I would move to admit  
3 DX1727.

4 MS. MUSSER: No objection.

5 THE COURT: It will be received.

6 BY MR. WOLF: (Continuing):

7 Q. If we can turn to page 6 of the document, Bates Number  
8 1223, and we see a title: Key assumptions, acquisition  
9 announcement versus now.

10 And we see four different time frames.

11 Do you see that, Mr. McMullen?

12 A. Yes.

13 Q. If we look in the box entitled "Efficiencies," the  
14 first bold, in October 2021, we see, including price  
15 investments of \$.5 billion, \$500 million.

16 Was that the initial thought as to what you would need  
17 to do in annual price investments to get started?

18 A. Yes.

19 Q. Did that remain the case?

20 A. No.

21 Q. Let's look at the next column, and I think you can read  
22 this. Can you just tell folks what the reference is?

23 Is it 500 million now?

24 A. The efficiencies have increased to a billion eight, and  
25 we have included -- we have raised the estimated price

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1 investments to a billion dollars.

2 Q. And then we see April 2024 referred to as "current."

3 And what does that say the price investment is intended to  
4 be on an annual basis?

5 A. \$1 billion.

6 Q. So this was communicated to the board?

7 A. Yes.

8 Q. This was agreed to by the board?

9 A. Yes.

10 Q. Is it a hollow promise?

11 A. Absolutely not.

12 Q. Is it an empty gesture?

13 A. No.

14 Q. Is it something that is made in fleeting to ensure that  
15 you get regulatory approval or permission from someone to do  
16 the merger?

17 A. Absolutely not.

18 Q. When we say "a billion dollars," is that one time?

19 A. It's a billion dollars -- when -- we will grow up to a  
20 billion dollars. Publicly, we have said four years. Our  
21 internal goal is three. And it's annual. So if you look at  
22 the billion dollars, every year customers will save a  
23 billion dollars versus where they are today.

24 Q. On top of the billion dollars, is Kroger intending to  
25 invest more than that?



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1 A. We believe over time we will, because if you look at  
2 the fundamental Kroger business model, it's to continue to  
3 lower pricing.

4 Q. So as I -- as you stated every year, there will be a  
5 billion-dollar investment. So what does that mean to the  
6 real customer in a world where Kroger owns these 1,700  
7 Albertsons stores versus a world where Albertsons retained  
8 these stores? What does that mean in real-world terms?

9 A. Obviously, in terms of if Albertsons continues to own  
10 the store, I'm basing it on the due diligence documentation  
11 that was provided. I don't know what their actual strategy  
12 would be, but Kroger customers will pay a billion dollars  
13 less in retail price than what they did before.

14 Q. Are there folks at Kroger who have developed a plan for  
15 how prices will be brought down over time?

16 A. Yes.

17 Q. Is Stuart Aitken one of those folks?

18 A. Yes.

19 Q. Again, we'll hear from him probably later today.

20 If someone were to say that they, quote, "Don't credit  
21 general claims that we are going to lower prices or do  
22 something after a merger," end quote, and therefore can  
23 disregard it, what would your reaction be?

24 MS. MUSSER: Your Honor, I'm going to object to  
25 the extent that Mr. Wolf is paraphrasing an expert as a

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1 violation of the sequestration order.

2 THE COURT: Sustained.

3 MR. WOLF: Your Honor, first of all --

4 THE COURT: I'm not going to revisit it.

5 MR. WOLF: Okay.

6 THE COURT: Move on.

7 BY MR. WOLF: (Continuing):

8 Q. To someone who would suggest that you're not serious  
9 about making the billion-dollar investment, what would you  
10 say?

11 A. We are serious.

12 Q. Are you committed?

13 A. Yes.

14 Q. Are you -- can you guarantee it as much as you can  
15 guarantee anything as a CEO and board member of Kroger?

16 A. Yes.

17 Q. Does Kroger plan to reduce costs as a result of the  
18 merger?

19 A. Yes.

20 Q. Can you -- we've talked a little bit about it, but  
21 could you put a little more meat on the bones of how the  
22 merger will allow you to reduce costs?

23 A. As we talked about before, Kroger has been involved in  
24 several mergers over the years. So we have a lot of  
25 experience in terms of being able to actually reduce cost.

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1           And what we looked at was our actual experience in  
2 previous mergers. We also used third parties to help us to  
3 identify, you know, if you look at supply chain, how can you  
4 drive fewer miles to still get fresh products to all the  
5 stores?

6           Obviously, you'll have more warehouses, so you'll be  
7 able to naturally have less miles.

8           The example I gave before on bags, goods not for  
9 resale, on goods for sale as well. It's all of those areas;  
10 and, you know, there's hundreds of items, based on our  
11 previous experience, in terms of what you can actually find  
12 and expect to see.

13 Q.   Does Kroger plan to improve the merged stores in the  
14 near term?

15 A.   Yes. And we have committed to invest \$1.3 billion,  
16 from a capital standpoint, in stores and warehouse  
17 facilities.

18 Q.   Can you give some examples of what you plan to do with  
19 that \$1.3 billion?

20 A.   If you look at -- an easy one would be on some  
21 energy-type opportunities, that, when you're going through  
22 the stores, we believe there's projects where we'll be able  
23 to reduce the energy usage.

24           In some cases, it's repairing cases, and it's -- you  
25 know, basically, if you just walk a store with me, it's --

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1 there -- there would be things in numerous departments.

2 Q. When you say in some cases you would be repairing  
3 cases, what kind of cases are you talking about in the  
4 second instance of using the word "cases"?

5 A. That would be refrigeration cases.

6 And I'll try to talk about this in a way that makes  
7 sense, but when you're walking a store, some cases you can  
8 hear them. That shouldn't be the case. And that usually  
9 means that somebody hasn't invested in a new motor or fan or  
10 something like that.

11 Q. And what does a bad motor or fan mean for what's inside  
12 the refrigeration case?

13 A. It's usually harder for -- to keep temperature for the  
14 product, which usually causes utility usage to go up, and it  
15 just doesn't -- you know, from a customer standpoint, it  
16 isn't the right image you want to present.

17 Q. Who is Mafaz Maharroof?

18 A. He's in charge of our capital management area.

19 Q. Was he responsible for figuring out or at least  
20 supervising those that figure out where savings might be  
21 found and the like?

22 A. Yes. He's the person that really quarterbacked the  
23 whole process on working with each individual team and third  
24 parties on the efficiencies and making sure that people  
25 understood that those efficiencies will eventually be added

McMullen - D

1 to budgets and other things that they'll be held accountable  
2 to.

3 Q. And we'll be hearing from Mr. Maharooof later in this  
4 case.

5 Let's talk a little bit about associates.

6 What will the merger mean for the former Albertsons  
7 associates that are now part of the Kroger family?

8 A. We've committed to invest \$1 billion, incrementally, in  
9 wages.

10 Q. Is that --

11 A. That's.

12 Q. Sorry. Go ahead.

13 A. No. Go ahead.

14 Q. Is that a one-time investment?

15 A. Once you do it, it's an annual investment.

16 Q. And what is -- what are you investing in? What does  
17 that billion dollars get you?

18 A. Some of it is wages. Some of it's benefits. Some of  
19 it is Feed Your Future and things like that.

20 Q. Is that \$1 billion less in profits that Kroger  
21 otherwise might have had?

22 A. Short-term, yes.

23 Q. Why do you say "short-term"?

24 A. We believe over time, when you look at the whole  
25 business model of lowering prices, investing in associates,

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1 which we would expect will improve turnover, those things  
2 will cause us to connect with customers better. And when  
3 you connect with customers better, your volume grows, which  
4 allows you to be successful by taking -- do a better job of  
5 taking care of the customer, giving them a better value, and  
6 those things take time to execute.

7 And, you know, we try to make our business decisions on  
8 what is best for 10 years out, not what is best this  
9 quarter.

10 Q. You reviewed opening statements in this case?

11 A. Yes.

12 Q. Did you listen to some of them?

13 A. Some of them.

14 Q. And you read all of it?

15 A. Yes.

16 Q. So you're aware that the statement was made that the \$1  
17 billion -- and I think it was referring to price  
18 investment -- is, quote, "Pennies on the dollar because it  
19 represents less than .5 percent of Kroger and Albertsons'  
20 revenue."

21 Roughly speaking, what was Kroger's profit last year?

22 A. Slightly over 3 billion.

23 Q. The \$1 billion price investment is what percent of your  
24 profit?

25 A. You would need to make sure -- on the billion-dollar

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1 price investment, you after-tax it. So once you after-tax  
2 it, it's about 23.5, 24 percent.

3 Q. Would you consider 23 or 24 percent of your profit an  
4 insignificant amount?

5 A. Absolutely not.

6 Q. Would you consider it an insignificant commitment to  
7 trying to close gap at the former Albertsons stores  
8 vis-à-vis Walmart?

9 A. No.

10 Q. Let's shift gears now to talk about the divestiture.  
11 How did Kroger go about finding potential buyers for  
12 the divested stores?

13 A. Our investment banker would have reached out to -- I  
14 actually think it's over 100 different potential buyers.

15 Q. Did you receive bids from some of those hundred  
16 potential buyers?

17 A. Yes.

18 Q. How many serious bids did you receive?

19 A. Three.

20 Q. At a very high level, how did Kroger decide on C&S as  
21 the appropriate buyer of the divested stores?

22 A. It was multiple things.

23 One, it's learnings that -- from what we thought had  
24 gone wrong on Haggen's, finding a buyer that would recognize  
25 the labor contracts, finding a buyer that had a lot of

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1 experience in the industry, finding a buyer that was well  
2 capitalized, and having a buyer that was -- would be a  
3 person that people would want to go to work for so the  
4 associates that got transferred over would want to work for  
5 them and would want to have a career as well.

6 Q. Were you aware how C&S intended to finance the  
7 operation?

8 A. In general. Not the specifics.

9 Q. And, generally, how did you understand that they  
10 intended to finance the deal?

11 A. That Mr. Cohen, and I believe he had an outside  
12 investor, was writing a significant check for additional  
13 equity in the business.

14 Q. Did it matter to you that they were putting significant  
15 equity into the deal?

16 A. Yes.

17 Q. Why is that?

18 A. If you look at one of the things that we thought that  
19 was wrong in Hagen's, is that it was -- the company was  
20 well over-levered, and so they did not have the ability to  
21 endure any business changes. And, you know, the economy  
22 today is strong, but the economy is not going to always be  
23 strong. And you want to make sure that somebody has a  
24 balance sheet that can deal with uncertainty where things  
25 just aren't barely getting by.



## McMullen - D

1 Q. Was Yael Cosset the person primarily responsible, at  
2 least in later months, for setting up the divestiture  
3 package?

4 A. Yes.

5 Q. And we'll be hearing from him probably on Thursday or  
6 Friday this week?

7 A. Yes.

8 Q. Wrapping up, Mr. McMullen, do you consider the merger  
9 with Albertsons a watershed moment for Kroger?

10 A. Yes.

11 Q. Have there been other watershed moments, in your  
12 experience, in your years at the company?

13 A. Yes. If you look at merging with Fred Meyer, would  
14 have been a watershed moment. When KKR tried to take Kroger  
15 over, would have been a watershed moment. If you look at  
16 when Amazon bought Whole Foods, would have been a watershed  
17 moment.

18 Q. Is this important to the future of the company?

19 A. Yes.

20 Q. If the merger goes through, will prices for Albertsons'  
21 customers, current Albertsons' customers, go down as a  
22 result of the price investment?

23 A. Yes.

24 Q. Will employees see increased wages?

25 A. Yes.

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1 Q. Will customers see better stores?

2 A. Yes.

3 Q. Are these unenforceable promises, in your mind,  
4 Mr. McMullen?

5 A. If you look at legally, it's one thing; but if you look  
6 at commitments, these are commitments that we've made in  
7 partnership with our board. Its commitments that, if you  
8 look at historically, we've actually done when we've merged  
9 with previous companies. And if you look at what we think  
10 it takes to be successful going forward, it's things that  
11 you should do from a business standpoint going forward to be  
12 successful as well.

13 Q. If you purchase -- if you acquire these Albertsons  
14 stores and don't make the price investment, would that make  
15 business sense to you?

16 A. No, not at all.

17 Q. Why is that?

18 A. Because we believe that -- if you look at long-term,  
19 being that much price different than the market isn't a  
20 sustainable successful strategy, and we just don't think  
21 that you would be able to be success -- be a successful  
22 competitor against a Walmart, a Costco, you know, Aldi's,  
23 and people like that, because they are going to be bigger  
24 competitors in five years and ten years than what they are  
25 today.

## McMullen - D

1 Q. Let's shift to what happens to Kroger if the merger  
2 doesn't occur.

3 For current Kroger stores, on day one, will there be  
4 any difference for those stores if the merger does not  
5 occur?

6 A. No.

7 Q. What -- what will it mean for Albertsons' customers if  
8 the merger doesn't occur?

9 MS. MUSSER: Objection. Foundation.

10 MR. WOLF: Your Honor --

11 THE COURT: I mean, he's a CEO of Kroger, not  
12 Albertsons.

13 MR. WOLF: To be clear, let me just -- it was  
14 meant to be a more obvious question than the way I phrased  
15 it, so let me rephrase it, Your Honor.

16 THE COURT: All right.

17 BY MR. WOLF: (Continuing):

18 Q. Will the price investments you intend benefit  
19 Albertsons' customers if the merger doesn't go through?

20 A. No.

21 Q. Now, I asked you whether there will be changes to the  
22 stores without the merger. Does your answer to what will  
23 happen to Kroger, if there's no merger, change if our time  
24 period or our outlook changes to, say, three or five years?

25 A. Yes.

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1 Q. And how is that?

2 A. It really gets back to the questions you asked before.

3 When you look at, you know, five years and ten years,  
4 we think alternative profit will be significantly more part  
5 of the business, and we believe the combined companies will  
6 be able to actually achieve numbers bigger than what either  
7 one of us can do without the other. Those are things that  
8 benefit Kroger and Albertsons both, and it's one of the  
9 reasons why we think combined it's better for everybody than  
10 what it would be without being separate.

11 Q. Let me conclude by asking you, you understand the  
12 Federal Trade Commission and the states are trying to block  
13 the merger because they say it's a threat to competition?

14 A. Yes.

15 Q. Do you view the merger as a threat to competition?

16 A. Absolutely not.

17 Q. Why not?

18 A. It's really all the questions that you've been asking.  
19 We know that the Albertsons pricing today is 10 to 12  
20 percent. We know, beginning day one, we'll begin narrowing  
21 that gap. We have committed to invest in associates, and  
22 we've committed to being supportive of communities, and  
23 together we believe we can do things that we could not do  
24 without each other.

25 MR. WOLF: Pass the witness, Your Honor.

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1 THE COURT: All right. I think this is a perfect  
2 time for a morning break. We'll stand in recess for 15  
3 minutes.

4 (Recess taken.)

5 DEPUTY COURTROOM CLERK: All rise.

6 THE COURT: Please be seated.

7 All right. You may begin your cross-examination.

8

9 CROSS-EXAMINATION

10 BY MS. MUSSER:

11 Q. Good morning, Mr. McMullen.

12 A. Good morning.

13 Q. My name is Susan Musser. I'll be asking a few  
14 follow-up questions, following up on your examination with  
15 Mr. Wolf.

16 So starting where he began, I know he asked you some  
17 questions about your business.

18 Do you recall that?

19 A. Yes.

20 Q. And I believe you testified that Kroger's business is  
21 feeding people.

22 Do I have that right?

23 A. Yes.

24 Q. Whether it's feeding people on a budget or just someone  
25 looking to come in and buy a bunch of groceries and have a

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1 good shopping experience; is that correct?

2 A. Yes. Among many others.

3 Q. And you would agree that food is a reason that  
4 people -- in fact, the reason that people come to Kroger  
5 banner.

6 A. I would say "a reason."

7 Q. And when a customer comes to a Kroger banner, Kroger  
8 tries to provide an experience that the customer enjoys or  
9 finds value in; is that right?

10 A. Yes.

11 Q. And you're familiar with the term "traditional shop";  
12 correct?

13 A. I've heard the term. I don't use it, but I've heard  
14 the term.

15 Q. And you testified in your deposition that that term is  
16 a grocery store visit to shop for items on your weekly  
17 grocery list; is that correct?

18 A. Correct.

19 Q. And a traditional shop is one reason that shoppers go  
20 to Kroger; correct?

21 A. Yes.

22 Q. And you've heard the term "fresh, full, and friendly"?

23 A. Yes.

24 Q. And that's, in fact, Kroger slogan. Do I have that  
25 right?

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1 A. Yes.

2 Q. And "full" refers to the availability of products that  
3 customers want at a particular Kroger store; correct?

4 A. Correct.

5 Q. And customers consider whether a store carries the  
6 products they want in deciding where to shop; is that right?

7 A. Yes.

8 Q. And whether or not Kroger carries a particular item in  
9 stock impacts customer satisfaction when they shop?

10 A. Sometimes.

11 Q. And that makes sense; right? If I'm shopping for a  
12 grocery list and want to make dinner based on those recipes  
13 I used to develop that list and you don't have what I want  
14 as a shopper, that shopper could be dissatisfied. Is that  
15 fair?

16 A. Yes.

17 Q. And one way that Kroger tries to meet its customer  
18 demand is by offering one-stop-shop across multiple  
19 specialty departments; is that right?

20 A. Yes. But we would approach it different than the way  
21 you described.

22 Q. And what type of specialty departments does Kroger  
23 offer?

24 A. Different stores would have different, but service  
25 meat, service seafood, pharmacy, among others; but, in some

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1 cases, we actually would have a bar and -- you know, every  
2 store is unique and its own trade area.

3 Q. And in each trade area, it's fair to say that Kroger  
4 strives to offer a range of products, including specialty  
5 departments, in order to allow customers to have a  
6 one-stop-shop at a Kroger banner; correct?

7 A. We attempt for Kroger to be the destination where  
8 somebody goes.

9 Q. And it's fair to say that at a typical Kroger store a  
10 shopper can buy a Gatorade, fresh produce for the week, cold  
11 cuts for school sandwiches, and a pasta salad to have with  
12 Sunday dinner; is that right?

13 A. Yes.

14 Q. And Kroger is a publicly traded company?

15 A. Yes.

16 Q. And as a publicly traded company, Kroger is required to  
17 make certain filings with the Securities and Exchange  
18 Commission; is that right?

19 A. Yes.

20 Q. And, of course, it goes without saying, that Kroger is  
21 truthful and accurate in its representation to shareholders  
22 and potential shareholders. Fair?

23 A. Yes.

24 Q. And I'll ask you to turn to what's marked as PX6009 in  
25 the binder in front of you. You'll also see those documents



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1 come up on the screen.

2 THE COURT: The binder is just now coming.

3 MS. MUSSER: I jumped a little bit ahead,

4 Mr. McMullen. I apologize.

5 BY MS. MUSSER: (Continuing):

6 Q. Do you see PX6009?

7 A. Yes.

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. It would be the annual report and the proxy.

12 MS. MUSSER: Your Honor, I move to admit PX6009.

13 MR. WOLF: No objection, Your Honor.

14 THE COURT: It will be received.

15 BY MS. MUSSER: (Continuing):

16 Q. If you could turn to page ending in -113, and you'll  
17 notice at the bottom right-hand corner of these documents  
18 they're marked PX6009- and there's a number.

19 Looking at that pagination, I'm looking at the number  
20 ending -113.

21 Do you see that?

22 A. Yes.

23 Q. And do you see in the middle of this page there's a  
24 list of stores? Do you see that?

25 A. Yes.

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1 Q. And the paragraph that starts, "The combo store is the  
2 primary food store format."

3 Do you see that?

4 A. Yes.

5 Q. Can you read the second sentence after the one that I  
6 just read?

7 A. "We believe this format is successful because the  
8 stores are large enough to offer the specialty departments  
9 that customers desire for one-stop shopping, including  
10 natural food and organic sections, pharmacies, general  
11 merchandise, pet centers, and high-quality perishables such  
12 as fresh seafood and organic produce."

13 Q. So Kroger represented to the SEC in its 2023 filing  
14 that Kroger's desire -- or customers desire one-stop  
15 shopping at its Kroger stores; correct?

16 A. Yes.

17 Q. Now, you started as CEO in 2014? I believe you  
18 testified to that on your direct.

19 A. Yes.

20 Q. And so the first filing -- the first annual report  
21 during your tenure as CEO would have been filed in 2015; is  
22 that correct?

23 A. Well, I'm not trying to -- technically, I think it was  
24 actually filed in 2016.

25 Q. Well, let's go to the 2015 -- well, it's fair to say in

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1 2015 you were working at Kroger; correct?

2 A. Yes.

3 Q. And I believe you were on the board of directors at  
4 that time?

5 A. Yes.

6 Q. Okay. So let's turn to PX6683 in your binder.

7 This again will also appear as a page in front of you,  
8 if that's easier.

9 Do you recognize this document, Mr. McMullen?

10 A. After looking at it, yes.

11 Q. What is it?

12 A. It would be the 10-K.

13 MS. MUSSER: Your Honor, I move to admit what's  
14 been marked as PX6683.

15 MR. WOLF: No objection, Your Honor.

16 THE COURT: It will be received.

17 BY MS. MUSSER: (Continuing):

18 Q. If you could turn to the page ending -002, do you see  
19 that?

20 A. Yes.

21 Q. And that's a header called "Stores." Do you see that?

22 A. Yes.

23 Q. And going to -003, the next page, do you see where,  
24 again, it starts, "The combo store"?

25 Do you see that?

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1 A. Yes.

2 Q. And could you read for the Court the two sentences  
3 after -- starting, "They typically draw customers"?

4 A. "They typically draw customers from 2 to 2.5 mile  
5 radius. We believe this format is successful because the  
6 store is large enough to offer the specialty departments  
7 that customers desire for one-stop shopping, including  
8 natural and organic sections, pharmacies, general  
9 merchandise, pet centers, and high-quality perishables such  
10 as fresh seafood and organic produce."

11 Q. And this statement, or something similar to it,  
12 appeared in each Kroger 10-K filing from 2015 to 2023; is  
13 that correct?

14 A. I assume, yes.

15 Q. And I believe you testified earlier that you started  
16 becoming worried about Costco in the '90s.

17 Do I have that right?

18 A. Yes.

19 Q. And that Walmart popped on your radar -- at least you  
20 became aware of it in the early '90s.

21 Do I have that right?

22 A. Yes.

23 Q. And I believe Mr. Wolf told you -- showed you an  
24 article about Amazon; is that right?

25 A. Correct.

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1 Q. And that article was dated 2017?

2 A. Yes.

3 Q. So during this time after you became aware of Costco,  
4 Walmart, and Amazon, in every share -- or in every 10-K  
5 filing from 2015 to 2023, Kroger represented to its  
6 shareholders and to the SEC that one-stop shop was something  
7 its customers desired; is that right?

8 A. Yes.

9 Q. And are you aware that the plaintiffs sued Kroger and  
10 Albertsons in February of 2024?

11 A. Yes.

12 Q. And are you aware that plaintiffs' complaint filed in  
13 this case alleged that offering a one-stop shopping  
14 experience is a feature of supermarkets like Kroger and  
15 Albertsons?

16 A. Yes.

17 Q. And Kroger released its most recent 10-K a month after,  
18 in March 2024?

19 Do I have that right?

20 A. Yes.

21 Q. And are you aware that that 10-K eliminated the  
22 reference to one-stop shopping?

23 A. I'd have to look at it. I assume, yes.

24 Q. And you spoke with Mr. Wolf about divisions.

25 Do you recall that conversation?

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1 A. Yes.

2 Q. Now, part of the reason to have divisions in that those  
3 divisions are close to the community; is that right?

4 A. Yes.

5 Q. And being close to community helps Kroger understand as  
6 local shoppers within that community. Is that fair?

7 A. Yes.

8 Q. It also helps Kroger understand competition in that  
9 local community; is that right?

10 A. Yes.

11 Q. And those divisions you spoke to, they are headed by  
12 division presidents. Is that fair?

13 A. Yes.

14 Q. And you would agree that those division presidents'  
15 purpose is to be a liaison between the local community and  
16 Kroger corporate; is that right?

17 A. That would be one of their responsibilities.

18 Q. And you would agree that competition differs by local  
19 community. Is that fair?

20 A. Yes.

21 Q. For example, I'm from Missouri. We have Schnucks in  
22 Missouri, but there might not be a Schnucks here in  
23 Portland; is that right?

24 A. Yes.

25 Q. You also spoke about farmers. Do you recall that

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1 conversation with Mr. Wolf?

2 A. Yes.

3 Q. And you would agree that you try to reduce the time  
4 that it takes to get produce from a farmer to a store; is  
5 that right?

6 A. Yes.

7 Q. And you do that by local networks with farmers that are  
8 supported by a local distribution system; is that right?

9 A. I'm -- I'm trying to under -- I'm trying to understand  
10 the question.

11 Q. Let me break it down for you, Mr. McMullen.

12 So you agree with the underlying premise that you want  
13 to reduce the time to get from a local farmer to a store; is  
14 that right?

15 A. Yes.

16 Q. And does Kroger's distribution network help it do that?

17 A. Yes.

18 Q. How?

19 A. If you look with farmers, in some -- if you take  
20 California, you're moving product 24 hours a day if it's  
21 strawberries. Some places you have a center where you bring  
22 product together and get a full truckload from there. If  
23 you get with -- if you look at, like, the example I gave on  
24 Grainger County, they would actually make deliveries to a  
25 couple of different warehouses. Other places, if it's a

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1 small enough farmer, they may go directly to a store.

2 It's -- you're using every different avenue available.

3 Q. And you also testified about a 10 to 12 percent spread  
4 between Kroger and Albertsons stores; is that right?

5 A. Yes.

6 Q. And you would agree that that spread is averaged across  
7 all products; is that right?

8 A. Yes.

9 Q. Is that averaged across all Kroger stores, compared to  
10 across all Albertsons stores?

11 A. It would be the stores where we would have -- where we  
12 would be competing against Albertsons.

13 Q. And I believe you agreed on direct, but I just wanted  
14 to confirm that there are some products that Albertsons  
15 might be closer in price to Kroger; is that right?

16 A. Yes.

17 Q. And there are some prices where they might actually be  
18 better than Kroger; is that right?

19 A. Yes.

20 Q. And you would agree -- well, let me go to Walmart. I  
21 know you spoke to Walmart on direct examination.

22 Do you recall that?

23 A. Yes.

24 Q. And after Walmart came on the -- your radar, Kroger  
25 made the strategic decision that it was going to compete



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1 primarily through investing in prices. Is that fair?

2 A. It would be much broader than just price.

3 Q. But price was one way that they were going to compete?

4 A. One.

5 Q. And a focus on reducing that price was a key way that  
6 Kroger decided to compete with Walmart; is that right?

7 A. One way, yes.

8 Q. But that's not, as you just mentioned, the only way  
9 that you can compete. Is that fair?

10 A. Yes.

11 Q. For example, Kroger or other supermarkets could choose  
12 to compete on promotions; correct?

13 A. Correct.

14 Q. Could choose to compete on an in-store experience;  
15 correct?

16 A. Correct.

17 Q. For example, offering sushi counters; right?

18 A. Yes.

19 Q. And you're familiar with Kroger's banner Harris Teeter?

20 A. Yes.

21 Q. And Harris Teeter is one such store; correct?

22 A. One such store.

23 Q. Well, Harris Teeter chose to -- is a bit differentiated  
24 from some of Kroger's other banners; is that right?

25 A. Yes.

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1 Q. And, in fact, it has its own operating unit within the  
2 Kroger corporate structure.

3 Do I have that right?

4 A. Yes.

5 Q. And Kroger -- and Harris Teeter competes a little bit  
6 differently than other Kroger banners. Is that fair?

7 A. Yes.

8 Q. Meaning, it focuses more on promotion and other aspects  
9 of competition, not as focused on price.

10 Do you agree?

11 A. Yes.

12 Q. Now, you also mentioned Costco.

13 Do you recall that testimony?

14 A. Yes.

15 Q. And I believe you said that Costco is a club store with  
16 a limited number of items and a focus on pallets. Do I --  
17 or presenting its goods on pallets; is that right?

18 A. Generally on pallets, yes.

19 Q. And so you would agree that club stores do not offer as  
20 wide of a variety of offerings as a Kroger store; correct?

21 A. Correct.

22 Q. For example, you can't just get a single avocado at  
23 Costco?

24 A. Correct.

25 Q. And to shop at Costco, members have to pay fees; is

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1 that right?

2 A. If you go into a store. But if you get -- you can get  
3 Instacart delivery or DoorDash deliveries in some stores  
4 where you do not pay a fee.

5 Q. But to go into a store, you need to pay a fee. Is that  
6 fair?

7 A. In most places, yes.

8 Q. And that fee -- there's a couple of levels of fees.

9 Do I have that right?

10 A. Yes.

11 Q. And are you aware that Costco just raised its  
12 membership fee?

13 A. Yes.

14 Q. But at the time of your deposition, anyway, one level  
15 of fee was \$129.

16 Does that sound about right?

17 A. Yeah. I believe the real number is \$120. I was going  
18 off of memory, and I think I said \$129.

19 Q. Okay. But you would agree that for some shoppers \$120  
20 is a lot of money?

21 A. Yes. And I believe that's the reason Costco has more  
22 than one membership level.

23 Q. And you would also agree that, for whatever reason,  
24 some shoppers do not want to purchase food in bulk, for  
25 budget reasons or otherwise?

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1 A. Correct.

2 Q. And for a shopper on a budget looking to purchase a  
3 limited quantity on her list, Costco may not be as good an  
4 option as a Kroger store to grab all those items on her  
5 list; is that right?

6 A. Yes.

7 Q. And you also spoke about dollar stores.  
8 Do you recall that testimony?

9 A. Yes.

10 Q. And you spoke about I think Dollar General.  
11 Do I have that right?

12 A. Yes.

13 Q. Is Dollar Tree another example of a dollar store?

14 A. Yes. But they go to market a lot different than Dollar  
15 General.

16 Q. Well, we can focus on Dollar General.

17 You would agree that Dollar General has fewer food --  
18 food SKUs relative to a Kroger store; is that right?

19 A. Yes.

20 Q. And, in fact, even the Dollar General Market store has  
21 less than a quarter of food SKUs relative to a Kroger store?

22 A. Yes.

23 Q. And you would expect that produce that a shopper gets  
24 from Dollar General would not be as fresh as produce offered  
25 at a Kroger store?

McMullen - X

1 A. That would be our -- our objective is that produce at  
2 Kroger would be fresher than they can get anywhere.

3 Q. In fact, that would be your expectation?

4 A. Yes.

5 Q. And for the shopper looking to do a traditional shop  
6 for their weekly groceries, you agree that Dollar General  
7 Market will not provide the same amount of choices as  
8 Kroger; correct?

9 A. Can you say that again? Because somebody can do a full  
10 shop at Dollar General Market, but I'm not sure I completely  
11 understood the question.

12 Q. Sure.

13 For someone looking to get a full weekly shop, you  
14 would agree that Dollar General Market has less options to  
15 fulfill that weekly shop than a Kroger banner?

16 A. Yes. There would be less options. Somebody could do  
17 the full shop.

18 Q. But would just have to make choices among fewer  
19 options; correct?

20 A. Correct.

21 Q. So, for example, if someone looking to get that  
22 Gatorade and sides for Sunday dinner, they might not be able  
23 to get a fresh pasta salad at Dollar General Market;  
24 correct?

25 A. Yeah. I'd have to look. I don't know on the pastas.

McMullen - X

1 Q. And you also mentioned Amazon on your direct  
2 examination.

3 Do you recall that?

4 A. Yes.

5 Q. And Amazon sells groceries through three primary  
6 channels: Whole Foods, Amazon Fresh, and through their main  
7 Amazon.com website.

8 Do you agree with that?

9 A. Yes.

10 Q. And, again, you haven't seen Amazon's ordinary course  
11 documents produced in this case; correct?

12 A. Correct.

13 Q. And you don't have access to their confidential  
14 information, of course?

15 A. Correct.

16 Q. And you would agree that Amazon is best situated to  
17 speak to their plans, if any, to expand or reduce its  
18 Whole Foods sales -- or stores; is that correct?

19 A. Did you say "reduce"?

20 Q. To expand or reduce their Whole Food stores?

21 A. Yes.

22 Q. And Amazon is also best situated to speak to their  
23 plans to expand or reduce their Amazon Fresh  
24 brick-and-mortar stores; correct?

25 A. Correct.

McMullen - X

1 Q. And turning to Whole Foods, you would agree that  
2 Whole Foods does not offer the same selection of national  
3 brands as Kroger banners; correct?

4 A. Correct.

5 Q. For example, a shopper cannot buy a Gatorade or a Pepsi  
6 at a Whole Foods; correct?

7 A. Correct.

8 Q. So for a shopper with Gatorade and Pepsi on their  
9 weekly shopping list, you would agree that Whole Foods might  
10 not be as good an option as Kroger; correct?

11 A. Correct. But most customers shop multiple stores.

12 Q. And for a shopper that wants to get, say, a fresh  
13 chicken for dinner that evening, a delivery from the  
14 Amazon.com ecommerce site might not be as good an option as  
15 a Kroger store; is that right?

16 A. Yeah. Kroger or Whole Foods, yes.

17 Q. And now you just mentioned that shoppers may go to a  
18 couple of different stores. Is that -- do I have that  
19 right?

20 A. Yes.

21 Q. But you would agree that for a busy shopper looking to  
22 go on her weekly grocery shop between kids' soccer games,  
23 going to one store to buy her week's worth of groceries is  
24 more convenient than having to go to three stores to buy  
25 Gatorade, fresh produce, cold cuts for school sandwiches,

McMullen - X

1 and a pasta salad to have at Sunday dinner?

2 A. Certainly more convenient. Not always what they do.

3 Q. And you mentioned corner grocery stores.

4 Do I have that right?

5 A. Yes.

6 Q. And you would agree that having a corner grocery store  
7 connected to the local community is important; right?

8 A. Yes.

9 Q. And do you consider Kroger's offering corner grocery  
10 stores?

11 A. Some of our stores.

12 Q. But you would agree that Kroger tries to be focused on  
13 the local communities; is that right?

14 A. Yes.

15 Q. And you would agree that Albertsons also, in some  
16 cases, offers corner grocery stores; correct?

17 A. Correct.

18 Q. And you would agree that Albertsons also tries to be  
19 focused on its local communities; is that right?

20 A. Yes.

21 Q. And so prior to this acquisition, at least in some  
22 communities throughout the country, both Kroger and  
23 Albertsons, offer a choice between local corner grocery  
24 stores; correct?

25 A. It would be one choice, yes.



McMullen - X

1 Q. And after this merger, there will only be one -- those  
2 two stores will just be one store owned by one company; is  
3 that right?

4 A. Not always.

5 Q. And you would agree that today Kroger stores compete  
6 with Albertsons stores; is that right?

7 A. Yes. It would be one competitor among many.

8 Q. And you agree that Kroger competes with Albertsons in  
9 all the traditional ways that companies go to market to try  
10 and serve the customer in the best way possible?

11 A. We would compete against all competitors, and so it  
12 wouldn't be unique to Albertsons. It would be the way you  
13 go to market, and you're trying to offer the customer  
14 something for them to come to you versus any competitor.

15 Q. But one of those competitors that you compete against  
16 is Albertsons; correct?

17 A. Yes. It's one among many.

18 Q. And Kroger competes with Albertsons to offer fresh  
19 produce?

20 A. Yes.

21 Q. And Kroger competes with Albertsons to offer a friendly  
22 in-store experience; is that right?

23 A. Yes.

24 Q. And Kroger competes with Albertsons on price?

25 A. Yes.

## McMullen - X

1 Q. And Kroger competes with Albertsons to offer different  
2 rewards or loyalty programs. Is that fair?

3 A. Yes.

4 Q. Can you please turn to what's been marked as PX6024 in  
5 your binder.

6 Do you recognize this document, Mr. McMullen?

7 A. Yes.

8 Q. What is it?

9 A. The 2021 Fact Book.

10 Q. And this fact book is a book that Kroger puts together  
11 for Kroger's shareholders and potential shareholders?

12 A. Yes.

13 Q. If you could turn to the page ending -012, page 12 of  
14 this document, do you see your name listed there: Rodney  
15 McMullen?

16 A. Yes.

17 Q. And is that your signature?

18 A. Yes.

19 MS. MUSSER: Your Honor, I move to admit what's  
20 been marked as PX6024.

21 MR. WOLF: No objection, Your Honor.

22 THE COURT: It will be received.

23 BY MS. MUSSER: (Continuing):

24 Q. And if you could turn to what's been marked as page  
25 -058 in this exhibit, and this slide lists certain made --

McMullen - X

1 oh, let me give you a minute to get there.

2 A. You said 5 -- I was trying to look here. 5-8?

3 Q. 5-8, sir.

4 And do you see -- and this is a chart.

5 Do you see that?

6 A. Yes.

7 Q. And on the top left, it says "Major Markets."

8 Do you see where I'm looking at?

9 A. Yeah. Nine or more stores.

10 Q. And a major market is nine or more stores; is that  
11 right?

12 A. Yes.

13 Q. And at the time this was published, it was accurate  
14 that Kroger held the number one or number two market  
15 position in the majority of these major markets.

16 Do you see that?

17 A. Yes.

18 Q. And meaning that Kroger has the number one or number  
19 two market share in the majority of these markets listed  
20 throughout this chart on page 58 through 60?

21 A. Yes.

22 Q. And looking at the far right, where it says "Major  
23 Competitors," do you see that?

24 A. Yes.

25 Q. And those companies listed there are the top two

McMullen - X

1 competitors in that particular market shown on this page; is  
2 that right?

3 A. Yes. It would be the top two among many, but it's the  
4 two largest.

5 Q. And if you could turn to page 59, I'm looking at row  
6 19. It's listed Portland-Vancouver-Hillsboro,  
7 Oregon-Washington.

8 Do you see that?

9 A. Yes.

10 Q. And is that an MSA?

11 A. Yes.

12 Q. What's an MSA?

13 A. It's a metropolitan statistical area, and I believe the  
14 technical definition is, when people are driving to work,  
15 "how far are they driving" is how the government defines it.

16 Q. And is this MSA covering where we're located and where  
17 we're sitting here today?

18 A. Yes.

19 Q. And turning to the far right column on this row, do you  
20 see where it says Albertsons Safeway/Portland Division?

21 A. Yes.

22 Q. And the Albertsons Safeway/Portland Division is the  
23 number one competitor in Portland at the time this was  
24 written; correct?

25 A. Correct.

McMullen - X

1 Q. And in your -- and if you could -- I'm actually going  
2 to ask Mr. Duncan to pull up what's been marked PDX11 on  
3 your screen.

4 If you can stay where you are in the binder,  
5 Mr. McMullen, I think that might make this a little bit  
6 easier to navigate.

7 A. Okay.

8 Q. But can you see what's been marked as PDX11 on your  
9 screen?

10 A. Yes.

11 Q. And Mr. Wolf showed you two maps in your direct  
12 examination.

13 Do you recall that?

14 A. Yes.

15 Q. He showed you a map of Kroger's locations and a map of  
16 Albertsons' locations; is that right?

17 A. Yes.

18 Q. And does this map combine both of those to one set of  
19 locations across the country?

20 A. Yes.

21 Q. And I believe, as you testified on direct examination,  
22 there are some areas where there are no overlap; correct?

23 A. Correct.

24 Q. Mostly in the Midwest and the Southeast; is that right?

25 A. And the Northeast and Northern California.

McMullen - X

1 Q. Okay. Fair enough.

2 So in the Northeast, Northern California, the Midwest,  
3 and the Southeast; correct?

4 A. Correct.

5 Q. All right. So looking again at the chart that's on  
6 pages 58 through 60 -- and I have them side by side on your  
7 screen, if that's helpful -- you would agree that in some  
8 major markets listed here Kroger has a presence but  
9 Albertsons does not; is that right?

10 A. Yes.

11 Q. So, for example, if you go to row two, do you see where  
12 it says Atlanta-Sandy Springs-Roswell, Georgia?

13 A. Yes.

14 Q. And, of course, looking at this map, you see there's no  
15 Albertsons presence in Georgia; is that right?

16 A. Yes.

17 Q. And same with row six. For example,  
18 Detroit-Warren-Dearborn, Michigan.

19 Do you see that?

20 A. Yes.

21 Q. And, again, there's no Albertsons presence there?

22 A. Right.

23 Q. Correct. If you could turn to what's been marked as  
24 PDX9 in your binder.

25 And, actually, Mr. McMullen, I'm going to keep it -- if

McMullen - X

1 you could keep your binder open to PX6024 and just put the  
2 demonstrative on the screen, I think that might be a little  
3 bit easier for everybody.

4 And this demonstrative looks at MSAs located on pages  
5 58 to 60 only where -- only where Albertsons and Kroger have  
6 overlapped locations; is that right?

7 And please take a minute.

8 A. I believe that's correct, without going through every  
9 one.

10 Q. But sitting here today, you cannot identify an MSA on  
11 the major markets appendix that you've provided to  
12 shareholders that Kroger and Albertsons have an overlapping  
13 presence that is not -- that is not displayed on PDX9; is  
14 that right?

15 A. Yes. Without double-checking every line, yes.

16 Q. And for the states where both Kroger and Albertsons  
17 operate, so the states -- the MSAs listed on PDX9, you would  
18 agree that Albertsons is Kroger's number one or number two  
19 competitor in 14 of the 17 MSAs listed there; is that right?

20 A. Yes. On the subset of the 45.

21 MS. MUSSER: And you can put that off the screen.

22 THE WITNESS: Or 49. Excuse me.

23 BY MS. MUSSER: (Continuing):

24 Q. And you spoke a little bit with Mr. Wolf about union  
25 workers.

McMullen - X

1 Do you recall that testimony?

2 A. Yes.

3 Q. And I believe you testified that 65 percent of Kroger  
4 employees were union workers?

5 A. Yes.

6 Q. And it's fair to say that you're proud to be a union  
7 employer?

8 A. Yes.

9 Q. And do you believe that being a union employer provides  
10 benefits to your workers?

11 A. We believe it's the choice of our associates to decide  
12 whether they're represented by the union or not.

13 Q. Why are you proud to be a union employer?

14 A. I mean, I grew up in a union family. I was a union  
15 employee for several years.

16 Q. So it's fair to say that you personally believe that  
17 there was a benefit to being in a union; is that right?

18 A. Yes.

19 Q. And you testified that Kroger was committing to honor  
20 union contracts; is that right?

21 A. Yes.

22 Q. But you would agree that union contracts are negotiated  
23 every three years or so. Is that about right?

24 A. Yes.

25 Q. And it's fair to say that, as in any negotiation,



McMullen - X

1 sometimes the parties have disagreements; is that right?

2 A. Correct.

3 Q. So, for example, maybe the union wants certain  
4 employment terms that Kroger has a different view on. Is  
5 that fair?

6 A. Yes.

7 Q. And so after this acquisition, Kroger and unions are  
8 going to have to duke it out, so to speak, to come to terms  
9 on those agreements. Is that fair?

10 A. Well, every contract -- I don't think of it as duking  
11 it out. What you're trying to do is to get a settlement  
12 that supports sustainable business and support your  
13 associates, so -- I mean, I realize why you might use the  
14 words "duking it out," but I don't really think of it that  
15 way.

16 Q. But it's fair to say that each side is trying to get  
17 the terms in their contract that they believe are best for  
18 its particular position in the contract negotiations. Is  
19 that fair?

20 A. Yes.

21 Q. And you testified in front of the United States  
22 Congress relating to this transaction. Do I have that  
23 right?

24 A. Yes.

25 Q. If you could turn to what's been marked as PX6090 in

McMullen - X

1 your binder, and let me know when you're there,

2 Mr. McMullen.

3 A. Okay.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. And this is a set of written questions that were  
7 submitted by members of Congress; is that right?

8 A. Yes.

9 Q. And these are Kroger's drafted responses to those  
10 written questions; is that right?

11 A. Correct.

12 MS. MUSSER: I move to admit what's been marked as  
13 PX6090.

14 MR. WOLF: No objection, Your Honor.

15 THE COURT: It will be received.

16 BY MS. MUSSER: (Continuing):

17 Q. If you can turn to the page ending -0003, and these  
18 are -- are you there, Mr. McMullen?

19 A. Yes.

20 Q. And these are questions submitted by Senator  
21 Alex Padilla.

22 Do you see that?

23 A. Yes.

24 Q. And if you could turn to page -005, and this is  
25 question 4e. Mr. Padilla's question asks: "Will you commit

McMullen - X

1 that any spin-off company will retain union workers and the  
2 high level of unionization?"

3 Do you see that?

4 A. Yes.

5 Q. Can you read your response to that question?

6 A. "Working together with antitrust regulators, we will  
7 ensure any divested stores are" --

8 Q. I'm sorry, Mr. McMullen. I think we're on a slightly  
9 different question.

10 Can you turn to page -005?

11 MS. MUSSER: And, Mr. Duncan, this should be in  
12 the middle of page 5, and it's the question that's started,  
13 "Will you commit that any spin-off company will retain union  
14 workers?"

15 BY MS. MUSSER: (Continuing):

16 Q. Oh, you're there. Sorry.

17 Do you see that, Mr. McMullen?

18 A. Is that the "c"?

19 Q. It's "e." Sorry.

20 A. Yes. Now I found it.

21 Q. Okay. Well, let me read the question again.

22 Do you see what it says, "Will you commit that any  
23 spin-off company will retain union workers and the high  
24 level of unionization?"

25 Do you see that?

McMullen - X

1 A. Yes.

2 Q. Could you read your answer to "e"?

3 A. "We expect that unionized workforces at any divested  
4 stores would remain unionized following the sale."

5 Q. And while you, Kroger, writes that the divested stores  
6 will remain unionized, what you do not say in your prepared  
7 response to Congress is that C&S, spin-off company, will  
8 retain workers; is that correct?

9 A. Well, this was before the conversations with C&S.

10 Q. But the spin-off company at that time, you had SpinCo,  
11 I believe, before C&S; is that right?

12 A. For part of the stores, but not all of the stores.

13 Q. And at that time, you did not represent to Congress  
14 that SpinCo would retain unionized workers; correct?

15 A. I don't believe we did.

16 Q. And associates in Kroger or Albertsons stores that are  
17 going to be divested to C&S aren't going to be forced to go  
18 to C&S; is that correct?

19 A. Are not or are? I didn't --

20 Q. Are not going to be forced.

21 A. No. They would be -- within stores, if your store is  
22 sold to C&S, you would go with that store.

23 Q. Do you have to go to that store, or do employees have a  
24 choice?

25 A. I believe you have to go with that store.

McMullen - X

1 Q. And if an employee decides not to go to that store,  
2 Kroger has offered no commitment to retain it at an existing  
3 Kroger store; is that correct?

4 A. Not at this point. It would be something that you'd  
5 have to talk to the union about, negotiate it.

6 Q. And you testified in front of Congress, I believe, that  
7 Kroger would not close a store as a result of this merger;  
8 is that correct?

9 A. Yes.

10 Q. And Kroger is only committing to not closing stores at  
11 the initial time of the merger; is that correct?

12 A. Correct.

13 Q. And, in fact, Kroger may, indeed, close stores later;  
14 is that right?

15 A. Yes.

16 Q. Meaning that Kroger could relocate a store; is that  
17 right?

18 A. Yes.

19 Q. Or consolidate two stores into one?

20 A. Correct.

21 Q. And I believe that you testified that Kroger had  
22 initially estimated that it was going to invest \$500 million  
23 in price investments; is that correct?

24 A. Correct.

25 Q. And then you increase that amount to -- I believe you

McMullen - X

1 said 1 billion?

2 A. Correct.

3 Q. And you were deposed as part of the FTC's efforts to  
4 stop this transaction; is that right?

5 A. Yes.

6 Q. And your deposition took place on May 31, 2024; is that  
7 correct?

8 A. Correct.

9 Q. And at that time you knew about the increase in  
10 Kroger's purported price investments; is that right?

11 A. Yes.

12 Q. And at the time of your deposition on May 31st, Kroger  
13 had yet to publicly announce its increase in price  
14 investments; is that right?

15 A. Right. We had not talked about it outside of within  
16 the company.

17 Q. And do you recall that at your deposition you explained  
18 that the reason you had yet to announce it was because there  
19 hadn't really been a time when it's appropriate to have a  
20 broader update on how the merger with Albertsons is going;  
21 is that right?

22 A. Correct.

23 Q. And Kroger decided to announce these price investments  
24 on August 15, 2024; is that correct?

25 A. I'd have to look at this specific date.

McMullen - X

1 Q. Does that sound about right, though?

2 A. Yeah. Approximately.

3 Q. And that was about 10 days before the hearing in this  
4 court started?

5 A. Yes.

6 Q. Now, these price investments are about reducing  
7 Albertsons' margin post-acquisition; is that right?

8 A. Yes.

9 Q. Specifically, what margin -- Albertsons' margin is now  
10 versus what the margin will be after the transaction, that's  
11 what Kroger is looking to do; correct?

12 A. Yes. That it will go down.

13 Q. And I'm -- and a margin, you would agree, is  
14 essentially the difference between price and the cost of  
15 goods sold; is that correct?

16 A. Yes. But it would also include transportation --  
17 distribution and other costs as well.

18 Q. So the margin is a difference between price, cost of  
19 goods sold, and certain other costs. Is that fair?

20 A. Correct.

21 Q. But you would agree that cost of goods sold is a big  
22 component of --

23 A. It would be the largest.

24 Sorry. I apologize.

25 Q. That's okay.

McMullen - X

1           And Kroger assumes that it will be able to fund, at  
2 least these investments, through post-merger synergies; is  
3 that correct?

4   A.    Yes.

5   Q.    And that some of these synergies will impact the cost  
6 of goods sold; right?

7   A.    Yes.

8   Q.    And as CEO of Kroger, you personally do not have access  
9 to Albertsons' confidential information today; is that  
10 right?

11   A.    Correct.

12   Q.    Including what Albertsons' current cost of goods sold  
13 is; is that right?

14   A.    Correct.

15   Q.    You've heard of the term "clean room"?

16   A.    Yes.

17   Q.    What is it?

18   A.    It's a room where people have access to the specific  
19 data for both companies.

20   Q.    And you don't have access to the clean room in this  
21 case; correct?

22   A.    Correct.

23   Q.    And you would agree that you have not been  
24 identified -- involved in identifying how synergies will be  
25 accomplished post-transaction; is that right?



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1 A. Not by detail, if that's the question.

2 Q. So you haven't been involved in identifying, by detail,  
3 how synergies will be achieved post-transaction; correct?

4 A. Correct.

5 Q. And you don't have access to Kroger's or Albertsons'  
6 current sensitive information relating to, you know, cost of  
7 goods sold; is that correct?

8 A. Correct.

9 Q. And so it's fair to say that you're not best situated  
10 to understand exactly how Albertsons' cost of goods sold  
11 will change post-acquisition?

12 A. Other than the fact that we've done a lot of other  
13 mergers and what we've actually found in the other  
14 transactions, we would expect to see the same thing with  
15 Albertsons.

16 On the specifics, no.

17 Q. So on the specifics of this transaction, you are not  
18 best situated to speak to how those cost of goods will  
19 change, specifically; correct?

20 A. Not in detail, correct.

21 Q. All right. And if you could turn to what's been marked  
22 as PDX11. This is at the front of your binder.

23 I'm sorry. It should be PDX14.

24 A. I can't find 11. I can find 9 and 16 and --

25 Q. In the very front, it should be the third tab, and it's

McMullen - X

1 PDX14. I misspoke.

2 A. I -- I --

3 Q. You don't have it?

4 A. I have 440 --

5 MS. MUSSER: Can you put PDX14 on the screen,  
6 Mr. Duncan?

7 BY MS. MUSSER: (Continuing):

8 Q. Mr. McMullen, I can approach the witness with a hard  
9 copy if you would prefer. If you would like to use the  
10 screen, that's fine too.

11 A. Yeah, I can see this.

12 Q. Okay. And this is a demonstrative, and I understand  
13 you're an accountant, so this might be a bit simple; but  
14 this is a demonstrative looking at price at the top, which  
15 is marked on the left-hand side by \$1.20.

16 Do you see that?

17 A. Yes.

18 Q. And this blue box is meant to represent the cost  
19 associated -- the cost associated with this particular  
20 product.

21 Do you see that?

22 A. Yes.

23 Q. And I believe you earlier testified that this cost of  
24 goods sold could include -- it'd be both the cost of  
25 producing that particular item as well as particular costs,

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1 like transportation costs; is that correct?

2 A. Correct.

3 Q. And that difference, or that delta, between the price  
4 and the cost of that product is called a gross margin. Is  
5 that fair?

6 A. Yes.

7 Q. And here, this gross margin is 20 percent; is that  
8 right?

9 A. An example illustrated here, yes.

10 Q. And you would agree that the reason this blue box can  
11 increase or decrease, could increase or decrease for a lot  
12 of different reasons; is that right?

13 A. Yes.

14 Q. For example, if inflation increased, cost inflation  
15 increased, the blue box could -- the cost of producing that  
16 particular item could increase as well; is that right?

17 A. Yes.

18 Q. Same thing with a supply chain inefficiency or increase  
19 in costs; is that right?

20 A. Yes.

21 Q. And if, for whatever reason, Kroger's cost increased,  
22 Kroger, in the ordinary course of business, does what it  
23 needs to do to maintain gross profit dollars; is that right?

24 A. Generally, yes.

25 And when you look at it in total, not necessarily by

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1 individual items.

2 Q. So if you'd go to the second bar chart, here you see an  
3 illustrative example of an increase in cost, and that  
4 increase a cost is represented there by \$1.20.

5 Do you see that?

6 A. Yes.

7 Q. And you also see the margin illustrated in orange at  
8 the top.

9 Do you see that?

10 A. Yes.

11 Q. And do you see that between these two examples, the  
12 margin decreased from \$0.20 cents to \$0.12 cents?

13 Do you see that?

14 A. Yes.

15 Q. And you also would agree that the margin can decrease,  
16 but if costs increase, the total price paid by consumers  
17 could still increase. Is that fair?

18 A. Yes. But not as much as it could have been.

19 Q. Fair.

20 But it could still increase; correct?

21 A. Correct.

22 Q. So is it fair to say that even if Kroger is successful  
23 in reducing its cost of goods sold after this merger, that  
24 still could be -- or strike that.

25 And you would agree that even if Kroger is successful

McMullen - X

1 in reducing margin, the total price could still increase if  
2 that cost associated with producing that good increases as  
3 well; is that right?

4 A. Yes. If you add inflation.

5 Q. So it's fair to say that this price investment promise  
6 is just a price -- a promise to invest prices; is that  
7 right?

8 A. It's a promise to reduce prices versus what they would  
9 have been.

10 Q. And it's not a promise to reduce list prices; correct?

11 A. It depends on the inflation environment.

12 Q. And if the inflation environment, for whatever reason,  
13 isn't good, then it will not necessarily reduce list prices;  
14 correct?

15 A. Correct.

16 But if there was zero inflation, it would.

17 Q. And so too with synergies. If Kroger doesn't realize  
18 certain synergies, that will also impact the amount that any  
19 sort of price investment would have on list prices. Is that  
20 fair?

21 A. Now, that, I would not agree with.

22 First of all, we have a lot of experience on  
23 efficiencies; and, two, if you look at when we merged with  
24 Roundy's, we continued to invest in lower prices even before  
25 we were able to get the efficiencies.

McMullen - X

1 Q. But you just testified, right, that Kroger is funding  
2 these price investments through its synergies; is that  
3 right?

4 A. Yes.

5 Q. And so if it's not able to realize the synergies, that  
6 could impact its ability to fund its price investment;  
7 correct?

8 A. I would not expect that to be the case.

9 Q. But it could?

10 A. I don't know.

11 Q. And you mentioned certain products that Kroger sells  
12 that will have a day one price investment?

13 A. Yes.

14 Q. And these day one price investments cover a limited  
15 amount of items; is that right?

16 A. Correct.

17 Q. These are only targeted to Albertsons' stores. Is that  
18 fair?

19 A. Yes.

20 Q. And these day one price investments are limited to  
21 Kroger's own brands or their private label brands; is that  
22 right?

23 A. That, I don't know the specifics.

24 Mr. Aitken would know the specifics.

25 Q. So Mr. Aitken is the person to speak to about this?

McMullen - X

1 A. Yes.

2 Q. But either way, you would agree that these day one  
3 price investments are for a limited amount of items only in  
4 Albertsons stores; correct?

5 A. Correct.

6 Q. And Kroger intends to rebanner some of its stores after  
7 purchasing them; is that right?

8 A. Yes.

9 Q. And for those stores that are being rebannered, these  
10 day one price investments will not happen until 18 months  
11 after rebannered; is that right?

12 A. Depends on the market. I would have to look at the  
13 specifics, but I believe it would be in even the stores that  
14 would be rebannered, but I don't know.

15 Q. And Kroger anticipates investing 192 million in the  
16 first-year price investments; is that right?

17 A. That sounds correct, yes.

18 Q. And Kroger invested in prices before the proposed  
19 acquisition; is that right?

20 A. Yes. We've been doing it for 15 years.

21 Q. And last year Kroger invested around 200 to 250 million  
22 in price investments. Is that fair?

23 A. Yes.

24 Q. So the investments that Kroger is going to be making  
25 day one, after this acquisition, is less than the price

McMullen - X

1 investments that it made last year; is that right?

2 A. Yes. Different-sized company too.

3 Q. And can you please turn to what's been marked as PX6684  
4 in your binder.

5 And this is an investor transcript from October 14,  
6 2022; is that right?

7 A. Yes.

8 Q. And you, in the course of your role as CEO, participate  
9 in investor calls; is that right?

10 A. Yes.

11 Q. And these conversations are normally recorded; correct?

12 A. Yes.

13 Q. And during these conversations, it's fair to say you  
14 try to be truthful and accurate; is that right?

15 A. Yes.

16 MS. MUSSER: Your Honor, we move to admit what's  
17 been marked as PX6684.

18 MR. WOLF: No objection, Your Honor.

19 THE COURT: It will be received.

20 MR. WOLF: Excuse me.

21 BY MS. MUSSER: (Continuing):

22 Q. If you turn to what's marked as PX011.

23 Let me know when you're there, Mr. McMullen.

24 A. I'm there.

25 MS. MUSSER: Mr. Duncan, if you can zoom in on the



McMullen - X

1 top section of this document, please.

2 BY MS. MUSSER: (Continuing):

3 Q. This is a question from Robert Frederick Ohmes. Do you  
4 see that?

5 A. Yes.

6 Q. Mr. Ohmes is a consumer analyst from BofA Securities?

7 A. Yes.

8 Q. And he asked, in part, "The first one, Rodney,  
9 Albertsons has a very different pricing model than Kroger.  
10 You mentioned price investment. Albertsons is, I think, a  
11 little more decentralized, more localized than you guys. Is  
12 there -- is there going to be any sort of conversion to the  
13 Kroger approach of business?"

14 Do you see that?

15 A. Yes.

16 Q. And going down to your response, you start by saying,  
17 "Yes. If you look at the pricing model, first of all, I  
18 wouldn't -- we wouldn't look at it in terms of moving  
19 everything over to the Kroger operating model. We would  
20 really look at what connects best with the customer."

21 Do you see that?

22 A. Yes.

23 Q. So you're telling the analyst that you wouldn't  
24 default, move everything that Kroger does over -- or  
25 Albertsons does over to the Kroger operating manual --

McMullen - X

1 model; is that right?

2 A. Yes.

3 Q. And, instead, you would look at what connects best to  
4 the customer; right?

5 A. Yes.

6 Q. For example, what you did with Harris Teeter. Is that  
7 fair?

8 A. Yes.

9 Q. And you go on to say, "Albertsons has always been  
10 investing in pricing. So it's not something that's -- it's  
11 something that's not new to them."

12 Do you see that?

13 A. Yes.

14 Q. So prior to the merger, Albertsons was no stranger in  
15 price investments; is that right?

16 A. Yes.

17 Q. And you don't know, sitting here today, what Albertsons  
18 was planning to do to invest in prices, absent this merger;  
19 correct?

20 A. Only to the extent that they would have included it in  
21 their projections they provided to us as part of due  
22 diligence.

23 Q. And you believe -- and you would agree that Albertsons'  
24 CEO, Vivek Sankaran, would be best situated to speak to all  
25 the things they were doing to invest in prices; correct?

McMullen - X

1 A. Correct. All I would know is what's in the  
2 projections.

3 Q. And you didn't, in calculating Kroger's, you know,  
4 promise price investment, offset the loss of what Kroger --  
5 Kroger -- or Albertsons could have been doing absent this  
6 transaction; is that correct?

7 A. Correct.

8 Q. Now, counsel asked you some questions about Kroger's  
9 profit; right?

10 And I believe you testified that it was \$3 billion. Do  
11 I have that right?

12 A. A little over 3 billion.

13 Q. A little over 3 billion?

14 A. Yes.

15 Q. Okay. And this -- Kroger is paying 25 billion for  
16 this, to purchase Albertsons. Do I have that right?

17 A. Yeah. It's a little bit less than that, but yes.

18 Q. So about seven times the amount of its profit every  
19 year?

20 A. Yes.

21 Q. And Kroger, in fact, spent 535 million in  
22 merger-related expenses this year; is that right?

23 A. Yes.

24 Q. And Albertsons separately spent 329 million; is that  
25 right?

McMullen - X

1 A. Yes.

2 Q. And so if my math is right, which it may not be, that's  
3 864 million; is that correct?

4 A. If your math is correct, yes.

5 Q. And that's, you know, almost one-third of the profits  
6 that Kroger made last year; is that right?

7 A. Yes.

8 Q. And you earlier testified that these price investments  
9 were going to be funded, at least in part, through  
10 synergies; is that right?

11 A. Correct.

12 Q. So it's fair to say it's not going to be a reduction in  
13 profit; is that right?

14 A. Would not expect to because of the efficiencies.

15 Q. So let's put the price investments in an appropriate  
16 amount of -- in the right context. These price investments  
17 are 1/25th of the purchase price of Albertsons; is that  
18 right?

19 A. Well, you have to look at the price investment as an  
20 annual number. The purchase price is the total future of  
21 the company. So you'd have to capitalize the price  
22 investments and then compare it. So it's not -- it's apples  
23 and oranges.

24 Q. Well, you would agree that last year Kroger's annual  
25 sales were \$150 billion; right?

## McMullen - X/ReD

1 A. Yes.

2 Q. And this annual price investment is 1/150th of that.

3 Is that fair?

4 A. If you look at it versus revenue, yes.

5 MS. MUSSER: I pass the witness.

6 THE COURT: Any redirect?

7 MR. WOLF: Brief, Your Honor.

8

9

## REDIRECT EXAMINATION

10 BY MR. WOLF:

11 Q. Mr. McMullen, Counsel asked you about whether you try  
12 to be truthful with shareholders in the investor community  
13 more broadly.

14 Do you recall that?

15 A. Yes.

16 Q. Have you informed your shareholders and the investor  
17 community more broadly of your billion-dollar annual price  
18 investment commitment, your \$1.3 billion commitment to  
19 stores, and your billion-dollar annual commitment to  
20 associates?

21 A. Yes.

22 Q. So what is the significance of the fact, if any, that  
23 you've communicated these commitments to your investors to  
24 the investing community more broadly?

25 A. We think it's material relative to a person making the

McMullen - ReD

1 decision to buy our stock or not buy our stock. We think  
2 it's a commitment, in terms of -- so that somebody knows  
3 what we plan to do. It's one of the reasons why we would  
4 have had the conversations with the board, to make sure  
5 we're partnered with the board, but you also want to make  
6 sure you're partnered with your investors as well.

7 And you want somebody that's making the decision to  
8 know what you plan to do from a business standpoint.

9 Q. So when you tell the investor community about the  
10 planned investments, does that have any effect on the  
11 enforceability, broadly speaking, of those commitments?

12 A. Legally, no. But from a reputation standpoint,  
13 absolutely.

14 Q. Let's go to 6024. Counsel just asked you about -- and  
15 the page that we were looking at -- the three pages, how  
16 would you characterize how frequently -- I'll give you a  
17 chance to look at 58, 59, and 60 of Exhibit PX6024.

18 How would you characterize how frequently Walmart  
19 appears as one of your top two competitors in each of these  
20 markets?

21 A. Just eyeballing it, I would say probably two-thirds of  
22 the time, but I need to go through all of 49 to know  
23 exactly.

24 Q. Is it the most common competitor you see on that sheet?

25 A. Yes.

## McMullen - ReD

1 Q. You were asked about your December 2022 congressional  
2 testimony.

3 Do you recall that?

4 A. Yes.

5 Q. And you were asked about commitments regarding labor  
6 contracts.

7 Do you remember that?

8 A. Yes.

9 Q. Where was C&S in the picture in December of 2022?

10 A. Nowhere.

11 Q. In order to have a commitment of a hand-off of labor  
12 contracts, do you need both sides committing to it?

13 A. Yes.

14 Q. So was the other side available to make the commitment  
15 at the time you gave your answer to Congress?

16 A. No.

17 Q. So were you in any position to make a statement about  
18 what C&S would and would not do in December of 2022?

19 A. No.

20 Q. Does that explain your answer?

21 A. Yes.

22 Q. Last questions.

23 You were asked about closing stores. Why would you  
24 close stores? What might motivate you to close or  
25 consolidate stores?

## McMullen - ReD

1 A. It's -- there would be several items. Some was the  
2 example that Counsel gave, where, if we relocate a store,  
3 you may close a store. In some cases, a trade area has  
4 changed. You may close two stores and consolidate it to  
5 one. In other cases, it would be just be the pure  
6 profitability of a particular location.

7 And we don't make -- the last decision, we don't make  
8 lightly; the first two decisions, obviously that's about  
9 growth.

10 Q. Is there anything about this merger that changes the  
11 circumstances under which you would or would not close a  
12 store?

13 A. Not at all, and our hope and expectation is it allows  
14 us to accelerate capital investment in markets when you look  
15 at a marketplace store and some of the other formats.

16 Q. We talked before about deal models. Could you talk in  
17 broad terms about what a deal model is?

18 A. Well, first of all, I'm going to back up a little bit.  
19 Before we would ever get serious about merging with  
20 somebody, we would have to make sure that their values,  
21 their culture, those things are similar to us. Because if  
22 those aren't the same, it just makes no sense.

23 Then the deal model is -- we're going through what --  
24 how's the impact on customers, associates, and financials?

25 And you obviously want to make sure that the financial



## McMullen - ReD

1 numbers include all the commitments that you're making from  
2 a customer and an associate standpoint in those numbers,  
3 because you -- you want to make sure that you're doing a  
4 merger where customers win, associates win, communities win,  
5 and your shareholder benefits as well.

6 Q. Are the -- is the deal model communicated to the board?

7 A. Yes.

8 Q. Is the deal model, at least at a high level,  
9 communicated to the investor community?

10 A. Yes. In terms of the broad commitments, but not the  
11 specifics.

12 Q. Does the deal model that you are relying on contemplate  
13 or -- based on the intent to close any stores?

14 A. It does not.

15 Q. So the deal model, is it based on the idea that you're  
16 going to operate all the stores you buy?

17 A. Yes.

18 Q. Does the deal model contemplate you're going to make a  
19 billion-dollar investment in price every year after the  
20 ramp-up period?

21 A. Yes.

22 Q. Does the deal model contemplate \$1.3 billion in  
23 improvements to Albertsons stores?

24 A. Yes.

25 Q. Does the deal model contemplate a billion dollars extra

## McMullen - ReD

1 going to associates?

2 A. Yes.

3 MR. WOLF: No further questions, Your Honor.

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

5 THE WITNESS: Okay. Thank you.

6 MS. MAINIGI: Your Honor, our next witness is  
7 Albertsons CEO, Mr. Sankaran. Would it make sense to take a  
8 little bit earlier lunch break so he could come in right  
9 after?

10 THE COURT: That's fine with me. We would just  
11 start earlier. I don't want to lose -- I don't want to lose  
12 momentum.

13 MS. MAINIGI: Understood, Your Honor.

14 THE COURT: I mean, it makes sense. So why don't  
15 we be in recess for lunch until 12:45.

16 We're coming in 15 minutes early. Thank you.

17 (Morning session concluded at 11:44 AM.)

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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 7 - AM Session

September 4, 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

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Official Court Reporter  
Oregon CSR No. 98-0346

Signature Date: 9/4/2024  
CSR Expiration Date: 9/30/2026

**BY MR. WOLF:**

**(Continuing): [15]**

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1608/10 1608/20 1609/6  
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**BY MS. MUSSER:**

**(Continuing): [10]**

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**DEPUTY COURTROOM**

**CLERK: [6]**

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1569/22 1629/5

**MR. McMULLEN: [1]**

1569/10

**MR. PERRY: [3]**

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1568/4 1569/5

**MR. WOLF: [27]**

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1677/7 1682/3

**MS. MAINIGI: [4]**

1567/14 1587/6 1682/6  
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**MS. MUSSER: [19]**

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**THE COURT: [28]**

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**THE WITNESS: [6]**

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**\$129 [2]** 1643/15 1643/18  
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**\$3,500 [1]** 1577/9  
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**-058 [1]** 1650/25  
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**192 million** [1] 1671/15  
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1639/20**25** [2] 1594/8 1675/15**250 million** [1] 1671/21**25th** [1] 1676/17**2626** [4] 1586/21 1586/25  
1587/5 1608/17**3****3 billion** [2] 1675/12  
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1600/21 1602/20**30 percent** [1] 1590/25**300** [1] 1580/11**3000** [1] 1564/2**301** [1] 1565/21**31** [1] 1662/6**31st** [1] 1662/12**329 million** [1] 1675/24**34th** [1] 1564/17**35** [1] 1585/17**3:24-cv-00347-AN** [2]  
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**767 [1]** 1564/7  
**7th [1]** 1562/5

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**864 million [1]** 1676/3

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