

# Appendix A

**Appendix A**

1. **Yael Cosset** – Senior Vice President and Chief Information Officer for The Kroger Companies, Inc. (“Kroger”), who was “the chief business negotiator for Kroger” in the discussions about the proposed divestiture contained in the agreements dated April 22, 2024 (“the New Divestiture”). Musser Dec., Ex. B at 16 (Cosset Dec. ¶ 3). Mr. Cosset was also Kroger’s designee under Federal Rule of Civil Procedure 30(b)(6) with respect to topics on “[t]he Divestiture Package and the Divestiture Agreement,” “[a]ny alternative divestiture proposals considered by [Kroger] or proposed by C&S or another potential buyer,” and “[Kroger’s] communications and negotiations with C&S and other potential buyers related to a potential divestiture.” PX8080 at 14 (Topics 1, 2, and 3); *see also* PX4094 at 135:9-142:22 (testimony about his designation and preparations to testify on Topics 1, 2, and 3). During his deposition, Kroger’s lawyer instructed Mr. Cosset not to answer questions about the New Divestiture’s creation and negotiation, stating that “each of [these topics] implicates significant subject matter over which Kroger and the other parties to this litigation have asserted various privileges” and “[Kroger] will be standing on those privilege assertions for purposes of today’s deposition.” *Id.* at 136:24-137:12. Mr. Cosset was precluded from answering “[w]ere you consulted in selecting which stores would be sold to C&S as part of the divestiture package?” and “[d]id you review drafts of the TSA and provide comments?” *Id.* at 53:13-55:19; 73:7-74:3. Counsel then prevented Mr. Cosset from testifying on issues including “[w]hat renegotiations were going on with C&S in mid-January 2024,” “[w]hy did Kroger license the Safeway banner to C&S,” and “[f]or the April 2024 package, what factors did Kroger consider in selecting a store it would make available to C&S?” *Id.* at 156:8-158:3; PX4105 at 337:4-338:12; 379:1-21. And

counsel only permitted Mr. Cosset to answer “yes or no,” but not provide any detail, about whether Kroger and C&S “disagreed” during the negotiations. *Id.* at 296:12-297:9.

2. **Eric Winn** – Chief Executive Officer of C&S Wholesale Grocers LLC (“C&S”) and “lead for [C&S]” in the New Divestiture negotiations. PX4060 at 241:123-16. Mr. Winn was also C&S’s Rule 30(b)(6) designee on topics including “C&S’s negotiations with Kroger and/or Albertsons relating to the Proposed Divestiture,” “[t]he Divestiture Package and the Divestiture Agreement,” “C&S’s plans for operating the assets in the Divestiture Package,” and “[a]ssessments or analyses by C&S or C&S consultants regarding whether the Divestiture Package excludes assets of Kroger or Albertsons used to support or operate the Divestiture Assets.” PX8061 at 4-8 (Topics 1, 2, 4, and 5); PX4060 at 11:11-15:25 (testimony about his designation and preparations to testify on Topics 1 and 5 and portions of Topics 2 and 4). At Mr. Winn’s deposition, he was ordered by counsel not to answer “did C&S ever ask Kroger for a distribution center in California as part of the divestiture,” “did C&S ask Kroger or Albertsons” for “exclusive rights on a nationwide basis to [the] Safeway [banner],” “did C&S ask for . . . three dairy plants in California, Colorado, and the Pacific Northwest from Kroger and Albertsons,” “which stores did C&S ask for,” and “what California stores were in the package that you rejected?” *Id.* at 176:1-12; 183:8-21; 234:21-235:7; 249:20-25; 250:14-21. He was further instructed to remain silent in response to questions about whether C&S requested “certain distribution assets,” “banners,” “e-commerce assets,” “loyalty assets,” or “assets,” “stores,” or “employees that it did not receive.” *Id.* at 254:2-256:255:15. When asked various ways whether “the antitrust analysis drove the selection of stores in the package,” Mr. Winn was also told not to answer. *Id.* at 216:15-218:13. Mr. Winn was instructed not to answer “why did C&S reject . . . three different store packages” that Kroger proposed in the negotiations because his lawyer

claimed privilege over any “detail about the basis for rejecting or accepting” those proposals. *Id.* at 245:22-247:15; *see also id.* at 253:6-24 (instructing witness not to answer “why did C&S reject” other divestiture packages). And Mr. Winn was generally barred from discussing “the biggest sticking points in negotiations between C&S, Kroger, and Albertsons,” any “issues that Kroger [or] C&S was unwilling to give on,” or “the differences in the collection of stores and asserts between the [New Divesture] and previous ones.” *Id.* at 255:17-257:5.

3. **Mafaz Maharroof** –

[REDACTED]



[REDACTED]

4. Rodney McMullen – [REDACTED]

[REDACTED]

5. Gabriel Arreaga – Kroger’s Senior Vice President and Chief Supply Chain Officer was commanded by counsel not to answer any question that “relates to the second

divestiture package” and thus precluded from explaining “[w]hat request did C&S make” for “appropriate assets . . . for Kroger to divest.” or whether “C&S [has] shared any plans with you for how it will run the divested businesses in the current package?” PX4082 at 104:19-106:8; 114:1-13.

6. **Jon McPherson** – Kroger’s Vice President of Associate and Labor Relations was ordered not to answer whether “Kroger place[d] copies of the[] collective bargaining agreements in the clean room for C&S” or to “describe [his] involvement in the due diligence work” for the labor-relations aspect of the proposed acquisition. PX4113 at 31:8-32:10; 210:11-211:9.

7. **Richard Cohen** – [REDACTED]

[REDACTED]

[REDACTED]

8. **Alona Florenz** – C&S’s Senior Vice President of Corporate Development and Financial Planning & Analysis was prohibited from testifying about whether “during negotiations with Kroger C&S tried to push [transition] timelines to align more with rebannering timelines” and tried to exclude certain banners from “the final divestiture package.” PX4072 at 194:6-195:3; 220:22-221:23. She was instructed not to answer whether “C&S ever tr[ie]d to negotiate for different stores in the Illinois region aside from the Mariano’s store,” “negotiate for a different banner in California aside from Albertsons,” or “negotiate or try to negotiation for a different banner aside from Albertsons in Wyoming?” *Id.* at 221:24-223:21; 247:5-249:4. She was also commanded not to answer questions about communications with an investment banker in which she wrote “[w]e still have that bad stores rules but [Albertsons] was suggesting it would be a known set of stores.” *Id.* at 258:8-259:7.

9. **Erik Keptner** – [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. **Sudhakar Lingineni** – C&S’s Chief Information Officer was ordered not to answer whether there “[w]ere . . . still changes being proposed in the [divestiture] package as of April 18<sup>th</sup>,” as well as whether there was “anything that C&S asked for in its negotiations concerning the divestiture agreement that C&S did not receive” or “would have reduced C&S’s execution risk” in the New Divestiture. PX4057 at 95:1-96:3; 127:6-128:13.

11. **Roxanne Schwans** – C&S’s Head of Pharmacy was instructed not to respond to questions about whether she is “responsible . . . for negotiating any aspects of the divestiture agreement on behalf of C&S” or whether during negotiations C&S “request[ed] to be able to ride along on the sellers’ current [pharmacy] procurement contracts.” PX4102 at 115:6-116:8; 208:5-11. She was blocked from even testifying about whether, during negotiations of the prior divestiture package—executed on September 8, 2023—C&S “request[ed] . . . to be able to ride along on the sellers’ [pharmacy] procurement contracts.” *Id.* at 208:15-210:8. Ms. Schwans was



then instructed not to answer whether “having [pharmacy benefit manager] support day one” or “digital pharmacy support similar to merch” were topics “raised for negotiation.” *Id.* at 371:5-16; 372:3-15.

12. Vivek Sankaran – [REDACTED]

[REDACTED]

13. Susan Morris – Albertsons’ Chief Operating Officer was instructed not to answer questions about how she believed “Albertsons selected [the private label] brands” it included in the New Divestiture and whether “C&S ask[ed] for any analysis or studies that Albertsons has conducted about these brands.” PX4097 at 390:16-391:24; 394:12-395:25. She was also commanded not to answer for “which [of those] brands” Albertsons “provided analysis [to C&S].” *Id.* at 396:11-16.

14. Anuj Dhanda – [REDACTED]

[REDACTED]

[REDACTED]

15. Rahul Pinto – [REDACTED]

[REDACTED]

16. Jim Perkins – Albertsons’ former Executive Vice President of Retail Operations and Special Projects was ordered by Albertsons’ lawyer not to answer questions about “the results of [his] assessment” of how a distribution center in Denver, Colorado “would operate in the divestiture package.” PX4140 at 245:1-250:7.