

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

**[PROPOSED] ORDER REGARDING
PRE-HEARING STIPULATIONS**

Plaintiffs Federal Trade Commission (“FTC” or Commission”) and the States of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming, and the District of Columbia and Defendants The Kroger Company and Albertsons Companies, Inc., by and through their respective counsel, have stipulated to the terms of this Pre-Hearing Order.

IT IS HEREBY ORDERED THAT

- 1. Opening Statement:** The parties may make opening statement of up to 90-minutes per side, with such time to come out of the speaking party’s chess clock.
- 2. Witness Sequestering:** Fact witnesses shall be sequestered and not attend the testimony of other fact witnesses during the hearing, and testimony of other fact

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witnesses shall not be disclosed to or accessed by them. Expert witnesses will not be sequestered and may attend or review fact witness testimony.

3. **Party Representative:** On or before Friday, August 16, 2024 at 5:00 p.m. Pacific Time, Defendants will identify one officer or employee per Defendant whom they propose to serve as that party's representative at counsel table for the duration of the hearing.
4. **Witnesses Called by Both Parties.** If both parties intend to call a witness, that witness will testify only once and will be fully examined by both parties. Witnesses on both parties' witness list will testify during Plaintiffs' case-in-chief. They will first testify in response to Plaintiffs' questions and then in response to Defendants' questions.
5. **Deposition Designations:** Each party reserves the right to call witnesses through designation of depositions taken in this case (including exhibits used during the deposition) with the understanding that the other party may counter designate from the same deposition and accompanying exhibits. The parties will make best efforts to notify each other by the start of the hearing whether they intend to present any deposition designations in lieu of live testimony. Each party reserves all rights to object to the other party's designations of deposition in whole or in part.
6. **Presentation by Video:** To alleviate demonstrated burden, third-party witnesses may testify by video conference with prior approval of the Court.
7. **Closing Arguments:** The parties will make closing arguments of up to 120 minutes per side immediately following the evidentiary hearing.

8. Post-hearing Briefing: At the conclusion of hearing, the parties will seek further guidance from the Court on whether the Court would find any additional post-hearing briefs helpful. To the extent the Court does request additional briefing, the Parties agree that the additional post hearing briefs shall not exceed 35 pages and will be due at 5:00 p.m. Pacific Time on the 10th day following the conclusion of the evidentiary hearing.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

DATED: _____, 2024