

**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

**JOINT LIST OF STIPULATIONS AND
ISSUES FOR STATUS CONFERENCE**

Plaintiffs Federal Trade Commission (the “FTC” or “Commission”) and the States of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia, by and through their respective Attorneys General (together, the “Plaintiff States”) and Defendants The Kroger Co. (“Kroger”) and Albertsons Companies, Inc. (“Albertsons”) respectfully submit the below list of stipulations and issues to be addressed by the Court during the August 7, 2024 status conference.

JOINT LIST OF STIPULATIONS AND ISSUES
FOR STATUS CONFERENCE

I. STIPULATIONS

1. **Opening Statement:** The parties anticipate making opening statement of up to approximately 90-minutes per side, but in any event such time will 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 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:** Defendants have until Friday, August 16, 2024, to 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. Plaintiffs reserve all rights to object to either Defendant's designated representative.

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:** While Defendants currently intend to call each of their witnesses live, Defendants recognize that some third parties may be unwilling or unable to appear live at the evidentiary hearing and reserve the right to call those witnesses through designation of depositions taken in this case (including exhibits used during the deposition) with the understanding that Plaintiffs may counter designate from the same deposition and accompanying exhibits. Defendants will make best efforts to notify Plaintiffs by the start of the hearing whether they intend to present any deposition designations in lieu of live testimony.

JOINT LIST OF STIPULATIONS AND ISSUES
FOR STATUS CONFERENCE

Plaintiffs reserve all rights to object to Defendants' 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 approval of the Court.

II. OUTSTANDING ISSUES

1. **Sealing of evidentiary hearing exhibits and the courtroom during the hearing:** The parties are continuing to meet and confer regarding a proposal and have agreed to either submit a joint proposal or separate position statements for this Court's consideration by August 9, 2024 at 5:00 pm EST.

2. **Closing Argument:** The parties will seek the Court's guidance on closing arguments, if any. If the Court requests closing arguments, the parties will be prepared to present them at the conclusion of the hearing beginning on August 26, 2024, or after the submission of post-trial briefs, as the Court prefers.

3. **Post-hearing findings of fact and conclusions of law:** The Parties are at impasse regarding the scope of the hearing record. It is Plaintiffs' position that the Court should be able to consider the full record submitted in the administrative proceeding. It is Defendants' position that the record before the court should be limited to what is presented to the court during the evidentiary hearing.

Dated: August 6, 2024

Respectfully submitted,

/s/ Susan A. Musser

Susan A. Musser, DC Bar # 1531486

Rohan Pai, DC Bar # 1015652

Charles Dickinson, DC Bar # 997153

Laura Hall, NY Bar # 4337408

Federal Trade Commission

Bureau of Competition

600 Pennsylvania Avenue, NW

Washington, DC 20580

Telephone: (202) 326-2122

smusser@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

/s/ Robert A. Bernheim

Robert A. Bernheim, AZ Bar No. 024664

Jayne L. Weber, AZ Bar No. 032608

Vinny Venkat, AZ Bar No. 038587

Connor Nolan, AZ Bar No. 038088

Arizona Office of the Attorney General

2005 N. Central Avenue

Phoenix, AZ 85004

Telephone: (602) 542-5025

Robert.Bernheim@azag.gov

Jayne.Weber@azag.gov

Vinny.Venkat@azag.gov

Connor.Nolan@azag.gov

Attorneys for Plaintiff State of Arizona

/s/ Nicole Gordon

Nicole Gordon, CA Bar No. 224138
Shira Hoffman, CA Bar No. 337659

State of California
California Department of Justice
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Telephone: (415) 510-3458
Facsimile: (415) 703-5480
Nicole.Gordon@doj.ca.gov
Shira.Hoffman@doj.ca.gov

Attorneys for Plaintiff State of California

/s/ C. William Margrabe

C. William Margrabe, DC Bar No. 90013916

Office of the Attorney General for the District of
Columbia

400 6th Street, N.W, 10th Floor

Washington, D.C. 20001

Telephone: (202) 727-3400

Will.Margrabe@dc.gov

Attorneys for Plaintiff District of Columbia

/s/ Brian M. Yost

Brian M. Yost, IL Bar No. 6334138
Paul J. Harper, IL Bar No. 6335001
Alice Riechers, IL Bar No. 6272933

Office of the Illinois Attorney General
115 S. LaSalle St.
Chicago, IL 60603
Telephone: (872) 276-3598
Email: Brian.Yost@ilag.gov
Paul.Harper@ilag.gov
Alice.Riechers@ilag.gov

Attorneys for Plaintiff State of Illinois

/s/ Schonette J. Walker

Schonette J. Walker, MD Bar No. 0512290008

Gary Honick, MD Bar No. 7806010078

Byron Warren, MD Bar No. 1612140330

Office of the Attorney General

200 St. Paul Place, 19th Floor

Baltimore, MD 21202

Telephone: (410) 576-6470

swalker@oag.state.md.us

ghonick@oag.state.md.us

bwarren@oag.state.md.us

Attorneys for Plaintiff State of Maryland

/s/ Lucas J. Tucker

Lucas J. Tucker, NV Bar No. 10252

Samantha B. Feeley, NV Bar No. 14034

Office of the Nevada Attorney General

100 N. Carson St.

Carson City, Nevada 89701

Telephone: (775) 684-1100

ltucker@ag.nv.gov

sfeeley@ag.nv.gov

Attorneys for Plaintiff State of Nevada

/s/ Julie Ann Meade

Julie Ann Meade, NM Bar No. 8143
Jeff Dan Herrera, NM Bar No. 154030

New Mexico Department of Justice
408 Galisteo St.
Santa Fe, NM 87504
Telephone: (505) 717-3500
jmeade@nmag.gov
jherrera@nmag.gov

Attorneys for Plaintiff State of New Mexico

/s/ Cheryl F. Hiemstra

Cheryl F. Hiemstra, OSB#133857

Tim D. Nord, OSB#882800

Chris Kayser, OSB#984244

Tania Manners, OSB#140363

Oregon Department of Justice

100 SW Market Street

Portland, OR 97201

Telephone: (503) 934-4400

Facsimile: (503) 378-5017

Cheryl.Hiemstra@doj.state.or.us

Tim.D.Nord@doj.state.or.us

cjkayser@lvklaw.com

tmanners@lvklaw.com

Attorneys for Plaintiff State of Oregon

/s/ William Young

William Young, WY Bar No. 8-6746

Office of the Wyoming Attorney General

109 State Capitol

Cheyenne, WY 82002

Telephone: (307) 777-7847

William.Young@wyo.gov

Attorney for Plaintiff State of Wyoming

STOEL RIVES LLP

/s/ B. John Casey

B. JOHN CASEY, OSB No. 120025

john.casey@stoel.com

RACHEL C. LEE, OSB No. 102944

rachel.lee@stoel.com

JACOB GOLDBERG, OSB No. 162565

jacob.goldberg@stoel.com

STOEL RIVES LLP

760 SW Ninth Avenue, Suite 3000

Portland, OR 97205

Telephone: 503.224.3380

AND

ARNOLD & PORTER KAYE SCHOLER LLP

MATTHEW M. WOLF (*Pro Hac Vice*)

matthew.wolf@arnoldporter.com

SONIA K. PFAFFENROTH (*Pro Hac Vice*)

sonia.pfaffenroth@arnoldporter.com

JOSHUA M. DAVIS (*Pro Hac Vice*)

joshua.davis@arnoldporter.com

KOLYA D. GLICK (*Pro Hac Vice*)

kolya.glick@arnoldporter.com

JASON C. EWART (*Pro Hac Vice*)

jason.ewart@arnoldporter.com

MICHAEL E. KIENTZLE (*Pro Hac Vice*)

michael.kientzle@arnoldporter.com

MATTHEW M. SHULTZ (*Pro Hac Vice*)

matthew.shultz@arnoldporter.com

DAVID B. BERGMAN (*Pro Hac Vice*)

david.bergman@arnoldporter.com

MICHAEL L. WALDEN (*Pro Hac Vice*)

mike.walden@arnoldporter.com

YASMINE L. HARIK (*Pro Hac Vice*)

yasmine.harik@arnoldporter.com

ALLISON GARDNER (*Pro Hac Vice*)

allison.gardner@arnoldporter.com

BARBARA H. WOOTTON (*Pro Hac Vice*)

barbara.wootton@arnoldporter.com

CHRISTIAN SCHULTZ (*Pro Hac Vice*)

christian.schultz@arnoldporter.com

DAVID EMANUELSON (*Pro Hac Vice*)

JOINT LIST OF STIPULATIONS AND ISSUES
FOR STATUS CONFERENCE

david.emanuelson@arnoldporter.com
MEI-WAH LEE (*Pro Hac Vice*)
mei-wah.lee@arnoldporter.com
WILSON DELOSS MUDGE (*Pro Hac Vice*)
wilson.mudge@arnoldporter.com
601 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: 202.942.5000

JOHN A. HOLLER (*Pro Hac Vice*)
john.holler@arnoldporter.com
250 W 55th Street
New York, NY 10019
Telephone: 212.836.8000

BRIAN K. CONDON (*Pro Hac Vice*)
brian.condon@arnoldporter.com
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017
Telephone: 213.243.4000

JEREMY T. KAMRAS (*Pro Hac Vice*)
jeremy.kamras@arnoldporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Telephone: 415.471.3100

AND

WEIL, GOTSHAL & MANGES LLP

MARK A. PERRY (*Pro Hac Vice*)
mark.perry@weil.com
LUKE SULLIVAN (*Pro Hac Vice*)
luke.sullivan@weil.com
JASON N. KLEINWAKS (*Pro Hac Vice*)
jason.kleinwaks@weil.com
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: 202.682.7000

LUNA N. BARRINGTON (*Pro Hac Vice*)
luna.barrington@weil.com
767 Fifth Avenue
New York, NY 10153

JOINT LIST OF STIPULATIONS AND ISSUES
FOR STATUS CONFERENCE

Telephone: 212.310.8000

SARAH M. STERNLIEB (*Pro Hac Vice*)
sarah.sternlieb@weil.com
700 Louisiana Street, Suite 3700
Houston, TX 77002
Telephone: 713.546.5000

BAMBO OBARO (*Pro Hac Vice*)
bambo.obaro@weil.com
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: 650.802.3000

THOMAS B. FIASCONE (*Pro Hac Vice*)
tom.fiascone@weil.com
REBECCA SIVITZ (*Pro Hac Vice*)
rebecca.sivitz@weil.com
100 Federal Street, Floor 34
Boston, MA 02110
Telephone: 617.722.8314

Attorneys for Defendant The Kroger Company

ANGELI LAW GROUP LLC

/s/ Kristen Tranetzki
KRISTEN TRANETZKI, Bar No. 115730
kristen@angelilaw.com
DAVID H. ANGELI, Bar No. 020244
david@angelilaw.com
PETER D. HAWKES, Bar No. 071986
peter@angelilaw.com
121 SW Morrison Street, Suite 400
Portland, OR 97204
Telephone: 503.954.2232

AND

DEBEVOISE & PLIMPTON LLP

EDWARD D. HASSI (*Pro Hac Vice*)
thassi@debevoise.com
801 Pennsylvania Avenue NW
Washington, DC 20004

JOINT LIST OF STIPULATIONS AND ISSUES
FOR STATUS CONFERENCE

Telephone: 202.942.5000
MICHAEL SCHAPER (*Pro Hac Vice*)
mschaper@debevoise.com
SHANNON ROSE SELDEN (*Pro Hac Vice*)
srselden@debevoise.com
J. ROBERT ABRAHAM (*Pro Hac Vice*)
jrabraham@debevoise.com
NATASCHA BORN (*Pro Hac Vice*)
nborn@debevoise.com
66 Hudson Boulevard
New York, NY 10001
Telephone: 212.909.6000

AND

WILLIAMS & CONNOLLY LLP

ENU A. MAINIGI (*Pro Hac Vice*)
emainigi@wc.com
JONATHAN B. PITT (*Pro Hac Vice*)
jpitt@wc.com
A. JOSHUA PODOLL (*Pro Hac Vice*)
apodoll@wc.com
THOMAS W. RYAN (*Pro Hac Vice*)
tryan@wc.com
TYLER INFINGER (*Pro Hac Vice*)
tinfinger@wc.com
WILLIAM ASHWORTH (*Pro Hac Vice*)
washworth@wc.com
680 Maine Avenue SW
Washington, DC 20024
Telephone: 202.434.5000

AND

DECHERT LLP

JAMES A. FISHKIN (*Pro Hac Vice*)
james.fishkin@dechert.com
MICHAEL COWIE (*Pro Hac Vice*)
mike.cowie@dechert.com
ELENA KAMENIR (*Pro Hac Vice*)
elena.kamenir@dechert.com
1900 K Street NW
Washington, DC 20006

JOINT LIST OF STIPULATIONS AND ISSUES
FOR STATUS CONFERENCE

Telephone: 202.261.3300

HOWARD. M. ULLMAN (*Pro Hac Vice*)

howard.ullman@dechert.com

45 Fremont St, 26th Floor

San Francisco, CA 94105

Telephone: 415.262.4500

ROSS UFBERG (*Pro Hac Vice*)

ross.ufberg@dechert.com

YOSEF WEITZMAN (*Pro Hac Vice*)

yosi.weitzman@dechert.com

Cira Centre

2929 Arch Street

Philadelphia, PA 19104

Telephone: 215.994.2422

Attorneys for Defendant Albertsons Companies, Inc.