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Albertsons Files Lawsuit Against Kroger for Breach of Merger Agreement

December 11, 2024

Kroger refused to offer an adequate divestiture package and repeatedly ignored regulators' concerns, causing the merger with Albertsons to be blocked

Seeks billions of dollars in damages to account for harm to Albertsons' business, consumers, associates and shareholders

BOISE, Idaho--(BUSINESS WIRE)-- Albertsons Companies, Inc. (NYSE: ACI) ("Albertsons") today filed a lawsuit against The Kroger Co. (NYSE: KR) ("Kroger") in the Delaware Court of Chancery, bringing claims for willful breach of contract and breach of the covenant of good faith and fair dealing arising from Kroger's failure to exercise "best efforts" and to take "any and all actions" to secure regulatory approval of the companies' agreed merger transaction, as was required of Kroger under the terms of the merger agreement between the parties (the "Merger Agreement"). Pursuant to the Court of Chancery rules, Albertsons' complaint against Kroger is temporarily under seal.

Kroger willfully breached the Merger Agreement in several key ways, including by repeatedly refusing to divest assets necessary for antitrust approval, ignoring regulators' feedback, rejecting stronger divestiture buyers and failing to cooperate with Albertsons.

Tom Moriarty, Albertsons' General Counsel and Chief Policy Officer, said: "A successful merger between Albertsons and Kroger would have delivered meaningful benefits for America's consumers, Kroger's and Albertsons' associates, and communities across the country. Rather than fulfill its contractual obligations to ensure that the merger succeeded, Kroger acted in its own financial self-interest, repeatedly providing insufficient divestiture proposals that ignored regulators' concerns. Kroger's self-serving conduct, taken at the expense of Albertsons and the agreed transaction, has harmed Albertsons' shareholders, associates and consumers. We are disappointed that the opportunity to realize the significant benefits of the merger has been lost on account of Kroger's willfully deficient approach to securing regulatory clearance."

Mr. Moriarty continued: "We are taking this action to enforce and preserve Albertsons' rights and to protect the interests of our shareholders, associates and consumers. We believe strongly in the merits of our case and look forward to presenting it to the Court to hold Kroger responsible for the harm it has caused."

Albertsons' claims against Kroger are confirmed by the recent rulings from the United States District Court for the District of Oregon and the King County Superior Court for the State of Washington, which granted regulators' requests to block the merger. Those results could have been avoided but for Kroger's breaching conduct.

Albertsons is seeking billions of dollars in damages from Kroger to make Albertsons and its shareholders whole. Albertsons' shareholders have been denied the multi-billion-dollar premium that Kroger agreed to pay for Albertsons' shares and have been subjected to a decrease in shareholder value on account of Albertsons' inability to pursue other business opportunities as it sought approval for the transaction. Albertsons also seeks to recover for the time, energy and resources it invested in good faith to try to make the merger a success.

In light of the Oregon and Washington courts' rulings enjoining the company's proposed merger with Kroger and Kroger's failure to close the merger before the contractual deadline to do so, Albertsons has notified Kroger of its decision to terminate the merger agreement. This termination entitles Albertsons to an

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across 34 states and the District of Columbia under more than 20 well known banners including Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, Acme, Tom Thumb, Randalls, United Supermarkets, Pavilions, Star Market, Haggen, Carrs, Kings Food Markets and Balducci's Food Lovers Market. The Company is committed to helping people across the country live better lives by making a meaningful difference, neighborhood by neighborhood. In 2023, along with the Albertsons Companies Foundation, the Company contributed more than \$350 million in food and financial support, including more than \$35 million through our Nourishing Neighbors Program to ensure those living in our communities and those impacted by disasters have enough to eat.

For Investor Relations, contact investor-relations@albertsons.com

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