

1 public interest that the legislature has expressly declared them unlawful in RCW 19.86.060 of
2 the Washington Consumer Protection Act (“CPA”).

3 3. Defendants’ Proposed Transaction would combine the two largest supermarket
4 chains operating in Washington. Albertsons, the largest supermarket chain in the State, operates
5 as Albertsons, Haggen, and Safeway. Kroger, the second largest supermarket chain in the State,
6 operates as Fred Meyer and QFC. Together, Albertsons and Kroger—both the products of prior
7 multi-billion dollar mergers—account for more than 50% of supermarket sales statewide.

8 4. This Proposed Transaction will likely substantially lessen supermarket
9 competition or tend to create a monopoly in many Washington communities where Defendants
10 currently compete head-to-head. The ultimate effect of that lessening of competition would be
11 to increase the likelihood that prices of food and other grocery products in supermarkets offered
12 to Washington consumers will increase, and that the quantity and quality of choices available to
13 Washington consumers will decrease.

14 II. INTRODUCTION

15 5. Supermarkets stand apart from other places where consumers may buy food. A
16 supermarket pairs a full range of grocery offerings—fresh ingredients for meals, prepared foods,
17 nonperishables, and more—with a full-service shopping experience.¹ This full-service
18 “one-stop shopping” experience can save consumers time by replacing multiple trips to specialty
19 stores.

20 6. Increases in the price of groceries in recent years emphasize the importance of
21 robust competition amongst supermarkets to keep prices in check. When the COVID-19
22 pandemic and supply chain issues arose in 2021, for example, [REDACTED]
23 [REDACTED]

24
25 ¹ While some supermarkets offer consumers the ability to purchase groceries online for
26 in-person pick up or at-home delivery, 97% of Americans continue to regularly shop in-person for groceries.
Megan Brenan, *In-Person Grocery Shopping Rebounds in U.S.; Online Also Up*, Gallup (Aug. 24, 2022),
<https://news.gallup.com/poll/397706/person-grocery-shopping-rebounds-online.aspx>.

1 [REDACTED]

2 [REDACTED].

3 7. Currently, Albertsons and Kroger compete head-to-head in communities across
4 Washington. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] They also compete by striving to offer a wide variety of quality products and high
8 levels of customer service. The Proposed Transaction would eliminate
9 head-to-head competition across all of these dimensions.

10 8. Eliminating this robust competition between Defendants will harm millions of
11 consumers in the State. The Proposed Transaction would combine the two
12 largest—and, in some areas, the *only*—supermarkets in many communities across Washington,
13 which is likely to lead to higher prices, lower quality, and less variety in many local markets
14 throughout Washington.

15 9. The Proposed Transaction is also likely to lead to store closures. As a result of
16 the Proposed Transaction, Kroger will own overlapping stores in many Washington
17 communities, and will have an incentive to close some of them, further concentrating these
18 markets and reducing choice for consumers, as well as eliminating jobs. Indeed, [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]. If the Proposed

23 Transaction is consummated, Kroger will no longer face competitive pressure from Albertsons
24 to keep stores open or reopen closed stores in order to maintain its market share. Instead, because
25 consumers will have fewer options, such closures are likely to steer displaced shoppers of the
26 closed Kroger store to another—but less preferred—Kroger store.

1 10. The harmful effects of the Proposed Transaction are likely to be particularly acute
2 because, leading up to the merger agreement, Albertsons had been successfully growing its
3 grocery business, taking market share from Kroger in the process. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 11. Defendants have always known that the removal of such a robust competitor
7 would harm competition. When rumors of the Proposed Transaction began circulating, one
8 Albertsons' Vice President wrote "you are basically creating a monopoly in grocery with the
9 merger so [it] makes no sense," followed by "[i]t's like AT&T and Verizon wanting to merge."
10 Another Albertsons' Vice President agreed: "[t]here is no way that they could buy all of us - too
11 many competing markets."

12 12. Defendants' proposed remedy for this harm to competition is to divest 413 stores
13 nationwide to C&S Wholesale Grocers, LLC ("C&S"). But their proposed divestiture is woefully
14 inadequate to restore the competition lost through the Proposed Transaction. C&S is primarily a
15 wholesale distributor that operated [REDACTED]
16 [REDACTED]—and none at all in Washington. It has no track record of successfully running hundreds of
17 grocery stores. And C&S is not a sufficiently established and sophisticated competitor to restore
18 the competition that will be lost if Kroger is permitted to acquire an established, successful
19 competitor like Albertsons.

20 13. Indeed, the proposed divestiture bears a striking resemblance to Albertsons'
21 failed divestiture of stores in connection with its 2015 acquisition of Safeway. In order to address
22 competition concerns regarding that merger, Albertsons and Safeway divested 146 stores,
23 including 26 stores in Washington, to Haggen, a Washington-based regional supermarket chain.
24 *In re HH Liquidation, LLC*, 590 B.R. 211, 219 (Bankr. D. Del. 2018). Haggen lacked the
25 infrastructure to rapidly expand to a multi-state, national grocery retailer and struggled
26 immensely to operate the divested stores. Six months after the divestiture, Haggen was forced to

1 close 127 stores (14 of which were in Washington)² and lay off thousands of workers (more than
2 1,130 of whom had worked in Washington).³

3 14. Washington consumers and workers should not be forced to take a gamble on
4 another risky supermarket divestiture. Defendants are proposing to divest stores in fifteen states.
5 Approximately one out of every four proposed store divestitures are in Washington. Because
6 this divestiture proposal disproportionately impacts Washington stores, the failure of this
7 proposed divestiture would be particularly harmful here.

8 15. Because the effect of Kroger’s merger with Albertsons “may be to substantially
9 lessen competition” in violation of RCW 19.86.060, the State of Washington respectfully
10 requests that this Court enjoin the Proposed Transaction.

11 III. JURISDICTION AND VENUE

12 16. The State files this complaint and institutes these proceedings under the
13 provisions of the Consumer Protection Act, RCW 19.86.

14 17. Defendants are subject to the personal jurisdiction of this Court pursuant to
15 RCW 19.86.160 and because each transacts business in, has purposeful, continuous or systemic
16 contacts with, or has sufficient minimum contacts in Washington. Each Defendant engages in
17 the business of operating retail supermarkets across Washington, including marketing,
18 transporting, storing, and selling groceries at locations across Washington; employing
19 Washington workers; and engaging in business with Washington residents and business entities.
20 The combination of these separate entities through the challenged Proposed Transaction will
21 have a substantial and foreseeable effect on Washington trade and commerce.

22
23 ² *Haggen to close 127 grocery stores; 14 in Washington*, KIRO7 (Sept. 25, 2015),
24 [https://www.kiro7.com/news/haggen-close-127-grocery-stores-14-washington/27019376/#:~:text=VIDEO
%3A%20Haggen%20grocery%20chain%20closing,amid%20allegations%20of%20unfair%20competition.&text=
BURIEN%2C%20Wash.,less%20option%20to%20buy%20groceries.](https://www.kiro7.com/news/haggen-close-127-grocery-stores-14-washington/27019376/#:~:text=VIDEO%3A%20Haggen%20grocery%20chain%20closing,amid%20allegations%20of%20unfair%20competition.&text=BURIEN%2C%20Wash.,less%20option%20to%20buy%20groceries)

25 ³ Angel Gonzalez, *Haggen promises laid-off workers here will be paid on time*,
26 *Seattle Times* (Sept. 30, 2015), 2015 WLNR 28935201,
[https://www.westlaw.com/Document/I608d4d50671711e5bd0de12d3891819a/View/FullText.html?transitionType
=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0.](https://www.westlaw.com/Document/I608d4d50671711e5bd0de12d3891819a/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

1 18. Venue is proper in King County because Defendants have extensive intentional,
2 continuous and systematic contacts in Washington, including contacts in support of their retail
3 supermarkets in King County; and Defendants' activities were intended to have, and will
4 continue to have, a foreseeable effect on commerce in Washington, including in King County.

5 IV. THE PARTIES AND THE PROPOSED TRANSACTION

6 A. Plaintiff

7 19. Plaintiff is the State of Washington, by and through its Attorney General, in its
8 sovereign capacity.

9 20. The Office of the Attorney General is charged with the constitutional mandate to
10 ensure that companies do not create monopolies or trusts. Wash. Const. art. XII, § 22;
11 RCW 19.86.080. Washington has a sovereign interest in the enforcement of its antitrust laws and
12 authority to bring this action under RCW 19.86.080.

13 21. The State also has a sovereign interest in fostering fair and honest competition,
14 protecting consumers from anticompetitive and unlawful practices, and supporting the general
15 welfare of consumers and businesses in Washington and its economy.

16 22. Pursuant to that mandate and interest, the State, through the Office of the Attorney
17 General, has been investigating the Proposed Transaction for the past year. The Attorney General
18 has issued Civil Investigative Demands and conducted interviews with dozens of market
19 participants and other relevant actors, collected millions of documents, conducted an economic
20 analysis of the Proposed Transaction, and engaged with the parties to understand the intricacies
21 of the industry at issue. Through this investigation, the Attorney General has concluded that the
22 Proposed Transaction is illegal under RCW 19.86.060, and is thus requesting that this Court
23 enjoin it.

24 B. Defendants

25 23. Defendants Albertsons and Kroger are two of the largest national supermarket
26 companies in operation today. Together they employ over 710,000 workers and operate 4,996

1 grocery stores, 66 distribution centers, 3,972 pharmacies, 52 manufacturing plants, and 2,015
2 fuel centers in 48 states and the District of Columbia. Their expansive reach allows them to serve
3 85 million households, for a combined annual revenue in excess of \$210 billion.

4 24. In Washington, Albertsons and Kroger are the two biggest supermarket chains,
5 both by number of stores and by footprint. Collectively, Defendants operate over 300 grocery
6 stores in the State, including approximately 194 in the Seattle-Tacoma-Bellevue Metropolitan
7 Statistical Area (“MSA”).

8 **1. Albertsons**

9 25. Albertsons Companies, Inc. is a Delaware corporation that started in, and is still
10 headquartered in Boise, Idaho, and has operated in Washington since the mid-twentieth century.

11 26. Albertson’s Companies Specialty Care, LLC is a Delaware limited liability
12 company and a subsidiary of Albertsons Companies, Inc., with its principal place of business in
13 Boise, Idaho, that is engaged in retail grocery business in Washington State.

14 27. Albertson’s LLC is a Delaware limited liability company and a subsidiary of
15 Albertsons Companies, Inc., with its principal place of business in Boise, Idaho, that is engaged
16 in retail grocery business in Washington State.

17 28. Albertson’s Stores Sub LLC is a Delaware limited liability company with its
18 principal place of business in Boise, Idaho, at the same location as Albertsons Companies, Inc.,
19 that is engaged in real estate business in Washington State.

20 29. In 1998, Albertsons agreed to buy Montana’s Buttrey Food and Drug Store
21 Company and its 44 stores—spread across Montana, Wyoming, and North Dakota.⁴ After the
22 Federal Trade Commission (“FTC”) expressed concerns that this proposed acquisition might
23 substantially lessen competition, Albertsons agreed to divest 15 stores in those states.⁵ A mere
24

25 ⁴ Don Day, *Albertsons cut a deal to sell stores to clear a merger in ‘98. Most of them quickly closed*, Boise
Dev (Sept. 11, 2023), <https://boisedev.com/news/2023/09/11/albertsons-kroger-buttrey/>.

26 ⁵ *Id.*

1 two years later, the buyer of most of those stores—which is now owned by Kroger—began
2 closing them⁶ after it struggled to win loyal customers in areas where Albertsons remained in
3 the market.⁷ Today, all but two of the 15 divested stores have closed.⁸

4 30. In 2006, Albertsons sold a majority interest in its stores in Idaho, Southern
5 Nevada, Utah, Southern California, and the Northwestern U.S.—including its Washington
6 stores—to supermarket chain SuperValu, Inc. while retaining a 35% interest.⁹ By 2013,
7 however, SuperValu sold all of its Albertsons assets back to Albertsons.¹⁰

8 31. In 2015, Albertsons significantly expanded its presence in the State when it
9 acquired Safeway—which, at the time, owned 1,332 supermarkets.¹¹ As a result of this
10 consolidation, Albertsons increased the number of stores it operated in Washington from 49 to
11 172.¹²

14 ⁶ *Id.*

15 ⁷ John Stucke, *Smith's Food and Drug Store will Close this Saturday*, Missoulian (Aug. 22, 2000),
https://missoulian.com/smiths-food-and-drug-store-will-close-this-saturday/article_2578d35e-8ea0-5025-ba94-cc2e4f48e70c.html.

16 ⁸ Day, *supra*.

17 ⁹ SuperValu, Inc., Current Report (Form 8-K), EX-99.2, at 29 (Jan. 23, 2006),
<http://pdf.secdatabase.com/397/0001193125-06-009695.pdf>.

18 ¹⁰ Olivia Oran & Lisa Baertlein, *Supervalu selling 877 supermarkets in \$3.3 billion deal*, Reuters (Jan. 10,
2013), <https://www.reuters.com/article/us-supervalu-results/supervalu-selling-877-supermarkets-in-3-3-billion-deal-idUSBRE90A00320130111/>.

19 ¹¹ Like Albertsons, Safeway obtained its scale, in part, through acquisitions. For example, as part of its
20 acquisition of Carrs in 1998 the Alaska Attorney General's office required Safeway to divest seven Alaska stores
due to competition concerns. Associated Grocers, an experienced wholesaler, purchased six of those divested stores.
Tony Hopfinger, *Safeway Sells Six Stores Associated to Start Changeover Saturday*, Alaska Dispatch News
21 (Oct. 14, 1999), at A1, 1999 WLNR 7357656,
[https://www.westlaw.com/Document/I02b8e020e32011dab6a0f547ef0b9623/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I02b8e020e32011dab6a0f547ef0b9623/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0). All six of the stores divested to Associated Grocers
22 closed within a year, “leaving local residents with fewer options for groceries.” James Brooks, *Two dozen Alaska
legislators join opposition to Kroger-Albertsons merger plans*, Alaska Beacon (Oct. 6, 2023),
23 <https://alaskabeacon.com/briefs/two-dozen-alaska-legislators-join-opposition-to-kroger-albertsons-merger-plans/>;
Paula Dobbyn, *Marketplace unable to pay creditors*, Alaska Dispatch News (Feb. 3, 2021), at D1, 2001 WLNR
24 11280134, [https://www.westlaw.com/Document/Icaec9ef0e34e11dab59adb083e1ba21b/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Icaec9ef0e34e11dab59adb083e1ba21b/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0).

25 ¹² Krista Brown, *Supermarket Squeeze: The Real Costs of the Kroger and Albertsons Deal*, American
26 Economic Liberties Project (Nov., 2023), [20231109-AELP-Supermarket-Brief_v3.pdf](https://www.aelp.org/2023/11/09/AELP-Supermarket-Brief_v3.pdf).

1 32. After reviewing the proposed Albertsons-Safeway transaction, the State and the
2 FTC concluded it would be anticompetitive and required Albertsons to divest nearly 170 stores,
3 including 26 stores in Washington.¹³ Haggen, a regional supermarket with only 18 stores,
4 purchased 146 of Albertsons’ divested stores, including all 26 Washington stores.¹⁴

5 33. What followed has been described as “one of the swiftest, most spectacular
6 corporate crash-and-burns in recent history.”¹⁵

7 34. Haggen faced challenges almost immediately. The divested stores saw stagnating
8 sales and widespread customer dissatisfaction with increased pricing. Less than a year later,
9 Haggen announced that it would sell more than 100 of the stores it acquired and filed for
10 bankruptcy. In analyzing Haggen’s failure, the bankruptcy court agreed with industry
11 commentators that Haggen “did not have the talent nor the numbers of people in merchandizing
12 to adequately negotiate, make decisions, set up pricing, and manage a large chain.”¹⁶

13 35. Albertsons reacquired 48 of the stores it had divested, in some cases paying only
14 \$1 per store at auction. Albertsons also acquired 14 of Haggen’s formerly independent stores.
15 Haggen thus became Albertsons’ third banner in the State.

16 36. Today, Albertsons operates roughly 215 stores in Washington under its own
17 name, as well as the Haggen and Safeway names.¹⁷ Its Washington stores represent
18 approximately 10% of its stores nationwide.

21 ¹³ Decision and Order, *In the Matter of Cerberus Institutional Partners, et. al.*, Dkt. No. C-4504 (F.T.C.,
22 July 2, 2015), <https://www.ftc.gov/system/files/documents/cases/150702cerberusdo.pdf>. Washington only required
the divestiture of Washington stores. See Order Entering Consent Decree, *State of Washington v. Cerberus*
Institutional Partners, et. al., No. 2:15-cv-00147-JCC, Document 11 (W.D. Wash. Feb. 3, 2015).

23 ¹⁴ *In re HH Liquidation, LLC*, 590 B.R. at 219.

24 ¹⁵ Jon Talton, *Haggen a harsh lesson in expanding too quickly*, Seattle Times (Sept. 24, 2015),
<https://www.seattletimes.com/business/economy/haggen-a-harsh-lesson-in-expanding-too-quickly/>.

25 ¹⁶ *In re HH Liquidation, LLC*, 590 B.R. at 238 (internal quotation omitted).

26 ¹⁷ Nationwide, Albertsons operates under the following names: Albertsons, Safeway, Vons, Pavilions,
Randalls, Tom Thumb, Carrs, Jewel-Osco, Acme, Shaw’s, Star Market, United Supermarkets, Market Street,
Haggen, Kings Food Markets, and Balducci’s Food Lovers Market.

1 **2. Kroger**

2 37. Kroger was founded and is headquartered in Cincinnati, Ohio.

3 38. In 1997, Fred Meyer, a Portland, Oregon-based company, bought QFC, a
4 Bellevue-based company, and Ralphs, a Southern California-based company. At that time, QFC
5 had about “6,000 workers and 90 stores in the state.”¹⁸ Eight months after Fred Meyer acquired
6 QFC, Kroger acquired Fred Meyer.¹⁹ At that time, Kroger had about 1,400 grocery stores in the
7 Midwest and South.²⁰ By acquiring Fred Meyer’s 800 stores, Kroger’s reach grew to “31 states
8 from Georgia to Alaska.”²¹

9 39. Today, Kroger operates 114 stores in Washington under its Fred Meyer and QFC
10 names.²²

11 **3. Kettle Merger Sub**

12 40. Kettle Merger Sub, Inc. is a Delaware corporation and wholly owned subsidiary
13 of The Kroger Co., and is a party to the October 13, 2022, merger agreement among Albertsons
14 Companies, Inc. and The Kroger Co.

15 **C. Defendants’ Proposed Transaction**

16 41. On October 13, 2022, Defendants entered into a definitive merger agreement.
17 Under the terms of that agreement, Kroger would acquire all of the outstanding shares of
18 Albertsons “common and preferred stock (on an as converted basis) for an estimated total
19

20 ¹⁸ Lee Moriwaki, *Fred Meyer To Buy QFC -- Chain With National Plans Is Sold Instead*, Seattle Times
(Nov. 7, 1997), <https://archive.seattletimes.com/archive/?date=19971107&slug=2570906>.

21 ¹⁹ Michele Matassa Flores & Joe Heim, *Attention Shoppers: We’ve Been Sold - Again -- As Grocery
22 Giants Take Over, Customers Fret About Choice*, Seattle Times (Oct. 20, 1998),
<https://archive.seattletimes.com/archive/?date=19981020&slug=2778731>.

23 ²⁰ Christine Dunn, *Kroger in \$12 billion deal to buy Fred Meyer*, Pittsburgh
Post-Gazette, (Oct. 20, 1998), at D1, [https://news.google.com/newspapers?id=-
tNRAAAAIBAJ&sjid=Zm8DAAAIBAJ&pg=6052%2C9766080](https://news.google.com/newspapers?id=-tNRAAAAIBAJ&sjid=Zm8DAAAIBAJ&pg=6052%2C9766080).

24 ²¹ *Id.*

25 ²² Nationwide, Kroger operates under the following names: Kroger, Ralphs, Dillons, Smith’s, King
26 Soopers, Fry’s, QFC, City Market, Owen’s, Jay C, Pay Less, Baker’s, Gerbes, Harris Teeter, Pick ‘n Save, Metro
Market, Mariano’s, Fred Meyer, Dillons Marketplace, Fry’s Marketplace, King Soopers Marketplace, Kroger
Marketplace, Smith’s Marketplace, Food 4 Less, and Foods Co.

1 consideration of \$34.10 per share, implying a total enterprise value of approximately \$24.6
2 billion, including the assumption of approximately \$4.7 billion of Albertsons Cos. net debt.”²³

3 42. Since Defendants announced the Proposed Transaction, the State has received
4 numerous complaints from concerned consumers across Washington. Consumers from Spokane
5 to Sequim, and Bellingham to Vancouver submitted complaints on a range of topics—from
6 concerns about lack of selection and choice, to increased prices and price-fixing, to decreased
7 product quality and diversity, to store closures and access to resources, to decreased wages and
8 job loss, among others.

9 43. For example, a Gig Harbor consumer shared their concern that the Proposed
10 Transaction would leave them with “limited choices to fill prescription medications without
11 traveling some distance,” as pharmacies located in grocery stores were most convenient to that
12 consumer and, after the merger, the pharmacies would negotiate the same contracts with
13 Pharmacy Benefit Managers (“PBMs”) and may not be in-network. Similarly, a Sammamish
14 consumer said, “It is unknown whether the merged Albertsons-Kroger would choose to remain
15 or exit my pharmacy network, but it does emphasize that it’s more than just groceries involved
16 and the result of such a merger would be reduced choice.”

17 44. Across King County, consumers are concerned the Proposed Transaction will
18 result in a decrease in grocery competition and access in their neighborhoods. A Kent consumer
19 wrote: “People can live without internet/cable, but this Albertson purchase jeopardizes the ability
20 of people to feed their families.” Another consumer wrote, “I live in the south end of Seattle and
21 have seen already a degradation of quality, variety of goods and management of our local
22 Safeways since the 2015 acquisition; this further merger is only going to further exacerbate our
23 limited shopping options. We risk becoming a food desert.” Similarly, a Bothell consumer wrote:

25 ²³ Press Release, Kroger, Kroger and Albertsons Companies Announce Definitive Merger Agreement
26 (Oct. 14, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>.

1 These two grocery stores are the only two viable chains in the Seattle area,
2 following the Albertsons merger with Safeway a couple of years ago. Giving
3 Kroger a monopoly of the grocery market will severely impact lower to middle
4 class families in our area. Those families either cannot afford to shop at Whole
5 Foods and other one-off stores in our area, or else cannot reach them due to
6 distant locations. Unfettered by competition, Kroger will assuredly raise prices
7 for decades to come. Grocery purchases are an absolute necessity for every
8 family. No company should have a monopoly in that market.

9 45. Even Defendants' own executives and other employees reacted to the merger
10 announcement with concern and disbelief. In internal documents, the Fred Meyer President
11 wrote in response to rumors that Kroger would be acquiring Albertsons, "I could see us picking
12 up individual markets, but can't see us taking on all of [Albertsons]." Similarly, a Kroger store
13 manager wrote, "There's no way if we by [sic] them we are keeping all these stores open." On
14 the Albertsons side, after seeing the merger announcement, a Senior Vice President said, "I was
15 shocked to see that hit the wire. I didn't think [Kroger] would be an option with all the overlap."
16 In the aftermath of the announcement, an Albertsons Senior Director discussed the U.S. Senate
17 Subcommittee on Competition Policy, Antitrust, and Consumer Rights' hearing examining the
18 competitive impact of the Proposed Transaction, stating, "It's all about pricing and competition
19 and we all know prices will not go down."

17 V. OVERVIEW OF THE SUPERMARKET INDUSTRY

18 A. Retail Grocery Stores

19 46. A range of stores sell food to consumers, from specialty food stores to small
20 corner grocers to larger supermarkets. Supermarkets, however, stand apart in offering a full line
21 of groceries, meat, and produce, with many also offering a staffed deli, bakery, and/or
22 pharmacy.²⁴

23
24
25 ²⁴ Other retailers also sell food and grocery products. Wholesale club stores, like Costco, provide a
26 relatively limited variety of products, in bulk, in a warehouse environment to customers that pay an annual
membership fee. Dollar stores sell a combination of merchandise and mostly shelf-stable consumable items in small
sizes at aggressive price points. Such stores offer a distinct assortment of products and customer experience from
that offered by supermarkets.

1 47. Large national supermarket companies are often comprised of multiple chains of
2 separately branded retail stores, known as “banners.” Albertsons, for example, operates three
3 banners within Washington: Albertsons, Haggen, and Safeway. Kroger operates two banners in
4 Washington: Fred Meyer and QFC. Supermarket companies can add new banners as the result
5 of acquisitions: what was an independent chain of stores becomes a banner operated under a
6 larger parent company. Each supermarket location publicly bears the name of its banner—rather
7 than the name of the parent company.

8 48. Each banner has distinct branding and may also have distinct product offerings
9 and store layouts. Different banners often employ their own pricing strategies, promotions, and
10 loyalty programs.

11 49. In addition to their outward differences, retail supermarket chain banners can be
12 operationally distinct—they usually have different Information Technology (“IT”) systems,
13 different management structures, and different arrangements with suppliers.

14 50. Supermarket parent companies will sometimes seek to convert a store from one
15 banner to another—a process known as “rebranding.” Rebranding is expensive and
16 time-consuming. It requires reconciliation of the many public-facing and operational distinctions
17 between banners, including some or all of the following changes: updating the store layout and
18 signage; adopting a new pricing and promotional strategy; integrating a new IT system;
19 negotiating new agreements with suppliers and vendors, and switching product manufacturers,
20 or customizing the label for a manufacturer’s product, and replacing those items on store shelves.
21 Oftentimes, a store will need to close for a period of time to implement these changes, missing
22 out on sales in the process. According to Albertsons, the average cost to rebrand a single store

23  .

24 51. Supermarket companies also invest substantial sums in opening new stores,
25 expanding or remodeling existing stores, and closing poorly performing stores. Albertsons and
26 Kroger, for instance, each have a national real estate team that is responsible for selecting sites

1 for new stores and building them out. For example, Albertsons’ approach is to [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 **B. Supermarket Operations**

5 52. Supermarkets source a wide range of products both directly from manufacturers
6 and growers (“suppliers”) as well as from wholesalers, who in turn purchase products from
7 suppliers. To facilitate large-scale purchases from their biggest suppliers, including major
8 consumer packaged goods companies, supermarket companies often negotiate long-term
9 contracts that govern key terms of dealing, including product shelf-space allotments and supplier
10 contributions towards funding promotions or advertisements. Supermarkets also procure certain
11 products from smaller, often local suppliers. [REDACTED]

12 [REDACTED]

13 53. Supermarkets also sell products from their wholly-owned brands, known as
14 “private labels.” Some private label products are completely vertically integrated, meaning the
15 supermarket company directly manufactures and packages the product for retail sale. Other
16 private label products are manufactured by third parties, but are packaged and sold under a brand
17 name owned by the supermarket company. Supermarket companies actively advertise and
18 promote their private label brands and some private labels have developed significant
19 name-recognition and brand equity. Albertsons and Kroger, for instance, have eight private label
20 brands with one billion dollars in sales or more each: Albertsons’ Lucerne, Signature Select,
21 Signature Café, and O Organics²⁵; and Kroger’s Private Selection, Simple Truth, Kroger Brand,
22 and Home Chef.²⁶

23 _____

24 ²⁵ Russell Redman, *Albertsons spotlights customer-favorite own-brand products*, Supermarket News
(Jan. 10, 2022), <https://www.supermarketnews.com/private-label/albertsons-spotlights-customer-favorite-own-brand-products>.

25 ²⁶ Russell Redman, *Kroger named SN’s 2022 Retailer of the Year*, Supermarket News (Sept. 6, 2022),
26 <https://www.supermarketnews.com/retail-financial/kroger-named-sns-2022-retailer-year>.

1 54. The vast majority of grocery transactions take place in-store.²⁷ Some supermarket
2 business, however, has moved online. Supermarkets use a range of proprietary mobile and online
3 applications, as well as third-party services, such as Instacart, to offer pickup and delivery of
4 groceries to customers. Ultimately, this online business is necessarily tied to supermarkets'
5 in-store operations.

6 55. Operating full-service supermarkets is a labor-intensive business. Albertsons
7 alone has approximately 290,000 employees across the country.²⁸ In order to offer a high level
8 of service to support an in-person shopping experience, supermarket companies must also invest
9 heavily in training their in-store employees. Kroger, for instance, spent over a hundred million
10 dollars in associate training and development in 2021 alone.²⁹

11 C. Supermarket Pharmacies

12 56. Many supermarkets operate pharmacies within their stores. For example,
13 Albertsons' pharmacy sales account for approximately [REDACTED] of total revenue. These pharmacies
14 also [REDACTED]

15 [REDACTED].
16 57. Running a pharmacy introduces operational complexities for supermarket
17 operators. Pharmacies must obtain state and federal licenses to operate. Pharmacies also require
18 specialized labor. Kroger employs [REDACTED], and
19 Albertsons employs [REDACTED]. In addition,
20 pharmacies introduce an entirely separate set of supply chain considerations, as supermarkets
21

22
23 ²⁷ Alarice Rajagopal, *Most grocery transactions still occur in stores*, Supermarket News (June 7, 2023),
<https://www.supermarketnews.com/issues-trends/most-grocery-transactions-still-occur-stores>.

24 ²⁸ Albertsons Companies, Inc., Quarterly Report (Form 10-Q), at 23, (Jan. 9, 2024),
<https://d18rn0p25nwr6d.cloudfront.net/CIK-0001646972/e583cb22-92da-4916-997a-75ef15266aa7.pdf>.

25 ²⁹ *Examining the Competitive Impact of the Proposed Kroger-Albertsons Transaction Before the Subcomm.*
26 *on Competition Policy, Antitrust, and Consumer Rights of the S. Comm. on the Judiciary*, 117th Cong. (2022)
(written statement of Mr. Rodney McMullen, The Kroger Co.),
<https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20McMullen%20-%202022-11-28.pdf>.

1 must negotiate with drug manufacturers and PBMs to secure an adequate supply of prescription
2 drugs and to obtain them at affordable prices.

3 **D. Supermarket Fuel Centers**

4 58. Many supermarket locations also include fuel centers. These fuel centers not only
5 serve tens of thousands of customers on a daily basis—they also drive grocery sales. According
6 to Albertsons, [REDACTED].
7 Kroger, for its part, reports to investors that “[f]uel sales are an important part of our revenue,
8 net earnings and loyalty offering.”³⁰

9 59. Like pharmacies, fuel centers require operational expertise, including hiring
10 specialized labor and investments in fuel-specific infrastructure.

11 **E. Supermarket Analytics**

12 60. Across all of these business lines, modern supermarket companies rely heavily
13 on sophisticated analytics departments to set pricing and promotions.

14 61. These analytics departments also drive alternative sources of revenue. At Kroger,
15 for instance, the 84.51° analytics division uses customer data obtained from customers’ use of
16 Kroger Plus loyalty cards to generate insights about consumer preferences and to create highly
17 targeted advertising and personalized offers for specific products.³¹ Kroger then sells its
18 consumer insights and personalized offers, through its “Best Customer Communication”
19 platform, back to its suppliers.³² [REDACTED]
20 [REDACTED]

21
22
23
24 ³⁰ The Kroger Co., Annual Report (Form 10-K), at 4, (Mar. 29, 2022),
<https://d18rn0p25nwr6d.cloudfront.net/CIK-0000056873/107badbb-3656-4d1e-8e88-bede8ee11566.pdf>.

25 ³¹ 84.51°, Consumer Packaged Goods, <https://www.8451.com/industries/consumer-packaged-goods/> (last
visited Jan. 14, 2024).

26 ³² *Id.*

1 **A. Relevant Product Market: The Retail Sale Of Food And Other Grocery Products**
2 **In Supermarkets**

3 66. The sale of food and other grocery products through Supermarkets is the relevant
4 product market in which to assess the effect of Kroger’s proposed acquisition of Albertsons and
5 constitutes a line of commerce under RCW 19.86.060.

6 67. For purposes of this Complaint, the term “Supermarket” means any full-line retail
7 grocery store that enables customers to purchase substantially all of their weekly food and
8 grocery shopping requirements in a single shopping visit with substantial offerings in each of
9 the following product categories: bread and baked goods; dairy products; refrigerated food and
10 beverage products; frozen food and beverage products; fresh and prepared meats and poultry;
11 fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred,
12 bottled, boxed, and other types of packaged products; staple foodstuffs, which may include salt,
13 sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including
14 nonfood items such as soaps, detergents, paper goods, other household products, and health and
15 beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent
16 permitted by law, wine, beer, and distilled spirits.

17 68. Supermarkets like Albertsons and Kroger provide a broad array of products and
18 services and offer consumers convenient one-stop shopping for food and grocery products. In
19 order to accommodate the large number of products and services necessary for a one-stop
20 shopping experience, Supermarkets must be physically larger than many other retailers. For
21 example, Kroger’s securities filings state that it believes that its primary food store “format is
22 successful because the stores are large enough to offer the specialty departments that customers
23 desire for one-stop shopping, including natural food and organic sections, pharmacies, general
24 merchandise, pet centers and high-quality perishables such as fresh seafood and organic
25
26

1 produce.”³⁴ In addition, [REDACTED]

2 [REDACTED].
3 69. Supermarkets compete primarily with other Supermarkets that provide one-stop
4 shopping opportunities for food and grocery products. Supermarkets regularly base their food
5 and grocery prices on the prices of products sold at nearby Supermarkets. To do this,
6 Supermarkets conduct regular “price checks” of the goods offered by other local Supermarkets.

7 70. Albertsons has acknowledged that club stores like Costco and Sam’s Club are
8 [REDACTED]
9 [REDACTED].

10 71. Additionally, as one industry commentator put it, club stores “think big: bigger
11 package sizes or multipacks” to fit that store format.³⁵ Many dollar stores, meanwhile, “require
12 packages that can be retailed for \$1.”³⁶

13 72. As such, although retailers other than Supermarkets, such as club stores or dollar
14 stores, may also sell food and grocery products, these types of stores do not offer a Supermarket’s
15 array of products and services.

16 **B. Relevant Geographic Markets For Supermarkets**

17 73. The majority of grocery shopping occurs at stores located very close to where
18 consumers live, study, or work. As a result, competition for Supermarkets is local in nature and
19 the relevant geographic markets consist of the areas surrounding each of Defendants’ stores.

20 74. This localized competition is reflected in Defendants’ ordinary course documents
21 concerning competitive analysis and pricing. [REDACTED]
22 [REDACTED]

23 ³⁴ See, e.g., The Kroger Co., Annual Report (Form 10-K), at 4, (Jan. 29, 2022),
24 <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000056873/107badbb-3656-4d1e-8e88-bede8ee11566.pdf>.

25 ³⁵ *Food and Beverage’s Changing Retail Landscape*, Food Processing (Mar. 16, 2016),
<https://www.foodprocessing.com/business-of-food-beverage/business-strategies/article/11321951/food-and-beverages-changing-retail-landscape>.

26 ³⁶ *Id.*

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] Kroger has also noted that its “primary food store format . . . typically
4 draw[s] customers from a 2-2.5 mile radius.”³⁷

5 75. As the Supreme Court has noted, a plaintiff need not “delineat[e] . . . [each
6 geographic market] by metes and bounds as a surveyor would lay off a plot of ground.” *United*
7 *States v. Pabst Brewing Co.*, 384 U.S. 546, 549 (1966). This is because the “Supreme Court has
8 recognized that an element of fuzziness would seem inherent in any attempt to delineate the
9 relevant geographic market.” *Sysco Corp.*, 113 F. Supp. 3d at 48 (internal quotation omitted).

10 76. Here, the competitive effects of the Proposed Transaction can be evaluated within
11 at least the following 49 city areas, each of which consists of a city, a section of a large city, or
12 a grouping of nearby cities in Washington: (1) Auburn, (2) Battle Ground, (3) Belfair,
13 (4) Bellevue, (5) Bellingham, (6) Bonney Lake, (7) Bothell, (8) Bremerton, (9) Burlington,
14 (10) Edmonds, (11) Ellensburg, (12) Enumclaw, (13) Everett, (14) Federal Way,
15 (15) Gig Harbor, (16) Issaquah, (17) Kent, (18) Kirkland, (19) Longview,
16 (20) Lynnwood/Mountlake Terrace, (21) Marysville, (22) Monroe, (23) North Bend,
17 (24) Olympia, (25) Port Orchard, (26) Port Townsend, (27) Puyallup, (28) Redmond,
18 (29) Renton, (30) Sammamish, (31) NE Seattle, (32) NW Seattle, (33) S Seattle, (34) SE Seattle,
19 (35) SW Seattle, (36) W Seattle, (37) Sequim, (38) Shelton, (39) Snohomish, (40) N Spokane,
20 (41) S Spokane, (42) Stanwood, (43) E Tacoma, (44) W Tacoma,
21 (45) Tri-City/Richland/Kennewick/Pasco, (46) E Vancouver, (47) W Vancouver,
22 (48) Wenatchee/East Wenatchee, and (49) Yakima. These city areas are a conservative
23 approximation of the area of effective competition among Defendants’ stores. In some cases,
24

25 _____
26 ³⁷ See, e.g., The Kroger Co., Annual Report (Form 10-K), at 4, (Jan. 29, 2022),
<https://d18rn0p25nwr6d.cloudfront.net/CIK-0000056873/107badbb-3656-4d1e-8e88-bede8ee11566.pdf>.

1 depending on the location of Defendants’ stores, the relevant geographic market may be smaller
2 than a city area.

3 **VII. ANTICOMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION**

4 77. Federal law, and by extension, Washington law, recognizes an “expansive
5 definition of antitrust liability,” *California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990), because
6 “[Congress’s] concern was with probabilities, not certainties,” *Brown Shoe Co. Inc. v. United*
7 *States*, 370 U.S. 294, 323 (1962). Accordingly, a merger violates the law if it is “reasonably
8 likely to cause anticompetitive effects.” *United States v. H & R Block, Inc.*, 833 F. Supp. 2d 36,
9 49 (D.D.C. 2011). The law “does not require proof that a merger or other acquisition has caused
10 higher prices [or reduced quality] in the affected market. All that is necessary is that the merger
11 create an appreciable danger of such consequences in the future.” *Id.* (internal quotation
12 omitted). Some mergers are *presumptively* illegal because they are “so inherently likely to lessen
13 competition substantially that [they] must be enjoined in the absence of evidence clearly showing
14 that the merger is not likely to have such anticompetitive effects.” *United States v. Philadelphia*
15 *Nat’l Bank*, 374 U.S. 321, 363 (1963).

16 78. A merger between Kroger and Albertsons—the two largest Supermarket
17 operators in the State—creates an appreciable danger that there will be a substantial lessening of
18 competition in the sale of food and grocery products by Supermarkets in city areas throughout
19 Washington. The Proposed Transaction will eliminate head-to-head competition between
20 Albertsons and Kroger—competition that has resulted in better service, better products, and
21 better prices for Washington consumers. It will likely result in store closures and worsening
22 quality of store service. It will remove Albertsons—the largest grocery retailer in Washington,
23 and a company whose focus on local competition has resulted in better offerings and better deals
24 for Washington customers—from the market. And it will increase the likelihood that, in the wake
25 of this merger, the remaining retail Supermarket competitors in Washington will coordinate to
26 raise prices or reduce store or product quality. For all these reasons, the Proposed Transaction,

1 unless enjoined, will likely raise the cost of groceries for Washington consumers and reduce the
2 quality of their grocery shopping experience.

3 **A. Defendants’ Proposed Transaction Is Presumptively Unlawful**

4 79. The Proposed Transaction is presumptively unlawful.

5 80. A presumption that a merger is illegal arises when the merger would result in
6 “a firm controlling an undue percentage share of the relevant market,” including a firm that
7 would “control[] at least 30%” of the market, and “result[] in a significant increase in the
8 concentration of firms in that market.” *Philadelphia Nat’l Bank*, 374 U.S. at 363-64.

9 81. To measure market concentration, courts have sometimes relied on the
10 Herfindahl-Hirschman Index (“HHI”). The HHI of a particular relevant market is calculated by
11 summing the squares of each individual firms’ market shares. *See* U.S. Dep’t of Justice & FTC,
12 Merger Guidelines § 2.1 (2023), <https://www.ftc.gov/reports/merger-guidelines-2023> (“Merger
13 Guidelines”).³⁸ So, for example, a market consisting of four firms with market shares of 30%,
14 30%, 20%, and 20%, would have an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). Courts look
15 at the post-merger concentration levels in the relevant market, and at the increase in HHI
16 resulting from the proposed transaction, called the “delta HHI.”

17 82. The Proposed Transaction need only result in markets exceeding *either* the 30%
18 market share with significant increase in concentration threshold set forth in *Philadelphia*
19 *National Bank* or the HHI and delta HHI thresholds set forth in the Merger Guidelines to be
20 presumptively unlawful. Merger Guidelines § 2.1; *see also* *FTC v. IQVIA Holdings Inc.*, No. 23
21 CIV. 06188 (ER), 2024 WL 81232, at *33 (S.D.N.Y. Jan. 8, 2024).

22
23
24 ³⁸ Federal courts have looked to prior versions of the Merger Guidelines to assist in their interpretation of
25 the antitrust laws. *See, e.g.,* *FTC v. Staples, Inc.*, 190 F. Supp. 3d 100, 117 (D.D.C. 2016); *FTC v. Cardinal Health,*
26 *Inc.*, 12 F. Supp. 2d 34, 53 (D.D.C. 1998); *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1211 n.12 (11th Cir. 1991);
FTC v. Staples, Inc., 970 F. Supp. 1066, 1081-82 (D.D.C. 1997).

1 83. The Proposed Transaction would result in such a significant concentration of
2 market power in the hands of the merged firm that it is presumptively anticompetitive in dozens
3 of city areas throughout the State.³⁹

4 84. That fact is unsurprising. As noted previously, Albertsons and Kroger are the two
5 largest Supermarket operators in Washington. In Renton, for example, their combined share
6 exceeds 70% and exceeds the relevant HHI thresholds, rendering the Proposed Transaction
7 presumptively anticompetitive. Similarly, in Bonney Lake, their combined share exceeds 40%
8 and exceeds the relevant HHI thresholds, rendering the Proposed Transaction presumptively
9 anticompetitive.

10 85. Once a plaintiff establishes that a proposed merger is presumptively illegal, the
11 burden shifts to defendants to rebut the presumption. *ProMedica Health Sys., Inc. v. FTC*, 749
12 F.3d 559, 568-70 (6th Cir. 2014). This means that, to the extent that a defendant attempts to
13 argue that a particular transaction will not substantially reduce competition, it is the defendant's
14 burden to substantiate that defense.⁴⁰

15 **B. Defendants' Proposed Transaction Will Eliminate Head-To-Head Competition**
16 **Between Albertsons And Kroger**

17 86. Defendants' Supermarket operations and documents additionally show that the
18 Proposed Transaction is likely to substantially reduce competition.

19 87. Defendants are significant competitors throughout much of the United States.
20 That competition is particularly fierce in Washington, where they currently operate
21 Supermarkets in many Washington communities within a few miles of each other. In fact, they
22 currently operate Supermarkets in some Washington communities within a single mile of each
23 other.

24 ³⁹ While club and dollar stores are not part of the relevant product market, this remains true even if they
25 are included in calculating market shares, HHIs and delta HHIs resulting from the Proposed Transaction.

26 ⁴⁰ If the presumption is overcome, the burden shifts back to the plaintiff. *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 337-38 (3d Cir. 2016).

1 88. In Washington, both Kroger banners, Fred Meyer⁴¹ and QFC,⁴² compete
2 head-to-head with Albertsons' banners, Albertsons, and Haggen, and Safeway.

3 89. The Division President of QFC has stated [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 90. Throughout Washington, Albertsons banners also compete head-to-head with
9 Kroger banners. [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 91. The head-to-head competition between Albertsons and Kroger banners has
17 resulted in significant benefits to consumers. For instance, [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED]

20 92. The vigorous head-to-head competition between Albertsons and Kroger banners
21 is not limited to price. Albertsons and Kroger also improve and expand their product offerings
22

23 ⁴¹ Fred Meyer operates 59 grocery stores across 43 cities in Washington. Fred Meyer, Grocery Stores in
24 Washington, <https://www.fredmeyer.com/stores/grocery/wa> (last visited Jan. 10, 2024). It operates an additional 51
25 stores in Oregon, 11 stores in Idaho, and 11 stores in Alaska. Fred Meyer, Grocery Store Locations,
26 <https://www.fredmeyer.com/stores/grocery> (last visited Jan. 10, 2024).

⁴² QFC operates almost exclusively in Washington. It has “55 grocery stores across 30 cities in
Washington.” QFC, Grocery Stores in Washington, <https://www.qfc.com/stores/grocery/wa> (last visited Jan. 10,
2024). It operates only four additional stores outside Washington—in Portland, Oregon. QFC, Grocery Stores in
Portland, Oregon, <https://www.qfc.com/stores/grocery/or/portland> (last visited Jan. 10, 2024).

1 and services to compete with, and win customers from, each other. For example, [REDACTED]

2 [REDACTED]
3 [REDACTED]. [REDACTED]
4 [REDACTED]
5 93. As an example of the vigorous head-to-head competition between Kroger and
6 Albertsons, after the Seattle City Council mandated large grocery stores provide a \$4 per hour
7 hazard pay during COVID to their workers, Kroger closed two QFC stores—one in Seattle’s
8 Wedgwood neighborhood, which had been beloved independent grocer Matthew’s Red Apple
9 Market until QFC took it over in 1999, and one in Seattle’s Capitol Hill neighborhood.⁴³ Both
10 the Wedgwood and Capitol Hill stores were within one mile of competing
11 Albertsons-owned Safeways. In 2021, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 94. Economics and common sense suggest that if this vigorous head-to-head
18 competition between Albertsons and Kroger is lost, customers in markets throughout
19 Washington will face increased prices and worse service.

20 95. So do the parties’ documents. Kroger, for example, has recognized that [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 ⁴³ Paul Roberts, *‘It’s devastating’: As a QFC store winds down, neighbors and politicians thank employees, criticize closure*, Seattle Times (Apr. 22, 2021), <https://www.seattletimes.com/business/local-business/as-a-qfc-store-winds-down-neighbors-and-politicians-thank-employees-criticize-owner/>; Paul Roberts, *QFC has no plans to reopen Wedgwood store, despite repeal of city law that prompted closure*, Seattle Times (Dec. 17, 2021), <https://www.seattletimes.com/business/qfc-has-no-plans-to-reopen-wedgwood-store-despite-repeal-of-city-law-that-prompted-closure/>.

1 Kroger is not alone in this regard. Albertsons also recognizes that [REDACTED]

2 [REDACTED]

3 96. Accordingly, unless the Proposed Transaction is enjoined, the loss of
4 head-to-head competition between Albertsons and Kroger will likely lead to substantial
5 lessening of competition in markets throughout Washington, likely resulting in increased product
6 prices, decreased choices, and diminished Supermarket shopping quality for Washington
7 residents.

8 **C. Defendants' Proposed Transaction Will Likely Result In Store Closures**

9 97. The Proposed Transaction will also likely result in store closures in Washington,
10 which will reduce consumer choice or force consumers to travel further to buy groceries.

11 **1. Kroger will have an incentive to close stores in neighborhoods where its
12 newly acquired stores overlap with its current ones**

13 98. As a result of the Proposed Transaction, Kroger will own and operate multiple
14 Supermarkets within a few miles of each other. In fact, many of these stores will be within a
15 mile of another Kroger store. Having consolidated its control over these stores, Kroger will be
16 incentivized to reduce geographic overlap by closing some overlapping stores. These store
17 closures, in turn, will lead to lost jobs and reduced choice for consumers.

18 99. History is a guide. Albertsons closed a store located in the Birchwood
19 neighborhood of Bellingham, shortly after acquiring the Haggen store a mile away in the wake
20 of the Albertsons-Safeway merger. The Birchwood store had served the community for 38 years.

21 100. Two years after this store's closure, Albertsons sold the property with a use
22 restriction that prevented subsequent owners from devoting more than a small portion of the
23 store to grocery items. That restrictive covenant was to last for decades to come—until 2038.

1 101. Local National Public Radio station KUOW reported in May 2023 that the loss
2 of the Birchwood Albertsons in 2016 “created a food desert in one of Bellingham’s most racially
3 and socio-economically diverse neighborhoods that continues to this day.”⁴⁴

4 **2. Kroger will have an increased incentive to close stores to reduce union**
5 **participation**

6 102. Defendants negotiate collective bargaining agreements with local union chapters
7 for their stores. Documents from both companies reflect the reality that [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 103. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 104. At present, competition from Albertsons impedes Kroger’s incentive and ability
20 to shutter union stores to render them non-union. Specifically, Kroger must contend with the
21 possibility that even a temporary closure of a store to render it non-union would risk shifting

22 _____
23 ⁴⁴ Ruby de Luna, *A grocery store merger made this Bellingham neighborhood a food desert. Are others*
24 *next?*, KUOW (May 9, 2023), [https://www.kuow.org/stories/a-2015-grocery-merger-made-this-bellingham-](https://www.kuow.org/stories/a-2015-grocery-merger-made-this-bellingham-neighborhood-a-food-desert-are-others-next)
25 [neighborhood-a-food-desert-are-others-next](https://www.kuow.org/stories/a-2015-grocery-merger-made-this-bellingham-neighborhood-a-food-desert-are-others-next). Areas with low access to fresh food are colloquially called “food
26 deserts.” The U.S. Department of Agriculture has recognized Birchwood as a Low-Access Census Tract because it
has low access to food stores. The U.S. Department of Agriculture also recognized the area just northwest of the
former Albertsons as both a Low-Access Census Tract and a Low-Income Census Tract, a designation held by only
13% of U.S. census tracts in 2019. *Food Access Research Atlas*, U.S. Dep’t of Agric. Econ. Rsch. Serv.,
<https://www.ers.usda.gov/data-products/food-access-research-atlas/>.

1 most of that store’s customer base to a nearby Albertsons location. By consolidating control over
2 more than 300 Supermarkets in Washington in Kroger’s hands, however, the Proposed
3 Transaction would make it significantly easier for Kroger to close stores without suffering a
4 substantial loss in sales, because any business diverted to a former Albertsons location would
5 now count towards Kroger’s sales.

6 105. Closing and reopening stores as non-union—in effect, undoing a unionization
7 vote—would result in layoffs and store closures in the immediate term. Such closures would also
8 result in fewer choices for consumers and the possibility that customers would have to travel
9 further for groceries.

10 **D. Defendants’ Proposed Transaction Will Eliminate Aggressive Competition From**
11 **Albertsons**

12 106. Albertsons is the largest Supermarket in Washington by far—operating almost
13 twice as many stores as Kroger. It is also an aggressive and successful competitor in Washington,

14 [REDACTED]

15 [REDACTED].

16 107. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 108. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 109. If the Proposed Transaction were to be consummated, Albertsons' [REDACTED]
4 [REDACTED]—and the unique value that Albertsons brings to its customers—would be lost, resulting in
5 a significant diminishment of competition throughout Washington.

6 **E. Defendants' Proposed Transaction Will Reduce Competition Between All**
7 **Supermarkets And Increase The Potential For Coordinated Effects**

8 110. “Merger law rests upon the theory that, where rivals are few, firms will be able
9 to coordinate their behavior, either by overt collusion or implicit understanding in order to
10 restrict output and achieve profits above competitive levels.” *FTC v. CCC Holdings Inc.*, 605 F.
11 Supp. 2d 26, 60 (D.D.C. 2009) (internal quotation omitted). By removing Albertsons from the
12 market, the Proposed Transaction will increase the likelihood that, instead of competing fiercely,
13 the remaining Supermarkets in Washington will be incentivized to coordinate to raise prices.

14 111. Grocery pricing has always been transparent.⁴⁵ Historically, Supermarkets have
15 been able to send employees to competitors' stores to see what prices their competitors charge
16 customers so that they can respond accordingly. The advent of modern technology has
17 exacerbated this trend. [REDACTED]

18 [REDACTED]

19 [REDACTED] This practice
20 creates a situation ripe for coordination.

21
22
23 ⁴⁵ Courts and regulators look to certain key factors to determine whether a market is particularly susceptible
24 to coordination. One of those factors is whether pricing in a particular market is transparent—that is, whether a
25 company can easily determine the prices that its competitors charge customers, and vice versa. Transparent pricing
26 is conducive to coordination in a particular market because it permits market participants to “signal” to each other
that they want to raise prices by raising their own prices—confident in the knowledge their competitors will be
aware of this move. That transparent pricing then also permits the “signaler” to track whether its competitors raise
their own prices in response. Another factor, that customers cannot negotiate prices with supermarkets, is similarly
present in this market.

1 112. The transparency of grocery prices has created opportunities for coordinated
2 behavior among grocery stores. Kroger, for example, has noted that its strategy is to [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 113. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 114. Similarly, in June of 2022, Kroger decided to [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 115. Existing competition constrains coordination, but if the Proposed Transaction
17 were to be consummated, the elimination of Albertsons will increase the ease and likelihood of
18 coordination amongst the remaining Supermarkets, leading to the potential for further harm to
19 Washington consumers.

20 **VIII. THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION**
21 **WILL NOT BE MITIGATED OR OFFSET**

22 116. To the extent Defendants seek to argue that the prospect of entry by new
23 competitors, expansion of existing competitors or the potential efficiencies created by the
24 Proposed Transaction mitigate or offset the threat it poses to competition, they face a heavy
25 burden. For example, if a defendant seeks to justify a merger on the basis of efficiencies, it must
26 come forward with “proof of extraordinary efficiencies” for mergers that will result in “high

1 market concentration levels.” *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 720 (D.C. Cir. 2001). A
2 defendant that seeks to show that entry by new firms or an expansion by existing firms will
3 resolve the competitive harm of a merger must show the entry will be timely, likely and sufficient
4 to counteract the anticompetitive harm of the merger. *Sysco Corp.*, 113 F. Supp. 3d at 80.

5 **A. Entry And Expansion Are Unlikely To Prevent The Proposed Transaction’s**
6 **Potential Harm**

7 117. New entry or expansion by existing Supermarkets is unlikely to address the
8 Proposed Transaction’s anticompetitive effects. There are high barriers to building a successful
9 Supermarket business, including significant start-up costs and operating expenses, building
10 advanced information technology systems, cultivating and maintaining competitive distribution
11 networks, ensuring consistent supply across multiple categories of product, hiring and training
12 staff with specialized skills, and establishing brand differentiation, including an online presence.

13 118. Consumers have grown accustomed to Supermarkets offering a wide range of
14 products and services, such as bakeries, pharmacies, affordable private label products, fresh and
15 organic produce, wine and beer selections, and a wide variety of
16 non-perishable items. New entrants need to secure multiple licenses and registrations with
17 varying state entities to ensure regulatory compliance, such as an enterprise DEA license to
18 operate a pharmacy, or a liquor license to sell alcohol in their store. A new competitor must be
19 equipped to provide these offerings or risk closing.

20 119. Additional barriers to entry can be created by incumbents, who may hold on to
21 closed stores or undeveloped land for potential reopening, or add use restrictions that prevent
22 closed properties from being developed by another company into a grocery store. A strategically
23 placed use restriction can foreclose a market to the benefit of the incumbents, especially in more
24 densely populated areas where suitable space is already difficult to find.

25 120. Overcoming these high barriers to entry is difficult and costly. Internal Albertsons
26 documents warn that [REDACTED]

1 [REDACTED]. These
2 high barriers to entry can also be [REDACTED]
3 [REDACTED]
4 [REDACTED].

5 121. Existing grocery store operators have been unable to expand their operations in a
6 manner that would prevent or remedy the Proposed Transaction's likely anticompetitive effects
7 in Washington. Walmart, for example, has not opened a supercenter in Washington since 2018.
8 It has, however, closed two of its stores in Washington over the last four years, and to date
9 operates only 52 supercenters and four neighborhood markets in Washington, compared to
10 Albertsons' approximately 215 stores and Kroger's approximately 114 stores. There is also no
11 indication that any existing Supermarkets have plans to substantially expand their presence in
12 Washington, much less in a manner that would timely replicate the intensity of the competition
13 that the Proposed Transaction is poised to eliminate.

14 **B. There Are No Merger-Specific Efficiencies That May Reverse The Proposed**
15 **Transaction's Potential To Harm Consumers**

16 122. Defendants have not provided any meaningful analysis of the purported synergies
17 or efficiencies they claim will result from the Proposed Transaction. Even if the synergies they
18 have claimed were cognizable for purposes of this Court's analysis of the Proposed Transaction,
19 they would not be sufficient to cure the anticompetitive effects that are likely to occur in the
20 relevant markets if the Proposed Transaction were to take place.

21 **IX. DEFENDANTS' PROPOSED DIVESTITURE**

22 123. All but conceding the fact that their proposed merger will substantially lessen
23 competition, Defendants have proposed a divestiture of assets to C&S in the event the Proposed
24 Transaction is permitted to close. It is Defendants' burden to show the adequacy of this
25 divestiture.

1 124. As part of the proposed divestiture, Defendants have agreed to sell 413 stores
2 (104 of which are in Washington), eight distribution centers [REDACTED],
3 two regional offices [REDACTED], the QFC, Mariano's and Carrs brand
4 names, the exclusive licensing rights to the Albertsons brand name in Arizona, California,
5 Colorado and Wyoming, and five private label brands. Defendants are selling this divestiture
6 package to C&S for \$1.9 billion in an attempt to remedy the significant harm to competition
7 posed by the Proposed Transaction.

8 125. C&S is a wholesale grocery store supply company that operated [REDACTED]
9 [REDACTED] (and none in Washington).

10 126. C&S has not demonstrated the ability to successfully and durably operate retail
11 grocery stores, let alone undertake the complicated process of rebannered a number
12 Supermarkets it will acquire via the parties' proposed divestiture.

13 **A. History Shows That C&S Lacks The Incentive To Operate The Divested Assets In**
14 **A Manner That Would Restore The Competition Lost As A Result Of The Proposed**
15 **Transaction**

16 127. C&S is not incentivized to fully replace the competitive intensity that Albertsons
17 brought to the sale of food and grocery products in Supermarkets.

18 128. C&S has a history of buying grocery stores, then selling them to their customers
19 in their wholesale distribution business. Through this practice, C&S can lock in lucrative
20 distribution agreements with these divested stores, without having to undertake the work
21 necessary to operate them.

22 129. In 2000, for example, C&S acquired 185 Grand Union Supermarkets. A year after
23 C&S purchased the Grand Union stores, it had sold 140 of them to other Supermarket chains,
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1 with plans to sell another 15.⁴⁶ Many of the Supermarkets that C&S sold ultimately closed,⁴⁷
2 and in 2012, the Grand Union brand was effectively defunct.⁴⁸

3 130. C&S has expressly stated in annual [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 131. Neither Defendants nor C&S have provided binding commitments that would
7 ensure that C&S will continue to operate and invest in the divested stores. To the contrary, [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 **B. C&S Lacks The Ability To Successfully Restore The Competition Lost As A Result**
14 **Of The Proposed Transaction**

15 132. C&S lacks the requisite experience and resources to successfully operate and
16 rebanner the divested stores. As a consequence, C&S will be unable to replace the competitive
17 intensity lost due to Albertsons' removal from the relevant market.

18 133. *C&S lacks experience operating grocery stores.* C&S' primary business is as a
19 grocery store supplier—not a retail grocery store operator. The “About” section of C&S' website
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21 ⁴⁶ William J. Kemble, *Supermarket Will Stay in Saugerties – Under New Name*, Daily Freeman (Nov. 29,
22 2001, updated July 22, 2021), <https://www.dailyfreeman.com/2001/11/29/supermarket-will-stay-in-saugerties-under-new-name/>.

23 ⁴⁷ *Last Grand Union Grocery Store In Connecticut Will Close*, Hartford Courant (Nov. 8, 2012, updated
24 Sept. 15, 2021), <https://www.courant.com/2012/11/08/last-grand-union-grocery-store-in-connecticut-will-close-2/>.

25 ⁴⁸ Jason Graziadei, *Nantucket supermarket closing doors*, Cape Code Times (Oct. 15, 2012),
26 <https://www.capecodtimes.com/story/news/2012/10/15/nantucket-supermarket-closing-its-doors/49348503007/>.

In 2021, C&S reopened 11 stores under the Grand Union banner after purchasing them from Tops Markets as a part of another divestiture package. Russell Redman, *C&S Wholesale Grocers readies Grand Union relaunch*, Supermarket News (Feb. 28, 2022), <https://www.supermarketnews.com/retail-financial/cs-wholesale-grocers-readies-grand-union-relaunch>.

1 describes it as “an industry leader in supply chain solutions and wholesale grocery supply.”⁴⁹
2 Nowhere does that page mention that C&S is at all involved in the business of operating retail
3 grocery stores. That omission is unsurprising. C&S operated [REDACTED]
4 [REDACTED]
5 [REDACTED]. C&S’ agreement to purchase the
6 413 divested grocery stores amounts to an increase of over 1,700% in its grocery retail
7 business.⁵⁰

8 134. Defendants’ asset purchase agreement with C&S provides that [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 135. *C&S has never opened or operated a grocery store in Washington.* C&S has
19 never opened or operated a grocery store in Washington. Nor does it have any distributions
20 centers in Washington. As a result, C&S lacks the relationships with local vendors, labor unions,
21 and suppliers necessary to successfully operate and supply the 104 divested stores in
22 Washington. This also means that any attempt to expand its presence *beyond* the stores divested
23 by Defendants would require C&S to break new ground, literally and figuratively.
24

25 ⁴⁹ About, C&S Wholesale Grocers, <https://www.cswg.com/> (last visited Jan. 10, 2024).

26 ⁵⁰ C&S also owns the Piggly Wiggly brand and franchises over eighty Piggly Wiggly stores. But C&S does not run those stores.

1 136. The lack of relationships with local vendors and suppliers is concerning, since

2 [REDACTED]

3 [REDACTED].

4 137. ***C&S has a history of not renewing union contracts and shifting operations to***
5 ***non-union shops.*** C&S has a history of closing unionized facilities, a practice which could, if
6 applied to the stores it is set to acquire, reduce consumer choice and force some customers to
7 travel farther for their grocery needs. As early as 2004, C&S closed unionized warehouses in
8 Maine, Massachusetts, and Rhode Island within a year of acquiring them, transferring the jobs
9 to non-union facilities located elsewhere, where workers were paid less per hour and did not
10 have access to union health and retirement benefits.⁵¹ In 2015, C&S acquired two unionized
11 Safeway warehouses in Maryland and swiftly closed them, again transferring jobs to non-union
12 warehouses elsewhere.⁵² One report observed that “[i]t has become almost commonplace for
13 C&S to acquire control of Teamster-contracted union warehouses, transfer the shipping work to
14 other C&S non-union subsidiaries, and then get rid of the unionized workers.”⁵³

15 138. The majority of Albertsons and Kroger employees are union members, and the
16 overwhelming majority of Albertsons and Kroger employees in Washington are union members.
17 As a consequence, as part of the divestiture C&S will take ownership of [REDACTED] unionized retail
18 stores.

19 139. C&S has declined to comment on its willingness to renew the collective
20 bargaining agreements it will inherit from Defendants and it has made no commitments not to
21 close unionized stores after the divestiture is finalized.

22 140. ***C&S lacks the sophisticated analytics and IT systems of Albertsons and Kroger.***
23 Defendants maintain [REDACTED] IT systems, which are required to operate everything from

24 ⁵¹ *C&S Closing Three New England Warehouses*, Progressive Grocer (Mar. 5, 2004),
25 <https://progressivegrocer.com/cs-closing-three-new-england-warehouses>.

26 ⁵² Bruce Vail, *Teamsters Say Union Buster C&S Wholesale Grocers Aims To Kill Jobs at Safeway*, In
These Times (Oct. 16, 2016), <https://inthesetimes.com/article/cs-wholesale-grocers-safeway-layoffs>.

⁵³ *Id.*

1 distribution centers to customer point-of-sale transactions, to digital loyalty programs, to the
2 companies' human resources systems. IT systems capable of carrying out those and hundreds of
3 other tasks needed to run a grocery retail business are necessary to C&S' success in taking over
4 the divested stores.

5 141. [REDACTED]

10 142. [REDACTED]

13 143. [REDACTED]

19 144. *C&S does not possess a robust array of private brands to sell in the divested*
20 *stores.* Together, Defendants own 22 private labels, including the O Organics, Lucerne, Heritage
21 Farms, and Big K brands. In 2019, for example, Albertsons alone carried over 11,000 products
22 under its private labels.⁵⁴ Likewise, Kroger “stock[ed] over 14,000 private label items” in 2022,
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25 ⁵⁴ Lawrence Aylward, *Albertsons Companies: A store brands success story*, StoreBrands (Jan. 28, 2019),
26 <https://storebrands.com/albertsons-companies-store-brands-success-story>.

1 and, as of January 28, 2023, “operated 33 food production plants.”⁵⁵ [REDACTED]

2 [REDACTED]

3 145. C&S owns only one private label brand, called “Best Yet.”⁵⁶ [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 146. C&S will acquire only five private label brands in the divestiture, and [REDACTED]

7 [REDACTED]. Certainly,

8 Kroger has not agreed to divest any of the four Albertsons private label brands with \$1 billion in

9 sales or more each—the Lucerne, Signature Select, Signature Café, or O Organics brands.⁵⁷

10 Instead, it has offered C&S brands such as “Waterfront Bistro,” a private label brand that offers

11 only a limited number of frozen seafood items.

12 147. Even if C&S expands its private label offerings, it will be unlikely to match

13 Defendants’ private label brand pricing because C&S lacks the manufacturing plants Defendants

14 rely upon to produce private goods.

15 148. *C&S Lacks the Expertise and Infrastructure Necessary to Operate the*

16 *Non-Grocery Assets it Hopes to Acquire in the Divestiture.* C&S lacks sufficient experience,

17 infrastructure, and resources to operate a number of the non-grocery services that Defendants

18 offer their customers in order to drive grocery store sales. Those services include Defendants’

19 pharmacies and fuel centers, many of which are included in the divestiture package proposed by

20 the parties. C&S will, for example, [REDACTED]

21 [REDACTED]. But C&S today operates only a single pharmacy.

22

23

24 ⁵⁵ The Kroger Co., Annual Report (Form 10-K), at 5, (Mar. 29, 2022), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000056873/107badbb-3656-4d1e-8e88-bede8ee11566.pdf>.

25 ⁵⁶ C&S also has access to other private label brands through its membership in Topco Associates, LLC, a

26 grocery group purchasing organization of which C&S is a member.

⁵⁷ Russell Redman, *Albertsons spotlights customer-favorite own-brand products*, Supermarket News (Jan. 10, 2022), <https://www.supermarketnews.com/private-label/albertsons-spotlights-customer-favorite-own-brand-products>.

1 149. *C&S Is Unlikely to Be Able to Successfully Rebanner the Divested Stores.*

2 When assuming control of the divested stores, C&S will not only have to assume control over
3 and begin operating hundreds of stores, it will also need to undertake a complex rebanner-
4 ing process for the [REDACTED] of those stores. That rebanner-
5 ing process will require it to convert
6 the stores it acquires from Defendants' banners (such as Albertsons or Safeway) to new banners
7 (such as QFC or Carrs).

8 150. The stakes for a successful rebanner-
9 ing are high. Store banners are important to
10 consumers and, if poorly executed, store rebanner-
11 ing can lead to customer confusion, permanent
12 sales declines, and store closures. [REDACTED]

13 151. Rebanner-
14 ing can entail not just swapping out the aesthetic branding of the store,
15 but also replacing proprietary private label brands owned by the previous banner, switching IT
16 systems, hiring new employees, and contracting with new distribution centers and wholesalers,
17 among other tasks. Shortly after closing the transaction, C&S will need to undertake this
18 complex rebanner-
19 ing process for [REDACTED].
20 There is no indication it will be able to do so in a successful or timely fashion.

21 **C. Even If C&S Successfully Operates And Rebanners The Divested Stores, The**
22 **Divestiture Will Not Remedy The Anticompetitive Effects Of The Proposed**
23 **Transaction**

24 152. Regardless of C&S' ability to operate and rebanner the divested stores, even after
25 the divestiture of 413 stores (104 of which are in Washington) to C&S, Defendants will not be
26 able to remedy the anticompetitive effects of the Proposed Transaction. Indeed, post-divestiture,

1 there will *still* be several city areas in Washington in which the merger is presumptively
2 anticompetitive.⁵⁸

3 **X. VIOLATION OF THE CONSUMER PROTECTION ACT, RCW 19.86.060**

4 153. Plaintiff repeats, re-alleges and incorporates by reference each and every
5 preceding paragraph and allegation of this Complaint as if fully set forth herein.

6 154. Defendants' Proposed Transaction violates RCW 19.86.060.

7 155. The effect of the Proposed Transaction will likely substantially lessen
8 competition for the retail sale of food and other grocery products in Supermarkets in the relevant
9 geographic markets in Washington.

10 156. The Proposed Transaction affects trade and commerce as defined in
11 RCW 19.86.010(2) because it affects Defendants' sale of food and other grocery products in
12 Supermarkets to Washington consumers through Defendants' employees in Washington and
13 across the nation.

14 157. Unless enjoined, the Proposed Transaction is likely to have the effect of
15 substantially lessening competition for the retail sale of food and other grocery products in
16 Supermarkets in the relevant geographic markets in Washington in the following ways, among
17 others:

- 18 (a) by eliminating direct and substantial competition between
19 Defendants Albertsons and Kroger;
- 20 (b) by increasing the likelihood that Defendant Kroger will
21 unilaterally exercise market power; and
- 22 (c) by increasing the likelihood of, or facilitating, coordinated
23 interaction between Defendant Kroger and the remaining market
24 participants in each of the relevant geographic markets.

25 _____
26 ⁵⁸ While club and dollar stores are not part of the relevant product market, this remains true even if they are included in calculating market shares, HHIs and delta HHIs resulting from the proposed divestiture.

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