

0300
GEG AT OY A E A K H A U T
S O O A U W P V Y
U W U O U W U A O U W U V A O S O U S
O E O S O O
O O E J O A N G E E E J I E A U O C E

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

THE KROGER CO.;
ALBERTSONS COMPANIES, INC.;
ALBERTSON'S COMPANIES
SPECIALTY CARE, LLC;
ALBERTSON'S LLC;
ALBERTSON'S STORES SUB LLC;
and KETTLE MERGER SUB, INC.,

Defendants.

No. 24-2-00977-9 SEA

ALBERTSONS DEFENDANTS'
ANSWER AND AFFIRMATIVE
DEFENSES

Defendants Albertsons Companies, Inc., Albertsons Companies Specialty Care, LLC, Albertson's LLC, and Albertson's Stores Sub LLC (together, "Albertsons") hereby answer the complaint (the "Complaint") filed by Plaintiff State of Washington (the "State" or "Plaintiff") related to the proposed merger (the "Merger") between Albertsons and the Kroger Co. ("Kroger"), and assert affirmative and other defenses. Any allegation in the Complaint that is not expressly admitted below is denied.¹

¹ The Complaint contains section titles, organizational headings, footnotes, and an introductory statement to which no response is required. To the extent that the titles, headings, footnotes, or introductory statement may be construed to contain allegations of fact to which a response is required, Albertsons denies all such allegations.

1 **INTRODUCTION**

2 The State’s claims are premised entirely on the State’s distortion and ignorance of
3 basic but critical facts. The State’s unprecedented challenge to the Merger should be
4 rejected for multiple reasons.

5 **First**, the State entirely ignores the commercial realities of the fiercely competitive
6 landscape in which Defendants participate and the evolution of that landscape in recent
7 years. Instead, the State has handcrafted a narrowly defined set of “supermarket”
8 competitors as the relevant product market for the purposes of this litigation, but omits
9 obvious competition from other grocery retailers that public documents and ordinary
10 course business documents confirm are engaged in vigorous competition with Defendants.
11 The reality is that Defendants face increasingly intense competition from big box retailers
12 such as Walmart — the largest grocer in the U.S. — and Target, club stores such as
13 Costco — one of Defendants’ most fervent competitors — and Sam’s Club, discount,
14 limited assortment, specialty and organic grocers like WinCo, Trader Joe’s and Sprouts,
15 dollar stores, and retail giant Amazon (which owns Whole Foods and Amazon Fresh and
16 operates a significant online grocery business via Amazon.com).

17 **Second**, in claiming the Merger will substantially lessen competition in
18 Washington, the State fails to account for Kroger’s divestment of 579 stores — including
19 124 stores in Washington — and supporting assets to C&S Wholesale Grocers (“C&S”), a
20 leading grocery operator. The State alleges that Kroger and Albertsons “currently operate
21 Supermarkets in some Washington communities within a single mile of each other,”
22 Compl. ¶ 87 (emphasis added), and that therefore the Merger will eliminate substantial
23 head-to-head competition in Washington, *see id.* ¶¶ 96–98, but does not meaningfully
24 address the 124 stores that Kroger has agreed to divest in Washington — divestitures
25 which will preserve competition in local markets and address any competitive concerns
26 raised by the Merger. Instead, the State casts aside the divestiture package as insufficient

1 and ignores the fact that C&S is a large, sophisticated, well-financed company with deep
2 experience in the grocery industry. Contrary to the State’s allegations, C&S is well-
3 positioned to successfully operate the significant assets that it will receive as part of the
4 divestiture package and execute on its business plans. And as part of the agreed upon
5 divestiture, C&S will receive the assets necessary to ensure its success — including
6 physical stores, distribution centers to supply the divested stores, store and management
7 personnel, banner rights, popular private label brands and critical transition services.

8 The State also make much of certain previous divestitures in other transactions that
9 bear no resemblance to the robust divestiture package Kroger and C&S have agreed to
10 here. Specifically, the State points to the limited divestitures to Haggen, made in
11 connection with Albertsons’ 2015 acquisition of Safeway, and suggests that the failures
12 associated with that divestiture plan mean that *any* divestiture to C&S in connection with
13 *this* Merger is necessarily bound to fail. But contrary to the State’s allegations, the C&S
14 divestiture bears no resemblance to the 2015 Haggen divestitures. The State’s failure to
15 account for the effect of the divestiture in preserving local competition is ultimately fatal
16 to their claim.

17 Simply put, although the State alleges that the Merger is likely to harm
18 competition in Washington, the so-called “facts” it has offered in support of this bold
19 assertion completely ignore both (i) the commercial realities of a marketplace that is both
20 highly competitive and rapidly evolving, and (ii) the actual transaction Defendants seek to
21 close (inclusive of the C&S divestitures).

22 Finally, although the allegations of the Complaint focus on purported harm to
23 competition within Washington, the State seeks unprecedented relief in the form of an
24 injunction that would bar the Merger across the country. The injunctive relief sought by
25 the State is impermissibly overbroad and violates basic constitutional principles, including
26 the dormant Commerce Clause and the Full Faith and Credit Clause of the U.S.

1 Constitution. For these and many other reasons, the State’s challenge to the Merger and
2 its request for overbroad injunctive relief should fail.

3 Against this backdrop, Albertsons hereby answers the specific allegations in the
4 Complaint. The Complaint improperly mixes factual averments with legal argument and
5 rhetoric such that admissions or denials of the factual averments are difficult or impossible
6 to make. Moreover, many of the allegations in the Complaint are overbroad, vague, or
7 conclusory, include terms that are undefined and that are susceptible to various
8 interpretations, and asserts facts as to third-party market participants which Albertsons
9 cannot meaningfully respond to. Accordingly, by way of a general response, all
10 allegations in the Complaint are denied unless specifically admitted, and any factual
11 averment that is admitted is admitted only as to the specific facts and not as to any
12 conclusions, characterizations, implications, or the like which are contained in the
13 averment or in the Complaint as a whole. These comments and objections are
14 incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

15 **SPECIFIC RESPONSES TO PLAINTIFF’S ALLEGATIONS**

16 **I. NATURE OF THE COMPLAINT**

17 1. Paragraph 1 states legal conclusions to which no response is required. To
18 the extent a response is required, Albertsons denies the allegations in Paragraph 1, except
19 admits that the State purports to bring an action as described in Paragraph 1.

20 2. Paragraph 2 states legal conclusions to which no response is required. To
21 the extent a response is required, Albertsons denies the allegations in Paragraph 2, except
22 admits that Paragraph 2 contains incomplete and/or inaccurate descriptions of Article XII,
23 Section 22 of the Washington State Constitution and the Washington Consumer Protection
24 Act, RCW 19.86 *et seq.*, and refers to the Washington State Constitution and Washington
25 Consumer Protection Action, RCW 19.86 *et seq.*, for their complete content and context.
26

1 3. Albertsons is unable to respond to the allegations in Paragraph 3 in any
2 meaningful way because the phrase “supermarket” is vague and ambiguous. To the extent
3 a response is required, Albertsons denies the allegations in the second sentence of Paragraph
4 3, except admits that Albertsons operates stores in Washington under the Albertsons,
5 Hagen, and Safeway banners. To the extent a response is required, Albertsons lacks
6 knowledge or information sufficient to form a belief as to the truth of the allegations in the
7 first and third sentences of Paragraph 3 and denies the same. To the extent a response is
8 required, Albertsons denies the allegations in last sentence of Paragraph 3, except admits
9 that Albertsons has been involved in past mergers and acquisitions.

10 4. The first sentence of Paragraph 4 states legal conclusions to which no
11 response is required. To the extent a response is required, Albertsons denies the allegations
12 in the first sentence of Paragraph 4. Albertsons denies the remaining allegations in
13 Paragraph 4.

14 **II. INTRODUCTION**

15 5. Albertsons is unable to respond to the allegations in Paragraph 5 in any
16 meaningful way because the phrases “supermarkets,” “full range,” “full-service shopping
17 experience,” “one-stop shopping,” and “specialty stores,” among others, are vague and
18 ambiguous. To the extent a response is required, Albertsons lacks knowledge or
19 information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and
20 denies the same.

21 6. Albertsons is unable to respond to the allegations in the first sentence of
22 Paragraph 6 in any meaningful way because the phrases “robust competition,”
23 “supermarkets,” and “in check” are vague and ambiguous. To the extent a response is
24 required, Albertsons denies the allegations in the first sentence of Paragraph 6. Albertsons
25 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
26 in the second and third sentences of Paragraph 6 and denies the same.

1 7. Albertsons is unable to respond to the allegations in Paragraph 7 in any
2 meaningful way because the phrases “head-to-head,” “price competition,” “quality
3 products” and “high levels of customer service” are vague and ambiguous. To the extent a
4 response is required, Albertsons denies the allegations in Paragraph 7, except admits that
5 Albertsons fiercely competes for consumers with numerous other retailers in local
6 geographies in Washington, including, but not limited to, Kroger, on the basis of price,
7 product quality, product selection, customer service, and loyalty programs, among other
8 things.

9 8. Albertsons denies the allegations in the first sentence of Paragraph 8.
10 Albertsons is unable to respond to the allegations in the second sentence of Paragraph 8 in
11 any meaningful way because the phrases “supermarkets,” “local markets,” and “many
12 communities” are vague and ambiguous. To the extent a response is required, Albertsons
13 denies the allegations in the second sentence of Paragraph 8, except admits that the Merger
14 would combine assets of Albertsons and Kroger in Washington state and divest certain of
15 those assets to C&S Wholesale Grocers, LLC (“C&S”).

16 9. Albertsons denies the allegations in the first, second, fifth, and last sentences
17 of Paragraph 9. Albertsons lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegations in the third and fourth sentences of Paragraph 9 and therefore
19 denies the same.

20 10. Albertsons denies the allegations in the first sentence of Paragraph 10,
21 except admits that Albertsons is a thriving company, Albertsons vigorously competes with
22 other retailers selling grocery items, including, but not limited to, Kroger, and that
23 competition among grocery retailers is fierce. To the extent the last sentence of Paragraph
24 10 purports to quote from or characterize documents, Albertsons refers to the documents
25 for their complete content and context. Albertsons denies any characterizations inconsistent
26 with the documents themselves or their context.

1 11. Albertsons is unable to respond to the allegations in the first sentence of
2 Paragraph 11 in any meaningful way because the phrase “robust competitor” is vague and
3 ambiguous. To the extent a response is required, Albertsons denies the allegations in the
4 first sentence of Paragraph 11. To the extent the remaining allegations in Paragraph 11
5 purport to quote from or characterize documents, Albertsons refers to the documents for
6 their complete content and context. Albertsons denies any characterizations inconsistent
7 with the documents themselves or their context.

8 12. Albertsons denies the allegations in the first sentence of Paragraph 12,
9 except admits that Kroger has agreed to a divestiture package which would transfer
10 hundreds of stores (including 124 located in Washington) and other assets to C&S and refers
11 to the divestiture package for its complete content and context. Albertsons denies the
12 allegations in the second and last sentences of Paragraph 12. Albertsons lacks knowledge
13 or information sufficient to form a belief as to the truth of the allegations in the third and
14 fourth sentences of Paragraph 12 and therefore denies the same.

15 13. Albertsons denies the allegations in the first and second sentences of
16 Paragraph 13, except admits that certain stores were divested to multiple buyers, including
17 Hagen, pursuant to a consent order with the Federal Trade Commission entered in
18 connection with Albertsons’ acquisition of Safeway. Albertsons lacks knowledge or
19 information sufficient to form a belief as the truth of the remaining allegations in Paragraph
20 13 and therefore denies the same.

21 14. Albertsons denies the allegations in Paragraph 14, except admits that Kroger
22 has agreed to a divestiture package which would transfer hundreds of stores (including 124
23 located in Washington) and other assets to C&S and refers to the divestiture package for its
24 complete content and context.

25 15. Paragraph 15 states legal conclusions to which no response is required. To
26 the extent a response is required, Albertsons denies the allegations in Paragraph 15.

1 **III. JURISDICTION AND VENUE**

2 16. Paragraph 16 states legal conclusions to which no response is required. To
3 the extent a response is required, Albertsons denies the allegations in Paragraph 16, except
4 admits that the State purports to bring an action as described in Paragraph 16.

5 17. The first and second sentences of Paragraph 17 state legal conclusions to
6 which no response is required. To the extent a response is required, Albertsons denies the
7 allegations in the first and second sentences of Paragraph 17, except admits that Albertsons
8 Companies Specialty Care, LLC and Albertson’s LLC are registered to conduct retail
9 business in Washington and that Albertson’s Stores Sub LLC is registered to conduct real
10 estate business in Washington. Albertsons denies the remaining allegations in Paragraph
11 17.

12 18. Paragraph 18 states legal conclusions to which no response is required. To
13 the extent a response is required, Albertsons denies the allegations in Paragraph 18, except
14 admits that Albertsons operates stores in Washington.

15 **IV. THE PARTIES AND PROPOSED TRANSACTION**

16 **A. Plaintiff**

17 19. Paragraph 19 states legal conclusions to which no response is required. To
18 the extent a response is required, Albertsons admits that the State of Washington has
19 brought this action.

20 20. Paragraph 20 states legal conclusions to which no response is required. To
21 the extent a response is required, Albertsons states that Paragraph 20 contains incomplete
22 characterizations of Article XII, Section 22 of the Washington State Constitution and RCW
23 19.86.080, denies the allegations in Paragraph 20, and refers to the quoted authorities for
24 their full content and context.

25 21. Paragraph 21 states legal conclusions to which no response is required. To
26 the extent a response is required, Albertsons denies the allegations in Paragraph 21.

1 22. Albertsons lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations in Paragraph 22 and therefore denies the same, except admits
3 that the State issued Albertsons a Civil Investigative Demand (“CID”) in October 2022 and
4 that Albertsons has produced documents to the State in response to the CID.

5 **B. Defendants**

6 23. Albertsons is unable to respond to the allegations in the first sentence of
7 Paragraph 23 in any meaningful way because the phrase “largest national supermarket
8 companies” is vague and ambiguous. To the extent a response is required, Albertsons lacks
9 knowledge or information sufficient to form a belief as to the truth of the allegations in the
10 first sentence of Paragraph 23 and therefore denies the same. Albertsons lacks knowledge
11 or information sufficient to form a belief as to the truth of the remaining allegations in
12 Paragraph 23 and therefore denies the same, except admits that: (i) as of February 24, 2024,
13 Albertsons operated 2,269 stores, 22 dedicated distribution centers, 1,725 pharmacies, 19
14 manufacturing facilities, and 402 associated fuel centers in 34 states and the District of
15 Columbia; (ii) as of February 24, 2024, Albertsons employed approximately 285,000
16 associates; and (iii) for fiscal year 2023, Albertsons had annual revenues of \$79.24 billion.

17 24. Albertsons is unable to respond to the allegations in the first sentence of
18 Paragraph 24 in any meaningful way because the phrase “biggest supermarket chains” is
19 vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or
20 information sufficient to form a belief as to the truth of the first sentence in Paragraph 24
21 and therefore denies the same. Albertsons lacks knowledge or information sufficient to
22 form a belief as to the truth of the remaining allegations in Paragraph 24 and therefore denies
23 the same, except admits Albertsons operates approximately 215 stores in Washington state,
24 and approximately 110 stores in the Seattle-Tacoma-Bellevue Metropolitan Statistical Area
25 (“MSA”).

1 **1. Albertsons**

2 25. Albertsons denies the allegations in Paragraph 25, except admits that
3 Albertsons Companies, Inc. is a Delaware corporation that is headquartered in Boise, Idaho.

4 26. Albertsons denies the allegations in Paragraph 26, except admits that
5 Albertsons Companies Specialty Care, LLC is a Delaware limited liability company and a
6 subsidiary of Albertsons Companies, Inc., with its principal place of business in Boise,
7 Idaho, and is registered to conduct retail business in Washington state.

8 27. Albertsons denies the allegations in Paragraph 27, except admits that
9 Albertson’s LLC is a Delaware limited liability company and a subsidiary of Albertsons
10 Companies, Inc., with its principal place of business in Boise, Idaho, and is registered to
11 conduct retail business in Washington state.

12 28. Albertsons denies the allegations in Paragraph 28, except admits that
13 Albertson’s Stores Sub LLC is a Delaware limited liability company with its principal place
14 of business in Boise, Idaho, at the same location as Albertsons Companies, Inc., and is
15 registered to conduct real estate business in Washington state.

16 29. Albertsons denies the allegations in the first sentence of Paragraph 29,
17 except admits that Albertsons acquired Buttrey Food and Drug Store Company in 1998 and
18 refers to the relevant transactional documents for their complete content and context.
19 Albertsons denies the allegations in the second sentence of Paragraph 29, except admits that
20 15 stores were divested pursuant to a consent order with the Federal Trade Commission.
21 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations in Paragraph 29 and therefore denies the same.

23 30. Albertsons denies the allegations in Paragraph 30, except admits that
24 SuperValu Inc. acquired certain Albertsons assets in connection with a 2006 transaction and
25 that Albertsons acquired certain assets from SuperValu Inc. in connection with a 2013
26

1 transaction, and refers to the relevant transactional documents for their complete content
2 and context.

3 31. Albertsons denies the allegations in the first sentence of Paragraph 31,
4 except admits that Albertsons acquired Safeway in 2015 and refers to the relevant
5 transactional documents for their complete content and context. Albertsons denies the
6 allegations in the second sentence of Paragraph 31, except admits that as a result of the
7 Safeway acquisition, Albertsons increased the number of stores operated by Albertsons in
8 Washington state.

9 32. Albertsons denies the allegations in Paragraph 32, except admits that certain
10 stores (including stores in Washington) were divested to multiple buyers, including Haggen,
11 pursuant to a consent order with the Federal Trade Commission entered in connection with
12 Albertsons' acquisition of Safeway.

13 33. Albertsons lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 33 and therefore denies the same. To the extent
15 Paragraph 34 purports to quote from or characterize documents, Albertsons refers to the
16 documents for their complete content and context. Albertsons denies any characterizations
17 inconsistent with the documents themselves.

18 34. Albertsons lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations in Paragraph 34 and therefore denies the same. To the extent the
20 last sentence of Paragraph 34 purports to quote from or characterize documents, Albertsons
21 refers to the documents for their complete content and context. Albertsons denies any
22 characterizations inconsistent with the documents themselves.

23 35. Albertsons denies the allegations in Paragraph 35, except admits that
24 Albertsons reacquired from Haggen certain stores that had been divested to Haggen in
25 connection with the Albertsons-Safeway transaction and that Albertsons acquired certain
26 additional stores from Haggen as well as rights to the Haggen banner.

1 36. Albertsons denies the allegations in Paragraph 36, except admits that
2 Albertsons operates approximately 215 stores in Washington state under the Albertsons,
3 Hagen and Safeway banners and, as of February 24, 2024, 2,269 stores nationwide.

4 **2. Kroger**

5 37. Albertsons lacks knowledge or information sufficient to form a belief as to
6 the truth of allegations in in Paragraph 37 and therefore denies the same.

7 38. Albertsons lacks knowledge or information sufficient to form a belief as to
8 the truth of allegations in in Paragraph 38 and therefore denies the same.

9 39. Albertsons lacks knowledge or information sufficient to form a belief as to
10 the truth of allegations in in Paragraph 39 and therefore denies the same.

11 **3. Kettle Merger Sub**

12 40. Albertsons lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations in Paragraph 40 and therefore denies the same, except admits
14 that Albertsons and Kroger entered into a merger agreement on October 13, 2022 and that
15 Kettle Merger Sub, Inc. is a party to this agreement and refers to the merger agreement for
16 its complete content and context.

17 **C. Defendants' Proposed Transaction**

18 41. Albertsons admits that Albertsons and Kroger entered into a merger
19 agreement on October 13, 2022 and refers to the merger agreement and accompanying press
20 release for its complete content and context. Albertsons denies any characterizations
21 inconsistent with the documents themselves. To the extent Paragraph 41 purports to quote
22 from or characterize documents, Albertsons refers to the documents for their complete
23 content and context. Albertsons denies any characterizations inconsistent with the
24 documents themselves.

25 42. Albertsons lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations in Paragraph 42 and therefore denies the same.

1 43. Albertsons lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations in Paragraph 43 and therefore denies the same.

3 44. Albertsons lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations in Paragraph 44 and therefore denies the same.

5 45. Albertsons denies the allegations in the first sentence of Paragraph 45.
6 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations in the second and third sentences of Paragraph 45 and therefore denies the same.
8 To the extent the remaining allegations in Paragraph 45 purport to quote from or
9 characterize documents, Albertsons refers to the documents for their complete content and
10 context. Albertsons denies any characterizations inconsistent with the documents
11 themselves.

12 **V. OVERVIEW OF THE SUPERMARKET INDUSTRY**

13 **A. Retail Grocery Stores**

14 46. Albertsons is unable to respond to the allegations in Paragraph 46 in any
15 meaningful way because the term “supermarkets” is vague and ambiguous. To the extent a
16 response is required, Albertsons denies the allegations in Paragraph 46 (including footnote
17 24), except admits that a wide range of retailers sell food and grocery products to
18 consumers.

19 47. Albertsons is unable to respond to the allegations in Paragraph 47 in any
20 meaningful way because the term “large national supermarket,” among others, is vague and
21 ambiguous. To the extent a response is required, Albertsons lacks knowledge or
22 information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and
23 therefore denies the same, except admits that Albertsons operates stores in Washington
24 under the Albertsons, Haggen, and Safeway banners.

25 48. Albertsons lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations in Paragraph 48 and therefore denies the same.

1 49. Albertsons is unable to respond to the allegations in Paragraph 49 in any
2 meaningful way because the phrase “retail supermarket chain banners,” among others, is
3 vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or
4 information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and
5 therefore denies the same.

6 50. Albertsons is unable to respond to the allegations in the first sentence of
7 Paragraph 50 in any meaningful way because the term “supermarket parent companies”
8 among others, is vague and ambiguous. To the extent a response is required, Albertsons
9 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
10 in the first sentence of Paragraph 50 and therefore denies the same. Albertsons lacks
11 knowledge or information sufficient to form a belief as to the truth of the allegations in the
12 second and third sentences of Paragraph 50 and therefore denies the same. Albertsons
13 denies the remaining allegations in Paragraph 50, except admits that rebannered a store
14 typically requires certain efforts and costs which vary based on the particular circumstances.
15 To the extent the last sentence of Paragraph 50 purports to quote from or characterize
16 documents, Albertsons refers to the documents for their complete content and context.
17 Albertsons denies any characterizations inconsistent with the documents themselves.

18 51. Albertsons is unable to respond to the allegations in the first sentence of
19 Paragraph 51 in any meaningful way because the terms “supermarket companies”
20 “substantial sums,” and “poorly performing,” among others, are vague and ambiguous. To
21 the extent a response is required, Albertsons lacks knowledge or information sufficient to
22 form a belief as to the truth of the allegations in the first sentence of Paragraph 51 and
23 therefore denies the same. Albertsons lacks knowledge or information sufficient to form a
24 belief as to the truth of the remaining allegations in Paragraph 51 and therefore denies the
25 same, except admits that Albertsons has employees whose responsibilities include
26 identifying sites for potential new stores and developing them.

1 **B. Supermarket Operations**

2 52. Albertsons is unable to respond to the allegations in Paragraph 52 in any
3 meaningful way because the term “supermarket,” among others, is vague and ambiguous.
4 To the extent a response is required, Albertsons lacks knowledge or information sufficient
5 to form a belief as to the truth of the allegations in Paragraph 52 and therefore denies the
6 same.

7 53. Albertsons is unable to respond to the allegations in Paragraph 53 in any
8 meaningful way because the terms “supermarket,” “supermarket companies,” and “one
9 billion in sales,” among others, are vague and ambiguous. To the extent a response is
10 required, Albertsons lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations in Paragraph 53 and therefore denies the same, except admits that
12 Albertsons has private label brands, which include Lucerne, Signature Select, and O
13 Organics.

14 54. Albertsons is unable to respond to the allegations in Paragraph 54 in any
15 meaningful way because the phrases “grocery transactions,” “supermarkets,” “necessarily
16 tied,” and “in-store operations,” among others, are vague and ambiguous. To the extent a
17 response is required, Albertsons lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 54 and therefore denies the same.

19 55. Albertsons is unable to respond to the allegations in Paragraph 55 in any
20 meaningful way because the terms “supermarkets,” “full-service,” and “labor-intensive,”
21 among others, are vague and ambiguous. To the extent a response is required, Albertsons
22 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
23 in Paragraph 55 and therefore denies the same, except admits that, as of February 24, 2024,
24 Albertsons employed approximately 285,000 associates.

1 **C. Supermarket Pharmacies**

2 56. Albertsons is unable to respond to the allegations in Paragraph 56 in any
3 meaningful way because the terms “supermarkets,” “pharmacy customers,” and “non-
4 pharmacy customers,” among others, are vague and ambiguous. To the extent a response
5 is required, Albertsons lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations in Paragraph 56 and therefore denies the same, except admits that
7 Albertsons operates pharmacies within certain of its stores and that pharmacy sales
8 accounted for approximately 10.4% of Albertsons’ total revenue in fiscal year 2023.

9 57. Albertsons is unable to respond to the allegations in the first sentence of
10 Paragraph 57 in any meaningful way because the terms “operational complexities” and
11 “supermarket operators” are vague and ambiguous. To the extent a response is required,
12 Albertsons denies the allegations in the first sentence of Paragraph 57. Albertsons denies
13 the allegations in the second and third sentences of Paragraph 57, except admits that
14 pharmacies typically must obtain state and federal licenses to operate and require licensed
15 pharmacists. Albertsons lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations in the fourth sentence of Paragraph 57 and therefore denies the
17 same, except admits that Albertsons employs over 10,000 healthcare professionals.
18 Albertsons is unable to respond to the allegations in the fifth sentence of Paragraph 57 in
19 any meaningful way because the terms “supply chain considerations,” “adequate supply,”
20 “supermarkets,” and “affordable prices” are vague and ambiguous. To the extent a response
21 is required, Albertsons lacks knowledge or information sufficient to form a belief as to the
22 truth of the allegations in the fifth sentence of Paragraph 57 and therefore denies the same.

23 **D. Supermarket Fuel Centers**

24 58. Albertsons is unable to respond to the allegations in the first and second
25 sentences of Paragraph 58 in any meaningful way because the terms “supermarket” and
26 “drive grocery sales” are vague and ambiguous. To the extent a response is required,

1 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in the first and second sentences of Paragraph 58 and therefore denies the same.
3 Albertsons denies the allegations in the third sentence of Paragraph 58 and, to the extent the
4 third sentence of Paragraph 58 purports to quote from or characterize documents,
5 Albertsons refers to the documents for their complete content and context. Albertsons
6 denies any characterizations inconsistent with the documents themselves. Albertsons lacks
7 knowledge or information sufficient to form a belief as to the truth of the allegations in the
8 fourth sentence of Paragraph 58 and therefore denies the same.

9 59. Albertsons is unable to respond to the allegations in Paragraph 59 in any
10 meaningful way because the terms “operational expertise,” “specialized labor,” and “fuel-
11 specific infrastructure,” among others, are vague and ambiguous. To the extent a response
12 is required, Albertsons lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations in Paragraph 59 and therefore denies the same.

14 **E. Supermarket Analytics**

15 60. Albertsons is unable to respond to the allegations in Paragraph 60 in any
16 meaningful way because the terms “business lines” and “modern supermarket companies,”
17 among others, are vague and ambiguous. To the extent a response is required, Albertsons
18 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
19 in Paragraph 60 and therefore denies the same.

20 61. Albertsons lacks knowledge or information sufficient to form a belief as to
21 the truth of the allegations in the first, second, and third sentences of Paragraph 61 and
22 therefore denies the same. Albertsons denies the allegations in the fourth sentence of
23 Paragraph 61 and, to the extent the fourth sentence of Paragraph 61 purports to quote from
24 or characterize documents, Albertsons refers to the documents for their complete content
25 and context.
26

1 62. Albertsons lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations in Paragraph 62 and therefore denies the same.

3 **VI. RELEVANT MARKETS**

4 63. Paragraph 63 states legal conclusions to which no response is required. To
5 the extent a response is required, Albertsons states that Paragraph 63 is an incomplete
6 description of RCW 19.86.060, and refers to the quoted statute for its full content and
7 context.

8 64. Paragraph 64 states legal conclusions to which no response is required. To
9 the extent a response is required, Albertsons states that Paragraph 64 contains incomplete
10 descriptions of RCW 19.86.920, 15 U.S.C. § 18, and case law, and refers to the quoted
11 statutes and cited case law for their full content and context.

12 65. Paragraph 65 states legal conclusions to which no response is required. To
13 the extent a response is required, Albertsons denies the allegations in Paragraph 65 and, to
14 the extent the allegations in Paragraph 65 purport to quote from or characterize cases,
15 Albertsons refers to the cases for their complete content and context.

16 **A. Relevant Product Market: The Retail Sale of Food and Other Grocery**
17 **Products in Supermarkets**

18 66. Paragraph 66 asserts legal conclusions to which no response is required. To
19 the extent a response is required, Albertsons denies the allegations in Paragraph 66.

20 67. Albertsons is unable to respond to the allegations in Paragraph 67 in any
21 meaningful way because the terms “full-line retail grocery store,” “substantially all,” and
22 “substantial offerings,” among others, are vague and ambiguous. To the extent a response
23 is required, Albertsons denies the allegations in Paragraph 67.

24 68. Albertsons is unable to respond to the allegations in Paragraph 68 in any
25 meaningful way because the terms “convenient one-stop shopping” and “one-stop shopping
26 experience,” among others, are vague and ambiguous. To the extent a response is required,
Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the

1 allegations in Paragraph 68 and therefore denies the same, except admits that Albertsons
2 provides a broad array of products and services to customers in its stores.

3 69. Albertsons is unable to respond to the allegations in Paragraph 69 in any
4 meaningful way because the terms “one-stop shopping” and “supermarkets,” among others,
5 are vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge
6 or information sufficient to form a belief as to the truth of the allegations in Paragraph 69
7 and therefore denies the same.

8 70. Albertsons denies the allegations in Paragraph 70. To the extent Paragraph
9 70 purports to quote from or characterize documents, Albertsons refers to the documents
10 for their complete content and context. Albertsons denies any characterizations inconsistent
11 with the documents themselves.

12 71. Albertsons lacks knowledge or information sufficient to form a belief as the
13 truth of the allegations in Paragraph 71 and therefore denies the same. To the extent
14 Paragraph 71 purports to quote from one or more sources, Albertsons refers to any such
15 sources for their complete content and context.

16 72. Albertsons denies the allegations in Paragraph 72.

17 **B. Relevant Geographic Markets for Supermarkets**

18 73. Albertsons is unable to respond to the allegations in Paragraph 73 in any
19 meaningful way because the phrases “very close,” “local in nature,” and “areas
20 surrounding,” among others, are vague and ambiguous. To the extent a response is required,
21 Albertsons denies the allegations in Paragraph 73, except admits that competition for
22 grocery sales typically occurs at a local level and varies based on local conditions.

23 74. Albertsons is unable to respond to the allegations in the first sentence of
24 Paragraph 74 in any meaningful way because the term “localized competition” is vague and
25 ambiguous. To the extent a response is required, Albertsons lacks knowledge or
26 information sufficient to form a belief as to the truth of the allegations in the first sentence

1 of Paragraph 74 and therefore denies the same. To the extent the second sentence of
2 Paragraph 74 purports to quote from or characterize documents, Albertsons refers to the
3 documents for their complete content and context. Albertsons denies any characterizations
4 inconsistent with the documents themselves. Albertsons lacks knowledge or information
5 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 74 and
6 therefore denies the same.

7 75. Paragraph 75 states legal conclusions to which no response is required. To
8 the extent a response is required, Albertsons denies the allegations in Paragraph 75 and, to
9 the extent the allegations in Paragraph 75 purport to quote from or characterize cases,
10 Albertsons refers to the cases for their complete content and context. Albertsons denies any
11 characterizations inconsistent with the cases themselves.

12 76. Paragraph 76 states legal conclusions to which no response is required.
13 Albertsons is unable to respond to the allegations in Paragraph 76 in any meaningful way
14 because the term “city areas” is vague and ambiguous. To the extent a response is required,
15 Albertsons denies the allegations in Paragraph 76.

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

17 77. Paragraph 77 states legal conclusions to which no response is required. To
18 the extent a response is required, Albertsons denies the allegations in Paragraph 77 and, to
19 the extent the allegations in Paragraph 77 purport to quote from or characterize cases,
20 Albertsons refers to the cases for their complete content and context. Albertsons denies any
21 characterizations inconsistent with the cases themselves.

22 78. Albertsons denies the allegations in Paragraph 78.

23 **A. Defendants’ Proposed Transaction is Presumptively Unlawful**

24 79. Paragraph 79 asserts legal conclusions to which no response is required. To
25 the extent a response is required, Albertsons denies the allegations in Paragraph 79.
26

1 80. Paragraph 80 states legal conclusions to which no response is required. To
2 the extent a response is required, Albertsons denies the allegations in Paragraph 80 and, to
3 the extent the allegations in Paragraph 80 purport to quote from or characterize cases,
4 Albertsons refers to the cases for their complete content and context. Albertsons denies any
5 characterizations inconsistent with the cases themselves.

6 81. Paragraph 81 states legal conclusions to which no response is required.
7 Albertsons is unable to respond to the allegations in Paragraph 81 in any meaningful way
8 because the phrases “courts” and “delta HHI” are vague and ambiguous. To the extent a
9 response is required, Albertsons denies the allegations in Paragraph 81, except admits that
10 the Merger Guidelines, which are not binding on the FTC or courts, measure market
11 concentration using the Herfindahl-Hirschman Index (“HHI”) and that Paragraph 81
12 summarizes how the “HHI” calculation is described in the Merger Guidelines, and refers to
13 the Merger Guidelines for their complete content and context.

14 82. Paragraph 82 asserts legal conclusions to which no response is required. To
15 the extent a response is required, Albertsons denies the allegations in Paragraph 82.

16 83. Paragraph 83 asserts legal conclusions to which no response is required. To
17 the extent a response is required, Albertsons denies the allegations in Paragraph 83
18 (including footnote 39).

19 84. Albertsons is unable to respond to the allegations in Paragraph 84 in any
20 meaningful way because the phrases “Supermarket operators” and “combined share,”
21 among others, are vague and ambiguous. Paragraph 84 also states legal conclusions to
22 which no response is required. To the extent a response is required, Albertsons denies the
23 allegations in Paragraph 84, except admits that Albertsons operates stores in Washington
24 state.

1 85. Paragraph 85 states legal conclusions to which no response is required. To
2 the extent a response is required, Albertsons denies the allegations in Paragraph 85
3 (including footnote 40).

4 **B. Defendants’ Proposed Transaction Will Eliminate Head-to-Head Competition**
5 **Between Albertsons and Kroger**

6 86. Albertsons denies the allegations in Paragraph 86.

7 87. Albertsons is unable to respond to the allegations in Paragraph 87 in any
8 meaningful way because the phrases “significant competitors,” “much of the United States,”
9 “Supermarkets,” “particularly fierce,” and “Washington communities,” among others, are
10 vague and ambiguous. To the extent a response is required, Albertsons denies the
11 allegations in Paragraph 87, except admits that that Albertsons fiercely competes for
12 consumers with other retailers in Washington state, including, but not limited to, Kroger.

13 88. Albertsons is unable to respond to the allegations in Paragraph 88 in any
14 meaningful way because the term “head-to-head” is vague and ambiguous. To the extent a
15 response is required, Albertsons admits that it operates stores in Washington state under the
16 Albertsons, Safeway, and Haggen banners and that it fiercely competes for consumers with
17 other retailers in Washington state, including, but not limited to, Kroger.

18 89. Albertsons lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations in Paragraph 89, including to the extent they are redacted, and
20 therefore denies the same.

21 90. Albertsons is unable to respond to the allegations in Paragraph 90 in any
22 meaningful way because the phrases “throughout Washington” and “head-to-head,” among
23 others, are vague and ambiguous. To the extent a response is required, Albertsons denies
24 the allegations in Paragraph 90, except admits that Albertsons operates stores in Washington
25 state under the Albertsons, Safeway, and Haggen banners and that Albertsons fiercely
26 competes for consumers with other retailers in Washington state, including, but not limited
to, Kroger, on the basis of price, product quality, product selection, customer service, and

1 loyalty programs, among other things. To the extent the allegations in Paragraph 90 purport
2 to quote from or characterize documents, Albertsons refers to the documents for their
3 complete content and context. Albertsons denies any characterizations inconsistent with
4 the document themselves.

5 91. Albertsons is unable to respond to the allegations in the first sentence of
6 Paragraph 91 in any meaningful way because the terms “head-to-head competition” and
7 “significant benefits” are vague and ambiguous. To the extent a response is required,
8 Albertsons denies the allegations in the first sentence of Paragraph 91 except admits that
9 consumers benefit from competition. Albertsons denies the allegations in the second
10 sentence of Paragraph 91, except admits that it monitors the pricing decisions of many
11 competitors in order to inform its pricing. To the extent the second sentence of Paragraph
12 91 purports to characterize or quote from documents, Albertsons refers to the documents
13 for their complete content and context. Albertsons denies any characterization inconsistent
14 with the documents themselves. Albertsons lacks knowledge or information sufficient to
15 form a belief as to the truth of the allegations in the third sentence of Paragraph 91 and
16 therefore denies the same.

17 92. Albertsons is unable to respond to the allegations in Paragraph 92 in any
18 meaningful way because the phrases “head-to-head competition,” “significant benefits,”
19 and “product offerings and services” are vague and ambiguous. To the extent a response is
20 required, Albertsons lacks knowledge or information sufficient to form a belief as to truth
21 of the allegations in Paragraph 92 and therefore denies the same, except admits that
22 Albertsons fiercely competes for consumers with other retailers, including, but not limited
23 to, Kroger, on the basis of price, product quality, product selection, customer service, and
24 loyalty programs, among other things.

25 93. Albertsons lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations in the first and second sentences of Paragraph 93 and therefore

1 denies the same. Albertsons denies the allegations in the third and fourth sentences of
2 Paragraph 93, except admits that admits that Albertsons and Kroger compete against each
3 other in certain local geographies and that Albertsons fiercely competes for consumers with
4 other retailers, including, but not limited to, Kroger, on the basis of price, product quality,
5 product selection, customer service, and loyalty programs, among other things. To the
6 extent the third and fourth sentences of Paragraph 93 purport to characterize or quote from
7 documents, Albertsons refers to the documents for their complete content and context.
8 Albertsons denies any characterizations inconsistent with the documents themselves.
9 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in the fifth sentence of Paragraph 93, including to the extent they are redacted,
11 and therefore denies the same.

12 94. Albertsons denies the allegations in Paragraph 94.

13 95. Albertsons lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations in the first, second and third sentences of Paragraph 95 and
15 therefore denies the same. Albertsons denies the allegations in the fourth sentence of
16 Paragraph 95, and to the extent the fourth sentence of Paragraph 95 purports to quote from
17 or characterize documents, Albertsons refers to the documents for their complete content
18 and context. Albertsons denies any characterizations inconsistent with the documents
19 themselves.

20 96. Albertsons denies the allegations in Paragraph 96.

21 **C. Defendants' Proposed Transaction Will Likely Result in Store Closures**

22 97. Albertsons denies the allegations in Paragraph 97.

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

25 98. Albertsons denies the allegations in Paragraph 98.

1 99. Albertsons denies the allegations in Paragraph 99, except admits that
2 Albertsons closed a store in the Birchwood neighborhood of Bellingham in March 2016
3 which had initially opened in February 1960.

4 100. Albertsons is unable to meaningfully respond to the allegations in Paragraph
5 100 because the phrases “use restriction” and “more than a small portion” are vague and
6 ambiguous. To the extent a response is required, Albertsons denies the allegations in
7 Paragraph 100, except admits that Albertsons sold the Birchwood store property pursuant
8 to a 2017 agreement and entered into a use restriction with respect to that property in 2018,
9 and refers to the transactional documents for their complete content and context.

10 101. Albertsons lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations in Paragraph 101 and therefore denies to the same.

12 **2. Kroger will have an increased incentive to close stores to reduce union**
13 **participation**

14 102. Albertsons lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations in the first and second sentence of Paragraph 102 and therefore
16 denies the same, except admits that Albertsons negotiates and enters into collective
17 bargaining agreements (“CBAs”) with local unions representing its associates, and that the
18 CBAs typically govern wages, benefits and workplace conditions for covered workers. To
19 the extent the second sentence of Paragraph 102 purports to characterize or quote from
20 documents, Albertsons refers to the documents for their complete content and context.
21 Albertsons denies any characterizations inconsistent with the documents themselves.
22 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
23 third sentence in Paragraph 102 and therefore denies the same.

24 103. Albertsons lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations in Paragraph 103 and therefore denies the same.

1 104. Albertsons lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations in the first and second sentences of Paragraph 104 and therefore
3 denies the same. Albertsons denies the remaining allegations in Paragraph 104.

4 105. Albertsons is unable to meaningfully response to the allegations in
5 Paragraph 105 because the phrases “immediate term” and “travel further,” among others,
6 are vague and ambiguous. To the extent a response is required, Albertsons denies the
7 allegations in Paragraph 105.

8 **D. Defendants’ Proposed Transaction Will Eliminate Aggressive Competition**
9 **from Albertsons**

10 106. Albertsons is unable to respond to the allegations in Paragraph 106 in any
11 meaningful way because the phrases “largest Supermarket,” “by far,” and “almost twice as
12 many” are vague and ambiguous. To the extent a response is required, Albertsons lacks
13 knowledge or information sufficient to form a belief as to the truth of the allegations in
14 Paragraph 106, except admits that Albertsons fiercely competes with other retailers in local
15 geographies, including Washington, and is a thriving company. To the extent the second
16 sentence of Paragraph 106 purports to characterize or quote from documents, Albertsons
17 refers to the documents for their complete content and context. Albertsons denies any
18 characterizations inconsistent with the documents themselves.

19 107. Albertsons is unable to respond to the allegations in Paragraph 107 in any
20 meaningful way because the phrases “in large part” and “local focus” are vague and
21 ambiguous. To the extent a response is required, Albertsons denies the allegations in
22 Paragraph 107, except admits that Albertsons fiercely competes for consumers with other
23 retailers in local geographies on the basis of price, product quality, produce selection,
24 customer service, and loyalty programs, among other things. To the extent the second
25 sentence of Paragraph 107 purports to characterize or quote from documents, Albertsons
26 refers to the documents for their complete content and context. Albertsons denies any
characterizations inconsistent with the documents themselves.

1 108. Albertsons is unable to respond to the allegations in Paragraph 108 in any
2 meaningful way because the terms “local focus” and “diverse array” are vague and
3 ambiguous. To the extent a response is required, Albertsons denies the allegations in the
4 first and second sentences of Paragraph 108, except admits that Albertsons fiercely
5 competes for consumers with other retailers in local geographies, including, but not limited
6 to, Kroger, on the basis of price, product quality, product selection, customer service, and
7 loyalty programs, among other things. To the extent the second sentence of Paragraph 108
8 purports to characterize or quote from documents, Albertsons refers to the documents for
9 their complete content and context. Albertsons denies any characterizations inconsistent
10 with the documents themselves. Albertsons lacks knowledge or information sufficient to
11 form a belief as to the truth of the allegations in the third sentence of Paragraph 108 and
12 therefore denies the same.

13 109. Albertsons denies the allegations in Paragraph 109.

14 **E. Defendants’ Proposed Transaction Will Reduce Competition Between All**
15 **Supermarkets and Increase the Potential For Coordinated Effects**

16 110. Paragraph 110 states legal conclusions to which no response is required. To
17 the extent a response is required, Albertsons denies the allegations in Paragraph 110 and, to
18 the extent the allegations in Paragraph 110 purport to quote from or characterize cases,
19 Albertsons refers to the cases for their complete content and context. Albertsons denies any
20 characterizations inconsistent with the cases themselves.

21 111. Albertsons is unable to respond to the allegations in Paragraph 111 in any
22 meaningful way because the phrases “grocery pricing,” “transparent,” “Supermarkets,” and
23 “scrape,” among others, are vague and ambiguous. To the extent a response is required,
24 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in the first, second, third, and fourth sentences of Paragraph 111 and therefore
26 denies the same, except admits that Albertsons monitors the pricing decisions of many

1 competitors in order to inform its pricing decisions. Albertsons denies the allegations in the
2 final sentence of Paragraph 111.

3 112. Albertsons denies the allegations in the first sentence of Paragraph 112.
4 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
5 remaining allegations of Paragraph 112, including to the extent they are redacted, and
6 therefore denies the same.

7 113. Albertsons lacks knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 113, including to the extent they are redacted, and
9 therefore denies the same.

10 114. Albertsons lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations in the first sentence of Paragraph 114 and therefore denies the
12 same. Albertsons denies the allegations in the second sentence of Paragraph 114, and to the
13 extent the second sentence of Paragraph 114 purports to characterize or quote from
14 documents, Albertsons refers to the documents for their complete content and context.
15 Albertsons denies any characterizations inconsistent with the documents themselves.
16 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in the third sentence of Paragraph 114 and therefore denies the same.

18 115. Albertsons denies the allegations in Paragraph 115.

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

21 116. Paragraph 116 states legal conclusions to which no response is required. To
22 the extent a response is required, Albertsons denies the allegations in Paragraph 116 and, to
23 the extent the allegations in Paragraph 116 purport to quote from or characterize cases,
24 Albertsons refers to the cases for their complete content and context. Albertsons denies any
25 characterizations inconsistent with the cases themselves.
26

1 **A. Entry and Expansion Are Unlikely to Prevent the Proposed Transaction’s**
2 **Potential Harm**

3 117. Albertsons cannot respond to the allegations in Paragraph 117 in any
4 meaningful way as the phrases “existing Supermarkets,” “high barriers,” and “successful
5 Supermarket business,” among others, are vague and ambiguous. To the extent a response
6 is required, Albertsons denies the allegations in Paragraph 117.

7 118. Albertsons lacks knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 118 and therefore denies the same.

9 119. Albertsons cannot respond to the allegations in Paragraph 119 in any
10 meaningful way because the phrases “barriers to entry,” “incumbents,” “use restrictions,”
11 and “suitable space,” among others, are vague and ambiguous. To the extent a response is
12 required, Albertsons lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations in Paragraph 119 and therefore denies the same.

14 120. Albertsons cannot respond to the allegations in the first and third sentences
15 of Paragraph 120 in any meaningful way because the term “high barriers,” among others, is
16 vague and ambiguous. To the extent a response is required, Albertsons lacks knowledge or
17 information sufficient to form a belief as to the truth of the allegations in the first and third
18 sentences of Paragraph 120. Albertsons denies the allegations in the second sentence of
19 Paragraph 120, except admits that opening new stores requires certain efforts and costs
20 which vary based on the particular circumstances and, to the extent the second sentence
21 purports to characterize or quote from documents, Albertsons refers to the documents for
22 their complete content and context. Albertsons denies any characterizations inconsistent
23 with the documents themselves.

24 121. Albertsons denies the allegations in the first sentence of Paragraph 121.
25 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in the second and third sentences of Paragraph 121 and therefore denies the

1 same, except admits that Albertsons operates approximately 215 stores in Washington state.
2 Albertsons denies the remaining allegations in Paragraph 121.

3 **B. There Are No Merger-Specific Efficiencies that May Reverse the Proposed**
4 **Transaction's Potential to Harm Consumers**

5 122. Albertsons denies the allegations in the first sentence of Paragraph 122. The
6 second sentence of Paragraph 122 states legal conclusions to which no response is required.
7 To the extent a response is required, Albertsons denies the allegations in the second sentence
8 of Paragraph 122.

9 **IX. DEFENDANTS' PROPOSED DIVESTITURE**

10 123. Albertsons denies the allegations in the first sentence of Paragraph 123,
11 except admits that Kroger has agreed to a divestiture package which would transfer
12 hundreds of stores (including 124 located in Washington) and other assets to C&S and refers
13 to the divestiture package for its complete content and context. The second sentence of
14 Paragraph 123 states legal conclusions to which no response is required. To the extent a
15 response is required, Albertsons denies the allegations in the second sentence of Paragraph
16 123.

17 124. Albertsons denies the allegations in Paragraph 124, except admits that
18 Kroger has agreed to a divestiture package which would transfer hundreds of stores
19 (including 124 located in Washington) and other assets to C&S and refers to the divestiture
20 package for its complete content and context.

21 125. Albertsons lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations in Paragraph 125 and therefore denies the same.

23 126. Albertsons denies the allegations in Paragraph 126.

24 127. Albertsons denies the allegations in Paragraph 127.

25 128. Albertsons lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations in Paragraph 128 and therefore denies the same.

1 **A. History Shows that C&S Lacks the Incentive to Operate the Divested Assets**
2 **in a Manner that Would Restore the Competition Lost as a Result of the**
3 **Proposed Transaction**

4 129. Albertsons lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations in Paragraph 129 and therefore denies the same.

6 130. Albertsons lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations in Paragraph 130 and therefore denies the same.

8 131. Albertsons denies the allegations in the first sentence of Paragraph 131.
9 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
10 remaining allegations in Paragraph 131 and therefore denies the same.

11 132. Albertsons denies the allegations in Paragraph 132.

12 **B. C&S Lacks the Ability to Successfully Restore the Competition Lost as a**
13 **Result of the Proposed Transaction**

14 133. Albertsons lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations in Paragraph 133 and therefore denies the same.

16 134. Albertsons lacks knowledge or information sufficient to form a belief as to
17 the truth of the allegations in Paragraph 134, including to the extent they are redacted, and
18 therefore denies the same. To the extent that Paragraph 134 characterizes the divestiture
19 package, Albertsons refers to the operative divestiture package for its complete content and
20 context. Albertsons denies any characterizations inconsistent with the documents
21 themselves.

22 135. Albertsons lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations in Paragraph 135 and therefore denies the same.

24 136. Albertsons denies the allegations in Paragraph 136.

25 137. Albertsons lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations in Paragraph 137 and therefore denies the same.

 138. Albertsons cannot respond to the allegations in the first sentence of
Paragraph 138 in any meaningful way because the term “overwhelming majority” is vague

1 and ambiguous. To the extent a response is required, Albertsons denies the allegations in
2 the first sentence of Paragraph 138, except admits that a majority of its associates
3 nationwide and in Washington state are union members. Albertsons lacks knowledge or
4 information sufficient to form a belief as to truth of the allegations in the second sentence
5 of Paragraph 138 and therefore denies the same.

6 139. Albertsons lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations in Paragraph 139 and therefore denies the same.

8 140. Albertsons is unable to meaningfully respond to the allegations in Paragraph
9 140 because the phrase “IT systems,” among others, is vague and ambiguous. To the extent
10 a response is required, Albertsons lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 140 and therefore denies the same, except
12 admits that Albertsons utilizes a variety of information technology systems in the conduct
13 of its business.

14 141. Albertsons lacks knowledge or information sufficient to form a belief as to
15 truth of the allegations in Paragraph 141 and therefore denies the same.

16 142. Albertsons denies the allegations in Paragraph 142, except admits that
17 Kroger has agreed to a divestiture package with C&S which would provide C&S with,
18 among other things, raw customer data, technical support, and maintenance services, and
19 refers to the divestiture package for its complete content and context.

20 143. Albertsons lacks knowledge or information sufficient to form a belief as to
21 truth of the allegations in Paragraph 143 and therefore denies the same.

22 144. Albertsons lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations in the first, second, and third sentences of Paragraph 144 and
24 therefore denies the same, except admits that Albertsons owns private label brands,
25 including O Organics and Lucerne, and that it carried approximately 14,000 unique items
26 under its various private labels in fiscal year 2023. Albertsons lacks knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations in
2 Paragraph 144 and therefore denies the same.

3 145. Albertsons lacks knowledge of information sufficient to form a belief as to
4 the truth of the allegations in Paragraph 145 and therefore denies the same.

5 146. Albertsons denies the allegations in Paragraph 146, except admits that
6 Kroger has agreed to a divestiture package which would transfer to C&S certain private
7 label assets, including “Waterfront Bistro,” “Open Nature,” “Primo Taglio,” “Debi Lilly
8 Design,” and “Ready Meals,” and would license to C&S certain private label assets,
9 including “O Organics” and “Signature,” and refers to the divestiture package for its
10 complete content and context.

11 147. Albertsons lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 147 and therefore denies the same.

13 148. Albertsons denies the allegations in the first sentence of Paragraph 148.
14 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations in the second and third sentences of Paragraph 148 and therefore denies the
16 same, except admits that the divestiture package agreed to by Kroger includes pharmacies
17 and fuel centers, and refers to the divestiture package for its complete content and context.
18 Albertsons lacks knowledge or information sufficient form a belief as to the truth of the
19 allegations in the remaining allegations in Paragraph 148 and therefore denies the same.

20 149. Albertsons denies the allegations in the first sentence of Paragraph 149.
21 Albertsons lacks knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations in Paragraph 149 and therefore denies the same.

23 150. Albertsons is unable to respond to the allegations in the first and second
24 sentences of Paragraph 150 in any meaningful way because the phrases “stakes,”
25 “successful rebanner,” and “poorly executed,” among others, are vague and ambiguous.
26 To the extent a response is required, Albertsons denies the allegations in the first and second

1 sentences of Paragraph 150. Albertsons lacks knowledge or information sufficient to form
2 a belief as to the truth of the remaining allegations in Paragraph 150 and therefore denies
3 the same.

4 151. Albertsons is unable to respond to the allegations in the first sentence of
5 Paragraph 151 in any meaningful way because the phrases “swapping,” “aesthetic
6 branding,” “IT systems,” and “other tasks,” among others, are vague and ambiguous. To
7 the extent a response is required, Albertsons denies the allegations in the first sentence of
8 Paragraph 151, except admits that rebannered a store typically requires certain efforts and
9 costs which may vary based on the particular circumstances. Albertsons denies the
10 remaining allegations in Paragraph 151.

11 **C. Even if C&S Successfully Operates and Rebanners the Divested Stores, the**
12 **Divestiture Will Not Remedy the Anticompetitive Effects of the Proposed**
13 **Transaction**

14 152. Albertsons denies the allegations in the first sentence of Paragraph 152,
15 except admits that Kroger has agreed to a divestiture package which would transfer
16 hundreds of stores (including 124 stores located in Washington) and other assets to C&S
17 and refers to the divestiture package for its complete content and context. The remaining
18 allegations of Paragraph 152 state legal conclusions to which no response is required. To
19 the extent a response is required, Albertsons denies the remaining allegations of Paragraph
20 152.

21 **X. VIOLATION OF THE CONSUMER PROTECTION ACTION, RCW 19.86.060**

22 153. Albertsons repeats and incorporates by reference each and every preceding
23 answer above as if fully set forth herein.

24 154. Paragraph 154 asserts legal conclusions to which no response is required.
25 To the extent a response is required, Albertsons denies the allegations in Paragraph 154.

26 155. Paragraph 155 asserts legal conclusions to which no response is required.
To the extent a response is required, Albertsons denies the allegations in Paragraph 155.

1 156. Paragraph 156 asserts legal conclusions to which no response is required.
2 To the extent a response is required, Albertsons denies the allegations in Paragraph 156.

3 157. Paragraph 157 asserts legal conclusions to which no response is required.
4 To the extent a response is required, Albertsons denies the allegations in Paragraph 157.

5 158. Albertsons denies the allegations in Paragraph 158.

6 **XI. REQUEST FOR RELIEF**

7 1. Albertsons denies that Plaintiff is entitled to any of the relief requested.

8 2. Albertsons denies that judgment should be entered in favor of Plaintiff.

9 3. Albertsons denies that Plaintiff is entitled to any of the relief requested.

10 4. Albertsons denies that Plaintiff is entitled to reasonable costs and attorneys'
11 fees.

12 5. Albertsons denies that Plaintiff is entitled to any other relief.

13 **AFFIRMATIVE DEFENSES**

14 Albertsons asserts the following affirmative defenses:

15 A. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
16 state a claim on which relief can be granted.

17 B. Granting the relief sought is inequitable and contrary to the public interest.

18 C. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
19 allege a plausible relevant product market.

20 D. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
21 allege a plausible geographic market or markets.

22 E. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
23 allege undue share in any plausibly defined relevant market.

24 F. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
25 allege any plausible harm to competition, particularly when accounting for the proposed
26 divestitures.

1 G. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
2 allege any plausible harm to consumers, particularly when accounting for the proposed
3 divestitures.

4 H. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to
5 allege any plausible harm to consumer welfare, particularly when accounting for the
6 proposed divestitures.

7 I. Plaintiff's claims are barred, in whole or in part, because the divestitures
8 will eliminate any potential anticompetitive effects.

9 J. There will be no harm to competition, consumers, or consumer welfare
10 because expansion by existing competitors can be swift, likely, and sufficient.

11 K. There will be no harm to competition, consumers, or consumer welfare
12 because customers have a variety of tools available to ensure that they receive competitive
13 pricing and terms.

14 L. The Merger will be procompetitive and will benefit consumers and
15 employees. It will result in substantial merger-specific efficiencies, including cost
16 synergies, which will allow Albertsons and Kroger to compete more effectively than they
17 can alone against competition from other retailers.

18 M. The relief sought by Plaintiff is unavailable because the injunctive relief
19 sought is overbroad and not tailored to the state-specific harms alleged.

20 N. The relief sought by Plaintiff is unavailable because the extraterritorial
21 application of Washington law is limited by the U.S. Constitution.

22 O. The relief sought by Plaintiff is barred by the U.S. Constitution, including
23 the dormant Commerce Clause and Full Faith and Credit Clause.

24 P. The relief sought by Plaintiff is barred by principles of interstate comity.
25
26

1 Q. To the extent the Merger is authorized by a federal court or by the Federal
2 Trade Commission, Plaintiff's claims are barred under RCW 19.86.170 and/or RCW
3 19.86.920.

4 R. Albertsons reserves the right to assert any other defenses, as they become
5 known to it.

6 **ALBERTSONS' REQUEST FOR RELIEF**

7 Albertsons requests that the Court enter a judgment in its favor as follows:

8 A. The Complaint be dismissed with prejudice;

9 B. None of the Complaint's contemplated relief issue to Washington;

10 C. Award Albertsons its reasonable costs and attorneys' fees, as provided by
11 law; and

12 D. Any and all other relief as the Court may deem just and proper.

13 ///

1 DATED this 10th day of May, 2024.

2 McNAUL EBEL NAWROT &
3 HELGREN PLLC

4 By: s/ Claire Martirosian
5 Daniel M. Weiskopf, WSBA No. 44941
6 Claire Martirosian, WSBA No. 49528
7 600 University Street, Suite 2700
8 Seattle, Washington 98101
9 (206) 467-1816
10 dweiskopf@mcnaul.com
11 cmartirosian@mcnaul.com

12 WILLIAMS & CONNOLLY LLP
13 (ADMITTED *Pro hac vice*)
14 Enu Mainigi, No. 454012 (DC)
15 (emainigi@wc.com)
16 Jonathan Pitt, No. 479765 (DC)
17 (jpitt@wc.com)
18 A. Joshua Podoll, No. 1011743 (DC)
19 (apodoll@wc.com)
20 680 Maine Ave., S.W.
21 Washington, D.C. 20024
22 (202) 434-5000

DEBEVOISE & PLIMPTON LLP
(ADMITTED *Pro hac vice*)
Edward D. Hassi, No. 1026776 (DC)
(thassi@debevoise.com)
Leah S. Martin, No. 1029757 (DC)
(lmartin@debevoise.com)
801 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 383-8000
Michael Schaper, No. 4033486 (NY)
(mschpaer@debevoise.com)
Shannon Rose Selden, No. 4056701 (NY)
(srselden@debevoise.com)
J. Robert Abraham, No. 4935110 (NY)
(jrabraham@debevoise.com)
Morgan Davis, No. 5444161 (NY)
(mdavis@debevoise.com)
66 Hudson Boulevard
New York, NY 10001
(212) 909-6000

DECHERT LLP
(ADMITTED *Pro hac vice*)
Michael G. Cowie, No. 4322338 (DC)
(mike.cowie@dechert.com)
James A. Fishkin, No. 478958 (DC)
(james.fishkin@dechert.com)
1900 K Street N.W.
Washington, DC 20006
(202) 261-3339

23 *Attorneys for Defendants Albertsons Companies, Inc., Albertsons Companies Specialty*
24 *Care, LLC, Albertson's LLC, Albertson's Stores Sub LLC*

