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HONORABLE MARSHALL L. FERGUSON  
CLERK OF COURT  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SUPERIOR COURT OF THE STATE 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

DEFENDANTS THE KROGER CO.  
AND KETTLE MERGER SUB, INC.  
ANSWER AND AFFIRMATIVE  
DEFENSES

Defendants The Kroger Co. and Kettle Merger Sub, Inc. (collectively "Kroger") respectfully submits this Answer in response to the Complaint of Plaintiff the State of Washington ("Washington" or "Plaintiff").

**INTRODUCTION**

Washington challenges Kroger's acquisition of Albertsons by mischaracterizing the scope of the transaction and distorting the competitive landscape Kroger will face after the merger. The Complaint describes a post-transaction world in which Kroger will own more than 300 stores in Washington and face competition from a narrowly defined set of "supermarket" competitors. The world described in the Complaint, however, is pure fiction. In reality, Kroger has agreed to divest its well-established QFC banner, and more QFC and Albertsons stores will

1 be divested in Washington than Kroger owns in the state today—to a strong and sophisticated  
2 buyer: C&S Wholesale Grocers (“C&S”), the nation’s leading grocery wholesaler. Each of the  
3 Complaint’s allegations about the post-merger world—including its claims concerning  
4 competition, competitors, market shares, and concentration—ignores the divestiture package  
5 and the fact that C&S will have the stores and assets it needs to ensure competition across  
6 Washington remains at least as vigorous as it is today.

7 The Complaint also distorts the future competitive landscape by ignoring one of  
8 Defendants’ largest competitors with deep roots in the state: Costco. Kroger and Albertsons  
9 compete against a wide array of grocery competitors—including the “supermarkets” that fall in  
10 the State’s artificially narrow and legally baseless product market, big-box retailers with  
11 extensive grocery offerings like Walmart and Target, specialty and organic grocers like Trader  
12 Joe’s and Sprouts, as well as retailers like Amazon that have both brick-and-mortar grocery  
13 stores and a significant online grocery business. Among all of these options, Kroger’s  
14 customers in Washington shop at Costco more than any other competitor. Yet the Complaint  
15 ignores this market reality and explicitly excludes Costco from its relevant market definition.

16 On October 13, 2022, Kroger entered into an agreement to acquire Albertsons, seeking  
17 to keep pace with an expanding set of competitors, extend its geographic reach, increase its  
18 operating efficiency, and lower its costs. From the outset, Kroger has publicly committed to  
19 reinvest the savings generated by the transaction to lower prices, which will directly benefit  
20 consumers in Washington and across the country. These efficiencies are not just aspirational;  
21 they are supported by Kroger’s track record of lowering prices for consumers after past  
22 acquisitions.

23 Kroger knew, however, that the transaction would be subject to an extensive regulatory  
24 review by the Federal Trade Commission (“FTC”) and the attorneys general of states in which  
25 Kroger and Albertsons both operate. Anticipating that review process, Kroger agreed to  
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1 make—and remains committed to making—significant divestitures, fundamentally changing  
2 the scope of the post-merger landscape. The State, however, jumped the gun and prematurely  
3 abandoned the regulatory review process to file its Complaint, blinding itself to Kroger’s  
4 divestiture proposals and the comprehensive economic analysis supporting Kroger’s divestiture  
5 agreement in favor of the vague and misleading allegations in the Complaint.

6 *First*, the Complaint’s market analysis ignores the extensive divestiture package.  
7 Contrary to the State’s claim that the transaction will “consolidat[e] control over more than 300  
8 Supermarkets in Kroger’s hands” (Compl. ¶ 104), Kroger will never control anywhere near that  
9 many stores in Washington. Instead, Kroger will divest 124 stores—more stores than it owns  
10 in Washington today—maintaining (and even enhancing) competition throughout the state.  
11 Using sophisticated econometric analysis and detailed customer data, Kroger has analyzed  
12 competition between the Defendants by store and by customer location to construct a robust  
13 divestiture package that addresses the precise areas where Defendants’ stores and customers  
14 overlap. In contrast, the cursory market analysis in the Complaint ignores those divestitures  
15 altogether, artificially limits competition to “supermarkets,” fails to identify with any precision  
16 which competitors are considered “supermarkets,” and defines the geographic areas in which  
17 Defendants allegedly compete with vague and contradictory allegations.

18 Instead of offering a cogent market analysis accounting for C&S’s role in the post-  
19 merger world, the Complaint frames the divestiture as irrelevant and bound to fail, citing a rare  
20 instance in which a divestiture buyer went bankrupt. But C&S is not a mom-and-pop operation  
21 or a risky private equity venture; it is a sophisticated, well-capitalized company with deep  
22 industry experience—the eighth-largest privately held company in the United States, with  
23 nearly \$35 billion in annual revenue.<sup>1</sup> And the divestiture package that C&S will acquire is not

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25 <sup>1</sup> *America’s Largest Private Companies*, FORBES, Mar. 2023,  
<https://www.forbes.com/lists/largest-private-companies/?sh=3d05a802bac4>

1 made up of empty storefronts. In addition to the physical stores, it includes all the assets and  
2 personnel C&S will need to compete, including distribution centers to supply the divested  
3 stores, all employees working at the divested stores and distribution facilities, the well-  
4 established QFC and Haggen banners, the QFC division headquarters, and the QFC division  
5 team, as well as several private label brands and the transition services needed to ensure the  
6 QFC banner thrives under C&S's ownership. With these assets and this support, C&S will  
7 immediately be a vigorous competitor with experienced management, a firmly established local  
8 banner, and a retail footprint in Washington virtually equal to Kroger's today.

9 *Second*, the Complaint's view of the relevant market is disassociated from the real  
10 world. Kroger and Albertsons operate in a fiercely competitive and rapidly evolving retail  
11 marketplace. Consumers increasingly purchase their groceries from a broad range of retailers,  
12 including club stores like Costco, big-box stores such as Walmart and Target, and competitors  
13 like Amazon (which owns Whole Foods and Amazon Fresh and sells groceries through  
14 Amazon.com). The Complaint's relevant product market artificially excludes club stores,  
15 entirely ignoring competition from massive competitors like Costco, Compl. ¶ 23 n.39, the third  
16 largest retailer in the world.<sup>2</sup> Yet Costco, founded and headquartered in Washington, is one of  
17 Albertsons' and Kroger's leading competitors throughout the state. Indeed, Kroger's internal  
18 documents show that customers at both of Kroger's banners in Washington—QFC and Fred  
19 Meyer—spend more money at Costco for grocery items than they do at any other competitor.

20 *Third*, the Complaint also fails to define coherent geographic areas in which to assess  
21 the competitive effects of the transaction. The Complaint at first claims that Kroger stores draw  
22 customers from a "2-2.5 mile radius." Compl. ¶ 74. Only two paragraphs later, it defines the  
23 market in broader terms, claiming that geographic markets in Washington encompass entire  
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25 <sup>2</sup> *How Costco became the king of bulk buying after starting out selling goods only to*  
26 *businesses out of an old airplane hangar*, BUSINESS INSIDER, Aug. 22, 2023,  
<https://www.businessinsider.com/founding-history-of-costco>.

1 cities, groupings of multiple cities, and sections of large cities. Compl. ¶ 76. But apart from  
2 listing these areas, the Complaint offers no facts or data to indicate why such “city areas” reflect  
3 the service areas of Washington grocery stores or how far customers in the state travel to buy  
4 groceries from the Defendants and their competitors.

5 In sum, the Complaint alleges that the transaction is likely to harm competition in  
6 Washington, but it can only reach that “conclusion” by distorting the actual marketplace in  
7 which Kroger will compete. The harm imagined by the State is fanciful, not only because it  
8 ignores one of Washington’s largest grocery competitors, but also because it pretends that the  
9 divestiture package and C&S do not exist. Rather than harming competition, the transaction  
10 will facilitate C&S’s entry into Washington under the well-known QFC and Haggen banners  
11 with over 120 stores, while enabling Kroger to reduce prices at the Albertsons stores it acquires.  
12 For these and other reasons, the State’s challenge to Kroger’s acquisition of Albertsons lacks  
13 merit and should be rejected.

#### 14 **GENERAL RESPONSE TO PLAINTIFF’S ALLEGATIONS**

15 Kroger generally denies each and every allegation of the Complaint not expressly  
16 admitted. To the extent Kroger incorporates Washington’s headings into this Answer, Kroger  
17 does so for organizational purposes only and does not admit any of the allegations in  
18 Washington’s headings. To the extent allegations exist in any headings that Kroger does not  
19 incorporate into this Answer, Kroger denies the allegations in said headings. Kroger reserves  
20 the right to amend its Answer consistent with the facts discovered in the case.

#### 21 **SPECIFIC RESPONSES TO PLAINTIFF’S ALLEGATIONS**

22 In response to the allegations in Plaintiff’s Complaint, Kroger hereby specifically  
23 answers the Complaint as follows:

#### 24 **I. NATURE OF THE COMPLAINT**

25 1. Kroger denies that its proposed acquisition of Albertsons will harm competition  
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1 or the public interest or is a violation of any laws. Kroger admits that Plaintiff has sued  
2 Albertsons and Kroger to enjoin the Proposed Transaction.

3 2. Kroger states that to the extent the allegations in Paragraph 2 characterize or  
4 describe statutes or regulations, such sources speak for themselves and denies any  
5 characterization or description that is inconsistent therewith. If a response is deemed required,  
6 Kroger denies the allegations.

7 3. Kroger admits that Albertsons operates in Washington under the Albertsons,  
8 Haggen, and Safeway banners, and further admits that Kroger operates in Washington under  
9 the Fred Meyer and QFC banners. Kroger states that the term “supermarket” in the allegations  
10 is vague and ambiguous and denies the remaining allegations in Paragraph 3 on that basis.

11 4. Kroger admits that Albertsons is one amongst many entities that Kroger  
12 competes with in Washington. Kroger states that the remaining allegations in the first sentence  
13 of Paragraph 4, including the terms “supermarket” and “head-to-head,” are vague and  
14 ambiguous and denies these allegations on that basis. Kroger denies the remaining allegations  
15 contained in Paragraph 4.

## 16 II. INTRODUCTION

17 5. Kroger states that the allegations in Paragraph 5, including the terms  
18 “supermarkets” and “full-service,” are vague and ambiguous and denies these allegations on  
19 that basis. Kroger further states that Plaintiff’s selective quotation of a publicly available  
20 document in Paragraph 5 is taken out of context, denies any characterization or description that  
21 is inconsistent therewith, and refers the Court to the document itself for its full context. Kroger  
22 otherwise denies the allegations in Paragraph 5.

23 6. Kroger admits the price of groceries has risen in recent years due to inflation and  
24 that robust competition with respect to the sale of groceries is important, but Kroger states that  
25 the term “supermarkets” is vague and ambiguous and otherwise denies the allegations in  
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1 sentence 1 of Paragraph 6 on that basis. Kroger further responds that Plaintiff's selective  
2 quotations of a Kroger document in sentences 2 and 3 of Paragraph 6 are taken out of context  
3 and misleading, denies any characterization or description that is inconsistent therewith, and  
4 refers the Court to the document itself for its full context. Kroger otherwise denies the  
5 allegations in Paragraph 6.

6 7. Kroger admits that Albertsons is one amongst many entities that Kroger  
7 competes with in Washington, but states that the term "head-to-head" is vague and ambiguous  
8 and denies the remaining allegations in sentence 1 of Paragraph 7 on that basis. Kroger admits  
9 that it checks prices of products offered by competing retailers, that price is only one dimension  
10 of competition, and that Kroger competes by striving to offer product variety and quality and  
11 customer service. Kroger otherwise denies the allegations contained in Paragraph 7.

12 8. Kroger denies the allegations contained in Paragraph 8.

13 9. Kroger denies the allegations in sentence 1 of Paragraph 9. Kroger admits that  
14 it may own multiple stores in some Washington communities post-Transaction, as it does today,  
15 but otherwise denies the allegations in sentence 2 of Paragraph 9. Kroger further responds that  
16 Plaintiff's selective quotation of Kroger's document in sentence 3 of Paragraph 9 is taken out  
17 of context and misleading, denies any characterization or description that is inconsistent  
18 therewith, denies these allegations on this basis, and refers the Court to the document itself for  
19 full context. Kroger denies the allegations in sentence 4 of Paragraph 9. Kroger admits that it  
20 and Albertsons will no longer be separate entities if the Proposed Transaction is consummated,  
21 but otherwise denies the allegations in sentence 5 of Paragraph 9. Kroger denies the allegations  
22 in sentence 6 of Paragraph 9.

23 10. Kroger lacks knowledge or information sufficient to form a belief about the truth  
24 or falsity of Plaintiff's allegations in sentences 1 and 2 of Paragraph 10 to the extent they relate  
25 to Albertsons and on that basis denies these allegations. Kroger denies the remaining  
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1 allegations in sentences 1 and 2 of Paragraph 10.

2 11. Kroger denies the allegations in sentence 1 of Paragraph 11. Kroger lacks  
3 knowledge or information sufficient to form a belief about the truth or falsity of the allegations  
4 in sentences 2 through 3 of Paragraph 11 to the extent they relate to Albertsons, and on that  
5 basis denies these allegations.

6 12. Kroger admits that on September 8, 2023, it signed an Asset Purchase  
7 Agreement and Transition Services Agreement with Albertsons and C&S Wholesale Grocers,  
8 LLC (“C&S”) that includes the divestiture of at least 413 stores nationwide to C&S, updated  
9 and expanded to 579 stores on April 22, 2024 in an Amended and Restated Asset Purchase  
10 Agreement with Albertsons and C&S (hereinafter the “Divestiture Agreement”). Kroger lacks  
11 knowledge or information sufficient to form a belief about the truth or falsity of the other  
12 allegations in sentences 3 and 4 of Paragraph 12 to the extent they relate to C&S and on that  
13 basis denies these allegations. Kroger otherwise denies the allegations in Paragraph 12.

14 13. Kroger denies the allegations in the first sentence of Paragraph 13. Kroger lacks  
15 knowledge or information sufficient to form a belief about the truth or falsity of the allegations  
16 in sentences 2 through 5 of Paragraph 13 to the extent they relate to Albertsons or Haggen, and  
17 on that basis denies these allegations. Kroger further states that Plaintiff’s selective quotations  
18 of publicly available documents in Paragraph 13 are taken out of context, denies any  
19 characterization or description that is inconsistent therewith, and refers the Court to the  
20 documents themselves for their full context.

21 14. Kroger admits that, pursuant to the Divestiture Agreement, 579 stores (over one  
22 fifth of which are located in Washington) would be divested to C&S across 17 states, along  
23 with various other assets that will enable C&S to successfully compete post-transaction  
24 including, among other things, pharmacies and fuel centers, distribution centers, various store  
25 banners including Washington-based QFC and Haggen, and private labels. Kroger denies the  
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1 remaining allegations contained in Paragraph 14.

2 15. Kroger admits that Plaintiff has filed its complaint and seeks to enjoin the  
3 Proposed Transaction. Kroger denies that the Proposed Transaction would lessen competition  
4 in any relevant market or otherwise violates RCW 19.86.060 or any antitrust law, or that  
5 Plaintiff is entitled to any relief.

### 6 III. JURISDICTION AND VENUE

7 16. Kroger admits that Plaintiff has filed its complaint under RCW 19.86.

8 17. The first sentence of Paragraph 17 contains legal conclusions to which no  
9 response is required. If a response is deemed required, Kroger admits it is subject to the  
10 personal jurisdiction of this Court. Kroger lacks knowledge or information sufficient to form a  
11 belief about the truth or falsity of Plaintiff's allegations in Paragraph 17 to the extent they relate  
12 to Albertsons. Kroger admits that it operates retail stores across Washington, including  
13 marketing, transporting, storing, and selling groceries as well as other products at locations  
14 across Washington, that it employs Washington workers, and that it engages in business with  
15 Washington residents and business entities, but states that the term "retail supermarkets" is  
16 vague and ambiguous, and denies the remaining allegations in sentence 2 of Paragraph 17 on  
17 that basis. Kroger otherwise denies the allegations in Paragraph 17.

18 18. Paragraph 18 contains legal conclusions to which no response is required. If a  
19 response is deemed required, Kroger denies the allegations in Paragraph 18, except Kroger  
20 admits that it operates stores in King County.

### 21 IV. THE PARTIES AND PROPOSED TRANSACTION

#### 22 A. Plaintiff

23 19. Kroger admits the allegations contained in Paragraph 19.

24 20. The allegations in Paragraph 20 describing the charge of the Office of the  
25 Attorney General and Washington's sovereign interest are legal conclusions not subject to  
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1 admission or denial. Kroger states that to the extent Paragraph 20 characterizes or describes  
2 states constitutions or statutes, such sources speak for themselves and denies any  
3 characterization or description that is inconsistent therewith.

4 21. The allegations in Paragraph 21 concerning the State’s sovereign interest are  
5 legal conclusions not subject to admission or denial. Kroger notes that to the extent the  
6 allegations in Paragraph 21 characterize or describe statutes or regulations, such sources speak  
7 for themselves and denies any characterization or description that is inconsistent therewith.

8 22. Kroger admits that the Attorney General has issued three Civil Investigative  
9 Demands and that Kroger has produced to Washington documents and other data and  
10 information in response, and that Washington also has access to additional documents and data  
11 produced by Kroger to the Federal Trade Commission. Kroger otherwise lacks knowledge or  
12 information sufficient to form a belief as to the truth or falsity of the remaining allegations in  
13 Paragraph 22 and therefore denies the allegations.

14 **B. Defendants**

15 23. Kroger states that the allegations in sentence 1 of Paragraph 23 are vague and  
16 ambiguous, including the term “national supermarket companies,” and on that basis denies the  
17 allegations. Kroger admits that as of October 2022, Kroger and Albertsons together employed  
18 over 710,000 workers and operated 4,996 grocery stores, 66 distribution centers, 3,972  
19 pharmacies, 52 manufacturing plants, and 2,015 fuel centers in 48 states and the District of  
20 Columbia, and that the Proposed Transaction would allow them to serve 85 million households  
21 for a combined annual revenue in excess of \$210 billion. Kroger otherwise denies any  
22 remaining allegations in Paragraph 23.

23 24. Kroger states that the allegations in sentence 1 of Paragraph 24 are vague and  
24 ambiguous including the terms “supermarket chains” and “footprint” and on that basis denies  
25 the allegations. Kroger admits that it and Albertsons operate over 300 grocery stores combined  
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1 within Washington, including approximately 194 within the Seattle-Tacoma-Bellevue MSA.

2 **1. Albertsons**

3 25. Kroger lacks knowledge or information sufficient to form a belief about the truth  
4 or falsity of the allegations in Paragraph 25.

5 26. Kroger lacks knowledge or information sufficient to form a belief about the truth  
6 or falsity of the allegations in Paragraph 26.

7 27. Kroger lacks knowledge or information sufficient to form a belief about the truth  
8 or falsity of the allegations in Paragraph 27.

9 28. Kroger lacks knowledge or information sufficient to form a belief about the truth  
10 or falsity of the allegations in Paragraph 28.

11 29. Kroger admits that it acquired Smith's Food and Drug in 1999. Kroger lacks  
12 knowledge or information sufficient to form a belief about the truth or falsity of Plaintiff's  
13 allegations in Paragraph 29 to the extent they relate to Albertsons or Smith's Food and Drug  
14 (prior to its acquisition by Kroger in 1999), and on that basis denies these allegations. Kroger  
15 further states that Plaintiff's selective references to publicly available documents in Paragraph  
16 29 are taken out of context, denies any characterization or description that is inconsistent  
17 therewith, and refers the Court to the documents themselves for their full context.

18 30. Kroger lacks knowledge or information sufficient to form a belief about the truth  
19 or falsity of Plaintiff's allegations in Paragraph 30 as they relate to Albertsons, and on that basis  
20 denies the allegations. Kroger further states that Plaintiff's selective references to publicly  
21 available documents in Paragraph 30 are taken out of context, denies any characterization or  
22 description that is inconsistent therewith, and refers the Court to the documents themselves for  
23 their full context.

24 31. Kroger admits that Albertsons purchased Safeway in 2015. Kroger lacks  
25 knowledge or information sufficient to form a belief about the truth or falsity of Plaintiff's  
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1 remaining allegations in Paragraph 31 as they relate to Albertsons, and on that basis denies  
2 these allegations. Kroger further states that Plaintiff's selective references to publicly available  
3 documents in Paragraph 31 are taken out of context, denies any characterization or description  
4 that is inconsistent therewith, and refers the Court to the documents themselves for their full  
5 context.

6 32. Kroger lacks knowledge or information sufficient to form a belief about the truth  
7 or falsity of Plaintiff's allegations in Paragraph 32, and on that basis denies the allegations.  
8 Kroger further states that Plaintiff's selective references to publicly available documents in  
9 Paragraph 32 are taken out of context, denies any characterization or description that is  
10 inconsistent therewith, and refers the Court to the documents themselves for their full context.

11 33. Kroger lacks knowledge or information sufficient to form a belief about the truth  
12 or falsity of Plaintiff's allegations in Paragraph 33 as they relate to Albertsons or Haggen, and  
13 on that basis denies these allegations. Kroger further states that Plaintiff's selective quotations  
14 of publicly available documents in Paragraph 33 are taken out of context, denies any  
15 Characterization or description that is inconsistent therewith, and refers the Court to the  
16 documents themselves for their full context.

17 34. Kroger lacks knowledge or information sufficient to form a belief about the truth  
18 or falsity of Plaintiff's allegations in Paragraph 34 as they relate to Haggen, and on that basis  
19 denies these allegations. Kroger further states that Plaintiff's selective quotations of publicly  
20 available documents in Paragraph 34 are taken out of context, denies any characterization or  
21 description that is inconsistent therewith, and refers the Court to the documents themselves for  
22 their full context.

23 35. Kroger lacks knowledge or information sufficient to form a belief about the truth  
24 or falsity of Plaintiff's allegations in Paragraph 35 as they relate to Albertsons and Haggen, and  
25 on that basis denies these allegations.

1           36. Kroger admits that Albertsons operates in Washington under Albertsons,  
2 Hagen and Safeway banners but Kroger otherwise lacks knowledge or information sufficient  
3 to form a belief about the truth or falsity of Plaintiff's allegations in Paragraph 36 as they relate  
4 to Albertsons, and on that basis denies these allegations.

5                           **2. Kroger**

6           37. Kroger admits the allegations in Paragraph 37.

7           38. Kroger admits the allegations in sentences 1 and 2 of Paragraph 38, and further  
8 admits that it acquired Fred Meyer in 1999, that at that time Kroger operated approximately  
9 1,400 retail stores in the Midwest and South, and that the acquisition of Fred Meyer enabled  
10 Kroger to expand to new geographies. Kroger further states that Plaintiff's selective quotations  
11 of publicly available documents in Paragraph 38 are taken out of context, denies any  
12 characterization or description that is inconsistent therewith, and refers the Court to the  
13 documents themselves for their full context.

14           39. Kroger admits the allegations in Paragraph 39.

15                           **3. Kettle Merger Sub**

16           40. Kroger admits the allegations in Paragraph 40.

17                           **C. Defendants' Proposed Transaction**

18           41. Kroger admits the allegations in Paragraph 41.

19           42. Kroger lacks sufficient knowledge or information necessary to admit or deny the  
20 allegations in Paragraph 42, and therefore denies the allegations.

21           43. Kroger lacks sufficient knowledge or information necessary to admit or deny the  
22 allegations in Paragraph 43, and therefore denies the allegations.

23           44. Kroger lacks sufficient knowledge or information necessary to admit or deny the  
24 allegations in Paragraph 44, and therefore denies the allegations.

25           45. Kroger denies the allegations in sentence 1 of Paragraph 45. Kroger further  
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1 responds that Plaintiff's selective quotations of uncited Kroger documents in sentences 2 and 3  
2 of Paragraph 45 are taken out of context and are misleading, and refers the Court to the  
3 documents themselves for their full context. Kroger lacks knowledge or information sufficient  
4 to form a belief about the truth or falsity of Plaintiff's allegations in sentences 1 and 4 through  
5 6 of Paragraph 45 to the extent they relate to Albertsons, and on that basis denies these  
6 allegations.

## 7 **V. OVERVIEW OF THE SUPERMARKET INDUSTRY**

### 8 **A. Retail Grocery Stores**

9 46. Kroger admits that a range of stores sell food and grocery products to consumers,  
10 which include but are not limited to smaller and larger retailers, club stores, dollar stores, and  
11 specialty food stores. Kroger denies the remaining allegations in Paragraph 46, including the  
12 footnote thereto.

13 47. Kroger responds that the allegations in sentences 1, 4, and 5 of Paragraph 47,  
14 including the terms "large national supermarket companies" and "Supermarket companies" and  
15 "supermarket location," are vague and ambiguous, and that Kroger lacks information sufficient  
16 to form a belief as to the truth or falsity of the allegations as to companies other than Kroger,  
17 and on these bases denies the allegations. Kroger admits that Albertsons operates the  
18 Albertsons, Haggen, and Safeway banners of grocery stores within Washington, and that  
19 Kroger operates the Fred Meyer and QFC banners of grocery stores in Washington.

20 48. Kroger states that the allegations in Paragraph 48, including what "banner(s)" it  
21 refers to, are vague and ambiguous, and that Kroger lacks knowledge or information sufficient  
22 to form a belief about the truth or falsity of Plaintiff's allegations in Paragraph 48 to the extent  
23 they relate to third parties, and on these bases denies these allegations.

24 49. Kroger states that the allegations in Paragraph 49, including the terms  
25 "supermarket chain," "management structures," and "arrangements with suppliers" are vague  
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1 and ambiguous, and that Kroger lacks knowledge or information sufficient to form a belief  
2 about the truth or falsity of Plaintiff's allegations in Paragraph 49 to the extent they relate to  
3 third parties, and on these bases denies the allegations.

4 50. Kroger states that the allegations in Paragraph 50, including the term  
5 "Supermarket parent companies" are vague and ambiguous and that Kroger lacks knowledge  
6 or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 as  
7 they relate to other companies including Albertsons, and on these bases denies the allegations  
8 in sentences 1 through 4 of Paragraph 50. Kroger further lacks knowledge or information  
9 sufficient to form a belief as to the truth or falsity of the redacted allegations in sentence 5 of  
10 Paragraph 50 and on that basis denies these allegations. Kroger admits that it will occasionally  
11 convert a store from one banner to another, and Kroger further admits that this process is  
12 sometimes referred to as "rebranding." Kroger admits that rebranding may require financial  
13 investment over a period of time, that changes to signage are expected, and that a company may  
14 choose as a business decision to make some of the other changes listed in sentence 3 of  
15 Paragraph 50, but these are not "requirements," and Kroger otherwise denies the allegations in  
16 sentences 2 and 3 of Paragraph 50. Kroger states that on rare occasions a store may close  
17 temporarily in connection with rebranding but otherwise denies the allegations in sentence 4  
18 of Paragraph 50.

19 51. Kroger responds that the allegation in sentence 1 of Paragraph 51, including the  
20 term "Supermarket companies," is vague and ambiguous, and that Kroger lacks information  
21 sufficient to form a belief as to the truth or falsity of the allegations as to companies other than  
22 Kroger, and on these bases denies the allegations. Kroger admits that it has a national real  
23 estate team whose responsibilities include selecting sites for new stores and building them out  
24 and that it invests substantially in opening, expanding, or remodeling grocery stores. Kroger  
25 lacks knowledge or information sufficient to form a belief about the truth or falsity of Plaintiff's  
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1 allegations in sentences 2 and 3 of Paragraph 51 to the extent they relate to Albertsons or are  
2 redacted and on that basis denies these allegations.

3 **B. Supermarket Operations**

4 52. Kroger responds that the allegations in Paragraph 52, including the terms  
5 “Supermarkets” and “Supermarket companies” and “competitive advantage,” are vague and  
6 ambiguous, and that Kroger lacks information sufficient to form a belief as to the truth or falsity  
7 of the allegations as to companies other than Kroger and on these bases denies the allegations.  
8 Kroger admits that it sources a wide range of products from many different suppliers as alleged  
9 in sentences 1 and 3 of Paragraph 52. Kroger denies any remaining allegations in Paragraph 52.

10 53. Kroger responds that the allegations in Paragraph 53, including the terms  
11 “Supermarkets” and “Supermarket companies,” are vague and ambiguous, and that Kroger  
12 lacks information sufficient to form a belief as to the truth or falsity of the allegations as to  
13 companies other than Kroger and on these bases denies the allegations. Kroger admits that it  
14 sells products from certain wholly-owned brands known as “private labels,” that Kroger’s  
15 private label products may be manufactured either by Kroger or by a third party, that Kroger  
16 advertises and promotes its private label brands. Kroger admits that some private labels have  
17 developed significant name-recognition and brand equity. Kroger admits that its Private  
18 Selection, Simple Truth, Kroger Brand, and Home Chef private label brands each have one  
19 billion dollars in sales or more. Kroger lacks knowledge or information sufficient to form a  
20 belief about the truth or falsity of Plaintiff’s remaining allegations in Paragraph 53 to the extent  
21 they relate to Albertsons and on that basis denies these allegations.

22 54. Kroger responds that the allegations in Paragraph 54, including the term  
23 “supermarkets,” are vague and ambiguous, and that Kroger lacks information sufficient to form  
24 a belief as to the truth or falsity of the allegations as to companies other than Kroger and on  
25 these bases denies the allegations. Kroger admits that the majority of its grocery transactions  
26



1 take place in store, that Kroger also sells products online, and that Kroger uses proprietary  
2 mobile and online applications as well as third-party services such as Instacart to offer pickup  
3 and delivery of products to customers. Kroger otherwise denies the allegations in Paragraph  
4 54, including that online grocery sales are necessarily tied to in-store operations.

5 55. Kroger states that the allegations in sentence 1 of Paragraph 55, including the  
6 terms “full-service supermarkets” “labor-intensive” and “supermarket companies,” are vague  
7 and ambiguous and denies these allegations on that basis. Kroger admits that training of its  
8 associates is important to supporting its customers’ in-person shopping experience and that  
9 Kroger spent over a hundred million dollars in associate training and development in 2021.  
10 Kroger states that Plaintiff’s selective references to publicly available documents in Paragraph  
11 55 are taken out of context, denies any characterization or description that is inconsistent  
12 therewith, and refers the Court to the documents themselves for their full context. To the extent  
13 that the allegations contained in Paragraph 55 relate to Albertsons and/or third parties, Kroger  
14 lacks knowledge or information sufficient to form a belief as to the truth of these allegations  
15 and therefore denies these allegations. Kroger otherwise denies the allegations in Paragraph  
16 55.

17 **C. Supermarket Pharmacies**

18 56. Kroger states that the allegation in sentence 1 of Paragraph 56, including the  
19 term “supermarkets,” is vague and ambiguous and on that basis denies the allegations. Kroger  
20 admits that many retailers that also sell groceries operate pharmacies within their stores. Kroger  
21 further admits that its pharmacy customers tend to spend more on their visits than non-pharmacy  
22 customers but otherwise denies the allegations in the last sentence of Paragraph 56.. Kroger  
23 lacks knowledge or information sufficient to form a belief about the truth or falsity of Plaintiff’s  
24 allegations in sentences 2 and 3 of Paragraph 56 to the extent they relate to Albertsons or any  
25 third parties and on that basis denies these allegations.

1           57. Kroger states that the allegation in sentences 1 and 4 of Paragraph 57, including  
2 the terms “operational complexities,” “supermarket operators,” and “supermarkets,” are vague  
3 and ambiguous and on that basis denies the allegations. Kroger admits that operating a  
4 pharmacy requires certain state and federal licenses and employees with certain qualifications.  
5 Kroger admits that it employs approximately 24,000 healthcare professionals company-wide.  
6 Kroger lacks knowledge or information sufficient to form a belief about the truth or falsity of  
7 Plaintiff’s remaining allegations in sentence 4 of Paragraph 57 to the extent they relate to  
8 Albertsons and on that basis denies these allegations. Kroger admits that operating its  
9 pharmacies involves procurement through separate supply chains than those used for  
10 procurement of other products it sells, including negotiations with drug manufacturers to  
11 procure prescription drugs. Kroger denies that it negotiates with PBMs to secure adequate  
12 supply of prescription drugs and to obtain them at affordable prices. Kroger further lacks  
13 knowledge or information sufficient to form a belief about the truth or falsity of Plaintiff’s  
14 allegations in sentence 5 of Paragraph 57 in relation to third parties, including the vague and  
15 undefined term “supermarkets,” and on that basis denies these allegations.

16                   **D. Supermarket Fuel Centers**

17           58. Kroger states that the allegations in the first two sentences of Paragraph 58,  
18 including the term “supermarkets,” are vague and ambiguous and on that basis denies these  
19 allegations. Kroger lacks knowledge or information sufficient to form a belief about the truth  
20 or falsity of Plaintiff’s allegations in sentence 3 of Paragraph 58 to the extent they relate to  
21 Albertsons or are redacted and on that basis denies these allegations. Kroger further states that  
22 Plaintiff’s selective quotation of Kroger’s document in Paragraph 58 is taken out of context and  
23 refers the Court to the document itself for full context.

24           59. Kroger denies that fuel center operations are like pharmacy operations or that  
25 they require operational expertise and specialized labor. Kroger admits that fuel centers require  
26

1 fuel-specific infrastructure.

2 **E. Supermarket Analytics**

3 60. Kroger states that the allegations in Paragraph 60, including the terms “these  
4 business lines” and “modern supermarket companies,” are vague and ambiguous and denies the  
5 allegations in Paragraph 60 on that basis. Kroger further states that it lacks knowledge or  
6 information sufficient to form a belief about the truth or falsity of Plaintiff’s allegations in  
7 Paragraph 60 to the extent they relate to unidentified third parties and on that basis denies these  
8 allegations.

9 61. Kroger states that the allegation in sentence 1 of Paragraph 61, including what  
10 is meant by “[t]hese analytics departments,” is vague and ambiguous, and that Kroger lacks  
11 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
12 with respect to parties other than Kroger and on these bases denies the allegation. Kroger  
13 further lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
14 redacted allegations in sentence 4 of Paragraph 61 and on that basis denies these allegations.  
15 Kroger admits the remaining allegations in Paragraph 61.

16 62. The allegation in Paragraph 62, including what is meant by “these analytic  
17 businesses,” is vague and ambiguous, and Kroger denies the allegation on that basis.

18 **VI. RELEVANT MARKETS**

19 63. The allegations in Paragraph 63 constitute characterization of a statute not  
20 subject to admission or denial. Such sources speak for themselves, and Kroger denies any  
21 characterization or description that is inconsistent therewith.

22 64. The allegations in Paragraph 64 constitute characterizations of statutes, case law,  
23 and legal conclusions not subject to admission or denial. Such sources speak for themselves,  
24 and Kroger denies any characterization or description that is inconsistent therewith.

25 65. The allegations in Paragraph 65 constitute descriptions of statutes and case law,  
26

1 and legal conclusions not subject to admission or denial. Such sources speak for themselves  
2 and Kroger denies any characterization or description that is inconsistent therewith.

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

5 66. Kroger denies the allegations in Paragraph 66.

6 67. Kroger denies that Plaintiff's definition of "Supermarket" in Paragraph 67  
7 defines a relevant antitrust market, or any economically meaningful market or set of  
8 competitors.

9 68. Kroger admits that it provides a broad array of products and services at its stores,  
10 but Kroger states that the allegations in sentences 1 and 2 of Paragraph 68, including the term  
11 "Supermarkets," are vague and ambiguous and that Kroger lacks knowledge or information  
12 sufficient to form a belief about the truth or falsity of Plaintiff's allegations in sentences 1 and  
13 2 of Paragraph 68 to the extent they relate to Albertsons or other third parties, and on these  
14 bases denies the allegations. Kroger states that Plaintiff's selective quotation of Kroger's  
15 document in Paragraph 68 is taken out of context and refers the Court to the document itself for  
16 full context. Kroger admits that in 2020, its average store size was approximately 65,000 square  
17 feet, but Kroger states that it lacks knowledge or information sufficient to form a belief about  
18 the truth or falsity of Plaintiff's remaining allegations in sentence 4 of Paragraph 68 to the extent  
19 they relate to Albertsons or to any representations by JP Morgan in an uncited, nonpublic report  
20 and on that basis denies these allegations.

21 69. Kroger denies the allegations in Paragraph 69.

22 70. Kroger lacks knowledge or information sufficient to form a belief about the truth  
23 or falsity of Plaintiff's allegations in Paragraph 70 and on that basis denies these allegations.

24 71. Kroger states that Plaintiff's selective quotations of publicly available  
25 documents in Paragraph 71 are taken out of context and misleading, denies any characterization  
26

1 or description that is inconsistent therewith, and refers the Court to the documents themselves  
2 for their full context.

3 72. Kroger admits that club stores and dollar stores sell food and grocery products  
4 but otherwise denies the allegations in Paragraph 72.

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

6 73. Kroger admits that consumers may shop for groceries near to where the  
7 consumers live, study or work, but otherwise denies the allegations in sentence 1 of Paragraph  
8 73. Kroger responds that the allegations in sentence 2 of Paragraph 73, including the term  
9 “competition for Supermarkets,” are vague and ambiguous and on that basis denies these  
10 allegations.

11 74. Kroger lacks knowledge or information sufficient to form a belief about the truth  
12 or falsity of Plaintiff’s allegations in sentences 1 and 2 of Paragraph 74 as they relate to  
13 Albertsons and therefore denies the allegations. Kroger further states that Plaintiff’s selective  
14 quotations of publicly available documents in Paragraph 74 are taken out of context, denies any  
15 characterization or description that is inconsistent therewith, and refers the Court to the  
16 documents themselves for their full context. Kroger admits the remaining allegations in  
17 Paragraph 74.

18 75. The allegations in Paragraph 75 constitute characterizations of case law and  
19 legal analyses and/or conclusions not subject to admission or denial. Such sources speak for  
20 themselves, and Kroger denies any characterization or description that is inconsistent therewith.

21 76. Plaintiff’s allegations in sentence 1 of Paragraph 76, including the term “city  
22 area,” are vague and ambiguous and on that basis Kroger denies these allegations. Kroger  
23 denies the remaining allegations in Paragraph 76.

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

25 77. The allegations in Paragraph 77 constitute characterizations of case law and  
26

1 legal analyses and/or conclusions not subject to admission or denial. Such sources speak for  
2 themselves, and Kroger denies any characterization or description that is inconsistent therewith.

3 78. Kroger denies the allegations in Paragraph 78.

4 **A. Defendants' Proposed Transaction Is Presumptively Unlawful**

5 79. The allegation in Paragraph 79 constitutes a legal conclusion that is not subject  
6 to admission or denial. To the extent a response is required, Kroger denies the allegation.

7 80. The allegation in Paragraph 80 constitutes a characterization of case law and/or  
8 legal analysis or conclusions that are not subject to admission or denial. Such sources speak  
9 for themselves, and Kroger denies any characterization or description that is inconsistent  
10 therewith.

11 81. The allegations in Paragraph 81 constitute characterizations of federal agency  
12 guidelines and case law not subject to admission or denial. Such sources speak for themselves,  
13 and Kroger denies any characterization or description that is inconsistent therewith.

14 82. The allegations in Paragraph 82 constitute characterizations of case law, agency  
15 guidelines, and legal analysis and/or conclusions not subject to admission or denial. Such  
16 sources speak for themselves, and Kroger denies any characterization or description that is  
17 inconsistent therewith.

18 83. Kroger denies the allegations in Paragraph 83 including the footnote thereto.

19 84. Kroger denies the allegations in Paragraph 84.

20 85. The allegations in Paragraph 85 constitute characterizations of case law and  
21 legal analysis and/or conclusions not subject to admission or denial. Kroger denies the  
22 allegations in footnote 40 to Paragraph 85.

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

25 86. Kroger denies the allegations in Paragraph 86 as to its operations and documents.  
26

1 Kroger lacks knowledge or information sufficient to form a belief about the truth or falsity of  
2 Plaintiff's allegations in Paragraph 86 to the extent they relate to Albertsons and on that basis  
3 denies these allegations.

4 87. Kroger denies the allegations in Paragraph 87.

5 88. Kroger admits that its banners, Fred Meyer and QFC, compete with Albertsons'  
6 banners, Albertsons, Haggen, and Safeway among many other retailers in Washington. Kroger  
7 states that the term "head-to-head" is vague and ambiguous and denies the remaining  
8 allegations in Paragraph 88 on that basis.

9 89. Kroger states that Plaintiff's selective quotations of Kroger's uncited documents  
10 in Paragraph 89 are taken out of context and misleading, including that none of them contain  
11 the quoted words "primary strategy," and refers the Court to the documents themselves for their  
12 full context.

13 90. Kroger admits that its banners compete with Albertsons banners and many other  
14 retailers in Washington. Kroger states the term "head-to-head" is vague and ambiguous and  
15 denies the remaining allegations of the first sentence of Paragraph 90 on that basis. Kroger  
16 lacks knowledge or information sufficient to form a belief about the truth or falsity of Plaintiff's  
17 allegations in Paragraph 90 to the extent they relate to Albertsons and on that basis denies these  
18 allegations. Kroger further lacks knowledge or information sufficient to form a belief as to the  
19 truth or falsity of the redacted allegations in sentence 3 of Paragraph 90 and on that basis denies  
20 these allegations.

21 91. Kroger states that the allegations in sentences 1 and 3 of Paragraph 91, including  
22 the terms "head-to-head" and "the same," are vague and ambiguous, and denies these  
23 allegations on that basis. Kroger lacks knowledge or information sufficient to form a belief  
24 about the truth or falsity of the redacted allegations in sentence 2 of Paragraph 91 and on that  
25 basis denies these allegations.

1           92. Kroger admits that it competes with Albertsons, along with numerous other  
2 competitors, and that such competition with Albertsons and these other competitors is not  
3 limited to price. Kroger further admits that it improves and expands its product offerings and  
4 services to compete with and win customers from a wide range of competitors, of which  
5 Albertsons is only one. Kroger further responds that Plaintiff's selective reference to Kroger's  
6 document in sentence 3 of Paragraph 92 is taken out of context and misleading, and refers the  
7 Court to the document itself for its full context. Kroger lacks knowledge or information  
8 sufficient to form a belief about the truth or falsity of the redacted allegations in sentence 4 of  
9 Paragraph 92 and on that basis denies these allegations. Kroger otherwise denies the allegations  
10 in Paragraph 92.

11           93. Kroger admits that it closed QFC stores located at 416 15th Avenue E., Seattle,  
12 WA 98112 and 8400 35th Avenue NE, Seattle, WA 98115 on April 24, 2021, but otherwise  
13 denies the allegations in the first sentence of Paragraph 93. Kroger states that Plaintiff's  
14 selective quotations of publicly available documents in Paragraph 93 are taken out of context,  
15 denies any characterization or description that is inconsistent therewith, and refers the Court to  
16 the documents themselves for their full context. Kroger lacks knowledge or information  
17 sufficient to form a belief as to the truth or falsity of the redacted allegations in sentence 3 of  
18 Paragraph 93 and on that basis denies these allegations. Kroger otherwise denies the allegations  
19 in Paragraph 93.

20           94. Kroger denies the allegations in Paragraph 94.

21           95. Kroger responds that Plaintiff's selective quotation of Kroger's document in  
22 Paragraph 95 is taken out of context and misleading, and refers the Court to the document itself.  
23 Kroger further lacks knowledge or information sufficient to form a belief as to the truth or  
24 falsity of Plaintiff's allegations in sentences 1, 3, and 4 of Paragraph 95 to the extent they relate  
25 to Albertsons and on that basis denies these allegations. Kroger otherwise denies the allegations  
26



1 of Paragraph 95.

2 96. Kroger denies the allegations in Paragraph 96.

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

4 97. Kroger denies the allegations in Paragraph 97.

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

7 98. Kroger denies the allegations in Paragraph 98.

8 99. Kroger lacks knowledge or information sufficient to form a belief about the truth  
9 or falsity of Plaintiff's allegations in Paragraph 99 and on that basis denies these allegations.

10 100. Kroger lacks knowledge or information sufficient to form a belief about the truth  
11 or falsity of Plaintiff's allegations in Paragraph 100 and on that basis denies these allegations.

12 101. Kroger lacks knowledge or information sufficient to form a belief about the truth  
13 or falsity of Plaintiff's allegations in Paragraph 101 and on that basis denies these allegations.

14 Kroger further states that Plaintiff's selective quotations of publicly available documents in  
15 Paragraph 101 are taken out of context, denies any characterization or description that is  
16 inconsistent therewith, and refers the Court to the documents themselves for their full context.

17 **2. Kroger will have an increased incentive to close stores to reduce**  
18 **union participation**

19 102. Kroger admits that Kroger and Albertsons negotiate collective bargaining  
20 agreements with unions. Kroger further responds that Plaintiff's selective reference to Kroger's  
21 document in Paragraph 102 is taken out of context and is misleading and refers the Court to the  
22 document itself for full context. Kroger further states that it lacks knowledge or information  
23 sufficient to form a belief about the truth or falsity of Plaintiff's allegations in Paragraph 102 to  
24 the extent they relate to Albertsons' documents and on that basis denies these allegations.

25 Kroger otherwise denies the allegations in Paragraph 102.

1           103. Kroger admits that an outside consultant prepared a document that contains the  
2 words quoted in sentences 1 and 2 of Paragraph 103, but that Plaintiff's selective quotations of  
3 this document are taken out of context and misleading and refers the Court to the document  
4 itself. Kroger otherwise denies these allegations.

5           104. Kroger denies the allegations in Paragraph 104.

6           105. Kroger denies the allegations in Paragraph 105.

7                   **D. Defendants' Proposed Transaction Will Eliminate Aggressive Competition**  
8                   **From Albertsons**

9           106. Kroger lacks knowledge or information sufficient to form a belief about the truth  
10 or falsity of Plaintiff's allegations in Paragraph 106 as they relate to Albertsons and on that  
11 basis denies these allegations.

12           107. Kroger lacks knowledge or information sufficient to form a belief about the truth  
13 or falsity of Plaintiff's allegations in Paragraph 107 and on that basis denies these allegations.

14           108. Kroger lacks knowledge or information sufficient to form a belief about the truth  
15 or falsity of Plaintiff's allegations in sentences 1 and 2 of Paragraph 108 as they relate to  
16 Albertsons and on that basis denies these allegations. Kroger further responds that Plaintiff's  
17 selective quotation of Kroger's document in Paragraph 108 is taken out of context and  
18 misleading, and refers the Court to the document itself for full context. Kroger otherwise denies  
19 the allegations in Paragraph 108.

20           109. Kroger lacks knowledge or information sufficient to form a belief about the truth  
21 or falsity of Plaintiff's allegations in sentence 1 of Paragraph 109 to the extent they relate to  
22 Albertsons, and on that basis denies these allegations. Kroger otherwise denies the allegations  
23 in Paragraph 109.

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

1           110. The first sentence of Paragraph 110 quotes case law and is not subject to  
2 admission or denial, that such sources speak for themselves and Kroger denies any  
3 characterization or description that is inconsistent therewith. Kroger denies the allegations in  
4 sentence 2 of Paragraph 110.

5           111. Kroger states that it lacks knowledge or information sufficient to form a belief  
6 about the truth or falsity of Plaintiff's allegations in Paragraph 111 to the extent they relate to  
7 Albertsons or any other third-party company and on that basis denies these allegations. Kroger  
8 admits that prices for food and grocery products that retailers sell are publicly available, for  
9 example, through in-store pricing tags, online, and in advertising circulars that Kroger has  
10 historically conducted and currently conducts price checks of the products offered by competing  
11 retailers and that Kroger uses technology to efficiently gather publicly available pricing  
12 information across competing stores to inform Kroger's own pricing decisions in order remain  
13 competitive, for example, to ensure that Kroger is not pricing its products too high. Kroger  
14 further responds that Plaintiff's description of Kroger's documents in the paragraph is taken out  
15 of context and misleading, and refers the Court to the document itself. Kroger otherwise denies  
16 the allegations in Paragraph 111, including the footnote thereto.

17           112. Kroger denies the allegations in Paragraph 112. Kroger further responds that  
18 Plaintiff's selective quotations of Kroger's documents in sentences 2 and 3 of Paragraph 112  
19 are taken out of context and misleading, and refers the Court to the documents themselves for  
20 their full context.

21           113. Kroger denies the allegations of Paragraph 113. Kroger further responds that  
22 Plaintiff's selective quotations of Kroger's document in Paragraph 113 are taken out of context,  
23 and refers the Court to the document itself.

24           114. Kroger denies the allegations of Paragraph 114. Kroger further responds that  
25 Plaintiff's selective quotations of Kroger's document in Paragraph 114 are taken out of context  
26

1 and misleading, and refers the Court to the document itself for its full context. Kroger further  
2 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
3 redacted allegations in sentence 2 of Paragraph 114 and on that basis denies these allegations.

4 115. Kroger admits that competition constrains coordination but otherwise denies the  
5 allegations in Paragraph 115.

6 **VIII. THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION**  
7 **WILL NOT BE MITIGATED OR OFFSET**

8 116. The allegations in Paragraph 116 constitute characterizations of legal standards  
9 and case law, arguments and conclusions not subject to admission or denial. Such sources  
10 speak for themselves, and Kroger denies any characterization or description that is inconsistent  
11 therewith.

12 **A. Entry And Expansion Are Unlikely To Prevent The Proposed**  
13 **Transaction's Potential Harm**

14 117. Kroger denies the allegations in Paragraph 117.

15 118. Kroger denies the allegations in Paragraph 118.

16 119. Kroger denies the allegations in Paragraph 119.

17 120. Kroger lacks knowledge or information sufficient to form a belief about the truth  
18 or falsity of Plaintiff's allegations in sentence 2 of Paragraph 120 to the extent they are redacted  
19 or relate to Albertsons and on that basis denies these allegations. Kroger otherwise denies the  
20 allegations in Paragraph 120.

21 121. Kroger lacks knowledge or information sufficient to form a belief about the truth  
22 or falsity of Plaintiff's allegations in Paragraph 121 to the extent they relate to Walmart and  
23 other third-party undefined "grocery store operators" and on that basis denies these allegations.  
24 Kroger admits that it operates approximately 114 stores in Washington, and that Albertsons  
25 operates approximately 215 stores in Washington. Kroger otherwise denies the allegations in  
26

1 Paragraph 121.

2 **B. There Are No Merger-Specific Efficiencies That May Reverse The**  
3 **Proposed Transaction’s Potential To Harm Consumers**

4 122. Kroger denies the allegations in Paragraph 122.

5 **IX. DEFENDANTS’ PROPOSED DIVESTITURE**

6 123. Kroger admits that, pursuant to the Divestiture Agreement, it proposes to divest  
7 stores and other assets to C&S, but otherwise denies the allegations in Paragraph 123. Kroger  
8 states that to the extent Paragraph 123 contains Plaintiff’s characterization of its claims or legal  
9 arguments, no response is required.

10 124. Kroger denies the allegations in Paragraph 124, except admits that Kroger has  
11 entered into the Divestiture Agreement which would transfer 579 stores (including 124 located  
12 in Washington) and other assets to C&S and refers to the Divestiture Agreement for its complete  
13 content and context.

14 125. Kroger admits that C&S is a wholesale grocery store supply company, but  
15 Kroger lacks knowledge or information sufficient to form a belief about the truth or falsity of  
16 the remaining allegations in Paragraph 125 and on that basis denies these allegations.

17 126. Kroger denies the allegations in Paragraph 126.

18 127. Kroger denies the allegations in Paragraph 127.

19 128. Kroger lacks knowledge or information sufficient to form a belief about the truth  
20 or falsity of Plaintiff’s allegations in Paragraph 128 and on that basis denies these allegations.

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

24 129. Kroger lacks knowledge or information sufficient to form a belief about the truth  
25 or falsity of Plaintiff’s allegations in Paragraph 129 and on that basis denies these allegations.

1 Kroger further states that Plaintiff's selective references to publicly available documents in  
2 Paragraph 129 are taken out of context, denies any characterization or description that is  
3 inconsistent therewith, and refers the Court to the documents themselves for their full context.

4 130. Kroger lacks knowledge or information sufficient to form a belief about the truth  
5 or falsity of the allegations in Paragraph 130 and on that basis denies these allegations.

6 131. Kroger denies the allegations in sentence 1 of Paragraph 131. Kroger further  
7 states that it lacks knowledge or information sufficient to form a belief about the truth or falsity  
8 of the allegations in sentences 2, 3, and 4 of Paragraph 131 and on that basis denies these  
9 allegations.

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

12 132. Kroger denies the allegations in Paragraph 132.

13 133. Kroger lacks knowledge or information sufficient to form a belief about the truth  
14 or falsity of Plaintiff's allegations in Paragraph 133 to the extent they relate to C&S and on that  
15 basis denies these allegations. Kroger further states that Plaintiff's selective quotations of  
16 publicly available documents in Paragraph 133 are taken out of context, denies any  
17 characterization or description that is inconsistent therewith, and refers the Court to the  
18 documents themselves for their full context.

19 134. Kroger admits the allegations in sentence 1 of Paragraph 134. Kroger lacks  
20 knowledge or information sufficient to form a belief about the truth or falsity of the redacted  
21 allegations in the remainder of Paragraph 134 and on that basis denies these allegations.

22 135. Kroger lacks knowledge or information sufficient to form a belief about the truth  
23 or falsity of Plaintiff's allegations in duplicate sentences 1 and 2 and in sentence 3 of Paragraph  
24 135. Kroger denies the allegations in sentences 4 and 5 of Paragraph 135.

25 136. Kroger denies the allegations in Paragraph 136. Kroger further lacks knowledge  
26

1 or information sufficient to form a belief about the truth or falsity of Plaintiff's allegations in  
2 Paragraph 136 to the extent they relate to Albertsons and on that basis denies these allegations.

3 137. Kroger lacks knowledge or information sufficient to form a belief about the truth  
4 or falsity of Plaintiff's allegations in Paragraph 137 and on that basis denies these allegations.  
5 Kroger further states that Plaintiff's selective quotations of publicly available documents in  
6 Paragraph 137 are taken out of context, denies any characterization or description that is  
7 inconsistent therewith, and refers the Court to the documents themselves for their full context.

8 138. Kroger admits that the majority of Albertsons employees and Kroger's  
9 employees are union members, including the majority of their employees in Washington, and  
10 that C&S will take ownership of 489 unionized stores as part of the divestiture.

11 139. Kroger lacks knowledge or information sufficient to form a belief about the truth  
12 or falsity of Plaintiff's allegations in Paragraph 139 and on that basis denies these allegations.

13 140. Kroger admits that it maintains analytics and IT systems that it uses to operate  
14 distribution centers, customer point-of-sale transactions, digital loyalty programs, human  
15 resources systems and other tasks to operate its retail stores. Kroger lacks knowledge or  
16 information sufficient to form a belief about the truth or falsity of Plaintiff's remaining  
17 allegations in Paragraph 140 and on that basis denies these allegations.

18 141. Kroger lacks knowledge or information sufficient to form a belief as to the truth  
19 or falsity of the allegations in Paragraph 141 and on that basis denies these allegations.

20 142. Kroger denies the allegations in Paragraph 142 except that Kroger admits that  
21 Defendants have agreed to provided C&S with raw customer data, technical support, and  
22 maintenance services amongst other support and services pursuant to the Divestiture Agreement  
23 that will enable C&S to successfully take ownership of and operate the divested stores following  
24 the close of the divestiture.

25 143. Kroger lacks knowledge or information sufficient to form a belief as to the truth  
26

1 or falsity of the allegations in Paragraph 143 to the extent they relate to C&S and on that basis  
2 denies these allegations. Kroger otherwise denies the allegations in Paragraph 143.

3 144. Kroger admits that it owns 15 private label brands. Kroger admits that it stocked  
4 over 14,000 private label items in Kroger's 2021 fiscal year and that as of January 28, 2023, it  
5 operated 33 food production plants. Kroger lacks knowledge or information sufficient to form  
6 a belief about the truth or falsity of the allegations in Paragraph 144 to the extent they relate to  
7 Albertsons or C&S, and on that basis denies these allegations. Kroger further states that the  
8 allegations in sentence 5 of Paragraph 144, including the term "overall grocery stores' sales,"  
9 are vague and ambiguous and that Kroger lacks knowledge or information sufficient to form a  
10 belief as to the truth or falsity of these allegations to the extent they relate to third parties and  
11 on these bases denies the allegations. Kroger otherwise denies the allegations in Paragraph 144.

12 145. Kroger lacks knowledge or information sufficient to form a belief about the truth  
13 or falsity of Plaintiff's allegations in Paragraph 145 and on that basis denies these allegations.

14 146. Kroger admits that pursuant to the Divestiture Agreement, C&S will acquire five  
15 private label brands and long-term supply of certain private label products under two additional  
16 private label brands to stores divested to C&S. Kroger states that the Divestiture Agreement  
17 with C&S speaks for itself and denies any characterization or description that is inconsistent  
18 therewith. Kroger lacks knowledge or information sufficient to form a belief about the truth or  
19 falsity of Plaintiff's allegations in Paragraph 146 to the extent they relate to Albertsons and on  
20 that basis denies these allegations. Kroger otherwise denies the allegations in Paragraph 146.

21 147. Kroger lacks knowledge or information sufficient to form a belief about the truth  
22 or falsity of Plaintiff's allegations in Paragraph 147 to the extent they relate to C&S. Kroger  
23 otherwise denies the allegations in Paragraph 147.

24 148. Kroger admits that it operates pharmacies and fuel centers and that the  
25 Divestiture Agreement provides for the divestiture of pharmacy and fuel center assets necessary  
26



1 for C&S to successfully operate these non-grocery assets, and that C&S will acquire 492  
2 pharmacies, 93 of which are located in Washington. Kroger lacks knowledge or information  
3 sufficient to form a belief about the truth or falsity of the allegations in the last sentence of  
4 Paragraph 148 and on that basis denies these allegations. Kroger otherwise denies the  
5 allegations in Paragraph 148.

6 149. Kroger admits that through the Divestiture Agreement, C&S would assume  
7 control and begin operating hundreds of stores as well as undertake a rebanner process for  
8 certain divested stores, but otherwise denies the allegations in Paragraph 149.

9 150. Kroger lacks knowledge or information sufficient to form a belief about the truth  
10 or falsity of Plaintiff's allegations in Paragraph 150 to the extent they relate to C&S. Kroger  
11 otherwise denies the allegations in Paragraph 150.

12 151. Kroger admits that rebanner may in some cases involve changing one or more  
13 of the following: aesthetic branding, private label brands, IT systems, and/or contracting with  
14 new distribution centers or wholesalers and that C&S will need to undertake a rebanner  
15 process for certain divested stores, but Kroger otherwise denies the allegations in Paragraph  
16 151.

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

20 152. Kroger admits that the Divestiture Agreement includes the divestiture of 579  
21 stores nationwide (124 of which are in Washington) to C&S, but denies the remaining  
22 allegations in Paragraph 152, including the allegations in the footnote thereto.

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

24 153. Paragraph 153 is a paragraph of incorporation to which no response is required.  
25 To the extent a response is required, Kroger incorporates by reference its answers to the  
26

1 allegations of Paragraphs 1 through 152 of the Complaint.

2 154. Kroger denies the allegations in Paragraph 154.

3 155. Kroger denies the allegations in Paragraph 155.

4 156. Kroger states that Paragraph 156 states a legal conclusion, to which no response  
5 is required. If a response is required, Kroger denies the allegations in Paragraph 156.

6 157. Kroger denies the allegations in Paragraph 157.

7 158. Kroger denies the allegations in Paragraph 158.

8 **XI. REQUEST FOR RELIEF**

9 1. Kroger denies that Plaintiff is entitled to any of the relief requested and requests  
10 that Kroger be awarded the costs incurred in defending this action, as well as any and all other  
11 relief the Court may deem just and proper.

12 2. Kroger denies that judgment should be entered in favor of the State of  
13 Washington.

14 3. Kroger denies that Plaintiff is entitled to any of the relief requested and requests  
15 that Kroger be awarded the costs and reasonable attorneys' fees incurred in defending this  
16 action, as well as any and all other relief the Court may deem just and proper.

17 4. Kroger denies that Plaintiff is entitled to reasonable costs and attorneys' fees.

18 5. Kroger denies that Plaintiff is entitled to any other relief.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, having fully answered the Complaint and having provided affirmative  
21 defenses, Defendant The Kroger Company requests that the Court:

22 1. Enter judgment in its favor on all claims asserted by Plaintiff in its Complaint;

23 2. Award Defendant its costs and reasonable attorneys' fees in this action as provided by  
24 rule, statute or otherwise; and

25 3. Grant such other relief as the Court deems just and proper.

1 **AFFIRMATIVE DEFENSES**

2 In asserting the following defenses, Kroger does not assume any burden of proof with  
3 respect to any issue where the applicable law dictates the burden of proof rests with Plaintiff.  
4 Kroger expressly reserves the right to amend or supplement its answer to assert additional  
5 defenses as they become known during discovery or otherwise available and has not knowingly  
6 or intentionally waived any applicable defense.

7 **FIRST AFFIRMATIVE DEFENSE**

8 1. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to state a  
9 claim upon which relief can be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 2. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to define  
12 a relevant product or geographic market or markets.

13 **THIRD AFFIRMATIVE DEFENSE**

14 3. Plaintiff's claims are barred, in whole or in part, because the proposed  
15 acquisition will not substantially lessen competition in any relevant product or geographic  
16 market particularly when accounting for the proposed divestitures.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 4. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs fail to allege  
19 any plausible harm to consumers or consumer welfare, particularly when accounting for the  
20 divestitures.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 5. Plaintiff's claims are barred, in whole or in part, because the efficiencies and  
23 other pro-competitive effects resulting from the transaction will benefit consumers.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 6. Plaintiff's claims are barred, in whole or in part, because the transaction will not  
3 harm competition or consumers due to competitor entry and expansion that is timely, likely,  
4 and sufficient to replace any competition purportedly lost as a result of the transaction.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 7. Plaintiff's claims are barred, in whole or in part, because divestitures will  
7 eliminate any purported anticompetitive effects.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 8. Plaintiff's claims are barred, in whole or in part, because granting the relief  
10 sought is contrary to the public interest.

11 **NINTH AFFIRMATIVE DEFENSE**

12 9. The relief sought by Plaintiff is unavailable because the injunctive relief sought  
13 is overbroad and not tailored to the state-specific harms alleged.

14 **TENTH AFFIRMATIVE DEFENSE**

15 10. The relief sought by Plaintiff is unavailable because the extraterritorial  
16 application of Washington law is limited by the Washington and U.S. Constitutions.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 11. The relief sought by Plaintiff is barred by the U.S. Constitution, including the  
19 dormant Commerce Clause and Full Faith and Credit Clause.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 12. The relief sought by Plaintiff is barred by principles of interstate comity.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

1 DATED May 10, 2024.

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3 K&L GATES LLP

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1 **CERTIFICATE OF ECF FILING AND SERVICE**

2 I certify that on this date I arranged for a copy of the foregoing document to be served  
3 on the parties listed below by King County eFiling Application:  
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DATED this 10th day of May, 2024.

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