STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. ALBERTSONS COMPANIES, INC.; ALBERTSON S COMPANIES SPECIALTY CARE, LLC; ALBERTSON'S LLC; ALBERTSON'S STORES SUB LLC; THE KROGER CO.; KETTLE MERGER SUB, INC., Defendants.	NO. COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF UNDER THE WASHINGTON STATE CONSUMER PROTECTION ACT, RCW 19.86

Plaintiff, the State of Washington, through its Attorney General, brings this action in its sovereign capacity and as *parens patriae* on behalf of persons residing in the State against Albertsons Companies, Inc.; Albertson S Companies Specialty Care, LLC; Albertson's LLC; Albertson's Stores Sub LLC; (collectively, Albertsons); and The Kroger Co.; and Kettle Merger Sub, Inc.; (collectively, Defendants) including their agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, to recover injunctive relief, civil penalties, and costs and fees pursuant to the Washington Consumer Protection Act, RCW 19.86 *et seq*.

I. INTRODUCTION

1. Grocery stores are the lifeblood of our communities. The vast majority of Americans buy their food and basic necessities at these stores every day. Albertsons and Kroger are two of the largest grocery chains in the United States and these chains have an outsized presence in Washington. Albertsons owns roughly 216 stores in Washington and operates them

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under its own name, as well as Safeway and Haggen. Kroger owns roughly 114 stores in Washington and operates them under the names Fred Meyer and QFC. Collectively, these competitors operate over 300 grocery stores in Washington, including approximately 80 in the Seattle area.

2. On October 14, 2022, Albertsons and Kroger announced that they had reached an agreement to merge. As part of the merger agreement, Albertsons will issue a $4 billion "Special Cash Dividend" to its stockholders that will be paid in a matter of days—on Monday, November 7, 2022. This payment is 57 times as large as the most recent regular quarterly dividend announced by Albertsons on October 18, 2022. While the agreement refers to this dividend as a "Pre-Closing Dividend," it is better described as a "regardless of closing" dividend because it will be paid to Albertsons' shareholders regardless of whether the proposed merger is ever completed. At the time of the merger announcement, the parties stated that it is not expected to close until early 2024.

3. Although Albertsons is a publicly traded company, approximately 75% of its stock is controlled by a private equity consortium. As a result, paying out $4 billion will mostly benefit this private equity consortium, which controls Albertsons.

4. Paying out the $4 billion will cripple Albertsons' ability to operate its stores and meaningfully compete with Kroger during the time before the deal closes and leave it in a weakened state if the deal subsequently falls apart. As Albertsons noted in its February 26, 2022 Form 10-K securities filing, "[t]he food and drug retail industry is highly competitive" and "[w]e and our competitors engage in price and non-price competition which, from time to time, has adversely affected our operating margins."

5. Surprisingly, Albertsons plans to pay the $4 billion not from its surplus profits, but rather out of critical operating margins it needs to stay afloat over the next twelve months. Albertsons publicly disclosed that it will use $2.5 billion in cash on hand and will finance the remaining $1.5 billion through loans.

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6. The impact of the payout on Albertsons' liquid assets is alarming. It will reduce Albertsons cash on hand by almost 75%.

7. The need to finance the remaining $1.5 billion is just as destructive to Albertsons ability to compete. Albertsons already has low credit and liquidity ratings and announcing payment of the Special Cash Dividend has lowered its liquidity rating even further. In further downgrading Albertsons' non-investment grade liquidity rating on October 14, 2022, Moody's noted that it reflected "Albertsons lower cash balances and reduced revolver availability following the payment of the dividend." This will further hamper Albertsons ability to obtain financing in the future to maintain and expand its infrastructure, stock shelves and pay its employees.

8. Albertsons and Kroger, anticipating regulatory scrutiny of their proposed merger, have proposed to address concerns in part by divesting between 100-375 stores in markets where they overlap to a new Albertsons subsidiary called SpinCo. While the ability of this divestiture to create a viable competitor remains to be seen, in light of Albertsons and Kroger's claim that their own much larger standalone companies must merge to effectively compete in the grocery industry, there are serious reasons to be skeptical. Washington's experience with Albertson's 2014 acquisition of Safeway pursuant to a similar proposal, serves as a cautionary tale for allowing future similar deal structures to proceed. Haggen, the entity that purchased the stores spun off in the deal, was unable to meaningfully compete and declared bankruptcy—allegedly due to Albertson's actions in overstocked perishable inventory, understocked stable inventory, removed purchased fixtures, provided inaccurate pricing information, cut off advertising, lied about the merchandising data system, and misappropriated Haggen's store opening plan. Similar to Albertsons situation now, Haggen was controlled by a private equity firm at that time, which drained its liquidity necessary to operate by paying itself a special dividend when Haggen acquired the spun off stores, draining Haggen of needed operating funds to operate the new stores

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and crippling Haggen's ability to obtain new funds through loans. In the end, Albertsons re-acquired many of the stores it had divested to Haggen.

9. The parallels to the Albertsons-Safeway merger are troubling. Albertsons claims that it will be sufficiently capitalized to pay the Special Dividend, but there is every reason to suspect that—in two years from now—Albertsons will be in the position of arguing to federal and state antitrust enforcers that it is preferable to allow Kroger to purchase its remaining assets because it is a failing firm. The Attorney General's Office is rightly and deeply concerned that past may be prologue.

10. Attempting to execute Albertson's and Kroger's agreement, Albertson's informed our office on October 28, 2022 that it intends to pay the extraordinary dividend of up to $4 billion to its shareholders on November 7, 2023.

11. Albertsons intends to do so despite:

a. accepting service of a Civil Investigative Demand issued pursuant to the Attorney General's investigatory authority under RCW 19.86.110 to obtain more information about this transaction and understand whether it poses anticompetitive concerns;

b. producing no documents to our office responsive to our Civil Investigative Demand unless and until it receives certain assurances of confidentiality beyond those provided by RCW 19.86.110; and

c. receiving a joint letter from the Attorney General's Office, along with the Attorneys General of the District of Columbia, Arizona, California, Idaho, and Illinois asking Albertsons to delay this extraordinary dividend to facilitate a reasonable time to review of this transaction for potential anticompetitive concerns.

12. This agreement present the Attorney General's Office with a Hobson's choice that will enable these competitors to enjoy windfall benefits—whether or not the merger

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eventually receives approval—as a result of an anticompetitive agreement that is both an unreasonable restraint trade and an unfair method of competition prohibited by the Washington State Consumer Protection Act.

13. The Attorney General of Washington, as the primary enforcer of the Washington Consumer Protection Act ("CPA"), therefore brings this action for Albertsons and Kroger's unlawful restraint of trade in violation of RCW 19.86.030 and unfair method of competition in violation of RCW 19.86.020 to prevent Albertsons from paying this extraordinary $4 billion dividend as a result of its Agreement and Plan of Merger with Kroger.

II. JURISDICTION AND VENUE

14. This action alleges violations of the Consumer Protection Act, RCW 19.86 *et seq*. The Court has subject matter jurisdiction pursuant to RCW 19.86.160.

15. Defendants are subject to the personal jurisdiction of this Court because each transacts business in, has purposeful, continuous or systemic contacts with, or has sufficient minimum contacts in Washington State, and engages in the business of operating retail supermarkets, pharmacies, and fueling stations throughout Washington State, including marketing, transporting, storing, and selling groceries at locations throughout Washington State; employing Washington workers; and engaging in business with Washington residents and business entities. Defendants' anticompetitive agreement and activities are intended to, and will have, a substantial and foreseeable effect on Washington State trade and commerce, will negatively impact and restrain competition in the retail grocery market in Washington State, and will negatively impact the labor market in Washington State and limit opportunities for workers throughout Washington State, including in King County.

16. Venue is proper in King County because a significant portion of the harm giving rise to this action occurred in King County; Defendants have extensive intentional, continuous and systematic contacts in Washington, including contacts in support of their grocery stores in

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King County; and the Defendants' activities were intended to, and will continue to have, a foreseeable effect on commerce in Washington State, especially in King County.

III. THE PARTIES

A. Plaintiff

17. The Plaintiff is the State of Washington, by and through its Attorney General, in its sovereign capacity and as *parens patriae* on behalf of persons, including consumers and businesses, in the state.

18. The Office of the Attorney General is charged with the constitutional mandate to ensure that companies do not fix prices, limit production, or create monopolies or trusts. Wash. Const. art. XII, § 22. The State of Washington has a sovereign interest in the enforcement of its antitrust laws and authority to bring this action under RCW 19.86.080.

19. The State of Washington has a quasi-sovereign interest in fostering fair and honest competition, protecting consumers from anticompetitive and unlawful practices, and supporting the general welfare of consumers and businesses in Washington State and its economy.

B. Defendants

20. Defendant Albertsons Companies, Inc. is a Delaware corporation with its principal place of business in Boise, Idaho. It is one of the largest full-service grocery retailers in the United States and operates well over 200 retail stores in Washington State—which is roughly 10% of all of its stores nationwide. It operates nationwide as Albertsons, Safeway, Vons, Pavilions, Randalls, Tom Thumb, Carrs, Jewel-Osco, Acme, Shaw's, Star Market, United Supermarkets, Market Street, Haggen, Kings Food Markets, and Balducci's Food Lovers Market. Albertsons' February 26, 2022 Form 10-K securities filing reflects that these "stores operate in First-and-Main retail locations and have leading market share within attractive and growing geographies." In particular, Albertsons disclosed that it holds "a #1 or #2 position by market share in 68% of the 121 metropolitan statistical areas ("MSAs")" in which it operates. Its

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stores' operations extend beyond grocers to pharmacies, in-store branded coffee shops, fuel centers, dedicated distribution centers, manufacturing facilities and various digital platforms.

21. Defendant Albertson S Companies Specialty Care, LLC is a Delaware limited liability company and a subsidiary of Albertsons Companies, Inc., with its principal place of business in Boise, Idaho, that is engaged in retail grocery business in Washington State.

22. Defendant Albertson's LLC is a Delaware limited liability company and a subsidiary of Albertsons Companies, Inc., with its principal place of business in Boise, Idaho, that is engaged in retail grocery business in Washington State.

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

24. Defendant The Kroger Co. is an Ohio corporation with its principal place of business in Cincinnati, Ohio. It is one of the largest full-service grocery retailers in the United States, and operates about 114 stores in Washington State—which is roughly 4% of all its stores. It operates those stores under the Fred Meyer and QFC banners. Kroger's March 29, 2022 Form 10-K securities filing reflects that its "retail business is built on the foundation of our market leading position in food retail which includes the added convenience of our retail pharmacies and fuel centers."

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

26. "Defendant" or "Defendants" includes, as well as those named herein, all of the named Defendants' predecessors, including each named Defendant's wholly-owned or controlled subsidiaries or affiliates.

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IV. NATURE OF THE CASE

27. In locations all throughout Washington State, grocery stores are hubs of commerce and community for the neighborhoods they serve. For decades, Albertsons and Kroger grocery stores have been consistent fixtures in these communities and in the lives of consumers, providing some of the most basic necessities for day-to-day living. Indeed, Kroger and Albertsons are two of the largest grocery chains in the United States, with a combined annual revenue in excess of $200 billion and approximately 5,000 stores nationwide.

28. They both have an outsized presence in Washington State, with 216 Albertsons-owned Safeway and Albertsons stores and 114 Kroger-owned Fred Meyer and QFC stores as of 2020. As he *Seattle Times* reported on October 19, 2022, "in Washington . . . Kroger and Albertsons collectively have nearly 350 locations—roughly 10% of all Albertsons locations and 4% of all Kroger locations". It also states, "[i]n the greater Seattle area alone, each company has "around 80 locations, according to company data, and often appear to be the other's biggest local competitor."

A. Albertsons and Kroger's Special Cash Dividend Agreement and Plan of Merger

29. On October 14, 2022, Kroger and Albertsons rattled consumers with news, disclosed in Albertsons Form 8-K filed with the United States Securities and Exchange Commission that they had "entered into an Agreement" to merge with Kroger.

30. The associated October 14, 2022 joint press release of Kroger and Albertsons reflects that, "As part of the transaction**,** Albertsons Cos. will pay a special cash dividend of up to $4 billion to its shareholders."

31. The $4 billion Special Cash Dividend corresponds to $6.85 per share and will be paid on November 7, 2022.

32. For context, Albertsons announced its next regular quarterly dividend payment of $0.12 per share of common stock on October 18, 2022, which corresponds to $63 million and

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will be paid on November 14, 2022. This corresponds to a multiplier of 57 for the Special Cash Dividend payable on November 7, 2022.

33. Albertsons and Kroger reached this agreement on October 13, 2022 and memorialized it in an "Agreement and Plan of Merger" document.

34. Absent a court order restraining or enjoining the Special Cash Dividend, it will be payable to Albertsons shareholders on November 7, 2022.

35. On October 28, 2002 Albertsons counsel represented to the Washington Attorney General's Office and other attorney generals across the nation that it plans to consummate payment of the Special Cash Dividend that is part of the Agreement and Plan of Merger on November 7, 2022 before federal and state antitrust enforcers have had an opportunity to review the transaction.

36. The Special Cash Dividend Agreement and Plan of Merger between Albertsons and Kroger makes its consummation contingent on specified conditions, including the expiration of the waiting period applicable after filing the HSR and the absence of "any law or governmental order prohibiting the transactions contemplated by the Merger Agreement".

B. Albertsons' Pre-Existing Low Credit and Liquidity

37. While Albertsons has calculated that it needs $10 billion to operate this next year, it has chosen to deplete much of its available operating cash and credit line by paying the Special Cash Dividend. This amount exceeds Albertsons' current cash, cash equivalents, and net receivables owed and drains its available line of credit. This will force Albertsons' to seek loans or somehow otherwise extract money from its fixed assets to maintain its current operations. However, Albertson's low credit and liquidity ratings threaten to make it difficult to obtain these loans and make it more expensive to obtain any loan that it is able to obtain. If such loans cannot be obtained, Albertsons will be forced to reduce their services and investments in their infrastructure and employees, all of which undercut its ability to operate in a highly competitive market over the next year.

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C. Albertsons' Pre-existing Non-Investment Grade Long-Term Credit Rating

38. The Center for Economic Policy and Research explained on October 19, 2022 in an article entitled, "Albertsons and Kroger Merger a Win for Private Equity and Loss for Workers," posted on its website that "[a] dividend of this size could bankrupt the debt-ridden supermarket chain."

39. This article also reflects that "the payment of this special dividend sets Albertsons up for failure and provides Kroger with a powerful 'failing firm' defense" so "Kroger can argue that Albertsons will face bankruptcy if the merger is not approved."

40. Prior to Albertson's and Kroger's October 14, 2022 announcement of their Special Cash Dividend Agreement and Plan of Merger, S&P affirmed its BB non-investment grade long-term credit rating for Albertsons on April 21, 2022.

41. S&P's Global Ratings' website's "Intro to Credit Ratings" page in the year 2022 reflects that "[a] credit rating is an Informed Opinion".

42. According to that webpage, S&P's BB long-term credit rating is not an "Investment Grade" rating, but a "Speculative Grade" rating that it assigns to companies that face "major ongoing uncertainties to adverse business, financial and economic conditions."

43. Consistent with S&P's BB speculative long-term credit rating for Albertsons, Forbes reported on October 28, 2022 that "borrowing costs are set to rise to the highest level in 15 years" in November 2022.

D. Albertsons' Resulting Decreased Short-Term Liquidity

44. To pay the $4 billion Special Cash Dividend, Albertsons will use the majority of its liquid assets—and take on debt to fund the remainder.

45. As Albertsons stated in its October 18, 2022 Form 10-Q securities filing, "We estimate our liquidity needs over the next 12 months to be approximately $10.0 billion."

46. In addition to paying the $4 billion Special Cash Dividend, Albertsons' October 18, 2022 Form 10-Q securities filing reflects that those liquidity needs require $6 billion

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more for: "requirements for incremental working capital, capital expenditures, pension obligations, interest payments and scheduled principal payments of debt, dividends on Class A common stock and Convertible Preferred Stock, operating leases and finance leases."

47. Albertsons' October 18, 2022 Form 10-Q securities filing also reflects that the $4 billion Special Cash Dividend "will be funded using approximately $2.5 billion of cash on hand with the remainder in borrowings under the Company's existing ABL Facility," a loan based on fixed assets. This will reduce Albertsons' reported cash and cash equivalents by about 74%—from $3.392 billion to $892 million by November 7, 2022.

48. This Albertsons securities filing also indicates that Albertsons does not believe that its "cash flows from operating activities" will alone be sufficient to meet its remaining needed $6 billion in liquidity over the next year, "maintain its current debt ratings," or "respond effectively to competitive conditions."

49. Albertsons' February 26, 2022 Form 10-K sheds light on the basis for this belief. There, Albertsons represented that "[t]he food and drug retail industry is highly competitive" and that "[w]e and our competitors engage in price and non-price competition which, from time to time, has adversely affected our operating margins."

50. Nevertheless, Albertsons plans to take on even more debt by borrowing more funds from ABL Facility.

51. Albertsons' October 18, 2022 Form 10-Q securities filing indicates that Albertsons will use about 40% of ABL Facility's $3.76 billion to pay $1.5 billion of the Special Cash Dividend payable to shareholders on November 7, 2022.

52. After that time, Albertsons' ability to borrow from ABL Facility for its remaining $6 billion liquidity needs will be reduced to $2.26 billion.

53. Upon learning how Albertsons would pay for the $4 billion Special Cash Dividend, Moody's downgraded Albertsons' existing non-investment grade short-term liquidity rating.

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54. In further downgrading Albertsons' non-investment grade liquidity rating on October 14, 2022, Moody's noted that it reflected "Albertsons lower cash balances and reduced revolver availability following the payment of the dividend."

E. Kroger's Contrasting Steps to Improve Its Liquidity and Credit

55. In contrast to Albertsons, Kroger announced in the parties' October 14, 2022 joint press release that it was taking steps to increase its liquidity in the parties' joint press release pertaining to the transaction, noting that it had "already paused its share repurchase program."

56. Kroger also announced in the parties' October 14, 2022 joint press release that it had "engaged with the rating agencies" and was "strongly committed to an investment grade credit rating."

57. To the extent that Albertsons and Kroger stores operate in the same neighborhoods, these steps make it more likely that Kroger will be the beneficiary of Albertson's likely reductions in services, investments in infrastructure and employees before any decision is made on whether or not to challenge the merger.

58. As a result, consumers will be more likely to choose to shop at Albertsons over Kroger. Workers poised to lose their jobs at Albertsons are more likely to seek employment at Kroger.

59. This benefit to Kroger is likely to persist even if the merger fails.

F. The Resulting Calculated Benefit to Albertsons' Controlling Private Equity Shareholders and Harm to Albertsons' Consumers and Employees

60. Although Albertsons is a publicly traded company, it is effectively controlled by a consortium of private equity entities, which collectively own approximately 75% of Albertson's stock. It is this consortium of private equity firms that are the primary beneficiaries of the $4 billion Special Cash Dividend.

61. Albertson's Form 10-K securities filing dated April 26, 2022 admits that the private equity consortium's interests "may not coincide with the interests of other holders of our

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common stock" and "may have conflicts of interest with other stockholders" such as individuals and Albertsons employees who receive Albertsons stock as part of their compensation based upon tenure and merit.

62. It also reflects that the private equity consortium also determines its "corporate and management policies" and "without the consent of our other stockholders, the outcome of any corporate transaction or other matter submitted to our stockholders for approval, including potential mergers or acquisitions, asset sales and other significant corporate transactions."

63. Moreover, the $4 billion Special Cash Dividend represents a windfall to Albertsons' private equity consortium.

G. The Resulting Calculated Benefit to Kroger and Harm to Albertsons' Consumers and Employees

64. This decreased liquidity thus has the potential to do things like reduce Albertsons' ability to purchase inventory, such as baby formula, and stock its retail store shelves for consumers who need it to sustain lives of infants.

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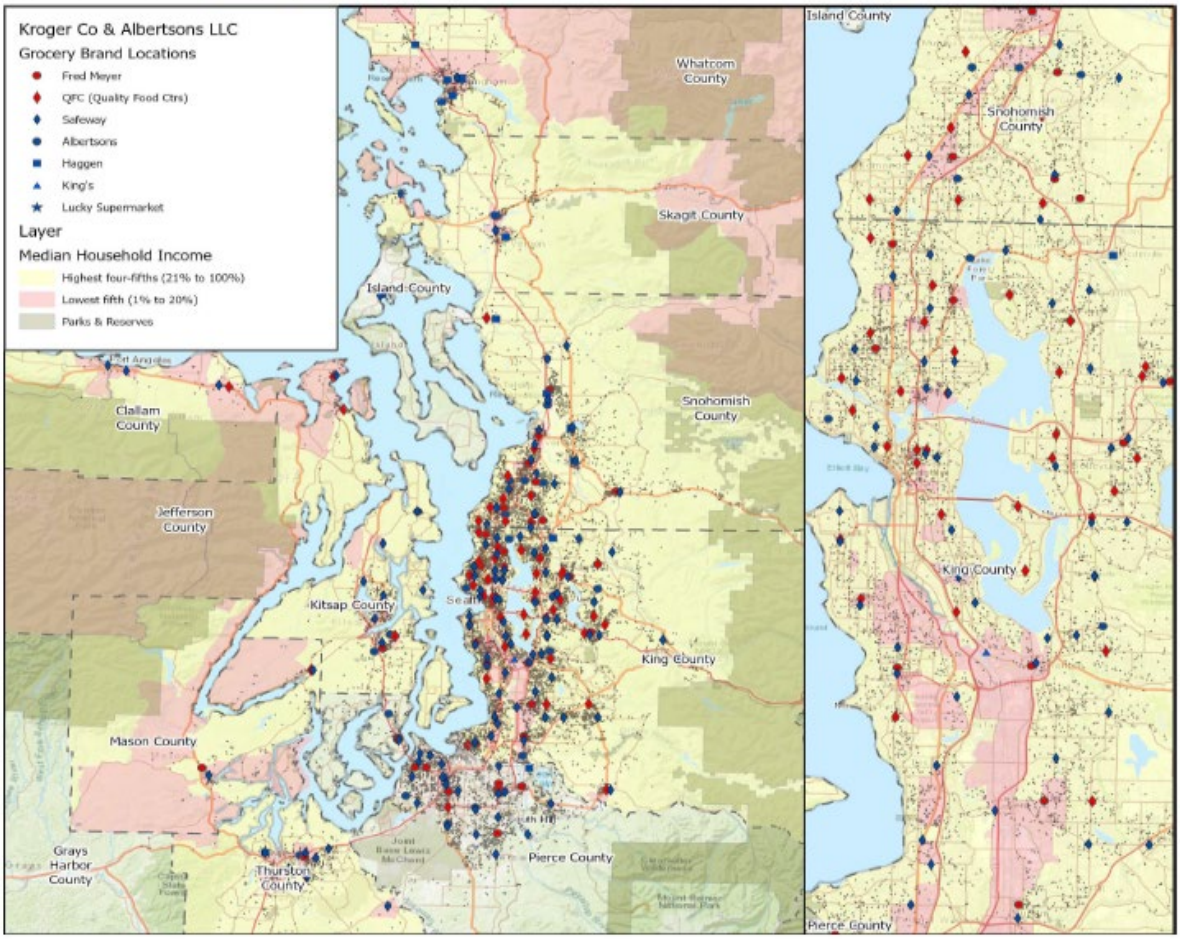
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65. As illustrated by the below map Kroger and Albertsons in Northwest Washington, if a consumer's neighborhood Albertsons-owned store runs out of baby formula, the next nearest grocer could very well be a Kroger-owned store:

Figure 77: Northwest Washington Kroger Co., Albertsons LLC Grocery Stores and Median Household Income



Source: U.S. Census Bureau. American Community Survey: 2019 Table ID: S1903. Database of chain grocery store locations and square feet compiled by Economic Roundtable.

66. Such consumers may subsequently think twice about which of these competing grocers to shop at in the future for needs that are not limited to a single product.

67. Similarly, less inventory to stock and less consumers for Albertsons means fewer Albertsons employees are needed to stock inventory and assist Albertsons consumers.

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V. ANTICOMPETITIVE EFFECTS

68. Defendants, through their officers, directors and employees, effectuated a contract, combination, trust, or conspiracy in restraint of trade, and constituting an unfair method of competition, among themselves nationwide by agreeing to the Pre-Closing Dividend, which will have a substantial and foreseeable effect on Washington State trade and commerce, will negatively impact and restrain competition in the retail grocery market in Washington State, and will negatively impact the labor market in Washington and limit opportunities for workers throughout Washington State, including in King County.

69. While the immediacy of Albertsons desire to pay the Special Dividend makes a complete analysis of its the likely anticompetitive effect impractical at this point, Washington's past experience with a similar deal involving Albertsons shows that this deal is likely to have significant anticompetitive effects.

70. In 2014, Albertsons announced an acquisition of Safeway Inc.

71. After reviewing the transaction, the FTC concluded it would have anticompetitive effects and ordered Albertsons to divest 26 Washington stores.

72. Haggen, a regional supermarket with only 18 stores, purchased 146 of the divested stores, including all 26 Washington stores.

73. However, months after the divestiture, Haggen filed for Chapter 11 Bankruptcy and filed a federal lawsuit accusing Albertsons of intentionally sabotaging the divested stores.

74. Haggen alleged that Albertsons had overstocked perishable inventory, understocked stable inventory, removed purchased fixtures, provided inaccurate pricing information, cut off advertising, lied about the merchandising data system, and misappropriated Haggen's store opening plan.

75. Meanwhile, Comvest, the private equity firm who owned a majority of Haggen, controlled Haggen's negotiations and saw the divesture as an opportunity for a payout. Comvest paid itself a $20 million dividend out of the $430 million divestiture deal.

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76. Comvest structured the deal to extract and separate the real estate assets from the grocery operating business.

77. The operating business' lack of assets deprived Haggen stores of liquidity or the ability to obtain debt financing.

78. Facing these headwinds, Haggen filed for bankruptcy and Albertsons took the opportunity to repurchase 14 stores it had previously divested.

79. Another 9 of the divested stores are no longer supermarkets.

80. Only 3 of the divested stores continue as non-Albertsons-owned supermarkets.

81. Furthermore, Haggen's remaining 15 supermarkets were re-acquired by Albertsons, further reducing competition in Washington grocery markets.

82. Moreover, the decreased ability of Albertsons to compete with Kroger as a result of paying the Special Cash Dividend may make it tougher for unions to secure competitive wages from Albertsons in the next year.

83. This transaction is likely to have even more dire effects for a labor force that has been deemed essential during the Covid-19 pandemic.

VI. CAUSES OF ACTION

A. Albertsons and Kroger Agreed to Restrain Trade in Violation of RCW 19.86.030

84. The State realleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

85. The Defendants violated RCW 19.86.030 in entering into a contract, combination, or conspiracy in restraint of trade or commerce in Washington State.

86. Defendants' acts in furtherance of their anticompetitive agreement were authorized, ordered, or done by their officers, agents, employees, or representatives.

87. Defendants' unlawful acts restrain trade and commerce in Washington State and harm Washington consumers and businesses by reducing competition among two of Washington's largest grocery retailers, and will continue unless enjoined.

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B. Albertsons and Kroger Engaged in Unfair Methods of Competition in Violation of RCW 19.86.020

88. The State realleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

89. The CPA is intended to "protect the public and foster fair and honest competition." RCW 19.86.920.

90. In addition to prohibiting unlawful restraints of trade (RCW 19.86.030), the CPA also prohibits, under RCW 19.86.020, unfair methods of competition that constitute "incipient" violations of or violate the spirit of the antitrust laws. This provision prohibits unfair and anticompetitive conduct.

91. The Defendants violated RCW 19.86.020 by engaging in unfair methods of competition or unfair or deceptive acts or practices in the conduct of trade or commerce in Washington.

92. The acts of Defendants constitute an unfair method of competition affecting commerce in violation of RCW 19.86.020 and will continue unless enjoined.

VII. PRAYER FOR RELIEF

The State of Washington respectfully requests:

1. The Court determine that the unlawful conduct alleged in this Complaint be adjudged and decreed to be in violation of RCW 19.86.030 and RCW 19.86.020, and enter an order permanently restraining it.
2. In the alternative, the Court declare Albertsons and Kroger are prohibited from claiming the failing firm defense in connection with their Agreement and Plan of Merger.
3. The Court enter judgment in favor of the State of Washington and against Defendants as alleged in this Complaint.

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4. The Court award civil penalties for each violation of RCW 19.86.020 and RCW 19.86.030 to the State of Washington to the maximum extent allowed under applicable state law, RCW 19.86.140.

5. The Court permanently enjoin Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, from in any manner continuing, maintaining or renewing the agreement, conduct, contract, conspiracies, or combinations alleged in this Complaint, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

6. The Court award the State of Washington its reasonable costs and attorneys' fees, as provided by law.

7. The Court award pre-judgment and post-judgment interest, as provided by law.

8. The Court award such other relief as it may deem just and proper.

DATED this 1st day of November 2022.

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