

**PUBLIC**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina Khan, Chair**  
                                 **Rebecca Slaughter**  
                                 **Alvaro Bedoya**  
                                 **Melissa Holyoak**  
                                 **Andrew Ferguson**

**In the Matter of**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**Docket No. 9428**

**EXPEDITED TREATMENT  
REQUESTED**

**JOINT MOTION TO DISMISS THE COMPLAINT**

Complaint Counsel and Respondents The Kroger Company (“Kroger”) and Albertsons Companies, Inc. (together with Complaint Counsel and Kroger, the “Parties”) jointly move to dismiss the complaint in the above-captioned matter. On December 13, 2024, Respondents’ counsel informed Complaint Counsel that Respondents have each terminated the proposed acquisition. As set forth in Exhibits A and B, Respondents have both withdrawn their Hart-Scott-Rodino Notification and Report Forms filed for the proposed acquisition at issue in the complaint and have no intent to refile. The Parties therefore respectfully request that the Commission dismiss the complaint because it is now moot.

The Parties also respectfully request the Commission’s expedited treatment of this motion, for two reasons. First, the evidentiary hearing in this matter is scheduled to begin 21 days after the final resolution of the related federal preliminary injunction proceeding in the U.S. District Court for the District of Oregon captioned *Federal Trade Commission, et al. v. Kroger Company and Albertsons Companies*, No 3:24-cv-00347-AN (D. Or.). On

December 10, 2024, the Oregon court granted Complaint Counsel's preliminary injunction motion to block Respondents' proposed merger, and since that ruling Respondents have each terminated the underlying merger agreement. The Commission's prompt action to dismiss the complaint and resolve this matter would thus conserve the Commission's limited adjudicatory resources and help the Parties avoid unnecessary litigation expenses in this forum.

Second, Kroger has filed a constitutional challenge to the Commission's administrative proceeding in U.S. District Court for the Southern District of Ohio captioned *The Kroger Company v. Federal Trade Commission*, No. 1:24-cv-00438-DRC (S.D. Ohio), in which Kroger seeks to preliminarily enjoin this administrative proceeding before it resumes. During a recent hearing, the Ohio court requested a prompt update after the Oregon court issued its ruling on Complaint Counsel's preliminary injunction motion. As shown in Exhibit C, on December 11, 2024, the Commission filed a notice in the Ohio court informing it of the Oregon court's ruling and stating that the Commission "expect[s] to submit a status report jointly with Plaintiffs by December 17, 2024, regarding next steps in this case." Therefore, the Commission's prompt action to dismiss the complaint and resolve this matter would likewise free the Ohio court to dismiss the case it is adjudicating as moot, and thereby conserve its judicial resources and help the Parties avoid unnecessary litigation expenses in that forum.

The Parties therefore respectfully request that the Commission dismiss the complaint on an expedited basis. A proposed order is attached.

**PUBLIC**

Dated: December 16, 2024

Respectfully submitted,

s/ Barrett J. Anderson  
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Federal Trade Commission  
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Washington, DC 20580  
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Email: banderson1@ftc.gov

s/ Mark A. Perry  
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*Counsel for Albertsons Companies, Inc.*

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**     **Lina Khan, Chair  
Rebecca Slaughter  
Alvaro Bedoya  
Melissa Holyoak  
Andrew Ferguson**

**In the Matter of**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**Docket No. 9428**

**[PROPOSED] ORDER TO DISMISS COMPLAINT**

This matter comes before the Commission on Complaint Counsel’s and Respondents’ Joint Motion to Dismiss Complaint. Having considered the motion, it is hereby **ORDERED**:

The Joint Motion to Dismiss the Complaint, dated December 16, 2024, is **GRANTED** and the complaint is **DISMISSED** without prejudice.

By the Commission.

ORDERED:

\_\_\_\_\_  
April Tabor  
Secretary

Date: \_\_\_\_\_

# **Exhibit A**

**PUBLIC**

**Debevoise  
& Plimpton**

Debevoise & Plimpton LLP  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
+1 202 383 8000

December 13, 2024

Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Constitution Center Building  
400 7th St., S.W., 5th Floor, Room 5301  
Washington, D.C. 20024  
(*premerger@ftc.gov*)

Department of Justice  
Antitrust Division  
Premerger and Division Statistics Unit  
450 Fifth Street, N.W.  
Suite 1100  
Washington, DC 20530-0001  
(*premerger@usdoj.gov*)

**Premerger Notification and Report Form: Acquired Person**

**Transaction File No. 231-0004**

**Acquisition by The Kroger Company of Albertsons Companies, Inc.**

Dear Sir or Madam:

Please be advised that our client, Albertsons Companies, Inc., hereby withdraws the above-referenced Notification and Report Form pursuant to 16 C.F.R. § 803.12, effective December 12, 2024.

Please contact me at (202) 383-8135 if I can be of any assistance.

Sincerely,



Edward D. Hassi

# **Exhibit B**

**PUBLIC**

# Arnold & Porter

Michael B. Bernstein  
+1 202.942.5227 Direct  
Michael.B.Bernstein@arnoldporter.com

**CONFIDENTIAL**

December 13, 2024

**VIA EMAIL**

Permerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Constitution Center Building  
400 7th St., S.W., 5th Floor, Room 5301  
Washington, D.C. 20024  
([premerger@ftc.gov](mailto:premerger@ftc.gov))

Department of Justice  
Antitrust Division  
Premerger and Division Statistics Unit  
450 Fifth Street, N.W.  
Suite 1100  
Washington, DC 20530-0001  
([premerger@usdoj.gov](mailto:premerger@usdoj.gov))

Re: Transaction File No. 231-0004 – Acquisition by The Kroger Co. of  
Albertsons Companies, Inc.

Dear Sir or Madam:

Please be advised that our client, The Kroger Co., hereby withdraws the above-referenced Notification and Report Form pursuant to 16 C.F.R. § 803.12, effective December 12, 2024.

Please contact me at (202) 942-5227 if you have any questions.

Sincerely



Michael B. Bernstein



# **Exhibit C**

**PUBLIC**

Case: 1:24-cv-00438-DRC Doc #: 31 Filed: 12/11/24 Page: 1 of 2 PAGEID #: 1104

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

<p>THE KROGER CO.,</p>
------------------------

*Plaintiff,*

v.

<p>THE FEDERAL TRADE COMMISSION, <i>et al.</i>,</p>
---

*Defendants.*

No. 1:24-cv-00438-DRC  
Hon. Douglas R. Cole

**NOTICE OF OREGON DISTRICT COURT DECISION  
AND WASHINGTON STATE COURT DECISION**

Defendants respectfully provide the Court with notice of the Oregon district court’s December 10, 2024 decision preliminarily enjoining The Kroger Company (“Kroger”) and Albertsons Companies, Inc. (“Albertsons”) from consummating the proposed merger pending the outcome of the administrative proceedings before the Federal Trade Commission (“FTC”). *See* Opinion & Order, *FTC v. The Kroger Co.*, No. 3:24-cv-00347-AN (D. Or. Dec. 10, 2024), ECF No. 521 at 71 (attached as Exhibit A).

Defendants also provide the Court with notice of the Washington state court’s December 10, 2024 decision permanently enjoining Kroger and Albertsons from consummating the proposed merger. *See* Findings of Fact and Conclusions of Law, *Washington v. The Kroger Co.*, No. 24-2-00977-9 (King Cty. Sup. Ct. Dec. 10, 2024) at 121 (attached as Exhibit B).

Defendants expect to submit a status report jointly with Plaintiffs by December 17, 2024, regarding next steps in this case.

**PUBLIC**

Case: 1:24-cv-00438-DRC Doc #: 31 Filed: 12/11/24 Page: 2 of 2 PAGEID #: 1105

Dated: December 11, 2024

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General  
Civil Division

BRIAN D. NETTER  
Deputy Assistant Attorney General

CHRISTOPHER R. HALL  
Assistant Branch Director

/s/ Cassandra M. Snyder  
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*Counsel for Defendants*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to as of December 16, 2024:

Michael B. Bernstein  
Matthew Wolf  
Sonia Pfaffenroth  
Joshua Davis  
Michael Kientzle  
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Barrett J. Anderson

*Counsel Supporting the Complaint*