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VIA E-MAIL **CONFIDENTIAL**

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Re: Albertsons' Special Cash Dividend Payment

Gentlemen:

I write on behalf of Albertsons Companies, Inc. ("Albertsons" or the "Company") regarding your letter dated October 26, 2022. This letter provides information on the Special Cash Dividend (the "Special Dividend") referenced in the Agreement and Plan of Merger by and among Albertsons, The Kroger Co. ("Kroger") and Kettle Merger Sub, Inc. dated October 13, 2022 (the "Merger Agreement") and strives to clear up any misconceptions that may have been created in press reports or otherwise.

The transaction between Albertsons and Kroger (the "Proposed Merger") will combine two purpose-driven, value-based organizations to create tremendous opportunities for their communities, associates, and customers, expanding reach to deliver fresh and affordable food to approximately 85 million households. It will enable the combined enterprise to serve more communities across the country, do more for its associates, and enable the combined company to be an even stronger contributor to its local communities. The combined company further will be a more compelling alternative to larger and non-union competitors. The Proposed Merger will also result in investments of approximately $500 million to lower prices, $1.3 billion into

Albertsons' stores to enhance the customer experience, and $1 billion to continue raising associate wages and comprehensive benefits. This amounts to an additional $2.8 billion of investments that will directly benefit customers, communities, and employees. Unions will remain an integral part of the combined company, and Albertsons expects the Proposed Merger to secure union jobs. Albertsons further expects the combined company will continue to actively work with local unions across the country to serve its communities. Albertsons understand the interest of your offices in the transaction, and looks forward working with you and other regulators to obtain the relevant approvals.

To be clear, the Special Dividend that is the subject of your letter is independent of the Proposed Merger itself. Rather, it is part of Albertsons' long-term strategy for growth, which includes plans to return capital to shareholders—a strategy that was determined well before Albertsons' discussions with Kroger began. The Special Dividend is **not** Kroger paying Albertsons to do (or not do) something, and it is **not** conditioned on the Merger closing.

Albertsons is in strong financial condition today, and will be in strong financial condition after the Special Dividend is paid. Critically, the Special Dividend will have no effect on the wages and benefits Albertsons pays its associates—Albertsons will continue to honor its agreements with the unions and its commitments to its associates to increase wages, maintain workplace safety measures, and maintain bargained health insurance and retirement benefits. Furthermore, in considering the Special Dividend, Albertsons concluded that it would not require any changes to the Company's planned investments in capital expenditures, including job-creating strategies such as investments in the modernization of its store fleet.

* * *

I. The Special Dividend Is Part of a Long-Term Strategy for Growth.

Albertsons has long been clear that capital return is a key component of its strategy for growth. Its capital allocation strategy balances investing for the future, strengthening its balance sheet and returns to shareholders through a combination of dividends and share repurchases. Capital expenditures were approximately $1.6 billion during fiscal 2021, primarily including job-creating strategies such as investments in the modernization of its store fleet, including 236 remodels and the opening of 10 new stores, and the building of its digital and technology platforms to enhance convenience, help its customers save money with access to personalized discount offers, and have increased choice. Capital returns to shareholders in fiscal 2021 included $207.4 million in common stock dividends and Albertsons increased its quarterly common stock dividend from $0.10 per quarter to $0.12 per quarter in fiscal 2021. Albertsons did not repurchase any shares in fiscal 2021. In fact, as part of its review of strategic alternatives, which was publicly announced in February 2022,[1] Albertsons considered increasing

[1] *See Albertsons Companies Announces Review of Strategic Alternatives*, Business Wire (Feb. 28, 2022), *available at* https://www.businesswire.com/news/home/20220228006022/en/Albertsons-Companies-Announces-Review-of-Strategic-Alternatives.

its regular dividend so it could return more capital to its shareholders who have entrusted Albertsons with being a leading grocer.

The Special Dividend is part of this strategy. It provides near-term liquidity to all of its shareholders, which Albertsons had planned and was prepared to do regardless of any acquisition by Kroger. It reflects Albertsons' independent decision to effectuate the capital allocation strategy it began evaluating with its advisors long before Kroger expressed interest in Albertsons. Its payment is not required by the Merger Agreement, and it does not reflect any exercise of operational or beneficial control by Kroger over Albertsons.

Investors in publicly traded grocery companies have an interest in the return of capital to shareholders, whether through dividends or share buybacks, and Albertsons has long recognized this interest. At its IPO in June 2020, Albertsons announced its intention to pay regular dividends going forward;[2] in subsequent filings and earning calls in 2021, the Company again acknowledged that returning cash to shareholders through a combination of dividends and share repurchases was part of its capital allocation strategy.[3] In February 2022—again, before Kroger approached Albertsons about a transaction—Albertsons announced an ongoing strategic review, aimed at enhancing the Company's growth and maximizing shareholder value, which would "include an assessment of various balance sheet optimization and capital return strategies."[4]

The Special Dividend, like the sale of the Company to Kroger, fulfills the Company's long-term strategy to return value to shareholders, but the two are not interdependent. As its name implies, the Special Dividend was declared earlier this month to stockholders of record as of the close of business on October 24, 2022, and will be paid those shareholders on November 7, 2022 regardless of whether the Proposed Merger receives regulatory approval and is consummated. It is not conditioned on the closing of Kroger's acquisition of the Company. It is related to and referenced in the transaction only insofar as the payment to Albertsons' shareholders via the Special Dividend reduces the merger consideration Kroger will pay on a dollar-for-dollar basis in recognition of the capital returned to shareholders. And as discussed below, Albertsons will, after the Special dividend is paid, remain on strong financial footing. Albertsons is confident in its financial future and continued ability to compete in its ferociously competitive industry.

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[2] *See* Albertsons Companies Inc., Amend. No. 3 to Form S-1 (June 18, 2020), at p. 55, *available at* https://sec.report/Document/0001193125-20-172409/#rom885054_6 ("[W]e have established a dividend policy pursuant to which we intend to pay a quarterly dividend on our common stock in an annual amount equal to 2.5% of the initial public offering price").

[3] *See, e.g.*, Albertsons Companies, Inc., 2021 Annual Report, at p. 45, *available at* https://sec.report/Document/0001646972-21-000026/ ("Our capital allocation strategy balances investing for the future, strengthening our balance sheet and returns to shareholders through a combination of dividends and opportunistic share repurchases.").

[4] *See supra* note 1.

II. The Special Dividend Will Not Lessen Albertsons' Financial Viability Or Ability to Compete.

Contrary to the suggestion in your letter and some press reports, the Special Dividend will not change the fact that Albertsons is well capitalized with a low debt profile and strong free cash flow. The payment of the Special Dividend will in no way impair Albertsons' ability to meaningfully compete.

With or without the payment of the Special Dividend, Albertsons will have the cash and liquidity needed to operate its business. As stated in Albertsons' latest Form 10-Q filed on October 19, 2022, Albertsons estimates its liquidity needs over the next 12 months to be approximately $10.0 billion, which includes the Special Dividend, anticipated requirements for incremental working capital, capital expenditures that help create jobs, pension obligations that Albertsons pays on behalf of its union contracts, interest payments and scheduled principal payments of debt, normal dividends on Class A common stock and Convertible Preferred Stock, operating leases, and finance leases. Based on current operating trends, Albertsons believes that cash flows from operating activities and other sources of liquidity, including borrowings under its ABL Facility, will be adequate to meet its liquidity needs for the next 12 months and for the foreseeable future. Albertsons believes it has adequate cash flow to continue to maintain its current debt ratings and to respond effectively to competitive conditions. Albertsons has been a responsible steward of its balance sheet and guarded its borrowing ability. As of the end of Albertsons' fiscal second quarter on September 11, 2022, it had no borrowings outstanding under its ABL Facility and total availability of $3,760.4 million (net of letter of credit usage).

Indeed, Albertsons' leverage after payment of the Special Dividend will remain solid, as evidenced by its strategic goals and prior performance. In recent years, Albertsons has sought to achieve a Net Debt/EBITDA ratio of approximately 2.5x. After payment of the Special Dividend, Albertsons' Net Debt/EBITDA ratio will be a very healthy 1.9x. This 1.9x ratio will reflect a less-leveraged Albertsons than it was in recent years: in 2018, the Company reduced its principal debt balance to achieve a Net Debt/EBITDA ratio of 3.5x,[5] and in 2019, the Company further reduced its principal debt balance by approximately $2.0 billion to achieve a Net Debt/EBITDA ratio of 2.9x.[6]

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[5] *See* Press Release, Albertsons, Albertsons Companies, Inc. Reports Fourth Quarter and Full Year Results (April 24, 2019), *available at* https://www.globenewswire.com/news-release/2019/04/24/1808808/0/en/Albertsons-Companies-Inc-Reports-Fourth-Quarter-and-Full-Year-Results.html.

[6] *See* Press Release, Albertsons, Albertsons Companies, Inc. Reports Fourth Quarter and Full Year Results (April 30, 2020), *available at* https://www.albertsonscompanies.com/newsroom/press-releases/news-details/2020/Albertsons-Companies-Inc-Reports-Fourth-Quarter-and-Full-Year-Results-20200430090000/default.aspx ("Total net leverage reduced to 2.9x, an improvement from 3.5x a year ago.").

The relative strength of Albertsons' 1.9x Net Debt/EBITDA ratio after payment of the Special Dividend is further evidenced by others' leverage. Kroger has a strategy of maintaining a Net Debt/EBITDA ratio of 2.3x – 2.5x.[7] As announced in its Annual Reports, Kroger's Net Debt/EBITDA ratio was in this range for years: 2.27x as of January 28, 2017, 2.45x as of February 3, 2018, 2.64x as of February 2, 2019, and 2.30x as of February 1, 2020.[8] And earlier this year, Moody's noted that Ahold's Net Debt/EBITDA ratio was above 2.5x.[9]

Albertsons' financial condition will remain strong after the Special Dividend is paid. And Albertsons has every incentive to make sure that continues. It is not in Albertsons' interest for Albertsons' competitive strength to diminish during the pending regulatory review of the Proposed Merger in the event it is not consummated. Albertsons competes in an intensely competitive industry and does not want to lose share to the myriad competitors it wrestles with on a daily basis. And it does not make sense for any company to pay $24.6 billion for a competitively harmed Albertsons.

III. The Special Dividend's Connection to Kroger's Acquisition of Albertsons Relates to Deal Valuation.

Albertsons was clear from the beginning of negotiations with Kroger that it intended to provide near-term liquidity to all of its shareholders, regardless of any acquisition. It is fair and should be expected that Kroger would want to understand the Special Dividend and its impact on Albertsons' debt and capital structure before agreeing to an acquisition. It is also reasonable for the acquisition price to be adjusted for the Special Dividend in recognition of Albertsons' return of capital to its own shareholders. To be clear, the sole reason the Special Dividend is referenced in the Merger Agreement is because of its effect on the acquisition price.

IV. Canceling or Postponing the Special Dividend Would Expose Albertsons to Serious Legal and Financial Consequences.

Albertsons is not aware of a legal basis that would require it or even permit it to cancel or postpone a dividend that has been duly approved by its fully informed board and announced to the financial markets. With the announcement of the Special Dividend and the setting of a Record Date

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[7] *See* Kroger, 2019 Annual Report, p. 92, *available at* https://s1.q4cdn.com/137099145/files/doc_financials/2019/ar/2019-Annual-Report.pdf ("[W]e are committed to maintaining our net debt to adjusted EBITDA range of 2.30 to 2.50."); Kroger, *Leading with Fresh, Accelerating with Digital Business Update* (March 2022), p. 63, *available at* https://s1.q4cdn.com/137099145/files/doc_events/2022/03/Kroger-2022-Business-Update-Presentation-Final-Website.pdf (citing to a "Disciplined Approach to Capital Allocation" with a "Net Debt to EBITDA range of 2.3 - 2.5").

[8] *See* Kroger's 2016, 2017, 2018, and 2019 Annual Reports, *available at* https://ir.kroger.com/CorporateProfile/financial-performance/reports-statements/.

[9] *Moody's Affirms Ahold Delhaize's Baa1 ratings*, Moody's Investors Service (Apr. 7, 2022), *available at* https://www.moodys.com/research/Moodys-affirms-Ahold-Delhaizes-Baa1-ratings--PR_464628?lang=tr&cy=tur.

for October 24, 2022, the holders of stock eligible to receive the Special Dividend have been determined, and trading in the stock, ex dividend, is now ongoing. Investors of all sorts are acting in reliance on those announcements. To cancel or even postpone the Special Dividend would expose Albertsons to significant legal and financial liability. Returning value to its shareholders is well within the discretion of the Albertsons' board and consistent with the Company's obligations to its shareholders, as well as its longstanding strategy. Accordingly, Albertsons cannot comply with the States' request to delay payment of the Special Dividend.

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I hope that this letter clarifies issues about which there have been misperceptions. I look forward to being in contact with your offices as the process for the Proposed Merger continues. The parties have not yet filed the Hart-Scott-Rodino filings and do not expect to do so until around November 3, 2022.

Best regards,

/s/ Ted Hassi

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