PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Rebecca Kelly Slaughter
Alvaro M. Bedoya

In the Matter of

The Kroger Company

and

Albertsons Companies, Inc.

Docket No. D-9428
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VERSION

and #2 traditional supermarket chains in the United States. Their combined footprint is vast—approximately 5,000 stores, 4,000 retail pharmacies, and 700,000 employees across 48 states.

4. Kroger and Albertsons acquired their massive size through numerous mergers over the past three decades, part of a broader trend of significant consolidation in the United States grocery industry. Examples of Kroger-owned supermarket banners include Fred Meyer, Quality Food Center (QFC), King Soopers, Mariano's, Ralphs, Smith's, and Harris Teeter, while Albertsons-owned banners include Safeway, Vons, Jewel-Osco, Haggen, and Carrs, among others.

5. Today, Kroger and Albertsons compete intensely for consumers and workers in hundreds of communities across the country. As Albertsons's CEO declared, Kroger executives, in turn, describe Albertsons banners as "our #1 direct competitor" and For millions of consumers, direct competition between Kroger and Albertsons has brought grocery prices down and the quality of grocery products and services up.

6. The proposed acquisition would destroy this competition, leaving consumers to foot the bill. As an Albertsons executive communicated to colleagues shortly after the merger announcement, Similarly, Albertsons's Chief Operating Officer emailed Albertsons's Division Leadership on the day the deal was announced,

A Kroger executive commented on some of the geographies impacted by the deal, The destruction of competition between these two head-to-head rivals risks raising prices, worsening services, and lowering quality for the millions of consumers who rely on Kroger and Albertsons for their groceries and other everyday goods.

7. Consumers are not the only ones who will pay the price if the proposed acquisition is completed; the hundreds of thousands of people who work for Kroger and Albertsons would suffer too. Today, Kroger and Albertsons compete aggressively with one another to hire and retain grocery workers

9. Theseexecutives were right to be concerned. In many hundreds of local

Kroger also employs approximately 430,000 workers and is a party to over 300 collective bargaining agreements, with labor unions representing most of its workforce.

15. Kroger's present-day portfolio of stores and banners is the product of four decades of continuous consolidation:

- 1983: Kroger acquired Dillon Companies (including Dillons, King Soopers, City Market, Fry's, and Gerbes banners)
- 1999: Kroger acquired JayC (including JayC and Ruler banners)
- 1999: Kroger acquired Pay Less
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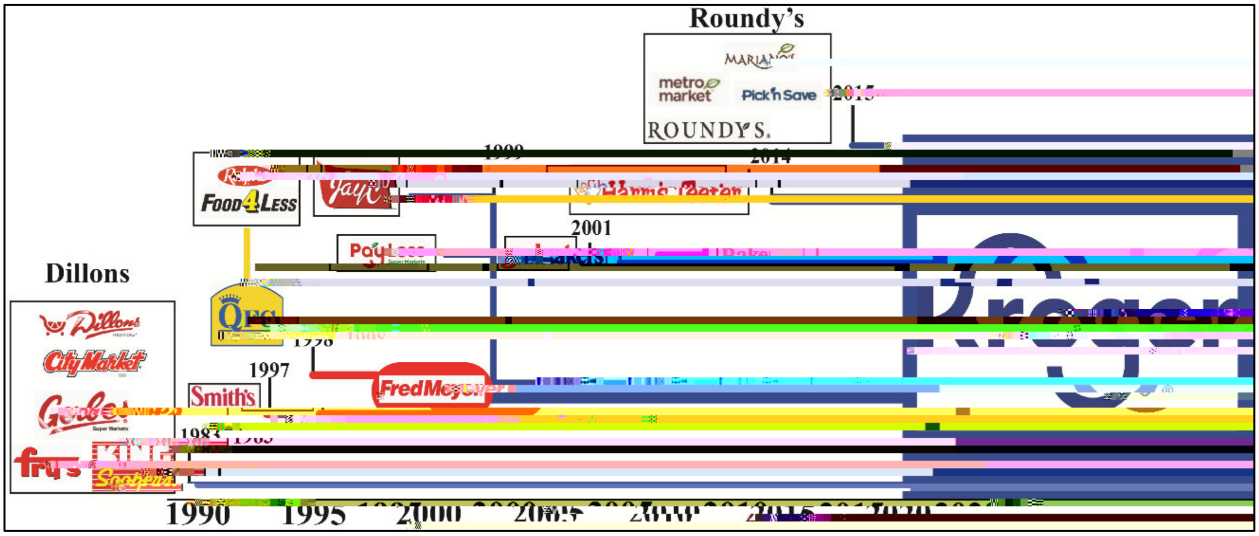
Touting its history of growth by acquisitions, Kroger notes on its website that, "Mergers have played a key role in our growth."



16. Respondent Albertsons is the second largest traditional supermarket chain and the second largest employer of union grocery workers in the United States. In 2022, Albertsons generated approximately $72 billion in revenues. Albertsons operates approximately 2,276 supermarkets and 1,722 retail pharmacies under numerous banners (e.g., Albertsons, Safeway, Haggen, Acme, Andronico's, Amigos, Balducci's, Carrs, Eagle Quality Center, Jewel-Osco, Kings Food Markets, Lucky, Market Street, Pak'N Save, Pavilions, Randalls, Shaw's, Star Market, Tom Thumb, United Supermarkets, Vons) across thirty-five states as shown in the illustration below.

Albertsons also employs over 290,000 workers, most of whom are covered by collective bargaining agreements.

[redacted]

20. Respondents are unique in their scale and size. Today, Kroger's and Albertsons's supermarkets are part of an ecosystem of store banners (e.g., Safeway, Fred Meyer, and QFC) that benefit from manufacturing and distribution networks that operate across broad areas of the country and enjoy local brand recognition. Kroger's go-to-market strategy is to benefit fro[redacted] Albertsons also benefits from the compan[redacted]

21. Respondents organize their supermarkets into "divisions," which are geographic organizational units that have some level of operational autonomy. Respondents' supermarkets also benefit from broad banner and operational division-level branding, marketing, pricing, and promotional strategies. Respondents' strategies include building a profitable "flywheel" (assets that work together to enable continuous growth) of data science capabilities, including loyalty program data that provide insights into consumer behavior and are utilized in retail media networks. These corporate capabilities are integral to the success of Respondents' individual stores. According to Albertsons's CEO [redacted]

22. Kroger and Albertsons also offer additional services to attract supermarket customers, such as fuel stations and pharmacies. For instance, Respondents recognize that offering pharmacy services in their supermarkets can help drive customer traffic, and that customers who come to the pharmacies tend to also purchase groceries. Offering these additional services contributes to the success of Respondents' overall supermarket business.

23. By leveraging these networks and services, Kroger and Albertsons compete head-to-head across multiple dimensions. For example, Albertsons's Portland Division has developed a specific plan for success against Kroge[redacted] and Kroger's QFC division refers to Safeway as its "#1 direct competitor." Respondents' supermarkets alter their pricing and promotions in response to each other and compete with one another to improve the quality of their products and services. Eliminating this head-to-head competition between Respondents may lead to higher prices and reduced services for consumers.

A. SUPERMARKETS ARE A RELEVANT PRODUCT MARKET

24. The retail sale of food and other grocery products in traditional supermarkets and supercenters constitutes a relevant product market. For brevity, this relevant product market is referred to here as "supermarkets."

25. Supermarkets offer consumers convenient "one-stop shopping" for food and grocery products, which, in Kroger's words, is a "simpler and more convenient" alternative to multiple shopping trips. Indeed, Kroger boasts that "one-stop shopping" is their "innovation #1" and has grown into something that would make [company founder] Barney [Kroger] smile." Compared to other types of food retailers, supermarkets typically have a broad and deep product assortment of tens of thousands of stock-keeping units ("SKUs") in a variety of package sizes, as well as a deep inventory of those items. To accommodate the large number of food and non-food products

necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

26. Supermarkets allow customers to purchase most or all of their food and grocery shopping requirements in a single trip to a store that offers substantial products in each of the following categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed, and other types of packaged products; staple foodstuffs, such as salt, sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; and, to the extent permitted by law, wine, beer, or distilled spirits. Supermarkets also offer customer service options including deli, butcher, seafood, bakery, prepared meals (e.g., sushi, hot bar), or floral counters.

27. Supermarkets recognize other supermarkets as a distinct type of food and grocery retailer. For example, supermarkets track and respond to other supermarkets' promotions and customer-service options. When determining their pricing, supermarkets primarily consider the pricing of other supermarkets. This is true for Respondents. Kroger predominantly price checks [redacted] Similarly, Albertsons's pricing program focuses o[redacted]

28. A relevant antitrust market need not include all substitute products or services. The loss of competition between a narrower group of substitutes can cause harm, making the narrower group a properly defined antitrust market. The hypothetical monopolist test is a tool used to determine if a group of products (i.e., type of retailers) is sufficiently broad to be a properly defined antitrust product market. If a single firm (i.e., a hypothetical monopolist) seeking to maximize profits controlled all sellers of a set of products or services and likely would undertake a small but significant and non-transitory increase in price or other worsening of terms ("SSNIPT"), then that group of products (i.e., type of retailer) is a properly defined antitrust product market.

29. A hypothetical monopolist of supermarkets likely would undertake a SSNIPT on consumers. In response to a SSNIPT, supermarket customers would not shift enough of their purchases to non-supermarket retail formats to make a hypothetical monopolist of supermarkets unlikely to undertake a SSNIPT. The reason consumers would not shift a significant enough volume of purchases is because these non-supermarket retail offerings provide a very differentiated customer experience. For example:

- Club stores (e.g., Costco, Sam's Club) require membership fees, typically offer larger package sizes, and frequently rotate their product assortments. Club stores have more square footage but offer far fewer food and grocery SKUs than supermarkets. Club stores also have fewer store locations than supermarkets, requiring consumers to travel longer distances.

- Limited assortment stores (e.g., Aldi, Lidl) offer a differentiated, narrower selection of product SKUs. Most of the SKUs limited assortment stores offer are private label (i.e., store brands) as opposed to national brands. Limited assortment stores often offer products on a rotating, limited time, or seasonal basis, meaning customers are

- Alaska: Anchorage; Fairbanks; Juneau; Kenai; Soldotna
- Arizona: Flagstaff; Lake Havasu City-Kingman; Payson, Phoenix-Mesa-Chandler; Prescott Valley-Prescott; Sierra Vista-Douglas; Tucson; Yuma
- California: Bakersfield; El Centro; Fresno; Los Angeles-Long Beach-Anaheim; Oxnard-Thousand Oaks-Ventura; Riverside-San Bernardino-Ontario; Salinas; San Diego-Chula Vista-Carlsbad; San Francisco-Oakland-Berkeley; San Luis Obispo-Paso Robles; Santa Maria-Santa Barbara
- Colorado: Alamosa; Boulder; Cañon City; Colorado Springs; Cortez; Delta; Denver-Aurora-Lakewood; Durango; Edwards; Fort Collins; Fraser; Granby; Grand Junction; Greeley; Gunnison; Montrose; Pueblo; Steamboat Springs
- District of Columbia and Virginia: Washington-Arlington-Alexandria
- Idaho: Boise-Meridian-Nampa; Coeur d'Alene; Idaho Falls; Pocatello; Twin Falls
- Illinois and Indiana: Bloomington; Chicago-Naperville-Elgin; Kankakee
- Louisiana: Alexandria; Lake Charles; Shreveport-Bossier City
- Maryland: Baltimore-Columbia-Towson; Easton
- Montana: Bozeman; Great Falls; Kalispell
- New Mexico: Albuquerque; Farmington; Santa Fe; Taos
- Nevada: Elko; Las Vegas-Henderson-Paradise; Pahrump; Reno
- Oregon: Albany-Lebanon; Bend; Coos Bay; Corvallis; Eugene-Springfield; Grants Pass; Klamath Falls; Medford; Newport; Portland-Vancouver-Hillsboro; Roseburg; Salem; The Dalles; Tillamook
- Texas: Dallas-Fort Worth-Arlington; Houston-The Woodlands-Sugar Land; Sherman-Denison
- Utah: Salt Lake City; St. George
- Washington: Bellingham; Bremerton-Silverdale-Port Orchard; Ellensburg; Hadlock; Kennewick-Richland; Longview; Mount Vernon-Anacortes; Olympia-Lacey-Tumwater; Port Angeles; Port Townsend; Seattle-Tacoma-Bellevue; Shelton; Spokane-Spokane Valley; Wenatchee; Yakima
- Wyoming: Casper; Cheyenne; Gillette; Jackson; Rock Springs

C. THE PROPOSED ACQUISITION IS-4 (;)-6-4 (U /LBody.u2 (l)-3 (-)-3 (O)-4 (NV AC)10LAC)10Y firms and grows higher as the market becomes more concentrated. A market with a single firm would have an HHI of 10,000 (100^2 = 10,000).

35. The Department of Justice and the Federal Trade Commission jointly publish the Merger Guidelines. Rooted in established caselaw and widely accepted economic thinking, the Merger Guidelines outline the legal tests, analytical frameworks, and economic methodologies both agencies use to assess whether transactions violate the antitrust laws, including measuring market shares and changes in market concentration from a merger. The Merger Guidelines themselves guided by numerous court decisions

benefits these consumers. For example, both Respondents frequently price check each other at a local level and often alter pricing in response to competition from each [redacted] This pricing competition between Respondents exists in both base pricing (non-promotional price) and promotional pricing (sale price). The proposed acquisition would eliminate that competition, leading to higher prices for consumers.

42. In some divisions, Kroger benchmarks its base pri[redacted] Additionally, for multiple product categories, Kroger policies demand that its base prices [redacted]

43. Likewise, Albertsons identifies Kroger Albertsons checks pric[redacted] Using the price check data, Albertsons's pricing software alerts employees when an item's base price is too high o[redacted] Albertsons's long-term goal is to create a[redacted] This price competition has benefited consumers in the form of lower prices.

44. Kroger and Albertsons also compete by offering promotional pricing discounts on products. Both Respondents engineer their promotional programs and discounts in part to drive customers towards their own supermarkets, and away from the other's supermarkets. Respondents also monitor each other's promotional offers and respond accordingly. In divisions where Respondents' supermarkets overlap, Kroger routinely compa[redacted]

Albertsons als[redacted] for example, Albertsons's Denver Division President testified that Albertsons stri[redacted]

45. Promotional competition between Kroger and Albertsons is a regular occurrence. For example, in response to Fred Meyer (Kroger) ads in Portland, Oregon, Albertsons's Chief Operating Officer wrote [redacted]

Albertsons's Vice President of Marketing and Merchandising comme[redacted] In 2022, Albertsons's Senior Vice President of Marketing and Merchandising for the Seattle Division noted in response to Fred Meyer ads [redacted] Again, the proposed acquisition would eliminate promotional pricing competition between Kroger and Albertsons, leading to higher prices for consumers.

46. Product quality competition. Kroger and Albertsons also compete with one another to improve the quality and variety of their products and offerings, such as the freshness and assortment of their produce. Kroger's internal analyses show th[redacted]

and Similarly, Albertsons's Division President in Portland stated in 2022, and that Albertsons needed to to compete with Kroger and Walmart.

47. Recognizing the importance of freshness and the assortment of fresh produce to customer choice, Respondents compete closely to offer the freshest, highest quality produce. Consumers regularly benefit from this competition. For example, after noting the selection of in-store cut produce at Vons (Albertsons) stores in late 2022, a Ralphs (Kroger) produce manager directed his team Similarly, in April 2022, Albertsons conducted a test comparing the freshness of

48. Kroger and Albertsons also compete by monitoring each other's branded and private-label products. For example, in 2020, Kroger compared the quality As a result of this assessment, Kroger recognized a need The proposed acquisition would eliminate that competition, leading to lower quality private-label offerings for consumers.

49. Store condition and customer service competition. Respondents try to attract customer volume by prioritizing store remodels where they face more robust competition. For example, when Kroger opened a Fry's supermarket in Arizona near an Albertsons, the Albertsons's District Manager noted its store was He added, Also, for example, a Ralphs employee stated a particular store was a

50. Competition between Respondents also spurs them to offer superior customer services. Albertsons's 2022 Portland Division plan to compete against Kroger included The improved customer services include store hours and pick-

leaves for a non-union employer, however, the worker will lose any non-vested CBA benefits and protections.

64. Union grocery workers value the robust pension and healthcare benefits, as well as other benefits and protections provided by the CBAs. Because union grocery worker pensions vest

Counties); (viii) Roseburg, Sutherlin, Winston, Riddle, and Myrtle Creek; (ix) Salem (Marion, Polk, Linn, and Benton Counties); (x) Wasco and Hood River Counties;

- Washington: (i) Chelan, Douglas, and Kittitas Counties; (ii) Clark County; (iii) Cowlitz and Wahkiakum Counties; (iv) Jefferson and Clallam Counties; (v) King, Kitsap, and Snohomish Counties; (vi) Island, Skagit, and Whatcom Counties; (vii) Mason and Thurston Counties; (viii) Spokane County; (ix) Yakima County.

D. THE PROPOSED ACQUISITION WOULD ELIMINATE COMPETITION BETWEEN RESPONDENTS FOR UNION GROCERY LABOR

69. Separate from the increase in concentration, the elimination of current head-to-head competition between Respondents for union grocery labor in many of their shared local CBA areas also makes the proposed acquisition unlawful.

70. By eliminating the current competition for union grocery labor between Kroger and Albertsons, the proposed acquisition would prevent the unions from being able to play them off each other during collective bargaining negotiations, substantially increasing Kroger's negotiating leverage. Kroger could use this increased negotiating leverage to reduce (or refuse to increase) wages, to reduce (or refuse to improve) worker benefits, and to degrade (or refuse to improve) working conditions or commit to fewer workplace protections.

71. Kroger and Albertsons are the two largest union grocery operators in the United States. Kroger and Albertsons each negotiate with local unions representing their workforces to determine wages, benefits, and working conditions for union grocery workers. Where Respondents overlap, they compete to attract and retain union grocery workers. To remain competitive, Respondents monitor and often match each other's wage increases for union grocery workers.

72. Where Respondents' union grocery operations overlap, they often negotiate CBAs separately but simultaneously against local chapters of labor unions representing grocery workers. During these negotiations, local unions try to play Kroger and Albertsons against each other, typically by obtaining a favorable deal from one Respondent and then leveraging that deal against the other Respondent to demand similar or better terms. The local unions can play Respondents against each other because Respondents closely compete for customers and workers and Respondents do not want to risk losing either customers or workers to their competitor. Albertsons's Vice President of Labor Relations refers to Kroger as its because Kroger and Albertsons compete for sales and talent while engaging in bargaining with local unions at the same time. During CBA negotiations with Respondents, the local unions have been able to improve wages, benefits, and working conditions by leveraging the competition between Kroger and Albertsons.

73. Union grocery workers' primary leverage during CBA negotiations is the ability to credibly threaten a strike. When workers withhold their labor during a strike, workers also encourage customers to shop at a competing supermarket, preferably another union grocery employer. Thus, a strike is effective because the employer loses sales and customers to competing supermarkets. The unions leverage the fact that Kroger and Albertsons compete for customers by striking or threatening to strike Kroger and encouraging Kroger's customers to shop elsewhere,

a similar or better term. Kroger's Vice President of Labor Relations stated during 2022 Seattle negotiations:

74. UFCW Local 7's strike against Kroger in Colorado illustrates how the unions play Respondents off one another during a strike. In January 2022, UFCW Local 7 struck Kroger's King Soopers supermarkets in the Denver, Colorado CBA area. Leading up to and during the strike, Kroger's union grocery workers encouraged Kroger customers and employees to transfer their prescriptions to and shop at Albertsons stores instead of Kroger stores.

75. Kroger's concern about losing customers led them to ask Albertsons

Albertsons's Senior Vice President of Labor Relations emailed Kroger that

76. During the strike, Kroger lost of dollars in sales and profits, with Albertsons's Denver Division President wrote that Albertsons gained and

agreements. This competitive pressure benefits workers at both firms. For example, during the

84. Timely entry by other union grocery employers is also not likely, and any potential entry by smaller union grocers would not be sufficient in magnitude to impact negotiations with the combined Kroger/Albertsons.

B. RESPONDENTS CANNOT DEMONSTRATE EFFICIENCIES SUFFICIENT TO REBUT THE PRESUMPTION OF HARM

85. Respondents cannot demonstrate merger-specific, verifiable, and cognizable efficiencies sufficient to rebut the presumption of harm indicated by the proposed acquisition's impact on market shares and concentration and the evidence that the proposed acquisition may eliminate substantial head-to-head competition in the relevant markets.

C. THE PROPOSED DIVESTITURE DOES NOT SUFFICIENTLY MITIGATE THE LIKELY ANTICOMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION

86. On September 8, 2023, Respondents announced that they intend to divest a hodgepodge of 413 stores and other castoff assets across 17 states and the District of Columbia to C&S Wholesale Grocers, LLC

87. The proposed divestiture does not solve the competitive issues created by the proposed acquisition. C&S will not acquire an ongoing business operated by either Respondent today in any geography. In many local markets where Respondents overlap, C&S will not acquire any assets, leaving local market conditions unchanged. Additionally, in many local markets where C&S is acquiring stores, Respondents cannot show the proposed divestiture will prevent a substantial lessening of competition. The proposed divestiture thus does not contain sufficient assets to enable nde 2efnw 2efiaotopos (t)-2p(ny)]ntRp (C)]Tbu'ton2 (i)-2 (t)-2 (i) -1 (uf)e

programs, and new e-commerce platforms. C&S will need to do that while scrambling to recover from the loss of numerous assets that Respondents chose not to include in the package For example, Respondents will not be providing some of Albertsons's most popular private label brands, certain self-manufacturing facilities, established data-analytics capabilities, and experienced regional and corporate support teams. The deficiencies in the proposed divestiture pose unacceptable risks to competition, consumers, and workers.

91. Anticompetitive Entanglements. The proposed divestiture does not provide any meaningful relief during a lengthy transition period, as the combined Kroger/Albertsons and C&S

acquiring. In an internal assessment of the proposed divestiture, C&S estimated

100. The proposed acquisition constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

101. The allegations of Paragraphs 1 through 98 above are incorporated by reference as

Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Proposed Transaction challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. A prohibition against any transaction between The Kroger Company and Albertsons Companies, Inc. that combines their businesses, except as may be approved by the Commission.

2. If the Proposed Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as The Kroger Company and Albertsons Companies, Inc. were offering and planning to offer prior to the Proposed Transaction.

3. A requirement that, for a period of time, The Kroger Company and Albertsons Companies, Inc. provide prior notice to and receive prior approval from the Commission for acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company engaging in the relevant market.

4. A requirement to file periodic compliance reports with the Commission.

5. Requiring that Respondents' compliance with the order may be monitored at Respondents' expense by an independent monitor, for a term to be determined by the Commission.

6. Any other relief appropriate to correct or remedy the anticompetitive effects of the Proposed Transaction or to restore The Kroger Company and/or Albertsons Companies, Inc. as viable, independent competitors in the relevant market[s].

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty sixth day of February, 2024.

By the Commission.

April J. Tabor
Secretary

SEAL: