

**Material redacted in public version**

**HIGHLY CONFIDENTIAL**

July 29, 2024

**VIA EMAIL**

Jenny Grunditz  
Policy Advisor  
Health and Policy Analytics Division  
Oregon Health Authority  
421 SW Oak Street  
Portland, OR 97204  
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Re: Kroger/Albertsons – Response to June 18, 2024 Letter re: Supplemental Information Requests Issued to Kroger on December 18, 2023 and February 23, 2024

Dear Jenny:

We write with responses to the letter sent by the Oregon Health Authority (“OHA”) to Kroger on June 18, 2024 regarding the information provided in response to OHA’s December 18, 2023 and February 23, 2024 supplemental information requests related to Kroger’s proposed acquisition of Albertsons (“Proposed Transaction”) and Kroger’s and Albertsons’ proposed divestiture to C&S Wholesale Grocers (“C&S”) in conjunction with the Proposed Transaction (“Proposed Divestiture”).

**I. Responses to December 18, 2023 RFIs**

- 1. For the response to #2, the Entities provided the Amended and Restated Asset Purchase Agreement by and among Kroger, Albertsons, and C&S Wholesale Grocers, LLC, dated April 22, 2024, and the Disclosure Schedules to that agreement (“Divestiture Agreement”).**
  - a. Please provide all previous versions of the Divestiture Agreement and related disclosures.**

July 29, 2024

Page 2

**Response:**

In response to Question 1, Kroger is providing the original Divestiture Agreement and related disclosure schedules, entered into by Kroger, Albertsons, and C&S on September 8, 2023 (KR-OHA-00006117 and KR-OHA-00006611).

- b. Compared to the previously identified Oregon divestitures, the revised list of stores adds 23 stores and removes 11 stores, for a net increase of 12 stores in Oregon. Please explain why previously included Oregon stores were removed from the divestiture package and how the Entities identified the stores to be added.**

**Response:**

The original and revised lists of stores to be divested were developed by counsel for Kroger based upon their legal analysis of the divestitures required to address regulatory concerns. Based upon feedback provided by regulators on the initial list of proposed divestitures, Kroger, working with its counsel, developed an updated divestiture package, including a revised list of proposed store divestitures, that it believes addresses the regulatory concerns identified. *See generally* Order Denying Complaint Counsel’s Motion to Compel Production of Documents and Revised Privilege Log, *In re Kroger Co. & Albertsons Companies, Inc*, FTC Dkt. No. 9248 (June 11, 2024) (describing role of counsel for the parties in developing and negotiating divestiture agreements and upholding privilege claims relating to negotiation of divestiture agreement), at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/610942\\_-\\_order\\_denying\\_complaint\\_counsels\\_mtc\\_production\\_of\\_documents\\_and\\_revised\\_privilege\\_1.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/610942_-_order_denying_complaint_counsels_mtc_production_of_documents_and_revised_privilege_1.pdf).

- c. Other than the list of stores to be divested, please identify/list all changes made to the Divestiture Agreement as part of the April 2024 amendment.**

**Response:**

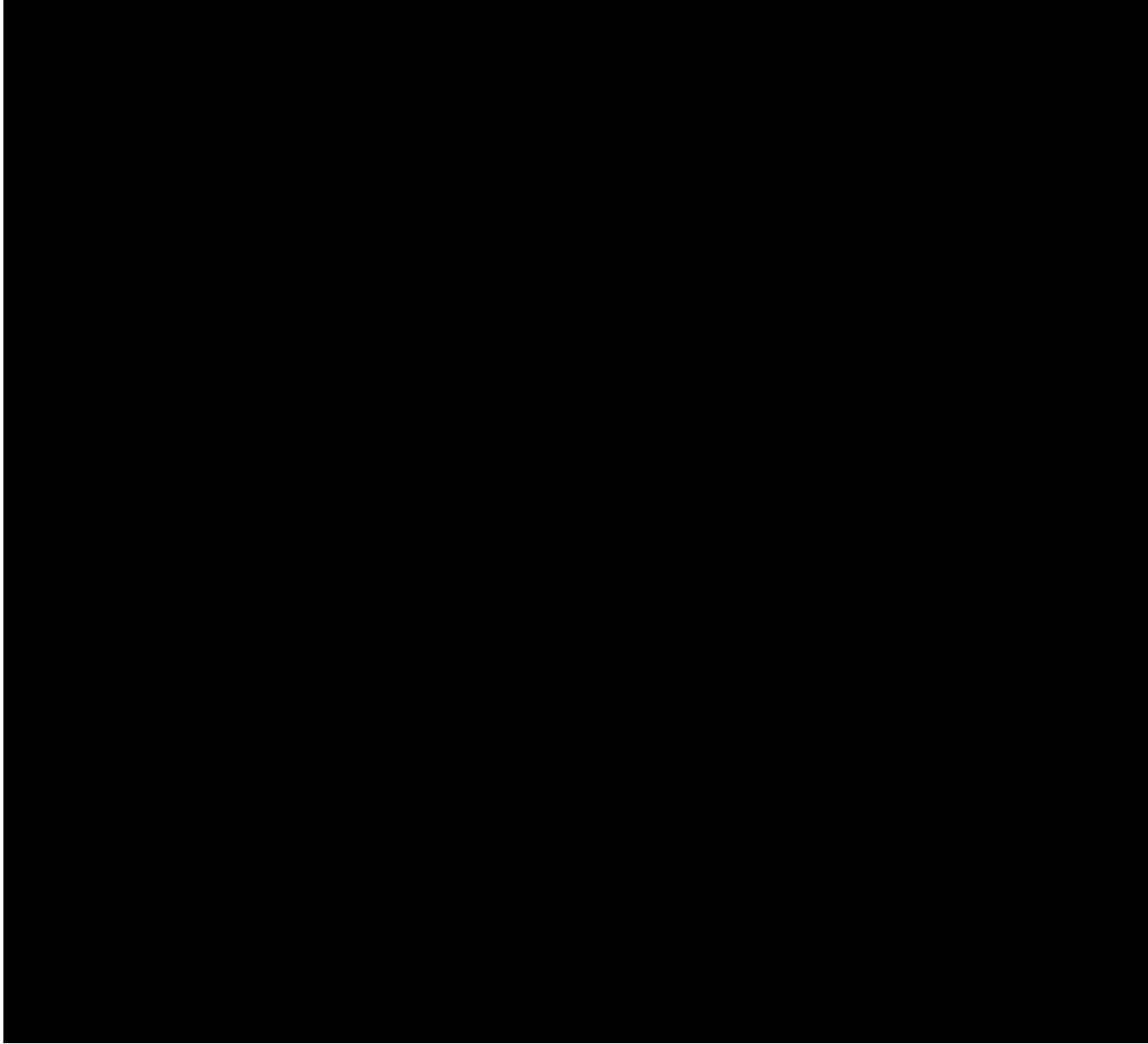
The Amended Divestiture Agreement signed in April 2024 and its schedules total more than 1,100 pages. It is not feasible to provide a list of “all” changes made as a result of the amendment. Kroger respectfully directs OHA to the agreements themselves to see “all” changes.

As a brief summary of certain key changes, the Amended Divestiture Agreement expands the number of stores to be divested, provides for the divestiture of different and

July 29, 2024

Page 3

larger distribution facilities, includes a dairy facility, and provides rights to the Signature and O Organics private label brands. The Amended Divestiture Agreement also contains changes to enhance the transition services provided to C&S. *See generally* Press Release, Kroger, Albertsons Companies and C&S Wholesale Grocers, LLC Announce an Updated and Expanded Divestiture Plan (Apr. 22, 2024), <https://ir.kroger.com/news/news-details/2024/Kroger-Albertsons-Companies-and-CS-Wholesale-Grocers-LLC-Announce-an-Updated-and-Expanded-Divestiture-Plan/default.aspx>.

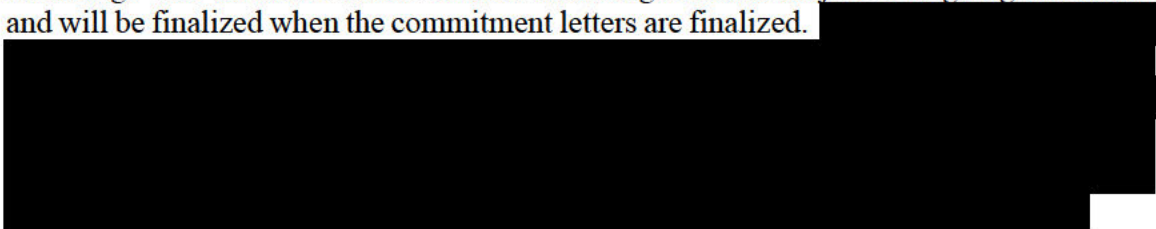




**g. Please describe the material terms of** [redacted]

**Response:**

C&S expects to enter into one or more commitment letters to provide for commitments in respect of its existing credit facility, other term loan financing, and equity financing. The form and nature of such financing remains subject to ongoing discussion and will be finalized when the commitment letters are finalized.



**2. For the response to #8, please provide the following:**

**a. Similar store-level data for all Albertsons-owned and Kroger-owned stores in the U.S., inclusive of Oregon, and include the TDLinx ID corresponding to each store.**

**Response:**

Kroger is providing KR-OHA-000006870, which provides similar store-level data to that provided in KR-OHA-000001782 for all Kroger-owned stores in the U.S. For each Kroger store, KR-OHA-000006870 includes both the internal Kroger division and store numbers (“Div#-Store#”) and the TDLinx ID. As explained below, OHA can use the cross-references between the internal Kroger division-store number and the TDLinx ID in KR-OHA-000006870 to associate the TDLinx ID to the store-level financial data referenced in Questions 13 and 20.

July 29, 2024  
Page 5

Albertsons is providing ACI-ORHCMO-00001036, which provides similar store-level data to that provided in ACI-ORHCMO-00001031 for all Albertsons-owned stores in the U.S. TDLinx IDs are not available for standalone fuel centers and stores that are not yet open.

**b. Identifying information (e.g., store location) for the stores set forth in ACI-ORHCMO-00001031.**

**Response:**

Albertsons is providing ACI-ORHCMO-00001036, which includes identifying information for each store in the fields “Banner,” “Street\_Address,” “City,” “State,” “Zip\_Code,” “Store\_Latitude,” and “Store\_Longitude.”

**c. Whatever forward-looking projections the parties have prepared regardless of whether they are in the form requested in item #8.**

**Response:**

[REDACTED]

[REDACTED]

**3. For the response to #13, please provide the following:**

- a. A description of the general scope of services that [REDACTED] will provide to assist C&S with pharmacy integrations including the duration of the engagement. Please also make note of any issues or gaps in services under the TSA that [REDACTED] has identified.**

July 29, 2024

Page 6

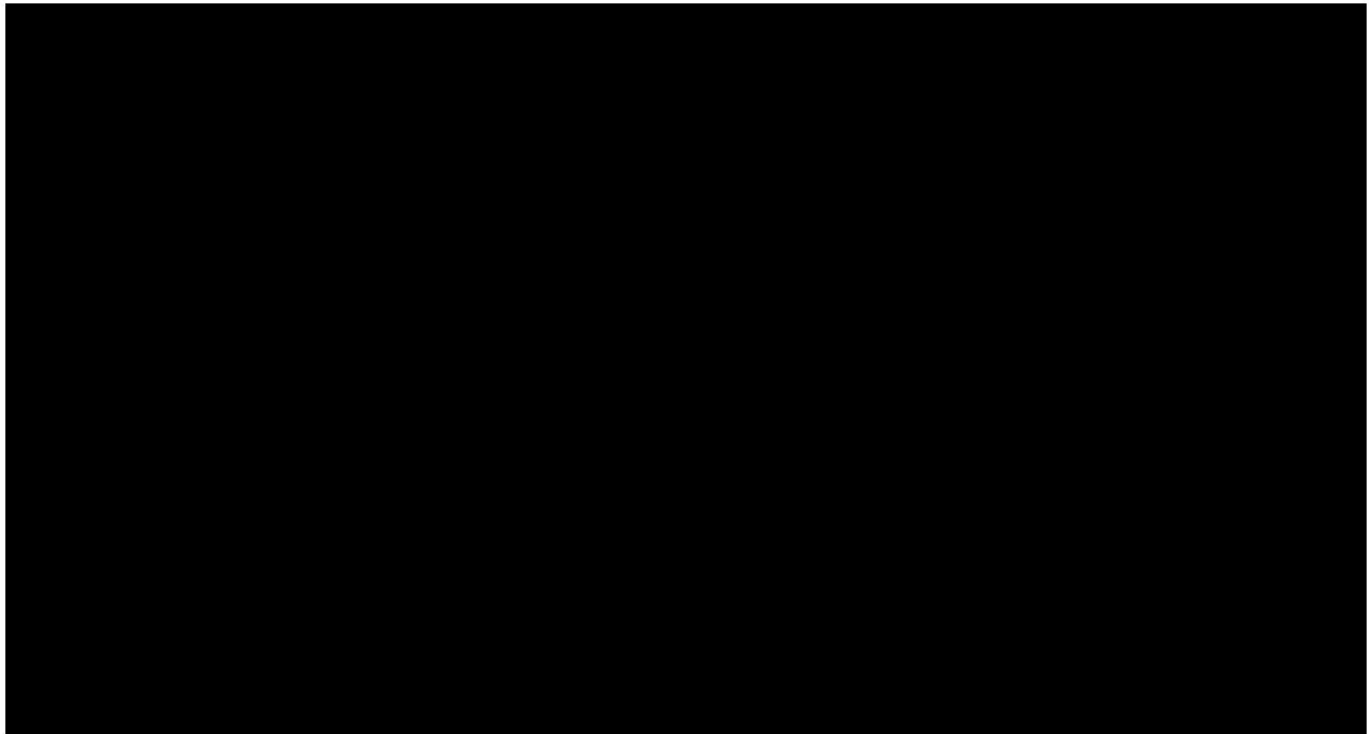
**Response:**

C&S engaged [REDACTED] to assist with retail pharmacy readiness. [REDACTED]

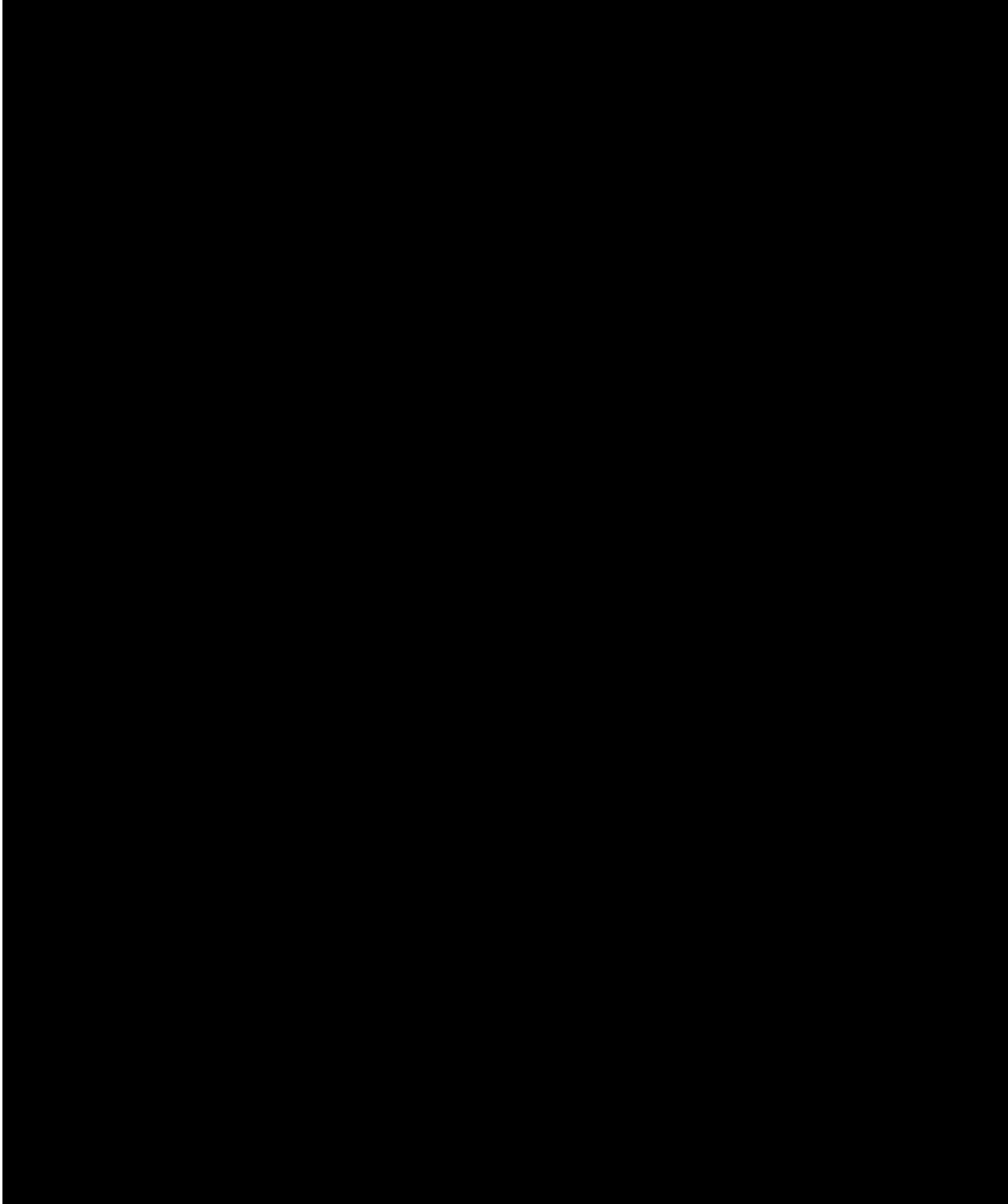
- b. Centerview's updated analysis/report referenced in the response to part c.**
- c. An updated analysis (including the analysis in FTC-CS-00004549 – HIGHLY CONFIDENTIAL.pdf) reflecting the April 2024 Divestiture Agreement.**

**Response:**

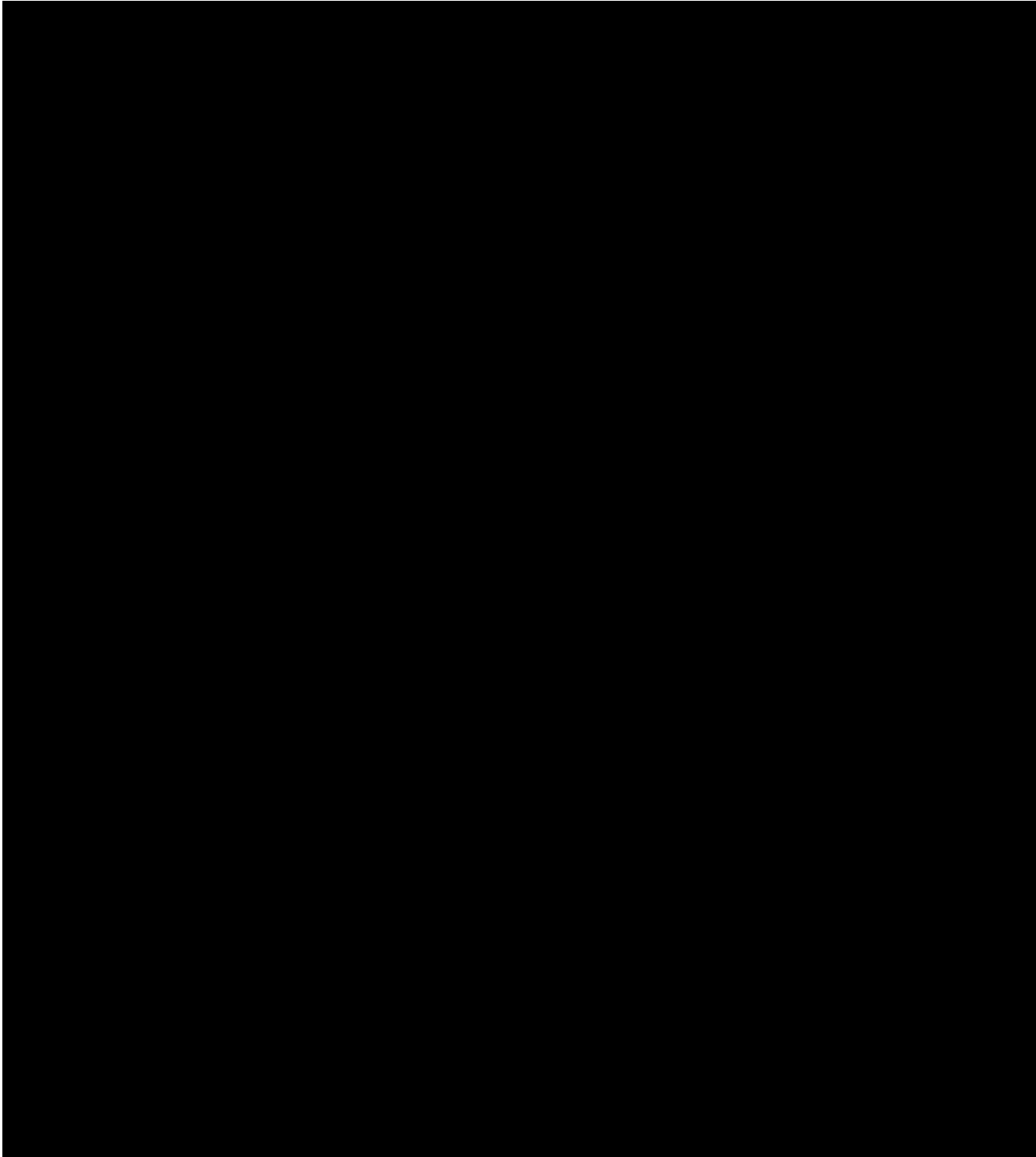
In response to Question 3(b)-(c), C&S is providing CS-01847615, a slide deck created by Centerview in May 2024.



July 29, 2024  
Page 7



July 29, 2024  
Page 8





July 29, 2024

Page 9

6. Regarding the response to item #18, the “Specialty Rx by payer – ACI” tab in **HIGHLY CONFIDENTIAL-ACI-ORHCMO-00000087.xls** has blank cells for Medcart Specialty Pharmacy. Please clarify whether the blank cells represent zero values or missing/unavailable data.

**Response:**

Blank cells represent zero values.

8. Several RFI responses related to how C&S intends to operate divested pharmacies indicate the potential for operating changes which may impact operational costs, such as [REDACTED] and other vendor re-contracting, and potential PBM contract changes. How were pharmacy operating cost changes reflected in the deal model (CS-00001457 – **HIGHLY CONFIDENTIAL.xls**)?

**Response:**

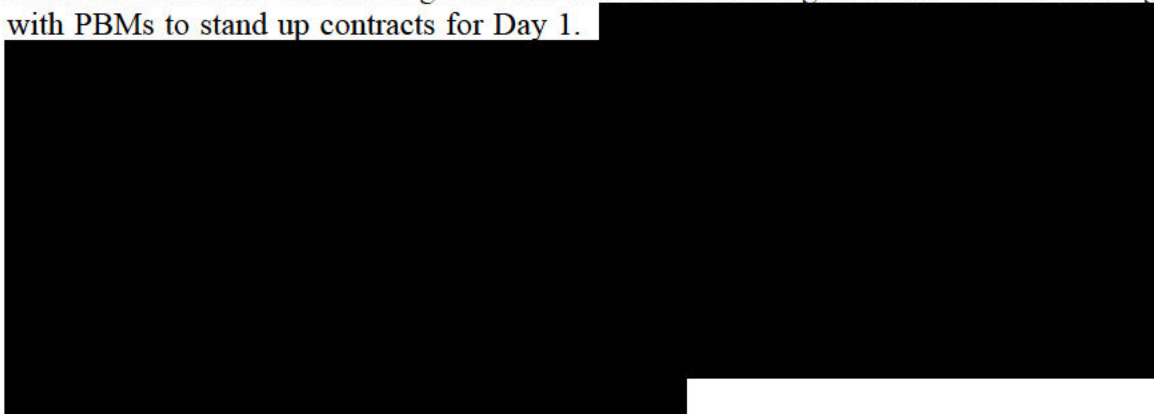
In-store operations will remain largely unchanged on Day 1 as in-store associates will continue operating on the same pharmacy systems and with many of the same processes as a result of the TSA. [REDACTED]

[REDACTED] C&S is engaged with procurement providers and has selected its primary and secondary wholesalers. C&S is also in the midst of negotiations and

July 29, 2024

Page 10

implementation plans with other suppliers and PBMs. C&S pharmacy leadership has contacted national PBMs and negotiated NDAs to facilitate negotiations. C&S is working with PBMs to stand up contracts for Day 1.

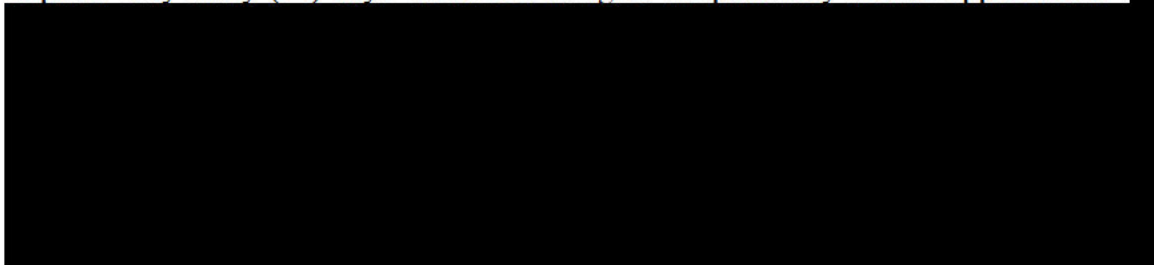


**9. Regarding the response to #33, please provide the following:**

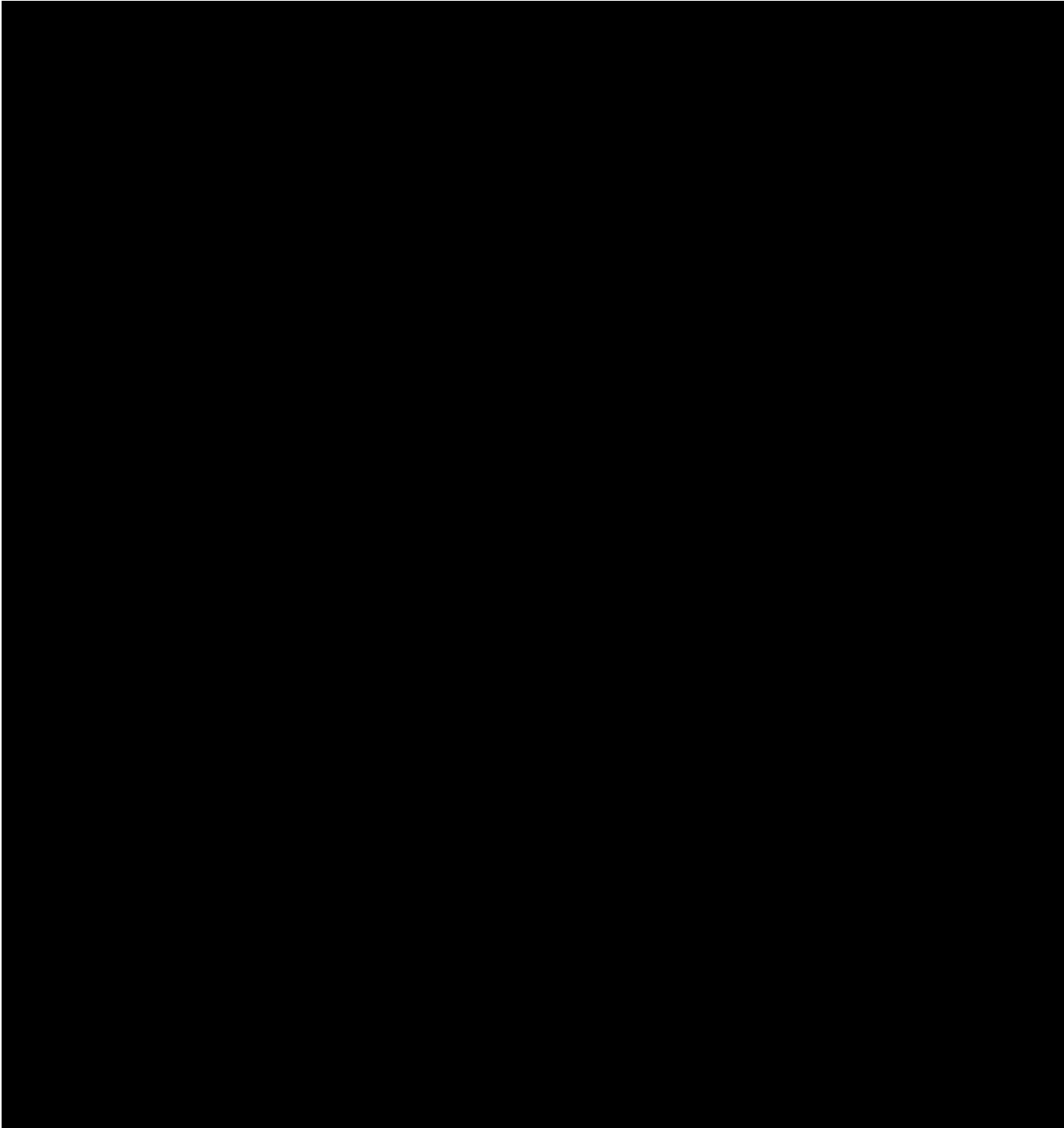
- a. Supporting legal analysis that confirms C&S is permitted to make use of Kroger’s and/or Albertsons’s pharmacy licenses (and any other related regulatory approvals, franchises, authorizations, permits, etc.) that are necessary for the seamless operation of the Divestiture Stores’ pharmacy and related healthcare operations under a power of attorney pursuant to the TSA.**

**Response:**

C&S hired [redacted] to assist with all regulatory filings associated with the licenses for the Divestiture Stores’ pharmacies. Early in the exploratory process with the Oregon Board of Pharmacy (“Board”), on November 16, 2023, and then again on May 2, 2024, [redacted] met with a licensing representative from the Board, Tracy Loosli, to ensure that C&S understood all of the Board’s required processing timelines and procedures related to this change of ownership. Ms. Loosli advised [redacted] that the Board’s pharmacy license application processing time is relatively fast. In fact, it requires only thirty (30) days’ advanced filing of the pharmacy license applications.



July 29, 2024  
Page 11



July 29, 2024

Page 12

**Response:**

[REDACTED]

**11. For the response to #38, please provide the following information:**

- a. The response to part a. indicates that C&S acquired the Sherrill, NY pharmacy from Grand Union, whereas the response to part b. suggests that this pharmacy was acquired from Tops-Price Chopper. Please clarify.**

**Response:**

The Sherrill, NY pharmacy was acquired from Tops – Price Chopper and was then re-bannered to Grand Union.

- b. As requested in subpart c.ii., please provide the current status of each pharmacy previously operated by C&S.**

**Response:**

C&S does not maintain information on the current status of each pharmacy previously operated by C&S.

[REDACTED]

July 29, 2024  
Page 13

**12. The response to item #49 identifies “mobile refill, network rates, drug availability, and clinical services” as “areas which could experience changes.” Please provide a detailed description of potential changes in each of these areas:**

**a. Mobile refill**

**Response:**

[REDACTED]

**b. Network rates**

**Response:**

C&S is negotiating with PBMs for all networks where stores are located to minimize disruption [REDACTED]

**c. Drug availability**

**Response:**

There are no changes anticipated to drug availability.

**d. Clinical services**

**Response:**

There are no changes anticipated to clinical services.

**Please also describe how these changes will meet the criteria set forth in O.R.S § 415.500 et. seq and the regulations promulgated thereunder.**

**Response:**

There are no material changes anticipated in these areas.

July 29, 2024  
Page 14

## II. Responses to February 23, 2024 RFIs

13. Please append the TDLinx ID that corresponds to those included in KR-OHA-000001897 - HIGHLY CONFIDENTIAL.xlsx to each store-specific data line in each of the below provided files:

- a. KR-OHA-000001899 - HIGHLY CONFIDENTIAL.xlsx through KR-OHA-000001906 - HIGHLY CONFIDENTIAL.xlsx
- b. KR-OHA-000001907 - HIGHLY CONFIDENTIAL.xlsx and KR-OHA-000001908 - HIGHLY CONFIDENTIAL.xlsx
- c. KR-OHA-000001909 - HIGHLY CONFIDENTIAL.xlsx and KR-OHA-000001910 - HIGHLY CONFIDENTIAL.xlsx
- d. KR-OHA-000001911 - HIGHLY CONFIDENTIAL.xlsx through KR-OHA-000006116 - HIGHLY CONFIDENTIAL.xlsx

### Response:

In response to Question 2(a), Kroger has provided KR-OHA-000006870, which cross-references the TDLinx number to Kroger's internal division and store number for each Kroger store. OHA can use this file to associate the TDLinx number with the internal Kroger store numbers used in the documents referenced in Question 13(a)-(d) (KR-OHA-000001899 through KR-OHA-000006116). KR-OHA-000006870 provides the current snapshot of this cross-reference; Kroger's store numbers may have changed over time such that for prior years, the cross-reference does not hold.

Below we describe where in each of these documents the division-store number can be identified – and thus, how they can be cross-referenced to the TDLinx number:

- KR-OHA-00001899 to -1906 include the Kroger division-store number.
- In KR-OHA-000001907, KR-OHA-000001909, and KR-OHA-000001911 to -1932, the Kroger division number is noted in the first column of the [REDACTED] tab and the Kroger store number is listed in the relevant rows for a given store in the [REDACTED]

July 29, 2024  
Page 15

[REDACTED]

- In KR-OHA-000001908, KR-OHA-000001910, and KR-OHA-000006095 to KR-OHA-000006166, the store number is listed in the relevant rows for a given store in the [REDACTED]
- KR-OHA-000001933 to -6094 relate to the Harris Teeter division [REDACTED]. These documents use the Kroger internal store numbers for the stores in the Harris Teeter division. [REDACTED]

e. **HIGHLY CONFIDENTIAL-ACI-ORHCMO-00001032.xlsx** and **HIGHLY CONFIDENTIAL-ACI-ORHCMO-00001033.xlsx**

**Response:**

In response to Question 13(e), Albertsons is providing ACI-ORHCMO-00001040 and ACI-ORHCMO-00001041, which include the TDLinx ID for each store in the field “TDLinx” where available. TDLinx IDs are not available for standalone fuel centers and stores that are not yet open.

**14. Regarding KR-OHA-000001898 - HIGHLY CONFIDENTIAL.xlsx, please confirm that Q1 comprises of periods 1-4, Q2 comprises of periods 5-7, Q3 comprises of periods 8-10, and Q4 comprises of periods 11-13.**

**Response:**

Confirmed.

**15. Regarding files KR-OHA-000001907 - HIGHLY CONFIDENTIAL.xlsx and KR-OHA-000001908 - HIGHLY CONFIDENTIAL.xlsx, please confirm that all information included in file Exhibit 2-4 - CONFIDENTIAL.xls (submitted to OHA on October 20, 2023) is included in KR-OHA-000001907 - HIGHLY**

July 29, 2024

Page 16

**CONFIDENTIAL.xlsx and KR-OHA-000001908 - HIGHLY CONFIDENTIAL.xlsx.**

**Response:**

All information in Exhibit 2-4 is included in KR-OHA-000001907.

- 16. Regarding files KR-OHA-000001909 - HIGHLY CONFIDENTIAL.xlsx and KR-OHA-000001910 - HIGHLY CONFIDENTIAL.xlsx, please confirm that all information included in file Exhibit 2-5 - CONFIDENTIAL.xls (submitted to OHA on October 20, 2023) is included in KR-OHA-000001909 - HIGHLY CONFIDENTIAL.xlsx and KR-OHA-000001910 - HIGHLY CONFIDENTIAL.xlsx.**

**Response:**

All information in Exhibit 2-5 is included in KR-OHA-000001909.

- 17. Regarding files KR-OHA-000001899 - HIGHLY CONFIDENTIAL.xlsx through KR-OHA-000001906 - HIGHLY CONFIDENTIAL.xlsx, please confirm that all information included in file Exhibit 2-1 - CONFIDENTIAL.xls (submitted to OHA on October 20, 2023) is included in KR-OHA-000001899 - HIGHLY CONFIDENTIAL.xlsx through KR-OHA-000001904 - HIGHLY CONFIDENTIAL.xlsx.**

**Response:**

All information in Exhibit 2-1, except for [REDACTED], is included in KR-OHA-000001902 and KR-OHA-000001903.

- 18. Regarding files HIGHLY CONFIDENTIAL-ACI-ORHCMO-00001032.xlsx and HIGHLY CONFIDENTIAL-ACI-ORHCMO-00001033.xlsx, please confirm that all information included in file HIGHLY CONFIDENTIAL-ACI-ORHCMO-00000001.xlsx (submitted to OHA on October 20, 2023) is included in HIGHLY CONFIDENTIAL-ACI-ORHCMO-00001032.xlsx and HIGHLY CONFIDENTIAL-ACI-ORHCMO-00001033.xlsx.**



July 29, 2024

Page 17

**Response:**

All information in ACI-ORHCMO-00000001 is included in ACI-ORHCMO-00001032. ACI-ORHCMO-00001033 contains this data broken down by pharmacy department vs. other departments where this breakdown is available.

**19. Regarding files KR-OHA-000001911 - HIGHLY CONFIDENTIAL.xlsx through KR-OHA-000006116 - HIGHLY CONFIDENTIAL.xlsx:**

- a. Please provide all data in Microsoft Excel format in a limited number of files organized in a reasonable way, such as by year, region, similar number of stores, etc.

**Response:**

Kroger has provided these files in the format in which they were kept in the ordinary course of business. We will not provide these files in another format.

Kroger's response to RFI #8 of the December 2023 RFIs described the time period covered by KR-OHA-000001911 through KR-OHA-000006116. As further description, we provide KR-OHA-000006873, which lists the division and specific time period covered by each file in this range.

**20. Regarding KR-OHA-000001897 - HIGHLY CONFIDENTIAL.xlsx, please add columns that include store-by-store financial data file name(s) corresponding to each store.**

**Response:**

OHA can use the chart provided in response to Question 19, in conjunction with the key cross-referencing the TDLinx numbers and internal Kroger division-store numbers for Kroger's stores provided in response to Question 2(a), to determine which stores are covered by which data file.

**21. Regarding FTC-CS-00006838 - HIGHLY CONFIDENTIAL.xlsx and FTC-CS-00006839 - HIGHLY CONFIDENTIAL.xlsx:**

- a. Please append the TDLinx ID corresponding to each store to the data.

July 29, 2024  
Page 18

**Response:**

In response to Question 21(a), C&S is providing updated versions of FTC-CS-00006838 and FTC-CS-00006839 that include the TDLinx ID corresponding to each store.

**b. Please provide data for all fiscal years from 2018 – 2023.**

**Response:**

C&S only acquired its Piggly Wiggly Midwest stores in 2021 and its Grand Union stores in 2022. C&S has already provided the store-level financial data for Piggly Wiggly Midwest's retail business for fiscal years 2021, 2022, and 2023 (FTC-CS-00006839), as well as the store-level financial data it has for Grand Union's retail business for fiscal years 2022, 2023, and 2024 (FTC-CS-00006838).

**c. Please provide similar data for each store listed as owned by C&S from KR-OHA-000001897 - HIGHLY CONFIDENTIAL.xlsx.**

**Response:**

In response to Question 21(c), C&S is providing CS\_OHA\_00000001 to CS\_OHA\_00000774, which contains the available financial data for its Piggly Wiggly franchise stores.

**22. Regarding the responses to item # 6, part d. and item #7, part d. where you indicated that "The breakdown requested in RFI #6 subpart d is not available in Kroger's ordinary course data":**

**a. At what level is pharmacy-related sales and expense data available?**

**Response:**

Kroger has already provided OHA with the most granular pharmacy-related sales and expense data regularly used in the ordinary course of business in Exhibit 2-1 and 2-3, provided in response to RFI #2 of OHA's September 2023 RFIs, and KR-OHA-000001899 to -1904, provided in response to RFI #4 of OHA's February 2024 RFIs.

[REDACTED] Extracting this

July 29, 2024  
Page 19

data would be unduly burdensome and disproportionate to the needs of OHA's investigation. [REDACTED]

- b. Please provide store revenue and expense items separated by Pharmacy-related and non-Pharmacy-related at the most granular level available.**

**Response:**

Kroger has already produced this data breakdown in the most granular form available in Exhibit 2-1, provided in response to RFI #2 of OHA's September 2023 RFIs, and KR-OHA-000001899 to -1904, provided in response to RFI #4 of OHA's February 2024 RFIs.

- 23. Regarding the responses to item #12 where you indicated that "Kroger and Albertsons do not create forward-looking, store-level financial projections in the ordinary course of business," and "C&S does not maintain store-level proforma financial projections in the ordinary course of business:"**

- a. At what level are forward-looking financial projections available?**
- b. Please provide forward-looking financial projections at the most granular level available, including sales and expense information split between pharmacy and non-pharmacy departments, if available. Note that the request pertains to all stores, not just the 579 stores involved in the proposed divestiture.**

**Response:**

For information related to Kroger and Albertsons, see response to Question 2(c).

[REDACTED]

\* \* \*

July 29, 2024

Page 20

This response and all of the exhibits and documents identified in this response contain confidential business and financial information that qualifies as trade secrets. I am enclosing a confidentiality log that describes the confidential information in this submission per ORS 415.501 and ORS 192.345(2).

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Gleklen", is positioned above the printed name.

Jonathan I. Gleklen

Enclosures