

Congress of the United States

Washington, DC 20515

November 3, 2024

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, D.C. 20580

The Honorable Thomas J. Vilsack
Secretary
Department of Agriculture
140 Independence Ave SW
Washington, D.C. 20250

Dear Chair Khan and Secretary Vilsack:

We write with concern that major grocery chains may be making false and misleading representations regarding food sold by weight, leading to customers paying more for groceries than expected. Last month, California prosecutors reached a nearly \$4 million settlement with grocery giant Albertsons Companies, Inc. (Albertsons) and its subsidiaries Safeway, Inc. (Safeway) and The Vons Companies, Inc. (Vons) to resolve allegations that the companies engaged in “false advertising and unfair competition.”¹ Specifically, the grocers “unlawfully charged customers prices higher than their lowest advertised or posted price” and overcharged customers by placing “inaccurate weights on the labels of their products.”² We urge you to investigate whether Albertsons or other major grocery chains have engaged in similar predatory practices nationwide, and to hold these companies accountable if they have violated federal laws.

Too frequently, large grocery companies use their significant market power to hike prices for essential goods and take advantage of customers.³ For example, Stop & Shop charged higher prices at a largely minority, working-class, urban location in Boston, Massachusetts than it did at a suburban store location, placing a significant burden on already-struggling consumers.⁴ Grocery giant Kroger Company (Kroger) has adopted digital price tags in its

¹ Sonoma County District Attorney, “Safeway, Albertsons, and Vons Pay Nearly \$4 Million to Resolve Allegations of Price Overcharges and False Weight Advertising,” press release, October 3, 2024, <https://da.sonomacounty.ca.gov/safeway-albertsons-and-vons-pay-nearly-4-million-to-resolve-allegations-of-price-overcharges-and-false-weight-advertising>; Albertsons Companies, “About ACI,” <https://www.albertsonscorporation.com/about-aci/overview/default.aspx>.

² Sonoma County District Attorney, “Safeway, Albertsons, and Vons Pay Nearly \$4 Million to Resolve Allegations of Price Overcharges and False Weight Advertising,” press release, October 3, 2024, <https://da.sonomacounty.ca.gov/safeway-albertsons-and-vons-pay-nearly-4-million-to-resolve-allegations-of-price-overcharges-and-false-weight-advertising>.

³ Letter from Senator Elizabeth Warren, Representative Jim McGovern, et al. to President Joe Biden, May 13, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.05.13%20Letter%20to%20Biden%20Admin%20on%20Food%20Prices1.pdf>.

⁴ Letter from Senator Elizabeth Warren to Ahold Delhaize CEO Frans Muller, September 30, 2024, https://www.warren.senate.gov/imo/media/doc/letter_to_ahold_delhaize_repricegouginginstopshopsinmassachusetts.pdf.

stores, which may allow the company to surge grocery prices and exploit consumers.⁵ And the proposed \$24.6 billion merger between Kroger and Albertsons is poised to further drive up grocery prices and harm grocery store workers and consumers.⁶ We are grateful that the Federal Trade Commission (FTC) has taken action to block this merger.⁷

California prosecutors took an important step to hold corporations accountable when they announced that Albertsons, Safeway, and Vons had agreed to settle a civil complaint alleging the corporations engaged in “false advertising and unfair competition.”⁸ District attorneys in numerous California counties alleged that Albertsons made false and misleading representations regarding some products sold by weight.⁹ According to California state law,¹⁰ those products, including produce, meat, and baked goods, were supposed to be sold based on the item’s net weight, meaning the weight of the product not including the weight of any packaging.¹¹ Albertsons failed to follow procedure and conduct the employee training necessary to ensure the net weights the companies determined and advertised were accurate.¹² As a result, Albertsons labeled essential commodities with inaccurate prices.¹³ The lawsuit found that Albertsons had overcharged customers based on these inaccurate weights, and that customers received less product than Albertsons had represented on the label.¹⁴

In addition, the prosecutors alleged that Safeway and its subsidiary Vons failed to abide by provisions of a 2014 injunction mandating they implement a price accuracy policy to resolve allegations of price inaccuracy.¹⁵ The policy required that when a Safeway store overcharged

⁵ Letter from Senator Elizabeth Warren to Kroger CEO Rodney McMullen, August 5, 2024, https://www.warren.senate.gov/imo/media/doc/warren_casey_letter_to_kroger_re_electronic_shelving_and_price_gouging.pdf.

⁶ Letter from Senator Elizabeth Warren to FTC Chair Lina Khan, October 25, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.10.25%20Letter%20to%20FTC%20re%20Kroger-Albertsons%20Merger1.pdf>.

⁷ Federal Trade Commission, “FTC Challenges Kroger’s Acquisition of Albertsons,” press release, February 26, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>.

⁸ Sonoma County District Attorney, “Safeway, Albertsons, and Vons Pay Nearly \$4 Million to Resolve Allegations of Price Overcharges and False Weight Advertising,” press release, October 3, 2024, <https://da.sonomacounty.ca.gov/safeway-albertsons-and-vons-pay-nearly-4-million-to-resolve-allegations-of-price-overcharges-and-false-weight-advertising>.

⁹ County of Marin, “Marin, 6 Other Counties Successful with \$3.96 Million False Advertising Settlement,” press release, October 3, 2024, <https://www.marincounty.gov/news-releases/marin-6-other-counties-successful-396-million-false-advertising-settlement>.

¹⁰ CA Bus & Prof Code § 12023 (2023).

¹¹ County of Marin, “Marin, 6 Other Counties Successful with \$3.96 Million False Advertising Settlement,” press release, October 3, 2024, <https://www.marincounty.gov/news-releases/marin-6-other-counties-successful-396-million-false-advertising-settlement>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*; Alameda County District Attorney’s Office, “SAFeway INC. AGREES TO AN INJUNCTION AND PAYMENT OF \$2,250,000 IN FINES, RESTITUTION AND OTHER COSTS TO SETTLE A CONSUMER PROTECTION ACTION,” press release, March 6, 2014, <https://assets1.cbsnewsstatic.com/i/cbslocal/wp-content/uploads/sites/15116056/2014/03/final-safewayinjunctionpressrelease2014-2.pdf>.

a customer for an item, the customer either received the item for free or received a \$5 gift card.¹⁶ Safeway failed to consistently honor and train employees on the company policy, resulting in Safeway overcharging customers and preventing customers from receiving the policy's benefits.¹⁷

The judgment requires Albertsons to pay "\$3,213,000 in civil penalties and \$749,500 in costs and restitution to cover investigation costs and support future enforcement of consumer protection laws" in California.¹⁸ The companies are enjoined from making any false or misleading statement regarding prices; "charging an amount greater than the lowest advertised price; unlawfully selling products by gross weight; and[] selling commodities in less quantity than represented."¹⁹ Albertsons is also required to implement the price accuracy policy the company had previously failed to enforce, and hire an independent auditor to ensure the company complies with the terms of the judgment.²⁰

We are concerned that Albertsons' actions may have also violated federal law. For example, Albertsons may have committed "unfair or deceptive acts or practices" in violation of Section 5 of the *Federal Trade Commission Act*.²¹ In addition, Albertsons may have violated the *Fair Packaging and Labeling Act*, as the company did not disclose the appropriate net quantity of contents on certain products.²²

Albertsons is one of the largest food retailers in the United States, boasting over 2,200 stores across the country.²³ This settlement covers the 589 Albertsons stores in California,²⁴ but all U.S. customers should be protected from predatory pricing. To ensure that no Albertsons stores are overcharging customers for essential groceries, we urge the FTC and U.S. Department of Agriculture (USDA) to investigate whether any other Albertsons stores or

¹⁶ Sonoma County District Attorney, "Safeway, Albertsons, and Vons Pay Nearly \$4 Million to Resolve Allegations of Price Overcharges and False Weight Advertising," press release, October 3, 2024, <https://da.sonomacounty.ca.gov/safeway-albertsons-and-vons-pay-nearly-4-million-to-resolve-allegations-of-price-overcharges-and-false-weight-advertising>.

¹⁷ County of Marin, "Marin, 6 Other Counties Successful with \$3.96 Million False Advertising Settlement," press release, October 3, 2024, <https://www.marincounty.gov/news-releases/marin-6-other-counties-successful-396-million-false-advertising-settlement>.

¹⁸ Sonoma County District Attorney, "Safeway, Albertsons, and Vons Pay Nearly \$4 Million to Resolve Allegations of Price Overcharges and False Weight Advertising," press release, October 3, 2024, <https://da.sonomacounty.ca.gov/safeway-albertsons-and-vons-pay-nearly-4-million-to-resolve-allegations-of-price-overcharges-and-false-weight-advertising>.

¹⁹ County of Marin, "Marin, 6 Other Counties Successful with \$3.96 Million False Advertising Settlement," press release, October 3, 2024, <https://www.marincounty.gov/news-releases/marin-6-other-counties-successful-396-million-false-advertising-settlement>.

²⁰ Los Angeles Times, "Albertsons to pay \$3.9 million over allegations it overcharged, lied about weight of groceries," Clara Harter, October 3, 2024, <https://www.latimes.com/california/story/2024-10-03/albertsons-to-pay-3-9-million-over-allegations-it-overcharged-lied-about-weight-of-groceries>.

²¹ 15 U.S.C. § 45.

²² 16 CFR 500.

²³ Albertsons Companies, "About ACI," <https://www.albertsonscorporation.com/about-aci/overview/default.aspx>.

²⁴ Los Angeles Times, "Albertsons to pay \$3.9 million over allegations it overcharged, lied about weight of groceries," Clara Harter, October 3, 2024, <https://www.latimes.com/california/story/2024-10-03/albertsons-to-pay-3-9-million-over-allegations-it-overcharged-lied-about-weight-of-groceries>.

other major grocery chains have committed similar wrongdoing and, if necessary, hold the responsible parties accountable.

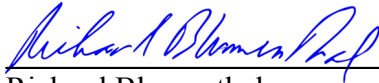
Sincerely,



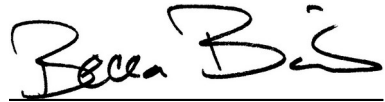
Elizabeth Warren
United States Senator



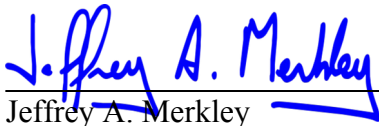
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United States Senator



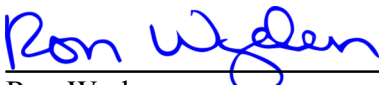
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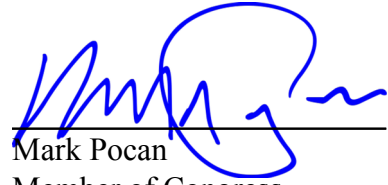
Mike Levin
Member of Congress



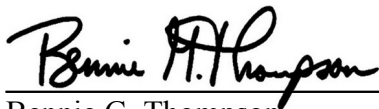
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