

United States Senate

WASHINGTON, DC 20510

February 15, 2023

Rodney McMullen
Chairman and Chief Executive Officer
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202-1100

Dear Mr. McMullen,

We are writing today regarding alarming new reports of Kroger's involvement in the mistreatment of workers and consumers through widespread and unresolved wage theft. These reports indicate that "systemic and widespread errors" by Kroger resulted in thousands of your employees experienced delays and missing wages in their paychecks in late 2022.¹ Given your company's record of anti-worker policies,² and your ongoing attempt to push through a merger that would harm both consumers and workers,³ we are writing to request a full explanation of how your workers will be compensated for any lost or delayed wages, and how you will prevent future wage theft.

After your company installed a new payroll system last year, thousands of workers experienced delayed, missing, or incorrect paychecks. This "systematic wage theft"⁴ has harmed Kroger's workers across the country, resulting in four lawsuits against the company for federal and state violations of wage theft laws.⁵ Some of the workers described losing income while on medical leave or falling behind on monthly bills,⁶ and being forced to take on risky payday loans or

¹ Dayton Daily News, "Kroger facing four class-action lawsuits over payroll mistakes," Dan Monk, January 24, 2023, <https://www.daytondailynews.com/news/kroger-facing-four-class-action-lawsuits-over-payroll-mistakes/Q3AGRKMFMREVPNXCHFXXK7JDZY/>.

² Detroit Free Press, "Kroger, other retailers see 'eye-popping profits' as workers reap little benefit," Susan Selasky, December 4, 2020, <https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>.

³ Wall Street Journal, "Kroger to Buy Albertsons in \$24.6 Billion Deal That Would Create New Grocery Giant," Jaewon Kang, October 14, 2022, https://www.wsj.com/articles/kroger-to-merge-with-albertsons-in-a-24-6-billion-deal-11665745735?mod=hp_lead_pos4.

⁴ WAVY, "Virginia workers accuse Kroger of systematic wage theft under new payroll software," Jakob Cordes, January 30, 2023, <https://www.wavy.com/news/virginia/virginia-workers-accuse-kroger-of-systematic-wage-theft-under-new-payroll-software/>.

⁵ Dayton Daily News, "Kroger facing four class-action lawsuits over payroll mistakes," Dan Monk, January 24, 2023, <https://www.daytondailynews.com/news/kroger-facing-four-class-action-lawsuits-over-payroll-mistakes/Q3AGRKMFMREVPNXCHFXXK7JDZY/>; UFCW Local 400, "Kroger Union Members File Class Action Lawsuit Alleging Widespread Wage Theft," January 19, 2023, <https://www.ufcw400.org/2023/01/19/kroger-union-members-file-class-action-lawsuit-alleging-widespread-wage-theft/>.

⁶ Dayton Daily News, "Kroger facing four class-action lawsuits over payroll mistakes," Dan Monk, January 24, 2023, <https://www.daytondailynews.com/news/kroger-facing-four-class-action-lawsuits-over-payroll-mistakes/>

second jobs to make ends meet.⁷ Workers who filed suit against your company allege “a persistent pattern of wage theft through its failure to correct ongoing and systemic payroll problems.”⁸

Kroger’s failure to pay its workers what they are owed appears to represent the latest example of your company’s outrageous pattern of padding your own profits by mistreating your employees. A 2021 survey by the Economic Roundtable of more than 10,000 Kroger workers found that approximately 75 percent of your workers reported being food insecure, and more than 60 percent did not earn “enough money to pay for basic expenses every month.”⁹ In 2017, internal documents showed that your company was aware that one in five employees received government assistance,¹⁰ and in 2020, Kroger ended “hero pay” for frontline workers during the pandemic after just three months.¹¹ Kroger engaged in “intimidat[ion]” and “retaliation” of local and national elected leaders to avoid paying workers during the pandemic,¹² shuttering stores to avoid compliance in Los Angeles and Seattle after those cities enacted hazard pay increases.¹³

While Kroger workers and consumers struggled with higher food prices and lower wages, Kroger executives raked in millions of dollars in salaries and bonuses. As Chief Executive Officer, you received over \$22 million in compensation in 2020,¹⁴ while workers could have “earned as little as \$9 per hour or less” and median worker pay dropped by over \$2,000 in that same period.¹⁵ In 2021, the same year your company closed stores in cities that required a \$5 or

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⁷ WAVY, “Virginia workers accuse Kroger of systematic wage theft under new payroll software,” Jakob Cordes, January 30, 2023, <https://www.wavy.com/news/virginia/virginia-workers-accuse-kroger-of-systematic-wage-theft-under-new-payroll-software/>.

⁸ UFCW Local 400, “Kroger Union Members File Class Action Lawsuit Alleging Widespread Wage Theft,” January 19, 2023, <https://www.ufcw400.org/2023/01/19/kroger-union-members-file-class-action-lawsuit-alleging-widespread-wage-theft/>.

⁹ Economic Roundtable, “Hungry at the Table,” Daniel Flaming, Peter Dreier, Patrick Burns, and Aaron Danielson, January 11, 2022, <https://economicrt.org/publication/hungry-at-the-table/>; New York Times, “Business Booms at Kroger-Owned Grocery Stores, but Workers Are Left Behind,” Sapna Maheshwari and Michael Corkery, February 12, 2022, <https://www.nytimes.com/2022/02/12/business/kroger-grocery-stores-workers-pay.html>.

¹⁰ New York Times, “Business Booms at Kroger-Owned Grocery Stores, but Workers Are Left Behind,” Sapna Maheshwari and Michael Corkery, February 12, 2022, <https://www.nytimes.com/2022/02/12/business/kroger-grocery-stores-workers-pay.html>.

¹¹ Washington Post, “Kroger is closing stores rather than giving workers an extra \$4 in pandemic ‘hero pay,’” Paulina Firozi, February 3, 2021, <https://www.washingtonpost.com/business/2021/02/03/ralphs-kroger-pandemic-pay-mandate/>; NPR, “Grocery Store Chain Kroger Is Planning To End ‘Hero Pay,’” All Things Considered, May 15, 2020, <https://www.npr.org/2020/05/15/857105173/grocery-store-chain-kroger-is-planning-to-end-hero-pay>.

¹² Washington Post, “Kroger to close more stores instead of giving workers hazard pay,” Eli Rosenberg, February 17, 2021, <https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>.

¹³ The Guardian, “‘They don’t care’: US supermarket chain shutter stores after hazard pay rules,” Michael Sainato, March 26, 2021, <https://www.theguardian.com/us-news/2021/mar/26/krogers-us-supermarket-chain-stores-closed-layoffs>; Washington Post, “Kroger to close more stores instead of giving workers hazard pay,” Eli Rosenberg, February 17, 2021, <https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>.

¹⁴ Securities and Exchange Commission, Schedule 14A Proxy Statement, The Kroger Co., May 13, 2021, https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1_def14a.htm.

less hazard pay increase on base pay because of “razor-thin profit margins,”¹⁶ Kroger announced a \$1 billion share buyback program,¹⁷ followed by another \$1 billion buyback plan just one year later.¹⁸

Even as your company was failing to address concerns about systemic wage theft, you have been pushing through a \$24.6 billion merger with Albertsons Companies, Inc. that further threatens workers’ wages and jobs and hurts consumers by reducing competition among grocers.¹⁹ This merger would exacerbate corporate consolidation in the grocery sector, and likely result in the shuttering of some stores across the country and the firing of workers from both Kroger and Albertsons.²⁰ As we noted in our letter to the Federal Trade Commission urging them to reject the deal, “Kroger’s and Albertsons’s high combined market shares in certain geographic markets would give the new company significant leverage” to cut benefits for workers.²¹

Given our concerns regarding your company’s treatment of workers and your proposed merger that would further adversely impact them, we request a full accounting of how this widespread wage theft occurred, and what steps you plan to take to compensate your workers prior to any merger with Albertsons. We ask that you provide answers to the following questions no later than March 1, 2023:

1. How many missing or incorrect paychecks were reported to the company in 2022?
 - a. How many of these reports were related to the MyTime system?
2. What was the total amount of wages owed to workers that Kroger failed to pay in 2022?
 - a. What was the total amount related to the MyTime system?

¹⁵ Brookings Institute, “The COVID-19 hazard continues, but the hazard pay does not: Why America’s essential workers need a raise,” Molly Kinder, Laura Stateler, and Julia Du, October 29, 2020, <https://www.brookings.edu/research/the-covid-19-hazard-continues-but-the-hazard-pay-does-not-why-americas-frontline-workers-need-a-raise/>; Cincinnati Enquirer, “Kroger CEO pay tops \$20M, median worker pay drops during COVID-19 pandemic,” Alexander Coolidge, May 17, 2021, <https://www.cincinnati.com/story/money/2021/05/17/how-does-kroger-pay-workers-compared-its-ceo/5125727001/>.

¹⁶ Washington Post, “Kroger to close more stores instead of giving workers hazard pay,” Eli Rosenberg, February 17, 2021, <https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>.

¹⁷ MarketWatch, “Kroger raises full year guidance, announces \$1 billion share buyback program,” Tonya Garcia, June 17, 2021, <https://www.marketwatch.com/story/kroger-raises-full-year-guidance-announces-1-billion-share-buyback-program-2021-06-17>.

¹⁸ Seeking Alpha, “Kroger shares carry higher on earnings beat, raised forecast, new buybacks,” Clark Schultz, September 9, 2022, <https://seekingalpha.com/news/3881624-kroger-shares-carry-higher-on-earnings-beat-raised-forecast-new-buybacks>.

¹⁹ Wall Street Journal, “Kroger to Buy Albertsons in \$24.6 Billion Deal That Would Create New Grocery Giant,” Jaewon Kang, October 14, 2022, https://www.wsj.com/articles/kroger-to-merge-with-albertsons-in-a-24-6-billion-deal-11665745735?mod=hp_lead_pos4.

²⁰ Washington Post, “Corporate mergers hurt workers — and drag down the job market,” Sarah Miller, October 21, 2021, <https://www.washingtonpost.com/outlook/2021/10/21/corporate-mergers-layoffs-antitrust/>.

²¹ 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>.

3. How much back pay has Kroger issued to date for missing or incorrect paychecks in 2022?
 - a. How much of that back pay was related to reports under the MyTime system?
4. Is Kroger continuing to use the MyTime payroll system, despite significant accuracy issues?
 - a. If so, what steps has the company put in place to prevent further wage theft?
5. Have any company executives had pay, bonuses, or other compensation withheld or clawed back as a result of the systemic problems affecting workers' pay in 2022?
6. Will you commit to fully redressing all workers affected by missing or late pay prior to taking any additional steps to move forward with the Albertson's merger?

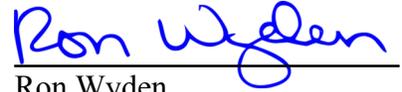
Sincerely,



Elizabeth Warren
United States Senator



Bernard Sanders
United States Senator



Ron Wyden
United States Senator

cc: Lina Kahn, Chair, Federal Trade Commission