

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

ROBIN G. THORNTON,  
on behalf of herself and others  
similarly situated,

Plaintiff,

v.

No. 1:20-cv-1040

THE KROGER COMPANY,  
ALBERTSONS,

Defendants

**JOINT NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendants The Kroger Co. (“Kroger”) and Albertson’s LLC (“Albertson’s”) (collectively, “Defendants”) hereby remove this action from the State of New Mexico Second Judicial District Court, County of Bernalillo to the United States District Court for the District of New Mexico.

This Court has original jurisdiction pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because (1) the proposed class has at least 100 putative class members, (2) the proposed class asserts an aggregate amount in controversy of \$5,000,000 or more, exclusive of interest and costs, and (3) minimal diversity exists. *See* 28 U.S.C. § 1332(d). This Court also has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because (1) there is complete diversity between the named parties, and (2) the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff Robin G. Thornton’s (“Plaintiff’s”) claims are preempted by federal law.

### **Background**

1. Plaintiff commenced this action by filing a Complaint on September 3, 2020, in the Second Judicial District Court for the State of New Mexico, in and for the County of Bernalillo, styled *Robin G. Thornton v. The Kroger Company, et al.*, Case No. D-202-CV-2020-05018. Pursuant to 28 U.S.C. § 1446(a), and Local Rule 81.1(a), the most recent version of the docket from the state court and true and correct copies of all pleadings and documents filed in that action are attached as Exhibit 1.

2. Kroger was served with a Summons and copy of the Complaint on September 8, 2020. Albertson's was served with a Summons and copy of the Complaint on September 8, 2020.

3. Plaintiff's Complaint asserts claims regarding Defendants advertising of beef products. (*See, e.g.*, Compl., ¶ 5.) Defendants own and operate grocery stores throughout the United States. (*Id.*, ¶¶ 14-16.) Plaintiff alleges that Defendants deceptively advertise imported beef or beef derived from imported cattle as products of the United States. (*Id.*, ¶¶ 5-6, 19-21.) Plaintiff also alleges the deceptive advertising has occurred since 2015. (*Id.* ¶ 5.)

4. Plaintiff brings this action as a class action on behalf of a putative class, which is defined as “[a]ll consumers in the United States who purchased the Defendants’ Products during the applicable limitations period for their personal use, rather than for resale or distribution (‘Class’).” (*Id.*, ¶ 44.) She also seeks to represent a sub-class, defined as “[a]ll consumers in New Mexico who purchased the New Mexico Products during the applicable limitations [sic], for their personal use, rather than for resale or distribution (‘New Mexico Sub-Class’).” (*Id.*)

5. Plaintiff brings three claims against Defendants: (1) violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-1, *et seq.* (“UPA”) on behalf of herself and the New

Mexico Sub-Class, (2) breach of express warranty on behalf of herself and the Class, and (3) unjust enrichment on behalf of herself and the Class. (*Id.*, ¶¶ 48-69.)

6. In her Prayer for Relief, Plaintiff seeks, (1) an order certifying the Class and New Mexico Sub-Class, (2) a declaration that Defendants are “financially responsible” for notifying the Class and New Mexico Sub-Class members of the pendency of this suit, (3) an order declaring that Defendants’ conduct violates the UPA, (4) an injunction requiring “proper, complete, and accurate advertising of the Products,” (5) an injunction “requiring that Defendants remove and refrain from making representations on advertising that beef that is not born, raised and slaughtered in the US is not exclusively a product of the US and requiring that any Products from cattle that are not born, raised and slaughtered in the US be advertised in a way to disclose the accurate and complete origination of the Product,” (6) actual damages for the New Mexico Sub-Class pursuant to the UPA, (7) exemplary damages of three times the actual damages for Plaintiff pursuant to the UPA, (8) restitution for members of the Class “to recover Defendants’ ill-gotten benefits,” (9) damages for members of the Class arising from Defendants’ breach of warranty, (10) an order finding in favor of Plaintiff, the Class, and the New Mexico Sub-Class on all counts, (11) prejudgment interest, (12) “[a]n order of restitution and all other forms of equitable monetary relief,” (13) unspecified “injunctive relief,” and (14) attorneys’ fees, expenses, and costs. (*Id.*, Prayer for Relief, pp. 18-19.)

### **Venue**

7. Plaintiff filed this action in the State of New Mexico Second Judicial District Court, County of Bernalillo, which is located in the District of New Mexico. Venue is proper in the United States District Court for the District of New Mexico pursuant to 28 U.S.C. § 1441(a) because it encompasses the county in which the state court action is pending.

**Notice to Plaintiff**

8. Concurrently with the filing of this Notice of Removal in this Court, Defendant will serve written notice of removal on Plaintiff's counsel and file a copy of this Notice of Removal with the Clerk of the State of New Mexico Second Judicial District Court, County of Bernalillo, as required by 28 U.S.C. § 1446(d).

**Timely Removal**

9. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(1) because it is being filed within thirty days of September 8, 2020, the date on which Defendants received the Complaint through service of Summons and a copy of the Complaint. This Notice of Removal also is filed within one year of the commencement of this action on September 3, 2020, and is thus also timely pursuant to 28 U.S.C. § 1446(c)(1).

**Grounds for Removal**

**I. This Court Has Jurisdiction Pursuant to CAFA.**

**A. The Present Action is a Class Action.**

10. Under CAFA, “‘class action’ means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action[.]” 28 U.S.C. § 1332(d)(1)(B). The Complaint is captioned as a “Class Action Complaint,” seeks certification of the Class and New Mexico Sub-Class, and expressly states that “Plaintiff Thornton bring this action pursuant to NMRA Rule 1-023.” (Compl., pp. 1, 18, ¶ 44.) NMRA Rule 1-023 authorizes an action to be brought by one or more representative parties as a class action. Therefore, this Action is a “class action” as defined by CAFA.



**B. There is Sufficient Diversity of Citizenship.**

11. CAFA’s minimal diversity requirement is satisfied when “[a]ny member of a class of plaintiffs is a citizen of a State different from any defendant[.]” 28 U.S.C. § 1332(d)(2). There is at least minimal diversity of citizenship here because both Defendants are citizens of different states than Plaintiff.

12. Plaintiff alleges that she is a resident of New Mexico (Compl., ¶ 12), and on information and belief, she is a citizen of New Mexico.

13. Kroger is a corporation that was incorporated in Ohio and has its principal place of business in Cincinnati, Ohio.<sup>1</sup> Kroger is therefore a citizen of Ohio. *See* 28 U.S.C. § 1332(c)(1).

14. Albertson’s is limited liability limited liability company, organized in Delaware, with its principal place of business in Boise, Idaho. (Compl., ¶ 15.) Therefore, under CAFA, it is a citizen of Delaware and Idaho. *See* 28 U.S.C. § 1332(d)(10).

15. None of the members of Albertson’s is a citizen or resident of the State of New Mexico. Accordingly, Albertson’s is not a citizen of New Mexico.

16. No change of citizenship has occurred since commencement of the state court action.

17. Accordingly, the requisite diversity of citizenship exists for federal jurisdiction under CAFA. 28 U.S.C. § 1332(d)(2)(A).

**C. The Putative Class Has At Least 100 Members.**

18. The putative Class exceeds CAFA’s requirement of at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B).

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<sup>1</sup> *See, e.g.*, Amendment to the Amended Articles of Incorporation of the Kroger Co., dated June 25, 2015, available at [https://www.sec.gov/Archives/edgar/data/56873/000110465915048764/a15-10878\\_1ex3d1.htm](https://www.sec.gov/Archives/edgar/data/56873/000110465915048764/a15-10878_1ex3d1.htm) (last accessed Oct. 1, 2020). Plaintiff mistakenly pleaded that Kroger is an Ohio limited liability company (Compl., ¶ 14), but it is in fact an Ohio corporation. (*Id.*)

19. Plaintiff purports to bring claims on behalf of a proposed national Class of “[a]ll consumers in the United States who purchased the Defendants’ Products during the applicable limitations period, for their personal use, rather than for resale or distribution.” (Compl. ¶ 44(1).)

20. According to United States Department of Agriculture (“USDA”) data, 27.3 billion pounds of beef products were consumed in the United States in 2019, and the USDA estimates that consumption from 2019 to the present is not lower than that number.<sup>2</sup> Also according to USDA estimates, the amount of beef consumed in the United States per capita in 2019 was approximately 58 pounds, and the USDA estimates that per capita beef consumption since that time is not significantly lower than in 2019.<sup>3</sup>

21. Plaintiff herself alleges that 3.06 billion pounds of beef and 1.94 million head of cattle have been imported on average since 2014. (Compl., ¶ 21.)

22. Kroger is the largest grocery chain in the country. Given the volume of beef sold each year, it is not surprising that the number of consumers who have purchased Kroger’s beef products at Kroger-owned or operated stores across the United States exponentially exceeds 100. (See Declaration of William Zimmerman (“Zimmerman Decl.”) (attached hereto as Exhibit 2), ¶ 6.) Albertson’s is the second-largest chain and would be no different.

**D. The Amount in Controversy is Over \$5,000,000.**

23. CAFA confers jurisdiction to the United States district courts over class actions “in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs[.]” 28 U.S.C. § 1332(d)(2). To determine whether the matter in controversy exceeds

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<sup>2</sup> See USDA World Agricultural Supply and Demand Estimates, September 11, 2020 at 32, available at <https://www.usda.gov/oce/commodity/wasde/wasde0920.pdf> (last accessed Sept. 30, 2020).

<sup>3</sup> See *id.*

CAFA’s \$5,000,000 threshold, “the claims of the individual class members shall be aggregated[.]” 28 U.S.C. § 1332(d)(6).

24. The Tenth Circuit has explained that the amount in controversy is “not the amount the plaintiff will recover,” but instead “an estimate of the amount that will be put at issue in the course of the litigation.” *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1245 (10th Cir. 2012). Moreover, “the question at this stage in the proceedings isn’t what damages the plaintiff will *likely* prove but what a factfinder *might* conceivably lawfully award.” *Hammond v. Stamps.com*, 844 F.3d 909, 912 (10th Cir. 2016) (emphases in original).

25. A notice of removal “need only include a *‘plausible allegation* that the amount in controversy exceeds the jurisdictional threshold.” *Buscema v. Wal-Mart Stores East LP*, No. 19-CV-01089-MV-KK, 2020 U.S. Dist. LEXIS 68412, at \*14 (D.N.M. Apr. 16, 2020) (emphasis added). As set forth below, the amount in controversy in this action far exceeds \$5,000,000.<sup>4</sup>

26. For her claim for breach of warranty, Plaintiff alleges that she and the members of the national Class have been damaged because they “did not receive goods as warranted and did not receive the benefit of the bargain.” (Compl., ¶ 64.) She claims that as such, “they have suffered damages in an amount to be proven at trial. (*Id.*)

27. Additionally, for her claim for unjust enrichment, on behalf of herself and the national Class, Plaintiff requests restitution of alleged “ill-gotten benefits.” (Compl., ¶ 69.) She further alleges that the amount of the unjust enrichment is the sale of imported Products. (*Id.*, ¶ 68.)

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<sup>4</sup> Defendants provide the following calculations only to demonstrate that the amount in controversy exceeds \$5,000,000. Defendants make no admission of liability or damages with respect to any aspect of this case, nor do Defendants waive their right to ultimately contest the proper amount of damages due, if any, should Plaintiff prevail with any of her claims.

28. Her claims on behalf of the Class place at issue all sales by Kroger or Albertson’s— nationwide—of beef products that contain what Plaintiff claims to be imported beef products.

29. Kroger’s annual sales for beef products at its stores nationwide totals well in excess of \$5,000,000. (Zimmerman Decl., ¶ 7.) And this figure is for only *one year*. It must be multiplied by five as Plaintiff alleges the Defendants’ deceptive advertising has occurred since 2015. (Compl., ¶ 5). Albertson’s, which Plaintiff alleges also sells beef products nationwide, would be no different. (*See Id.*, ¶ 16.)

30. Even assuming that only a small portion of the Defendants’ total sales for beef products resulted from the sale of what Plaintiff alleges to be deceptively marketed beef, it is more than plausible that this amount totals \$5,000,000. Indeed, Plaintiff alleges “Defendants have *profited enormously* ... from [their] falsely marketed products.” (*Id.*, ¶ 34) (emphasis added). She also states that beef imported by the packers that supply Defendants totals \$6.2 billion in sales annually. (*Id.* ¶ 34.)

31. Even setting aside Defendants’ actual sales of beef products, CAFA’s \$5,000,000 amount-in-controversy requirement can be satisfied by Plaintiff’s alternative demand for \$100 on behalf of herself and the New Mexico Sub-Class. (Compl., ¶ 58b.) The United States Census Bureau estimates New Mexico’s population at over 2 million.<sup>5</sup> It is plausible that at least 2.5% (or approximately 50,000) of those 2 million residents fall within the proposed New Mexico Sub-Class. Even using that conservative assumption, the \$100 claim by itself satisfies the \$5 million amount-in-controversy requirement.

32. Finally, Plaintiff has claimed attorneys’ fees. (Compl., p. 19.) Where attorneys’ fees are part of the potential and claimed recovery under a statute, they properly are considered as

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<sup>5</sup> See <https://www.census.gov/quickfacts/fact/table/NM/PST045219> (last accessed Sept. 30, 2020).

part of the amount-in-controversy. *See Barreras v. Travelers Home & Marine Ins. Co.*, No. 12-CV-0354 RB/RHS, 2012 U.S. Dist. LEXIS 200819, at \*3 (D.N.M. Oct. 17, 2012); *see also Woodmen of the World Life Ins. Soc'y v. Manganaro*, 342 F.3d 1213, 1218 (10th Cir. 2003).

33. This Court has awarded attorneys' fees of approximately 18 to 20 percent of the class recovery. *See, e.g., In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1249 (D.N.M. 2012); *Robles v. Brake Masters Sys., Inc.*, No. CIV 10-0135 JB/WPL, 2011 U.S. Dist. LEXIS 14432, at \*54 (D.N.M. Jan. 31, 2011); *In re Horizon/CMS Healthcare Corp. Sec. Litig.*, 3 F. Supp. 2d 1208, 1212 (D.N.M. 1998).

34. Plaintiff's request for attorney's fees, therefore further increases the amount in controversy by approximately 18 to 20% beyond the rest of the amount in controversy.

**E. The Exceptions To CAFA Do Not Apply Here.**

35. A district court is required to decline to exercise jurisdiction under CAFA if certain explicit conditions are present. *See* 28 U.S.C. § 1332(d)(4). Those conditions are not present here. Neither Defendants are citizens of New Mexico, as stated above. *See* 28 U.S.C. § 1332(d)(4)(A)(i) (local controversy exception applies only if at least one defendant is a citizen of the state in which the action was originally filed); § 1332(d)(4)(B) (home-state controversy exception also applies only if at least one defendant is a citizen of the state in which the action was filed); 28 U.S.C. § 1332(d)(3) (discretionary exception applies only if primary defendants are citizens of the state in which the action was filed).

36. Accordingly, this Court has jurisdiction over this matter pursuant to CAFA.

**II. This Court Has Jurisdiction Pursuant to 28 U.S.C. § 1332(a).**

37. Original jurisdiction is also present pursuant to the diversity statute, 28 U.S.C. § 1332(a)(1), which applies where there is complete diversity between the named parties and the amount in controversy exceeds \$75,000.

38. For purposes of determining if complete diversity exists, unnamed class members shall not be considered. *See Devlin v. Scardelletti*, 536 U.S. 1, 10, 122 S. Ct. 2005 (2002) (“The rule that nonnamed class members cannot defeat complete diversity is likewise justified by the goals of class action litigation.”).

39. The named parties here are completely diverse. On information and belief, Plaintiff is a citizen of New Mexico. (*See* Compl., ¶ 12.) As an Ohio corporation with its principal place of business in Cincinnati, Ohio, Kroger is a citizen of Ohio.<sup>6</sup> Albertson’s is a limited liability company; its sole member is Albertsons Companies, Inc., a corporation incorporated in Delaware with its principal place of business in Boise, Idaho.<sup>7</sup> For purposes of establishing diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), Albertson’s is a citizen of Delaware and Idaho. *See Spring Creek Exploration & Prod. Co., LLC v. Hess Bakken Invs. II, LLC*, 887 F.3d 1003, 1014 (10th Cir. 2018) (“For diversity purposes, a limited liability company ‘takes the citizenship of all its members.’”).

40. As set forth above, the amount in controversy for this matter exceeds \$5,000,000, which is exponentially greater than 28 U.S.C. § 1332(a)(1)’s \$75,000 requirement.

41. Moreover, Kroger and Albertson’s have filed this Notice jointly and as such all Defendants have consented to removal of this action as required by 28 U.S.C. § 1446(b)(2)(a).

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<sup>6</sup> *See, e.g.*, Amendment to the Amended Articles of Incorporation of the Kroger Co., dated June 25, 2015, [https://www.sec.gov/Archives/edgar/data/56873/000110465915048764/a15-10878\\_1ex3d1](https://www.sec.gov/Archives/edgar/data/56873/000110465915048764/a15-10878_1ex3d1).

<sup>7</sup> *See, e.g.* Form 8-K of Albertson’s Company, Inc., dated September 14, 2020, available at <https://sec.report/Document/0001193125-20-245806/> (last accessed Oct. 7, 2020).

42. Accordingly, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

**III. This Court Has Federal Question Jurisdiction Pursuant to 28 U.S.C. § 1331.**

43. Under 28 U.S.C. § 1331, United States district courts have original jurisdiction of “all civil actions arising under the Constitution, laws, or treaties of the United States.”

44. “[F]ederal courts may exercise federal question jurisdiction over complaints that, although not presenting federal questions on their face, nonetheless present state law claims that are *preempted* by federal law.” *Garley v. Sandia Corp.*, 236 F.3d 1200, 1207 (10th Cir. 2001) (emphasis in original). Additionally, the Supreme Court has held that “[t]he artful pleading doctrine allows removal where federal law completely preempts a plaintiff’s state-law claim.” *Rivet v. Regions Bank*, 522 U.S. 470, 475, 118 S. Ct. 921, 139 L. Ed. 912 (1998). Because Plaintiffs’ claims are preempted by the Federal Meat Inspection Act (“FMIA”), this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

45. The FMIA regulates labels on beef products. *See* 21 U.S.C. § 601, *et seq.* It prohibits labels, which are “false and misleading” and permits labeling that is specifically approved by the Secretary of Agriculture or his delegate. 21 U.S.C. § 607(d). The USDA, through its Food Safety and Inspection Service (“FSIS”), regulates beef labels pursuant to the FMIA. *See Thornton v. Tyson Foods, Inc.*, Nos. 1:20-cv-105-KWR-SMV, 1:20-cv-106-KWR-SMV, 2020 U.S. Dist. LEXIS 156059, at \*6 (D.N.M. Aug. 27, 2020). Beef labels indicating a country of origin must comply with FSIS-approved standards. *Id.* at \*7 (citing 21 U.S.C. § 607(d)). FSIS permits a beef product label to indicate that it is a product of the United States if it is “processed in the

U.S.”,<sup>8</sup> in other words, if it “has been prepared (i.e., slaughtered, canned, salted, rendered, boned, etc.)” in the United States. 66 Fed. Reg. 41160, at 41160-61 (Aug. 7, 2001).

46. The FMIA contains an express preemption clause, which provides, “marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia.” 21 U.S.C. § 678. The Supreme Court has found the “FMIA’s preemption clause sweeps widely ... The clause prevents a State from imposing any additional or different—even if non-conflicting—requirements[.]” *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452, 459, 132 S. Ct. 965, 181 L.Ed. 2d 950 (2012). “This includes claims raised under state common law or statutory law.” *Thornton*, 2020 U.S. Dist. LEXIS 156059, at \*13 (citing *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1146 (9th Cir. 2005)).

47. Earlier this year, this Court found that this Plaintiff’s claims based on USDA-approved beef labels that bore the phrase “Product of the USA” were preempted by the FMIA. *Id.* at \*16 (“[A]ll of Plaintiffs’ claims are preempted under 21 U.S.C. § 678 because they seek to impose different or additional labeling requirements than those found under the FMIA.”).

48. Now Plaintiff brings the same claims based on the depiction of USDA-approved labels in Defendants’ advertising. (Compl., ¶ 22.) But these claims are also preempted by the FMIA. *See, Thornton*, 2020 U.S. Dist. LEXIS 156059, at \*18-19; *Animal Legal Def. Fund v. Hormel Foods Corp.*, No. 2016 CA 004744 B, 2019 D.C. Super. LEXIS 7, at \*33 (D.C. Sup. Apr. 8, 2019) (“To the extent that a meat producer uses *in advertising the same terms with the same disclaimers that USDA has approved in labeling, state-law challenges to the advertising claims*

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<sup>8</sup>See Food Safety Inspection Service’s Food Standards and Labeling Policy Book, available at <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/guidelines/2005-0003> (last accessed Oct. 2, 2020).



*are preempted.*”) (emphasis added); *Phelps v. Hormel Foods Corp.*, 244 F. Supp. 3d 1312, 1317 n.2 (S.D. Fla. Mar. 27, 2017) (“[T]he only advertising content to which Plaintiff objects in the Complaint is use of the terms ‘Natural’ and ‘No Preservatives, which are claims approved by FSIS for use in describing the Products. Therefore, Plaintiff’s FDUTPA claims based on advertising and marketing are preempted.”).

49. Because Plaintiffs’ claims are preempted by federal law, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

**WHEREFORE**, Defendants remove the above-styled action to this Court.

Respectfully submitted,

/s/ Monica R. Garcia  
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*Counsel for Defendants,  
The Kroger Co. and Albertson’s LLC*

I HEREBY CERTIFY that on the 8<sup>th</sup> day of October 2020, I filed the foregoing electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

A. Blair Dunn, Esq. - [abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)  
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*Attorneys for Plaintiff*

*/s/ Monica R. Garcia*

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Monica R. Garcia

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> Robin G. Thornton, on behalf of herself and others similarly situated</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Bernalillo</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p>	<p><b>DEFENDANTS</b> The Kroger Co., Albertson's LLC</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p>
<p><b>(c) ATTORNEYS (Firm Name, Address, and Telephone Number)</b> A. Blair Dunn, Jared R. Vander Dussen Western Agriculture, Resource and Business Advocates, LLP 400 Gold Ave. SW, Suite 1000 Albuquerque, NM 87102 (505) 750-3060</p>	<p><b>ATTORNEYS (IF KNOWN)</b> Monica R. Garcia Butt Thornton &amp; Baehr PC P.O. Box 3170 Albuquerque, NM 87190 (505) 884-0777</p>

<p><b>II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)</b></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</b></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td style="text-align: center;">Citizen of This State</td> <td style="text-align: center;">X <input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="text-align: center;">Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;">X <input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;">Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	X <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated <i>and</i> principal Place of Business in Another State	<input type="checkbox"/> 5	X <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury – Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			LABOR	SOCIAL SECURITY
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395 ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities – Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)							
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation – Direct File	

<b>VI. CAUSE OF ACTION</b>	(Cite the U.S. Civil Statute under which you are filing. <i>(Do not cite jurisdictional statutes unless diversity.)</i> ) 28 U.S.C. 1332(d) (CAFA), 28 U.S.C. 1332(a), 28 U.S.C. 1331
	Brief description of cause: Violation of New Mexico Unfair Practices Act, breach of express warranty, and unjust enrichment

<b>VII. REQUESTED IN COMPLAINT:</b>	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint <b>JURY DEMAND:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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<b>VIII. RELATED CASES(S) IF ANY</b>	(See instructions)	JUDGE <u>Kea W. Riggs</u>	DOCKET NUMBER <u>1:20-cv-00105, 1:20-cv-00106</u>
--------------------------------------	--------------------	---------------------------	---

DATE October 8, 2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Monica R. Garcia

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment)”.
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an “X” in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# Exhibit 1

10/5/2020

<https://securecourtcasess.nmcourts.gov/CaseDetail.aspx?CaseID=8374977>

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[Location: All Courts](#) [Images](#)

**REGISTER OF ACTIONS**  
**CASE No. D-202-CV-2020-05018**

Robin G Thornton v. Kroger Company, et al.

10/5/2020 10:58:58 AM

Case Type: **Civil Violations, Statutes, Ordinances**  
Date Filed: **09/03/2020**  
Location:  
Judicial Officer: **Ortega, Lisa Chavez**

**PARTY INFORMATION**

		<b>Attorneys</b>
<b>Defendant</b>	<b>Albertsons</b>	
<b>Defendant</b>	<b>Kroger Company</b>	
<b>Plaintiff</b>	<b>Thornton, Robin G</b>	<b>A. Blair Dunn</b> <i>Retained</i> 505-750-3060(W)
		<b>Jared Robert Vander Dussen</b> <i>Retained</i> 505-750-3060(W)
		<b>Marshall J Ray</b> <i>Retained</i> 505-312-7598(W)

**EVENTS & ORDERS OF THE COURT**

<b>OTHER EVENTS AND HEARINGS</b>			
09/03/2020	<b>Cause Of Actions</b>	Breach of Warranty	
	Action Type	Action	
09/03/2020	<b>Cause Of Actions</b>	Statutes, Ordinance Violations, Miscellaneous	
	Action Type	Action	
09/03/2020	<b>OPN: COMPLAINT</b>		
09/03/2020	<b>ARB: CERT NOT SUBJECT</b>		
09/03/2020	<b>JURY DEMAND 6 PERSON</b>		
09/03/2020	<b>Summons</b>		
	Kroger Company	Served	09/08/2020
		Response Due	10/08/2020
		Returned	09/15/2020
	Albertsons	Served	09/08/2020
		Response Due	10/08/2020
		Returned	09/15/2020
09/15/2020	<b>SUMMONS RETURN</b>		
09/15/2020	<b>SUMMONS RETURN</b>		

**FINANCIAL INFORMATION**

	<b>Plaintiff Thornton, Robin G</b> Total Financial Assessment Total Payments and Credits <b>Balance Due as of 10/05/2020</b>	282.00 282.00 <b>0.00</b>
09/03/2020	Transaction Assessment	282.00
09/03/2020	File & Serve Payment      Receipt # ALBD-2020-18578      Thornton, Robin G	(282.00)



FILED  
2ND JUDICIAL DISTRICT COURT  
Bernalillo County  
9/3/2020 12:07 PM  
CLERK OF THE COURT  
Blair Sandoval

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

ROBIN G. THORNTON,  
on behalf of herself and others  
similarly situated,

Plaintiff,

v.

Case No. D-202-CV-2020-05018

THE KROGER COMPANY,  
ALBERTSONS,

Defendants.

**CLASS ACTION COMPLAINT**

COMES NOW, Plaintiff Robin G. Thornton, by and through undersigned counsel of record Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq. and Jared R. Vander Dussen, Esq.) and the Law Offices of Marshall Ray (Marshall J. Ray, Esq.) on behalf of herself and all others similarly situated, alleges, with personal knowledge as to her own actions, and upon information and belief as to those of others, the following against Defendants (collectively, "Grocers" or "Defendants"):

**NATURE OF THE ACTION**

1. This is a proposed class-action complaint brought on behalf of one class and one subclass (further defined *infra*), comprising consumers who purchased beef products (the "Products," as further defined below) that are deceptively marketed and advertised.
2. Country of Origin Labeling (COOL) is a mandatory U.S. labeling law enforced by the U.S. Department of Agriculture (USDA) that requires retailers notify their customers with information

regarding the source of certain foods, also referred to as covered commodities. The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the 2002 Supplemental Appropriations Act (2002 Appropriations), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) amended the Agricultural Marketing Act of 1946 (Act) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. Specifically, this applied to regulations promulgated by USDA that prohibited beef imported post-slaughter or products derived from animals imported for immediate slaughter were required to be labeled with the originating country and could not be held out exclusively as "Product of the U.S."

3. COOL is not a food safety program. It is a consumer labeling and marketing law regulated by the USDA's Agricultural Marketing Service.

4. As directed by the United States Congress through Public Law 114-113, the Consolidated Appropriations Act of 2016, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) issued a final rule in 2016 that amends the Country of Origin Labeling (COOL) regulations by removing the requirements for muscle cuts of beef and pork, and ground beef and pork. The Consolidated Appropriations Act of 2016 repealed these COOL requirements and immediately after the legislation was passed, USDA stopped enforcing the COOL requirements for beef and pork effective Dec. 18, 2015. USDA is thus considered to be silent as to COOL regulations regarding beef and pork post 2015.

5. Since 2015, Defendants have been advertising beef that is imported into the U.S. post



slaughter as “Product of the U.S.” or some similar label designed to give the impression that the beef that the consumer is purchasing is from an animal born, raised and slaughtered in the United States. Likewise, since 2015 Defendants have sold beef from imported cattle for immediate slaughter or for finishing in the United States and advertised the products derived from those animals as “Product of the U.S.” Since 2015, imports of beef to the United States are estimated to average \$6.2 billion annually.

6. Since 2015, Defendants have breached consumer trust by advertising that some of their beef products are a “Product of the U.S.” when in fact, the products are not derived from domestically originating cattle.

7. In order to clearly understand the impact that beef imports are having on the market, and their availability to consumers to understand their prevalence, a conversion of live cattle to beef is illustrative. The USDA counts imported live cattle and converts imported beef into a live cattle equivalent. The agency uses a conversion factor of 592 pounds to determine the live cattle equivalent. For example, 1 billion pounds of imported beef is the rough equivalent of 1.7 million live cattle. As of 2019, the Big 4 Packers (Tyson, Cargil, JBS USA and National Beef) as importers now control about 6.9 million cattle in the U.S. market. Only the state of Texas, which controls about 12.6 million cattle exceeds the importers' control. Neither Kansas nor Nebraska, which are the nation's second and third top cattle inventory states, even rival Defendants in domestic cattle inventory.

8. Defendants' misrepresentations in advertising that they mail or cause to be delivered to consumers about beef that is a “Product of the U.S.” or is advertised in such a way to cause the consumer to believe that the beef is a product of the U.S. prompts consumers to buy beef products

with more confidence than they might otherwise have, and to pay more for them than they otherwise would.

9. Plaintiff Thornton, like other reasonable consumers who see Defendants' representations in advertisement outside of the stores about beef that is a "Product of the U.S.," did not expect the Products to be derived from non-domestic cattle. Plaintiff Thornton, like other reasonable consumers, purchased the Products believing that they were supporting American beef industry by purchasing Products labeled "Product of the U.S."

10. By deceiving consumers about the true origin of the Products, Defendants are able to sell a greater volume of the Products thereby increasing their own sales and profits.

11. Because Defendants' advertising of the beef products are false and misleading to reasonable consumers, Plaintiff Thornton brings this case on behalf of herself and the members of the class and subclass seeking injunctive and monetary relief, as set forth more fully below.

#### **PARTIES**

12. Plaintiff Robin Thornton is a resident of Bernalillo County, New Mexico, and a long-time purchaser of beef Products. During the class period (as further defined below), Plaintiff Thornton has purchased beef products in New Mexico from Smith's Grocery Store and Albertsons grocery stores.

13. When she purchased these Products, Plaintiff Thornton did so in reliance on the advertisements she received in the mail or in her newspapers. Plaintiff Thornton read the advertisements about "Product of the U.S." or similar statements on red white and blue flag like images to mean that the Products being advertised that she eventually purchased were from cattle born, raised and slaughtered in the United States.



14. Defendant The Kroger Company. is a Ohio LLC with its principal place of business in Cincinnati, Ohio that in New Mexico operates Smith's stores and City Market stores.

15. Defendant Albertsons is a Delaware LLC with its principal place of business in Boise, Idaho, that in New Mexico operates Albertsons, Albertsons Market, Safeway and Market Street.

16. Defendants market or advertise and sell the Products throughout most of the United States, including in New Mexico.

### **SUBSTANTIVE ALLEGATIONS**

17. In recent years, consumers have grown more concerned about health, sustainability, and animal welfare, leading them to consider how their food is produced. This increased consideration of food production has made consumers more reliant on domestically raised cattle in order to have confidence that the beef they are purchasing meets those concerns, thus a product that is labeled "Product of the U.S." generates a confidence in the consumer that the beef that they are about to purchase is from an American rancher that fulfills their socially conscious and environmentally responsible concerns including concerns that the beef they are about to consume isn't contributing to serious environmental degradation such as what is being experienced in the deforestation of Brazil. In fact Defendant The Kroger Company recognizes this and markets to consumers that they are concerned about the sustainability. See Exhibit A and <http://sustainability.kroger.com/>; Exhibit B and <https://www.albertsonscorporation.com/our-values/sustainability.html>

18. Consumers, like Plaintiff Thornton, actively seek products that provide assurances regarding animal welfare, food safety standards, environmentally sound production methods and support for the domestic producers. Consumers (as Defendants know) are willing to pay more for products marketed in this way than they are willing to pay for competing products that do not provide these assurances, moreover when presented the choice between buying American beef and

foreign beef consumers overwhelmingly prefer American beef.

19. Defendants advertise a variety of products from the muscle cuts of beef and ground beef (the "Products") that are derived both from cattle born and raised in the United States and from imported beef either live or slaughtered elsewhere.

20. Defendants represent to consumers that the Products (all of them, not just Products from cattle born and raised in the USA) are "Products of the USA" even though some of the Products they are selling to consumers were derived from cattle that never drew a breath of American air, much less were born here. The "Product of the U.S." packaging or similar advertising omitting the truth of where the Product actually originated from leads consumers to believe that the beef they are purchasing was born and raised on an American ranch or farm.

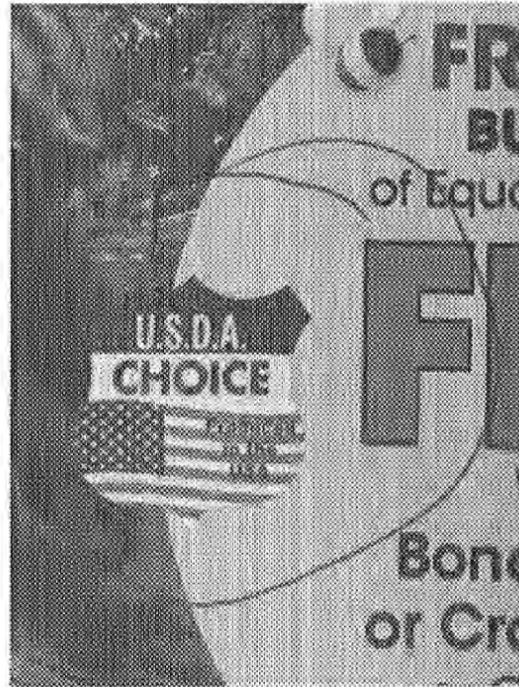
**I. The Reality of the Imported Beef or Live Cattle for the Products Renders the Defendants' Advertising False and Deceptive.**

21. In contrast to what Defendants have told consumers, the Products are made from a mixture of domestically born and raised cattle (actual "Product of the U.S.") and imported beef (approximately 3.06 billion pounds on average since 2014) as well as imported live cattle (approximately 1.94 million head on average since 2014). Unbeknownst to consumers who believe they are supporting exclusively American ranchers and farms raised according to that ethos they understand to be associated to the beef industry in this Country, Defendants are misleading them to use their patronage to support unknown, unqualified beef production practices, such as feedlot shipping across the oceans in an environmentally damaging fashion or such as the environmental devastation of deforestation of the Amazon Rain Forest for grazing witnessed in Brazil.

22. The advertising delivered to consumers in their homes and businesses of the Products representing the Products as "Product of the U.S." or other similar representations that are prominent on the advertising materials, result in the representations that are necessarily seen by



retail purchasers of the Products. Thus, representations made by Defendants regarding country of origin results in misleading and false representations being made to the consumer.





**/LB**  
With Card  
**Fresh Atlantic Salmon Fillets**  
Farm-Raised

**Boneless Beef Marinated Carne Asada Steak** **\$6.99** /LB With Card

**Assorted Pork Chops or Center-Cut Pork Chops** **\$2.49** /LB With Card  
13.49/lb Bone-In, Natural Super Value Pack

**Ribeye Steak Bone-In Super Value Pack** **\$7.99** /LB With Card

**BEYOND BEEF THE NEXT BURGER**

**SeaPak**

**USDA CHOICE**

**Ribeye Steak**  
Bone-In.  
Super Value Pack

**\$7.99** /LB



23. The advertising, with its “Product of United States” or “USDA Choice” with no accurate representation of country of origin, prominently directs purchasers to assume that the Products are actually derived from domestically born and raised cattle when in fact that may not be true at all.

24. In the instance of the Albertsons’ advertising, the absence of the country of origin taken together, with “USDA Choice” red white and blue graphic, are intended to, and do, portray to consumers that they are purchasing a “Product of the United States.”

25. Contrary to the representations made by Defendants, much of the beef in the Products is not actually a product of the United States.

**II. Defendants’ Have Deceived Consumers and Are Aware That Their Representations Are False.**

26. America’s ranchers and farmers have spent decades cultivating a reputation as an environmentally and socially conscious beef industry. Since 2015, when USDA went silent on COOL for beef and pork, Defendants have been able to benefit from that reputation, and from the consumer trust it engenders to sell foreign beef to consumers for the same price as domestically produced beef.

27. Reasonable consumers rely on grocers, their reputation, and the information provided in grocers’ marketing in making purchase decisions, especially in purchasing food.

28. Reasonable consumers lack the information and scientific knowledge necessary to ascertain the true source, quality, and nature of the beef products they purchase.

29. Reasonable consumers must, and do, rely on Defendants to advertise honestly where the products originate.

30. Reasonable consumers are misled and deceived by Defendants’ advertising that they receive in the mail or in their newspapers as to where the Products originate from and what that

means for how the Product was produced.

31. Defendants made these false, misleading, and deceptive representations, and omitted the true information that would counter them, knowing that consumers would rely upon the representations and omissions in purchasing the Products.

32. In making the false, misleading, and deceptive representations and omissions at issue, Defendants knew and intended for consumers to purchase the Products believing them to be products of the United States when consumers might otherwise purchase a competing product that was actually born, raised and slaughtered in the United States.

33. In making the false, misleading, and deceptive representations and omissions at issue, Defendants also knew and intended that consumers would purchase foreign beef believing that they were purchasing something that represented a humane, environmentally sound and/or socially responsible, production furthering Defendants' private interest of increasing their profits through the sale of what would otherwise be cheaper valued products to the consumer and decreasing the sales of products that are truthfully marketed by its competitors.

34. Upon information and belief, Defendants have profited enormously to the detriment of consumers and domestic producers from its falsely marketed products. For example, it is understood that on average per year since 2015, imports for the Big 4 Packers that supply Defendants with the beef they sell to consumers represents close to \$6.2 Billion annually.

35. Defendants' conduct in representing the Products as being products of the United States deceived and/or is likely to deceive the public.

36. To this day, Defendants continue to conceal and suppress the true origination of the Products in their advertisements.



37. Defendants' concealment tolls the applicable statute of limitations.

38. Upon information and belief, Defendants have failed to remedy the problems with their marketing, thus causing future harm to consumers, as well as real, immediate, and continuing harm.

39. Plaintiff Thornton and other members of the Class and Subclass will continue to suffer injury if Defendants' deceptive conduct is not enjoined. Plaintiff Thornton would like to continue purchasing the Products in the future. But as a result of Defendants wrongful acts, Plaintiff Thornton and other reasonable consumers can no longer rely on the truth and accuracy of the origination of Defendants' Products. Absent an injunctive order, Plaintiff Thornton and other reasonable consumers are prevented from making a meaningful and informed choice, and are otherwise at continued risk of real and immediate threat of repeated injury, including purchasing deceptively advertised Products sold at prices above their true market value.

40. Defendants have failed to provide adequate relief to members of the Class as of the date of filing this Complaint.

#### **JURISDICTION AND VENUE**

41. This Court has subject matter jurisdiction under the New Mexico Constitution and the Unfair Practices Act, NMSA 1978 57-12-1 *et seq.*

42. This Court has personal jurisdiction over the parties in this case. Defendants conduct business in New Mexico and avail themselves of the laws of this State to market and sell the Defendants' Products to consumers throughout New Mexico.

43. Venue is proper in this District because substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the

nature, quality, and/or ingredients of the Products, occurred within this District; Plaintiff Thornton resides in and purchased the Products in this District; and Plaintiff Thornton brings this action under the laws of New Mexico.

### **CLASS ALLEGATIONS**

44. Plaintiff Thornton brings this action as a class action pursuant to NMRA Rule 1-023. Plaintiff seeks to represent the following Class and Sub-Class.

- (1) All consumers in the United States who purchased the Defendants' Products during the applicable limitations period, for their personal use, rather than for resale or distribution ("Class").
- (2) All consumers in New Mexico who purchased the New Mexico Products during the applicable limitations, for their personal use, rather than for resale or distribution ("New Mexico Sub-Class").

45. Excluded from the Class and New Mexico Sub-Class are (1) Defendants, any entity or division in which any Defendants' have a controlling interest, and Defendants' legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

46. The requirements of Federal Rule of Civil Procedure 23 are satisfied:

A. Numerosity: The members of the Class and the New Mexico Sub-Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is currently unknown to Plaintiff Thornton, based on Defendants' volume of sales, Plaintiff Thornton estimates that each will number greater than 40, if not more.

B. Commonality: There are questions of law and fact that are common to

the Class members and that predominate over individual questions, and therefore, the requirements of Rule 23(b)(3) are met. The common questions of law and fact include the following:

- i. Whether Defendants materially misrepresented, either through express or implied representations, that the muscle cut of beef in the Products originated exclusively from the United States;
- ii. Whether Defendants misrepresented and/or failed to disclose material facts concerning the Products;
- iii. Whether Defendants' labeling, marketing, and sale of the Products as products of the United States constitutes unfair, deceptive, fraudulent, or unlawful conduct;
- iv. Whether Defendants warranted the Products to contain originating exclusively from the United States;
- iv. Whether Defendants procured and have retained ill-gotten gains from members of the Class;
- v. Whether Defendants' conduct injured consumers and, if so, the extent of the injury;
- vi. Whether Plaintiff Thornton and the Class or New Mexico Sub-Class members are entitled to injunctive relief; and
- viii. The appropriate remedies for Defendants' conduct.

C. Typicality: Plaintiff Thornton's claims are typical of the claims of the Class and New Mexico Sub-Class because Plaintiff Thornton suffered the same injury-



i.e., Plaintiff Thornton purchased the Products based on Defendants' misleading representations and omissions about the origination of those cattle for the Products.

D. Adequacy: Plaintiff Thornton will fairly and adequately represent and protect the interests of the members of the Class and the New Mexico Sub-Class. Plaintiff Thornton does not have any interests that are adverse to those of the Class members or New Mexico Sub-Class members. Plaintiff Thornton has retained competent counsel experienced in class action litigation and intends to prosecute this action vigorously.

E. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Since the damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged.

47. The prerequisites for maintaining a class action for injunctive or equitable relief under NMRA 1-023 are met because Defendants have acted or refused to act on grounds generally applicable to the Class and to the New Mexico Sub-Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**Violation of the New Mexico Unfair Practices Act  
(On Behalf of Plaintiff and the New Mexico Subclass)**

48. Plaintiff Thornton repeats the allegations in all the foregoing paragraphs as if fully set forth herein.

49. Plaintiff Thornton brings this claim on her own behalf and on behalf of the New Mexico Subclass.

50. The Unfair Practices Act (N.M.S.A. §§ 57-12-1 *et seq.* (“UPA”)) declares unlawful all “[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce.” N.M.S.A. § 57-12-1. The UPA is to be liberally construed to protect the public and encourage fair and honest competition.

51. Defendants have acted unfairly and deceptively, in violation of the UPA, by fraudulently advertising to consumers that the muscle cuts of beef in the Products exclusively originates from American Ranchers and Farmers. This representation was likely to mislead consumers acting reasonably under the circumstances and did mislead consumers acting reasonably under the circumstances.

52. Having made these representations, Defendants have acted unfairly and deceptively, in violation of the UPA, by omitting information about the actual origination of the beef in the Products, a great amount of which originates from imports of beef and imported foreign cattle. This omission was likely to mislead consumers acting reasonably under the circumstances and did mislead consumers acting reasonably under the circumstances.

53. Defendants’ representations and omissions were material to consumers. Defendants’

representations and omissions led consumers to believe that the Products were derived from American ranches and farms with a reputation of humane standards, food safety protections, and environmental responsibility. Defendants' representations and omissions led consumers to purchase imported Products, to purchase more of those Products, and/or to pay a higher price for the Products than they otherwise would have.

54. Although it is not necessary for Plaintiff Thornton to prove that Defendants intended to act unfairly or deceptively, on information and belief, Defendants did so intend, and did knowingly capitalize on the reputation of domestic beef producers to make material representations and omissions to consumers in New Mexico and across the nation.

55. Defendants acted with malice, ill will, or wanton conduct in deceiving New Mexico consumers about how their purchasing dollars are being spent, and whether they are supporting domestic producers, or unwittingly spending in support of foreign beef operations associated with environmental degradation. Defendants acted with malice, ill will, or wanton conduct in deceiving New Mexico consumers who wish to support environmentally responsible socially conscious New Mexico and USA-based businesses.

56. Pursuant to NMSA § 57-12-10, a person who sustains injury or damages as a result of practices prohibited by UPA may sue for equitable relief and to recover damages or return of consideration. Plaintiff Thornton sustained injury and damages when she saw Defendants' representations about the Products and purchased the Products at the frequency and price she did.

57. Plaintiff Thornton brings this claim for violation of the UPA on her own behalf, and on behalf of other New Mexico consumers who saw the Products labeled as products of the United States and purchased the Products. Plaintiff Thornton is a "person" pursuant to NMSA § 57-12-2.



58. Plaintiff Thornton and members of the New Mexico Subclass are entitled to:
- a. equitable relief;
  - b. actual damages or the sum of one hundred dollars (\$100), whichever is greater;
  - c. exemplary damages for Plaintiff Thornton only as to herself up to three times actual damages or three hundred dollars (\$300), whichever is greater; and
  - d. attorneys' fees and costs.

NMSA § 57-12-10.

**COUNT II**

**Breach of Express Warranty (On Behalf of Plaintiff and the Class)**

59. Plaintiff Thornton repeats the allegations in all the foregoing paragraphs as if fully set forth herein.

60. Plaintiff Thornton brings this claim on her own behalf and on behalf of the Class.

61. Defendants provided Plaintiff Thornton and members of the Class with written express warranties including, but not limited to, warranties that Products originated exclusively from domestic beef producers.

62. Plaintiff Thornton and members of the Class purchased the Products believing them to conform to the express warranties made in advertisements.

63. Defendants breached these warranties.

64. As a proximate result of the breach of warranties by Defendants, Plaintiff Thornton and the members of the Class did not receive goods as warranted and did not receive the benefit of the bargain. They have been injured and have suffered damages in an amount to be proven at trial.

**COUNT III**

**Unjust Enrichment  
(On Behalf of Plaintiff and the Class)**

65. Plaintiff Thornton repeats the allegations in all the foregoing paragraphs as if fully set forth

herein.

66. Plaintiff Thornton brings this claim on her own behalf and on behalf of the Class.

67. To the extent required by law, this cause of action is pleaded in the alternative to Plaintiff Thornton's contract-based claims.

68. As the intended, direct, and proximate result of Defendants' conduct, Defendants have been unjustly enriched through sales of imported Products at the expense of Plaintiff Thornton and the Class members.

69. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from Plaintiff Thornton and the Class members, in light of the fact that the products they purchased were not what Defendants purported them to be.

#### **PRAYER FOR RELIEF**

Plaintiff Thornton, on her own behalf and on behalf of the Class and the New Mexico Subclass, prays for the following relief:

- A. An order certifying the Class and New Mexico Subclass under Rule 23 of the New Mexico Rules of Civil Procedure and naming Plaintiff Thornton as Class and New Mexico Subclass Representative and her attorneys as Class Counsel;
- B. A declaration that Defendants are financially responsible for notifying Class and New Mexico Subclass members of the pendency of this suit;
- C. An order declaring that Defendants' conduct violates the New Mexico UPA;
- D. An order providing appropriate equitable relief in the form of an injunction against Defendants' unlawful and deceptive acts and practices, and requiring proper, complete, and



accurate advertising of the Products;

- E. An order providing appropriate equitable relief in the form of an injunction against Defendants' unlawful and deceptive acts and practices, and requiring that Defendants remove and refrain from making representations on advertising that beef that is not born, raised and slaughtered in the US is not exclusively a product of the US and requiring that any Products from cattle that are not born, raised and slaughtered in the US be advertised in a way to disclose the accurate and complete origination of the Product;
- F. Actual damages for members of the New Mexico Subclass pursuant to NMSA § 57-12-10;
- G. Exemplary damages of 3 times the actual damages for Plaintiff Thornton pursuant NMSA § 57-12-10;
- H. Restitution for members of the Class to recover Defendants' ill-gotten benefits;
- I. Damages for members of the Class arising from Defendants' breach of warranty;
- J. An order finding in favor of Plaintiff Thornton and the Class and New Mexico Subclass on all counts asserted herein;
- K. Prejudgment interest on all amounts awarded;
- L. An order of restitution and all other forms of equitable monetary relief;
- M. Injunctive relief as the Court may deem appropriate; and
- N. An order awarding Plaintiff Thornton, the Class and New Mexico Subclass their attorneys' fees and expenses and costs of suit.

Respectfully submitted,

WESTERN AGRICULTURE, RESOURCE  
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

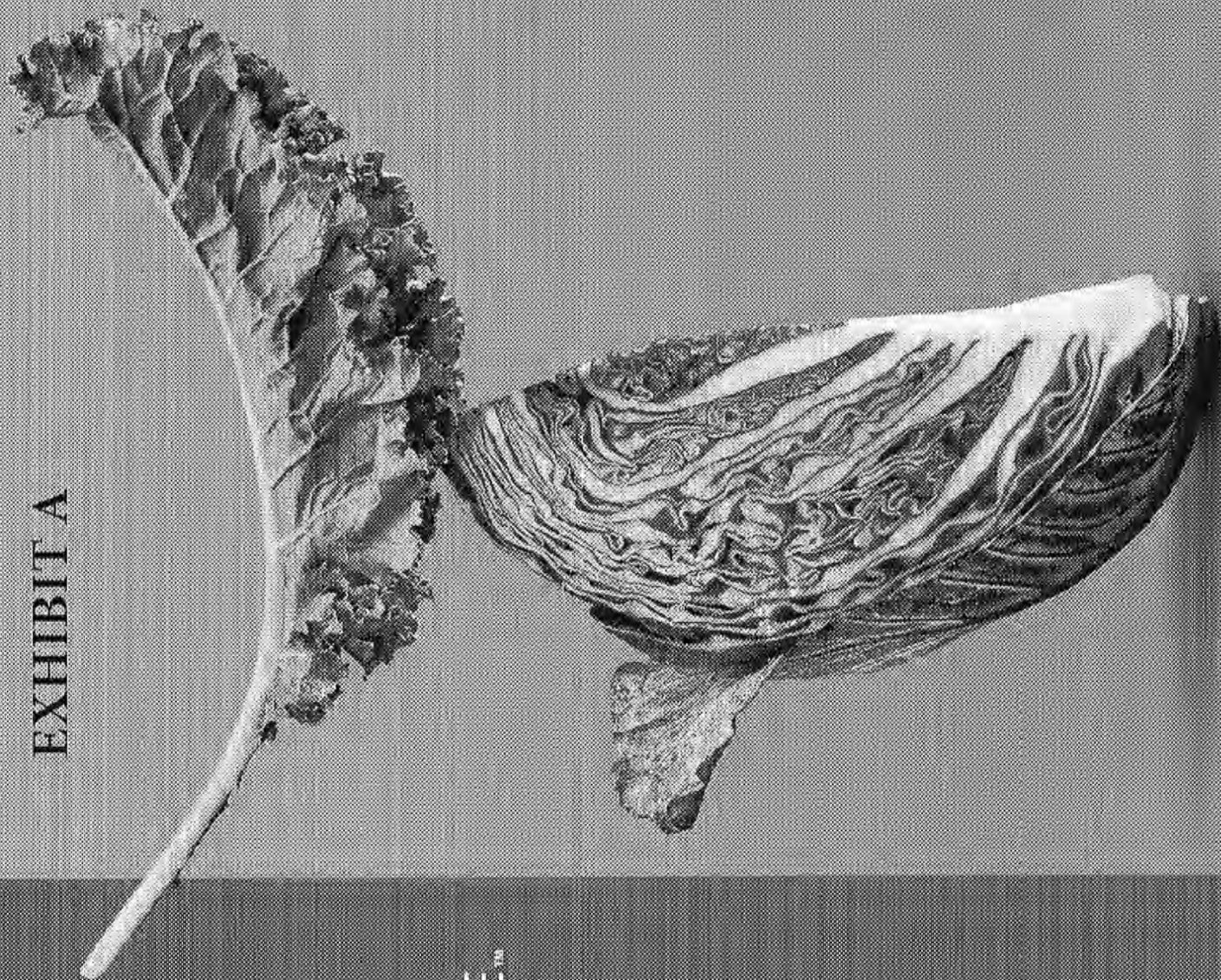
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EXHIBIT A



FRESH  
FOR  
EVERYONE.™  
**Kroger**®

2020  
Environmental, Social  
and Governance Report



# Welcome to our Environmental, Social and Governance Report

We are pleased to share this report on our environmental, social and governance (ESG) performance with our shareholders, associates, customers, communities, suppliers and interested non-governmental organizations (NGOs).

This report builds on Kroger's 14-year history of sustainability reporting, which has tracked our journey to becoming more sustainable. As our world continues to change, we will continue to invest time, resources and energy into making our operations more efficient, using resources more responsibly and improving health, safety and well-being.

A cross-functional Kroger team of sustainability, business and functional leaders oversees the company's management approach to and performance on ESG topics. As we near the end of our journey to achieve our 2020 Sustainability Goals, we are developing new performance targets for 2025, 2030 and beyond to help create a more sustainable future for people and our planet. More details about our management approach to ESG topics can be found in our [2019 Sustainability Report](#) and online.

## About This Report

Kroger reports its ESG performance annually. This report covers the Kroger family of companies 2019 fiscal year, which ran from February 3, 2019, to February 1, 2020. Unless otherwise noted, data included in the report reflects this time period. Kroger's financial statements reflect all Kroger operations, including all business and divisions, unless otherwise noted in the Annual Report. This ESG Report includes data from all of our operations, except for certain data sets where we are still integrating banners from prior recent mergers into our tracking systems. As data access improves on our business changes, we will adjust our performance tracking accordingly and note this in the relevant report section.

## GRI Alignment

The content in this report and on our corresponding website has been prepared in accordance with the Global Reporting Initiative (GRI) Global Sustainability Reporting Standards, specifically the Core reporting option. We summarize references to content that aligns with the relevant GRI disclosures in the [GRI Index](#).

## SASB Standards

Kroger is currently a member of the Sustainability Accounting Standards Board (SASB)'s Standards Advisory Group for the Food and Beverage Sector. This group of retail and industry experts are appointed to advise SASB on emerging issues that should be considered in the standards development process. In 2018, SASB released 77 sector-specific standards to guide companies in identifying, managing and communicating financially material sustainability information in a way that is meaningful to investors and relevant to their sector. To review our disclosure against the Food Retailers and Distributors Standards, refer to our [SASB Index](#) at the end of this report.

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# Q&A With the Chairman and CEO

We are pleased to share Kroger's 2019 progress on ESG topics that matter to our Company and stakeholders like you. As I reflect on the first half of 2020, we are grateful for the opportunity to keep our doors open and shelves stocked for our Customers during the COVID-19 pandemic. I'm incredibly thankful for our Associates' continued dedication and service. Perhaps more than ever before, we are deeply committed to our brand ethos—Fresh for Everyone™—and to advancing diversity, equity and inclusion in our Company and Communities.

## How did Kroger Live Our Purpose in 2019?

We Live Our Purpose—to Feed the Human Spirit™—in big and small ways through Kroger's Zero Hunger | Zero Waste plan, our commitment to help create Communities free of hunger and waste. I'm proud of our Associates—together we achieved our three-year goal to direct 1 billion meals in food and funds to our Communities by 2020.

## How have Kroger's investments in sustainability helped prepare the Company for the COVID-19 pandemic?

Kroger has a rich history of investing in Communities and being there for our Customers. Strategic investments in our Restock Kroger plan, including alternative shopping modalities, proved critical as Customers turned to lower-contact shopping. Similarly, our Zero Hunger | Zero Waste Food Rescue and Dairy Rescue programs, as well as our charitable giving, are amplifying our community support at a time when many people are struggling.

## How does Kroger's pandemic response demonstrate Our Purpose?

The coronavirus outbreak challenged us to act quickly and balance the needs of many stakeholders. As always, protecting the health and safety of our Associates and Customers is our top priority.

We invested more than \$830 million to reward our Associates and safeguard our teams, Customers and Communities during the first four months of the COVID-19 pandemic. We also created Sharing What We've Learned: A Blueprint for Businesses, which captures our best practices in retail operations, sourcing, supply chain and more to help others.

## How will Kroger advance diversity, equity and inclusion?

As a Company, we believe we can and must do better. We are listening deeply to our Black Associates, Customers and Allies to learn more and better support the advancement of racial equity. We are also taking deliberate action to be a catalyst for change in our Communities, in part through a \$5 million fund in The Kroger Co. Foundation to advance diversity, equity and inclusion.

## How will Kroger lead in sustainability during the next decade?

We continue to accelerate toward our 2020 sustainability goals. At the same time, we are developing new ambitious long-term targets for 2030. These include commitments to reduce greenhouse gases (GHGs) by 30% and transition to 100% recyclable, compostable or reusable Our Brands packaging by 2030.

## How is Kroger's long-term strategy evolving to address stakeholder interests?

We are driving the integration of key ESG topics into our business plans and decisions over time. Our Zero Hunger | Zero Waste plan, for example, reflects the concept of shared value in action—working collectively toward a common goal that is good for both business and society.



**Rodney McMullen**  
Kroger's Chairman  
and Chief Executive Officer



# About Kroger

Kroger is America's favorite grocer. We are committed to delivering fresh food at a fair price, simplifying the customer experience and meaningfully giving back to the communities in which we operate. We believe no matter who or where you are, you deserve affordable, easy-to-enjoy, fresh food. This idea is embodied in a simple tagline—Fresh for Everyone™—that represents our egalitarian brand and underscores our commitments to our customers.

In fulfilling Our Purpose to Feed the Human Spirit™, we always live by our Values:

- Respect**  
We treat all with dignity and value the opinions and perspectives of others.
- Diversity**  
We seek and embrace difference in the backgrounds, cultures and ethnicities of all associates, customers and vendors.
- Inclusion**  
We encourage and expect collaboration, teamwork and the active involvement of all associates.
- Honesty**  
We insist on truthfulness with each other, with our customers, with our vendors and in our business records. We expect and value openness.
- Integrity**  
We act in accordance with our values, even when it's difficult.
- Safety**  
We protect our customers and each other from injury with a safe and secure workplace and shopping environment.



## Restock Kroger Plan Overview

Kroger's vision is to serve America through food inspiration and uplift, and Restock Kroger is our three-year plan to deliver on that vision. The plan's four key drivers will help us serve customers anything, anytime, anywhere and are built on the foundation of running great stores:



**Redefine the Grocery Customer Experience**  
Accelerate our digital and ecommerce efforts, applying customer data and personalization to more aspects of the business, and building the success of *Our Brands*.



**Partner for Customer Value**  
Use more capital to fund technology and infrastructure upgrades and create alternative revenue streams.



**Develop Talent**  
Develop our high-performance leadership culture through future talent development and training, and by investing in associate pay and benefits.



**Live Our Purpose**  
Our Purpose and Promise guide everything we do, and Kroger's Zero Hunger | Zero Waste social impact plan is how we live that Purpose every day.

Read more about Restock Kroger in our 2019 Fact Book.

<b>2,757</b> retail locations	<b>44</b> distribution centers	<b>11M</b> customers daily
<b>34</b> manufacturing plants operated by the Kroger family of companies	<b>1,244</b> vehicles in Kroger-owned commercial fleet	<b>\$122.3B</b> Total 2019 sales
<b>100.7M</b> miles traveled by Kroger-owned commercial fleet	<b>180M</b> square feet of supermarket space	



# OUR APPROACH TO ESG

## Materiality

Our sustainability materiality assessment was updated in early 2020, in line with the GRI Global Sustainability Reporting Standards. In partnership with a consultancy, we determined relevant topics by reviewing the priorities of each stakeholder group through sustainability reports, sustainability ratings and rankings, reporting frameworks, industry reports, consumer surveys and media scans. In total, we identified 32 significant topics.

To prioritize these topics and apply the Stakeholder Inclusiveness Principle, we conducted interviews with and distributed surveys to more than 100 internal and external stakeholders. Analyzing the input, we prioritized 12 topics as most "material"—that is, topics foundational to our license to operate and/or with high levels of company-specific risk, opportunity or ability to impact. We identified boundaries for each topic based on stakeholder expectations and our management practices.

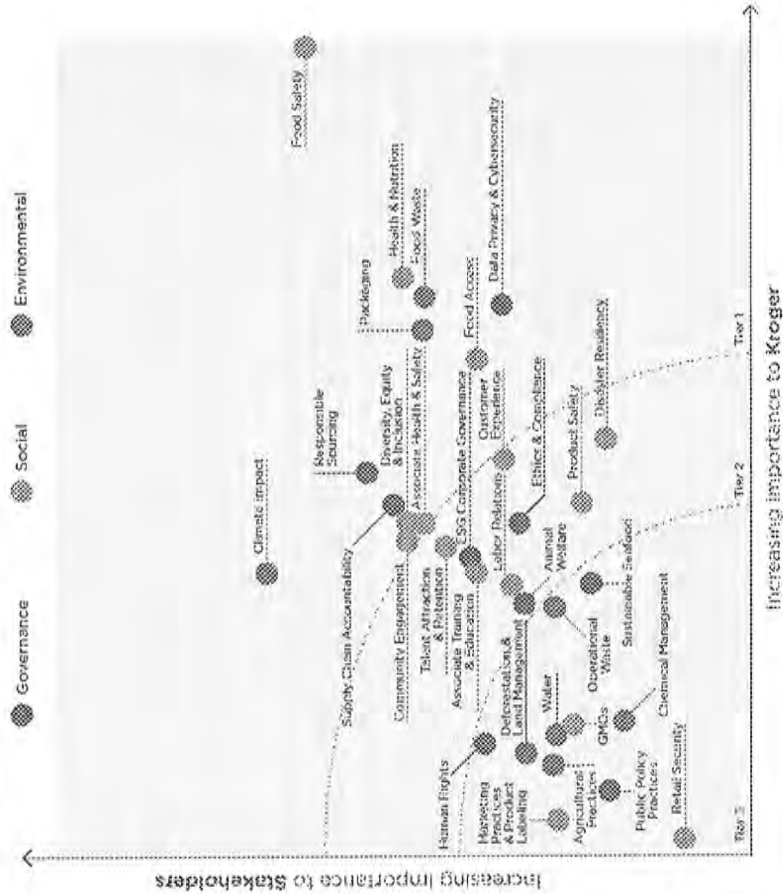
Kroger's Corporate Affairs team and select company leaders reviewed and validated the prioritized topics. The validated topics shaped the content of this ESG Report, which details the Kroger family of companies' management approach and performance for each Tier 1 topic.

We also provide information for several Tier 2 and Tier 3 topics of particular interest to our stakeholders. The 2020 materiality assessment was conducted during the initial stages of the COVID-19 pandemic, and we recognize that the context of our ESG work going forward will continue evolving.

### New Material Issues

Our 2020 materiality assessment resulted in some topics increasing in priority to Tier 1, such as Packaging and Data Privacy & Cybersecurity. Key new topics include ESG Governance, Ethics & Compliance and Agricultural Practices. Food Safety remains the top overall Tier 1 topic, as it was in 2018. We expect some topics to gain increased importance in the post-COVID world, such as Associate Health & Safety and Disaster Resiliency.

## 2020 Material Topics



To read descriptions of Kroger's 32 material ESG topics, refer to the table in the Appendix.



# Performance & Disclosure

As we drive progress toward our 2020 goals, we also look to what lies ahead. Through engagement with our stakeholders, subject matter experts and internal business owners, we are identifying the commitments and goals that will maintain Kroger's sustainability leadership through the next decade.

During 2020, we are launching new or extended commitments in the areas of:

- GHG emissions reductions
- Sustainable packaging for *Our Brands* products
- Responsible sourcing, including zero deforestation in *Our Brands* products
- Extended zero-waste goals

## Progress on Long-Term Goals

Goal	2017	2018	2019	Target Year	Trend
<b>Zero Hunger</b> <small> fiscal year</small> 					
Donate 18 cumulative meals (food & funds) to our communities by 2020; 3B by 2025	325M meals	316M meals	493M meals	2020 2025	 
Direct as much safe, nutritious food as possible to feed people in our communities through Zero Hunger   Zero Waste Food Rescue	91M lbs food rescued	100M lbs food rescued	101M lbs food rescued	2025	
<b>Zero Waste</b> <small> calendar year</small> 					
Company-wide, meet and exceed the Zero Waste threshold of 90% diversion from landfill	72% diversion	76% diversion	80% diversion	2020	
Recycle over 260M pounds more plastic—cumulatively—by the end of 2020, from a baseline of 2016	45.1M pounds	52.1M pounds	53.7M pounds	2020	
Continue to integrate reusable plastic containers (RPCs) into our network and test new technologies that reduce waste in the supply chain	140M RPCs	160M RPCs	123M RPCs	2020	
Recover over 3.4B pounds of cardboard annually by the end of 2020	1.481B pounds	1.484B pounds	1.606B pounds	2020	
50% of new store and remodel construction projects to achieve zero waste in 2019	21% of projects	40% of projects	54% of projects	2019	
Phase out single-use plastic shopping bags <small>Phaseout commitment is in addition to any existing and future legislation for plastic bags.</small>	-	-	QFC division phaseout complete	2025	



Goal 2017 2018 2019 Target Year Trend

**Food Waste Recycling**  Calendar icon

- Achieve zero food waste
- Reduce total food waste generated in our retail supermarkets.
- Improve food waste diversion from landfills in retail supermarkets.

332,212 tons generated  
271% food waste diversion

301,282 tons  
39.7%

298,966 tons  
44.7%

2025 

- Expand food waste recycling programs to support zero food waste
- Expand programs to donate safe and nutritious food scraps to animals.
- Leverage anaerobic digestion (AD) technology in additional locations.
- Expand composting operations that provide nutrients back to our environment.

98,070 tons to animal feed  
34,798 tons to AD

108,036 tons  
76,210 tons

14,220 tons to compost  
1,978 stores with food waste recycling programs

15,870 tons  
2,120 stores

2020 

**Climate Impact**  Fiscal year icon

Improve our km miles per gallon (MPG) by 20% by 2020, using a 2010 baseline

8.1% 10.21% 10.84%

2020 

Achieve 40% electricity savings in supermarkets by 2020, using 2010 as a baseline year

38% savings 44.9% savings 47.4% savings

2020 

Achieve 3% annual reduction in electricity consumed per unit produced in our plants

1.86% ↓ 0.36% ↑ 2.47% ↑

2019 

Achieve 3% annual reduction in natural gas consumed per unit produced in our plants

0.32% ↑ 4.95% ↑ 3.12% ↑

2019 

Reduce refrigerant emissions by 9% in our retail stores annually

10% ↓ 0% 0%

2019 

**Water Reduction**  Fiscal year icon

Achieve 5% water savings in supermarkets by 2020, using a 2015 baseline year

0.5% savings 2.2% savings 5.6% savings

2020 

Achieve 3% annual reduction in water consumed per unit produced in our plants

2.98% ↓ 3.44% ↑ 1.7% ↓

2019 

 Read more  Did not achieve  On track  Achieved  Achieved ahead of schedule



Goal 2017 2018 2019 2020 Target Year Trend

**Responsible Sourcing**  Calendar year 

Source 100% of wild-caught seafood from fisheries that are Marine Stewardship Council (MSC) certified, in MSC full assessment, in comprehensive fishery improvement projects (FIPs) or certified by other Global Sustainable Seafood Initiative (GSSI)-recognized programs by 2020.

Preferentially source MSC-certified wild-caught seafood and, by 2020, source at least 90% of volume from fisheries that are MSC certified.

Source 100% of farm-raised seafood from farms that are Best Aquaculture Practices (BAP) 2-star or greater certified, Aquaculture Stewardship Council (ASC) certified or GLOBALG.A.P. certified by 2020.

Source 100% of shell-stable tuna from companies aligned with the International Sustainable Seafood Foundation (ISSF).

Transition to a 100% cage-free egg supply chain by 2025.

*Data reflects shell eggs. 2018 data point restated. In 2019, 24.5% of all eggs types sold at Kroger were cage free.*

Source 100% of fresh pork from suppliers and farms that have transitioned away from gestation crates by 2025.

*2019 and 2018 practical data points reflect the percentage of Kroger's fresh pork supply chain that has moved away from gestation crates for at least part of pregnancy.*

**Packaging**  Fiscal year 

Kroger seeks to optimize Our Brands manufactured product packaging in several ways:

- Reduce plastic resin by 10M pounds, from a 2015 baseline.
- Use at least 20% post-consumer recycled (PCR) content.
- Increase the recyclability of plastic packaging.
- Increase communication about recyclability on all applicable packaging.
- Increase certified virgin fiber from well-managed forests for paperboard packaging.
- Support the expansion of infrastructure to increase the availability and accessibility of recycling for Our Brands product packaging.

2017	2018	2019	2020
87%	88%	88%	88%
74%*	75%	71%	71%
81%*	89%	96%	96%
100%	100%	100%	100%
21%	23.3%*	23.1%	23.1%
-	38%*	43%	43%
4.8M pounds plastic reduced	9.8M pounds plastic reduced	10.1M pounds plastic reduced	10.1M pounds plastic reduced
1,310+ items labeled with "Please Recycle"	1,830+ items labeled with "Please Recycle"	3,000+ items labeled with "Please Recycle"	3,000+ items labeled with "Please Recycle"

\*Restated



Read more



Did not achieve



Continued focus



On track



Achieved



Achieved ahead of schedule

Note: M = million, B = billion

# Engagement

As one of the world's largest retailers, Kroger has a large and diverse group of stakeholders. We define stakeholders as those groups and individuals who affect our ability to successfully run our business, and who may be affected by our business operations. We proactively manage a wide variety of stakeholder relationships to foster open dialogue and capture feedback on key ESG topics. Our approach to engagement varies by stakeholder group.

## Key Stakeholder

### Shareholders

Kroger's leaders, our Investor Relations team and other subject matter experts engage with shareholders throughout the year. Key channels include direct investor engagement, investor conferences, our annual shareholders' meeting, quarterly earnings calls, financial reports, investor questionnaires about ESG topics, [www.thekrogerco.com](http://www.thekrogerco.com), press releases and webcasts.

### NGOs

We engage in long-standing partnerships with many NGOs to share the vision for Kroger's Zero Hunger | Zero Waste social impact plan and our performance. We welcome dialogue with NGOs on diverse sustainability topics to help advance common goals for people and the planet.

### Associates & Labor Unions

We strive to engage with all Kroger associates in all locations. We use employee training, one-on-one discussions and coaching, the company's intranet, email, leadership meetings and town halls, affinity and inclusion groups, internal and external social media and an annual employee engagement survey. We also communicate with local and international unions through scheduled meetings, telephone calls and ongoing collective bargaining agreement negotiations.

### Customers

We offer customers many ways to engage with us, including in-store service counters, surveys, focus groups, websites and social media, as well as Kroger Customer Connect, our live call center.

### Communities

We foster close relationships with the neighborhoods in which we operate. Key channels include direct engagement, local giving and fundraising, service and volunteerism, weekly food donations, hunger relief, ongoing special events, store openings, media relations and more.

### Suppliers & Manufacturers

Kroger's engagement with our suppliers is a critical element of our commitment to responsible sourcing and supplier accountability. We focus our engagement during the onboarding process and continue it through ongoing meetings, site visits, surveys, audits and scorecards.

## Engagement Outcomes in 2019

Our comprehensive shareholder engagement plan and continuous dialogue ensures the company's strategy is informed by our key stakeholders and aligns business, financial and investor strategies. In 2019, Kroger met with unique investors that managed nearly 70% of the active institutional float and with investors holding more than about \$50 billion of purchasing power.

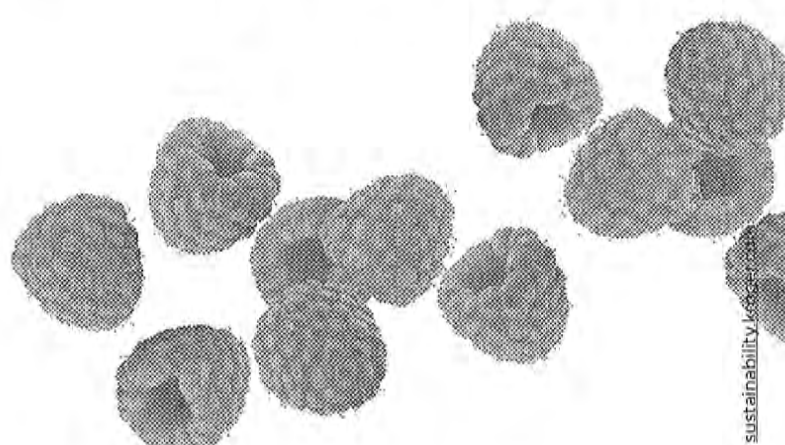
Proactive and ongoing dialogue with more than 40 NGOs informed Kroger's ESG priorities, material topics and new long-term goals regarding carbon reduction, packaging and deforestation.

Regular engagement with labor union leaders and members led to the adoption of 139 new collective bargaining agreements in 2019, covering nearly 96,000 associates.

The customer insights team at \$4.5P led customer research to inform our Zero Hunger | Zero Waste plan and gauge interest in transitioning to reusable shopping bags.

Followed Kroger's established Community Engagement Principles and gave back meaningfully in the places we call home. Our corporate and retail division teams focused on advancing positive impact in our communities through philanthropy, service and ongoing dialogue.

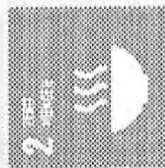
Engaged select suppliers in key ESG strategies, including food access and raw milk rescue, food waste reduction, packaging optimization and community development.





# Contributing to the Sustainable Development Goals

In 2015, the UN launched the Sustainable Development Goals (SDGs) to focus global efforts in 17 key areas to help bring peace and prosperity to people and the planet. Our Purpose—to Feed the Human Spirit™—aligns with many of the SDGs, and as we commit to doing our part, we call on our stakeholders and partners to join us.



## Zero Hunger

As America's grocer, we are committed to creating communities free of hunger and waste. This mission is reflected in our brand ethos: Fresh for Everyone™. We believe in creating solutions that provide access to fresh, nutritious food and improve health for all.

### How we're contributing

#### SDG Target 2.1

By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round.

- Directed a total of 493 million meals in food and funds to our communities in 2019; exceeded three-year goal to donate 1 billion meals to our communities from 2017 through 2019.

- Improved the nutritional balance of surplus food donated through Zero Hunger | Zero Waste Food Rescue.

- Supported national and local non-profit partners—like Feeding America, No Kid Hungry and others—that direct meals to children, families and individuals in need across the U.S.

#### SDG Target 2.4

By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters, and that progressively improve land and soil quality.

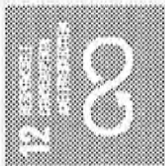
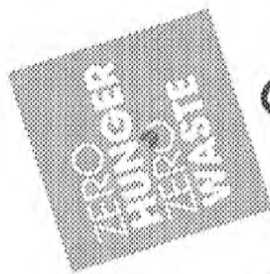
- Conducted multiple pilots focused on reducing food loss and waste in our operations.

- Established The Kroger Co. Zero Hunger | Zero Waste Foundation as a public charity to support partners improving sustainable practices in food production and consumption, including the Congressional Hunger Center and IDEO CoLab.

- Worked with Fair Trade USA to better support global communities from which we source *Our Brands* products and ingredients.

### Significant Impact

We have a significant impact on SDGs 2 and 12 through Kroger's Zero Hunger | Zero Waste social impact plan:



## Responsible Consumption and Production

Kroger has long focused on waste reduction across our food production, distribution and retail processes as part of our sustainability commitment. Our goal is to achieve zero waste by 2020 and zero food waste by 2025.

### How we're contributing

#### SDG Target 12.2

By 2030, achieve the sustainable management and efficient use of natural resources.

- Measured and reported progress on 2020 Sustainability Goals; set new long-term targets to reduce carbon emissions and deforestation, and to improve packaging sustainability.

- Built on our partnership with Fair Trade USA to increase community-development premiums paid through Fair Trade-certified products. Joined the Sustainable Coffee Challenge to source all Fair Trade-certified coffee for Kroger's Simple Truth® brand.

- Released a No-Deforestation Commitment for Raw Material Sourcing in our operations and completed the membership process for the Roundtable on Sustainable Palm Oil (RSPO).

#### SDG Target 12.3

By 2030, halve per capita global food waste at the retail and consumer levels, and reduce food losses along production and supply chains, including post-harvest losses.

- Continued to maximize food rescue, reduce the amount of food waste generated and improve food-waste diversion from landfill.

- Committed to engage 20 strategic Kroger suppliers in the World Resources Institute (WRI)'s 10x20x30 Initiative.

- The Kroger Co. Foundation partnered with World Wildlife Fund (WWF) to expand the reach of its Food Waste Warrior Toolkit to local school districts in major U.S. markets. See the report.

- Kroger's manufacturing plants and co-packing suppliers are now aligned with the standardized date labeling practice of "Use by" to indicate food safety and "Best by" to indicate quality for *Our Brands* products.



**Business Impact**

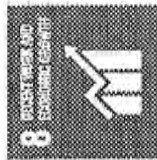
We contribute to the following five SDGs through our business operations:



**Good Health and Well-Being**

Kroger's health, nutrition, pharmacy and The Little Clinic™ services help improve our customers' health and wellness. We support a variety of nutritional plans, and offer vaccinations, physicals, sick visits, prescriptions, nutrition counseling and our innovative OptUP app. Equally important are our own associates' health needs. Kroger offers competitive benefits, including health insurance options, parental leave, adoption support, well-being assistance and smoking-cessation services, among others.

[Read more about this topic](#)



**Decent Work and Economic Growth**

We want our associates to come for a job and stay for a career. We are an equal opportunity employer that seeks to provide career opportunities and flexibility for associates regardless of gender, race, age, sexual orientation, culture, language or religion. Kroger's average hourly wage is over \$15, and with comprehensive benefits factored in, our average hourly rate is over \$20. Kroger's commitment to protecting human rights is reflected both in our Statement on Human Rights and our Vendor Code of Conduct, and our Social Compliance Audit program verifies suppliers' conformance with the vendor code.

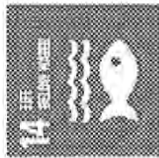
[Read more about this topic](#)



**Climate Action**

Kroger uses energy-savings and emissions-reduction investments to reduce our climate impacts. Our Retail team has achieved a 47.4% electricity savings in our supermarkets since 2000. We also participate in the U.S. Environmental Protection Agency (EPA)'s GreenChill program, and set annual goals to reduce refrigerant emissions in our stores. We have 15 solar power installations across our stores, distribution centers and plants. In 2019, we also initiated a carbon risk analysis, which will further inform efforts to identify and reduce impacts to Kroger from physical, regulatory and transitional climate risks. In 2020, we set a new science-based GHG emissions goal to reduce company-wide emissions by 30% by 2030.

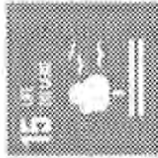
[Read more about this topic](#)



**Life Below Water**

For over a decade, Kroger has partnered with WWF, our suppliers and others to increase the sustainability of the seafood we sell. By aligning with third-party certifications for wild-caught and farm-raised seafood, we ensure that our customers can purchase seafood while advancing conservation for future generations. Kroger has supported several fishery improvement projects through sourcing and financial contributions to help fisheries achieve certification. Meanwhile, our sustainable packaging goals are intended to reduce the amount of plastic packaging in the environment by giving unnecessary packaging, increasing recyclability, and giving customers easy ways to reduce, reuse and recycle.

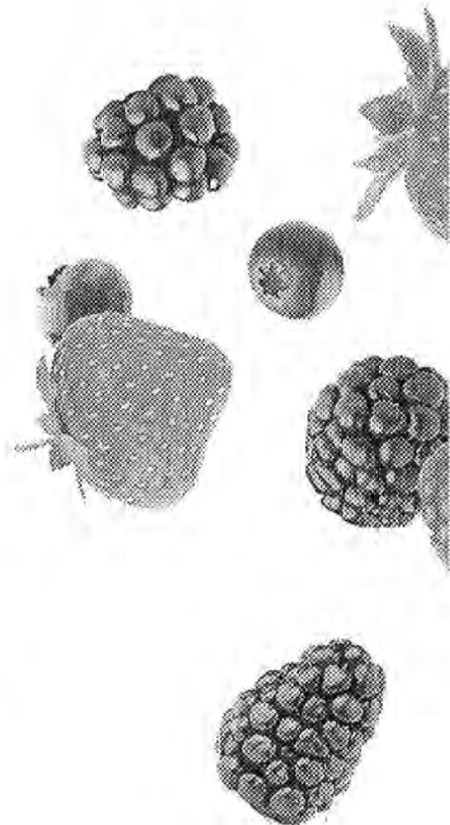
[Read more about this topic](#)



**Life on Land**

While providing a crucial resource, food production can have significant impacts on our natural resources. Several of our supply chains are engaged in reducing their environmental impacts. Kroger is a signatory of the U.S. Dairy Stewardship Commitment, an industry-wide initiative, as well as the Sustainable Coffee Challenge. Our No-Deforestation Commitment addresses deforestation from palm, soy, beef and pulp/paper, and our sustainable packaging commitments include a focus on sustainable forestry management in our paper products. We also expanded Kroger's Pollinator Protection Statement to encourage suppliers' conservation efforts.

[Read more about this topic](#)





# Our Social Impact Plan

## Zero Hunger | Zero Waste

Kroger's Zero Hunger | Zero Waste social impact plan aligns with four of our most material social and environmental issues: food access, food waste, health and nutrition, and community engagement. Inspired by Our Purpose—to Feed the Human Spirit™—and our brand promise—Fresh for Everyone™—it is our commitment to help create communities free of hunger and waste. This mission is central to the fourth pillar of our Restock Kroger plan, Live Our Purpose, and evolved from a strategic look at what was authentic to our past and what we, uniquely, can do.

Zero Hunger | Zero Waste addresses a fundamental absurdity in our food system: an estimated 40% of the food produced in the U.S. is thrown away, yet one in nine Americans experiences hunger. As America's grocer, we have the size, scale, expertise and local connections to help. We are setting ambitious goals, leveraging our charitable giving and outreach efforts, and bringing long-standing and new partners on our journey.

We are collaborating with partners, advisers and innovators who are helping solve the complex problems surrounding food insecurity and waste. Thanks to our dedicated associates, generous customers and thoughtful partners, we are making significant progress on our Zero Hunger | Zero Waste plan.

Zero Hunger | Zero Waste—introduced in late 2017—aligns internal teams and external partners on strategic ways to improve food security and end waste. We strive to direct as much food as possible to its highest purpose: feeding people. We recognize the need for a better, more resilient global food system to meet the needs of an estimated 10 billion people by 2050.

We are engaging and recognizing associates and others who are Zero Heroes among us. Their commitment and passion for rescuing fresh food, reducing waste, recycling and serving others is truly inspiring.

See a list of Kroger's latest associate Zero Heroes.

Read more about how Zero Hunger | Zero Waste aligns to key ESG topics in these sections.



For more details about Zero Hunger | Zero Waste, please see our 2019 ESG Report PDF online. For details on giving aligned to our social impact plan, please see this report on The Kroger Co. Foundation and The Kroger Co. Zero Hunger | Zero Waste Foundation.





# Zero Heroes Among Us

## Engaging Youth in the SDGs

In 2019, Kroger helped scale the InnerView youth social responsibility platform to amplify community service opportunities related to our Zero Hunger | Zero Waste plan. Through InnerView, students aged 14 to 24 are encouraged to explore the UN SDGs and engage in volunteer efforts that align with their personal beliefs and passions.

In the process, students earn awards and develop a personal service résumé detailing their hours of service and areas of positive social impact.

Kroger sponsored youth service awards aligned with SDG 2: Zero Hunger and SDG 12: Responsible Consumption and Production.

For the 2019-2020 school year, 4,702 student volunteers at 224 schools in 41 states earned service credit aligned with SDG 2 and hunger relief. Another 356 students at 90 schools in 29 states earned credit supporting SDG 12 and waste reduction.

A total of 960 students earned recognition as Zero Heroes for achieving specific levels of service. Students named Zero Heroes for service aligned with SDG 12 also had an opportunity to connect with WWF's Food Waste team and be recognized as Citizen Scientists.



### Champions of Change: 2019-2020 School Year

<b>Student volunteers</b> <i>(Note: some students earned credit for both goals)</i>	4,914
<b>Student volunteer hours</b>	37,000
<b>Community impact value</b>	More than \$1M
<b>Schools with Zero Hunger   Zero Waste activities</b>	231
<b>States with Zero Hunger   Zero Waste activities</b>	41
<b>Total Zero Hero awardees</b>	960



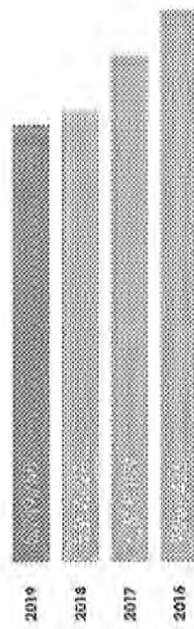


# ENVIRONMENT

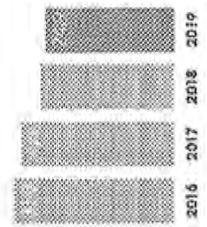
**In This Section**

- 14 Climate Impact
- 17 Food Waste
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- 20 Packaging
- 22 Water
- 23 Product Sustainability

**Total Carbon Emissions (Scope 1 and 2)—Tons CO<sub>2</sub>e**



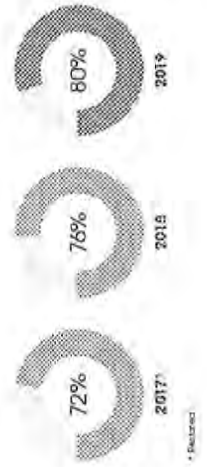
**Normalized Carbon Emissions—Tons CO<sub>2</sub>e/sq. ft.**



**Total Waste Generated—M short tons**



**Diversion From Landfill Rate—%**



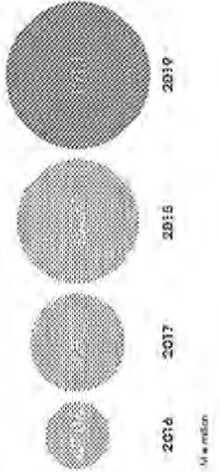
**Food Waste Diversion From Landfill in Kroger Retail Stores—%**



**Amount of Plastic Resin Removed From Packaging for Kroger Manufactured Our Brands Products—M lbs. cumulative**



**Plastic Recycled in Our Operations—M lbs. cumulative**





# Climate Impact

Goals	Progress in 2019	Target Year
Improve our fleet efficiency by 20% by 2020, using a 2010 baseline.	Improved fleet efficiency by 10.84% against 2010 baseline, by achieving 8.47 TMPG.	2020
Achieve 40% electricity savings in supermarkets by 2020, using 2000 as a baseline year.	Achieved 47.4% cumulative annual electricity savings in supermarkets against a 2000 baseline, resulting in 2.2 billion kWh of cumulative avoided electricity.	2020
Achieve 3% reduction in electricity and natural gas consumed annually per unit produced in our plants.	Electricity consumed per unit produced increased by 2.47% (total electricity consumed decreased by 1.94%) and natural gas consumed per unit produced increased by 3.32% (total natural gas consumed decreased by 1.31%). What we produce, and how much, varies year over year, which impacts our short-term performance trends.	2019
Reduce refrigerant emissions by 9% in our retail stores between 2018 and 2019.	Company-wide, supermarket refrigerant emissions did not change materially between 2018 and 2019. However, nearly half of our retail divisions met or exceeded their store-level emissions reduction goals.	2019

Our large portfolio of stores, warehouses and manufacturing plants contributes significantly to our energy and carbon impacts. With a large and complex supply chain, our carbon footprint also includes our products and the suppliers who make them.

We have measured and managed our carbon footprint since 2006, and reducing our climate impact is central to our sustainability commitment. We have a history of reducing carbon intensity through investments in energy efficiency, renewable energy and refrigerant emissions reduction measures. We continue to extend proven solutions as well as to identify and evaluate new innovations and collaborations with potential to improve our sustainability.

Our 2020 Sustainability Goals reflect current commitments to reduce energy and carbon impacts. We recently set a new science-based goal to reduce absolute GHG emissions from our operations by 30% by 2030, from a 2018 baseline.

## Climate Risk Assessment

Our mechanisms to identify and assess climate impact risks include:

- Periodic meetings of the Public Responsibilities Committee of the Board of Directors to elevate and discuss current risks and emerging trends.
- Materiality assessment process to identify and confirm the most material sustainability topics for the company.
- Regular stakeholder engagement to discuss emerging trends, industry benchmarking, and risks and opportunities pertaining to environmental and social impacts.
- Dedicated business resiliency and continuity planning to assist in preparing for potential interruptions to business operations.

In 2019, we conducted a qualitative assessment to evaluate the economic, transitional and physical risks climate change poses to our business. In partnership with a third-party consultant, we prioritized risks to our operations and supply chain in four key areas: lost revenue, reputational damage, increased costs and impact on associates. The assessment confirmed several risks Kroger was already evaluating, such as the business impacts of rising and more variable temperatures, future legislation mandating reduced refrigerant emissions and the challenges and opportunities from market shifts towards electric vehicles. Discussion about Kroger's carbon impact management activities can be found in our CDP Climate response.

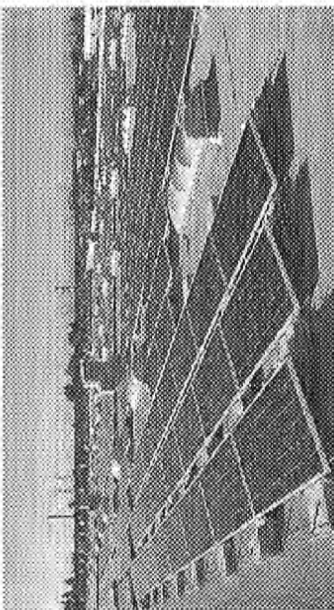
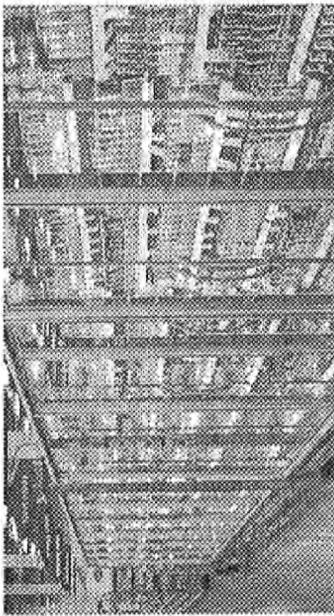


### Carbon Emissions Trends

Kroger's carbon emissions for 2019 are summarized to the right, with more details provided in the Appendix of this report and our latest CDP Climate response. Between 2018 and 2019, the increase in Kroger's Scope 1 emissions were partly driven by the transition away from ozone-depleting R-22 refrigerants (not reported per Kroger's current GHG reporting protocol) to other refrigerants (which are reported). Stationary and mobile energy consumption both decreased, as did corresponding Scope 1 emissions.

In 2019, Kroger reduced electricity consumption by 2.7%, driven primarily by store efficiency improvements. Updated U.S. EPA eGRID emissions factors further amplified energy reductions, resulting in an 8.3% reduction in Scope 2 location-based emissions. Kroger's normalized GHG emissions (tCO<sub>2</sub>e per 1,000 square feet) continue to show a declining trend, decreasing from 26.0 in 2018 to 24.9 in 2019.

### Energy Management and Leadership



#### Stores

Kroger uses the EnergyCAP tool and machine learning to track and actively manage energy use, as well as minimize refrigerant leakage, across our 2,757 stores. To reduce energy use, new stores are designed with energy-efficient features and existing stores are retrofitted. To date, 821 stores have been certified by the U.S. EPA's ENERGY STAR program. We also seek to minimize leakage from our air conditioning and refrigeration units, and we participate in the U.S. EPA's GreenChill program. The glass door retrofit project rolled out to 250 stores in 2019 and will save an average of 225,000 kWh of electricity and 16,000 therms of natural gas per store, annually.

#### Plants

Our facilities reduce energy intensity through regular goal setting, energy tracking, collaborative leadership and internal benchmarking. To date, eight Kroger manufacturing plants have installed energy management systems (EMS). These systems provide real-time energy data, which allows for immediate correction of energy anomalies and identifies energy-reduction opportunities. Our KB Specialty Foods plant has replaced a 5,000-pound R-22 refrigeration system with an ammonia system, which helps reduce Kroger's ozone-depleting and GHG impacts. In April 2020, a new solar power installation went live at Kroger's La Habra Bakery in California. The 970-kW, 2,900-panel array will offset 20% of the facility's electricity needs.

#### Supply Chain Operations

We continuously improve the efficiency of our fleet by replacing old vehicles with newer, more efficient vehicles. We invest in truck improvements, optimize routes and limit speeds. We regularly implement energy-efficiency measures, and we operate solar installations at multiple distribution centers. In 2019, we activated our largest solar power array to date at the Paramount, Calif., Distribution Center. The 2-MW installation can generate 4.28 million kWh of solar power annually—about 50% of the building's needs. Kroger is also investing in electric vehicles in our truck fleet, with 10 Tesla vehicles planned for our California distribution network.

Emissions Category	2019 Emissions—tCO <sub>2</sub> e	% Change
Scope 1 (stationary, mobile)	771,598	-2.8%
Scope 1 (fugitive)	1,673,928	+10.2%
Scope 2, location based (purchased electricity)	3,304,231	-8.3%
Scope 2, market based (purchased electricity)	3,522,338	+1.8%
Total (\$1 + \$2, location based)	5,749,756	-2.8%
Total (\$1 + \$2, market based)	5,967,965	+3.4%
Scope 3	2,175,346	-5.3%

For more details about our approach to climate impact, please see our 2019 Sustainability Report.



# Food Waste

## Goals

- Achieve zero food waste
- Reduce total food waste generated in our retail supermarkets.
- Improve food-waste diversion from landfills in retail supermarkets.

## Expanded food waste recycling programs

- Expand programs to donate safe and nutritious food scraps to animals.
- Leverage AD technology in additional locations.
- Expand composting operations that provide nutrients back to our environment.

## Progress in 2019

- Generated 288,536 tons of food waste in supermarkets (2018: 301,282).
- Diverted 44.7% of food waste in supermarkets (2018: 39.7%).
- Diverted 108,036 tons of food waste to animal feed operations (2018: 101,575 tons).
- Diverted 76,210 tons of food waste to AD (2018: 62,598 tons).
- Diverted 15,870 tons of food waste to composting facilities (2018: 15,965).
- Expanded food waste recycling programs to reach 2120 stores (2018: 2,039).

2025

2020

As a food retailer and manufacturer, we are at the center of a chain that produces surplus food that may go to waste unnecessarily, which is why we have committed to eliminating food waste across the company by 2025.

Reducing and recovering edible surplus food has multiple benefits, including reducing hunger and food insecurity, improving operations efficiency, and reducing environmental impacts.

As items near their expiration date, we employ item-markdown best practices. Many surplus food products that are still safe to eat are donated through our Zero Hunger | Zero Waste Food Rescue program. We aim to recycle—through, in order of priority, animal feed, AD or composting programs—any food that cannot be donated.

We measure and track our food waste footprint annually. With support from our partner WWF, we established our food waste footprint in 2017 using WRI's Food Loss & Waste Protocol.

In the last year, our retail stores continued to show a favorable trend in reducing total food waste generated and improving food waste diversion from landfill.

Through leadership and associate communication, Kroger's Zero Hunger | Zero Waste plan continues to permeate our company culture. Our store associates are actively engaging in store programs to more effectively manage our food rescue and food waste recycling programs.

Between 2018 and 2019, total food waste generated in Kroger-operated stores decreased by 4.1% to 288,966 tons (2018: 301,282), while the percentage of food waste diverted from landfill improved by 5 percentage points to 44.7% (2018: 39.7%). Since 2017, our baseline year, we have decreased total food waste generated in our stores by 13% and improved our food-waste diversion rate by almost 18 percentage points.

The GHG impacts of these improvements are also notable. As a result of diverting more than 129,000 tons of retail food waste from landfill in 2019, we are avoiding an estimated 79,000 metric tons of CO<sub>2</sub>e.

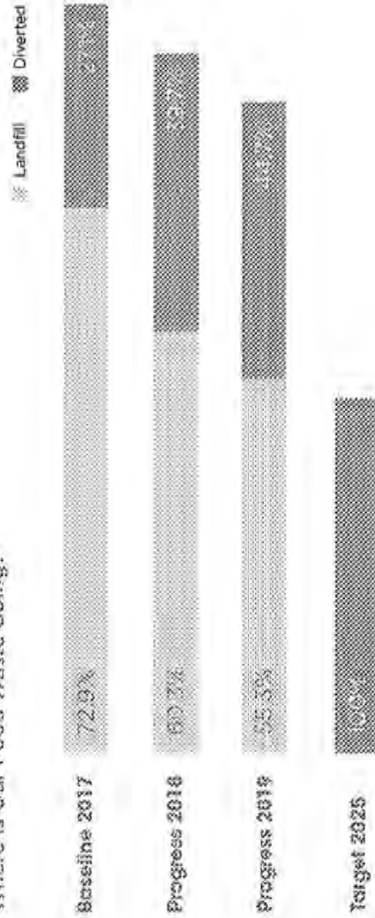




**Food Waste Management Data**

Destination	Food (short tons)	inedible parts (short tons)	Total
Animal feed	44,146	19,986	64,233
AD	41,147		41,147
Composting	15,876		15,876
Bio-diesel production		18,046	18,046
Landfill	134,124	25,540	159,664
<b>Total</b>	<b>335,292</b>	<b>53,674</b>	<b>388,966</b>

**Where is Our Food Waste Going?**



**Notes:**

- 1. Food loss diversion data reflects data collected from stores on their composting, animal feed, oil/seeds and used cooking oil recycling programs.
- 2. The landfill metric derived here is estimated using data captured and synthesized from annual waste audits conducted in a subset of our stores.
- 3. Harris Teeter data is included in landfill and food diversion, but is not included in inedible parts diversion due to insufficient data.
- 4. The bar length for 2019 progress is proportional relative to the bar length of 2017 baseline.

**Food Rescue and Recycling**

In partnership with Feeding America, Kroger introduced our innovative Zero Hunger | Zero Waste Food Rescue program more than 10 years ago. We partner with Feeding America-affiliated food banks across our communities to direct safe, wholesome surplus food to individuals and families in need. In 2019, we donated 101 million pounds of food to partner food banks company-wide.

We have food waste recycling programs in 2,120 stores (2018: 2,039), and aim to launch these programs in every store. Most of our stores currently use animal feed—a smaller number of stores use composting and AD services.

**Value Chain Engagement**

Food waste happens all the way up the supply chain, which means our vendors can be among our greatest partners. In 2019, Kroger joined WRI's 10x20x30 Initiative as a retail partner to contribute toward SDG 12 and Target 12.3. We are engaging 20 suppliers in WRI's Target, Measure, Act process to halve global food waste by 2030.

Meanwhile, approximately 40% of food waste happens at the consumer level. As a result, we consider our customers key partners in our zero-waste vision and share easy ways to reduce food waste at home. Over time, brands and retailers have adopted a wide variety of date labeling practices that cause confusion. Expert organizations recommend the adoption of a single standard: "Use by" to indicate food safety, and "Best by" to indicate product quality. Kroger's manufacturing plants and co-packing suppliers are aligned with this transition to ensure *Our Brands* products reflect the standardized terminology.

For more details about our approach to food waste, please see our 2019 Sustainability Report.





# Zero Waste

## Goals

### Progress in 2019

### Target Year

Company-wide, we set and exceed the Zero Waste threshold of 90% diversion from landfill

Achieved a waste diversion rate of 90% (2018: 76%).

2020

**Source Reduction**

- Continue to integrate RPCs into our network and test new technologies that reduce waste in the supply chain.

Supply chain network had 123 million RPCs in circulation; to ship products among our suppliers, distribution centers and stores.

2020

**Plastic Recycling**

- Recycle over 200 million pounds more plastic by the end of 2020, from a baseline of 2016.

Recycled over 13.7 million pounds of plastic (cumulative 191 million pounds since 2016).

2020

**Cardboard Recycling**

- Recover over 3.3 billion pounds of cardboard annually by the end of 2020.

Recycled over 1.6 billion pounds of cardboard (2018: 1.48 billion pounds).

2020

**Construction Sites**

- 50% of new stores, remodels and construction projects in 2019 to be zero waste.

54% of new stores and remodels achieved zero waste, diverting 68,000 tons of construction waste from landfill.

2019

**Plastic Bags**

- Phase out single-use plastic shopping bags by 2025.

Phase-out commitment is in addition to any existing and future legislation for plastic bags.

Kroger's QFC division was the first to phase out single-use plastic bags in 2019. Our Corporate Affairs, Retail Operations and Sourcing teams are developing a phaseout timeline for the next five years, with input from other stakeholders.

2025

We remain committed to achieving zero waste—diverting 90% or more of waste from landfill—and continue to steadily improve how we manage waste.

Our associates recycle much of the waste we produce, like cardboard, plastic and paper, to increase our landfill-diversion rate. We also incorporate reusable items, like RPCs, wooden pallets and milk crates, to reduce materials needed to ship products between suppliers, manufacturing plants, distribution centers, and stores.

across all divisions, driving increased participation and higher diversion rates. At our distribution centers, teams are installing additional recycling equipment to increase diversion rates. We report our waste-management metrics to the EPA WasteWise program.

Our overall waste-diversion rate increased to 80% in 2019 (2018: 76%), with all business units maintaining or improving their diversion rates. In 2019, 31 manufacturing plants continued to achieve zero-waste status. Our Retail Operations team rolled out an improved cardboard recycling tracking program

Kroger joined the U.S. Chamber of Commerce Foundation's Beyond 34 initiative, which aims to find scalable solutions to increase the national recycling rate beyond 34%. As a local champion of the second pilot in Cincinnati, Kroger is playing a key role in identifying and implementing waste reduction and recovery opportunities.

Waste-Management Method	Weight (Short tons)
Waste reduction	123,000
Donation	55,084
Animal feed	108,036
AD	76,210
Composting	15,870
Other recycling	1,955,627
Waste-to-energy	7,417
Landfill	571,837
<b>Total</b>	<b>2,913,080</b>

**Notes:**

1. Data reflects calendar year 2019.
2. Waste disposed is managed by and reported to Kroger by our different waste and recycling haulers.
3. Waste data excludes office locations and salvage centers (which are very small portions of our waste footprint).
4. Donation is primarily food donation with a nominal amount of non-food donations.



# Packaging

## Goals

We seek to optimize packaging for Kroger-manufactured Our Brands products in several ways:

- Reduce the amount of plastic resin by 10 million pounds from a 2015 baseline.
- Use at least 20% PCR content.
- Increase the recyclability of plastic packaging.
- Increase communication about recyclability on all applicable packaging.
- Increase certified virgin fiber sourcing from well-managed forests for paperboard packaging.
- Support the expansion of infrastructure to increase the availability and accessibility of recycling for Our Brands product packaging.

## Progress in 2019

- Reduced plastic resin in packaging for Kroger-manufactured products by 10.1 million pounds between 2015 and 2019, surpassing our goal one year early.
- Added PCR content to packaging across dairy, produce and bakery categories.
- Added “Please Recycle” to additional product packages in 2019—for a total of more than 3,000 items.
- Majority of paper-based packaging in Kroger’s plants was certified to a sustainable forestry standard and/or contained recycled content.
- Offered plastic film drop-off recycling program, company-wide.

## Target Year

2020

Sustainable packaging is a core tenet of our zero-waste vision. While packaging is important for preserving product quality, freshness and integrity, we also recognize the negative impact packaging—including plastic packaging—can have on the environment. This is why we are focused on reducing unnecessary packaging, reusing where we can and striving for more recyclable packaging.

We continue to drive progress on our current 2020 Sustainability Goals for packaging through the end of this year. As we look to the future, we recognize that we still have work to do. We have recently launched new 2030 Sustainable Packaging Goals that will pave our way to 2030. These include:

- Seeking to achieve 100% recyclable, compostable and/or reusable packaging for Our Brands products.
- Increasing recycled content in packaging so that the Kroger Our Brands product portfolio collectively contains at least 10% recycled content in packaging.
- Reducing unnecessary packaging.

To start, we will complete a baseline product packaging footprint to fully understand current packaging impacts. Improving the recyclability of single-use packaging depends on both product redesigns and recycling infrastructure improvements. We look forward to collaborating with our suppliers, the industry and other experts to achieve these goals.





**Packaging Reduction**

In 2019, we finished rolling out new milk jugs that are 10% lighter to all Kroger family of companies' dairy-processing plants, and we recently improved our half-gallon juice container—with more improvements planned for 2020.

**Moving Beyond Single-Use**

Customers are increasingly concerned about the environmental impacts of single-use plastics and packaging, and are seeking more sustainable options. In May 2019, TerraCycle launched its revolutionary circular packaging platform Loop in the U.S. with Kroger as its exclusive grocery retailer partner. Starting as an e-commerce pilot in several states in the Northeast, Loop offers customers popular consumer goods in durable, refillable packaging.

Kroger was also the first major U.S. grocery retailer to commit to phase out single-use plastic bags by 2025. While there are many challenges ahead, we are committed to being part of the solution. In fact, Kroger is the Grocery Sector Lead Partner for the recently launched Beyond the Bag Initiative. In a partnership with other leading retailers convened by Closed Loop Partners, Kroger is supporting the development of alternatives to the single-use plastic grocery bag.

**Recycling Solutions**

We recognize that recycling infrastructure is critical for making our products more recyclable, and we aim to support the communities in which we operate to improve this. We are also offering recycling solutions for our customers.

Our in-store plastic film collection and recycling program accepts a wide range of plastic films not currently accepted in curbside recycling programs, like plastic grocery bags, produce bags, bread bags, and plastic overwrap on household tissues, diapers and bottled water.

**In 2020, Kroger launched a new recycling mail-back program in partnership with TerraCycle. This solution allows customers to mail harder-to-recycle flexible plastic packaging for popular Simple Truth® items back to TerraCycle for safe and effective recycling.**

As a new member of the How2Recycle program, we will begin adopting the program's label on Our Brands product packaging to help customers recycle our product packaging more readily and accurately.

**Increasing Recycled Content**

We are incorporating recycled material in our product packaging to drive demand for recycled materials and "close the loop." In 2019, we continued adding PCR content to multiple plastic packaging items manufactured in our plants, including 25% PCR content in two buttermilk containers, up to 40% PCR in pie containers, and up to 20% PCR in several cake and cookie containers.

**Certified Fiber Packaging**

Many Kroger products use paper packaging. Our goal is to increase the amount of fiber certified to three sustainable forestry standards: the Forest Stewardship Council, the Sustainable Forestry Initiative, and the Programme for the Endorsement of Forest Certification. Our No-Deforestation Commitment for Raw Material Sourcing and Sustainable Packaging Goals reiterate our commitment to adopt certified fiber in product packaging.





# Water

## Goals

Achieve a 3% reduction in water consumption annually per unit produced by 2020 in supercenters, and a 5% reduction by 2025 in all facilities.

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## Progress in 2019

Achieved 5.6% water savings in supercenters from a 2015 baseline, a cumulative water reduction of 250,000 kGal.

Water consumed per unit produced decreased by 1.47%, while total water consumed decreased by 5.71%. What we produce, and how much, varies year over year, which impacts our short-term performance trends.

## Targeted Year

2020

2019

We know the importance of safe, high-quality water for the health of our associates, customers and communities, and the planet. We have programs in place to reduce water usage, find reuse opportunities and manage water discharge quality to protect local water sources.

The nature and intensity of these water impacts vary by the business area. For example, in our stores and distribution centers, water intensity is relatively low because water use is largely limited to "taps and toilets." In our manufacturing plants, however, water intensity can be relatively high. Collectively, our facilities consumed approximately 6.6 billion gallons of water in the past year.

### Water Risk Assessment

In 2019, we updated our water risk assessment to reflect changes in our facility portfolio. Using WRI's Aqueduct tool, we evaluated our facilities for location-based water risk across several impact areas, including physical quantity, physical quality, regulatory and reputational risks. While the analysis indicated that Kroger does have facilities operating in regions with a defined level of water stress, these represent less than 10% of our total facilities. Overall, we consider Kroger operations as low risk for water withdrawal.

### How We Manage Water

Our engineering teams and associates regularly review our processes and operations to identify water-reduction opportunities. Our supermarkets continue to implement a five-point water-reduction retrofit program, which includes retrofitting pre-rinse spray valves, bathroom faucet aerators, urinal flush valves, commodes and their flush valves, and Starbucks dipper wells used for cleaning utensils. In 2019, we began rolling out improved-efficiency sprinkler nozzles in landscape irrigation systems. Our stores are also piloting new water-efficiency projects, including advanced adiabatic cooling technology that can reduce a whole store's water use by as much as 50% and reduce water used for cooling refrigeration equipment by 80%.

Water Consumption—8 gallons



Source: Kroger





# Product Sustainability

## Natural & Organic

Natural and organic products are an important element of Kroger's overall product assortment, and the number of natural and organic products Kroger carries continues to increase each year. This reflects the customer's ever-growing interest in purchasing products that are free from artificial ingredients, flavors and preservatives, and in sustainable products with reduced environmental impact. The average Kroger store carries 4,000+ natural and organic products, with all stores carrying some assortment. Many stores have integrated natural and organic products into the conventional aisles to increase visibility to customers.

Kroger's own Simple Truth® and Simple Truth Organic® product lines continue to expand—reaching more than 2,300 unique products in 2019—and remain the second-largest brand in our retail stores, based on sales. We remain committed to increasing the affordability and availability of natural and organic items to improve health and sustainability. Currently, 18 of Kroger's manufacturing plants are certified to produce organic *Our Brands* items.

## Plant-Based Alternatives

Kroger continues to increase our assortment of plant-based alternatives across multiple product categories in response to increasing consumer interest. We currently offer more than 1,300 plant-based products across the store. In 2019, Kroger's Simple Truth® and Simple Truth Organic® brands launched 27 new plant-based food products (in addition to 12 non-food products), reaching 39 product categories to date. This includes our Simple Truth® Emerge plant-based meat alternative line.

In fact, the Good Food Institute's Good Food Retail Report recognized multiple Kroger retail divisions for their extensive plant-based product assortment and marketing.

Sales of all plant-based products grew significantly in 2019 compared to 2018, with an 11% increase in the fourth quarter alone, while sales of *Our Brands* plant-based items increased more than 13% versus the previous year.

In 2019, Kroger's meat department launched a consumer test in around 60 stores in partnership with the Plant Based Foods Association to better understand consumer adoption. This study found that sales of plant-based meat alternatives rose 23% when placed in store meat cases.

## Chemical Management

We are committed to managing product quality and safety, and set high standards for all *Our Brands* products. Our regulatory compliance and quality assurance programs define product and supplier requirements such as quality specifications, testing protocols, and reporting and labeling to ensure safe, high-quality products.

Currently 92% of our canned goods items are free of BPA liners. We are committed to converting the remaining items by the end of 2020.

We are committed to eliminate the sourcing of live plants that have been treated with neonicotinoid-containing pesticides, and engage relevant suppliers to ensure alignment with this policy.

We developed an Apparel Restricted Substance Policy that adopts the Apparel and Footwear International RSL Management (AFIRM) Group's Restricted Substances List (RSL) and establishes compliance requirements for our suppliers.

Several *Our Brands* products have been certified with the EPA Safer Choice label, demonstrating to consumers that they contain ingredients considered safer for human health and the environment.

## Fair Trade Certified

Through our partnership with Fair Trade USA, Kroger helps build livelihoods and support communities around the world from which we source products. Our contributions to the Fair Trade-supported Community Development Funds (\$1.37 million in 2019) allow farmers and growers to enhance their communities, capabilities and resilience, while also ensuring environmental sustainability. In 2019, Kroger increased the volume of Fair Trade Certified ingredients we sourced by over 70%, reaching 29.3 million pounds and 82 Simple Truth® products.







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**All Kroger Associates**

2019 Demographics	Full Time	Part Time	Total
Male	91,056	119,818	211,774
Female	95,327	124,211	219,538
Total	187,283	244,059	431,312

**All Kroger Associates**

	2017	2019
Female Non-Diverse	33%	32.5%
Female Diverse	18%	16.7%
Male Non-Diverse	52%	31.2%
Male Diverse	17%	17.7%

**Learning & Development 2019**

- 2,300** Associates per day logged into Kroger's Learning Management System
- 9,300** Learning development courses completed per day
- 17,000** Retail store and department leaders participated in training to improve our customers' experience

**Average Wage for Hourly Store Associates**

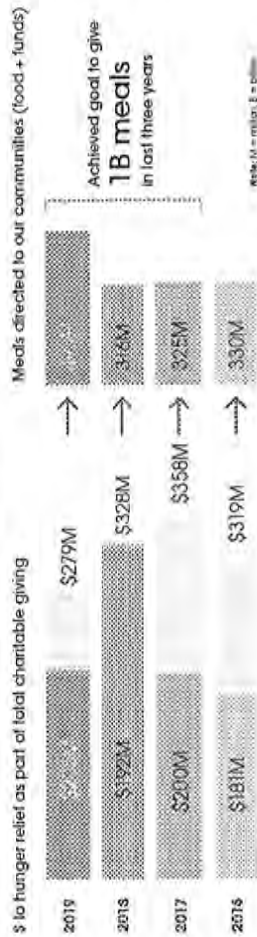
**\$15/hour**  
Average wage for hourly associates is more than \$15/hour in King-operated stores

**\$20/hour**  
Average wage for hourly store associates is more than \$20/hour, including comprehensive benefits

**New Hourly Associates Trained in Basic Food Safety (Goal: 100%)**



**Charitable Giving Directed to Hunger Relief in Our Communities**





## Food Safety

Keeping food safe is central to everything we do. Food safety, quality assurance and regulatory compliance are key facets of our business and, for our suppliers and partners, they are conditions of working with Kroger.

Our company-wide Risk Mitigation Strategy helps ensure every facility meets or exceeds all food safety laws and standards. We establish and maintain science-based food preparation and handling practices and develop programs to address emerging food safety topics.

The International Association for Food Protection awarded the Kroger family of companies the 2012 Black Pearl Award for "corporate excellence in food safety and quality," reflecting our ongoing commitment to food safety. We continually improve food safety standards to reflect the latest data and best practices, and regularly report food safety performance to the Public Responsibilities Committee of the board.

### Our Stores

Food safety managers help ensure compliance with all applicable federal, state, and local regulations; oversee associate food safety training and master cleaning schedules; coach store teams on best practices; and coordinate the store audits.

Every year, Kroger provides food safety training to associates who work in our retail supermarkets. We aim to train 100% of new retail store associates before they serve their first customer through the Serve Up Safe Delicious Food™ program.

### Our Plants

We manufacture popular *Our Brands* products—31% of total units and 42% of the grocery category units—at Kroger-operated food processing plants. We meet or exceed all regulatory and industry-accepted standards and requirements. All manufacturing plants are certified to the Safe Quality Foods standard, a Global Food Safety Initiative (GFSI)-audited protocol, and every plant has an assigned Quality Assurance Manager and a Safe Quality Food Practitioner.

Each facility must also establish a multi-disciplinary Food Safety Committee, train all new associates, and give refresher training to all associates at least annually. Food Safety Plans identify the preventive and critical control steps necessary to ensure product safety in our plants.

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### Number of Kroger-Manufactured Products Recalled

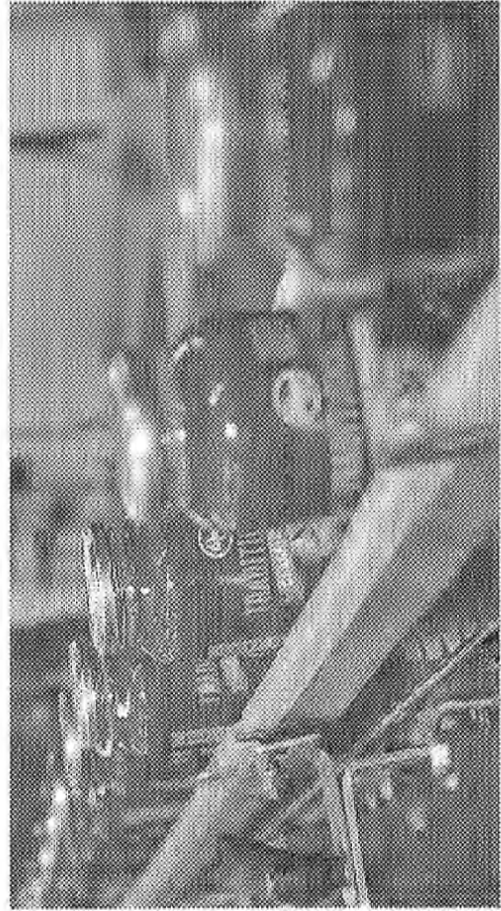


In 2019, there were zero product recalls for Kroger-manufactured *Our Brands* items. The most common cause of recalls, when they occur, is labeling issues related to undeclared allergens. When Class I recalls are necessary to protect health and safety, Kroger quickly activates our comprehensive customer notification systems to alert shoppers who may have purchased these items.

### Distribution Centers

As with our stores and manufacturing plants, maintaining excellent food safety practices in our 44 distribution centers is critical. Food Safety and Sanitation Standards outline management responsibilities and formal documented programs, such as Food Safety Plans, that are necessary to effectively establish and maintain food safety. Distribution centers also use Cold Chain Management Standards to ensure appropriate refrigeration control and product handling measures are conducted for the foods we receive, store and transport.

For more details about our approach to food safety, please see our [2019 Sustainability Report](#).





# Health & Nutrition

As the country's largest food retailer, we recognize our ability and responsibility to offer healthy product choices and services for the 11 million customers we serve every day. We encourage customers to choose more healthy and nutritious products, support wellness and provide tools for healthier lifestyles.

Kroger believes in the healing power of food and helps our customers make food choices that align with their health goals, diets and specific diseases or chronic illnesses.

## Kroger Health

How we improve health and nutrition is important to Kroger and our stakeholders. The team at Kroger Health, the company's healthcare arm, oversees health and nutrition strategy and programs, pharmacy operations, The Little Clinic and more. Kroger Health is one of America's leading retail healthcare organizations, with 2,280 retail pharmacies, 220 clinics and 11 specialty pharmacies. Our team of 22,000 healthcare practitioners—from pharmacists and nurse practitioners to dietitians and technicians—serves over 14 million customers annually.

Kroger Health leads the company's Food as Medicine strategy, which complements the Pharmacy and The Little Clinic lines of business. We believe promoting long-term health and nutrition among our current and potential customers is a shared value proposition with the potential to improve population health and increase sales, customer loyalty, and alternative revenue. The Food as Medicine strategy aims for "20x5by2025": 20% improvement in five critical dimensions of population health: obesity, diabetes, food insecurity, cost and product assortment by 2025.

We are committed to bringing innovative products and services to market while engaging *Our Brands* and key supply chain partners to produce better, healthier foods for all.

## Pharmacy

Kroger is the fifth-largest pharmacy operator in the U.S. by number of locations. Our retail and specialty pharmacy operations extend to 36 states plus Puerto Rico. In 2019, our pharmacists filled 262 million prescriptions. Aside from dispensing safe, accurate and appropriate medications, we are committed to providing a holistic, personalized, quality health experience to our patients. Our everyday pharmacy services include: vaccinations, medication synchronization, medication therapy management and a variety of health screenings. In 2019, our pharmacies provided more than 81,000 free health screenings.

In 2019, Kroger Health introduced its Rx Savings Club, a new program designed to significantly reduce the cost of prescription drugs for customers across the country, adding to the Wellness Your Way platform. The program was developed in partnership with GoodRx, America's number one source for prescription drug savings.

Kroger Health's Food as Medicine Strategy  
By 2025, Kroger Health aspires to drive 20% improvements in the five most important areas of population health:



## The Little Clinic

The Little Clinic is a convenient, affordable, quality healthcare option that continues to expand its assortment of services to meet our customers' diverse health needs. In 2019, The Little Clinic operated 221 retail clinics in nine states and cared for 1.2 million patients. The Little Clinic is one of only two retail health clinic organizations that has earned The Joint Commission's Gold Seal of Approval®, demonstrating continuous compliance with its nationally recognized standards.

**OptUP to Make Healthier Choices**  
In 2018, Kroger introduced OptUP, an innovative app that scores shoppers' food purchases with Kroger for nutritional value. Then, based on purchases, OptUP offers better-for-you options and delivers a metric for tracking improved nutrition over time. In 2018 and 2019, our scores were based on a nationally recognized nutrient profiling system enhanced by our team of registered dietitians. This system helps summarize the information on nutrition labels, making it easy to compare similar products and find better-for-you options.



For information about Kroger's COVID-19 Response, please see our Here for Everyone report.

For more details about our approach to health and nutrition, please see our 2019 Sustainability Report.



# Food Access

Kroger's Zero Hunger | Zero Waste social impact plan is our commitment to create communities free of hunger and waste. This includes bringing attention and resources to the complex issues surrounding food insecurity and increasing the availability of affordable and nutritious food for all.

We recognize that many of our customers struggle to make ends meet and pay for groceries. Since 2000, Kroger has invested \$4.5 billion in lowering prices, helping our customers meet their weekly budgets. We work with key partners to fight hunger and find ways to direct more food to struggling individuals and families. We aim to direct surplus food and meals to neighbors in need, rescue higher-nutrition items and support innovation to improve food security and health.

In 2019, Kroger directed the equivalent of 493 million meals to improve food security in our communities, including food and funds donated to Feeding America and its affiliated local food banks and other key hunger-relief partners. This brings our three-year total to 11 billion meals, surpassing our 2020 target.

Kroger also introduced the Zero Hunger Mobile Market in partnership with the local Dare to Care Food Bank, based in Louisville, Ky. This single-aisle grocery store on wheels brings affordable fresh fruits, vegetables, and pantry staples to underserved neighborhoods in Louisville.

**Zero Hunger | Zero Waste Food Rescue**  
Kroger's Zero Hunger | Zero Waste Food Rescue program is the heart of our commitment to create communities free of hunger and waste. Through this program, we rescue safe, wholesome surplus produce, proteins, and other fresh items that can be donated to food banks and turned into a healthy dinner or satisfying snack. In 2019, our associates rescued 101 million pounds of food company-wide, up slightly from 2018.

Working with Kroger's food safety experts and our food rescue partners, we continuously expand the program to include more items that can be safely donated. In 2019, we expanded a pilot for donating three species of fresh, never-frozen seafood to all stores, directing more high-nutrition items to agencies that can properly handle them. We continue to work with long-standing and new national partners to maximize the amount of surplus food available for our communities.

Over time, we are strategically shifting the balance of surplus food rescued to include more high-value proteins, produce and dairy, and to reduce the undefined "mix."

For more details, see [Zero Hunger | Zero Waste progress updates](#).



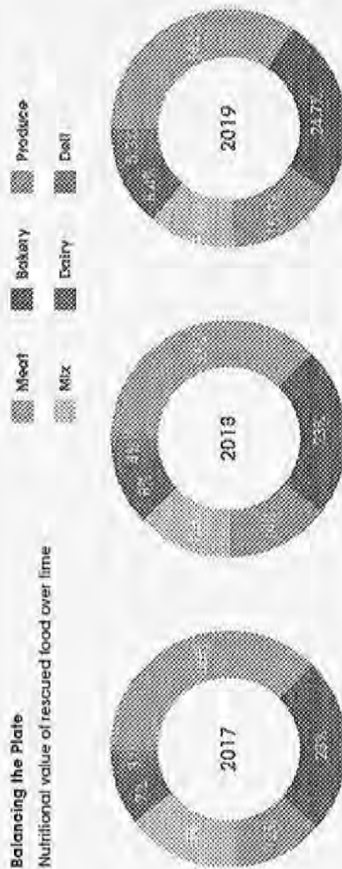
**Serving Our Communities**  
Our retail associates are passionate about making a difference in their communities. As well as supporting large-scale initiatives, many associates and leaders volunteer their time to help local families in need of healthy food and hope. Although we do not currently track volunteer hours, community-based activities our associates participate in often include:

- Events to pack and serve meals with local food bank partners.
- Support for hunger-relief organizations serving active-duty military, veterans, seniors, and other at-risk populations.

- Serving as board members and regular volunteers for food banks and non-profit organizations.
- Walks, runs and other events to raise money for local non-profits.

When our partners, communities, and neighbors began to feel the effects of the COVID-19 pandemic, we stepped in to help. Kroger and The Kroger Co. Zero Hunger | Zero Waste Foundation quickly directed grants to Feeding America, No Kid Hungry, the United Service Organizations (USO), Meals on Wheels and countless local partners. See our [COVID-19 Response Overview](#) for additional details.

**Balancing the Plate**  
Nutritional value of rescued food over time





# Associate Health & Safety

Protecting the health and safety of more than 431,000 associates across the Kroger family of companies is a top priority, and zero accidents is our ultimate safety goal. We believe our leading safety results make our stores, manufacturing plants and distribution centers among the safest places to work in the U.S.

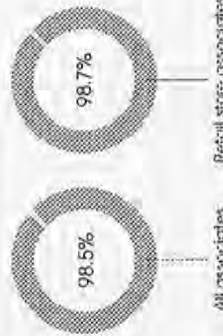
Kroger's Health & Safety teams use annual goals tailored to their part of the business to achieve our zero-accidents goal and help protect the well-being of our associates and customers every day. These goals are intended to improve performance year over year (continuous improvement), or to ensure we are hitting a certain threshold for health and safety performance. They focus on injury events for associates and customers, and on reporting frequency.

**Our Approach**  
We prioritize providing the right safety training and equipment, safe working conditions and resources to maintain and improve associates' well-being. We have multiple requirements and processes to prevent, review and address safety concerns. Through clear expectations, routine monitoring, and regular communication and engagement, we reduce the number of injuries and accidents that happen in our workplace.

Several policies also ensure we comply with relevant Occupational Safety & Health Administration (OSHA) requirements, such as:

- Hazard communications plan
- Bloodborne pathogens
- Process safety management
- Powered industrial truck
- Emergency evacuation
- Hearing conservation
- Lockout/tagout
- Personal protective equipment

Number of Associates Who Completed Personal Safety Training in 2019



**Management at All Levels**  
Managing health and safety is critical to our business success. Each part of our business—Retail Operations, Manufacturing and Supply Chain—has its own management structure to help minimize incidents in its operations.

**Retail Operations**  
Each retail division has dedicated safety resources. We have district (within a division) Safety Training and Resources (STAR) Safety 360 teams made up of managers who meet regularly to review injury and accident reports. Each store also has a STAR Safety Team that drives associate awareness and engagement in safety programs and executes on our in-store health and safety goals. Associates comprise 80% of these teams.

**Manufacturing**  
One associate in every Kroger Manufacturing facility is dedicated to promoting associate safety on a full-time basis. In most cases, our plants have two full-time associates leading the safety process, one focusing on OSHA compliance safety and the other on behavioral safety.

**Supply Chain**  
Our Supply Chain behavior-based safety program—Behavior Risk Improvement—is an associate-run floor program supported by distribution center management and supervisors.

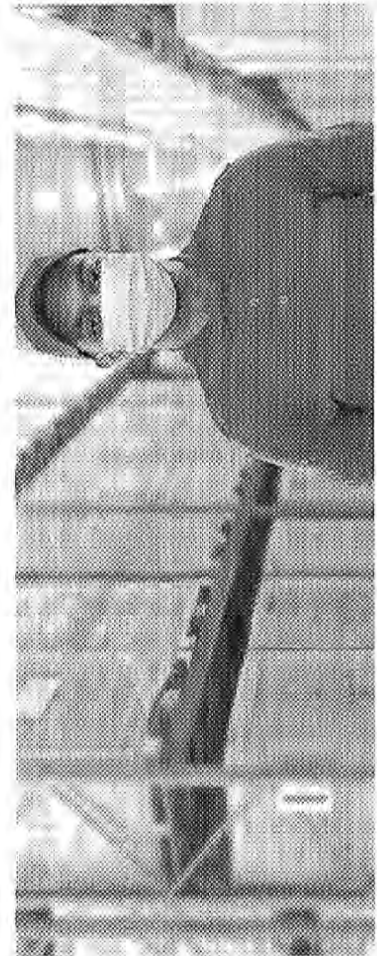
Each department and shift has core teams made up of floor associates who perform pinpoint observations and offer feedback on these observations every day. The peer-to-peer feedback the program uses has proven highly successful in reducing injuries.

**Data Tracking and Monitoring**  
We track all health and safety metrics centrally for an enterprise-wide view of issues, trends and opportunities. We monitor associate injury performance including total injuries, OSHA injury rates, and lost-time injuries, as well as customer injury metrics like slip-and-fall injuries. We also track the completion of required training for associates. We regularly share these metrics with leaders and relevant team members to inform management decisions.

Metric	Associates	Contributors
Injury Rate (OSHA Injuries/100 full-time employees (FTE)) <sup>1</sup>	3.61	3.72
Lost Day Rate (OSHA Lost time Rate/100 FTE) <sup>2</sup>	2.74	3.31
Work-related Fatalities	0	0

1. Injury rate includes injuries greater than minor injuries (first aid) per OSHA reporting requirements
2. We classify lost days as calendar days. Lost days begin the day after the injury.

Read more about how we are protecting our associates' health and safety during the COVID-19 outbreak.





# Diversity, Equity & Inclusion

Diversity and inclusion have been among Kroger's Values for decades. We are committed to fostering an environment of inclusion where diversity of all kinds is valued and appreciated. Our goal is to attract, retain and develop leaders and associates who reflect the communities we serve.

**We Live Our Purpose and Values by** building a diverse workforce, welcoming all people into the Kroger family of companies and creating an inclusive culture. We also focus on living Our Promise—a framework that guides every interaction with each other and our customers every day: everyone friendly and caring, everything fresh, uplift every way and improve every day.

**Our Beliefs**

The Kroger team is humbled and inspired by the heightened national conversation on racial equity in 2020, and we stand with our valued Black associates. We are unequivocally anti-racism. We acknowledge the need to do more to help end systemic racism, and we are committed to attract, reward and advance people of color across the company.

In 2019, we began implementing new leadership training—developed in partnership with a third-party consultant—to build awareness of implicit bias among us. This training continues to roll out across the company in 2020 to help deepen our awareness and understanding of the legacy of systemic racism.

We are committed to being part of the solution by leveraging our strengths; engaging our associates, customers and communities; and directing philanthropic grants through The Kroger Co. Foundation's Racial Equity Fund to advance national and local action.

**Our Approach**

Kroger's Chief People Officer oversees the Human Resources and Labor Relations team, which advances diversity, equity and inclusion across the company. Our Diversity & Inclusion team monitors progress against goals, leads our Associate Resource Groups (affinity groups), and implements our Supplier Inclusion strategy. We regularly track and review progress on our goal for retail stores to reflect the demographics of the neighborhoods in which we operate. Over time, we have gradually improved our performance on this measure.

Throughout the year, our corporate team and functional business leaders nurture strategic partnerships with universities, educational institutions and community partners to attract candidates who represent all races and ethnicities. We invest in building skills among leaders and associates at all levels so they can advance and grow, no matter what path they choose.

In 2019, Kroger ranked fourth on *The Wall Street Journal's* list of the top 20 most diverse Fortune 500 companies, and was named Company of the Year for Corporate Equality by the Human Rights Campaign (HRC)'s Greater Cincinnati Chapter, recognizing our commitment in the region that is home to our headquarters and more than 21,000 associates.



More than half of Kroger's workforce are women, each with a unique personal story and career journey. Kroger supports participation in the national Network of Executive Women and celebrates our leaders and rising stars named *Progressive Grocer's Top Women in Grocery*. We continue to support women through strategic career development plans and ongoing talent discussions and training opportunities.

Kroger met or exceeded all Corporate Equality Index criteria, resulting in a perfect score of 100 and designation as a Best Place to Work for LGBTQ Equality. We provide same-sex partner benefits and transgender-inclusive health care. In addition, we partner with the National LGBT Chamber of Commerce to create and enhance partnerships with LGBTQ suppliers.

**LGBTQ Inclusion**

Kroger earned our second consecutive perfect score on the 2020 Corporate Equality Index, the HRC Foundation's national benchmarking tool for corporate policies and practices supporting lesbian, gay, bisexual, transgender and queer (LGBTQ) associates.

Read more about how we promote Diversity & Inclusion.

**Reflecting Our Communities**

	U.S. Population 2018*	Kroger Operating Area Population 2018*	Total Kroger Associates 2019**
White or Caucasian	63%	59%	64%
Hispanic or Latino	17%	19%	15%
Black or African-American	12%	13%	15%
Asian or Asian-American	5%	6%	3%
Other	3%	3%	5%

\*U.S. Census Estimate Data \*\*Kroger Data



# Community Engagement

The Kroger family of companies is committed to community engagement, positive social impact and charitable giving locally and nationally. Since our earliest days—when our founder Barney Kroger started selling groceries in 1883—we've connected with our communities to give back meaningfully in the places where we live and work.

Our centralized Corporate Affairs function is responsible for leading community engagement. Regional Corporate Affairs directors and division managers partner with our leaders to meaningfully engage local officials, businesses, non-profit organizations and special interest groups to better understand priorities, listen to concerns, and inform decisions on strategic giving.

Kroger's goal is to be welcome in the communities we call home and a trusted, involved and valued partner. Our leaders serve as local non-profit board members, and our associates volunteer with community partners aligned to our mission and their own personal passions. We also engage our customers and give them easy ways to give back at stores and online.

Since launching Kroger's Zero Hunger | Zero Waste social impact plan, we have strategically aligned community engagement and philanthropy to drive greater positive impact in our communities.

## Giving Back

Kroger directs charitable giving in the form of strategic donations and grants from the company. The Kroger Co. Foundation—our private foundation—and The Kroger Co. Zero Hunger | Zero Waste Foundation—a new non-profit public charity. In 2019, a total of nearly \$280 million in charitable donations were made in Kroger's name. Of that, we directed \$205 million to hunger-relief organizations that help improve food security in our communities.

Examples of our national partners include:

- **Feeding America:** Kroger is a founding member and visionary partner of Feeding America, and we direct food and funds to Feeding America and its affiliated food banks in our markets.

- **World Wildlife Fund:** Our decade-long partnership with WWF helps advance seafood sustainability in our global supply chain, reduce our retail food-waste footprint and teach young Food Waste Warriors to prevent and reduce food waste at home.

- **USO:** Through Kroger's long-standing partnership with the USO, we say thank you to millions of active-duty military service men and women and their families. In 2019, Kroger and The Kroger Co. Foundation directed \$2.6 million to the USO. In all, the Kroger family of companies and The Kroger Co. Foundation have contributed more than \$33 million to the USO—the single largest cumulative donation to the USO in its 77-year history.

- **American Red Cross:** In 2019, Kroger joined the Red Cross Annual Disaster Giving Program, pledging a \$500,000 grant from The Kroger Co. Foundation to help power infrastructure, training and other preparedness efforts in advance of disasters.

## Community Rewards

We also give back to our communities through our customer-directed, hyper-local Kroger Community Rewards program. When customers enroll in Community Rewards and select the registered 50(c)(3) organization of their choice, Kroger makes a donation on their behalf based on the number of shoppers linked to that organization and total spend. In 2019, Kroger directed a total of \$44 million to Community Rewards to help local organizations that matter most to our customers.

## Creative Solutions

While every community is unique, we follow established principles to achieve a common goal: to be welcome in our neighborhoods and help people live healthier lives. As part of our Zero Hunger | Zero Waste mission, we also engage community stakeholders to discuss complex issues regarding food insecurity.

## Examples from our work in Cincinnati include:

- A design thinking engagement led by 84.51°, our Customer Insights team, and Xavier University's Center for Innovation to help identify the underlying causes of food insecurity and co-create solutions.
- A partnership with the University of Cincinnati (UC) to offer the *Inquiry to Innovation: Zero Hunger | Zero Waste* honors seminar. Interdisciplinary UC students collaborated with Kroger leaders to understand issues and develop ways to recover and redistribute surplus food on campus.
- An engagement with InnoVationGirls, a platform where girls from ages 10 to 15 engage with businesses to solve real-world challenges. Their team co-created ideas to help food insecure families live healthier lives.

For more details, please see our [Community Engagement Principles](#).





## Additional Social Disclosures

### Talent Attraction & Retention

Kroger's people are our most important asset. To deliver on the Develop Talent pillar of our Restock Kroger plan, we continually improve how we attract and retain talent. We offer a broad range of employment opportunities for workers of all ages and aspirations, from teenagers looking for their first job to experienced career professionals and seniors wanting to stay active and connected in their community. People often come to Kroger for a job, and our focus on talent development encourages them to stay for a career.

We offer competitive benefits and pay in all our stores, distribution centers, manufacturing plants, technology hubs, and corporate offices. We also help associates build Careers with Promise by nurturing and developing skills that support them in their current roles and prepare them to take the next step. In the past decade, Kroger also created 100,000 new jobs, more than 90% of which are in our supermarket divisions, ranging from full-time department heads and assistant store managers to part-time courtesy clerks and cashiers. In 2019, we also achieved record employee retention in one of the tightest labor markets in years, improving our retention rate by nearly 5% from the prior year.

We listen to our associates and gather feedback through our annual Associate Insights survey. We typically have a very high participation rate across the company, and we share results widely. In 2019, Kroger's overall engagement score was 70, down 2 points from the prior year but above the industry benchmark.

To further understand our associate engagement trend and address feedback in real time, we are adding more frequent, smaller surveys among randomly selected associates in 2020. This includes questions to gauge how associates feel about health and safety during the COVID-19 outbreak.

For more details about our approach to talent attraction and retention, please see our [2019 Sustainability Report](#).

### Training & Development

Well-trained, engaged, and productive leaders and associates are essential for delivering on Our Purpose, Values and our Restock Kroger plan. We offer Kroger Learning & Performance Academy, a comprehensive training and leadership-development curriculum with skill-based training by role from new-hire associate to store leader, and leadership development from department leader to executive. Leadership training focuses on developing leaders with strong business acumen who consistently perform at a high level and effectively coach, teach and train others.

### Investing in Our People

We care about our associates' overall well-being—physical, financial and emotional. We offer associates several important benefits to help them save money, continue their education, and take care of themselves and their families.

Through Restock Kroger, we planned to invest \$500 million in associate wages between 2018 and 2020. In late 2019, we increased our estimate to approximately \$800 million in associate wage investments, excluding COVID-19 associate investments in 2020.

As a result, Kroger's average retail hourly wage increased to over \$15 per hour. Including benefit equivalents, the average rate surpasses \$20 per hour.

### Feed Your Future

Our industry-leading continuing education benefit—Feed Your Future—offers up to \$3,500 annually (and up to \$21,000 over the course of a career) to help continually develop skills. All part-time and full-time associates are eligible after six months of service. Since inception, the program has directed over \$8 million to help more than 5,000 associates, 87% of whom are hourly associates.

Read more about how we are protecting our associates' health and safety during the COVID-19 outbreak.





### Customer Experience

Creating unique, personalized experiences helps build connection with our customers, and highly relevant shopping experiences that drive loyalty. A cross-functional team, including Marketing, Merchandising, Loyalty, 84.51°, and Kroger Technology & Digital, among others, is responsible for leading and measuring customer satisfaction and digital innovation. In addition to our focused approach to data science, we ask for and listen to our customers' feedback.

We engage customers all year long to measure satisfaction and gather feedback. Data scientists at 84.51° regularly field customer surveys to gather input on key topics and anticipate changing needs and trends.

#### Measuring Satisfaction

In 2019, we introduced a new market study across Kroger-operated supermarket divisions that tracks how customers feel about us and our performance relative to competitors.

This enables deeper insights into elements of the shopping experience that are most important to customers, and how Kroger can connect more deeply with current and new customers.

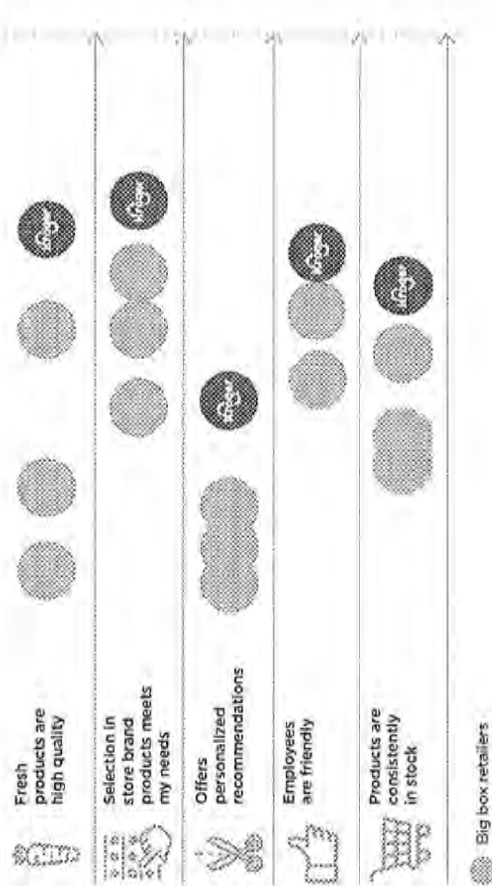
We field this 20-minute online survey twice a year, and results are shared with corporate and division leaders. Two studies were completed in 2019, reflecting a mostly flat trend in customer connection for Kroger and much of the grocery retail landscape at the time. We anticipate 2020 studies will reflect changes in shopping modalities, behaviors and experiences related to COVID-19.

#### Customer Comments

We also gather customer feedback on Our Brands products to continually improve quality and assortment. In 2019, we received 9.18 comments per million units of Our Brands products, up from 8.73 comments per million (restated) the prior year.

#### Customer Satisfaction: Kroger's Position in the Market

Source: Online consumer survey



Big box retailers

#### Digital Growth

Shoppers today want convenient services like curbside pickup, delivery, and ship-to-home. As reflected in our Restock Kroger plan, Kroger's vision is to serve America through food inspiration and uplift. We aim to offer a seamless shopping experience for our customers so they can shop for anything, anytime, anywhere. During COVID-19, these digital shopping modalities increased in importance and saw significant growth.

The Kroger Digital team continually adds features and enhancements to improve our customers' experience online through the Kroger app and ecommerce website.

Customers can shop online for over 70,000 items, with more regularly added. We offer 1,989 curbside pickup locations, with 304 added in 2019, and same-day home delivery through our partnership with Instacart from 2,385 stores. Together, Pickup and Delivery services cover 97% of Kroger households. We are committed to continuing this growth to meet our customers' changing needs in 2020 and beyond.

#### Ocado

Through our partnership with Ocado, one of the world's largest online grocery retailers, Kroger will be able to bring fresh food to our customers faster than ever before. This strategic partnership leverages advanced robotics technology and a seamless fulfillment system for customers across the United States. To date, Kroger has named nine locations for Customer Fulfillment Centers (CFCs) featuring the Ocado Smart Platform, including Monroe, Ohio, where construction began in 2019. This facility is planned to come online in 2021.

Other CFCs are planned in Groveland, Fla.; Frederickburg, Md.; Atlanta; Dallas; Pleasant Prairie, Wis.; and in the Great Lakes, Pacific Northwest and West regions.

Read more about how Kroger promoted new, low-contact shopping options during COVID-19.





## Marketing Practices and Product Labeling

Kroger develops product information and marketing communications to help customers make purchase decisions that are right for them. We follow all applicable laws and regulations related to marketing practices.

Recent decisions to exit certain product categories reflect our ongoing commitment. In 2019, Kroger decided to discontinue the sale of electronic nicotine delivery products, or electronic cigarettes, at all store and fuel center locations given mounting questions and an increasingly complex regulatory environment. The company exited this category after selling all existing inventory. Previously, Kroger decided to exit sales of firearms and ammunition at select Fred Meyer stores in Alaska, Idaho, Oregon and Washington.

Across our operations, we avoid targeted marketing to minors of products intended for adult purchase and consumption, including adult beverages and nicotine products. We are committed to representing product characteristics clearly and accurately, including health and nutrition benefits.

Read more about our [Responsible Marketing Statement](#).

## Labor Relations

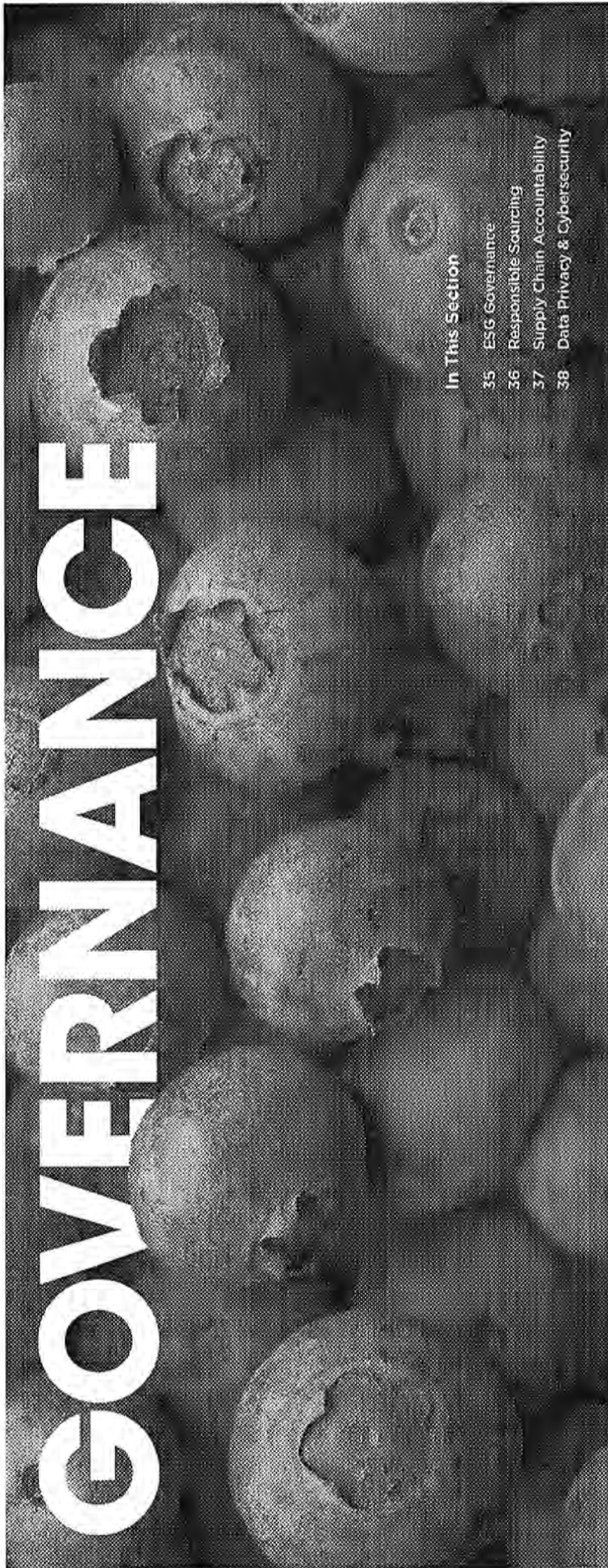
Approximately 66% of associates are covered by collective bargaining agreements negotiated with local unions affiliated with one of several different international unions. There are 356 such agreements, usually with terms of three to five years. Our objective in every negotiation is to find a fair and reasonable balance on compensation packages that provide solid wages as well as good quality, affordable health care and retirement benefits while also keeping our family of companies competitive in the market.

We continue to communicate with local unions that represent many of our associates about the importance of growing our business and profitability, which will help us create more jobs and career opportunities as well as enhance job security for our associates. In 2019, we did not experience any work stoppages or idle days in our operations.

To find out how we have invested in our associates during the coronavirus pandemic, see our [COVID-19 Response Summary](#).







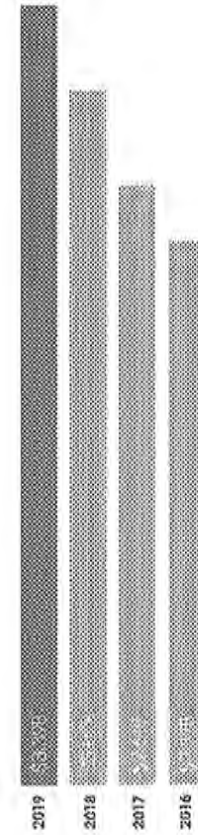
**In This Section**

- 35 ESG Governance
- 36 Responsible Sourcing
- 37 Supply Chain Accountability
- 38 Data Privacy & Cybersecurity

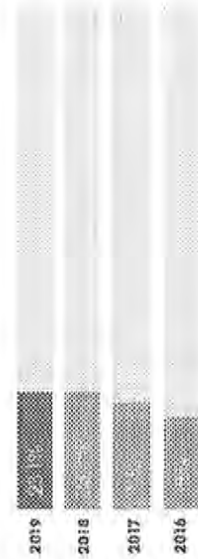
Amount of Sustainable Seafood Sourced by Kroger—M lbs



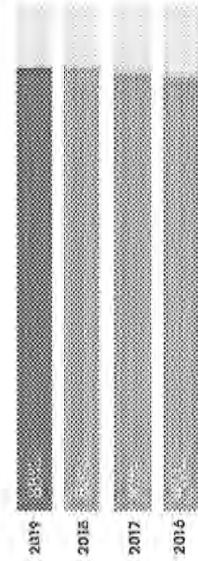
Annual Spend With Diverse Suppliers



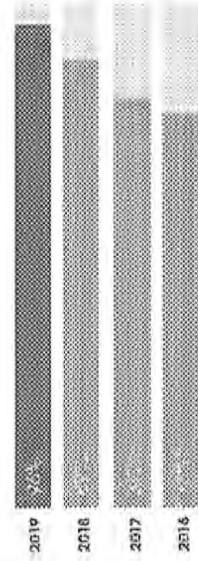
% Shell Egg Units Sold That Are Cage Free



% Wild-Caught Seafood Sourced by Kroger That Meets Sustainability Criteria



% Farm-Raised Seafood Sourced by Kroger That Meets Sustainability Criteria



\* Recycled



# ESG Governance

Kroger is committed to strong corporate governance—we believe it builds trust and promotes the long-term interests of our shareholders and other stakeholders. We continue to improve systems that integrate ESG priorities into overall business and corporate governance practices. This includes oversight of enterprise risk and accountability among the company's senior management and Board of Directors, as well as ongoing engagement in progress updates.

The Corporate Governance Committee considers racial, ethnic and gender diversity to be important elements in promoting full, open and balanced deliberations of issues presented to the Board. Committee members consider director candidates who help the Board reflect the diversity of our shareholders, associates, customers, and the communities in which we operate. Of 10 members on Kroger's Board of Directors, four are women and two are diverse.

The Corporate Governance Committee oversees Kroger's governance policies and practices, including those by which the Board performs its functions, and nominates director candidates who have specific qualities, skills, and experiences that would contribute to current and future Board and committee effectiveness. Board committees with the most direct oversight of ESG topics are the Audit Committee, which oversees compliance with legal, financial and regulatory requirements, and the Public Responsibilities Committee,

which oversees our responsibilities as a corporate citizen and efforts to engage stakeholders and manage issues that affect our business.

We provide additional details about our corporate governance practices and Board committee members' experience and qualifications in our [2020 Proxy Statement](#).

Several internal Kroger departments are accountable for risk management:

- **Audit:** oversees financial reporting and managing our independent auditors.
- **Ethics and Compliance:** leads awareness and implementation of Kroger's [Policy on Business Ethics and Anti-Corruption](#) as well as monitoring vendor and supplier compliance with the [Vendor Code of Conduct](#).

- **Environmental Compliance:** oversees the company's compliance with environmental regulations, reflecting Kroger's [Sustainability Commitment](#).

- **Social Responsibility Compliance:** focuses on Kroger's commitment to safe and fair working conditions in our global supply chain.

- **Kroger Technology & Digital:** focuses on governance and topics related to data privacy and cybersecurity.

- **Food Technology:** oversees food safety for our manufacturing operations and retail stores.

- **Sourcing:** focuses on responsibly sourcing products for our extensive line of *Our Brands* products, including products we manufacture and label, reflecting our [Responsible Sourcing Framework](#).

- **Corporate Affairs:** fosters dialogue and advocacy across Kroger's operations. Leaders in sustainability and community engagement work internally and externally with a wide range of stakeholders to advance our social impact and sustainability goals.

## 2019 Highlights

In 2019, we continued to integrate food rescue, waste diversion, recycling and packaging goals from our Zero Hunger | Zero Waste social impact plan into Retail Operations, Manufacturing, Sourcing and Supply Chain operations. We also convened senior business leaders and multi-stakeholder teams to help set new long-term goals for sustainability performance.





## Responsible Sourcing

Given our scope and scale, we are committed to reducing the social and environmental impacts of our supply chain by using responsible sourcing practices. We develop our priorities and policies by evaluating risk, and engaging with investors, industry groups, NGOs and subject matter experts.

See our [Responsible Sourcing Framework](#) for more detail.

### Kroger Vendor Code of Conduct

Our customers trust that the products we bring to market are sourced from reputable suppliers who provide safe and fair working conditions. We share this concern, as articulated in our Statement on Human Rights. All suppliers, including those providing *Our Brands* products, must maintain good working environments and meet all the requirements of our Vendor Code of Conduct. We uphold a zero-tolerance policy for certain violations of our Code, such as child and forced labor, discrimination and bribery.

### Animal Welfare Requirements

Kroger has a long-standing commitment to responsible business practices, including the humane treatment of animals, as articulated in our Animal Welfare Policy and we align with the Food Marketing Institute's industry-reviewed animal welfare standards for beef, pork, chicken, turkey and eggs. We have also made commitments to source 100% cage-free eggs and to transition to a 100% gestation-crate-free pork supply chain, both by 2025. For the last decade, we have also convened our own independent panel of animal science experts to make recommendations on ways to improve animal welfare.

Kroger does not conduct animal testing on our manufactured *Our Brands* products and ingredients, nor do we require or request that our contract suppliers conduct animal testing.

### Responsibly Sourced Milk and Dairy

Kroger is both a retailer and processor of many dairy products, and we are committed to producing and selling the highest-quality, freshest, most sustainable dairy products available. All cooperatives supplying milk to our plants must be in good standing with the National Dairy FARM™ (Farmers Assuring Responsible Management) program. We have invested in many initiatives from farm to store, enabling our industry-leading 10-day freshness guarantee.

In early 2020, Kroger adopted the U.S. Dairy Stewardship Commitment.

### Sustainable Seafood

For over a decade, we have been improving the environmental sustainability of our seafood through sustainable seafood commitments, expert partnerships and sourcing decisions. Like us, our customers recognize the importance of preserving the variety of fish we enjoy today for future generations. With support from partner WWF, and by aligning with certification standards—including those benchmarked by the GSSI—we are working to achieve our 100% sustainable wild-caught and farm-raised responsible seafood commitments. In 2019, we supported 25 FIPs through sourcing and/or funding, which helps advance progress on our commitments.

Read more about Kroger's 10-year progress in our [Seafood Sustainability Report](#).

### No-Deforestation Commitment

Kroger is committed to eliminating tropical deforestation from *Our Brands* products. Per our [No-Deforestation Commitment for Raw Material Sourcing](#):

- **Palm:** We will source palm oil, palm kernel oil and palm oil derivatives from suppliers certified to the RSPO supply chain standard, or an equivalent standard.
- **Pulp/paper:** We will source paper packaging that is certified to a sustainable forestry standard and/or includes recycled content.
- **Soy:** We will source soy-based ingredients that are deforestation free.
- **Beef:** We will source fresh beef and beef-based ingredients that are deforestation free.

In 2020, Kroger joined the RSPO, and we will report progress on eliminating deforestation to CDP Forests.

### Supplier Inclusion

The Kroger family of companies takes a deliberate approach to supplier inclusion. Minority- and women-owned business enterprises (MBEs and WBEs) and other diverse businesses provide products, services and perspectives that align with our strategies and help us better understand our customers' needs and trends in the marketplace. We value our business relationships with these M/WBEs because they contribute to the local economy and community, and their products and services are often unique and popular among customers.

In 2019, Kroger:

- Achieved Billion Dollar Roundtable status for the 12th consecutive year, reaching more than \$1 billion in spend with certified minority- and women-owned suppliers.
- Increased diverse spend by more than 10% annually for the last three years, reaching \$3.39 billion in 2019.
- Ranked 12th on Omnikal's 2020 Omni50 list, which recognizes Kroger as one of America's Top 50 Corporations for multicultural business opportunities.
- Was recognized by the Women's Business Enterprise National Council as one of America's "Top Corporations for Women's Business Enterprises" for the sixth year in a row.
- Was named the 2019 Corporation of the Year by the Ohio Minority Supplier Development Council.



## Supply Chain Accountability

Our responsible sourcing commitments and requirements help us minimize negative impacts in our supply chain, so it is important we ensure their integrity. We have programs in place to hold our suppliers accountable for meeting our standards through assessments of environmental, social and human rights practices, and we are working to improve the traceability of *Our Brands* products.

Several of our responsible sourcing commitments and programs are aligned with specific environmental and social certification schemes to provide clarity and add third-party credibility. Our Responsible Sourcing Framework summarizes our major policies and commitments, and our approach to tracking performance against these.

### Social Compliance Audits

As described in Kroger's Social Compliance Program Requirements, our social compliance audits are designed to check our suppliers' alignment with our Vendor Code of Conduct, which vendors must agree to when registering to become a supplier.

Factory visits are guided by Kroger's Social Compliance Audit Content and conducted by a third-party auditing firm. We require social compliance audits for all *Our Brands* (food and non-food products) and unbranded products (such as bulk produce) processed at facilities outside the United States. We also require audits for direct import national-brand products where Kroger is the importer of record.

In 2019, approximately 17% of the audits resulted in approved facilities that can continue doing business with us for another 12 months. 58% were given a

corrective action plan and required to fix violations over either six or 12 months. Finally, 25% of audits identified zero tolerance violations, and, if permitted, the suppliers corrected violations immediately. We launched the Worker Voice Survey in 2019, through our social compliance auditing firm, ELEVATE. The survey, administered by cellphone, allows workers to share sentiment and feedback anonymously, and has been implemented for all facilities ELEVATE audits in Bangladesh, China, Vietnam, Thailand, India and Mexico.

### Supplier Management

Supplier Hub, Kroger's vendor management system, enables a thorough identification and verification process for our external vendors and suppliers.

Through Supplier Hub, we can more easily collect and centrally maintain important information about our suppliers' compliance with our commitments, such as U.S. food safety standards, facility audit outcomes, certifications and relevant company initiatives. Additionally, we continue to embed compliance controls deeper into day-to-day operations to help shield Kroger from unnecessary third-party risk and maintain the integrity of our brands and reputation.

Kroger recently established a new business team to partner with our Technology function in implementing a more holistic approach to supplier lifecycle management. This cross-functional Supplier Solutions team is developing new ways to speed up our suppliers' "time to market" with Kroger through seamless navigation of Kroger's supplier-facing portals and simplified vendor processes.

To maintain consistency and focus, we have enacted executive oversight and policy governance to help optimize enterprise processes, monitor compliance, remove barriers and expedite solutions for continuous supplier-performance and cost improvement.

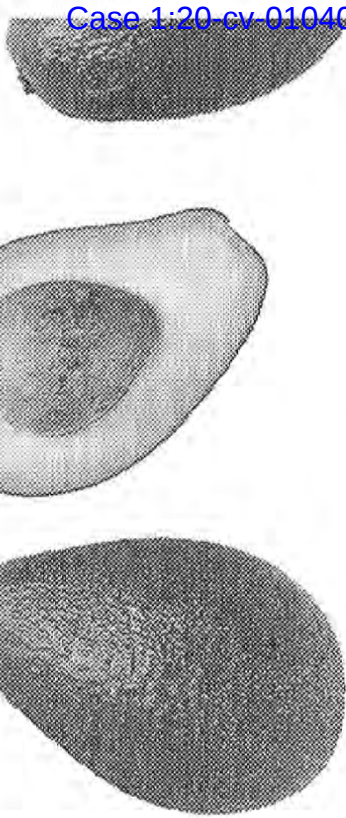
### Animal Welfare Audit Requirements

As articulated in our Animal Welfare Policy, we require all beef, pork, chicken, turkey and egg suppliers to provide evidence of an annual animal welfare audit. These audits must align with our accepted animal welfare standards and be conducted by reputable third-party auditing companies.

### Testing, Monitoring and Reporting

Kroger is committed to managing our products to ensure safety and quality. We require our suppliers to comply with regulatory requirements pertaining to product safety, as well as to meet or exceed our quality, safety and performance requirements. We engage with suppliers to address any concerns. This is true for both food and non-food products.

We continue to be innovative in engaging our suppliers through different channels. In 2019, we developed and implemented a new dip® brand apparel factory-engagement plan as an extension of the supplier scorecard developed previously. Visual dashboards, a standardized factory-engagement form and dynamic communications with suppliers help measure supplier and factory performance against key quality metrics, as well as performance relative to other factories across Kroger's supplier community. The engagement also helps identify improvement opportunities.





# Data Privacy & Cybersecurity

Our customers' trust is important to the Kroger family of companies, and we recognize our responsibility to protect our business information and the data shared with us. As an organization, we are committed to the ongoing development of methodologies and processes that enhance data privacy and security.



Kroger Technology & Digital was named to *Computerworld* magazine's Top 100 Best Places to Work in IT for the third consecutive year.

The Kroger Technology & Digital teams are responsible for data privacy and information security across the company. Corporate Information Security team leaders have instituted strong governance, policies and practices, led by the Chief Information Officer, the Chief Information Security Officer and our Chief Compliance Officer, who regularly report to the Audit Committee of the Board of Directors.

Kroger continues to prioritize development of processes that enhance privacy and incorporate protections into our business strategy, culture and ongoing operations. Changes necessary to comply with the Nevada Privacy Law went into effect on October 1, 2019. Capabilities and features to facilitate privacy requests from California consumers were implemented on December 30, 2019.

**Privacy**  
Kroger continues to prioritize development of processes that enhance privacy and incorporate protections into our business strategy, culture and ongoing operations. Changes necessary to comply with the Nevada Privacy Law went into effect on October 1, 2019. Capabilities and features to facilitate privacy requests from California consumers were implemented on December 30, 2019.

**Best Practices**  
We implement and maintain reasonable security practices and procedures appropriate to the nature of the information we maintain, including appropriate technical, administrative and physical procedures to prevent loss, misuse or alteration of personal information. For example, we use Transport Layer Security (TLS/SSL) to encrypt certain sensitive personal information we exchange with customers. That way, access to data is limited through the use of technological safeguards. We also comply with payment card industry data-security standards for the processing of credit and debit card transactions.

**Cybersecurity**  
The Kroger family of companies operates in a highly competitive, increasingly complex and ever-changing business environment. To safeguard our systems and information, we continually upgrade security governance and protocols to reflect changes in technology, potential risks and business needs. We expect associates to complete a version of corporate security awareness training annually, and we provide updated information throughout the year to alert associates to new potential cybersecurity risks.

**Best Practices**  
We encourage our customers to use complex passwords and to change them regularly. While we use both passwords and usernames to protect information online, we also take reasonable steps to protect personal information offline.

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Dedicated Kroger leaders guide efforts to implement recent data privacy legislation in the markets where we operate. As part of our standard practices, we conduct general privacy awareness training for all associates who handle personal information so they understand their important role in upholding these principles and practices.

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# Appendix

## Material Topics Summary Table

### 2020 Materiality Assessment Topic Definitions and Boundaries

Environmental Topic	Topic Definition	Stakeholder	Tier
Agricultural Practices	Promoting responsible pesticide, fertilizer and soil-management practices, including efforts to reduce negative impacts on pollinators.	Internal—Corporate (Sourcing) External—Supply Chain (Farmers)	3
Chemical Management	Redesigning products and processes to avoid the use and/or generation of hazardous chemicals, replacing potentially hazardous chemicals with safer alternatives, reducing hazardous chemical emissions and wastewater discharge, and diverting unsalable or hazardous consumer products from landfill through responsible management.	Internal—Corporate (Sourcing) External—Food, Consumer Packaged Goods (CPG) and Packaging Suppliers	3
Energy Usage	Energy consumption and GHG emissions resulting from building and fleet management in retail, manufacturing, supply chain and other Kroger operations. Implementing solutions (e.g., renewable energy and energy/refrigeration efficiency) to address climate change and mitigate the impacts of climate change to Kroger.	Internal—Stores, Food Production Plants, Distribution Centers, Fleet External—Suppliers to Kroger's Food Production Plants	1
Greenhouse Gas Emissions	Supporting responsible land-management and forestry practices in our operations and supply chain to reduce forest loss and negative impacts to biodiversity, particularly among high-impact commodities such as palm oil, beef, soy, and pulp/paper/timber.	Internal—Corporate (Sourcing) External—Food, Packaging and CPG Suppliers	3
Food Waste	Working across the value chain to reduce and recover food waste in our operations and in partnership with suppliers, farms and customers.	Internal—Food Production Plants, Stores, Corporate (Government Affairs) External—Farmers, Food/Perishables Suppliers	1
Operational Waste	Diverting more waste from landfill through increased waste reduction, reuse and recycling adoption in our operations. This includes adopting more circular economy models.	Internal—Stores, Food Production Plants, Distribution Centers	3
Packaging	Adopting sustainable packaging practices that reduce unnecessary materials, increasing recyclability of packaging, adopting more reusable models, and increasing recycled content and sustainable fibers. Supporting infrastructure development and providing recycling solutions and recycling information for customers.	Internal—Corporate (Product Design, Sourcing, Government Affairs) External—Suppliers, Packaging Suppliers	1
Water	Reducing water use, increasing reuse and managing water discharge quality to protect local water sources.	Internal—Food Production Plants, Stores, Distribution Centers External—Farmers Suppliers	3
Social Topic	Topic Definition	Stakeholder	Tier
Associate Health & Safety	Providing proper safety training and equipment, safe working conditions and access to resources to maintain and improve associates' health and well-being.	Internal—All Operations	1
Associate Training & Education	Providing training and educational opportunities to build associates' skill sets, increase engagement and job performance and support career advancement.	Internal—All Operations External—Customers, Unions	2
Community Engagement	Using community engagement principles to share updates on Kroger business and operations, discuss community priorities, partner in local events and identify opportunities for philanthropic support and more. Being a trusted partner in the communities where our associates and customers live through volunteerism, grants and donations.	Internal—All Operations External—Communities, NGOs	1
Customer Experience	Providing exceptional service and value and improving the customer experience through advances in areas such as online ordering, home delivery and digital solutions that offer greater flexibility in how customers shop.	Internal—All Operations External—Customers	2
Disaster Resilience	Enhancing our ability to respond to natural disasters affecting our associates and customers by improving our preparedness and speed to mobilize needed resources.	Internal—All Operations External—Communities, Government/Policy Institutes	2
Diversity, Equity & Inclusion	Building a diverse and inclusive workforce, fostering an environment of non-discrimination where diversity is a competitive advantage and providing equal opportunity for associates. Building supplier diversity and inclusion as a business advantage.	Internal—All Operations External—Communities, Customers	1



Food Access	Fighting hunger by ensuring the availability of sufficient, affordable and nutritious food to support an active and healthy life for customers and communities.	Internal—Food Production Plants, Retail Operations, Sourcing/Procurement External—Community, Customers, Suppliers	1
Food Safety	Ensuring food produced in our manufacturing plants and sold in our stores is safe for customers by establishing and maintaining science-based food preparation and handling guidelines. Developing and maintaining programs to address emerging food safety topics.	Internal—Food Production Plants, Distribution, Retail Operations External—Customers, Suppliers	1
Genetically Modified Organisms (GMOs)	Transparent communication about the presence and impact of GMOs in food products.	Internal—Corporate (Sourcing) External—Food Suppliers	3
Health & Nutrition	Encouraging customers to include more healthful and nutritious products in their baskets, providing pharmacy and retail health clinic services to our customers and supporting wellness in the communities in which we operate.	Internal—Food Production Plants, Marketing, Retail Operations, Technology, Sourcing/Procurement External—Community, Customers, Suppliers	1
Labor Relations	Promoting fair labor practices; respecting associates' freedom of association and right to collective bargaining; and participating in positive, proactive, consultative conversations with associates, including those covered by collective bargaining agreements.	Internal—All Operations External—Union	2
Marketing Practices & Product Labeling	Providing clear, fact-based and transparent nutritional labeling, including information on geographic origin, restaurant-type menu items sold in our stores and our suppliers' products. Working with suppliers to ensure product attributes are truthfully and responsibly communicated to our customers in stores and through advertising, including refraining from marketing products that do not fulfill specific nutritional criteria to children.	Internal—Corporate (Package Design, Procurement/Sourcing, Marketing) External—Customers, Industry Associations, NGOs, Suppliers	3
Supplier Safety	Providing customers with high-quality non-food products (i.e., clothing, cleaning products, etc.) that meet the highest safety and legal requirements. Setting robust standards for the production of non-food products.	Internal—Distribution, Retail Operations External—Customers, Suppliers	2
Work Safety	Ensuring the physical security of retail operations by training associates on issues such as active shooters, open carry laws and appropriate response to crime and theft.	Internal—Retail Operations	3
Workplace Culture & Retention	Creating a workplace of choice by providing competitive wages, high-quality benefits and a company culture that fosters career advancement and purpose.	Internal—All Operations External—Communities, Customers	2
<b>Governance Topic Definition</b>			
Animal Welfare	Providing industry leadership in support of the humane treatment of animals, requiring adherence to Kroger's Animal Welfare Policy, helping improve industry practices and driving innovations in plant-based protein.	Internal—Food Production Plants External—Animal Protein Suppliers (Our Brands, National Brand)	2
Data Privacy & Cybersecurity	Ensuring the data privacy and security of associates, customers and suppliers and implementing procedures to prevent, detect and respond to potential data breaches.	Internal—Corporate (84.51', IT/Technology, Shopper Marketing) External—Customers, Suppliers	1
ESG Corporate Governance	Establishing and disclosing systems that ensure that ESG priorities are incorporated into the company's overall corporate governance practices, including checks and balances that enable the Board of Directors to have appropriate control and oversight responsibilities.	Internal—All Operations External—Supply Chain, Customers, Investors	2
Ethics & Compliance	Operating in an ethical manner and in compliance with applicable regulations, including anti-corruption, anti-bribery and anti-competitive practices. Maintaining and enforcing codes of conduct to protect associates, suppliers and customers.	Internal—All Operations External—Supply Chain, Customers, Investors	2
Human Rights	Upholding human rights, including addressing such issues as forced labor, migrant labor, child labor and living wage expectations, within operations and through the supply chain.	Internal—All Operations External—Supply Chain, Customers, Investors	3
Public Policy Practices	Actively participating in forming and shaping federal, state and local public policy on issues that could significantly affect our business.	Internal—Corporate (Compliance, Corporate Affairs, Government Affairs) External—Customers, Government/Policy Institutes, Industry Associations, NGOs, Suppliers	3
Responsible Sourcing	Developing and adhering to procurement practices that mitigate environmental and social risks in the supply chain, as well as finding opportunities to make a positive impact for people and the planet. Increasing traceability and transparency.	Internal—Corporate (Sourcing, Corporate Affairs, Ethics & Compliance) External—Suppliers	1
Supply Chain Accountability	Holding suppliers accountable for meeting standards through assessments of environmental, social and human rights practices. Working to improve the traceability of products.	Internal—Corporate (Sourcing, Ethics & Compliance) External—Suppliers	1
Sustainable Sourcing	Offering wild-caught and farm-raised seafood sourced from sustainability-certified fisheries, supporting FIPs and removing at-risk species from stores.	Internal—Corporate (Sourcing) External—Seafood Suppliers	3



## Energy & Emissions Table

### 2019 Data

Energy Consumption <sup>1</sup>	Amount	Unit	Amount	Unit	Change Compared to 2018
Total fuel consumed	3,957,310	MWh	1.42E+16	Joules	-2.9%
Stationary sources (natural gas, propane, fuel oil)	3,211,178	MWh	1.16E+16	Joules	-2.1%
Mobile sources (diesel, gasoline, kerosene, jet fuel)	746,132	MWh	2.69E+15	Joules	-6.5%
Renewable fuel	-	MWh	-	Joules	N/A
Total electricity consumed	7,442,435	MWh	2.68E+16	Joules	-2.7%
Renewable electricity	3,674	MWh	1.32E+13	Joules	+722%
Total Energy Consumed	11,399,745	MWh	4.10E+16	Joules	-2.8%

1. This data reflects the vast majority of Kroger's operations, with a few exceptions.  
 2. Using each fuel type's heat content, we were able to convert each fuel source from total gallons to therms and then MWh.

### 2019 Data

Energy Intensity	Amount	Unit	Amount	Unit	Change Compared to 2018
Energy intensity per square foot	49.32	MWh/1,000 ft <sup>2</sup>	1.78E+11	Joules/1,000 ft <sup>2</sup>	-4.2%
Non-managing factor: facility footprint	231,154	1,000 ft <sup>2</sup>	-	-	-

1. The energy intensity calculation reflects total energy consumed within the organization.

### 2019 Data

Carbon Emissions <sup>1,2,3</sup>	Amount	Unit	Change Compared to 2018
Direct (Scope 1) emissions	2,445,527	tCO <sub>2</sub> e	+5.7%
Stationary	582,527	tCO <sub>2</sub> e	-2.1%
Mobile	189,071	tCO <sub>2</sub> e	-4.9%
Fugitive <sup>4</sup>	1,673,929	tCO <sub>2</sub> e	+10.2%
Indirect (Scope 2) emissions (location based)	3,304,231	tCO <sub>2</sub> e	-6.3%
Indirect (Scope 2) emissions (market based)	3,522,338	tCO <sub>2</sub> e	+1.8%
Total Corporate (Scope 1 and 2) emissions (location based)	5,749,758	tCO <sub>2</sub> e	-2.8%
Total Corporate (Scope 1 and 2) emissions (market based)	5,967,865	tCO <sub>2</sub> e	+3.4%
Intensity (Scope 1) emissions	2,175,346	tCO <sub>2</sub> e	-5.3%

1. We used the GHG Protocol Accounting Standard, the Operational Control Approach, and Global Warming Potential from the IPCC Fifth Assessment Report (AR5 - 100 year). The base year for our footprint is 2006, when we first started measuring it.  
 2. Scope 1 and 2 emissions reflect CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O and HFC gases. Our emissions calculations primarily rely on EPA emissions factors. Details are disclosed in our CD9 Climate response. Offsets were not used in our calculations.  
 3. Scope 3 emissions reflect the following categories: Fuel and energy-related activities (not included in Scope 1 or 2); upstream (transportation and distribution) waste generated in operations; business travel and employee commuting.  
 4. Carbon intensity calculation reflects total Scope 1 and 2 (location-based) emissions.  
 5. Between 2018 and 2019, Kroger contributed to emission away from R-22 refrigerants in our operations, which contributed to the increase in reported Scope 1 fugitive emissions. R-22 emissions are not reported per the GHG Protocol's Corporate Reporting Standard, while the refrigerants Kroger is transitioning to are included in the reporting standard scope. In 2019, Kroger's R-22 emissions decreased by 25,775 tCO<sub>2</sub>e (or 21.2%).

### 2019 Data

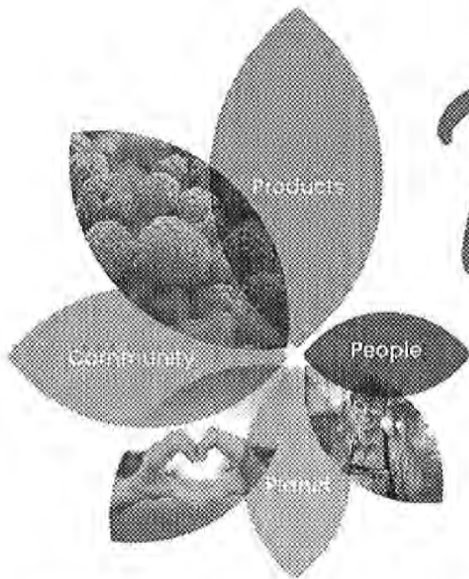
Carbon Intensity	Amount	Unit	Change Compared to 2018
Total corporate carbon emissions intensity per square foot	24.9	tCO <sub>2</sub> e/1,000 ft <sup>2</sup>	-4.2%
Non-managing factor: facility footprint	231,154	1,000 ft <sup>2</sup>	-



# SASB Index

Topic	Accounting Metric	Unit of Measure	Company Response
Fleet Fuel Management	Fleet fuel consumed, percentage renewable	Gigajoules (GJ), Percentage (%)	2,686,075 GJ, 0% renewable
Air Emissions from Refrigeration	Gross global Scope 1 emissions from refrigerants	Metric tons (t) CO <sub>2</sub> e	1,673,928 tCO <sub>2</sub> e
	Percentage of refrigerants consumed with zero ozone-depleting potential	Percentage (%) by weight	We do not report this publicly
	Average refrigerant emissions rate	Percentage (%)	We do not report this publicly
Energy Management	(1) Operational energy consumed, (2) percentage grid electricity, (3) percentage renewable	Gigajoules (GJ), Percentage (%)	(1) 38,353,005 GJ, (2) 70% grid electricity, (3) 0.032%
Food Waste Management	Amount of food waste generated, percentage diverted from the waste stream	Metric tons (t), Percentage (%)	262,146 metric tons food waste generated in stores; 44.7% diverted from landfill
Data Security	(1) Number of data breaches; (2) percentage involving personally identifiable information (PII); (3) number of customers affected	Number, Percentage (%)	(1) Zero data breaches; (2) n/a; (3) n/a
	Description of approach to identifying and addressing data security risks	n/a	See Data Security & Cybersecurity section
Food Safety	High-risk food safety violation rate	Rate	Average of 2.1 critical violations per store per audit in 2019.
	(1) Number of recalls, (2) number of units recalled, (3) percentage of units recalled that are private-label products	Number, Percentage (%)	Zero recalls of Our Brands products manufactured by Kroger.
Product Health & Nutrition	Revenue from products labeled and/or marketed to promote health and nutrition attributes	Reporting currency	See Health & Nutrition section
	Discussion of the process to identify and manage products and ingredients related to nutritional and health concerns among consumers	n/a	See Health & Nutrition section
Product Labeling & Marketing	Number of incidents of non-compliance with industry or regulatory labeling and/or marketing codes	Number	Zero incidents of non-compliance with labeling and/or marketing codes
	Total amount of monetary losses as a result of legal proceedings associated with marketing and/or labeling practices	Reporting currency	We do not report this publicly
	Revenue from products labeled as (1) containing GMOs and (2) non-GMO	Reporting currency	We do not report this publicly
Labor Practices	(1) Average hourly wage and (2) percentage of in-store and distribution center employees earning minimum wage, by region	Reporting currency, Percentage (%)	(1) Average hourly wage is over \$15, (2) We do not report this publicly
	Percentage of active workforce covered under collective bargaining agreements	Percentage (%)	66% of associates are covered by collective bargaining agreements
	(1) Number of work stoppages and (2) total days idle	Number, Days idle	(1) Zero work stoppages, (2) Zero days idle
	Total amount of monetary losses as a result of legal proceedings associated with: (1) labor law violations and (2) employment discrimination	Reporting currency	We do not report this publicly
Management of Environmental & Social Impacts in the Supply Chain	Revenue from products third-party certified to environmental or social sustainability sourcing standard	Reporting currency	We do not report this publicly
	Percentage of revenue from (1) eggs that originated from a cage-free environment and (2) pork produced without the use of gestation crates	Percentage (%) by revenue	We currently report these metrics by units/weight, not by revenue
	Discussion of strategy to manage environmental and social risks within the supply chain, including animal welfare	n/a	See Responsible Sourcing, Supply Chain Accountability and Our Approach to ESG sections
	Discussion of strategies to reduce the environmental impact of packaging	n/a	See Packaging section





# EXHIBIT B Protecting Our Future

## Sustainability Highlights: 2019

By being locally great and nationally strong, we are able to make a meaningful difference for our people, planet, products, and communities.

### PEOPLE

Supporting employees to reach their full potential



More than 60 women in Albertsons Companies were recognized for their leadership by industry publications



More than 60,000 of our associates celebrated 15 years of service, and more than 43,000 celebrated over 20 years of service



Over 241,000 employees have completed Diversity and Inclusion Training

### PLANET

Minimizing our impact on the planet



Recycled more than 25 million pounds of plastic film and 760 million pounds of cardboard from our facilities



1,400+ energy efficiency projects completed in 475+ stores and warehouses



Announced Plastics and Packaging Pledge which includes 100% of our Own Brands packaging will be recyclable, reusable, or compostable by 2025

### PRODUCTS

Meeting the demands of an evolving marketplace



Won the EPA Safer Choice Partner of the Year Award for the third year



Expanded Open Nature® brand with compostable and bamboo products, and added certified plant-based, organic frozen foods and meatless proteins to our Own Brands portfolio



100% of our Own Brands Waterfront BISTRO® and Open Nature® seafood is sourced to meet our Responsible Seafood Policy, achieving our commitment three years ahead of our 2022 goal

### COMMUNITY

Supporting causes that impact our customers' lives



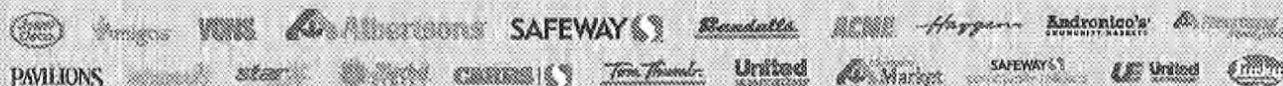
Our stores donated more than 100 million pounds of food, making us a Visionary Partner for Feeding America®



Partnered with 348 local organizations and food banks in 35 states to provide hunger relief



Enabled 70 million breakfasts to kids in need in 2019 through Hunger Is®, and more than 100 million breakfasts since the program began





Thanks to the dedication of our employees and the generosity of our customers, we are able to have a positive impact on the planet and the communities we serve. The stories below highlight a few examples of how we strive to Make Everyday a Better Day. Learn more at [AlbertsonsCompanies.com](https://www.albertsonscompanies.com).



### Truckers Against Trafficking

Albertsons Companies is committed to making a difference in the communities we serve. Several years ago, we joined the anti-human trafficking forces and became a shipping partner of Truckers Against Trafficking (TAT). Since that time, we have trained our more than 2,400 drivers to identify human trafficking on the road. This training gives drivers exposure to the issue and provides them with the tools to recognize the signs of human trafficking and the knowledge of how to take action if they see it.

A recent follow-up training was held for drivers in our United Division in Lubbock, Texas. Drivers from our Lubbock Distribution Center will travel approximately 5 million miles this year, covering the area from Albuquerque, NM to Dallas, TX. Our well-trained drivers cover broad areas, giving them an opportunity to make the communities we serve safer.



### Improving Transportation Sustainability

Increasing the sustainability of our transportation operations is one way that we reduce our impact on the environment. 100% of our private truck fleet is EPA SmartWay certified, helping us to advance our supply chain sustainability and freight transportation efficiency. We have ongoing programs to pilot and purchase alternative energy transportation equipment, including renewable diesel trucks, electric yard trucks, and trailers that are cryogenically cooled with liquid nitrogen.

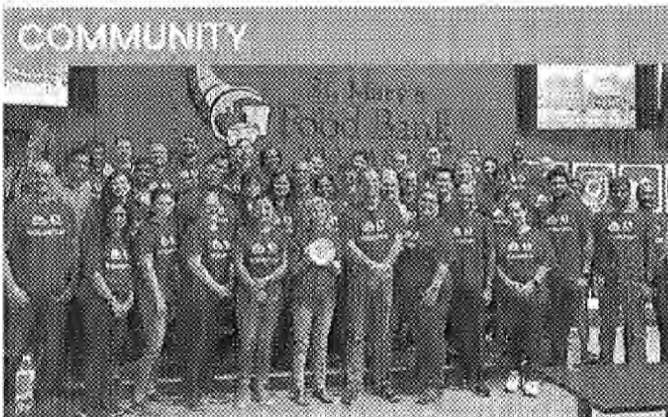
We also help our customers reduce their own transportation carbon footprint by providing electric vehicle charging stations. We have more than 40 charging stations available for our customers and have provided more than 27,000 charging sessions to date. Our portfolio of stores that offer this service continues to grow as we identify new partnership opportunities across the country.



### debi lilly design™ Extending Smiles

Albertsons Companies' exclusive debi lilly design™ line of floral and home décor is transforming the gift of flowers into the gift of hope. When customers purchase debi lilly design Extending Smiles bouquets at participating stores, \$1 of the proceeds is used to provide a pair of shoes, clean water, or food to someone in need. Each bouquet includes a tag that identifies the charity that the donation will go to: Sales4Souls, Food for the Poor, Inc., or WATERisLIFE.

In addition to supporting the organization listed on each tag, Extending Smiles bouquets also support sustainable farming practices. The designs are certified by the Rainforest Alliance, which verifies that each flower and element of the bouquet was farmed in a way that conserves biodiversity and natural resources and improves the livelihoods of growers and farm workers.



### Fighting Hunger in our Communities

Our West Coast Divisions signed onto the Pacific Coast Collaborative (PCC) and committed to reduce food waste by 50% by 2030. In addition to prioritizing food waste reduction at its source, we are also committed to feeding people in our communities. We will continue to support our local partners in the fight against hunger in our neighborhoods.

Last year, our stores, distribution centers, and manufacturing facilities partnered with over 146 foodbanks, pantries, and other hunger relief agencies to provide food donations and funds to the communities we serve across the United States.

Erica Yaeger from the North Texas Foodbank said "We are deeply grateful for the support from Albertsons. Not only are they putting meals on the table, they are putting hope in the hearts of those who are food insecure in our community."



FILED  
2ND JUDICIAL DISTRICT COURT  
Bernalillo County  
9/3/2020 12:07 PM  
CLERK OF THE COURT  
Blair Sandoval

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

ROBIN G. THORNTON,  
on behalf of herself and others  
similarly situated,

Plaintiff,

v.

Case No. D-202-CV-2020-05018

THE KROGER COMPANY,  
ALBERTSONS,

Defendants.

**PLAINTIFF'S CERTIFICATION REGARDING ARBITRATION**

The Law Offices of Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.) counsel for Plaintiff, certify that:

       This case is subject to referral to arbitration. No party seeks relief other than a money judgment and no party seeks an award in excess of \$25,000, inclusive of punitive damages and exclusive of interest, costs and attorney's fees.

  XX   This case is not subject to referral to arbitration because at least one party seeks relief other than a money judgment and/or at least one party seeks an award in excess of \$25,000 inclusive of punitive damages and exclusive of interest, costs and attorney's fees.

Respectfully Submitted,

WESTERN AGRICULTURE, RESOURCE  
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.  
400 Gold Ave SW, Suite 1000  
Albuquerque, NM 87102  
(505) 750-3060  
[abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

Counsel for the Plaintiff hereby certifies that a copy of the foregoing was filed via the New Mexico E-Riling system causing all parties of record to be served via electronic means.



FILED  
2ND JUDICIAL DISTRICT COURT  
Bernalillo County  
9/3/2020 12:07 PM  
CLERK OF THE COURT  
Blair Sandoval

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

**ROBIN G. THORNTON,  
on behalf of herself and others  
similarly situated,**

**Plaintiff,**

**v.**

**Case No.** D-202-CV-2020-05018

**THE KROGER COMPANY,  
ALBERTSONS,**

**Defendants.**

**JURY DEMAND**

COMES NOW, Plaintiff Robin G. Thornton and through its attorneys of record, Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq. and Jared Vander Dussen, Esq.) and pursuant to NMRA 1-038, hereby demands a trial of factual issues by a jury of Six (6) persons and deposits herewith the sum of One Hundred and Fifty Dollars (\$150.00) with the Clerk of the Court as required.

Respectfully submitted,

Western Agriculture, Resource  
and Business Law Advocates, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.  
[abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)  
Jared R. Vander Dussen, Esq.  
[Warba.lip.jared@gmail.com](mailto:Warba.lip.jared@gmail.com)  
400 Gold St. SW, Suite 1000  
Albuquerque, NM 87102  
(505)750-3060; Fax (505)226-8500



**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing via the NM E-Filing System on September 3, 2020 and caused a true and correct copy to be served upon Defendants along with the Summons and Complaint in this matter:

*/s/ A. Blair Dunn*

A. Blair Dunn, Esq.



SUMMONS FOR COMPLAINT	
District Court: Second Judicial District Court Court Address: 400 Lomas Blvd NW Albuquerque, NM 87102 Court Telephone No.: 505-841-8400	Case Number: D-202-CV-2020-05018 Judge: Lisa Chavez Ortega
Plaintiff(s): ROBIN G. THORNTON, On behalf of herself and others Similarly situated, v. Defendant(s): THE KROGER COMPANY, ALBERTSONS	Defendant: Name: The Kroger Company Address: 125 Lincoln Ave Ste 223 Santa Fe, NM 87501

**FILED**  
**2ND JUDICIAL DISTRICT COURT**  
 Bernalillo County  
 9/15/2020 10:59 AM  
**CLERK OF THE COURT**  
 Latoya Grayes

**TO THE ABOVE NAMED DEFENDANT(S):** Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6657; or 1-505-797-6066.

Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_ day of 9/3/2020, 20\_\_.



SECOND JUDICIAL DISTRICT COURT  
 CLERK OF THE COURT

By: [Signature]  
 Deputy Clerk

/s/ A. Blair Dunn

Signature of Attorney for Plaintiff

Name: A. Blair Dunn  
 Address: 400 Gold Ave SW, Suite 1000  
 Albuquerque, NM 87102  
 Telephone No.: (505) 750-3060  
 Fax No.: (505) 226-8500  
 Email Address: [abdunn@ablairdunn.esq.com](mailto:abdunn@ablairdunn.esq.com)

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

YECOM 1422338  
 09/15/2020 10:59 AM  
 CLERK OF THE COURT





OHIO  
STATE OF ~~NEW MEXICO~~ )  
COUNTY OF HAMILTON ) ss.

RETURN<sup>1</sup>

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in HAMILTON county on the 8 day of September, 2020, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

- to the defendant \_\_\_\_\_ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)
- to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

- to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address) a copy of the summons and complaint.
- to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address).
- to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.
- to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (used when defendant is a minor or an incompetent person).
- to Karen Filik \_\_\_\_\_ (name of person), Legal Assistant \_\_\_\_\_, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \_\_\_\_\_

[Signature]  
Signature of person making service

Process Server  
Title (if any)

Subscribed and sworn to before me this 11<sup>th</sup> day of Sept, 20 20

[Signature]  
Judge, notary or other officer  
authorized to administer oaths

Notary  
Official title



MELISSA J. MOODY  
Notary Public, State of Ohio  
My Commission Expires 08-16-2022



USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]



SUMMONS FOR COMPLAINT		2ND JUDICIAL DISTRICT COURT Bernalillo County CLERK OF THE COURT Latoya Grayes
District Court: Second Judicial District Court Court Address: 400 Lomas Blvd NW Albuquerque, NM 87102 Court Telephone No.: 505-841-8400	Case Number: D-202-CV-2020-05018 Judge: Lisa Chavez Ortega	FILED COURT 9/15/2020 10:59 AM
Plaintiff(s): ROBIN G. THORNTON, On behalf of herself and others Similarly situated, v. Defendant(s): THE KROGER COMPANY, ALBERTSONS	Defendant: Name: Albertsons Address: 726 E. Michigan, Ste 330 Hobbs, NM 88240	

**TO THE ABOVE NAMED DEFENDANT(S):** Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6657; or 1-505-797-6066.

Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_ day of 9/3/2020, 20\_\_.



SECOND JUDICIAL DISTRICT COURT  
CLERK OF THE COURT

By: *[Signature]*  
Deputy Clerk

/s/ A. Blair Dunn

Signature of Attorney for Plaintiff

Name: A. Blair Dunn  
 Address: 400 Gold Ave SW, Suite 1000  
 Albuquerque, NM 87102  
 Telephone No.: (505) 750-3060  
 Fax No.: (505) 226-8500  
 Email Address: [abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.



RETURN

STATE OF NEW MEXICO }  
COUNTY OF Lea } ss.

I, being duly sworn, on oath, state that I am, over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Lea county on the 8 day of Sept., 2020 by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

- to the defendant \_\_\_\_\_ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)
- to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

- to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address) a copy of the summons and complaint,
- to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address).

to Kimberlie F. Fuchs, an agent authorized to receive service of process for defendant The Kroger Company, Albertsons

to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (used when defendant is a minor or an incompetent person).

to \_\_\_\_\_ (name of person), \_\_\_\_\_ (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \$ 0

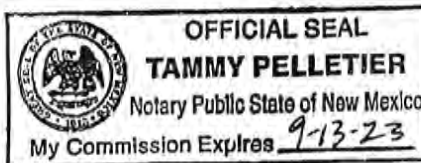
[Signature]  
Signature of person making service

Title (if any)

Subscribed and sworn to before me this 8th day of September, 2020

[Signature]  
Judge, notary or other officer authorized to administer oaths

Paralegal Notary  
Official title





USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]



## Exhibit 2

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ROBIN G. THORNTON,

Plaintiff,

v.

No.

THE KROGER COMPANY,  
et al.,

Defendants.

**Declaration of William Zimmerman**

1. Pursuant to 28 U.S.C. § 1746, I, William Zimmerman, declare as follows:

2. I am 18 years of age or older.

3. I make this declaration based on my personal knowledge.

4. I am employed by The Kroger Co. ("Kroger") as Beef Commodity Manager. I

have held this position since 2017. Prior to that, I was Assistant Beef Commodity Manager for Kroger. I have been employed by Kroger since 2006.

5. Through my employment with Kroger, I have personal knowledge of Kroger's sales of fresh beef products in the stores it owns across the United States.

6. Each year, the number of customers who purchase fresh beef products in Kroger-owned or operated stores in the United States greatly exceeds 100.

7. Kroger's total sales of fresh beef products in its stores is well in excess of \$5,000,000 each year.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and accurate.



Executed this 6<sup>th</sup> day of October, 2020.



William Zimmerman

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Kroger, Albertsons 'Breached Consumer Trust' by Advertising Imported Beef, Cattle as 'Product\[s\] of the U.S.'](#)

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