

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**The Kroger Company, and**

**Albertsons Companies, Inc.**

**DOCKET NO. 9428**

**NON-PARTY TRADER JOE’S COMPANY’S UNOPPOSED MOTION TO EXTEND  
THE TIME TO MOVE TO QUASH OR LIMIT SUBPOENA**

Non-party Trader Joe’s Company (“Trader Joe’s”), by and through its undersigned counsel, hereby moves, pursuant to Rules 3.22, 3.34, and 4.3 of the Federal Trade Commission’s (“FTC”) Rules of Practice for Adjudicative Proceedings, to extend its time to move or quash or limit the Subpoena for Production of Documentary Material (“Subpoena”) served by the FTC in the above-captioned proceeding on April 2, 2024. Specifically, Trader Joe’s respectfully requests that the deadline to file a motion to quash or limit the Subpoena under Rule 3.34(c), and to submit written objections to the subpoena under Subpoena instruction numbers 13 and 14, be extended by fourteen (14) days from April 12, 2024, to April 26, 2024.

Subpoena instruction number 13 requires Trader Joe’s to “set forth the basis for [Trader Joe’s] objection and respond to all parts of the request to which [Trader Joe’s] do[es] not object. Any ground not stated in an objection within the time provided by 16. C.F.R. § 3.34, or any extension thereof, shall be waived.” Section 3.34(c) provides that any motion “to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith.” 16 C.F.R. § 3.34(c). Accordingly, Trader Joe’s current deadline to object and/or move to limit or quash the subpoena is April 12, 2024.

Counsel for Trader Joe's and the FTC met and conferred several times, including on April 11, 2024. During the meet-and-confers, Counsel for Trader Joe's and the FTC agreed that an extension of the deadline to seek relief from the Subpoena would allow the meet and confer process to continue and afford Trader Joe's additional time necessary to continue investigating the Subpoena and preparing its initial responses. Counsel for the FTC informed Trader Joe's counsel that the FTC will not oppose this motion for a fourteen (14) day extension of Trader Joe's deadline to object or otherwise move to limit or quash the Subpoena.

Granting this extension will allow Trader Joe's to preserve its rights to object and/or seek adjudicative relief while Trader Joe's evaluates the Subpoena and investigates sources of potentially responsive documents. Without an extension, Trader Joe's will need to file an immediate motion to quash or limit the Subpoena to preserve its rights to assert any objections it may have. Conversely, an extension will also allow counsel for Trader Joe's and the FTC to further meet and confer regarding the scope of the Subpoena and negotiate the content of Trader Joe's response, potentially obviating the need for any such motion practice in the future. FTC Counsel has indicated that it does not oppose this motion.<sup>1</sup>

Accordingly, Trader Joe's respectfully requests that this unopposed motion to extend the time to file a motion to quash or limit the Subpoena be granted and that Trader Joe's be given until April 26, 2024, to file any such motion. A proposed order granting the requested relief is attached hereto as Exhibit A.

---

<sup>1</sup> Trader Joe's recognizes that additional time beyond the requested extension may be required to resolve the meet and confer process and respond to the Subpoena or otherwise move for relief from the Subpoena as necessary. Therefore, Trader Joe's reserves all rights to request additional extensions of the time to seek relief from or respond to the Subpoena as necessary in the future.

PUBLIC

Dated: April 12, 2024

O'MELVENY & MYERS LLP

By: /s/ Dawn Sestito  
Dawn Sestito

DAWN SESTITO  
dsestito@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407

Attorneys for Non-Party  
Trader Joe's Company

**CERTIFICATE OF SERVICE AND ELECTRONIC FILING**

I hereby certify that on April 12, 2024, a true and correct copy of Trader Joe's Company's foregoing Unopposed Motion to Extend the Time to Move to Quash or Limit the Subpoena and the accompanying proposed order were filed electronically with the Federal Trade Commission using the Commission's E-Filing System, and a notification of such filing with a courtesy copy of the foregoing documents was sent by email to:

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N. W., Rm. H-110  
Washington, D.C. 20580

I also hereby certify that on April 12, 2024, I caused a true and correct PDF copy of the foregoing documents to be served by email to:

Charles Dickinson  
James H. Weingarten  
Emily Blackburn  
Paul Frangie  
Laura Hall  
Janet Kim  
Kenneth A. Libby  
Eric Olson  
Rohan Pai  
Harris Rothman  
Albert Teng  
Elizabeth Arens  
Jacob Hamburger  
Joshua Smith  
Katherine Bies  
Lily E. Hough  
Katharine Drummonds

PUBLIC

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
cdickinson@ftc.gov  
jweingarten@ftc.gov  
eblackburn@ftc.gov  
pfrangie@ftc.gov  
lhall1@ftc.gov  
jkim3@ftc.gov  
klibby@ftc.gov  
eolson@ftc.gov  
rpai@ftc.gov  
hrothman@ftc.gov  
ateng@ftc.gov  
earens@ftc.gov  
jhamburger1@ftc.gov  
jsmith3@ftc.gov  
kbies@ftc.gov  
lthough@ftc.gov  
kdrummonds@ftc.gov

*Complaint Counsel*

Michael B. Bernstein  
Matthew Wolf  
Sonia Pfaffenroth  
Joshua Davis  
Michael Kientzle  
Jason Ewart  
Yasmine Harik  
Christina Cleveland  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Ave, NW  
Washington, DC 20001  
Telephone: (202) 942-5227  
michael.b.bernstein@arnoldporter.com  
matthew.wolf@arnoldporter.com  
sonia.pfaffenroth@arnoldporter.com  
joshua.davis@arnoldporter.com  
michael.kientzle@arnoldporter.com  
jason.ewart@arnoldporter.com  
yasmine.harik@arnoldporter.com  
John Holler  
Arnold & Porter Kaye Scholer LLP  
250 West 55th Street

PUBLIC

New York, NY 10019  
Telephone: (212) 836-7739  
john.holler@arnoldporter.com

Mark Perry  
Luke Sullivan  
Weil, Gotshal & Manges LLP  
2001 M Street, NW, Suite 600  
Washington, DC 20036  
Telephone: (202) 682-7511  
mark.perry@weil.com  
luke.sullivan@weil.com

Luna Barrington  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8421  
luna.barrington@weil.com

Bambo Obaro  
Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3083  
bambo.obaro@weil.com

*Counsel for The Kroger Company*

Edward Hassi  
Debevoise & Plimpton LLP  
801 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: (202) 383-8135  
thassi@debevoise.com

Michael Schaper  
Shannon R. Selden  
J. Robert Abraham  
Natascha Born  
Jaime Freilich-Fried  
Marieugenia Cardenas  
Tom E. Buckley  
Heather T. Mehler  
Marie Ventimiglia  
Debevoise & Plimpton LLP

PUBLIC

66 Hudson Boulevard  
New York, NY 10001  
Telephone: (212) 909-6737  
mschaper@debevoise.com  
srselden@debevoise.com  
jrabraham@debevoise.com  
nborn@debevoise.com  
jmfried@debevoise.com  
mcardena@debevoise.com  
tebuckley@debevoise.com  
htmehler@debevoise.com  
msventim@debevoise.com

Mike Cowie  
James Fishkin  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 261-3339  
mike.cowie@dechert.com  
james.fishkin@dechert.com

Thomas Miller  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104  
Telephone: (215) 994-2906  
thomas.miller@dechert.com

George L. Paul  
White & Case LLP  
701 13th Street, NW  
Washington, DC 20005  
Telephone: (202) 626-3656  
gpaul@whitecase.com

*Counsel for Albertsons Companies, Inc.*

PUBLIC

Dated: April 12, 2024

O'MELVENY & MYERS LLP

By: /s/ Dawn Sestito  
Dawn Sestito

DAWN SESTITO  
dsestito@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street  
18<sup>th</sup> Floor  
Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407

Attorneys for Non-Party  
Trader Joe's Company



PUBLIC

**EXHIBIT A**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**The Kroger Company, and  
Albertsons Companies, Inc.**

**DOCKET NO. 9428**

**[PROPOSED] ORDER GRANTING TRADER JOE’S COMPANY’S UNOPPOSED  
MOTION TO EXTEND THE TIME TO MOVE TO QUASH OR LIMIT SUBPOENA**

Before the Administrative Law Judge is the Unopposed Motion to Extend the Time to File a Motion to Quash, or in the alternative to Limit the Subpoena for Production of Documents (“Subpoena”) that the Federal Trade Commission (“FTC”) Complaint Counsel served on non-party Trader Joe’s Company (“Trader Joe’s”) on or about April 2, 2024. Trader Joe’s requests an extension to through and including April 26, 2024, to file any such motion to quash and/or limit, or to otherwise serve objections to the Subpoena. Having considered the motion, and the fact that it is unopposed by FTC Complaint Counsel, this Court finds that the motion should be, and hereby is, GRANTED.

IT IS THEREFORE ORDERED that the deadline for Trader Joe’s to file any Motion to Quash and/or Limit the Subpoena is extended to through and including April 26, 2024.

---

D. Michael Chappell  
Chief Administrative Law Judge

Date: \_\_\_\_\_, 2024