

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

In the Matter of

THE KROGER COMPANY a
corporation,

and

ALBERTSONS COMPANIES, INC.,
a corporation,

Respondents.

Docket No. 9428

**NON-PARTY
UNITED FOOD & COMMERCIAL WORKERS LOCAL 555'S
UNOPPOSED MOTION TO FURTHER EXTEND THE TIME
TO MOVE TO QUASH OR LIMIT SUBPOENA**

Non-party United Food & Commercial Workers Local 555 (“Local 555”), 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 further extend its time to move to quash or limit the Subpoena for Production of Documentary Material (“Subpoena”) issued by the FTC in the above-captioned proceeding on April 18, 2024.

By order dated April 30, 2024, the time for Local 555 to file a motion to quash or limit the Subpoena was extended to May 10, 2024.

Local 555 now 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 further extended by fourteen (14) days from May 10, 2024 to May 24, 2024.

Subpoena instruction number 13 requires Local 555 to “set forth the basis for [Local 555’s] objection and respond to all parts of the request to which [Local 555] 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). Local 555’s current deadline to object and/or move to limit or quash the subpoena is May 10, 2024.

Counsel for Local 555 and the FTC met and conferred by telephone conference on May 9, 2024. During the conference, Counsel for Local 555 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 Local 555 additional time necessary to continue investigating the Subpoena and preparing its initial responses. Counsel for the FTC informed Local 555’s counsel that the FTC will not oppose this motion for a fourteen (14) day extension of Local 555’s deadline to object or otherwise move to limit or quash the subpoena.

Granting this extension will allow Local 555 to preserve its rights to object and/or seek adjudicative relief while Local 555 evaluates the Subpoena and investigates sources of potentially responsive documents. Without an extension, Local 555 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 Local 555 and the FTC to further meet and confer regarding the scope of the Subpoena and negotiate the

PUBLIC

content of Local 555'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.¹

Accordingly, Local 555 respectfully requests that this unopposed motion to extend the time to file a motion to quash or limit the Subpoena be granted and that Local 555 be given until May 24, 2024, to file any such motion. A proposed order granting the requested relief is attached hereto.

DATED May 9, 2024

MCDERMOTT WEAVER
CONNELLY CLIFFORD LLP

By: /s/ Ciaran P.A. Connelly

James T. McDermott
jmcdermott@mwcc.law
Ciaran P.A. Connelly
cconnelly@mwcc.law
1000 SW Broadway, Suite 960
Portland, Oregon 97205
(503) 208-6848

*Attorneys for Non-Party United Food & Commercial
Workers Local 555*

¹ Local 555 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, Local 555 reserves all rights to request additional extensions of the time to seek relief from or respond to the Subpoena as necessary in the future.

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I hereby certify that on May 9, 2024, a true and correct copy of the foregoing documents 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:

The Honorable April Tabor
Secretary Federal Trade Commission
600 Pennsylvania Ave., N.W.
Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Rm. H-110
Washington, DC 20580
oalj@ftc.gov

I also hereby certify that on May 9, 2024, I caused a true and correct PDF copy of the foregoing documents to be served by email to:

James H. Weingarten or designee
U.S. Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-3570
jweingarten@ftc.gov

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
Federal Trade Commission

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
New York, NY 10019

PUBLIC

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

Counsel Supporting the Complaint

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

PUBLIC

Debevoise & Plimpton LLP
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.

/s/ Ciaran P.A. Connelly
Ciaran P.A. Connelly
cconnelly@mwcc.law
1000 SW Broadway, Suite 960

PUBLIC

Portland, Oregon 97205
(503) 208-6848

*Attorneys for Non-Party
United Food & Commercial Workers Local 555*

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

In the Matter of

THE KROGER COMPANY a
corporation,

and

ALBERTSONS COMPANIES, INC., a
corporation,

Respondents.

Docket No. 9428

**[PROPOSED] ORDER GRANTING NON-PARTY
UNITED FOOD & COMMERCIAL WORKERS LOCAL 555'S
UNOPPOSED MOTION TO FURTHER EXTEND THE TIME
TO MOVE TO QUASH OR LIMIT SUBPOENA**

Before the Administrative Law Judge is the Unopposed Motion to Further 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 nonparty United Food & Commercial Workers Local 555 (“Local 555”) on or about April 18, 2024. Local 555 requests an extension to and including May 24, 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.

PUBLIC

IT IS THEREFORE ORDERED that the deadline for Local 555 to file any Motion to Quash and/or Limit the Subpoenas is extended to through and including May 24, 2024.

Signed this ____ day of May, 2024

D. Michael Chappell
Chief Administrative Law Judge