

**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 26, 2024, to May 10, 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). On April 12, 2024, Trader Joe’s filed an unopposed motion to extend the time to move to quash or limit the Subpoena and requested that the deadline

be extended until April 26, 2024, which the Court granted. Accordingly, Trader Joe's current deadline to object and/or move to limit or quash the subpoena is April 26, 2024.

Counsel for Trader Joe's and the FTC met and conferred several times, including on April 24, 2024. During the meet-and-confers, Counsel for Trader Joe's and the FTC agreed that an additional 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. 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.¹

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 May 10, 2024, to file any such motion. A proposed order granting the requested relief is attached hereto as Exhibit A.

¹ 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 25, 2024

O'MELVENY & MYERS LLP

By: /s/ Dawn Sestito
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CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I hereby certify that on April 25, 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:

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Washington, DC 20580
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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 25, 2024, I caused a true and correct PDF copy of the foregoing documents to be served by email to:

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PUBLIC

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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 May 10, 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 May 10, 2024.

D. Michael Chappell
Chief Administrative Law Judge

Date: _____, 2024