

**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 BJ’S WHOLESALE CLUB, INC.’S UNOPPOSED MOTION TO EXTEND
THE TIME TO MOVE TO QUASH OR LIMIT SUBPOENA**

Non-party BJ’s Wholesale Club, Inc. (“BJ’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 to quash or limit the Subpoena for Production of Documentary Material (“Subpoena”) issued by the FTC in the above-captioned proceeding on April 15, 2024. Specifically, BJ’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 25, 2024, to May 9, 2024.

Subpoena instruction number 13 requires BJ’s to “set forth the basis for [BJ’s] objection and respond to all parts of the request to which [BJ’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, BJ's current deadline to object and/or move to limit or quash the subpoena is April 25, 2024.

Counsel for BJ's and the FTC met and conferred by video conference on April 22, 2024. During the conference, Counsel for BJ'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 BJ's additional time necessary to continue investigating the Subpoena and preparing its initial responses. BJ's indicated a willingness to produce responsive documents on a rolling basis, subject to and without waiving its objections. Subsequently, on April 23, 2024, counsel for the FTC informed BJ's counsel that the FTC will not oppose this motion for a fourteen (14) day extension of BJ's deadline to object or otherwise move to limit or quash the subpoena.

Granting this extension will allow BJ's to preserve its rights to object and/or seek adjudicative relief while BJ's evaluates the Subpoena and investigates sources of potentially responsive documents. Without an extension, BJ'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 BJ's and the FTC to further meet and confer regarding the scope of the Subpoena and negotiate the content of BJ'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, BJ'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 BJ's be given until May 9, 2024, to file any such motion. A proposed order granting the requested relief is attached hereto.

¹ BJ'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, BJ'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
Washington, D.C.

Respectfully submitted,

GOODWIN PROCTER LLP

/s/ Elliot Silver

Elliot Silver
1900 N Street NW
Washington, DC 20036
Telephone: (202) 346-4373
esilver@goodwinlaw.com

Arman Oruc
1900 N Street NW
Washington, DC 20036
Telephone: (213) 426-2645
aoruc@goodwinlaw.com

*Counsel to Subpoena Recipient
BJ's Wholesale Club, Inc.*

PUBLIC

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I hereby certify that on April 25, 2024, a true and correct copy of BJ's Wholesale Club, Inc.'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 forgoing 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 25, 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
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
llhall1@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
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
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 25, 2024
Washington, D.C.

/s/ Elliot Silver

Elliot Silver
Goodwin Procter LLP
1900 N Street NW
Washington, DC 20036
Telephone: (202) 346-4373
esilver@goodwinlaw.com

*Counsel to Subpoena Recipient
BJ's Wholesale Club, Inc.*

PUBLIC

**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 BJ'S WHOLESALE CLUB, INC.'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 BJ’s Wholesale Club, Inc. (“BJ’s”) on or about April 15, 2024. BJ’s requests an extension to and including May 9, 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 BJ’s to file any Motion to Quash and/or Limit the Subpoenas is extended to through and including May 9, 2024.

Signed this __ day of April, 2024.

D. Michael Chappell
Chief Administrative Law Judge