

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

_____)	
In the Matter of)	
)	
The Kroger Company,)	
)	Docket No. 9428
and)	
)	
Albertsons Companies, Inc.,)	
)	
Respondents.)	
_____)	

ORDER GRANTING MOTION TO MODIFY IN PART THE MAY 16 ORDER

By Order issued May 16, 2024, Respondents The Kroger Company (“Kroger”) and Albertsons Companies, Inc. (“Albertsons”) were required to produce responsive, non-privileged Negotiation Documents,¹ together with a privilege log in compliance with Instruction I9 of Complaint Counsel’s First Request for Production of Documents to Kroger and to Albertsons and Rule 3.38A(a), no later than May 17, 2024 (“May 16 Order”).

On May 16, 2024, Respondents filed a motion to modify the May 16 Order to permit Respondents to produce a privilege log by May 24, 2024, which Complaint Counsel opposed. Respondents state that they will be producing responsive non-privileged Negotiation Documents on May 17, 2024, but that it is not practically possible for Respondents to produce the privilege logs by that date.

Upon consideration of the motion and opposition thereto, Respondents’ Motion to Modify in Part the May 16 Order is GRANTED. Respondents are hereby ORDERED to produce a privilege log by May 24, 2024.

ORDERED:	
	D. Michael Chappell
	Chief Administrative Law Judge

Date: May 17, 2024

¹ Per the May 16, 2024 Order, “Negotiation Documents” are: (1) communications between Respondents and C&S Wholesale Grocers LLC, whether through businesspeople or counsel, in which the composition of the divestiture asset package was negotiated; (2) drafts of the Amended Divestiture Agreement exchanged between the negotiating parties; and (3) each of Respondents’ and C&S’s internal analyses of the strengths and weaknesses of potential divestiture packages with respect to post-transaction operation of their respective businesses.