

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

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

ORDER EXTENDING DEADLINE FOR RULING

On May 16, 2024, Complaint Counsel filed a motion seeking to require Respondents to comply with Federal Trade Commission (“FTC”) Rule 3.31A(b) by amending their expert witness list to identify only five experts (“May 16 Motion”). That rule sets forth:

No party may call an expert witness at the hearing unless he or she has been listed and has provided reports as required by this section. Each side will be limited to calling at the evidentiary hearing 5 expert witnesses, including any rebuttal or surrebuttal expert witnesses. A party may file a motion seeking leave to call additional expert witnesses due to extraordinary circumstances.

16 C.F.R. § 3.31A(b).

Respondents’ expert witness list, served on May 10, 2024, identified six expert witnesses. Complaint Counsel argues that Respondents’ identification of six expert witnesses violates Rule 3.31A(b)’s five expert witness limit and that Respondents were required to move for leave first.

In their opposition to the May 16 Motion, filed May 23, 2024, Respondents argue that while Rule 3.31A(b) limits the number of experts that may be “call[ed] at the evidentiary hearing” to testify, it does not limit the number of experts that may be identified on an expert witness list.

On May 28, 2024, Respondents filed a motion for leave to call six expert witnesses to testify at the evidentiary hearing pursuant to Rule 3.31A(b) (“May 28 Motion”). Complaint Counsel’s opposition to that motion is due by June 10, 2024.

Pursuant to FTC Rule 3.22(a), a ruling on the May 16 Motion is due by June 6, 2024 and, depending on when Complaint Counsel files its opposition, a ruling on the May 28 Motion would be due around June 24, 2024.

FTC Rule 4.3(b) authorizes the Administrative Law Judge, for good cause, to extend the deadline to issue a ruling on a motion. To facilitate consideration of the issues raised by the May 16 Motion in conjunction with issues raised by the May 28 Motion, there is good cause to extend the deadline for issuance of the ruling on the May 16 Motion to a date later than June 6, 2024, to provide appropriate time for filing, consideration of, and ruling on the May 28 Motion. Accordingly, the deadline for ruling on the May 16 Motion is hereby extended to the date upon which a ruling is issued on the May 28 Motion.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: June 6, 2024