



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 14, 2022

Lyuba Goltser
Weil, Gotshal & Manges LLP

Re: The Kroger Co. (the "Company")
Incoming letter dated April 12, 2022

Dear Ms. Goltser:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by The Sisters of St. Francis of Philadelphia et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its February 22, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Tom McCaney
Sisters of St. Francis of Philadelphia

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Lyuba Goltser
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February 22, 2022

VIA E-MAIL (shareholderproposals@sec.gov)
U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: The Kroger Co. – 2022 Annual Meeting Omission of Shareholder Proposal of The Sisters of St. Francis of Philadelphia Pursuant to Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is submitted on behalf of our client, The Kroger Co. (the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company has received the shareholder proposal and related correspondence attached as Exhibit A hereto (the “Proposal”) submitted by the Sisters of St. Francis of Philadelphia, Providence St. Joseph Health, and PeaceHealth, as co-filers (together, the “Proponents”) for inclusion in the Company’s form of proxy statement and other proxy materials (together, the “Proxy Materials”) for its 2022 annual meeting of shareholders, scheduled to be held on June 23, 2022 (the “2022 Annual Meeting”). In reliance on Rule 14a-8 under the Exchange Act, the Company intends to omit the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(7) (ordinary business operations).

We respectfully request the concurrence of the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that no enforcement action will be recommended if the Company omits the Proposal from the Proxy Materials. Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than eighty (80) calendar days before the Company intends to file the Proxy Materials in definitive form with the Commission. The Company intends to file and make available to shareholders its Proxy Materials for the 2022 Annual Meeting on or about May 13, 2022. The Company intends to file definitive copies of the Proxy Materials with the Commission at the same time the Proxy Materials are first made available to shareholders.

Pursuant to Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company has submitted this letter and the related exhibits to the Staff via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this letter and

related exhibits is being simultaneously provided by email on this date to the Proponents informing it of the Company's intention to exclude the Proposal from the Proxy Materials.

The Company agrees to promptly forward to the Proponents any Staff response to the Company's no-action request that the Staff transmits to the Company by mail, email and/or facsimile. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, the Company hereby informs the Proponents that the undersigned on behalf of the Company is entitled to receive from the Proponents a concurrent copy of any additional correspondence submitted to the Commission or the Staff relating to the Proposal.

I. The Proposal

The Company received the Proposal, accompanied by a cover letter from each of the Proponents, via email on January 10, 2022.

The Proposal states:

Resolved: shareholders of Kroger ask the company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of PSL that can be used after working at Kroger for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.

The cover letter and the Proposal, along with a seven paragraph statement in support of the Proposal (the "Supporting Statement"), are attached to this letter as Exhibit A.

II. Basis for Exclusion

The Proposal May be Excluded Under Rule 14a-8(i)(7) Because the Proposal Relates to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) permits the omission of a shareholder proposal dealing with matters relating to a company's "ordinary business operations" and does not focus on a significant policy issue. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Release No. 34-40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission identified the two primary considerations underlying the general policy for the ordinary business exclusion. The first consideration relates to the subject matter of the proposal. The Commission stated that, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* Examples of the tasks cited by the

Commission include “management of the workforce.” *Id.* The second consideration relates to the “degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.*; *see also* Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). Both considerations are rooted in a fundamental “corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” 1998 Release (citing Release No. 12999 (Nov. 22, 1976)).

We respectfully advise the Staff that it has concurred with the exclusion of a substantially similar proposal relating to the production of a report on the feasibility of adopting paid sick leave as a standard employee benefit, which was submitted to the Company and several others by various proponents. As we discuss further below, the Staff concurred that Rule 14a-8(i)(7) provided a basis to exclude the proposal as relating to the Company’s ordinary business operations (*See* The Kroger Co. (Feb. 22, 2021); Kohl’s Corp. (Feb. 19, 2021) (“Kohl’s Corp.”); CVS Health Corp. (Feb. 19, 2021); Walmart Inc. (Feb. 1, 2021) (hereinafter referred to as the “Prior Paid Sick Leave Proposals”).

While the Proposal covers the same subject matter of paid sick leave addressed by the Prior Paid Sick Leave Proposals, it goes significantly further by requesting the implementation of a specific paid sick leave policy, a request that squarely falls within the responsibility of management. Accordingly, and as further discussed below, the Company believes that the established precedents set forth below support the conclusion that the Proposal relates to ordinary business matters, and therefore is excludable from its Proxy Materials under Rule 14a-8(i)(7).

a. *The Proposal Relates to the General Compensation and Benefits of Associates*

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because a request that the Company adopt a new policy to specifically provide paid sick leave time as a standard employee benefit directly relates to the Company’s general employee compensation policies and practices, a core component of the Company’s ordinary business as a large employer. The Staff consistently has concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the proposal relates to general employee compensation rather than compensation of senior executive officers and directors. Staff Legal Bulletin No. 14A (July 12, 2002)¹ (“SLB 14A”). For example, in *Ford Motor Co.* (avail. Jan. 9, 2008) (“Ford 2008”), the proposal requested that the company stop awarding all stock options – not just awards to senior executive officers and directors, but awards to all company employees. Accordingly, the Staff concurred that the company could “exclude the proposal under [R]ule 14a-8(i)(7), as relating to Ford’s ordinary business operations (i.e., general compensation matters).” *See also* *Apple, Inc.* (avail. Nov. 16, 2015) (allowing the exclusion of a proposal asking Apple’s compensation committee to adopt new compensation

¹ In SLB 14A, the Staff stated that “[s]ince 1992, we have applied a bright-line analysis to proposals concerning equity or cash compensation: We agree with the view of companies that they may exclude proposals that relate to general employee compensation matters in reliance on Rule 14a-8(i)(7)” On the other hand, the Staff stated that it did “not agree with the view of companies that they may exclude proposals that concern only senior executive and director compensation in reliance on [R]ule 14a-8(i)(7).”

principles responsive to the U.S.’s “general economy, such as unemployment working hour[s] and wage inequality”); *Yum! Brands, Inc.* (avail. Feb. 24, 2015) (concurring with the exclusion of a proposal requesting a report on the company’s executive compensation policies, where the proposal suggested that the report include a comparison of senior executive compensation and “our store employees’ median wage”); *ENGlobal Corp.* (avail. Mar. 28, 2012) (concurring with the exclusion of a proposal that sought to amend the company’s equity incentive plan, noting that “the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); *International Business Machines Corp. (Boulain)* (avail. Jan. 22, 2009) (concurring with the exclusion of a proposal requesting that no employee above a certain management level receive a salary raise in any year in which at least two-thirds of all company employees did not receive a three percent salary raise); *Amazon.com, Inc.* (avail. Mar. 7, 2005) (concurring with the exclusion of a proposal requesting that the board adopt a new policy on equity compensation and cancel an existing equity compensation plan that potentially affected the general company workforce); *Capital Cities Communications, Inc.* (avail. Mar. 14, 1984) (concurring with the exclusion of a proposal requesting a written report of the company’s policies on, among other matters, wages, benefits, pensions and sick leave, as “relating to the conduct of the company’s ordinary business operations (i.e., employee compensation and employee relations)”).

Similarly, the Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) that related to various employee benefits, including paid sick leave. In *Exelon Corp.* (avail. Feb. 21, 2007), the proposal requested the implementation of rules and regulations that would forbid the company’s executives from establishing incentive bonuses requiring the reduction of retiree benefits in order to meet such incentive bonuses. The Staff concurred with the exclusion noting that the proposal “relat[es] to [the company’s] ordinary business operations (i.e., general employee benefits).” See also *ConocoPhillips* (avail. Feb. 2, 2005) (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); *International Business Machines Corp. (Jaracz)* (avail. Jan. 2, 2001) (concurring with the exclusion of a proposal requesting cost of living allowances to the company’s retiree pensions as ordinary business operations relating to employee benefits).

Further, the Staff has also consistently recognized that shareholder proposals addressing minimum wage concerns are excludable as relating to ordinary business matters. For example, in *Amazon.com, Inc.* (avail. Mar. 1, 2017), the Staff concurred with the exclusion of a proposal requesting adoption and publication of principles for minimum wage reform, noting that “the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters” despite the proponent’s assertion that minimum wage was a significant policy issue. See also *CVS Health Corp.* (avail. Mar. 1, 2017) (same); *The Home Depot, Inc.* (avail. Mar. 1, 2017) (same); *The TJX Companies, Inc.* (avail. Mar. 1, 2017) (same). As in the proposals relating to minimum wage, the Proposal addresses the Company’s paid sick leave policy, which is related to associates’ overall compensation. Just as minimum wage is an ordinary employee compensation matter that does not transcend day-to-day business matters, paid sick leave, a specific type of

compensation that may be offered to associates, is squarely in the realm of ordinary business matters.

Here, consistent with the precedents discussed above, the Proposal focuses on the compensation and benefits of the Company's general workforce, including the importance of paid sick leave for all workers and that a paid sick leave helps workers counter the "risk [to] their economic stability" when missing work due to illness. The Company's policies concerning paid leave for its associates, including what compensation is allocated to its associates for absences, are part of Company management's determinations with respect to the overall associate benefits and compensation packages. The Company had over 420,000 associates across the United States as of the end of the 2021 fiscal year. Determinations regarding the types of benefits and the amounts of compensation—including with regard to paid leave and paid sick leave—for the numerous associates across the Company's large and complex organization are a fundamental responsibility of the Company's management, and moreover are among those that must be and are collectively bargained with the scores of labor unions that represent the approximately two-thirds of Company associates who (in total) belong to bargaining units covered by over three hundred collective bargaining agreements. The Company's Total Rewards structure is complex and multi-faceted and across its workforce consist of elements of compensation and benefits including competitive hourly wage and salary rates, overtime practices, incentive based cash compensation, vacation, paid company holidays, paid time off, defined contribution and defined benefit retirement programs, medical, dental, vision, and prescription health care coverage, transgender health services, support of mental and emotional health needs, short and long term disability, leaves of absence, bereavement leave, equity, tuition reimbursement, financial planning services, associate discounts on Our Brands products, and discounts on various insurance products, fitness, travel and many other items. Such determinations should not be subject to shareholder oversight because shareholders are not in a position to determine the appropriateness of associates' wages and benefits in the context of the local, regional and national labor markets; the circumstances of the Company's business; the dynamics of labor-management relations; the roles that various Company associates perform; associates' overall compensation packages; and the relative value or importance to associates of various elements of compensation and benefits. Because the Company's approach to paid leave and associate absences relates to the Company's workforce compensation decisions generally, the Proposal's request addresses matters relating to the day-to-day operation of the Company's business, which shareholders are not in a position to effectively vote upon. Just as in *Ford 2008*, *International Business Machines Corp. (Boulain)*, and *Exelon*, where the proposals related to a particular element of general employee compensation (i.e., stock options, salary raises, and incentive bonuses, respectively) and how the company should alter its compensation practices to address such element, here too the Proposal relates to a particular element of general associate compensation—paid sick leave—and requests that the Company expand its existing policies to adopt a paid sick leave policy applicable to all associates, as prescribed by the Proposal and on the terms set forth therein, as a standard benefit.

The Proposal relates to ordinary business matters of the Company, namely the decision of what compensation and benefits should be provided to associates. These matters are fundamental

to management's ability to run the Company on a day-to-day basis and are not suitable for shareholder oversight; thus, the Proposal is excludable under Rule 14a-8(i)(7).

b. *The Proposal is Excludable Because It Relates To the Company's Management Of Its Workforce*

The Proposal asks the Company "to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of [paid sick leave] that can be used after working at Kroger for a reasonable probationary period." Through discussion of this issue, the Proposal and Supporting Statement focus on the way the Company compensates, manages, motivates and engages with its associates, all of which are core components of managing a large, national workforce on a day-to-day basis. The Proposal's focus on the Company's ordinary business matters, such as (i) "the initial cost [being] relatively low" to provide a paid sick leave policy for all associates, (ii) that a "public [paid sick leave] policy would help make the future operating environment more equitable and mitigate reputational, financial and regulatory risks to [the Company]," and (iii) that a "lack of permanent [paid sick leave] could pose reputational risk given [the Company's] statement that 'our people are our most important asset,'" are each examples of considerations that are wholly within the scope of the day-to-day business and workforce management of the Company.

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to the company's management of its workforce. The Commission recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "employee health benefits, *general compensation issues not focused on senior executives*, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation" (emphasis added).

Consistent with the 1998 Release, the Staff has permitted the exclusion of a broad range of proposals relating to a company's management of its workforce under Rule 14a-8(i)(7). For example, in *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited workhour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect. The Staff noted that the foregoing was excludable as "relating, in part, to Intel's ordinary business operations (i.e. management of the workforce)." See also *Amazon.com, Inc.* (avail. Apr. 1, 2020, recon. denied Apr. 9, 2020) (concurring with the exclusion of a proposal requesting a report on steps the company has taken to reduce the risk of accidents because "the proposal focuses on workplace accident prevention, an ordinary business matter"); *PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor

contracts or customer relations, as relating to the company's ordinary business operations); *Apple, Inc.* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal asking the company's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour and wage inequality," as relating to "compensation that may be paid to employees generally"); *Bank of America Corp.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting that a company policy be amended to include "protection to engage in free speech outside the job context, and to participate freely in the political process without fear of discrimination or other repercussions on the job"); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it "relates to procedures for hiring and training employees" and "[p]roposals concerning a company's management of its workforce are generally excludable under Rule 14a-8(i)(7)"); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company's reduction-in-force review process, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)"); *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring with the exclusion of a proposal requesting that the company implement a "high-performance" workplace based on policies of workplace democracy and worker participation).

Notably, the Staff has recently concurred with the exclusion of a proposal under Rule 14a-8(i)(7) that related to policies for paid family leave at Walmart Inc. In *Walmart Inc.* (avail. Apr. 8, 2019) ("Walmart"), the Staff concurred with the exclusion of a proposal requesting that Walmart Inc.'s board of directors evaluate the risk of discrimination that may result from the company's policies and practices of hourly workers taking absences from work for personal or family illness because the proposal related to "management of [its] workforce." Specifically, the recitals in Walmart stated that "[p]aid sick leave is a fundamental component of economic security and stability for workers," discussed the benefits (including medical and health) of providing paid sick leave, and referenced legislation in support of paid sick leave. Additionally, the recitals took issue with Walmart, Inc.'s paid sick leave practice and expressed concern for workers with serious medical conditions, requiring disability-related absences, and needing to take time off to care for family members. In particular, although the proponent argued that concerns regarding paid sick leave constituted a significant policy issue, the Staff concluded in Walmart that the proposal "does not focus on an issue that transcends ordinary business."

Similarly, the Proposal and Supporting Statement address the benefits of providing paid sick leave, the effects of not providing such benefits, and the prominence of paid sick leave in state and local mandates. The Proposal and Supporting Statement also discuss the exacerbating effect of the COVID-19 pandemic on the topic, with reference to the Company's actions in response to the pandemic, including certain changes to the Company's paid sick leave policy that the Company had implemented during the COVID-19 pandemic. As in *Walmart*, the Proposal is properly excludable under the ordinary business exception as relating to management of the Company's workforce. See also *Pilgrim's Pride Corp.* (avail. Feb. 25, 2016) (concurring with the exclusion

of a proposal requesting a report describing the company's policies, practices, performances and improvement targets related to occupational health and safety, as "relat[ing] to workplace safety").

Like *Walmart* and the other precedents discussed above, the Proposal seeks to dictate the compensation and benefits provided by Kroger to its workforce by imposing the adoption of a policy to provide for paid sick leave for all associates. The Company's determinations as to how much time the associate can be away from work – whether due to illness or other reasons that require the associate to stay home – and whether to pay associates for such time and under what circumstances, fall squarely within ordinary business matters best left to the Company's management. Moreover, the Supporting Statement refers to the interests of the Company's workers, including their compensation. Management's decisions related to the compensation and benefits of a diverse national workforce are multifaceted, complex, and based on a range of factors, which certainly include the interests of the Company's associates and include as to a majority of them the requirement that such terms and conditions be collectively bargained with the scores of labor unions across the country that represent them, and are "ordinary business" decisions that have consistently been found to be excludable.

Policies and practices relating to associates' absences from work due to illness or to care for a family member are elements of the Company's ordinary business of managing its workforce and the Company's relationship with its associates. The Proposal, therefore, is excludable from the Company's Proxy Materials under Rule 14a-8(i)(7), as relating to the management of the Company's workforce.

c. The Proposal Does Not Address a Significant Policy Issue That Transcends the Company's Ordinary Business Operations

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release also distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." 1998 Release (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In SLB 14L, the Staff stated that it will "focus on the social policy significance of the issue that is the subject of the shareholder proposal" and that "in making this determination, the [S]taff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." As respectfully noted above, in the Prior Paid Sick Leave Proposals, the Staff has consistently declined to identify paid sick leave as a significant policy issue for purposes of Rule 14a-8(i)(7).

Moreover, as Staff precedent has established, the mere mention of a significant policy issue in a proposal without defining the scope of actions addressed in a proposal and with only tangential implications for the issues that constitute the central focus of a proposal, does not transform an

otherwise ordinary business proposal into one that transcends ordinary business. In addition to the Staff's concurrence in the Prior Paid Sick Leave Proposals, see also *CVS Health Corp.*, *supra* (concurring in the exclusion of a proposal to adopt and publish principles for minimum wage reform, "noting that the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters"); *ConocoPhillips (Feb. 2, 2005)* (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); and *International Business Machines Corp. (Jan. 2, 2001)* (concurring with the exclusion of a proposal requesting cost of living allowances to the company's retiree pensions as ordinary business operations relating to employee benefits). In each of these proposals, the Staff determined that a proposal seeking a change in the companies' employee compensation and benefit practices that did not transcend the company's ordinary business operations was excludable under Rule 14a-8(i)(7) because the relationship between the employee and the company was part of the day-to-day operations of the company.

Here, the Proposal asks the Company to adopt a paid sick leave policy for all associates. To date, the Staff has not recognized paid sick leave as a significant policy issue. As described above, the Proposal seeks to impose specific associate compensation and benefits by adopting a paid sick leave policy. While the Supporting Statement notes the effectiveness of state and local paid sick leave mandates and that "[paid sick leave] is a crucial contributor to public health," public prominence of an issue does not render it a significant policy issue for the Company for purposes of Rule 14a-8(i)(7). The Staff expressed a similar reasoning in *Dollar General Corp.* (avail. Mar. 6, 2020) (concurring with the exclusion of a proposal seeking a report on "the use of contractual provision requiring employees of [the company] to arbitrate employment-related claims"). There, the Staff noted that "notwithstanding some references in the supporting statement to potentially important social issues, the [p]roposal as a whole deals with a matter relating to the [c]ompany's ordinary business operations – the overall 'use' of arbitration – and does not focus on any particular policy implication of [its] use at this particular company." The Staff then cited to Staff Legal Bulletin 14K (Oct. 16, 2019) for the proposition that proponents are discouraged from focusing "on the overall significance of the policy issue raised by the proposal, instead of whether the proposal raises a policy issue that transcends the particular company's ordinary business operations." Likewise, references in the Proposal and Supporting Statement to COVID-19, public health, and the importance of paid sick leave do not, in and of themselves, transform a proposal focused on a particular associate benefit into one that transcends the Company's "ordinary business" for purposes of Rule 14a-8(i)(7). Further, the Proposal specifically focuses on offering a paid sick leave policy for associates that does "not expire after a set time or depend upon the existence of a global pandemic" (i.e., extending the benefit indefinitely to other conditions or illnesses), reinforcing the "ordinary business" focus of the Proposal under Rule 14a-8(i)(7).

Further, on numerous occasions, the Staff has concurred with the exclusion of a proposal pursuant to Rule 14a-8(i)(7) that raised public health concerns. For example, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the company's policies, actions and plans to reduce BPA use in its products and set quantitative targets to phase out the use of BPA as relating to the company's ordinary business. See *Ball Corp.* (avail. Feb. 4, 2016). And, in *Amazon.com, Inc.* (avail. Mar. 17, 2016) ("Amazon 2016"), the proposal requested

a report on the company's policy options to reduce potential pollution and public health problems from electronic waste as a result of sales to consumers. Notwithstanding several references to public health and environmental impacts in the proposal, the Staff determined that the proposal "relate[d] to the company's products and services and [did] not focus on a significant policy issue." Here, there are only limited references to public health and the Proposal is primarily focused on the Company adopting a paid sick leave policy as a standard employee benefit. Therefore, the Proposal presents an even more compelling case for exclusion pursuant to Rule 14a-8(i)(7) than the proposals at issue in *Ball Corp.* and *Amazon 2016*. See also *AT&T Inc.* (avail. Dec. 28, 2015) (concurring with the exclusion of a proposal seeking establishment of a program to educate company employees on health matters relating to HIV/AIDS, as relating to an ordinary business matter); *Viacom Inc.* (avail. Dec. 5, 2014) (concurring with the exclusion of a proposal requesting a report on the public health impacts of smoking in all of Viacom's movies as an ordinary business matter relating to "the nature, presentation and content of programming and film production" despite the potential public health concerns).

The Company considers the training, development, compensation and overall treatment of all of its associates as key responsibilities of management and an important focus of board oversight. More specifically, the Company believes that supporting its associates during times of illness or medical uncertainty is an important part of management's responsibility. The Company believes that management has considered the needs of associates and best practices in determining its paid sick leave policy. The Company believes the decisions related to benefit programs and the modifications to those programs fall squarely within the responsibility of management, and that these are considerations that are wholly within the scope of the day-to-day business of the Company. The ongoing impact of the COVID-19 pandemic has reinforced for the Company how decisions related to health, safety and benefits provided to associates are part of the day-to-day, if not minute-to-minute, management of an organization.

As discussed above, the Proposal, requests that the Company adopt a paid sick leave policy for all associates. The Proposal does not focus on a significant policy issue, but rather the compensation and benefits provided to, and the management of, its workforce, which relates to the Company's ordinary business operations and policies for its day-to-day operations and does not present a significant policy issue that "transcend[s] the day to day business matters" of the Company, and is therefore excludable from the Company's Proxy Materials under Rule 14a-8(i)(7).

d. *The Proposal Seeks to Micromanage the Company*

The 1998 Release identified that a proposal could "probe too deeply" where "the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies" thereby seeking to micromanage the Company. The Staff recently reiterated its view and application of this standard of assessing whether a proposal micromanages in Staff Legal Bulletin No. 14J (Oct. 23, 2018). In SLB 14L, when discussing the concept of micromanagement, the Staff stated, "we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Proposal's

intrusion into the Company's employment compensation and benefits policies is an inappropriate attempt to micromanage the Company because decisions involving employment policies implicate a wide variety of different types of considerations and involve "matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release.

As mentioned above, the Company is one of the nation's largest retailers and employs over 420,000 associates who support its operations in over 2,700 supermarkets across 35 U.S. states and the District of Columbia. The relationship between the Company and its associates in multiple and varied jurisdictions constitutes a critical component of its day-to-day management. Decisions concerning employee relations and compensation and benefits matters are multi-faceted, complex and based on a range of factors, and are the subject of a myriad of different state laws. These are fundamental business matters for the Company's management and require a localized understanding of the state and local legal and regulatory considerations and business implications that could result from changes made to workforce policies, specifically as relevant here compensation and benefit policies.

Decisions concerning employee relations and compensation and benefits matters also, in the Company's case, bear directly on the terms and conditions of employment that must be and are collectively bargained with the scores of labor unions that represent hundreds of thousands of Company associates (approximately two-thirds of its associates in total) who belong to bargaining units covered by over three hundred collective bargaining agreements throughout the country. These are fundamental business matters for the Company's management and require an understanding of the business implications that could result from changes made to workforce policies, specifically as relevant here compensation and benefit policies. Given the inherent complexity of the decisions associated with the determination of the breadth of compensation and benefits to offer the Company's associates across the United States, including how much time an associate can be away from work while sick and how much they should be paid during that time, as well as the grasp and application of varying labor relations dynamics and the sophistication required to analyze and act effectively with respect to such activities, the decisions that the Proposal seeks to influence are properly within the discretion of the Company's management and should not be the subject of direct shareholder oversight. Accordingly, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by probing too deeply into matters about which shareholders as a group are not in a position to make an informed judgement, namely the analysis and decision-making with respect to general employee compensation and benefits.

For the reasons discussed above, the Proposal, in asking the Company to adopt a paid sick leave policy, is focused on general associate compensation and workforce management, a topic which, as we respectfully noted above, the SEC has concurred in excluding. The Proposal does not focus on a significant policy issue for purposes of Rule 14a-8(i)(7); rather, the subject matter of the Proposal directly relates to the Company's ordinary business operations and policies concerning the management and compensation of the Company's workforce. Accordingly, and

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
February 22, 2022
Page 12

consistent with the precedents cited above, the Company believes that the Proposal may properly be excluded from its Proxy Materials.

III. Conclusion

For the foregoing reasons, please confirm that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the Proxy Materials.

Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should any additional information be desired in support of the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's Rule 14a-8 response.

If we can provide additional correspondence to address any questions that the Staff may have with respect to this no-action request, please do not hesitate to call me at 212-310-8048 or contact me via email at lyuba.goltser@weil.com.

Very truly yours,

Lyuba Goltser
Partner

Attachments

cc:

Christine Wheatley
Stacey Heiser
The Kroger Co.

Tom McCaney
Sisters of St. Francis of Philadelphia

Joseph Walker
Providence St. Joseph Health

Jeff Seirer
PeaceHealth

EXHIBIT A

Shareholder Proposal and Related Correspondence



THE SISTERS OF ST. FRANCIS OF PHILADELPHIA

January 10, 2022

Via UPS Overnight Delivery

Christine S. Wheatley
Corporate Secretary
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202-1100

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Ms. Wheatley,

The Sisters of St. Francis of Philadelphia is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of The Kroger Company (the "Company") for its 2022 annual meeting of shareholders. The Sisters of St. Francis of Philadelphia is the lead filer for the Proposal and may be joined by other shareholders as co-filers.

The Sisters of St. Francis of Philadelphia has continuously beneficially owned, for at least three years as of the date hereof, at least \$2,000 worth of the Company's common stock. Verification of this ownership is attached. The Sisters of St. Francis of Philadelphia intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

The Sisters of St. Francis of Philadelphia are available to meet with the Company in person or via teleconference on January 25th, 26th, 27th or February 2nd at 10 AM, 12 Noon, or 1 PM Eastern time Any co-filers will either (a) be available on those dates and times or (b) in their submission letters, authorize us to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

I can be contacted at (610) 716-2766 or by email at tmccaney@osfphila.org to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

Tom McCaney
Associate Director, Corporate Social Responsibility

Whereas: More than 26 million people working in the private sector have no access to earned sick time, or “paid sick leave” (PSL), for short-term health needs and preventive care.¹ Working people in the United States face an impossible choice when they are sick: stay home and risk their economic stability or go to work and risk their health and the public’s health.

The vast majority (77 percent) of the lowest earning 10 percent of American employees do not have access to PSL.² 48 percent of Latinx workers and 36 percent of Black workers report having no paid time away from work of any kind.³

As the COVID-19 pandemic has shown, PSL is a crucial contributor to public health, allowing workers who have been exposed to any illness to quarantine. State and local PSL mandates have been shown to reduce the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL, lowering disease and overall absence rates.⁴

Over the years, Kroger has expanded its benefits package to employees, including increased starting wages, free counseling resources, and tuition reimbursement. During the pandemic, Kroger has supported employee health and safety through paid leave for quarantine and confirmed illness, free COVID testing, and access to additional healthcare services.⁵ In its Blueprint for Businesses, Kroger notes the importance of reviewing time off policies to ensure “for everyone’s security and well-being that employees who are ill feel comfortable staying home without fear of losing pay.”⁶

However, Kroger does not disclose any details on a paid time off (PTO) policy, including the average number of PTO hours earned, who is eligible and any probationary period before eligibility, or a carryover option.⁷ A lack of permanent PSL could pose reputational risk given their statement that “our people are our most important asset.”⁸

Kroger could benefit from all employees having permanent access to PSL. The initial cost is relatively low – providing PSL is estimated to cost employers an average of 2.7 cents per hour of paid work⁹ – and PSL both increases productivity¹⁰ and reduces turnover, which in turn reduces costs associated with hiring.¹¹ This is particularly important for lower-wage industries like retail where turnover is highest. Proactively creating and disclosing a permanent PSL policy would also address inconsistencies between labor markets since only 14 states have adopted PSL laws.¹²

¹ <https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf>

² <https://www.wsj.com/articles/companies-expand-paid-sick-time-leave-11632413861>

³ <https://www.bls.gov/news.release/leave.t01.htm>

⁴ <https://voxeu.org/article/pros-and-cons-sick-pay>

⁵ <https://corporate.target.com/about/purpose-history/our-commitments/target-coronavirus-hub>

⁶ <https://www.thekrogerco.com/wp-content/uploads/2020/04/Krogers-Blueprint-for-Businesses.pdf>

⁷ <https://www.thekrogerco.com/careers/life-at-kroger/>

⁸ <https://www.thekrogerco.com/wp-content/uploads/2021/07/Kroger-2021-ESG-Report.pdf>

⁹ https://www.nber.org/system/files/working_papers/w26832/w26832.pdf

¹⁰ <https://voxeu.org/article/pros-and-cons-sick-pay>

¹¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649342/>

¹² <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

We believe adopting a comprehensive, permanent, and public PSL policy would help make the future operating environment more equitable and mitigate reputational, financial, and regulatory risk to Kroger.

Resolved: shareholders of Kroger ask the company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of PSL that can be used after working at Kroger for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.

The Northern Trust Company
50 South LaSalle Street
Chicago, Illinois 60603
312-630-6000



January 10, 2022

Christine S. Wheatley
Corporate Secretary
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202-1100

Re: Shareholder proposal submitted by the Sisters of St. Francis of Philadelphia

Dear Christine:

I write concerning a shareholder proposal (the "Proposal") submitted to Kroger Company (the "Company") by the Sisters of St. Francis of Philadelphia.

"As of January 10, 2022, the Sisters of St. Francis of Philadelphia beneficially owned, and had beneficially owned continuously for at least three years, shares of the Company's common stock worth at least \$2,000 (the "Shares")."

Northern Trust has acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at 312-444-5195 or via email at ss20@ntrs.com

Sincerely,

Sanjay K. Singhal

Sanjay K. Singhal
Vice President
Northern Trust



January 12, 2022

The Kroger Co.
Kristine Wheatley, Corporate Secretary
1014 Vine Street
Cincinnati, Ohio 45202-1100
Via email: christine.wheatley@kroger.com

Dear Ms. Wheatley,

As shareholders of The Kroger, Co., Providence St. Joseph Health calls on the Company to adopt and disclose a policy on paid sick leave for its employees.

Providence St. Joseph Health is submitting the attached proposal, pursuant to the Securities and Exchange Commission's Rule 14a-8, to be included in the proxy statement of The Kroger Co. for its 2022 annual meeting of shareholders. Providence St. Joseph Health is co-filing the proposal with lead filer, the Sisters of St. Francis of Philadelphia. In its submission letter, the lead filer will provide dates and times of ability to meet. We designate the lead filer to meet initially with the Company but may join the meeting subject to our availability.

Providence St. Joseph Health has continuously beneficially owned, for at least one year as of the date hereof, at least \$2000 worth of the Company's common stock. Verification of this ownership is attached. Providence St. Joseph Health intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

The lead filer of the proposal, Tom McCaney can be contacted at: 610-716-2766 or tmccaney@osfphila.org/ If you have questions for Providence St. Joseph Health, contact Judy Byron by email: jbyron@ipic.org/

Best regards,

A handwritten signature in blue ink, appearing to read "J Walker", is positioned above the typed name.

Joseph Walker
Senior Vice President, Treasurer
Providence St. Joseph Health

Encl.: Verification of ownership
Resolution

Whereas: More than 26 million people working in the private sector have no access to earned sick time, or “paid sick leave” (PSL), for short-term health needs and preventive care.¹ Working people in the United States face an impossible choice when they are sick: stay home and risk their economic stability or go to work and risk their health and the public’s health.

The vast majority (77 percent) of the lowest earning 10 percent of American employees do not have access to PSL.² 48 percent of Latinx workers and 36 percent of Black workers report having no paid time away from work of any kind.³

As the COVID-19 pandemic has shown, PSL is a crucial contributor to public health, allowing workers who have been exposed to any illness to quarantine. State and local PSL mandates have been shown to reduce the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL, lowering disease and overall absence rates.⁴

Over the years, Kroger has expanded its benefits package to employees, including increased starting wages, free counseling resources, and tuition reimbursement. During the pandemic, Kroger has supported employee health and safety through paid leave for quarantine and confirmed illness, free COVID testing, and access to additional healthcare services.⁵ In its Blueprint for Businesses, Kroger notes the importance of reviewing time off policies to ensure “for everyone’s security and well-being that employees who are ill feel comfortable staying home without fear of losing pay.”⁶

However, Kroger does not disclose any details on a paid time off (PTO) policy, including the average number of PTO hours earned, who is eligible and any probationary period before eligibility, or a carryover option.⁷ A lack of permanent PSL could pose reputational risk given their statement that “our people are our most important asset.”⁸

Kroger could benefit from all employees having permanent access to PSL. The initial cost is relatively low – providing PSL is estimated to cost employers an average of 2.7 cents per hour of paid work⁹ – and PSL both increases productivity¹⁰ and reduces turnover, which in turn reduces costs associated with hiring.¹¹ This is particularly important for lower-wage industries like retail where turnover is highest. Proactively creating and disclosing a permanent PSL policy would also address inconsistencies between labor markets since only 14 states have adopted PSL laws.¹²

¹ <https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf>

² <https://www.wsj.com/articles/companies-expand-paid-sick-time-leave-11632413861>

³ <https://www.bls.gov/news.release/leave.t01.htm>

⁴ <https://voxeu.org/article/pros-and-cons-sick-pay>

⁵ <https://corporate.target.com/about/purpose-history/our-commitments/target-coronavirus-hub>

⁶ <https://www.thekrogerco.com/wp-content/uploads/2020/04/Krogers-Blueprint-for-Businesses.pdf>

⁷ <https://www.thekrogerco.com/careers/life-at-kroger/>

⁸ <https://www.thekrogerco.com/wp-content/uploads/2021/07/Kroger-2021-ESG-Report.pdf>

⁹ https://www.nber.org/system/files/working_papers/w26832/w26832.pdf

¹⁰ <https://voxeu.org/article/pros-and-cons-sick-pay>

¹¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649342/>

¹² <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

We believe adopting a comprehensive, permanent, and public PSL policy would help make the future operating environment more equitable and mitigate reputational, financial, and regulatory risk to Kroger.

Resolved: shareholders of Kroger ask the company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of PSL that can be used after working at Kroger for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.

The Northern Trust Company
50 South LaSalle Street
Chicago, Illinois 60603



January 12, 2022

The Kroger Co.
Cristine Wheatley, Corporate Secretary
1014 Vine Street
Cincinnati, Ohio 45202-1100

Re: Shareholder proposal submitted by Providence St. Joseph Health

Dear Ms. Wheatley,

I write concerning a shareholder proposal (the "Proposal") submitted to The Kroger Co. (the "Company") by Providence St. Joseph Health.

As of January 4, 2021, Providence St. Joseph Health had continuously held shares of the Company's common stock with a value of at least \$2,000 for at least one year, and Providence St. Joseph Health has continuously maintained a minimum investment of at least \$2,000 of such securities (the "Shares") from January 4, 2021 through January 12, 2022.

Northern Trust has acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at 312-557-9342.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yudan Zhou'.

Yudan Zhou
2nd Vice President – Senior Client Service Manager



January 12, 2022

The Kroger Co.
Kristine Wheatley, Corporate Secretary
1014 Vine Street
Cincinnati, Ohio 45202-1100
Via email: christine.wheatley@kroger.com

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Ms. Wheatley,

As shareholders of The Kroger Co., PeaceHealth calls on the Company to adopt and disclose a policy on paid sick leave for its employees.

PeaceHealth is submitting the attached proposal, pursuant to the Securities and Exchange Commission's Rule 14a-8, to be included in the proxy statement of The Kroger Co. for its 2022 annual meeting of shareholders. PeaceHealth is co-filing the proposal with lead filer, the Sisters of St. Francis of Philadelphia. In its submission letter, the Sisters of St. Francis of Philadelphia will provide dates and times of ability to meet. We designate the lead filer to meet initially with the Company but may join the meeting subject to our availability.

PeaceHealth continuously beneficially owned, for at least one year as of the date hereof, at least \$2000 worth of the Company's common stock. Verification of this ownership is attached. PeaceHealth intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

For matters pertaining to this resolution, please contact Tom McCaney at: 610-716-2766 or tmccaney@osfphila.org/ If you have questions for the PeaceHealth, contact Judy Byron by email: jbyron@ipjc.org/

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Seirer", with a long horizontal line extending to the right.

Jeff Seirer
PeaceHealth System VP Financial Integrity / Controller

Encl: Shareholder Resolution
Verification of Ownership

Whereas: More than 26 million people working in the private sector have no access to earned sick time, or “paid sick leave” (PSL), for short-term health needs and preventive care.¹ Working people in the United States face an impossible choice when they are sick: stay home and risk their economic stability or go to work and risk their health and the public’s health.

The vast majority (77 percent) of the lowest earning 10 percent of American employees do not have access to PSL.² 48 percent of Latinx workers and 36 percent of Black workers report having no paid time away from work of any kind.³

As the COVID-19 pandemic has shown, PSL is a crucial contributor to public health, allowing workers who have been exposed to any illness to quarantine. State and local PSL mandates have been shown to reduce the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL, lowering disease and overall absence rates.⁴

Over the years, Kroger has expanded its benefits package to employees, including increased starting wages, free counseling resources, and tuition reimbursement. During the pandemic, Kroger has supported employee health and safety through paid leave for quarantine and confirmed illness, free COVID testing, and access to additional healthcare services.⁵ In its Blueprint for Businesses, Kroger notes the importance of reviewing time off policies to ensure “for everyone’s security and well-being that employees who are ill feel comfortable staying home without fear of losing pay.”⁶

However, Kroger does not disclose any details on a paid time off (PTO) policy, including the average number of PTO hours earned, who is eligible and any probationary period before eligibility, or a carryover option.⁷ A lack of permanent PSL could pose reputational risk given their statement that “our people are our most important asset.”⁸

Kroger could benefit from all employees having permanent access to PSL. The initial cost is relatively low – providing PSL is estimated to cost employers an average of 2.7 cents per hour of paid work⁹ – and PSL both increases productivity¹⁰ and reduces turnover, which in turn reduces costs associated with hiring.¹¹ This is particularly important for lower-wage industries like retail where turnover is highest. Proactively creating and disclosing a permanent PSL policy would also address inconsistencies between labor markets since only 14 states have adopted PSL laws.¹²

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² <https://www.wsj.com/articles/companies-expand-paid-sick-time-leave-11632413861>

³ <https://www.bls.gov/news.release/leave.t01.htm>

⁴ <https://voxeu.org/article/pros-and-cons-sick-pay>

⁵ <https://corporate.target.com/about/purpose-history/our-commitments/target-coronavirus-hub>

⁶ <https://www.thekrogerco.com/wp-content/uploads/2020/04/Krogers-Blueprint-for-Businesses.pdf>

⁷ <https://www.thekrogerco.com/careers/life-at-kroger/>

⁸ <https://www.thekrogerco.com/wp-content/uploads/2021/07/Kroger-2021-ESG-Report.pdf>

⁹ https://www.nber.org/system/files/working_papers/w26832/w26832.pdf

¹⁰ <https://voxeu.org/article/pros-and-cons-sick-pay>

¹¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649342/>

¹² <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

We believe adopting a comprehensive, permanent, and public PSL policy would help make the future operating environment more equitable and mitigate reputational, financial, and regulatory risk to Kroger.

Resolved: shareholders of Kroger ask the company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of PSL that can be used after working at Kroger for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.



100 Vanguard Boulevard
Malvern, PA 19355

1/12/2022

The Kroger Co.
Christine Wheatley, Corporate Secretary
1014 Vine Street
Cincinnati, Ohio 45202-1100

Re: Shareholder proposal submitted by PeaceHealth

Dear Ms. Wheatley,

I write concerning a shareholder proposal (the "Proposal") submitted to the Kroger Co. (the "Company") by PeaceHealth.

As of January 4, 2021, PeaceHealth had continuously held shares of the Company's common stock with a value of at least \$2,000 for at least one year, and PeaceHealth has continuously maintained a minimum investment of at least \$2,000 of such securities (the "Shares") from January 4, 2021 through January 12, 2022.

Vanguard acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at 480-713-761, or gary_h_serlin@vanguard.com/

Very truly yours,

Gary Serlin

Gary Serlin
Client Service Analyst
Vanguard Institutional Investor Group

From: [Wheatley, Christine S](#)
To: [Heiser, Stacey M](#)
Subject: Fwd: shareholder proposal from the Sisters of St. Francis of Philadelphia
Date: Friday, January 14, 2022 7:56:43 AM
Attachments: [copied ltr from Northern Trust 1-10-22.docx](#)

Regards, Christine

Begin forwarded message:

From: Thomas McCaney <tmccaney@osfphila.org>
Date: January 14, 2022 at 7:46:53 AM EST
To: "Wheatley, Christine S" <christine.wheatley@kroger.com>
Subject: Re: shareholder proposal from the Sisters of St. Francis of Philadelphia

[EXTERNAL EMAIL]: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Heiser,

I apologize for the problem with the letter from our custodian/record holder, Northern Trust. I've attached a copied and pasted version of their letter, since I don't think I'm allowed to share their password. Hopefully, by now you've received the original hard copy that was sent via UPS Overnight.

Thank you,

Tom

Tom McCaney
Associate Director, Corporate Social Responsibility
Sisters of St. Francis of Philadelphia
609 S. Convent Road
Aston, PA 19014

>>> Thomas McCaney 1/10/2022 10:25 AM >>>

Dear Ms. Wheatley,

Attached are the documents related to the Sisters of St. Francis of Philadelphia's shareholder filing on the topic of paid sick leave. In the cover letter, we offer potential dates and times to discuss the proposal, but remain flexible to other times that may be more convenient to you.

If you have any questions, please don't hesitate to contact me via email or by phone at 610-716-2766.

Sincerely,

Tom McCaney
Associate Director, Corporate Social Responsibility
Sisters of St. Francis of Philadelphia
609 S. Convent Road
Aston, PA 19014

From: [Leach, Amanda M](#)
To: [Heiser, Stacey M](#)
Subject: FW: FW: shareholder proposal from the Sisters of St. Francis of Philadelphia
Date: Thursday, February 17, 2022 3:50:17 PM

-Amanda

From: Thomas McCaney <tmccaney@osfphila.org>
Sent: Tuesday, February 15, 2022 12:39 PM
To: Leach, Amanda M <amanda.leach@kroger.com>
Subject: RE: FW: shareholder proposal from the Sisters of St. Francis of Philadelphia

Thanks so much, Amanda. If you could, I'd like you to send an invitation.

Tom

>>> "Leach, Amanda M" <amanda.leach@kroger.com> 2/14/2022 5:13 PM >>>
Mr. McCaney:

I apologize for the delay. I can make my team available on Friday, February 25 from 12 – 1. Would you like for me to send the invitation or do you prefer to handle?

-Amanda

From: Leach, Amanda M
Sent: Monday, February 14, 2022 4:58 PM
To: 'Thomas McCaney' <tmccaney@osfphila.org>
Subject: RE: FW: shareholder proposal from the Sisters of St. Francis of Philadelphia

I haven't forgotten about you. I am checking with my team.

-Amanda

From: Thomas McCaney <tmccaney@osfphila.org>
Sent: Monday, February 14, 2022 9:29 AM
To: Leach, Amanda M <amanda.leach@kroger.com>
Subject: Re: FW: shareholder proposal from the Sisters of St. Francis of Philadelphia

Hi Amanda,

Would your team be available on Wednesday, the 23rd at 2 PM, Thursday, the 24th at 2 PM, or Friday the 25th at 12 Noon (all Eastern times)?

Thanks,

Tom

>>> Thomas McCaney 2/11/2022 1:30 PM >>>

Thanks, Amanda. I'll check with my colleagues and get back to you ASAP.

Tom

>>> "Leach, Amanda M" <amanda.leach@kroger.com> 2/11/2022 12:19 PM >>>

Good afternoon, Mr. McCaney. I would be happy to schedule a call with Christine and Keith Dailey on our side. Would you be able to provide a few time blocks for the week of February 21 and I will do my best to accommodate?

Best Regards,

Amanda

Amanda M. Leach | Senior Executive Assistant to:
Christine Wheatley, Group Vice President, Secretary, and General Counsel

The Kroger Co. | 1014 Vine Street, Cincinnati, OH 45202

☎(office): 513-762-1360 | 📠(fax): 513-762-4935

✉(email): amanda.leach@kroger.com

CONFIDENTIALITY NOTICE: The information contained in any e-mail messages, including any attachments, is for the sole use of the intended recipient(s) and may be privileged and confidential. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please notify the sender by reply e-mail and delete the original message and all copies from your computer.

Begin forwarded message:

From: Thomas McCaney <tmccaney@osfphila.org>

Date: January 10, 2022 at 10:26:06 AM EST

To: "Wheatley, Christine S" <christine.wheatley@kroger.com>

Subject: shareholder proposal from the Sisters of St. Francis of Philadelphia

[EXTERNAL EMAIL]: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Wheatley,

Attached are the documents related to the Sisters of St. Francis of Philadelphia's shareholder filing on the topic of paid sick leave. In the cover letter, we offer potential dates and times to discuss the proposal, but remain flexible to other times that may be more convenient to you.

If you have any questions, please don't hesitate to contact me via email or by phone at 610-716-2766.

Sincerely,

Tom McCaney
Associate Director, Corporate Social Responsibility
Sisters of St. Francis of Philadelphia
609 S. Convent Road
Aston, PA 19014

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain information that is confidential and protected by law from unauthorized disclosure. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain information that is confidential and protected by law from unauthorized disclosure. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Weil, Gotshal & Manges LLP

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

Lyuba Goltser
lyuba.goltser@weil.com

April 12, 2022

VIA E-MAIL (shareholderproposals@sec.gov)
U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: Withdrawal of No-Action Request Dated February 22, 2022 Regarding Shareholder Proposal Submitted to The Kroger Co. by The Sisters of St. Francis of Philadelphia

Ladies and Gentlemen:

This letter serves to inform you that, on behalf of our client, The Kroger Co. (the "Company"), we hereby withdraw our letter dated February 22, 2022 to the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") requesting that the Staff not recommend to the Commission that any enforcement action be taken if the Company excludes a shareholder proposal (the "Proposal") submitted by the Sisters of St. Francis of Philadelphia, Providence St. Joseph Health, and PeaceHealth, as co-filers (together, the "Proponents") from its proxy materials for the Company's 2022 Annual Meeting of Shareholders. The Proponents have indicated to the Company that they are withdrawing the Proposal. Attached hereto as Exhibit A is a copy of the Proponents' notice withdrawing the Proposal.

If you have any questions regarding this request, or need additional information, please do not hesitate to call me at 212-310-8048 or contact me via email at lyuba.goltser@weil.com.

Very truly yours,



Lyuba Goltser
Partner

Attachment: Exhibit A

cc:

Christine Wheatley

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
April 12, 2022
Page 2

Stacey Heiser
The Kroger Co.

Tom McCaney
Sisters of St. Francis of Philadelphia

Joseph Walker
Providence St. Joseph Health

Jeff Seirer
PeaceHealth

EXHIBIT A

Copy of the Proponents' Withdrawal Notice

From: Thomas McCaney [REDACTED]
Date: April 10, 2022 at 11:31:45 AM EDT
To: "Wheatley, Christine S" [REDACTED], "Dailey, Keith G"
[REDACTED], "Quast, Rob" [REDACTED]
Cc: Judy Byron [REDACTED]
Subject: shareholder proposal on paid sick leave

[EXTERNAL EMAIL]: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Dailey,

On behalf of the Sisters of St. Francis of Philadelphia, the primary filer of a shareholder proposal on paid sick leave, along with co-filers PeaceHealth and Providence St. Joseph Health, I formally withdraw this proposal. Sister Judy Byron and I greatly appreciate your willingness to meet with us regarding our concerns, and value the collaborative spirit the Kroger team brings.

If you require anything further, please don't hesitate to reach out to me.

Sincerely,

Tom

Tom McCaney
Associate Director, Corporate Social Responsibility
Sisters of St. Francis of Philadelphia
609 S. Convent Road
Aston, PA 19014

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