



Zevin Asset Management

March 8, 2021

[Via e-mail at shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

RE: Request by The Kroger Co to omit proposal submitted by Zevin Asset Management, LLC on behalf of William Creighton and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Zevin Asset Management, LLC filed a shareholder proposal (the "Proposal") on behalf of William Creighton (the "Proponent") at The Kroger Co ("Kroger" or "the Company") for inclusion in the Company's proxy materials for its 2021 annual meeting of shareholders. Co-filers included Everence Financial on behalf of the Praxis Value Index Fund, the Sisters of St. Francis Charitable Trust, First Affirmative Financial Network, LLC on behalf of Waterglass, LLC, and the Sisters of the Presentation of the Blessed Virgin Mary of Aberdeen, South Dakota. The Proposal asks Kroger's board to analyze and report on the feasibility of including the paid sick leave policy announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

In a letter to the Division dated February 22, 2021 (the "No-Action Request"), Kroger stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2021 annual meeting of shareholders. Kroger argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the grounds that the Proposal deals with Kroger's ordinary business operations. As discussed more fully below, the consistent and widespread public debate over the importance of paid sick leave to protect workers, customers, communities, and the economy, as well as the salience of the issue for Kroger specifically, establish that paid leave is a significant policy issue transcending ordinary business. Accordingly, Kroger has not met its burden of proving its entitlement to exclude the Proposal on that basis, and the Proponents respectfully request that the Company's request for relief be denied.

The Proposal

The Proposal states:

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy¹ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. Kroger argues that the Proposal relates to the Company's ordinary business operations because it addresses general employee compensation and benefits, as well as management of the workforce, without implicating a significant policy issue. The Company further argues that the Proposal seeks to micromanage the Company.

The Proponents do not dispute that proposals on general employee compensation/benefits and workforce management, without more, deal with ordinary business operations. But companies are generally not allowed to rely on the ordinary business exclusion to omit such proposals if they "focus[] on sufficiently significant social policy issues."²

Paid Sick Leave is a Consistent Subject of Widespread Public Debate

Over the past eight years, paid sick leave has been the consistent subject of widespread public debate, the Division's standard for a significant policy issue.³ This growing public concern and policy activity was greatly amplified in 2020 and 2021 with the COVID-19 pandemic. The Proponents respectfully submit that the 2019 determination in *Walmart, Inc.*,⁴ on which Kroger relies,⁵ should be revisited in light of these changed circumstances.

Well before the pandemic, concerns were raised about workers who must work while sick because they can't afford to miss a shift or fear disciplinary consequences. Between 2012 and 2019, 11 states and the District of Columbia adopted measures to require paid sick leave.⁶ Thirty

¹ <http://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Family-of-Companies-Announces-Appreciation-Bonus-for-Associates-and-Expands-14-Day-COVID-19-Emergency-Leave-Guidelines/default.aspx>

² Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

³ See, e.g., <https://www.sec.gov/interps/legal/cfsilb14a.htm>

⁴ Walmart, Inc. (avail. Apr. 8, 2019).

⁵ No-Action Request, at 8.

⁶ <https://www.zenefits.com/workest/the-definitive-list-of-states-and-cities-with-paid-sick-leave-laws/>; see also <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>. Examples of coverage of paid sick leave

municipalities, including Los Angeles, Chicago, and New York City, had such requirements as of March 2020.⁷

President Obama signed an Executive Order in 2015 directing the Department of Labor to promulgate rules requiring federal contractors to give employees seven days of paid sick leave.⁸ Discussing those rules, President Obama explained, "Coming to work sick is bad for employees, co-workers, and customers alike."⁹ He highlighted the issue in his 2016 State of the Union address, stating, "Equal pay for equal work, paid leave and raising the minimum wage. All of these things still matter to working families, they are the right thing to do, and I won't stop until they get done."¹⁰

President Obama also urged Congress to "pass a law guaranteeing most workers in America the chance to earn seven days of paid sick leave each year."¹¹ The Healthy Families Act ("HFA") was introduced by Rep. Rosa DeLauro and Sen. Patty Murray in 2017 and again in 2019.¹² The HFA would require employers with 15 or more employees to allow each employee to "permit each employee to earn at least 1 hour of paid sick time for every 30 hours worked."¹³ The National Paid Sick Days Coalition formed to promote national legislation providing paid sick leave. That coalition is made up of hundreds of organizations, including women's and children's organizations, labor groups, religious organizations and think tanks.¹⁴ The HFA has been the coalition's primary national focus.¹⁴

The FAMILY Act would establish an Office of Paid Family and Medical Leave within the Social Security Administration to administer a family and medical leave insurance benefit funded by a federal Family Leave and Medical Insurance Trust Fund. The benefit would be payable to workers who are dealing with their own medical needs or those of relatives. In the Senate, the FAMILY Act was introduced by Sen. Kirsten Gillibrand in 2017 and 2019 and co-sponsored by Sens. Elizabeth Warren, Bernie Sanders, Amy Klobuchar, Kamala Harris and Cory Booker.¹⁵ The House version of the bill was introduced by Rep. Rosa DeLauro in 2017 and 2019, and the 2019 bill had 219 co-sponsors.¹⁶

requirements adopted prior to the pandemic can be found at <https://wbng.com/2021/01/01/new-state-law-allows-paid-sick-leave-for-workers/>; <https://www.wkbw.com/news/state-news/new-paid-sick-leave-benefits-for-new-yorkers>

⁷ See <https://www.zenefits.com/workest/the-definitive-list-of-states-and-cities-with-paid-sick-leave-laws/>

⁸ <https://www.dol.gov/agencies/whd/government-contracts/sick-leave>

⁹ <https://slate.com/business/2016/09/an-interview-with-president-barack-obama-about-extending-paid-sick-leave.html>

¹⁰ <https://www.cnbc.com/2016/01/13/how-important-is-paid-sick-leave-listen-to-obama.html>

¹¹ <https://www.cbsnews.com/news/obama-urges-congress-to-act-on-paid-sick-leave/>

¹² See <https://www.congress.gov/bill/115th-congress/senate-bill/636>; <https://www.congress.gov/bill/116th-congress/senate-bill/840>

¹³ <https://www.congress.gov/bill/116th-congress/senate-bill/840>

¹⁴ <http://www.paid sick days.org/campaigns/>

¹⁵ <https://www.congress.gov/bill/116th-congress/senate-bill/463/text>

¹⁶ <https://www.congress.gov/bill/116th-congress/house-bill/1185>

The pandemic threw into stark relief the relationship between paid sick leave, public health, and the precarity of many workers' finances. As Americans negotiate safely shopping and taking public or for-hire transportation, and amid concerns over outbreaks at meat packing plants and nursing homes, attention has focused on whether workers at essential businesses have the protections they need to keep customers and communities safe. The media has covered the issue extensively. An article at the very beginning of the pandemic predicted that poor sick leave coverage in the U.S. "might prove to be among the biggest Achilles' heels in efforts to stymie the spread of COVID-19."¹⁷

Examples of coverage in national publications include numerous articles and opinion pieces in The New York Times,¹⁸ Washington Post,¹⁹ Atlantic Monthly,²⁰ and USA Today.²¹

¹⁷ <https://www.theatlantic.com/health/archive/2020/02/coronavirus-could-hit-american-workers-especially-hard/607213/>

¹⁸ E.g., <https://www.nytimes.com/2020/03/14/opinion/sunday/coronavirus-paid-sick-leave.html>;
<https://www.nytimes.com/2020/05/08/upshot/virus-paid-leave-pandemic.html>;
<https://www.nytimes.com/2020/03/19/upshot/coronavirus-paid-leave-guide.html>;
<https://www.nytimes.com/2020/05/18/parenting/coronavirus-family-leave.html>;
<https://www.nytimes.com/article/coronavirus-money-unemployment.html>;
<https://www.nytimes.com/2020/04/02/us/politics/coronavirus-paid-leave.html>;
<https://www.nytimes.com/2020/03/19/opinion/mcdonalds-paid-leave-coronavirus.html>;
<https://www.nytimes.com/2020/03/03/opinion/trump-coronavirus-sick-leave.html>;
<https://www.nytimes.com/2020/04/04/business/coronavirus-uber.html>;
<https://www.nytimes.com/2020/03/01/upshot/coronavirus-sick-days-service-workers.html>

¹⁹ E.g., <https://www.washingtonpost.com/business/2020/03/16/paid-sick-leave-coronavirus-house-bill/>;
<https://www.washingtonpost.com/business/2020/08/11/paid-sick-leave/>;
<https://www.washingtonpost.com/lifestyle/2020/10/23/paid-leave-covid/>;
<https://www.washingtonpost.com/business/2020/03/16/paid-sick-leave-coronavirus-house-bill/>;
<https://www.washingtonpost.com/business/2020/03/03/our-lack-paid-sick-leave-will-make-coronavirus-worse/>;
<https://www.washingtonpost.com/business/2020/03/09/sick-leave-coronavirus/>;
<https://www.washingtonpost.com/graphics/2020/national/sick-leave-workers-coronavirus/>;
https://www.washingtonpost.com/local/virginia-politics/virginia-sick-leave/2020/12/23/5d2191aa-4158-11eb-8bc0-ae155bee4aff_story.html; <https://www.washingtonpost.com/business/2020/03/10/walmart-apple-olive-garden-are-among-major-employers-updating-sick-leave-policies-coronavirus-cases-spread/>;
https://www.washingtonpost.com/national/as-coronavirus-spreads-the-people-who-prepare-your-food-probably-dont-have-paid-sick-leave/2020/03/04/7b35965a-5d51-11ea-9055-5fa12981bbbf_story.html;
<https://www.washingtonpost.com/business/2020/11/23/retail-workers-pandemic-pay/>

²⁰ E.g., <https://www.theatlantic.com/health/archive/2020/06/sick-leave-covid-time-off/612361/>;
<https://www.theatlantic.com/health/archive/2020/03/does-walmart-provide-paid-sick-leave/608779/>;
<https://www.theatlantic.com/ideas/archive/2020/11/the-economy-cant-recover-with-sick-workers/616947/>;
<https://www.theatlantic.com/politics/archive/2020/05/coronavirus-minimum-wage-paid-leave-biden/611281/>;
<https://www.theatlantic.com/health/archive/2020/12/pandemic-year-two/617528/>;
<https://www.theatlantic.com/health/archive/2020/09/pandemic-intuition-nightmare-spiral-winter/616204/>

²¹ E.g., <https://www.usatoday.com/story/money/2020/04/18/american-jobs-with-the-biggest-sick-leave-problems-right-now/111535588/>; <https://www.usatoday.com/story/opinion/voices/2020/12/17/fast-food-coronavirus-covid-19-north-carolina-report-for-america/3930065001/>;
<https://www.usatoday.com/story/opinion/todaysdebate/2020/03/17/coronavirus-fight-needs-paid-sick-leave->

The proliferation of public policy initiatives addressing paid sick and caregiving leave evidence the vigor of public debate on the issue:

- The Families First Coronavirus Response Act, which required employers with fewer than 500 employees to provide paid sick and caregiving leave, was introduced and became law in March.²²
- In May, the House passed the HEROES Act, which would have broadened the workers covered by the FFCRA's paid leave provisions and extended them through 2021.²³
- New York state passed the Quarantine Leave Law in March, which required that employers with more than 10 employees provide paid sick leave to an employee unable to work due to "a mandatory or precautionary order of quarantine or isolation due to COVID-19."²⁴
- New York state enacted a paid sick leave law in April which took effect on September 30th.²⁵
- The California Governor signed an executive order in April requiring that workers in the food sector, including independent contractors and gig workers, receive two weeks of paid sick leave.²⁶
- Pursuant to the Colorado Governor's March 10th State of Disaster Emergency declaration, the state's Department of Labor and Employment issued emergency regulations requiring paid sick leave for some workers.²⁷
- Six California cities, including Long Beach, Los Angeles, San Francisco, and Oakland, passed emergency paid sick leave ordinances in the spring.²⁸
- Pittsburgh enacted an emergency paid sick leave law to supplement existing protections for the duration of the city's emergency declaration.²⁹
- Philadelphia expanded existing sick leave protections to cover gig workers in September.³⁰

[editorials-debates/5013280002/](https://www.usatoday.com/story/opinion/voices/2020/12/17/fast-food-coronavirus-covid-19-north-carolina-report-for-america/3930065001/); <https://www.usatoday.com/story/opinion/voices/2020/12/17/fast-food-coronavirus-covid-19-north-carolina-report-for-america/3930065001/>; <https://www.usatoday.com/picture-gallery/money/2020/04/18/american-jobs-with-the-biggest-sick-leave-problems-right-now/111535684/>; <https://www.usatoday.com/story/money/2020/11/23/covid-19-grocery-workers-demand-masks-hazard-pay-amid-virus-surge/6396541002/>; <https://www.usatoday.com/story/money/2020/03/20/target-adds-coronavirus-paid-leave-program-seniors-pregnant-bonuses/2884869001/>

²² <https://www.congress.gov/bill/116th-congress/house-bill/6201>

²³ <https://www.congress.gov/bill/116th-congress/house-bill/6800>

²⁴ <https://www.jacksonlewis.com/publication/new-york-s-new-quarantine-leave-law-0>

²⁵ <https://www.debevoise.com/insights/publications/2020/04/new-york-state-enacts-permanent-paid-sick-leave>

²⁶ <https://www.fisherphillips.com/resources-alerts-california-provides-paid-sick-leave-for-food>

²⁷ <https://www.fisherphillips.com/resources-alerts-colorado-issues-temporary-emergency-rule-requiring-paid>

²⁸ <https://www.littler.com/publication-press/publication/covid-19-supplemental-paid-sick-leave-docks-long-beach-california>

²⁹ <https://pittsburgh.cbslocal.com/2020/12/08/pittsburgh-city-council-passes-coronavirus-sick-leave-proposal/>

³⁰ <https://www.inquirer.com/news/coronavirus-paid-sick-leave-philadelphia-gig-workers-20200910.html> ("[T]he pandemic shined a light on how many workers were lacking such safeguards as paid sick leave or whistle-blower protection.").

- In February 2021, the New Mexico House of Representatives passed a bill that would require many employers to increase the amount of paid sick leave that workers can earn in a given year.³¹
- Also in February 2021, the Virginia House of Delegates passed a bill that would guarantee paid sick leave to “essential workers,” including those working in “essential retail business.”³²

The paid sick leave provisions of the FFCRA were not part of the late 2020 COVID relief package, so they expired at the end of 2020, igniting additional media coverage of the issue and further elevating the importance of company-provided protections.³³

- <https://www.buzzfeednews.com/article/paulmcleod/paid-sick-leave-ends-coronavirus-mcconnell>
- <https://www.abc10.com/article/news/health/coronavirus/families-first-coronavirus-paid-leave/103-e34dbd1e-8b94-43db-a52e-c9397671272e>
- <https://www.newsweek.com/fact-check-did-mitch-mcconnell-block-paid-sick-leave-second-covid-19-relief-bill-1558296>
- <https://www.marketplace.org/2021/01/01/congress-lets-paid-sick-family-and-medical-leave-mandate-expire/>
- <https://www.ketv.com/article/paid-sick-time-mandate-ends-for-americans-in-new-year-as-pandemic-rages-on/35109428#>
- <https://www.marketplace.org/2021/01/01/congress-lets-paid-sick-family-and-medical-leave-mandate-expire/>
- <https://www.cnbc.com/2020/12/23/new-relief-deal-doesnt-mandate-paid-sick-or-family-leave-for-covid-19.html>
- <https://www.cbs8.com/article/news/health/coronavirus/families-first-coronavirus-paid-leave/103-e34dbd1e-8b94-43db-a52e-c9397671272e>

Most recently, reviving paid sick leave “to limit the spread of COVID-19 and provide economic security to millions of working families” is a key part of President Biden’s COVID-19

³¹ https://www.santafenewmexican.com/news/legislature/new-mexico-house-passes-paid-sick-leave-bill/article_99ea8da2-7863-11eb-b1c5-e721194a1a9e.html

³² <https://www.virginiamercury.com/blog-va/paid-sick-leave-bill-passes-virginia-house-clearing-the-way-for-senate-debate/>

³³ <https://www.buzzfeednews.com/article/paulmcleod/paid-sick-leave-ends-coronavirus-mcconnell>; <https://www.abc10.com/article/news/health/coronavirus/families-first-coronavirus-paid-leave/103-e34dbd1e-8b94-43db-a52e-c9397671272e>; <https://www.newsweek.com/fact-check-did-mitch-mcconnell-block-paid-sick-leave-second-covid-19-relief-bill-1558296>; <https://www.marketplace.org/2021/01/01/congress-lets-paid-sick-family-and-medical-leave-mandate-expire/>; <https://www.ketv.com/article/paid-sick-time-mandate-ends-for-americans-in-new-year-as-pandemic-rages-on/35109428#>; <https://www.marketplace.org/2021/01/01/congress-lets-paid-sick-family-and-medical-leave-mandate-expire/>; <https://www.cnbc.com/2020/12/23/new-relief-deal-doesnt-mandate-paid-sick-or-family-leave-for-covid-19.html>

relief plan, the “American Rescue Plan,” announced on January 14th.³⁴ The American Rescue Plan proposed to restore the FFCRA’s requirement that employers with 500 or fewer employees provide paid leave (and reimburse them for the expense using a refundable tax credit); extend the requirement to cover employees of larger employers as well as healthcare workers and first responders, who were not covered by the FFCRA; expand caregiving leave; and provide federal workers with emergency paid leave.³⁵

Academic researchers have concluded that paid sick leave curbs transmission of COVID-19. An October 2020 study compared the number of COVID-19 cases in states where workers gained paid sick leave as a result of the FFCRA with the number in states where workers already had such leave and estimated that the FFCRA’s paid sick leave provision resulted in 400 fewer cases per day.³⁶ That study was consistent with pre-pandemic research finding that state paid sick leave mandates reduced rates of influenza-like illness by 11% per week in the first year,³⁷ and it was cited in the American Rescue Plan.

Though the robust debate over paid sick leave described above intensified as a result of the COVID-19 pandemic, there is good reason to believe that it will persist even after the current crisis has passed. Experts have made clear that COVID-19 is likely a sign of things to come rather than a rare event. Writing in August 2020, Dr. Anthony Fauci and Dr. David Morens described the “pandemic era” which includes “the threat of ever more frequent and deadly emergences of infectious diseases.” As they explained, “[e]vidence suggests that SARS, MERS, and COVID-19 are only the latest examples of a deadly barrage of coming coronavirus and other emergences.”³⁸

The World Health Organization (WHO) warned that “despite the severity, the COVID-19 pandemic is not ‘necessarily the big one.’”³⁹ Dr. Mark Ryan, head of the WHO emergencies program, said that the primary takeaway from COVID-19 should be that “we need to get ready for something which may be more severe in the future.”⁴⁰

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services issued a study in October 2020 which said that “[w]ithout preventative strategies, pandemics will emerge more often, spread more rapidly, kill more people, and affect the global economy

³⁴ See, e.g., <https://www.nytimes.com/2021/01/17/upshot/paid-leave-biden-plan.html>;
<https://www.washingtonpost.com/business/2021/01/15/biden-economy-stimulus-sick-pay/>;
<https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/american-rescue-plan.aspx>;
<https://www.fmlainsights.com/joe-biden-unveils-his-plan-for-paid-leave/>;

³⁵ <https://beta.documentcloud.org/documents/20454630-biden-transition-covid-relief-package-fact-sheet?sidebar=0>, at 7-8.

³⁶ <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2020.00863>

³⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3660277

³⁸ [https://www.cell.com/cell/fulltext/S0092-8674\(20\)31012-6#bib58](https://www.cell.com/cell/fulltext/S0092-8674(20)31012-6#bib58)

³⁹ <https://globalnews.ca/news/7545830/coronavirus-pandemic-big-one-who/>

⁴⁰ <https://globalnews.ca/news/7545830/coronavirus-pandemic-big-one-who/>

with more devastating impact than ever before.”⁴¹ Gavi, the Vaccine Alliance, has drawn similar conclusions, explaining that pandemic risks are increasing due to greater interconnectedness, urbanization, climate change, increased animal-human contact, and shortages of health workers in places where pandemics tend to start.⁴²

As well, the pandemic sparked broader discussion of how “essential workers”—those who provide essential products and services like food, medical care, transportation, delivery, law enforcement, childcare and education—are treated in the U.S. Many such workers are poorly paid and lack benefits like health insurance and paid sick leave, both of which create public health risks by impeding access to health care and discouraging workers from staying home when they are sick. Especially relevant for Kroger, in October 2020, CNN reported on a scientific study suggesting that “about 20% of grocery workers had COVID-19.”⁴³ The study, which was based on a sample of grocery workers in Boston, further found that “[w]orkers...had tried to take precautions. Nearly all, 91%, said they wore a face mask at work and 77% said they also wore masks outside of work. Yet only about 66% said they were able to practice social distancing consistently on the job.”⁴⁴ The pandemic has highlighted our interconnectedness — “If we work sick, then you get sick,” workers chanted at a 2020 protest⁴⁵ — which increases the likelihood that issues like paid sick leave will continue to have a high profile.

Paid Sick Leave is a Salient Issue for Kroger, Not Just Society Generally

Kroger seems to dismiss the relevance of the broader societal debate in arguing that paid sick leave is not a significant policy issue, urging that “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).”⁴⁶ Under the Division’s longstanding approach, however, a proponent must show the existence of widespread public debate on a subject in order to prove that it is a significant policy issue. Moreover, the Proponents are not relying solely on “references” in the Proposal, but also on the extensive evidence of a widespread public debate outlined in the previous section.

More recent Division guidance has indicated that a subject must also be significant for the particular company.⁴⁷ Although Kroger does not explicitly assert that paid leave is not a

⁴¹ https://ipbes.net/sites/default/files/2020-10/20201028%20IPBES%20Pandemics%20Workshop%20Report%20Plain%20Text%20Final_0.pdf

⁴² <https://www.gavi.org/vaccineswork/5-reasons-why-pandemics-like-covid-19-are-becoming-more-likely>

⁴³ <https://www.cnn.com/2020/10/29/health/grocery-workers-increased-covid-19-risk-wellness/index.html>

⁴⁴ *Ibid.*

⁴⁵ <https://www.nytimes.com/2020/03/11/opinion/coronavirus-paid-sick-leave.html>

⁴⁶ No-Action Request, at 10.

⁴⁷ *See* Staff Legal Bulletin 14I (Nov. 1, 2017) (“Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.”); Staff Legal Bulletin 14J

salient issue for it, the Company's citation to Staff Legal Bulletin 14K suggests that argument. But as the largest supermarket chain in the U.S. and one of the country's largest employers of grocery workers — workers who have been widely designated as "essential workers" who have been reporting for work throughout the pandemic — Kroger's own paid leave policies have manifested clear public policy consequences, attracted attention, and provoked widespread public debate.

Kroger was among the companies prominently mentioned in a New York Times editorial in March 2020 entitled "The Companies Putting Profits Ahead of Public Health," highlighting the tens of thousands of Kroger employees reportedly lacking access to paid sick leave as a standard benefit,⁴⁸ and other articles also focused on Kroger.⁴⁹ Kroger's approach to sick leave received even more direct and pointed attention as the Company's COVID-19-related emergency sick leave policy was set to expire in late 2020. POLITICO noted this risky and important issue for Kroger on November 29, 2020, in an article entitled "Millions of workers poised to lose access to paid leave as virus spikes." The national news article related specific shortcomings in Kroger's approach to sick leave, quoting an employee:

Janet Wainwright, who works at a Kroger supermarket in Yorktown, Va., said her employer used to provide paid leave to workers who tested positive. Now, employees who contract coronavirus "have to take 14 days leave with no pay."

"We're being forced to work because we can't live without our jobs every day," she said. "This makes us paranoid and fearful because it makes people more likely to come to work sick."⁵⁰

The above report demonstrates that, in the view of the national political press, the conduct of sick leave policy at Kroger was quite evidently linked to and reinforcing of specific public policy consequences in the United States at large. Indeed, the POLITICO article linked shortcomings in the sick leave approaches of Kroger and other employers with the current US

(Oct. 23, 2018) ("To assist the staff with its review of these types of no-action requests, [SLB 14I] invited companies to include in their no-action requests a discussion reflecting the board's analysis of the particular policy issue raised by the proposal and its significance in relation to the company."); Staff Legal Bulletin 14K (Oct. 16, 2019) ("The staff takes a company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.' Accordingly, a policy issue that is significant to one company may not be significant to another.").

⁴⁸ <https://www.nytimes.com/2020/03/14/opinion/sunday/coronavirus-paid-sick-leave.html>

⁴⁹ E.g., <https://www.businessinsider.com/coronavirus-kroger-25-credit-all-employees-not-paid-sick-leave-2020-3>; <https://news.bloomberglaw.com/daily-labor-report/kroger-worker-who-may-have-had-covid-19-sues-alleging-job-bias>; <https://www.bizjournals.com/cincinnati/news/2020/12/01/kroger-employees-speak-out-about-coronavirus-safet.html>;

⁵⁰ <https://www.politico.com/news/2020/11/29/millions-of-workers-lose-paid-leave-coronavirus-440793>

public policy crisis in which “[a]s many as 87 million public and private sector workers could lose access to the federally mandated benefit [paid sick leave] at the end of the year.”⁵¹

Similarly, a USA Today article also from November 2020 highlighted the connections between lapsed emergency paid sick leave benefits and broader problems in Kroger’s labor relations. The article, entitled “No masks? No hazard pay? Amid COVID-19 surge, grocery store workers demand protections,” surfaced the complaint among members of the United Food and Commercial Workers Union “that many major employers have grown lax, cutting wages and protections put in place when the coronavirus first began to spread in the spring.” As evidenced by the article, which mentioned Kroger, the fight over whether to restore paid sick leave policies enacted temporarily and in a limited fashion at the start of the COVID-19 pandemic was driving significant public policy and labor relations controversies.⁵²

Kroger’s poor approach to sick leave received so much public attention that a MoveOn.org petition has been launched challenging Kroger to “provide paid sick leave to employees.” As of March 2021, the petition had more than 87,000 signatures.⁵³

The sustained public policy conversation around benefits and human capital management practices specifically at Kroger has continued in 2021 as the company fights against attempts by community leaders in various jurisdictions to mandate enhanced benefits for workers. In February 2021, Kroger announced that it would close two stores in Long Beach, California instead of complying with “a local ordinance requiring extra pay for certain grocery employees working during the pandemic,” according to a report in USA Today.⁵⁴ Kroger’s approach to avoiding hazard pay or “hero pay” ordinances, which included a similar decision in the Seattle area, received widespread negative coverage in national media outlets.⁵⁵ A recent op-ed piece in The Los Angeles Times by Robert Garcia, the mayor of Long Beach, California, and Anthony Rendon, the Speaker of the California State Assembly, drew a clear connection between Kroger’s recent decisions and the public policy crisis regarding sick leave, observing that “[w]orkers who need to quarantine are rapidly exhausting paid sick leave, forcing them to pay for this work-related necessity out of their own pockets.”⁵⁶ Mr. Garcia and Mr. Rendon went on to observe:

⁵¹ Ibid.

⁵² <https://www.usatoday.com/story/money/2020/11/23/covid-19-grocery-workers-demand-masks-hazard-pay-amid-virus-surge/6396541002/>

⁵³ <https://sign.moveon.org/petitions/tell-kroger-to-provide-paid-sick-leave-to-employees>

⁵⁴ <https://www.usatoday.com/story/money/2021/02/04/pandemic-hazard-pay-biden-trader-joes-kroger/4392444001/>

⁵⁵ See: <https://www.nytimes.com/2021/02/08/business/grocery-workers-hero-pay-vaccines.html>;
<https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>;
<https://www.washingtonpost.com/business/2021/02/03/ralphs-kroger-pandemic-pay-mandate/>;
<https://thehill.com/policy/finance/537002-kroger-closing-two-stores-after-city-orders-higher-pandemic-pay-for-workers>;

⁵⁶ <https://www.latimes.com/opinion/story/2021-02-27/grocery-workers-hero-pay-kroger-pandemic>

Instead of protecting the frontline employees who keep their stores running, Kroger Co., the grocery giant behind Ralphs and Food 4 Less, has decided to strike back. The company is shuttering two stores in Long Beach and, in turn, creating food deserts in the city's poorest neighborhood.

And Kroger is sending a message to essential workers that, despite its slogan, we never really were "all in this together."

To make matters worse, diverse communities like Long Beach are being disproportionately affected by COVID-19.⁵⁷

COVID-19 cases and clusters at Kroger, Ralphs, and Harris Teeter stores also drew press scrutiny as the COVID-19 pandemic progressed.⁵⁸

In sum, paid sick leave clearly qualifies as a consistent subject of widespread public debate, as shown by the abundant media attention and public policy initiatives dedicated to the issue, especially in 2020 and 2021. More specifically, the features of sick leave policy specifically at Kroger have had significant public policy consequences and caused wide public discussion. This issue is significant for Kroger in particular, as evidenced by media attention focused on Kroger's paid leave policies due to its size, number of low-wage and essential workers, and the potential for spread at stores that stayed open as essential businesses. The roiling controversy over Kroger's human capital practices, including sick leave policy, is obvious in the current fight over municipal "hero pay" ordinances. Therefore, it is abundantly clear that paid sick leave is a significant public policy issue for Kroger, and the Company should not be permitted to exclude the Proposal on ordinary business grounds.

The Proposal Would Not Micromanage Kroger Because It Requests a Feasibility Report and Would Not Seek to Control Day-to-Day Management

Kroger urges that the Proposal would micromanage it because it believes that implementation would intrude on "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

⁵⁷ Ibid.

⁵⁸ See, e.g., <https://www.cincinnati.com/story/money/2020/03/16/coronavirus-two-kroger-workers-test-positive/5060499002/>; <https://www.whas11.com/article/news/investigations/focus/three-lou-area-krogers-deep-cleaned-after-employees-test-positive-for-covid-19/417-41c10bf3-e22a-4150-a868-33542add1e60>; <https://www.usatoday.com/story/money/2020/04/13/coronavirus-four-kroger-workers-die-after-falling-ill-covid-19/2985496001/>; <https://www.fastcompany.com/90500771/grocery-store-workers-keep-getting-covid-19-but-have-to-fight-their-companies-to-pay-for-testing>; <https://dailybruin.com/2020/05/01/5-westwood-village-ralphs-workers-test-positive-for-covid-19>; <https://www.wxii12.com/article/harris-teeter-distribution-center-associates-greensboro-covid19/32169782>;

policies” and would dictate “compensation and benefits matters,” “terms and conditions of employment,” and the Company’s labor relations and collective bargaining.⁵⁹ Kroger argues that the Proposal seeks to micromanage the Company because “[g]iven 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.”⁶⁰ That claim is at odds with the language of the Proposal, which does not seek detailed information, nor identify nor dictate the factors Kroger should consider, nor recommend a specific policy change.

A 2019 Staff Legal Bulletin made clear that the framing used in the Proposal does not support exclusion on micromanagement grounds. Staff Legal Bulletin 14K (“SLB 14K”)⁶¹ reiterated the standard set forth in the 1998 Release in which the Commission stated that micromanagement “may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.”⁶² SLB 14K then explained that a proposal, like the Proposal, “framed as a request that the company consider, discuss the feasibility of, or evaluate the potential for a particular issue generally would not be viewed as micromanaging,” even when the issue involves “matters of a complex nature.”⁶³ The Division contrasted such a proposal with one that “prescribes specific timeframes or methods for implementing complex policies,” which “may run afoul of micromanagement.”⁶⁴ Because the Proposal asks for a feasibility report, Kroger’s assertions regarding the “inherent complexity” involved in paid sick leave policy are irrelevant to whether the Proposal is excludable on ordinary business grounds.

More fundamentally, the Proposal does not “prob[e] 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,” as the 1998 Release put it. Senior executive compensation policies and practices are at least as complex as paid sick leave and involve numerous factors such as legal requirements, tax considerations, market practices, and performance metrics. Indeed, the section of Kroger’s most recent proxy statement dealing with executive compensation runs for 34 pages. Kroger’s shareholders analyzed that detailed and complicated disclosure when voting on management’s “say on pay” proposal at the 2020 annual meeting. They would be more than capable of understanding the feasibility analysis sought by this Proposal.

⁵⁹ No-Action Request, at 11.

⁶⁰ No-Action Request, at 11-12.

⁶¹ Staff Legal Bulletin 14K (Oct. 16, 2019).

⁶² Exchange Act Release No. 40018 (May 21, 1998).

⁶³ SLB 14K, section 4.

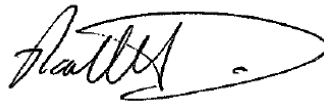
⁶⁴ SLB 14K, section 4.

* * *

For the reasons set forth above, Kroger has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). The Proponents thus respectfully request that Kroger's request for relief be denied.

The Proponents are grateful for the opportunity to be of assistance in this matter. Please direct all replies and inquiries to me by e-mail at pat@zevin.com or by phone at (617) 742-6666.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Miguel Tomaino", enclosed within a large, loopy oval shape.

Pat Miguel Tomaino
Director of Socially Responsible Investing
Zevin Asset Management, LLC

cc: Christine Wheatley, The Kroger Co
Stacey Heiser, The Kroger Co
Keith Daley, The Kroger Co
Rebekah Manis, The Kroger Co
Samantha Gossett, The Kroger Co
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February 22, 2021

Lyuba Goltser
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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. – 2021 Annual Meeting Omission of Shareholder Proposal of Zevin Asset Management 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 attached as Exhibit A (the “Proposal”) submitted on behalf of William Creighton by Zevin Asset Management, LLC and by Everence Financial on behalf of the Praxis Value Index Fund, the Sisters of St. Francis Charitable Trust, First Affirmative Financial Network, LLC on behalf of Waterglass, LLC, and the Sisters of the Presentation of the Blessed Virgin Mary of Aberdeen, South Dakota, 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 2021 annual meeting of shareholders. 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 2021 annual meeting of shareholders on or about May 13, 2021. The Company’s Annual Meeting of Shareholders is scheduled to be held on June 24, 2021. 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. Background

The Company is one of the nation’s largest retailers and operates, either directly or through one of its subsidiaries, approximately 2,757 retail food and drug stores, multi-department stores, jewelry stores, and convenience stores in 35 states and the District of Columbia, and has nearly 500,000 associates who support its operations across the United States. The Proposal (text provided below) focuses on benefits that the Company provides to its general employees (“associates”) through its emergency leave guidelines, which are part of the benefits offered, and the compensation paid, by the Company to its associates across the United States. The Company takes seriously its commitment to the health and well-being of its associates. In March 2020, in response to the potential impact of COVID-19 on its workforce, the Company announced and expanded its emergency leave guidelines to include paid time off for self-isolation and symptoms verified by an accredited health care professional as well as associates diagnosed or placed under quarantine due to COVID-19.¹ The Company paid all eligible full- and part-time frontline grocery, pharmacy, supply chain, manufacturing and call center associates a wage premium from late March through mid-May 2020 and multiple thank-you bonuses in recognition of its associates’ sustained commitment to customers during the pandemic. Throughout fiscal year 2020, the Company invested more than \$1.5 billion to reward our associates and safeguard associates and customers. These investments include associate bonuses, wage premiums, store credits and fuel points, paid leave, personal protective equipment, and over \$10 million in contributions to The Kroger Family of Companies Helping Hands fund.² In addition, the Company recently announced reward payments to associates who receive the COVID-19 vaccine.

Aside from COVID-19-related benefits, the Company offers a comprehensive and competitive Total Rewards program including competitive wages, vacation, paid time off,

¹ <http://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Family-of-Companies-Announces-Appreciation-Bonus-for-Associates-and-Expands-14-Day-COVID-19-Emergency-Leave-Guidelines/default.aspx>

² See “How We’re Keeping Our Associates Safe” <https://www.kroger.com/i/coronavirus-update/associate-wellness>.

retirement, health care, associate discounts on Our Brands, tuition reimbursement, and discounts on fitness, travel, cell phones, and many other items in our communities.

II. The Proposal

The Company received the Proposal, accompanied by a cover letter from Zevin Asset Management, LLC, writing on behalf of Mr. Creighton, via email on December 7, 2020.

The Proposal states:

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy³ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

The cover letter and the Proposal, along with a five paragraph statement in support of the Proposal under the header “Supporting Statement,” as well as the co-filers’ submissions are attached to this letter as Exhibit A.

III. Basis for Exclusion

The Proposal May be Excluded Under Rule 14a-8(i)(7) Because the Proposal Is Related 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 “May 1998 Release”).

In the May 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.* 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.* Both considerations are rooted in a fundamental

³ <http://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Family-of-Companies-Announces-Appreciation-Bonus-for-Associates-and-Expands-14-Day-COVID-19-Emergency-Leave-Guidelines/default.aspx>

“corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.* (citing Release No. 12999 (Nov. 22, 1976)).

In Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that there is a significant policy exception to the use of the ordinary business exclusion, such that shareholder proposals in which the “underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant... would be appropriate for a shareholder vote as long as a sufficient nexus exists between the nature of the proposal and the company.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business). Thus, a shareholder proposal framed in the form of a request for a report does not change the nature of the proposal.

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 Employees

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because, by focusing on the Company providing additional weeks of paid leave as a “standard employee benefit,” it 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)⁴ (“SLB 14A”). The Staff echoed this guidance in Staff Legal Bulletin No. 14J (Oct. 23, 2018), explaining that “proposals that relate to general employee compensation and benefits are excludable under Rule 14a-8(i)(7).” For example, in *Ford Motor*

⁴ 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).”

Co. (avail. Jan. 9, 2008) (“Ford 2008”), the proposal requested that the company stop awarding all stock options. The proposal did not limit the applicability of this ban on stock option awards to senior executive officers and directors, but instead applied the ban generally 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 *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. 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 employees, 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 (PSL) for workers" and that "[paid sick leave] helps to counter the negative economic impact" of missing work due to illness, namely the COVID-19 pandemic. 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 nearly 500,000 associates across the United States as of its fiscal year end 2020. 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 employees who (in total) belong to bargaining units covered by over three hundred collective bargaining agreements. 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; and associates' overall compensation packages. 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*, 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 alter its policies to extend paid sick leave, as prescribed by the Proposal, for the duration and on the terms set forth therein, as a "standard employee 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).

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

The Proposal asks the Company "to analyze and report on the feasibility of including the paid sick leave policy announced March 14, 2020 and expanded March 21, 2020 as a standard

employee benefit not limited to the COVID-19 pandemic.” 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 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. Notably, 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 discussions among legislators and other policymakers. 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 relating to COVID-19 that the Company determined to implement. 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 aims to direct the Company's management of its nearly 500,000 associates as of its fiscal year end 2020 by requesting that the Company analyze and report on the feasibility of expanding its paid sick leave guidelines to offer the 14 days of standard pay provided to workers with verified COVID-19 symptoms as a "standard employee benefit not limited to the COVID-19 pandemic." Evidently, the Proposal is focused on influencing the Company's management of its workforce in seeking an analysis and a report relating to the compensation and benefits provided to its workforce. The Company's determinations as to how much time the associate can be away from work while sick, and whether to pay associates who are required to stay home from work due to illness, 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.

b. 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 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. 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.

Here, the Proposal asks the Company to analyze and report on the feasibility of expanding its paid sick leave policy. To date, the Staff has not recognized paid sick leave as a significant policy issue. As described above, the Proposal focuses on expanding associate compensation and benefits for paid sick leave, and the Proposal and Supporting Statement’s references and discussion of the COVID-19 pandemic and its “negative economic impact” do not lessen the “ordinary business” focus of the Proposal. Further, while the Supporting Statement notes that “[p]olicy makers at all levels are debating [paid sick leave],” public discussion 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) (“SLB 14K”) 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 paid sick leave to associates “not limited to the COVID-19 pandemic” (i.e., extending the benefit to other conditions or illnesses), reinforcing the “ordinary business” focus of the Proposal under Rule 14a-8(i)(7).

The Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019), the proposal raised multiple issues at the company that may arguably have been of significance to the company. While it is possible that one or more of the concerns raised by the proposal and support provided related to policy issues of significance to the Company that may have transcended ordinary business, the proposal itself focused on customer service, and the Staff concurred that the proposal was excludable under Rule 14a-8(i)(7). Similarly, in *Amazon.com, Inc.* (Domini Impact Equity Fund and the New York State Common Retirement Fund) (avail. Mar. 28, 2019) (“Amazon 2019”), although the proposal might have touched on significant sustainability concerns, the proposal was so broadly worded that the Staff concurred that the proposal did not focus on any single issue that transcended the company’s ordinary business. In this case, the Supporting Statement makes only tangential references to the views of “some policymakers” and largely presents unsubstantiated opinions regarding the contributions of paid sick leave to public health. Moreover, the resolution in the Proposal itself does not provide for a public policy basis for conducting the feasibility report proposed.

Like Amazon 2019, the Proposal relates generally to the Company’s operations (i.e., how it compensates its associates and manages its workforce), and makes only brief reference to public policy, and instead focuses on how the Company can make changes to its policies and standards relating to extending the Company’s paid sick leave policy, thus remaining focused on workforce management, general workforce practices, and general associate compensation and benefits.

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 extending the Company’s paid sick leave policy so that it is 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).

As discussed above, the Proposal, requests that the Company analyze and report on the feasibility of expanding its paid sick leave policy. The Proposal does not focus on a significant policy issue, but rather the management and compensation of the Company’s workforce, which relates to the Company’s ordinary business operations and policies for its day-to-day operations, and is therefore excludable from the Company’s Proxy Materials under Rule 14a-8(i)(7).

c. The Proposal Seeks to Micromanage the Company

The May 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). The complexity of the type of assessment the Proposal requests is simply beyond the knowledge and expertise of the shareholders and therefore seeks to micromanage the Company. Moreover, although the Proposal is framed as a request for a report, the Proposal could be viewed as a request of the Board to adopt the Company’s previously announced paid sick leave policy implemented in response to the COVID-19 pandemic, which determination clearly involves “matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

Decisions concerning employee relations and compensation and benefits matters are multi-faceted, complex and based on a range of factors, and all the subject of different state laws. They 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 employees (approximately two-thirds of its employees 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 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.

As discussed above, the Proposal, in asking the Company to analyze and report on the feasibility of expanding its paid sick leave policy, is focused on general associate compensation and workforce management. 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 consistent with the precedents cited above, the Company believes that the Proposal may properly be excluded from its Proxy Materials.

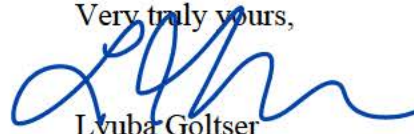
IV. Conclusion

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.

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
February 22, 2021
Page 13

Pat Miguel Tomaino
Zevin Asset Management, LLC

Chris C. Meyer
Everence Financial and the Praxis Mutual Fund

Judith Sinwell, OSF
Sisters of St. Francis Charitable Trust

Holly A. Testa
First Affirmative Financial Network

Sister Pegge Boehm
Sisters of the Presentation of the Blessed Virgin Method of Aberdeen, South Dakota

Exhibit A



Zevin Asset Management

December 7, 2020

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

RE: Shareholder proposal for 2021 Annual Meeting

Dear Ms. Wheatley,

I write to file the attached proposal to be included in the proxy statement of The Kroger Co ("Kroger" or the "Company") for its 2021 annual meeting of stockholders.

Zevin Asset Management is a socially responsible investment manager which integrates financial and environmental, social, and governance (ESG) research in making investment decisions on behalf of our clients. We are submitting the attached proposal because Kroger and its investors would benefit from considering improvements to paid sick leave policies.

We are filing this shareholder resolution on behalf of our client William Creighton (the Proponent), who has continuously held, for at least one year of the date hereof, 330 shares of the Company's stock, which would meet the requirements of Rule 14a-8 under the Securities Exchange Act of 1934, as amended. Verification of this ownership from our client's custodian is enclosed. That documentation shows that William Creighton (the Proponent) is beneficial owner of the above mentioned Kroger shares.

Zevin Asset Management, LLC has complete discretion over the Proponent's shareholding account at UBS Financial Services, which means that we have complete discretion to buy or sell investments as well as submit shareholder proposals at the direction of our client (the Proponent) to companies in the Proponent's portfolio. In consultation with our client (the Proponent), we confirm that the Proponent intends to continue to hold the requisite number of shares through the date of the Company's 2021 annual meeting of stockholders.

Zevin Asset Management, LLC is the primary filer for this resolution. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules. We may be joined by one or more co-filers.

I have had productive conversations with Keith Daley and Rebekah Manis on these issues, and I would welcome the opportunity to meet with you and your team in the coming weeks. I am looking forward to discussing the proposal and learning about relevant efforts underway which might be responsive to the proposal. Thank you for advising on your availability.

Please direct any communications to me at (617) 742-6666 or pat@zevin.com. We request copies of any documentation related to this proposal. I am grateful for your time, and I look forward to your response and further constructive dialogue on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Miguel Tomaino", enclosed within a hand-drawn oval.

Pat Miguel Tomaino
Director of Socially Responsible Investing
Zevin Asset Management, LLC

CC: Keith Daley, Group Vice President, Corporate Affairs, Kroger
Rebekah Manis, Director of Investor Relations, Kroger
Samantha Gossett, Investor Relations Analyst, Kroger

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy¹ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

SUPPORTING STATEMENT

The COVID-19 pandemic and the economic crisis it precipitated have drawn the attention of the public and policymakers to the importance of paid sick leave (PSL) for workers and public health. Media attention has focused on U.S. workers' lack of access to PSL, especially in sectors with significant public contact such as retail.² Workers without PSL risk being fired if they do not come into work despite illness, and some workers cannot afford to miss work and forego wages. PSL allows sick workers to stay home, preventing them from infecting co-workers and customers. Studies show that PSL mandates adopted in the U.S. since 2007 have reduced the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL and have lowered disease and overall absence rates.

PSL also contributes to public health by allowing workers who have been exposed to the virus that causes COVID-19 to quarantine, preventing further exposure. According to public health experts, PSL is cost-effective compared to the costs associated with disease spread. Some policymakers argue that PSL helps to counter the negative economic impact of the pandemic, especially for women and non-white workers, who are bearing the brunt of job loss, and that a sustainable economy depends on prioritizing safety. Finally, PSL benefits companies as well as workers, the public and the economy. Companies report that bolstering PSL improves morale and boosts productivity.

Policymakers are debating PSL at the federal, state and local levels. In response to the pandemic, the Families First Coronavirus Response Act (FFCRA) required that certain employers provide paid time off for workers ill with COVID-19 or quarantined due to exposure to the virus. That law is set to expire at the end of 2020, and the House-passed HEROES Act would fill some of the FFCRA's significant gaps and extend its PSL requirement through 2021. State and local governments, including California, San Francisco, and Philadelphia have also acted to mandate PSL for workers not covered by the FFCRA. Even before the pandemic, bills had been introduced in Congress to require employers to provide PSL, and eight states plus the District of Columbia had established PSL social insurance systems.

In March, Kroger announced temporary paid sick leave guidelines providing up to 14 days of standard pay to workers with verified COVID-19 symptoms. This Proposal asks that Kroger analyze and report to shareholders on the feasibility of making the policy permanent and extending it to cover conditions other than COVID-19.

We urge shareholders to vote FOR this proposal.

¹ <http://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Family-of-Companies-Announces-Appreciation-Bonus-for-Associates-and-Expands-14-Day-COVID-19-Emergency-Leave-Guidelines/default.aspx>

² See, e.g., <https://www.businessinsider.com/coronavirus-changes-walmart-starbucks-employee-benefits-2020-3/>; <https://www.cnn.com/2020/04/16/business/grocery-store-workers-retail-paid-sick-leave/index.html>; <https://www.theatlantic.com/health/archive/2020/03/does-walmart-provide-paid-sick-leave/608779/>; <https://www.washingtonpost.com/business/2020/03/10/walmart-apple-olive-garden-are-among-major-employers-updating-sick-leave-policies-coronavirus-cases-spread/>; <https://qz.com/1841763/us-grocery-workers-risk-coronavirus-but-most-lack-paid-sick-leave/>; <https://www.nytimes.com/2020/03/14/opinion/sunday/coronavirus-paid-sick-leave.html>



Zevin Asset Management

December 7, 2020

To Whom It May Concern:

Please find attached UBS Financial Services custodial proof of ownership statement of The Kroger Co (KR) from William Creighton. Zevin Asset Management, LLC is the investment advisor to William Creighton and filed a shareholder resolution regarding a paid sick leave report on behalf of William Creighton.

This letter serves as confirmation that William Creighton is the beneficial owner of the above referenced stock.

Sincerely,

Pat Miguel Tomaino
Director of Socially Responsible Investing
Zevin Asset Management, LLC



UBS Financial Services Inc.
One Post Office Square
Boston, MA 02109
Tel. 617-439-8227
Fax 855-833-0369
Toll Free 800-225-2385
www.ubs.com/team/kwbwm

Kolton Wood Brown Wealth Management

www.ubs.com

December 7, 2020

To Whom It May Concern:

This is to confirm that DTC participant (number 0221) UBS Financial Services Inc is the custodian for 330 shares of common stock in The Kroger Co (KR) owned by William Creighton.

We confirm that the above account has beneficial ownership of at least \$2,000 in market value of the voting securities of KR. Such beneficial ownership existed on December 7, 2020 and for one or more years prior to that date in accordance with Rule 14a-8(a)(1) of the Securities Exchange Act of 1934, as amended.

The shares are held at Depository Trust Company under the Nominee name of UBS Financial Services.

This letter serves as confirmation that William Creighton is the beneficial owner of the above referenced stock.

Zevin Asset Management, LLC is the investment advisor to William Creighton and will file a shareholder resolution on behalf of William Creighton.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelley A. Bowker".

Kelley A. Bowker



Everence Financial
1110 North Main Street
Post Office Box 483
Goshen, IN 46527
www.everence.com

Toll-free: (800) 348-7468
T: (574) 533-9511

December 14, 2020

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

Dear Ms. Wheatley,

On behalf of the Praxis Value Index Fund, Everence Financial is co-filing the enclosed shareholder resolution on paid sick leave policy, for inclusion in Kroger's proxy statement pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Everence Financial is a co-filer of this proposal with Zevin Asset Management as lead filer of the proposal. Zevin Asset Management is empowered to withdraw the proposal on our behalf.

Everence is the stewardship agency of Mennonite Church USA with \$5 billion of socially invested assets under management. Everence Capital Management is the advisor to Praxis Mutual Funds, and as such, conducts all investment related activities of the fund family, including filing shareholder resolutions and directing proxy voting.

The Praxis Value Index Fund is the beneficial owner of more than \$2,000 worth of Kroger stock. It has held the shares for over one year and will continue to hold sufficient shares in the company through the date of the annual shareholders' meeting. Verification of ownership will follow via a separate letter.

If you need to contact me, I can be reached at 574-533-9515 ext. 3291 or chris.meyer@everence.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris C. Meyer".

Chris C. Meyer
Manager, Stewardship Investing Advocacy & Research
Everence Financial and the Praxis Mutual Funds

CC: Keith Daley, Group Vice President, Corporate Affairs, Kroger
Rebekah Manis, Director of Investor Relations, Kroger
Samantha Gossett, Investor Relations Analyst, Kroger

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy¹ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

SUPPORTING STATEMENT

The COVID-19 pandemic and the economic crisis it precipitated have drawn the attention of the public and policymakers to the importance of paid sick leave (PSL) for workers and public health. Media attention has focused on U.S. workers' lack of access to PSL, especially in sectors with significant public contact such as retail.² Workers without PSL risk being fired if they do not come into work despite illness, and some workers cannot afford to miss work and forego wages. PSL allows sick workers to stay home, preventing them from infecting co-workers and customers. Studies show that PSL mandates adopted in the U.S. since 2007 have reduced the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL and have lowered disease and overall absence rates.

PSL also contributes to public health by allowing workers who have been exposed to the virus that causes COVID-19 to quarantine, preventing further exposure. According to public health experts, PSL is cost-effective compared to the costs associated with disease spread. Some policymakers argue that PSL helps to counter the negative economic impact of the pandemic, especially for women and non-white workers, who are bearing the brunt of job loss, and that a sustainable economy depends on prioritizing safety. Finally, PSL benefits companies as well as workers, the public and the economy. Companies report that bolstering PSL improves morale and boosts productivity.

Policymakers are debating PSL at the federal, state and local levels. In response to the pandemic, the Families First Coronavirus Response Act (FFCRA) required that certain employers provide paid time off for workers ill with COVID-19 or quarantined due to exposure to the virus. That law is set to expire at the end of 2020, and the House-passed HEROES Act would fill some of the FFCRA's significant gaps and extend its PSL requirement through 2021. State and local governments, including California, San Francisco, and Philadelphia have also acted to mandate PSL for workers not covered by the FFCRA. Even before the pandemic, bills had been introduced in Congress to require employers to provide PSL, and eight states plus the District of Columbia had established PSL social insurance systems.

In March, Kroger announced temporary paid sick leave guidelines providing up to 14 days of standard pay to workers with verified COVID-19 symptoms. This Proposal asks that Kroger analyze and report to shareholders on the feasibility of making the policy permanent and extending it to cover conditions other than COVID-19.

We urge shareholders to vote FOR this proposal.

¹ <http://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Family-of-Companies-Announces-Appreciation-Bonus-for-Associates-and-Expands-14-Day-COVID-19-Emergency-Leave-Guidelines/default.aspx>

² See, e.g., <https://www.businessinsider.com/coronavirus-changes-walmart-starbucks-employee-benefits-2020-3>; <https://www.cnn.com/2020/04/16/business/grocery-store-workers-retail-paid-sick-leave/index.html>; <https://www.theatlantic.com/health/archive/2020/03/does-walmart-provide-paid-sick-leave/608779/>; <https://www.washingtonpost.com/business/2020/03/10/walmart-apple-olive-garden-are-among-major-employers-updating-sick-leave-policies-coronavirus-cases-spread/>; <https://qz.com/1841763/us-grocery-workers-risk-coronavirus-but-most-lack-paid-sick-leave/>; <https://www.nytimes.com/2020/03/14/opinion/sunday/coronavirus-paid-sick-leave.html>

Memo

To: The Kroger Co., Attn: Christine S. Wheatley, Corporate Secretary

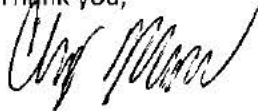
From: Everence Financial

Date: 12/14/2020

RE: Shareholder Proposal on Paid Sick Leave Policy

Included in this mailing is verification of our ownership of Kroger stock.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Meyer". The signature is written in a cursive, flowing style.

Chris Meyer

Manager, Stewardship Investing Advocacy and Research



Fund Custody
Trust Technology and Support Services
1555 N. Rivercenter Drive, Suite 302
Milwaukee, WI 53212
usbank.com

12-14-20

Mr. Chris C. Meyer
Manager, Advocacy and Research
Everence Financial and the Praxis Mutual Funds
1110 North Main Street
PO Box 483
Goshen, IN 46527

Dear Mr. Meyer:

This letter is in response to your request for confirmation that the following account is currently the beneficial owner of **The Kroger Co. (Cusip: 501044101)**. These securities are currently held by U.S. Bank as the accountholder's custodian. We furthermore verify that the account has held a minimum of \$2,000 worth of Kroger shares for the one-year period preceding and including December 14, 2020.

Praxis Value Index Fund/Account * 11,374 shares**

This letter also confirms that the aforementioned shares of stock are registered with U.S. Bank, Participant Number 2803, at the Depository Trust Company.

Sincerely,

Michael Cordelli

Michael Cordelli
Global Fund Custody Services- Account Manager
c. 414.639.0313 | f. 833.740.0379 |

U.S. Bank
RiverCenter (Schlitz Park)
1555 N Rivercenter Dr Suite 302, Milwaukee, WI 53212 | MK-WI-S302 | www.usbank.com



Sisters of St. Francis Charitable Trust

3390 Windsor Avenue
Dubuque, IA 52001-1311
563-583-9786

December 14, 2020

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

Dear Ms. Wheatley:

The Sisters of St. Francis Charitable Trust is committed to investment decision-making which meets both its fiduciary and social responsibility. Corporate business policies and practices become the evidence we seek as an investor, practices which also foster long-term business success and enhance the Common Good, especially aware of impact on the poor and Mother Earth.

The Sisters of St. Francis Charitable Trust has been a shareholder in The Kroger Company continuously for more than one year holding at least \$2,000 in market value. It will continue to hold the required number of shares for proxy resolutions through the date of the 2021 annual meeting of shareholders. *A letter verifying ownership is being sent separately by our custodian, Wells Fargo Bank, NA.*

In collaboration with Zevin Asset Management, LLC, who is filing on behalf of William Creighton (Proponent), we are co-filing the enclosed resolution for inclusion in the 2021 proxy statement in accordance with Rule 14(a)(8) of the General Rules and Regulations of the Securities and Exchange Act of 1934. A representative of the filers will attend the 2021 Annual Meeting as required by SEC rules. Zevin Asset Management, LLC is the primary filer. Pat Miguel Tomaino is the primary contact pat@zevin.com or 617-742-6666, and is authorized to act on our behalf, including withdrawal should the parties come to a mutual agreement.

Sincerely,

Judith Sinnwell

Judith (Judy) Sinnwell, OSF
Authorized Agent: Sisters of St. Francis Charitable Trust
sinnwellj@osfdbq.org

Cc: Resolution: Paid Sick Leave

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy¹ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

SUPPORTING STATEMENT

The COVID-19 pandemic and the economic crisis it precipitated have drawn the attention of the public and policymakers to the importance of paid sick leave (PSL) for workers and public health. Media attention has focused on U.S. workers' lack of access to PSL, especially in sectors with significant public contact such as retail.² Workers without PSL risk being fired if they do not come into work despite illness, and some workers cannot afford to miss work and forego wages. PSL allows sick workers to stay home, preventing them from infecting co-workers and customers. Studies show that PSL mandates adopted in the U.S. since 2007 have reduced the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL and have lowered disease and overall absence rates.

PSL also contributes to public health by allowing workers who have been exposed to the virus that causes COVID-19 to quarantine, preventing further exposure. According to public health experts, PSL is cost-effective compared to the costs associated with disease spread. Some policymakers argue that PSL helps to counter the negative economic impact of the pandemic, especially for women and non-white workers, who are bearing the brunt of job loss, and that a sustainable economy depends on prioritizing safety. Finally, PSL benefits companies as well as workers, the public and the economy. Companies report that bolstering PSL improves morale and boosts productivity.

Policymakers are debating PSL at the federal, state and local levels. In response to the pandemic, the Families First Coronavirus Response Act (FFCRA) required that certain employers provide paid time off for workers ill with COVID-19 or quarantined due to exposure to the virus. That law is set to expire at the end of 2020, and the House-passed HEROES Act would fill some of the FFCRA's significant gaps and extend its PSL requirement through 2021. State and local governments, including California, San Francisco, and Philadelphia have also acted to mandate PSL for workers not covered by the FFCRA. Even before the pandemic, bills had been introduced in Congress to require employers to provide PSL, and eight states plus the District of Columbia had established PSL social insurance systems.

In March, Kroger announced temporary paid sick leave guidelines providing up to 14 days of standard pay to workers with verified COVID-19 symptoms. This Proposal asks that Kroger analyze and report to shareholders on the feasibility of making the policy permanent and extending it to cover conditions other than COVID-19.

We urge shareholders to vote FOR this proposal.

¹ <http://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Family-of-Companies-Announces-Appreciation-Bonus-for-Associates-and-Expands-14-Day-COVID-19-Emergency-Leave-Guidelines/default.aspx>

² See, e.g., <https://www.businessinsider.com/coronavirus-changes-walmart-starbucks-employee-benefits-2020-3>; <https://www.cnn.com/2020/04/16/business/grocery-store-workers-retail-paid-sick-leave/index.html>; <https://www.theatlantic.com/health/archive/2020/03/does-walmart-provide-paid-sick-leave/608779/>; <https://www.washingtonpost.com/business/2020/03/10/walmart-apple-olive-garden-are-among-major-employers-updating-sick-leave-policies-coronavirus-cases-spread/>; <https://qz.com/1841763/us-grocery-workers-risk-coronavirus-but-most-lack-paid-sick-leave/>; <https://www.nytimes.com/2020/03/14/opinion/sunday/coronavirus-paid-sick-leave.html>

Institutional Retirement and Trust
104 W. 2nd Street
Davenport, IA 52801-1803

Wells Fargo Bank, N.A.

December 14, 2020

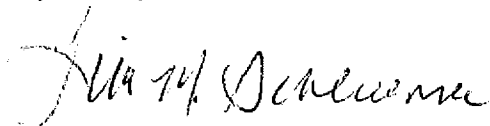
Christine S. Wheatley
Corporate Secretary
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202-1100

To whom it may concern:

As custodian of their assets, the Sisters of St. Francis Dubuque Charitable Trust has asked that Wells Fargo Bank, N.A. verify the holding of Kroger Company stock in their portfolio:

As of December 14, 2020, the Sisters of St. Francis Dubuque Charitable Trust holds, and has held continuously for at least one year, 111 shares of Kroger Company stock.

Respectfully,



Lisa M. Schluensen
Vice President



First Affirmative
Financial Network, LLC

Investing for a Sustainable Future

December 18, 2020

Christine Wheatley
Group Vice President, Secretary, and General Counsel
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202-1100

Dear Ms. Wheatley,

First Affirmative Financial Network, LLC is a United States based investment management firm. Kroger common stock is a portfolio holding for many of our clients. First Affirmative joins Zevin Asset Management as a co-filer of the enclosed shareholder proposal that addresses sick leave policy.

We file this resolution on behalf of our client Waterglass, LLC. We support the inclusion of this proposal in the 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, Waterglass holds more than \$2,000 of Kroger common stock, acquired more than one year prior to date of this filing and held continuously for that time.

Waterglass intends to remain invested in this position through the date of the 2021 annual meeting. Verification of ownership can be provided by DTC participant custodian Folio Institutional (Foliofn Investments, Inc.) upon request.

First Affirmative authorizes the lead filer to negotiate on our behalf, to include withdrawal of the resolution.

Sincerely,

A handwritten signature in cursive script that reads "Holly A. Testa".

Holly A. Testa
Director, Shareowner Engagement
First Affirmative Financial Network
303-641-5190 /hollytesta@firstaffirmative.com

Enclosures: resolution, letter of authorization

SHAREHOLDER ENGAGEMENT AUTHORIZATION

COMPANY NAME: KROGER

SHAREHOLDER PROPOSAL: PAID SICK LEAVE FEASIBILITY REPORT

Authorization and Agent Appointment of First Affirmative

I/we do hereby authorize First Affirmative Financial Network, LLC, acting through its officers and employees (collectively "First Affirmative") to represent me/us, as our agent, to file this "shareholder proposal" as defined by the U.S. Securities and Exchange Commission ("SEC") in SEC Rule 14a-8 at the next annual meeting. This authority and agent appointment includes:

- The submission, negotiation and withdrawal of my/our shareholder proposal, including statements in support of such shareholder proposal.
- Requesting Letters of Verification from custodians that I/we hold the requisite number of securities of the company to be eligible to submit the shareholder proposal.
- Issuing a Letter of Intent to the company of my/our intent to hold my/our securities required for eligibility to submit the shareholder proposal through the meeting for such shareholder proposal.
- Attending, speaking, and presenting my/our shareholder proposal at the shareholder meeting.
- Should a meeting be rescheduled and re-solicitation is not required, this authorization will apply to a re-convened meeting as well.

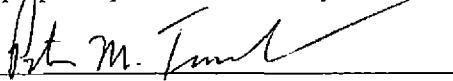
Please dialogue constructively with First Affirmative, promptly act upon their communications and instructions related to the shareholder proposal and direct all correspondence and questions regarding the above to First Affirmative.

Statement of Intent to First Affirmative,

In order for First Affirmative to act as my/our agent in a Letter of Intent, I/we do hereby affirmatively state an intent to First Affirmative to continue to hold a sufficient value of the company's securities, as defined within SEC Rule 14a-8(b)(1), from the time the shareholder proposal is filed at that company through the date of the subsequent related meeting of shareholders.

Should this authorization be rescinded in writing, First Affirmative is not required to take any action with respect to a pending shareholder proposal.

The undersigned hereby represent that I/we (whether individually, jointly, or organizationally) hold all appropriate power and authority to enter into this Shareholder Engagement Authorization.



Peter Trueblood
Manager, Waterglass LLC

12/17/20
Date

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy¹ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

SUPPORTING STATEMENT

The COVID-19 pandemic and the economic crisis it precipitated have drawn the attention of the public and policymakers to the importance of paid sick leave (PSL) for workers and public health. Media attention has focused on U.S. workers' lack of access to PSL, especially in sectors with significant public contact such as retail.² Workers without PSL risk being fired if they do not come into work despite illness, and some workers cannot afford to miss work and forego wages. PSL allows sick workers to stay home, preventing them from infecting co-workers and customers. Studies show that PSL mandates adopted in the U.S. since 2007 have reduced the rate at which employees report to work ill in low-wage industries where employers do not tend to provide PSL and have lowered disease and overall absence rates.

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<https://www.theatlantic.com/health/archive/2020/03/does-walmart-provide-paid-sick-leave/608779/>;
<https://www.washingtonpost.com/business/2020/03/10/walmart-apple-olive-garden-are-among-major-employers-updating-sick-leave-policies-coronavirus-cases-spread/>; <https://qz.com/1841763/us-grocery-workers-risk-coronavirus-but-most-lack-paid-sick-leave/>; <https://www.nytimes.com/2020/03/14/opinion/sunday/coronavirus-paid-sick-leave.html>



Sisters of the Presentation
of the Blessed Virgin Mary
In Joyful Service

December 28, 2020

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

RE: Co-file Investor Resolution with Zevin Asset Management, LLC to analyze and report on the feasibility of including the paid sick leave policy as a standard employee benefit

Dear Ms. Wheatley,

The Sisters of the Presentation of the Blessed Virgin Mary of Aberdeen, South Dakota ("Sisters") hereby co-file with *Zevin Asset Management, LLC* the enclosed shareholder proposal with The Kroger Company ("Kroger" or the "Company") for inclusion in Kroger's 2021 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

The Sisters have owned at least \$2,000 worth of Kroger stock continuously for over one year and will be holding the requisite number of shares for proxy resolutions through the annual shareholder meeting in 2021. You will be receiving verification of the ownership from our Custodian under separate cover, dated December 28, 2020. I am authorized to co-file the enclosed resolution. A representative of the proponents will be present at the 2021 shareholder meeting to move this proposal.

Zevin Asset Management, LLC is the lead filer on this resolution. We authorize and empower *Zevin Asset Management, LLC* to withdraw on our behalf if an agreement is reached.

We would appreciate confirmation of receipt of this letter via e-mail to sisterpegge@hotmail.com
May God's peace be with you.

Sincerely,

Sister Pegge Boehm, PBVM

Sister Pegge Boehm, PBVM Socially Responsible Investing Coordinator
Sisters of the Presentation of the BVM of Aberdeen, SD
1702 South 7th Avenue, #210
Sioux Falls, South Dakota 57105-2034
Phone (605) 848-3225
www.presentationisters.org

CC: Natalie Wasek, wasek.natalie@gmail.com,
Seventh Generation Interfaith Coalition for Responsible Investment
Pat Miguel Tomaino, pat@zevin.com, Zevin Asset Management, LLC
Keith Daley, ken.daley@kroger.com, Kroger
Rebekah Manis, Rebekah.manis@kroger.com, Kroger
Samantha Gossett, Samantha.gossett@kroger.com, Kroger

RESOLVED, that shareholders of Kroger ask the board of directors to analyze and report on the feasibility of including the paid sick leave policy¹ announced March 14, 2020 and expanded March 21, 2020 as a standard employee benefit not limited to the COVID-19 pandemic.

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Fifth Third Institutional Services
38 Fountain Square Plaza
1090CC
Cincinnati, OH 45263



December 28, 2020

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

Dear Ms. Wheatley:

As of the of December 28, 2020 the Sisters of the Presentation held 2,995 shares of the Kroger Company for at least one year in account number *** Any further questions, please do not hesitate to call.

Also, please be advised that Fifth Third Bank is a Registered DTC Participant.

Regards,

A handwritten signature in black ink, appearing to read 'Patrick Blom'.

Patrick Blom
Vice President
Fifth Third Institutional Services
Relationship Manager Team Lead
Ph: 513-534-0148
Email: patrick.blom@53.com

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Are Not FDIC Insured	Offer No Bank Guarantee	May Lose Value	Are Not Insured By Any Federal Government Agency	Are Not a Deposit
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