

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                                |   |                         |
|--------------------------------|---|-------------------------|
| <b>Joseph Hardesty, et al.</b> | : | Case No.: 1:16-cv-00298 |
|                                | : |                         |
| Plaintiffs,                    | : | Judge Black             |
|                                | : |                         |
| vs.                            | : |                         |
|                                | : |                         |
| <b>The Kroger Co., et al.</b>  | : |                         |
|                                | : |                         |
| Defendants.                    | : |                         |
|                                | : |                         |

**AGREED MOTION TO EXTEND THE RULE 23 AND  
FLSA DECERTIFICATION BRIEFING SCHEDULE**

Plaintiffs Joseph Hardesty, Madeline Hickey and Derek Chipman (collectively, “Plaintiffs”) and Defendants The Kroger Co. and Kroger G.O., LLC (collectively, “Defendants”) (together with Plaintiffs, the “Parties”) hereby move the Court for an Order amending the current Calendar Order (Doc. #18) as follows:

|  | <u>Current</u> | <u>Proposed</u>      |
|--|----------------|----------------------|
| Rule 23 certification/FLSA decertification motions | March 3, 2017  | <b>April 7, 2017</b> |
| Memoranda in opposition thereto                    | April 3, 2017  | <b>May 22, 2017</b>  |
| Reply memoranda in support thereof                 | May 3, 2017    | <b>June 23, 2017</b> |

While the Parties have been and remain diligently engaged in discovery, the Parties request these modest extensions in order to allow adequate time for both Plaintiffs and Defendants to take certain depositions prior to filing their opening Rule 23 and FLSA decertification papers, respectively. Specifically, Plaintiffs intend to take the deposition of Buck Moffett, the former General Manager of Defendant Kroger G.O., LLC’s Center of Recruiting Excellence (“CoRE”),

on February 23, 2017, and Defendants intend to take the depositions of four opt-in plaintiffs – Kim Burchette, Corbin Hom, Kelly Rutledge, and Matthew Taske – during the time period from February 24, 2017 to and including March 10, 2017. While Plaintiffs are prepared and able to take Mr. Moffett’s deposition prior to February 23, 2017, Defendants have indicated that Mr. Moffett will be out of the country and otherwise unavailable until that time. Similarly, Defendants could depose the four opt-in plaintiffs sooner than February 24, 2017 to March 10, 2017, but they have agreed to comply with Plaintiffs’ request that Mr. Moffett’s deposition occur first. For these reasons, the Parties agree that a modest extension of the briefing schedule will best enable these depositions to occur as required and requested by the Parties while also allowing the Parties to adequately brief issues relevant to Rule 23 certification and FLSA decertification. In addition, the Parties request a small amount of additional time to prepare and file their oppositions so that they can sufficiently address any issues raised in the opening papers.

The Parties do not believe that these proposed changes will require an alteration to the August 22, 2017 telephonic status conference or any other dates related to this matter.

Respectfully submitted,

/s/ Joshua M. Smith (per authority)

Peter A. Saba  
Joshua M. Smith  
Sharon J. Sobers  
Stagnaro, Saba & Patterson Co., L.P.A.  
2623 Erie Avenue  
Cincinnati, OH 45208  
Telephone: (513) 533-2700  
Facsimile: (513) 533-2999  
pas@sspfirm.com

*Attorneys for Plaintiffs*

/s/ David P. Zins

David K. Montgomery (0040276)  
David P. Zins (0096034)  
Jackson Lewis PC  
PNC Center, 26<sup>th</sup> Floor  
201 East 5<sup>th</sup> Street  
Cincinnati, OH 45202  
Telephone: (513) 898-0050  
Facsimile: (513) 898-0051  
David.Montgomery@jacksonlewis.com

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on January 27, 2017 the foregoing AGREED MOTION TO EXTEND THE RULE 23 AND FLSA DECERTIFICATION BRIEFING SCHEDULE was filed with the Court's CM/ECF system, which electronically sends notice to all parties of record upon:

Peter A. Saba  
Joshua M. Smith  
Sharon J. Sobers  
Stagnaro, Saba & Patterson Co., L.P.A.  
2623 Erie Avenue  
Cincinnati, OH 45208

/s/ David P. Zins

David P. Zins