In the Matter of THE KROGER CO.

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into between the Attorneys General of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont,Virginia, Washington, West Virginia, Wyoming, and Guam and The Kroger Co., a for-profit corporation incorporated under the laws of Ohio (hereafter referred to as "the Company").[1]

WHEREAS, the Attorneys General allege that:

- more than 80% of regular adult smokers began smoking as children; and
- every day in the United States more than 2000 children begin smoking cigarettes, and one third of those children will one day die from a tobacco-related disease; and
- the younger a person begins smoking, the more likely it is that he or she will be unable to quit in later life and will suffer a disease attributable to tobacco use; and
- youth demonstrate signs of addiction after smoking only a few cigarettes; and
- an estimated 690 million packs of cigarettes are sold illegally to children each year nationwide; and
- more than 400,000 Americans die each year from diseases caused by tobacco use; and

WHEREAS, the federal Food & Drug Administration ("FDA") data indicates that, as an average among U.S. retailers, one in every four attempts by a person 15 to 17 years old to purchase cigarettes over the counter results in a sale; and

WHEREAS, the Company is a retailer of tobacco products; and

WHEREAS, the Company operates under trademarks including, but not limited to: Kroger, Ralphs, King Soopers, City Market, Dillons, Smith's, Fry's, QFC, Baker's, Price Rite, Owen's, JayC, Hilander, Gerbes, Pay Less, Food4Less, Foods Co, Fred Meyer, Fry's Marketplace, Smith's Marketplace, Kroger Marketplace, Turkey Hill, Kwik Shop, Loaf 'n Jug, Quik Stop, and Tom Thumb trademarks; and

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[1] With regard to Georgia and Virginia, this document will be titled an "Agreement." With regard to Tennessee, this Assurance is entered into in conjunction with the Tennessee Division of Consumer Affairs.

WHEREAS, an analysis performed by the Attorneys General of compliance check data collected by the FDA and by state authorities under the Synar Amendment, section 1926(b)(2) of the Public Health Service Act, 42 USC 300x-26(b)(2) (1992), and state and local laws indicates that retail outlets operating under the Company's trademarks made tobacco sales to persons under the age of 18 in a number of controlled compliance checks; and

WHEREAS, the Attorneys General claim that such sales, and/or the corporate policies and practices that result in such sales, violate the Consumer Protection statutes[2] and/or other laws of their respective States; and

WHEREAS, the Company does not admit liability for any of the acts or practices described or referred to herein nor agree that the Consumer Protection statutes create any liability on it in this regard; and

WHEREAS, the Company reaffirms its continuing commitment to responsible marketing of this age-restricted product and to the health and welfare of our nation's youth, and is committed to

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[2] §13A-12-3, Code of Alabama (1975) (AL); Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 et seq. (AK); A.R.S. § 44-1521 et seq. (AZ); Arkansas Code Annotated 4-88-101 et seq. (AR); Cal. Bus. & Prof. Code § 17200 et seq. (CA); Colorado Consumer Protection Act, §§ 6-1-101, et seq., C.R.S. (2001) (CO); Conn. Gen. Stat. § 42-110a et seq. (2007) (CT); 6 Del. C. 2512 et seq. and 6 Del. C. 2531 et seq. (DE); Fla. Stat. Ann. § 501.201, et seq. (West) (FL); O.C.G.A. § 45-15-3. (GA); Haw. Rev. Stat. § 481A-1 et seq. (HI); Idaho Code Section 48-601 et seq. (ID); Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 et seq. (IL); Iowa Code § 714.16 (2005) (IA); K.S.A. 50-623, et seq. (KS); KRS 367.110-367.300 (KY); La. Rev. Stat. Ann. § 51:1501 (West) (LA); 5 M.R.S.A § 203-A, 5 M.R.S.A. § 210, 5 M.R.S.A. §§ 205-A-214 and 10 M.R.S.A. § 1211 (ME); Maryland Annotated Code, Commercial Law Article, §§ 13-101 et seq. (MD); Michigan Consumer Protection Act, MCL 445.901 et seq. (MI); Mississippi Consumer Protection Act, Miss. Code Ann. Section 75-24-1, et seq. (MS); Mont. Code Ann. § 30-14-101 et seq. (MT); Neb.Rev.Stat. § 59-1601 et seq. (Reissue 2004; Cum. Supp. 2006) (NE); Nevada Revised Statutes Chapter 598 (NV); N.J.S.A. 56:8-1 et seq. (NJ); NMSA 1978, §§ 57-12-1 et seq. (1967) (NM); R.C. 1345.01 et seq. (OH); 15 O. S. (2001) § 751 et seq. (OK); ORS 646.605, et seq. (OR); Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (PA); R.I. General Laws §§ 11-9-13, 11-9-13.1 through 11-9-13.16, and 11-9-14 (RI); S.C. Code Ann., § 39-5-10 et seq. (1976, as amended) (SC); S.D. Codified Laws Ann. Chapter 37-24 (SD); Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. Sec. 47-18-101, et seq. (TN); Tex. Bus. & Com. Code Ann. § 17-41 (Vernon) (TX); Utah Code Ann. §§ 13-5-1 through 13-5-18 & 13-11-1 through 13-11-23 (UT); Virginia Consumer Protection Act, Va. Code § 59.1-196 et seq. (VA); Vermont Consumer Fraud Act, 9 V.S.A. § 2451, et seq. (VT); Wash. Rev. Code Ann. § 19.86.100 (WA); W. VA Code 46A-1-101 et seq. (WV); Wyo. Stat. § 40-12-101 et seq. (WY); 5 GCA, §32201, et seq. (GU).

employing and enhancing tobacco retailing practices that are designed to prevent the sale of tobacco products to minors;

NOW, THEREFORE, the Attorneys General and the Company agree as follows:

I. DEFINITIONS

(A) The term "Attorney General" refers to an Attorney General who is a party to this Assurance, and the term "Attorneys General" refers collectively to all such parties.

(B) The term "business day" means a day which is not a Saturday or Sunday or legal holiday on which banks are authorized or required to close in New York, New York.

(C) The term "Company store" means a retail store both owned and operated by the Company.

(D) The term "Compliance Officer" refers to the person appointed by the Company pursuant to Part V.A.1.

(E) The term "electronic age verification devices and systems" means cash registers, computerized systems or electronic scanning or swiping equipment that assist a clerk in verifying the age of the customer.

(F) The term "Franchisee" means an individual or entity that by a written franchise agreement has been granted the right to use the Company trademarks, trade dress and other property to operate a retail store and conduct business.

(G) The term "Independent Entity" means an entity that is not owned by or affiliated with the Company and which conducts the compliance checks described in Part IV.

(H) The term "Inside Advertising" shall mean tobacco advertising located inside a Company Store and window tobacco advertising signage facing into the Company store.

(I) The term "minor" means a person under the legal age for purchasing tobacco products.

(J) The term "person experienced in providing youth access training" means someone who the Company determines has demonstrated a thorough understanding and working knowledge of the information and possesses the skills necessary to train others.

(K) The term "smoking paraphernalia" means pipes, cigarette rolling papers, and cigarette rolling machines.

(L) The term "States" refers to the States, Commonwealths, and the District of Columbia whose Attorneys General are parties to this Assurance.

(M) The term "third party sale" means an adult purchasing tobacco products or smoking paraphernalia in order to furnish it to a minor.

(N) The term "tobacco product" is intended to include cigarettes of all kinds, including bidis, cigars, loose tobacco, chewing tobacco, snuff, and any other form of tobacco.

(O) The term "vending machine" means a mechanical or electrical device from which one or more tobacco products are dispensed in exchange for consideration.

(P) The term "youth access" is used herein as a shorthand reference to age restrictions only on tobacco products contained in the laws of the various States.

II. PERSONNEL PRACTICES RELATING TO THE SALE OF TOBACCO PRODUCTS TO MINORS

The Company shall adopt and enforce policies that implement the following personnel practices at Company stores relating to the sale of tobacco products to minors.

A. Hiring

1. The Company shall provide adequate supervision to those employees under the legal age for purchasing tobacco who work in a position that may involve selling tobacco, or supervising anyone who sells tobacco, at a Company store.

2. Upon hiring an employee for a position (or upon first assigning an employee to a position) that involves selling tobacco, or supervising anyone who sells tobacco, at a Company store, the Company will inform the individual of the importance of compliance with laws relating to youth access. The information the Company provides shall include references to Company policies, legal consequences, and health concerns associated with youth access.

3. The Company shall revise its employment applications to ask all applicants for positions that involve the selling of tobacco, or supervising anyone who sells tobacco, at a Company store about past violations of prohibitions on selling or supplying tobacco to minors by that person or anyone under that person's supervision. The Company shall give any such reported violations due consideration in the hiring decision. The Company is not responsible for independently verifying the accuracy of the information on the application.

B. Training

1. Before assuming any job duties that involve or may involve the sale of tobacco at a Company store, a newly hired employee (or an employee being assigned to such a position for the first time) shall receive comprehensive training in the laws and company policies relating to tobacco and shall be required to sign an acknowledgment or confirm electronically that he/she has read and understands the information provided. The Company may combine such youth access training with the training it provides its employees with respect to other age restricted products.

2. Such training shall be prepared or performed by a person experienced in providing training and may be presented in a computer-based training (CBT) format. The training shall include, at a minimum, the following components:

(a) A review of applicable federal and state laws relating to youth access;

(b) A review of all Company policies relating to youth access;

(c) An explanation of the reasons that the law and Company policy deem youth access an important matter, which shall include the following information:

(i) the age of most beginning users (currently the average age is 14);
(ii) nicotine is addictive, and young people may show signs of addiction after smoking only a few cigarettes or using smokeless tobacco products for only a short time;
(iii) the younger a person becomes a regular tobacco user, the more likely it is that he or she will become addicted for life and that he or she will suffer serious health damage; and
(iv) more than 400,000 Americans die each year from tobacco-related diseases;

(d) An explanation that employee non-compliance with youth access laws and policies may constitute grounds for discharge, and that the Company actively monitors employee compliance by instructing store managers to assess compliance on an on-going basis;

(e) A review of the range of tobacco products, and, where applicable, smoking paraphernalia, to which Company policies and/or youth access laws apply;

(f) A review of identification procedures including:

(i) the age that triggers the I.D. requirement (see Part III.E.2);
(ii) acceptable forms of I.D. (as listed in Part III.E.8);
(iii) features of an I.D. that must be checked;
(iv) how to tell if an I.D. may have been altered or is being misused; and
(v) what to do if an I.D. appears altered or misused;

(g) An explanation of the fact that many illegal sales are made to minors who produce I.D.'s showing that they are in fact under the legal age, and the importance of devoting the time and effort needed to perform the necessary calculation to establish that a customer is of legal age;

(h) A review of prescribed methods, practical techniques, and stock phrases (where appropriate) for handling the following recurring situations:

(i) asking for I.D.;
(ii) making the necessary age calculation;
(iii) declining to make a sale based on concerns relating to whether the I.D. has been altered or is being misused;
(iv) declining to make a sale for failure to have an I.D.;
(v) recognizing a potential third party sale;
(vi) declining to make a sale that appears to be a third party sale;
(vii) declining to make a sale of smoking paraphernalia;
(viii) resisting customer pressure and handling a customer's abusive conduct; and
(ix) taking any other actions required by Company policy.

(i) Actual or interactive practice of the methods, techniques, and phrases to be employed in the situations described in the preceding paragraph through role playing (for purposes of CBT training, computer interactive scenarios will satisfy this requirement);

(j) Instruction that an employee is not required to make a tobacco sale, and must decline to do so, if the circumstances reasonably suggest that doing so would violate the laws or company policies regarding youth access; and

(k) Instruction on the proper use of electronic age verification devices and any other systems employed by the Company in connection with age screening for the purchase of tobacco products.

3. In the case of an employee under the age of 21, training shall also emphasize the special challenges associated with declining to sell tobacco to underage persons who are friends, acquaintances, and/or peer group members, and on techniques and methods for meeting such challenges.

4. Within 90 days of the Effective Date, the Company will have modified its existing written instructor training materials to conform to the requirements of Paragraphs 2 and 3. The parties understand the locality-by-locality specific revisions for CBT development and programming may take a longer period of time to complete. To provide adequate time for this development and programming to occur, the Company shall be permitted to utilize its current CBT programs for a period of 120 days following the Effective Date, even if all of the topics specified above are not covered in the current CBT training programs.

5. The Company shall use a written or an electronic test designed to establish that its Company store employees whose duties involve the sale of tobacco have fully acquired the knowledge required to perform in accordance with the laws and Company policies relating to youth access. Within 90 days after the Effective Date, all new employees hired for a position, and all employees first assigned to a position, involving the sale or supervision of the sale of tobacco products at a Company store shall be required to pass the test prior to assuming those duties. Within 90 days after the Effective Date, the Company shall begin to administer

the test to all current employees selling or supervising the sale of tobacco products at a Company store, and all current employees shall be required to pass the test within one year of the Effective Date. Thereafter, each employee shall be required to pass the test at least once each year. The Company shall retain for three (3) years a record of the tests completed by each employee.

6. The Company shall provide supplemental training to any employee it desires to retain who:

   (a) allegedly sells tobacco products to a minor at a Company store and the Company receives notice from a governmental agency of the alleged violation;

   (b) fails to pass a compliance check as set forth in Part IV.B;

   (c) fails to pass a compliance check pursuant to any program now existing or hereafter implemented by the Company; or

   (d) fails to pass the test described in Part II.B.5.

C. Supervision

1. The Company's store managers shall be instructed to monitor staff compliance with youth access laws and policies on an on-going basis.

2. The Company shall inform its store managers that an important element of their performance assessments will be whether the staff under their supervision complies with applicable laws and regulations, which includes youth access laws and policies.

III. TOBACCO RETAILING POLICIES AND PRACTICES

The Company shall adopt and enforce the following retailing policies and practices at Company stores.

A. Vending Machines

The Company shall not use vending machines to sell tobacco products.

B. Restricted Sales Area

1. Inside Company convenience stores, tobacco products and smoking paraphernalia shall be displayed for sale in only one area of the store. Inside Company grocery stores and mass merchandise stores, cigarettes and smoking paraphernalia shall be displayed for sale in one primary location and may be displayed for sale in no more than two secondary locations (such as near self-check lanes and secondary store exits), provided such secondary locations contain limited advertising. This section does not apply to fuel kiosk areas outside the stores.

2. Tobacco products and smoking paraphernalia in Company convenience stores and cigarettes and smoking paraphernalia in Company grocery and mass merchandise stores shall be displayed and stored in an area designed to require an employee's assistance in retrieving a product from a restricted access location and designed not to permit a customer to take possession of the product without the sales associate's assistance.

C. Age Limitation on Sale of Smoking Paraphernalia

The Company shall have a policy requiring that no one under the legal age for purchasing tobacco be permitted to purchase smoking paraphernalia.

D. Cooperation in Enforcement of Youth Access Laws

The Company shall have a policy requiring that store personnel make every reasonable effort to cooperate in the enforcement of applicable youth access laws. At a minimum, the Company's policy shall require Company store employees to promptly inform their supervisor of violations by employees of laws:

1. prohibiting the purchase or attempted purchase of tobacco by minors;

2. prohibiting persons from supplying tobacco to minors;

3. prohibiting the theft of tobacco; and

4. prohibiting the alteration or misuse of a government-issued I.D. in connection with an attempt to purchase tobacco.

The supervisor will make reports of alleged violations of which s/he becomes aware to the Compliance Officer as specified in Part V.A.2.

E. Age Verification

1. The Company shall have in place adequate policies and procedures that are actively enforced and which prohibit the selling of tobacco products or smoking paraphernalia to minors.

2. The Company shall require its employees to obtain identification before sales are made from persons seeking to purchase tobacco or smoking paraphernalia who appear to be under the age of 27 (or such higher age as the Company determines appropriate) in accordance with Part III.E.8.

3. The Company shall program its cash registers at Company stores that are grocery stores to:

   (a) stop when the first tobacco product is scanned;

   (b) prompt the employee to I.D. the customer;

(c) display the date on or before which the customer must have been born in order to make a legal tobacco purchase or, if it cannot be programmed in that manner, require the clerk to enter the birth date shown on the I.D. for customers seeking to purchase tobacco who appear to be under the age of 27 (or such higher age as the Company determines appropriate); and

(d) allow the tobacco sale to proceed if the correct date is entered.

4. In the event the Company does not display the date on, or require the clerk to input the date into, its cash registers as specified in Section E.3(c) above, the Company shall provide employees with ready access at point of sale to specialty calendars ("If born after this date...") or comparable devices, including warning screens, in order to provide that the age calculation required to be made when an I.D. is checked in connection with a tobacco sale can be easily and reliably performed and is actually made.

5. The Company shall have a policy that each person with responsibility for selling tobacco at a Company store shall be reminded each time he or she begins a shift of the importance of performing proper I.D. checks for tobacco purchases, through a sign-in sheet, signs, posters, decals, stickers, a cash register prompt, or other means.

6. The Company shall monitor developments in technology relating to electronic age verification devices and systems and consider employing such devices and systems, to the extent reasonable, practicable, and affordable, as they become available. This Assurance does not require the Company to use any particular device or system for age verification.

7. In the event the Company adapts electronic age verification devices or systems that have the capacity to store data that would assist in evaluating whether the systems are being properly used by employees, it shall review such data periodically, and provide remedial training and support, as necessary, for those employees who appear to need it. However, nothing in this Assurance authorizes or sanctions the retention of personally identifiable information for marketing or other purposes.

8. Unless otherwise required by law, the Company shall have a policy that only the following forms of photo-I.D. are acceptable for purposes of establishing legal age to purchase tobacco: (a) Driver's License; (b) State-Issued Identification Card; (c) Passport; (d) Military -issued Identification Card; and (e) U.S. Immigration Card. The I.D. must be current and valid.

F. Minimum Pack Size

The Company shall not offer for sale single cigarettes or cigarette packages containing fewer than twenty cigarettes per pack. Single cigars are not prohibited.

G. Sale of Look-Alike Products

The Company shall institute a policy that it will not offer for sale candy, chewing gum, or similar products that themselves are designed to look like cigars or cigarettes.

H. Advertising

1. The Company shall limit tobacco signage in Company stores to brand names, logos, and prices.

2. The Company shall ensure that all tobacco advertising signage visible inside Company stores is confined to the area(s) where tobacco products are sold.

3. At Company stores located within 500 feet of any public playground area or any elementary or secondary school, the Company shall not utilize tobacco advertising signs that are located outdoors or on windows facing outward.

I. Placement of Minimum Age Signs

In addition to meeting whatever signage and posting requirements or restrictions as may be embodied in local, state, or federal law, within 90 days the Company shall post signs stating that persons who appear under the age of 27 will be asked for identification before a sale of any age-restricted product is made. The signs shall be placed at the following locations:

1. on each door by which a customer may enter the establishment (facing out),

2. at each cash register at which tobacco is sold,

3. at each tobacco product display, and

4. in the employee break area.

J. Free Samples

The Company shall not permit the distribution of free samples of tobacco products anywhere on Company store premises, including walkways and any parking area. Discounts, multi-package pricing, and tobacco products provided in connection with a purchase of tobacco products, e.g. a two-for-one offer, will not be considered the distribution of free samples.

IV. MONITORING

A. General Requirements

1. The Company shall within 90 days implement and maintain a program of compliance checks designed to determine whether Company stores and their employees are in compliance with youth access laws and policies.

2. All compliance checks pursuant to this Part IV shall be unannounced. Procedures shall be adopted that provide that employees whose compliance is being checked (both clerks and supervisors responsible for the performance of the clerks) have no reason to know that a given attempt to purchase tobacco is actually a compliance check.

3. The compliance checks pursuant to this Part IV will determine whether the employee selling the tobacco product asked the purchaser to produce identification, whether the purchaser provided an acceptable form of identification (see Part III.E.8), whether the employee checked the identification to verify whether the purchaser is of legal age, and, in the case of an attempted purchase by a person who does not produce proper identification, whether the sale was consummated. A passed compliance check is one where the employee completes these tasks and, where appropriate, declines to make the sale.

4. The Company will implement a program to notify associates who pass compliance checks, however, there shall be no obligation to provide rewards that have any monetary value.

B. Compliance checks

1. Within 90 days of the Effective Date, the Company shall arrange for an Independent Entity reasonably acceptable to the Attorneys General to perform compliance checks at 15% or more retail stores (both convenience stores and grocery or mass merchandise stores), as set forth in Part IV.B.2 below, that sell tobacco and are located in States whose Attorneys General are parties to this Assurance each six months. Compliance checks shall comply with the protocol attached hereto as Exhibit A.

2. For each six month period, the Independent Entity will randomly select the stores (but may be given direction by the Company as to specific divisions to be checked) where compliance checks will be conducted, provided that all of the stores shall be located in States whose Attorneys General are parties to this Assurance. No store selected to be checked will be identified to the Company, directly or indirectly, until after the check of that store is completed.

3. The Company shall have a policy that provides that compliance checks shall be conducted in a series of consecutive six (6) month programs, with each subsequent program beginning on the day after the previous program ends.

4. A compliance check shall consist of an attempt to purchase tobacco by a person chosen by the Independent Entity who:

   (a) is not employed by the Company,

   (b) is unknown to the staff of the selected store, and

(c) is a person of legal age who is less than 27 years of age (or such higher age as the Company determines appropriate).

5. The Company shall instruct the Independent Entity to perform the compliance checks for the purpose of obtaining an accurate and reliable indication of actual employee practices in connection with tobacco sales and not for the purpose of ensuring favorable results. When evaluating the performance of the Independent Entity, the Company shall apply the aforesaid criteria.

6. In the event that a store fails a compliance check, the Independent Entity shall conduct a second check ("re-check") of the store within sixty (60) days. The Independent Entity or the Company shall also conduct a re-check at each store that has received notice from a law enforcement agency of an alleged violation of law concerning the sale of tobacco products to minors that occurred after the Effective Date of this Assurance.

7. Within five (5) business days of each compliance check, including re-checks, the Independent Entity shall report the results to the manager of the store that was checked and to the Compliance Officer. Within five (5) business days after receiving notice of a compliance check, the Company shall use reasonable efforts to communicate the result of the check to the employees (cashier and supervisors), in the case of Company stores, or the Franchisee, in the case of franchise stores, who were the subject of the test.

8. In the event of a failed compliance check by a Company store employee whom the Company intends to retain, the non-complying employee shall be informed of the test result, instructed on what constitutes proper compliance, and cautioned to avoid further instances of non-compliance. In addition, a Company representative shall meet with the non-complying employee at the earliest practicable time for the purpose of informing him/her of the consequences of the violation and any subsequent violations, and, if the Company intends to retain the employee, providing remedial training and testing, and informing the employee that he or she will be the subject of additional compliance checks in the future.

9. A Company store employee who passes a compliance check and his/her immediate supervisor shall, at the earliest practicable time, be informed of the success and reminded that passing a compliance test is noted.

10. The parties recognize that a performance measure on compliance checks of 90% or higher for any six-month testing period constitutes good performance for that period. In the event the Company attains a compliance check performance measure of 90% or higher at Company stores for any six-month period, the Company may reduce the number of random checks conducted in the subsequent six-month period by 25%. In the event the Company attains a compliance check performance measure of 90% or higher at Company stores for any two consecutive six-month periods, the Company may eliminate the requirement to conduct checks.

C. Forbearance from Institution of Legal Proceedings

The Attorneys General agree not to institute legal proceedings based on any tobacco sales that are made during compliance checks conducted by the Company or compliance checks pursuant to this Assurance.

V. REPORTS

A. Compliance Officer

1. The Company shall designate an executive-level employee as its Compliance Officer, which person shall be responsible for ensuring compliance with the terms of this Assurance and for taking the steps necessary to improve compliance with youth access laws at Company stores.

2. The Company shall have and enforce a policy that requires each Company store manager to report all violations of federal, state, and local laws concerning the purchase or attempted purchase of tobacco products to minors occurring at the store to the Company's Compliance Officer within five (5) business days of receipt of notice of the alleged violation. The Compliance Officer shall maintain a record of all reported alleged violations and their dispositions for three (3) years.

3. Upon request of an Attorney General, the Compliance Officer shall cooperate in providing access to information relating to this Assurance, including but not limited to store-specific data on compliance with youth access laws.

B. Reports by the Independent Entity

1. The Company shall require by contract that the Independent Entity report the results of its compliance checks to a person designated by the participating Attorneys General to receive such reports.

2. The Company shall request that the Independent Entity send reports to the designated representative of the participating Attorneys General at the same time they are sent to the Company.

VI. FRANCHISE AGREEMENTS

The Company represents that its franchise agreements provide that Franchisees are independent contractors with control over the day-to-day operations of franchised stores, including without limitation the hiring, training and supervision policies at such stores. With respect to stores operated by Franchisees, the Company shall make good faith efforts to effect compliance on the part of each Franchisee with local, state, and federal laws relating to youth access and with this Assurance as follows:

1. Within ninety days of the Effective Date of this Assurance, the Company shall provide to each Franchisee (i) correspondence reminding them of the importance of preventing underage sales of tobacco products and of complying with youth access laws, including broader requirements regarding other age restricted products, and noting the fact that failure to comply with youth access laws could constitute grounds for termination or non-renewal of their right to operate under the Company trademark at the non-complying outlet, and (ii) a copy of this Assurance or a summary of its terms together with a letter encouraging the Franchisees to implement similar policies related to their retailing of tobacco products. Thereafter, correspondence from the Company bearing a similar message shall be sent annually to each Franchisee.

2. Each new Franchisee will be required to undergo the same tobacco retailing training program as is administered by the Company to new Company store employees that will be selling or supervising the sale of tobacco products.

3. The Company will offer each Franchisee the opportunity to separately engage the same Independent Entity engaged by the Company for purposes of Part IV.B of this Assurance to conduct compliance checks at the Franchisee's stores at the Franchisee's expense. Compliance checks so engaged by the Franchisee will not be part of the Part IV.B compliance check program of the Company and the results of such checks will be communicated only to the Franchisee and the Company.

4. The Company will offer to make its hiring, training, marketing, advertising, and other policies required under this Assurance, as well as its youth access training materials (where such materials have been developed to reflect laws applicable to the Franchisee), available to Franchisees through the Company's existing mechanisms for the Franchisee's adaptation and use in its operations.

5. In evaluating available legal options to discipline, terminate, or non-renew a franchise agreement, the Company shall give appropriate consideration to violation(s) of youth access laws.

6. Each newly entered or renewed franchise agreement entered into by the Company shall incorporate provisions into all franchise agreements at the time the agreement is initiated or renewed that generally requires the Franchisee to (i) comply with youth access laws, (ii) not permit on the premises the sale of tobacco products to underage persons, and (iii) notify the Company within five business days, in writing, of any notices of violation received from local, state, or federal authorities concerning the sale of tobacco to minors. These requirements can be broader and cover general compliance with all laws and regulations that pertain to the store. The franchise agreement shall provide that the violation(s) of youth access and other laws could constitute grounds for termination or non-renewal of the trademark authorization or franchise agreement.

7. The Company will advise its franchisees in writing of its advertising policies (Part III.H) and recommend to its franchisees that they follow these policies.

VII. MISCELLANEOUS PROVISIONS

A. Written Policies

1. Company policies relating to tobacco shall be in writing or electronic form. The Company shall provide a written or electronic copy of those tobacco policies relating to each employee who sells tobacco within ninety (90) days of the Effective Date or upon hiring if that occurs thereafter.

2. Company policies intended to prevent underage tobacco sales, including employee training and discipline policies, shall be no less stringent or comprehensive than policies intended to prevent underage alcohol sales, except where differences in the law require different policies.

3. Company policies shall embody the standards and practices set forth in this Assurance.

4. Within ninety (90) days of the Effective Date, the Company shall provide to a person designated by the Attorneys General a copy of the policies it adopts in order to comply with this Assurance. Thereafter it shall provide copies of any changes or modifications to such policies to a person designated by the Attorneys General within ten (10) days of such change or modification.

B. Implementation

Except where otherwise indicated in this Assurance, the Company agrees to adopt and implement the practices set forth in this Assurance on the following schedule:

1. Immediately upon the Effective Date, the Company will adopt and implement the following:

   - Underage Supervision (Part II.A.1)
   - Vending Machines (Part III.A)
   - Restrictions on selling area (Part III.B)
   - Age limitations on smoking paraphernalia (Part III.C)
   - Monitor electronic age verification technology (Part III.E.6)
   - Minimum pack size (Part III.F)
   - Free samples (Part III.J)
   - Compliance Officer appointed (Part V.A.1)

2. Within sixty (60) days of the Effective Date, the Company will adopt and implement the following:

   - Supplemental training using current materials (Part II.B.6)

- Supervision (Part II.C)
- Age verification (Part III.E) other than completing any necessary cash register programming pursuant to Part III.E.3
- Cooperation with enforcement of youth access laws (Part III.D)
- Franchise agreement provisions for new or renewed agreements (Part VI.A.6)

3. Within ninety (90) days of the Effective Date, the Company will adopt and implement the following:

   - Providing information to new hires (Part II.A.2)
   - Requesting violation information from applicants (Part II.A.3)
   - Revisions to written training materials (other than CBT training – see Part II.B.4) and implementation of non-CBT training consistent with Assurance (Part II.B)
   - New hire and first assignment employee testing (Part II.B.5)
   - Sale of look-alike products (Part III.G)
   - Advertising (Part III.H)
   - Placement of minimum age signs (Part III.I)
   - Compliance checks (Part IV.B)
   - Franchisee letters (Part VI.1)
   - Compliance Officer reporting system in place (Part V.A.2)
   - Providing policies and information to employees (Part VII.A.1 and 2)
   - Provide policies to Attorneys General (Part VII.A.4)

4. Within one hundred and twenty (120) days of the Effective Date, the Company will adopt and implement the following:

   - Revisions to CBT materials completed (Part II.B.4)

5. Within one hundred and fifty (150) days of the Effective Date, the Company will adopt and implement the following:

   - Cash register programming completed (Part III.E.3)

6. Within one year of the Effective Date, the Company will have completed annual testing of all existing employees subject to Part II.B.5.

C. Payment

The Company agrees to pay $325,000 to such accounts and addresses as the Attorneys General may direct within thirty (30) days of the Effective Date. Such sum is to be divided by the Attorneys General as they may agree and is to be used for attorney's fees or costs of investigation, or it shall be placed in or applied to consumer education, public protection, or local consumer aid funds, including for implementation of programs designed to decrease

possession and use of tobacco by minors, or for any other purpose authorized by state law at the sole discretion of each Attorney General or as otherwise required by law.

D. Applicability

This Assurance shall be binding on the Company, its successors, and assigns.

E. Modifications

1. The parties reserve the right to discuss the viability of any or all of these provisions as they are implemented, having due regard for changes in laws and regulations, as well as changes in equipment, technology, or methodology of retail sales over time. In particular, to the extent that unlawful underage sales continue to occur in spite of the Company's compliance with the provisions of this Assurance, the Attorneys General expressly reserve any and all enforcement options available for addressing such non-compliance (with the exception of those waived in Section F). Each party reserves the right to renew discussions with the other for the purpose of removing or modifying outdated or unnecessary provisions or establishing additional and/or different practices, policies, or procedures designed to eliminate or further reduce underage tobacco sales and, if requested by the other party, agrees to negotiate in good faith concerning the need for and content of possible modifications to the Assurance that address these issues.

2. Any modifications to this Assurance shall be by written agreement of the affected parties and, in the case of the Company, signed by a duly authorized officer of the Company holding the title of Vice President or higher.

F. Scope of Agreement

1. This Assurance hereby releases and resolves any and all claims of the Attorneys General as may arise from Consumer Protection jurisdiction (pursuant to the statutes set forth in footnote 2) over the acts and practices of the Company and its employees, officers, directors, and agents relating to tobacco sales to minors occurring prior to the Effective Date. Nothing herein shall affect other remedies available to any state or local jurisdiction in connection with a past or future underage sale of tobacco at a particular retail location, including fines, administrative penalties, permit suspensions, or any other remedy, sanction, or penalty that may be available to state or local authorities under applicable law.

2. Prior to seeking enforcement of this Assurance, a signatory Attorney General shall contact the Compliance Officer and provide the Company thirty (30) days advance written notice prior to instituting any proceeding under the States' Consumer Protection jurisdiction alleging a violation of this Assurance.

G. Counterparts

This Assurance may be executed in counterparts.

H. Conflict with Applicable Laws

No provision of this Assurance is intended or shall be interpreted to authorize conduct in violation of applicable local, state, or federal law, which law supersedes any and all terms of this Assurance in conflict with such law.

I. Effective Date

This Assurance shall take effect on November 1, 2007.

Dated: October 18, 2007

The Kroger Co.

By: _____

PAUL W. HELDMAN
Executive Vice President, Secretary & General Counsel

APPROVED MCS LAW DEP

EDMUND G. BROWN JR.
Attorney General
State of California

TOM CORBETT
Attorney General
State of Pennsylvania

GREG STUMBO
Attorney General
State of Kentucky

ROB MCKENNA
Attorney General
State of Washington

MARC DANN
Attorney General
State of Ohio

TROY KING
Attorney General
State of Alabama

TALIS J. COLBERG
Attorney General
Sate of Alaska

TERRY GODDARD
Attorney General
State of Arizona

DUSTIN MCDANIEL
Attorney General
State of Arkansas

JOHN SUTHERS
Attorney General
State of Colorado

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

JOSEPH R. BIDEN III
Attorney General
State of Deleware

BILL MCCOLLUM
Attorney General
State of Florida

THURBERT E. BAKER
Attorney General
State of Georgia

MARK J. BENNETT
Attorney General
State of Hawaii

LAWRENCE WASDEN
Attorney General
State of Idaho

LISA MADIGAN
Attorney General
State of Illinois

TOM MILLER
Attorney General
State of Iowa

PAUL MORRISON
Attorney General
State of Kansas

CHARLES FOTI
Attorney General
State of Louisiana

G. STEVEN ROWE
Attorney General
State of Maine

DOUGLAS F. GANSLER
Attorney General
State of Maryland

MIKE COX
Attorney General
State of Michigan

JIM HOOD
Attorney General
State of Mississippi

MIKE MCGRATH
Attorney General
State of Montana

JON BRUNING
Attorney General
State of Nebraska

CATHERINE CORTEZ MASTO
Attorney General
State of Nevada

ANNE MILGRAM
Attorney General
State of New Jersey

GARY KING
Attorney General
State of New Mexico

W. A. DREW EDMONDSON
Attorney General
State of Oklahoma

HARDY MYERS
Attorney General
State of Oregon

PATRICK LYNCH
Attorney General
State of Rhode Island

HENRY MCMASTER
Attorney General
State of South Carolina

LARRY LONG
Attorney General
State of South Dakota

ROBERT E. COOPER, JR.
Attorney General
State of Tennessee

GREG ABBOTT
Attorney General
State of Texas

MARK SHURTLEFF
Attorney General
State of Utah

WILLIAM H. SORRELL
Attorney General
State of Vermont

BOB MCDONNELL
Attorney General
State of Virginia

DARRELL V. MCGRAW JR.
Attorney General
State of West Virginia

BRUCE A. SALZBURG
Attorney General
State of Wyoming

ALICIA G. LIMTIACO
Attorney General
Territory of Guam

Exhibit A: Protocol for Compliance Checks

Part IV.B. of the Assurance of Voluntary Compliance, effective November 1, 2007, among the Company and the Attorneys General party thereto, requires that the Company arrange for an Independent Entity acceptable to the Attorneys General to perform compliance checks consistent with an agreed protocol at Company stores and stores operated by Franchisees that sell tobacco.

Unless otherwise defined in this Protocol, all terms used herein shall have the meanings given to them in the Assurance of Voluntary Compliance.

1. General Principles Underlying Protocol

A. Compliance checks conducted pursuant to this protocol shall be carried out in a manner that is designed to provide a reliable and realistic assessment of how employees perform when presented, in the usual course of business, with typical young persons attempting to purchase cigarettes.

B. Each compliance check is to be conducted in a manner that is designed not to reveal to employees and managers in the store being checked that compliance checks may be simultaneously occurring at other stores in the vicinity. However, the checker may notify the employee or the manager at the conclusion of the compliance check in the store being checked.

C. Persons who attempt to purchase cigarettes during compliance checks ("checkers") are to be trained by the Independent Entity to ensure that each checker is able to perform compliance checks in a competent and confident manner. Such training shall include role-playing. The Independent Entity shall develop written training protocols for checkers and for those who supervise checkers, and shall make those protocols available to the Company and the Attorneys General upon request.

D. Compliance checks shall be conducted in accordance with applicable federal, state, and local law and regulations.

2. General Characteristics of Persons Employed as Checkers and Timing of Checks

A. The Independent Entity shall verify that each checker, when he or she conducts compliance checks, is a person of legal age to purchase tobacco but who is less than 27 years of age.

B. Each checker shall not appear to be older or younger than the average person of his or her age, shall dress in a manner appropriate to his or her age group and social group, and shall not alter his or her appearance with the intent of appearing older or younger.

C. At least 40%, but not more than 60%, of compliance checks nationwide shall be conducted by a checker who is female. Persons used as checkers may include otherwise suitable persons who have previously used or currently use cigarettes, but may not be used to perform a check at any store at which the checker may have purchased cigarettes in the past.

D. At least 60% of compliance checks shall be conducted on weekends or between 3:00 P.M. and 8:00 P.M. on weekdays.

3. **Instructions to Checkers and Conduct of Compliance Checks**

Compliance checks shall be conducted in one of the following ways at the Company's option:

A. No I.D. Method

The following compliance check method may be used for any store.

i. The checker shall enter the store alone.

ii. The checker shall have no I.D. in his or her possession during the compliance checks, but shall have a sum of money sufficient to pay for the cigarettes that the checker will attempt to purchase.

iii. The checker shall approach a check-out counter where cigarettes may be purchased and request from the cashier a single pack of cigarettes. The brand requested shall vary among compliance checks.

iv. If the cashier requests I.D., the checker shall state that he or she does not have an I.D. in his or her possession. He or she may state that s/he is old enough to buy cigarettes and his or her actual age if asked.

v. The checker shall not attempt to persuade the cashier to sell the cigarettes by taking steps other than those expressly set forth in this Protocol.

vi. The checker shall attempt to make a note of the cashier's name and general appearance.

vii. The compliance check shall be considered a "pass" if the cashier both (1) asks for I.D. and (2) declines the sale due to failure to provide I.D.

viii. The compliance check shall be considered a "fail" if the cashier either (1) fails to ask for I.D. or (2) although asking for I.D., nonetheless completes the sale.

B. Electronic Age Verification Check (EAV Check)

If the store has deployed an operational electronic age verification device or system, the following method may be used at the Company's option:

i. The checker shall enter the store alone.

ii. The checker shall have a true and valid I.D. capable of use through the deployed age verification system in his or her possession during the compliance checks, and a sum of money sufficient to pay for the cigarettes that the checker will attempt to purchase.

iii. The checker shall approach a check-out counter where cigarettes may be purchased and request from the cashier a single pack of cigarettes. The brand requested shall vary among compliance checks.

iv. If the cashier requests I.D., the checker shall provide the cashier his or her I.D. and observe whether the cashier uses the electronic device available.

v. The checker shall attempt to make a note of the cashier's name and general appearance.

vi. The compliance check shall be considered a "pass" if the cashier both (1) asks for I.D. and (2) uses the EAV device to verify that the checker is of legal age.

vii. The compliance check shall be considered a "fail" if the cashier either (1) fails to ask for I.D. or (2) when presented with I.D., fails to use the EAV device to verify that the checker is of legal age.

4. Following the Compliance Checks

A. Immediately following each compliance check, the checker shall complete a report form that includes, at a minimum, the following items:

i. the checker's name, sex, and date of birth;
ii. the date and time of the compliance check;
iii. the address or the 3-digit number of the store checked;
iv. the name or a brief description of the cashier involved;
v. the brand of cigarettes requested;
vi. whether I.D. was requested;
vii. in the case of an EAV Check, whether the EAV device was used to verify age;
viii. comments regarding any noteworthy aspects of the transaction; and
ix. whether an employee's assistance was required to obtain cigarettes. In the event that an employee's assistance was not required, this shall be

reported to the Compliance Officer within seven (7) days of the compliance check.

B. The Independent Entity shall retain for at least two years each written report prepared pursuant to this Protocol.

C. In the event a store fails a compliance check or has received notice from a governmental entity of an alleged violation of law concerning the sale of tobacco products to minors that occurred after entry of the Assurance of Voluntary Compliance, the Independent Entity shall conduct a second compliance check ("re-check") of the store within sixty (60) days.

D. The Independent Entity shall report promptly the results of individual compliance checks to the Compliance Officer.

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

EDMUND G. BROWN JR.
Attorney General of the State of California

ALAN LIEBERMAN
Deputy Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814

In the Matter of
THE KROGER CO.

Dated: OCTOBER 9, 2007

GREGORY D. STUMBO
Attorney General
Commonwealth of Kentucky

Michael Plumley
Assistant Attorney General
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

MARC DANN
Attorney General of the State of Ohio

Susan C Walker

Susan Walker
Chief of Tobacco Enforcement Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428

In the Matter of
THE KROGER CO.

TOM CORBETT
Attorney General of Pennsylvania

BY: Tracey D. Tubbs
TRACEY D. TUBBS
Deputy Attorney General
Tobacco Enforcement Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

Dated: October 23, 2007

In the Matter of
THE KROGER CO.

Dated: OCTOBER 10, 2007

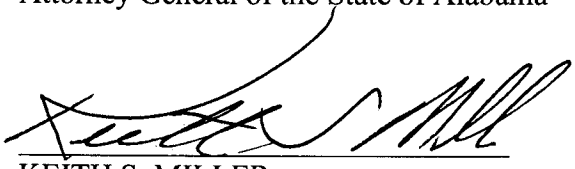
ROBERT M. MCKENNA
Attorney General of the State of Washington

ROBERT J. FALLIS
Assistant Attorney General
Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, Washington 98504-0100

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

TROY KING
Attorney General of the State of Alabama



KEITH S. MILLER
Chief Deputy Attorney General
Office of the Attorney General
11 South Union Street
Montgomery, Alabama 36130

In the Matter of
THE KROGER CO.

Dated: OCTOBER 10, 2007

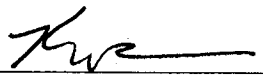
TALIS J. COLBERG
ALASKA ATTORNEY GENERAL

By: Julie Costa
FOR Cynthia C. Drinkwater
Assistant Attorney General
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5200
(907) 276-8554 (Facsimile)
Alaska Bar No. 8808159

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

TERRY GODDARD
Attorney General of the State of Arizona



KELLY PELOQUIN
Assistant Attorney General
Office of the Attorney General
1275 W. Washington
Phoenix, Arizona 85007

IN THE MATTER OF THE KROGER CO.

Dated: October 10, 2007

DUSTIN McDANIEL
Attorney General of the State of Arkansas

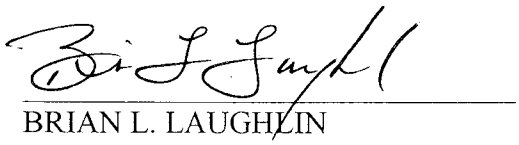
By: _____

Eric B. Estes, Ark. Bar No. 98210
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201

In the Matter of
THE KROGER CO.

Dated: OCTOBER 11, 2007

JOHN W. SUTHERS
Attorney General of the State of Colorado



BRIAN L. LAUGHLIN
Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203

In the matter of The Kroger Co.

Dated: October 9, 2007

RICHARD BLUMENTHAL
Attorney General of the State of Connecticut

JERRY FARRELL, JR.
Commissioner of Consumer Protection
State of Connecticut

HEATHER J. WILSON
Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

In the Matter of
THE KROGER CO.

Dated: OCTOBER 5, 2007

JOSEPH R. BIDEN, III
Attorney General of the State of Delaware

THOMAS E. BROWN, ESQ.
Deputy Attorney General
Delaware Department of Justice
820 North French Street, 6th Floor
Wilmington, DE 19801

In the Matter of
THE KROGER CO.

Dated: October 12, 2007

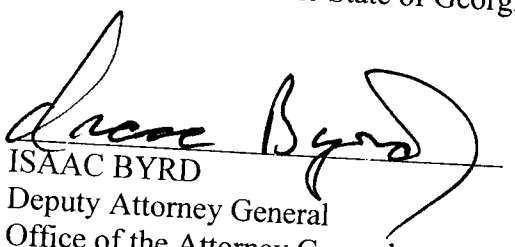
BILL McCOLLUM
Attorney General of the State of Florida

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399

In the Matter of
THE KROGER CO.

Dated: OCTOBER 10, 2007

THURBERT E. BAKER
Attorney General of the State of Georgia

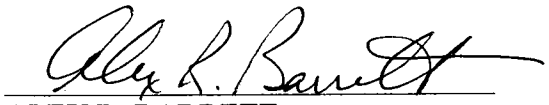


ISAAC BYRD
Deputy Attorney General
Office of the Attorney General
40 Capitol Square SW
Atlanta, Georgia 30334

In the Matter of
THE KROGER CO.

Dated: OCTOBER 16, 2007

MARK J. BENNETT
Attorney General of the State of Hawaii

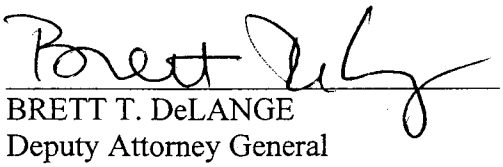


ALEX R. BARRETT
Deputy Attorney General
Office of the Attorney General
425 Queen St.
Honolulu, HI 96813

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

LAWRENCE G. WASDEN
Attorney General of the State of Idaho



BRETT T. DeLANGE
Deputy Attorney General
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

In the Matter of
THE KROGER CO.

Dated: OCTOBER 9, 2007

LISA MADIGAN
Attorney General of the State of Illinois

Elizabeth Blackston

ELIZABETH BLACKSTON
Assistant Attorney General
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

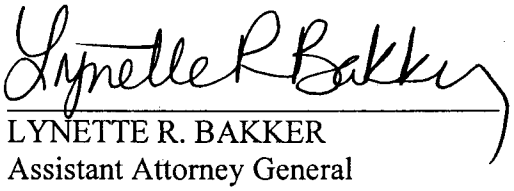
TOM MILLER
Attorney General of the State of Iowa

STEVE ST. CLAIR
Assistant Attorney General
Hoover Building
1305 East Walnut
Des Moines, Iowa 50319

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

PAUL MORRISON
Attorney General of the State of Kansas



LYNETTE R. BAKKER
Assistant Attorney General
Consumer Protection/Antitrust
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66212

In the Matter of
THE KROGER CO.

Dated: OCTOBER 17, 2007

CHARLES C. FOTI, JR.
Attorney General of the State of Louisiana

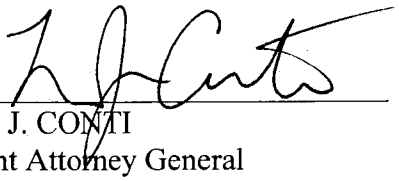
Gol Hannaman

GOL HANNAMAN
Assistant Attorney General
Office of the Attorney General
1885 N. Third Street
Baton Rouge, LA 70802

In the Matter of
THE KROGER CO.

Dated: OCTOBER 9, 2007

G. Steven Rowe
Attorney General of the State of Maine

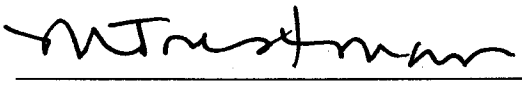


LINDA J. CONTI
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

In the Matter of
THE KROGER CO.

Dated: OCTOBER 9, 2007

DOUGLAS F. GANSLER
Attorney General of the State of Maryland



MARLENE TRESTMAN
Special Assistant to the Attorney General
State of Maryland
200 St. Paul Place – 20th Floor
Baltimore, MD 21202
410-576-7219

In the Matter of
THE KROGER CO.

Dated: October 12, 2007

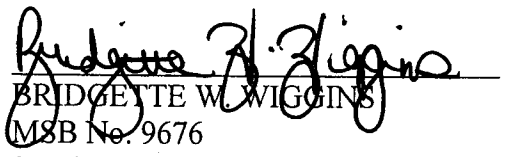
CAROL L. ISAACS
Chief Deputy Attorney General of the State of Michigan

CAROL L. ISAACS
Chief Deputy Attorney General
PO Box 30212
Lansing, MI 48909

In the matter of
THE KROGER CO.

Dated: October 11, 2007

JIM HOOD
Attorney General of the State of Mississippi



BRIDGETTE W. WIGGINS
MSB No. 9676
Special Assistant Attorney General
Mississippi Attorney General's Office
Post Office Box 22947
Jackson, MS 39225
Phone: (601) 359-4279
Facsimile: (601) 359-4231

In the Matter of
THE KROGER CO.

Dated: OCTOBER 18, 2007

MIKE McGRATH.
Attorney General of the State of Montana

CHRIS D. TWEETEN
Chief Civil Counsel
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620-1401

In the Matter of
THE KROGER CO.

Dated: October 9, 2007

JON BRUNING
Attorney General of the State of Nebraska

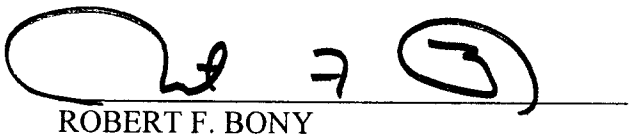
LYNNE R. FRITZ
Assistant Attorney General
Nebraska Attorney General
2115 State Capitol
Lincoln, NE 68509-8920

32-1371-11

In the matter of
The Kroger Company

Dated: 10.11.07

CATHERINE CORTEZ MASTO
Attorney General, State of Nevada



ROBERT F. BONY
Senior Deputy Attorney General
Tobacco Unit
Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

In the Matter of
THE KROGER CO.

Dated: OCTOBER 10, 2007

ANNE MILGRAM
Attorney General of the State of New Jersey

CATHY A. MELITSKI
Deputy Attorney General
Office of the Attorney General
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

Gary K. King
Attorney General of the State of New Mexico

Lawrence Otero
Assistant Attorney General
Office of the Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504

In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

W.A. "Drew" Edmondson
Attorney General of the State of Oklahoma

P. Clayton Eubanks OBA #16648
Office of the Attorney General of Oklahoma
Assistant Attorney General
Tobacco Enforcement Unit
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel: (405) 522-8992 Fax:(405) 522-4534
clayton_eubanks@oag.ok.gov

In the matter of
THE KROGER CO.

Dated: October 9, 2007

HARDY MYERS
Attorney General of Oregon

Eva H. Novick, OSB #04429
Assistant Attorney General
Oregon Department of Justice
1162 Court St NE
Salem OR 97301
Phone: (503) 947-4333
Fax: (503) 378-5017
Email: eva.h.novick@doj.state.or.us

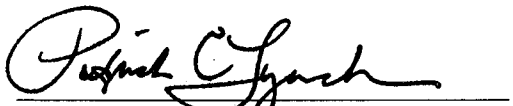
APPROVAL BY COURT

APPROVED FOR FILING this ___ day of _____, 2007.

_____
Circuit Court Judge

In the Matter of
THE KROGER CO.

Dated: OCTOBER 9, 2007



PATRICK C. LYNCH
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

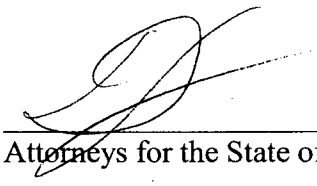
In the Matter of
THE KROGER CO.

Dated: October 17, 2007

Henry D. McMaster
Attorney General

John W. McIntosh
Chief Deputy Attorney General

David Spencer
Assistant Attorney General



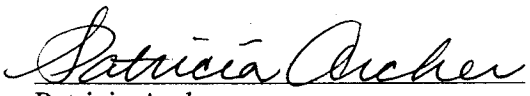
Attorneys for the State of South Carolina

South Carolina Office of the Attorney General
Rembert C. Dennis Bldg.
P.O. Box 11549
Columbia, SC 29211-1549

In the Matter of
THE KROGER CO.

Dated: OCTOBER 10, 2007

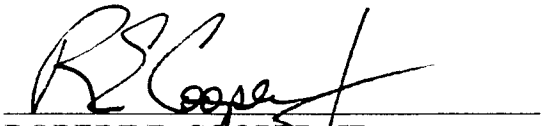
LAWRENCE E. LONG
Attorney General
of the State of South Dakota



Patricia Archer
Assistant Attorney General
Office of the Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501

FOR THE TENNESSEE ATTORNEY GENERAL'S OFFICE:

By:



ROBERT E. COOPER, JR.
Attorney General & Reporter

CYNTHIA E. KINSER (MILLS)
Deputy Attorney General
Office of the Tennessee Attorney General
Consumer Advocate & Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Facsimile: (615) 532-2910
Telephone: (615) 741-6422

Approved by:

Mary Clement
Director
Tennessee Division of Consumer Affairs

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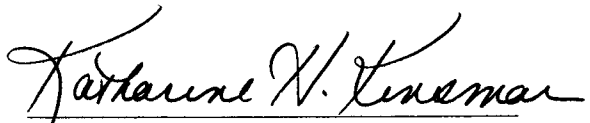
In the Matter of
THE KROGER CO.

Dated: OCTOBER 4, 2007

MARK L. SHURTLEFF
Attorney General of the State of Utah

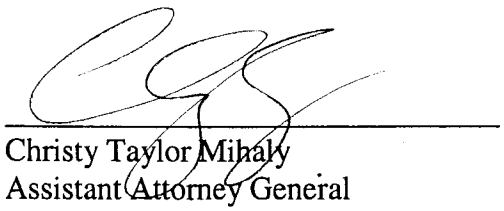


KATHARINE H. KINSMAN
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857

In the Matter of
THE KROGER CO.

Dated: OCTOBER 5, 2007

WILLIAM H. SORRELL
Attorney General of the State of Vermont



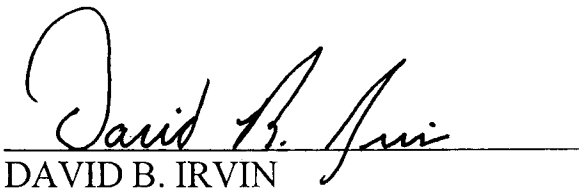
Christy Taylor Mihaly
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

In the Matter of:

THE KROGER CO.

Dated: OCTOBER 10, 2007

ROBERT F. MCDONNELL
Attorney General of the
Commonwealth of Virginia

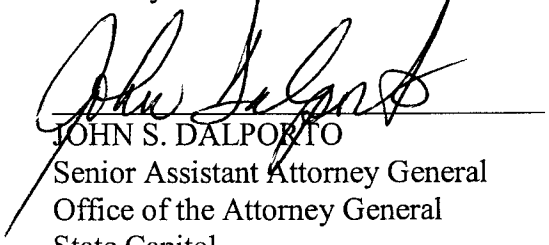


DAVID B. IRVIN
Senior Assistant Attorney General
Antitrust and Consumer Litigation Section
Office of Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-4047

In the Matter of
THE KROGER CO.

Dated: OCTOBER 16, 2007

DARRELL V. MCGRAW JR.
Attorney General of the State of West Virginia



JOHN S. DALPORTO
Senior Assistant Attorney General
Office of the Attorney General
State Capitol
1900 Kanawha Blvd. E.
Charleston, WV 25305

In the Matter of
THE KROGER CO.

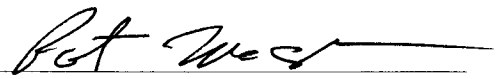
Dated: OCTOBER 4, 2007

BRUCE A. SALZBURG
Attorney General of Wyoming
123 Capitol Avenue
Cheyenne, WY 82002
(307) 777-7841 (telephone)
(307) 777-6869 (facsimile)

In the Matter of
THE KROGER CO.

Dated: OCTOBER 11, 2007

ALICIA G. LIMTIACO
Attorney General of Guam



J. PATRICK MASON
Deputy Attorney General
Office of the Attorney General
287 West O'Brien Drive
Hagåtña, Guam 96910