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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Joseph J. Simons, Chairman** **Noah Joshua Phillips** **Rohit Chopra** **Rebecca Kelly Slaughter**

waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

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K. “Broadline Distribution Assets” means all of Respondents’ rights, title, and interest in and to all assets, tangible or intangible, of whatever nature and wherever located, primarily relating to or used in connection with: (i) a specified Broadline Distribution Center, including both (a) assets removed and not replaced after the announcement of the Acquisition and (b) Designated Distribution Assets; and (ii) the operation of a Broadline Distribution Business associated with that Broadline Distribution Center (including Software).

L. “Broadline Distribution Business” means the purchasing, stocking, warehousing, logistics planning, marketing, advertising, delivery, distribution, and sale of a broad array of foodservice products, including private label offerings, and the provision of related value-added services in, from, and relating to a specified Broadline Distribution Center.

M. “Broadline Distribution Center(s)” means the following distribution centers owned and operated by Respondents:

1. Boise Distribution Center;

2. Fargo Distribution Center; and

3. Kent Distribution Center.

N. “Broadline Divestiture Assets” means the following:

1. Boise Broadline Divestiture Assets;

2. Fargo Broadline Divestiture Assets; and

3. Kent Broadline Divestiture Assets.

O. “Business Information” means all books, records, and data, wherever located and however stored, used in the Broadline Distribution Business, including documents, written information, graphic materials, and data and information in electronic format, along with unwritten knowledge of employees, contractors, and representatives. Business Information includes records and information relating to research and development, manufacturing, process technology, production, sales, marketing, logistics, advertising, creative material, personnel, accounting, business strategy, business processes and practices, information technology systems, management systems, suppliers, procurement practices, bidding practices, customers, customer purchasing histories, customer preferences, delivery histories, delivery routing information, policies and procedures, food safety, handling and recalls, and all other aspects of the Broadline Distribution Business. For clarity, Business Information includes all of Respondents’ rights and control over information and material provided to any other Person.

P. “Cash-Wa” means Cash-Wa (but)6/ oveP.cturnd mor cn B-mo(s)-1 ()-1 (.,dl)-2 (i)-2 .(i)-2po procform i executive offices and principal place of business located at 401 West 4th Street, Kearney, Nebraska, 68847.

Q. "Cashreplacements), including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, and vehicles, together with all express or implied warranties by manufacturers, sellers, or lessors, and all maintenance records and operating manuals;

3. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, telecopy and telephone listings, domain names, internet sites, web portals, and social media accounts;

4. Inventories and accounts receivable;

5. Business Information; provided, however, Respondents may retain a copy of Business Information as required or necessary for use in Respondents' retained businesses or for legal, regulatory, and compliance purposes;

6. Contracts, and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto; provided, however, that Replacement Contracts may be substituted for Shared Contracts;

7. Governmental Authorizations and all pending applications therefor or renewals thereof;

Provided, however, that Designated Distribution Assets need not include:

1. Corporate, business, or other names of Respondents or any logo, trademark,

6. Assets that are specifically identified as excluded assets in a Divestiture Agreement that is approved by the Commission unless necessary for an Acquirer operate the relevant Broadline Distribution Business.

W. "Direct Cost" means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to an Acquirer for the labor of a Respondent's employees shall not exceed the then-current average wage rate for such employee, including benefits.

X. "Divestiture Agreement" means any agreement between Respondents (other than Respondent SGA after the Acquisition Date) (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer, including all amendments, exhibits (including the related transition services agreement), attachments, and schedules thereto, to purchase Broadline Divestiture Assets, that has been approved by the Commission to accomplish the requirements of this Order, including the following:

1. The Shamrock Divestiture Agreement;

2. The Cash-Wa Divestiture Agreement; and

3. The Harbor Divestiture Agreement.

Y. "Divestiture Date" means the date on which each divestiture required by this Order is completed.

Z. "Divestiture Trustee" means the person appointed pursuant to Paragraph IX of this Order.

AA. "DMA" means Distribution Market Advantage, Inc. a for profit corporation, organized, existing and doing business under and by the virtue of the laws of Illinois with its executive offices and principal place of business located at 1515 E. Woodfield Road, Suite 600, Schaumburg, Illinois 60173.

BB. "DMA Broadline Distribution Customer" means a customer (i) with a Contract for broadline foodservice distribution with DMA as of the Acquisition Date; and (ii) for which DMA had submitted a bid or otherwise engaged in negotiations to provide broadline foodservice distribution anytime since January 1, 2018.

CC. "DMA Confidential Business Information" means any non-public books, records, and data, along with unwritten knowledge of employees, in the possession or control of Respondent SGA or Respondent FSA relating to DMA;

Provided, however, that DMA Confidential Business Information shall not include information that:

1. Was, is, or becomes generally available to the public other than as a result of a breach of this Order;

2. Was or is developed independently of and without reference to any DMA Confidential Business Information; or

3. Was available, or becomes available, on a non-confidential basis form a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

DD. "Fargo Broadline Divestiture Assets" means the Broadline Distribution Assets relating to the Fargo Distribution Center; provided, however, that if the Fargo Broadline Divestiture Assets are divested to Cash-Wa pursuant to the Cash-Wa Divestiture Agreement, then the Fargo Broadline Divestiture Assets shall not include those assets excluded by the Cash-Wa Divestiture Agreement, which is attached to this Order as Non-Public Appendix 1; provided further, however, that the Contract with each Fargo Multi-Location Customer assigned to Cash-Wa pursuant to the Cash-Wa Divestiture Agreement shall provide Cash-Wa all of the customer ship-to location(s) historically serviced out of the Fargo Distribution Center for each such Fargo Multi-Location Customer.

EE. "Fargo Distribution Center" means the distribution center located at 4101 15th Ave., NW, Fargo, North Dakota, 58102.

FF. "Fargo Multi-Location Customer" means any customer who, as of the Divestiture Date, is serviced by Respondent FSA out of the Fargo Distribution Center and was also serviced by Respondent FSA out of at least one other distribution center that is not the Fargo Distribution Center; provided, however, the term "Fargo Multi-Location Customer" shall exclude any customer excluded pursuant to the Cash-Wa Divestiture Agreement.

GG. "Governmental Authorization" means any license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.

HH. "Harbor" means Harbor Foodservice of Seattle LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of Washington with its executive offices and principal place of business located at 3901 Hogum Bar Road, NE, Lacey, Washington 98516.

II. "Harbor Divestiture Agreement" means the asset purchase agreement by and among Harbor Foodservice of Seattle LLC, Food Services of America, Inc., US Foods, Inc. and Harbor Wholesale Grocery Inc. dated May 7, 2019. The Harbor Divestiture Agreement is attached to this Order as Non-Public Appendix 2.

JJ. "Intellectual Property" means, without limitation, all:

1. Patents, patent applications, and inventions and discoveries that may be patentable;

2. Know-how, trade secrets, Software, technical information, data, registrations, applications for Governmental Authorization, inventions, processes, best practices, formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information; and

3. Rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

KK. "Kent Broadline Divestiture Assets" means the Broadline Distribution Assets relating to the Kent Distribution Center; provided, howver, that if the Kent Broadline Divestiture Assets are divested to Harbor pursuant to the Harbor Divestiture Agreement, then the Kent Broadline Divestiture Assets shall not include those assets excluded by the Harbor Divestiture Agreement, which is attached to this Order as Non-Public Appendix 2.

LL. "Kent Distribution Center" means the distribution center located at 18430 East Valley Highway, Kent, Washington, 98032.

MM. "Monitor" means the Person appointed as Monitor in this Order.

NN. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.

OO. "Relevant Employees" means any and all full-time employees, part-time employees, or contract employees, who were employed by or under contract with the Broadline Distribution Business at any time during the ninety (90) days preceding the Acquisition Date or at any time after the Acquisitionud4(t)-hys prsi1 (ees)-s6 ( )]T2 Td ( )Tj -0.004 Tc 07 34 Tc 0

TT. “Shamrock Divestiture Agreement” means the Asset Purchase Agreement by and among Shamrock Foods Company, Food Services of America, Inc. and US Foods, Inc. dated June 24, 2019. The Shamrock Divestiture Agreement is attached to this Order as Non-

2. Assist the Acquirer in obtaining any Contracts or Governmental Authorizations which Respondents have no legal right to assign, transfer, or sublicense;

V. Asset Maintenance

IT IS FURTHER ORDERED that from the date Respondents sign the Consent Agreement until the Divestiture Date, Respondents shall:

A. Maintain each of the Broadline Distribution Centers and all Broadline Distribution Assets in substantially the same condition (except for normal wear and tear) as they existed at the time Respondents signed the Consent Agreement;

B. Take such actions that are consistent with the past practices of Respondents in connection with each Broadline Distribution Center and all the Broadline Distribution Assets, and that are taken in the ordinary course of business and in the normal day-to-day operations of the Broadline Distribution Centers;

C. Keep available the services of the current officers, employees, and agents of and interview any Relevant Employee outside the presence or hearing of any employee or agent of Respondents;

2. Respondents shall (i) not offer any incentive to any Relevant Employee to decline employment with the Acquirer, (ii) remove any contractual impediments that may deter any Relevant Employee from accepting employment with the Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other Contracts with Respondents that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Relevant Employee by the Acquirer; and

3. Respondents shall, to the extent permissible by law, (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Relevant Employee who accepts an offer of employment from the Acquirer and (ii) provide each Relevant Employee with reasonable financial incentive, including continuation of all employee benefits and regularly scheduled raises and bonuses, as necessary to accept offers of employment with the Acquirer.

Provided, however, that this Paragraph does not require, nor shall it be construed to require, any Respondent to terminate the employment of any employee or to prevent Respondents from continuing to employ any Relevant Employee(s) in connection with the Acquisition or the divestiture of the Broadline Divestiture Assets.

B. For a period of 2 years after the Divestiture Date, Respondents shall not solicit or induce any Relevant Employee who has accepted an offer of employment with an Acquirer to terminate such employment; provided, however, that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Relevant Employees; (ii) hire Relevant Employees if employment has been terminated by an Acquirer, or who apply for employment with Respondents, so long as such Relevant Employees were not solicited by Respondents in violation of this Paragraph; or (iii) hire any Relevant Employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that Relevant Employee, or where such an offer has been made and the Relevant Employee has declined the offer.

VII. Transition Assistance

IT IS FURTHER ORDERED that Respondents shall:

A. Provide the Acquirer(s) with Transition Assistance (i) to efficiently transfer the relevant Broadline Divestiture Assets to each Acquirer and (ii) to operate the relevant Broadline Divestiture Assets and Broadline Distribution Business in a manner equivalent in all material respects to the manner in which Respondents operated the Broadline Divestiture

Assets and Broadline Distribution Business prior to the Acquisition, including the ability to develop new products, increase sales of current products, make reasonable modifications to the relevant Broadline Distribution Business, and maintain the competitiveness of the relevant Broadline Distribution Business;

B. Provide Transition Assistance:

1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);

2. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct Cost; and

3. For a period sufficient to meet the requirements of this Paragraph, which shall be at least 24 months after the Divestiture Date, provided however, that for any Transition Assistance for the use of Respondent FSA's Brands, the applicable period shall be 12 months after the Divestiture Date;

C. Allow the Acquirer to terminate at any time, in whole or in part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty;

D. At an Acquirer's request, file with the Commission a written request to extend the time period of any such Transition Assistance; and

E. Not cease providing Transition Assistance due to a breach by the Acquirer of a Divestiture Agreement and not seek to limit any damages (such as indirect, special, and consequential damages) which the Acquirer would be entitled to receive in the event of Respondents' breach of any agreement relating to the provision of Transition Assistance.

VIII. Monitor

IT IS FURTHER ORDERED that:

A. Bradford A. Wise shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order.

B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix 1 (Monitor Agreement) and Non-Public Appendix A (Monitor Compensation) to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.

C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the Consent of US Foods, which Consent shall not be unreasonably withheld. If US Foods has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to US Foods of the identity of any proposed substitute Monitor, US Foods shall be deemed to have Consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, US Foods shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order.

D. Respondents shall Consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:

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5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor, including any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order and the Divestiture Agreements.

8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning the performance by Respondents of their obligations under this Order, and the Divestiture Agreements.

9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.

F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor pursuant to

G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Divestiture Agreements.

H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations imposed by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Broadline Distribution Assets, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l Bes0 (n 03 0 Td [aT(e)1 (f)

a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.

b. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described in Paragraph IX.B to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided*, *however*, the Commission may extend the divestiture period only two (2) times.

c. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

d. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each Contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided*, *however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further*, *however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

e. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

C. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IX.

D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

X. Prior Notice

IT IS FURTHER ORDERED that:

A. Respondent US Foods shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:

1. Acquire any Third Party broadline distribution center in the Relevant Notice Area servicing broadline distribution customers; or

2. Enter into any Contract to participate in the management, operation, or control of any Third Party broadline distribution center in the Relevant Notice Area serving broadline distribution customers.

B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title rvionv1.(l)-2d apa(a)4 (3 (e)4 (por)3 (t)-2 (F)6 (o)-10 (r)3 (m)-2 (s)-1 (e4

XI. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondents shall:

1. notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date, and

2. submit each of the complete Divestiture Agreement

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate on November 15, 2029.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED: November 15, 2019

NON-PUBLIC APPENDIX 1

Cash-Wa Divestiture Agreement

NON-PUBLIC APPENDIX 2

Harbor Divestiture Agreement

NON-PUBLIC APPENDIX 3

Shamrock Divestiture Agreement

NON-PUBLIC APPENDIX 4

Relevant Notice Area

APPENDIX 1

Monitor Agreement

NON-PUBLIC APPENDIX A

Monitor Compensation