

UNITED STATES OF AMERICA

In the Matter of

The Golub Corporation,  
a corporation,

Tops Markets Corporation,  
a corporation, and

Project P Newco Holdings, Inc.,  
a corporation.

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The Federal Trade Commission (“Commission”) is hereby instituting a proceeding under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, to prevent the proposed merger of Respondent The Golub Corporation whereby each such entity shall acquire Project P Newco Holdings, Inc. The Commission’s Bureau of Competition is hereby instituting a proceeding under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, to prevent Respondents the Draft Complaint, which it proposes to issue for your consideration. If issued by the Commission,

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:

1. Respondent The Golub Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York 12308.
2. Respondent Tops Market Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 760 Wehrle Drive, Williamsville, New York 14221.
3. Respondent Project P Newco Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York 12308.
4. C&S Wholesale Grocers, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Vermont with its executive offices and principal place of business located at 7 Corporate Drive, Keene, New Hampshire 03431.
5. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent and the proceeding is in the public interest.

## ORDER

### I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Golub" means The Golub Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by The Golub Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Tops" means Tops Market Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Tops Market Corporation, and the

groups, and affiliates controlled by Project P Newco Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. "C&S" means C&S Wholesale Grocers, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by C&S Wholesale Grocers, Inc., and the

Locations, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Nonpublic Appendix A; or

2. Any agreement between Respondents (or a Divestiture Trustee) pursuant to Section IX of this Order) and an Acquirer to purchase the Supermarket Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto

M. "Divestiture Date" means the date on which the assets relating to each Supermarket Business are divested. For example, the Divestiture Date in connection with the divestiture of the assets relating to the Cooperstown Supermarket Business would be the date on which those assets for that specific business are divested.

N. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Section IX of this Order.

O. "Employee Information" means for each Supermarket Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

1. Name, job title or position, date of hire, and effective service date;
2. Specific description of the employee's responsibilities;
3. The employee's base salary or current wages;
4. Most recent bonus paid, aggregate annual compensation for this fiscal year, and current target or guaranteed bonus, if any;
5. Written performance reviews for the past three years, if any;
6. Employment status ( active or on leave or disability; fulltime or parttime);
7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

P. "Equipment" means all tangible personal property (other than inventory

with any express or implied warranty by the manufacturers ~~lessor~~ lessors of an item or component part, to the extent such warranty is transferrable, and all maintenance records and other related documents

- Q. “Governmental Authorization” means Consent, 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.
- R. “Intellectual Property” means all intellectual property, including: (1) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (2) all patents, patent applications and inventions and discoveries that may be patentable; (3) all registered and unregistered ~~copy~~ rights in both published works and unpublished works; (4) all rights in mask works; (5) all ~~know~~ know, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and ~~blue~~ prints; (6) and all rights in internet web sites and internet domain names presently used.
- S. “Merger” means the proposed merger described in the Agreement and Plan of Merger by and among (1) The Golub Corporation, (2) The Golub Stockholders Set Forth in Appendix A Hereto, (3) Tops Markets Corporation, (4) The Tops Stockholders Set Forth in Appendix B Hereto, (5) Project P Newco Holdings, Inc., (6) TMC Merger Sub, Inc., (7) Pines Merger Sub, Inc., (8) Shareholders Representative Services LLC, ~~in its~~ Capacity as the ~~Tops~~ Stockholders Representative, and (9) Shareholder Representative Services LLC, Solely in its Capacity as the Golub Stockholders Representative, Dated as of February 8, 2021.
- T. “Merger Date” means the date the Respondents consummate the Merger.
- U. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- V. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- W. “Relevant Area” means ~~any~~ any of these counties in New York: Chenango, Clinton, Cortland, Franklin, Jefferson, Oneida, Otsego, Tioga, or Warren, ~~and~~ and County in Vermont.
- X. “Retained Assets” means ~~the~~ the assets identified on Exhibit B of this Order.
- Y. “Retained Intellectual Property” means any owned or licensed (as licensor or licensee)

Z. "Supermarket" means any full retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed, and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer, and/or distilled spirits.

AA. "Supermarket Assets" means all of Respondents' rights, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, used in, or relating to the Supermarket Business, including:

1. All real property interests (including fee simple interests and real property leasehold interests), including easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. All Equipment;
3. At the Acquirer's option, any or all inventories;
4. All accounts receivable;
5. All Intellectual Property;
6. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
7. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
8. All Business Information; and
9. All intangible rights and property, including going concern value, goodwill, and telephone and telecopy listings;

that the Supermarket Assets need not include the (x) Retained Assets or (y) Retained Intellectual Property

BB. "Supermarket Business" means the Cooperstown Supermarket Business, Cortland Supermarket Business, Norwich Supermarket Business, Owego Supermarket Business, Peru Supermarket Business, Rome Supermarket Business, Rutland Supermarket

Business, Saranac Lake Supermarket Business, Sherrill Supermarket Business, Warrensburg Supermarket Business, Watertown Supermarket Business, and Watertown II Supermarket Business as defined in Appendix C of this Order.

- CC. "Supermarket Employee" means each full-time, part-time, or contract individual employed by Topco whose job responsibilities relate or relate to the Supermarket Business at any time after February 8, 2021.
- DD. "Transitional Assistance" means services and support as required by the Acquirer to facilitate the transfer of the Supermarket Business and operation of the Supermarket Assets, including services and support related to payroll, employee benefits, accounting information technology systems, back office and front office systems (including inventory and price management), distribution, warehousing, and use of trademarks or trade names for transitional purposes

## II. Divestiture

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the Supermarket Assets, ongoing businesses, absolutely and in good faith, to C&S as follows:
  1. The assets relating to at least 2 of the Supermarket Businesses identified on Appendix C no later than January 17, 2022;
  2. The assets relating to at least 4 of the Supermarket Businesses identified on Appendix C no later than January 24, 2022;
  3. The assets relating to at least 6 of the Supermarket Businesses identified on Appendix C no later than January 31, 2022;
  4. The assets relating to at least 8 of the Supermarket Businesses identified on Appendix C no later than February 7, 2022;
  5. Businesses identified on

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that if Business Information relating to any of the Supermarket Assets includes information that also relates to other retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to such Supermarket Assets or (2) where Respondents have a legal obligation to retain the original copies, then Respondents may provide copies of the Business Information (with redactions as appropriate) and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes

- B. If Respondents have divested any of the Supermarket Assets to C&S prior to the date this Order becomes final, and at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. C&S is not acceptable as the acquirer of applicable Supermarket Assets, then Respondents shall rescind the divestiture within 5 days of notification, and shall divest such Supermarket Assets no later than 180 days from the date this Order is issued, as ongoing businesses, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
  2. The manner in which the divestiture to C&S was accomplished is not acceptable, the Commission may direct Respondents to appoint a Divestiture Trustee, to modify the manner of divestiture of the Supermarket Assets as the Commission may determine is necessary to satisfy the requirements of this Order.
- C. Respondents shall grant a license to the Acquirer under any Retained Intellectual Property that is needed for the Acquirer to operate the Supermarket Business.
- D. Respondents shall obtain, no later than applicable Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the relevant Supermarket Assets to the Acquirer and for the Acquirer to operate any aspect of the relevant Supermarket Business;

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1. Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers and
2. With respect to any Governmental Authorization relating to any Supermarket Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the relevant Supermarket Assets under Respondents' Governmental Authorization pending the Acquirer's receipt of its own Governmental Authorization, and Respondents shall provide such



assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorization.

- E. Respondents shall assist potential Acquirer to conduct a due diligence investigation of the applicable Supermarket Assets and Supermarket Business,

C. Respondents shall provide Transitional Assistance:

1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date)
2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and
3. For a time period sufficient to meet the requirements of this Paragraph, which shall be, at the option



- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Supermarket Business and related Supermarkets, to minimize the risk of any loss of Tw 1 Tw [(B)3 (u)1er)-1 (m)-, to





4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to this Order
  5. Indemnify and hold the Monitor harmless against loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order unless the loss, claim, damage, liability, expense results from gross negligence or willful misconduct by the Monitor.
- E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with this Order
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor under this Order. The Commission shall select the substitute Monitor, subject to the consent of Respondents:
1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
  2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
  3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission approved agreement referenced in Paragraph VII, or (b) receives Commission approval.
- 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

## IX. Divestiture Trustee





Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 gross negligence or willful misconduct by the Respondents.
9. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 gross negligence or willful misconduct by the Respondents.

## X. Prior Approval

IT IS FURTHER ORDERED that Respondents shall not, without the prior approval of the Commission, acquire, directly or indirectly, through subsidiaries, partnerships, or otherwise

- A. Any ownership or leasehold interest in any facility that has operated as a Supermarket in a Relevant Area within 6 months prior to the date of such proposed acquisition; or
- B. Any stock, share capital, equity, or other interest in any entity that owns a interest in or operates a Supermarket or owned any interest in or operated a Supermarket in a Relevant Area within 6 months prior to such proposed acquisition.

, that Respondents are not required to obtain the prior approval of the Commission for the Respondents' construction or opening of new facilities.

## XI. Additional Obligations

IT IS FURTHER ORDERED that Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person to operate a Supermarket at any location formerly owned or operated by Respondents in a Relevant Area.

- B. C&S shall neither enter into nor enforce any agreement that restricts the ability of any Person to operate a Supermarket at any location formerly owned or operated by a Relevant Area.

### XIII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Notify Commission staff via email at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) of the Merge Date and of the Divestiture Date of the Supermarket Assets relating to each Supermarket Business no later than 5 days after the occurrence of, ~~and~~
  2. Submit the complete Divestiture Agreement to the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) no later than 30 days after Respondents close on a Divestiture Agreement
- B. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:
1. Respondents shall submit:
    - (a) Interim Compliance Reports 30 days after this Order is issued and every 30 days thereafter until Respondents have fully complied with the provisions of Sections II and IV of this Order;
    - (b) Annual Compliance Reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date; and
    - (c) Additional Compliance Reports as the Commission or its staff may request.
  2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order.



XVI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to ensure the Acquirer operate the Supermarket Business in a manner equivalent in all material respects to the manner in which Respondents operated the Supermarket Business prior to the Merger

XVII. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor  
Secretary

SEAL:  
ISSUED:

Nonpublic Appendix A

Divestiture Agreement

[Redacted From the Public Record Version, Butncorporated By Reference]





## Appendix C

State	City	Business	Store Number	Description
NY	Cooperstown (Otsego County)	Cooperstown Supermarket Business	Tops 568	All business activities conducted by

State	City	Business	Store Number	Description
NY	Saranac Lake (Franklin County)	Saranac Lake Supermarket Business	Tops 707	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 156 Church Street, Saranac Lake, New York 12983.
NY	Sherrill (Oneida County)	Oneida Supermarket Business	Tops 364	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 87 East State Street, Sherrill, New York 13461.
NY	Warrensburg (Warren County)	Warrensburg Supermarket Business	Tops 701	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 3836 Main Street, Warrensburg, New York 12885.
NY	Watertown (Jefferson County)	Watertown Supermarket Business	Tops 589	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 22050 Seaway Shopping Center, Watertown, New York 13601.
NY	Watertown (Jefferson County)	Watertown II Supermarket Business	Tops 597	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 1330 Washington Street, Watertown, New York 13601.
VT	Rutland (Rutland County)	Rutland Supermarket Business	Tops 740	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 14 N. Main Street, Rutland, Vermont 05701.