

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

06 04 2015
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In the Matter of)
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SYSCO CORPORATION,)
a corporation)
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and)
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USF HOLDING CORP.,)
a corporation)
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and)
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US FOODS, INC.,)
a corporation.)
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ORIGINAL

Docket No. 9364

COMPLAINT COUNSEL’S MOTION TO COMPEL RESPONDENT SYSCO CORPORATION TO PRODUCE DOCUMENTS REQUESTED BY COMPLAINT COUNSEL’S REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 3.38(a) of the Federal Trade Commission’s Rules of Adjudicative Practice, Complaint Counsel respectfully submits this Motion to Compel Respondent Sysco Corporation to Produce Documents Requested by Specifications 1 and 10 of Complaint Counsel’s Requests for Production of Documents to Sysco Corporation, dated April 17, 2015, and other relief as requested.

Dated: June 4, 2015

Respectfully Submitted,

/s/ Stephen Weissman

Stephen Weissman
Alexis J. Gilman
Mark D. Seidman
Melissa L. Davenport
Christopher J. Abbott
Thomas H. Brock
Krisha A. Cerilli
David J. Laing
Matthew McDonald
Stephen A. Mohr
Jeanne Liu Nichols
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UNITED STATES OF AMERICA
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**MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL’S MOTION TO
COMPEL RESPONDENT SYSCO CORPORATION TO PRODUCE DOCUMENTS
REQUESTED BY COMPLAINT COUNSEL’S REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Introduction

Pursuant to Rule 3.38(a) of the Federal Trade Commission’s Rules of Adjudicative Practice, Complaint Counsel respectfully moves the Court for an order compelling Respondent Sysco Corporation (“Sysco”) to produce documents requested by Specification 1 and Specification 10 of Complaint Counsel’s Requests for the Production of Documents, served on April 17, 2015 (the “RFP”). Sysco has refused to produce any documents responsive to Complaint Counsel’s RFP, which contained 16 specifications. To limit its request to the most critical specifications in the RFP and because little time remains before the administrative hearing begins, Complaint Counsel asks the Court to compel Sysco to produce documents

responsive to only two of sixteen specifications in Complaint Counsel's RFP. Further, because time is of the essence and Complaint Counsel's pre-trial brief is due by July 6, Complaint Counsel moves the Court to compel Sysco to produce this reasonably limited set of responsive documents immediately and issue such other remedial relief as is appropriate.

Factual Background

On February 19, 2015, the Federal Trade Commission filed an Administrative Complaint challenging Sysco's proposed acquisition of Respondents USF Holding Corp., and US Foods, Inc. (collectively, "US Foods"). Pursuant to Rule 3.37(a) of the Federal Trade Commission's Rules of Adjudicative Practice, on April 17, 2015, Complaint Counsel served on Sysco Requests for Production of Documents containing 16 specifications. (Exhibit A). At Respondents' request, Complaint Counsel agreed to extend the deadline for Respondents to object and respond to Complaint Counsel's RFP until May 22, 2015, which the Court approved on May 13, 2015. Sysco delivered to Complaint Counsel its written Objections and Responses to Complaint Counsel's RFP ("Response") on May 22, but produced no documents in response to the RFP and has produced none to date. (Exhibit B).

Indeed, Sysco refused to produce any documents responsive to our requests. Sysco based its refusal on the claim that the Specifications are "duplicative"¹ of discovery requests served in connection with *FTC v. Sysco Corp* Case No. 1:15-cv-2056-APM (D.D.C.) (the "Federal Action"), and that in connection with the Federal Action Sysco "has already provided all relevant, non-privileged information to Complaint Counsel"²

¹ Sysco claims that Specification 1 is "duplicative," and that Specification 10 is "largely duplicative." See Exhibit B.

² This objection is contained in Sysco's response to every one of Complaint Counsel's RFP Specifications. See Exhibit B.

On June 2, 2015, Complaint Counsel met and conferred via telephone with counsel for Respondent Sysco. Because little time remains before the Administrative Hearing begins, Complaint Counsel indicated its willingness to resolve the discovery dispute by requiring Sysco to produce documents responsive to Specifications 1 and 10 of its RFP only. Rather than accept this more-than-reasonable compromise, on June 4, 2015, Respondent's counsel informed Complaint Counsel that Sysco refused to produce any documents responsive to the RFP.

Argument

I. Complaint Counsel is Entitled to Conduct Part 3 Discovery Separate from Discovery Conducted During the Preliminary Injunction Hearing

Under this Court's Scheduling Order and by Rule, Complaint Counsel is entitled to conduct Part 3 discovery. Paragraph 11 of the Court's March 16, 2015, Scheduling Order and Rule 3.37(a) of the Commission's Rules of Practice for Adjudicative Proceedings allow each party to serve on another party a request to produce "documents or electronically stored information . . . in the possession, custody, or control of the party upon whom the request is served" Moreover, from the beginning of this proceeding, the parties accepted that there would be Part 3 discovery in addition to discovery in the Federal Action. Indeed, the Court has specified that the written discovery in this litigation would be separate from the written discovery in the Federal Action: Paragraph 11 of the Scheduling Order expressly states that "[D]ocument requests . . . served by the parties in connection with the Federal Action will not count against the limits" on written discovery the Court set in this case.³ Thus, the mere fact that Complaint Counsel obtained discovery from Sysco during the Federal Action does not preclude discovery

3

during Part 3 or permit Sysco to escape its obligations under Rules of Adjudicative Practice and the Court's Scheduling Order.

II. Specification 1 of Complaint Counsel's RFP Seeks Highly Relevant, Non-Duplicative Documents that Respondent has Not Previously Produced

Specification 1 of Complaint Counsel's RFP requests "all documents that refer to US Foods or competition with US Foods from the files (electronic or paper) of the OpCo President, OpCo VP Sales, and the OpCo SVP Operations for each of the [32 listed] Sysco distribution centers." The distribution centers listed in Specification 1 are located in the 32 geographic areas where Complaint Counsel alleges the merger will result in anticompetitive harm.⁴ Complaint Counsel only seeks documents that were **not** previously produced in the Federal Action.

Sysco's response to Specification 1 incorrectly claims that it is "duplicative of Request No. 8 from Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation in [the Federal Action]," and is "unreasonably cumulative [and] duplicative." The Request for Production in the Federal Action requested documents from distribution centers in just eight geographic areas—and the parties later agreed to limit this to seven—not 32 areas as here. (Exhibit D). Thus, Complaint Counsel has never before requested documents—and no documents have yet been produced— from any custodian in 25 distribution centers.

Additionally, the Request for Production in the Federal Action was narrowed to limit the Request documents from just two custodians (OpCo President and OpCo VP Sales) in those seven distribution centers, not all three custodians requested here (OpCo, OpCo VP Sales, and SVP Operations). So even in the seven geographic areas where it has produced some documents, Sysco has not provided documents from all custodians covered by the RFP here.

⁴ See Administrative Complaint, App. A.

Therefore, rather than being “cumulative [and] duplicative,” Specification 1 is entirely supplemental to the prior discovery request in the Federal Action, which was appropriately limited in scope as it was a preliminary injunction action and to reduce the burden on Sysco given the quick-moving Federal Action. Seeking discovery from custodians in every contested geographic market is proper for Part 3 discovery, where the parties are preparing for a full trial on the merits rather than a preliminary injunction hearing. Indeed, Specification 1 requests vital document discovery from custodians in the contested geographic market that will be the subject of the Part 3 trial.

As such, Complaint Counsel seeks to an order compelling Sysco to produce the following Specification 1 documents : (1) for all three custodians in each of the distribution centers in the 25 areas not listed in the Request for Production in the Federal Action, Complaint Counsel requests production in full; (2) for the two custodians in the distribution centers in the seven geographic areas for which Sysco produced documents in the Federal Action, Complaint Counsel only requests that Sysco produce documents created since Sysco’s initial production; and (3) for the custodian (SVP Operations) in each of the distribution centers in those seven geographic areas, Complaint Counsel requests that documents for those custodians be produced in full. In sum, this request represents the first time Complaint Counsel has requested these particular documents or that Sysco would have produced the requested documents.

In a further effort to reduce Sysco’s burden, Complaint Counsel is willing to forego documents requested in clause (1) above from custodians at distribution centers where the proposed divestiture resolves all competitive concerns, specifically: Las Vegas, Kansas City, Minnesota, San Francisco, Cleveland, and Intermountain.

III. Specification 10 of Complaint Counsel's RFP Seeks Highly Relevant, Non-Duplicative Documents that Respondent has Not Previously Produced

Specification 10 of Complaint Counsel's RFP requests "all documents responsive to Specifications 16, 17, 24, and 26 of the Second Request, including those covering the time period after the most recent documents submitted [the Federal Action] to the present (emphasis added). Specification 10 seeks only a "refresh" of the relevant Second Request specifications. (Exhibit E). Sysco's objection that the request is "unreasonably cumulative [and] duplicative" is therefore without merit. Notably, the language of Specification 10 tracks the language of the request served on Sysco in the Federal Action, which requested documents "including those covering the time period after the most recent documents submitted in your response to the Second Request to the present." (Exhibit C, Req. No. 13). Sysco correctly interpreted that request and produced only newly created documents relevant to the Second Request specifications. Complaint Counsel respectfully requests that this Court require Sysco to do the same here because these are highly relevant documents pertaining to competitive bidding information and claimed efficiencies.

IV. Conclusion

In the interest of expediency and reducing the burden on Respondent Sysco, Complaint Counsel is foregoing the production of 14 of the 16 Specifications in the RFP. For the foregoing reasons, Complaint Counsel respectfully requests that the Court order Sysco to produce documents in response to RFP Specifications 1 and 10.

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[PROPOSED] ORDER

Upon consideration of Complaint Counsel’s Motion to Compel Sysco Corporation (“Sysco”) to Produce Documents Requested by Complaint Counsel’s Requests for Production of Documents, and any opposition thereto,

IT IS HEREBY ORDERED that Complaint Counsel’s Motion is GRANTED.

IT IS FURTHER ORDERED that Sysco shall immediately take all necessary steps towards producing to Complaint Counsel all requested documents responsive to Specification 1 a)-i); k)-l); n); q)-s); u)-y); aa)-ff), and Specification 10 of Complaint Counsel’s Requests for Production of Documents issued on April 17, 2015 within ___ days from the issuance of this Order.

IT IS FURTHER ORDERED that Complaint Counsel will be allowed to supplement its final proposed exhibit list with documents produced pursuant to this Order.

IT IS FURTHER ORDERED that Complaint Counsel will be allowed to conduct additional out-of-time depositions and to supplement expert reports, briefs, and other submissions as needed in the event Sysco fails to produce all requested documents within the timeframe prescribed by this Order.

IT IS FURTHER ORDERED that if Respondent Sysco has not produced all responsive documents 10 calendar days before July 6, 2015, then pursuant to Rule 3.38(b)(3) the matters covered by the RFP for which Respondent Sysco has not completed its production by that date shall be taken as established adversely to Respondent Sysco; provided further that with respect to Specification 1, this shall mean that it is established for purposes of the Administrating

distribution business from, and lose the most national broadline distribution business to, each other; and (h) Respondents' cognizable efficiencies claims are no larger than the amounts set forth in the Federal Action expert report and rebuttal expert report of Rajiv Gokhale.

D. Michael Chappell
Chief Administrative Law Judge

DATED this ____ day of June, 2015

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STATEMENT REGARDING MEET AND CONFER PURSUANT TO 16 C.F.R. § 3.22(g)

Complaint Counsel respectfully submits this Statement, pursuant to Rule 3.22(g) of the Federal Trade Commission’s Rules of Adjudicative Practice and Paragraph 4 of the Scheduling Order.

Complaint Counsel has attempted to confer in good faith with counsel for Sysco Corporation (“Sysco”) in an effort to obtain the requested documents on a timely basis without the Court’s intervention.

On April 17, 2015, Complaint Counsel issued the Requests for Production of Documents to Sysco. (Exhibit B).

On May 22, 2015 Sysco delivered to Complaint Counsel Respondent Sysco’s Objections and Responses to Complaint Counsel’s Requests for the Production of Documents (“Response”),

pursuant to the Court's Order Granting Unopposed Motion for Extension of time, which was filed on May 13, 2015, and which extended the deadline for responding to Complaint Counsel's Requests until May 22, 2015.

On June 2, 2015, counsel met and conferred by phone at 3:41 p.m. to discuss the Response, propose a resolution of the discovery dispute by limiting the production obligation to certain information in two specifications, and to indicate that Complaint Counsel would file a

Dated: June 4, 2015

Respectfully Submitted,

/s/ Stephen Weissman

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EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

serve customers directly from a distribution center relative to serving customers using shuttle service or “stretch distribution.”

7. Submit all documents relating to the Company’s cost of goods sold, i.e., food and food-related product costs for the Relevant Service, including, but not limited to, any analysis of the Company’s cost of goods sold compared to any person the Company competes with or to the merged Sysco-US Foods, and any strategies to improve (lower) the Company’s cost of goods sold.
8. Submit all documents relating to the Company’s current capacity and utilization, and the Company’s capacity management and expansion strategies, relating to the Relevant Service, including, but not limited to, documents relating to the Company’s current capital plans and capacity management strategies and documents relating to the Company’s capacity and “fold-out” expansion plans or strategy in the event that the

13. Submit all documents comparing or contrasting the Company's Broadline, SYGMA, and specialty business units.
14. Submit all documents from, to, or relating to Culvers, Subway, Waffle House, Cheesecake Factory, Forum, Five Guys, Sonic, MedAssets, Hilton, and Sodexo.
15. Submit all documents, from January 1, 2014 to the present, from the files (electronic or paper) of Matt Gutermuth, relating to (i) the Company's cost of goods sold, i.e., food and food-related product costs for the Relevant Service; (ii) the Company's category management program or initiative; (iii) the Company's relationship, agreements, negotiations, or communications with suppliers and food manufacturers; and (iv) the Company's relationships, agreements, negotiations, or communications with brokers.
16. Submit all regularly prepared and pro forma audited and unaudited financial statements (including income statements, balance sheets, and profit and loss statements) for the Company as a whole, for each business unit, and for each distribution center.

DEFINITIONS

For the purposes of these Requests for Documents, the following definitions apply:

- A. The terms "Sysco" or "the Company" means Sysco Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing, including outside antitrust counsel for Sysco, including any representative of O'Melveny & Myers LLP and Wachtell, Lipton, Rosen & Katz. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (i.e., 25% or more) or total ownership or control between Sysco and any other person.
- B. The term "US Foods" means USF Holding Corp. and all of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (i.e., 25% or more) or total ownership or control between US Foods and any other person.
- C. The term "CDR" means Clayton, Dubilier & Rice, LLC, its funds (including, but not limited to, Clayton, Dubilier & Rice Fund VII L.P.), its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships (including, but not limited to, CD&R Associates VII, Ltd.; CDR USF Co-Investor, L.P.; CDR USF Co-Investor No. 2, L.P.), and joint ventures, and all directors, officers, principals, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (i.e., 25% or more) or total ownership or control between CDR and any other person.
- D. The term "KKR" means KKR & Co. L.P., its funds (including, but not limited to, KKR 2006 Fund L.P., KKR PEI Investments, L.P., KKR Associates 2006 L.P., and KKR 2006

GP LLC), its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships (including, but not limited to, KKR Management LLC and KKR

- iii. documents solely relating to environmental, tax, human resources, OSHA or ERISA issues.
3. The term “computer files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Complaint Counsel’s need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel representatives identified on the last page of this SDT. The Complaint Counsel representative will consider modifying this instruction to:
- i. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - ii. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain Specifications identified by Complaint Counsel representatives; or
- H. The terms “FTC” or “Commission” mean the Federal Trade Commission.
- I. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- J. The term “Proposed Merger” means the proposed merger of Sysco and US Foods pursuant to the Agreement and Plan of Merger By and Among Sysco Corporation, USF Holding Corp., and US Foods, Inc., dated December 8, 2013.
- K. The term “Second Request” means the FTC’s Request for Additional Information and Documentary Evidence issued to the Co

- d) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (e.g., a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image;
- e) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and
- f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper

Metadata/Document Information	Description
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

- iv. Submit all other electronic documents other than those described in subpart (a)(i) in image format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the original custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

- v. Submit documents stored in hard copy in image format accompanied by OCR with the following information:

- iv. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
- v. Each production shall be submitted with a transmittal letter that includes the Docket Number (No. 9364); pro

- b) Construing the singular form of any word to include the plural and plural form to include the singular;
 - c) Construing the past tense of the verb to include the present tense and present tense to include the past tense;
 - d) Construing the masculine form to include the feminine form; and
 - e) Construing the term “date” to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters.
- J. Unless otherwise stated, construe each request independently and without reference to any other purpose of limitation.
- K. In order for the Company’s response to these document requests to be complete, the attached certification form must be executed by the official supervising compliance with this request, notarized, and submitted along with the responsive materials.
- L. The Company’s response to these document requests shall be delivered to the attention of Christopher J. Abbott, between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, 400 7th Street SW, Washington, DC 20024. For courier or other delivery, please contact Christopher J. Abbott at (202) 326-2685 or cabbott@ftc.gov.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Requests for Production of Documents has been prepared by me or under my personal supervision from records of Sysco Corporation and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If the Commission uses such copies in any court or administrative proceeding, Sysco Corporation will not object based upon the Commission not offering the original document.

Signature of the Official

Title/Company

Printed Name of Official

Dated

CERTIFICATE OF SERVICE

I certify that on April 17, 2015, I delivered via electronic mail a copy of the foregoing

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

SYSCO CORPORATION,
a corporation

and

USF HOLDING CORPORATION,
a corporation

and

US FOODS, INC.,
a corporation.

Respondents.

Docket No. 9364

RESPONDENT SYSCO CORPORATION'S OBJECTIONS AND RESPONSES TO
COMPLAINT COUNSEL'S REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to the Federal Trade Commission Rules of Practice, 16 C.F.R. §3.37, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on March 16, 2015, Respondent Sysco Corporation ("Sysco") hereby submits the following objections and responses to Complaint Counsel's Requests for Production of Documents ("Request" or "Requests") dated April 17, 2015. These objections and responses have been served according to the Court's Order Granting Unopposed Motion for Extension of Time, which was filed on May 13, 2017, and extended the deadline for responding to the Requests until May 22, 2015. Sysco's objections and responses are based upon information presently known to Sysco. Sysco reserves the right to amend, modify, or supplement these objections and responses, and therefore the absence of an objection to any Request does not constitute a waiver of any general or specific objection or

privilege. A response that Sysco will produce documents is not a statement that the documents exist, rather that if such public and non-privileged documents described in the response exist and are located pursuant to a reasonable search they have been and/or will be produced.

5. Sysco objects to each Request to the extent it seeks documents or information not in Sysco's possession, custody, and control. None of the responses to these Discovery Requests

production or identification of a document is not by this Court to be a waiver of any privilege or immunity, the waiver shall be a limited waiver pertaining to that document only.

9. Sysco objects to each Request to the extent that it requires or purports to require Sysco to locate and produce "all" documents subject to its objections. Sysco will respond to the Requests by conducting a reasonable search of those files at Sysco that are reasonably believed to possess potentially responsive documents.

10. Sysco objects to each Request to the extent that it calls for expert testimony.

11. Sysco objects to the Requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit.

12. Sysco objects to the Requests to the extent they seek to impose obligations different from, or in excess of, those required or authorized by the Federal Trade Commission's Rules of Practice or any applicable order or rule of this Court.

13. Sysco's discovery and investigation in the matters specified are continuing. Accordingly, Sysco reserves its right to supplement, alter, or change its responses and objections to the Requests and to provide additional responsive documents that Sysco has in its possession, custody, or control at the time the Requests were propounded, in the manner and to the extent required by the Federal Trade Commission's Rules of Practice. Furthermore, Sysco reserves the right, during any proceedings in this action, to rely on documents, evidence, and other matters in addition to the information provided in response to the Requests, whether or not such documents, evidence, or other matters are newly discovered or are now in existence but have not been located despite diligent and good faith efforts.

14. Sysco's production of any documents is not a waiver of any of the objections set forth herein or an admission or acknowledgment that such information is relevant to the subject

matter of this action. Further, these responses without prejudice to and not a waiver of (a) Sysco's right to contend at any proceeding in this action that such information is inadmissible,

18. Sysco objects to Complaint Counsel's Instructions to the extent that they purport to impose burdens and requirements upon Sysco that exceed or differ from the requirements of the Federal Trade Commission's Rules of Practice. Without limiting the generality of this objection, Sysco specifically objects to the following:

A. Sysco objects to Complaint Counsel's Instruction B to the extent

and consistent with the metadata produced in prior productions to the Federal Trade Commission.

E. Sysco objects to Complaint Counsel's instruction G to the extent that it requires Sysco to provide information beyond that required by Rule §3.38A of the Federal Trade Commission's Rules of Practice. Sysco will provide information that "will enable [Complaint Counsel]." Federal T

B. Sysco objects to the definition of the term “US Foods” in Paragraph B to the extent it purports to include third-party “agents,” “representatives,” or “affiliates” on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.

C. Sysco objects to the definition of the term “PFG” in Paragraph E to the extent it purports to include third-party “agents,” “representatives,” or “affiliates” on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.

D. Sysco objects to the definition of “Blackstone” in Paragraph F to the extent it purports to include third-party “agents,” “representatives,” or “affiliates” on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.

E. Sysco objects to the definition of “Relevant Service” in Paragraph N Sysco to the extent the definition is vague, ambiguous, overly broad, and/or unduly burdensome.

20. To the extent that Sysco adopts any terms defined by Complaint Counsel, it is adopted solely for convenience in responding to Complaint Counsel's Requests for Production of Documents, and Sysco does not accept or concede

Sysco's Response to Document Request No. 1:

Sysco objects on the grounds that this Request is duplicative of Request No. 8 from Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule 31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome, or less expensive." Sysco has already provided all relevant, non-privileged information to Company Counsel and adopts all objections provided in Defendant Sysco Corporation's Objections Responses to Plaintiffs' First Set of Requests for Production, Request No. 8, served on March 20, 2015. To the extent this response was not specifically covered by Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation, Request No. 8, this is largely covered by the information provided to Company Counsel.

from some other source that is more convenient, burdensome, or less expensive.” Sysco has already provided all relevant, non-privileged information to Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation’s Objections and Responses to Plaintiffs’ First Set of Requests for Production, Request No. 2, served on March 20, 2015. To the extent this response was not specifically covered by Plaintiff’s First Request for Production of Documents to Defendant Sysco Corporation Request No. 2, it is largely duplicative of other documents provided by Sysco to Complaint Counsel during the course of the action before the United States District Court for the District of Columbia. Sysco has already produced roughly 6.1 million documents, containing over 20 million pages to Complaint Counsel. Sysco has also responded to numerous written specifications, interrogatories, requests for admission, and has provided several economic analyses to Complaint Counsel. In the federal matter Sysco has also produced Defendants’ Exhibit and Supplemental Exhibit lists with over 3,000 exhibits. Sysco further objects that, under Rule 31(c)(2)(i) of the Federal Trade Commission’s Rules of a

including any communication, correspondence, and other documents relating to such letters, declarations, affidavits, and statements.

Sysco's Response to Document Request No. 4:

Sysco objects on the grounds that this Request is almost exactly duplicative of Request No. 6 from Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is, pursuant to Rule 37(c)(2)(i) of the Federal Trade Commission's Rule Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome, or less expensive." Sysco has already provided relevant, non-privileged information to Plaintiff Counsel and adopts all objections provided by Defendant Sysco Corporation's Objections and Responses to Plaintiffs' First Set of Requests for Production, Request No. 6, served on March 20, 2015. To the extent this response was not specifically covered by Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation Request No. 6, it is largely duplicative of other documents provided by Sysco to Plaintiff Counsel during the course of the action before the United States District Court for the District of Columbia. Sysco has already

cumulative and duplicative and already in the possession, custody, or control of Complaint Counsel.

Sysco further objects to this Request on the grounds that it seeks privileged documents or information, information prepared in anticipation of litigation, information constituting attorney work product, or information which discloses mental impressions, conclusions, opinions, or legal theories of any attorney or other legal representative of Sysco; information containing or reflecting privileged attorney-client communications; and/or information that is otherwise protected from disclosure under applicable privileges, laws, or rules, including, but not limited to, the joint defense and/or common interest doctrines. Sysco further objects to this Request on the grounds that it seeks documents containing Sysco's confidential, commercial, and/or proprietary information, the disclosure of which would unduly and improperly invade its protected rights. Sysco further objects to this Request on the grounds that it seeks documents held by Sysco that are subject to an obligation of confidentiality owed to a third party.

Document Request No. 5:

Submit all communication or correspondence with persons (including customers, distributors, or other industry participants) relating to the FTC or a State Attorney General's investigation of, or lawsuit challenging the Proposed Merger, including any potential and actual federal and administrative litigation.

6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome, or less expensive." Sysco has already provided all relevant, non-privileged information to Complaint Counsel and adopts all

shuttle service or “stretch distribution,” including any comparison of the costs to serve customers directly from a distribution center relative to serving customers using shuttle service or “stretch distribution.”

Sysco’s Response to Document Request No. 6:

served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade

Document Request No. 10:

Submit all documents responsive to Specifications 16, 17, 24 and 26 of the Second Request, including those covering the time period after the most recent documents submitted in the preliminary injunction hearing in Civil Action No. 15-cv-00256 (APM) to the present.

Sysco's Response to Document Request No. 10:

Sysco objects on the grounds that this Request is largely duplicative of Request No. 13 from Plaintiff's First Request for Production Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule 37(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome, or less expensive." Sysco has already provided all relevant, non-privileged information to Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation's Objections and Responses to Plaintiffs' First Set of Requests for Production, Request No. 13, served on March 20, 2015. To the extent this response was not specifically covered by Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation Request No. 13, it is largely duplicative of other documents provided by Sysco to Complaint Counsel during the course of the action before the United States District Court for the District of Columbia. Sysco has already produced roughly 6.1 million documents, containing over 20 million pages to Complaint Counsel. Sysco has also responded to numerous written specifications,

further objects that this material was prepared in anticipation of litigation and need not be disclosed under Rule §3.31(c)(5) of the Federal Trade Commission's Rules of Practice.

Document Request No. 11:

Submit all documents relating to any completed transaction to divest distribution centers, including any offer or proposal by the Company or US Foods to divest distribution centers or other assets to PFG, including, not limited to, documents relating to:

- a) the Company's communication with any other person, including, but not limited to, KKR, CDR, PFG, Blackstone, actual or potential customers, suppliers, relating to any potential transaction with a divestiture buyer including, but not limited to, the Proposed Divestiture;
- b) the Company's discussion of the reasons for a potential transaction with a divestiture buyer including the Proposed Divestiture, and potential or actual benefits, costs, risks, and competitive impacts of such potential transaction; and
- c) the Company's business plans, including any models, projections, or expansions related to any proposed divestiture, including models, projections or expansions.

Sysco's Response to Document Request No. 11:

Sysco objects on the grounds that this Request is largely duplicative and entirely inclusive of Request No. 14 from Plaintiff's First Request for Production of Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome,

or less expensive.” Sysco has already provided relevant, non-privileged information to Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation’s Objections and Responses to Plaintiffs’ First Set of Requests for Production, Request No. 14, served on March 20, 2015.

Document Request No. 12:

Submit documents sufficient to show, by distribution facility, all operating costs tracked by the Company in the ordinary course of business as well as current operating costs, including distribution, delivery, warehouse occupancy, selling, and administrative costs (in total and by case).

Sysco’s Response to Document Request No. 12:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 15 from Plaintiff’s First Request for Production Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade Commission’s Rules of Practice, “unreasonably cumulative [and] duplicative” and “obtainable from some other source that is more convenient, less burdensome, or less expensive.” Sysco has already provided all relevant, non-privileged information to Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation’s Objections and Responses to Plaintiffs’ First Set of Requests for Production, Request No. 15, served on March 20, 2015.

Document Request No. 13:

Submit all documents comparing or contrasting the Company's Brocade, SYGMA, and specialty business units.

Sysco's Response to Document Request No. 13:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 16 from Plaintiff's First Request for Production Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome, or less expensive." Sysco has already provided all relevant, non-privileged information to Plaintiff's Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation's Objections and Responses to Plaintiffs' First Set of Requests for Production Documents, Request No. 16, served on March 20, 2015.

Document Request No. 14:

Submit all documents from, to, or relating to Culvers, Subway, Waffle House, Cheesecake Factory, Forum, Five Guys, Sonic, MedAssets, Hilton, and Sodexo.

Sysco's Response to Document Request No. 14:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 18 from Plaintiff's First Request for Production Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable

from some other source that is more convenient, burdensome, or less expensive.” Sysco has already provided all relevant, non-privileged information to Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation’s Objections

Document Request No. 16:

Submit all regularly prepared and pro forma audited and unaudited financial statements (including income statements, balance sheets, profit and loss statements) for the Company as a whole, for each business unit, and for each distribution center.

Sysco's Response to Document Request No. 16:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 19 from Plaintiff's First Request for Production Documents to Defendant Sysco Corporation served in the action before the United States District Court for the District of Columbia on March 6, 2015. This information is thus, pursuant to Rule §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, "unreasonably cumulative [and] duplicative" and "obtainable from some other source that is more convenient, less burdensome, or less expensive." Sysco has already provided all relevant, non-privileged information to Plaintiff's Complaint Counsel and adopts all objections provided in Defendant Sysco Corporation's Objections and Responses to Plaintiffs' First Set of Requests for Production, Request 19, served on March 20, 2015. Sysco further

Dated: May 22, 2015

By: /s/ Edward D. Hassi

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Ian Simmons
Edward D. Hassi
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isimmons@omm.com
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krobson@omm.com

Counsel for Respondent Sysco
Corporation

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2015, I served foregoing document on the following counsel via electronic mail:

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Alexis Gilman
Mark Seidman
Melissa Davenport
David Laing
Chris Abbott
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Commission

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peter.herrick@stblaw.com
pmirrer-singer@stblaw.com
alevine@stblaw.com

Counsel for Defendants USF Holding Corp.

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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

SYSCO CORPORATION
USF HOLDING CORP.
US FOODS, INC.

Defendants.

Civil Action No. 15-cv-00256 (APM)

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT SYSCO CORPORATION

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Federal Trade Commission propounds to Defendant Sysco Corporation the following First Request for Production of Documents. Defendant is to produce the requested documents upon Plaintiff's counsel, at Federal Trade Commission, Bureau of Competition, 600 Pennsylvania Ave., NW, Washington, DC 20580, no later than 5:30 p.m. on March 20, 2015.

REQUEST FOR DOCUMENTS

1. Submit all documents, from January 1, 2014, to the present, relating to communications between the Company and any person concerning the Proposed Merger.
- 2.

10. Submit all documents relating to the Company's cost of goods sold and food and food-related product costs for the Relevant Service, including, but not limited to, any analysis of the Company's cost of goods sold compared to any person the Company competes with or to the merged US Foods, and any strategies to improve (lower) the Company's cost of goods sold.
11. Submit all documents relating to the Company's current capacity and utilization, and the Company's capacity management and expansion strategies, relating to the Relevant Service, including, but not limited to, documents relating to the Company's current capital plans and capacity management strategies and documents relating to the Company's capacity and "fold-out" expansion plans or strategy in the event that the Proposed Merger is consummated.
12. Submit all documents relating to the Company's healthcare-specific expertise, marketing, product offerings, or value-added services, including, but not limited to, information technology, personnel, analytics, and products that are targeted at healthcare customers who seek or purchase the Relevant Service.
13. Submit all documents responsive to Specifications 16, 17, 24 and 26 of the Second Request, including those covering the period after the most recent documents submitted in your response to the Second Request to the present.
14. Submit all documents relating to any contemplated transaction to divest distribution centers, including any offer or proposal by the Company or US Foods to divest distribution centers or other assets to PFG, including, but not limited to, documents relating to:
 - a) the Company's review, evaluation, or analysis of any potential transaction with a divestiture buyer, including, but not limited to, the Proposed Divestiture;
 - b) the Company's evaluation or analysis of any bids submitted for any potential transaction with a divestiture buyer, including, but not limited to, the Proposed Divestiture;
 - c) the Company's communication with any other person, including, but not limited to, KKR, CDR, PFG, Blackstone, actual or potential customers, or suppliers, relating to any potential transaction with a divestiture buyer, including, but not limited to, the Proposed Divestiture;
 - d) the Company's discussion of the reasons for any potential transaction with a divestiture buyer including the Proposed Divestiture, and the potential or actual benefits, costs, risks, and competitive impacts of such potential transaction; and

e)

DEFINITIONS

For the purpose of these Requests for Documents, the following definitions apply:

1. The term “the Company” or “Sysco” means Sysco Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, ~~office~~ employees, agents, and representatives

6.

computers, workstations, minicomputers, mainframes, and servers searched by the Company;

- ii. Limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain Specifications identified by Commission representatives; or
 - iii. Include other proposals consistent with Commission policy and the facts of the case.
8. The terms “Commission” or “FTC” mean the Federal Trade Commission.
9. The terms “and” and “or” have both conjunctive and disjunctive meanings.
10. The term “Proposed Merger” means the proposed merger of Sysco and US Foods pursuant to the Agreement and Plan of Merger By and Among Sysco Corporation, USF Holding Corp., and US Foods, Inc., dated December 8, 2013.
11. The term “Second Request” means the FTC’s Request for Additional Information and Documentary Material issued to the Company on February 18, 2014, Transaction Identification No. 2014-0468.
12. The term “Proposed Divestiture” means the transaction(s) through which Sysco or US Foods would divest certain distribution facilities and other assets to PFG as described in the Asset Purchase Agreement By and Among Performance Food Group, Inc., E&H Distributing LLC, RSF Funding, Inc., USF Propco I, LLC, USF Propco II LLC, Trans-Porte, Inc., US Foods, Inc., USF Holding Corp. and Sysco Corporation, dated as of February 2, 2015.
13. The term “relating to” means, in whole or in part, addressing, analyzing, concerning, constituting, containing, containing, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining to, referring to, reflecting, reporting, stating, or summarizing.
14. The term “Relevant Service” means the provision of broadline foodservice distribution services, e., the sale or distribution of a broad line of food and foodservice-related non-food items, or contracted pricing thereof, to foodservice operators or their purchasing agents (including, but not limited to, healthcare organizations, hospitality organizations, educational institutions, government organizations, stadiums, and group purchasing organizations).
15. The term “including” means including, but not limited to.
16. Any other term used in this Document that is not defined has the meaning that the Company uses in the ordinary course of business.

INSTRUCTIONS

For purposes of these Requests for Documents, the following instructions apply:

- A. Unless otherwise specified, each request is for documents received or created from January 1, 2012 to the present. Unless otherwise specified, each request calls only for documents relating to the

that person's documents, and if submitted in paper form, the box number containing such documents. The FTC will provide a sample index upon request.

F. Forms of Production: The Company shall submit all documents as instructed below absent written consent from the FTC.

a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:

- i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(iii) and (a)(iv).
- ii. Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the original custodian of the file.
To	Recipient(s) of the email.
From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.
Date Received	Date the email was received.
Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).

Metadata/Document Information	Description
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.
Message ID	Microsoft Outlook Message ID or similar value in other message systems.

- iii. Submit email attachments in image format other than those identified in subpart (a)(i) with

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the original custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.

- vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type described in subparts (a) through (a)(y) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above.

either the request or a definition or instruction applicable thereto, set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the request, and provide all documents that are responsive to the request as you interpret it.

- K. Whenever necessary to bring within the scope of a request a response that might otherwise be construed to be outside its scope, the following construction should be applied:
- a) Construing the terms “and” and “or” the disjunctive or conjunctive, as necessary, to make the request more inclusive;
 - b) Construing the singular form of any word to include the plural and plural form to include the singular;
 - c) Construing the past tense of the verb to include the present tense and present tense to include the past tense;
 - d) Construing the masculine form to include the feminine form; and
 - e) Construing the term “date” to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters.
- L. Unless otherwise stated, construe each request independently and without reference to any other purpose of limitation.
- M. The Company’s response to this subpoena shall be delivered to the attention of Melissa Davenport, between 8:30 a.m. and 5:00 p.m. on a business day to the Federal Trade Commission, 400 Street SW, Washington, DC 20024. For courier or other delivery, please contact Melissa Davenport at (202) 326-2673 or mdavenport@ftc.gov.

N. Call Melissa Davenport at (202) 326-2673 or Steve Mohr at (202) 326-2850 with any questions you have relating to the scope or meaning of this subpoena.

Dated: March 6, 2015

By: /s/ Stephen Weissman

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Counsel for Plaintiff Federal Trade Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of March, 2015, I served the foregoing on the following counsel via electronic mail:

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EXHIBIT E
[THIS DOCUMENT IS CONFIDENTIAL IN ITS ENTIRETY AND HAS BEEN REDACTED]

