

EXHIBIT 4



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

MICHAEL A. OAKES
DIRECT DIAL: 202-419-2172
EMAIL: moakes@hunton.com

FILE NO: 74395.000003

October 8, 2010

VIA ELECTRONIC MAIL

Mr. Alain Sheer
Division of Privacy and Identity Protection
Bureau of Consumer Protection
Federal Trade Commission Division
Mail Stop NJ-3137
600 Pennsylvania Ave
Washington, D.C. 20580

Re: Hannaford Bros. Co.

Dear Alain:

I write in response to your email dated September 30th and in follow-up to our telephone conversation on October 4, 2010, regarding whether Hannaford Bros. Co. (Hannaford) would provide a certification stating that Hannaford's voluntary document production made over the past several years is "complete and accurate."

During our call, you informed me that regardless of Hannaford's response, you intend to seek authority to serve a formal Civil Investigative Demand (CID) on Hannaford. Hannaford wants to continue the cooperation it has demonstrated throughout this process, and we are willing to discuss the steps that were taken by Hannaford to collect and produce documents in response to the voluntary access letters. (Of course, any such discussion would require an appropriate agreement regarding the non-waiver of privilege.) We believe that this dialogue will make it clear that Hannaford conducted a reasonable inquiry in response to the voluntary access letters and has made a more than adequate production in response thereto, as evidenced by the more than 130,000 pages produced to date. But given that you are determined to serve a CID on Hannaford regardless of whether a certification is provided, we believe that the FTC's demand that Hannaford certify its production as "complete and accurate" serves no actual purpose.

Indeed, the entire decision regarding the service at a CID at this point is troubling to us. At no point in time has FTC Staff raised questions about the completeness of Hannaford's production, nor made any prior inquiry about it, despite the fact that this matter has been



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pending for over two and one-half years. More to the point, however, is the purpose of the CID. FTC Staff has represented that it had concluded its investigation, made a determination that there was reason to believe Hannaford violated the FTC Act, and prepared and provided a draft complaint to Hannaford in June 2010. Both FTC Staff and Director Vladeck then made verbal representations to us at our August 2010 meeting that the Bureau of Consumer Protection would request that the Commission authorize the filing of a complaint against Hannaford. We are very troubled by the due process implications of the FTC using its investigative authority after Staff has represented that its investigation was complete, it had reached a conclusion around the conduct and gone so far as to draft a complaint. This seems nothing more than an attempt to circumvent what, at this point, should be mutual discovery obligations before an appropriate tribunal.

Nevertheless, and despite our concerns, we remain willing to discuss the above-referenced non-waiver agreement as a prelude to our disclosing in a transparent manner how documents were collected and produced in response to the FTC's voluntary access letters. Please call me if you would like to have that discussion.

I would like to raise two additional issues. First, there has been an intervening legal development since we met in August 2010 that I would like to bring to your attention. On September 21, 2010, the Maine Supreme Judicial Court, on a certified question from the United States District Court for the District of Maine in the litigation relating to the Hannaford data intrusion, was asked if Maine law would recognize whether in the absence of physical harm or economic loss or identity theft, time and effort spent in a reasonable effort to avoid harm constituted a cognizable injury for purposes of negligence or implied contract. The Court answered that question in the negative, and noted in its decision that "the plaintiffs here suffered no physical harm, economic loss or identity theft" directly tied to the Hannaford incident. This ruling is consistent with the decisions of numerous other courts in many states.

Second, I want to reiterate a request that we made over a year ago and which we have repeated on several occasions. To the extent that the FTC Staff is aware of evidence of injuries to consumers that would be recognized under Section 5 of the FTC Act and would be consistent with the Commission's Unfairness Policy Statement, please share this information with us. This is important information to my client, and as we noted in our August 2010 meeting, Staff has failed to provide us with any support for the contention that it exists.

**HUNTON &
WILLIAMS**

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I look forward to discussing these issues further. As noted in previous correspondence from Hannaford and/or its counsel, we ask that you treat this response as confidential under all applicable statutes, regulations, rules and laws.

Best regards,

A handwritten signature in black ink, appearing to read "M. A. Oakes", with a long horizontal flourish extending to the right.

Michael A. Oakes

Enclosure



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Alain Sheer
Senior Attorney
Division of Privacy and Identity Protection

Direct Dial: 202.326.3321
Fax: 202.326.3629
E-mail: asheer@ftc.gov

October 12, 2010

VIA EMAIL

Michael Oakes, Esq.
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006-1109

Dear Mike:

Thank you for your October 8, 2010 letter following up on our conversation on October 4, 2010.

To begin, your letter mischaracterizes some points in our discussion and therefore requires correction. Hannaford has not certified that the company's responses to the FTC's March 21, 2008, July 23, 2008, September 8, 2009, and October 14, 2009 access letters were complete and accurate. The company has similarly not provided a log of responsive documents it withheld from its productions to date. When we spoke on October 4, 2010, you stated that Hannaford had not intended to comply with the instructions issued in the FTC's original request for a certification and privilege log. In response, I explained that because this matter may proceed to litigation, the FTC needs assurances in writing that Hannaford's productions are complete and accurate, and we are entitled to assess the company's privilege claims. If Hannaford will not agree to certify that its productions to date are complete and accurate, and if the company will not provide a privilege log, we will ask the Commission to issue a Civil Investigative Demand ("CID") repeating our access letters' requests. Hannaford can easily avoid this circumstance by producing the certification and privilege log now, in which case we will not include the access letter requests in the CID; alternatively, Hannaford can satisfy the CID as it relates to the access letter requests by producing a certification and privilege log in response to the CID.

Second, we intend to ask the Commission to issue CID specifications that will address certain issues Hannaford raised in its August 12, 2010 White Paper and August 17, 2010 presentation to the Bureau that have not been addressed adequately or at all in Hannaford's responses and productions to date. The information the specifications seek is relevant to

decisions about whether to present a complaint recommendation to the Commission.

Finally, we are aware of the Maine Supreme Judicial Court's decision on the question certified to it by the United State District Court for the District of Maine as well as the District Court's decisions in the class action before it. However, we do not agree that these decisions are dispositive of the question of consumer injury in an action brought under the Federal Trade Commission Act as to payment card information, let alone as to the other types of very sensitive personal information that were exposed through the breach.

While we are willing to discuss these issues further, we ask that you advise us by October 18, 2010 whether Hannaford will provide the certification and privilege log that we first requested in March 2008.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alain Sheer', with a stylized, cursive script.

Alain Sheer



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

MICHAEL A. OAKES
DIRECT DIAL: 202-419-2172
EMAIL: moakes@hunton.com

FILE NO: 74395.000003

October 18, 2010

VIA ELECTRONIC MAIL

Mr. Alain Sheer
Division of Privacy and Identity Protection
Bureau of Consumer Protection
Federal Trade Commission Division
Mail Stop NJ-3137
600 Pennsylvania Ave
Washington, D.C. 20580

Re: Hannaford Bros. Co.

Dear Alain:

I am writing in response to your October 12, 2010, letter.

First, you state that my letter of October 8, 2010, "mischaracterizes" certain aspects of our prior discussion. But you do not actually identify any mischaracterizations, and we fail to see any inaccurate statements. If you want to address any specific concerns with me directly, please let me know. Otherwise, I ask that you refrain from making such accusations in the future.

Second, as you point out, Hannaford responded to your *four* written requests and numerous telephone requests over a period of several years by producing significant amounts of information and documents. We have offered to explain to you, subject to a non-privilege waiver agreement, the steps Hannaford took to respond. Your apparent refusal even to discuss this with us, while again threatening to issue a CID, is both troubling and disappointing. We again reiterate Hannaford's offer to discuss with you the methodology by which it responded to the voluntary access letters. We believe that such a discussion is necessary so that you can understand the process Hannaford undertook to collect and produce documents in response to the voluntary access letters and make your own determination as to whether Hannaford's production is complete. Until both sides have a common understanding as to what has been done, it would be impossible for anyone to certify that a production is complete when the overly broad requests in the voluntary access letters seek "all documents" on certain issues.



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Indeed, we have asked on numerous occasions whether there was anything further you wanted Hannaford to produce and you have repeatedly said no. We are hopeful that you will reconsider your rejection of our proposal.

Third, we again requested that the FTC share with us any evidence it has on the question of substantial consumer injury to assist Hannaford in addressing your requests and settlement demand. This is not an onerous request, and we cannot understand your repeated refusals to provide this information. The draft complaint that you provided in an attempt to force Hannaford to agree to "disgorge" \$9.6 million and submit to a twenty-year consent decree asserted that the substantial injury requirement was satisfied. Either the evidence in support of that allegation does not exist, or it does exist but you are simply refusing to share it with us. Your failure to respond to Hannaford's request prevents the Company from making an informed decision in this matter. Therefore, once again, we request that you share with us any information you have on this subject.

Finally, we would like to address the statement in your letter that you will be seeking additional information "relevant to decisions about whether to present a complaint recommendation to the Commission." While Hannaford feels strongly that a complaint recommendation is inappropriate in this matter, it is clear that you have already reached your decision. In fact, you have already provided a draft complaint to Hannaford and made a recommendation to Director Vladeck that a complaint be filed, which recommendation he apparently accepted. Indeed, immediately after our meeting with Director Vladeck in August of 2010, we were told by him in no uncertain terms that a complaint recommendation to the full Commission would be forthcoming shortly and that we should be prepared to meet with the Commissioners. You again stated during our October 4, 2010, call that it is "no secret" that this matter is heading to litigation. We therefore believe the further investigation you now say you are undertaking is not a good faith attempt to investigate whether a complaint should be brought, but is an attempt to find evidence to support your pre-formed conclusion. I hope our view here is wrong, and we would be happy to discuss this with you. However, FTC Staff's conduct in this matter, especially in recent months, does not leave us much doubt.

If there is anything you would like to discuss, please feel free to call me. As noted in previous correspondence from Hannaford and/or its counsel, we ask that you treat this response as confidential under all applicable statutes, regulations, rules and laws.

**HUNTON &
WILLIAMS**

Mr. Alain Sheer
October 18, 2010
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Best regards,

A handwritten signature in black ink, appearing to read "M.A. Oakes". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael A. Oakes



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Alain Sheer
Senior Attorney
Division of Privacy and Identity Protection

Direct Dial: 202.326.3321
Fax : 202.326.3629
E-mail: asheer@ftc.gov

October 29, 2010

VIA EMAIL

Michael Oakes
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006-1109

Dear Mike:

Thank you for your October 18, 2010 letter responding to my October 12, 2010 letter.

In response to your letter, please note that my letter accurately presented the current status of our investigation: we seek additional information which we will consider in further evaluating whether to recommend a complaint to the Commission. We look forward to Hannaford's timely responses to our forthcoming requests.

In addition, your letter omits important elements of our presentation regarding monetary relief. During our confidential settlement discussion in July 2010, we proposed a measure of monetary relief, and we invited Hannaford to discuss our rationale and to make a counter-offer. Hannaford did neither. It is patently incorrect to suggest that we attempted to "force" any outcome.

Finally, while we would be pleased to learn how Hannaford searched, identified, and produced information and documents in response to our access letters, such a discussion is not a substitute for providing a sworn representation that Hannaford's responses are complete and accurate and a log of responsive documents that it withheld from its productions. Given Hannaford's refusal to provide a sworn representation and privilege log, we plan to issue a Civil Investigative Demand ("CID") repeating our access letters' requests. Hannaford may comply with this CID by certifying that its responses to the access letters are complete and accurate and

providing a privilege log.

We continue to be willing to discuss these and related issues as our investigation continues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alain Sheer', with a stylized, cursive-like script.

Alain Sheer



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

MICHAEL A. OAKES
DIRECT DIAL: 202-419-2172
EMAIL: moakes@hunton.com

FILE NO: 74395.000003

November 5, 2010

VIA ELECTRONIC MAIL

Mr. Alain Sheer
Division of Privacy and Identity Protection
Bureau of Consumer Protection
Federal Trade Commission Division
Mail Stop NJ-3137
600 Pennsylvania Ave
Washington, D.C. 20580

Re: **Hannaford Bros. Co.**

Dear Alain:

Thank you for your letter of October 29, 2010. It appears from your response that FTC Staff is reconsidering its prior decision to recommend that the Commission file a complaint against Hannaford. As we have stated all along, and as set forth in the White Paper we provided to you and Director Vladeck in August 2010, Hannaford's data security was reasonable and appropriate at the time of the criminal intrusion, there has been no substantial injury to consumers, and no complaint is warranted. We therefore welcome your decision to reconsider.

While we continue to believe that no further investigation is warranted, we remain puzzled by your unwillingness to talk with us about the methodology by which Hannaford searched for and produced over 130,000 pages of documents in response to your previous voluntary access letters. To the extent that the Civil Investigative Demand ("CID") you are planning to seek authority to serve is going to cover materials previously produced, we necessarily will engage in a process to define a response procedure, including where to search and which individuals to search. We believe the search Hannaford previously conducted was reasonable, and if you agree, then there will be no need to issue a CID that is duplicative of the voluntary access letters. Hannaford will simply certify as to the parameters of the search. What Hannaford will not do, however, is certify that its production is "complete," either with respect to the voluntary access letters or to a CID. Indeed, it would be impossible for any company to make this certification in response to requests that ask for "all documents." The costs of searching would be prohibitive, and we cannot believe that the FTC seeks to require companies to search every



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employee, every file, and every electronic document regardless of how unlikely it is that relevant and responsive documents would be found. Rather, Hannaford undertook a reasonable search of those employees and areas of the Company most likely to possess relevant and responsive information. Why the FTC Staff will not sit down with us in advance to determine whether the prior response was satisfactory under these standards such that a duplicative request is unnecessary is very confusing to us and raises questions about what the FTC Staff is really trying to accomplish. We think a discussion with your colleague, David Shonka, may be beneficial, as he may understand the electronic discovery concerns we have been trying to raise with you and may be able to facilitate a productive dialogue between us.

In addition to the ongoing concern, we also want to address your characterization of the discussions around your previous settlement demand. In our July 2010 meeting, you stated that based on instructions from your management, you "would not leave the table without money," despite the fact that no previous data intrusion settlement has involved a monetary payment. You later demanded a payment of \$9.6 million, in addition to the other relief specified in your proposed consent order. Contrary to your statement that Hannaford never responded, we explained to you several times, both orally and in our White Paper, why the consumer redress/disgorgement remedy sought was unwarranted against Hannaford, a company that was the victim of a criminal intrusion and that did not profit in any way from these events. We explained that the FTC and individual Commissioners have testified before Congress that the disgorgement you purported to seek is not an appropriate remedy under these circumstances. Accordingly, Hannaford's response was that it would not agree to a settlement with a monetary component and, based on your earlier statement that the Commission required this, there was no reason to discuss the other aspects of your proposed Consent Decree.

Shortly after our meeting with Director Vladeck, you demonstrated that you fully understood our position by offering to resolve this matter without any monetary payment if Hannaford would agree to the proposed twenty-year consent order within a week. Hannaford was not willing to agree to this, and when we informed you of this decision, you said that you were going to issue a CID. Thus, it seems clear that the demand for money, your statement that the Commission required monetary relief as part of a settlement, and the various statements about recommending the filing of a complaint that you have now said you are reconsidering were being used solely to put pressure on Hannaford to agree to a Consent Decree. While you protest that this conclusion is "patently incorrect," it is hard to reach any other conclusion from these facts.

Next, I want to note once again that you have completely ignored our request to share with us any evidence of injury you have collected in your two-and-a-half year investigation. If you are



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not going to share any evidence with us, we would at the very least appreciate it if you would confirm that you are unwilling to do so.

Finally, we want to close with one enforcement-related observation. We read with interest Director Vladeck's October 27, 2010 letter to Google's counsel ending the Commission's inquiry into Google's collection of consumer data over wireless networks. Director Vladeck states in that letter that the Commission's concerns about data protection can be resolved when companies strengthen their security practices and provide assurances to the FTC about the protection of consumer information. The FTC Staff has surprisingly never inquired about Hannaford's current data security practices. To the extent that a party engaged in a deliberate act can assuage the FTC Staff through remedial measures and statements that it would act differently in the future, it would seem that the victim of a criminal act by third parties should be provided with the same opportunity. We are fully convinced that the enhancements that have been made since the criminal intrusion to Hannaford's already robust information security program would convince the Commission that no action is warranted. We would be happy to discuss the current state of Hannaford's data security with you.

Please contact me if there is anything further you would like to discuss. As with our prior correspondence, we ask that you treat this response as confidential under all applicable statutes, regulations, rules, or laws.

Best regards,

A handwritten signature in black ink, appearing to read "WUACOL".

Michael A. Oakes



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Alain Sheer
Senior Attorney
Division of Privacy and Identity Protection

Direct Dial: 202.326.3321
Fax: 202.326.3629
E-mail: asheer@ftc.gov

BY EMAIL

Michael Oakes, Esq.
Hunton & Williams LLP
1900 K Street NW
Washington, DC 20006

November 8, 2010

Dear Mike:

Thank you for your letter of November 5, 2010.

As we discussed on November 5, 2010, and consistent with the parties' recent letter exchange, we propose meeting to discuss how Hannaford searched, identified, and produced materials in response to the Commission's access letters. During this meeting, we propose also discussing the Commission's Civil Investigative Demands ("CIDs"), which the Secretary has served on Hannaford. We are available to meet at 2:00 PM on either November 12 or November 15, 2010, at the Commission's New Jersey Avenue offices. Let me know as soon as possible which date you prefer.

To facilitate a productive meeting, we suggest that a Hannaford corporate representative and a knowledgeable IT staff member attend with counsel. We also suggest that you provide organization charts, network diagrams, search plans, and other materials sufficient to demonstrate the reasonableness of your search for materials responsive to the access letters and the search you plan to conduct for materials responsive to the Commission's CIDs. If Hannaford used an independent information retrieval professional to conduct the access letter search or plans to use one to comply with the CIDs, we would like to learn more about that process. By meeting we may be able to avoid the need to schedule an investigational hearing, or circumscribe hearing questions, regarding the collection and production of responsive documents.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alain Sheer', with a stylized, cursive script.

Alain Sheer



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

MICHAEL A. OAKES
DIRECT DIAL: 202 • 419 • 2712
EMAIL: moakes@hunton.com

FILE NO: 74395.00003

November 10, 2010

Via E-Mail

Mr. Alain Sheer
Division of Privacy and Identity Protection
Bureau of Consumer Protection
Federal Trade Commission Division
Mail Stop NJ-3137
600 Pennsylvania Ave
Washington, D.C. 20580

Re: Hannaford Bros. Co.

Dear Alain:

I am writing in response to your letter dated November 8, 2010. The purpose of our offer to have a detailed meeting to discuss Hannaford's previous production was so that you would not need to serve a CID that duplicated your previous voluntary access letters. Now that you have served the CIDs, a detailed discussion of the previous production does not appear to be necessary or relevant.

Nonetheless, as discussed earlier, we do need to have a meeting to discuss the CIDs. I do not think you will be surprised to learn that we think that the CIDs are overbroad, unduly burdensome and suffer from numerous other flaws. Thus, while the meeting will necessarily include a discussion of some of the issues raised in your letter, we want to make clear that we do not believe the meeting can be limited to those issues, but instead must include the full range of issues related to the CIDs. We will have the appropriate personnel present to discuss all issues.



Mr. Alain Sheer
November 10, 2010
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As stated in your email, the meeting will be at 2:00 p.m. on Tuesday, November 16. Since you have graciously hosted our previous meetings, we would be happy to host this one at our offices.

Best regards,

A handwritten signature in black ink, appearing to read "M. A. Oakes". The signature is written in a cursive style with a large, sweeping initial "M" and a long, horizontal stroke extending to the right.

Michael A. Oakes