

# EXHIBIT 8



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

Maneesha Mithal  
Associate Director  
Division of Privacy and Identity Protection

December 10, 2010

**BY EMAIL**

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

Dear Mr. Oakes:

I have reviewed your December 7, 2010 letter, which follows your November 16, 2010 meeting with Alain Sheer, Loretta Garrison, and Laura Riposo VanDruff, and my November 23, 2010 letter regarding the Commission's Civil Investigative Demands ("CIDs") to Hannaford Brothers Co. ("Hannaford") and Sweetbay Supermarket ("Sweetbay").<sup>1</sup> Your letter identifies some specific concerns regarding the CIDs, including some, I have been informed, that were not raised in your November 16, 2010 meeting with staff or in subsequent correspondence. Nonetheless, we remain committed to responding in good faith so that your clients may respond efficiently and timely to the Commission's CIDs without seeking unnecessary relief from the Commission. Thus, while reserving all rights of the Commission with respect to the CIDs as originally propounded, we respond to your December 7, 2010 letter below.

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<sup>1</sup> The Commission issued two CIDs to Hannaford: the First CID to Hannaford generally seeks information regarding arguments Hannaford asserted in its August 2010 White Paper and in its August 17, 2010 meeting with Bureau of Consumer Protection Director David Vladeck ("White Paper CID"); the Second CID to Hannaford repeats the requests of the access letters ("Access Letter CID"). The Commission also issued CIDs to Sweetbay Supermarket ("Sweetbay CID") and Kash n' Karry Food Stores, Inc. d/b/a Sweetbay Supermarket ("Kash n' Karry CID"). You have agreed to relate back the Kash n' Karry CID to the Sweetbay CID.

## **Definitions, Instructions, and Specifications to White Paper CID**

### (1) Definitions and Instructions

- **Electronically Stored Information or ESI (G):** To the extent that responsive documents have been properly preserved, collected, and produced, we do not intend for the definition of ESI to impose an obligation on Hannaford to recover or restore ESI from backup media.
- **Hannaford or the Company (J):** By my letter of November 23, 2010, we believed that we had addressed your concerns regarding the definition of “Hannaford.” For the purpose of Hannaford’s initial responses to the White Paper CID, the definition of Hannaford is further modified as follows: “‘Hannaford’ or the ‘Company’ shall mean Hannaford Brothers Co., and its parents, subsidiaries, divisions, branches, joint ventures, and agents.”
- **Scope of Search (I):** During the November 16, 2010 meeting regarding the Commission’s CIDs, I am informed that you specifically proposed modifying Instruction I as set forth in my November 23, 2010 letter. We believe that the Instruction, as modified, is self-explanatory.
- **Submission of Electronic Data/Forms of Production (M):** To the extent that you may determine that production in compliance with Instruction M would be difficult or burdensome, please consult with Mr. Sheer regarding your proposed alternative form(s) of production.

### (2) Interrogatory Specification

- **Interrogatory Specification 1:** Please refer to the definition of security practices, as modified by my letter of November 23, 2010.

### (3) Document Specifications

- **Document Specification 4:** We did not intend for the phrasing of Document Specification 4 to be, and we do not agree that it is, pejorative.
- **Document Specification 5:** For the purpose of Hannaford’s initial responses to the White Paper CID, Document Specification No. 5 is modified as follows: “For the period March 17, 2007 through March 17, 2009, provide all documents that describe, evaluate, or analyze changes in the purchasing practices of Hannaford’s customers, including documents that concern changes in the form of payment, the average dollar amount of purchases (by individual form of payment), and the churn rate (by demographic characteristic and location), and provide the underlying data, analytical methodology, and conclusions.”

- **Document Specification 7:** For the purpose of Hannaford's initial responses to the White Paper CID, Document Specification No. 7 is modified as follows: "Provide documents sufficient to show all individual components, and the percentage thereof, that constitute actual or prospective acquiring banks' payment card transaction fees, including security or PCI compliance, and provide all contracts between Hannaford and its acquiring banks."

#### **Definitions, Instructions, and Specifications to Access Letter CID**

At the outset, I would reiterate that the purpose of the Access Letter CID is to repeat the requests of the access letters. In this regard, you are mistaken that Interrogatory 14 is new. Rather, Interrogatory 14 seeks information identical to the information sought in the September 8, 2009 access letter. *See* Letter to M. Oakes from A. Sheer (Sept. 8, 2009) at no. 4 (enclosed).

With respect to the applicable time period of January 1, 2007 until December 23, 2009, this period mirrors the instructions of the access letters, which provided that "the time period covered by these requests is from January 1, 2007 through the date of full and complete production." *See* Letter to R. Hodge from A. Sheer (Mar. 21, 2008) at 3 (enclosed). Although Hannaford has not certified the accuracy or completeness of its responses to the access letters, its last response was on December 23, 2009.

In response to your explanation of the processes by which counsel for Hannaford collected, reviewed, and produced certain documents responsive to the access letters, please refer to Mr. Sheer's letter of December 9, 2010, which has been transmitted under separate cover.

#### (1) Definitions and Instructions

- **Electronically Stored Information or ESI (H):** To the extent that responsive documents have been properly preserved, collected, and produced, we do not intend for the definition of ESI to impose an obligation on Hannaford to recover or restore ESI from backup media.
- **Hannaford or the Company (K):** For the purpose of Hannaford's initial responses to the Access Letter CID, the definition of Hannaford is modified as follows: "'Hannaford' or the 'Company' shall mean Hannaford Brothers Co., and its parents, subsidiaries, divisions, branches, joint ventures, and agents."
- **Scope of Search (J):** For the purpose of Hannaford's initial responses to the Access Letter CID, the Scope of Search instruction is modified as follows: "This CID covers documents and information in your possession or under your actual or constructive custody or control."

## Definitions and Specifications to Kash n' Karry CID

Although your December 7, 2010 letter refers only to the Sweetbay CID, I assume you intended the comments and modification requests expressed therein to apply to the Kash n' Karry CID, and I am responding accordingly.<sup>2</sup> The modifications to the Sweetbay CID that are set forth in my November 23, 2010 letter apply equally to the Kash n' Karry CID.

### (1) Definitions and Instructions

- **Hannaford (K):** For the purpose of initial responses to the Kash n' Karry CID, the definition of Hannaford is modified as follows: "Hannaford' shall mean Hannaford Brothers Co., and its parents, subsidiaries, divisions, branches, joint ventures, and agents."
- **Security Practice (T):** For the purpose of initial responses to the Kash n' Karry CID, the definition of security practice is modified as follows: "Security practice' shall mean procedures, practices, policies, and defenses, including network operation protocols, used to protect electronic data."
- **Sweetbay or the Company (V):** For the purpose of initial responses to the Kash n' Karry CID, the definition of Sweetbay is modified as follows: "Sweetbay' or the 'Company' shall mean Kash n' Karry Food Stores, Inc. (d/b/a Sweetbay Supermarket), and its parents, subsidiaries, divisions, branches, joint ventures, and agents."
- **Scope of Search (I):** For the purpose of initial responses to the Kash n' Karry CID, the Scope of Search instruction is modified as follows: "This CID covers documents and information in your possession or under your actual or constructive custody or control."

### (2) Interrogatory Specifications

We acknowledge your repeated representations that pharmacy information at Sweetbay was not compromised during the breach. However, pharmacy information issues are well within our investigative authority, particularly in light of the documents Hannaford produced suggesting that pharmacy information may have been accessed or accessible during the breach.

- **Interrogatory Specification 11:** Please refer to the definition of security practices, as modified by this letter.
- **Interrogatory Specification 20:** For the purpose of initial responses to the Kash

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<sup>2</sup> The definitions, instructions, and specifications of the Sweetbay and Kash n' Karry CIDs as issued are identical, other than to change a name.

n' Karry CID, Interrogatory Specification 20 is modified as follows:

"Identify and describe in detail whether, and, if so, how and over what time period, customers of Sweetbay changed their purchasing practices after the breach was announced, including: (a) the form of payment used (such as switching from payment cards to cash and checks); (b) the average dollar amount of purchases by payment form; and (c) the churn rate or attrition rate in the customer base, reflecting the proportion of customers who stopped doing business with Sweetbay.

The response should include: a separate spreadsheet that sets out, week-by-week between March 17, 2007 and March 17, 2009, changes in the form of payment and average dollar amount of purchases (by individual form of payment) and the churn rate (by demographic characteristics and location); the raw data on which each spreadsheet is based; and a detailed description of the methods used to prepare each spreadsheet."

(3) Document Specifications

- **Document Specification 12:** For the purpose of initial responses to the Kash n' Karry CID, Document Specification 12 is modified as follows: "For the period March 17, 2007 through March 17, 2009, provide all documents that describe, evaluate, or analyze changes in the purchasing practices of Sweetbay's customers, including documents that concern changes in the form of payment, the average dollar amount of purchases (by individual form of payment), and the churn rate (by demographic characteristic and location), and provide the underlying data, analytical methodology, and conclusions."

I encourage you to bring any additional concerns that you may have to Mr. Sheer's attention at your earliest convenience. In addition, Mr. Sheer is available to meet and confer regarding these and other issues.

Sincerely,



Maneesha Mithal

Enclosures (2)

cc: Alain Sheer