

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



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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)
)
and)
)
US FOODS, INC.,)
a corporation.)
)
_____)

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
Ryan K. Quillian
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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 The Case Management and Scheduling Order issued in the Federal Action also contemplates separate discovery: "All discovery taken in the above-captioned litigation can be used in connection with the Administrative Action and vice versa." Exhibit C, ¶ 15.

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 in [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.

Dated: June 4, 2015

Respectfully Submitted,

/s/ Stephen Weissman

Stephen Weissman
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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 Hearing that (a) the relevant local geographic markets are as alleged in Complaint Counsel's Complaint and Appendix A of the Complaint; (b) the merger of Respondents would result in market shares and market concentrations exceeding the thresholds held unlawful in case law, and presumed to be likely to enhance market power under the Horizontal Merger Guidelines, in each of the relevant local geographic markets; (c) Respondents are each other's closest competitors in each of the relevant local geographic markets; and (d) entry will not be timely, likely, or sufficient in any of the relevant local geographic markets; and *provided further that*, with respect to Specification 10, this shall mean that it is established for purposes of the Administrating Hearing that (e) Respondents bid most frequently for national broadline distribution customer accounts against each other; (f) Respondents most often win national broadline distribution customer accounts from, and most often lose national broadline distribution customer accounts to, each other; (g) on a dollar-volume basis, Respondents win the most national broadline

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

UNITED STATES OF AMERICA
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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 motion to compel if an agreed resolution could not be reached. Alexis Gilman, Mark Seidman, and Melissa Davenport were present on the call for Complaint Counsel. Edward Hassi participated for Respondent Sysco. Respondent's counsel said he needed to confer with the client before responding to the proposal.

On June 3, 2015, at 5:29 p.m., Alexis Gilman for Complaint Counsel left a voicemail message for Respondent's Counsel, Ted Hassi, to request an update on Respondent's response to the proposed resolution of the discovery dispute.

On June 4, 2015, at 9:15 a.m. Respondent's Counsel, Ted Hassi, left a voicemail message for Alexis Gilman of Complaint Counsel indicating that Sysco did not agree to the proposed resolution of the discovery dispute and that Sysco would not produce any documents responsive to Specifications 1 or 10 of the RFP. At 10:01 a.m., Alexis Gilman for Complaint Counsel sent an email to Respondent's Counsel, Ted Hassi and Richard Parker, confirming that Complaint Counsel would be filing a motion to compel.

Dated: June 4, 2015

Respectfully Submitted,

/s/ Stephen Weissman

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EXHIBIT A

UNITED STATES OF AMERICA
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Docket No. 9364

**COMPLAINT COUNSEL’S REQUESTS
FOR PRODUCTION OF DOCUMENTS ISSUED TO
SYSCO CORPORATION**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.37, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on March 16, 2015, Complaint Counsel hereby requests that Sysco Corporation respond to the following Requests for Production of Documents in accordance with the Definitions and Instructions set forth below:

SPECIFICATIONS

1. Submit all documents that refer to US Foods or competition with US Foods from the files (electronic or paper) of the OpCo President, the OpCo VP Sales, and the OpCo SVP Operations for each of the following Sysco distribution centers:
 - a) Albany
 - b) Atlanta
 - c) Baltimore
 - d) Central Alabama
 - e) Central Florida
 - f) Central Illinois
 - g) Central Pennsylvania
 - h) Charlotte
 - i) Chicago

- j) Cleveland
 - k) Eastern Wisconsin
 - l) Gulf Coast
 - m) Intermountain
 - n) Jackson
 - o) Kansas City
 - p) Las Vegas
 - q) Lincoln
 - r) Los Angeles
 - s) Memphis
 - t) Minnesota
 - u) North Dakota
 - v) Philadelphia
 - w) Pittsburgh
 - x) Raleigh
 - y) San Diego
 - z) San Francisco
 - aa) South Carolina
 - bb) St. Louis
 - cc) Syracuse
 - dd) Virginia
 - ee) West Coast Florida
 - ff) West Texas
2. Submit all documents, from January 1, 2014, to the present, relating to communications between the Company and any person concerning the Proposed Merger.
 3. Submit all communications and documents upon which Sysco plans to rely in connection with the Part 3 Administrative Trial in Docket No. 9364.
 4. Submit all draft, final, and executed letters, declarations, affidavits, statements, and related documents that have been exchanged between the Company and any person (including customers, distributors, or other industry participants) in connection with the Proposed Merger, including any communication, correspondence, and other documents relating to such letters, declarations, affidavits, and statements.
 5. Submit all communication or correspondence with persons (including customers, distributors, or other industry participants) relating to the FTC's or a State Attorney General's investigation of, or lawsuit challenging the Proposed Merger, including any potential and actual federal and administrative litigation relating to the Proposed Merger.
 6. Submit all documents discussing, referring to, or relating to the advantages, disadvantages, benefits, costs, or risks of providing the Relevant Service to customers through 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.”

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 Proposed Merger is consummated.
9. 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.
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.
11. 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 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;
 - b) 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
 - c) the Company’s business plans, including any models, projections, or expansions related to any proposed divestiture, including models, projections, or expansions.
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).

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 Holdings 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 KKR and any other person.

- E. The term “PFG” means PFG Holdings, Inc., Performance Food Group Co., its domestic and foreign parents (including, but not limited to, The Blackstone Group L.P. and Wellspring Capital Management LLC, and any funds or General Partners thereof), predecessors, subsidiaries, affiliates, partnerships, 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 the Company and any other person.
- F. The term “Blackstone” means The Blackstone Group, L.P., its funds (including, but not limited to, Blackstone Holdings IV L.P., Blackstone Capital Partners IV), its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships (including, but not limited to, Blackstone Group Management, L.L.C. and Blackstone Partners L.L.C.), 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 Blackstone and any other person.
- G. The terms “document” and “documents” mean any information, on paper or electronic format, including written, recorded, graphic materials, and computer files of every kind in the possession, custody, or control of the Company. The term “documents” includes, without limitation: electronic mail messages; audio files, instant messages, files or information or data created or stored in software-as-a-service, cloud-computing, or web 2.0; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that person’s files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
1. The term “web 2.0” means any applications that facilitate interactive information-sharing and collaboration. Examples of Web 2.0 may include social networking sites, blogs, wikis, and video-sharing sites.
 2. Unless otherwise specified, the term “documents” excludes:
 - i. bills of lading, purchase orders, customs declarations, and other similar documents of a purely transactional nature;
 - ii. architectural plans and engineering blueprints; and

- 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 Company on February 18, 2014, Transaction Identification No. 2014-0468.
- L. The term “Proposed Divestiture” means the proposed 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, RS Funding, Inc., USF Propco I, LLC, USF Propco II LLC, Trans-Porte, Inc., US Foods, Inc., USF Holding Corp. and Sysco Corporation, dated February 2, 2015.
- M. The term “relating to” means, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting, in connection with, dealing with, discussing,

describing, embodying, evidencing, identifying, pertaining to, referring to, reflecting, reporting, stating, or summarizing.

- N. The term “Relevant Service” means the sale or distribution 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, education institutions, government organizations, stadiums, and group purchasing organizations).
- O. The term “including” means including, but not limited to.
- P. Any other term used in this Document Request that is not defined has the meaning that the Company uses in the ordinary course of business.

INSTRUCTIONS

- A. Unless otherwise specified, each request calls for documents received or created from January 1, 2012 to the present. Each request calls only for documents relating to the Company’s business in the United States.
- B. Unless modified by agreement with Complaint Counsel, these document requests require a complete search of all the files of the Company. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of the Company.
- C. These document requests are continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Company’s initial response and trial.
- D. If the named custodians do not hold the positions they occupied when the Company submitted organizational charts in response to the Second Request, the Company must produce documents from all successors who hold those positions currently, or have held the position in the interim.
- E. All documents responsive to this document request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
 - a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company’s files.
 - b) Shall be marked on each page with corporate identification and consecutive document control numbers;
 - c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

- 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 form, the box number containing such documents. The Complaint Counsel representative will provide a sample index upon request.
- F. Forms of Production: The Company shall submit all documents as instructed below absent written consent signed by Complaint Counsel.
- 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)(ii), (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. |

| Metadata/Document Information | Description |
|--------------------------------------|---|
| 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). |
| 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 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. |
| Parent Email | The Document ID of the parent email. |
| 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. |

| 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:

| 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. |

- vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type described in subparts (a)(i) through (a)(v) 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.
- b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.
- c) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in its computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact the Complaint Counsel representative to determine, with the assistance of the appropriate Commission representative, whether and in what manner the Company may use such software or services when producing materials in response to these document requests.
- d) Produce electronic file and image submissions as follows:
- i. For productions over 10 gigabytes, use IDE, EIDE, and SATA hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 external enclosure;
 - ii. For productions under 10 gigabytes, CD-R CD-ROM optical disks formatted to ISO 9660 specifications, DVD-ROM optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats;
 - iii. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Company's compliance with these Document Requests; and

- 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); production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load-file fields in the order in which they are organized in the load file.
- G. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a searchable and sortable log that includes each document's authors, addresses, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient; state the person's full name, title, and employer or firm; and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Complaint Counsel or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal firm memoranda, may be omitted from the log.
- H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I. 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" in 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.
- 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

Dated: April 17, 2015

Respectfully Submitted,

Of counsel:

/s/ Stephen Weissman

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Director
Federal Trade Commission
Bureau of Competition

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CERTIFICATE OF SERVICE

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

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*Counsel for Respondents USF Holding Corp. and
US Foods, Inc.*

April 17, 2015

By: /s/ Christopher J. Abbott
On behalf of Complaint Counsel

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's 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 these 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 non-public and non-privileged documents described in the response exist and are located pursuant to a reasonable search then they have been and/or will be produced.

GENERAL OBJECTIONS

These objections apply to all document Requests as though set out as specific objections immediately following each document Request.

1. Sysco objects to the Requests to the extent they are cumulative of other discovery, including interrogatories, requests for production, Civil Investigative Demands, or subpoenas propounded to any other party or third party. 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. Further information has also been provided during the course of the seven-day preliminary injunction hearing before Judge Amit Mehta in the United States District Court for the District of Columbia. This includes Defendants' Exhibit and Supplemental Exhibit lists with over 3,000 exhibits provided.

2. Sysco objects to each Request to the extent it is vague, ambiguous, overbroad, unduly burdensome, and/or fails to describe the information sought with reasonable particularity.

3. Sysco objects to the Requests to the extent they require the disclosure of information that is neither relevant to the parties' claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence.

4. Sysco objects to each Request to the extent it requires the disclosure of any information or document that is a matter of public record, is equally available to Complaint Counsel, or is already in Complaint Counsel's possession, custody, or control.

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 constitutes an admission that any responsive documents are within the possession, custody, or control of Sysco.

6. Sysco's agreement to search for and make available any particular document or documents shall not be deemed to be, or construed as, a representation either that responsive information exists or that such information is in Sysco's possession, custody, or control.

7. Sysco objects to each Request to the extent that it does not contain reasonable time limits.

8. Sysco objects to the Requests to the extent they call for information that is protected by the attorney-client privilege, the joint prosecution privilege, the joint defense privilege, the work-product doctrine, or any other privileges, protections, or doctrines of similar effect. To the extent Sysco inadvertently produces any information protected by the attorney-client privilege, the joint prosecution privilege, the joint defense privilege, the work-product doctrine, or any other privilege or protection, such production is not intended to and shall not operate as a waiver of any applicable privilege with respect to that document and/or information, or any other document and/or information. Sysco reserves the right to demand that Complaint Counsel return any such information and/or documents or copies thereof. If Sysco notifies Complaint Counsel that an inadvertent disclosure has occurred, Complaint Counsel must immediately return the inadvertently produced privileged material to Sysco, including any copies, must not use or disclose the information, and must take reasonable steps to retrieve the information if Complaint Counsel disclosed such information before being notified. If the

production or identification of a document is deemed 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 into 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 are 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, irrelevant, immaterial, or not a proper basis for discovery; and (b) any objection by Sysco to any future use of such information that Complaint Counsel may attempt to make. Sysco construes the Requests as requiring it to engage in, and they have engaged in, reasonable inquiry about the specific matters referenced therein.

15. Sysco objects to each and every Request to the extent that it seeks Sysco's proprietary, confidential, financial, trade secret, or commercially-sensitive information, the disclosure of which would unduly and improperly invade its protected rights. Sysco similarly objects to each and every Request to the extent it seeks third-party proprietary, confidential, financial, trade secret, or commercially-sensitive information, the disclosure of which could harm third parties' competitive or business positions or result in a breach of Sysco's obligation to maintain the confidentiality of such information. Sysco will thus produce such documents and information as necessary subject to the Protective Order entered by the Court.

16. Sysco incorporates by reference any general objection asserted by any other Defendants in response to Requests for Production of Documents.

17. Sysco objects to each Request to the extent it requires or purports to require Sysco to review and produce electronic documents that cannot be reviewed in an efficient and cost-effective manner, or to the extent that it seeks discovery of electronically stored information from sources that Sysco identifies as not reasonably accessible because of undue burden or cost pursuant to Rule §3.37 of the Federal Trade Commission's Rules of Practice. Sysco's production of documents, if any, will be made from reasonably accessible, non-archived sources only.

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 Complaint Counsel's instruction to produce "all" documents or information is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Sysco further objects to the extent that Complaint Counsel demands that Sysco produce documents protected by the attorney-client privilege, work product doctrine, or any other privilege or immunity.

B. Sysco objects to Complaint Counsel's assertion in Instruction C that their Discovery Requests are "continuing in nature," thereby obligating Sysco to produce subsequently discovered documents. Sysco will supplement its responses pursuant to the requirements set forth in Rule §3.31(e) of the Federal Trade Commission's Rules of Practice.

C. Sysco objects to Complaint Counsel's Instructions E and F because Sysco is under no obligation pursuant to the Federal Trade Commission's Rules of Practice to produce documents in the fashion specified by Complaint Counsel. Except where indicated otherwise, Sysco will produce non-objectionable responsive documents as they are kept or maintained in the usual course of business.

D. Sysco objects to Complaint Counsel's Instruction F on the grounds that it is overbroad and burdensome and purports to impose duties or obligations on Sysco that are greater than or inconsistent with the applicable requirements of the Federal Trade Commission's Rules of Practice. When both reasonable and possible, Sysco will produce metadata coextensive

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] to assess the claim." Federal Trade Commission's Rules of Practice Rule §3.38A.

F. Sysco objects to Plaintiffs' Instruction H to the extent it requests information about documents that are lost, destroyed, or otherwise missing. Sysco is under no obligation to produce documents that are not in its possession, custody, or control. Moreover, there is no requirement under the Federal Trade Commission's Rules of Practice for Sysco to undertake a costly and time-consuming investigation to provide the information requested in Instruction H.

19. Sysco's responses, and its production of any document or documents, do not in any way constitute an adoption of Complaint Counsel's purported Definitions of words or phrases. Sysco objects to the Definitions to the extent they (i) are unclear, ambiguous, overly broad, or unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; and (iii) seek to impose obligations different from, or in excess of, those created by 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 the definition of the terms "Sysco" and "the Company" in Paragraph A to the extent they purport to include third-party "agents," "representatives," or "affiliates" on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.

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 term 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 that any of the terms or definitions contained therein are appropriate, descriptive, or accurate.

21. The general objections set forth above are incorporated in each response below and shall be deemed to be continuing even if not specifically referred to in responses to individual Requests. Any responses to these Requests are made without waiver of, or prejudice to, any objections Sysco may raise now or in the future and all such objections are hereby expressly preserved.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to the General Objections, Sysco responds as follows:

Document Request No. 1:

Submit 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 following Sysco distribution centers:

- a) Albany
- b) Atlanta
- c) Baltimore
- d) Central Alabama
- e) Central Florida
- f) Central Illinois
- g) Central Pennsylvania
- h) Charlotte
- i) Chicago
- j) Cleveland
- k) Eastern Wisconsin
- l) Gulf Coast
- m) Intermountain
- n) Jackson
- o) Kansas City
- p) Las Vegas
- q) Lincoln
- r) Los Angeles
- s) Memphis
- t) Minnesota
- u) North Dakota
- v) Philadelphia
- w) Pittsburgh
- x) Raleigh
- y) San Diego
- z) San Francisco
- aa) South Carolina
- bb) St. Louis
- cc) Syracuse
- dd) Virginia
- ee) West Coast Florida
- ff) West Texas

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 §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. 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, 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 §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, Sysco is under no obligation to provide information that is cumulative and duplicative and already in the possession, custody, or control of Complaint Counsel.

Document Request No. 2:

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

Sysco's Response to Document Request No. 2:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 1 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 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. 1, served on March 20, 2015.

Document Request No. 3:

Submit all communications and documents upon which Sysco plans to rely in connection with the Part 3 Administrative Trial in Docket No. 9364.

Sysco's Response to Document Request No. 3:

Sysco objects on the grounds that this Request is largely duplicative of Request No. 2 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 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 §3.31(c)(2)(i) of the Federal Trade Commission’s Rules of Practice, Sysco is under no obligation to provide information that is cumulative and duplicative and already in the possession, custody, or control of Complaint Counsel. Sysco 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. 4:

Submit all draft, final, and executed letters, declarations, affidavits, statements, and related documents that have been exchanged between the Company and any person (including customers, distributors, or other industry participants) in connection with the Proposed Merger,

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 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. 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 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 §3.31(c)(2)(i) of the Federal Trade Commission's Rules of Practice, Sysco is under no obligation to provide information that is

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's or a State Attorney General's investigation of, or lawsuit challenging the Proposed Merger, including any potential and actual federal and administrative litigation relating to the Proposed Merger.

Sysco's Response to Document Request No. 5:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 7 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 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. 7, served on March 20, 2015. Sysco 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.

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. 6:

Submit all documents discussing, referring to, or relating to the advantages, disadvantages, benefits, costs, or risks of providing the Relevant Service to customers through

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:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 9 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 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. 9, served on March 20, 2015.

Document Request No. 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.

Sysco’s Response to Document Request No. 7:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 10 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 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. 10, served on March 20, 2015. 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.

Document Request No. 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 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.

Sysco's Response to Document Request No. 8:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 11 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 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. 11, served on March 20, 2015. 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.

Document Request No. 9:

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 consumers who seek or purchase the Relevant Service.

Sysco’s Response to Document Request No. 9:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 12 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 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. 12, served on March 20, 2015.

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 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 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, 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 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 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 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;
- b) 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
- 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 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. 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 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 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 Broadline, 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 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 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. 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 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 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. 18, served on March 20, 2015.

Document Request No. 15:

Submit all documents, from January 1, 2014 to 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 relationships, agreements, negotiations, or communications with suppliers and food manufacturers; and (iv) the Company’s relationships, agreements, negotiations, or communications with brokers.

Sysco’s Response to Document Request No. 15:

Sysco objects on the grounds that this Request is entirely duplicative of Request No. 20 from Plaintiff’s Second 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 27, 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’ Second Set of Requests for Production, Request No. 20, served on April 6, 2015.

Document Request No. 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.

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 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 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. 19, served on March 20, 2015. 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.

Dated: May 22, 2015

By: /s/ Edward D. Hassi

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CERTIFICATE OF SERVICE

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

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/s/ Lindsey Freeman
Lindsey Freeman

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|--------------------------------------|
| Federal Trade Commission, <i>et al.</i>, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil No. 1:15-cv-00256 (APM) |
| |) | |
| Sysco Corporation, <i>et al.</i>, |) | |
| |) | |
| Defendants. |) | |

CASE MANAGEMENT AND SCHEDULING ORDER

Upon consideration of the Proposed Case Management and Scheduling Order submitted by the parties on March 6, 2015, it is hereby ordered that the following shall govern the proceedings in this matter:

I. Scheduling Order

- A. TEMPORARY RESTRAINING ORDER: The court entered the Stipulated Temporary Restraining Order on February 27, 2015. ECF #35.
- B. DISCOVERY
1. Fact Discovery. The parties may commence issuing discovery immediately. Fact discovery shall be completed by April 14, 2015.
 2. Initial Disclosures. The parties already have served each other with lists of people with knowledge, as required by Fed. R. Civ. P. 26(a)(1). By March 20, 2015, the parties will make a good faith effort to produce copies of all documents in their possession that they may use to support their claims and defenses in this action, pursuant to

Fed. R. Civ. P. 26(a)(1). To the extent additional documents come to the parties' attention during discovery, they will supplement their disclosures promptly.

3. Pre-Trial Discovery Conference. The parties' prior consultations and submission of this stipulated Order relieve the parties of their duty under Fed. R. Civ. P. 26(f) to confer about scheduling and a discovery plan.
4. Third-Party Discovery. For any third-party subpoena, the parties will not request a return date sooner than seven calendar days after service. The parties agree to produce all materials received pursuant to a third-party subpoena to the non-serving Party in the format the materials were received within 24 hours of knowing receipt.
5. Document Production. The parties shall not be required to produce to each other in discovery in this case any documents previously produced by Defendants to Plaintiff FTC in the course of the investigation of the acquisition of USF Holding Corp. by Sysco Corporation, FTC File No. 141-0067.
6. Expert Materials Not Subject to Discovery. Expert disclosures and reports shall comply with Fed. R. Civ. P. 26(a)(2), except neither side must preserve or disclose:
 - a) any form of communication or work product shared between any of the Parties' counsel and their expert(s), or between any of the experts themselves;
 - b) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);
 - c) expert's notes; unless they reflect facts or assumptions relied upon by the expert in arriving at the opinions contained in the final expert report;
 - d) drafts of expert reports, analyses, or other work product; or

- e) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

The Parties shall disclose the following materials with all expert reports:

- a) all documents relied on by the testifying expert(s) by Bates number; and (except for those excluded above) copies of any materials relied on by the testifying expert(s) that were not previously produced and are not readily available through public sources; and
- b) all data and programs underlying the expert's calculations for any calculation appearing in an expert report, including all programs and codes necessary to recreate the calculation from the initial ("raw") data files, and any intermediate files.

7. Requests for Admission and Exhibits. The parties shall be limited to eight requests for admission per side, subject to the following provisions:

- a) There will be no limit on the number of requests for admission for the authenticity of documents or admissibility of evidence. Requests for Admission related to the authenticity of a document and admissibility of evidence shall not count against the limit of eight Requests for Admission. The parties will respond to requests regarding the authenticity and admissibility of documents within ten days.
- b) Any good faith objection to a document's status as a business record must be provided at the same time as other objections to intended trial exhibits. If the opposing side serves a specific good faith written objection to the

document's status as a business record, the parties will promptly meet and confer to attempt to resolve any objection. If the objection is not resolved, the party seeking to introduce the exhibit shall have the opportunity to take discovery regarding the exhibit(s) in question. Any objections not resolved through this means or the discovery process will be resolved by the Court.

8. Interrogatories. Each side shall be permitted to serve the other with up to twelve interrogatories seeking only factual information (i.e., no contention interrogatories). The parties shall serve responses to the interrogatories no later than ten days after the date of service.
9. Deadline to Issue Written Discovery to Parties: The parties shall serve requests for admission, interrogatories, and document requests to parties by March 27, 2015, except that requests for admission related to the authenticity of a document and admissibility of evidence shall be served by April 4, 2015.
10. Service of Objections to Written Discovery. The parties shall serve any objections to written discovery requests within ten days of service of the discovery requests to which objections are asserted.
11. Exchange of Lists of Fact Witnesses to Appear at Hearing. The parties shall exchange preliminary party and third-party fact witness lists no later than 5:00 pm ET, on March 9, 2015. Such preliminary party and non-party fact witness lists shall include a summary of the topics of each witness's testimony. The preliminary witness list shall include the name of the employer of each witness. The parties will update their preliminary lists promptly as they add or delete witnesses. Final party and non-party fact witness lists shall be exchanged on or before April 10, 2015, with a summary of

the topics of each witness's testimony. Additional witnesses may be added to the final witness list after this date only by agreement of the parties or with leave of the Court for good cause shown.

12. Depositions.

- a) The parties agree there should be no limit on the number of depositions that each party will be permitted. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the deposition. The Parties may not serve a deposition notice with fewer than seven days' notice. The parties shall use reasonable efforts to reduce the burden on witnesses noticed for depositions and to accommodate the witness's schedule.
- b) All depositions shall be limited to a maximum of seven (7) hours.
- c) For any deposition noticed by both Plaintiffs and Defendants, the maximum time for the deposition shall be allocated evenly between the two sides. For any noticed deposition for which either side has obtained a declaration from the deponent, the maximum time shall be allocated for five (5) hours for the party that did not obtain the declaration, and two (2) hours for the party that obtained the declaration. For any noticed deposition of the proposed divestiture buyer of eleven US Foods' distribution centers, Performance Food Group, or its employees, Plaintiffs shall be allocated six (6) hours and Defendants one (1) hour. For any party deponent who has previously been deposited in an investigational hearing in the Federal Trade Commission's investigation of the acquisition of USF Holding Corp. by Sysco

Corporation, FTC File No. 141-0067, the deposition shall be limited to a maximum time of 3.5 hours; provided that Plaintiffs shall be entitled to designate a maximum of four (4) depositions of deponents who have previously been deposed in an investigational hearing for which the deposition shall have a maximum time of 7 hours; provided further that the CEOs of Sysco and US Foods shall not be among those four unless any is identified on Defendants' preliminary or final witness lists. Unused time in any party's allocation of deposition time shall not transfer to the other party.

- d) If a Party serves a non-party subpoena for the production of documents or electronically stored information and a subpoena commanding attendance at a deposition, the deposition date must be at least seven days after the original return date for the document subpoena.

13. Expert Reports.¹ The parties shall simultaneously exchange expert reports on April 14, 2015 and rebuttal expert reports on April 21, 2015.

14. Expert Depositions. Depositions of each side's experts may only be conducted after the disclosure of each expert's report. Expert depositions must be completed on or before April 28, 2015.

15. Discovery Uses. All discovery taken in the above-captioned litigation can be used in connection with the Administrative Action and vice versa.

¹ At the time of service of the expert reports, a Party shall provide opposing counsel (i) a list of all commercially-available computer programs used by the expert in the preparation of the report; (ii) a copy of all data sets used by the expert, in native file format and processed data file format; and (iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

16. Notwithstanding any other provision herein, the Parties may modify deadlines in paragraphs 1-15 in this Order by agreement, but must provide notice of such modification to the court.

C. BRIEFING SCHEDULE

17. Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction shall be filed by April 21, 2015. The Plaintiffs' Reply Brief shall be filed by April 29, 2015.

D. DATE AND LENGTH OF PRELIMINARY INJUNCTION HEARING

18. The preliminary injunction hearing in this matter shall begin on May 5, 2015, at 9:30 a.m. in Courtroom 5, and will conclude no later than May 13, 2015.

E. OTHER MATTERS

19. Electronic Service. Service of all correspondence and formal papers filed, whether under seal or otherwise, shall be by electronic mail. In the event any documents are too voluminous for electronic mail, the parties shall serve an electronic disk version of the papers on opposing counsel by hand at their Washington, D.C. office. The serving Party will telephone the other side's principal designee when the materials are sent to alert them that the materials are being served. Electronic delivery shall be treated the same as hand delivery for purposes of calculating response times under the Federal Rules. Service on Plaintiff FTC shall be deemed service on the Plaintiff States. Plaintiff FTC shall provide copies to the Plaintiff States of any papers served by Defendants.

20. Privilege Logs: The parties agree to suspend the obligation under Rule 26(b)(5)(A), Fed. R. Civ. P., to produce a log of privileged materials withheld from discovery taken

in this action (excluding the Defendants' productions made during the course of the FTC's pre-complaint investigation). Notwithstanding the foregoing, the parties shall log materials that are: 1) authored by, addressed to, or received from any non-party; or 2) internal to a party that are not authored by, addressed to, or received from the party's attorneys. The term "non-party" as used in this provision excludes counsel for (a) the Defendants and (b) Performance Food Group on or after February 2, 2015. The parties shall maintain all documents responsive to a discovery request that are withheld pursuant to a claim of privilege or protection.

21. Answer. Defendants shall answer the complaint on or before March 5, 2015.
22. Nationwide Service. The Parties will be allowed nationwide service of discovery and trial subpoenas pursuant to Fed. R. Civ. P. 45 and 15 U.S.C. § 23, to issue from this Court.
23. March 5, 2015 Order. The court's Order issued on March 5, 2015, ECF #48, is hereby incorporated into this Case Management and Scheduling Order as if fully set forth herein.

SCHEDULE

| Event | Date |
|---|---------------------------|
| Defendants File Answer to Complaint | March 5, 2015 |
| Exchange of Preliminary Fact Witness Lists | March 9, 2015 |
| Deadline to Issue Written Discovery to Parties (Except Authenticity and Admissibility RFAs) | March 27, 2015 |
| Deadline for Service of Third-Party Subpoenas | April 1, 2015 |
| Final party and non-party fact witness lists shall be exchanged on or before | April 10, 2015 |
| Close of Fact Discovery | April 14, 2015 |
| Exchange of Expert Reports | April 14, 2015 |
| Exchange of Rebuttal Expert Reports | April 21, 2015 |
| Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction Due | April 21, 2015 |
| Parties Exchange Exhibit Lists and Deposition Designations | April 27, 2015 |
| Close of Expert Depositions | April 28, 2015 |
| Plaintiffs' Reply Brief Due | April 29, 2015 |
| Parties Exchange Objections to Exhibits and Deposition Designations | April 30, 2015 |
| Pre-hearing conference | May 1, 2015 at 10:00 a.m. |
| Hearing on Plaintiffs' Motion for Preliminary Injunction | Commences on May 5, 2015 |
| Proposed Findings of Fact and Conclusions of Law | May 20, 2015 |

Dated: March 9, 2015



Amit P. Mehta
United States District Judge

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. Submit all communications and documents upon which Sysco plans to rely in connection with the preliminary injunction hearing in Civil Action No. 15-cv-00256(APM).
3. Submit all documents and communications relating to or supporting the cost-analysis comparing US Foods and PFG submitted to the Federal Trade Commission on or about February 10, 2015.
4. Submit all documents and communications relating to the August 18, 2014 White Paper on National Account Customers and associated exhibits, including but not

limited to, all documents and communications relating to Exhibit 26 “Critical Loss Analysis Applied to Large CMU Customers.”

5. Submit all documents and communications relating to presentations to Commission staff, Bureau of Competition and Bureau of Economics management, or Commissioners regarding the Proposed Divestiture to PFG.
6. Submit all draft, final, and executed letters, declarations, affidavits, and statements that have been exchanged between the Company and any person (including customers, distributors, or other industry participants) in connection with the Proposed Merger, as well as any communication, correspondence, and other documents relating to such letters, declarations, affidavits, and statements.
7. Submit copies of any communication or correspondence with persons (including customers, distributors, or other industry participants) relating to the FTC’s or a State Attorney General’s investigation of the Proposed Merger and the potential and actual federal and administrative litigation relating to the Proposed Merger.
8. Submit all documents that refer to US Foods or competition with US Foods from the files (electronic or paper) of the following Sysco employees:

Kevin Mangan, San Diego OpCo President; Trey Kidd, San Diego OpCo VP Sales; Vannon Hooper, San Diego OpCo SVP Operations; Donald Tarwater, Raleigh OpCo President; Gregory Weatherford, Raleigh OpCo VP Sales; Roy Willard, Raleigh OpCo VP Operations; Troy Barnes, Columbia OpCo President; Thomas Propps, Columbia OpCo VP Sales; Michael Turner, Columbia OpCo VP Operations; David Kraft, Virginia OpCo President and COO; William Dipaola, Virginia OpCo VP Territorial Sales; George Moses, Virginia OpCo VP Operations; Lincoln OpCo President; Lincoln OpCo VP Sales; Lincoln OpCo VP Operations; Joseph Barton, Los Angeles OpCo President and CEO; Svante Johansson, Los Angeles OpCo VP Sales; Scott Bower, Los Angeles OpCo VP Operations; Peter Scatamacchia, Memphis OpCo President and CEO; Louis Costable, Memphis OpCo VP Territorial Sales; James Cella, Memphis OpCo VP Operations; William Tubbs, Philadelphia OpCo President and CEO; Steven Kane, Philadelphia OpCo VP Sales; James Forant Jr., Philadelphia OpCo VP Operations; and any successors of these employees if the identified employee is no longer employed by Sysco or has a different position within Sysco.

9. Submit all documents discussing, referring to, or relating to the advantages, disadvantages, benefits, costs, or risks of providing the Relevant Service to customers through 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.”

10. 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.
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 time 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) the Company's business plans, including any models, projections, or expansions related to any proposed divestiture, including models, projections, or expansions.
15. 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).
 16. Submit all documents comparing or contrasting the Company's Broadline, SYGMA, and specialty business units.
 17. Submit all documents relating to Project Naples.
 18. Submit all documents from, to, or relating to Culvers, Subway, Waffle House, Cheesecake Factory, Forum, Five Guys, Sonic, MedAssets, Hilton, and Sodexo.
 19. 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 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, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25% or more) or total ownership or control between the Company and any other person.
2. The term “US Foods” means USF Holding 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. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25% or more) or total ownership or control between US Foods and any other person.
3. 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 (25% of more) or total ownership or control between CDR and any other person.
4. 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 Holdings 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 (25% of more) or total ownership or control between KKR and any other person.
5. The term “PFG” means PFG Holdings, Inc., Performance Food Group Co., its domestic and foreign parents (including, but not limited to, The Blackstone Group L.P. and Wellspring Capital Management LLC, and any funds or General Partners thereof), predecessors, subsidiaries, affiliates, partnerships, 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 (25% of more) or total ownership or control between the Company and any other person.

6. The term “Blackstone” means The Blackstone Group, L.P., its funds (including, but not limited to, Blackstone Holdings IV L.P., Blackstone Capital Partners IV), its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships (including, but not limited to, Blackstone Group Management, L.L.C. and Blackstone Partners L.L.C.), 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 (25% or more) or total ownership or control between Blackstone and any other person.
7. The term “documents” means any information, on paper or electronic format, including written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term “documents” includes, without limitation: electronic mail messages; audio files, instant messages, drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that person’s files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
 - a. Unless otherwise specified, the term “documents” excludes:
 - i. bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature;
 - ii. architectural plans and engineering blueprints; and
 - iii. documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.
 - b. 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 Commission’s need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this Request. The Commission 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 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, RS 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, commenting, 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, *i.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 Request 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 calls for documents received or created from January 1, 2012 to the present. Unless otherwise specified, each request calls only for documents relating to the Company's business in the United States.
- B. Unless modified by agreement with FTC, these document requests require a complete search of all the files of the Company. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of the Company.
- C. These document requests are continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Company's initial response and the date established by the Court for hearing the FTC's Motion for Preliminary Injunction in the above-captioned proceeding.
- D. If the named custodians do not hold the positions they occupied when the Company submitted organizational charts in response to the Second Request, the Company must produce documents from all successors who hold those positions currently, or have held the position in the interim.
- E. All documents responsive to these document requests, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
 - a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files.
 - b) Shall be marked on each page with corporate identification and consecutive document control numbers;
 - c) 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;
 - d) 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 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)(ii), (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 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. |
| Parent Email | The Document ID of the parent email. |
| 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. |
| 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:

| 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. |

- vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type described in subparts (a)(i) through (a)(v) 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.
- b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data unredacted and all underlying formulas and algorithms intact.
- c) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in its computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact the Commission staff to determine, with the assistance of the appropriate Commission representative, whether and in what manner the Company may use such software or services when producing materials in response to these document requests.
- d) Produce electronic file and image submissions as follows:
 - i. For productions over 10 gigabytes, use IDE, EIDE, and SATA hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 external enclosure;
 - ii. For productions under 10 gigabytes, CD-R CD-ROM optical disks formatted to ISO 9660 specifications, DVD-ROM optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats;
 - iii. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with these Document Requests;
 - iv. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged; and
 - v. Each production shall be submitted with a transmittal letter that includes the Civil Action Number (1:15-CV-00256 (APM)); production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of

documents; and a list of load- file fields in the order in which they are organized in the load file.

- G. Unless otherwise agreed, if any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a searchable and sortable log that includes each document's authors, addresses, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient; state the person's full name, title, and employer or firm; and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the FTC or a court to assess the applicability of the privilege claimed under FRCP 45(d)(2). For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal firm memoranda, may be omitted from the log.
- H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I. If you object to any part of a request, set forth the basis for your objection and respond to all parts of the request to which you do not object. Any ground not stated in an objection within the time provided by Federal Rule of Civil Procedure 45(c), or any extension thereof, shall be waived. All objections must be made with particularity and must set forth all the information upon which you intend to rely in response to any motion to compel.
- J. All objections must state with particularity whether and in what manner the objection is being relied upon as a basis for limiting the scope of any search for documents or withholding any responsive documents. If you are withholding responsive information pursuant to any general objection, you should so expressly indicate. If, in responding to any request, you claim any ambiguity in interpreting

either the request or a definition or instruction applicably thereto, set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the request, and produce 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” in 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 7th 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

Stephen Weissman, D.C. Bar No. 451063
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Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
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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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*Counsel for Respondents USF Holding Corp. and
US Foods, Inc.*

March 6, 2015

By: /s/ Mark Seidman
Attorney

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

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2015, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

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alevine@stblaw.com

*Counsel for Respondents USF Holding Corp. and
US Foods, Inc.*

I further certify that I delivered via electronic mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 4, 2015

By: s/ Thomas H. Brock