

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WIENERBERGER AG.

GENERAL SHALE BRICK, INC.,

BORAL LIMITED,

LSF9 STARDUST SUPER HOLDINGS,
L.P.,

and,

MERIDIAN BRICK LLC,

Defendants.

Civil Action No.: 1:21-cv-02555-CRC

JOINT NOTICE OF AMENDED PROPOSED FINAL JUDGMENT

Pursuant to Paragraph V.D of the Asset Preservation Stipulation and Order (Dkt. 2-1) entered by the Court on October 5, 2021, Plaintiff, United States of America (“United States”), and Defendants, Wienerberger AG (“Wienerberger”), General Shale Brick, Inc. (“General Shale”), Boral Limited, LSF9 Stardust Super Holdings, L.P., and Meridian Brick, LLC (“Meridian”), jointly provide notice to this Court regarding a modification to Appendix A of the proposed Final Judgment related to the definition of assets to be divested. An Amended Proposed Final Judgment is attached hereto as Exhibit 1. The amendment to the proposed Final Judgment does not affect the substance of the remedy contained in the original proposed Final Judgment. For the Court’s

convenience, a redline comparison to the October 1, 2021, proposed Final Judgment is attached hereto as Exhibit 2.

I. Background

On October 1, 2021, the United States filed a civil antitrust Complaint (Dkt. 1), Asset Preservation Order (“Stipulation and Order”) (Dkt. 2-1), and a proposed Final Judgment (Dkt. 2-2) designed to address the anticompetitive effects alleged in the Complaint. Under the Stipulation and Order, Defendants are allowed to consummate the acquisition but are required to abide by the proposed Final Judgment pending its consideration by the Court, including by divesting certain assets defined in the proposed Final Judgment (“Divestiture Assets”) to remedy the alleged anticompetitive effects of the transaction.¹ Specifically, the proposed Final Judgment requires Defendants Wienerberger, General Shale, and Meridian to sell the Divestiture Assets to RemSom LLC (“RemSom”) or another acquirer acceptable to the United States.²

In accordance with the Stipulation and Order, pending entry of the Final Judgment by the Court, Defendants must comply with the proposed Final Judgment and with “any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.” Stipulation and Order ¶ V.D. Because the United States’s obligations under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, are ongoing, this Court has not yet entered the proposed Final Judgment.

II. The Proposed Amended Final Judgment

Paragraph IV.A of the proposed Final Judgment states that “Defendants Wienerberger, General Shale, and Meridian are ordered and directed, within 30 calendar

¹ See Proposed Final Judgment § IV.

² See Proposed Final Judgment § IV.A.

days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to RemSom or another Acquirer acceptable to the United States, in its sole discretion." On November 4, 2021, the United States filed notice that, under Paragraph IV.A of the proposed Final Judgment, the Division extended Defendants' deadline to complete the sale of the Divestiture Assets by 15 calendar days, to November 19, 2021. (*See* Dkt. 10).

Paragraph II.H.1 of the proposed Final Judgment defines the Divestiture Assets as including "all of Defendants' rights, titles, and interests in and to: 1. the manufacturing facilities and mines listed in Appendix A." Appendix A lists, among other real properties, "Meridian's Lease agreement for the Wingo Mine, Humphrey Road, Hickman, KY," (hereinafter referred to as the "Wingo Lease"). The Wingo Lease was included in the Divestiture Assets because the Wingo Mine was believed to be supplying clay to the Gleason, Tennessee brick manufacturing facility. It has since been determined, however, that the Wingo Mine is not currently supplying clay to that facility and will not be needed in the future to supply clay to that facility. In addition, at the termination of the Wingo Lease, there will be certain costs incurred by the holder of the lease that will be necessary to reclaim the mine. Consequently, as set forth in the attached Amended Proposed Final Judgment, the United States and Defendants have agreed to modify Appendix A by deleting "6. Meridian's Lease agreement for the Wingo Mine, Humphrey Road, Hickman, KY" from the list of real property assets required to be divested.

Consequently, as set forth in the attached Amended Proposed Final Judgment, the United States and Defendants have agreed to modify Appendix A by deleting "6. Meridian's Lease agreement for the Wingo Mine, Humphrey Road, Hickman, KY" from

the list of real property assets required to be divested.

The Amended Proposed Final Judgment is identical in all respects to the original proposed Final Judgment filed with the Court except for this change to Appendix A, which has been made for the express purpose of furthering the competitive position and financial viability of the Divestiture Assets. The amendment to the proposed Final Judgment does not affect the substance of the remedy contained in the original proposed Final Judgment. The Wingo Mine is not providing clay to Meridian's Gleason, Tennessee facility, therefore, removing the Wingo Lease from the Divestiture Assets does not have an impact on the competitive significance of Meridian's Gleason, Tennessee facility, which is being divested to remedy competitive concerns in the Nashville, Tennessee MSA. Accordingly, the United States does not seek to re-start the comment period under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act"). Under the Tunney Act, after the United States has published its response to any comments received, the Court may enter the Amended Proposed Final Judgment without further proceedings if the Court determines entry is in the public interest. 15 U.S.C. § 16(e).

At this time, the United States is not moving for entry of the Amended Proposed Final Judgment. The United States will wait until the end of the comment period, as required by the Tunney Act, and will then move to enter the Amended Proposed Final Judgment should the United States continue to believe it is in the public interest.

Dated: November 12, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/

DANIEL J. MONAHAN, JR.
Defense, Industrials, and Aerospace Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street N.W., Suite 8700
Washington, DC 20530
Tel: (202) 489-2305
Email: daniel.monahan@usdoj.gov

FOR DEFENDANT WIENERBERGER AG

/s/

William J. Sheridan
PA Bar No. 206718 (*pro hac vice*)
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222
Telephone: 412.288.3131
Email: wsheridan@reedsmith.com

FOR DEFENDANT GENERAL SHALE
BRICK, INC.

/s/

William J. Sheridan
PA Bar No. 206718 (*pro hac vice*)
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222
Telephone: 412.288.3131
Email: wsheridan@reedsmith.com

FOR DEFENDANT
MERIDIAN BRICK, LLC

/s/

William J. Sheridan
PA Bar No. 206718 (*pro hac vice*)
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222
Telephone: 412.288.3131
Email: wsheridan@reedsmith.com

FOR DEFENDANT
BORAL LIMITED

/s/

Adam J. Biegel
DC Bar No. 1030382
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Telephone: (202) 239-3692
Email: adam.biegel@alston.com

FOR DEFENDANT
LSF9 STARDUST SUPER HOLDINGS, L.P.

/s/

Adam J. Biegel
DC Bar No. 1030382
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Telephone: (202) 239-3692
Email: adam.biegel@alston.com