

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GRUPO BIMBO, S.A.B. de C.V., et al.,

Defendants.

Civil Action No. 11-01857 (EGS)

MODIFIED FINAL JUDGMENT

WHEREAS, Plaintiff United States of America filed its Complaint on October 21, 2011, and plaintiff and defendants Grupo Bimbo S.A.B. de C.V. (“Grupo Bimbo”), BBU, Inc. (“BBU”) and Sara Lee Corporation (“Sara Lee”) (collectively “Defendants”), by their respective attorneys, have consented to the entry of this Modified Final Judgment without trial or adjudication of any issue of fact or law, and without this Modified Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants have agreed to be bound by the provisions of this Modified Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Modified Final Judgment is the prompt and certain divestiture of certain rights and assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures

required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Modified Final Judgment:

(A) “Acquirer” means the person or persons to whom Defendants divest all or any portion of the Divestiture Assets.

(B) “BBU” means Defendant BBU, Inc., a Delaware corporation with its headquarters in Horsham, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) “California Area” means the state of California.

(D) “California Assets” means:

(1) a perpetual, royalty-free, assignable, transferable, exclusive license (or, in the case of rights licensed from third parties or Sara Lee, a sublicense or assignment thereof) to use, manufacture (or have manufactured for the Acquirer), distribute, market,

promote, advertise, and sell Fresh Bread under the California Brands in the California Area, including the right to manufacture Fresh Bread under the California Brands outside of the California Area for sale exclusively in the California Area, subject to any preexisting limitations on Sara Lee's authority to engage in such actions in the California Area;

(2) all plants and equipment used by Sara Lee to manufacture Fresh Bread under the California Brands for sale in the California Area (at the locations identified herein), and all trucks and other vehicles, depots, and warehouses utilized by Sara Lee or its agents in the distribution and sale of Fresh Bread under the California Brands in the California Area, provided, however, that the United States may approve a package of fewer of the assets identified in this subparagraph (2) based on a determination, in its sole discretion, that such a smaller package is sufficient to maintain current levels of competition for the manufacturing, distribution, and sale of Fresh Bread in the California Area;

(3) all route books, customer lists, and other records used in the Defendants' sale of Fresh Bread under the California Brands in the California Area, provided that copies may be provided if such assets cannot be separated from what Defendants require for the retained business;

(4) all Other Assets used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of Fresh Bread under the California Brands in the California Area; and

(5) the Sara Lee Fresh Bread production facilities located at (a) 160 L Street, Fresno, California, 93721; (b) 955 Kennedy Street, Oakland, California, 94606; (c) 3211

6th Avenue, Sacramento, California, 95817; and (d) 2651 South Airport Way, Stockton, California, 95206. The California Assets specifically exclude the Sara Lee Fresh Bread production facility located at 5200 South Alameda, Vernon, California, 90058.

(E) “California Brands” means the EarthGrains, Sara Lee, Sara Lee Classic, Sara Lee Soft & Smooth, Sara Lee Hearty & Delicious, and Sara Lee Delightful brands for Fresh Bread in the California Area and any other related Trade Dress used in connection with the sale of Fresh Bread in the California Area.

(F) “Central Pennsylvania Area” means Adams, Berks, Carbon, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming, and York Counties in the commonwealth of Pennsylvania.

(G) “Central Pennsylvania Assets” means:

(1) a perpetual, royalty-free, assignable, transferable, exclusive license (or, in the case of rights licensed from third parties or Sara Lee, a sublicense or assignment thereof) to use, manufacture (or have manufactured for the Acquirer), distribute, market, promote, advertise, and sell Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area, including the right to manufacture Fresh Bread under the Central Pennsylvania Brands outside of the Central Pennsylvania Area for sale exclusively in the Central Pennsylvania Area, subject to any preexisting limitations on Sara Lee’s authority to engage in such actions in the Central Pennsylvania Area;

(2) all plants and equipment used by Sara Lee to manufacture Fresh Bread under the Central Pennsylvania Brands for sale in the Central Pennsylvania Area (at the

locations identified herein), and all trucks and other vehicles, depots, and warehouses utilized by Sara Lee or its agents in the distribution and sale of Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area, provided, however, that the United States may approve a package of fewer of the assets identified in this subparagraph (2) based on a determination, in its sole discretion, that such a smaller package is sufficient to maintain current levels of competition for the manufacturing, distribution, and sale of Fresh Bread in the Central Pennsylvania Area;

(3) all route books, customer lists, and other records used in the Defendants' sale of Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area, provided that copies may be provided if such assets cannot be separated from what Defendants require for the retained business;

(4) all Other Assets used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area; and

(5) the Sara Lee Fresh Bread production facilities located at (a) 500 Hanover Street, Northumberland, Pennsylvania, 17857; and (b) 249 North 11th Street, Sunbury, Pennsylvania, 17801.

(H) "Central Pennsylvania Brands" means the Holsum and Milano brands for Fresh Bread in the Central Pennsylvania Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Central Pennsylvania Area.

(I) "Central Region Area" means the Kansas City Area, the Omaha Area, and the Oklahoma City Area.

(J) "Central Region Assets" means:

(1) a perpetual, royalty-free, assignable, transferable, exclusive license (or, in the case of rights licensed from third parties or Sara Lee, a sublicense or assignment thereof) to use, manufacture (or have manufactured for the Acquirer), distribute, market, promote, advertise, and sell Fresh Bread under the Central Region Brands in the Central Region Area, including the right to manufacture Fresh Bread under the Central Region Brands outside of the Central Region Area for sale exclusively in the Central Region Area, subject to any preexisting limitations on Defendants' authority to engage in such actions in the Central Region Area;

(2) all plants and equipment used by Sara Lee to manufacture Fresh Bread under the Central Region Brands for sale in the Central Region Area (at the locations identified herein), and all trucks and other vehicles, depots, and warehouses utilized by Sara Lee or its agents in the distribution and sale of Fresh Bread under the Central Region Brands in the Central Region Area, provided, however, that the United States may approve a package of fewer of the assets identified in this subparagraph (2) based on a determination, in its sole discretion, that such a smaller package is sufficient to maintain current levels of competition for the manufacturing, distribution, and sale of Fresh Bread in the Central Region Area;

(3) all route books, customer lists, and other records used in the Defendants' sale of Fresh Bread under the Central Region Brands in the Central Region Area, provided that copies may be provided if such assets cannot be separated from what Defendants require for the retained business;

(4) all Other Assets used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of Fresh Bread under

the Central Region Brands in the Central Region Area; and

(5) the Sara Lee Fresh Bread production facilities located at (a) 317 South Elm Street, Hastings, Nebraska, 68901; (b) 221 North Chapel Hill Road, Sioux Falls, South Dakota, 57103; (c) 2630 Southeast Drive, Wichita, Kansas, 67216; and (d) 1916 North Broadway, Oklahoma City, Oklahoma, 73103. The Central Region Assets specifically exclude the Sara Lee bread production facilities located at (i) 415 South Mill Street, Fergus Falls, Minnesota, 56537; (ii) 3723 South Dakota Avenue, South Sioux City, Nebraska, 68776; and (iii) 1500 North US Highway 75, Sioux City, Iowa, 51102.

(K) “Central Region Brands” means:

(1) the EarthGrains and Mrs Baird’s brands for Fresh Bread in the Kansas City Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Kansas City Area;

(2) the EarthGrains and, as licensed by Defendants, Healthy Choice brands for Fresh Bread in the Omaha Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Omaha Area; and

(3) the EarthGrains brand for Fresh Bread in the Oklahoma City Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Oklahoma City Area.

(L) “Divestiture Assets” means the California Assets, the Central Pennsylvania Assets, and the Central Region Assets.

(M) “Divestiture Trustee” means the trustee selected by the United States and appointed by the Court pursuant to Section V of this Modified Final Judgment.

(N) “Formulas” mean all of Defendants’ formulas, recipes, and specifications used by a Defendant in connection with the production and packaging associated with the goods manufactured, distributed, marketed, and sold under a brand name, including, without limitation, ingredients, manufacturing processes, equipment and material specifications, trade and manufacturing secrets, know-how, and scientific and technical information.

(O) “Fresh Bread,” for purposes of this Modified Final Judgment, means for the Central Pennsylvania Brands and the Central Region Brands, fresh, bagged, sliced bread, and items sold as bagged buns, rolls, sandwich thins, thin buns, bagels, English muffins, flat bread sold as traditional pita bread, and other fresh bread products sold under each Relevant Brand in the Central Pennsylvania Area and the Central Region Area. For the purposes of this Modified Final Judgment, “Fresh Bread” for the California Area means fresh, bagged, sliced bread, and items sold as bagged buns, rolls, sandwich thins, thin buns, and other fresh bread products sold under the California Brands in the California Area, and excludes English muffins, bagels, and flat bread sold as traditional pita bread.

(P) “Grupo Bimbo” means Defendant Grupo Bimbo S.A.B. de C.V., a corporation organized under the laws of Mexico, with its headquarters in Mexico City, Mexico, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(Q) “Kansas City Area” means Johnson, Leavenworth, Miami, and Wyandotte Counties in the state of Kansas, and Cass, Clay, Jackson, Lafayette, Platte, and Ray Counties in the state of Missouri.

(R) “Licensed Trademarks” means all trademarks or service marks belonging or licensed to Defendants (whether registered or unregistered, or whether the subject of a pending application) that consist of, or incorporate, a Relevant Brand.

(S) “Monitoring Trustee” means any monitor appointed by the United States pursuant to Section IX of this Modified Final Judgment.

(T) “Oklahoma City Area” means Canadian, Cleveland, Logan, McClain, Oklahoma, and Pottawatomie Counties in the state of Oklahoma.

(U) “Omaha Area” means Pottawattamie County in the state of Iowa, and Cass, Douglas, Lancaster, Sarpy, Saunders, and Washington Counties in the state of Nebraska.

(V) “Other Assets” means, with respect to each Relevant Brand:

(1) All tangible assets (other than plants and equipment) primarily used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of any Fresh Bread product sold under a Relevant Brand in its Relevant Area, including but not limited to copies of customer lists and route maps; copies of accounts, credit records and related customer information; product inventory; packaging and copies of artwork relating to such packaging; and copies of all performance records and all other records, provided, however, that Defendants may retain the portions of such tangible assets that relate to products other than any Fresh Bread product sold under a Relevant Brand in its Relevant Area where such assets reasonably can be divided, or may provide copies of such assets where it is reasonable to do so; and

(2) All of the following intangible assets:

(a) all licenses, permits, or authorizations issued by any governmental organization, contracts (including route contracts), teaming arrangements,

agreements, leases, commitments, certifications, and understandings, including agreements with suppliers, distributors, independent operators, wholesalers, retailers, marketers, unions, employees, or advertisers used primarily in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of any Fresh Bread product sold under a Relevant Brand in its Relevant Area;

(b) A non-exclusive, transferable, royalty-free license or sublicense to all not-previously-identified intellectual property used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, servicing, or sale of any Fresh Bread product under a Relevant Brand in its Relevant Area, including but not limited to any patents, licenses and sublicenses, copyrights, Licensed Trademarks (excluding trademarks other than the Licensed Trademarks), and trade secrets; and

(c) all technical information, computer software, route configurations, and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, Fresh Bread products sold or distributed primarily under a Relevant Brand in its Relevant Area; all research, packaging, distribution, marketing, advertising, and sales know-how and documentation, including marketing and sales data, packaging designs, quality assurance and control procedures; all associated manuals and technical information that Defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs or experiments

primarily related to the Relevant Brands in the Relevant Areas, and the results of successful and unsuccessful designs and experiments, provided that with respect to any intangible assets identified in subparagraphs (a), (b), and (c) herein that, prior to the merger, were being used in the research, development, production, distribution, marketing, promotion, advertising, servicing, or sale of any Fresh Bread product distributed or sold under a Relevant Brand in a Relevant Area and any product or other asset not being divested, Defendants may utilize and retain the portions of such intangible assets that relate solely to products other than any Fresh Bread product distributed or sold under a Relevant Brand in a Relevant Area where such assets reasonably can be divided, and may provide copies of such intangible assets that relate to both any Fresh Bread sold or distributed under a Relevant Brand in a Relevant Area and any other product or asset not being divested if such assets cannot be separated from what Defendants require for the retained business.

(W) “Relevant Areas” means the California, Central Pennsylvania, and Central Region Areas.

(X) “Relevant Brands” means the California Brands, the Central Pennsylvania Brands, and the Central Region Brands.

(Y) “Sara Lee” means Defendant Sara Lee Corporation, a Maryland corporation with its headquarters in Downers Grove, Illinois, its successors and assigns (other than Grupo Bimbo and BBU), and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

(Z) “Trade Dress” means the print, style, color, labels, and other elements of trade dress currently used by Defendants and/or their subsidiaries, divisions, groups, affiliates,

partnerships, and joint ventures in association with the goods manufactured, distributed, marketed, and sold under a brand name.

III. Applicability

(A) This Modified Final Judgment applies to each Defendant and all persons in active concert or participation with any Defendant who receives actual notice of this Modified Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV or V of this Modified Final Judgment, Defendants sell, license, or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser(s) to be bound by the provisions of this Modified Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Modified Final Judgment.

IV. Divestitures

(A) Grupo Bimbo and BBU are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter or five (5) calendar days after notice of entry of this Modified Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Modified Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to up to two thirty (30) day extensions of this time period, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

(B) In accomplishing the divestiture ordered by this Modified Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person who inquires about a possible purchase

of the Divestiture Assets that they are being divested pursuant to this Modified Final Judgment and provide that person with a copy of this Modified Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States no later than five (5) business days after such information is made available to any prospective Acquirer.

(C) Subject to the execution of customary confidentiality agreements, Defendants shall provide prospective Acquirers and the United States with information relating to the personnel (including independent operators) directly involved in the operation and sale activities relating to the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ or contract with any Defendant's employee or independent operator whose responsibility relates to the Divestiture Assets.

(D) Subject to the execution of customary confidentiality agreements, Defendants shall permit prospective Acquirers of the Divestiture Assets to (1) have reasonable access to personnel; (2) make inspections of the physical facilities; (3) have access to any and all environmental, zoning, and other permit documents and information; and (4) have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(E) Grupo Bimbo and BBU shall warrant to the Acquirer(s) that the Divestiture Assets will be operational on the date of sale.

(F) Defendants shall not take any action that will impede in any way the licensing, permitting, operation, or divestiture of the Divestiture Assets.

(G) Grupo Bimbo and BBU shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

(H) In connection with the divestiture of the Divestiture Assets pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Modified Final Judgment, at the option of the Acquirer(s), Grupo Bimbo and BBU shall enter into transitional supply and transportation agreements, up to six (6) months in length, for the supply and transportation of Fresh Bread under the Relevant Brands in the Relevant Areas. At the request of the Acquirer, the United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed twelve (12) months in total. The terms and conditions of such transitional supply and transportation agreements must be acceptable to the United States in its sole discretion. All such agreements shall be deemed incorporated into this Modified Final Judgment, and a failure by Grupo Bimbo or BBU to comply with any terms of such an agreement shall constitute a failure to comply with this Modified Final Judgment. Upon the expiration or termination of such agreements, Grupo Bimbo and BBU shall not enter into or have any supply or transportation agreements with the Acquirer(s) relating to the sale of Fresh Bread under the Relevant Brands in the Relevant Areas for a period of three (3) years thereafter.

(I) Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by the Divestiture Trustee appointed pursuant to Section V, of this Modified Final

Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Modified Final Judgment and that the Relevant Brands can and will be used by the Acquirer(s) as part of viable, ongoing businesses engaged in the sale of Fresh Bread. Divestiture of the California Assets by Defendants pursuant to Section IV of the Modified Final Judgment shall be made to a single Acquirer. Divestiture of the Central Region Assets and Central Pennsylvania Assets pursuant to Section IV (by Defendants) or Section V (by the Divestiture Trustee) of the Modified Final Judgment, and divestiture of the California Assets by the Divestiture Trustee pursuant to Section V of the Modified Final Judgment, may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Modified Final Judgment:

(1) shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of Fresh Bread; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

(J) During the term of this Modified Final Judgment, Defendants shall not sell or

introduce for sale any Fresh Bread under a Relevant Brand in its Relevant Area, and Defendants shall not use the Sara Lee trade name for co-branding of any Fresh Bread product sold in the California Area.

(K) Notwithstanding any contrary requirements of this Modified Final Judgment, including without limitation paragraphs IV.E or IV.F or section VIII, the United States may approve a divestiture that includes the sale of the Stockton Bakery on a non-operational (closed) basis if, in the United States's sole discretion, it is consistent with the purposes of this Modified Final Judgment. If the United States has notified Grupo Bimbo, BBU, and the Divestiture Trustee pursuant to paragraph VI(C) that the United States does not object to the divestiture agreement, (1) Grupo Bimbo and BBU may stop operating such assets that the agreement contemplates being sold as non-operational assets; (2) Grupo Bimbo and BBU shall not be required to warrant to the Acquirer(s) that the specified assets will be operational on the date of sale; and (3) the Amended Hold Separate shall cease to apply to the assets that the agreement specifies will be sold as non-operational, and to any trucks, other vehicles, depots, warehouses, and routes that Grupo Bimbo, BBU, or their agents use to distribute or sell Fresh Bread manufactured by or using the specified assets.

V. Appointment of Divestiture Trustee

(A) If BBU and Grupo Bimbo have not divested the California Assets, the Central Pennsylvania Assets, and the Central Region Assets within the time period specified in paragraph IV(A), Grupo Bimbo and BBU shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the not-yet-divested Divestiture Assets (the "remaining Divestiture Assets").

(B) After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the remaining Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Modified Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to paragraph V(D) of this Modified Final Judgment, the Divestiture Trustee may hire at the cost and expense of Grupo Bimbo and BBU any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee and who shall be required to execute customary confidentiality agreements, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

(C) Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

(D) The Divestiture Trustee shall serve at the cost and expense of Grupo Bimbo and BBU, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Grupo Bimbo or BBU and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the

remaining Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(E) Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the remaining Divestiture Assets, and Defendants shall develop financial and other information relevant to the remaining Divestiture Assets as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

(F) After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Modified Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the remaining Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the remaining Divestiture Assets.

(G) If the Divestiture Trustee has not accomplished the divestiture ordered under this

Modified Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent the report contains information that the Divestiture Trustee deems confidential, the report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Modified Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

(A) Within two (2) business days following execution of a definitive divestiture agreement, Grupo Bimbo and BBU or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Modified Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Grupo Bimbo and BBU. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed

divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish to the United States any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under paragraph V(C) of this Modified Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Modified Final Judgment.

VIII. Amended Hold Separate

Until the divestiture required by this Modified Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Amended Hold Separate Stipulation and Order (the "Amended Hold Separate") entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Appointment of Monitoring Trustee

(A) Upon the filing of this Modified Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

(B) The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Modified Final Judgment and the Amended Hold Separate entered by this Court and shall have such powers as this Court deems appropriate. Subject to Paragraph IX(D) of this Modified Final Judgment, the Monitoring Trustee may hire any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

(C) Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

(D) The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such terms and conditions as the United States approves, including the execution of customary confidentiality agreements. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

(E) The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

(F) Defendants shall assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Modified Final Judgment and under the Amended Hold Separate. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

(G) After its appointment, the Monitoring Trustee shall file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Modified Final Judgment and under the Amended Hold Separate. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

(H) The Monitoring Trustee shall serve until the divestiture of all of the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Modified Final Judgment and any agreement(s) for transitional supply and transportation services described in Paragraph IV(H) of this Modified Final Judgment have expired.

(I) If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently, the United States may appoint a substitute Monitoring Trustee in the same manner as provided in this Section.

(J) The Monitoring Trustee appointed pursuant to this Modified Final Judgment may be the same person or entity appointed as a Divestiture Trustee pursuant to Section V of this Final Judgment.

X. Affidavits

(A) Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Modified Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Modified Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in

Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

(D) Sara Lee's obligations under paragraphs A and B of this Section shall cease upon completion of its sale to Grupo Bimbo and BBU of the Sara Lee business that includes the Divestiture Assets.

XI. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Modified Final Judgment, or of determining whether the Modified Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Modified Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such

matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Modified Final Judgment as may be requested, including, but not limited to, any transitional supply and/or transportation agreements entered into between the Acquirer(s) and the Defendants pursuant to paragraph IV(H) of this Modified Final Judgment.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants shall not reacquire any part of the Divestiture Assets during the term of this Modified Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Modified Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Modified Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Modified Final Judgment

Unless this Court grants an extension, this Modified Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of the Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Modified Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures
of Antitrust Procedures and Penalties Act,
15 U.S.C. § 16.

United States District Judge