

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

FILED

UNITED STATES OF AMERICA

Plaintiff,

vs.

SUIZA FOODS CORPORATION

d/b/a Louis Trauth Dairy,
Land O' Sun Dairy, and
Flav-O-Rich Dairy, and

BROUGHTON FOODS COMPANY,

d/b/a Southern Belle Dairy

Defendants.

Civil Action No. 99-CV-130

Entered: August 30, 1999

AT LONDON
LESLIE G. WATNER
CLERK, U.S. DISTRICT COURT

FINAL JUDGMENT

WHEREAS plaintiff the United States of America (hereinafter "United States"), having filed its Complaint herein, and defendants, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

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

AND WHEREAS, prompt and certain divestiture of certain assets to a third party is the essence of this agreement;

AND WHEREAS, plaintiff requires defendants to divest, as a viable business, the Southern Belle Dairy so as to ensure, to the sole satisfaction of the plaintiff, that the Acquirer will be able to continue to operate the Southern Belle Dairy as a viable, ongoing business;

AND WHEREAS, defendants have represented to plaintiff that the divestiture required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

- A. "Acquirer" means the person(s) to whom defendants shall sell the Southern Belle Dairy (as defined below).
- B. "Southern Belle Dairy" means the entire milk processing plant owned by Broughton Foods Company located in Pulaski County, Kentucky, and all related assets, including all rights and interests in it, including all property and contract rights, all existing inventory, accounts receivable, pertinent correspondence and files, customer lists, all related customer information, advertising materials, contracts or other relationships with suppliers, customers and distributors, any rights, contracts and licenses involving intellectual property, trademarks, tradenames or brands, computers and other physical assets and equipment used for production at, distribution from, or associated with, Southern Belle Dairy or any of its distribution branches and locations.
- C. "Suiza Foods Corporation" means defendant Suiza Foods Corporation and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.
- D. "Broughton Foods Company" means defendant Broughton Foods Company and includes its successors and assigns, their subsidiaries, divisions,

groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Southern Belle Dairy may not be sold to an Acquirer that has not agreed to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE OF ASSETS

A. Suiza Foods Corporation is hereby ordered and directed, within six (6) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Southern Belle Dairy to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to one (1) month, and shall notify the Court in such circumstances.

B. Unless the United States consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Southern Belle Dairy defined above. Divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion that the Southern Belle Dairy can and will be operated by the Acquirer as a viable, ongoing business. Divestiture of the Southern Belle Dairy, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the dairy business, (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the dairy business; and (3) that none of the terms of any agreement between the Acquirer and defendant give defendant 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.

C. In accomplishing the divestiture ordered by this Final Judgment, Suiza Foods Corporation shall make known, by usual and customary means, the availability of the Southern Belle Dairy. Suiza Foods Corporation shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective purchaser, subject to customary confidentiality assurances, all information regarding the Southern Belle Dairy customarily provided in a due diligence process, except such

information subject to attorney-client privilege or attorney work product privilege.

Defendants shall make available such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Southern Belle Dairy to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing, or distribution of products from the Southern Belle Dairy.

E. Suiza Foods Corporation shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment. Defendants shall not take any action that will impede in any way the operation of the Southern Belle Dairy other than in the ordinary course of their other business.

V.

APPOINTMENT OF TRUSTEE

A. In the event that Suiza Foods Corporation has not divested the Southern Belle Dairy within the time period specified in Section IV. A., it shall notify the plaintiff of that fact in writing. In the event that Suiza Foods Corporation has not divested the Southern Belle Dairy within the time period specified in Section IV. A., and upon application of the United States, the Court shall appoint a trustee selected

by the United States to effect the divestiture of the Southern Belle Dairy. Unless the plaintiff otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Southern Belle Dairy can and will be operated by the Acquirer as a viable on-going business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Southern Belle Dairy. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V. C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Suiza Foods Corporation, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Suiza Foods Corporation and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Southern Belle Dairy and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Suiza Foods Corporation shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of, and relating to, the Southern Belle Dairy, and defendants shall develop financial or other information relevant to such assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture. Defendants shall permit prospective acquirers of the assets to have

reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the 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 Southern Belle Dairy, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Southern Belle Dairy. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to

the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI.

NOTIFICATION

A. Within two (2) business days following execution of a definitive agreement, Suiza Foods Corporation or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Suiza Foods Corporation. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Southern Belle Dairy, together with full details of the same. Within fifteen (15) calendar days after receipt of the notice, the plaintiff may request from Suiza Foods Corporation, the proposed purchaser, or any third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Suiza Foods Corporation or the trustee shall furnish the additional information within fifteen (15) calendar days of the receipt of the request. Within thirty (30)

calendar days after receipt of the notice or within twenty (20) calendar days after receipt of the additional information by the United States, whichever is later, the United States shall notify in writing Suiza Foods Corporation and the trustee, if there is one, whether or not it objects to the proposed divestiture. If the United States notifies in writing Suiza Foods Corporation and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Suiza Foods Corporation's limited right to object to the sale under Section V. B. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or V may not be consummated. Upon objection by Suiza Foods Corporation under Section V. B., the proposed divestiture under Section V shall not be accomplished unless approved by the Court.

B. Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Suiza Foods Corporation shall deliver to the plaintiff a written affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) calendar days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Southern Belle Dairy, the name, address, and telephone number of that person and a detailed description of

each contact with that person during that period. Each such affidavit shall also include a description of the efforts that Suiza Foods Corporation has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendant, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit. Suiza Foods Corporation shall maintain full records of all efforts made to divest all or any portion of the Southern Belle Dairy.

VII.

FINANCING

Suiza Foods Corporation shall not finance all or any part of any purchase of the Southern Belle Dairy made pursuant to Sections IV or V of this Final Judgment.

VIII.

HOLD SEPARATE REQUIREMENTS

Unless otherwise indicated, from the date of filing of this proposed Final Judgment with the Court and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished

A. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V

of the Final Judgment has been accomplished, Suiza Foods Corporation shall preserve, maintain, and operate the Southern Belle Dairy as an independent competitor with management, production, sales and operations held entirely separate, distinct and apart from those of Suiza Foods Corporation. Suiza Foods Corporation shall not coordinate the production, marketing or sale of products from Southern Belle Dairy's business with the business that it will own as a result of the acquisition of Broughton Foods Company.

B. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall take all steps reasonably necessary to ensure that the Southern Belle Dairy will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of products; that the management of the Southern Belle Dairy will not be influenced by Suiza Foods Corporation, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Southern Belle Dairy will be kept separate and apart from the operations of Suiza Foods Corporation. Suiza Foods Corporation's influence over the Southern Belle Dairy shall be limited to that necessary to carry out its obligations under the Final Judgment. Suiza Foods Corporation may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Southern Belle Dairy to the extent necessary to allow Suiza Foods

Corporation to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports including provision of due diligence information required to be made available pursuant to this Final Judgment.

C. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall use all reasonable efforts to maintain the operations of the Southern Belle Dairy, and shall maintain at current or previously approved levels, whichever are higher, internal funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Southern Belle Dairy.

D. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall provide and maintain sufficient working capital to maintain the Southern Belle Dairy as an economically viable, ongoing business.

E. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall provide and maintain sufficient lines and sources of credit to maintain the Southern Belle Dairy as an economically viable, ongoing business.

F. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall take all steps reasonably necessary to ensure that the Southern Belle Dairy is fully maintained in operable condition at no lower than its current rated capacity levels, and shall maintain and adhere to normal repair and maintenance schedules for the Southern Belle Dairy.

G. Suiza Foods Corporation shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any assets of the Southern Belle Dairy.

H. The management of Southern Belle Dairy shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the Southern Belle Dairy.

I. Except in the ordinary course of business or as is otherwise consistent with this Final Judgment, Suiza Foods Corporation shall not hire and shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees who on the date of the filing of this proposed Final Judgment work at the Southern Belle Dairy, unless such individual has a written offer of employment from a third party for a like position.

J. Until such time as the Southern Belle Dairy is divested, it shall be managed by Martin Shearer. Mr. Shearer shall have complete managerial responsibility for the Southern Belle Dairy, subject to the provisions of the Final Judgment. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV. A. or V of the Final Judgment has been accomplished, and in the event that Mr. Shearer is unwilling or unable to perform these duties, Suiza Foods Corporation shall appoint, subject to plaintiff's approval, a replacement acceptable to plaintiff within ten (10) working days. Should Suiza Foods Corporation fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement.

K. Suiza Foods Corporation shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

L. Within twenty (20) calendar days of the filing of this Final Judgment, Suiza Foods Corporation shall deliver to the United States an affidavit which describes in detail all actions Suiza Foods Corporation has taken and all steps Suiza Foods Corporation has implemented on an on-going basis to preserve the Southern Belle Dairy pursuant to Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, Suiza Foods Corporation's efforts to maintain and operate the Southern Belle Dairy as an active competitor, maintain the

independent management, staffing, sales, marketing, and pricing of the Southern Belle Dairy and maintain the Southern Belle Dairy in operable condition at current capacity levels. Suiza Foods Corporation shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Suiza Foods Corporation's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

IX.

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Suiza Foods Corporation or Broughton Foods Company made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and
2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview either informally or on the

record, directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in Sections VIII or IX shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the plaintiff, such defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiff shall give ten (10) calendar days' notice to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI.

TERMINATION OF PROVISIONS

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

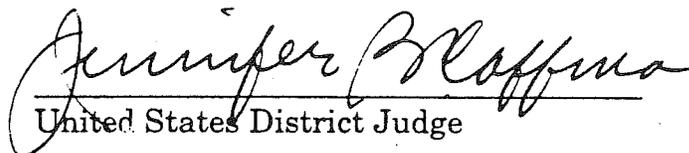
XII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: 8/30/99

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


United States District Judge