



U.S. Department of Justice

Antitrust Division

*Liberty Place Building
325 Seventh Street NW
Washington, DC 20530*

June 24, 2003

VIA FACSIMILE

Thomas G. Slater, Jr.
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074

Re: United States v. Smithfield Foods, Inc.

Dear Mr. Slater:

This letter contains our concerns regarding the written responses and documents produced on June 18, 2003, by Defendant Smithfield Foods, Inc. ("Defendant" or "Smithfield") in response to Plaintiff's First Set of Requests for Documents Relating to Jurisdictional Discovery and Plaintiff's First Set of Interrogatories Relating to Jurisdictional Discovery. In addition, this letter addresses issues raised by the Objections to Plaintiff's Subpoena directed to Gwaltney of Smithfield, Ltd. ("Gwaltney"), Smithfield Packing Company, Inc. ("Packing"), and The Smithfield Companies, and by the documents they produced.¹

We hope that we can resolve our concerns without having to seek the Court's intervention.

¹On May 19, 2003, Plaintiff served Defendant with written discovery that sought documents and information from Defendant and its subsidiaries. On May 20, you informed us that Defendant did not have control over its subsidiaries for purposes of complying with discovery requests on their behalf. Although Plaintiff did not agree with this position, in the interests of moving the process along, Plaintiff served the above-listed subsidiaries with subpoenas issued pursuant to Fed.R.Civ.P. 45, attached to which were document requests identical to those served on Defendant. On June 2, 2003, the three subsidiaries served their Objections to Plaintiff's Subpoena.

DEFENDANT'S RESPONSES TO REQUESTS FOR DOCUMENTS²

1. Lack of Specificity with Regard to Documents Withheld and Objection(s) Relied Upon

Request No. 1 sought:

All documents relating to each meeting of Smithfield's board of directors or any of its committees, including minutes of each such meeting, notes taken in preparation for, at, or after each such meeting, written presentations prepared for or made at each such meeting, and resolutions passed.

Defendant responded to this request as follows:

See General Objections. Without waiving any objections, SFD has produced documents responsive to this request, if any.

Defendant's Responses state twelve General Objections. With one exception, none of them states whether Defendant is refusing to produce documents because of that particular objection.³ Based on your prior correspondence, Plaintiff has reason to believe that documents have been withheld, yet, in our review of the documents, we have come across documents bearing dates later than January 31, 2001, which is inconsistent with General Objection 1. Also, we have come across documents relating to subsidiaries other than Gwaltney and Packing, which is inconsistent with General Objections 2 and 3. It is therefore impossible for Plaintiff to determine from Defendant's response to Request No. 1 whether any documents were in fact withheld and on what basis.⁴ This problem exists in connection with each of Defendant's

²Plaintiff's discussion of the deficiencies in Defendant's responses is directed to Gwaltney and packing as well, since their General Objections to Plaintiff's Subpoena are based on identical requests for documents, were prepared by you, appear to be virtually identical to Defendant's written responses to Plaintiff's Requests for Production of Documents, and are therefore collectively referred to as "Defendant's Responses," unless otherwise stated.

³The exception is General Objection 6, which states that "Smithfield objects to the Requests to the extent they seek documents containing proprietary and/or confidential business information of Smithfield. To the extent the Requests to seek such documents, Smithfield will respond only pursuant to a Protective Order under Fed.R.Civ.P. 26(c)." Although the Stipulated Protective Order was not entered by the Court until June 17, 2003, we are hopeful that, in anticipation of its entry, Defendant, Gwaltney and Packing did not withhold any documents on the basis of General Objection 6.

⁴We note that Defendant produced a privilege log listing documents withheld on the basis of privilege. Without waiving the right to challenge the asserted privileges, Plaintiff, in asking for immediate production of documents and information, seeks only non-privileged documents.

Responses and each of its Answers, as detailed below.

Accordingly, please tell us whether *all* documents responsive to Request No. 1 were produced by Defendant, Gwaltney and Packing. If any documents were withheld, please state with specificity each objection relied upon and the types of document withheld on the basis of each objection. The Federal Rules of Civil Procedure require that objections be stated with specificity sufficient both to allow the party seeking discovery to assess the basis for objection and to know whether any responsive documents have been withheld on the basis of the objection. The Federal Rules in and [production] made of the remaining parts. Fed.R.Civ.P. 34(b).

Defendant's Responses to Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26

Each of the responses to the following document requests raises the same concern addressed above in connection with Defendant's Responses to Request No. 1: Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26. Please tell us whether *all* responsive documents were produced in response to each. If any documents were withheld, please state with specificity each General Objection relied upon and the types of document withheld on the basis of each such General Objection.

2. Impropriety of Certain General Objections

General Objection 1

If Defendant withheld documents responsive Request No. 1 in reliance on General Objection 1, please immediately produce those documents. General Objection 1 is not a legitimate basis on which to limit discovery. Defendant's General Objection 1 states:

SFD objects to the Document Requests to the extent they require the production of documents prepared, written, sent, dated, or in effect prior to January 1, 1997 or after January 31, 2001. The Department of Justice has alleged that the first cause of action accrued on June 28, 1998 [sic], and that SFD was in violation of the relevant statute from June 26, 1998 through October 1, 1998. DOJ has alleged the second cause of action accrued on December 8, 1999 and that SFD was in violation of the relevant statute from December 8, 1999 through January 12, 2001. Therefore, requests for documents prepared, written, sent, dated or in effect prior to January 1, 1997 or after January 31, 2001 seek documents that are irrelevant and such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not SFD is amenable to jurisdiction in this district.

This Objection seeks to limit Plaintiff's jurisdictional discovery to what Defendant considers the "relevant" time period of January 1, 1997 through January 31, 2001. Plaintiff seeks

jurisdictional discovery of the time period January 1, 1997 through the present. Defendant's "relevant" time period is not a legitimate basis for refusing to produce documents in jurisdictional discovery. A party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending action. Fed. R. Civ. P. 26(b)(1). The phrase "relevant to the subject matter involved in the pending action has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

The subject matter of the current proceeding is whether Defendant transacts business in this district for purposes of establishing venue and jurisdiction pursuant to Section 12 of the Clayton Act. The focus of jurisdictional discovery is to establish that the relationship between Defendant and its subsidiaries who have direct contacts with this district is such that Defendant may be said to be transacting business here through them. *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25073 (D.D.C. Oct. 30, 2001). Given the various factors listed by the *Vitamins* court in assessing whether a defendant transacts business, any and all evidence that tends to show that Defendant controls (or does not control) its subsidiaries is relevant and therefore discoverable. *Id.* At *25. Evidence of conduct or events that demonstrate a pattern and practice in how Smithfield deals with its subsidiaries is relevant, without regard to its date.

We remind Defendant that the Court has already spoken on this issue when it permitted Plaintiff to supplement its opposition to Defendant's Motion to Dismiss with evidence of conduct occurring outside Defendant's asserted "relevant" time period. Nor did the Court impose any limitations on time frame for discovery, for that matter, when it granted Plaintiff's Motion for Leave to Conduct Jurisdictional Discovery.

Defendant's Responses to Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26.

If Defendant withheld documents responsive to Requests Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26 relying on General Objection 1, please immediately produce those documents. For the reasons stated above, General Objection 1 is not a legitimate basis for limiting jurisdictional discovery.

General Objection 2

If Defendant withheld documents responsive to request No. 1 in reliance on General Objection 2, please immediately produce those documents. General Objection 2 is not a legitimate basis for limiting jurisdictional discovery. Defendant's General Objection 2 states:

SFD objects to the Document Requests to the extent they relate to companies other than The Smithfield Packing Company, Incorporated ("Packing"), Gwaltney of Smithfield, Ltd. ("Gwaltney"), and the Smithfield Companies, Inc, and their subsidiaries, or SFD. DOJ has not alleged that other companies are amenable to

personal jurisdiction in the District of Columbia. Therefore, to the extent Document Requests relate to companies other than Packing, Gwaltney, the Smithfield Companies, Inc., and their subsidiaries, or SFD, such requests seek documents that are irrelevant, and such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not SFD is amenable to jurisdiction in this district. Further SFD objects to the Document Requests to the extent they relate to The Smithfield Companies, Inc., which was acquired on July 31, 2002 [sic], after the alleged causes of action accrued and after the periods DOJ has alleged SFD was in violation of the relevant statute. To the extent Document Requests relate to The Smithfield Companies, Inc., such requests are irrelevant and such requests are overly broad, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence in determining whether or not SFD is amenable to jurisdiction in this district.

Like General Objection 1, this is a relevance objection. General Objection 2 seeks to limit Plaintiff's jurisdictional discovery to certain subsidiaries based on Defendant's assertion of a "relevant" time period and on some notion of waiver. Evidence of Defendant's relationship with any and all of its subsidiaries is relevant to whether it transacts business through its subsidiaries whose products are sold in the District of Columbia. Since that evidence would show a pattern and practice that is informative of the nature of Defendant's relationship with the latter subsidiaries, it is relevant. That Plaintiff somehow waived its right to seek discovery of Smithfield subsidiaries other than the three mentioned above has no basis in law or fact. Plaintiff has consistently stated that *at least* Gwaltney and Packing conduct business in the District of Columbia.⁵ In its Motion for Leave to Conduct Jurisdictional Discovery, Plaintiff stated that it would "supplement [the evidence proffered in support of its Opposition to Defendant's Motion to Dismiss] by conducting discovery of Smithfield and *at least* three of its subsidiaries." Memorandum in Support of Motion for Leave to Conduct Jurisdictional discovery at 3 (emphasis added.) The Court's order granting Plaintiff's Motion for Leave to Conduct Jurisdictional Discovery in no way limits the topics or time frame for jurisdictional discovery.

Defendant, on the other hand, has been inconsistent in the information that it has provided to the Court. For example, in its Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss, Defendant included an affidavit from the President of John Morrell. Why would Defendant have chosen that subsidiary to submit an affidavit to the Court other than because its products are sold in the District of Columbia? For Defendant now to say that Plaintiff is not entitled to discovery of John Morrell, or any of its subsidiaries whose products are sold in the District or that provide services to those subsidiaries, is not legitimate.

⁵See Plaintiff's Opp. to Defendant's Motion to Dismiss at 9.

With regard to the portion of General Objection 2 that asserts the irrelevancy of The Smithfield Companies, the same reasons that General Objection 1 is not a legitimate basis on which to limit discovery apply. Discovery of The Smithfield Companies is related to the subject matter of this proceeding. Products made by The Smithfield Companies are sold in the District of Columbia. The very fact that The Smithfield Companies is a recent acquisition supports its relevance insofar as it would allow Plaintiff to understand the ways in which Defendant brings a new member into the family, which is relevant to how Defendant deals with its subsidiaries that are already a part of the family.

Defendant's Responses to Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26

If Defendant withheld documents responsive to Requests Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26 on the basis of General Objection 2, please immediately produce those documents. For the reasons stated above, General Objection 2 is not a legitimate basis on which to limit jurisdictional discovery.

General Objection 3

If Defendant withheld documents responsive to Request No. 1 on the basis of General Objection 3, please immediately produce them.

Defendant's General Objection 3 states:

SFD objects to the Document Requests to the extent they seek information regarding companies that DOJ has not alleged or asserted were involved in the events giving rise to the alleged violations of the Hart-Scott-Rodino Act.

There is no basis in law or fact for limiting discovery on the basis of this objection.

Defendant's Responses to Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26

If Defendant withheld documents responsive to Requests Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 20, 21, 22, 23, 24, 25, and 26 on the basis of General Objection 3, please immediately produce those documents. For the reasons stated above, General Objection 3 is not a legitimate basis on which to limit jurisdictional discovery.

3. Invalidity of Specific Objections

Defendant's Response to Request No. 14

Request No. 14 asks Defendant to produce:

All studies, evaluations, reviews, analyses, reports or similar documents discussing changes in or improvements to information technology policies, practices, or procedures at any Smithfield subsidiary prepared by, or at the direction of, Mansour Zadeh, in connection with his position as Smithfields' Chief Information Officer.

Defendant's Response states:

See General Objections. Further, Mansour Zadeh joined SFD on January 3, 2002. This was well after the alleged causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Further, in its complaint and subsequent briefs, DOJ has neither alleged nor asserted that technology practices are relevant to determining personal jurisdiction for purposes of Section 12 of the Clayton Act. Likewise, in its complaint and subsequent briefs, DOJ has neither mentioned Mansour Zadeh nor alleged that his conduct was relevant to the issue of jurisdiction. Therefore, SFD further objects to this request as seeking documents that are irrelevant and this request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

To the extent that Defendant has withheld documents in reliance on General Objections 1 and 2, please immediately produce them. Those objections are not a legitimate basis on which to limit discovery for the reasons stated above at pp. 3-5. Moreover, Defendant's argument that a party is limited to discovery of only those persons and conduct previously identified has no basis in law or fact. In any case, Plaintiff did identify Mr. Zadeh in its Opposition to Defendant's Motion to Dismiss when it referred the Court to Exhibit X, a press release announcing the appointment of Mr. Zadeh. Plaintiff's Opp. To Defendant's Motion to Dismiss at 22.

Response to Request No. 15

Request No. 15 asks Defendant to produce:

All documents discussing any actions taken by, or at the direction of, Joseph W. Luter, IV, in connection with his responsibilities, which were listed in your press release dated October 19, 2001, as "coordinating corporate sales and marketing programs," as well as "transportation, logistics, and information technology affecting the entire organization."

Defendant's Response states:

See General Objections. Further, DOJ requests documents reflecting conduct and events that occurred well after the alleged causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Therefore, SFD further objects to this request as seeking documents that are irrelevant and this request is overly broad, unduly burdensome, and not reasonably calculated to lead

to the discovery of admissible evidence.

If the Defendant withheld documents responsive to this Request, please immediately produce them. For the reasons stated above at pp. 3-5 in connection with General Objections 1 and 2, this objection is not a legitimate basis on which to limit Plaintiff's jurisdictional discovery. Furthermore, Mr. Luter is scheduled to be deposed on July 9, 2003. Defendant's counsel has promised that no objections will be made to questions posed to Mr. Luter that seek information outside of what Defendant unilaterally defined as the relevant time period. See Letter from Nina B. Hale to Thomas G. Slater, Jr., dated June 6, 2003 ("June 6, 2003 letter"). By refusing to provide documents, Defendant is hampering Plaintiff's ability to prepare for Mr. Luter's deposition. Defendant has already properly conceded that Mr. Luter's testimony cannot be limited on the basis of relevance, even though Mr. Luter did not obtain his position with Defendant until after the time period that Defendant has asserted is the only time period that is relevant. Plaintiff is entitled to all responsive documents to prepare for the depositions.

Response to Request No. 17

Request No. 17 asks Defendant to produce:

All documents discussing any actions taken by, or at the direction of, Robert A. Slavik to "devis[e] a national brand strategy at Smithfield Foods," his stated intent in your press release dated June 25, 2001.

Defendant's Response to Request No. 17 states:

See General Objections. DOJ requests documents reflecting conduct that occurred well after the alleged cause of action accrued and after the time DOJ alleged Smithfield was in violation of the relevant statute. Therefore, SFD further objects to this request as seeking documents that are irrelevant and this request is overly broad, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence.

If Defendant withheld documents responsive to this request, please immediately produce them. Defendant's specific objection is essentially the same as its General Objection 1, and is not a legitimate basis to limit jurisdictional discovery for the same reasons stated at pp. 3-4 in connection with Plaintiff's discussion of General Objection 1 above. Moreover, Defendant's relevancy objection is inconsistent with its position on depositions. On June 5, Defendant informed Plaintiff that Mr. Slavik was available for deposition on July 11, 2003.⁶ See Letter

⁶On May 19, 2003, we informed you that Plaintiff wanted to depose six of Defendant's executives, the president of Gwaltney and the president of Packing – for a total of eight depositions. Defendant has steadfastly refused to allow Plaintiff to make available more than four witnesses. Defendant then unilaterally chose four of the eight it would produce, including

from Thomas G. Slater, Jr. To Nina B. Hale, dated June 5, 2003. Defendant also stated that it would not object to any of its witnesses, including Mr. Slavik, answering questions in their depositions about conduct or events occurring outside Defendant's asserted "relevant" time period. See June 6, 2003 letter.

Defendant's Responses to Request Nos. 13 and 19.

In response to Request Nos. 13 and 19, Defendant has made the same specific objection based on relevant time period that it made to Request Nos. 15 and 17. If documents were withheld on the basis of that objection, please immediately produce them because that objection is not a proper basis for denying discovery for the reasons stated above.

ANSWERS TO INTERROGATORIES

1. **Lack of Specificity with Regard to Information Withheld and Objection(s) Relied Upon**

Defendant's Answer to Interrogatory No. 1

Interrogatory No. 1 asks Defendant to:

Identify each Smithfield subsidiary whose products are, directly or indirectly, marketed or sold in the District of Columbia.

Defendant's answer states:

See General Objections. Based on General Objections 1 and 2, SFD is limiting its response to Gwaltney and Packing, both of which have products that are marketed and sold in the District of Columbia. The dollar volume of sales for the period 1997 to 2001 is listed below.

This Interrogatory asks a simple question that has been answered only as to two Smithfield subsidiaries – Packing and Gwaltney. However, the answer does not state whether Packing and Gwaltney are the only subsidiaries whose products are marketed or sold in the District of Columbia. If they are, please say so. In addition, Defendant has asserted twelve General Objections to Plaintiff's First Set of Interrogatories that are virtually identical to those asserted in response to Plaintiff's First Set of Requests for Documents, and specifically asserts General Objections 1 and 2 as a basis for its limited answer. Plaintiff is entitled to specificity under Fed. R. Civ. P. 33. Please state with specificity what type of information has been withheld and for

Mr. Slavik. Given the artificial and unreasonable limitation, Plaintiff was not inclined to depose Mr. Slavik at the time, and asked for Mr. Luter instead. As you know, Plaintiff intends to request an order from the Court requiring Defendant to make available the other four witnesses.

each type of information, identify each objection relied upon for withholding such information.

If Packing and Gwaltney are not the only subsidiaries whose products are marketed or sold in the District of Columbia, Plaintiff requests that Defendant immediately provide a complete answer to this interrogatory. For the reasons stated above in connection with the discussion of General Objection 1 at pp. 3-4, Defendant is improperly withholding information based on its definition of a “relevant” time period of January 1 1997 through January 31, 2001. For the reasons stated above in connection with the discussion of General Objection 2 at pp. 4-5, Defendant is improperly withholding information about other subsidiaries and its relationship with them, which casts light on its relationship with its subsidiaries who do business in the District of Columbia.

2. Reliance on Improper Objections

Defendant’s Answer to Interrogatory No. 2

Interrogatory No. 2 asks Defendant to:

Identify each Smithfield subsidiary that has provided goods or services to any Smithfield subsidiary identified in your answer to Interrogatory No. 1.

Defendant’s Answer states:

See General Objections. In addition, DOJ has alleged that SFD transacts business through subsidiaries amenable to jurisdiction in the District of Columbia. Information regarding goods and services *subsidiaries provide other subsidiaries* is irrelevant to DOJ’s jurisdictional assertions. Therefore, SFD further objects to this interrogatory as seeking information that is irrelevant to the issue of personal jurisdiction as well as overly broad, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence.

To the extent that Defendant refuses to provide an answer based on General Objection 1, 2, or 3, please immediately provide an answer to this Interrogatory. For the reasons stated above at pp. 3-6, such objections are not legitimate bases for limiting jurisdictional discovery. Information regarding the services that other Smithfield subsidiaries provide to the Smithfield subsidiaries whose products are sold in the District is relevant to showing the degree of integration among Smithfield subsidiaries. The *Vitamins* court found evidence of integration to be relevant to the question of whether it had personal jurisdiction over a parent. *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25073 (D.D.C. Oct. 2001) at *25 (whether the parent and the subsidiaries are partners in worldwide business competition, what part the subsidiary or affiliated corporation plays in the overall business activity of the absent corporation, the existence of an integrated sales system involving manufacturing, trading and sales corporations were all considered by the court). For example, among Smithfield’s subsidiaries are what appear to be trucking companies, *e.g.*, Gwaltney Transportation Co., Inc. Evidence that one subsidiary

provides transportation services to a sister subsidiary is evidence of integration. How decisions are made and by whom, in connection with subsidiary-to-subsidiary services would cast light on how the family of Smithfield companies, including Smithfield itself, interacts to maximize synergies and therefore, profits that inure to the group as whole.

Defendant's Answer to Interrogatory No. 4

Interrogatory No. 4 asks Defendant to:

Describe all policies and procedures by which Smithfield subsidiaries, directly or indirectly, access funds from all debt instruments to which Smithfield is a signatory.

Defendant's Response states:

See General Objections. Based upon General Objections 1 and 2, SFD is limiting its response to Gwaltney and Packing. Subject to and without waiving any objections, Gwaltney and Packing access funds from one debt instrument to which Smithfield is a signatory. This debt instrument is a Multi-Year Credit Agreement ("Credit Agreement") that was arranged by Chase Securities and administered by The Chase Manhattan Bank. DOJ submitted a copy of this agreement as Exhibit 5 to *Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction*. Like SFD, Gwaltney and Packing are guarantors under the Credit Agreement and are therefore liable for borrowings pursuant to it. SFD has no policies or procedures by which Gwaltney and Packing access funds under the Credit Agreement. Rather Gwaltney and Packing maintain a daily balance of liabilities or surplus. Based on this balance, a person from SFD performs the ministerial function of transferring funds available from the Credit Agreement to cover liabilities or transfers to pay down debt.

To the extent that this answer is limited to Packing and Gwaltney on the basis of General Objections 1 and 2, please immediately provide a complete answer for all Smithfield subsidiaries. For the reasons stated above at pp. 3-5, such objections are not a legitimate basis to limit jurisdictional discovery. Moreover, as written, this answer is confusing. The answer does not explicitly state that it covers only the time period that Defendant claims is relevant (1/1/97-1/31/01), and yet the answer is written in the present tense. For example, Defendant's answer states that Packing and Gwaltney *are* guarantors, and that Smithfield *has* no policies or procedures.

Defendant's Answers to Interrogatory Nos. 5, 6, 7, 8, 9, 10, 11, and 12.

To the extent that Defendant's answers to Interrogatory Nos. 5, 6, 7, 8, 9, 10, 11, and 12 are limited in reliance on General Objections 1 and 2, please immediately provide complete answers. For the reasons stated above at pp. 3-5, such objections are not a legitimate basis for

limiting jurisdictional discovery. Moreover, with the exception to Defendant's answer to Interrogatory No. 11, each of these answers, as written, is confusing insofar as it is written in the present tense despite relying on an objection that purports to limit the time period to pre-January 31, 2001.

Defendant's Answer to Interrogatory No. 13

Interrogatory No. 13 asks Defendant to:

Describe all contractual obligations incurred by each Smithfield subsidiary identified in your response to Interrogatory No. 1 for which Smithfield is a guarantor.

Defendant's Response states:

See General Objections. Based upon General Objections 1 and 2, SFD is limiting its response to Gwaltney and Packing. Subject to and without waiving any objections, Gwaltney and Packing have entered into lease agreements for rolling stock, such as large tractor trailers and similar equipment, and automobiles for which SFD is a guarantor. In addition, SFD is a guarantor of the Credit Agreement discussed in response to Interrogatory No. 4 above.

To the extent that information has been withheld on the basis of General Objections 1 and 2, please immediately provide a complete answer. For the same reasons stated above at pp. 3-5, these objections are not a legitimate basis for limiting jurisdictional discovery. Moreover, this answer, as written, is deficient in its lack of detail. Plaintiff's Definition No. 7 defines the word "describe" to mean "to provide a comprehensive, complete, accurate, and detailed description, explanation, or listing of the matter inquired of." This answer provides no details such as how many such agreements Gwaltney and Packing have entered into, and with regard to those agreements who are the other parties to the contracts, what amounts of money at issue, and the contracts' duration. This information is relevant to the role that Smithfield plays in decisions that its subsidiaries make about whatever aspect of their business involves entering a contractual obligation. Please immediately provide a detailed answer.

Defendant's Answer to Interrogatory No. 14

Interrogatory No. 14 asks Defendant to:

Describe any changes made in the policies, procedures or practices of any Smithfield subsidiary relating to corporate sales, marketing programs, transportation, logistics and information technology as a result of any actions taken by, or at the direction of, Joseph W. Luter, IV, in his capacity as head of what you described in an October 19, 2001 press release as a "a major new corporate initiative to invoke a closer relationship between the operating subsidiaries to maximize the available synergies within the Smithfield Foods

family of companies.”

Defendant’s Answer states:

See General Objections. Further, DOJ requests information regarding conduct and events that occurred well after the alleged causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Therefore, SFD further objects to this interrogatory as seeking information that is irrelevant and this interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Please immediately provide a full and complete response to this interrogatory. Defendant’s refusal to provide information based on its asserted definition of a “relevant” time period and on its assertion that only two subsidiaries are relevant is not a legitimate basis to limit discovery for the reasons stated above in connection with the discussion of General Objections 1 and 2 at pp. 3-5, and with the discussion of Defendant’s response to Document Request No. 15, which seeks documents relating to Mr. Luter.

Defendant’s Answer to Interrogatory No. 15

Interrogatory No. 15 asks:

Describe any changes made in the policies, procedures or practices of any Smithfield subsidiary relating to logistics as a result of any actions by, or at the direction of, Lawrence Shipp, whose appointment as Vice President, Logistics, you announced in a press release dated January 3, 2002.

Defendant’s Answer states:

See General Objections. Further, Lawrence Shipp joined SFD as Vice President of Logistics on January 3, 2002. This was well after the alleged causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Therefore, SFD further objects to this interrogatory as seeking information that is irrelevant and this interrogatory is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Please immediately provide a full and complete answer to Plaintiff’s Interrogatory No. 15. The objection as to a “relevant” time period is not a legitimate basis for limiting discovery for the reasons stated above in connection with the discussion of General Objection 1 at pp. 3-4.

Defendant’s Answer to Interrogatory No. 16

Interrogatory No. 16 asked Defendant to:

Describe any changes made in the policies, procedures or practices of any Smithfield subsidiary relating to logistics or information technology as a result of any actions by, or at the direction, of Mansour Zadeh, whose appointment as Chief Information Officer, you announced in a press release dated January 3, 2002.

Defendant's Answer states:

See General Objections. Further, Mansour Zadeh joined SFD as Chief Information Officer on January 3, 2002. This was well after the alleged causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Further, in its complaint and subsequent briefs, DOJ has neither alleged nor asserted that technology practices are relevant to determining personal jurisdiction for purposes of Section 12 of the Clayton Act. Likewise, in its complaint and subsequent briefs, DOJ has neither mentioned Mansour Zadeh nor alleged that his conduct is relevant to the issue of jurisdiction. Therefore, SFD further objects to this interrogatory as seeking information that is irrelevant and this interrogatory is overly broad, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence.

Please immediately provide a full and complete answer to Plaintiff's Interrogatory No. 16. The objection as to a "relevant" time period is not a legitimate basis on which to limit discovery for the reasons stated above at pp. 3-4. Moreover, for the reasons stated in Plaintiff's discussion of Defendant's Response to Document Request No. 14, Defendant's refusal to answer this question is not legitimate.

Defendant's Answer to Interrogatory No. 17

Interrogatory No. 17 asks Defendant to:

Identify each employee of Smithfield or of any Smithfield subsidiary who plays any role in marketing or sale of products produced by each subsidiary identified in your answer to Interrogatory No. 1.

Defendant's Answer states:

See General Objections. Based upon General Objections 1 and 2, SFD is limiting its response to Gwaltney and Packing. Subject to and without waiving any objections, SFD personnel do not play any role in the marketing or sales of the products of Gwaltney or Packing. Likewise, Gwaltney and Packing do not play any role in the marketing or sales of each other's products.

Please immediately provide a full and complete answer to this Interrogatory for the following reasons. This Interrogatory seeks the names of people at Smithfield who are involved in sales or marketing of the products of any subsidiaries whose products are sold in the District

of Columbia. Defendant's General Objections 1 and 2 ("relevant" time period and "relevant" subsidiaries) are not legitimate for the reasons set forth above in connection with its discussion of Objections 1 and 2 at pp. 3-5. Moreover, it is impossible for Plaintiff to determine, from the way the answer is written in the present tense, whether Defendant is stating that during its asserted "relevant" time period, Smithfield personnel had no role in the marketing or sale of the products of Gwaltney or Packing. The answer is also incomplete because Defendant failed even to identify the employees of Smithfield subsidiaries, including Gwaltney and Packing, involved in marketing or sales of their employer's products. Please immediately identify those employees.

FAILURE OF SMITHFIELD COMPANIES TO COMPLY WITH THE SUBPOENA

As noted above, Smithfield Companies failed to provide any documents in response to Plaintiff's subpoena. Smithfield Companies' General Objection 1 appears to provide the basis for its failure to comply. That objection states:

Smithfield Companies objects to the Document Requests as overly broad, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence in determining whether Smithfield Foods, Inc. (Smithfield) is amenable to jurisdiction in this district. DOJ has alleged that the first cause of action accrued on June 28, 1998 [sic] and that Smithfield was in violation of the relevant statute from June 26, 1998 through October 28, 1998. DOJ has alleged the second cause of action accrued on December 8, 1999 and that SFD was in violation of the relevant statute from December 8, 1999 to January 12, 2001. SFD did not acquire Smithfield Companies until July 31, 2002, well after the alleged causes of action accrued and after the periods DOJ has alleged SFD was in violation of the relevant statute. Therefore, the Document Requests seek [sic] documents that are irrelevant to the issue of personal jurisdiction and the Document Requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Please have The Smithfield Companies immediately comply with the Subpoena. This objection is not a legitimate basis on which to deny Plaintiff discovery. There is no basis for a "relevant" time period for purposes of discovery directed to personal jurisdiction as discussed above at pp. 3-4 in connection with Defendant's General Objection 1. Discovery directed to Defendant's relationship with all its subsidiaries, particularly one that was recently acquired and incorporated into the family of Smithfield companies, is relevant to how Defendant relates to its subsidiaries whose products are sold in the District of Columbia.

In sum, Defendant has made it virtually impossible for Plaintiff to determine the extent to which Defendant and its subsidiaries have complied with Plaintiff's legitimate efforts to conduct jurisdictional discovery and has improperly deprived Plaintiff of documents and information. Plaintiff hopes that these concerns can be resolved without the Court's intervention. If it becomes necessary to seek the Court's help, I remind you that Plaintiff will seek an extension of the current period allowed for jurisdictional discovery and will be ask the currently scheduled

deponents to return for questioning on documents and information that were previously withheld.

Please let me know immediately whether Defendant and its three subsidiaries intend to produce all the documents and information requested in this letter or if you wish to discuss this matter further.

Very truly yours,

“/s/”

Nina B. Hale
Attorney