

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

B.S.A. S.A.,

LAG HOLDING, INC.,

and

THE KRAFT HEINZ COMPANY,

Defendants.

ASSET PRESERVATION AND HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and among the undersigned parties, subject to approval and entry of this Order by the Court, as follows.

I. DEFINITIONS

As used in this Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”):

A. “Acquirer” or “Acquirers” means the entity or entities approved by the United States in its sole discretion to which Defendants divest any of the Divestiture Assets.

B. “Acquirer of the Athenos Divestiture Assets” means Emmi Roth or another entity approved by the United States in its sole discretion to which Defendants divest the Athenos Divestiture Assets.

C. “Acquirer of the Polly-O Divestiture Assets” means BelGioioso or another entity approved by the United States in its sole discretion to which Defendants divest the Polly-O Divestiture Assets.

D. “Athenos Brand Name” means Athenos and any other name that uses, incorporates, or references the Athenos name.

E. “Athenos Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Athenos Divestiture Business, including:

1. the Athenos Brand Name, including (a) the right to the exclusive use of the Athenos Brand Name in all sales channels (including the retail, foodservice, and ingredients or industrial channels), and (b) all other intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (i) patents, patent applications, and inventions and discoveries that may be patentable, (ii) registered and unregistered copyrights and copyright applications, and (iii) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications;

2. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including agreements with suppliers, manufacturers, co-packers, and retailers, teaming agreements, leases, and all outstanding offers or solicitations to enter into a similar arrangement;

3. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

4. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs; and

5. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, including recipes and formulas, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

Provided, however, that the assets specified in Paragraphs I.E.1–5 above do not include the Athenos Transitional Manufacturing Assets or the Athenos Transitional Services Contracts.

F. “Athenos Divestiture Business” means the worldwide business of the sale of Athenos Products by Kraft Heinz.

G. “Athenos Personnel” means all full-time, part-time, or contract employees of Kraft Heinz, wherever located, whose job responsibilities relate in any way to the Athenos Divestiture Assets, at any time between September 15, 2020, and the date on which the Athenos Divestiture Assets are divested. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Athenos Personnel.

H. “Athenos Products” means any product that Kraft Heinz sold, sells, or has plans

to sell under the Athenos Brand Name anywhere in the world.

I. “Athenos Transitional Manufacturing Assets” means:

1. production lines numbers 25 and 26, which are used by the Athenos Divestiture Business for crumbling and packaging feta and are located at Kraft Heinz’s facility at 1007 Townline Road, Wausau, Wisconsin 54403;

2. the feta packaging mold used to produce plastic feta lids and containers, which was purchased by Kraft Heinz in 2021 and is located at the facilities of RPC Bramlage-WIKO USA, Inc. in Morgantown, Pennsylvania; and

3. the contracts and agreements between Kraft Heinz and each of the following: (a) Agropur, dated January 13, 2021; (b) J. Rettenmaier USA LP, dated January 1, 2021; (c) International Paper Company, dated January 1, 2016, and last amended December 31, 2020; (d) Berry Global, Inc., dated April 1, 2014, supplemented September 22, 2014, and last amended August 1, 2019; (e) Weber Packaging Solutions, Inc., dated January 1, 2020; and (f) Bramlage, Inc. d/b/a RPC Bramlage Morgantown (the “RPC Agreement”), dated October 23, 2017.

J. “Athenos Transitional Services Contracts” means the contracts and agreements between Kraft Heinz and each of the following: (a) Prairie Farms, dated November 3, 2020; (b) Great Lakes Cheese Company, Inc., dated January 1, 2021, and supplemented and amended on January 1, 2021; (c) Marathon Cheese Corporation, dated April 10, 2021, and supplemented on April 10, 2021; (d) Cedar’s Mediterranean Foods, Inc., dated November 1, 2020, and supplemented on February 1, 2021; and (e) Saputo Cheese USA, Inc., dated November 1, 2020.

K. “BelGioioso” means BelGioioso Cheese, Inc., a Wisconsin corporation with its

headquarters in Green Bay, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

L. “Divestiture Assets” means the Athenos Divestiture Assets and the Polly-O Divestiture Assets.

M. “Emmi Roth” means Emmi Roth USA, Inc., a Wisconsin corporation with its headquarters in Fitchburg, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

N. “Including” means including, but not limited to.

O. “Kraft Heinz” means Defendant The Kraft Heinz Company, a Delaware corporation with its co-headquarters in Pittsburgh, Pennsylvania and Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

P. “Lactalis” means Defendant B.S.A. S.A., a French corporation with its headquarters in Laval, France, its successors and assigns, and its subsidiaries, including Defendant LAG Holding, Inc. and its subsidiary Lactalis American Group, Inc., divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

Q. “Polly-O Brand Name” means Polly-O and any other name that uses, incorporates, or references the Polly-O name.

R. “Polly-O Divestiture Assets” means all of Defendants’ rights, titles, and interests

in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Polly-O Divestiture Business, including:

1. the Polly-O Brand Name, including (a) the right to the exclusive use of the Polly-O Brand Name in all sales channels (including the retail, foodservice, and ingredients or industrial channels), and (b) all other intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (i) patents, patent applications, and inventions and discoveries that may be patentable, (ii) registered and unregistered copyrights and copyright applications, and (iii) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications;

2. the Shared Recipes License;

3. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including agreements with suppliers, manufacturers, co-packers, and retailers, teaming agreements, leases, and all outstanding offers or solicitations to enter into a similar arrangement;

4. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

5. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and

unsuccessful designs and experiments, and (e) drawings, blueprints, and designs; and

6. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

Provided, however, that the assets specified in Paragraphs I.R.1–6 above do not include any ownership of the intellectual property licensed through the Shared Recipes License or the Polly-O Excluded Contracts.

S. “Polly-O Divestiture Business” means the worldwide business of the sale of Polly-O Products by Kraft Heinz.

T. “Polly-O Excluded Contracts” means the contracts and agreements between Kraft Heinz and each of the following: (a) Foremost Farms USA Cooperative, dated October 8, 2020; (b) Marathon Cheese Corporation, dated April 10, 2021, and supplemented on April 10, 2021; (c) Saputo Cheese USA Inc., dated November 1, 2020; (d) Amcor Flexibles North America, Inc. (fka Bemis Company, Inc.), dated January 1, 2015, entered into initially between H.J. Heinz Supply Chain Europe B.V. and Bemis Company, Inc., and last amended November 1, 2020; (e) International Paper Company, dated January 1, 2016, and last amended December 31, 2020; (f) Berry Global, Inc., dated April 1, 2014, supplemented September 22, 2014, and last amended August 1, 2019; (g) Transcontinental US LLC, dated January 1, 2019; and (h) J. Rettenmaier USA LP, dated January 1, 2021.

U. “Polly-O Personnel” means all full-time, part-time, or contract employees of Kraft Heinz, wherever located, whose job responsibilities relate in any way to the Polly-O Divestiture Assets, at any time between September 15, 2020, and the date on which the Polly-O Divestiture Assets are divested. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Polly-O Personnel.

V. “Polly-O Products” means any product that Kraft Heinz sold, sells, or has plans to sell under the Polly-O Brand Name anywhere in the world.

W. “Shared Recipes License” means a perpetual, royalty-free, paid-up, irrevocable, worldwide, non-exclusive license to the formulas, recipes and related trade secrets, know-how, confidential business information and related data that, on or prior to the date of the signing of this Stipulation and Order by Defendants, were used by Kraft Heinz for the production of cheese sold under both (i) the Polly-O Brand Name and (ii) any name other than the Polly-O Brand Name.

X. “Transaction” means the definitive agreement that Lactalis and Kraft Heinz entered into on September 15, 2020, for the acquisition by Lactalis of, among other assets, Kraft Heinz’s natural, grated, cultured, and specialty cheese businesses in the United States.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing one or more viable competitors in (a) the sale of feta cheese to grocery stores and other retailers in metropolitan and surrounding areas across the United States and (b) the sale of ricotta cheese to grocery stores and other retailers in the metropolitan and surrounding areas of (1) New York, New York, (2) Miami/

Ft. Lauderdale, Florida, (3) Tampa/St. Petersburg, Florida, (4) Orlando, Florida, and (5) Jacksonville, Florida in order to remedy the anticompetitive effects that the United States alleges would otherwise result from the Transaction. This Stipulation and Order ensures that, prior to divestiture, the Divestiture Assets remain independent, economically viable, competitive, and saleable; that Defendants will preserve and maintain the Divestiture Assets; and that the level of competition that existed between Defendants prior to the Transaction is maintained during the pendency of the required divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over the parties to it. Venue for this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The proposed Final Judgment filed with this Stipulation and Order, or any amended proposed Final Judgment agreed upon in writing by the United States and Defendants, may be filed with and entered by the Court as the Final Judgment, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or any other proceeding, as long as the United States has not withdrawn its consent. The United

States may withdraw its consent at any time before the entry of the Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by Defendants until the Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters this Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as if the proposed Final Judgment were in full force and effect as a final order of the Court, and Section XV of the proposed Final Judgment will also apply to violations of this Stipulation and Order.

D. Defendants agree to arrange, at their expense, publication of the newspaper notices required by the APPA, which will be drafted by the United States in its sole discretion. The publications must be arranged as quickly as possible and, in any event, no later than three business days after Defendants' receipt of (1) the text of the notice from the United States and (2) the identity of the newspapers within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notices has been arranged and (2) the certifications of publication prepared by the newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and filed with the Court.

F. Defendants represent that the divestitures ordered by the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provision of the proposed Final Judgment or this Stipulation and Order.

VI. ASSET PRESERVATION AND HOLD SEPARATE

From the date of the signing of this Stipulation and Order by Defendants and until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants must take all actions necessary to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets including by (1) operating the Divestiture Assets in the ordinary course of business and consistent with past practices and (2) providing sufficient working capital and lines and sources of credit.

B. Defendants must use all reasonable efforts to maintain and increase the sales and revenues of the Athenos Divestiture Business and the Polly-O Divestiture Business and must maintain at 2020 or previously approved levels for 2021, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, research and development, and merchandising support for the Athenos Divestiture Business and the Polly-O Divestiture Business.

C. Defendants must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

D. Defendants must maintain, separately for the Athenos Divestiture Assets and the Polly-O Divestiture Assets, in accordance with sound accounting principles, separate, accurate,

and complete financial ledgers, books, or other 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, and income of the Athenos Divestiture Assets and the Polly-O Divestiture Assets.

E. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Athenos Personnel and all Polly-O Personnel. Athenos Personnel and Polly-O Personnel must not be transferred or reassigned except to an Acquirer or via transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States with 10 calendar days' notice of the transfer of Athenos Personnel or Polly-O Personnel, and, upon objection by the United States to such transfer, Athenos Personnel or Polly-O Personnel may not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Athenos Personnel and Polly-O Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by Defendants, and financial incentives may not be structured so as to disincentivize employees from accepting employment with an Acquirer.

F. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

G. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacities and levels of sales, with the same levels of quality, functionality, access, and customer support, and must, consistent with past practices, maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

H. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants must not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any of the Divestiture Assets.

I. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

J. Lactalis must hold entirely separate, distinct, and apart from Lactalis's other operations, the management, sales, and operations of the Athenos Divestiture Assets. Lactalis must not coordinate the production, marketing, or terms of sale of any products produced or sold by the Athenos Divestiture Assets with the production, marketing, or terms of sale of any other products produced or sold by Lactalis.

K. Lactalis must hold entirely separate, distinct, and apart from Lactalis's other operations, the management, sales, and operations of the Polly-O Divestiture Assets. Lactalis must not coordinate the production, marketing, or terms of sale of any products produced or sold by the Polly-O Divestiture Assets with the production, marketing, or terms of sale of any other products produced or sold by Lactalis.

L. Kraft Heinz must appoint, subject to approval of the United States in its sole discretion, (a) a person or persons to oversee the Athenos Divestiture Assets and (b) a person or persons to oversee the Polly-O Divestiture Assets. The person or persons appointed by Kraft Heinz may jointly oversee both the Athenos Divestiture Assets and the Polly-O Divestiture Assets. Such person or persons will be responsible for Kraft Heinz's compliance with this Section VI, for managing the sales and operations of the Athenos Divestiture Assets and the Polly-O Divestiture Assets, and for ensuring the preservation of the Athenos Divestiture Assets

and the Polly-O Divestiture Assets until the date on which the Transaction is completed. In the event any such person is unable to perform his or her duties, Kraft Heinz must appoint, subject to the approval of the United States in its sole discretion, a replacement within 10 business days. Should Kraft Heinz fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

M. Lactalis must appoint, subject to approval of the United States in its sole discretion, (a) a person or persons to oversee the Athenos Divestiture Assets and (b) a different person or persons to oversee the Polly-O Divestiture Assets. Such persons will be responsible for Lactalis's compliance with this Section VI, for managing the sales and operations of the Athenos Divestiture Assets and the Polly-O Divestiture Assets separately from each other and from Lactalis's other operations, and for ensuring the preservation of the Athenos Divestiture Assets and the Polly-O Divestiture Assets from the date on which the Transaction is completed until the divestitures required by the proposed Final Judgment have been accomplished. In the event any such person is unable to perform his or her duties, Lactalis must appoint, subject to the approval of the United States in its sole discretion, a replacement within 10 business days. Should Lactalis fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

N. Within 20 calendar days after the entry of this Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

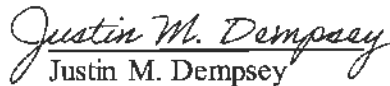
VII. DURATION OF OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will expire upon the completion of the divestitures required by the proposed Final Judgment or unless otherwise ordered by the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A of this Stipulation and Order; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: November 10, 2021

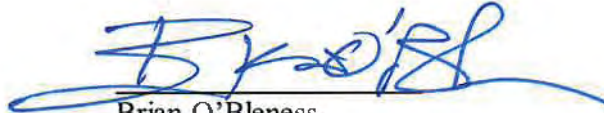
Respectfully submitted,

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ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, _____.

United States District Judge