

Attorneys for Defendant
FERRERO U.S.A, INC.

In re FERRERO LITIGATION

DECLARATION OF BERNARD F. KREILMANN IN SUPPORT OF FERRERO U.S.A., INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Date: November 7, 2011
Time: 10:30 AM
Before: Hon. Marilyn L. Huff

1 I, Bernard F. Kreilmann, hereby declare and state as follows:

2 1. I am the President and Chief Executive Officer of Ferrero U.S.A., Inc., ("Ferrero
3 U.S.A." or "the Company"). I have been employed by Ferrero U.S.A. since August 1, 2004.

4 The following facts are within my personal knowledge and, if called and sworn as a witness, I
5 could and would competently testify thereto.

6 **CORPORATE HISTORY & EMPLOYEES**

7 2. Ferrero U.S.A. is a Delaware corporation. It was incorporated in 1969 and has
8 been doing business in the United States since that time. The Company is a subsidiary of Ferrero
9 International S.A., which is headquartered in Luxembourg. Ferrero U.S.A. maintains its
10 headquarters in Somerset, New Jersey.

11 3. Ferrero U.S.A. is required to register to do business in certain states, including
12 California. Ferrero U.S.A. is registered to do business in 7 states that have such a requirement.

13 4. Ferrero U.S.A. initially was headquartered in Yonkers, New York. In 1972,
14 Ferrero U.S.A. moved its headquarters to Manhattan, in New York City. In 1994, Ferrero U.S.A.
15 relocated its headquarters to New Jersey.

16 5. Since 1994, Ferrero U.S.A.'s headquarters have been located at 600 Cottontail
17 Lane, Somerset, New Jersey (the "New Jersey Headquarters").

18 6. Ferrero U.S.A. employs approximately 104 individuals at the New Jersey
19 Headquarters. A true and correct copy of Ferrero U.S.A.'s organizational chart is attached hereto
20 as Exhibit 1.

21 7. All of Ferrero U.S.A.'s executives work at the New Jersey Headquarters. Those
22 executives include Ferrero's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"),
23 Vice President of Sales, Vice President of Marketing, Director of Human Resources, Senior
24 Customer & Logistics Manager, Legal Counsel, Information Services Manager, and Innovation
25 Manager.

26 8. Ferrero U.S.A.'s customer service personnel are located in the New Jersey
27 Headquarters. Calls made to the 1 (800) NUTELLA phone number (which appears on the label
28

1 for Nutella) are received at the New Jersey Headquarters.

2 9. Ferrero U.S.A.'s Marketing Department includes the Vice President of Marketing,
3 three Category Managers, the Senior Brand Manager, two Brand Managers, three Associate
4 Brand Managers, the Marketing Intelligence Manager, the Marketing Intelligence Analyst, and
5 the Administrative & Planning Manager. Each of these employees works in the New Jersey
6 Headquarters.

7 10. Ferrero U.S.A.'s Sales Department includes corporate employees and regional
8 sales personnel. Ferrero U.S.A.'s corporate employees include the Manager of Sales Operations,
9 the Sales Administrator, the Customer Marketing Leader, the Trade Marketing Administrator,
10 the Sales Planning Manager, the Channel Development Manager, the Sales Demand Planning
11 Manager, and Account Managers. Each of these corporate employees works in the New Jersey
12 Headquarters.

13 11. Ferrero U.S.A.'s Finance Department includes the Credit Manager, Accounting
14 Manager, Deduction Supervisor, Credit Supervisor, Analysts, Accountants, and Business
15 Planners. Each of these employees works in the New Jersey Headquarters.

16 12. Ferrero U.S.A. employs 70 full-time field employees who are based throughout
17 the United States. Ferrero U.S.A.'s field employees are responsible for developing relationships
18 with retailers and increasing sales to those entities. They are not involved in corporate decisions,
19 including corporate marketing and advertising, and they do not target their sales efforts directly
20 to consumers.

21 13. Ferrero U.S.A.'s full-time field employees are positioned throughout the United
22 States as follows: 2 in Arizona, 9 in California, 1 in Colorado, 8 in Florida, 1 in Georgia, 6 in
23 Illinois, 1 in Indiana, 1 in Massachusetts, 1 in Maryland, 1 in Minnesota, 2 in Missouri, 2 in
24 North Carolina, 1 in New Hampshire, 10 in New Jersey, 1 in Nevada, 5 in New York, 3 in Ohio,
25 2 in Oregon, 2 in Pennsylvania, 6 in Texas, 2 in Virginia, 1 in Washington, 1 in Wisconsin, 1 in
26 West Virginia. Field employees typically work out of their homes (not a Ferrero U.S.A. facility).

1 14. Ferrero U.S.A. also employs 96 part time field employees throughout the United
2 States. Ferrero U.S.A.'s part time field employees have responsibilities similar to those of
3 Ferrero U.S.A's full time field employees but on a part-time basis.

4 15. Ferrero U.S.A.'s part time field employees are positioned throughout the United
5 States as follows: 2 in Alabama, 1 in Arkansas, 1 in Arizona, 6 in California, 1 in Colorado, 1 in
6 Connecticut, 14 in Florida, 7 in Georgia, 1 in Illinois, 1 in Indiana, 1 in Louisiana, 4 in
7 Massachusetts, 3 in Michigan, 1 in Minnesota, 4 in Missouri, 1 in Mississippi, 3 in North
8 Carolina, 1 in New Hampshire, 5 in New Jersey, 1 in New Mexico, 5 in New York, 4 in Ohio, 2
9 in Oklahoma, 3 in Pennsylvania, 1 in Rhode Island, 3 in Tennessee, 11 in Texas, 2 in Utah, 2 in
10 Virginia, 2 in Washington, 2 in Wisconsin.

11 16. Ferrero U.S.A. also utilizes 22 brokers throughout the United States to sell
12 Nutella to retailers (not directly to consumers). These third-party brokers are positioned
13 throughout the United States as follows: 1 in Alaska, 1 in Arizona, 1 in California, 2 in Florida,
14 1 in Hawaii, 1 in Iowa, 1 in Illinois, 1 in Louisiana, 2 in Maryland, 1 in North Carolina, 2 in New
15 Jersey, 1 in New York, 1 in Ohio, 1 in Oklahoma, 1 in Pennsylvania, 1 in Tennessee, 1 in Texas,
16 1 in Utah, 1 in Virginia.

17 **MANUFACTURING AND SALES OF NUTELLA**

18 17. Between 1995 and February 2007, Ferrero U.S.A. manufactured Nutella in New
19 Jersey. Since 2007, the Nutella sold in the United States has been manufactured by Ferrero
20 Canada Ltd.

21 18. Ferrero Canada Ltd., which is also a subsidiary of Ferrero International S.A., is
22 headquartered in Toronto, Ontario. Ferrero Canada Ltd. manufactures Nutella in Brantford,
23 Ontario.

24 19. Ferrero U.S.A. does not sell product directly to consumers. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 [REDACTED] On behalf of Ferrero U.S.A., I
2 consider this information and the data set forth in paragraphs 20 - 29 to be confidential and
3 commercially sensitive, in that the unrestricted disclosure of such information could be
4 potentially prejudicial to the business or operations of Ferrero U.S.A.

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ADVERTISING

30. Ferrero U.S.A. began running the advertisements challenged by plaintiffs in their complaint nationally in August 2009. Prior to 2009, marketing for Nutella in the United States was limited to efforts such as coupons, product sampling, in-store displays, co-promotions with movie premieres, and the test advertising described below.

31. Ferrero U.S.A. began working on the television advertisements challenged in plaintiffs' complaint in 2007. The first television advertisement for Nutella that aired in the United States was adapted from an advertisement that Ferrero Canada, Ltd. had used. Ferrero

1 U.S.A. began airing this advertisement in two test markets (Albany, NY and Providence, RI) in
2 February 2008. In January 2009, Ferrero U.S.A. aired this advertisement in Columbus, Ohio;
3 Buffalo, New York; and Portland, Oregon. This advertisement began airing nationally in August
4 2009.

5 32. The print ads described in Plaintiffs' Motion for Class Certification were placed
6 in four national publications for the first time beginning in September 2009 and were
7 subsequently placed in additional publications.

8 33. In August 2009, Ferrero U.S.A. launched a version of the Nutella website
9 containing some of the content that is challenged in the complaint. The website was updated in
10 August 2010.

11 34. Between September 2007 and September 2009, the Nutella sold in the United
12 States included the label attached hereto as Exhibit 2. In September 2009, the Nutella label was
13 restyled to include the statement, "[s]tart your day with Nutella spread... An example of a tasty
14 yet balanced breakfast: a glass of skim milk, orange juice and Nutella on whole wheat bread." A
15 true and correct copy of this label is attached hereto as Exhibit 3. When the label was restyled,
16 Ferrero removed the phrase, "Spreadably Delicious™ on: whole wheat, multigrain and bakery
17 breads[;] bagels[;] English muffins[;] waffles[;] toast[;] croissants."

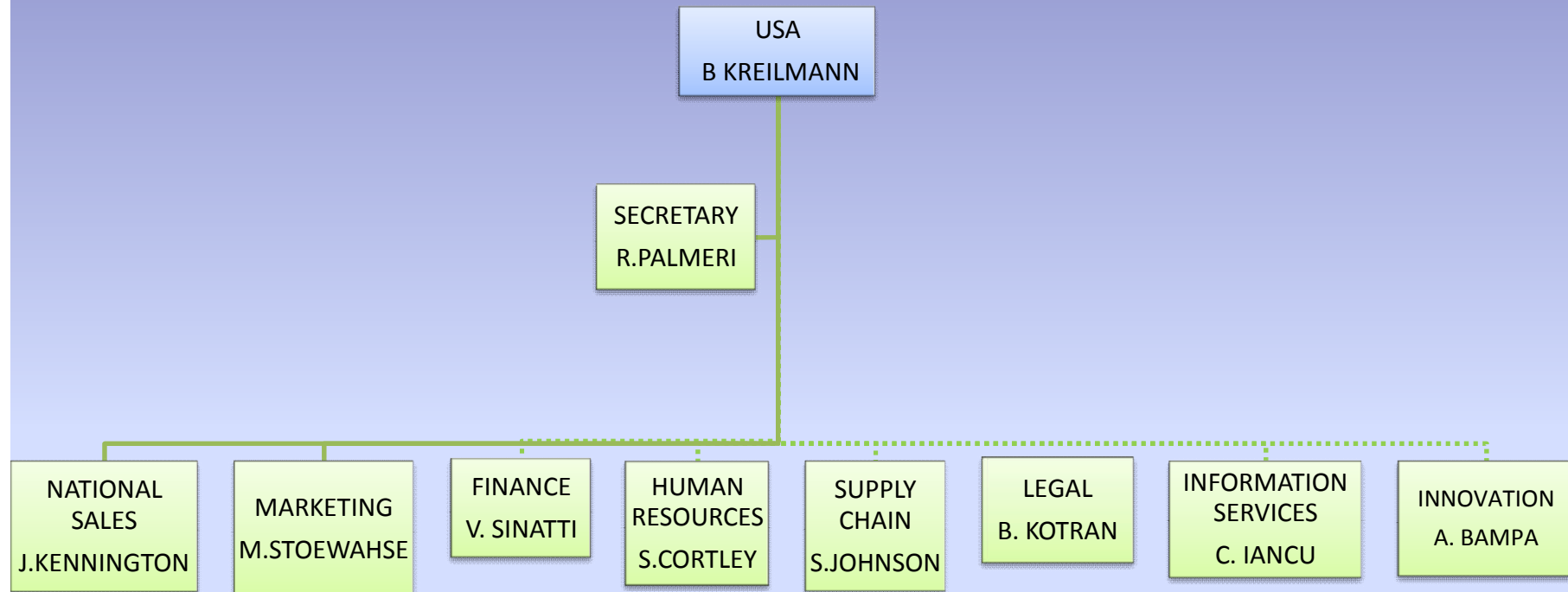
18
19 I certify under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct.

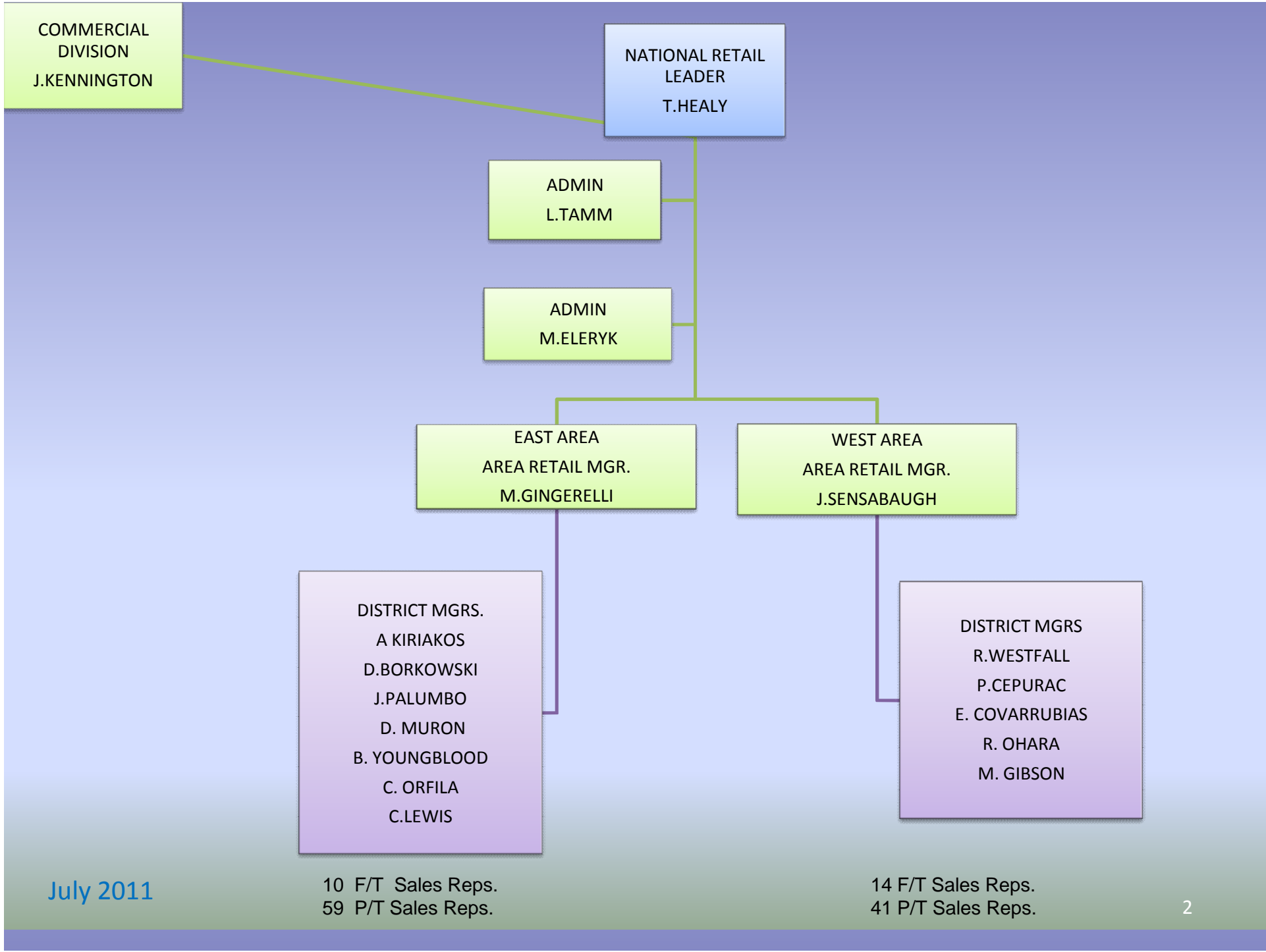
21 Executed this 7th day of October, 2011, at Somerset, New Jersey.

22
23 
24 _____
25 Bernard F. Kreilmann
26
27
28

EXHIBIT 1

FERRERO

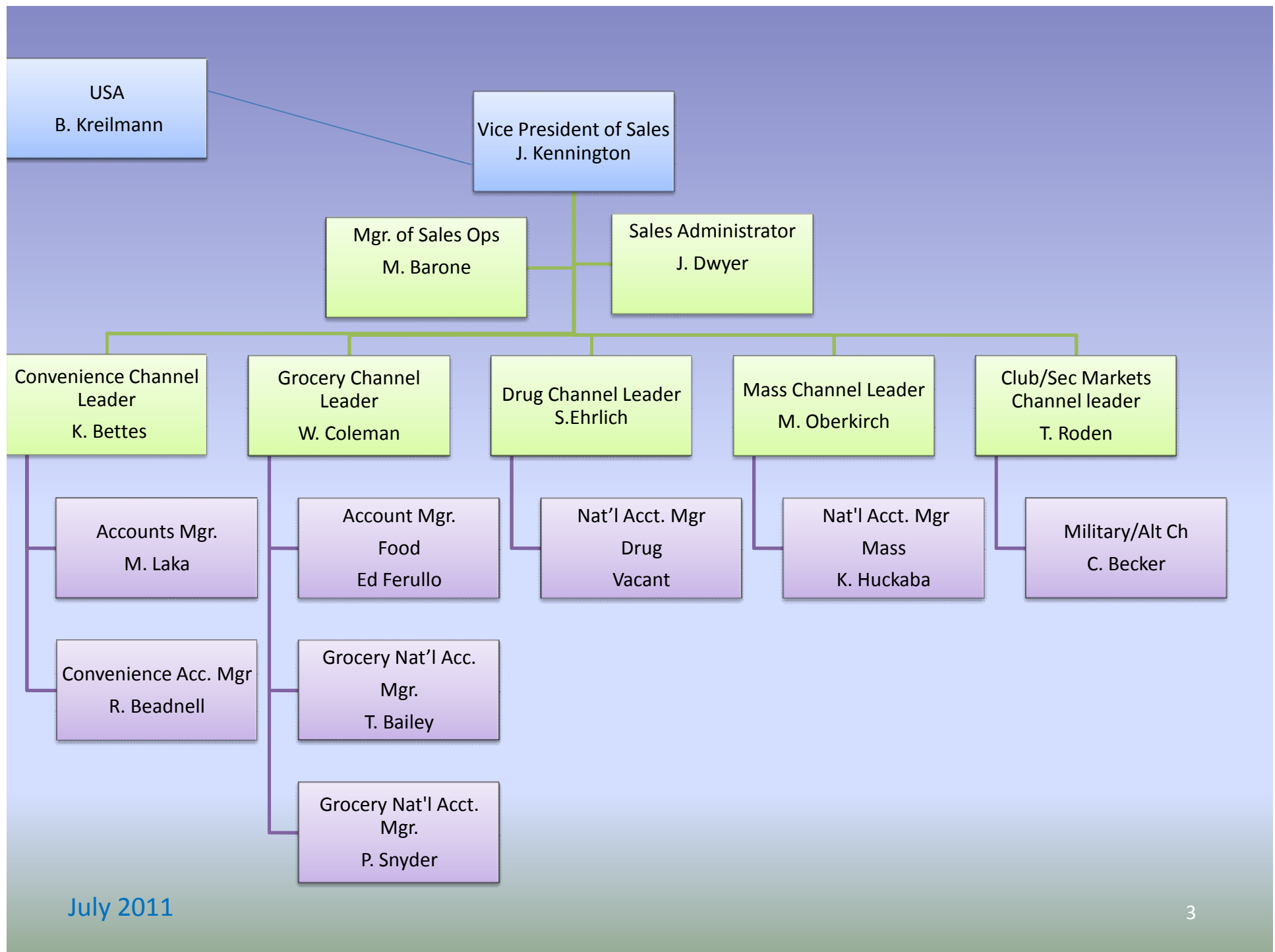


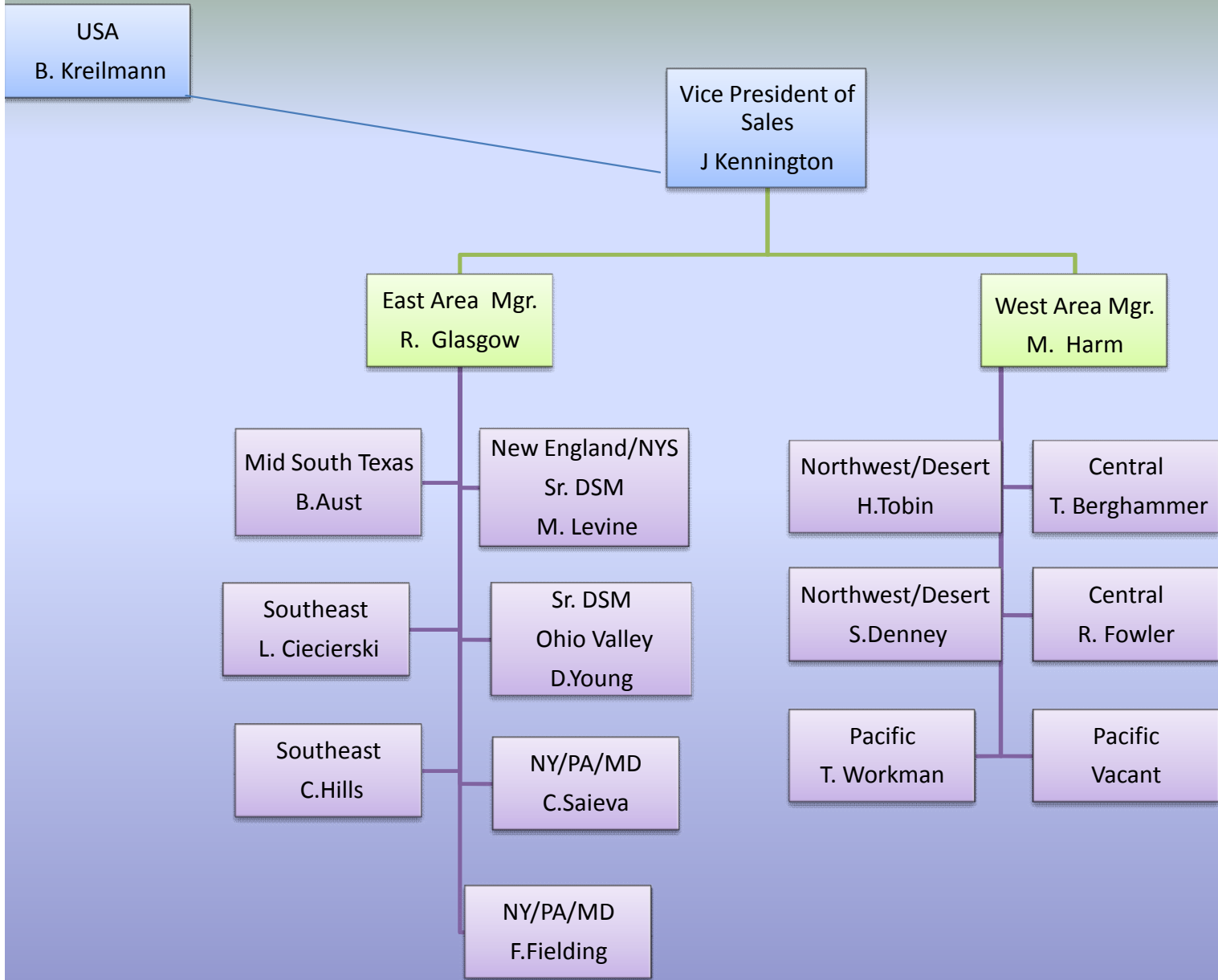


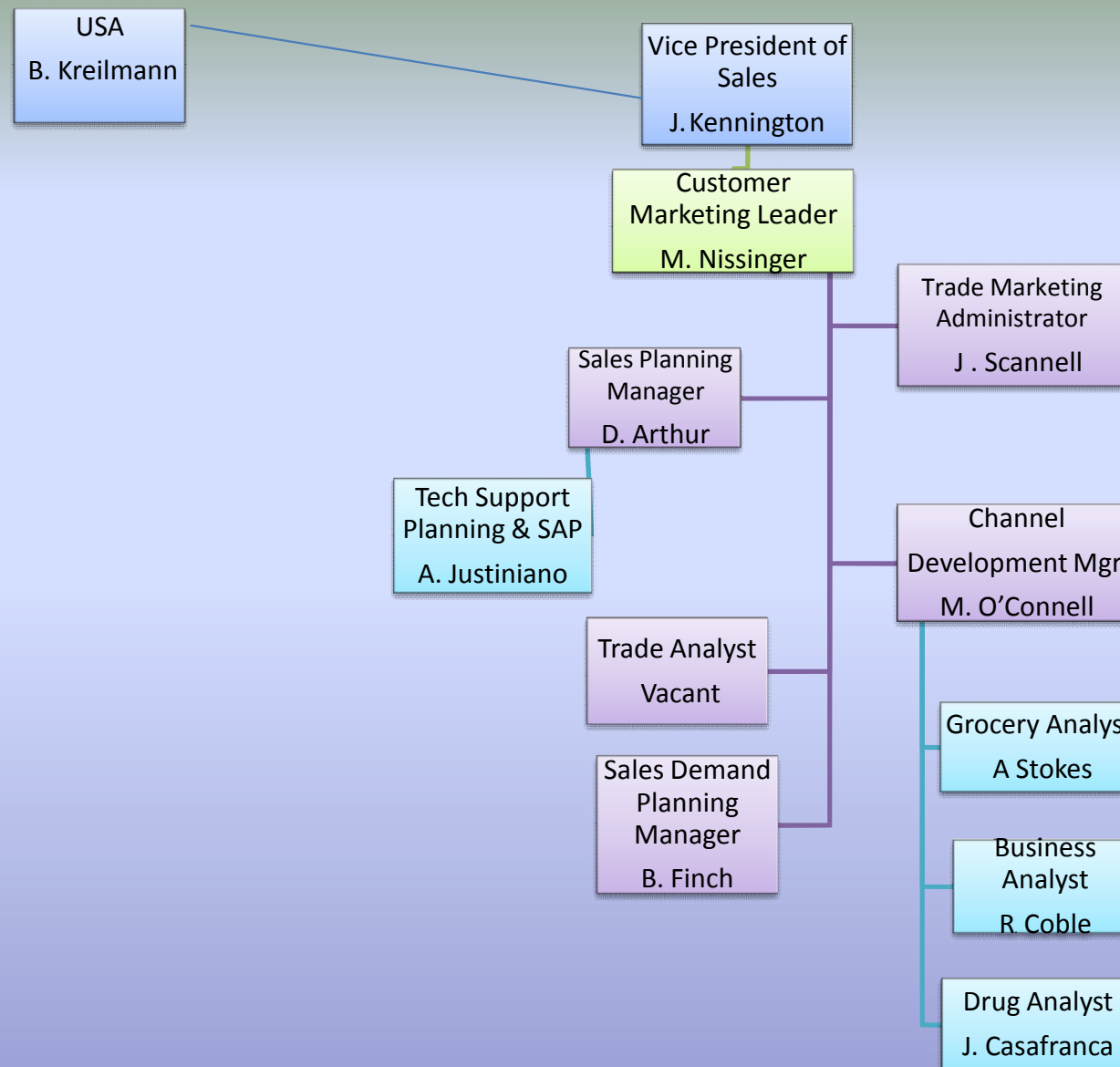
July 2011

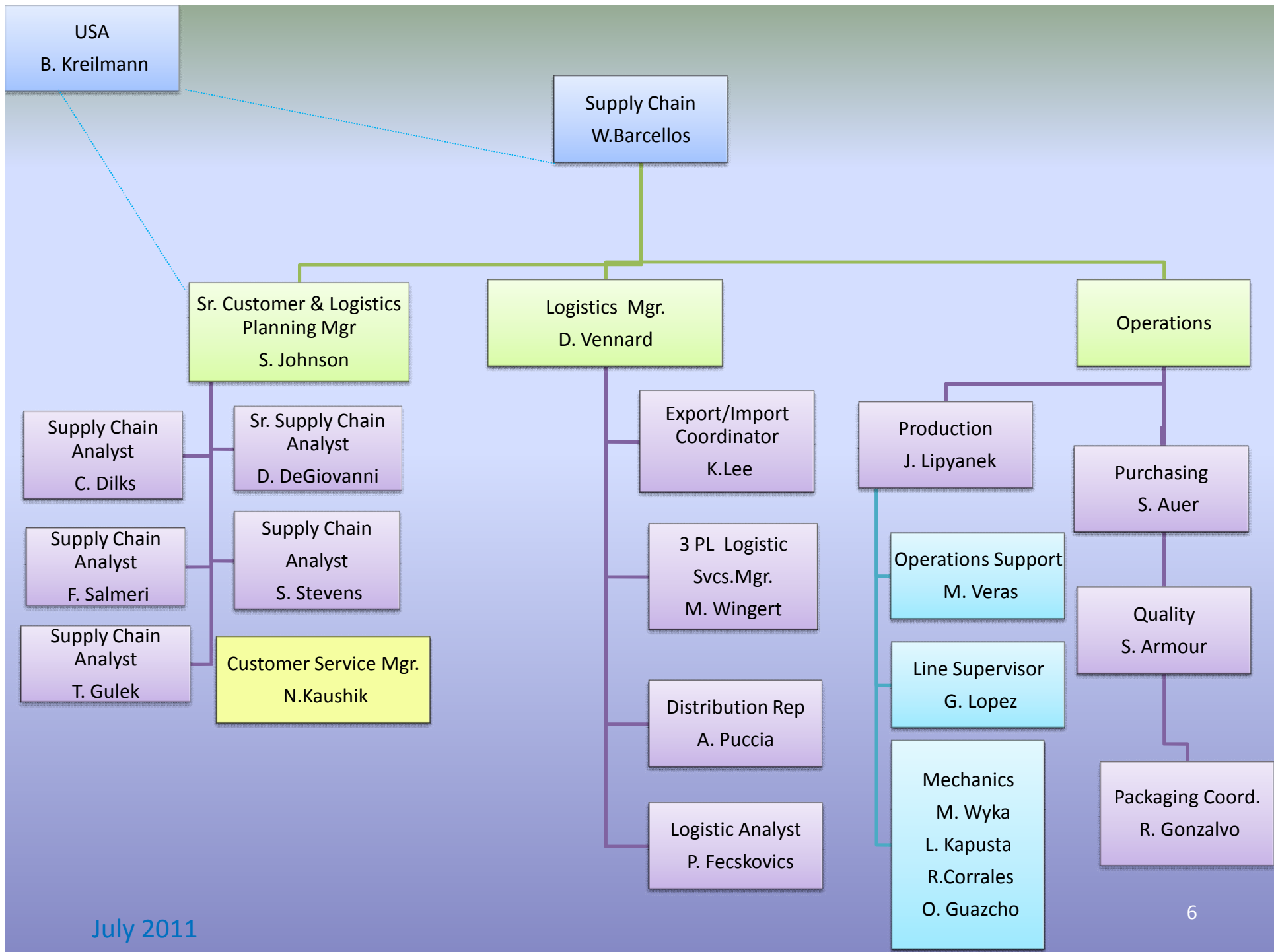
10 F/T Sales Reps.
59 P/T Sales Reps.

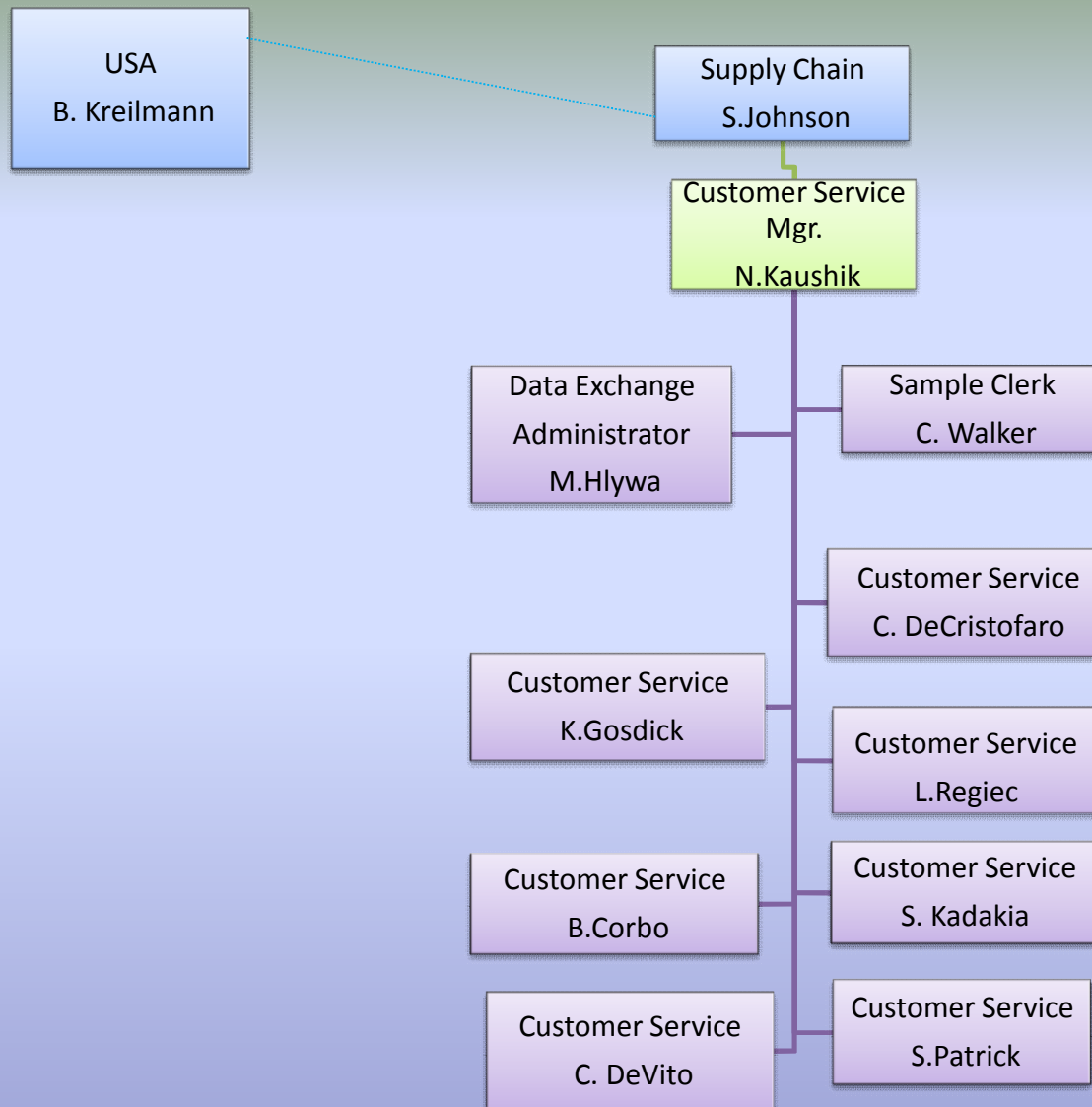
14 F/T Sales Reps.
41 P/T Sales Reps.

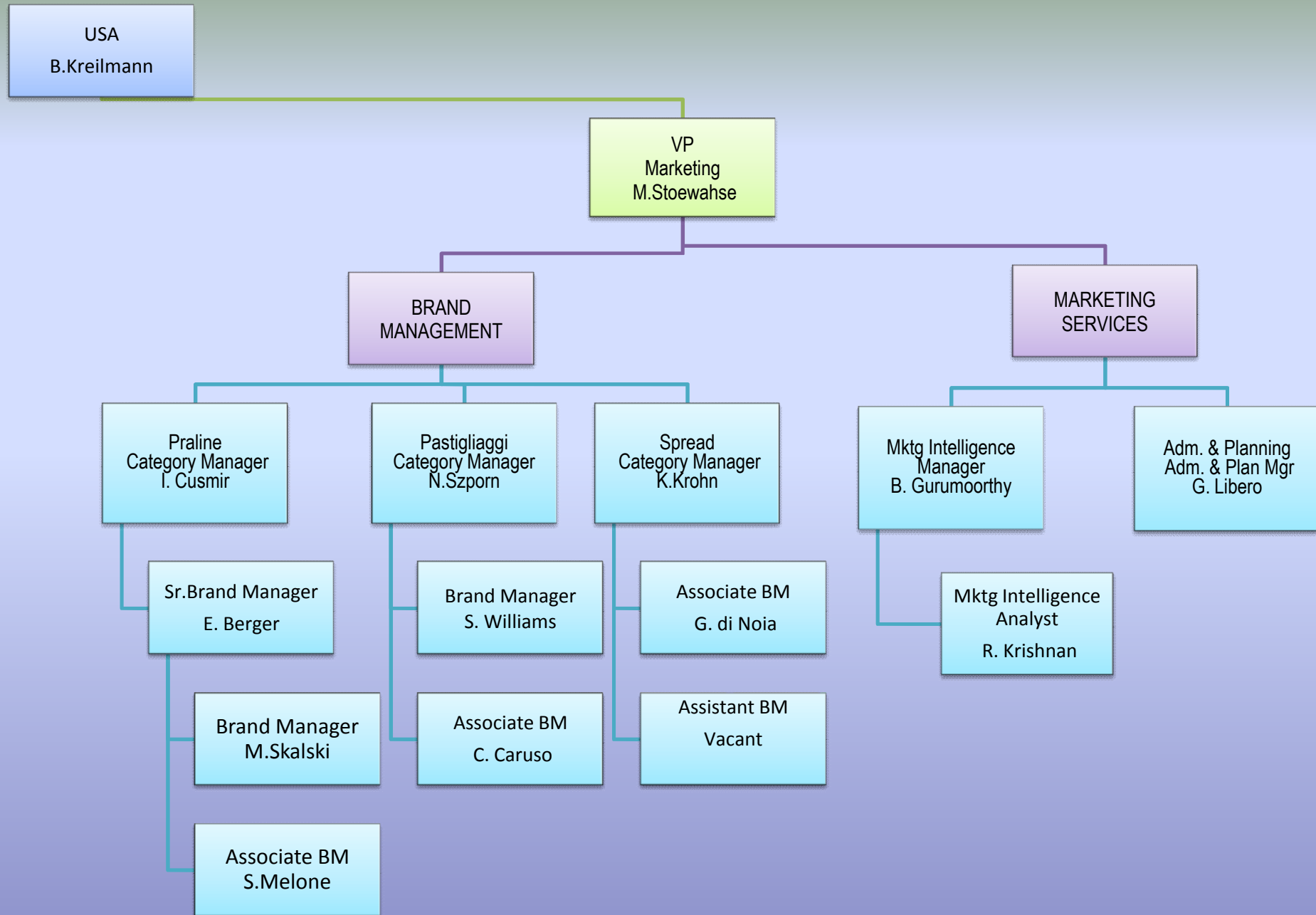


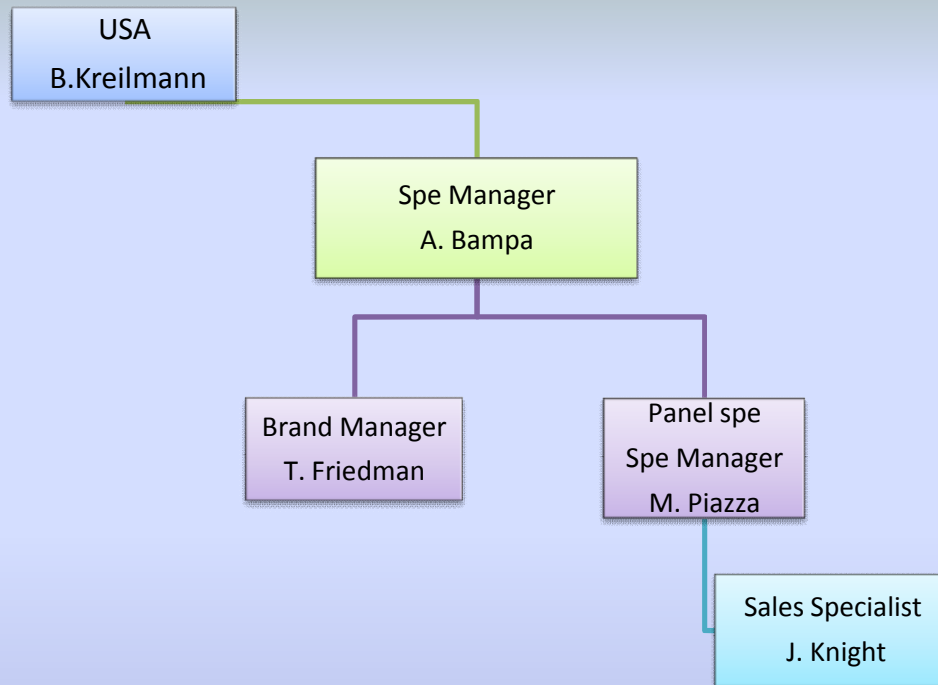


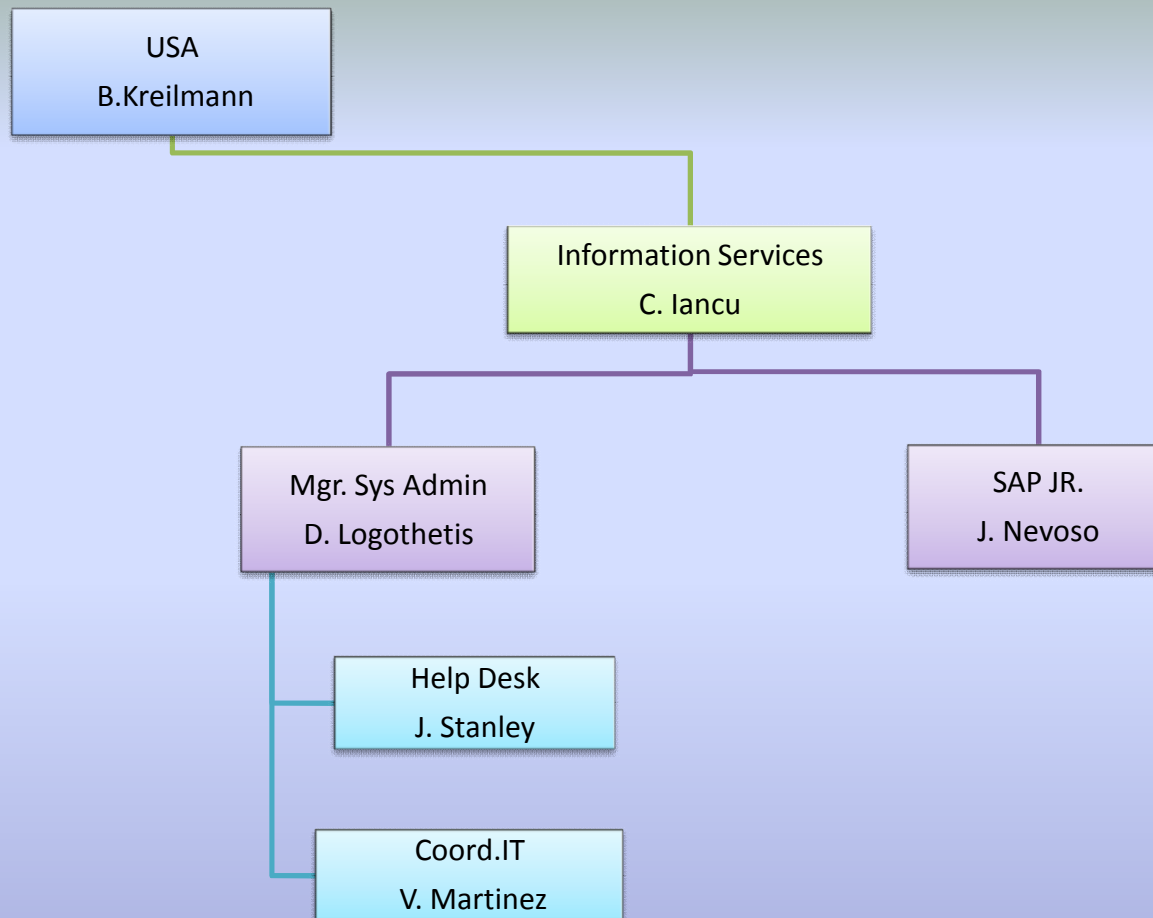


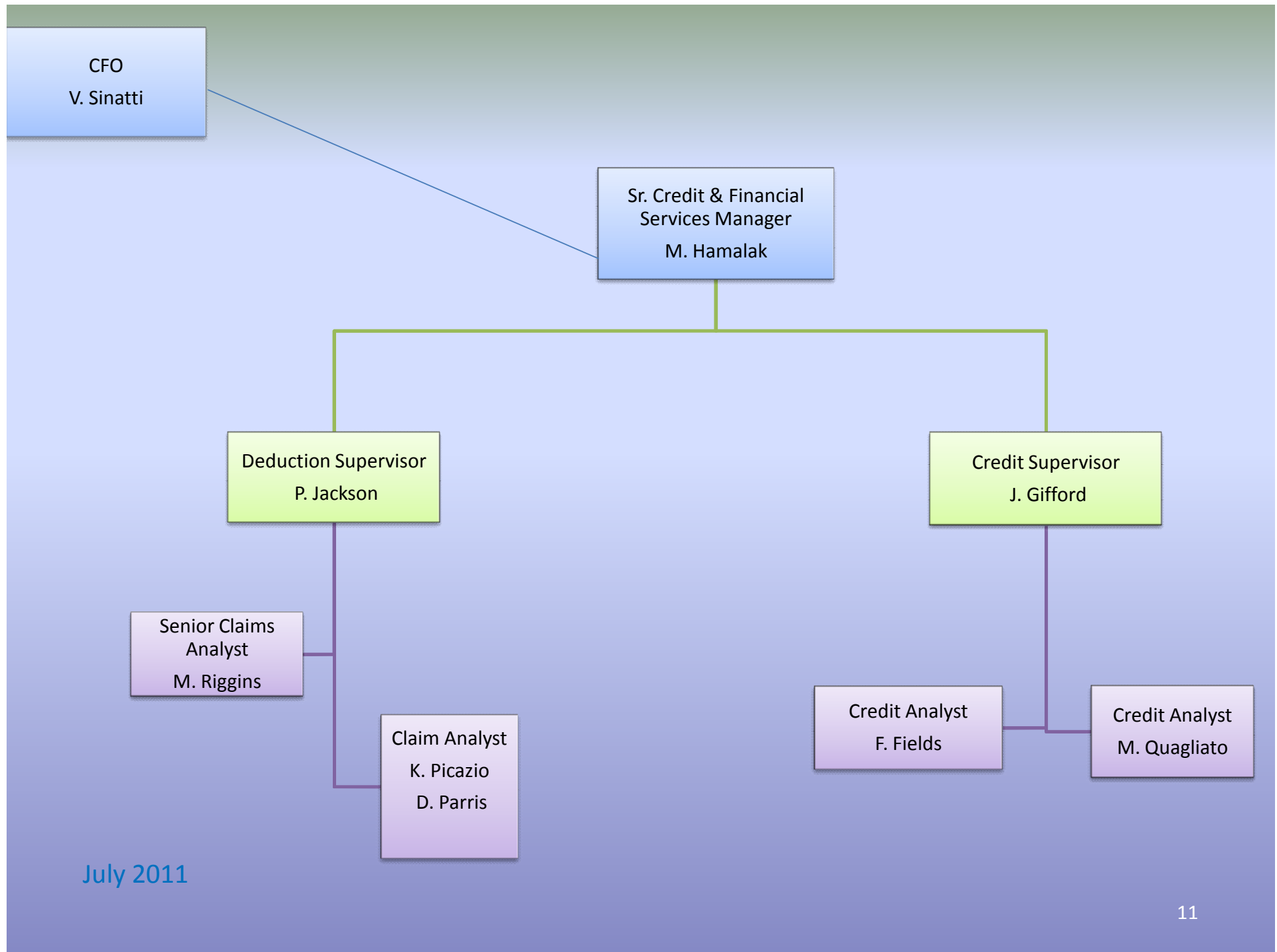




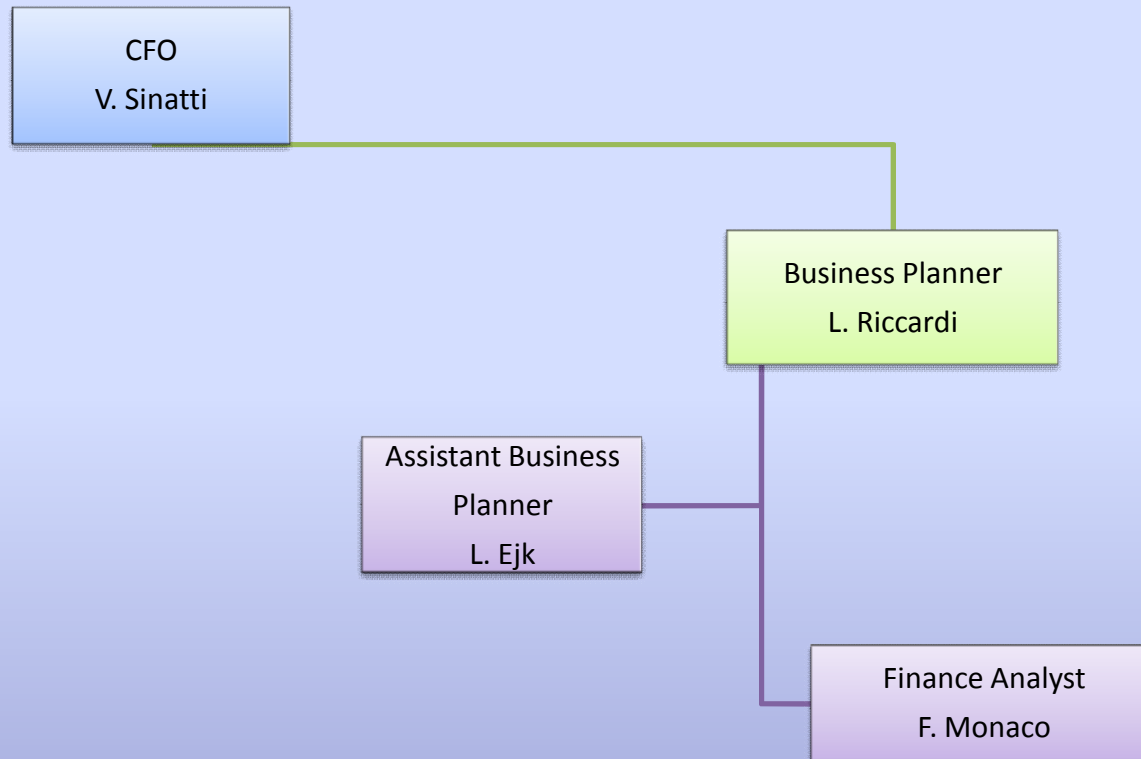




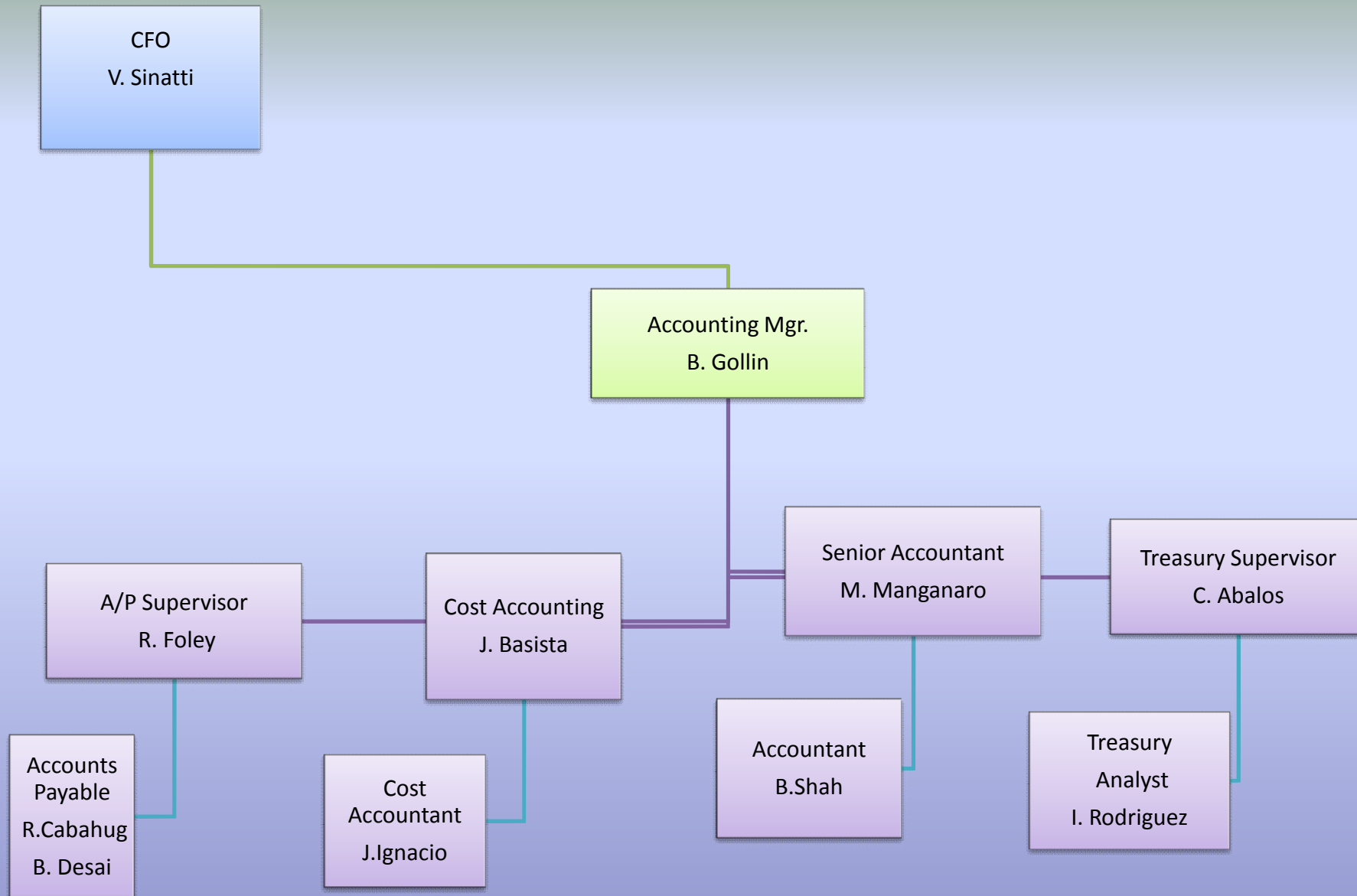


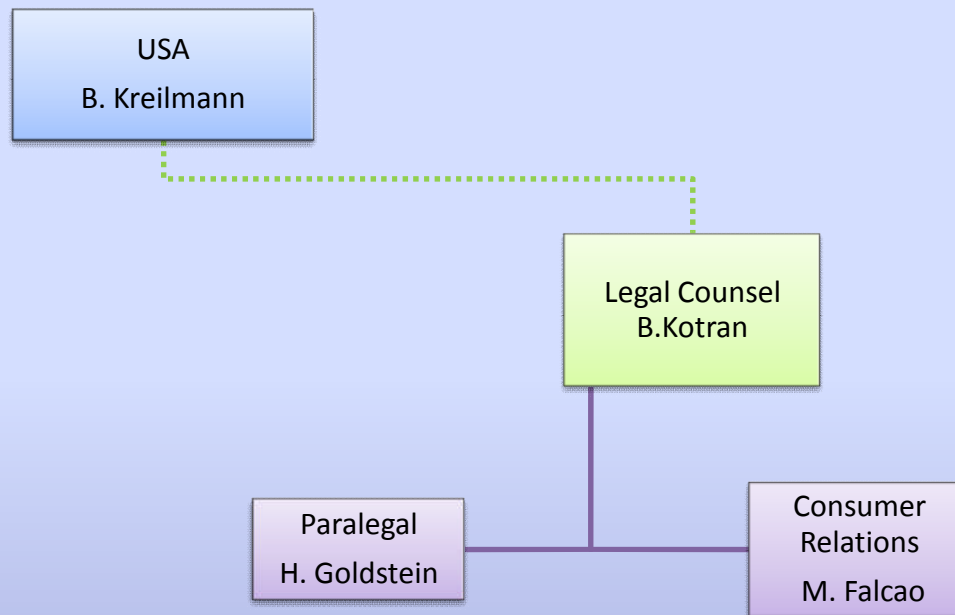


July 2011



July 2011





USA
B.Kreilmann

Director of Human
Resources
S. Cortley

Manager of Office
Services
R.Palmeri *

H.R. Manager
E. May

Office Services
Administrator
J. Stankus

Office Services
Supervisor
F. Brown

Office Services
Coordinator
C. Boulding

Payroll Manager
J. Ferraro

Benefits Manager
A. Carrano

T. Kozinsky
Chef

July 2011

EXHIBIT 2

Spreadably
Delicious™

ON: WHOLE WHEAT,
MULTIGRAIN AND
BAKERY BREADS
BAGELS
ENGLISH MUFFINS
WAFFLES
TOAST
CROISSANTS...

61430892

nutella®

FERRERO

UD



Hazelnut Spread with Skim Milk & Cocoa

*The original
creamy,
chocolaty
hazelnut
spread™*

NET WT 26.5 OZ (750g)

nutella[®]
The original creamy, chocolaty hazelnut spread™

- **Made with over 100 Hazelnuts per Jar**
- **Contains No Artificial Colors**
- **Contains No Artificial Preservatives**

Visit us on the web at
www.NutellaUSA.com

Questions?
Call 1 (800) NUTELLA

Nutrition Facts

Serv Size 2 tbsp. (37g)
Servings about 20

Calories 190
Fat Cal 100

*Percent Daily Values (DV) are
based on a 2,000 calorie diet.

Amount/Serving	%DV*	Amount/Serving	%DV*
Total Fat 11g	17%	Total Carb. 22g	7%
Sat. Fat 3.5g	18%	Fiber 1g	5%
Trans Fat 0g		Sugars 21g	
Cholest. 0mg	0%	Protein 3g	
Sodium 15mg	0%		

Vitamin A 0% • Vitamin C 0% • Calcium 4% • Iron 4%

**DO NOT REFRIGERATE
OR MICROWAVE**



INGREDIENTS: SUGAR, MODIFIED PALM OIL, HAZELNUTS, COCOA, SKIM MILK, REDUCED MINERALS WHEY (FROM MILK), SOY LECITHIN: AN EMULSIFIER, VANILLIN: AN ARTIFICIAL FLAVOR.

MADE IN CANADA. EXCL. DIST.
FERRERO U.S.A., INC.
SOMERSET, NJ 08873

© FERRERO



61430893

EXHIBIT 3

Visit us on the web at
www.NutellaUSA.com

*The original
hazelnut spread®*

- Made with over 50 Hazelnuts per Jar
- Contains No Artificial Colors
- Contains No Artificial Preservatives

nutella®

FERRERO

®D



Hazelnut Spread with Skim Milk & Cocoa



0 09800 89500 7

NET WT 13 OZ (371g)

Questions? Call
1 (800) NUTELLA

61430122

5.0"
127mm

2.0"
50.8mm

4.75"
120.65mm

Start your day
with **nutella**[®]
spread...



**DO NOT REFRIGERATE
OR MICROWAVE**

Nutrition Facts

Serv Size 2 tbsp.(37g)
Servings about 10

Calories 200
Fat Cal 100

*Percent Daily Values (DV) are
based on a 2,000 calorie diet.

Amount/Serving	%DV*	Amount/Serving	%DV*
Total Fat 11g	17%	Total Carb. 22g	7%
Sat. Fat 3.5g	18%	Fiber 1g	6%
Trans Fat 0g		Sugars 21g	
Cholest. 0mg	0%	Protein 3g	
Sodium 15mg	1%		

Vitamin A 0% • Vitamin C 0% • Calcium 4% • Iron 4%

**An example of a tasty
yet balanced breakfast:**

a glass of skim milk,
orange juice and Nutella[®]
on whole wheat bread.

visit us at www.NutellaUSA.com

INGREDIENTS: SUGAR, PALM OIL, HAZELNUTS, COCOA,
SKIM MILK, REDUCED MINERALS WHEY (MILK), LECITHIN
AS EMULSIFIER (SOY), VANILLIN: AN ARTIFICIAL FLAVOR.

MADE IN CANADA,

EXCL. DIST.FERRERO U.S.A. INC.
SOMERSET, NJ 08873

© FERRERO



2.0"
50.8mm

61430132