

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRAFT FOODS GLOBAL, INC., :

Plaintiff, :

-against- :

INDEX NO. 10 CIV 09085 (Seibel)

STARBUCKS CORPORATION, :

Defendant. :

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SUPPLEMENTAL DECLARATION OF LORI ACKER [CORRECTED]

I, Lori Acker, declare based upon personal knowledge and investigation and under penalty of perjury that the following is true and correct:

1. I am the Sr. Director of Marketing, U.S. Premium Coffee & Tea for Kraft Foods Global, Inc. (“Kraft”) and have held this position since October 2008. Since June 2008, I have been responsible for managing Kraft’s U.S. relationship with Starbucks. Specifically, I oversee the day-to-day aspects of the CPG business with Starbucks, including, among other things, business performance, marketing (inclusive of advertising and promotions), sales, supply chain, innovation strategy and market research. I communicate on a daily basis with one or more Starbucks’ employees.

2. I have reviewed the declarations of Michele Waits and Larry Cronin that Starbucks filed with the Court on January 14, 2011.

3. Since 1998, Kraft has generated average annual revenue growth for its Starbucks CPG business of 20%, growing the business from under \$50 million in revenues to over \$500

million. From 2004 to 2010 the average annual growth rate (CAGR) has been 10%, driven by volume growth of 7%.¹

4. Since 1998 Kraft has grown the Starbucks share of the CPG coffee market by more than tenfold from 0.9% in 1998 to 10.6% in 2010. Starbucks market share increased every year other than 2008 and 2009. Today, Starbucks has 150% of the market share of any other premium competitor in the CPG coffee market.²

5. Ms. Waits' characterization of Kraft's performance in paragraphs 14-16 of her Declaration is misleading because it is based on a comparison of the performance of *all* of Starbucks Corporation (i.e., International and U.S., including the significant growth in the number of retail cafes worldwide, CPG, and Foodservice), to the performance of the CPG business after Kraft had reached full distribution (90% All Commodity Volume (ACV), a measurement of the breadth of a brand's distribution) with the Starbucks brand. This type of comparison naturally skews in favor of Starbucks, in part given their significant expansion in the number of retail café openings across the world.

6. A more meaningful comparison is same store sales by Starbucks in its U.S. retail cafes vs. Kraft's sales of Starbucks branded bagged coffee products in U.S. CPG channels. As Exhibit 2 illustrates, the net revenue growth in these two categories was the same in 2004, and since 2005, the net revenue growth of Starbucks bagged coffee in the CPG market has *outperformed* Starbucks U.S. Comparable Store Sales growth in every year.³

¹ See attached charts reflecting Kraft's growth of Starbucks' net revenue and market share over tenure of 12 year relationship, copies of which are attached as Ex. 1.

² See Exhibit 1.

³ See Chart comparing net revenue growth of Kraft U.S. CPG Business with Starbucks U.S. Store Sales, a copy of which is attached hereto as Ex. 2.

7. Even if we were to compare Starbucks Total U.S. business (includes Starbucks café businesses, which saw an 80% increase in U.S. store expansion from 6,177 stores at the end of 2004 to 11,131 at the end of 2010, CPG, and Foodservice) to sales by Kraft in U.S. CPG channels, Ms. Waits' statement about Kraft's performance is misleading. As Exhibit 3 illustrates, Starbucks outperformed Kraft in a few years, just as Kraft outperformed Starbucks in a few years. Overall, for the period from 2004-2010, Kraft's growth in net revenues for the Starbucks U.S. CPG Business was essentially the same as Starbucks U.S. net revenue growth (84% vs. 85%).⁴

8. Although the CPG business was not immune to the negative effects of the 2008-2009 economic downturn, Kraft took significant measures to counter those efforts. For instance, Kraft increased A&P (advertising and promotion) spending by 24% in 2009 and 19% in 2010. Kraft's efforts resulted in the strong growth of the CPG business in 2010: Revenues of Starbucks coffee products managed by Kraft grew at a rate of 8% in 2010 compared to 5% growth for total U.S. coffee sales.

9. Ms. Waits' statements concerning Kraft's 2008 price increase are not accurate. That price increase was the first one since 2005, and was needed to respond to a 9% increase in transfer costs from 2005-08. At the time, competing brands also raised prices. Starbucks should understand the reasoning behind the pricing action, as it recently has suggested to Kraft that it raise prices to customers now to compensate for a cost increase.⁵

⁴ See Chart comparing net revenue growth of Kraft and Starbuck for the period 2004-2010, a copy of which is attached hereto as Ex. 3.

⁵ See January 14, 2011 email from Jeff Hansberry to Deanie Elsner suggesting price increase, attached hereto as Ex. 4.

10. Kraft has consistently involved Starbucks in all aspects of the CPG business since the inception of the Kraft/Starbucks relationship. The members of the cross-functional teams supporting the Kraft/Starbucks CPG Business work extremely closely and collaboratively on every aspect of the business, including marketing, sales, supply chain, finance, and market research. This high level of collaborative involvement across both teams on a daily basis belies Ms. Waits' assertion that "Kraft has taken a high handed, dismissive approach" to the relationship. *See* Waits Decl. ¶ 11.

11. Starbucks' assertion on page 5 of its January 14, 2011 brief that "Kraft refused to allow Starbucks to participate fully in sales and marketing" is inaccurate. During a significant portion of the time that Ms. Waits has been involved with this business, she was working out of Kraft's offices in Tarrytown, NY (where Kraft's Coffee business team is based). From August 27, 2008 to September 28, 2009, Ms. Waits came to the Kraft office regularly to work, and had full access to Kraft's facilities and personnel.⁶ Ms. Waits' office was mere feet away from the entire cross functional team dedicated to the Starbucks' CPG Business. She interacted with Kraft's Starbucks team countless times each day on issues related to the business, including sales and marketing. She not only was involved in the numerous scheduled conference calls each week, but had complete, open access to stop into my office, or the office of others on my team, to discuss Starbucks issues. During that period, Ms. Waits never informed me that she believed she was excluded from any aspect of the business.

12. Following her move to Starbucks' offices in Seattle in late 2009, Ms. Waits continued to have almost daily contact with Kraft's cross-functional team.

⁶ *See* M. Waits building pass for Kraft, and an excerpt of key card access activity, copies of which are attached hereto as Ex. 5.

13. I personally traveled to Seattle with members of my team to meet with the Starbucks group 11 times during 2009-2010, often staying for several days of meetings with the Starbucks team. Starbucks team members also would travel to Tarrytown, as Kraft and Starbucks would take turns hosting meetings. I estimate that my Starbucks' counterparts traveled to Tarrytown an equal number of times during 2009-2010.

14. Apart from Ms. Waits' daily interactions with Kraft, the members of Kraft's team are in daily contact with their Starbucks' counterparts to address, among other things, marketing (inclusive of advertising and promotions), sales, finance, innovation, and other factors related to driving the business and its performance.

15. In a typical month, these interactions include updates on the business, answering questions, requesting approvals, and developing advertising/business strategies. As an example, during June 2010, Sivonne Davis, then Kraft Sr. Brand Manager of Starbucks, participated in approximately 82 hours of meetings with Starbucks, exchanged nearly 440 emails with Starbucks, fielded more than 70 requests from Starbucks, and sent more than 80 requests for approvals to Starbucks.⁷

16. Often, however, poor internal communications within the Starbucks organization created additional work for me and my team. On multiple occasions, we would respond to requests for information from one Starbucks person, only to have to respond to the same questions from another Starbucks individual. Furthermore, the Starbucks team experiences a high level of turnover, which required us to spend significant time to get those new Starbucks individuals up to speed and fully versed on the Kraft/ Starbucks CPG Business.

⁷ See representative examples of June 2010 meeting notices, email exchanges with Starbucks, requests for information and approval, collectively attached hereto as Exhibit 6.

17. In furtherance of open communication with Starbucks, Kraft provides numerous reports to Starbucks and the Kraft team holds daily, weekly, monthly and quarterly meetings with their Starbucks' counterparts in an effort to enhance the parties' business relationship and maximize the CPG business performance.

18. Moreover, Management Committee Meetings typically were positive and productive sessions with Starbucks in which the companies discussed the health of the business and confirmed direction moving forward. Since taking responsibility for the Kraft/ Starbucks CPG Business in June 2008, I have attended all 10 Management Committee Meetings, and at no time did Starbucks suggest that Kraft had breached the R&G Agreement. As Greg Price, then Vice President of Marketing for the Consumer Packaged Goods Group at Starbucks Corporation, stated in a November 4, 2009 email following a Management Committee Meeting: "Excellent mcm today . . .very productive discussions, and i have already heard very positive feedback and enthusiasm for the direction team is going from Terry, John, and Michelle Gass." John Culver, then President of Global Consumer Products and Foodservice at Starbucks Corporation, echoed Mr. Price's sentiments on November 8, 2009: "I also wanted to thank the entire team from both Kraft and Starbucks for a great meeting and more importantly for all of your efforts to get our packaged coffee business back on a positive growth track."⁸

19. Further, in an effort to assist Starbucks in better understanding consumer and marketplace trends, Kraft includes Starbucks in all market research efforts designed for the Starbucks' brands including focus groups, new product research, and advertising testing.

⁸ Copies of Mr. Price's and Mr. Culver's emails are attached hereto as Ex. 7.

20. Ms. Waits asserts that Kraft withheld certain “Brand Health Tracker” reports and failed to respond to a June 10, 2010 request for a list of “all research conducted in the previous year” on the Starbucks’ brands, *see* Waits Decl. ¶ 41. That is not true. On June 15, 2010 (less than three business days later), I responded to Mr. Price’s request and copied Ms. Waits on my email. The email confirms that Mr. Price had previously received copies of the reports he was requesting and also received the research list he requested.⁹

21. Starbucks has often praised the quality and efforts of Kraft’s team.¹⁰ Set forth below are positive comments that Kraft has received from Starbucks:

- In a May 26, 2010 email to Deanie Elsner, President of U.S. Beverages for Kraft Foods, re: Lori Acker, Greg Price stated, “You’ve got a great team and I especially want to call out Lori who has been on the “sharp end” during a time of major business challenges, but has remained throughout smart, passionate, focused and committed.”
- In a January 7, 2010 email to Sivonne Davis, Ms. Waits stated, “Just so you know, you have a big fan in Greg, he often comments on his respect for you, and was very pleased that we had such a productive session. Thanks in large parts to your efforts.”
- In a November 3, 2008 email to Sivonne Davis, Ms. Waits stated, “And thanks for 1) taking the time to review the current ‘09 budget and plans and 2) for pulling it together so quickly! You have been on the brand such a short

⁹ *See* June 15, 2010 email from L. Acker to G. Price, a copy of which is attached hereto as Ex. 8.

¹⁰ *See, e.g.*, representative emails discussed in ¶ 21 that reflect Starbucks’ praise of Kraft, collectively attached hereto as Ex. 9.

time and are already making a big impact. There was lots of positive feedback about you from the West Coast – hopefully you felt good karma coming from the phone.”

- In a February 16, 2010 email to Abby Coleman of Kraft, Ms. Waits stated, “With... your great connectivity with MGass [President of Seattle’s Best Coffee] – I think you and SBC are poised for really great results in the near future!!”
- In a July 31, 2009 email to Josh Kroo of Kraft, Ms. Waits stated, “While I know that this exercise was something like childbirth and Middle East peace negotiations, the fact that we were so quickly able to adopt the new campaign look to our marketing messages WHILE we developed new marketing messages for our 5&20-oz. product is quite extraordinary. It also took the patience of a saint to work through all of the last-minute comments and details. I want you to know that Greg was very happy with the outcome and we are very proud to launch these in-store. Thank you and congratulations!”

22. Starbucks repeatedly has acknowledged the effectiveness of Kraft’s collaborations with Starbucks.¹¹ For example:

- In a August 13, 2008 email to Lori Acker and Ms. Waits, Greg Price said, “I want to congratulate and thank you and your teams on a job well done. Today we had tough, honest, necessary, and I think very productive conversations driven by the work, thinking and preparation each of you have done. Know

¹¹ See, e.g., representative emails discussed in ¶ 22 that reflect Starbucks’ praise of the manner in which Kraft/Starbucks members worked collaboratively as one team, collectively attached hereto as Ex. 10.

it's been a hard journey, and that we yet have a ways to go, but I am proud and confident to be on the trip with you. You are making, and will make, a big difference in the face of big challenges.”

- In a October 24, 2008 email to Kraft and Starbucks team, Greg Price stated, “The analysis you’ve run is a big help in understanding ramifications and challenges...and I know a lot of work. There’s a lot that has to be done to get the business back on track...sometimes it feels like its too much coming too fast. I’m glad we’re in this together”

23. In short, Kraft highly values its contractual relationship with Starbucks and has treated Starbucks as a partner.

24. Kraft has exceeded the minimum A&P spending set forth in the contract in Starbucks’ fiscal year 2010 by 27.5%.

25. Although Kraft spent less than originally planned on trade for the quarter from October - December 2009, and it had the discretion to do so, Kraft increased trade spending for that year by +8%, which drove incremental sales in Food, Drug, Mass Channels by +19%. This reflects that Kraft not only added spending but also increased the effectiveness of that spend – in other words, by driving more sales per dollar spent.¹²

26. Kraft has invested well above the contractual requirements to support the business in all years except 2007 and 2008, when the parties expressly agreed to reduce A&P investment. *See* Acker Decl. (Dec. 21, 2010) ¶ 61.

¹² *See* Incremental Performance file, attached hereto as Ex. 11.

27. Further, Starbucks itself has asked Kraft to shift A&P spending from one quarter to another in an apparent effort to improve Starbucks' bottom line or to ensure that Starbucks' employees hit year-end performance goals and qualified for bonuses. For example:

- On June 1, 2009, Ms. Waits asked Kraft to shift A&P spending to enable Starbucks “to take it to its bottom line.”¹³
- On July 26, 2009, Greg Price reiterated Ms. Waits' request in an email, and stated, “we (Starbucks CPG) may be within a hair's breadth of hitting some key threshold objectives for the FY that impact bonuses, vesting of 401K's, and several other things for ALL of FSBCPG [refers to Starbucks Global Food Service and CPG business].”¹⁴
- On August 4, 2009, Mr. Price again asked Kraft to cut 2009 A&P spending: “My ask (prior to further live discussion) is that we don't start media until Oct 1. At the risk of sounding crass (but wanting to be totally transparent), we are literally on the razor edge of crossing a threshold that would impact not only the coffee team on this side, but whether the entire FSBCPG team is eligible for at least a small portion of a bonus, vesting of some target dependent options granted last year, and a few other things. Since there were no bonuses or raises last year, even achieving a small % of this means a lot on this side. We're looking under every rock for every \$, but

¹³ See June 1, 2009 email from M. Waits (Starbucks) to K. Glancy (Kraft) and S. Davis (Kraft), a copy of which is attached hereto as Ex. 12.

¹⁴ See July 26, 2009 email from G. Price (Starbucks) to S. Davis (Kraft), G. Jones (Starbucks) and L. Acker (Kraft), a copy of which is attached hereto as Ex. 13.

it appears it may come down to (literally) a few hundred K that makes the difference.”¹⁵

- In an August 26, 2009 email, Ms. Waits stated: “As we’re closing down our year, we have been asked to make sure that ANY volume we can push for and ANY costs that we can push out – we actively pursue. Poor sentence construction, but I think you know what I mean.... Greg [Price] had specifically asked us NOT to incur media costs in September. And I know that Gary had communicated that to you.”¹⁶

28. Representatives of Seattle’s Best Coffee (“SBC”) have likewise requested that Kraft cut spending in order to achieve year end performance goals.¹⁷

29. When CPG customers approach Kraft with promotional opportunities, Kraft presents these opportunities to Starbucks even when there may be a potential issue with Starbucks brand usage. In our experience, these programs are often highly incremental and drive even better business performance. Rather than immediately turn these customer programs down because of any possible issue regarding brand usage or Starbucks “guardrails,” we present the opportunities to Starbucks to try to find a solution that meets both CPG customer and Starbucks brand needs. In those instances where we can’t find that solution, we decline the opportunity.¹⁸

¹⁵ See August 4, 2009 email from G. Price (Starbucks) to S. Davis (Kraft), L. Acker (Kraft), a copy of which is attached hereto as Ex. 14.

¹⁶ See August 26, 2009 email from M. Waits (Starbucks) to S. Davis (Kraft) and G. Jones (Starbucks), a copy of which is attached hereto as Ex. 15.

¹⁷ See August 11, 2010 from E. Long (SBC) to A. Coleman and L. Acker and August 16, 2010 email from H. Caterson (SBC) to E. Long (SBC), A. Coleman (Kraft) and L. Acker (Kraft), copies of which are collectively attached hereto as Ex. 16.

¹⁸ See, e.g., October 6, 2010 email exchange between L. Robinson (Kraft Sr. Associate Brand Manager), M. Heineman (Starbucks), T. Alymer (Starbucks), N. Kalter (Kraft), C. Beach (Kraft) re: Weiss November

30. Kraft also solicits Starbucks input on and closely collaborates with Starbucks on all national advertising and consumer promotion efforts of the Starbucks brands.

31. In an average month, Kraft submits between 5-15 advertising and promotional pieces to Starbucks for its review and approval. For example, in October 2010, Kraft submitted 14 requests for approval.

32. Each of the five (5) advertising approval examples that Ms. Waits cites in paragraphs 18-31 of her declaration were specific CPG customer driven (not Kraft driven) promotional pieces.

33. Although the approval timeline for CPG customer driven promotional pieces is often accelerated because the CPG customer dictates the timeline, Kraft works diligently to involve Starbucks, and does not delay involving them once contacted by the customers. If Starbucks has concerns with the approval process and timing, it can always reject the business opportunity. As to the five promotions on which it focuses, Starbucks actually approved four, and rejected only one, the Publix, cookingwithkraft.com opportunity. Because that program was rejected, it did not include the Starbucks brands when it was activated.

34. Furthermore, the four CPG customer advertising examples that Starbucks approved *collectively* represent less than 1 % of Kraft's total annual A&P spend for the Starbucks brand. Indeed, the Safeway BCA program was only 0.06% of total A&P spend for the Starbucks brand. The Publix TV advertisement was 0.27% of total A&P spend for the Starbucks brand. The Kroger "Look What's New" ad was 0.28% of total A&P spend for the

Starbucks brand. The Safeway coupon book program was 0.07% of total A&P spend for the Starbucks brand. The four programs performed well, driving more than \$1 million in revenue.

35. I am aware that the R&G Agreement gives Starbucks the right to object to sales of any Starbucks branded products to any customer that Starbucks determines is detrimental to its brand positioning strategy.¹⁹

36. To my knowledge, Starbucks has never exercised its rights under the R&G Agreement by instructing Kraft to stop selling Starbucks branded products to any of Kraft's CPG customers because Starbucks was dissatisfied with the brand positioning employed by that CPG customer.

37. In contrast to the accelerated timeline often associated with CPG customer driven advertising, there is substantial lead time for national advertising program for the CPG business. For these Kraft driven programs, Kraft collaborates and consults extensively with Starbucks. For example, the Starbucks print magazine advertising in the "Burlap" campaign, which ran for 4 months in 2009, was planned and discussed with Starbucks over a seven (7) week period from late June to mid-August 2009. This print magazine campaign represented 4.9% of total A&P spend for the Starbucks brand. Kraft included Starbucks throughout, and incorporated Starbucks' feedback during the entire 7 week process from initial briefing through final creative.²⁰

38. Ms. Waits' testimony that Kraft "never provided Starbucks with monthly marketing or trade budgets" and only sometimes provided a spreadsheet with "little program

¹⁹ See R&G Agreement at ¶ 9(A)(iii), a copy of which is attached Ex. 2 to the Declaration of William P. Quinn (Doc. No. 22-2).

²⁰ See representative emails reflecting collaboration on "Burlap" print magazine campaign, attached collectively hereto as Ex. 18.

detail” is inaccurate. Waits Decl. ¶ 32. The budgets that I referenced in my December 21, 2010 Declaration are detailed and include multiple line items. For instance, in the budget sent to Starbucks and reviewed on October 16, 2009, Kraft provided details on programs ranging from the very small, \$3 thousand, to the large, \$3.2 million.²¹ Further, Kraft’s finance team also provides Starbucks with P&Ls quarterly, and breaks out trade spending during the annual joint planning process that it conducts with Starbucks.

39. Ms. Waits herself in a November 3, 2008 email to Sivonne Davis, praised Kraft for the budget information that was shared, stating, “And thanks for 1) taking the time to review the current ‘09 budget and plans and 2) for pulling it together so quickly!” *See* Exhibit 9(c).

40. Moreover, Kraft provided a full, detailed marketing plan to Starbucks on an annual basis, usually during a Management Committee Meeting (MCM) in the third or fourth quarter of each calendar year. Going back to at least 2007, these marketing plans were presented to the Starbucks team on or around the following dates: 2007 Marketing plan: presented August 4, 2006; 2008 Marketing plan: presented August 28, 2007; 2009 Marketing plan: presented August 13, 2008; 2010 Marketing plan: presented November 4, 2009; and 2011 Marketing plan: presented December 16, 2010.²²

41. The comprehensive marketing plans that Kraft provided were consistent with those created for other Kraft brands and included, among other items, information on key marketing objectives (such as penetration or buy rate plans), marketing strategies, target

²¹ *See* October 16, 2009 L. Robinson email and 2009 redacted SBUX Budget file, attached hereto as Ex. 19.

²² *See* cover pages for 2007, 2008, 2009, 2010, and 2011 Marketing Plans presented to MCM, collectively attached hereto as Ex. 20.

consumer definitions and insights, communication/advertising strategies, key customer marketing programs, and marketing/promotional tactics.

42. Kraft has made every reasonable effort to ensure that Starbucks' products are adequately stocked and featured in the stores of Kraft's customers. As a result, Starbucks dominates the Premium coffee section with customers holding an average of 35.9 Starbucks branded shelf slots, referred to as "facings" (number of front facing packages visible to consumers) in CPG.

43. Ms. Waits' statement that 42% of audited stores had at least one out of stock is misleading because the vast majority of those stores had only *one* out of stock item. Further, her statement ignores the overall stock levels of Starbucks branded products. The Starbucks brand has 35.9 facings and has a total of 16.5 average items carried. Given the number of Starbucks product facings, 97% of Starbucks branded products are on shelf and available at a given time.²³

44. Ms. Waits' statement that Starbucks led the initiative to launch Starbucks 20 oz. bagged coffee, Starbucks Natural Fusions line and Starbucks Pike Place Roast is inaccurate. As more fully set forth in paragraphs 67-71 of my December 21, 2010 Declaration, Starbucks often impaired Kraft's ability to grow the business through lack of innovation. Indeed, contrary to what Ms. Waits suggests, Kraft urged Starbucks for months, and, in some cases years to pursue innovation in the CPG channel. Kraft specifically called for the innovation behind 20 oz. bagged coffee, Starbucks Natural Fusions line, and Starbucks Pike Place Roast.

²³ See chart attached hereto as Ex. 21.

45. Starbucks Christmas Blend is a prime example of how Starbucks has hampered Kraft's efforts to grow the business. As discussed in my December 21, 2010 Declaration, although Kraft repeatedly sought the opportunity to sell Christmas Blend, Starbucks' No. 1 selling bagged coffee in cafes, in the CPG channel, Starbucks rebuffed our efforts to do so, including to one of Kraft's largest, valued CPG customers.

46. Flavored Coffee is another key example of how Starbucks stymied Kraft's ideas for innovation. Based on information and belief, Kraft had been requesting a Starbucks CPG flavored Coffee for years. For instance, an email from December 6, 2006 shows that Kraft's New Product group reviewed concept ideas for a Starbucks flavored coffee product ("Choffee") with the Starbucks team.²⁴ Starbucks initially did not embrace this idea.

47. Kraft continued to pursue the flavored coffee idea with Starbucks for the next few years. In May 2009, Kraft developed flavored coffee concepts and conducted marketing research to validate its belief that premium flavored coffee represented a tremendous business potential. Kraft shared the results of that marketing research with Starbucks.²⁵

48. On June 25, 2009, an innovation summit was set up by Kraft and held at Starbucks' offices in Seattle during which Kraft presented the flavored coffee idea and offered R&D support. I attended this meeting along with my colleague, Frank Sabella, Vice President of Kraft Research, Development and Quality for US Beverages, along with 4 other members of Kraft's Coffee R&D team.²⁶

²⁴ See December 6, 2006 e-mail exchange between Helene Bates and Marigrace Lalli, attached hereto as Ex. 22.

²⁵ See May 21, 2009 email from S. Burnett summarizing market research, attached hereto as Ex. 23.

²⁶ See June 23, 2009 email from Y. Hernandez (Kraft) to, among others, L. Acker and T. Gibson re: SBUX Flavored Coffee Technical Summit Deck, a copy of which (without the attachment) is attached hereto as Ex. 24.

49. On July 23, 2009, another R&D meeting was held at Starbucks' Seattle office, during which Kraft committed to continue to provide R&D support to Starbucks.²⁷

50. On August 19, 2009 a meeting was held with Howard Schultz about the flavored coffee idea, and Mr. Schultz approved moving forward with a premium flavored coffee, which ultimately became known as Natural Fusions.²⁸

51. At a Management Committee Meeting that I attended on January 14, 2010 in Seattle, Starbucks, specifically, Howard Schultz, put a hold on the Natural Fusions project as a result of his concerns over Starbucks' PR plan for the product. Starbucks specifically instructed Kraft not to speak to customers about the new Natural Fusions project.

52. It was not until March 15, 2010 that Kraft was able to talk to its CPG customers and sell-in the new premium flavored Natural Fusions coffee.²⁹ Because of the prohibition on speaking to CPG customers Kraft missed the shelf re-set window with Kroger and as a consequence Natural Fusions was not available in Kroger stores until seven months later when Kroger had its next shelf re-set window.

53. Kraft launched Natural Fusions in the CPG segment in May 2010.³⁰

54. Ms. Waits testimony that Starbucks led the initiative to introduce Pike Place Roast ("PPR") to CPG customers is also inaccurate. As stated in paragraph 68 of my December 21, 2010 Declaration, Kraft sought permission on a near monthly basis to launch Pike Place

²⁷ See July 23, 2009 email from T. Gibson (Kraft) summarizing the R&D Kraft-Starbucks meeting, attached hereto as Ex. 25.

²⁸ See August 19, 2009 email from M. Pandher (Starbucks) to, among others, L. Acker, attached hereto as Ex. 26.

²⁹ See March 3, 2010 L. Acker email, attached hereto as Ex. 27.

³⁰ See "Starbucks Adds a Few Doses of Flavor to Perk Up Its Packaged-Coffee Sales", Ad Age, September 20, 2010 (interviewing Ms. Waits, and noting that Natural Fusions was "created in partnership with Kraft"). A copy of this article is attached as Ex. 28.

Roast into CPG. However, Starbucks delayed its approval for almost a full year. In 2010, Pike Place Roast delivered nearly \$10 million in net revenue.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct based upon my investigation and to the best of my knowledge, information and belief.

Executed on January 24, 2011.



Lori Acker