industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on September 1, 2020 (85 FR 54404) and determined on December 7, 2020 that it would conduct expedited reviews (86 FR 18295, April 8, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 29, 2021. The views of the Commission are contained in USITC Publication 5190 (April 2021), entitled *Boltless Steel Shelving Units Prepackaged for Sale from China: Investigation Nos. 701–TA–523 and 731–TA–1259 (Review).*

By order of the Commission.

Issued: April 29, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–09429 Filed 5–4–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Stone Canyon Industries Holdings LLC, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Stone Canyon Industries Holdings LLC,* Civil Action No. 21–cv–01067. On April 19, 2021, the United States filed a Complaint alleging that the acquisition of Morton Salt, Inc. by SCIH Salt Holdings Inc. (''SCIH'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires SCIH to divest its US Salt LLC subsidiary.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 Fifth Street N.W., Suite 8700, Washington, DC 20530. Plaintiff, v. *STONE CANYON INDUSTRIES HOLDINGS LLC,* 1875 Century Park East, Suite 320, Los Angeles, CA 90067, *SCIH SALT HOLDINGS INC.,* 10995 Lowell Avenue, Suite 500, Overland Park, KS 66210, *K+S AKTIENGESELLSCHAFT* Bertha-von-Suttner-Str. 7, 34131 Kassel, Hesse, Germany, and *MORTON SALT, INC.,* 444 West Lake Street, Suite 300, Chicago, IL 60606, Defendants.

Civil Action No.: 1:21–cv–01067–TJK

Judge Timothy J. Kelly

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Stone Canyon Industries Holdings LLC (''Stone Canyon''), SCIH Salt Holdings Inc. (''SCIH''), K+S Aktiengesellschaft (''K+S AG''), and Morton Salt, Inc. (''Morton'') to enjoin SCIH's proposed acquisition of assets including Morton from K+S AG. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to a Transaction Agreement dated October 5, 2020, SCIH intends to acquire assets including Morton from K+S AG for approximately $3.2 billion. As a result of the acquisition, SCIH would control both Morton and US Salt, which are the largest suppliers of certain evaporated salt products in the United States.

2. Together, Morton and US Salt would have a monopoly in the United States and Canada for pharmaceutical-grade salt, the purest grade of evaporated salt, which is used to make life-saving treatments and products for patients in need of dialysis fluid, intravenous saline solution, or other medical products.

3. Additionally, Morton and US Salt are two of only three companies that supply U.S. households with ''round-can'' table salt, a type of evaporated salt that is sold in 26-ounce round containers with a metal spout and used to flavor food.

4. Morton and US Salt are also two of only three major suppliers in the northeastern United States of bulk evaporated salt, which is used by food processors and chemical manufacturers to make pre-packaged food and everyday cleaning products.

5. Today, customers benefit from competition between Morton and US Salt in the form of lower prices, higher quality products, and/or improved service. The proposed transaction would eliminate this competition, driving the opposite result: Higher prices, lower quality products, and poorer service for customers of pharmaceutical-grade salt in the United States and Canada, for customers of round-can table salt in the United States, and for customers of bulk evaporated salt in the northeastern United States.

6. Accordingly, SCIH's acquisition of Morton would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. The Parties and the Transaction

7. K+S AG is a chemical company headquartered in Kassel, Germany. In 2020, K+S AG reported revenues of approximately $4.4 billion. K+S AG's Operating Unit Salt Americas business includes Morton as well as K+S Windsor Salt, which sells salt products in Canada, and Sociedad Punta de Lobos, which sells salt products in Chile.

8. Morton is a K+S AG subsidiary with approximately $1 billion in revenue in 2020. Morton is the largest supplier of pharmaceutical-grade salt in the United States and Canada, the largest supplier of round-can table salt in the United States, and one of only three suppliers of bulk evaporated salt in the northeastern United States.

9. Stone Canyon is an industrial holding company incorporated in Delaware and headquartered in Los Angeles, California. Stone Canyon acquired Kissner Group Holdings LP, which it later renamed SCIH, in April 2020.

10. SCIH is a subsidiary of Stone Canyon and is headquartered in Overland Park, Kansas. In 2020, SCIH had revenues of approximately $1 billion. SCIH is a leading supplier of salt products, including evaporated salt.

11. US Salt, a subsidiary of SCIH with approximately $95 million in revenues

in 2020, is the nation's second-largest supplier of pharmaceutical-grade salt in the United States and Canada, the second-largest supplier of round-can table salt in the United States, and one of only three suppliers of bulk evaporated salt in the northeastern United States.

12. Pursuant to a Transaction Agreement dated October 5, 2020, SCIH agreed to acquire K+S AG's Operating Unit Salt Americas business, including Morton, for approximately $3.2 billion.

III. Jurisdiction and Venue

13. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

14. Defendants' activities substantially affect interstate commerce. Defendants sell pharmaceutical-grade salt and round-can table salt throughout the United States and bulk evaporated salt throughout the northeastern United States. This Court has subject matter jurisdiction over this matter pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

15. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b) and (c)(2), for Stone Canyon, SCIH, and Morton, and venue is proper for K+S AG, a German corporation, under 28 U.S.C. 1391(c)(3).

IV. Relevant Markets

A. Relevant Product Markets

16. Morton and SCIH's US Salt subsidiary both produce and sell evaporated salt. Evaporated salt is a type of sodium chloride produced through ''vacuum evaporation.'' In the vacuum evaporation process, water is pumped into a salt deposit where the salt dissolves, and the resulting brine is forced into an evaporator on the surface where it is boiled in a series of pans until only the salt remains. Evaporated salt is nearly 100% sodium chloride and contains almost no other trace minerals. Because of the evaporation process, individual grains of evaporated salt are also more consistent and regularly shaped than other forms of salt.

17. Evaporated salt is distinct from salt created through other production methods, such as rock salt and solar salt. Rock salt is mined and then crushed into smaller sizes before being transported to the surface. Rock salt is less expensive to produce than evaporated salt, but it is also coarser, irregularly shaped, and contains other minerals and impurities. As a result, rock salt is used for applications that have less demanding quality requirements such as de-icing roads. Solar salt is created when salt water is captured in shallow ponds where the sun evaporates most of the water. It can only be produced in warm climates where the evaporation rate exceeds the precipitation rate. Solar salt is less pure and not as uniform in shape as evaporated salt, but it is purer than rock salt. Solar salt is used for applications such as water softening.

18. Evaporated salt typically is used in applications that require the highest quality of salt, such as human consumption. There are different types of evaporated salt that have different characteristics, end uses, and customers. Three types of evaporated salt produced by Defendants constitute relevant product markets—pharmaceutical-grade salt, round-can table salt, and bulk evaporated salt.

i. Pharmaceutical-Grade Salt

19. Pharmaceutical-grade salt is the grade of salt with the highest percentage of sodium chloride and thus is the purest grade of evaporated salt. Pharmaceutical-grade salt is used in the pharmaceutical industry as a building block for a number of life-saving treatments and products, including dialysis fluid, intravenous saline solution, and other medical products. Pharmaceutical-grade salt must be evaporated from salt deposits of extremely high purity and then undergo post-production processing to ensure that it contains virtually no trace minerals or other impurities.

20. Because of these stringent standards, the mining and production process for pharmaceutical-grade salt must be extensively monitored and documented to ensure purity and consistency across production batches. This documentation must then be provided to customers as a validation of the quality and purity of the pharmaceutical-grade salt.

21. Rock salt and solar salt do not meet the purity requirements for pharmaceutical-grade salt. Other grades of evaporated salt—for example, salt used in food processing—also cannot serve as a substitute for pharmaceutical-grade salt. Pharmaceutical-grade salt must contain a higher percentage of sodium chloride than other types of evaporated salt. This ensures that it does not contain trace minerals that would impact the efficacy of pharmaceutical products made using pharmaceutical-grade salt. Pharmaceutical-grade salt also cannot contain additives such as anti-caking agents that are added during the processing of other types of evaporated salt. Because of these requirements, pharmaceutical-grade salt is more difficult to produce than other forms of evaporated salt.

22. In the event of a small but significant increase in price by a hypothetical monopolist of pharmaceutical-grade salt, substitution away from pharmaceutical-grade salt would be insufficient to render the price increase unprofitable. Pharmaceutical-grade salt is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. 18.

ii. Round-Can Table Salt

23. Table salt is evaporated salt that is processed for human consumption. It is regulated by the Food and Drug Administration (''FDA'') and must meet high purity standards. Table salt also has a highly consistent size across granules and contains agents to prevent clumping and evaporation. Without additional processing—which raises price considerably—rock salt and solar salt cannot meet the same purity requirements or achieve the same consistent granule size as table salt. Pharmaceutical-grade salt meets the purity requirements for table salt but does not contain the necessary agents to prevent clumping and evaporation. As such, rock salt, solar salt, and pharmaceutical-grade salt are not substitutes for table salt.

24. In the United States, the packaging format strongly preferred by consumers for table salt is the round can, which is a 26-ounce cardboard cylinder with a paper label and a metal spout. The round-can's size, shape, material, and metal spout make it an easy receptacle to use one-handed without spilling while cooking or refilling a salt shaker, which is a product characteristic that is highly valued by consumers. Reflecting consumer preference, retailers like grocery stores dedicate shelf space specifically to round-can packaging. As a result, approximately 95% of the table salt sold to consumers in the United States is sold in a round can.

25. Table salt packaged in other containers, such as boxes or bags, is not a reasonable substitute for round-can table salt. Boxes without a metal spout and bags are more difficult to use and store and may spill once opened. Larger packages of table salt also are not reasonable substitutes for round-can table salt, as they contain significantly more salt than an individual can practically use.

26. In the event of a small but significant increase in price by a hypothetical monopolist of round-can table salt, substitution away from round-can table salt would be insufficient to render the price increase unprofitable. Round-can table salt is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. 18.

iii. Bulk Evaporated Salt

27. Bulk evaporated salt is salt that is of sufficient purity to be used for human consumption that is sold in bulk form. Bulk evaporated salt is used to manufacture chemicals necessary to create essential everyday cleaning products such as disinfectants, soap, and bleach. Bulk evaporated salt is also an essential ingredient in nearly all processed pre-packaged foods, such as sauces, chips and other snacks, and frozen meals. Because bulk evaporated salt is incorporated into products end-consumers ingest or touch, it is regulated by the FDA and must meet stringent purity requirements.

28. Customers for bulk evaporated salt include chemical companies and large pre-packaged food manufacturers as well as smaller customers, such as bakeries, that use salt as an essential ingredient in their food products. To accommodate these customers, many of whom purchase thousands of tons of salt per year, evaporated salt is sold in bulk, by the truckload or in containers ranging from 50-pound bags to 2,000-pound ''super-sacks.''

29. Bulk evaporated salt is distinct from evaporated salt used for other applications. Compared to other types of evaporated salt, it has unique end-uses, customers, and packaging. While pharmaceutical-grade salt and round-can table salt are of sufficient purity, they are priced too high and packaged in quantities that are too small to serve as substitutes for bulk evaporated salt. Bulk evaporated salt also is distinct from rock salt and solar salt, which have lower purity levels and non-uniform textures that make them unsuitable for chemical and food-production end uses. None of these types of salt can serve as a substitute to bulk evaporated salt.

30. In the event of a small but significant increase in price by a hypothetical monopolist of bulk evaporated salt, substitution away from bulk evaporated salt would be insufficient to render the price increase unprofitable. Bulk evaporated salt is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. 18.

B. Relevant Geographic Markets

i. Pharmaceutical-Grade Salt

31. Pharmaceutical-grade salt is manufactured in only a few locations in the United States. From these locations, pharmaceutical-grade salt is shipped to customers throughout the United States and Canada.

32. While pharmaceutical-grade salt is shipped throughout the United States and Canada, shipping it from overseas is prohibitively expensive. This is because pharmaceutical-grade salt may not contain anti-caking agents. Without anti-caking agents, pharmaceutical-grade salt has a short shelf-life and may be damaged by the time and rigors of ocean-shipping. These limitations make ocean-shipping cost-prohibitive.

33. A hypothetical monopolist of pharmaceutical-grade salt in the United States and Canada could profitably impose a small but significant non-transitory increase in price for pharmaceutical-grade salt without losing sufficient sales to render the price increase unprofitable. Accordingly, the relevant geographic market for the purposes of analyzing the effects of the acquisition on pharmaceutical-grade salt under Section 7 of the Clayton Act, 15 U.S.C. 18, is the United States and Canada.

ii. Round-Can Table Salt

34. Competition among round-can table salt suppliers occurs at a national level. Retailers, many of which are grocery store chains, mass merchandisers, or convenience stores with large national footprints, purchase round-can table salt for all of their locations at once, and suppliers ship round-can table salt from coast to coast.

35. Round-can table salt is not imported from outside the United States. In addition to being heavy—and therefore expensive to transport—table salt in other countries is typically sold in bags or cardboard boxes. As such, foreign suppliers of table salt typically lack the production facilities to produce round cans for the United States market.

36. A hypothetical monopolist of round-can table salt in the United States could profitably impose a small but significant non-transitory increase in price for round-can table salt without losing sufficient sales to render the price increase unprofitable. Accordingly, the relevant geographic market for the purposes of analyzing the effects of the acquisition on round-can table salt under Section 7 of the Clayton Act, 15 U.S.C. 18, is the United States.

iii. Bulk Evaporated Salt

37. Bulk evaporated salt is a product that can be produced at a relatively low cost, but it is heavy and therefore expensive to transport. As a result, customers purchase from nearby suppliers to minimize shipping costs that can be high relative to the value of the bulk evaporated salt being purchased.

38. Both Morton and US Salt—along with only one other competitor—operate bulk evaporated salt production facilities in upstate New York. All three companies use these facilities to service customers in the northeastern United States, including Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Customers in the northeastern United States can economically procure bulk evaporated salt from only these three locations. Other more distant bulk evaporated salt facilities cannot compete successfully on a regular basis for customers in the northeastern United States because the suppliers are too far away, making transportation costs too great.

39. A hypothetical monopolist of bulk evaporated salt in the northeastern United States could profitably impose a small but significant non-transitory increase in price for bulk evaporated salt without losing sufficient sales to render the price increase unprofitable. Accordingly, the relevant geographic market for the purposes of analyzing the effects of the acquisition on bulk evaporated salt under Section 7 of the Clayton Act, 15 U.S.C. 18, is the northeastern United States.

V. Anticompetitive Effects

40. The proposed transaction would lessen competition and harm customers for pharmaceutical-grade salt in the United States and Canada, round-can table salt in the United States, and bulk evaporated salt in the northeastern United States by eliminating the substantial head-to-head competition that currently exists between Morton and US Salt. Customers in each of these markets would pay higher prices and receive lower quality and service as a result of the acquisition.

A. Pharmaceutical-Grade Salt in the United States and Canada

41. Morton and US Salt are the only two suppliers of pharmaceutical-grade salt in the United States and Canada, with Morton currently having a market share of around 77% and US Salt a share of around 23%. The acquisition would thus give the combined firm a monopoly in the sale of pharmaceutical-

grade salt in the United States and Canada, leaving pharmaceutical companies and other customers without a competitive alternative for this critical ingredient in dialysis fluid, intravenous saline solution, and other medical products.

42. Morton and US Salt compete to sell pharmaceutical-grade salt on the basis of quality and surety of supply. This competition has resulted in higher quality, lower prices, and better customer service. The combination of Morton and US Salt would eliminate this competition and its future benefits to customers, including pharmaceutical companies. Post-acquisition, the combined Morton and US Salt likely would have the incentive and ability to increase prices and offer less favorable contractual terms.

43. The proposed acquisition, therefore, likely would substantially lessen competition in the production of pharmaceutical-grade salt in the United States and Canada in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

B. Round-Can Table Salt in the United States

44. Morton and US Salt are two of the largest table salt suppliers in the United States and are two of only three suppliers of round-can table salt in the United States. Morton is the largest supplier of branded round-can table salt in the United States. US Salt is the largest supplier of private-label round-can table salt—which is made by US Salt but sold under the brands of retailers and other third-parties—in the United States. US Salt is also the second-largest supplier of branded round-can table salt, with around six percent of sales.

45. Today, US Salt's private-label and branded round-can table salt products compete directly with Morton's branded round-can table salt. Together, the combined firm would control at least 90% of the round-can table salt market in the United States.

46. The combination of Morton and US Salt would eliminate the head-to-head competition between Morton and US Salt and leave customers in the United States with only two alternatives for round-can table salt in the United States. Post-acquisition, the combined firm likely would have the incentive and ability to increase prices and offer less favorable contractual terms.

47. Morton and US Salt compete for sales of round-can table salt on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and more reliable delivery. The combination of Morton and US Salt would eliminate this competition and its future benefits to customers, including grocery chains, big box stores, and discount stores.

48. The proposed acquisition, therefore, likely would substantially lessen competition in the production of round-can table salt in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Bulk Evaporated Salt in the Northeastern United States

49. Three bulk evaporated salt suppliers—Morton, US Salt, and one additional competitor, each with production facilities in upstate New York—compete for bulk evaporated salt customers in the northeastern United States. The combination of Morton and US Salt would eliminate the head-to-head competition between the parties and result in only two remaining competitors in the region.

50. Bulk evaporated salt customers in the northeastern United States, including food processors and chemical manufacturers, have been able to secure lower prices and improved quality and service—such as more reliable delivery—by threatening to switch between Morton and US Salt. The elimination of this head-to-head competition would allow a combined Morton and US Salt to exercise market power to unilaterally increase prices and reduce the quality and service for bulk evaporated salt customers in the northeastern United States.

51. The proposed acquisition, therefore, likely would substantially lessen competition in the production of bulk evaporated salt in the northeastern United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

VI. Entry

A. Difficulty of Entry Into Pharmaceutical-Grade Salt in the United States and Canada

52. Entry of new competitors into pharmaceutical-grade salt in the United States would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

53. A potential pharmaceutical-grade salt entrant would need to acquire suitable land that includes a salt deposit of sufficient purity, obtain the permits necessary to construct an evaporation and processing facility, possess or obtain appropriate financing for a significant capital expenditure, and then design, construct, and qualify the facility. This process would likely take several years, at a minimum. No new evaporated salt facility has been constructed in the United States in over 20 years.

54. Even if an entrant was able to construct an evaporated salt production facility, before selling a single grain of pharmaceutical-grade salt, it would need to install and test additional equipment needed to meet the exacting purity requirements for pharmaceutical-grade salt. Reputational barriers make entry even more difficult, as customers would be reluctant to switch to an unproven supplier that could not guarantee access to high-quality pharmaceutical-grade salt. Thus, entry would not be timely, likely, or sufficient to mitigate the anticompetitive effects from SCIH's proposed acquisition of Morton.

B. Difficulty of Entry Into Round-Can Table Salt in the United States

55. Entry of new competitors into round-can table salt in the United States would be difficult and time-consuming and is unlikely to prevent the anticompetitive effects that are likely to result if the proposed transaction is consummated.

56. Even though table salt has lower purity requirements than pharmaceutical-grade salt, a round-can table salt entrant would still need to take all of the steps to construct a facility that a pharmaceutical-grade salt entrant would, including locating an appropriate salt deposit, and investing significant time and money to build the facility.

57. In addition, an entrant in round-can table salt would have to secure a round-can packaging line. The packaging process for round-can table salt, created decades ago, is based on technology from that era and has proven to be difficult to replicate in a price-competitive manner. As a result, potential entrants with access to suitable salt deposits have tried, and failed, to develop round-can packaging technology in the last five years.

58. Entry through the construction of a new round-can table salt facility therefore will not be timely, likely, or sufficient to mitigate the anticompetitive effects of SCIH's proposed acquisition of Morton.

C. Difficulty of Entry Into Bulk Evaporated Salt in the Northeastern United States

59. Entry of new competitors into bulk evaporated salt in the northeastern United States would be difficult and time-consuming and is unlikely to prevent the harm to competition that is

likely to result if the proposed transaction is consummated.

60. Just as with pharmaceutical-grade salt or round-can table salt, a new entrant in bulk evaporated salt would need to invest significant time and money to acquire land and construct an evaporated salt processing facility. Entry into bulk evaporated salt in the northeastern United States is particularly difficult because this area has limited salt deposits, which are necessary serve the market.

61. Entry through the construction of a new bulk evaporated salt production facility will therefore not be timely, likely, or sufficient to mitigate the anticompetitive effects from SCIH's proposed acquisition of Morton.

VII. Violations Alleged

62. SCIH's proposed acquisition of Morton is likely to substantially lessen competition in the production and sale of evaporated salt products, including pharmaceutical-grade salt in the United States and Canada, round-can table salt in the United States, and bulk evaporated salt in the northeastern United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

63. The acquisition will likely have the following anticompetitive effects, among others, in the relevant markets:

a. Actual and potential competition between Morton and US Salt will be eliminated;

b. competition generally will be substantially lessened; and

c. prices will likely increase and quality and the level of service will likely decrease.

VIII. Request for Relief

64. The United States requests that this Court:

a. Adjudge and decree SCIH's acquisition of Morton to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. preliminarily and permanently enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition by SCIH of Morton or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Morton with US Salt;

c. award the United States the costs for this action; and

d. grant the United States such other relief as the Court deems just and proper.

Dated: April 19, 2021
Respectfully submitted,
COUNSEL FOR PLAINTIFF UNITED STATES:

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* LEAD ATTORNEY TO BE NOTICED

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *STONE CANYON INDUSTRIES HOLDINGS LLC; SCIH SALT HOLDINGS INC; MORTON SALT, INC.;* and *K+S AKTIENGESELLSCHAFT,* Defendants.

Civil Action No.: 1:21–cv–01067–TJK
Judge Timothy J. Kelly

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on April 19, 2021;

And whereas, the United States and Defendants, Stone Canyon Industries Holdings LLC (''Stone Canyon''); SCIH Salt Holdings Inc. (''SCIH''); Morton Salt, Inc. (''Morton''); and K+S Aktiengesellschaft (K+S AG''), have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, Defendants agree to make a divestiture to remedy the loss of competition alleged in the Complaint;

And whereas, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Stone Canyon'' means Defendant Stone Canyon Industries Holdings LLC, a Delaware limited corporation with its headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, including SCIH, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''SCIH'' means Defendant SCIH Salt Holdings Inc., an affiliate of Stone Canyon and a Delaware corporation with its headquarters in Overland Park, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents and employees.

C. ''US Salt'' means US Salt LLC, a Delaware limited liability company with its headquarters in Overland Park, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. US Salt is an indirect, wholly-owned subsidiary of SCIH.

D. ''K+S AG'' means Defendant K+S Aktiengesellschaft, a German company with its headquarters in Hesse, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Morton'' means Defendant Morton Salt, Inc., a Delaware corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Acquirer'' means the entity to which Defendants divest the Divestiture Assets.

G. ''Divestiture Assets'' means all of Defendants' rights, titles, and interests in US Salt, including:

1. The refinery and associated acreage located at 3580 Salt Point Road, Watkins Glen, NY 14891;

2. the leased warehouse located at 224 N Main Street, Horseheads, NY 14845;

3. all other real property, including fee simple interests and real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

4. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

5. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

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

7. 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, and (e) drawings, blueprints, and designs;

8. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

9. 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, and (d) rights in internet websites and internet domain names.

Provided, however, that the assets specified in Paragraphs (G)(1)–(9) above do not include (a) any trademarks, trade names, commercial names, doing business as (''d/b/a'') names, service marks, or service names containing the name ''Kissner'' or (b) the SCIH enterprise licenses for Adobe Acrobat, Atera, Microsoft Office 365, Mitel, Team Viewer, Ultipro, and Webroot.

H. ''Divestiture Date'' means the date on which the Divestiture Assets are divested to Acquirer pursuant to this Final Judgment.

I. ''Including'' means including but not limited to.

J. ''Relevant Personnel'' means all full-time, part-time, or contract employees involved in the production or sale of evaporated salt, wherever located, for (1) US Salt, or (2) SCIH. *Provided, however,* that Relevant Personnel does not include (a) employees of SCIH engaged in human resources, legal, information technology, or other general or administrative support functions; or (b) any SCIH employee with the title Senior Vice President or higher.

K. ''Transaction'' means the proposed acquisition of Morton by SCIH.

III. Applicability

A. This Final Judgment applies to Stone Canyon, SCIH, Morton, and K+S AG, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within 120 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total and will notify the Court of any extensions.

B. Defendants must use best efforts to divest the Divestiture Assets as expeditiously as possible and may not take any action to impede the permitting, operation, or divestiture of the Divestiture Assets. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

C. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business in the production and sale of evaporated salt products and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

D. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability, including the necessary managerial, operational, technical, and financial capability, to compete effectively in the production and sale of evaporated salt products.

E. The divestiture must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, lower Acquirer's efficiency, or otherwise interfere in the ability of the Acquirer to compete effectively in the production and sale of evaporated salt products.

F. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

G. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental,

zoning, and other permitting documents and information relating to the Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Divestiture Assets that customarily would be provided as part of a due-diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

H. Defendants must cooperate with and assist Acquirer in identifying and, at the option of Acquirer, hiring all Relevant Personnel, including:

1. Within 10 business days following the filing of the Complaint in this matter, Defendants must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, Defendants must provide to Acquirer and the United States additional information relating to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. Defendants also must provide to Acquirer and the United States current and accrued compensation and benefits, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed bonus any retention agreement or incentives, and any other payments due, compensation or benefit accrued, or promises made to the Relevant Personnel. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Relevant Personnel unless: (a) The offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to October 5, 2020; or (b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire six months after the Divestiture Date.

5. For Relevant Personnel who elect employment with Acquirer within six months of the Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights that those Relevant Personnel have fully or partially accrued, provide any pay pro-rata, provide all other compensation and benefits that those Relevant Personnel have fully or partially accrued, and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the production and sale of evaporated salt products and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the Divestiture Date, Defendants may not solicit to rehire Relevant Personnel who were hired by Acquirer within six months of the Divestiture Date unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants may solicit to re-hire that individual. Nothing in this Paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

I. Defendants must warrant to Acquirer that (1) the Divestiture Assets will be operational and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets; and (3) Defendants have disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and relationships (or portions of such contracts, agreements, and relationships) included in the Divestiture Assets, including all supply and sales contracts, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

K. Defendants must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Divestiture Assets. Until Acquirer obtains the necessary licenses, registrations, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendants must enter into a contract to provide transition services for back office, human resource, and information technology services and support for US Salt for a period of up to 12 months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendment to or modification of any provision of a contract for transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of this contract for transition services, for a total of up to an additional six months. If Acquirer seeks an extension of the term of any contract for transition services, Defendants must notify the United States in writing at least three months prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon 30 days' written notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

M. If any term of an agreement between Defendants and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment then, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV.A, Defendants

must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required by Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, that are approved by the United States, in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the date of the sale of the assets sold by the divestiture trustee, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Stone Canyon or SCIH and the trust will then be terminated.

H. Defendants must use best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) The divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive agreement to divest the Divestiture Assets, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of the proposed divestiture. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of the notice required by Paragraph VI.A, the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within 15 calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B, whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether the United States, in its sole discretion, objects to the proposed Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.C of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C, a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the United States Department of Justice's Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

F. If at the time a person furnishes information or documents to the United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. Financing

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets.

VIII. Asset Preservation and Hold Separate

Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court.

IX. Affidavits

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture required by this Final Judgment has been completed, each Defendant must deliver to the United States an affidavit signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail the fact and manner of that Defendant's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit must include: (1) The name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets, and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of the filing of the Complaint in this matter, each Defendant must deliver to the United States an affidavit signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail all actions that Defendants have taken and all steps that Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant makes any changes to the actions and steps described in affidavits provided pursuant to Paragraph IX.D, the Defendant must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to comply with Section VIII until one year after the divestiture has been completed.

X. Compliance Inspection

A. For the purpose of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation and Hold Separate Stipulation and Order, or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. To have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

C. No information or documents obtained by the United States pursuant to this Section X may be divulged by the

United States to any person other than an authorized representative of the executive branch of the United States except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XI. Firewalls

A. For a period of two years following the filing of this Proposed Final Judgment, Stone Canyon and SCIH must implement and maintain procedures to prevent any employees of Stone Canyon and SCIH from sharing competitively sensitive information relating to US Salt with personnel with responsibilities relating to Morton's production or sale of evaporated salt products.

B. Stone Canyon and SCIH, within 30 calendar days of the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order, must submit to the United States a document setting forth in detail the procedures implemented to effect compliance with this Section XI. Upon receipt of the document, the United States will inform Stone Canyon and SCIH within 10 business days whether, in its sole discretion, the United States approves or rejects Stone Canyon and SCIH's compliance plan. Within 10 business days of receiving a notice of rejection, Stone Canyon and SCIH must submit a revised compliance plan. The United States may request that the Court determine whether Stone Canyon and SCIH's proposed compliance plan fulfills the requirements of Paragraph XI.A.

XII. Limitations on Reacquisition

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce the Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and continuation of this Final Judgment no longer is necessary or in the public interest.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment, and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. *STONE CANYON INDUSTRIES HOLDINGS LLC; SCIH SALT HOLDINGS INC; MORTON SALT, INC.;* and *K+S AKTIENGESELLSCHAFT*, *Defendants.*

Civil Action No.: 1:21–cv–01067–TJK
Judge Timothy J. Kelly

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On October 5, 2020, Stone Canyon Industry Holdings LLC (''Stone Canyon'') and its portfolio company SCIH Salt Holdings Inc. (''SCIH'') agreed to acquire the K+S Aktiengesellschaft (''K+S AG'') Operating Unit Salt Americas business, a bundle of several subsidiaries including Morton Salt, Inc. (''Morton''). The United States filed a civil antitrust Complaint on April 19, 2021, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the production and sale of evaporated salt products, including pharmaceutical-grade salt in the United States and Canada, ''round-can'' table salt in the United States, and bulk evaporated salt in the northeastern United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation and Hold Separate Stipulation and Order (''Stipulation and Order''), which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest SCIH's subsidiary, US Salt LLC (''US Salt'').

Under the terms of the Stipulation and Order, Defendants must take certain steps to ensure that US Salt is operated as a competitively independent, economically viable, and ongoing business concern, which must remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the required divestiture. On April 22, 2021, the Court entered the Stipulation and Order.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Stone Canyon is an industrial holding company incorporated in Delaware and headquartered in Los Angeles, California. Stone Canyon acquired Kissner Group Holdings LP, which it later renamed SCIH, in April 2020.

SCIH is a subsidiary of Stone Canyon and is headquartered in Overland Park, Kansas. In 2020, SCIH had revenues of approximately $1 billion. SCIH is a leading supplier of salt products, including evaporated salt products.

K+S AG is a chemical company headquartered in Kassel, Germany. In 2020, K+S AG reported revenues of approximately $4.4 billion. K+S AG's Operating Unit Salt Americas business includes Morton as well as K+S Windsor Salt, which sells salt products in Canada, and Sociedad Punta de Lobos, which sells salt products in Chile.

Morton is a K+S AG subsidiary with approximately $1 billion in revenue in 2020. Morton is the largest supplier of pharmaceutical-grade salt in the United States and Canada, the largest supplier of ''round-can'' table salt in the United States, and one of only three suppliers of bulk evaporated salt in the northeastern United States.

Pursuant to a Transaction Agreement dated October 5, 2020, SCIH agreed to acquire K+S AG's Operating Unit Salt Americas business, including Morton, for approximately $3.2 billion.

B. Relevant Product Markets

Morton and SCIH's US Salt subsidiary both produce and sell evaporated salt. Evaporated salt is a type of sodium chloride produced through ''vacuum evaporation.'' In the vacuum evaporation process, water is pumped into a salt deposit where the salt dissolves, and the resulting brine is forced into an evaporator on the surface where it is boiled in a series of pans until only the salt remains. Evaporated salt is nearly 100% sodium chloride and contains almost no other trace minerals. Because of the evaporation process, individual grains of evaporated salt are also more consistent and regularly shaped than other forms of salt.

Evaporated salt is distinct from salt created through other production methods, such as rock salt and solar salt. Rock salt is mined and then crushed into smaller sizes before being transported to the surface. Rock salt is less expensive to produce than evaporated salt, but it is also coarser, irregularly shaped, and contains other minerals and impurities. As a result, rock salt is used for applications that have less demanding quality requirements such as de-icing roads. Solar salt is created when salt water is captured in shallow ponds where the sun evaporates most of the water. It can only be produced in warm climates where the evaporation rate exceeds the precipitation rate. Solar salt is less pure and not as uniform in shape as evaporated salt, but it is purer than rock salt. Solar salt is used for applications such as water softening.

Evaporated salt typically is used in applications that require the highest quality of salt, such as human consumption. There are different types of evaporated salt that have different characteristics, end uses, and customers. As alleged in the Complaint, three types of evaporated salt produced by Defendants constitute relevant product markets—pharmaceutical-grade salt, round-can table salt, and bulk evaporated salt.

i. Pharmaceutical-Grade Salt

Pharmaceutical-grade salt is the grade of salt with the highest percentage of sodium chloride and thus is the purest grade of evaporated salt. Pharmaceutical-grade salt is used in the pharmaceutical industry as a building block for a number of life-saving treatments and products, including dialysis fluid, intravenous saline solution, and other medical products. Pharmaceutical-grade salt must be evaporated from salt deposits of extremely high purity and then undergo post-production processing to ensure that it contains virtually no trace minerals or other impurities.

Because of these stringent standards, the mining and production process for pharmaceutical-grade salt must be extensively monitored and documented to ensure purity and consistency across production batches. This documentation must then be provided to customers as a validation of the quality and purity of the pharmaceutical-grade salt.

Rock salt and solar salt do not meet the purity requirements for pharmaceutical-grade salt. Other grades of evaporated salt—for example, salt used in food processing—also cannot serve as a substitute for pharmaceutical-grade salt. Pharmaceutical-grade salt must contain a higher percentage of sodium chloride than other types of

evaporated salt. This ensures that it does not contain trace minerals that would impact the efficacy of pharmaceutical products made using pharmaceutical-grade salt. Pharmaceutical-grade salt also cannot contain additives such as anti-caking agents that are added during the processing of other types of evaporated salt. Because of these requirements, pharmaceutical-grade salt is more difficult to produce than other forms of evaporated salt.

The Complaint alleges that, in the event of a small but significant increase in price by a hypothetical monopolist of pharmaceutical-grade salt, substitution away from pharmaceutical-grade salt would be insufficient to render the price increase unprofitable. Pharmaceutical-grade salt is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. 18.

ii. Round-Can Table Salt

Table salt is evaporated salt that is processed for human consumption. It is regulated by the Food and Drug Administration (''FDA'') and must meet high purity standards. Table salt also has a highly consistent size across granules and contains agents to prevent clumping and evaporation. Without additional processing—which raises price considerably—rock salt and solar salt cannot meet the same purity requirements or achieve the same consistent granule size as table salt. Pharmaceutical-grade salt meets the purity requirements for table salt but does not contain the necessary agents to prevent clumping and evaporation. As such, rock salt, solar salt, and pharmaceutical-grade salt are not substitutes for table salt.

In the United States, the packaging format strongly preferred by consumers for table salt is the round can, which is a 26-ounce cardboard cylinder with a paper label and a metal spout. The round-can's size, shape, material, and metal spout make it an easy receptacle to use one-handed without spilling while cooking or refilling a salt shaker, which is a product characteristic that is highly valued by consumers. Reflecting consumer preference, retailers like grocery stores dedicate shelf space specifically to round-can packaging. As a result, approximately 95% of the table salt sold to consumers in the United States is sold in a round can.

Table salt packaged in other containers, such as boxes or bags, is not a reasonable substitute for round-can table salt. Boxes without a metal spout and bags are more difficult to use and store and may spill once opened. Larger packages of table salt also are not reasonable substitutes for round-can table salt, as they contain significantly more salt than an individual can practically use.

The Complaint alleges that, in the event of a small but significant increase in price by a hypothetical monopolist of round-can table salt, substitution away from round-can table salt would be insufficient to render the price increase unprofitable. Round-can table salt is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. 18.

iii. Bulk Evaporated Salt

Bulk evaporated salt is salt that is of sufficient purity to be used for human consumption that is sold in bulk form. Bulk evaporated salt is used to manufacture chemicals necessary to create essential everyday cleaning products such as disinfectants, soap, and bleach. Bulk evaporated salt is also an essential ingredient in nearly all processed pre-packaged foods, such as sauces, chips and other snacks, and frozen meals. Because bulk evaporated salt is incorporated into products end-consumers ingest or touch, it is regulated by the FDA and must meet stringent purity requirements.

Customers for bulk evaporated salt include chemical companies and large pre-packaged food manufacturers as well as smaller customers, such as bakeries, that use salt as an essential ingredient in their food products. To accommodate these customers, many of whom purchase thousands of tons of salt per year, evaporated salt is sold in bulk, by the truckload or in containers ranging from 50-pound bags to 2,000-pound ''super-sacks.''

Bulk evaporated salt is distinct from evaporated salt used for other applications. Compared to other types of evaporated salt, it has unique end-uses, customers, and packaging. While pharmaceutical-grade salt and round-can table salt are of sufficient purity, they are priced too high and packaged in quantities that are too small to serve as substitutes for bulk evaporated salt. Bulk evaporated salt also is distinct from rock salt and solar salt, which have lower purity levels and non-uniform textures that make them unsuitable for chemical and food-production end uses. None of these types of salt can serve as a substitute to bulk evaporated salt.

The Complaint alleges that, in the event of a small but significant increase in price by a hypothetical monopolist of bulk evaporated salt, substitution away from bulk evaporated salt would be insufficient to render the price increase unprofitable. Bulk evaporated salt is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Relevant Geographic Markets

i. Pharmaceutical-Grade Salt

Pharmaceutical-grade salt is manufactured in only a few locations in the United States. From these locations, pharmaceutical-grade salt is shipped to customers throughout the United States and Canada.

While pharmaceutical-grade salt is shipped throughout the United States and Canada, shipping it from overseas is prohibitively expensive. This is because pharmaceutical-grade salt may not contain anti-caking agents. Without anti-caking agents, pharmaceutical-grade salt has a short shelf-life and may be damaged by the time and rigors of ocean-shipping. These limitations make ocean-shipping cost-prohibitive.

The Complaint alleges that a hypothetical monopolist of pharmaceutical-grade salt in the United States and Canada could profitably impose a small but significant non-transitory increase in price for pharmaceutical-grade salt without losing sufficient sales to render the price increase unprofitable. Accordingly, the Complaint alleges that the relevant geographic market for the purposes of analyzing the effects of the acquisition on pharmaceutical-grade salt under Section 7 of the Clayton Act, 15 U.S.C. 18 is the United States and Canada.

ii. Round-Can Table Salt

Competition among round-can table salt suppliers occurs at a national level. Retailers, many of which are grocery store chains, mass merchandisers, or convenience stores with large national footprints, purchase round-can table salt for all of their locations at once, and suppliers ship round-can table salt from coast to coast.

Round-can table salt is not imported from outside the United States. In addition to being heavy—and therefore expensive to transport—table salt in other countries is typically sold in bags or cardboard boxes. As such, foreign suppliers of table salt typically lack the production facilities to produce round cans for the United States market.

The Complaint alleges that a hypothetical monopolist of round-can table salt in the United States could profitably impose a small but significant non-transitory increase in price for round-can table salt without losing

sufficient sales to render the price increase unprofitable. Accordingly, the Complaint alleges that the relevant geographic market for the purposes of analyzing the effects of the acquisition on round-can table salt under Section 7 of the Clayton Act, 15 U.S.C. 18 is the United States.

iii. Bulk Evaporated Salt

Bulk evaporated salt is a product that can be produced at a relatively low cost, but it is heavy and therefore expensive to transport. As a result, customers purchase from nearby suppliers to minimize shipping costs that can be high relative to the value of the bulk evaporated salt being purchased.

Both Morton and US Salt—along with only one other competitor—operate bulk evaporated salt production facilities in upstate New York. All three companies use these facilities to service customers in the northeastern United States, including Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Customers in the northeastern United States can economically procure bulk evaporated salt from only these three locations. Other more distant bulk evaporated salt facilities cannot compete successfully on a regular basis for customers in the northeastern United States because the suppliers are too far away, making transportation costs too great.

The Complaint alleges that a hypothetical monopolist of bulk evaporated salt in the northeastern United States could profitably impose a small but significant non-transitory increase in price for bulk evaporated salt without losing sufficient sales to render the price increase unprofitable. Accordingly, the Complaint alleges that the relevant geographic market for the purposes of analyzing the effects of the acquisition on bulk evaporated salt under Section 7 of the Clayton Act, 15 U.S.C. 18 is the northeastern United States.

D. Anticompetitive Effects of the Proposed Transaction

The Complaint alleges that the proposed transaction would lessen competition and harm customers for pharmaceutical-grade salt in the United States and Canada, round-can table salt in the United States, and bulk evaporated salt in the northeastern United States by eliminating the substantial head-to-head competition that currently exists between Morton and US Salt. The Complaint further alleges that customers in each of these markets would pay higher prices and receive lower quality and service as a result of the acquisition.

i. Pharmaceutical-Grade Salt in the United States and Canada

As described in the Complaint, Morton and US Salt are the only two suppliers of pharmaceutical-grade salt in the United States and Canada, with Morton currently having a market share of around 77% and US Salt a share of around 23%. The acquisition would thus give the combined firm a monopoly in the sale of pharmaceutical-grade salt in the United States and Canada, leaving pharmaceutical companies and other customers without a competitive alternative for this critical ingredient in dialysis fluid, intravenous saline solution, and other medical products.

The Complaint alleges that Morton and US Salt compete to sell pharmaceutical-grade salt on the basis of quality and surety of supply. This competition has resulted in higher quality, lower prices, and better customer service. The combination of Morton and US Salt would eliminate this competition and its future benefits to customers, including pharmaceutical companies. Post-acquisition, the combined Morton and US Salt likely would have the incentive and ability to increase prices and offer less favorable contractual terms.

As alleged in the Complaint, the proposed acquisition, therefore, likely would substantially lessen competition in the production of pharmaceutical-grade salt in the United States and Canada in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

ii. Round-Can Table Salt in the United States

As described in the Complaint, Morton and US Salt are two of the largest table salt suppliers in the United States and are two of only three suppliers of round-can table salt in the United States. Morton is the largest supplier of branded round-can table salt in the United States. US Salt is the largest supplier of private-label round-can table salt—which is made by US Salt but sold under the brands of retailers and other third-parties—in the United States. US Salt is also the second-largest supplier of branded round-can table salt, with around six percent of sales.

The Complaint alleges that, today, US Salt's private-label and branded round-can table salt products compete directly with Morton's branded round-can table salt. Together, the combined firm would control at least 90% of the round-can table salt market in the United States.

The Complaint further alleges that the combination of Morton and US Salt would eliminate the head-to-head competition between Morton and US Salt and leave customers in the United States with only two alternatives for round-can table salt in the United States. Post-acquisition, the combined firm likely would have the incentive and ability to increase prices and offer less favorable contractual terms.

The Complaint also alleges that Morton and US Salt compete for sales of round-can table salt on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and more reliable delivery. The combination of Morton and US Salt would eliminate this competition and its future benefits to customers, including grocery chains, big box stores, and discount stores.

As alleged in the Complaint, the proposed acquisition, therefore, likely would substantially lessen competition in the production of round-can table salt in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

iii. Bulk Evaporated Salt in the Northeastern United States

As described in the Complaint, three bulk evaporated salt suppliers—Morton, US Salt, and one additional competitor, each with production facilities in upstate New York—compete for bulk evaporated salt customers in the northeastern United States. The combination of Morton and US Salt would eliminate the head-to-head competition between the parties and result in only two remaining competitors in the region.

The Complaint alleges that bulk evaporated salt customers in the northeastern United States, including food processors and chemical manufacturers, have been able to secure lower prices and improved quality and service—such as more reliable delivery—by threatening to switch between Morton and US Salt. The elimination of this head-to-head competition would allow a combined Morton and US Salt to exercise market power to unilaterally increase prices and reduce the quality and service for bulk evaporated salt customers in the northeastern United States.

As alleged in the Complaint, the proposed acquisition, therefore, likely would substantially lessen competition in the production of bulk evaporated salt in the northeastern United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

E. Difficulty of Entry

i. Difficulty of Entry Into Pharmaceutical-Grade Salt in the United States and Canada

As alleged in the Complaint, entry of new competitors into pharmaceutical-grade salt in the United States would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

The Complaint alleges that potential pharmaceutical-grade salt entrant would need to acquire suitable land that includes a salt deposit of sufficient purity, obtain the permits necessary to construct an evaporation and processing facility, possess or obtain appropriate financing for a significant capital expenditure, and then design, construct, and qualify the facility. This process would likely take several years, at a minimum. No new evaporated salt facility has been constructed in the United States in over 20 years.

The Complaint alleges that, even if an entrant were able to construct an evaporated salt production facility, before selling a single grain of pharmaceutical-grade salt, it would need to install and test additional equipment needed to meet the exacting purity requirements for pharmaceutical-grade salt. Reputational barriers make entry even more difficult, as customers would be reluctant to switch to an unproven supplier that could not guarantee access to high-quality pharmaceutical-grade salt. Thus, as alleged in the Complaint, entry would not be timely, likely, or sufficient to mitigate the anticompetitive effects from SCIH's proposed acquisition of Morton.

ii. Difficulty of Entry Into Round-Can Table Salt in the United States

As alleged in the Complaint, entry of new competitors into round-can table salt in the United States would be difficult and time-consuming and is unlikely to prevent the anticompetitive effects that are likely to result if the proposed transaction is consummated.

The Complaint alleged that, even though table salt has lower purity requirements than pharmaceutical-grade salt, a round-can table salt entrant would still need to take all of the steps to construct a facility that a pharmaceutical-grade salt entrant would, including locating an appropriate salt deposit, and investing significant time and money to build the facility.

The Complaint alleges that, in addition, an entrant in round-can table salt would have to secure a round-can packaging line. The packaging process for round-can table salt, created decades ago, is based on technology from that era and has proven to be difficult to replicate in a price-competitive manner. As a result, potential entrants with access to suitable salt deposits have tried, and failed, to develop round-can packaging technology in the last five years.

Thus, as alleged in the Complaint, entry through the construction of a new round-can table salt facility therefore will not be timely, likely, or sufficient to mitigate the anticompetitive effects of SCIH's proposed acquisition of Morton.

iii. Difficulty of Entry Into Bulk Evaporated Salt in the Northeastern United States

As alleged in the Complaint, entry of new competitors into bulk evaporated salt in the northeastern United States would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

The Complaint alleges that, just as with pharmaceutical-grade salt or round-can table salt, a new entrant in bulk evaporated salt would need to invest significant time and money to acquire land and construct an evaporated salt processing facility. The Complaint further alleges that entry into bulk evaporated salt in the northeastern United States is particularly difficult because this area has limited salt deposits, which are necessary serve the market.

As alleged in the Complaint, entry through the construction of a new bulk evaporated salt production facility will therefore not be timely, likely, or sufficient to mitigate the anticompetitive effects from SCIH's proposed acquisition of Morton.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires Stone Canyon and its subsidiary, SCIH, to divest their entire evaporated salt business, US Salt, to proceed with their proposed acquisition of Morton. This divestiture allows a third-party buyer to step in as the owner of US Salt and use all of those assets to compete for the production and sale of pharmaceutical-grade salt in the United States and Canada, round-can table salt in the United States, and bulk evaporated salt in the northeastern United States. The proposed divestiture will thus establish an independent and economically viable competitor that will ensure competition in these markets going forward.

Paragraph IV(A) of the proposed Final Judgment requires Defendants, within 120 calendar days after the entry of the Stipulation and Order by the Court, to divest the Divestiture Assets to an Acquirer acceptable to the United States, in its sole discretion. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the production and sale of evaporated salt products so that the Acquirer can compete effectively in the market for pharmaceutical-grade salt in the United States and Canada, round-can table salt in the United States, and bulk evaporated salt in the northeastern United States. Defendants must use best efforts to accomplish the divestiture of the Divestiture Assets quickly and must take no action to jeopardize the divestiture.

The Divestiture Assets include all of Defendants' rights, titles, and interests in US Salt, including two US Salt facilities (a refinery located in Watkins Glen, NY and a warehouse located in Horseheads, NY).

The proposed Final Judgment contains provisions intended to facilitate efforts by the Acquirer to hire certain employees. Specifically, Paragraph IV(H) of the proposed Final Judgment requires Defendants to provide the Acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any efforts by the Acquirer to hire these employees. In addition, for employees who elect employment with the Acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that those employees otherwise would have been provided had those employees continued employment with Defendants, including any retention bonuses or payments.

Paragraph IV(H) further provides that Defendants may not solicit to hire any employees who elect employment with the Acquirer within a certain time after the divestiture is completed, unless an individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that Defendants may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. Paragraph IV(H) does not prohibit Defendants from advertising employment openings using general

solicitations or advertisements and rehiring employees who apply for a position through a general solicitation or advertisement.

Paragraph IV(J) of the proposed Final Judgment will facilitate the transfer of customers and other contractual relationships from Defendants to the Acquirer. Defendants must transfer all contracts, agreements, and relationships to the Acquirer and must use best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

The proposed Final Judgment contains provisions to ensure that the Acquirer will be able to operate US Salt and serve customers immediately upon completion of the divestiture. For example, Paragraph IV(L) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a transition services agreement for back office, human resource, and information technology services and support for US Salt for a period of up to 12 months. The Acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon 30 days' written notice. Paragraph IV(L) further provides that the United States, in its sole discretion, may approve one or more extensions of the transition services agreement for a total of up to an additional six months and that any amendments to or modifications of any provisions of a transition services agreement between Defendants and Acquirer are subject to approval by the United States, in its sole discretion. Paragraph IV(L) also provides that employees of Defendants tasked with providing any transition services must not share any competitively sensitive information of the Acquirer with any other employee of Defendants.

Paragraph IV(K) requires Defendants to use best efforts to assist the Acquirer to obtain all necessary licenses, registrations, and permits to operate US Salt. Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, and permits until Acquirer obtains the necessary licenses, registrations, and permits,

Certain executives and employees of Stone Canyon and/or SCIH, who will remain with Stone Canyon and/or SCIH after the divestiture, have had access to competitively sensitive information about US Salt's business operations. In order to prevent Stone Canyon and SCIH from using that information, Paragraph XI(A) requires Stone Canyon and SCIH to implement a firewall. Specifically, Stone Canyon and SCIH must implement and maintain reasonable procedures to prevent the sharing of competitively sensitive information relating to US Salt with Defendants' personnel with responsibilities relating to Morton's production or sale of evaporated salt products. Such a firewall will prevent competitively sensitive information about US Salt—to which Stone Canyon will have had access prior to the divestiture—from being used to influence business decisions relating to Morton's production or sale of evaporated salt products or otherwise used to subvert competition. The implementation of these procedures for a two-year period will ensure that the information cannot be used while it is still competitively sensitive. After two years, any information will be sufficiently out of date to no longer pose a risk and the firewall can be eliminated. Under Paragraph XI(B), Stone Canyon and SCIH must, within 30 days of the entry of the Stipulation and Order, submit a document setting forth in detail the procedures Defendants have implemented to effect compliance with Section XI. The United States will determine, in its sole discretion, whether to approve or reject Stone Canyon and SCIH's proposed compliance plan.

If Defendants do not accomplish the divestiture within the period prescribed in Paragraph IV(A) of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's compensation must be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the proposed Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment by a period requested by the United States.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XIV(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV(C) provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV(C) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XIV(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final

Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Stone Canyon and SCIH's acquisition of Morton. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the production and sale of evaporated salt products in the markets alleged in the Complaint: Pharmaceutical-grade salt in the United States and Canada, round-can table salt in the United States, and bulk evaporated salt in the northeastern United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments or ''consent decrees'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F.

Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 29, 2021

Respectfully submitted,

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[FR Doc. 2021–09504 Filed 5–4–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 19–32]

Melanie Baker, N.P.; Decision and Order

On June 21, 2019, a former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter collectively, OSC) to Melanie Baker, N.P. (hereinafter, Respondent). Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (Order to Show Cause), at 1. The OSC informed Respondent of the immediate suspension of her Certificate of Registration No. MV3148257 (hereinafter, registration) pursuant to 21 U.S.C. 824(d), because her continued registration constituted an imminent danger to the public health and safety. *Id.* The OSC also proposed the revocation of Respondent's registration and denial of any pending applications for renewal or modification pursuant to 21 U.S.C. 824(a)(4), ''because [her] continued registration is inconsistent with the public interest. . . .'' *Id.* (citing 21 U.S.C. 823(f)).

I. Procedural History

The OSC alleged that ''[f]rom at least February 2017 to May 2019, [Respondent] issued numerous prescriptions for Schedule IIN through Schedule IV controlled substances to five patients in violation of federal and state law.'' OSC, at 3. The OSC alleged violations of 21 CFR 1306.04(a), Louisiana Statute Annotated § 40:978, and Louisiana Administrative Code tit. 46, Pt. LIII, § 2745(B)(1), and Pt. XLVII,