



Court File No. **VLC-S-S-248323**

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[REDACTED]

PLAINTIFF

AND:

MCCAIN FOODS LTD.,
MCCAIN FOODS USA, INC.,
CAVENDISH FARMS LTD.,
CAVANDISH FARMS, INC.,
LAMB WESTON HOLDINGS, INC.,
LAMB WESTON, INC.,
LAMB WESTON BSW, LLC,
LAMB WESTON SALES. INC.,
LAMB WSTON/MIDWEST, INC.,
LAMB WESTON CANADA ULC,
J.R. SIMPLOT COMPANY and
SIMPLOT CANADA (II) LTD.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A response to civil claim must be filed and served on the plaintiff(s),

- a. if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- b. if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- c. if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- d. if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff(s)

Part 1: STATEMENT OF FACTS

A. Nature of Action - Overview

1. The within proposed multi-jurisdictional class proceeding arises out of an alleged conspiracy and/or *per se* unlawful agreement by and among the Defendants to artificially fix, maintain, increase and/or control the price for the supply of frozen potato products such as french fries, hash browns, tater tots, and other frozen potato products, (collectively “**Frozen Potato Products**”) in Canada between January 1, 2021 to the present. This is a highly concentrated industry such that the Defendants together control over 95% of the Frozen Potato Products market in North America.
2. Rather than competing, the Defendants used their extreme market power to leverage a temporary spike in input costs to impose lockstep price increases on their Frozen Potato Products at supra-competitive levels. The Defendants synchronized their price increases at nearly identical times since at least early 2021.
3. The Defendants unlawful price-fixing agreement, conspiracy and/or scheme has led to record profits and revenues during the class period, defined herein, despite flat sale volumes and declining input costs. For instance, the Defendant, Lamb Weston Holdings, Inc., reported that its first quarter for fiscal year 2024 net income increased by 111 percent. Further, although sale volume remained *flat*, between July 2023 and June 2024, Frozen Potato Product sale prices increased by over 14 percent. Likewise, between July 2022 and July 2024 while input costs *declined*, the prices for Frozen Potato Products jumped 47 percent.
4. As a result of their unlawful price-fixing agreement, conspiracy and/or scheme the Defendants had no incentive to compete for each other's share in the Frozen Potato Products market. The Defendants had complete confidence in their ability to sustain their anti-competitive prices given their commitment to not to undercut one another on price.
5. The Defendants were able to implement lockstep price increases and collectively raise prices as the Frozen Potato Product industry is structurally susceptible to collusion. The Frozen Potato Products market features highly concentrated sellers, high entry barriers, fragmented buyers, repetitive purchases, inelastic demand, and opportunities to collude through co-packing arrangements, trade association events, and mechanisms to

exchange market share information enabling the Defendants to implement and monitor their unlawful price-fixing agreement, conspiracy and/or scheme.

6. The unlawful price-fixing agreement, conspiracy and/or scheme between the Defendants to artificially fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada violates section 45(1) of Part VI of the *Competition Act*, R.S.C. 1985, c.C-34 ("*Competition Act*").
7. The Defendants unlawful price-fixing agreement, conspiracy and/or scheme had the intended purpose and effect of artificially fixing, maintaining, raising and/or controlling the price for the supply of Frozen Potato Products in Canada to the Plaintiff and putative class members to overpay. As a direct result of the Defendants' concerted pricing and supply side decision making, the prices for Frozen Potato Products in Canada have been artificially inflated since at least January 1, 2021, causing consumers such as the Plaintiff and putative class members to pay more for Frozen Potato Products than they would have absent the Defendants unlawful price-fixing agreement, conspiracy and/or scheme.

B. The Parties

i. The Representative Plaintiff

8. [REDACTED]
9. During the class period, as defined below, the Plaintiff regularly purchased Frozen Potato Products such as tater tots and french fries at retail in Port Alberni, British Columbia at a Walmart supermarket. As such, the Plaintiff is an indirect purchaser of Frozen Potato Products and paid supra-competitive prices because of the unlawful price-fixing agreement, conspiracy and/or scheme of the Defendants to artificially fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada. Absent the Defendants' anti-competitive conduct, the Plaintiff would have paid a more competitive price for Frozen Potato Products at retail than he otherwise did.
10. As a result of the Defendants' anti-competitive conduct, the Plaintiff has paid, and continues to pay, higher prices for Frozen Potato Products at retail.

ii. The Defendants

McCain Defendants

11. The Defendant, McCain Foods Ltd., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia, and has a registered agent, LML&S Services Inc., at 1055 West Georgia Street, 1500 Royal Centre, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7, Canada.
12. The Defendant, McCain Foods Ltd. is a dominant producer and/or processor of Frozen Potato Products in North America. It is one of the world's largest manufacturers of french fries and potato products. In addition to Frozen Potato Products, its product portfolio also includes appetizers, pizzas, frozen fruits, vegetables and desserts. It operates on 47 sites on six continents. It had global revenues in excess of \$14 billion dollars (CDN).

13. The Defendant, McCain Foods Ltd., operates its United States operation through its wholly owned and controlled subsidiary, affiliate and/or agent, the Defendant, McCain Foods USA, Inc.
14. The Defendant, McCain Foods USA, Inc., is a company duly incorporated pursuant to the laws of the State of Illinois, one of the United States of America, and has a registered agent, CT Corporation System, at Suite 814, 208 SO Lasalle Street, Chicago, Illinois, 60604-1101, United States of America.
15. The Defendant, McCain Foods USA, Inc., is a producer and/or processor of Frozen Potato Products primarily for food service customers, retail grocers and private label brands in restaurants and supermarket freezers in the United States.
16. At all material times to the cause of action herein, the Defendant, McCain Foods USA, Inc., was under the ownership and/or control of the Defendant, McCain Foods Ltd., and participated in the unlawful price-fixing agreement, conspiracy and/or scheme of the Defendants to artificially fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada and the United States.
17. Hereinafter, the Defendants, McCain Foods Ltd. and McCain Foods USA, Inc., are collectively referred to herein as “**McCain**”, unless otherwise referred to individually.

Cavendish Farms Defendants

18. The Defendant, Cavendish Farms Ltd., is a company duly incorporated pursuant to the laws of the Province of New Brunswick, Canada, with its principal place of business at 100 Midland Drive, Dieppe, New Brunswick, E1A 6X4, Canada.
19. The Defendant, Cavendish Farms Ltd., is the fourth largest producer and/or processor of Frozen Potato Products in North America. It is part of the J.D. Irving Group of Companies.
20. The Defendant, Cavendish Farms Ltd., operates its United States operation through its wholly owned and controlled subsidiary, affiliate and/or agent, the Defendant, Cavendish Farms, Inc.
21. The Defendant, Cavendish Farms, Inc., is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801, United States of America.
22. The Defendant, Cavendish Farms, Inc., is a producer and/or processor of Frozen Potato Products at facilities located throughout the United States.
23. At all material times to the cause of action herein, the Defendant, Cavendish Farms, Inc., was under the ownership and/or control of the Defendant, Cavendish Farms Ltd., and participated in the unlawful price-fixing agreement, conspiracy and/or scheme of the Defendants to artificially fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada and the United States.
24. Hereinafter, the Defendants, Cavendish Farms Ltd. and Cavendish Farms, Inc., are collectively referred to herein as “**Cavendish**”, unless otherwise referred to individually.

Lamb Weston Defendants

25. The Defendant, Lamb Weston Holdings, Inc., is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Prentice-Hall Corporation System, Inc., at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.
26. The Defendant, Lamb Weston Holdings, Inc., is a leading producer, processor, distributor, and/or marketer of Frozen Potato Products in North America.
27. The Defendant, Lamb Weston Holdings, Inc., sells its Frozen Potato Products to quick-service and full-service restaurants, food service distributors, non-commercial channels, and retailers. Its products include Frozen Potato Products, commercial ingredients, and appetizers sold under the Lamb Weston brand as well as frozen potatoes sold under its owned or licensed brands, and brand names of North American restaurants, customer labels, and retailers' own brands (i.e., private label products).
28. The Defendant, Lamb Weston Holdings, Inc., owns and controls several North American subsidiaries, affiliates and/or agents, including the Defendants, Lamb Weston, Inc., Lamb Weston BSW, LLC, Lamb Weston Sales, Inc., and Lamb Weston/Midwest, Inc., in the United States and the Defendant, Lamb Western Canada ULC, in Canada, and operates them as a unitary enterprise. The Defendant, Lamb Weston Holdings, Inc., conducts its Frozen Potato Products business through these subsidiaries, affiliates and/or agents, including manufacturing, pricing and selling its Frozen Potato Products in the United States and Canada.
29. The Defendant, Lamb Weston, Inc. is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Prentice-Hall Corporation System, Inc., at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.
30. The Defendant, Lamb Weston BSW, LLC, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Prentice-Hall Corporation System, Inc., at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.
31. The Defendant, Lamb Weston Sales, Inc., is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Prentice-Hall Corporation System, Inc., at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.
32. The Defendant, Lamb Weston/Midwest, Inc., is a company duly incorporated pursuant to the laws of the State of Washington, one of the United States of America, and has a registered agent, The Prentice-Hall Corporation System, Inc., at 300 Deschutes way, Suite 208 MC-CSC1, Tumwater, Washington, 98501, United States of America.
33. The Defendant, Lamb Western Canada ULC, is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia, and has a registered agent, SE Corporate Services Ltd. at Suite 1700, Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2X8, Canada.

34. At all material times to the cause of action herein, the Defendants, Lamb Weston, Inc., Lamb Weston BSW, LLC, Lamb Weston Sales, Inc. Lamb Weston/Midwest, Inc. and Lamb Weston Canada ULC, were under the ownership and/or control of the Defendant, Lamb Weston Holdings, Inc., and participated in the unlawful price-fixing agreement, conspiracy and/or scheme of the Defendants to artificially fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada and the United States.
35. Hereinafter, the Defendants, Lamb Weston Holdings, Inc., Lamb Weston, Inc., Lamb Weston BSW, LLC, Lamb Weston Sales, Inc., Lamb Weston/Midwest, Inc. and Lamb Weston Canada ULC, are collectively referred to herein as "**Lamb Weston**", unless otherwise referred to individually.

J.R. Simplot Defendants

36. The Defendant, J.R. Simplot Company, is a company duly incorporated pursuant to the laws of the State of Nevada, one of the United States of America, and has a registered agent, Corporation Service Company, at 112 North Curry Street, Carson City, Nevada, 89703, United States of America.
37. The Defendant, J.R. Simplot Company, is one of the world's largest producers and/or processor of french fries and sells Frozen Potato Products throughout North America, including through its wholly owned and controlled Canadian subsidiary, affiliate and/or agent, the Defendant Simplot Canada (II) Ltd. Its other businesses include food brands, phosphate mining, farming, ranching, and fertilizer manufacturing.
38. The Defendant, Simplot Canada (II) Ltd., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia, and has a registered agent, Jonathan O'Connor, at Suite 1700, 2600-1066 West Hastings Street, Vancouver, British Columbia, V6E 3X1, Canada.
39. At all material times to the cause of action herein, the Defendant, Simplot (II) Canada Ltd., was under the ownership and/or control of the Defendant, J.R. Simplot Company, and participated in the unlawful price-fixing agreement, conspiracy and/or scheme of the Defendants to artificially fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada and the United States.
40. Hereinafter, the Defendants, J.R. Simplot Company and Simplot (II) Ltd. are collectively referred to herein as "**Simplot**", unless otherwise referred to individually.

iii. Agents and Co-Conspirators

41. The anti-competitive and unlawful acts alleged against the Defendants in this Notice of Civil Claim were authorized, ordered, or performed by the Defendants' respective officers, agents, employees, or representatives, while actively engaged in the management, direction, or control of the Defendants' businesses or affairs. The Defendants are also liable for acts done in furtherance of the alleged conspiracy by companies they acquired through mergers or acquisitions.
42. Each corporate Defendant's agent operated under the authority and apparent authority of its respective principles.

43. Each corporate Defendant, through its respective subsidiaries, affiliates, and agents, operated as a single unified entity.
44. Various persons or firms not named as the Defendants herein may have participated as co-conspirators in the violations alleged herein and may have performed acts and made statements in furtherance thereof.
45. Each Defendant acted as the principal or agent of, or for, other Defendants with respect to the acts, violations, and common course of conduct alleged herein.
46. When Plaintiff refers to a corporate family or companies by a single name in their allegations of participation in the conspiracy, the Plaintiff is alleging that one or more employees or agents of entities within the corporate family engaged in conspiratorial acts or meetings on behalf of all the Defendant companies within that family. As the Defendants market themselves as corporate families, individual participants in the conspiratorial acts did not always know the corporate affiliation of their counterparts, nor did they recognize the distinction between the entities within a corporate family. Thus, all the Defendant entities within the corporate families were active, knowing participants in the conspiracy to maintain supra-competitive prices of Frozen Potato Products in Canada.

C. The Class and Class Period

47. The Plaintiff seeks to represent the following Class and Class Period:

All resident persons or entities in Canada who indirectly purchased Frozen Food Products from one or more Defendants or co-conspirators for personal consumption through a retailer or distributor or who directly purchased Frozen Food Products from one or more Defendants or co-conspirators between January 1, 2021, until the effect of the conspiracy or such other class definition or class period as the court may ultimately decide on the application for certification (the “**Class**”, “**Class Members**” and “**Class Period**”). Excluded from the Class are the Defendants, their parent companies, subsidiaries, and affiliates and any judge assigned to the proposed class proceeding.

D. FACTUAL ALLEGATIONS

i. The Frozen Potato Products market

48. Potatoes are the leading vegetable crop in North America, and both Canada and the United States are among the largest producers of potatoes in the world. Billions of pounds of potatoes are produced in North America every year.
49. Approximately 40 percent of potatoes grown in North America are frozen and become part of the Frozen Potato Product market for downstream purchasers which include, *inter alia*, the food service sector, restaurants, hotels, schools, and hospitals.
50. The Defendants purchase potatoes from potato growers and process these potatoes into their products in their facilities. After washing, peeling, and cutting the potatoes, the potato pieces are blanch cooked at a high temperature before freezing the pieces. Among other steps, these frozen potato pieces are then weighed, packaged, labeled and then shipped and sold to customers of the Defendants. These customers include retail and food service

customers, as well as distributors, who then sell the Frozen Potato Products to smaller food service and retail entities.

51. Approximately 70 percent of potatoes sold in North America are sold to processors for frozen potatoes, chips, shoestrings, dehydrated potatoes, and other potato products. Of the potatoes sold to processors, approximately 60 percent are used for frozen french fries and other frozen products. Frozen french fries are the largest portion of the Frozen Potato Products market.
52. The United States produces most of the potatoes used for the Frozen Potato Products market. For example, in 2023, the United States produced slightly over 17 billion pounds of potatoes for freezing. By comparison, the United States imported 6.39 billion pounds of potatoes for freezing that year.
53. Imported Frozen Potato Products predominantly originate from Canada. For example, for the 2019-2020 market year, the United States imported approximately \$750 million of frozen french fries from Canada out of \$810 million. Approximately 90 percent of Canada's Frozen Potato Products exports are exported to the United States. The Defendants, McCain and Cavendish Farms, are responsible for a significant portion of Frozen Potato Products exported to the United States.
54. Frozen Potato Products provide business advantages to restaurants. For a restaurant, making fries from scratch requires both increased horizontal workspace and increased labor to cut up the potatoes. Further, if a restaurant orders fresh potatoes for fries, the potatoes can vary from week-to-week in size, shape, and starch levels. Based on these burdens, many restaurants order frozen fries instead.
55. The four Defendants-controlling over 95 percent of the Frozen Potato Products market in North America-together have extreme market power and possess the ability to control prices. As such, when the Defendants collectively raise their prices, that increase moves the market price.
56. The Frozen Potato Products market is properly defined because it satisfies the "SSNIP" test. The Test evaluates whether a single firm, (*i.e.*, a hypothetical monopolist), can profitably impose a small but significant non-transitory price increase, typically 5 percent, without causing a significant number of customers to switch to other products or services such that the SSNIP would be unprofitable. If the SSNIP is profitable, the market is properly defined. The four Defendants were able to dramatically increase the price of Frozen Potato Products in Canada through the Class Period without losing market share and increasing margins. In 2023, a former Defendant, Lamb Weston, vice-president stated that the Defendants, Lamb Weston, Simplot, and McCain "have never seen margins this high in the history of the potato industry" because the four Defendants have "no incentive to fight [] hard for each other's [market] share" and were "behaving themselves."

ii. Defendants impose lockstep price increases of Frozen Potato Products in furtherance of the conspiracy

57. The Defendants engaged in a conspiracy to fix and increase the price of Frozen Potato Products in Canada throughout the Class Period. The Defendants' conspiracy was implemented by their exchange of detailed, competitively sensitive and closely guarded non-public information about Frozen Potato Products.

58. The Defendants synchronized their price increases at identical or near identical times during the Class Period to the detriment of the Plaintiff and the Class. The Defendants sent price increase letters to their customers, noting the amount and outlining an effective date. For example:

- a) In January 2021, the Defendants, McCain and Simplot, each sent price increase letters to their customers within one day of each other. These letters indicated that the cost of Frozen Potato Products would increase by \$0.04 per pound with an effective date of March 15, 2021;
- b) In May 2021, the Defendants, Lamb Weston and McCain, sent price increased letters within two weeks of each other to their customers. The Defendant, Lamb Weston, letter indicated that the cost of Frozen Potato Products would increase by \$0.08 per pound, while the Defendant, McCain, price increase letter indicated that the cost of Frozen Potato Products would increase by \$0.04 per pound. The price increase letters sent by the Defendants, Lamb Weston and McCain, had effective dates of July 1 and 15, 2021, respectively;
- c) On June 4, 2021, the Defendant, Cavendish Farms, sent price increase letters to its customers indicating that the cost of Frozen Potato Products would increase by \$0.04 per pound, with an effective date of July 15, 2021, the same day as the Defendant, McCain's, price increase;
- d) In October 2021, the Defendants, Lamb Weston, McCain, and Cavendish Farms, each sent price increase letters to their customers within five days of each other. The price increase letters all indicated that the cost of Frozen Potato Products would increase by \$0.08 per pound, and all had the same effective date of December 15, 2021.
- e) In February 2022, the Defendants, Lamb Weston, McCain, Simplot and Cavendish Farms, each sent price increase letters to their customers within five days of one another. The Defendants, McCain and Cavendish Farms, letters indicated that the cost of Frozen Potatoes would increase by \$0.12 per pound, while the Defendant, Lamb Weston, price increase letter indicated that the cost of Frozen Potatoes would increase by \$0.10 per pound. These price increase letters had the same effective date of April 1, 2022; and
- f) On April 8, 2022, the Defendant, Cavendish Farms, sent a price increase letter to its customers indicating that the cost of Frozen Potatoes would increase by \$0.07 per pound, with an effective date of May 15, 2022.

59. In a competitive market, price increases would be viewed by competitors as opportunities to increase market share through more competitive pricing. However, this was not the case in the Frozen Potato Products industry as confirmed by a number of public signaling statements made in furtherance of the Defendants' conspiracy to artificially increase the price of Frozen Potato Products. For example:

- a) The Defendant, Lamb Weston's, former vice-president who admitted their prices increase: "will probably be exactly the price increase that McCain wanted, which was \$0.04 on A grade and \$0.02 they will announce a price

increase." The former vice-president added, "And they hope McCain will follow, and Simplot will follow, and Cavendish will follow";

- b) A former senior director of the Defendant, McCain, stated around 2023 that he wanted to compete with the Defendant, Lamb Weston, on the price and market share of battered fries but the "higher ups in the room ... [thought] we 're going to screw it up for everyone. So we shouldn't risk it";
- c) In 2023 a director of sales at the Defendant, Simplot, stated that the Defendants, Simplot, McCain and Cavendish Farms, were continuing to "push pricing" and would "not go after new business" in response to the Defendant, Lamb Weston, increasing prices by as much as 35 percent; and
- d) Around the same time in 2023, a former vice-president at the Defendant, Lamb Weston, stated there was "absolutely 100%" no incentive to fight for each other's market share and that they were "behaving themselves."

60. By collusively manipulating Frozen Potato Product prices, each Defendant, acting individually, risks one of its competitors undercutting their prices in order to capture market share. Competition on the merits would not allow for a single Frozen Potato Product processor to exceed certain price thresholds beyond input costs without losing market share due to another competitor undercutting those prices. As such, the Defendants' price increase actions are against their own interests, individually. By acting collusively, the Defendants align their interests and follow their collective interest as opposed to their individual interests through collective price increases. Further, all of this was made possible through the use of joint market data and information available with trade associations that the Defendants belong to and employing third-party data analytic firms which enable competitors in the Frozen Potato Products market to directly exchange data in an effort to control supply, costs and downstream pricing through the collection and standardization of their data to monitor or discipline co-conspirators.

iii. The Defendants' anti-competitive conduct causes prices for Frozen Potato Products to increase

- 61. During the Class Period, the price of frozen french fries and other Frozen Potato Products has risen dramatically in North America. The Producer Price Index ("PPI") data in the United States for Frozen Potato Products shows the dramatic and rapid increase in change of selling prices for Frozen Potato Products.
- 62. During the decade preceding Defendants' cartel, the PPI for Frozen Potato Products remained remarkably steady and experienced only a slight increase from January 2012 to February 2022. However, beginning in spring 2022, the PPI for Frozen Potato Products exploded between March 2022 and October 2024-by far the highest PPI for Frozen Potato Products since 1967.
- 63. As a result, the price of Frozen Potato Products in North America began increasing in late 2021 and skyrocketed in early 2022 and throughout the Class Period.
- 64. For example, between July 2023 and June 2024, although sale volume remained flat, Frozen Potato Product sale prices increased by 14.6 percent. And the dramatic increase in Frozen Potato Product prices cannot be adequately explained by the Defendants' cost

input. Between July 2022 and July 2024, while input costs *declined*, the prices for Frozen Potato Products jumped 47 percent.

65. Even after the Defendants' sliding input costs had re-settled at lower levels the prices for Frozen Potato Products continued to climb and remained uncompetitively high. The reason for this, as alleged above, was, and is, that the Defendants agreed not to compete with one another.

iv. The structure and characteristics of the Frozen Potato Product market support the existence of the Defendants' cartel and conspiracy.

66. Certain market characteristics make collusion more likely, for example by making collusion more efficient or more profitable. Such factors affecting the market for Frozen Potato Products include a highly concentrated market, high entry barriers, inelastic demand, commodity like product, opportunities within the seller's industry to collude, and sharing of competitively sensitive information.

a. The Frozen Potato Products market is highly concentrated

67. The Frozen Potato Products industry is highly concentrated, with just a few producers and/or processors controlling the supply. The Defendants comprise the four largest processors and sellers of Frozen Potato Products in North America, collectively holding over 95% of the market. The Defendant, Lamb Weston, holds more than a 40 percent market share, followed by the Defendant, McCain, at 30 percent, the Defendant, Simplot, at 20 percent, and the Defendant, Cavendish Farms, at 7-8 percent.
68. A concentrated market facilitates collusion in at least three ways. First, it gives a cartel of sellers more collective bargaining power by reducing buyers' alternatives. Second, communicating and agreeing upon collective action among fewer sellers requires less time and attention. Third, monitoring and policing the agreement among a smaller group of sellers is easier. The market for Frozen Potato Products has grown highly concentrated. Two decades ago, there were approximately 16 different companies with meaningful presence in the market; but those players have increasingly merged or otherwise consolidated their market share. That consolidation, as Defendants have admitted, has resulted in rising prices and rising margins. For example, in 2021 a former Defendant, Lamb Weston, vice-president boasted of high margins in the market, calling it "nirvana" for the largest market participants and that it was driven by consolidation of the industry. Further, farmers selling potatoes for Frozen Potato Products were effectively limited to only the Defendants.
69. As such, markets as consolidated as the Frozen Potato Products market present significant concerns because the possibility of anti-competitive collusion is more realistic in concentrated industries.

b. There are high barriers to entry in the Frozen Potato Product industry

70. High barriers to entering a market facilitate collusion in that market. Price increases and supra-competitive profits can attract other potential competitors, but high entry barriers make their market entry slower, riskier, and less likely to succeed, deterring and repelling additional competition. The Frozen Potato Product market's high entry barriers support the Defendants' collusion.

71. One barrier here is that competitively entering the Frozen Potato Products market would require extensive capital. For example, the Defendant, Cavendish Farms, planned to spend approximately \$293 million on a new frozen potato processing plant it announced in 2017 and spent \$430 million building a new plant in Alberta, Canada, in 2019. Such necessary start-up costs and investments to participate in the Frozen Potato Products market deter new market entry.
72. Another barrier is that entering the Frozen Potato Products market takes significant time, meaning that a new market entrant could not start operating and profiting immediately. For example, the Defendant, Simplot, expected completion of one new plant in the State of Washington, United States to take two years.
73. Another barrier is that Defendants' extensive relationships with potato growers which would make it difficult to obtain the raw potatoes necessary to compete in the Frozen Potato Products market.
74. As such, any new entrant would need to invest significant start-up capital on plants, specialized equipment, labor, infrastructure for distribution, and regulatory compliance. In addition, producers and/or processors of Frozen Potato Products are typically either vertically integrated (*i.e.*, they grow their own potatoes), such as Defendant, Simplot, or they have long established farm partners from whom they source their potatoes. This makes *de novo* entry by new participants even more challenging.
75. As a result, new competitors were prevented from responding to the supra-competitive prices caused by Defendants' unlawful price-fixing agreement by entering the Frozen Potato Product market, thus facilitating the Defendants' conspiracy.

c. The Frozen Potato Product market is characterized by inelastic demand

76. Demand is considered inelastic when a seller can increase prices without suffering a substantial reduction in demand. Demand inelasticity allows for collusion, because it enables producers to raise their prices collectively without triggering substitution to alternative products that could make the conspiratorial prices unprofitable.
77. Consumer demand for Frozen Potato Products is relatively unaffected by price because Frozen Potato Products are historically considered to be an inexpensive good, and even when prices fluctuate, they comprise a small share of consumers' budgets. As potatoes are one the most popular vegetables among North American consumers, the demand for potatoes is more price inelastic than that for less popular vegetables. For instance, frozen french fries are an important offering for food services and restaurants, so processors can raise prices without hurting demand.
78. Pricing for Frozen Potato Products is highly inelastic, in part, because there are no adequate substitutes. Frozen Potato Products are sold in virtually all restaurants and grocery stores throughout North America. This is because, due to their reduced preparation and ease of use, Frozen Potato Products are commercially accepted on a large scale. Although there are potential substitute products, such as fresh potatoes, the characteristics of those products lack the unique characteristics of Frozen Potato Products that make them attractive to both commercial and residential customers.
79. While demand for Frozen Potato Products-as a category-is relatively unaffected by price, competition *within* the industry would have allowed consumers to choose the cheapest

brand. In other words, had the Defendants not coordinated their unlawful price increases, consumers would have preferred the cheapest brand.

d. Frozen Potato Products are commodity products

80. The Defendants make similar Frozen Potato Products, which do not differ significantly in quality, appearance, or use. As a result, Frozen Potato Products are functionally interchangeable and considered a commodity product. For example, the United States Federal Reserve analyzes Frozen Potato Products as a "Producer Price Index by Commodity." The Frozen Potato Product market or industry is considered to be a "mature" market, one characteristic of which is homogeneous product offerings.
81. When products are interchangeable, the primary way to compete is on the basis of price. The avoidance of price-based competition is the primary motivation for forming a cartel. As such, cartels are more likely when the participants sell interchangeable products. Where products like Frozen Potato Products are interchangeable, economics suggest that cartel behavior is facilitated because, *inter alia*, cartel members can more easily agree to uniform price structures and monitor and detect defections from a price-fixing agreement.

e. Defendants had opportunities to collude

82. Opportunities for collusion facilitate price-fixing by providing cartels with otherwise legitimate-appearing opportunities to discuss prices and production. Communications among competitors can therefore provide circumstantial evidence of price-fixing. As described below, the Frozen Potato Products industry features both co-packing arrangements and trade association meetings that provided the Defendants with opportunities to collude.
83. In co-packing arrangements a manufacturer outsources part of its production to another company and then sells the products the other company has made. Co-packing agreements give manufacturers an opportunity to discuss prices and their production quantities with each other while discussing their arrangements. The Defendant, Lamb Weston, has acknowledged that it sources part of its production to other companies in co-packing arrangements.
84. The Defendants also share membership in multiple trade organizations and associations in the Frozen Potato Products industry. For example, the Defendants, McCain, Lamb Weston and Simplot, are all members of the Potato Association of America ("PAA"). The paramount objective of the PAA is the "collection and dissemination of the best available technical and practical information relating to all aspects of potato production, biology, and utilization." The PAA "serves as the official professional society for those involved in potato research, extension, production, and utilization." The PAA hosts a multi-day meeting each year of industry participants, including the Defendants. For example, the PAA held its 2022 meeting from July 17 to 22, 2022, in Missoula, Montana, its 2023 annual meeting from July 23 to 27, 2023 in Charlottetown, Prince Edward Island, Canada and its 2024 meeting in Portland, Oregon. The 2025 meeting is scheduled for July 27 to 31, 2025, in Madison, Wisconsin.
85. The Defendants, McCain, Cavendish Farms, Lamb Weston and Simplot, are also all members of the National Potato Council in the United States and the Canadian Potato Council. These entities are the voice of North American potato growers and industry members, and which, *inter alia*, addresses government policy and regulatory issues that

affect the potato industry. The National Potato Council hosts each year a "Potato Expo" which brings together growers, suppliers and industry experts to make the largest conference and trade show for the potato industry.

86. In addition, the Defendants have executives on the board of directors of the Potato Sustainability Alliance and American Frozen Food Institute. Three Defendants, McCain, Cavendish Farms and Simplot, are sustaining partners of the World Potato Congress.
87. The industry's common co-packing arrangements and the above contact at industry trade events gave the Defendants opportunities to meet and conspire about their prices for and production of Frozen Potato Products. It follows from these contacts that the Defendants' executives were aware of where their co-conspirators bought and sold their Frozen Potato Products.

f. Defendants' share competitively sensitive information

88. Sharing competitively sensitive information facilitates price-fixing because it is an action against independent economic self-interest, and it provides cartels with the means to enable the coordination of price increases and monitor each other's pricing.
89. All of the Defendants participate in PotatoTrac, an industry service run through a third-party data analytics firm, NPD Group, Inc., now known as Circana LLC ("Circana"), which provides in-depth market information, tracking, analytic, pricing strategies, and advisory services to help clients in making better business decisions. The Defendants either sell or supply Circana with their company specific data. PotatoTrac then sends the Defendants one another's market share information so that each knows where they and their competitors "sit" within the industry. PotatoTrac's commercial clients are limited to the Defendants. Potato Trac also includes company projections. Each of the Defendants willingly share their commercial data and information with PotatoTrac, knowing that the only other commercial industry participants are their major Frozen Potato Products competitors. By knowing and monitoring each other's "share" information, the Defendants are disincentivized to compete on price or for market share. Instead, they can keep Frozen Potato Product prices artificially high and monitor their conspiracy.

Part 2: RELIEF SOUGHT

90. The Plaintiff, on his own behalf and on behalf of Class Members, claims against each of the Defendants, jointly or severally, as follows:
- a) an order certifying this action as a multi-jurisdictional class proceeding and appointing the Plaintiff as the named representative;
 - b) a declaration that the Defendants price-fixing conduct constituted an unlawful restraint of trade and/or competition in violation of section 45 (1) of Part VI of the *Competition Act*, R.S.C. 1985, c. C-34 ("**Competition Act**");
 - c) a declaration that the Defendants are liable for the conduct or damage caused by any other non-party co-conspirator;
 - d) damages for conspiracy and conduct that is contrary to Part VI of the *Competition Act* pursuant to section 36(1) of the *Competition Act*;

- e) damages for the tort of civil conspiracy;
- f) an injunction against Defendants, their affiliates, subsidiaries, successors, transferees, assignees, and other officers, directors, partners, agents and employees thereof and all other persons acting or claiming to act on their behalf or in concert with them, from in any manner continuing, maintaining or renewing the conduct, agreement, contract, conspiracy or combination alleged herein, or from entering into any other agreement, contract, conspiracy or combination having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect;
- g) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("**CPA**") directing an aggregate assessment of damages;
- h) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- i) damages, including actual, compensatory, incidental, statutory and consequential damages;
- j) punitive or aggravated damages;
- k) costs of investigation pursuant to section 36 of the *Competition Act*;
- l) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- m) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

E. Jurisdiction

91. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (the "**CJPTA**") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f),(g), (h) and/or (i) of the *CJPTA* because this proceeding:

- a) concerns restitutionary obligations that, to a certain extent, arose in British Columbia;
- b) concerns a tort committed in British Columbia;
- c) concerns a business carried on in British Columbia; and/or
- d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

F. Causes of Action

i. Breach of Part IV of the *Competition Act*

92. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.
93. Beginning from at least January 1, 2021 and continuing through the present, the Defendants, as well as their co-conspirators, entered into a continuing combination, agreement, arrangement and/or conspiracy in restraint of trade to fix, maintain, increase and/or control prices within the Frozen Potato Product market with the goal and intent of artificially inflating the prices of Frozen Potato Products in Canada in violation of Section 45(1) of the *Competition Act*.
94. The Defendants are "competitors" within the meaning of sections 45(1) and (8) of the *Competition Act*.
95. Frozen Potato Products are "products" within the meaning of sections 2 and 45(1) of the *Competition Act*.
96. As averred to above, by means of a conspiracy and/or an unlawful agreement, the Defendants conspired, agreed and/or arranged to:
- a) fix, maintain, increase and/or control the price for the supply of Frozen Potato Products in Canada;
 - b) allocate sales, territories, customers and/or markets for the supply of Frozen Potato Products in Canada; and
 - c) fix, maintain, control, prevent, lessen and/or eliminate the supply of Frozen Potato Products in Canada.
97. In formulating and carrying out the alleged combination, agreement, arrangement and/or conspiracy, the Defendants, as well as their co-conspirators, did those things that they combined and conspired to do, including but not limited to:
- a) reached agreements-through in-person meetings, exchanges of information, and other communications-to fix the price of products within the Frozen Potato Product market with the goal and intent of artificially inflating the prices of Frozen Potato Products in Canada;
 - b) reached agreements-through in-person meetings, exchanges of information, and other communications-to fix, inflate, maintain, and/or stabilize the prices of Frozen Potato Products in Canada;
 - c) implemented, monitored, and enforced that conspiracy to artificially inflate prices through in person meetings, exchanges of information, inter-defendant sales, and other communications; and
 - d) sold Frozen Potato Products to Class Members at fixed, inflated, maintained, and/or stabilized prices in Canada.

98. The Defendants implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication, which communication was for the purposes of giving effect to a conspiracy, combination, agreement and/or arrangement entered outside Canada in relation to the above that, when entered into Canada, contravened section 46 of the *Competition Act*.
99. This conspiracy is a *per se* violation of 45(1) of the *Competition Act*.
100. The combination, agreement, arrangement and/or conspiracy, as alleged herein, has had the following effects, among others:
- a) price competition in Canada has been restrained, suppressed and/or eliminated with respect to Frozen Potato Products sold directly or indirectly to the Class;
 - b) prices paid for Frozen Potato Products sold directly or indirectly to the Class have been fixed, inflated, maintained and/or stabilized at artificially high, non-competitive levels throughout Canada; and
 - c) the Class has been deprived of free and open competition for Frozen Potato Products.
101. Frozen Potato Products are identifiable, discrete products which follow a traceable chain of distribution from the Defendants to their direct purchaser customers to indirect purchasers and other consumer end users.
102. As a result of the unlawful conduct, as alleged herein, the Plaintiff and Class Members paid enhanced, inflated, and supra-competitive prices for Frozen Potato Products. The Defendants' conduct caused loss and damage to the Plaintiff and Class Members in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided at Trial.

ii. Civil Conspiracy

103. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.
104. The Defendants and their co-conspirators are liable for the tort of civil conspiracy- both under unlawful means conspiracy and predominant purpose conspiracy. The Defendants and their unnamed co-conspirators entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages to the Plaintiff and Class Members. The unlawful means include the following:
- a) entering into agreements or arrangements to fix, maintain, increase, and/or control prices for the supply of Frozen Potato Products sold to customers in Canada, and elsewhere, in contravention of sections 45(1) and 46(1) of the *Competition Act*, and
 - b) aiding, abetting, and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code of Canada*, R.S.C. 1985, c C-46.
105. In furtherance of the conspiracy, the Defendants along with their agents, servants and unnamed co-conspirators carried out the acts described above.

106. The acts particularized above were unlawful acts directed towards indirect, and/or direct, purchasers of Frozen Potato Products, which unlawful acts the Defendants knew would likely cause injury to such indirect and direct purchasers, including the Plaintiff.
107. The Defendants and their unnamed co-conspirators were motivated to conspire. Their predominant purpose was to harm Class Members by requiring them to pay artificially inflated prices for Frozen Potato Products, and to illegally increase their profits on the sale of their Frozen Potato Products.
108. The Defendants and their unnamed co-conspirators intended to cause economic loss to the Plaintiff and Class Members. In the alternative, the Defendants and their unnamed co-conspirators knew in the circumstances that their unlawful acts would likely cause injury.

iii. Fraudulent Concealment

109. The Plaintiff and other Class Members had neither actual nor constructive knowledge of the facts constituting their claim for relief herein.
110. The Plaintiff and Class Members did not and could not have known about the Defendants' anti-competitive agreement. The Defendants engaged in a secret conspiracy that did not reveal facts that would put the Plaintiff or the Class on inquiry notice that there was a conspiracy to artificially inflate the prices of Frozen Potato Products in Canada.
111. The Defendants' anti-competitive conspiracy, by its very nature, was self-concealing. Frozen Potato Product manufacturers or processors are not exempt from anti-competitive regulation, and thus, the Plaintiff and Class Members reasonably considered the Frozen Potato Product industry to be competitive until recently. A reasonable person under the circumstances would not have been alerted to begin to investigate the legitimacy of prices paid by indirect, and/or direct, purchasers for Frozen Potato Products in Canada.
112. The Plaintiff and Class Members could not have discovered the alleged conspiracy at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and non-party co-conspirators to conceal their combination.
113. Throughout the Class Period, the Defendants effectively, affirmatively, and fraudulently concealed their unlawful combination and conspiracy from the Plaintiff and Class Members.
114. The combination and conspiracy, as alleged herein, was fraudulently concealed by the Defendants by various means and methods, including, but not limited to, the Defendants' repeated public statements that they offered competitive prices--e.g., that they offer prices set by competitive forces in the market rather than by the anti-competitive agreement, as alleged herein. During the Class Period, the Defendants affirmatively and falsely represented that they set competitive prices for Frozen Potato Products. These false representations were used to conceal the conspiracy.

By virtue of the Defendants' fraudulent concealment of their wrongful conduct, the running of any limitation period has been tolled and suspended with respect to any claims and rights of action that the Plaintiff and Class Members have as a result of the unlawful combination and conspiracy, as alleged herein.

iv. Unjust Enrichment

115. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.

116. As a result of their unlawful price-fixing conduct, the Defendants benefitted from a significant enhancement of their revenues on their Frozen Potato Products. Class Members have suffered a corresponding deprivation as a result of being forced to pay artificially inflated prices for Frozen Potato Products. There is no juristic reason or justification for the Defendants' enrichment, as such conduct is tortious, unjustifiable, and unlawful under the *Competition Act*.

117. It would be inequitable for the Defendants to be allowed to retain any of the ill-gotten gains resulting from their unlawful price-fixing conduct.

The Plaintiff and Class Members are entitled to the amount of the Defendants' ill-gotten gains resulting from their unlawful and inequitable price-fixing conduct.

G. Tolling of Limitation Periods

118. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.

119. During the Class Period, the Defendants' conspiracy was a continuing violation in which the Defendants repeatedly violated Class Members' interests by adhering to, enforcing, and reaffirming the anti-competitive agreement described herein.

120. The Defendants' continuing adherence to, enforcement of, and reaffirmation of the anti-competitive agreement throughout the Class Period was, and is, consummated through, among other conspiratorial acts, repeatedly selling Frozen Potato Products at artificially inflated prices, communicating with each other to discuss the terms of and continued adherence to the conspiracy and continually refusing to compete for each other's customers.

Plaintiff's address for service:

Dusevic & Garcha
Barristers & Solicitors
210 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

604-436-3302

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, British Columbia, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: December 2, 2024

A handwritten signature in blue ink, appearing to read "K. S. Garcha", is written over a horizontal line.

Signature of K.S. Garcha
lawyer for plaintiff(s)

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "**CJPTA**") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f), (g), (h) and (l) of the *CJPTA* because this proceeding:

- a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- b) concerns a tort committed in British Columbia;
- c) concerns a business carried on in British Columbia; and
- d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed multi-jurisdictional class proceeding involves an alleged conspiracy among the Defendants to fix, maintain, increase and/or control the price for the supply of Frozen Potato Products and resulting artificial price increases of such in violation of the *Competition Act*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

Class Proceedings Act, R.S.B.C. 1996, c.50

Court Jurisdiction and Proceedings Transfer Act R.S.B.C. 2003 c.28

Competition Act, R.S.C. 1985, c.C-34;

Criminal Code of Canada, R.S.C. 1985, c C-46;

Limitation Act, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8