



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 21-Dec-2017  
Délivré par voie électronique  
Brampton

**IRENE BRECKON**

Plaintiff

- and -

**LOBLAW COMPANIES LIMITED, GEORGE WESTON LIMITED, WESTON FOODS  
(CANADA), INCORPORATED, WESTON BAKERIES LTD., CANADA BREAD  
COMPANY, LIMITED, WAL-MART CANADA CORPORATION, SOBEYS  
INCORPORATED, METRO INCORPORATED, GIANT TIGER STORES LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.  
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: "December 21, 2017"

Issued by: \_\_\_\_\_

Local Registrar

Address of Court Office:  
Superior Court of Justice  
7755 Hurontario Street  
Brampton, ON L6W 4T6

**TO: LOBLAW COMPANIES LIMITED**  
1 Presidents Choice Circle  
Brampton, ON L6T 5S5

**AND TO: GEORGE WESTON LIMITED**  
22 St. Clair Avenue East  
Suite 800  
Toronto, ON M4T 2S5

**AND TO: WESTON FOODS (CANADA), INCORPORATED**  
22 St. Clair Avenue East  
Suite 800  
Toronto, ON M4T 2S5

**AND TO: WESTON BAKERIES LTD.**  
22 St. Clair Avenue East  
Suite 800  
Toronto, ON M4T 2S5

**AND TO: CANADA BREAD COMPANY, LIMITED**  
10 Four Seasons Place  
Etobicoke, ON M9B 6H7

**AND TO: WAL-MART CANADA CORPORATION**  
1940 Argentia Road  
Mississauga, ON L5N 1P9

**AND TO: SOBEYS INCORPORATED**  
115 King Street  
Stellarton, NS B0K 1S0

**AND TO: METRO INCORPORATED**  
11011 Maurice-Duplessis Blvd.  
Montréal, QC H1C 1V6

**AND TO: GIANT TIGER STORES LIMITED**  
2480 Walkley Road  
Ottawa, ON K1G 6A9

## CLAIM

1. The plaintiff claims on her own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 7 below):

- (a) Damages or compensation in an amount not exceeding \$1 billion for:
  - (i) loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (“*Competition Act*”);
  - (ii) civil conspiracy;
  - (iii) unjust enrichment; and
  - (iv) waiver of tort;
- (b) Punitive, exemplary and aggravated damages in the amount of \$100,000,000, or such further and other amount that is specified;
- (c) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 (“*Courts of Justice Act*”), as amended;
- (d) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (e) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (f) Such further and other relief as this Honourable Court deems just.

### **Summary of Claim**

2. This action arises from a conspiracy between the defendants involving packaged bread products and bread alternatives (including, but not limited to, bagged bread, buns, rolls, bagels, naan bread, English muffins, wraps, pita and tortillas) (collectively, “**Fresh Commercial Bread**”).

3. The conspiracy involving Fresh Commercial Bread sought to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof, contrary to s. 45(1)(b) of the *Competition Act*, as it existed prior to March 11, 2010; to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, contrary to s. 45(1)(c) of the *Competition Act*, as it existed prior to March 11, 2010; and to fix, maintain, increase or control the price for the supply of the product, contrary to s. 45(1)(a) of the *Competition Act*.

4. The unlawful conduct occurred from at least as early as January 2001 and continued until at least December 20, 2017 and/or during the subsequent period during which prices were affected by the alleged conspiracy. The unlawful conduct was targeted at purchasers of Fresh Commercial Bread, raising prices to all members of the Proposed Class.

5. As a direct result of the unlawful conduct alleged herein, the plaintiff and other members of the Proposed Class paid artificially inflated prices for Fresh Commercial Bread manufactured, marketed, sold and/or distributed during the Class Period and have thereby suffered losses and damages.

### **The Plaintiff**

6. The plaintiff, Irene Breckon (“**Breckon**”), is an individual who resides in Elliot Lake, Ontario. She is the President of the Anti-Poverty Coalition in Elliot Lake. She regularly purchased

loaves of Country Harvest bread (a Fresh Commercial Bread product manufactured by the Weston Defendants as described below) on a weekly basis at a No Frills grocery store in Elliot Lake.

7. The plaintiff seeks to represent the following class (the “**Proposed Class**”):

All persons in Canada who purchased Fresh Commercial Bread<sup>1</sup> during the Class Period.<sup>2</sup> Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

<sup>1</sup> Fresh Commercial Bread means packaged bread products and bread alternatives (including, but not limited to, bagged bread, buns, rolls, bagels, naan bread, English muffins, wraps, pita and tortillas).

<sup>2</sup> Class Period means between January 1, 2001 and continuing until December 20, 2017 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

## **The Defendants**

### ***Weston Defendants***

8. The defendant, Loblaw Companies Ltd. (“**Loblaws**”), is a Canadian corporation with its principal place of business in Brampton, Ontario. During the Class Period, Loblaws manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and subsidiaries.

9. The defendant, George Weston Limited (“**George Weston**”), is a Canadian corporation with its principal place of business in Toronto, Ontario. During the Class Period, George Weston manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Loblaws is owned and controlled by George Weston.

10. The defendant, Weston Foods (Canada), Incorporated (“**Weston Foods**”), is a Canadian corporation with its principal place of business in Toronto, Ontario. During the Class Period,

Weston Foods manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Weston Foods is owned and controlled by George Weston.

11. The defendant, Weston Bakeries Ltd. (“**Weston Bakeries**”), is a Canadian corporation with its principal place of business in Toronto, Ontario. During the Class Period, Weston Bakeries manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Weston Bakeries is owned and controlled by George Weston.

12. The businesses of each of Loblaws, George Weston, Weston Foods and Weston Bakeries is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Fresh Commercial Bread and for the purposes of the conspiracy described hereinafter. Loblaws, George Weston, Weston Foods and Weston Bakeries are collectively referred to herein as “**Weston**”.

*Canada Bread Company, Limited*

13. The defendant, Canada Bread Company, Limited (“**Canada Bread**”), is a Canadian corporation with its principal place of business in Toronto, Ontario. During the Class Period, Canada Bread manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and subsidiaries.

*Wal-Mart Canada Corporation*

14. The defendant, Wal-Mart Canada Corporation (“**Wal-Mart Canada**”), is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period,

Wal-Mart Canada manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

***Sobeys Incorporated***

15. The defendant, Sobeys Incorporated (“**Sobeys**”), is a Canadian corporation with its principal place of business in Stellarton, Nova Scotia. During the Class Period, Sobeys manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

***Metro Incorporated***

16. The defendant, Metro Incorporated (“**Metro**”), is a Canadian corporation with its principal place of business in Montreal, Quebec. During the Class Period, Metro manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

***Giant Tiger Stores Limited***

17. The defendant, Giant Tiger Stores Limited (“**Giant Tiger**”) is a Canadian corporation with its principal place of business in Ottawa, Ontario. During the Class Period, Giant Tiger manufactured, marketed, sold and/or distributed Fresh Commercial Bread to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

***Unnamed Co-Conspirators***

18. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit may have participated as co-conspirators with the defendants



in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. Other persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are not presently known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

***Joint and Several Liability***

19. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

20. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

**The Canadian Bread Industry**

21. During the Class Period, the defendants and their co-conspirators manufactured and/or sold Fresh Commercial Bread to retailers and consumers across Canada.

22. The defendants and their co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices for Fresh Commercial Bread sold in Canada.

23. The defendants and their co-conspirators unlawfully conspired to agree and manipulate prices for Fresh Commercial Bread and conceal their anti-competitive behaviour from retailers, consumers and other industry participants. The defendants and their co-conspirators intended and

were aware that their unlawful scheme and conspiracy would unlawfully increase the price at which Fresh Commercial Bread would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their co-conspirators intended that their unlawful scheme and conspiracy would injure purchasers of Fresh Commercial Bread. The defendants were aware that their conduct would impact the price of Fresh Commercial Bread beyond products manufactured and sold by Weston and Canada Bread and would impact the price of all Fresh Commercial Bread sold in Canada.

24. The defendants and their co-conspirators are the dominant manufacturers and suppliers of Fresh Commercial Bread sold in Canada. The Fresh Commercial Bread industry is characterized by high financial barriers to entry, which were known to the defendants. These barriers to entry, coupled with the defendants' high market share, meant that the defendants intended and were able to increase the price of all Fresh Commercial Bread sold in Canada, including those manufactured and supplied by non-cartel members, to *supra*-competitive levels during the Class Period.

25. Relying on higher prices set by the defendants, the non-cartel suppliers were able to, and did, maximize their profits by charging higher prices for Fresh Commercial Bread than they would have in a competitive market. The non-cartel suppliers' conduct in charging higher prices was a direct response to the higher Fresh Commercial Bread prices caused by the defendants' collusive conduct and exercise of collective market power. But for the conspiracy, the defendants would have charged lower, competitive prices, and the non-cartel suppliers would have needed to follow those lower prices or risk losing market share.

26. During the Class Period, members of the Proposed Class who directly or indirectly purchased Fresh Commercial Bread manufactured by non-cartel suppliers (“**Umbrella**

**Purchasers**”), suffered damages measured as the difference between the actual prices paid by them and the “but for” prices that they would have obtained in a competitive market. The defendants were aware and intended that the alleged conspiracy would result in Umbrella Purchasers paying *supra*-competitive prices for Fresh Commercial Bread during the Class Period.

### **Canadian Investigation into the Cartel**

27. By press release dated December 19, 2017, George Weston and Loblaws announced that Loblaws and Weston Bakeries were engaged in a price-fixing arrangement involving the coordination of retail and wholesale prices of certain packaged bread products over a period extending from late 2001 to March 2015. As described in the press release, under the arrangement, the participants regularly increased prices on a coordinated basis. The participants included Loblaws and Weston Bakeries, as well as other major grocery retailers and another bread wholesaler, the press release stated. George Weston and Loblaws have acknowledged that they requested immunity from prosecution by the Competition Bureau and the Public Prosecution Service of Canada.

28. On December 18, 2017, the Ontario Superior Court of Justice unsealed certain warrants to enter, search and copy or seize for examination or copying certain records pursuant to sections 15 and 16 of the *Competition Act*. These warrants revealed that Informations to Obtain warrants were sworn by an authorized representative of the Commissioner of Competition on or about October 24, 2017, and subsequently on October 26, 2017 and October 30, 2017, in which it was alleged that the defendants and other persons known and unknown engaged in a conspiracy, combination, agreement or arrangement with each other, contrary to s. 45(1)(b) and s. 45(1)(c) of the *Competition Act*, as they existed prior to amendments to the Act in 2010, and contrary to s. 45(1)(a), as it existed after amendments to the Act in 2010.

29. Fifteen search warrants were executed at the following locations in which the defendants carried on business in late October and early November 2017:

- (a) Canada Bread, 10 Four Seasons Place, Suite 1200, Etobicoke, ON
- (b) George Weston, 22 St. Clair Avenue East, Suite 800, Toronto, ON
- (c) Giant Tiger, 2480 Walkley Road, Ottawa, ON
- (d) Loblaws, 1 President's Choice Circle, Brampton, ON
- (e) Metro, 7151 Jean-Talon Est, 5<sup>e</sup> étage, Montreal, QC
- (f) Metro, 11701 Boulevard Albert-Hudon, Montreal, QC
- (g) Metro, 25 Vickers Road, Building C, Toronto, ON
- (h) Metro, 11011, boulevard Maurice-Duplessis, Montreal, QC
- (i) Metro, 5559 Dundas Street West, Etobicoke, ON
- (j) Sobeys, 123 Foord Street, Stellarton, NS
- (k) Sobeys, 115 King Street, Stellarton, NS
- (l) Sobeys, 4980 Tahoe Boulevard, Mississauga, ON
- (m) Wal-Mart Canada, 6600 Kitimat Road, Mississauga, ON
- (n) Wal-Mart Canada, 1940 Argentia Road, Mississauga, ON
- (o) Weston Foods, 1425 The Queensway, Etobicoke, ON

30. In addition, a search warrant was issued at a location involving a third party described by a Senior Competition Law Officer as not being a target of the inquiry at the time of the swearing of his affidavit. The plaintiff alleges the third party described is Overwaitea Food Group.

### **The Plaintiff Purchased Fresh Commercial Bread**

31. During the Class Period, Breckon purchased Fresh Commercial Bread, including Country Harvest bread that was manufactured, marketed and sold by Weston.

### **Breaches of Part VI of *Competition Act***

32. From at least as early as January 1, 2001 until at least December 20, 2017, and/or the subsequent period during which prices were affected by the alleged conspiracy, the defendants and their co-conspirators engaged in a conspiracy (or possibly separate related or unrelated conspiracies) to rig bids for and to fix, maintain, increase or control the prices of Fresh Commercial Bread sold to customers in Canada. The defendants and their co-conspirators conspired to enhance unreasonably the prices of Fresh Commercial Bread and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Fresh Commercial Bread in Canada. The conspiracy was intended to, and did, affect prices of Fresh Commercial Bread.

33. The defendants and their co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in Canada to discuss bids and price quotations;
- (b) agreeing, during those meetings, conversations and communications, on bids and price quotations;

- (c) agreeing on the prices to be charged and to control discounts for Fresh Commercial Bread in Canada and to otherwise fix, increase, maintain or stabilize those prices;
- (d) agreeing, during those meetings, conversations and communications, to allocate the supply of Fresh Commercial Bread in Canada;
- (e) agreeing, during those meetings, conversations and communications, to coordinate price adjustments in Canada;
- (f) submitting bids, price quotations and price adjustments in Canada in accordance with the agreements reached;
- (g) enhancing unreasonably the price of Fresh Commercial Bread sold in Canada;
- (h) selling Fresh Commercial Bread in Canada for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Fresh Commercial Bread in Canada;
- (i) allocating the supply of Fresh Commercial Bread sold in Canada;
- (j) accepting payment for Fresh Commercial Bread sold in Canada at collusive and *supra*-competitive prices;
- (k) engaging in meetings, conversations and communications for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security

rules to prevent “paper trails”, abusing confidences, communicating by telephone and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and

(m) preventing or lessening, unduly, competition in the market in Canada for the production, manufacture, sale or distribution of Fresh Commercial Bread.

34. As a result of the unlawful conduct alleged herein, the plaintiff and other members of the Proposed Class paid unreasonably enhanced/*supra*-competitive prices for Fresh Commercial Bread.

35. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1) and 47(1) of the *Competition Act*. The plaintiff claims loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

### **Civil Conspiracy**

36. The defendants are liable for the tort of civil conspiracy – both under unlawful means conspiracy and predominant purpose conspiracy. The defendants and their co-conspirators voluntarily entered into agreements with each other to use unlawful means, which resulted in loss and damage, including special damages, to the plaintiff and other members of the Proposed Class. The unlawful means include the following:

(a) entering into agreements to rig bids and fix, maintain, increase or control prices of Fresh Commercial Bread sold to customers in Canada in contravention of sections 45(1), 46(1), and 47(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*, RSC 1985, c C-46.

37. In furtherance of the conspiracy, the defendants, their servants, agents and co-conspirators carried out the acts described in paragraph 33 above.

38. The acts particularized in paragraph 33 were unlawful acts directed towards purchasers of Fresh Commercial Bread, including the plaintiff, which unlawful acts the defendants and their co-conspirators knew in the circumstances would likely cause injury to those purchasers and the plaintiff.

39. The defendants and their co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiff and other members of the Proposed Class by requiring them to pay artificially high prices for Fresh Commercial Bread, and to illegally increase their profits on the sale of Fresh Commercial Bread.

40. The defendants and their co-conspirators intended to cause economic loss to the plaintiff and other members of the Proposed Class. In the alternative, the defendants and their co-conspirators knew, in the circumstances, that their unlawful acts would likely cause injury.

### **Discoverability**

41. Fresh Commercial Bread is not exempt from competition regulation and thus, the plaintiff reasonably considered the Fresh Commercial Bread industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Fresh Commercial Bread.



42. Accordingly, the plaintiff and other members of the Proposed Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

### **Fraudulent Concealment**

43. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the plaintiff and other members of the Proposed Class. The defendants and their co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the plaintiff. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

44. The defendants' and their co-conspirators' anti-competitive conspiracy was self-concealing. As detailed in paragraph 33 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

45. Because the defendants' agreements, understandings and conspiracies were kept secret, the plaintiff and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying *supra*-competitive prices for Fresh Commercial Bread.

### **Unjust Enrichment**

46. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Fresh Commercial Bread. All members of the Proposed Class, to the extent that they purchased Fresh Commercial Bread, have suffered a corresponding deprivation. There is no juristic reason or justification for the defendants' enrichment – the defendants' receipt

of the overcharge is the result of wrongful or unlawful acts. As such, there is and can be no juridical reason justifying the defendants' retention of the overcharge and, in particular, any contracts upon which the defendants purport to rely to receive the overcharge are void and illegal.

### **Waiver of Tort**

47. In the alternative to damages, in all of the circumstances, the plaintiff pleads an entitlement to "waive the tort" of civil conspiracy and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the defendants and their co-conspirators as a result of their unlawful conspiracy.

48. As a direct, proximate and foreseeable result of the defendants' wrongful conduct, the plaintiff and other members of the Proposed Class overpaid for Fresh Commercial Bread. As a result of the unlawful conspiracy, the defendants profited from the sale of Fresh Commercial Bread at artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful overcharge. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the alleged conspiracy.

### **Damages**

49. The conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Fresh Commercial Bread sold directly or indirectly to the plaintiff and other members of the Proposed Class in Ontario and the rest of Canada;
- (b) the prices of Fresh Commercial Bread sold directly or indirectly to the plaintiff and other members of the Proposed Class in Ontario and the rest of Canada have been fixed, maintained, increased or controlled at artificially inflated levels; and

(c) the plaintiff and other members of the Proposed Class have been deprived of free and open competition for Fresh Commercial Bread in Ontario and the rest of Canada.

50. Fresh Commercial Bread is an identifiable, discrete physical product. As a result, Fresh Commercial Bread follows a traceable chain of distribution from the defendants and their co-conspirators to consumers or other end-user purchasers. Costs attributable to Fresh Commercial Bread can be traced through the distribution chain.

51. By reason of the wrongful conduct alleged herein, the plaintiff and the members of the Proposed Class have sustained losses by virtue of having paid higher prices for Fresh Commercial Bread than they would have paid in the absence of the illegal conduct of the defendants and their co-conspirators. As a result, the plaintiff and other members of the Proposed Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

### **Punitive, Aggravated and Exemplary Damages**

52. The defendants and their co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Fresh Commercial Bread. They were aware that their actions would have a significant adverse impact on the Proposed Class. Bread is a basic staple food product purchased by virtually all Canadians, including vulnerable, low-income persons. The conduct of the defendants and their co-conspirators was high-handed, reckless, without care, deliberate and in disregard of the plaintiff's and Proposed Class members' rights.

53. As the immunity applicant, Weston will not face any criminal punishment or fines for its actions resulting from its admittedly illegal activities. Price fixing agreements are analogous to

fraud and theft. The punitive damages awarded must include, among other things, a multiplier of the expected gain from the illegal overcharge. Otherwise, taking into account the low probability of detection, prosecution and conviction in cases involving illegal conspiracies, an award of punitive damages that fails to sting will not achieve objectives of deterrence and would not be consistent with the public interest. The punitive damages awarded must be sufficiently high to render the expected value of conspiratorial agreements negative, to ensure that damages awarded in respect of the illegal overcharge are more than a mere licence fee or cost of doing business, and to deter other manufacturers, distributors and/or retailers of consumer goods from taking part in price-fixing conspiracies.

54. Accordingly, the plaintiff requests substantial punitive, exemplary and aggravated damages in favour of the Proposed Class.

#### **Service of Statement of Claim Outside Ontario**

55. The plaintiff is entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because:

- (a) Rule 17.02 (g) – the claim relates to a tort committed in Ontario; and
- (b) Rule 17.02 (p) – the claim relates to a person ordinarily resident or carrying on business in Ontario.

Date: "December 21, 2017"

**SOTOS LLP**

Barristers and Solicitors  
180 Dundas Street West, Suite 1200  
Toronto, ON M5G 1Z8

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Lawyers for the Plaintiff

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brampton  
Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**SOTOS LLP**  
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