

AMENDED THIS SEP 12/24 PURSUANT TO
MODIFIÉ CE _____ CONFORMÉMENT A _____
 RULE/LA RÉGLE 26.02 (A)
 THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No. CV-17-586063-00CP

W. Campbell
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE
ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCY DAVID, BRENDA BROOKS, and ANDREW BALODIS
Plaintiffs

- and -

LOBLAW COMPANIES LIMITED, GEORGE WESTON LIMITED,
WESTON FOODS (CANADA) INC., WESTON BAKERIES LIMITED, CANADA BREAD
COMPANY, LIMITED, GRUPO BIMBO, S.A.B. DE C.V.,
MAPLE LEAF FOODS INC., EMPIRE COMPANY LIMITED, SOBEYS INC., METRO
INC., WAL-MART CANADA CORP., WAL-MART STORES, INC. and GIANT TIGER
STORES LIMITED
Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF DEFENCE AND CROSSCLAIM
OF CANADA BREAD COMPANY, LIMITED

1. The defendant Canada Bread Company, Limited ("**Canada Bread**") admits the allegations in paragraphs 10 to 12, paragraph 21, the first sentence of paragraph 26, paragraph 27, ~~and paragraph 78~~ 87 insofar as it concerns the period of time set out in the Plea (as defined below), ~~and paragraph 89~~ of the Fourth Fifth Fresh as Amended Statement of Claim dated ~~August 4, 2023~~ February 20, 2024 (the "**Claim**").
2. Canada Bread has no knowledge of the allegations in paragraphs 7 to 9, 34 to 35, 40 to 42, and 47 of the Claim.

3. Except as otherwise expressly admitted below, Canada Bread denies the allegations in paragraphs 1, 3 to 6, 13 to 20, paragraphs 22 to 25, the second sentence of paragraph 26, paragraphs 28 to 33, 36 to 39, 43 to 46, 48 to ~~77~~, ~~and 79 to 135~~ 76 to 85, and 87 to 152 of the Claim and denies that the plaintiffs are entitled to any of the relief claimed in paragraph 2 of the Claim, or any relief whatsoever, as against Canada Bread.

OVERVIEW

4. In the Claim, the plaintiffs allege a single, multi-level conspiracy beginning in November 2001 between the defendant producers/suppliers of packaged bread (Canada Bread, Weston Foods (Canada) Inc. and Weston Bakeries Limited) and the defendants that sell packaged bread to consumers (being Loblaw Companies Limited ("**Loblaw**"), Sobeys Inc. ("**Sobeys**"), Wal-Mart Canada Corp. ("**Wal-Mart Canada**"), Metro Inc. ("**Metro**"), and Giant Tiger Stores Limited ("**Giant Tiger**"), collectively, the "**Retailer Defendants**") resulting in alleged overcharges on the sale of packaged bread.

5. Canada Bread denies that it participated in the lengthy, wide-ranging conspiracy alleged in the Claim. In June 2023, Canada Bread plead guilty to four charges under the *Competition Act*, R.S.C. 1985, c. C-34, that on a total of four occasions (in 2007, and in 2010-2011) it entered into arrangements with the defendant Weston Foods (Canada) Inc. ("**Weston**") to increase the wholesale price of packaged sliced bread and rolls to certain grocery retailers. These arrangements resulted in only two implemented price increases, one in 2007 and one in 2011. This conduct took place while Canada Bread was under the ownership of the defendant Maple Leaf Foods Inc. ("**Maple Leaf**").

6. Canada Bread further denies that it profited as a result of the 2007 and 2011 price increases, or the conspiracy alleged in the Claim. The reality is, the wholesale prices charged by Canada Bread actually increased at a slower pace compared to the prices charged by bread manufacturers in the United States during the material time, including as a result of trade spend and individualized price negotiations with its customers in Canada.

7. The plaintiffs' action was certified in part as a class proceeding pursuant to the Order of Justice Morgan dated December 31, 2021 (the "**Certification Order**").

8. Justice Morgan certified the plaintiffs' claims under s. 45 of the *Competition Act*, and the plaintiffs' claims for the tort of civil conspiracy and unjust enrichment in respect of the alleged overcharges. "**Packaged Bread**" is defined in the Certification Order as "industrially-produced bread products and bread alternatives manufactured and packaged by the Defendant producers, including only bagged bread, buns, rolls, bagels, naan bread, English muffins, wraps, pita and tortillas for resale", but excluding "**Fresh Bread**", i.e., bread products and bread alternatives that are partly or fully baked in retail stores or foodservice providers, or otherwise finished in retail stores.

9. The class as certified consists of direct and indirect purchasers of Packaged Bread resident in Canada (other than in the province of Quebec) as of the date of the Certification Order, who purchased Packaged Bread that was sold by a Retailer Defendant during the Class Period (the "**Class**"). The Class Period is the period of time between November 1, 2001 and the date of certification (December 31, 2021).

10. The plaintiffs' action was not certified in respect of any of the three proposed classes of umbrella purchasers, namely: (a) persons who the plaintiffs define in their Statement of Claim as purchasers of packaged bread "produced or sold by anyone other than the Defendants"; (b) persons who purchased Fresh Bread sold by a defendant retailer; and (c) purchasers of Fresh Bread sold by certain non-defendant retailers.

11. Other than with respect to George Weston Limited, the plaintiffs' action was not certified as against the defendants that are or were the corporate parents of producer and Retailer Defendants, the corporate parents being Grupo Bimbo S.A.B de C.V. ("**Grupo Bimbo**"), Maple Leaf, Wal-Mart Stores, Inc., and Empire Company Limited.

12. The Claim includes claims that were not certified pursuant to the Certification Order. The Claim also does not accurately reflect the definition of the Class set out in the Certification Order. This statement of defence addresses only those allegations that relate to the Class and to the common issues certified in the Certification Order. Canada Bread reserves its right to amend this statement of defence, including in light of the result of the pending appeal of the Certification Order and any further amendments to the Claim that may be made by the plaintiffs.

CANADA BREAD

13. Canada Bread is a Canadian national bakery established in 1911 that operates bakeries throughout Canada and bakes and distributes a variety of bakery products. Since 2001 and still today, Canada Bread's primary products are packaged bread products. During the Class Period, Canada Bread did not generally sell packaged bread directly to consumers, but rather to grocery stores, foodservice businesses (such as

restaurant chains), and alternative channel distributors (such as gas stations and dollar stores).¹

14. Canada Bread is a wholly-owned subsidiary of Grupo Bimbo, a multinational food company headquartered in Mexico with a presence in 33 countries. From the beginning of the Class Period until May 23, 2014, Canada Bread was a subsidiary of Maple Leaf, at which time it was purchased by Grupo Bimbo.

15. Between the start of the Class Period and approximately May 23, 2014, Canada Bread did not have an independent legal and compliance department. Canada Bread's legal and compliance functions were directed by senior management of Maple Leaf.

16. During the Class Period up to May 23, 2014, Maple Leaf and Canada Bread were public companies, the shares of which traded on the Toronto Stock Exchange. During that period, Maple Leaf controlled Canada Bread through its ownership of the majority of Canada Bread's voting shares, including 90% of the common shares of Canada Bread at the time of its acquisition. Of Canada Bread's seven to nine directors during that period, a majority were senior officers of Maple Leaf. At the operating level, most of the senior officers of Canada Bread also held positions as senior officers of Maple Leaf. The revenue from the sale of Packaged Bread was in part used to fund returns of capital to Maple Leaf and dividends to Maple Leaf and other shareholders.

¹ During the Class Period, Canada Bread sold a limited quantity of bakery products (e.g. imperfect, near-expired, or excess stock packaged bread products) to consumers at deeply discounted prices through "thrift stores" in some provinces. Canada Bread ceased operating these "thrift stores" in approximately 2020.

NO CONSPIRACY TO FIX PRICES FOR THE FULL CLASS PERIOD

17. Canada Bread denies the alleged conspiracy as pleaded by the plaintiffs and as defined at section 1(g) of the Statement of Claim (the “**Alleged Conspiracy**”).

18. The foundation for the Alleged Conspiracy as described by the plaintiffs is an investigation by the Competition Bureau (the “**Bureau**”) that began in January 2016 into the pricing of packaged bread in Canada. As part of its investigation, the Bureau executed search warrants against George Weston Limited, Loblaw, Metro, Sobeys, Wal-Mart Canada, Giant Tiger, Overwaitea Food Group Limited and Canada Bread between October 31, 2017 and November 16, 2017, and later against Sobeys, Metro, and Canada Bread in May 2018; Canada Bread and Sobeys in September 2018; and Maple Leaf in May 2019.

19. On or about December 19, 2017, George Weston Limited and Loblaw issued a press release stating that “As previously reported, the Competition Bureau has commenced an investigation into a price-fixing arrangement. The arrangement involved the coordination of retail and wholesale prices of certain packaged bread products over a period extending from late 2001 to March 2015” and that “[t]he participants included Loblaw and the Weston Bakeries division of George Weston”. George Weston Limited and Loblaw also publicly acknowledged that they and their respective employees were granted immunity from prosecution in respect of this alleged arrangement.

20. On June 21, 2023, Canada Bread entered guilty pleas (pleas) and was convicted in the Ontario Superior Court of Justice with respect to four offences: two counts of violations to section 45(1)(c) of the *Competition Act* as it existed in 2007, and two counts

of violations of paragraph 45(1)(a) of the *Competition Act* as amended in 2010. For purposes of those pleas and convictions, Canada Bread admitted that on a total of four occasions (in 2007 and in 2010-2011) it entered into arrangements with Weston Foods (Canada) Inc. to increase the wholesale price of packaged sliced bread and rolls to certain retailers who sell groceries, not including alternative channel retailers such as dollar stores, gas stations, convenience stores and cash and carries (the "**Plea**"). The conduct identified in the Pleas resulted in two implemented wholesale price increases, one in 2007 and one in 2011. As part of the Pleas, Canada Bread and the Public Prosecution Service of Canada agreed to a joint Agreed Statement of Facts dated June 20, 2023, which was marked as an exhibit to the proceedings (the "**Statement of Agreed Facts**").

21. As a part of the Plea, Canada Bread admitted that one of its most senior executives, who was concurrently a senior officer of Maple Leaf, had participated in the arrangements described in the Statement of Agreed Facts. At the time, of those arrangements, a majority of Canada Bread's directors were senior officers of Maple Leaf. In advance of its purchase of Canada Bread, Grupo Bimbo inquired about Canada Bread's compliance with laws and regulations. Neither Maple Leaf nor its senior executives disclosed any of the events described in the Statement of Agreed Facts or admitted to in the Plea.

22. Canada Bread acknowledges that subsection 36(2) of the *Competition Act* applies with respect to the conduct contrary to Part VI of the *Competition Act* specifically set out in the Plea and Statement of Agreed Facts. Canada Bread otherwise denies any conspiracy, agreement, or arrangement involving the wholesale or retail price of Packaged Bread, or that it participated in any of the anti-competitive conduct alleged in

the Claim. Apart from the conduct specifically admitted to in the Plea and Statement of Agreed Facts, no findings of liability were made against Canada Bread in connection with any conduct related to the Claim.

23. Until May of 2014, Maple Leaf exercised control over the affairs and activities of Canada Bread. To the extent that Canada Bread engaged in any actionable anticompetitive conduct before May 23, 2014, it was at the direction of and to the benefit of Maple Leaf.

PRICING OF PACKAGED BREAD

24. Canada Bread sells Packaged Bread to grocery stores at wholesale prices. Canada Bread does not set or mandate retail prices, does not compete with its retail customers in the sale of packaged bread, and generally did not sell its products directly to end consumers.

25. The prices that Canada Bread charges its customers are determined by way of negotiations and can vary depending on several factors, including exclusivity arrangements (lowering the average price) and the region(s) in which the retailer operates (some having higher distribution costs than others).

26. The contracts between Canada Bread and its retail customers typically include volume discounts off Canada Bread's wholesale list price, and "trade spend" for retailer promotions. Trade spend refers to payments (including by way of trade discounts, merchandise allowances or rebates) made by suppliers to retailers to fund discounts on the suppliers' products when sold at retail.

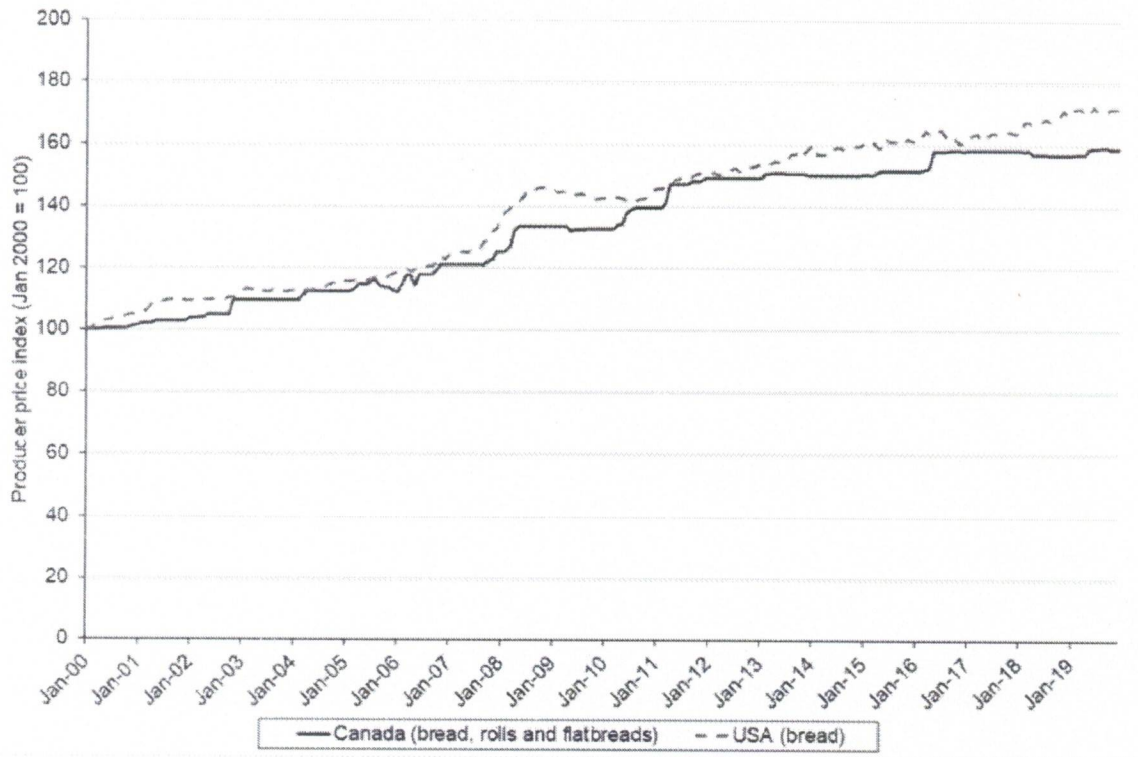
27. Canada Bread extends trade spend to its retail customers pursuant to its contracts with them to financially support “features” during which packaged bread is sold to consumers at discounted retail sale prices. The actual amount of the trade spend is frequently and heavily negotiated with each retailer on an ongoing basis during the contract term.

28. Given all these factors, Canada Bread does not charge uniform prices to its retail customers for Packaged Bread products. The actual price charged to a retailer is usually not the list price, and varies by SKU, by region, by retailer, and even on a week-to-week basis due to trade spend.

29. Over the majority of the Class Period, Canada Bread’s wholesale prices for Packaged Bread increased, but did so at a slower pace compared to the prices charged by other bread manufacturers in the United States. This is reflected in a comparison of US and Canadian Producer Prices Indices, which demonstrate that even if the Alleged Conspiracy did take place (which is denied), it did not have any material impact on the wholesale prices charged by Canada Bread.

30. In any event, the revenues from Canada Bread’s sale of Packaged Bread were passed along to Maple Leaf in the form of dividends and returns of capital. To the extent that Canada Bread profited from any actionable anticompetitive behaviour, all of the material benefit accrued to Maple Leaf.

Comparison of US and Canadian Bread PPIs



Source: Statistics Canada, U.S. Bureau of Labor Statistics

SECTION 45 OF THE *COMPETITION ACT*

31. Apart from acknowledging that subsection 36(2) of the *Competition Act* applies with respect to the conduct contrary to Part VI of the *Competition Act* specifically set out in the Plea and Statement of Agreed Facts, Canada Bread denies the plaintiffs' allegations that it breached section 45 of the *Competition Act* and puts the plaintiffs and the Class to the strict proof thereof.

32. Without limiting the generality of the foregoing, with respect to the *Competition Act* as it read before its amendment on March 12, 2010, Canada Bread denies that it conspired, combined, agreed or arranged with any of the defendants or any other person

to prevent, limit or lessen unduly the manufacture or production of packaged bread; to enhance unreasonably the price thereof; to prevent or lessen unduly competition in the production, manufacture, purchase, sale, or supply of Packaged Bread; or to otherwise restrain or injure competition unduly between or among any of the defendants during the Class Period up to March 12, 2010.

33. Further, or in the alternative, the Alleged Conspiracy (which is denied) would not amount to a violation of s. 45 of the *Competition Act* as it read prior to March 12, 2010 because the Alleged Conspiracy would not have enhanced unreasonably the price of Packaged Bread or otherwise unduly restrained or limited competition.

34. With respect to section 45 of the *Competition Act* as it read following its amendment in 2010, Canada Bread denies that it conspired, agreed or arranged with any of the defendants or any other person to fix, maintain, increase or control the price for the supply of packaged bread, to allocate sales, territories, customers or markets for the production or supply of Packaged Bread, or to fix, maintain, control, prevent, lessen or eliminate the production or supply of packaged bread during the Class Period from March 12, 2010 onward.

35. Further, Canada Bread states that the plaintiffs have not alleged an agreement between "competitors" contrary to section 45 of the *Competition Act* as it has read since March 12, 2010. Rather, they described the Alleged Conspiracy as a vertical conspiracy between the defendant suppliers and the Retailer Defendants, engaging multiple levels of the supply chain. Canada Bread, as a supplier, does not compete with any of the Retailer Defendants.

NO LIABILITY FOR COMMON LAW CONSPIRACY

36. Canada Bread denies that it is liable for common law conspiracy as alleged in the Claim. Other than what is specifically admitted in the Plea and the Agreed Statement of Facts, Canada Bread denies any conspiracy, agreement, or arrangement involving the wholesale or retail price of Packaged Bread.

37. Further, Canada Bread did not generally sell Packaged Bread directly to the plaintiffs or members of the Class during the Class Period. Without limiting the generality of the foregoing, Canada Bread denies that it engaged in any unlawful conduct (including any alleged contravention of section 45 of the *Competition Act*) that was specifically directed at the plaintiffs or any member of the Class during the Class Period, or at any time that resulted in loss or damage to the plaintiffs or any member of the Class.

38. Canada Bread denies that it engaged in any conduct with the predominant purpose of causing injury to the plaintiffs or any member of the Class by way of lawful or unlawful means (including by way of any alleged contravention of section 45 of the *Competition Act*) during the Class Period or at any time that resulted in loss or damage to the plaintiffs or any member of the Class.

39. In the alternative, if Canada Bread is found to have engaged in unlawful conduct that resulted in loss or damage to the plaintiffs or any member of the Class (which is denied), proof of such loss or damage is not capable of being demonstrated on an aggregate or class wide-basis.

NO UNJUST ENRICHMENT

40. Canada Bread denies the plaintiffs' allegations that it was unjustly enriched or profited in any way as a result of or in connection with the Alleged Conspiracy (which is denied), including in connection with the two implemented price increases identified in the Plea and Statement of Agreed Facts.

41. Canada Bread repeats that the prices it charges for its products are heavily negotiated with its retail customers, are dependent on several factors (including but not limited to input costs) and are set taking into account discounts and trade spend. With respect to the two price increases that were the subject of the Pleas, proceeds from these price increases were spent back to Canada Bread's customers through trade spend. Notably, the two price increases to which the Pleas relate occurred during periods of rapid inflation in Canada Bread's input costs, which would have affected Canada Bread's prices even absent the conduct described in the Statement of Agreed Facts.

42. The plaintiffs and members of the Class suffered no deprivation corresponding to the revenue generated by Canada Bread from the sale of Packaged Bread products during the class period. Canada Bread repeats that it did not generally sell Packaged Bread directly to the plaintiffs or members of the Class during the Class Period.

43. In the alternative, if the plaintiffs and members of the Class are found to have suffered a corresponding deprivation (which is denied), proof of such loss is not capable of being demonstrated on an aggregate or class wide-basis.

44. Further or in the alternative, there is a juristic reason for any enrichment received by Canada Bread, including but not limited to the agreements between Canada Bread and its customers.

45. Further or in the alternative, Canada Bread denies that a breach of s. 45 of the *Competition Act* is sufficient to ground a claim in unjust enrichment.

46. The plaintiffs and members of the Class are not entitled to the disgorgement of any portion of the revenue generated by Canada Bread further to the contracts with its retail customers for the sale of Packaged Bread during the Class Period.

CONSTRUCTIVE TRUST NOT AVAILABLE

47. Canada Bread denies that constructive trust is an available remedy to the plaintiffs or the Class, even if the Alleged Conspiracy (which is denied) were proven. There is no asset or identifiable property of Canada Bread that represents or could represent Canada Bread's alleged enrichment from the Alleged Conspiracy (both of which are denied), or that could be the subject of the claimed trust.

48. Canada Bread denies the plaintiffs' allegations that a portion of the revenue it received from the sale of its Packaged Bread by other defendants to the plaintiffs or any member of the Class was attributable to the Alleged Conspiracy (which is denied) or that such revenue was used to acquire, maintain, preserve or improve Canada Bread's property. Canada Bread denies it was unjustly enriched as a result of or in connection with the Alleged Conspiracy (which is denied), for the reasons set out in paragraphs 21-38 above.

NO LIABILITY FOR DAMAGES

49. Canada Bread denies that the plaintiffs or any member of the Class have suffered any loss or damage as a result of the Alleged Conspiracy during the Class Period or at any time and put the plaintiffs to the strict proof thereof.

50. Further or in the alternative, Canada Bread denies that any such loss or damage (the existence of which is denied) was caused by any conduct of Canada Bread.

51. In the further alternative, the damages alleged in the Claim are excessive, exaggerated, remote, and not recoverable as a matter of law.

52. Canada Bread denies that any damages suffered by the Class (which are denied) are capable of being proven on an aggregate or class-wide basis and put the plaintiffs and the Class to the strict proof thereof.

53. Canada Bread denies that the plaintiffs are entitled to punitive damages as a result of the Alleged Conspiracy (which is denied) or any conduct by Canada Bread alleged in the Claim. Without limiting the generality of the foregoing, with respect to the conduct identified in the Pleas and the Statement of Agreed Facts, Canada Bread has cooperated fully with the Bureau's investigation and has paid a significant fine of \$50 million. As the Public Prosecution Service of Canada acknowledged in the Statement of Agreed Facts, under the ownership of Grupo Bimbo, Canada Bread has developed and implemented a competition law compliance program and training program for Canada Bread that has been shared with the Bureau.

54. Canada Bread denies that it is jointly or severally liable with any of the defendants (or any other person) for any conduct alleged in the Claim. In the alternative, Canada Bread pleads that it is liable only for its proportionate share of any liability to the Class (which is denied), and in this regard relies to the extent necessary on the *Negligence Act*, R.S.O. 1990, c. N.1 and equivalent legislation in other Canadian provinces and territories.

PLAINTIFFS' CLAIMS ARE STATUTE-BARRED

55. Canada Bread pleads that the claims of the Plaintiff and other Class members (which are denied) were brought outside of applicable limitation periods and are therefore statute-barred. In this regard, Canada Bread pleads and relies on the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (as amended), and corresponding statutes in other Canadian provinces and territories, and s. 36(4) of the *Competition Act*.

56. Further or in the alternative, Canada Bread pleads and relies on the doctrine of laches.

ACTION SHOULD BE DISMISSED

57. Canada Bread agrees to this action being tried in Toronto, and asks that this action be dismissed as against it with costs.

CROSSCLAIM OF CANADA BREAD COMPANY, LIMITED

58. The defendant, Canada Bread claims against the defendant Maple Leaf for:
- (a) Contribution and indemnity under sections 2 and 3 of the *Negligence Act*, RSO 1990, c N 1 as amended, for any amounts which the defendant, Canada Bread, may be found liable to the Plaintiffs;
 - (b) Damages for breach of contract;
 - (c) Damages for fraudulent misrepresentation;
 - (d) Damages for unjust enrichment;
 - (e) Damages for the costs incurred and losses suffered by Canada Bread arising from the Competition Bureau's investigation;
 - (f) The costs of the main action plus all applicable taxes;
 - (g) The costs of this crossclaim plus all applicable taxes; and
 - (h) Such further and other relief as this Honourable Court may deem just.

CONTRIBUTION & INDEMNITY

59. Canada Bread denies that it is liable to the Plaintiffs for common law conspiracy or pursuant to the *Competition Act* but states that, if it is found liable, it is entitled to contribution and indemnity from Maple Leaf.

60. Canada Bread repeats and relies upon the allegations against Maple Leaf contained in its Statement of Defence and on paragraphs 80-84 of the Fifth Fresh as Amended Statement of Claim in support of its Crossclaim.

61. As pleaded in paragraphs 15 and 16 of its Statement of Defence, until May of 2014, Maple Leaf exercised control over the affairs and activities of Canada Bread.

62. Maple Leaf owned approximately 90% of the voting shares of Canada Bread, selected and appointed the members of Canada Bread's Board of Directors and as described more fully in paragraphs 68-74 below, installed one of its senior officers to run Canada Bread and arranged for its legal and compliance department to provide legal and compliance services for Canada Bread.

63. To the extent that Canada Bread engaged in any actionable anticompetitive conduct before May 23, 2014, this conduct was carried out at the behest and direction of Maple Leaf personnel as officers or members of the Board of Directors of Canada Bread and for whom Maple Leaf is vicariously and contractually liable (as described more fully in paragraphs 68-84 below).

64. Maple Leaf, through its personnel acting as senior officers or members of the Board of Directors controlling and directing Canada Bread, knew or ought to have known of any anticompetitive conduct by Canada Bread.

65. To the extent Canada Bread is found liable for common law conspiracy or pursuant to the *Competition Act* for alleged anticompetitive conduct, Maple Leaf participated fully in these activities, both through its personnel providing services to Canada Bread and

otherwise, as described in paragraphs 80-84 of the Fifth Fresh as Amended Statement of Claim and paragraphs 20-23 of Canada Bread's Statement of Defence.

66. The violations of the *Competition Act* identified in the Plea and Statement of Agreed Facts were committed on behalf of and to the benefit of Maple Leaf, who was using Canada Bread as a shield for its unlawful conduct.

67. To the extent that Canada Bread is found liable for damages for common law conspiracy or any breaches of the *Competition Act*, it is entitled to contribution and indemnity from Maple Leaf.

BREACH OF CONTRACT

68. In 1995, Canada Bread and Maple Leaf entered into a "Management and Affiliation Agreement" ("MAA"). Under the MAA, Maple Leaf agreed to provide its senior management to serve on Canada Bread's Board, to provide a number of management / consulting services and to assist with marketing coordination. The MAA was effective between December 15, 1995 and January 1, 2012.

69. In accordance with the MAA, Maple Leaf agreed that its employees would act with "reasonable diligence" in performing the services for Canada Bread described in the MAA.

70. Following the expiry of the MAA, Maple Leaf and Canada Bread entered into an "Intercompany Management Services Agreement" ("IMSA"). Under the IMSA, Maple Leaf agreed to continue lending senior management to Canada Bread and to provide management services to Canada Bread.

71. In accordance with the IMSA, Maple Leaf agreed to comply with all applicable laws in performing the agreement. Maple Leaf also agreed that all Maple Leaf personnel who perform services for Canada Bread would be required by Maple Leaf to comply with Maple Leaf's Code of Business Conduct which requires, *inter alia*, that its personnel conduct themselves in a way that could withstand the closest possible public scrutiny. The IMSA further provided an indemnity against all liabilities and damages for any fraud, criminal conduct, negligence, malfeasance or other wilful misconduct of Maple Leaf.

72. All of the work performed for Canada Bread by any of Maple Leaf officers, directors or executives was conducted pursuant to the MAA or the IMSA, as applicable.

73. It was a term of both the MAA and the IMSA that Maple Leaf personnel performing services for Canada Bread would comply with all applicable laws and statutes. Moreover, under the IMSA, Maple Leaf has an obligation to indemnify Canada Bread for damages resulting from fraud or criminal conduct.

74. Maple Leaf is liable to Canada Bread for any liability or expense Canada Bread has incurred or will incur resulting from Maple Leaf's breach of the MAA or the IMSA. To the extent that Canada Bread has engaged in any improper or unlawful activities in relation to its pricing activities during the Class Period, this conduct was the result of the services and management of individuals provided to it by Maple Leaf under the MAA or the IMSA, for which Maple Leaf is contractually liable. Any unlawful or negligent acts undertaken by these individuals is the responsibility of Maple Leaf under the MAA and the IMSA.

FRAUDULENT MISREPRESENTATION

75. Maple Leaf represented to Canada Bread that all Maple Leaf personnel who performed services for Canada Bread or acted as officers or directors of Canada Bread would do so in accordance with all applicable laws and in accordance with the Maple Leaf Code of Business Conduct which required conduct that would withstand the closest possible public scrutiny.

76. Maple Leaf also represented to Canada Bread that it would provide all such reasonable assurances necessary to give effect to the MAA.

77. Maple Leaf knew, at the time these representations and assurances were made and while the MAA and IMSA were in effect, that they were false.

78. Maple Leaf intended that the representations would be relied on by Canada Bread and Canada Bread relied on these representations, *inter alia*, by agreeing to allow Maple Leaf personnel to perform services for it, including allowing Maple Leaf personnel to lead its business and to provide legal and compliance services.

79. Maple Leaf is liable to Canada Bread for any and all loss caused to Canada Bread by its reliance on the fraudulent misrepresentations of Maple Leaf.

UNJUST ENRICHMENT

80. If Canada Bread incurs any liability to the Plaintiffs in the Class Proceeding in respect of dividends or returns of capital paid to Maple Leaf, Maple Leaf is liable to Canada Bread for any and all such loss.

81. Maple Leaf used Canada Bread as a shield for its unlawful conduct. To the extent that Canada Bread profited from any actionable anticompetitive behaviour committed at the behest and direction of Maple Leaf personnel acting as officers or members of the Board of Directors of Canada Bread for the benefit of Maple Leaf, the material benefit accrued to Maple Leaf.

82. There is no juristic reason for Maple Leaf's enrichment.

83. Canada Bread was a victim of a scheme conceived of by Maple Leaf to cause Canada Bread to assume the liabilities of the wrongful conduct it committed at the behest of Maple Leaf, with any corresponding benefits going to Maple Leaf in the form of dividends and capital transfers.

84. Canada Bread was used as the vehicle to carry out Maple Leaf's unlawful conduct and as such, there is no juristic reason for any dividends and capital transfers paid to Maple Leaf by Canada Bread attributable to the unlawful conduct.

COMPETITION BUREAU'S INVESTIGATION

85. Beginning in January 2016, the Competition Bureau conducted an extensive investigation into price-fixing of packaged bread products in Canada's grocery and wholesaling sectors.

86. The Bureau's investigation ultimately resulted in Canada Bread pleading guilty to four offences arising from two implemented wholesale price increases, one in 2007 and one in 2011.

87. As a result of the Competition Bureau's investigation, Canada Bread was exposed to and incurred liabilities for which Maple Leaf is responsible.

88. As part of the Plea, Canada Bread was required to pay a total fine of CAD\$50 million. The violations of the *Competition Act* upon which the fine was based were committed at the direction of and for the benefit of Maple Leaf.

89. Canada Bread incurred significant expenses responding to the Competition Bureau, as well as in defending itself during the course of the investigation.

90. Canada Bread has also incurred reputational harm as a result of the Competition Bureau's investigation.

91. Maple Leaf is liable to Canada Bread for the CAD\$50 million fine paid by Canada Bread, in addition to any and all other costs, expenses, and damages arising from the Competition Bureau's investigation into alleged anti-competitive conduct carried out by Canada Bread at the direction and for the benefit of Maple Leaf.

92. Canada Bread requests that this Crossclaim be tried with the main action at the City of Toronto.

October 18, 2023

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Randall Hofley LSO #31633L

Tel: 416-863-2387
randall.hofley@blakes.com

Catherine Beagan Flood LSO #43013U

Tel: 416-863-2269
cbe@blakes.com

Nicole Henderson LSO #56799K

Tel: 416-863-2399
nicole.henderson@blakes.com

Joe McGrade LSO #73277P

Tel: 416-863-4182
Fax: 416-863-2653
joe.mcgrade@blakes.com

LENCZNER SLAGHT LLP

130 Adelaide Street, West
Suite 2600
Toronto, ON M5H 3P5

Tom Curry LSO #25740V

Tel: 416-865-3096
tcurry@litigate.com

Eli S. Lederman LSO #47189L

Tel: 416-865-3555
elederman@litigate.com

Andrew Locatelli (78050P)

Tel: (416) 798-5944
alocatelli@litigate.com

Lawyers for the Defendants,
Canada Bread Company, Limited and
Grupo Bimbo S.A.B. De C.V.

TO: **STROSBERG SASSO SUTTS LLP**
1561 Ouellette Avenue
Windsor ON N8X 1K5

David R. Wingfield LSO# 28710D
Tel: (416) 432-1443
dwingfield@strosbergco.com

Jay Strosberg LSO# 47288F
Tel: (519) 561-6285
jay@strosbergco.com

Scott Robinson LSO# 75275W
srobinson@strosbergco.com
Tel: (519) 561-6227

Justin Smith LSO# 65689W
jsmith@strosbergco.com
Tel: (519) 561-6231
Fax: (866) 316-5311

Lawyers for the Plaintiffs,
Marcy David, Brenda Brooks and Andrew Balodis

AND TO: **ORR TAYLOR LLP**
655 Bay Street, Suite 400
Toronto, ON M5G 2K4

James C. Orr LSO# 23180M
Tel: 647-576-1925
jorr@orrtaylor.com

Kyle R. Taylor LSO# 71469R
ktaylor@orrtaylor.com
Tel: (647) 576 1922

Zohar Levy LSO# 59861O
zlevy@orrtaylor.com
Tel: (647) 576-4335
Fax: (647) 576-1940

Lawyers for the Plaintiffs,
Marcy David, Brenda Brooks and Andrew Balodis

AND TO: **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West, 199 Bay Street
Toronto, Canada M5L 1B9

Eliot N. Kolers LSO# 38304R
ekolers@stikeman.com
Tel: (416) 869-5637

Katherine L. Kay LSO# 28493T
kkay@stikeman.com
Tel: (416) 869-5507

Sinziana R. Hennig LSO# 62407T
shennig@stikeman.com
Tel: (416) 869-5207

Gavin Inkster LSO# 82737I
ginkster@stikeman.com
Tel: (416) 869-5242

Lawyers for the Defendants, Sobeys Inc.
and Empire Company Limited

AND TO: **NORTON ROSE FULBRIGHT CANADA LLP**
Royal Bank Plaza
South Tower, 3800 – 200 Bay Street
Toronto, ON M5J 2Z4

Andrew McCoomb LSO# 61618B
andrew.mccoomb@nortonrosefulbright.com
Tel: (416) 216-4039

Ted Brook LSO# 68672U
ted.brook@nortonrosefulbright.com
Tel: (416) 203-4457

Eric C. Lefebvre
Tel: (514) 547-4897
eric.lefebvre@nortonrosefulbright.com

Lawyers for the Defendant, Metro Inc.

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
155 Wellington St. W., 40th Floor
Toronto, ON M5V 3J7

Sandra A. Forbes LSO# 33253P
sforbes@dwpv.com
Tel: (416) 863-5574

Anita Banicevic LSO# 42793G
Tel: (416) 863-5523
abanicevic@dwpv.com

Kristine Spence LSO# 66099S
kspence@dwpv.com
Tel: (416) 367-7573
Fax: (416) 863-0871

Sarah Cormack LSO# 82189H
scormack@dwpv.com
Tel: (416) 367-7595
Fax: (416) 863-0871

Lawyers for the Defendant, Wal-Mart Canada Corp.

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
155 Wellington St. W., 40th Floor
Toronto, ON M5V 3J7

Derek D. Ricci LSO# 52366N
dricci@dwpv.com
Tel: (416) 367-7471

Chantelle Cseh LSO# 60620Q
ccseh@dwpv.com
Tel: (416) 367-7552

Maura O'Sullivan LSO# 77098R
mosullivan@dwpv.com
Tel: (416) 367-7481
Fax: (416) 863-0871

Lawyers for the Defendant, Giant Tiger Stores Limited

AND TO: **BORDEN LADNER GERVAIS LLP**
Bay Adelaide Centre, East Tower
Suite 3400, 22 Adelaide St. W.
Toronto, ON M5H 4E3

Robert S. Russell LSO# 25529R
Tel: (416) 367-6256
rrussell@blg.com

Markus Kremer LSO# 41893I
Tel: (416) 367-6658
mkremer@blg.com

Joshua Abaki LSO# 75327L
Tel: (416) 367-6568
Fax: (416) 367-6749
jabaki@blg.com

Lawyers for the Defendants, George Weston Limited,
Loblaw Companies Limited, Weston Foods (Canada) Inc., and Weston
Bakeries Limited

AND TO: **OSLER, HOSKIN & HARCOURT LLP**
6200 – 100 King St. W.
1 First Canadian Place
Toronto, ON M5X 1B8

Christopher Naudie LSO# 39596P
cnaudie@osler.com
Tel: (416) 862-6811

Adam Hirsh LSO# 39596P
ahirsh@osler.com
Tel: (416) 862-6635
Fax: (416) 862-6666

Lawyers for the Defendant, Maple Leaf Foods Inc.

MARCY DAVID et al. -and- CANADA BREAD COMPANY,
LIMITED et al.

Plaintiffs

Defendants

Court File No. CV-17-5886063-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AMENDED STATEMENT OF DEFENCE AND CROSSCLAIM
OF CANADA BREAD COMPANY, LIMITED**

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Randall Holfey LSO# 31633L
Tel: 416-863-2387
randall.holfey@blakes.com

Catherine Beagan Flood LSO# 43013U
Tel: 416-863-2269
cbe@blakes.com

Nicole Henderson LSO# 56799K
Tel: 416-863-2399
nicole.henderson@blakes.com

Joe McGrade LSO# 73277P
Tel: 416-863-4182
Fax: 416-863-2653
joe.mcgrade@blakes.com

LENCZNER SLAGHT LLP
130 Adelaide Street, West
Suite 2600
Toronto, ON M5H 3P5

Tom Curry LSO# 25740V
Tel: 416-865-3096
tcurry@litigate.com

Eli S. Lederman LSO# 47189L
Tel: 416-865-3555
elederman@litigate.com

Andrew Locatelli (78050P)
Tel: (416) 798-5944
alocatelli@litigate.com

Lawyers for the Defendants,
Canada Bread Company, Limited and
Grupo Birnbo S.A.B. De C.V.