

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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	:	Civ. No. 12-169 (AET) (LHG)
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IN RE DUCTILE IRON PIPE FITTINGS	:	
("DIPF") INDIRECT PURCHASER	:	SECOND AMENDED CLASS
ANTITRUST LITIGATION	:	ACTION COMPLAINT
	:	
	:	JURY TRIAL DEMANDED
	:	

Plaintiffs Waterline Industries Corporation, Yates Construction Co., Inc., City of Hallandale Beach (Florida), Wayne County (Michigan), South Huntington Water District (New York), City of Fargo (North Dakota), City of Blair (Nebraska), Water District No. 1 of Johnson County (Kansas), Village of Woodridge (New York), and Town of Fallsburg (New York) (collectively, "Plaintiffs"), on behalf of themselves and all other similarly-situated indirect purchasers, demand a trial by jury of all claims properly triable thereby against Defendants named herein, and complain and allege, based on personal knowledge as to their own acts, and on information and belief as to the acts of others, as set forth herein.

NATURE OF ACTION

1. This case arises out of Defendants' and their co-conspirators' unlawful conduct, which had the purpose and effect of raising and fixing prices for ductile iron pipe fittings ("DIPF") sold throughout the United States.
2. DIPF are used in pipeline systems that transport drinking water and waste water under pressurized conditions in municipal distribution systems and treatment plants.
3. Defendants control the DIPF market. As of January 2008, Defendants accounted for over 90 percent of DIPF sales in the United States.

4. From January 2008 until at least May 2009, Defendants conspired to fix the prices of DIPF sold in the United States.

5. In February 2009, Congress enacted the American Recovery and Reinvestment Act (“ARRA”), which included a provision that predicated funding on the use of domestic materials. At that time, Defendant McWane, Inc. (“McWane”) possessed a monopoly in the market for DIPF manufactured in the United States (“Domestic DIPF”). Soon thereafter, Defendants Sigma Corp. (“Sigma”) and Star Pipe Products, Ltd. (“Star”) sought to enter the Domestic DIPF market.

6. Following the enactment of the ARRA, Defendant McWane took steps to preserve its monopoly in the Domestic DIPF Market and to eliminate competition in that market.

7. McWane reached an illegal agreement with Defendant Sigma to foreclose Sigma’s entry into the Domestic DIPF market and, with Sigma’s willing participation, implemented illegal exclusive dealing policies to prevent customers from purchasing Domestic DIPF from McWane’s other competitors.

8. McWane, through its agreement with Sigma Corp. and its implementation of exclusive dealing policies, has maintained a monopoly in the market for domestic DIPF. Despite Star’s entry into the domestic DIPF market in 2009, McWane continues to control over 90 percent of Domestic DIPF sales.

9. As set forth in paragraphs 15 through 43 below, one or more of the Plaintiffs indirectly purchased DIPF during the Class Periods alleged herein. As a direct and proximate result of the unlawful conduct and conspiracy of Defendants alleged herein, Plaintiffs and other members of the Classes (defined below) have paid more during the Class Periods for DIPF than they otherwise would have paid in a competitive market and have therefore been injured in their

respective businesses and property.

10. Plaintiffs bring this class action lawsuit pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and to recover damages under state antitrust, unfair competition and consumer protection laws, and common law principles of unjust enrichment, as well as to recover the costs of suit, including reasonable attorneys' fees, for the injuries that Plaintiffs and all others similarly situated sustained as a result of the Defendants' illegal conduct with respect to DIPF.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and Title 28, United States Code, Sections 1331 and 1337. This Court has subject matter jurisdiction over the state law claims pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d) and 1367, in that this is a class action in which the members of the Damages Classes (as defined herein) exceed 100; the matter or controversy exceeds the sum of \$5,000,000, exclusive of interest and costs; and some members of the Damages Class are citizens of a state different from some Defendants.

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 15, 22 and 26 and pursuant to 28 U.S.C. § 1391(b), (c) and (d), because, at all times relevant to the Complaint, (a) Defendants transacted business, were found, or acted through subsidiaries or agents present in this district; (b) a substantial part of Plaintiffs' claims occurred in this district; and (c) a substantial portion of the affected interstate trade and commerce described below has been carried out in this district.

13. This Court has *in personam* jurisdiction over each of the Defendants because, *inter*

alia, each of the Defendants: (a) committed acts in this district in furtherance of the conspiracy alleged herein and directed the unlawful conspiracy through persons and entities located in this district, including fixing the prices of DIPF sold to purchasers in this district; (b) transacted business in DIPF and other products in this district; (c) maintained continuous and systemic contacts with this district prior to and during the Class Periods; and (d) purposefully availed itself of the benefits of doing business in this district. Accordingly, each of the Defendants maintained minimum contacts with this district that are more than sufficient to subject it to service of process and to comply with due process of law.

14. Defendants' illegal conduct with respect to DIPF has substantially affected commerce throughout the United States and in each of the states identified herein because Defendants, directly or through their agents, engaged in activities affecting each such state. Defendants have purposefully availed themselves of the laws of each of the states identified herein in connection with their activities relating to the production, marketing, and sale of DIPF. Defendants produced, promoted, sold, marketed, and/or distributed DIPF, thereby purposefully profiting from access to indirect-purchasers in each such state. Defendants also contracted to supply or obtain goods or revenue related to DIPF. As a result of the activities described herein, Defendants have:

- a. Caused damage to the residents of every state, including the states identified herein;
- b. Caused damage in every state, including each of the states identified herein, by acts or omissions committed outside each such state by regularly doing or soliciting business in each such state;
- c. Engaged in persistent courses of conduct within every state and/or

derived substantial revenue from the marketing of DIPF; and

- d. Committed acts or omissions that they knew or should have known would cause damage (and did, in fact, cause such damage) in every state while regularly doing or soliciting business in each such state, engaging in other persistent courses of conduct in each such state, and/or deriving substantial revenue from the marketing of DIPF in each such state.

PLAINTIFFS

15. Plaintiff Waterline Industries Corporation (“Waterline”) is a business entity with its principal place of business in Seabrook, New Hampshire.

16. Waterline indirectly purchased DIPF as a stand-alone product in February, April, May, June, July, August, and October 2008, and January, February, March and April 2009.

17. In December 2009, Waterline indirectly purchased McWane-branded Domestic DIPF as a stand-alone product.

18. Waterline was injured as a result of Defendants’ illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants’ illegal conduct.

19. Plaintiff Yates Construction Co., Inc. (“Yates”) is a North Carolina corporation with its principal place of business in Stokesdale, North Carolina.

20. Throughout 2008, Yates indirectly purchased SIGMA-branded DIPF as a stand-alone product.

21. Between April 2009 and the present, including on multiple occasions in 2009, 2010 and 2011, Yates indirectly purchased McWane-branded Domestic DIPF as a stand-alone product.

22. Yates was injured as a result of Defendants’ illegal conduct as alleged herein by

paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

23. Plaintiff City of Hallandale Beach ("Hallandale Beach") is a city located in Florida.

24. Hallandale Beach indirectly purchased DIPF as a stand-alone product on a regular basis from 2008 through 2012. For example, in January, March, May and July 2008, Hallandale Beach indirectly purchased McWane-branded DIPF as a stand-alone product.

25. Hallandale Beach was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

26. Plaintiff City of Blair ("Blair") is a municipal corporation organized under the laws of Nebraska with its headquarters located at 218 S. 16th Street, Blair, Nebraska.

27. Blair indirectly purchased DIPF as part of water systems project contracts in 2011 and 2012. Blair was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

28. Plaintiff South Huntington Water District ("SHWD") is a municipal corporation organized under the laws of the State of New York with its headquarters located at 75 Fifth Avenue, Huntington Station, New York.

29. SHWD has made numerous purchases of DIPF from 2008 to the present. In August 2008, SHWD indirectly purchased Sigma-branded DIPF as a stand-alone product.

30. In March and May 2009, SHWD indirectly purchased McWane-branded Domestic DIPF as a stand-alone product.

31. SHWD was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

32. City of Fargo ("Fargo") is a city in North Dakota organized under home rule

charter pursuant to North Dakota state law.

33. Between 2008 and the present, Fargo indirectly purchased DIPF that was originally manufactured by one or more of the Defendants as part of many water systems project contracts. *See* Affidavit of Mike Miller, Esq., attached hereto as Exhibit 1. Fargo was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

34. On information and belief, between February 17, 2009 and the present, Fargo indirectly purchased McWane-branded Domestic DIPF as part of a water systems project contract.

35. Plaintiff Wayne County ("Wayne") is a county in Michigan organized under home rule charter pursuant to Michigan state law.

36. In November 2008, Wayne indirectly purchased Sigma-branded DIPF as part of a water systems project contract. Wayne was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

37. Plaintiff Village of Woodridge ("Woodridge") is a municipal corporation located in the Town of Fallsburg, Sullivan County, New York.

38. In 2010 and 2011, Woodridge indirectly purchased Domestic DIPF from Sigma and Star as part of a water systems project contract. Woodridge was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

39. Plaintiff Water District No. 1 of Johnson County (Kansas) ("WaterOne") is a quasi-municipal agency with administrative offices located at 10747 Renner Boulevard, Lenexa,

Kansas.

40. From April 2008 through at least December 2009, Water One made numerous indirect purchases of McWane-branded Domestic DIPF as a stand-alone product. WaterOne was injured as a result of Defendants' illegal conduct as alleged herein by paying more for DIPF than it would have in the absence of Defendants' illegal conduct.

41. Plaintiff Town of Fallsburg ("Fallsburg") is a municipal corporation located in Sullivan County, New York.

42. Between 2010 and 2011, Fallsburg indirectly purchased Star-branded Domestic DIPF as part of multiple water systems project contracts. Fallsburg has an ongoing interest in enjoining further anticompetitive conduct in the Domestic DIPF market.

43. With respect to the foregoing allegations as to municipality plaintiffs, Plaintiffs have a reasonable good faith basis to believe that third-party discovery will reveal additional purchases of DIPF during the Class Periods and will reveal significant detail as to certain purchases referenced herein.

DEFENDANTS

44. Defendant Sigma Corporation is a corporation organized, existing and doing business under the laws of the State of New Jersey with its principal place of business located at 700 Goldman Drive, Cream Ridge, New Jersey 08154. Sigma imports, markets and sells DIPF in all 50 states.

45. Defendant McWane, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal place of business located at 2900 Highway 280, Suite 300, Birmingham, Alabama 35223. McWane imports, markets and sells DIPF in all 50 states, primarily through its Tyler Union and Clow Water Systems Company

divisions.

46. Defendant Star Pipe Products, Ltd. is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Texas with its principal place of business located at 4018 Westhollow Parkway, Houston, Texas 77082. Star imports, markets and sells DIPF in all 50 states.

AGENTS AND CO-CONSPIRATORS

47. The acts alleged against the Defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management and operation of Defendants' businesses or affairs.

48. Various persons and/or firms not named as Defendants herein have participated as co-conspirators in the violations alleged herein and have performed acts and made statements in furtherance thereof.

49. Each Defendant acted as the principal or agent for other Defendants with respect to the acts, violations, and common course of conduct alleged by Plaintiffs.

FACTUAL ALLEGATIONS

The DIPF Industry

50. DIPF are used in pipeline systems that transport drinking and waste water under pressurized conditions in municipal distribution systems and treatment plants. DIPF are used to join pipes, valves and hydrants in straight lines, and to change, divide or direct the flow of water.

51. Independent wholesale distributors, known as "waterworks distributors," are the primary channel of distribution of DIPF. Waterworks distributors specialize in distributing products for water infrastructure projects, and generally handle the full spectrum of waterworks products, including pipes, DIPF, valves and hydrants.

52. Waterworks projects generally refer to the projects conducted by municipalities and regional water authorities, in addition to their designated contractors, to create and maintain “water distribution and treatment systems to join pipes, valves and hydrants, and to change, divide or direct the flow of water.” *In the Matter of McWane, Inc. & Star Pipe Prods., Ltd.*, Dkt. No. 9351, 2012 WL 6721831, ¶¶ 371, 466 (F.T.C. Dec. 19, 2012). Waterworks projects can be separated into two categories – line or plant work. *Id.* ¶ 374. As noted in the FTC’s December 19, 2012 report, line work relates to the waterworks projects related to underground pipes that move water to and from water supply facilities. *Id.* ¶ 377. Plant work, alternatively, describes waterworks projects “for water treatment plants, pumping stations, or wastewater treatment plants, which process water so that it is clean when it is dumped.” *Id.* ¶ 376. Ductile iron and PVC pipe are the most commonly used products in waterworks projects. *Id.* ¶ 410.

53. DIPF sales in the United States in 2002, the last year for which such figures are publicly available, totaled approximately \$240 million.

Defendants’ Unlawful Conduct

A. Defendants Conspired to Manipulate DIPF Prices Beginning in January 2008

54. Defendants McWane, Star and Sigma initially conspired to raise and stabilize the prices at which DIPF were sold in the United States from January 11, 2008 through May 2009.

55. In or around December 2007, McWane formulated a plan to trade its support for higher prices in exchange for specific changes to the business methods of Sigma and Star that would reduce the risk that they would sell DIPF at prices lower than published levels.

56. McWane communicated the terms of its plan to Sigma and Star through meetings, telephone calls, and indirectly through pricing communications to customers.

57. On January 11, 2008, McWane sent a letter to its distributor customers in which

McWane announced that it was: 1) increasing its DIPF pricing, and 2) offering pricing only based on its price lists and multipliers, thereby eliminating discounted pricing on a project-basis (*i.e.* “Project Pricing”). The letter was designed to convey a message to Star and Sigma regarding the terms of McWane’s plan to increase DIPF pricing. Absent an agreement with its competitors, McWane’s public announcement that it would eliminate Project Pricing would have been irrational and against McWane’s competitive interests.

58. Executives from Sigma and Star held a series of phone conversations in late January and February 2008.

59. Sigma and Star accepted adopted McWane’s January 11, 2008 price increase and also acted to curtail their respective Project Pricing. This marked an abrupt change from the Defendants’ prior business practices.

60. According to documents obtained by the FTC, Sigma recognized McWane’s invitation to collude as “an opportunity for Sigma and Star to . . . demonstrate to [McWane] that we are capable of being part of a stable and profitab[ility] conscious industry.”

61. The Star national sales manager referred to the curtailment of Project Pricing as “an effort to do the right thing for the industry.”

62. A curtailment of Project Pricing would have made no economic sense for any Defendant acting unilaterally.

63. On or about March 8, 2008, McWane and Sigma executives discussed by telephone their implementation of the January 2008 price increase.

64. In June 2008, McWane again formulated a plan to trade its support for higher prices, this time in exchange for information from Sigma and Star documenting the volume of their monthly sales of DIPF. This exchange of information among Defendants was to be achieved

under the auspices of the Ductile Iron Fittings Research Association (“DIFRA”).

65. The DIFRA information exchange, which took place between June 2008 and January 2009, operated as follows: Defendants submitted a report of their previous month’s sales to an accounting firm. Shipments were reported in tons shipped, subdivided by diameter size range (e.g., 2-12”) and by joint type. Data submissions were aggregated and distributed to the Defendants. Data submitted to the accounting firm was typically no older than 45 days, and the summary reports returned to the Defendants contained data typically no more than 2 months old.

66. The DIFRA information exchange enabled each of the Defendants to determine and monitor its own market share and, indirectly, the output levels of its rivals. In this way, the DIFRA information exchange facilitated price coordination among the Defendants on the pricing of DIPF.

67. McWane communicated the terms of its plan to Sigma and Star through another letter sent by McWane to waterworks distributors, the common customers of the sellers. A section of that letter was meaningless to distributors, but was intended to inform Sigma and Star of the terms of McWane’s offer.

68. Sigma and Star manifested their understanding and acceptance of McWane’s offer by initiating their participation in the DIFRA information exchange in order to induce McWane to support higher price levels.

69. On June 17, 2008, McWane then led a price increase and, as agreed to among the Defendants, Sigma and Star followed.

70. On August 22, 2008, McWane and Sigma discussed by telephone their implementation of the June 2008 price increase.

71. In April 2009, McWane announced a new price list for DIPF to become effective

on May 1, 2009. Subsequently, senior executives of McWane and Star had a telephone conversation during which Star sought assurances that McWane would implement its announced price list. McWane provided those assurances.

72. After receiving assurances from McWane, Star adopted a DIPF price list similar to that adopted by McWane, effective in May 2009.

73. In connection with these new price lists, Sigma communicated with McWane and Star regarding an arrangement to alleviate McWane's concerns about secret DIPF discounting. Sigma also followed the price lists adopted by McWane and Star in May 2009.

74. In addition to the specific communications identified herein, Defendants' senior executives frequently and privately communicated with one another. These communications were often related to DIPF price and output.

75. The acts and practices of Defendants from January 2008 through January 2009, as alleged herein, had the purpose, capacity, tendency, and effect of fixing, maintaining and raising prices of DIPF.

76. The relevant market with regard to these acts was the nationwide market for DIPF.

B. McWane Intentionally Monopolized and Conspired with Sigma to Monopolize and Unreasonably Restrain Trade in the Domestic DIPF Market

77. In February 2009, Congress enacted the American Recovery and Reinvestment Act ("ARRA"). The ARRA allocated over \$6 billion to water infrastructure projects on the condition that those projects use domestically-produced materials, including DIPF. This requirement is known as the "Buy American Provision."

78. At the time of ARRA enactment, McWane possessed monopoly power in the Domestic DIPF Market. McWane was the sole supplier of a full line of domestically-produced

DIPF in commonly-used sizes.

79. ARRA's allocation of billions of dollars for "Buy American" water infrastructure projects positioned McWane to reap substantial monopoly profits in the event that McWane could prevent competition in the Domestic DIPF market.

80. The expansion of the Domestic DIPF market caused by ARRA enactment also gave Sigma and Star a new incentive to enter the Domestic DIPF Market.

81. In response to ARRA enactment, Sigma, Star and others attempted to enter the Domestic DIPF market.

82. However, McWane was able to maintain its monopoly in the Domestic DIPF Market. McWane prevailed on Sigma to abandon its effort to enter the Domestic DIPF Market, as described herein. McWane also implemented an exclusive dealing and rebate policy, as described herein, to prevent and impede other competitors from entering and competing in the Domestic DIPF Market. Through this conduct, McWane excluded, impeded, eliminated, or delayed competition in the Domestic DIPF Market.

83. As a result of its efforts, McWane was able to maintain its monopoly power in the Domestic DIPF Market through the unlawful acts alleged herein. Currently, McWane's share of the Domestic DIPF Market exceeds 90 percent, despite Star's entry into that market in 2009. McWane's monopoly power in the Domestic DIPF Market is demonstrated by its ability to exclude competitors, to control prices, and to impose unwanted distribution policies on its customers.

i. McWane Conspired with Sigma to Foreclose Sigma's Entry into the Domestic DIPF Market

84. Following the enactment of ARRA, Defendant Sigma took steps toward entry into the Domestic DIPF market, including:

- a. Formulating an operational plan;
- b. Arranging for an infusion of equity capital to fund domestic production of DIPF;
- c. Obtaining the approval of its board of directors for its entry plans; and
- d. Casting prototype product.

85. Sigma was “confident” of its ability to produce its own range of Domestic DIPF.

See September 22, 2009 Sigma Customer Letter¹ at 1. In a letter to its customers, Sigma stated:

SIGMA carefully reviewed the option to produce our own range of Fittings and Restraints in USA. As a leading supplier of AWWA Fittings over the last 25 years, SIGMA has adequate engineering and production expertise and the needed resources to develop and manufacture a competitive range of AWWA Fittings using a few quality foundries in USA.

Id.

86. McWane recognized that Sigma was preparing to enter the Domestic DIPF market. McWane sought to avoid additional competition in the Domestic DIPF market from Sigma by inducing Sigma to abandon its plans to produce Domestic DIPF and, instead, to become a distributor of McWane’s Domestic DIPF.

87. McWane and Sigma reached agreement to foreclose Sigma from entering the Domestic DIPF market as a competitor. McWane and Sigma executed a Master Distribution Agreement dated September 17, 2009 (“MDA”). The principal terms of the MDA were as follows:

- a. McWane would sell Domestic DIPF to Sigma at a 20 percent discount off of McWane’s published prices;

¹ <http://www.sigmaco.com/documents/SIGMA-BA-MDA-CUSTOMER%20LETTER-092209.pdf>.

- b. McWane would be Sigma's exclusive source for the relevant Domestic DIPF;
- c. Sigma would resell McWane's Domestic DIPF at or very near McWane's published prices for Domestic DIPF; and
- d. Sigma would resell McWane's Domestic DIPF to waterworks distributors only on the condition that the distributor agreed to purchase Domestic DIPF exclusively from McWane or Sigma.

88. Sigma detailed the terms of the McWane-Sigma MDA in its September 22, 2009

Customer Letter:

As per this MDA, we are now Master Distributors of Tyler/Union domestic Fittings. As such, we will follow Tyler/Union's distribution and pricing policies as they are announced from time to time. As mentioned in their own letter from Tyler/Union to their customers, which you too may have received, we wish to supply the Tyler/Union domestic Fittings to any customers who elect to commit to **fully support** Tyler/Union/Clow branded Fittings for their requirements of domestic Fittings, purchased thru Tyler/Union or SIGMA. **We appeal to you to accept this requirement of exclusive choice**, as a fair and reasonable one, in light of the considerable investment by Tyler/Union/Clow to provide this range of domestic production, which is now being expanded to offer domestic Fittings up to 48". Please note that **customers who elect not to fully support this program may forgo any unpaid volume incentive rebates** applicable to only the domestic Fittings and delivery of domestic Fittings up to 12 weeks." (Emphasis added).

Sigma Customer Letter at 2 (emphasis added).

89. McWane and Sigma agreed that McWane and Sigma would sell McWane's Domestic DIPF at or very near its published prices.

90. Under the MDA, McWane controlled the price at which Sigma could sell Domestic DIPF and the customers to whom Sigma could sell Domestic DIPF.

91. Through the MDA, McWane transferred a share of its sales and profits in the Domestic DIPF market to Sigma in exchange for Sigma's commitment to abandon its plans to enter the relevant Domestic DIPF market as an independent competitor.

92. In the absence of the agreement not to enter the Domestic DIPF market, Sigma would likely have entered the relevant Domestic DIPF market in competition with McWane.

93. According to documents obtained by the FTC, McWane executives referred to the Sigma MDA as an “insurance policy” against Sigma’s independent entry as a competitor in the Domestic DIPF market.

94. Sigma’s participation in the relevant Domestic DIPF market under the MDA was not equivalent to, and for consumers not a substitute for, Sigma’s competitive entry into the Domestic DIPF market.

95. Sigma’s independent, competitive entry into the Domestic DIPF market would have benefitted consumers by increasing competition and DIPF supply, thereby constraining McWane’s prices for the relevant Domestic DIPF.

96. Both McWane and Sigma entered into the MDA with the specific intent to maintain artificially inflated prices in the Domestic DIPF market by eliminating competition among themselves and excluding their rivals. The relevant market with respect to the McWane-Sigma collusion was the nationwide market for Domestic DIPF.

ii. McWane Adopted Exclusive Dealing Policies To Exclude Star from the Domestic DIPF Market

97. In response to the ARRA, Star readied itself to produce a full line of Domestic DIPF.

98. Star formally announced its entry into the Domestic DIPF market in June 2009. McWane projected that Star’s entry into the Domestic DIPF market, if unobstructed by McWane, would place downward pressure on Domestic DIPF prices.

99. McWane responded to Star’s entry into the Domestic DIPF market by adopting restrictive and exclusive distribution policies. McWane intended that such policies would impede

and delay Star's entry into the Domestic DIPF market and Star's competition with McWane in that market. Specifically:

- a. McWane threatened waterworks distributors with delayed or diminished access to McWane's Domestic DIPF, and the loss of accrued rebates on the purchase of McWane's Domestic DIPF, if those distributors purchased Domestic DIPF from Star.
- b. McWane threatened some waterworks distributors with the loss of rebates in other product categories, including ductile iron pipe, waterworks valves and hydrants if those distributors purchased Domestic DIPF from Star.
- c. Beginning in 2011, McWane modified its rebate structure for Domestic DIPF to require waterworks distributors to make certain minimum – and high – shares of their total Domestic DIPF purchases from McWane in order to qualify for these rebates.

100. According to a McWane executive, a purpose of the exclusive distribution policies was “to make sure that [Star] don't reach any critical market mass that will allow them to continue to invest and receive a profitable return.”

101. In addition, the exclusive distribution policies that were instituted by McWane through the Sigma MDA furthered McWane's attempts to exclude Star from the Domestic DIPF market.

102. According to evidence obtained by the FTC, one McWane executive stated that having Sigma sell McWane branded Domestic DIPF should “reduce Star's ability to grow share” in the Domestic DIPF market.

103. Similarly, a Sigma executive stated that the MDA was “likely to have the intended effect of marginalizing Star.”

104. McWane’s exclusionary conduct had its intended effect. Distributors otherwise interested in purchasing Domestic DIPF from Star were unwilling to do so under the terms of McWane’s exclusive dealing policies. McWane’s exclusive dealing policies have foreclosed Star from a substantial volume of sales opportunities with waterworks distributors in the Domestic DIPF market.

105. The exclusive dealing policies compelled waterworks distributors to purchase solely from McWane (or from Sigma, as a captive distributor for McWane), thereby substantially preventing Star from entering and competing in the Domestic DIPF market.

106. McWane’s monopolistic actions have created artificial barriers to entry into the Domestic DIPF market, reduced competition in the marketplace, reduced DIPF supply, and artificially raised prices for Domestic DIPF.

107. The actions of McWane and Sigma, as alleged herein, have had the effect of: (i) maintaining and stabilizing prices of Domestic DIPF in the Domestic DIPF market at artificially inflated supra-competitive levels; (ii) eliminating and excluding potential competition from Sigma in the Domestic DIPF Market; (iii) impairing the competitiveness of Star in the Domestic DIPF market; and (iv) raising barriers to entry for other potential rivals in the Domestic DIPF market.

FEDERAL TRADE COMMISSION PROCEEDINGS

108. Defendants’ conspiracy was revealed on January 4, 2012, when the United States Federal Trade Commission (“FTC”), following an investigation, filed complaints against the Defendants concerning their anticompetitive conduct. The FTC complaints document Defendants’ illegal inflation of DIPF prices beginning in January 2008.

109. On the date that the conspiracy was revealed, Defendant Sigma entered into a Consent Agreement with the FTC concerning the allegations set forth in the FTC complaint. Pursuant to the Consent Agreement, Sigma has agreed to refrain from participating in or maintaining any combination or conspiracy between any competitors to fix, raise or stabilize the prices at which DIPF are sold in the United States, or to allocate or divide markets, customers, or business opportunities.

110. On March 20, 2012, Defendant Star agreed to settle FTC charges that it conspired with McWane and Sigma to increase the prices at which DIPF were sold nationwide. Under the order settling the FTC's charges, Star is barred from participating in or maintaining any combination or conspiracy between any competitors to fix, raise or stabilize the prices at which DIPF are sold in the United States, or to allocate or divide markets, customers, or business opportunities.

MARKET FACTORS SUPPORTING CONSPIRACY

111. The relevant DIPF markets are: 1) the nationwide DIPF market, and 2) the nationwide Domestic DIPF market.

112. The relevant DIPF markets have several features that facilitate collusion among Defendants, including product homogeneity, market concentration of DIPF suppliers, barriers to timely entry of new DIPF suppliers, inelastic demand, and uniform published prices.

113. DIPF are commodity products produced to industry-wide standards. Product homogeneity enhances Defendants' ability to collude on prices and to detect deviations from those collusive prices.

114. The relevant DIPF markets are highly concentrated. In 2008, Defendants collectively made more than 90 percent of sales in the nationwide DIPF market. A highly

concentrated market enhances Defendants' ability and incentive to collude on prices.

115. The DIPF industry is subject to significant barriers to entry, including the need for a new entrant to develop a distribution network and a reputation for quality and service with waterworks distributors and the customers of the waterworks distributors.

116. Demand for DIPF is inelastic to changes in price at competitive levels. DIPF are a relatively small portion of the cost of materials of a typical waterworks project, and there are no widely used substitutes for the product.

117. Defendants periodically publish price lists uniform multiplier discounts. The "multipliers" identify, on a state-by-state basis, the discount from list price at which Defendants offer to sell DIPF. The publication of these multipliers enhances the Defendants' ability to collude on prices and to detect deviations from those collusive prices.

PLAINTIFFS AND THE CLASSES SUFFERED ANTITRUST INJURY

118. Defendants' anticompetitive conduct had the following effects, among others:

- a. Price competition has been restrained or eliminated with respect to DIPF;
- b. The prices of DIPF have been fixed, raised, maintained, or stabilized at artificially inflated levels; and
- c. Indirect purchasers of DIPF have been deprived of free and open competition.

119. During the Class Periods, Plaintiffs and the members of the Classes have paid supra-competitive prices for DIPF.

120. The inflated prices of DIPF resulting from Defendants' anticompetitive acts have been passed on to Plaintiffs and the other Class members.

121. Consistent with the allegations herein, the FTC has stated that “[f]ittings end users,” including “municipalities, regional water authorities, and the contractors they hire to construct waterworks projects,” are the entities “that ultimately paid the supracompetitive prices that are at issue” in the parallel FTC antitrust proceeding.

122. By reason of the alleged violations of the antitrust and other laws, Plaintiffs and the members of the Classes – contractors, municipalities and regional water authorities – have sustained injury to their businesses or property, having paid higher prices for DIPF than they would have paid in the absence of Defendants’ illegal contract, combination, or conspiracy and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

**ACCRUAL OF CLAIM, CONTINUING VIOLATION,
EQUITABLE TOLLING, AND FRAUDULENT CONCEALMENT**

123. Plaintiffs did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein prior to its disclosure on January 4, 2012 as a result of the FTC investigation.

124. Since the start of the Class Periods, Defendants and their co-conspirators have committed continuing violations of the antitrust and unfair competition laws resulting in monetary injury to Plaintiffs and Class members. These violations, and the resultant DIPF purchases by Class members at inflated prices, each constituted injurious acts.

125. In addition, the illegal agreement, understanding and conspiracy of Defendants and their co-conspirators was kept secret. As a result, Plaintiffs and Class members were unaware of Defendants’ unlawful conduct alleged herein and did not know that they were paying artificially high prices for DIPF in the United States throughout the Class Period. Defendants and their co-conspirators affirmatively and fraudulently concealed their unlawful conduct.

126. Plaintiffs and Class members did not discover, nor could they have discovered through reasonable diligence, that Defendants and their co-conspirators were violating the law until shortly before this litigation was initially commenced, because Defendants and their co-conspirators used deceptive and secret methods to avoid detection and to affirmatively conceal their violations.

127. Neither Defendants nor their co-conspirators told Plaintiffs or Class members that they were fixing prices, or engaging in the other unlawful practices alleged herein. By its very nature, the conspiracy by Defendants and their co-conspirators was inherently self-concealing.

128. Defendants and their co-conspirators engaged in a successful price-fixing conspiracy that they affirmatively concealed by, *inter alia*:

- a. Communicating in secret (and even going so far as to conceal the terms of the plan in a letter to waterworks distributors) to discuss prices, customers, and markets of DIPF in the United States;
- b. Using DIFRA as a cover to exchange information regarding sales and pricing; and
- c. Sending communications or taking actions in a manner designed to hide the origin or purpose of the communication or action.

129. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and members of the Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until January 2012, when reports of the investigations into anti-competitive conduct concerning DIPF were first publicly

disseminated.

130. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that Plaintiffs and the members of the Classes have alleged in this Complaint.

CLASS ACTION ALLEGATIONS

131. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the "Injunction Class"):

All persons and entities that, during the period from February 17, 2009 to the present (Class Period 1), purchased Domestic DIPF indirectly from Defendants and/or their co-conspirators. Excluded from the Class are Defendants, their co-conspirators and their officers, employees, agents, representatives, parents, subsidiaries and affiliates.

132. Plaintiffs also bring this action on behalf of themselves as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state antitrust, unfair competition, consumer and common laws on behalf of the following Damages Classes:

Stand-Alone Product Plaintiffs: All persons and entities who purchased DIPF as a stand-alone product indirectly from Defendants and/or their co-conspirators from January 11, 2008 through May 2009 (Class Period 2), or purchased Domestic DIPF as a stand-alone product indirectly from Defendant McWane or Sigma and/or their co-conspirators during Class Period 1, in the following states: Arizona, Arkansas California, District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin. Excluded from the Class are Defendants, their co-conspirators and their officers, employees, agents, representatives, parents, subsidiaries and affiliates.

Water Project Plaintiffs: All persons and entities who, during Class Period 2, purchased DIPF as part of a water systems project contract indirectly from Defendants and/or their co-conspirators or, during Class Period 1 purchased Domestic DIPF as part of a water systems project contract indirectly from Defendant McWane or Sigma and/or their co-conspirators, in the following states: Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Iowa, Kansas, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin. Excluded from the Class are Defendants, their co-conspirators and their officers, employees, agents, representatives, parents, subsidiaries and affiliates.

133. Plaintiffs reserve the right to amend the definitions of the foregoing Classes prior to certification.

134. Plaintiffs do not know the exact size of the Classes. However, due to the nature of the trade and commerce involved, there are thousands of members in each Class that are geographically dispersed across the United States such that joinder is impracticable.

135. Members of each Class are identifiable from information and records in the possession of such Class members.

136. There are questions of law and fact common to the Classes. These common questions relate to the existence of the conspiracy and other anticompetitive conduct alleged, the conduct of Defendants in agreeing to participate and participating in the conspiracy, and to the type and common pattern of injury sustained as a result thereof. The questions include but are not limited to:

- a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain, and/or stabilize the price charged for DIPF sold in the United States;
- b. The identity of participants in the conspiracy;

- c. The duration of the conspiracy alleged in this Complaint and the nature and character of the acts performed by Defendants and their co-conspirators in furtherance of the conspiracy;
 - d. Whether Defendants took steps to actively conceal the conspiracy from Plaintiffs and other members of the Classes;
 - e. Whether the alleged conspiracy violated the Sherman Act, as alleged in the First and Second Claims for Relief;
 - f. Whether the alleged conspiracy violated state antitrust statutes as alleged in the Third, Fifth, and Seventh Claims for Relief;
 - g. Whether the alleged conspiracy violated state consumer protection and unfair competition statutes as alleged in the Fourth, Sixth, and Seventh Claims for Relief;
 - h. Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Damages Classes, thereby entitling Plaintiffs and the members of the Damages Classes to disgorgement of all benefits derived by Defendants, as alleged in the Eighth Claim for Relief;
 - i. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to members of the Damages Classes;
 - j. The effect of Defendants' conspiracy on the prices of DIPF sold by Defendants; and
 - k. The appropriate measure of damages sustained by Plaintiffs and other members of the Damages Classes.
137. Plaintiffs' claims are typical of the claims of other members of the Classes, and

Plaintiffs will fairly and adequately protect the interests of those Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the members of the Classes. Plaintiffs have retained competent counsel experienced in the prosecution of antitrust class action litigation.

138. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

139. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

140. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by members of the Damages Classes that otherwise could not afford to litigate claims such as is asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

INTERSTATE TRADE AND COMMERCE

141. The conduct of Defendants and their co-conspirators has taken place in, and affected the continuous flow of, interstate trade and commerce of the United States, in that, *inter alia*:

- a. Defendants and their co-conspirators have sold DIPF throughout

- the United States;
- b. Defendants and their co-conspirators have each used instrumentalities of interstate commerce to sell DIPF throughout the United States;
 - c. In furtherance of the conspiracy alleged herein, Defendants have traveled between states and have exchanged communications through interstate wire communications and via U.S. mail; and
 - d. The conspiracy alleged herein has affected millions of dollars of commerce. Defendants and their co-conspirators have inflicted antitrust injury by artificially raising prices paid by Plaintiffs and other entities who are themselves engaged in commerce.

VIOLATIONS ALLEGED

First Claim For Relief

As Against McWane and Sigma

(Injunctive Relief Pursuant to Section 1 of the Sherman Act and Section 3 of the Clayton Act)

142. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

143. Beginning in or about September 2009, and continuing to the present, Defendants McWane and Sigma and their co-conspirators have maintained a continuing agreement, understanding, and conspiracy in restraint of trade in violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 3 of the Clayton Act, 15 U.S.C. § 14.

144. In furtherance of the unlawful conspiracy, Defendants McWane and Sigma and their co-conspirators have committed overt acts, including, *inter alia*:

- a. Entering into a distribution agreement that eliminated Sigma as an entrant into the Domestic DIPF market;

- b. Excluding actual and potential competitors through the adoption and enforcement of exclusive distribution policies;
- c. Agreeing to charge prices at certain levels and otherwise to fix, increase, maintain or stabilize prices of DIPF sold in the United States;
- d. Participating in conversations and communications regarding prices to be charged for DIPF; and
- e. Keeping the existence of the conspiracy unknown in order to foster the illegal anti-competitive conduct described herein.

145. The combination and conspiracy alleged herein has had the following effects, among others:

- a. Price competition in the sale of Domestic DIPF has been restrained, suppressed, or eliminated;
- b. Prices for Domestic DIPF have been fixed, raised, maintained, or stabilized at artificially high, non-competitive levels; and
- c. Plaintiffs and members of the Classes have been deprived of the benefits of free and open competition.

146. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating unlawful arrangements to fix, maintain, raise or stabilize prices of Domestic DIPF.

147. As a direct and proximate result of the illegal agreement, contract, combination, or conspiracy between Defendants McWane and Sigma, Plaintiffs and the members of the Injunction Class have been injured and damaged in their respective businesses and property.

148. The conduct of Defendants and their co-conspirators constitutes a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

149. Plaintiffs and members of the Injunction Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

Second Claim For Relief

As Against McWane

(Injunctive Relief Pursuant to Section 2 of the Sherman Act and Section 3 of the Clayton Act)

150. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

151. Beginning on or about February 17, 2009, and continuing to the present, Defendant McWane has illegally maintained a monopoly in the Domestic DIPF market.

152. Defendant McWane's intentional and purposeful anti-competitive acts, described above, were intended to maintain its monopoly in the Domestic DIPF market. As a result of Defendant McWane's monopolistic conduct, Plaintiffs and the members of the Injunction Class have been injured and damaged in their respective businesses and property.

153. The conduct of McWane constitutes a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, and Section 3 of the Clayton Act, 15 U.S.C. § 14.

154. Plaintiffs and members of the Injunction Class are entitled to an injunction against Defendant McWane, preventing and restraining the violations alleged herein.

Third Claim For Relief

As Against All Defendants

(Violation of State Antitrust Statutes)

155. Plaintiffs incorporate the allegations in the preceding paragraphs.

156. From at least as early as January 11, 2008, through at least May 2009, Defendants and their co-conspirators engaged in a continuing contract, combination, or conspiracy with respect to the sale of DIPF in unreasonable restraint of trade and commerce and in violation of the

various state statutes set forth below.

157. The contract, combination, or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, stabilize or maintain at artificially supra-competitive levels prices for DIPF in the United States.

158. In formulating and effectuating this conspiracy, Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

- a. participating in conversations and communications among themselves during which they agreed to price DIPF at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize prices paid by Plaintiffs and members of the Damages Classes with respect to DIPF sold in the United States; and
- b. participating in conversations and communications among themselves to implement, adhere to and police the unlawful agreements they reached.

159. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, maintain or stabilize prices and to allocate customers with respect to DIPF.

160. Plaintiffs assert this claim under the laws of their states of residence, including New Hampshire, North Carolina, North Dakota, New York, Kansas, Florida and Michigan, and as representatives of the proposed Damages Classes of indirect purchasers residing in states with indirect purchaser laws similar to their states such that the common questions of law and fact raised in this claim will predominate under Fed. R. Civ. P. 23(b)(3). Those states' laws are set

forth below in paragraphs 161 to 183.

161. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq.*

162. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq.*

163. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Code Annotated, §§ 28-4501, *et seq.*

164. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code, §§ 553.1, *et seq.*

165. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq.*

166. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, 10 M.R.S. §§ 1101, *et seq.*

167. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Michigan compiled Law Annotated, §§ 445.771, *et seq.*

168. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Minnesota Annotated Statutes, §§ 325D.49, *et seq.*

169. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated, §§ 75-21-1, *et seq.*

170. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes, §§ 59-801, *et seq.*

171. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated, §§ 598A.010, *et seq.*

172. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes, §§ 356:1, *et seq.*

173. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated, §§ 57-1-1, *et seq.*

174. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws, § 340, *et seq.*

175. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes, §§ 75-1, *et seq.*

176. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code, §§ 51-08.1-01, *et seq.*

177. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes, §§ 646.705, *et seq.*

178. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws, §§ 37-1-3.1, *et seq.*

179. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Tennessee Code Annotated, §§ 47-25-101, *et seq.*

180. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated, §§ 76-10-911, *et seq.*

181. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Vermont Stat. Ann. 9 §§ 2453, *et seq.*

182. Defendants have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code, §§ 47-18-1, *et seq.*

183. Defendants have entered into an unlawful agreement in restraint of trade in

violation of the Wisconsin Statutes, §§ 133.01, *et seq.*

184. Plaintiffs and members of the Damages Classes in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy or agreement. Plaintiffs and members of the Damages Classes have paid more for DIPF than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

185. In addition, Defendants have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anti-competitive conduct come at the expense and detriment of Plaintiffs and the members of the Damages Classes.

186. Accordingly, Plaintiffs and the members of the Damages Classes in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's applicable law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

Fourth Claim For Relief
As Against All Defendants
(Violation of State Consumer Protection and Unfair Competition Statutes)

187. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

188. From at least as early as January 11, 2008, through at least May 2009, Defendants engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale of DIPF in violation of the following state consumer protection and unfair competition statutes.

189. Plaintiffs assert this claim under the laws of their states of residence, including New Hampshire and North Carolina, and as representatives of the proposed Damages Classes of

indirect purchasers residing in states with indirect purchaser laws similar to their states such that the common questions of law and fact raised in this claim will predominate under Fed. R. Civ. P. 23(b)(3). Those states' laws are set forth below in paragraphs 190 to 200.

190. Defendants have violated Arkansas Code §§ 4-88-101 et seq.

191. Defendants have violated California Bus & Prof. Code §§ 17200 et seq.

192. Defendants have violated Florida Stat. §§ 501.201 et seq.

193. Defendants have violated Hawaii Rev. Stat. § 480-2 by engaging in unfair and deceptive acts and practices; excluding unfair competition as a basis for Defendants' violation of Hawaii Rev. Stat. § 480-2.

194. Defendants have violated Mass. Gen. Laws chapter 93A §§ 1 et seq.

195. Defendants have violated Nebraska Rev. Stat. §§ 59-1601 et seq.

196. Defendants have violated New Hampshire Rev. Stat. §§ 358-A:1 et seq.

197. Defendants have violated New Mexico Stat. Ann. §§ 57-12-1 et seq.

198. Defendants have violated North Carolina Gen. Stat. §§ 75-1.1 et seq.

199. Defendants have violated Rhode Island Gen. Laws §§ 6-13.1-1 et seq.

200. Defendants have violated S.C. Code Ann., §§ 39-5-10, et seq.

201. Defendants' intentional and purposeful anti-competitive acts, described above, were intended to and did cause Plaintiffs to pay supracompetitive, artificially inflated prices for the DIPF purchased in the states listed above.

202. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and Class members have been injured in their business and property in that they paid more for DIPF than they otherwise would have paid in the absence of Defendants' unlawful conduct.

203. Plaintiffs and Class members are therefore entitled to all appropriate relief as provided for by the laws of the states listed above, including but not limited to, actual damages, injunctive relief, attorneys' fees, and equitable relief, such as restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of their unlawful conduct.

Fifth Claim For Relief
As Against McWane and Sigma
(Violation of State Antitrust Statutes)

204. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

205. From at least as early as September 2009, McWane and Sigma engaged in a continuing contract, combination, or conspiracy with respect to the sale of Domestic DIPF in unreasonable restraint of trade and commerce and in violation of the various state statutes set forth below.

206. The contract, combination, or conspiracy consisted of an agreement among McWane and Sigma and their co-conspirators to fix, raise, stabilize, or maintain at artificially supra-competitive prices, the price of Domestic DIPF in the United States.

207. In formulating and effectuating this conspiracy, McWane, Sigma, and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

- a. participating in conversations and communications among themselves during which they agreed to price Domestic DIPF at certain levels; sell Domestic DIPF under certain restrictive and anti-competitive terms; restrict capacity of Domestic DIPF; and otherwise fix, increase, maintain, or prices paid by Plaintiffs and members of the Damages Classes with respect to Domestic DIPF

sold in the United States; and

- b. participating in conversations and communications among themselves to implement, adhere to and police the unlawful agreements they reached.

208. McWane, Sigma and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, raise, maintain or stabilize prices with respect to Domestic DIPF.

209. Plaintiffs assert this claim under the laws of their states of residence, including New Hampshire, North Carolina, North Dakota, New York and Kansas, and as representatives of the proposed Damages Classes of indirect purchasers residing in states with indirect purchaser laws similar to their states such that the common questions of law and fact raised in this claim will predominate under Fed. R. Civ. P. 23(b)(3). Those states' laws are set forth below in paragraphs 210 to 232.

210. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq.*

211. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq.*

212. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Code Annotated, §§ 28-4501, *et seq.*

213. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code, §§ 553.1, *et seq.*

214. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq.*

215. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, 10 M.R.S. §§ 1101, *et seq.*

216. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Michigan compiled Law Annotated, §§ 445.771, *et seq.*

217. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Minnesota Annotated Statutes, §§ 325D.49, *et seq.*

218. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated, §§ 75-21-1, *et seq.*

219. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes, §§ 59-801, *et seq.*

220. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated, §§ 598A.010, *et seq.*

221. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes, §§ 356:1, *et seq.*

222. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated, §§ 57-1-1, *et seq.*

223. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws, § 340, *et seq.*

224. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes, §§ 75-1, *et seq.*

225. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code, §§ 51-08.1-01, *et seq.*

226. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes, §§ 646.705, *et seq.*

227. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws, §§ 37-1-3.1, *et seq.*

228. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Tennessee Code Annotated, §§ 47-25-101, *et seq.*

229. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated, §§ 76-10-911, *et seq.*

230. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Vermont Stat. Ann. 9 §§ 2453, *et seq.*

231. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code, §§ 47-18-1, *et seq.*

232. McWane and Sigma have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes, §§ 133.01, *et seq.*

233. Plaintiffs and members of the Damages Classes in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy or agreement. Plaintiffs and members of the Damages Classes have paid more for Domestic DIPF than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

234. In addition, Defendants McWane and Sigma have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anti-competitive conduct come at the expense and detriment of Plaintiffs and the members of the Damages Classes.

235. Accordingly, Plaintiffs and the members of the Damages Classes in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's applicable law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

Sixth Claim For Relief
As Against McWane and Sigma
(Violation of State Consumer Protection and Unfair Competition Statutes)

236. Plaintiffs incorporate by reference the allegations in the preceding paragraphs. From at least as early as September 2009, McWane and Sigma have engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale of Domestic DIPF in violation of the following state consumer protection and unfair competition statutes.

237. Plaintiffs assert this claim under the laws of their states of residence, including New Hampshire and North Carolina, and as representatives of the proposed Damages Classes of indirect purchasers residing in states with indirect purchaser laws similar to their states such that the common questions of law and fact raised in this claim will predominate under Fed. R. Civ. P. 23(b)(3). Those states' laws are set forth below in paragraphs 238 to 248.

238. McWane and Sigma have violated Arkansas Code §§ 4-88-101 et seq.

239. McWane and Sigma have violated California Bus & Prof. Code §§ 17200 et seq.

240. McWane and Sigma have violated Florida Stat. §§ 501.201 et seq.

241. McWane and Sigma have violated Hawaii Rev. Stat. § 480-2 by engaging in unfair and deceptive acts and practices; excluding unfair competition as a basis for Defendants' violation of Hawaii Rev. Stat. § 480-2.

242. McWane and Sigma have violated Mass. Gen. Laws chapter 93A §§ 1 et seq.

- 243. McWane and Sigma have violated Nebraska Rev. Stat. §§ 59-1601 et seq.
- 244. McWane and Sigma have violated New Hampshire Rev. Stat. §§ 358-A:1 et seq.
- 245. McWane and Sigma have violated New Mexico Stat. Ann. §§ 57-12-1 et seq.
- 246. McWane and Sigma have violated North Carolina Gen. Stat. §§ 75-1.1 et seq.
- 247. McWane and Sigma have violated Rhode Island Gen. Laws §§ 6-13.1-1 et seq.
- 248. McWane and Sigma have violated S.C. Code Ann., §§ 39-5-10, et seq.
- 249. Defendants' intentional and purposeful anti-competitive acts, described above,

including, but not limited to, acts of collusion to set prices, were intended to and did cause Plaintiffs to pay supracompetitive, artificially inflated prices for the DIPF purchased in the states listed above.

250. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Classes have been injured in their business and property in that they paid more for DIPF than they otherwise would have paid in the absence of Defendants' unlawful conduct.

251. Plaintiffs and members of the Damages Classes are therefore entitled to all appropriate relief as provided for by the laws of the states listed above, including but not limited to, actual damages, injunctive relief, attorneys' fees, and equitable relief, such as restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of their unlawful conduct.

Seventh Claim For Relief

As Against McWane For Monopolization
(Violation of State Antitrust, Consumer Protection and Unfair Competition Statutes)

252. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

253. Defendant McWane, between February 17, 2009 and the present, has illegally maintained a monopoly in the Domestic DIPF market in violation of the following state antitrust, consumer protection and unfair competition statutes.

254. Plaintiffs assert this claim under the laws of their states of residence, including New Hampshire, North Carolina, North Dakota, New York and Kansas, and as representatives of the proposed Classes of indirect purchasers residing in states with indirect purchaser laws similar to their states such that the common questions of law and fact raised in this claim will predominate under Fed. R. Civ. P. 23(b)(3). Those states' laws are set forth below in paragraphs 255 to 279.

255. McWane has maintained a monopoly in domestic DIPF in violation of the Arizona Revised Statutes, §§ 44-1402, *et seq.*

256. McWane has maintained a monopoly in domestic DIPF in violation of the Arkansas Code, §§ 4-75-310 *et seq.*

257. McWane has maintained a monopoly in domestic DIPF in violation of the District of Columbia Code Annotated, §§ 28-4503, *et seq.*

258. McWane has maintained a monopoly in domestic DIPF in violation of the Florida Statutes, §§ 542.19, *et seq.*

259. McWane has maintained a monopoly in domestic DIPF in violation of the Hawaii Revised Statutes, §§ 480-9, *et seq.*

260. McWane has maintained a monopoly in domestic DIPF in violation of the Iowa Code, §§ 553.4, *et seq.*

261. McWane has maintained a monopoly in domestic DIPF in violation of the Maine Revised Statutes, 10 M.R.S. §§ 1102, *et seq.*

262. McWane has maintained a monopoly in domestic DIPF in violation of the Massachusetts General Laws, §§ 5 *et seq.*

263. McWane has maintained a monopoly in domestic DIPF in violation of the Michigan compiled Law Annotated, §§ 445.772, *et seq.*

264. McWane has maintained a monopoly in domestic DIPF in violation of the Minnesota Annotated Statutes, §§ 325D.52, *et seq.*

265. McWane has maintained a monopoly in domestic DIPF in violation of the Mississippi Code Annotated, §§ 75-21-3, *et seq.*

266. McWane has maintained a monopoly in domestic DIPF in violation of the Nebraska Revised Statutes, §§ 59-802, *et seq.*

267. McWane has maintained a monopoly in domestic DIPF in violation of the Nevada Revised Statutes Annotated, §§ 598A.060, *et seq.*

268. McWane has maintained a monopoly in domestic DIPF in violation of the New Hampshire Revised Statutes, §§ 356:3, *et seq.*

269. McWane has maintained a monopoly in domestic DIPF in violation of the New Mexico Statutes Annotated, §§ 57-1-2, *et seq.*

270. McWane has maintained a monopoly in domestic DIPF in violation of the New York General Business Laws, § 340, *et seq.*

271. McWane has maintained a monopoly in domestic DIPF in violation of the North Carolina General Statutes, §§ 75-2.1, *et seq.*

272. McWane has maintained a monopoly in domestic DIPF in violation of the North Dakota Century Code, §§ 51-08.1-02, *et seq.*

273. McWane has maintained a monopoly in domestic DIPF in violation of the Oregon Revised Statutes, §§ 646.730, *et seq.*

274. McWane has maintained a monopoly in domestic DIPF in violation of the Code of Laws of South Carolina, §§ 39-3-120 *et seq.*

275. McWane has maintained a monopoly in domestic DIPF in violation of the South Dakota Codified Laws, §§ 37-1-3.2, *et seq.*

276. McWane has maintained a monopoly in domestic DIPF in violation of the Utah Code Annotated, §§ 76-10-914, *et seq.*

277. McWane has maintained a monopoly in domestic DIPF in violation of the Vermont Stat. Ann. 9 §§ 2461c *et seq.*

278. McWane has maintained a monopoly in domestic DIPF in violation of the West Virginia Code, §§ 47-18-4, *et seq.*

279. McWane has maintained a monopoly in domestic DIPF in violation of the Wisconsin Statutes, §§ 133.03, *et seq.*

280. Defendant McWane's intentional and purposeful anti-competitive acts, described above, were intended to maintain its monopoly in the Domestic DIPF market and caused Plaintiffs and members of the Damages Classes who purchased domestic McWane DIPF to pay supracompetitive, artificially inflated prices for McWane-branded Domestic DIPF purchased in the states listed above.

281. As a direct and proximate result of Defendant McWane's unlawful conduct, Plaintiffs and members of the Damages Classes have been injured in their business and property in that they paid more for McWane domestic DIPF than they otherwise would have paid in the absence of Defendant McWane's unlawful conduct.

282. Plaintiffs and members of the Damages Classes are therefore entitled to all appropriate relief as provided for by the laws of the states listed above, including but not limited to, actual damages, injunctive relief, attorneys' fees, and equitable relief, such as restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by McWane as a result of its unlawful conduct.

Eighth Claim For Relief
As Against All Defendants
(Unjust Enrichment)

283. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

284. As a result of their unlawful conduct described above, Defendants have been unjustly enriched. Defendants have been unjustly enriched by the receipt of unlawfully inflated prices and unlawful profits on sales of DIPF.

285. Defendants have benefited from their unlawful acts and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs or the members of the Damages Classes for DIPF.

286. Plaintiffs and the members of the Damages Classes are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust and inequitable conduct. Plaintiffs and the members of the Damages Classes are entitled to the establishment of a constructive trust consisting of all ill-gotten gains.

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that:

A. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Classes, that Plaintiffs be appointed as representatives for the Classes, and that Plaintiffs' counsel be appointed Lead Counsel for the Classes.

B. That the unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

(a) An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

(b) A *per se* violation of Section 1 of the Sherman Act;

(c) An unlawful combination, trust, agreement, understanding or concert of action in violation of the state antitrust and unfair competition laws as set forth herein; and

(d) Unjust enrichment by Defendants as set forth herein.

(e) Monopolization of the Domestic DIPF market by McWane and a conspiracy to monopolize the Domestic DIPF market by McWane and Sigma.

C. Plaintiffs and the members of the Damages Classes recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the members of the Damages Classes be entered against Defendants in an amount to be trebled to the extent such laws permit;

D. Plaintiffs and the members of the Damages Classes recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits

unlawfully gained from them;

E. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents, and employees thereof, and all other person acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy or combination alleged herein, or from entering into any other 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;

F. Plaintiffs and the members of the Damages Classes be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

G. Plaintiffs and the members of the Damages Classes be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this Complaint;

H. Plaintiffs and the members of the Classes recover their costs of suit, including reasonable attorney's fees, as provided by law; and

I. Plaintiffs and members of the Classes have such other and further relief as the case may require and the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil

Procedure, of all issues so triable.

DATED: May 3, 2013

/s/ Lisa J. Rodriguez

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