

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SATNAM DISTRIBUTORS LLC, D/B/A/
LION & BEAR DISTRIBUTORS,
553 Winchester Road, Unit B,
Bensalem, PA 19020

Plaintiff,

v.

COMMONWEALTH-ALTADIS, INC.,
5900 N. Andrews, Suite 1100,
Fort Lauderdale, FL 33309

COMMONWEALTH BRANDS, INC.,
5900 N. Andrews, Suite 1100,
Fort Lauderdale, FL 33309

ALTADIS, U.S.A., INC.,
5900 N. Andrews, Suite 1100,
Fort Lauderdale, FL 33309; AND

HAROLD LEVINSON ASSOCIATES, INC.,
21 Banfi Plaza
Farmingdale, NY 11735

Defendants.

Civil Action No.: 2:14-cv-06660-LFR

**DEFENDANT HAROLD LEVINSON ASSOCIATES, INC.’S
ANSWER TO PLAINTIFF’S COMPLAINT**

Defendant Harold Levinson Associates, Inc. (“HLA”), by and through its undersigned counsel, hereby responds to Plaintiff’s Complaint as follows:

1. The allegations in Paragraph 1 contain legal conclusions to which no response is required. To the extent a response may be required, HLA denies the allegations in Paragraph 1, and specifically denies that it engaged in any conduct in violation of the Robinson-Patman Act, or any laws cited in the Complaint.

2. HLA admits that it is a distributor of mass-market cigars manufactured by

Defendants Commonwealth-Altadis, Inc., Commonwealth Brands, Inc. and Altadis U.S.A., Inc. (collectively, "CA") in Pennsylvania. To the extent that the allegations in Paragraph 2 relate to Plaintiff's Sherman Act Section 1 and 2 claims, those claims were dismissed and, therefore, no response is required. HLA otherwise denies the remaining allegations in Paragraph 2.

3. HLA lacks sufficient information to admit or deny the allegations in Paragraph 3, which relate to Plaintiff.

4. HLA denies that it received discriminatory pricing from CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 4, which relate to Plaintiff and CA.

5. HLA lacks sufficient information to admit or deny Plaintiff's allegation that Plaintiff gained market share through enhanced customer outreach and other strategies. HLA otherwise denies the remaining allegations in Paragraph 5.

6. HLA denies the allegation that there was an agreement between HLA and CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 6, which relate to Plaintiff and CA.

7. HLA admits that Plaintiff purports to bring this action to obtain injunctive relief and to recover damages for the alleged violation of the Robinson-Patman Act but denies that Plaintiff is entitled to any relief under that statute.¹

PARTIES

8. HLA admits that Plaintiff sells mass-market cigars to convenience stores and to other distributors servicing convenience stores. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 8, which relate to Plaintiff.

¹ By order dated October 14, 2015, the Court dismissed the Sherman Act claims (Counts III-VI of the Complaint).

9. HLA admits that Defendant Commonwealth Brands, Inc. sells cigarettes, rolling tobacco, rolling papers, and a selection of cigarette tubes and tube-filling machines. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 9.

10. HLA admits that Defendant Commonwealth-Altadis, Inc. is a tobacco sales and distribution company that delivers tobacco brands and products to wholesale and retail customers. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 10.

11. HLA admits that Defendant Altadis U.S.A., Inc. is a producer of mass-market and premium cigars. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 11.

11a. The allegation in this paragraph does not call for a response by HLA.²

12. HLA admits the first two sentences of Paragraph 12. HLA further admits that its sales revenue exceeded \$1.3 billion in 2011. To the extent that the allegations in Paragraph 12 relate to Plaintiff's Sherman Act Section 2 claim, the Court dismissed that claim and, therefore, no response is required. To the extent that a response may be required, HLA denies the remaining allegations in Paragraph 12, including that it is the "dominant" convenience store distributor in Pennsylvania.

JURISDICTION AND VENUE

13. HLA avers that the allegations in Paragraph 13 regarding jurisdiction constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies the allegations contained in Paragraph 13.

14. HLA avers that the allegations in Paragraph 14 regarding jurisdiction constitute

² The Complaint contains two paragraphs numbered, "11." HLA refers to the second paragraph numbered "11" as "11a."

legal conclusions to which no response is required. To the extent that a response may be required, and to the extent that the allegations relate to CA, HLA lacks sufficient information to admit or deny these allegations. To the extent that a response may be required, and to the extent that the allegations relate to HLA, HLA admits that it has conducted business in Pennsylvania but otherwise denies the remaining allegations.

15. HLA avers that the allegations in Paragraph 15 regarding venue constitute legal conclusions to which no response is required. To the extent that a response may be required, and to the extent that the allegations relate to CA, HLA lacks sufficient information to admit or deny these allegations. To the extent that a response may be required, and to the extent that the allegations relate to HLA, HLA admits that it transacts business within the Eastern District of Pennsylvania, but otherwise denies the remaining allegations.

RELEVANT MARKETS

A. Relevant Product Market

16. The allegation in Paragraph 16 contains a legal conclusion to which no response is required. To the extent that a response may be required, HLA denies the allegation in Paragraph 16.

17. HLA admits that most mass-market cigars are sold for less than \$2 per cigar in gas stations and convenience stores. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 17.

18. HLA lacks sufficient information to admit or deny the allegations in Paragraph 18, which relate to CA.

19. HLA admits that machine-made cigars are priced lower than high-end premium cigars. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph

19.

20. HLA admits that the packaging of Dutch Masters cigars features a Rembrandt painting. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 20, which relate to CA.

21. HLA lacks sufficient information to admit or deny the allegations in Paragraph 21, which relate to CA.

22. HLA admits that CA manufactures Dutch Masters, Backwoods, Phillies, Hav-A-Tampa, and White Cat cigars. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 22, which relate to CA and a third-party website.

23. HLA admits that it distributes mass-market cigars to convenience stores and other customers. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 23, which relate to Plaintiff and third-party convenience stores.

24. HLA admits that CA is the only cigar manufacturer that manufactures Dutch Masters, Backwoods, Phillies, Hav-A-Tampa, and White Cat. HLA avers that the allegations in Paragraph 15 regarding “substitutable products” calls for a legal conclusion to which no response is required. To the extent that a response is required, HLA denies that there are no reasonably substitutable products for the mass market cigars manufactured and sold by CA. HLA otherwise lacks sufficient information to admit or deny the remaining allegations in Paragraph 24, which relate to Plaintiff and Plaintiff’s customers.

25. HLA avers that Paragraph 25 calls for a legal conclusion to which no response is required, but, to the extent that it alleges a fact, HLA denies the allegation contained in Paragraph 25.

26. HLA admits the allegations contained in Paragraph 26.

27. HLA denies the allegation contained in Paragraph 27.

28. HLA denies the allegation contained in Paragraph 28.

29. HLA denies the allegation contained in Paragraph 29.

30. HLA avers that no response is required because the Court dismissed the Sherman Act Section 2 claim. To the extent that a response may be required, HLA denies the allegation contained in Paragraph 30.

31. HLA avers that no response is required because the Court dismissed the Sherman Act Section 2 claim. To the extent that a response may be required, HLA denies the allegation contained in Paragraph 31.

B. Geographic Market

32. HLA admits that convenience stores serve as its primary customers that buy CA mass-market cigars from HLA. HLA otherwise denies the allegation contained in Paragraph 32, which relate to Plaintiff.

33. HLA avers that the allegation in Paragraph 33 calls for a legal conclusion to which no response is required. To the extent that a response may be required, HLA denies the allegation contained in Paragraph 33.

34. HLA lacks sufficient information to admit or deny the allegations in Paragraph 34, which concern unidentified convenience stores and the distributors that service them.

C. Interstate Commerce

35. HLA admits that CA manufactures and sells CA's mass-market cigars. HLA further admits that it distributes CA's mass-market cigars in interstate commerce. The remaining allegations in Paragraph 35 call for a legal conclusion to which no response is required. To the extent that a response is required, HLA lacks sufficient information to admit or deny the

allegations in this paragraph, which relate to CA. HLA otherwise denies the remaining allegations contained in Paragraph 35.

36. HLA lacks sufficient information to admit or deny the allegations in Paragraph 36, which relate to CA. HLA otherwise denies the allegation contained in Paragraph 35.

FACTUAL ALLEGATIONS

A. Plaintiff Enters the Pennsylvania Market as a Distributor of CA's Mass-Market Cigars

37. HLA lacks sufficient information to admit or deny the allegations in Paragraph 37, which relate to Plaintiff.

38. HLA lacks sufficient information to admit or deny the allegations in Paragraph 38, which relate to Plaintiff.

39. HLA avers that no response is required because the Court dismissed the Satnam Act Section 2 claim related to Plaintiff's dominance/market share allegations. To the extent that a response may be required, HLA denies the allegation contained in Paragraph 39.

40. HLA lacks sufficient information to admit or deny the allegations in Paragraph 40, which relate to Plaintiff and Altadis, U.S.A. Inc.

41. HLA lacks sufficient information to admit or deny the allegations in Paragraph 41, which relate to Plaintiff, Altadis, U.S.A. Inc. and CA.

42. HLA avers that no response is required because the Court dismissed the Satnam Act Section 2 claim related to Plaintiff's significant market share allegations. To the extent that a response may be required, HLA lacks sufficient information to admit or deny the allegations, which relate to Plaintiff, and otherwise denies the allegations contained in Paragraph 42.

43. HLA avers that no response is required because the Court dismissed the Satnam Act Section 2 claim related to Plaintiff's market share allegations. To the extent that a response

may be required, HLA lacks sufficient information to admit or deny the allegations, which relate to Plaintiff, and otherwise denies the allegations contained in Paragraph 43.

B. HLA Enters into an Agreement with Altadis (Continued by CA) to Discriminate Against Plaintiff and Foreclose Plaintiff from the Market

44. HLA denies the allegations contained in Paragraph 44.

45. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with CA. To the extent that a response may be required, HLA denies that it had an agreement with CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 45, which relate to Plaintiff.

46. HLA admits the allegations contained in Paragraph 46 as to HLA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph, which may relate to CA's other customers.

47. HLA lacks sufficient information to admit or deny the allegations in Paragraph 47.

48. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with CA. To the extent that a response may be required, HLA denies that it had an agreement with CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 48, which relate to Plaintiff.

49. HLA lacks sufficient information to admit or deny the allegations in Paragraph 49, which relate to Plaintiff and to CA.

50. HLA lacks sufficient information to admit or deny the allegations in Paragraph 50, which relate to Plaintiff and to CA.

C. Altadis Discriminates Against Plaintiff (August-October 2011)

51. HLA lacks sufficient information to admit or deny the allegations in Paragraph 51, which relate to Plaintiff and Altadis.

52. HLA admits that it was able to sell CA's mass-market cigars for less than the listed price for the cigars. HLA avers that the allegation that it received "discriminatory discounts" calls for a legal conclusion to which no response is required. To the extent that a response may be required, HLA denies the allegation. HLA otherwise lacks sufficient information to admit or deny the remaining allegations in Paragraph 52, which relate to Plaintiff and Altadis.

53. HLA lacks sufficient information to admit or deny the allegations in Paragraph 53, which relate to Plaintiff and Altadis.

54. HLA lacks sufficient information to admit or deny the allegations in Paragraph 54, which relate to Plaintiff and Altadis.

55. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with Altadis. To the extent that a response may be required, HLA denies that it had an agreement with Altadis and otherwise lacks sufficient information to admit or deny the allegations in Paragraph 55, which relate to Plaintiff and Altadis.

56. HLA lacks sufficient information to admit or deny the allegations in Paragraph 56, which relate to Plaintiff and Altadis.

57. HLA lacks sufficient information to admit or deny the allegations in Paragraph 57, which relate to Plaintiff and Altadis.

58. HLA lacks sufficient information to admit or deny the allegations in Paragraph

58, which relate to Plaintiff and Altadis.

59. HLA lacks sufficient information to admit or deny the allegations in Paragraph 59, which relate to Plaintiff, Altadis and unidentified “competitors” of Plaintiff.

60. HLA lacks sufficient information to admit or deny the allegations in Paragraph 60, which relate to Plaintiff and Altadis.

D. Following the Merger of Altadis and Commonwealth, Price Discrimination and Anticompetitive Conduct Continue (November 2011-January 2012)

61. HLA admits the first sentence of Paragraph 61. HLA otherwise lacks sufficient information to admit or deny the second sentence of Paragraph 61, which relates to Altadis and Commonwealth.

62. HLA lacks sufficient information to admit or deny the allegations in Paragraph 62, which relate to Plaintiff and CA.

63. HLA lacks sufficient information to admit or deny the allegations in Paragraph 63, which relate to Plaintiff and CA.

64. HLA lacks sufficient information to admit or deny the allegations in Paragraph 64, which relate to Plaintiff and CA.

65. HLA lacks sufficient information to admit or deny the allegations in Paragraph 65, which relate to Plaintiff and CA.

66. HLA denies that it received discriminatory pricing from CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 66, which relate to Plaintiff and CA.

E. Plaintiff Succeeds Despite Defendants’ Conduct (February-May 2012)

67. HLA avers that Paragraph 67 calls for a legal conclusion to which no response is required. To the extent that a response may be required, HLA denies that it received

discriminatory pricing from CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 67, which relate to Plaintiff and CA.

68. HLA lacks sufficient information to admit or deny the allegations in Paragraph 68, which relate to Plaintiff and CA.

69. HLA lacks sufficient information to admit or deny the allegations in Paragraph 69, which relate to Plaintiff and CA.

70. HLA denies that it received discriminatory pricing from CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 70, which relate to Plaintiff and CA.

71. HLA lacks sufficient information to admit or deny the allegations in Paragraph 71, which relate to Plaintiff and CA.

72. HLA denies that it received discriminatory pricing from CA. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 72, which relate to Plaintiff and CA.

73. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with CA. To the extent that a response is required, HLA denies that it lodged a complaint to CA that Plaintiff was making significant market gains despite discriminatory pricing. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 73, which relate to Plaintiff and CA.

74. HLA lacks sufficient information to admit or deny the allegations in Paragraph 74, which relate to Plaintiff and CA.

75. HLA lacks sufficient information to admit or deny the allegations in Paragraph

75, which relate to Plaintiff and CA.

76. HLA lacks sufficient information to admit or deny the allegations in Paragraph 76, which relate to Plaintiff and CA.

77. HLA lacks sufficient information to admit or deny the allegations in Paragraph 77, which relate to Plaintiff and CA.

F. Defendants Intensify Their Discriminatory and Anticompetitive Conduct and Ultimately Exclude Plaintiff from the Market Entirely (June-December 2012)

78. HLA lacks sufficient information to admit or deny the allegations in Paragraph 78, which relate to Plaintiff and CA.

79. HLA lacks sufficient information to admit or deny the allegations in Paragraph 79, which relate to Plaintiff and CA.

80. HLA lacks sufficient information to admit or deny the allegations in Paragraph 80, which relate to Plaintiff and CA.

81. HLA lacks sufficient information to admit or deny the allegations in Paragraph 81, which relate to Plaintiff and CA.

82. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with CA. To the extent that a response may be required, HLA denies that it had an agreement with CA. HLA admits that it is generally aware that there were personnel changes at CA in or around September 2012, but lacks specific knowledge of those personnel changes. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 82, which relate to Plaintiff and CA.

83. HLA avers that no response is required because the Court dismissed the Satnam Act Section 2 claim related to Plaintiff's "market share" allegations. To the extent that a response may be required, HLA denies the allegations in Paragraph 83 that relate to its market

share of CA's Mass-Market Cigars. HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 83, which relate to Plaintiff.

G. Defendants Persist in their Conduct and Reinforce the Refusal to Deal (January 2013-Present)

84. HLA lacks sufficient information to admit or deny the allegations in Paragraph 84, which relate to Plaintiff and CA.

85. HLA lacks sufficient information to admit or deny the allegations in Paragraph 85, which relate to Plaintiff and CA.

86. HLA lacks sufficient information to admit or deny the allegations in Paragraph 86, which relate to Plaintiff and CA.

87. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with CA. HLA further avers Plaintiff's allegation that it received discriminatory pricing from CA constitutes a legal conclusion to which no response is required. To the extent that a response may be required, HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 87, which relate to Plaintiff and CA.

88. HLA lacks sufficient information to admit or deny the allegations in Paragraph 88, which relate to Plaintiff and CA.

89. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegation that HLA had an "agreement" with CA. HLA further avers Plaintiff's allegation that it received discriminatory pricing from CA constitutes a legal conclusion to which no response is required. To the extent that a response may be required, HLA otherwise lacks sufficient information to admit or deny the allegations in Paragraph 89, which relate to Plaintiff and CA.

90. HLA lacks sufficient information to admit or deny the allegations in Paragraph 90, which relate to Plaintiff and CA.

DEFENDANTS' ANTICOMPETITIVE CONDUCT

91. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 and Section 2 claims related to Plaintiff's allegation that HLA had an "agreement" with CA and that HLA "embarked on a course of anticompetitive conduct with the goal of excluding Plaintiff from the market." To the extent that a response may be required, HLA denies the allegations contained in Paragraph 91.

92. HLA avers that no response is required because the Court dismissed the Satnam Act Section 1 claim related to Plaintiff's allegations that HLA had an "agreement" with CA. To the extent that a response may be required, HLA denies that it had an agreement with CA and otherwise lacks sufficient information to admit or deny the allegations in Paragraph 92, which relate to Plaintiff and CA.

93. HLA denies the allegations contained in Paragraph 93.

94. HLA avers that no response is required because the Court dismissed the Satnam Act Section 2 claim related to Plaintiff's "anticompetitive conduct" allegation. To the extent that a response may be required, HLA denies the allegations contained in Paragraph 94.

95. HLA denies the allegations contained in Paragraph 95.

CAUSES OF ACTION

Count I

**Violation of 15 U.S.C. § 13 (Robinson-Patman Act)
(Against Commonwealth-Altadis, Inc., Commonwealth Brands, Inc.,
and Altadis U.S.A., Inc.**

96. HLA repeats and incorporates by reference its responses to Paragraphs 1 through

95 of the Complaint with the same force and effect as if set for herein at length.

97. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 97.

98. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 98.

99. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 99.

100. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 100.

101. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 101.

102. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 102.

103. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 103.

104. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 104.

105. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 105.

106. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 106.

107. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 107.

108. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 108.

109. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 109.

110. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 110.

111. Count I of the Complaint is not a count against HLA. HLA therefore takes the position that it is not required to respond to the allegations in Paragraph 111.

Count II
Violation of 15 U.S.C. § 13 (Robinson-Patman Act)
(Against HLA)

112. HLA repeats and incorporates by reference its responses to Paragraphs 1 through 111 of the Complaint with the same force and effect as if set for herein at length.

113. HLA avers that the allegations in this paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies each and every allegation contained in Paragraph 113.

114. HLA admits that it received discounts and promotions from CA. HLA lacks sufficient information to admit or deny the allegations in Paragraph 114, which relate to Plaintiff and CA. HLA otherwise denies the remaining allegations in Paragraph 114.

115. HLA avers that the allegations in this paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies each and every allegation contained in Paragraph 115.

116. HLA avers that the allegations in this paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies each

and every allegation contained in Paragraph 116.

117. HLA avers that the allegations in this paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies each and every allegation contained in Paragraph 117.

118. HLA avers that the allegations in this paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies each and every allegation contained in Paragraph 118.

Count III
Monopolization in Violation of Sherman Act Section 2 (15 U.S.C. § 2)
(Against HLA)

119. This cause of action was dismissed by a Court order dated October 14, 2015.

120. This cause of action was dismissed by a Court order dated October 14, 2015.

121. This cause of action was dismissed by a Court order dated October 14, 2015.

122. This cause of action was dismissed by a Court order dated October 14, 2015.

123. This cause of action was dismissed by a Court order dated October 14, 2015.

124. This cause of action was dismissed by a Court order dated October 14, 2015.

125. This cause of action was dismissed by a Court order dated October 14, 2015.

Count IV
Attempted Monopolization in Violation of Sherman Act Section 2 (15 U.S.C. § 2)
Against HLA

126. This cause of action was dismissed by a Court order dated October 14, 2015.

127. This cause of action was dismissed by a Court order dated October 14, 2015.

128. This cause of action was dismissed by a Court order dated October 14, 2015.

129. This cause of action was dismissed by a Court order dated October 14, 2015.

130. This cause of action was dismissed by a Court order dated October 14, 2015.

Count V
Conspiracy to Monopolize in Violation of Sherman Act Section 2 (15 U.S.C. § 2)
(Against All Defendants)

131. This cause of action was dismissed by a Court order dated October 14, 2015.
132. This cause of action was dismissed by a Court order dated October 14, 2015.
133. This cause of action was dismissed by a Court order dated October 14, 2015.
134. This cause of action was dismissed by a Court order dated October 14, 2015.
135. This cause of action was dismissed by a Court order dated October 14, 2015.
136. This cause of action was dismissed by a Court order dated October 14, 2015.
137. This cause of action was dismissed by a Court order dated October 14, 2015.
138. This cause of action was dismissed by a Court order dated October 14, 2015.
139. This cause of action was dismissed by a Court order dated October 14, 2015.
140. This cause of action was dismissed by a Court order dated October 14, 2015.

Count VI
Unlawful Agreement in Restraint of Trade in Violation of Sherman Act Section 1
(15 U.S.C. § 1)
(Against All Defendants)

141. This cause of action was dismissed by a Court order dated October 14, 2015.
142. This cause of action was dismissed by a Court order dated October 14, 2015.
143. This cause of action was dismissed by a Court order dated October 14, 2015.
144. This cause of action was dismissed by a Court order dated October 14, 2015.
145. This cause of action was dismissed by a Court order dated October 14, 2015.

DEMAND FOR JURY TRIAL

HLA avers that Plaintiff's demand for a jury trial constitutes a legal conclusion to which no response is required.

PRAYER FOR RELIEF

HLA avers that the allegations contained in the **WHEREFORE** paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, HLA denies that Plaintiff is entitled to any of the forms of relief alleged and contained in the **WHEREFORE** paragraph.

AFFIRMATIVE DEFENSES

Without assuming any burden it would not otherwise bear, subject to its responses above, and upon information and belief, HLA asserts the following additional and/or affirmative defenses to Plaintiff's Complaint.

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, estoppel, waiver, and/or unclean hands.
3. Plaintiff's claims are barred, in whole or in part, because Plaintiff's do not have standing or are not a proper party in interest to state claims or sue for damages.
4. Plaintiff's claims are barred because HLA's alleged conduct was lawful, justified, and pro-competitive, constituted bona fide business practices, and was carried out in furtherance of HLA's independent and legitimate business interests.
5. Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered antitrust injury.
6. Plaintiff's claims are barred, in whole or in part, because the conduct alleged did not cause any harm or injury to competition, the competitive process, or consumers.
7. Plaintiff's claims for damages are barred because its alleged damages, if any, are too speculative and uncertain and remote, and because of the impossibility of ascertaining and allocating these alleged damages.

8. Plaintiffs are precluded from recovering damages, in whole or in part, because and to the extent of, its failure to mitigate alleged damages, if any.

9. Plaintiff's claims are barred, in whole or in part, because Plaintiff would be unjustly enriched if it were allowed to recovery any part of the damages alleged in the Complaint.

10. Without admitting that Plaintiff is entitled to recover any damages in this matter, HLA is entitled to set off from any recovery Plaintiff may obtain against HLA any amount paid to Plaintiff by any other Defendants who have settled, or do settle, Plaintiff's claims in this matter.

11. Plaintiff's claims are barred, in whole or in part, because none of HLA's challenged actions or omissions substantially lessened competition within any properly defined market.

12. Plaintiff's claims are barred, in whole or in part, because HLA is not liable for the acts of any other Defendant.

13. Plaintiff's claims are barred, in whole or in part, because injuries alleged by Plaintiff, to the extent any exist, were caused, in whole or in part, by the conduct of third parties for whom HLA is not responsible, through forces in the marketplace over which HLA has no control, or through acts or omissions on the part of the Plaintiff.

14. Plaintiff's claims for injunctive relief should be dismissed because Plaintiff has available an adequate remedy at law and has not alleged any threat of imminent harm.

15. Plaintiff's claims are barred as CA acted in good faith to meet an equally low price of a competitor.

16. Plaintiff's claims are barred as any difference in price was in due allowance for

differences in cost of manufacture, sale, or delivery.

17. Plaintiff's claims are barred as any difference in price resulted from a response to changing conditions affecting the marketplace.

18. Plaintiff is not entitled to recovery as the applicable prices were made available to Plaintiff.

19. HLA adopts and incorporates by reference any all other affirmative defenses asserted or to be asserted by any other defendant in this proceeding to extent that HLA may share in such affirmative defenses.

20. HLA has not knowingly or intentionally waived any applicable defenses and explicitly reserves the right to assert and rely on such other applicable defenses as may become available or apparent during discovery proceedings. HLA further reserves the right to amend tis Answer and/or its defenses accordingly, and/or to delete defenses that it determines are not applicable during the course of subsequent discovery.

PRAYER FOR RELIEF

HLA request that Plaintiff's Complaint be dismissed with prejudice, that the Court find that Plaintiff is not entitled to any judgment or relief, that the Court enter judgment in favor of HLA, and that the Court award HLA its attorneys' fees, costs, and expenses, pre-judgment interest, and such other and further relief as the Court deems just and proper.

Dated: November 17, 2015

Respectfully submitted,

By: /s/ Robert E. Welsh
ROBERT E. WELSH, JR.
rewelsh@welshrecker.com
WELSH & BECKER, P.C.
2000 Market Street, Suite 2903

Philadelphia, PA 19103
Telephone: (215) 972-6430
Facsimile: (215) 972-6436

JOSEPH A. OSTOYICH (*pro hac vice*)
joseph.ostoyich@bakerbotts.com
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington DC 20004-2400
Telephone: (202) 639-7700
Facsimile: (202) 639-7890

ANDREW M. LANKLER
andrew.lankler@bakerbotts.com
BAKER BOTTS L.L.P. (*pro hac vice*)
30 Rockefeller Plaza
New York, New York 10112-4498
Telephone: (212) 408-2500
Facsimile: (212) 408-2501

Attorneys for Harold Levinson Associates, Inc.