

Amended the 22nd day of February, 2024  
pursuant to Rule 26.02(a).

Court File No.: 2426/19CP

Cara L Middleton

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Middleton  
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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

1758939 ONTARIO LTD.

Plaintiff

and

WESTON BAKERIES LIMITED, WESTON FOODS (CANADA) INC., and  
GEORGE WESTON LIMITED

Defendants

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

**AMENDED AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date December 11, 2019

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

Local Registrar

Address of court office: London Courthouse  
80 Dundas Street  
London, Ontario N6A 6A3

**TO: WESTON BAKERIES LIMITED**  
22 St. Claire Avenue East  
Suite 800  
Toronto, ON M4T 2S5

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

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

## CLAIM

1. The Plaintiff, on its own behalf and on behalf of all Class Members, seeks:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the proposed national class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;
  - (b) a declaration that the *Arthur Wishart Act (Franchise Disclosure)*, 2000 S.O. 2000, Chapter 3 and the regulations thereto (the “*Arthur Wishart Act*”) and parallel provincial franchise legislation (as described in Schedule A hereto) applies to the Distributors’ Agreements, defined below;
  - (c) a declaration that the common law duty of honesty apply in Provinces without provincial franchise legislation, and across all Provinces as applicable;
  - (d) damages in the amount of \$100,000,000 for breaches of the *Arthur Wishart Act*, parallel provincial franchise legislation, the common law duty of honesty, and breach of contract;
  - (e) punitive damages in the amount of \$20,000,000;
  - (f) a declaration that Weston Foods (Canada) Inc. and George Weston Limited are “franchisor’s associates” within the meaning of the *Arthur Wishart Act* and parallel provincial franchise legislation;
  - (g) a declaration that the Defendants, defined below, are jointly and severally liable for any and all damages awarded;

- ~~(h) in the alternative to the claim for damages, an accounting or other such  
restitutionary remedy disgorging the revenues realized by the Defendants from the  
Bread Price Fixing Cartel, defined below;~~
- ~~(i) a declaration that any funds received by the Defendants through the Bread Price  
Fixing Cartel are held in trust for the benefit of the Plaintiff and Class Members;~~
- (j) a reference to decide any issues not decided at the trial of the common issues;
- (k) costs of administration and notice, plus applicable taxes, pursuant to section 26(9)  
of the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (l) costs of this action pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, the  
*Courts of Justice Act*, RSO 1990, c C 43, and the *Rules of Civil Procedure*, RRO  
1990, Reg 194;
- (m) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*,  
RSO 1990, c C 43, as amended;
- (n) post-judgment interest in accordance with section 129 of the *Courts of Justice  
Act*, RSO 1990, c C 43, as amended; and
- (o) such further and other relief as to this Honourable Court may seem just.

## THE PARTIES

### The Plaintiff

2. The Plaintiff, 1758939 Ontario Ltd., is a corporation incorporated pursuant to the laws of Ontario with its head office located in Vienna, Ontario. On February 29, 2008, the

Plaintiff entered into a distribution agreement with the Defendant, Weston Bakeries Limited, which agreement was effective as of March 2, 2008 (the “Distributor’s Agreement”). The Plaintiff’s territory encompasses the area’s of Tillsonburg, Norwich, Delhi, Port Burwell, Port Rowen, and Long Point, and the little calls and towns in between in Ontario. ~~The Plaintiff is a small business with after tax revenues in a good year in the low six figures.~~

3. Like other distributors, the Plaintiff has significantly contributed to the Defendants’ bottom line, helping to improve the Defendants’ stock price and the Defendants’ goodwill.

### **The Class**

4. The Plaintiff brings this action on behalf of itself and other Weston distributors in Canada who entered into a distribution agreement with the Defendant, Weston Bakeries Limited, after January 1, 2001. As a direct result of the Defendants’ actions, as described below, the Plaintiff and class members have suffered a loss of revenue and a loss of the value of their business as a going concern.

### **The Defendants**

5. The Defendant, Weston Bakeries Limited (“Weston Bakeries”), is a corporation incorporated pursuant to the laws of Canada with its head office located in Toronto, Ontario. Weston Bakeries is a subsidiary of the Defendant, George Weston Limited, and operates wholly under the control of the Defendants, Weston Foods (Canada) Inc. and George Weston Limited.

6. The Defendant, Weston Foods (Canada) Inc. (“Weston Foods”), is a corporation incorporated pursuant to the laws of Ontario with its head office located in Toronto, Ontario. Weston Foods is a subsidiary of the Defendant, George Weston Limited, and operates wholly under the control of the Defendant, George Weston Limited.

7. The Defendant, George Weston Limited (“George Weston”), is a publicly-traded corporation incorporated pursuant to the laws of Canada with its head office located in Toronto, Ontario. George Weston is the parent company of Weston Foods and Weston Bakeries.

7.8. The Defendants, Weston Bakeries amalgamated with Weston Foods in January 2020 and was amalgamated into George Weston in July 2021.

8.9. The Defendants, Weston Bakeries, Weston Foods, and George Weston, are herein collectively referred to as the “Defendants”. The Plaintiff has set out its limited knowledge with respect to the corporate structure of the Defendants and such further details are within the direct knowledge of the Defendants. The Defendants are jointly and severally liable for the allegations as plead herein.

## NATURE OF THE ACTION

9.10. The Defendants make up one of Canada’s largest grocery empires and control a substantial part of the supply of bread at the wholesale level in Canada. The Defendants distribute their bread products to retail stores through a network of distributors across the country. Despite the immense value that these small businesses generate for the Defendants, the Defendants treat these small businesses unfairly and high-handedly as the Defendants exert

control through one-side distributors' agreements which are, in substance, franchise agreements.

10.11. Each Distributors' Agreement sets out a defined sales area. Within that defined sales area, each individual distributor sells the Defendants' products to independent outlets (retailers, restaurants, institutions etc.). These outlets have a choice of what products they choose to purchase and from whom.

11.12. Unbeknownst to their distributors, the Plaintiff and class members, between 2001 and 2015, the Defendants participated in an illegal conspiracy to fix the price of fresh commercial bread. As a result of such wrongdoing, the Defendants cheated their direct customers, ordinary Canadian consumers, and their own distributors. In particular, The Defendants concealed the this wrongdoing from the Plaintiff and class members prospective and existing distributors, breaching their statutory disclosure obligation to prospective distributors and breaching their statutory and common law duty of fair dealing to existing distributors. When the Defendants subsequently entered into immunity discussions with the Competition Bureau in 2015, they did not disclose that material fact to their distributors. The Defendants' co-conspirators then retaliated against the Defendants and their distributors causing serious losses.

12.13. When the conspiracy became public, the vast majority of independent outlets ceased purchasing the Defendants' products from the Plaintiff and class members. As a result, the Plaintiff and putative Class Members suffered substantial losses of revenue, lost sales, and capital losses of the value of their businesses as going concerns.

~~13.14. In December 2017, the Defendants unilaterally and suddenly made public their involvement in the conspiracy. As a direct result, customers cancelled their accounts with the Defendants, thereby devastating the distributors' bottom lines. As such, distributors have suffered lost sales and capital losses of the value of their businesses as going concerns.~~

## **FACTUAL BACKGROUND**

### **Canadian Bread Sector**

~~14.15. The Defendants control their distributors through a comprehensive system of Distributors' Agreements, price schedules, route schedules, and intensive managerial administration.~~

~~These arrangements are substantially the same for all distributors across Canada.~~

~~15.16. The Defendants' distribution scheme is a proprietary system developed and refined for the marketing and distribution of a range of fresh bread products.~~

~~16.17. The Defendants grant distributors a right to engage in a business in which the distributors are required by contract or otherwise to make continuing payments to the Defendants or their associates in the course of operating their distributorships. Pursuant to the Distributors' Agreements, defined below, the distributors are contractually required to purchase sufficient quantities of products to adequately and properly supply the outlets in their respective sales areas. The prices charged by the Defendants to the distributors for the products between 2001 and 2015 were not *bona fide* wholesale prices.~~

~~17.18. The Defendants grant distributors representational or distribution rights, in association with the Defendants' trademarks, trade names, logos and other commercial advertising symbols, to sell the Defendants' bread products.~~



~~18.~~19. The Defendants, or a third person designated by the Defendants, provide distributors location assistance, including securing retail outlets or accounts for the goods to be sold, offered for sale or distributed, and securing locations or sites for display racks or other product sales displays used by distributors.

~~19.~~20. Distributors, including the Plaintiff and putative class members, invest substantial sums in establishing and maintaining their franchises. They own or lease trucks for delivery, they hire and pay staff, they maintain office systems, spend money on products, and undertake promotion.

~~20.~~21. Despite the onerous obligations and risk of loss the Defendants impose on distributors, certain key elements of the system are under the Defendants' direct control, including pricing, geographical distribution, relationships with major chains, and route schedules.

~~21.~~22. Distributors purchase products under an "A/R buyback" scheme from the Defendants. That is, a distributor places an order and then delivers it. The customer pays the Defendants directly. The Defendants then remit a margin or commission to distributors for their sales, less any deductions for expenses or credits.

~~22.~~23. The Defendants are a large, successful enterprise. The Defendants' total sales in 2017 were \$48 billion.

## Distributors' Agreements

23-24. As noted above, the Plaintiff entered into a ~~Distribution Agreement~~ distribution agreement with Weston Bakeries. The Distributor's Agreement sets out the contractual basis for the operation of the franchise. The terms of the Distributor's Agreement are substantially and materially the same for all putative class members (collectively, the "Distributors' Agreements").

24-25. The Distributors' Agreements include the following basic terms:

- (a) ~~a recital~~ that Weston Bakeries has developed or acquired the rights to formulae, receipts, trademarks and tradenames through the use of which it manufactures, distributes, sells and markets various fresh baked bread, rolls, cakes and similar food products through much of Canada (Recital 1);
- (b) ~~a recital~~ that the distributor has purchased from its predecessor distributor or from Weston Bakeries the distribution rights to a geographically-defined sales area (Recital 3);
- (c) the distributor is accorded distribution rights for Weston Bakeries fresh bread products (arts. 1.3, 3.2);
- (d) Weston Bakeries controls the trademarks and names for the fresh bread products to be sold (arts. 1.2, 14) and grants distributors a limited licence to use such trademarks and names in connection with the operation of their distributorships;
- (e) Weston Bakeries is designated as the distributors' agent to make sales to grocery store chains (art. 6.2);

- (f) the distributor agrees to sell Weston Bakeries' fresh bread products to outlets within the sales area (art. 4.1);
- (g) the distributor agrees to pay Weston Bakeries on or before Friday of each week for all products delivered to the distributor during the week (art. 7.1); and
- (h) Weston Bakeries receives payment for bread products delivered by the distributors directly from customers, remitting only a margin – determined by Weston Bakeries – to distributors (art. 7.2).

26. The Distributors' Agreements also include implied terms and obligations, including:

- (a) the duty of fair dealing in the performance and enforcement of a franchise agreement including the duty to act in good faith and in accordance with reasonable commercial standards pursuant to s. 3 of the *Arthur Wishart Act*; and
- (b) common law duties of good faith and honest performance of contractual terms and obligations.

25-27. The Distributors' Agreements are one-sided agreements, drafted solely with the intention of benefitting the Defendants, at the expense of the distributors, including the Plaintiff and class members. While the agreement purports to be an agreement between commercial parties, the bargaining power is substantially unequal in the Defendants' favour, rendering the Distributors' Agreements contracts of adhesion.

26-28. The Distributors' Agreements were drawn up by the Defendants and include the following punitive terms:

- (a) Weston Bakeries unilaterally sets the prices for products (art. 3.3);
- (b) Weston Bakeries unilaterally sets the order schedule for products (art. 4.1);
- (c) Weston Bakeries has the right to unilaterally and immediately terminate a distributorship (art. 4.2);
- (d) Weston Bakeries has the power to unilaterally change the delivery method, potentially depriving a distributor of an account (art. 9.2);
- (e) Weston Bakeries has the right to unilaterally set off amounts due to distributors (art. 7.1);
- (f) Weston Bakeries has a general security interest in distributors' business assets (art. 7.4);
- (g) Weston Bakeries accords itself a power of attorney with full and complete authority to transfer the distributorship (art. 15.6);
- (h) Weston Bakeries must provide consent to any sale of the distributorship and accords itself a right of first refusal (art. 8.1), as well as a transfer fee of 2% of the sale price (art. 12.1);
- (i) Weston Bakeries must provide consent to any incorporation on their terms (art. 13.1); and
- (j) Weston Bakeries provides the software for route sales accounting and retains control over such software (art. 14.2).

### **Business During the Period 2001-2017**

~~27-29.~~ Initially, the Plaintiff's business with the Defendants was reasonably profitable.

~~28-30.~~ However, over time, it became apparent that the Defendants were treating their distributors, including the Plaintiff, unfairly. Margins never went up – they only went down. The administration of the Defendants' relationship with distributors was an ongoing detriment to the distributors, including the Plaintiff. Distributors' revenues, including the Plaintiff's, declined, even while the Defendants' profits increased.

### **The Bread Price-Fixing Cartel**

~~29-31.~~ Between approximately 2001 and March 2015, the Defendants, who were Canada's largest bread suppliers, conspired with some of Canada's largest grocery retailers (including the Defendant, George Weston and its subsidiary, Loblaw Companies Limited ("Loblaws"), Maple Leaf Foods Inc., through its subsidiary Canada Bread Company ("Canada Bread"), Limited, the Empire Company, through its subsidiary Sobeys Inc. ("Sobeys"), Metro Inc., Walmart Canada Corp. ("Walmart"), and Giant Tiger Stores Limited ("Giant Tiger")) to fix the price of fresh commercial bread (the "Bread Price-Fixing Cartel") which The Bread Price-Fixing Cartel was in breach of the *Competition Act*, RSC 1985, c. 35, ss. 45 and 46. The Bread Price-Fixing Cartel constituted a naked, horizontal price fixing conspiracy between the major suppliers and retailers of bread in Canada whereby the conspirators conspired to increase the price of bread by 7 cents per unit at wholesale and by 10 cents per unit at retail.

~~30.32. The Competition Bureau investigation indicates that the dominant bread suppliers, Weston Bakeries and Canada Bread, conspired to increase the wholesale price of bread through communications between their senior officers. Concurrently, the major retailers of bread (Loblaws, Sobeys, Metro Inc., Walmart, and Giant Tiger), conspired to increase the retail price of bread through communications between their senior officers. The conspiracy to increase the price of bread constituted a naked, horizontal price fixing conspiracy between the major suppliers of bread and the major retailers of bread in Canada. The Bread Price-Fixing Cartel cost Canadians billions of dollars.~~

~~31.33. The conspirators implemented their conspiracy through a number of mechanisms, including what became known among the defendants as “the 7/10 Convention.” According to the 7/10 Convention, the conspirators conspired to increase the price of bread by 7 cents per unit at wholesale and by 10 cents per unit at retail and by variations of the 7/10 Convention. The conspiracy caused 15 or more increases in the price of bread during the relevant period.~~

~~32.34. In 2015, the Defendants secretly entered into immunity discussions with the Competition Bureau about their involvement in the Bread Price-Fixing Cartel and on December 19, 2017 publicly admitted to their conduct.~~

~~33.35. On December 19, 2017, the Defendants issued a press release publicly admitting to participating in an industry wide conspiracy to fix the price of bread. The Defendants stated that beginning in 2001, they had a “role in an industry wide price fixing arrangement involving certain packaged bread products.” The Defendants further admitted that the~~

~~“arrangement involved the coordination of retail and wholesale prices of certain packaged bread products” and “the participants regularly increased prices on a coordinated basis.”~~

~~34.36.~~ The Plaintiff and other class members had no knowledge of the Bread Price-Fixing Cartel until the Defendants announced their involvement in December 2017. In particular, the Plaintiff and other class members had no knowledge of the Bread Price-Fixing Cartel at the time each entered into their Distributors’ Agreement with the Defendants.

~~35.37.~~ ~~As a result of the Bread Price-Fixing Cartel and the Competition Bureau investigation, numerous class action lawsuits have been initiated against the conspirators, including the Defendants.~~

~~36.38.~~ As a result of the Defendants’ public announcement of their involvement in the Bread Price-Fixing Cartel, cartel members or, in the addition and the alternative, innocent customers of the Defendants specifically including customers of the Plaintiff and class members have expressed their displeasure with the Defendants by cancelling their accounts with the Defendants and refusing to stock the Defendants’ products in their stores. This was a foreseeable consequence of the Defendants’ participation in the Bread Price-Fixing Cartel. In particular, in May 2018, Walmart announced that it was cutting ties with the Defendants effective July 2018, and in October 2019, Sobeys (and all of its affiliated companies, including but not limited to, Foodland and Price Chopper) cut ties with the Defendants.

~~37.39.~~ Distributors, including the Plaintiff, did not profit as a result of the price increases caused by the Bread Price-Fixing Cartel. Any increases in price were passed through to customers,

although in some cases, the Defendants also took the opportunity to lower distributors' margins on sales.

### **Losses Suffered by Distributors**

38.40. As a direct and foreseeable result of the Defendants' involvement in the Bread Price-Fixing Cartel, distributors, including the Plaintiff and class members, have suffered serious losses. In particular, losses suffered by the Plaintiff and class members include but are not limited to the following:

- (a) lost sales when Walmart and Sobeys and other such outlets cancelled their accounts with the Defendants;
- (b) overall decrease in sales volume as a result of customer reaction to the Defendants' actions;
- (c) decrease in the capital value of distributors' businesses as a going concern, and in some cases businesses being rendered unsaleable, due to the Defendants' actions;
- (d) inflation in the price paid for distribution rights from the Defendants by distributors during the period 2001 to 2017; and
- (e) business interruption, administrative expenses, and special costs to deal with the fallout from the Defendants' misconduct, including additional time spent with customers, legal fees, and accounting fees.

39.41. On or about June 15, 2018, Guy Burton, Vice President of Sales & Operations for Weston Bakeries, announced a compensation program for distributors' losses as a consequence of



Walmart cutting ties with Weston Bakeries. The compensation program was to pay distributors the full amount of margin lost from July 16 to December 31, 2018 as a result of Walmart's "customer transition." However, the compensation program was subsequently withdrawn by Weston Bakeries without any explanation and without any payments being made.

### **The Defendants' Misconduct**

40.42. The Defendants breached their statutory disclosure obligation by failing to provide a disclosure document to the Plaintiff and class members prior to entering into the Distributors' Agreements and accepting payment from the distributors.

41.43. The Defendants breached the statutory and common law duty of fair dealing to the Plaintiff and class members by participating in the Bread Price-Fixing Cartel.

42.44. The particulars of the Defendants' breaches of the duty of fair dealing include but are not limited to the following:

- (a) participating in the Bread Price-Fixing Cartel;
- (b) concealing their involvement in the Bread Price-Fixing Cartel from distributors;
- (c) ~~entering into immunity discussions with the Competition Bureau without informing distributors;~~
- (d) ~~publicly announcing their involvement in the Bread Price-Fixing Cartel without informing distributors;~~
- (e) ~~raising prices for distributors as part of the Bread Price-Fixing Cartel;~~

- (f) ~~inflating the cost of distributorships as a result of the false financials from the Bread Price Fixing Cartel;~~
- (g) failing to take any meaningful steps to protect distributors' interest from the fallout from the Bread Price-Fixing Cartel; and
- (h) treating distributors unfairly, high-handedly, unequally, and callously in the administration of the distributorships.

45. Weston Bakeries has further breached its duty of fair dealing and good faith obligations through its performance of the following provisions of the Distributors' Agreements without regard to the legitimate interests of the Plaintiff and class members:

- (a) Article 6.1 – the Defendants have interfered with distributors' sales efforts by failing to assist and cooperate in sales efforts;
- (b) Article 6.2 – the Defendants failed its obligation to use its best efforts to obtain authorization for distributors to sell product in retail chains; and
- (c) Article 6.2 – the Defendants failed to communicate to distributors information concerning authorization, prices and terms of business opportunities with retail chains.

## CAUSES OF ACTION

### **Breach of the *Arthur Wishart Act***

43.46. The Distributors' Agreements are "franchise agreements" within the meaning of s. 1 of the *Arthur Wishart Act*. The business arrangement established by the Distributors' Agreements

is a “franchise” within the meaning of s. 1 of the *Arthur Wishart Act*. The Plaintiff and class members are entitled to a declaration that the *Arthur Wishart Act*, and any parallel provincial franchise legislation, applies to the operation of their distributorships.

44.47. The Plaintiff and each class member is a “franchisee” within the meaning of s. 1 the *Arthur Wishart Act*. Weston Bakeries Limited is a “franchisor” within the meaning of s. 1 of the *Arthur Wishart Act*.

45.48. Weston Foods (Canada) Inc. and George Weston Limited are “franchisor’s associates” within the meaning of s. 1 of the *Arthur Wishart Act* and parallel provincial franchise legislation, because they directly or indirectly control the franchisor Weston Bakeries Limited and therefore have operational control and ongoing financial obligations with the distributors.

46.49. Under s. 3(1) of the *Arthur Wishart Act*, every franchise agreement imposes on each party a duty of fair dealing in the performance and enforcement of the agreement, including in relation to the exercise of rights under the franchise agreement. The duty of fair dealing includes a duty to act in good faith and in accordance with reasonable commercial standards. Under s. 3(2) of the *Arthur Wishart Act*, a party to a franchise agreement has a right of action for damages against another party to the franchise agreement who breaches the duty of fair dealing.

47.50. Under s. 5 of the *Arthur Wishart Act*, a franchisor shall provide a prospective franchisee with a disclosure document and the prospective franchisee shall receive the disclosure document not less than 14 days before the earlier of (a) the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise and

(b) the payment of any consideration by or on behalf of the prospective franchisee to the franchisor or the franchisor's associate relating to the franchise.

~~48.~~51. Under s. 7(1) of the *Arthur Wishart Act*, if a franchisee suffers a loss as a result of the franchisor's failure to comply with its statutory disclosure obligations, the franchisee has a right of action for damages against the franchisor, the franchisor's agent, the franchisor's broker (if applicable), the franchisor's associate and every person who signed the disclosure document.

~~49.~~52. Under s. 8(1) of the *Arthur Wishart Act*, all or any one or more of the parties to a franchise agreement who are found to be liable in an action under subsection 3(2) or who accept liability with respect to an action brought under that subsection are jointly and severally liable.

~~50.~~53. Under s. 9 of the *Arthur Wishart Act*, the rights conferred under the Act are in addition to and do not derogate from any other right or remedy any party to a franchise agreement may have at law.

~~51.~~54. Under s. 12 of the *Arthur Wishart Act*, the rights conferred by the Act cannot be waived and any purported waiver or release by a franchisee is void.

~~52.~~55. As described above, the Defendants have breached their duty of fair dealing to the Plaintiff and class members in the performance and enforcement of the Distributors' Agreements. As such, the Plaintiff and class members are entitled to statutory damages under s. 3(2) of the *Arthur Wishart Act* in the full amounts of their losses.

~~53-56.~~ In addition, the Defendants have breached their obligation to provide prospective franchisees with disclosure documents in compliance with s. 5 of the *Arthur Wishart Act*. As such, the Plaintiff and class members are entitled to statutory damages under s. 7(1) of the *Arthur Wishart Act* in the full amount of their losses.

### **Breach of Contract and Duty of Good Faith**

~~54-57.~~ The Distributors' Agreements are contracts between the Defendants and the distributors, including the Plaintiff and class members. Parties to a contract owe one another a duty of good faith in contractual performance. As such, the Defendants owed the Plaintiff and class members a duty of good faith in the performance of the Distributors' Agreements.

~~55-58.~~ As described above, the Defendants have breached their duty of good faith to the Plaintiff and class members. The Defendants have not behaved reasonably or honestly in dealing with the Plaintiff and class members. The Defendants have unilaterally and arbitrarily exercised authority to cause harm to the Plaintiff and class members.

~~56-59.~~ The Plaintiff and class members are entitled to be put in the position they would have been in had the Defendants fulfilled their duties, in the full amount of their losses.

### **Unjust Enrichment**

~~57-60.~~ As described above, the Defendants have been enriched by the receipt of money from product sales and the sale of distribution rights from the Plaintiff and class members directly attributable to the Bread Price Fixing Cartel and the Defendants' misconduct.

~~58-61.~~ The Plaintiff and class members have been deprived through the payment of these amounts to the Defendants.

~~59.62.~~ There is no juristic reason why the Defendants should have received or should retain these amounts. The breaches of the *Arthur Wishart Act*, the breaches of the contractual duty of good faith, the breaches of the *Competition Act*, and the *Criminal Code*, and the doctrine of unconscionability, negate any juristic reason why the Defendants should have received or should retain these benefits.

~~60.63.~~ As a result, the Defendants have been unjustly enriched.

~~61.64.~~ The Plaintiff and class members are entitled to restitution of the benefits received by the Defendants from them, in the full amounts of their losses.

~~62.65.~~ In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiff and class members an amount attributable to the benefits that they obtained from distributors as a result of the Bread Price-Fixing Cartel.

## DAMAGES

### Joint and Several Liability

~~63.66.~~ The business of each of the Defendants is inextricably interwoven with that of the others and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of fresh commercial bread, the operation of the Distributors' Agreements, and for the purposes of the Bread Price-Fixing Cartel.

~~64.67.~~ The Defendants are jointly and severally liable for the actions of and the damage allocable to each and any of them.

68. In addition or in the alternative, Weston Bakeries was a puppet of George Weston and Weston Foods. Justice demands that the corporate veil be pierced to allow the Plaintiff and class members to recover against George Weston and Weston Foods for the impact to the Distributors' Agreements and other consequences their illegal misconduct in the Bread Price-Fixing Cartel caused the Plaintiff and class members, (i.e. the loss of revenue and value of their businesses as going concerns). ~~in the manufacture, marketing, sale, and/or distribution of fresh commercial bread, the operation of the Distributors' Agreements, and for the purposes of the Bread Price-Fixing Cartel.~~

65-69. In addition or in the further alternative, the Weston Bakeries, Weston Foods and George Weston have amalgamated into one entity and are each liable to the plaintiff and distributors as a result of the amalgamation.

### **Punitive Damages**

66-70. The Defendants' misconduct, as described above, was malicious, oppressive, and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. The Defendants' actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made against the Defendants.

### **PLACE OF TRIAL**

67-71. The Plaintiff proposes that this action be tried in the City of London, in the Province of Ontario.

December 11, 2019

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Lawyers for the Plaintiff



## **SCHEDULE A**

Alberta – *Franchises Act*, RSA 2000, c. F-23

British Columbia – *Franchises Act*, SBC 2015, c. 35

Manitoba – *The Franchises Act*, CCSM c. F156

New Brunswick – *Franchises Act*, RSNB 2014, c. 111

Price Edward Island – *Franchises Act*, RSPEI 1988, c. F-14.1

1758939 ONTARIO LTD.  
Plaintiff

-and- WESTON BAKERIES LIMITED et al.  
Defendants

Court File No. 2426/19CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

**AMENDED AMENDED STATEMENT OF CLAIM**

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