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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DARBAR CUISINE, INC., on behalf of
itself and all others similarly situated,

Plaintiff,

vs.

CHEF'S CHOICE MESQUITE
CHARCOAL, LAZZARI FUEL
COMPANY LLC, CALIFORNIA
CHARCOAL AND FIREWOOD, INC.,
and WILLIAM W. LORD

Defendants.

) CIVIL ACTION NO.

) **CLASS ACTION**

) **COMPLAINT**

) **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

1 Plaintiff, Darbar Cuisine, Inc. ("Plaintiff"), individually, and on behalf of a class of all
2 those similarly situated, brings this action for treble damages under section one of the Sherman
3 Act, 15 U.S.C. § 1, and section four of the Clayton Act, 15 U.S.C. § 15, against the defendants
4 named herein ("Defendants"). This complaint is based on information and belief, except those
5 paragraphs which relate to Plaintiff, which are based on personal knowledge. Plaintiff alleges as
6 follows:

7 **INTRODUCTION**

8 1. This lawsuit arises out of a contract, combination and conspiracy among
9 Defendants and their co-conspirators to fix, raise, maintain and/or stabilize the prices of mesquite
10 charcoal sold directly by the Defendants and their affiliates during the period from approximately
11 January 1, 2000 through at least September 30, 2010 (the "Class Period").

12 2. Mesquite charcoal is typically used by restaurants and individuals to grill meat,
13 fish, and poultry. The mesquite charcoal industry is growing, and Defendants' sales of mesquite
14 charcoal generated a total estimated revenue during the Class Period over \$100 million.

15 3. The Department of Justice ("DOJ") has an ongoing investigation into
16 anticompetitive conduct in the mesquite charcoal industry, and on May 7, 2012 charged William
17 W. Lord, owner of Chef's Choice Mesquite Charcoal, with violating the Sherman Act. On June
18 18, 2012 Lord pleaded guilty to the one-count felony charge.

19 4. Defendants and their co-conspirators were some of the leading manufacturers of
20 mesquite charcoal. Plaintiff alleges that during the Class Period, Defendants conspired,
21 combined and contracted to fix, raise, maintain, and stabilize the prices at which mesquite
22 charcoal was sold in the United States. As a result of Defendants' unlawful conduct, Plaintiff
23 and the other members of the Class paid artificially inflated prices for mesquite charcoal during
24 the Class Period. Such prices exceeded the amount they would have paid if the price for
25 mesquite charcoal had been determined by a competitive market.

26 **JURISDICTION AND VENUE**

27 5. Plaintiff brings this action under §§ 4, 12 and 16 of the Clayton Act (15 U.S.C.
28 §§ 15, 22 and 26) for treble damages and injunctive relief, as well as reasonable attorneys' fees and

1 costs with respect to the injuries sustained by Plaintiff arising from violations by Defendants of the
2 federal antitrust laws, including § 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

3 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a)
4 and 1367.

5 7. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28
6 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is
7 licensed to do business or is doing business in this judicial district.

8 **PARTIES**

9 8. Plaintiff Darbar Cuisine, Inc. is a California corporation, with its principal place of
10 business in San Francisco, California. During the Class Period, Darbar Cuisine, Inc. purchased
11 mesquite charcoal from one or more of the Defendants or their Co-Conspirators and was injured by
12 the prices it paid.

13 9. Defendant Chef's Choice Mesquite Charcoal ("Chef's Choice") is a business entity,
14 with its principal place of business at 1729 Ocean Oaks Road, Carpinteria, California 93013.
15 Chef's Choice, either directly or through a wholly owned subsidiary, participated in the conspiracy
16 alleged in this complaint and manufactured, marketed and/or sold mesquite charcoal throughout the
17 United States, including in this district, during the Class Period.

18 10. Defendant Lazzari Fuel Company LLC ("Lazzari") is a business entity with its
19 principal place of business at 11 Industrial Way, Brisbane, California 94005. Lazzari, either
20 directly or through a wholly owned subsidiary, participated in the conspiracy alleged in this
21 complaint and manufactured, marketed and/or sold mesquite charcoal throughout the United States,
22 including in this district, during the Class Period.

23 11. Defendant California Charcoal and Firewood, Inc. ("California Charcoal") is a
24 business entity with its principal place of business at 1518 S. Eastern Ave., City of Commerce, CA
25 90022. California Charcoal either directly or through a wholly owned subsidiary, participated in
26 the conspiracy alleged in this complaint and manufactured, marketed and/or sold mesquite charcoal
27 throughout the United States, including in this district, during the Class Period.
28

12. Defendant William W. Lord, is sole proprietor and operator of Chef's Choice. Mr. Lord entered into a Plea Agreement with the United States, pursuant to which he pled guilty to a one-count Information charging him with conspiring to allocate customers for mesquite charcoal in violation of the Sherman Act, 15 U.S.C. § 1.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action both on behalf of himself, and as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b)(3), on behalf of the following class (the "Class"):

All individuals and entities who, during the period from approximately January 1, 2000 through at least September 30, 2010 (the "Class Period"), purchased mesquite charcoal in the United States directly from the Defendants, their subsidiaries or their co-conspirators. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, all governmental entities, and co-conspirators.

14. Plaintiff does not know the exact number of class members because such information is in the exclusive control of Defendants. Plaintiff believes that, due to the nature of the trade and commerce involved, there are most likely thousands of class members, geographically dispersed throughout the United States such that joinder of all class members is impracticable.

15. Plaintiff's claim is typical of the claims of the class in that Plaintiff is a direct purchaser of mesquite charcoal, all Class members were damaged by the same wrongful conduct of Defendants and their co-conspirators as alleged herein, and the relief sought is common to the class.

16. Numerous questions of law or fact arise from Defendants' anticompetitive conduct that is common to the class. Among the questions of law or fact common to the class are:

- a. whether Defendants engaged in a contract, combination or conspiracy among themselves to fix, maintain or stabilize the prices of, or allocate the market for, mesquite charcoal sold in the United States;

- 1 b. whether the conduct of Defendants caused prices of mesquite charcoal to
2 be artificially inflated to non-competitive levels; and;
3 c. whether plaintiff and other members of the class were injured by the
4 conduct of Defendants and, if so, the appropriate class-wide measure of
5 damages and appropriate injunctive relief.

6 17. These common questions of law or fact are common to the class, and predominate
7 over any other questions affecting only individual class members.

8 18. Plaintiff will fairly and adequately represent the interests of the class in that Plaintiff
9 is a typical direct purchaser of mesquite charcoal and has no conflicts with any other member of
10 the class. Furthermore, Plaintiff has retained competent counsel experienced in antitrust and class
11 action litigation.

12 19. A class action is superior to the alternatives, if any, for the fair and efficient
13 adjudication of this controversy.

14 20. Prosecution of separate actions by individual class members would create the risk of
15 inconsistent or varying adjudications, establishing incompatible standards of conduct for the
16 Defendants.

17 21. Injunctive relief is appropriate as to the class as a whole because Defendants have
18 acted or refused to act on grounds generally applicable to the class.

19 22. Plaintiff reserves the right to expand, modify or alter the class definition in response
20 to information learned during discovery.

21 **INTERSTATE AND FOREIGN TRADE AND COMMERCE**

22 23. During the Class Period, Defendants and their co-conspirators, or one or more of
23 their subsidiaries and/or affiliates sold and shipped substantial quantities of mesquite charcoal in a
24 continuous and uninterrupted flow of interstate and international commerce to customers located in
25 states other than the states in which Defendants are located.

26 24. The business activities of Defendants that are the subject of this Complaint were
27 within the flow of, and substantially affected, interstate trade and commerce. Furthermore, each of
28

1 the Defendants and their co-conspirators used instrumentalities of interstate commerce to market
2 and sell mesquite charcoal.

3 25. During the Class Period, Defendants, amongst whom are the largest mesquite
4 charcoal producers in the United States, had most of the mesquite charcoal sales in the national
5 market.

6 26. During the Class Period, Defendants and their Co-conspirators collectively imported
7 at least tens of millions of dollars worth of Mesquite charcoal into the United States.

8 **STATEMENT OF FACTS**

9 27. Mesquite charcoal is typically used by restaurants and individuals to grill meat, fish,
10 and poultry. It is produced primarily in Mexico and then sold to companies in the United States,
11 like Defendants, for resale to distributors and end users.

12 28. Defendants and their co-conspirators entered into conspiratorial agreements
13 designed to ensure that they would not have to reduce mesquite charcoal prices. These agreements
14 had the effect of maintaining artificially high prices for mesquite charcoal.

15 29. A number of the Defendants and co-conspirators were the subjects – and targets – of
16 the Department of Justice’s (“DOJ”) antitrust investigation into the mesquite charcoal industry.

17 30. On June 18, 2012, Chef’s Choice pled guilty to participating in a conspiracy to
18 suppress and eliminate competition by fixing the prices of mesquite charcoal.

19 31. Information and evidence related to meetings and agreements reached by the
20 Defendants are set forth in the United States’ Sentencing Memorandum in the criminal proceeding
21 against William W. Lord (3:12-cr-00326-WHA), attached hereto as Exhibit A.

22 **VIOLATIONS ALLEGED**

23 32. Beginning at least as early as January 1, 2000, the exact date being unknown to
24 Plaintiff, Defendants, by and through their officers, directors, employees, agents, or other
25 representatives, entered in a continuing contract, combination or conspiracy to unreasonably
26 restrain trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

27 33. Defendants, by their unlawful conspiracy, artificially raised, inflated and maintained
28 the market price of mesquite charcoal as herein alleged.

1 34. The contract, combination or conspiracy consisted of a continuing agreement,
2 understanding and concert of action among Defendants and their co-conspirators, the substantial
3 terms of which were to fix, raise, maintain and stabilize the prices of, and/or allocate the market
4 for, mesquite charcoal they sold in the United States.

5 35. For the purpose of formulating and effectuating their contract, combination or
6 conspiracy, Defendants and their co-conspirators did those things they contracted, combined or
7 conspired to do, including:

- 8 a. agreeing, during conversations and communications, not to compete for
- 9 sales of mesquite charcoal to co-conspirators customers;
- 10 b. refraining from submitting bids to co-conspirators' customers; and
- 11 c. communicating regarding bid prices and then submitting agreed-upon and
- 12 intentionally non-competitive bids to co-conspirators' customers.

13 36. As a direct result of the unlawful conduct of Defendants and their co-conspirators in
14 furtherance of their continuing contract, combination or conspiracy, Plaintiff and other members of
15 the class have been injured in their business and property in that they have paid more for mesquite
16 charcoal than they would have paid in the absence of Defendants' price fixing.

17 **EFFECTS**

18 37. The above combination and conspiracy has had the following effects, among
19 others:

- 20 a. price competition in the sale of mesquite charcoal by Defendants and their
- 21 co-conspirators has been restrained, suppressed and eliminated throughout
- 22 the United States;
- 23 b. prices for mesquite charcoal sold by Defendants have been raised, fixed,
- 24 maintained and stabilized at artificially high and noncompetitive levels
- 25 throughout the United States; and
- 26 c. direct purchasers of mesquite charcoal from Defendants have been deprived
- 27 of the benefit of free and open competition in the purchase of mesquite
- 28 charcoal.

38. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiff and other members of the class have been injured in their business and property in that they paid more for mesquite charcoal than they otherwise would have paid in the absence of the unlawful conduct of Defendants.

FRAUDULENT CONCEALMENT

39. Plaintiff had no knowledge of the combination and conspiracy alleged herein, or of any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior to June, 2012, when the DOJ announced it was investigating the mesquite charcoal industry.

40. Defendants engaged in numerous acts and representations that were intended to and did conceal the collusion that they were engaging in concerning mesquite charcoal pricing. Because Defendants' and their co-conspirators' agreements, understandings, and conspiracies were kept secret, Plaintiff and members of the Class were unaware of Defendants' and their Co-conspirators' unlawful conduct alleged herein, and they did not know before that time that they were paying artificially high prices for mesquite charcoal throughout the United States during the Class Period.

41. By their very nature, Defendants' and their co-conspirators' price-fixing conspiracy was inherently self-concealing. The mesquite charcoal industry is not exempt from antitrust regulation, and thus, before mid-2012, Plaintiff reasonably considered it to be a well-regulated competitive industry.

42. In the context of the circumstances surrounding Defendants' and their co-conspirators' pricing practices, Defendants' acts of concealment were more than sufficient to preclude suspicion by a reasonable person that Defendants' and their co-conspirators' pricing was conspiratorial. Accordingly, a reasonable person under the circumstances would not have been alerted to investigate the legitimacy of Defendants' and their co-conspirators' mesquite charcoal prices before mid-2012.

43. Plaintiff and members of the Class could not have discovered the alleged contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-

1 conspirators to avoid detection of, and fraudulently conceal, their contract, combination or
2 conspiracy.

3 44. As a result of the Discovery Rule and Defendants' and their co-conspirators'
4 fraudulent concealment of their conspiracy, the running of any statute of limitations did not
5 commence until May, 2012, and was tolled with respect to any claims that Plaintiff and members
6 of the Class have as a result of the anticompetitive conduct alleged in this Complaint.

7 **DAMAGES**

8 45. During the Class Period, Plaintiff and the other members of the Class purchased
9 mesquite charcoal directly from Defendants, or their subsidiaries, agents, and/or affiliates, and, by
10 reason of the antitrust violations herein alleged, paid more for such products than they would have
11 paid in the absence of such antitrust violations. As a result, Plaintiff and the other members of the
12 Class have sustained damages to their business and property in an amount to be determined at trial.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

15 (1) That the Court determine that this action may be maintained as a class action under
16 Rule 23 (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as class
17 representative and Plaintiff's counsel be appointed as counsel for the Class;

18 (2) That the unlawful contract, combination or conspiracy alleged be adjudged and
19 decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the
20 Sherman Act and Section 4 of the Clayton Act;

21 (3) That Plaintiff and the Class recover damages, as provided by law, determined to
22 have been sustained as to each of them, in an amount to be trebled in accordance with the antitrust
23 laws, and that judgment be entered against Defendants on behalf of Plaintiff and of the Class;

24 (4) That Plaintiff and the Class recover their costs of the suit, including attorneys' fees,
25 as provided by law;

26 (5) That Defendants, their subsidiaries, affiliates, successors, transferees, assignees and
27 the respective officers, directors, partners, agents, and employees thereof and all other persons
28

1 acting or claiming to act on their behalf be permanently enjoined and restrained from continuing
2 and maintaining the combination, conspiracy, or agreement alleged herein;

3 (6) That Plaintiff and members of the Class be awarded pre-judgment and post-
4 judgment interest, and that such interest be awarded at the highest legal rate from and after the date
5 of service of the initial complaint in this action; and

6 (7) For such other and further relief as is just under the circumstances.

7 **JURY TRIAL DEMANDED**

8 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all of
9 the claims asserted in this Complaint that are so triable.

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11
12 DATED: November 15, 2013

/s/ R. Alexander Saveri

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