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8 **SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

9 THE STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 STARKIST COMPANY; DONGWON
13 INDUSTRIES CO., LTD., and;
CHRISTOPHER LISCHEWSKI,

14 Defendants.

NO. 20-2-09491-9 SEA

LISCHEWSKI CONSENT DECREE

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16 **I. SETTLEMENT SUMMARY**

- 17 1.1 Plaintiff: State of Washington
- 18 1.2 Defendant: Christopher Lischewski
- 19 1.3 Settlement Amount: \$100,000 (to be paid in accordance with
Paragraph 6.1)
- 20 1.4 Attorney for Plaintiff: Holly Williams
21 Assistant Attorney General
- 22 1.5 Attorneys for Defendant: David Angeli
Angeli Law Group
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LISCHEWSKI CONSENT DECREE

1 ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle WA 98104
206 464-7744

II. INTRODUCTION

2.1 Plaintiff, State of Washington, by and through its Attorney General, as *parens patriae* on behalf of Persons, as defined *infra*, residing in the State of Washington, commenced an antitrust action on June 2, 2020, for an injunction, restitution, and other relief pursuant to Chapter 19.86 RCW, the Unfair Business Practices-Consumer Protection Act (“CPA”), against Defendants Starkist Co.; Dongwon Industries Co., Ltd., and; Christopher Lischewski in King County Superior Court, Cause No. 20-2-09491-9 (“Action”).

2.2 Plaintiff alleges price fixing and other anticompetitive conduct by various entities, including Defendants, in its complaint filed in the Action (“Complaint”). The Complaint alleges that Defendants participated in an unlawful conspiracy to suppress and eliminate competition by reaching agreements to fix, raise, and maintain the prices of Packaged Tuna Products sold in the State of Washington in violation of the CPA.

2.3 Plaintiff and Defendant Christopher Lischewski have engaged in arms-length negotiations regarding possible resolution of the claims against Defendant. Plaintiff and Defendant have now agreed on a basis for settlement of all Plaintiff’s claims against Defendant Lischewski in the Action and to entry of this Settlement and Consent Decree (“Consent Decree”) without trial or adjudication of any issues of fact or law. Defendant Lischewski does not admit the allegations contained in the Complaint or any liability or violation of law and believes he has valid defenses to Plaintiff’s claims and any potential claims that have been or could be asserted by Plaintiff against him.

2.4 Plaintiff and Defendant Lischewski have determined that this Consent Decree and the amount of the Settlement Fund, as defined *infra*, are reasonable in light of, among other things, Plaintiff’s claims and alleged damages, Defendant Lischewski’s defenses, the risk and expense of continuing and protracted litigation, and the extent of each party’s investigation, discovery, and preparation for trial.

1 2.5 Notwithstanding his defenses, Defendant Lischewski agrees to entry of this
2 Consent Decree to: (a) avoid the expense, inconvenience, and distraction of burdensome and
3 protracted litigation; (b) obtain the releases, orders, and final judgment contemplated by this
4 Consent Decree; and (c) put to rest and terminate with finality all claims Plaintiff has or could
5 have asserted against Defendant Lischewski that relate in any way to or arise out of the
6 allegations in the Complaint, as more particularly set forth below.

7 2.6 Defendant Lischewski recognizes and states that he enters into this Consent
8 Decree voluntarily and that other than the promises contained herein, no promises or threats
9 have been made by the Attorney General's Office or any member, officer, agent or
10 representative thereof to induce Defendant Lischewski to enter into this Consent Decree.

11 2.7 Plaintiff and Defendant Lischewski waive any right they may have to appeal
12 from this Consent Decree and from any Order adopting it, provided that no substantive changes
13 are made to the Consent Decree after it has been presented to the Court.

14 2.8 Plaintiff and Defendant Lischewski acknowledge that they have not completed
15 full discovery in this matter and may hereafter discover facts different from or in addition to
16 those known or believed to be true at the time they entered into this Consent Decree.
17 Nevertheless, Plaintiff and Defendant Lischewski agree this Consent Decree shall be effective
18 and remain effective notwithstanding such different or additional facts, any facts disclosed in
19 or the outcome of any other court proceeding, and waive any right they may have to seek
20 modification of this Consent Decree or any Order adopting it based upon discovery of such
21 different or additional facts or the outcome of any other court proceeding.

22 2.9 Plaintiff and Defendant Lischewski agree this Consent Decree and any Order
23 adopting it shall not limit or affect the Plaintiff's claims against the remaining defendants,
24 Starkist Co. and Dongwon Industries Co., Ltd., and it shall not be read in any way to benefit
25 the remaining defendants.

1 2.10 Plaintiff and Defendant Lischewski agree this Consent Decree and any Order
2 adopting it resolves claims against Christopher Lischewski as an individual only and *shall not*
3 limit or affect the Plaintiff's claims against any other person or entity, including but not limited
4 to any Bumble Bee Foods LLC entity, or any of its respective past and present, direct and
5 indirect, parent companies, wholly- and partially-owned subsidiaries, divisions, joint ventures,
6 and Affiliates (where "Affiliates" means any other entity that is now or was previously owned
7 by, or an owner of, a Bumble Bee Foods LLC entity, where "owned" and "owner" means
8 holding, directly or indirectly, a 50% or greater equity or beneficial interest); each and all of
9 the past and present principals, partners, officers, directors, supervisors, employees,
10 representatives, insurers, attorneys, agents, servants, and stockholders of each of the foregoing
11 entities; and each of the predecessors, successors, heirs, executors, administrators, and assigns
12 of any such entities and individuals except Defendant Christopher Lischewski.

13 NOW, THEREFORE, there being no just reason for delay for resolving the claims
14 alleged in Plaintiff's Complaint against Defendant Lischewski, and before the taking of any
15 testimony, and without trial or adjudication of any issues of fact or law herein, and upon consent
16 of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

17 **III. JURISDICTION AND SCOPE**

18 3.1 Jurisdiction: Solely for purposes of effectuating this Consent Decree, the Court
19 has jurisdiction over the parties and the subject matter herein, as well as the implementation,
20 enforcement, and performance of the terms included in this Consent Decree. The Attorney
21 General has authority to bring this Action under the CPA. Venue is proper in King County
22 Superior Court.

23 3.2 Review: Plaintiff and Defendant Lischewski have read and understand this
24 Consent Decree and enter into it voluntarily, each having been advised by their undersigned
25 counsel of the meaning and effect of each provision of this Consent Decree.
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1 3.3 Signatures: This Consent Decree may be executed in counterparts by Plaintiff
2 and Defendant Lischewski, and a signature page sent via fax or electronic mail shall be deemed
3 an original signature for purposes of executing this Consent Decree.

4 **IV. DEFINITIONS**

5 THE COURT ORDERS that the following definitions shall be used in interpreting the
6 terms of this Consent Decree:

7 4.1 “Packaged Tuna Products” shall refer to shelf-stable packaged tuna
8 products.

9 4.2 “Defendant” shall refer to Christopher Lischewski, an individual.

10 4.3 “Effective Date” shall mean the date this Consent Decree is entered by the Court.

11 4.4 “Person” or “Persons” shall mean, consistent with RCW 19.86.010(1), natural
12 persons, corporations, trusts, unincorporated associations, and partnerships.

13 4.5 “Plaintiff” shall mean the State of Washington (the “State”), acting as *parens*
14 *patriae* on behalf of Persons residing in the State of Washington, and the Attorney General
15 acting on behalf of the State of Washington.

16 4.6 “Released Claims” shall mean any claim or claims that arise out of or relate to
17 the Relevant Conduct, as defined *infra*, prior to the Effective Date, under the CPA, under any
18 federal, Washington, state, or local statute, regulation, law, or common law, or under any
19 international or foreign statute, regulation, law, or common law, regarding antitrust,
20 competition, unfair competition, unfair or deceptive acts or practices, price discrimination,
21 unitary pricing, consumer protection, restitution, fraud protection, common law unjust
22 enrichment, racketeering, civil conspiracy, or trade practice law, including, without limitation,
23 any and all claims, demands, actions, judgments, suits, liabilities, expenses (including costs,
24 attorneys’ fees, and interest), fines, penalties, or causes of action that Plaintiff has had, now has,
25 or hereafter may have or could bring, against Defendant Lischewski, whether in law, in equity,
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1 or otherwise, based on, arising out of, or related to, the Relevant Conduct, including, but not
2 limited to, Plaintiff's *parens patriae* claims on behalf of Persons residing in the State of
3 Washington and all claims Plaintiff asserted or could have asserted in the Action against
4 Defendant Lischewski. For the avoidance of doubt, Released Claims include any claims that
5 arise out of allegations of an increase in price, stabilization of price, reduction or decrease in
6 price, or a reduction in output, capacity for output, or quality, of Packaged Tuna Products as a
7 result of the Relevant Conduct.

8 4.7 "Releasee" shall refer solely to Defendant Christopher Lischewski as an
9 individual.

10 4.8 "Relevant Conduct" means Defendant Lischewski's alleged participation in an
11 unlawful conspiracy to suppress and eliminate competition by reaching agreements to fix,
12 raise, and maintain the prices of Packaged Tuna Products sold in the State in violation of
13 the CPA, as alleged in the Complaint.

14 4.9 "The Settlement Fund" shall be \$100,000 (One Hundred Thousand Dollars) in
15 United States dollars to be paid in accordance with Paragraph 6.1.

16 V. INJUNCTIONS

17 5.1 IT IS FURTHER ORDERED that Defendant Lischewski shall be enjoined for a
18 period of ten (10) years from engaging in price fixing, market allocation, and bid rigging with
19 respect to the sale of any Packaged Tuna Products in the United States, which constitute
20 horizontal conduct that are *per se* violations of RCW 19.86.030, including participating in
21 meetings, conversations and communications with other Packaged Tuna Products sellers (other
22 than among affiliated entities) in the United States and elsewhere to discuss the prices of
23 Packaged Tuna Products to be sold to any other person or entity and exchanging information
24 on the sales of Packaged Tuna Products to customers, for the purpose of monitoring and
25 enforcing adherence to unlawfully agreed upon prices.
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1 5.2 Nothing in this section or Consent Decree shall be interpreted as limiting in any
2 way Defendant Lischewski's obligations to comply in the fullest with federal and state antitrust
3 laws as they currently exist or may be amended in the future. Nothing herein shall relieve
4 Defendant Lischewski of his duty of compliance with any law.

5 **VI. MONETARY RELIEF**

6 6.1 Within sixty (60) days of the Effective Date or by October 30, 2020, whichever
7 is later, Defendant shall pay to the State of Washington one hundred thousand United States
8 dollars (\$100,000.00) ("Settlement Amount") by wire transfer to the State of Washington or to
9 such other recipient as Plaintiff shall designate. Pursuant to RCW 19.86.080, the Attorney
10 General shall use the funds to compensate Washington consumers who were allegedly harmed
11 by the Relevant Conduct, recovery of the costs and attorneys' fees incurred in investigating this
12 matter, future monitoring and enforcement of the Consent Decree, future enforcement of the
13 CPA, or for any lawful purpose in the discharge of the Attorney General's duties at the sole
14 discretion of the Attorney General.

15 6.2 The failure to pay the Settlement Amount as described in Paragraph 6.1 shall be
16 a breach of this Consent Decree. The cost of collecting the Settlement Amount after the time
17 described in Paragraph 6.1 shall be paid by Defendant Lischewski.

18 6.3 No part of the Settlement Amount paid by Defendant Lischewski shall
19 constitute, nor shall it be construed as, or treated as constituting, payment for treble or multiple
20 damages, fines, penalties, forfeitures, or punitive recoveries.

21 6.4 Plaintiff shall be solely responsible for the maintenance and administration of
22 the Settlement Fund, including any related fees, costs, and expenses. Defendant Lischewski
23 shall have no responsibility or liability for, and no rights in, nor authority over, the allocation
24 of the Settlement Fund. In no circumstances shall this Consent Decree be construed to require
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1 Defendant to pay more or less than the Settlement Amount set forth in Paragraph 6.1 above
2 unless he breaches the Consent Decree.

3 6.5 The parties shall be responsible for all of their own fees and costs incurred in
4 connection with the investigation, prosecution, defense, and settlement of the Action prior to
5 the entry of this Consent Decree.

6 **VII. PROVISION OF DOCUMENTS AND ACCEPTANCE OF SERVICE**

7 7.1 Defendant Lischewski will cooperate or has cooperated with Plaintiff by:

8 7.1.1 Defendant Lischewski has provided Plaintiff with a copy of the proposed
9 exhibit list in the United States District Court for the Northern District of California, No. 3:18-
10 CR-00203. This list includes bates numbers for all exhibits, including those that were marked
11 but not admitted; and has produced electronic copies of all exhibits that were admitted.

12 7.1.2 If service of any document from the State is required related to the above-
13 referenced lawsuit or this Consent Decree, Defendant Lischewski agrees that his undersigned
14 attorney or his other designee shall accept service by email;

15 7.1.3 Defendant Lischewski has confirmed that he did not produce or
16 provide any documents to any party or court pursuant to multi-district litigation pending in
17 the United States District Court for the Southern District of California captioned *In re*
18 *Packaged Seafood Products Antitrust Litigation*, No. 15-md-2670 (the “MDL Action”),
19 related to Defendant’s alleged participation in an unlawful conspiracy to suppress and
20 eliminate competition by reaching agreements to fix, raise and maintain the prices of
21 Packaged Tuna Products in the United States, including a duty to supplement until
22 informed that Plaintiff has discontinued its investigation.

23 7.2 In the event that Plaintiff reasonably believes a breach of this Consent Decree
24 has occurred, and for the purpose of securing compliance with this Consent Decree, Plaintiff
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1 may issue a Civil Investigative Demand pursuant to RCW 19.86.110(4)(c) requiring Defendant
2 to:

- 3 (1) Produce documents, and
4 (2) Counsel for Defendant shall accept electronic service of any such CID without
5 objection.

6 7.3 Plaintiff and Defendant Lischewski shall use their best efforts to effectuate this
7 Consent Decree, including cooperating in seeking any court approvals of the consent decree.

8 **VIII. NO EFFECT IF THIS CONSENT DECREE IS NOT ENTERED**

9 8.1 In the event this Consent Decree is not approved and entered by the Court, this
10 Consent Decree shall be of no force or effect. Defendant Lischewski and Plaintiff expressly
11 reserve all of their rights if this Consent Decree does not become final.

12 **IX. RELEASE, DISCHARGE AND COVENANT NOT TO SUE**

13 9.1 Upon payment of the Settlement Amount, and for other good and valuable
14 consideration, Defendant Lischewski shall be completely released and forever discharged to the
15 fullest extent permitted by law from each and all of the Released Claims. Plaintiff covenants
16 that Plaintiff will not, after payment of the Settlement Amount, commence or solicit new
17 litigation against Defendant Lischewski on behalf of the State or any person, entity, political
18 subdivision of the State, or any Person or other party, in any suit, action, complaint, arbitration,
19 mediation, or other grievance based on, or relating to, the Relevant Conduct. Plaintiff may
20 hereafter discover facts other than or different from those which it knows or believes to be true
21 with respect to the claims that are released pursuant to the provisions of Paragraph 9.1, but
22 Plaintiff hereby expressly waives and fully, finally, and forever settles and releases, upon the
23 payment of the Settlement Amount, any known or unknown, suspected or unsuspected,
24 contingent or non-contingent claims Plaintiff has agreed to release pursuant to Paragraph 9.1,
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1 whether or not concealed or hidden, without regard to the subsequent discovery or existence of
2 such different or additional facts.

3 9.2 Plaintiff shall not, after payment of the Settlement Amount, seek to establish
4 liability against Defendant based, in whole or in part, upon any of the Released Claims or
5 conduct at issue in the Released Claims including, without limitation, liability with respect to
6 any governmental or *parens patriae* indirect purchaser claims. For the avoidance of doubt, the
7 release, discharge, and covenant not to sue set forth above in this Consent Decree are binding
8 on Plaintiff, and all Persons residing in Washington or claiming under Washington law. After
9 the payment of the Settlement Fund, Plaintiff agrees it will not file any action against Defendant
10 that seeks any money payable to the State of Washington, its agencies, or any Person based on
11 any form of alleged anticompetitive conduct occurring on or before the Effective Date, relating
12 to Packaged Tuna Products, except as allowed under the terms of this Consent Decree.
13 Plaintiff further covenants that the Attorney General will not provide any non-public
14 information to any Person, political subdivision of the State, or any other party, other than the
15 State in connection with the Action, to support any suit, action, complaint, arbitration,
16 mediation, or other grievance against Defendant Lischewski, based on, or relating in any way
17 to, the Relevant Conduct unless required by law. Nothing in Paragraph 9.2 shall be construed
18 to inhibit in any way the Attorney General's ability to communicate with other states' attorneys
19 general.

20 9.3 The release and discharge, and covenant not to sue set forth in Paragraphs 9.1,
21 and 9.2 above include only the Released Claims, and do not include any claims arising solely
22 out of product liability or breach of contract in the ordinary course of business (except to the
23 extent any alleged product liability, breach of contract or similar claim is premised on alleged
24 anticompetitive conduct or any of the allegations alleged in the Action).

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X. ENFORCEMENT AND RETENTION OF JURISDICTION

10.1 Jurisdiction is retained by this Court for ten (10) years for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of any of the provisions of this Consent Decree, for the enforcement of compliance, and for the punishment of any violations.

10.2 In any contempt of court proceeding initiated to enforce this Consent Decree due to a violation of its terms, Plaintiff or Defendant may seek, and the Court shall have the authority to grant, all remedies available in such a proceeding including penalties and attorneys' fees.

10.3 Nothing herein precludes Plaintiff from enforcing the provisions of this Consent Decree, or from pursuing any law enforcement action with respect to the acts or practices of Defendant not covered by this Consent Decree or any acts or practices conducted after the Effective Date.

10.4 Nothing in this Consent Decree shall be construed to limit or bar any other governmental entity (other than Plaintiff and its officials and agencies) from pursuing other available remedies, if any, against Defendant Lischewski.

10.5 Nothing in this Consent Decree constitutes evidence of or an admission regarding the existence or non-existence of any issue, fact, liability, wrongdoing, or violation of any law alleged by Plaintiff. Further, neither this Consent Decree (whether or not it becomes final or is entered by the Court), nor any or all negotiations and discussions associated with it, shall be deemed or construed to be an admission by Defendant Lischewski or evidence of any violation of any statute or law or of any liability, wrongdoing, or violation of law whatsoever by Defendant Lischewski, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed by Plaintiff in the Action.

1 10.6 This Consent Decree shall be construed and interpreted to effectuate the intent
2 of the parties, which is to provide for a complete and final resolution of Plaintiff's claims that
3 were asserted, or could have been asserted, with respect to Defendant Lischewski only as
4 provided in this Consent Decree.

5 10.7 This Consent Decree shall be governed by and interpreted according to the
6 substantive laws of the State of Washington without regard to its choice of law or conflict of
7 laws principles.

8 10.8 Plaintiff and Defendant Lischewski agree that this Consent Decree constitutes
9 the entire, complete, and integrated agreement between Plaintiff and Defendant Lischewski
10 pertaining to the settlement of the Action against Defendant Lischewski, and supersedes all
11 prior and contemporaneous undertakings of Plaintiff and Defendant Lischewski in connection
12 therewith. This Consent Decree may not be modified or amended except in writing executed
13 by Plaintiff and Defendant Lischewski, and, if required by law, approved by the Court.

14 10.9 Neither Plaintiff nor Defendant Lischewski shall be considered the drafter of
15 this Consent Decree or any of its provisions for the purpose of any statute, case law or rule of
16 interpretation of construction that would or might cause any provision to be construed against
17 the drafter of this Consent Decree.

18 10.10 Solely for the purpose of determining or securing compliance with this Consent
19 Decree, Defendant Lischewski authorizes his attorneys to accept electronic service of a motion
20 by Plaintiff to enforce or interpret this Consent Decree.

21 10.11 This Consent Decree shall expire ten (10) years from the date it is executed.
22 Such expiration shall in no way affect the validity of Plaintiff's release of claims.

23 10.12 Plaintiff and Defendant Lischewski agree and represent that any persons signing
24 this Consent Decree are authorized to execute this Consent Decree on each party's respective
25 behalf.
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10.13 This Consent Decree shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiff and Defendant Lischewski. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiff shall be binding upon all Persons it represents.

10.14 This Consent Decree shall not benefit any third party other than Defendant Lischewski personally, and shall not be construed to provide any rights to third parties other than Defendant Lischewski.

XI. APPROVAL AND ORDER

11.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with respect to Defendant Lischewski only without award of fees, costs, or expenses to Plaintiff and Defendant Lischewski except as described above. The claims against Defendants Starkist Co. and Dongwon Industries, Co. Ltd. shall continue.

IT IS SO ORDERED this _____ day of _____, 2020.

THE HONORABLE JULIE SPECTOR
KING COUNTY SUPERIOR COURT JUDGE

1 Presented By:

2 ROBERT W. FERGUSON
3 Attorney General

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5 _____
6 Holly A. Williams, WSBA No. 41187
7 Eric S. Newman, WSBA No. 31521
8 Assistant Attorneys General
9 800 Fifth Avenue, Suite 2000
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11 (206) 326-5484
12 eric.newman@atg.wa.gov
13 holly.williams@atg.wa.gov

14 *Attorneys for Plaintiff State of Washington*

15 Agreed to, Approved for Entry, and
16 Notice of Presentation Waived:

17 ANGELI LAW GROUP LLC

18 

19 _____
20 David Angeli, WSBA No. 43741
21 Angeli Law Group LLC
22 121 SW Morrison Street, Suite 400
23 Portland, OR 97204
24 (503) 222-1552
25 david@angelilaw.com

26 *Attorneys for Defendant Lischewski*