UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD PRODUCTS ANTITRUST LITIGATION

This Document Relates To:

ALL ACTIONS.

Case No.: 15-MD-2670 DMS (MDD)

CLASS ACTION

ORDER (1) GRANTING PLAINTIFFS' MOTION FOR RECONSIDERATION; (2) VACATING ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; (3) DENYING DEFENDANTS' MOTION TO DISMISS; AND (4) DENYING AS MOOT PLAINTIFFS' MOTION FOR CERTIFICATION OF RULE 54(b) JUDGMENT AND THE PARTIES' JOINT MOTION TO SEAL

(ECF Nos. 2281, 2285, 2471)

Pending before the Court are Plaintiffs' Motion for Certification of a Rule 54(b) Judgment ("Rule 54(b) Mot.," ECF No. 2281-1) and Direct Action Plaintiffs' ("DAP") Motion for Reconsideration of the Court's Order Granting Lion Capital's Motion to Dismiss or, in the Alternative, for Entry of Final Judgment Under Rule 54(b) ("Mot. for Reconsideration," ECF No. 2284.) Plaintiff W. Lee Flowers & Co. separately joined in

the Rule 54(b) Motion. (ECF No. 2282.) Defendants Lion Capital LLP ("Lion Capital") and Big Catch Cayman LP ("Big Catch") opposed, ("54(b) Opp'n," ECF No. 2289; "Reconsideration Opp'n," ECF No. 2291), and Plaintiffs replied, ("54(b) Reply," ECF No. 2300; "Reconsideration Reply," ECF No. 2302.)[1] The parties also jointly filed a motion to seal. ("Mot. to Seal," ECF No. 2471.) For the reasons set forth below, Plaintiffs' Motion for Reconsideration is granted, the Order Granting Defendants' Motion to Dismiss ("Second Lion Order," ECF No. 2270) is vacated, and Defendants' motion to dismiss (ECF No. 1631) is denied. In light of those rulings, Plaintiffs' Rule 54(b) motion and the parties' Motion to Seal are denied as moot.

I.
BACKGROUND

The general background and history of this litigation is well documented and extensively discussed in prior orders. (ECF Nos. 2454, 2654.) For purposes of the present motions, the Court sets out only the relevant facts.

In July 2015, the Antitrust Division of the United States Department of Justice ("DOJ") announced its investigation into the packaged tuna industry. Criminal charges for price fixing in violation of the Sherman Act, 15 U.S.C. § 1, were filed against the three largest domestic producers of packaged tuna products—Tri-Union Seafoods LLC d/b/a Chicken of the Sea International ("COSI"), Bumble Bee Foods LLC ("Bumble Bee"), StarKist Company ("StarKist"), and their executives. Bumble Bee's CEO Christopher Lischewski[2] was convicted after a jury trial. *United States v. Lischewski*, 860 Fed. Appx. 512, 2021 WL 2826474 (9th Cir. Jul. 7, 2021) (affirming conviction). He is serving a prison sentence for his "leadership role in the conspiracy." *United States v. Lischewski*,

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[1] The Motion for Reconsideration briefing was filed under seal. The public redacted briefs can be found at ECF Nos. 2285, 2295, and 2303. This Order cites to the sealed briefs.

[2] Unless otherwise noted, individuals are referred to by full names only when first introduced. Subsequently, they are referenced by last name only.

U.S. Dist. Ct. N.D. Cal. Case No. 18cr203-EMC, Am. Crim. Minutes of Jun. 16, 2020, sentencing, ECF No. 692. All other defendants pled guilty.

In the wake of the DOJ announcement of its investigation, dozens of plaintiffs initiated civil actions alleging price fixing against the three tuna producers and their parent companies: (1) COSI and its owner Thai Union Group PCL ("TUG"); (2) StarKist and its owner Dongwon Industries Co. Ltd. ("Dongwon"); and (3) Bumble Bee and its owners Lion Capital, Lion Capital (Americas), Inc. ("Lion Americas") and Big Catch (collectively the "Lion Entities"). The civil actions were consolidated in a multidistrict litigation ("MDL") for pretrial proceedings before this Court.

The Lion Entities moved to dismiss the claims alleged against them. In the order disposing of the motion, the Court concluded it had personal jurisdiction over the Lion Entities, but that Plaintiffs stated a claim only against Lion Americas. (Order Granting in Part and Denying in Part Defs.' Mots. to Dismiss ("First Lion Order") at 90, ECF No. 1362.)[3] The complaint was sufficient to allege that Lion Americas directly participated in the price fixing conspiracy. (*Id.* at 79-86.) Plaintiffs were granted leave to amend the claims against Lion Capital and Big Catch. (*Id.* at 90.) When Plaintiffs filed their amended complaints,[4] Lion Capital and Big Catch again moved to dismiss, which motion was granted without leave to amend.

DAPs filed a Motion for Reconsideration of the Second Lion Order or, alternatively, for entry of a final judgment against Lion Capital and Big Catch under Rule 54(b) of the Federal Rules of Civil Procedure.[5] All Plaintiffs, including DAPs, also joined in a

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[3] The public redacted version of the First Lion Order can be found at ECF No. 1358.

[4] The parties have stipulated, and the Court ordered, that the Fourth Amended Complaint filed by the Kroger Plaintiffs (Compl., ECF No. 1475), is "in all material respects representative" for purposes of the Lion Entities' motion to dismiss. (ECF Nos. 1524, 1529, 2270.) The public redacted version of the Complaint can be found at ECF No. 1423.

[5] All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure.

separately filed Rule 54(b) Motion.[6] Finally, the parties jointly filed a Motion to Seal requesting the sealing of eight documents filed in support of and in opposition to Plaintiffs' Motion for Reconsideration.

II.

MOTION FOR RECONSIDERATION

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. IJ, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).[7] Here, Plaintiffs argue reconsideration is warranted based on newly discovered evidence and because the Court committed clear error in the Second Lion Order.[8]

In support of their argument of clear error, Plaintiffs raise the issue of the Court's application of *United States v. Bestfoods*, 524 U.S. 51, 69 (1998), in reaching the conclusion that Plaintiffs failed sufficiently to allege that Eric Lindberg, Jacob Capps, and Jeff Chang, dual agents of Lion Capital and Lion Americas, acted on behalf of Lion Capital when they participated in the conspiracy. (*Cf.* Second Lion Order at 16-17 *with* Mot. for Reconsideration at 8-12.) The Lion Entities counter that Plaintiffs should be precluded

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[6] The Rule 54(b) Motion, as well as the related opposition and reply, are incorporated by reference into the Motion for Reconsideration briefing, which does not add any substantive arguments regarding Rule 54(b) certification. (*See* Mot. for Reconsideration at 12; Reconsideration Opp'n at 1 n.1; Reconsideration Reply at 10.)

[7] Unless otherwise noted internal quotation marks, citations, ellipses, brackets, and footnotes are omitted from citations.

[8] Although Plaintiffs' substantive arguments are clear, the procedural vehicle for their motion is less so. Plaintiffs appear to be relying on Rule 59 as the basis for their motion, but that Rule governs motions to alter or amend a judgment, and no judgment has been entered here. Regardless, the substantive standard for reconsideration is the same, whatever the procedural vehicle. As stated above, that standard requires a showing of (1) newly discovered evidence, (2) clear error or manifest injustice, or (3) an intervening change in controlling law, and that is the standard that applies to the present Motion for Reconsideration.

from seeking reconsideration because they failed to address this issue in their opposition to the Second Lion 12(b)(6) Motion. (Reconsideration Opp'n at 2, 4.)

The Court disagrees. In their moving papers the Lion Entities quoted *Bestfoods* for the hornbook proposition that "a parent corporation ... is not liable for the acts of its subsidiaries." (Mem. of P.&A. in Supp. of Lion Capital and Big Catch Renewed Consol. Mot. to Dismiss ("Second Lion 12(b)(6) Mot.") at 31, ECF No. 1630-1.)[9] It was only in the reply that they argued for dismissal based on the "*Bestfoods* presumption," which they articulated as follows, "The Supreme Court has held that 'dual status' agents of a parent corporation and its subsidiary are presumed to be acting for the subsidiary if, as here, they are employed by that subsidiary." (Reply in Supp. of Lion Capital and Big Catch Renewed Consol. Mot. to Dismiss ("Second Lion 12(b)(6) Reply") at 2 (*citing Bestfoods*, 524 U.S. at 69-70), ECF No. 1759.)[10] Raising the "*Bestfoods* presumption" for the first time in the reply deprived Plaintiffs of an opportunity to respond. Accordingly, Plaintiffs' request to reconsider the Second Lion Order on this basis is granted. *See Dietz v. Bouldin*, 579 U.S. 40, 45-46 (2016).

The issue of Lion Capital's liability was raised in the context of a Rule 12(b)(6) motion to dismiss. Plaintiffs' allegations must therefore meet the pleading standard of Rule 8(a)(2). The Rule

> requires only a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds for his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

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[9] The public redacted version can be found at ECF No. 1631-1.

[10] The public redacted version can be found at ECF No. 1760.

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