IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

MAHASKA BOTTLING COMPANY, INC., *Plaintiff,* v. **PEPSICO, INC. and BOTTLING GROUP, LLC,** *Defendants.*	**Case No. 16-114** **COMPLAINT**

COMPLAINT

COMES NOW Mahaska Bottling Company, Inc., who files this Complaint and alleges as follows:

PARTIES AND RELEVANT NON-PARTIES

1. Plaintiff Mahaska Bottling Company, Inc., ("Mahaska") is an Iowa Corporation with its principal office located at 1407 17th Avenue, East Oskaloosa, Iowa 52577.

2. Defendant PepsiCo, Inc. ("PepsiCo") is a New York Corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.

3. Defendant Bottling Group LLC a/k/a and/or d/b/a Pepsi Beverages Company ("PBC") is a Delaware subsidiary of PepsiCo, which is a successor to formerly independent bottling companies, Pepsi Bottling Group, Inc. ("PBG"), and PepsiAmericas, Inc. ("PAS") each of which had been acquired, through acquisition of all outstanding voting securities, by PepsiCo in or around year 2010.

4. Non-Party Dollar General Corporation ("Dollar General") is a Tennessee Corporation. Dollar General is the largest discount retailer in the United States with over 11,500 stores located in over 43 states, including more than 80 stores in Iowa.

5. Non-Party Family Dollar Stores, Inc., ("Family Dollar") is a North Carolina Corporation and, as of July 2015, a wholly owned subsidiary of Dollar Tree, Inc., a Virginia Corporation. Family Dollar operates over 7800 discount stores throughout the United States, including more than 30 stores in Iowa.

6. Non-Party Dr Pepper Snapple Group ("DPSG") is a Texas Corporation that is a leading integrated brand owner, manufacturer and distributor of non-alcoholic beverages in the United States ("U.S."), Canada and Mexico, and, after the Coca-Cola Company and PepsiCo, DPSG owns the third largest share of the market for Carbonated Soft Drink ("CSD") concentrate in the United States.

JURISDICTION AND VENUE

7. PepsiCo and PBC are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce.

8. This is an action under both state law and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26 to recover treble damages, costs of suit, and reasonable attorneys' fees. Plaintiff's federal antitrust claims are based on Defendants' unlawful actions and conspiracy with third parties arise under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2(a) of the Robinson Patman Act, 15 U.S.C. § 13.

9. This Court has original jurisdiction over the federal subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and has supplemental jurisdiction over the appended state law claims pursuant to 28 U.S.C. § 1367.

10. This Court also has diversity jurisdiction over the state law claims. The parties are citizens of different states and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

11. Venue is proper in this Court under 15 U.S.C. § 22, because Defendants are found or transact business in this District.

12. Venue is also proper under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims occurred in this District.

FACTUAL BACKGROUND

THE MAHASKA TERRITORIES

13. Mahaska is a local, family owned independent bottler that provides jobs to hundreds of Iowans. Mahaska was established in 1889, and entered its first Exclusive Bottling Appointment ("EBA") with PepsiCo in 1928. After PepsiCo emerged from bankruptcy in the 1930s (with the support of independent bottlers including Mahaska), Mahaska continued to serve as the exclusive Pepsi bottler and distributor in its territory.

14. In 1948, Mahaska entered into a new EBA with PepsiCo that reaffirmed Mahaska's exclusive right, in perpetuity, to use the Pepsi trademark and to sell Pepsi soft drink products in various Iowa counties, including Marion; Mahaska; Keokuk; Washington; Jefferson; Wapello; Monroe; Lucas; Appanoose; and parts of Jasper and Poweshiek (the "Iowa Territories"). In subsequent agreements with PepsiCo, Mahaska was granted: 1) rights to Pepsi syrup used for fountain products; 2) additional exclusive territories including parts of Nebraska and Kansas; and 3) additional products such as Diet Pepsi, Mountain Dew, and etc. Collectively, Mahaska's exclusive territories under its agreements with PepsiCo are referred to below as the

"Mahaska Territories." As discussed below, Mahaska also has exclusive rights to distribute DPSG products in the Mahaska Territories.

15. Under the EBA and related agreements, Mahaska must purchase the concentrate for carbonated soft drinks (*i.e.,* the "concentrate") from PepsiCo, and must "vigorously push" sales of PepsiCo products in the Mahaska Territories. In return, Mahaska was given full discretion to set prices of PepsiCo products to customers in the Mahaska Territories. Through its own diligence, high quality service and support, and fair pricing practices, Mahaska successfully distributed soft drink products in its territories for more than a century. A true and correct copy of the EBA is attached hereto as **Exhibit "A."**

16. PepsiCo is an American multinational food, snack and beverage corporation with interests in the manufacturing, marketing, and distribution of snack foods, beverages, and other products including but not limited to soft drink concentrate.

17. PBC is a direct competitor of Mahaska in the Mahaska Territories. Specifically, PBC competes with Mahaska in selling snack/vending, beverages (such as Gatorade), and other such products.

18. Beginning in the 1920s, PepsiCo established a network of independent bottlers, each having exclusive territories, as a means of financing expansion and competing with the leading soft drink company of the time, Coca-Cola Company. Without financial support from independent bottlers such as Mahaska, PepsiCo would not have survived its bankruptcy in the 1930s or subsequently prospered.

19. For decades, PepsiCo recognized both the critical role of the independent bottlers and exclusive rights that were required to incentivize their substantial investments in the growth of the PepsiCo brands. Thus, and as acknowledged by the U.S. Court of Appeals for the Fifth

Circuit, in Pepsi-Cola Bottling Company of Pittsburg, Inc. v PepsiCo, Inc. 431 F.3d 124, 1249 (5th Cir. 2005) in his August 14, 1975, testimony before the Federal Trade Commission, then-PepsiCo President Walter S. Mack discussed how PepsiCo used the promise of exclusivity to persuade independent businessmen to become PepsiCo bottlers:

> "[W]e had to give them confidence in the early days that we were going to win our trademark suits and that they were taking on a beverage which they would have the exclusive right to from then on for the rest of their lives. [We told the bottlers] that the parent company would protect their franchise, the terms and conditions of the franchise, and do everything we could to protect both the trademark and the name and their territory for them on an exclusive basis.
>
> Mack testified that PepsiCo told the bottlers they would have an exclusive franchise for the rest of their lives or in perpetuity.

20. Beginning in the 1980s; however, PepsiCo adopted strategies to undermine the exclusive rights of many bottlers and sought increasing control over relationships with customers having multiple locations around the country. For example, in the early 1990s, PepsiCo began to push marketing programs built upon agreements with large chain customers, called the Customer Development Agreement ("CDA"). PepsiCo uses such agreements to set supposedly national (or uniform) pricing for large retail chains and to overcome its inability to compel independent bottlers, such as Mahaska, to offer Pepsi products at specific prices.

21. The CDA's established a rebate that PepsiCo will pay to replicate the "national" price it wants to offer a particular customer. Because PepsiCo cannot force Mahaska and/or other independent bottlers to sell PepsiCo products at a particular price, under a CDA, PepsiCo generally pays a rebate to account for the difference between the price charged by the bottler and the national price agreed upon by PepsiCo and the particular customer.

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