

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SATNAM DISTRIBUTORS LLC, D/B/A
LION & BEAR DISTRIBUTORS,
553 Winchester Road, Unit B,
Bensalem, PA 19020,
Farmingdale, NY 11735,

Civil Action No.:
2:14-cv-06660-LFR

Plaintiff,

vs.

COMMONWEALTH-ALTADIS, INC., 5900 N.
Andrews Avenue, Suite 1100,
Fort Lauderdale, FL 33309;

COMMONWEALTH BRANDS, INC.,
5900 N. Andrews Avenue, Suite 1100, Fort
Lauderdale, FL 33309;

ALTADIS, U.S.A., INC.,
5900 N. Andrews Avenue, Suite 1100, Fort
Lauderdale, FL 33309; AND

HAROLD LEVINSON ASSOCIATES, INC., 21
Banfi Plaza,
Farmingdale, NY 11735,

Defendants.

**ANSWER OF DEFENDANTS COMMONWEALTH-ALTADIS, INC.,
COMMONWEALTH BRANDS, INC., AND ALTADIS U.S.A. INC. TO COMPLAINT**

Defendants Commonwealth-Altadis, Inc. (“Commonwealth-Altadis”),
Commonwealth Brands, Inc. (“Commonwealth Brands”), and Altadis U.S.A., Inc. (“Altadis
USA”) answer the allegations in the Complaint filed by Plaintiff Satnam Distributors LLC,
d/b/a Lion & Bear Distributors, as follows:

INTRODUCTION

1. Plaintiff brings this action under the antitrust laws of the United States, seeking
treble damages, attorneys’ fees, and other relief based upon CA’s pricing and price

discrimination practices, as well as HLA's monopolization and attempted monopolization of the relevant market, and Defendants' conspiracy to monopolize and agreement to restrain trade, as more fully and particularly described below. As a result of Defendants' violations of the antitrust laws, Plaintiff has suffered injury in the form of overcharges and lost business, sales, and profits.

Answer: Paragraph 1 contains legal conclusions to which no response is required. To the extent a response may be required, Commonwealth-Altadis, Commonwealth Brands, and Altadis USA deny the allegations in Paragraph 1, and specifically deny that any of them engaged in any conduct in violation of the Robinson-Patman Act or any laws cited in the Complaint. Commonwealth-Altadis, Commonwealth Brands, and Altadis USA further deny that Commonwealth Brands, which manufactures and sells only cigarettes and has no involvement in mass-market cigar manufacture or sale, is properly named in this Complaint at all. Commonwealth Brands has no knowledge or information regarding the allegations of this Complaint, and unless specifically noted below thus denies each and every allegation on that basis.

2. This action arises from Plaintiff's attempt to challenge HLA, the dominant distributor of CA's Mass-Market Cigars (as defined below) in Pennsylvania. On information and belief, from the time that Plaintiff entered the relevant market in 2011, HLA viewed Plaintiff as a threat. Thus, HLA entered into an unlawful agreement with CA to ensure that Plaintiff would receive discriminatory pricing and unfair promotional terms on its purchases from CA.

Answer: To the extent that the allegations in Paragraph 2 relate to Plaintiff's Sherman

Act Section 1 and 2 claims, those claims were dismissed and, therefore, no response is required. Commonwealth-Altadis and Altadis USA admit that HLA is a distributor of mass-market cigars manufactured by Altadis USA. They deny the remaining allegations of Paragraph 2.

3. Plaintiff, a distributor of cigars and other products to other distributors and convenience stores, began to establish a business relationship with CA for the sale of CA's popular mass-market cigar products, such as Dutch Masters, Phillies, and Backwoods.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff was at some point a distributor of cigars and that it sought to purchase and did purchase mass-market cigars from Altadis USA.

4. Plaintiff's attempts were thwarted by CA's institution of a discriminatory pricing scheme whereby it sold the same cigars at different prices, and offered different promotional discounts, to HLA, placing Plaintiff at an extreme competitive disadvantage.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 4.

5. As Plaintiff nevertheless gained market share through enhanced customer outreach and other strategies, CA and HLA heightened the enforcement of their agreement, as a result of which HLA was able to monopolize the market for distribution of CA's Mass-Market Cigars in Pennsylvania, controlling at least 80% of the relevant market. Defendants' conduct had the ultimate goal and effect of foreclosing Plaintiff from the market for CA's Mass-Market Cigars altogether.

Answer: The allegations of this Paragraph are irrelevant and require no response

because the Court has dismissed all the claims to which they may relate. To the extent a response is required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 5.

6. After July 2012, CA refused to deal with Plaintiffs, resulting in Plaintiff making zero purchases of CA's Mass-Market Cigars from July to December 2012. The power of Defendants' agreement was underscored again in January 2013, when CA refused to fill three purchase orders submitted by Plaintiff. Moreover, in September 2013, CA also declined to ship a purchase order submitted by Plaintiff.

Answer: The allegations of this Paragraph are irrelevant and require no response because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Altadis USA did not sell cigars to Plaintiff after July 2012, but deny the remaining allegations of Paragraph 6. They aver further that Plaintiff did not typically purchase a full line of mass-market cigars, did not purchase the volume or variety of massmarket cigars that other, larger distributors, including HLA, purchased, and did not provide the range of services that other, larger distributors, including HLA, provided.

7. Plaintiff seeks damages and injunctive relief from CA and HLA to account for Plaintiff's lost profits and sales from the inception of the discriminatory and anticompetitive pricing scheme in 2011 through the present.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff seeks damages and injunctive relief under the Robinson-Patman Act but deny the remaining allegations of Paragraph 7 and specifically deny that Plaintiff is entitled to any relief.

PARTIES

8. Plaintiff Satnam Distributors LLC, d/b/a Lion & Bear Distributors, is a New York limited liability company which is registered to do business in Pennsylvania at a principal place of business located at 1553 Winchester Road, Unit B, Bensalem, PA 19020. In Pennsylvania, Plaintiff sells various items including mass-market cigars to convenience stores and to other distributors servicing convenience stores.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff did business in Pennsylvania and resold mass-market cigars but are without information sufficient to admit or deny the remaining allegations of Paragraph 8.

9. Defendant Commonwealth Brands, Inc. is a Kentucky corporation which was formed in Bowling Green, Kentucky in 1991. Throughout the 1990s, the company grew into one of the best-selling cigarette brands in the United States. On April 1, 1997, Commonwealth Brands was acquired by the Imperial Tobacco Group, PLC. Through subsequent mergers, Commonwealth Brands expanded its portfolio beyond cigarettes to offer rolling tobacco, rolling papers, and a selection of cigarette tubes and tube-filling machines. Commonwealth Brands' current principal place of business is 5900 N. Andrews Avenue, Suite 1100, Fort Lauderdale, FL 33309.

Answer: Commonwealth Brands, Commonwealth-Altadis, and Altadis USA admit the allegations of the first sentence of Paragraph 9, and further admit that Commonwealth Brands

sells cigarettes, RYO tobacco, and a selection of cigarette papers, tubes, and tube-filling machines. They deny the remaining allegations of Paragraph 9, but aver that the stock of Commonwealth Brands has been ultimately fully owned by Imperial Tobacco Group PLC since 2007 and that Commonwealth Brands' current principal place of business is in Greensboro, North Carolina.

11a. Defendant Altadis U.S.A., Inc., formerly known as Consolidated Cigar Co., is the United States subsidiary of the former Altadis, S.A. Altadis U.S.A. is a Florida corporation with its principal place of business located at 5900 N. Andres Avenue, Suite 1100, Fort Lauderdale, FL 33309. Altadis, S.A., which was the largest producer of mass market and premium cigars in the world, was acquired by the Imperial Tobacco Group, PLC in 2008. In addition to its premium cigar products and Cuban cigar brands, Altadis U.S.A. has been recognized in the cigar industry for producing some of the best-selling machine-made, mass-market cigar brands in the United States, including Dutch Masters, El Producto, Backwoods, and Phillies.

Answer: Commonwealth-Altadis and Altadis USA note that this Paragraph of the Complaint is numbered out of sequence as Paragraph 11, and note further that it is the first of two Paragraphs numbered 11 in the Complaint. For ease of reference, Commonwealth-Altadis and Altadis USA have renumbered this Paragraph as Paragraph 11a. They admit the allegations of Paragraph 11a.

10. Commonwealth-Altadis, Inc. is a U.S.-based tobacco sales and distribution company that delivers tobacco brands and products to wholesale and retail customers. Established in 2011, the company represents the combined sales, marketing, and operational history of Defendants Altadis U.S.A. and Commonwealth Brands, Inc., both owned by Imperial

Tobacco Group, PLC. Commonwealth-Altadis, Inc. is a Florida corporation with its principal place of business located at 5900 N. Andrews Avenue, Suite 1100, Fort Lauderdale, FL 33309. The company has a combined sales force of more than 750 employees.

Answer: Commonwealth Brands, Commonwealth-Altadis, and Altadis USA note that this Paragraph of the Complaint is numbered out of sequence as Paragraph 10. They admit that Commonwealth-Altadis was formed in 2011, that it is a Florida corporation, that its current principal place of business is in Greensboro, North Carolina, and that it is a services company that provides distribution, sales, marketing, and other services to Commonwealth Brands (for its sales of cigarettes) and Altadis USA (for its sales of cigars). They also admit that both Commonwealth Brands and Commonwealth-Altadis are ultimately owned by Imperial Tobacco Group PLC. They deny the remaining allegations of Paragraph 10.

11b. Defendants Commonwealth Brands, Inc.; Altadis U.S.A., Inc.; and Commonwealth-Altadis, Inc. are collectively referred to herein as “CA.”

Answer: Commonwealth Brands, Commonwealth-Altadis, and Altadis USA note that this Paragraph of the Complaint is the second of two Paragraphs numbered 11 in the Complaint. For ease of reference, these Defendants have renumbered this Paragraph as Paragraph 11b. Commonwealth Brands, Commonwealth-Altadis, and Altadis USA admit that Plaintiff has chosen to refer to them collectively as “CA,” but deny that referring to them collectively is accurate, as they are separate and independent companies with separate functions and differing levels of involvement in the manufacture and sale of mass-market cigars. They aver further that Altadis USA manufactures and holds the trademarks and/or rights to several brands of mass-market cigars, among other cigar products, and sells such cigars. Commonwealth-Altadis, since

2011, has performed distribution, marketing, sales, and other services for Altadis USA for its mass-market cigars. Commonwealth Brands does not manufacture or sell mass-market cigars and has no involvement in their distribution or sale.

12. Defendant Harold Levinson Associates, Inc. (“HLA”) is a New York corporation with its principal place of business located at 21 Banfi Plaza, Farmingdale, NY 11735. Since it began in 1977, HLA has expanded into one of the nation’s largest full-line convenience store distributors, and is the dominant convenience store distributor in Pennsylvania. In 2011, HLA’s sales revenue exceeded \$1.3 billion, ranking the company as the seventh-largest convenience store distributor in the United States.

Answer: To the extent that the allegations in Paragraph 12 relate to Plaintiff’s Sherman Act Section 2 claim, the Court dismissed that claim and, therefore, no response is required. Commonwealth-Altadis and Altadis USA admit the allegations of the first sentence of Paragraph 12 and state that they are without information sufficient to admit or deny the remaining allegations of Paragraph 12.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over Plaintiff’s federal antitrust claims pursuant to 28 U.S.C. §§ 1331 and 1337.

Answer: The allegations in Paragraph 13 regarding jurisdiction are legal conclusions to which no response is required. To the extent that a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 13.

14. This Court has personal jurisdiction over each Defendant. Defendants have

conducted business in, and have had continuous and systematic contacts with, the Commonwealth of Pennsylvania, including the Eastern District of Pennsylvania. The wrongful activity in this case concerns the Defendants' purposeful interactions with individuals in the Commonwealth of Pennsylvania, within the Eastern District of Pennsylvania. As demonstrated herein, Defendants have committed wrongful acts and have caused injury to Plaintiff in Pennsylvania, and particularly, in the Eastern District of Pennsylvania. Thus, each Defendant has purposefully availed itself of the privilege of doing business in Pennsylvania, and critical elements of Defendants' wrongdoing occurred in this Commonwealth.

Answer: The allegations in Paragraph 14 regarding jurisdiction are legal conclusions to which no response is required. To the extent that a response may be required, Commonwealth Brands, Commonwealth-Altadis, and Altadis USA admit that they conduct business in Pennsylvania and the Eastern District of Pennsylvania. They lack sufficient information to admit or deny the allegations of Paragraph 14 as they relate to HLA. They deny the remaining allegations of Paragraph 14.

15. Defendants transact business within this district, and they carry out interstate trade and commerce, in substantial part, in this district and/or have an agent and/or can be found in this district. Venue is appropriate within this district under U.S.C. § 1391(b) and (c).

Answer: The allegations in Paragraph 15 regarding venue are legal conclusions to which no response is required. To the extent a response may be required, Commonwealth Brands, Commonwealth-Altadis, and Altadis USA admit that they transact business within this District. They lack sufficient information to admit or deny the allegations of Paragraph 15 as they relate to HLA. They deny the remaining allegations of Paragraph 15.

RELEVANT MARKET

A. Relevant Product Market

16. The relevant product market in this case is the market for distribution of CA Mass-Market Cigars.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph also contains a legal conclusion to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 16.

17. Mass market, or machine-made, cigars are primarily sold in gas stations and convenience stores, rather than in higher-end specialty cigar shops. Typically made with short filler and in mass quantities, these cigars are less expensive than handmade premium cigars. Mass-market cigars account for nearly 80% of the total U.S. cigar business. Billions of units of mass-market cigars are sold annually compared to hundreds of millions of units for premium, hand-made cigars. Most mass-market cigars are sold for less than \$2 per cigar, and 68% of these mass-market cigars are sold via convenience stores or retail outlets.

Answer: Commonwealth-Altadis and Altadis USA admit that mass-market cigars are primarily sold in retail outlets other than higher-end specialty shops, that they are typically made with short filler and in mass quantities, that they are less expensive than handmade premium cigars, that most are sold for less than \$2 per cigar, and that billions of units of mass-market cigars are sold annually compared to hundreds of millions of units of premium, hand-made cigars. They deny the remaining allegations of Paragraph 17.

18. In the United States, CA is one of the largest manufacturers of machine-made

cigars. On information and belief, the market for CA Mass-Market Cigars in the Pennsylvania geographic market is approximately \$60 million per year.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Altadis USA is one of the largest manufacturers of machine-made cigars in the United States. They deny the remaining allegations of Paragraph 18.

19. In 2013, the U.S. market for mass market cigars totaled more than \$5 billion cigars. Given that these cigars are machine-made, they are priced lower than high-end premium cigars, which are often hand-rolled. Thus, machine-made or mass market cigars attract value-driven customers who shop at convenience stores, gas stations, or other retail outlets.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that there were more than \$5 billion in retail sales of mass-market cigars in the United States in 2013, that mass-market cigars are generally sold at lower prices than high-end premium cigars which are often hand-rolled, and that mass-market cigars are attractive to customers who wish to purchase cigars at lower prices. They deny the remaining allegations of Paragraph 19.

20. CA has developed unique packaging and advertising for its mass-market cigar brands. For example, Dutch Masters cigars are recognizable due to their packaging, which features a famous Rembrandt painting from 1662, The Syndics of the Drapers' Guild.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Altadis USA has unique packaging and marketing for each of its mass-market cigar brands, including Dutch Masters cigars, the packaging of which features the Rembrandt painting from 1662, The Syndics of the Drapers' Guild.

21. According to CA's website, Dutch Masters cigars are renowned for their high quality and craftsmanship and are considered "America's #1 Natural Wrapped cigar."

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response is required, Commonwealth-Altadis and Altadis USA admit that the Altadis USA website has used language similar to the quoted language to describe Dutch Masters cigars.

22. In addition to Dutch Masters, other familiar mass-market cigar brands also are manufactured by CA, including Backwoods, Phillies, Hav-A-Tampa, and White Cat. CA's website lists 12 brands as the company's most popular cigar products. According to Cigar.com, Backwoods cigars are "a throwback to the days of old west" and are comprised of "an infusion of natural and homogenized tobacco with additive flavoring that is aimed at smokers who are looking for more than just the taste of tobacco in their cigars." Backwoods cigars are identified by their frayed ends, tapered bodies, and unfinished heads. Phillies are made with short or chopped filler tobacco and a homogenized binder to give them a "distinct tobacco flavor," according to Cigar.com. Hav-A-Tampa cigars also are touted as an inexpensive alternative to premium cigars and the brand has become the world's largest-selling wood-tipped cigar,

according to CA's website. White Cat cigars, created in 2010, are open-head cigarillos, which CA touts as having "a smooth, seductive aroma available in multiple varieties."

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit the allegations of Paragraph 22 with respect to mass-market cigars manufactured by Altadis USA.

23. Cigar distributors, such as Plaintiff and HLA, distribute these mass-market cigars to convenience stores and other customers, primarily through other distributors and cash-and-carry wholesalers that service convenience stores directly. Because convenience stores, and therefore the distributor customers of Plaintiff and HLA, need to stock all major brands of mass-market cigars to meet customer demand, distributors such as Plaintiff and HLA must offer a supply of all of the different cigar varieties. Thus, distributors such as Plaintiff must buy all of the major mass-market cigar brands to ensure an adequate supply.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that certain distributors distribute mass-market cigars to convenience stores and other customers and that certain cigar distributors also resell mass-market cigars to other distributors and cash-and-carry wholesalers that in turn resell them to other distributors and to convenience stores. They aver further in response to Paragraph 23 that on information and belief HLA and Plaintiff occupy different positions in the chain of distribution for mass-market cigars and provide different services and functions. Specifically, on information and belief, HLA distributes Altadis mass-

market cigars through direct sales to high-value and high-volume retail stores and through sales to other distributors. On information and belief, HLA engages in activities that benefit Altadis USA and increase sales of its products, including purchasing Altadis USA mass-market cigars in large volume; purchasing a full line of Altadis USA mass-market cigars in sufficient quantities to ensure sales of all products, not only the most popular, to retailers and consumers; employing a sales force responsible for sales to retail who are able to “push” Altadis USA products with retailers and observe whether they are prominently displayed and on offer to the consumer; disseminating its own promotional materials to retailers promoting Altadis USA products; holding trade shows for retailers at least twice a year that provide exposure of Altadis USA mass-market cigars to retailers, including introduction of new products, and that typically result in significant sales; and providing its own direct shipping services that allow retailers to obtain products directly and immediately. On information and belief, in contrast to HLA’s activities as described above, Plaintiff distributes Altadis USA mass-market cigars primarily to “cash and carry” wholesalers (i.e., “subjobbers”) and other distributors, and, to a much lesser extent, directly to retail stores. It does not engage in any of the activities engaged in by HLA as described above that help increase sales of Altadis USA mass-market cigars. Specifically, on information and belief, it did not purchase a full line of Altadis USA products in quantities sufficient to resell a full line, but rather focused the vast majority of its purchases on the most popular items; it did not employ a sales force focusing on retailers; it did not produce its own promotional materials or sponsor trade shows; and it did not offer direct shipping to retailers. Moreover, on information and belief, Plaintiff did not purchase or resell mass-market cigars sold by any manufacturer except Altadis USA in any significant quantity during the time at issue in the Complaint.

24. With respect to cigar distribution, there are no reasonably substitutable products for the mass market cigars manufactured and sold by CA. CA is the only cigar manufacturer that manufactures popular brands such as Dutch Masters, Backwoods, Phillies, Hav-A-Tampa, and White Cat. Distributors such as Plaintiff must stock these popular cigar brands and cannot purchase CA's Mass-Market Cigars from any other entity besides CA. If Plaintiff could not supply its customers with CA Mass-Market Cigars, the customer would not substitute another manufacturer's cigar but would instead purchase CA Mass-Market Cigars from a different distributor.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph's claim regarding "reasonably substitutable products" is a legal conclusion to which no response is required. To the extent that a response is required, Commonwealth-Altadis deny the allegations of Paragraph 25 and aver further that there are many popular brands of mass-market cigars manufactured by manufacturers other than Altadis, including John Middleton Company (an affiliate of Altria, Inc. and Philip Morris USA, Inc.), Swedish Match, and Swisher International and that, in addition, distributors can buy Altadis USA brand mass-market cigars not only from Altadis USA but also from other distributors.

25. Thus, the relevant product market under which to evaluate Defendants' anticompetitive conduct is the market for the distribution of CA's Mass Market Cigars, which encompasses brands such as Dutch Masters, Backwoods, Phillies, Hav-A-Tampa, and White Cat cigars ("CA's Mass-Market Cigars").

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph also contains a legal conclusion to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 25.

26. On information and belief, CA has not entered into any exclusive distributor agreements in the Pennsylvania geographic market (defined below), and, on information and belief, CA does not have exclusive distribution territories.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph's claim regarding the appropriate "geographic market" is a legal conclusion to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that they have no exclusive distributor arrangements or exclusive distribution territories in Pennsylvania, but deny the remaining allegations of Paragraph 26.

27. In the Pennsylvania geographic market (defined below), HLA controls the dominant share of the market for distribution of CA's Mass-Market Cigars. On information and belief, as the dominant distributor of CA's Mass-Market Cigars in Pennsylvania, HLA receives favorable prices and discriminatory promotional discounts under an agreement formed with Defendant CA and currently accounts for at least 80% of the relevant market.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph's claim regarding the appropriate "geographic market" also is a legal conclusion to which no response is

required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 27.

28. Given the agreement between CA and HLA, and given that CA is the only entity that manufactures CA's Mass-Market Cigars, it is unlikely that any new entrant could gain a meaningful share of the market for distribution of CA's Mass-Market Cigars without a change in this agreement or without non-discriminatory treatment from CA.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 28.

29. Barriers to entry are high based on the importance of customer goodwill and based on the time it takes for distributors to establish their reliability for carrying in-demand products at reasonable prices. The relationship between the distributor and manufacturer, and the distributor and convenience store, is forged over a considerable period of time and cemented only when the convenience store owner can rely on the distributor to consistently stock specific products.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that whether a manufacturer or distributor reliably offers a sufficient variety of products at appropriate prices can be important to sales, but deny the remaining allegations of Paragraph 29.

30. The practices by Defendants CA and HLA, as alleged in this Complaint, serve as an additional barrier to entry. Potential new distributor entrants will recognize the likely response by CA and HLA to their entry, especially in light of HLA's success in destroying competition in the market for distribution of CA's Mass-Market Cigars, as evidenced by Plaintiff's exclusion from the market after achieving a 30% market share. Any rational, potential entrant would be deterred from entering a market from which a monopolist (HLA) had successfully eliminated a new, upstart rival based on the monopolist's agreement with the manufacturer of the relevant product.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 30.

31. As set forth below, on information and belief, HLA maintains its monopoly power in distributing CA's Mass-Market Cigars through an agreement with CA.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 31.

Geographic Market

32. As stated above, convenience stores serve as the primary customers that buy CA's Mass-Market Cigars from Plaintiff and HLA, either directly or through other

distributors that service convenience stores directly.

Answer: Commonwealth-Altadis and Altadis USA admit that Altadis USA brand mass-market cigars are sold to consumers primarily at retail outlets such as convenience stores but state that HLA and Plaintiff occupy different positions in the chain of distribution for mass-market cigars, with HLA selling primarily to convenience stores and other distributors and, on information and belief, Plaintiff selling primarily to “cash-and-carry” wholesalers, or subjobbers. They deny the remaining allegations of Paragraph 32.

33. The relevant geographic market is the Commonwealth of Pennsylvania.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph also contains a legal conclusion to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 33.

34. Convenience stores, and the distributors that service them, cannot turn to cigar distributors in nearby states outside of the relevant geographic market, such as New Jersey and Delaware, due to differing regulatory schemes and state taxes on cigar sales.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. This Paragraph’s claim regarding the “relevant geographic market” is a legal conclusion to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 34.

B. Interstate Commerce

35. CA manufactured and/or sold CA's Mass-Market Cigars, and HLA distributed CA's Mass-Market Cigars, in a continuous and uninterrupted flow of interstate commerce, including through and into this judicial district.

Answer: Commonwealth-Altadis and Altadis USA admit that Altadis USA's mass-market cigars are sold in and into Pennsylvania, including this District. They are without information sufficient to admit or deny the factual allegations of Paragraph 35 as they relate to HLA. The remaining allegations of this Paragraph are legal conclusions to which no response is required.

36. Defendants' business activities substantially affected interstate commerce and caused antitrust injury in this judicial district.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 36.

FACTUAL ALLEGATIONS

A. Plaintiff Enters the Pennsylvania Market as a Distributor of CA's Mass-Market Cigars

37. Beginning in 2009, Plaintiff operated a successful convenience store distribution business in Jericho, New York. In early 2011, Plaintiff opened a unit of its distribution business in Southeastern Pennsylvania to focus on the sale of cigars and other products to other distributors and convenience store customers.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff did business in Pennsylvania but are without information sufficient to admit or deny the remaining allegations of Paragraph 37.

38. Plaintiff focuses its business efforts in Pennsylvania. Plaintiff formed

relationships with distributor customers in this Commonwealth.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff did business in Pennsylvania but are without information sufficient to admit or deny the remaining allegations of Paragraph 38.

39. When Plaintiff entered Pennsylvania, HLA dominated the relevant market, although HLA was not Altadis's exclusive distributor in Pennsylvania. At the time, on information and belief, HLA accounted for at least 80% of the market for distribution of CA's Mass-Market Cigars in Pennsylvania.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that HLA was not Altadis USA's exclusive distributor in Pennsylvania but deny the remaining allegations of Paragraph 39.

40. In order to offer the type of mass market cigars most requested by its customers and to attempt to compete with HLA, Plaintiff began purchasing from Altadis, which manufactured popular mass-market cigar brands such as Dutch Masters, Phillies, and Backwoods.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff purchased various brands of Altadis mass-market cigars from Altadis USA, focusing its purchases almost exclusively on the most popular brands, but are without sufficient information to admit or deny the remaining allegations of Paragraph 40.

41. Between January and August 2011, Plaintiff purchased nearly 6,000 cases of cigars from Altadis, at a cost of approximately \$2.2 million. Then and throughout the relevant period, Plaintiff consistently remitted payment on time. Neither Altadis nor CA ever expressed to Plaintiff that it had decided to charge Plaintiff higher prices or to offer Plaintiff fewer promotional discounts as a result of concerns about Plaintiff's ability to pay on time.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff purchased a small quantity of cigars from Altadis during the period January through August 2011 and that it made timely payments for these cigars. They are continuing to investigate, but at present they are without information sufficient to admit or deny the allegations of Paragraph 41 regarding specific communications. They deny the remaining allegations of Paragraph 41.

42. Based on Plaintiff's superior customer service, ability to form relationships with customers, and a more equitable pricing structure for customers in comparison to HLA, Plaintiff ultimately achieved a market share of 30 percent in Pennsylvania despite the discriminatory pricing and anticompetitive conduct described herein, before CA's refusal to deal with Plaintiff. Plaintiff was the only distributor in Pennsylvania that threatened HLA's significant market share.

Answer: To the extent that this Paragraph relates to Plaintiff's Sherman Act Section 1 and 2 claims, its allegations are irrelevant and no response is needed because the Court has dismissed those claims. To the extent a response may be required, Commonwealth-Altadis and Altadis USA lack information sufficient to admit or deny the allegations regarding Plaintiff's conduct and deny the remaining allegations of Paragraph 42.

43. On information and belief, Plaintiff's initial success came at the expense of HLA, which was the largest distributor of CA's Mass-Market Cigars in Pennsylvania. On information and belief, HLA's market share ultimately fell to approximately 50% of the relevant market, down from at least 80% before Plaintiff's entry.

Answer: To the extent that this Paragraph relates to Plaintiff's Sherman Act Section 1 and 2 claims, its allegations are irrelevant and no response is needed because the Court has dismissed those claims. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 43.

B. HLA Enters into an Agreement with Altadis (Continued by CA) to Discriminate Against Plaintiff and Foreclose Plaintiff from the Market

44. On information and belief, HLA – aware of its dwindling share in the market for distribution of CA's Mass-Market Cigars in Pennsylvania – entered into an agreement with Altadis, which was continued by CA following the merger of Altadis with Commonwealth. On information and belief, this agreement provided that HLA would receive lower pricing and increased promotional opportunities for CA's Mass-Market Cigars, in comparison to the pricing and promotional discounts offered to Plaintiff.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 44.

45. As a result of this agreement, HLA would be able, and was able, to sell CA's Mass-Market Cigars for less than the price at which Plaintiff could purchase the identical product.

Answer: To the extent that this Paragraph relates to Plaintiff's Sherman Act Section 1 and 2 claims, its allegations are irrelevant and no response is needed because the Court has dismissed those claims. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 45.

46. CA's Mass-Market Cigars are sold at a list price set by CA, but are effectively discounted based on the number of free cases provided with a purchase. For example, in a "10+1" deal, one free case is provided when ten are purchased, amounting to an approximately 9% discount. In an "8+1" deal, one free case is provided when eight are purchased, amounting to an approximately 11% discount.

Answer: Commonwealth-Altadis and Altadis USA admit that Altadis USA's mass-market cigars are sold at list price and at times with promotions involving free cases.

47. CA's Mass-Market Cigars are also effectively discounted based on the amount of promotional funds provided for purposes such as "shows" that were either physical (i.e., exhibitions) or virtual (i.e., internet-based). For example, between May 15 and June 15, 2011, Altadis offered a promotion of \$2.50 per unit of Dutch Masters and \$2.00 per unit of Phillies, capped at \$12,000, for an effective discount of approximately 8% off list price.

Answer: Commonwealth-Altadis and Altadis USA admit that they provide promotions for purposes such as trade shows that result in increased sales of Altadis USA mass-market cigars. They deny the remaining allegations of Paragraph 47.

48. On information and belief, as a result of HLA's agreement with Altadis (continued by CA after the merger) HLSA paid lower prices than Plaintiff by means of more

free cases and more promotional funds. Nevertheless, Plaintiff's superior customer service allowed Plaintiff's business to grow, even though Plaintiff purchased CA's Mass-Market Cigars at discriminatory prices.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Plaintiff's purchases of Altadis USA mass-market cigars from Altadis USA and/or Commonwealth-Altadis increased substantially from the time Plaintiff began purchasing until mid-2012, and that on information and belief Plaintiff resold all the Altadis USA mass-market cigars it purchased. They deny the remaining allegations of Paragraph 48.

49. On information and belief, Plaintiff's prices for CA's Mass-Market Cigars were 10 to 20% higher than the prices charged to HLA. This price difference for identical products was not justified by any cost savings to CA.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 49.

50. The 10 to 20% price disparity cannot be explained by HLA's volume purchases of CA's Mass-Market Cigars. As evidenced by e-mail exchanges where Plaintiff offered to buy \$10 million of CA's Mass-Market Cigars in one large purchase, Plaintiff also was willing to purchase large volume amounts from CA.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 50 and aver that Plaintiff's offer to buy \$10 million of cigars far exceeded Plaintiff's credit limit with Altadis USA.

C. Altadis Discriminates Against Plaintiff (August-October 2011)

51. Despite the discriminatory prices and promotional discounts offered to Plaintiff by Altadis, Plaintiff attempted to develop its relationship with Altadis by sending sales representatives a series of emails in August and September 2011 with proposals for increasing sales.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff sought to purchase and did purchase products from Altadis USA in 2011, and had various communications with sales representatives regarding such attempted purchases and purchases. They lack information sufficient to admit or deny the remaining allegations in Paragraph 51, except that they deny that Plaintiff received discriminatory prices.

52. On information and belief, HLA was given significant and discriminatory discounts by Altadis at the same time that Altadis refused to offer similar pricing to Plaintiff. On information and belief, HLA was therefore able to sell CA's Mass-Market Cigars for significantly less than the listed price of the cigars as a result of these discriminatory discounts.

Answer: The claim in this Paragraph relating to "discriminatory discounts" is a legal conclusion to which no response is required. To the extent that a response is required, Commonwealth-Altadis and Altadis USA are without knowledge sufficient to admit or deny the prices at which HLA re-sold Altadis USA's mass-market cigars. They deny the remaining allegations of Paragraph 52.

53. In August 2011, Plaintiff requested an in-person meeting with the Altadis

representative, Andrew Panagoplos, to discuss a proposed sales order of \$10 million. In response, Mr. Panagoplos replied he would be unable to meet with Plaintiff at any point during that month and suggested that Plaintiff e-mail him the proposal for the \$10 million sales order.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff discussed sales with Mr. Panagoplos, and they further admit that Plaintiff wrote Mr. Panagoplos offering to purchase, and prepay, for \$50 million in product. On information and belief, they admit that Plaintiff subsequently sent a purchase order for \$10 million in product. They are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 53.

54. In further correspondence regarding the potential \$10 million sales order, Plaintiff communicated to Altadis that it was seeking a standard “10+1” promotional deal, with additional promotional discounts.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff sought a “10+1” promotional deal on its emailed order for \$50 million in product. They are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 54.

55. Altadis failed to accept Plaintiff’s proposals and never submitted a counter-offer to the \$10 million proposal. On information and belief, this was a result of the company’s agreement with HLA. On September 1, 2011, Plaintiff offered to fly to Altadis’s headquarters in Fort Lauderdale, Florida for a face-to-face meeting if it would move the

order forward. Mr. Panagoplos replied that he had passed the proposal onto his superiors, but they were “not ready to make a decision.”

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that they did not agree to fill Plaintiff’s \$50 million order or a \$10 million order for mass-market cigars because orders at either \$50 million or \$10 million were far above Plaintiff’s \$148,000 credit limit with Altadis USA. They are continuing to investigate, but at present they lack information sufficient to admit or deny the allegations of Paragraph 55 regarding specific communications. They deny the remaining allegations of Paragraph 55.

56. On September 15, 2011, Plaintiff expressed its concerns with Altadis’s conduct, writing that it did not want to attempt such large volume sales, in the range of \$10 million or \$50 million, and then “end up doing not even 5 million because when I get into action, everybody else will be loaded and done with their purchases, and I will miss the entire opportunity.”

Answer: Commonwealth Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny the allegations of Paragraph 56 regarding specific communications. They deny that Plaintiff received discriminatory pricing.

57. On September 19, 2011, Plaintiff submitted three purchase orders to Altadis, totaling more than \$1.2 million, based on a discount and a promotion of one free case for every 20 cases purchased (a “20+1” deal). This promotion was less beneficial to Plaintiff

then the previously-proposed “10+1” deal. When it submitted the purchase orders, Plaintiff also inquired as to the pricing and promotional disparities offered to various distributors in the market. Plaintiff wrote via e-mail that it “cannot buy at a higher price than what my competition is setting for.”

Answer: Commonwealth Brands and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny the allegations of Paragraph 57 regarding specific communications. They deny that Plaintiff received discriminatory pricing.

58. On September 19, 2011, Mr. Panagoplos emailed Plaintiff that “[a]s of now I am still not able to do any kind of deal.” That same day, Altadis announced a list price increase effective September 22, 2011, and Mr. Panagoplos emailed again to state that “because of the price increase I cannot approve anything without my GM’s approval.” He suggested that Plaintiff place an order at list price before the price increased, and Plaintiff responded that this was not possible:

Thanks and I appreciate the response and I am trying to understand what you are saying but the regular price is more than the price on the street. I am in the business for the long haul and if I do not get the right price I stay away from those products. So I will not be placing any order at the regular price, but if you are able to get my proposal approved it will be great if not as I said earlier we will be doing business at some other time.

I am sure there will be a lot of other distributors who will be buying in very big numbers because of the price increase but I am very confident those who will be buying huge quantities will be those distributors who do get a better pricing than the normal volume discount available to me and I understand they have been buying from Altadis for years and I am very new. So it is all understandable.

Answer: Commonwealth-Altadis and Altadis USA admit that the list price for mass-market cigars was increased on or about September 22, 2011, admit that by notifying Plaintiff and others of the price increase in advance Altadis USA was effectively giving them the

opportunity to purchase at a discount before the price increase became effective, and admit that on information and belief Mr. Panagoplos told Plaintiff it should purchase before the list price increased. They are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 58 regarding specific communications. They deny that Plaintiff received discriminatory pricing.

59. The next day, Plaintiff wrote again to Mr. Panagoplos to explain that his customers were able to buy from Plaintiff's competition at a lower price than the price at which Plaintiff itself could buy. Upon information and belief, many of Plaintiff's competitors were purchasing from HLA at discounted prices. Given these discounts, Plaintiff wrote to Mr. Panagoplos that he would take at loss unless Altadis offered a comparable discount to what Plaintiff's competition were receiving:

Today after the notice of the price rise and everything a customer of mine was able to book an order with a 2 nd source jobber for 50 cases (Total value around \$ 24,000.00) of dutch master Palma Box for \$38.50 for Wednesday delivery that is tomorrow, and if I purchased a 1000 or more cases (Total value minimum \$450,000) directly from Altadis after my volume discount my cost would be around \$38.65.

Other of my customers tell[s] me they can buy even today for \$38.25.

Answer: Commonwealth Brands and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny the allegations of Paragraph 59 regarding specific communications. They deny that Plaintiff received discriminatory pricing.

60. Mr. Panagoplos did not deny that it was selling to Plaintiff's competition at lower prices, instead emailing Plaintiff to state that "I have been informed that we will not be doing any promoting this month due to the price increase." Plaintiff purchased less than \$30,000 worth of cigars from Altadis in September 2011 and did not purchase any cigars

from Altadis in October 2011.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff purchased approximately \$28,000 in mass-market cigars from Altadis in September 2011 and did not purchase any cigars in October 2011. Commonwealth Brands and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 60 regarding specific communications. They deny that Mr. Panagoplos agreed that Altadis USA was selling to Plaintiff's competitors at lower prices, and deny that Plaintiff received discriminatory pricing.

D. Following the Merger of Altadis and Commonwealth, Price Discrimination and Anticompetitive Conduct Continue (November 2011-January 2012)

61. In early November 2011, it was publicly announced that Altadis would merge with Commonwealth Brands, Inc., forming the new entity Commonwealth-Altadis, Inc. The new company would combine the sales and marketing efforts of both Altadis U.S.A. and Commonwealth Brands (collectively, "CA").

Answer: Commonwealth Brands, Commonwealth-Altadis, and Altadis USA admit that Commonwealth-Altadis was established as a new company, affiliated with Commonwealth Brands and Altadis USA, to perform sales, marketing, and other functions for Altadis USA (in mass-market cigars) and Commonwealth Brands (in cigarettes), but deny the remaining allegations of Paragraph 61.

62. Following the merger, Plaintiff's sales representatives at CA changed to Russell Mancuso and Denis Murphy, who had worked for the former Commonwealth Brands entity. Plaintiff had a prior good relationship with Mr. Mancuso and had also worked with Mr. Murphy purchasing cigarette paper from Commonwealth in New York. Based on the

strength of this prior relationship, Plaintiff began receiving promotional pricing offers. Such promotional offers included the addition of a “free” case with every eight (8) or ten (10) cases purchased or “bill back credits” such as \$3.00 or \$4.00 for every box sold of a certain CA Mass-Market Cigar brand.

Answer: Commonwealth-Altadis and Altadis USA admit that Messrs. Mancuso and Murphy were Commonwealth-Altadis employees who communicated with Plaintiff with respect to sales of mass-market cigars and that Plaintiff received certain pricing discounts and promotional offers connected to its purchases of mass-market cigars. They are continuing to investigate, but at present they are without information sufficient to admit or deny the remaining allegations of Paragraph 62.

63. In or around November 2011, Plaintiff spoke with Mr. Mancuso about the need for fair and equitable pricing as between Plaintiff and its competition. Upon information and belief, Plaintiff’s prices still totaled approximately 10% higher than the prices offered to HLA. Mr. Mancuso promised Plaintiff that it would be given the same prices and discounts as HLA.

Answer: Commonwealth-Altadis and Altadis USA deny the allegation that Plaintiff’s prices were 10% higher than those offered to HLA. They are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 63.

64. On November 16, 2011, Mr. Mancuso approved Plaintiff’s purchase order, which included a “10+1” discount. However, Plaintiff reported to Mr. Mancuso that prices

still were not equal between Plaintiff and its competition due to a promotion offered to the competition but not to Plaintiff:

By this promotion my competitors are selling about \$12.50 lower than what I will be paying for per case after working the deal net price with the free case. I have enclosed an invoice from one of my competitors for your review. Without the similar promotion I would be thrown on the sidelines till the effect of this promotion subsides that is till mid December.

For eg the competitors are selling a box of Dutch Masters for \$ 37.50 and my cost is \$38.55 dead dead net that is I will be paying \$12,500.00 for every truck load I buy.

Answer: Commonwealth-Altadis and Altadis USA admit that on November 22, 2011 Atladis USA sold Plaintiff 1100 cases of a particular variety of Dutch Masters cigars on a 10+1 basis. They are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 64 regarding specific communications. They deny that Plaintiff received discriminatory pricing.

65. CA representatives insisted to Plaintiff that it was receiving the same pricing given to HLA. On information and belief, CA's statements were not true.

Answer: Commonwealth Brands and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny the allegations of Paragraph 65 regarding specific communications. They deny that Plaintiff received discriminatory pricing.

66. Despite the discriminatory pricing from CA, Plaintiff purchased over 5,700 cases of CA's Mass-Market Cigars between November 2011 and January 2012, at a cost of over \$2.3 million. Although considerable pricing disparity still existed between the prices offered to Plaintiff in comparison with the prices offered to HLA, Plaintiff's continued efforts to highlight these differences to CA's new managers following the merger led to an

improvement in the discriminatory pricing during this time.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff purchased approximately 5,700 cases of Altadis mass-market cigars, focusing primarily on the popular Dutch Masters brand, at a cost of approximately \$2.3 million during the period November 2011 through January 2012. They are continuing to investigate, but at present they lack information sufficient to admit or deny the allegations of Paragraph 66 regarding specific communications. They deny that Plaintiff received discriminatory pricing and deny the remaining allegations of Paragraph 66.

E. Plaintiff Succeeds Despite Defendants' Conduct (February-May 2012)

67. Between February and May 2012, Plaintiff purchased more of CA's Mass-Market Cigars than ever before: over 15,500 cases at a cost of over \$6.6 million. As a result of this large volume, Plaintiff was able to capture approximately 30% of the market for distribution of CA's Mass-Market Cigars in Pennsylvania. However, this was despite continued discriminatory pricing compared to HLA, which caused Plaintiff to pay higher prices and lose sales.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff purchased approximately 15,500 cases of Altadis mass-market cigars, focusing primarily on the most popular Dutch Masters brand, at a cost of over \$6.6 million during the period February 2012 through May 2012. They deny the remaining allegations of Paragraph 67.

68. Plaintiff continued to inform CA's new managers of lower sale prices in the market in an effort to further reduce the price disparities. On February 2, 2012, Plaintiff wrote to Mr. Mancuso and Mr. Murphy that "DM Box is being sold by other leading distributors to other

smaller wholesalers between \$ 38.00 and \$ 38.69 these smaller distributors th[e]n in turn sell this DM Box for as low as \$38.75, my cost on this item by buying in truck load quantities, prepaid is \$38.55. On the DM foil Cigarillo other leading distributor is selling between \$ 21.25 thru \$21.75 my cost on being part of the truck load order is \$ 22.02. And I could go on and on with the same story with the Backwood and Philly Blunts etc.”

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff’s allegations regarding specific communications in Paragraph 68. They deny that Plaintiff received discriminatory pricing.

69. In late February 2012, Plaintiff met with CA sales representatives at a trade show. Following the meeting, Mr. Mancuso told Plaintiff to submit orders with a promotional discount and that the orders would be processed. Plaintiff submitted eleven orders totaling more than \$2.6 million on February 27, 2012, to be shipped during March 2012. But despite Mr. Mancuso’s verbal approval, the discounts were not processed for an additional two months.

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff’s allegations regarding specific communications in Paragraph 69. They deny that Plaintiff received discriminatory pricing.

70. On March 2, 2012, Plaintiff wrote to Mr. Murphy to note the “deep discounts and lower prices” that were “being offered at the ongoing virtual trade show, for delivery for the entire month of march by a leading distributor on long island.” – HLA. Plaintiff stated that it was “surprised” and “may be you decided to give them twice the promo money than you give me.”

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 70. They deny that Plaintiff received discriminatory pricing.

71. On March 21, 2012, Plaintiff wrote again to Mr. Murphy with a request for promotional funds:

I have proposed [these] numbers based on how much Money I have to put in these products to be competitive in these items in the market place. Based on the sale price of these products in the market place by smaller case and carry distributors I am sure other smaller and bigger distributors are getting more PM money on the above items than what I have requested.

For example my cost of the DM foil cigarillo when I buy from you after figuring out the 11th free case is \$ 22.03 and cash and carry warehouses who are not your direct buying customers are selling for \$21.25. For your reference to back this up I have enclosed invoice and a packing label for this item. . . .

My business for these items will increase by about 400% once you confirm the PM monies I have requested. Please take the time and resolve my request as the delay is costing lost sales for these items.

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 71. They deny that Plaintiff received discriminatory pricing.

72. On April 4, 2012, Plaintiff wrote to Mr. Murphy and Mr. Mancuso that "HLA is selling at the trade show the backwood 5% below my dead net cost and the philli 6% below my dead net cost. That means their cost is at least 20 to 25% below my cost. . . . I have only requested about 9% in pm [promotional] monies which would bring down my **cost** by about 2 to 3% less than my competition is **selling** for."

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 72. They deny that Plaintiff received discriminatory pricing.

73. On information and belief, because Plaintiff was making significant market gains despite discriminatory pricing, HLA complained about Plaintiff to CA, following which HLA and CA agreed that CA would treat Plaintiff even less favorably than before. On information and belief, Mr. Mancuso and Mr. Murphy received substantial criticism inside CA for working toward a more equitable (though still discriminatory) pricing structure with Plaintiff.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Plaintiff's purchases of Altadis USA mass-market cigars substantially increased from 2011 through mid-2012 and that Plaintiff on information and belief was able to resell all those products, but deny the remaining allegations of Paragraph 73.

74. In or around May 2012, Mr. Murphy related to Plaintiff that it was accused of "disrupting the marketplace" through its competition with HLA.

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 74. They deny that Plaintiff received discriminatory pricing.

75. On May 8, 2012, Mr. Murphy called Plaintiff to inform it that CA would not offer Plaintiff any promotions other than the "8+1" deal through June. In an email that day, Plaintiff

expressed concern about how the lack of notice for this change would interrupt its business, hurt its goodwill and reputation with its customers, and hurt it “financially in a big way.” On May 10, 2012, Plaintiff wrote again that it was “confused about the all of a sudden change” and that his customers would get upset and hurt its credibility.

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff’s allegations regarding specific communications in Paragraph 75. They deny that Plaintiff received discriminatory pricing.

76. On May 16, 2012, Plaintiff wrote to Mr. Mancuso and Mr. Murphy that “by abruptly suspending my ongoing promotions things have become very difficult for me and I face a very competitive disadvantage. I feel I have been targeted and blamed for all the problems in the market place only because I am seen as a Commonwealth guy and not and Altadis Guy. I am seen as the guy from the opposition Party and I am seen as somebody who soon will have a good market share in the Altadis products and the Monopoly of a few distributors will be broker.”

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff’s allegations regarding specific communications in Paragraph 76. They deny that Plaintiff received discriminatory pricing.

77. On May 22, 2012, Mr. Mancuso spoke with Plaintiff by telephone. The next day, Plaintiff sent an email to Mr. Mancuso and Mr. Murphy to thank them “for listening and understanding about what is going on in the market place” and attached an order for over \$500,000 despite the absence of any promotional funds. Plaintiff wrote:

This is my Third half million dollar order without any Promotional monies authorized. However again based on the price and the unlimited quantity being sold by other major distributors I believe either somebody in your organization behind your back has authorized a better deal or a better buy down than the 8 and One that I am getting. . . .

Please put me in a level pla[y]ing field along with the other major distributors. I can assure you I will be a very beneficial partner for Commonwealth in the long Run.

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 77. They deny that Plaintiff received discriminatory pricing.

F. Defendants Intensify Their Discriminatory and Anticompetitive Conduct and Ultimately Exclude Plaintiff from the Market Entirely (June-December 2012)

78. In June 2012, the promotion allowing Plaintiff to receive one free case for every eight cases purchased (the "8+1" deal) also abruptly ended. On June 14, 2012, Plaintiff wrote in an e-mail that its business had been badly affected as a result of other distributors having a considerable pricing advantage, and that "even today they are selling below my cost."

Answer: Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 78. They deny that Plaintiff received discriminatory pricing.

79. This pricing change had the effect of dramatically reducing the volume of CA's Mass-Market Cigars that Plaintiff was able to purchase. In May 2012, Plaintiff had purchased over 1,000 cases per week, and purchased similar quantities in early June 2012, prior to CA's discontinuance of the "8+1" deal. After June 6, 2012, Plaintiff purchased under 500 cases for the rest of the month, and then purchased under 500 cases for the whole month of July (on July 3, 2012).

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff's volume of purchases declined but deny the remaining allegations of Paragraph 79.

80. The July 3, 2012 purchase was the last purchase of CA's Mass-Market Cigars that Plaintiff made. On that day, Plaintiff wrote to Mr. Mancuso and Mr. Murphy that it was "wondering what we can do to help and promote your products. I am all about volume and promoting your brands." On July 9, 2012, Plaintiff wrote again: "I assure you our joint effort will give you great results in the sales and further developing of your brands."

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff made its last purchase of mass-market cigars from Atladis USA in July 2012. Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 80. They deny that Plaintiff received discriminatory pricing.

81. On July 23, 2012, Plaintiff inquired about what promotional funds and discounts would be available for two planned two orders totaling over \$1 million. On August 5, 2012, Plaintiff wrote to Mr. Mancuso and Mr. Murphy:

It is about a month now since we had our conversation and although you assured me that the deal 10 to 12% off list price which will be made available to me is the best deal available to all major distributors and no other distributor will be getting anything more. **Market pricing of your products is 100% contradictory of this.** . . . Other "Major" Distributors are selling to my friends at 12 to 13% off list price up front of your Altadis products. This is not something which had just happened but is going on for all of 2012 and is going on today.

It is my hand full of friends who give other major distributors about 10 to 15 million dollar business every month and these are my friends with whom I wine and dine on a regular basis. All these friends show me their invoices

from where they buy how much they buy and what they pay, because they rather buy from me than other distributors.

In the month of March and April we did about 2 Million of business each month with you and that was just the beginning but after that our deal changed and I tried to continue to business but other major distributors were selling 2% to 3% below my cost. Hence we have fallen to \$ 00.00 business in the month of July and August and almost negligible business in the month of June.

My calculations tell me that other major distributors are getting at least 22 to 28% off list price and most of it up front. I will be happy to place now and regularly there after about \$ 5 million to \$ 10 Million in orders subject to me getting about 18% off list price up front. Our request of 18% discount is based on market pricing of your products.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA are continuing to investigate, but at present they lack information sufficient to admit or deny Plaintiff's allegations regarding specific communications in Paragraph 81. They deny that Plaintiff received discriminatory pricing.

82. Nevertheless, CA did not make non-discriminatory pricing available to Plaintiff, and no order was placed. In or around September 2012, Mr. Mancuso's employment with CA was terminated. Upon information and belief, other managers who worked for Commonwealth prior to the merger also were fired during this period, as employees from the Altadis side asserted control of CA's sale operations and were able to fully implement the agreement with HLA, which enhanced the discriminatory pricing presented to Plaintiff.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Mr. Mancuso's

employment ended in or around September 2012 but deny the remaining allegations of Paragraph 82. They deny that Plaintiff received discriminatory pricing.

83. As a result of the foregoing conduct, with Plaintiff unable to compete in the market for distribution of CA's Mass-Market Cigars, HLA regained its previously-lost market share. On information and belief, by the beginning of 2013, HLA had achieved at least an 80% market share for distribution of CA's Mass-Market Cigars in Pennsylvania.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 83.

G. Defendants Persist in their Conduct and Reinforce the Refusal to Deal (January 2013-Present)

84. A new salesperson, Rich Reisinger, was assigned to Plaintiff in or around late December 2012. On or about January 2, 2013, Mr. Reisinger distributed information to Plaintiff and others about a promotion by which it could receive a 7% credit on its purchases of CA's Mass-Market Cigars. On January 21, 2013, Plaintiff submitted three purchase orders, totaling 1,200 cases at a cost of over \$620,000.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Mr. Reisinger was assigned to Plaintiff's account in or around December 2012, admit that Mr. Reisinger sent Plaintiff an email with details of a current promotion in December 2012, and admit that Plaintiff submitted three purchase orders which were not accepted, but deny the remaining allegations of

Paragraph 84. They aver that Plaintiff had not purchased mass-market cigars from Altadis USA for a period of several months; Plaintiff did not purchase the full range of Altadis mass-market cigars that a number of other distributors did; Plaintiff did not purchase in the same volume as a number of other distributors did; and Plaintiff did not provide the range of services and direct distribution to retailers that those other distributors did.

85. As of February 4, 2013, Plaintiff had not received any notification that the three purchase orders submitted in January had been processed. Mr. Reisinger sent an e-mail to his superiors, inquiring whether the orders had been received and processed, and wrote that Plaintiff “is looking for these orders. Did you receive them?” Officials from CA replied that they would research the order and be back in touch about the status.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that the three purchase orders were not approved, and that Mr. Reisinger sent an internal email asking about the status of Plaintiff’s orders.

86. On February 6, 2013, Plaintiff emailed CA’s Cyndi Pignanelli to request an update. In her email reply dated the same day, Ms. Pignanelli wrote to Plaintiff that she would research the status of the order and “get back to you immediately” regarding the status. However, she did not do so. None of the three purchase orders submitted in January 2013 were ever filled or shipped to Plaintiff.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response is required, Commonwealth-Altadis and Altadis USA admit the allegations of the first sentence, admit that Ms. Pignenelli responded on February 6, 2013 in an email which contains the quoted language, and admit that the three purchase orders did not result in a sale to Plaintiff. They aver that at that point, Plaintiff had not purchased from Altadis USA for several months, and that when it did purchase Plaintiff did not purchase the full range of Altadis USA mass-market cigars that a number of other distributors did, did not purchase in the same volume as a number of other distributors did, and did not provide the range of services and direct distribution to retailers that those other distributors did. In February 2013, Commonwealth-Altadis notified Plaintiff that its account had been removed from active status.

87. On information and belief, senior managers at CA, Paul Mathews and Eric Workman, were upset with Mr. Reisinger for offering Plaintiff this promotion. On information and belief, this is because the promotion deviated from CA's agreement with HLA to refrain from offering Plaintiff non-discriminatory prices or, indeed, to refrain from dealing with Plaintiff at all. On information and belief, HLA received much higher discounts than 7%. They deny that Plaintiff received discriminatory pricing.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 87. They deny that Plaintiff received discriminatory pricing.

88. Plaintiff eventually spoke with Mr. Mathews by phone and asked about the

problem in processing the orders. Mr. Mathews replied that he would talk to CA's lawyers before giving Plaintiff an answer. Since that time, Plaintiff has not had any communication with Mr. Mathews.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA are continuing to investigate but at present they lack information sufficient to admit or deny the allegations of Paragraph 88.

89. In early September 2013, CA announced a price increase. Despite this increase, and despite the significant price discrimination that benefitted HLA, Plaintiff placed an order for \$9,349.97 of CA's Mass-Market Cigars. CA's customer service department sent Plaintiff a proforma invoice for this order on September 12, 2013. The invoice listed September 17, 2013 as the anticipated shipping date for the twenty (20) cases of Mass-Market Cigars ordered by Plaintiff.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that there was an announced price increase in September 2013 and that Plaintiff, although it had not purchased in well over a year and was no longer an active status account, submitted an order for a small quantity of cigars. They deny the remaining allegations of Paragraph 89.

90. However, CA never shipped the order. Plaintiff made repeated phone calls to

CA's customer service department to determine the reason for the delay. Plaintiff was advised by a customer service representative that CA's senior management had cancelled the order and closed his account. Plaintiff never received a written or verbal explanation for this action by CA.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA admit that Plaintiff did not purchase mass-market cigars in September 2013. They are continuing to investigate, but at present they lack information sufficient to admit or deny the remaining allegations of Paragraph 90.

DEFENDANTS' ANTICOMPETITIVE CONDUCT

91. As detailed above, on information and belief, HLA reacted to Plaintiff's modest success by entering into an agreement with Altadis (continued by CA following the merger), and subsequently ensuring that this agreement was enforced. HLA and CA embarked on a course of anticompetitive conduct with the overall goal of excluding Plaintiff from the market for distribution of CAI's Mass-Market Cigars in Pennsylvania.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 91.

92. On information and belief, based on the terms of its agreement with HLA, CA sought to drive Plaintiff from the market by actions that included, but were not limited to: (1) overcharging Plaintiff on purchases of CA's Mass-Market Cigar products in comparison to the

prices at which identical products were sold to HLA, (2) offering smaller promotional funds to Plaintiff in comparison to the promotional discounts on identical products given to HLA and eventually stopping all promotional pricing offered to Plaintiff, and (3) refusing to deal with Plaintiff and closing Plaintiff's purchasing account in Pennsylvania.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 92.

93. As a result of the anticompetitive conduct alleged herein, Plaintiff suffered overcharges, lost profits, lost sales, and damage to its business.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 93.

94. As a result of the anticompetitive conduct alleged herein, HLA has secured more than 80% of the market for distribution of CA's Mass-Market Cigars in Pennsylvania. The agreement between CA and HLA has also caused the exclusion of Plaintiff from the relevant market.

Answer: The allegations of this Paragraph are irrelevant and no response is required because the Court has dismissed all the claims to which they may relate. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 94.

95. As a result of the anticompetitive conduct alleged herein, prices for CA's Mass-

Market Cigars in Pennsylvania were higher than they would have been in the absence of the anticompetitive behavior. Specifically, customers could have purchased CA's Mass-Market Cigars at lower prices if Plaintiff and HLA competed with each other to offer the lowest prices in a competitive market. With HLA now encompassing at least 80% of the relevant market, customers have more limited options in purchasing CA's Mass-Market Cigars and pay higher prices than they otherwise would pay.

Answer: Commonwealth –Altadis and Altadis USA deny the allegations of Paragraph 95.

CAUSES OF ACTION

Count 1

Violation of U.S.C. § 13 (Robinson-Patman Act) (Against Commonwealth-Altadis, Inc., Commonwealth Brands, Inc., and Altadis U.S.A., Inc.)

96. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if set forth herein.

Answer: Commonwealth Brands, Commonwealth-Altadis, and Altadis USA incorporate their prior answers and responses to the preceding Paragraphs in response to Paragraph 96.

97. At all relevant times, CA and HLA were, and continue to be, engaged in commerce, as defined by and in 15 U.S.C. §13 of the Robinson-Patman Act.

Answer: This Paragraph contains a legal conclusion to which no response is required. To the extent that a response may be required, Commonwealth-Altadis and Altadis USA admit that each of them were, and continue to be, engaged in commerce. They lack sufficient information to admit or deny the allocations of Paragraph 97 as they relate to HLA.

98. During the relevant time periods herein above set forth and continuing through the present, CA has manufactured and sold, and continues to manufacture and to sell, CA's Mass-Market Cigar products, including brands such as Dutch Masters, Backwoods, Phillies, White Cat, and others, in commerce.

Answer: Commonwealth-Altadis and Altadis USA admit that Altadis USA manufactured and continues to manufacture various brands, styles, flavors and sizes of mass-market cigars, including, but not limited to, Dutch Masters, Backwoods, Phillies, and White Cat, and that Altadis USA and/or Commonwealth-Altadis sold those cigars.

99. At all relevant times, CA has manufactured and sold its Mass-Market Cigar products to multiple distributors located throughout Pennsylvania, including Plaintiff.

Answer: Commonwealth-Altadis and Altadis USA admit that Commonwealth Altadis, Inc. and/or Altadis USA sold mass-market cigars to various distributors in Pennsylvania, including Plaintiff.

100. Until July 2012, Plaintiff purchased large quantities of CA's Mass-Market Cigars from CA (including from Altadis prior to the merger with Commonwealth Brands). From January 2011 until July 2012, Plaintiff purchased approximately \$12.8 million in CA's Mass-Market Cigars.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff purchased approximately \$12.8 million of mass-market cigars from Altadis USA and/or Commonwealth-Altadis during the period from January 2011 to July 2012. They deny the remaining allegations of Paragraph 100.

101. On information and belief, at all relevant times and as more specifically described above, CA, in the course of commerce, has sold and continues to sell CA's Mass-Market Cigars to HLA at discriminatory prices. On information and belief, these prices were, and remain, substantially less than the prices that CA charged Plaintiff for the identical products. Thus, CA's pricing was discriminatory as between Plaintiff and HLA.

Answer: Paragraph 101 contains legal conclusions to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 101.

102. On information and belief, as more specifically described above, in the course of commerce, CA has sold its Mass-Market Cigar products to HLA along with promotions such as rebates, discounts, and other allowances. Although some discounts were offered to Plaintiff at various points during the relevant period, on information and belief Plaintiff was not offered pricing, discounts, or promotions on the same terms as offered to HLA for identical products.

Answer: Commonwealth-Altadis and Altadis USA admit that at various times Commonwealth-Altadis and/or Altadis sold various brands, styles, flavors and sizes of cigars to HLA, as well as to Plaintiff. They admit that both HLA and Plaintiff were offered various rebates, discounts, and allowances on certain of those sales. They admit that certain promotions available to HLA were not available to Plaintiff because Plaintiff does not perform the same functions in the distribution of Altadis USA cigars as does HLA. They deny that Plaintiff was not offered the same terms on comparable, contemporaneous sales of identical products as was HLA.

103. On information and belief, CA's discriminatory pricing practices were not justified based on any differences in the cost of manufacture, sale, or delivery resulting from any different quantities in which the products were sold or delivered to Plaintiff, as compared to HLA.

Answer: This Paragraph contains legal conclusions to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 103.

104. On information and belief, CA's pricing and related discriminatory practices were not justified based upon any changing conditions affecting the market for, or the marketability of, CA's Mass-Market Cigars.

Answer: This Paragraph contains legal conclusions to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 104.

105. Until July 2012, when CA stopped selling cigars to Plaintiff, Plaintiff and HLA marketed and sold CA's Mass-Market Cigars to the same smaller distributors and convenience stores located within the Pennsylvania geographic market, and did so contemporaneously.

Answer: Commonwealth-Altadis and Altadis USA admit that Plaintiff did not purchase cigars from them after July 2012. They lack information sufficient to admit or deny the remaining allegations of Paragraph 105.

106. Until July 2012, as a result of CA's discriminatory pricing and related practices

with respect to its sales of mass market cigar products, Plaintiff was forced to purchase CA's Mass-Market Cigar products at significantly higher prices than HLA, or was unable profitably to purchase them at all, both of which led to a substantial decrease in profits and sales.

Answer: Commonwealth-Altadis and Altadis USA lack information sufficient to admit or deny the allegations regarding HLA's profits and sales, but deny the remaining allegations of Paragraph 106.

107. As a direct and proximate result of the discriminatory pricing and related practices engaged in by CA, Plaintiff's ability to compete with HLA for distribution of CA's Mass-Market Cigars in Pennsylvania has been substantially diminished. As a result of CA's refusal to deal with Plaintiff after July 2012, Plaintiff's ability to compete with HLA in the relevant market has been completely eliminated.

Answer: This Paragraph contains legal conclusions to which no response is required. Moreover, the last sentence relates to claims which have been dismissed, so it is irrelevant and no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 107.

108. The overall effect of CA's discriminatory actions and related conduct has been to substantially lessen competition in the market for distribution of CA's Mass-Market Cigars in Pennsylvania.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 108.

109. CA's discriminatory conduct, as detailed herein, has injured, destroyed and/or prevented fair competition among Plaintiff and its competitors, particularly HLA, in the market for distribution of CA's Mass-Market Cigars in Pennsylvania. On information and belief, HLA, which served as Plaintiff's principal competitor in Pennsylvania, received the benefit of CA's price discrimination and related improper practices.

Answer: Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 109.

110. CA's acts of price discrimination as detailed herein constitute multiple violations of the Robinson-Patman Act, including, but not limited to, 15 U.S.C. §§ 13(a) and (d).

Answer: This Paragraph contains legal conclusions to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 110.

111. As a proximate result of CA's price discrimination as detailed herein, Plaintiff has suffered substantial economic losses and other damage to its business, reputation, and relationship with customers, including, but not limited to, overcharges, lost sales, and lost profits.

Answer: This Paragraph contains legal conclusions to which no response is required. To the extent a response may be required, Commonwealth-Altadis and Altadis USA deny the allegations of Paragraph 111.

Count II
Violation of U.S.C. § 13 (Robinson-Patman Act)
(Against HLA)

112. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if set

forth herein.

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required. To the extent a response is required, Commonwealth Brands, Commonwealth-Altadis, and Altadis USA incorporate their prior answers and responses to the preceding Paragraphs in response to Paragraph 112.

113. HLA, in the course of such commerce as described above, knowingly induced and/or knowingly has received discriminatory prices for CA's Mass-Market Cigars from CA in the relevant geographic market.

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required.

114. Throughout the relevant period, HLA received significant discounts and promotions from CA, while at the same time, Plaintiff did not receive as considerable discounts and promotions from CA, restricting Plaintiff's ability to compete with HLA.

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required.

115. The effect of HLA's knowing inducement and/or knowing receipt of discrimination in pricing and promotion as detailed herein has been to substantially lessen competition in the market for distribution of CA's Mass-Market Cigars in Pennsylvania.

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required.

116. HLA's knowing inducement and/or knowing receipt of discrimination in pricing and promotion as detailed herein has injured, destroyed and/or prevented fair competition among Plaintiff and HLA.

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required.

117. HLA's knowing inducement and/or knowing receipt of discriminatory pricing and unfair business conduct as detailed herein constitute multiple violations of the antitrust laws of the United States, including, but not limited to, violations of the Robinson-Patman Act, 15 U.S.C. §§ 13(a), 13(d), and 13(f).

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required.

118. As a direct and proximate result of HLA's knowing inducement and/or knowing receipt of discriminatory pricing and unfair business conduct as detailed herein, Plaintiff has suffered substantial economic losses and other damage to its business, reputation, and relationship with customers, including, but not limited to, overcharges, lost sales, and lost profits.

Answer: This is not a claim against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA, so no response is required.

Count III
Monopolization in Violation of Sherman Act Section 2 (15 U.S.C. § 2)
(Against HLA)

119. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if set forth herein.

Answer: No answer is required to the allegations of Paragraph 119 because the Court has dismissed the claim to which it relates.

120. As detailed above, the relevant product market is the market for distribution of CA's Mass-Market Cigars, and the relevant geographic market is the Pennsylvania region.

Answer: No answer is required to the allegations of Paragraph 120 because the Court has dismissed the claim to which it relates.

121. HLA possessed (and currently possesses) monopoly power in the market for distribution of CA's Mass-market Cigars in Pennsylvania. HLA's share of the market is at least 80%. As a result of HLA's anticompetitive practices and agreement with CA, it has succeeded in excluding Plaintiff – a new market entrant which had achieved a 30% share – from the market. Thus, HLA was able to maintain its monopoly power in the relevant market.

Answer: No answer is required to the allegations of Paragraph 121 because the Court has dismissed the claim to which it relates.

122. HLA, as alleged herein, has willfully acquired and maintained its monopoly in the market for the distribution of CA's Mass-Market Cigar products in Pennsylvania by engaging in anticompetitive conduct, including, but not limited to, knowingly inducing and/or receiving discriminatory prices and promotions, as set forth herein, and agreeing on a discriminatory pricing structure with CA. These discriminatory prices and promotions allowed HLA to pay substantially less than Plaintiff for CA's Mass-Market Cigars and permitted HLA to receive enhanced offers.

Answer: No answer is required to the allegations of Paragraph 122 because the Court has dismissed the claim to which it relates.

123. The anticompetitive effects of HLA's conduct outweigh any purported pro-competitive justifications.

Answer: No answer is required to the allegations of Paragraph 123 because the Court has dismissed the claim to which it relates.

124. As a direct, foreseeable, and proximate result of HLA's anticompetitive conduct, Plaintiff was damaged by the lost sales and profits associated with distribution of CA's Mass-Market Cigars, the diminution in value of Plaintiff's business, and the loss of reputation with customers who could no longer rely on Plaintiff to stock these highly-requested cigar products.

Answer: No answer is required to the allegations of Paragraph 124 because the Court has dismissed the claim to which it relates.

125. As a direct and proximate result of HLA's anticompetitive conduct, Plaintiff has not purchased CA's Mass-Market Cigars from CA since July 2012. Thus, Plaintiff been driven from the relevant market altogether and will remain unable to compete if HLA is not enjoined from engaging in its anticompetitive conduct.

Answer: No answer is required to the allegations of Paragraph 125 because the Court has dismissed the claim to which it relates.

Count IV
Attempted Monopolization in Violation of Sherman Act Section 2 (15 U.S.C. § 2)
(Against HLA)

126. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if set forth herein.

Answer: No answer is required to the allegations of Paragraph 126 because the Court has dismissed the claim to which it relates.

127. HLA has specifically intended its conduct, as alleged herein through its agreement with CA, to have the effect of controlling prices and/or destroying competition in the market.

Answer: No answer is required to the allegations of Paragraph 127 because the Court has dismissed the claim to which it relates.

128. HLA's anticompetitive conduct, including but not limited to its knowing inducement and/or knowing receipt of discriminatory prices, has been directed at accomplishing the unlawful objective of controlling prices or destroying competition in the market.

Answer: No answer is required to the allegations of Paragraph 128 because the Court has dismissed the claim to which it relates.

129. HLA's anticompetitive conduct presents a dangerous probability that HLA will succeed in its attempt to monopolize the market, in that, among things: (1) HLA's current market share of at least 80% gives rise to its monopoly power in the market; (2) since HLA embarked on its anticompetitive scheme by forming an agreement with CA, it has successfully led to the end of Plaintiff's business relationship with CA; and (3) giving the success of HLA's scheme, the barriers to entry in this market are even more substantial and would likely deter other would-be

competitors from entering the market.

Answer: No answer is required to the allegations of Paragraph 129 because the Court has dismissed the claim to which it relates.

130. As a direct and proximate result of HLA's wrongdoing as alleged herein, Plaintiff has been injured in its business, having suffered, among other things, damages from lost sales and profits associated with distribution of CA's Mass-Market Cigars, the diminution in value of its business, and the loss of reputation with convenience store customers and their distributors who could no longer rely on Plaintiff to stock these highly requested cigar products.

Answer: No answer is required to the allegations of Paragraph 130 because the Court has dismissed the claim to which it relates.

Count V
Conspiracy to Monopolize in Violation of Sherman Act Section 2 (15 U.S.C. § 2)
(Against All Defendants)

131. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if set forth herein.

Answer: No answer is required to the allegations of Paragraph 131 because the Court has dismissed the claim to which it relates.

132. At all relevant times, CA and HLA knowingly and intentionally conspired to acquire, maintain, and enhance HLA's monopoly power in the relevant market – i.e., the market for distribution of CAI's Mass-Market Cigars in Pennsylvania – and to exclude Plaintiff from being competitive in the market.

Answer: No answer is required to the allegations of Paragraph 132 because the Court has dismissed the claim to which it relates.

133. During the relevant period, CA and HLA violated Section 2 of the Sherman Act, 15 U.S.C. § 2, by willfully and unlawfully conspiring to acquire, maintain, or enhance monopoly power for HLA in the market for distribution of CA's Mass-Market Cigars in Pennsylvania by forming an agreement by which HLA would receive more discounted prices and other promotional and rebates on mass market cigar products from CAI while Plaintiff would not receive similar price promotions and discounts.

Answer: No answer is required to the allegations of Paragraph 133 because the Court has dismissed the claim to which it relates.

134. As set forth herein, CA and HLA specifically intended that the lower prices, allowances, and substantial promotional discounts offered to HLA would maintain and enhance HLA's monopoly power in the relevant market, and thereby injure Plaintiff.

Answer: No answer is required to the allegations of Paragraph 134 because the Court has dismissed the claim to which it relates.

135. CA and HLA each committed at least one overt act in furtherance of the conspiracy, in that the Defendants formed an agreement to offer discriminatory process and promotions for CA's Mass-Market Cigars and ultimately to refuse to deal with Plaintiff, and in that CA sold its Mass-Market Cigars to HLA at discriminatory prices and ultimately refused to deal with Plaintiff.

Answer: No answer is required to the allegations of Paragraph 135 because the Court has dismissed the claim to which it relates.

136. As a result of the foregoing conspiratorial conduct, Plaintiff paid more for CA's Mass-Market Cigars than it would have but for the Defendants' conduct. Plaintiff eventually was completely foreclosed from purchasing CA's Mass-Market Cigars, while HLA assumed an even greater share of the market. As described above, upon information and belief, HLA's percentage of the market rose to at least 80% following Defendants conduct.

Answer: No answer is required to the allegations of Paragraph 136 because the Court has dismissed the claim to which it relates.

137. There was no legitimate business justification for the conspiracy between CA and HLA to acquire or to maintain monopoly power for HLA. The conspiratorial actions by Defendants provided no market efficiencies or other legitimate business value to customers who had business relationships with distributors such as Plaintiff and HLA.

Answer: No answer is required to the allegations of Paragraph 137 because the Court has dismissed the claim to which it relates.

138. As a direct and proximate result of the Defendants' conspiracy to acquire or maintain monopoly power for HLA, Plaintiff was injured in the form of paying higher prices for the same product – mass market cigars manufactured by CA – than it would have paid in the absence of Defendants' unlawful, conspiratorial conduct.

Answer: No answer is required to the allegations of Paragraph 138 because the Court has dismissed the claim to which it relates.

139. Plaintiff's injuries specifically consist of: (1) being denied the opportunity to purchase CA's Mass-Market Cigars at lower prices or better promotions, (2) paying higher prices for CA's Mass-Market Cigars products than it would have paid in the absence of Defendants' unlawful, conspiratorial conduct, and (3) eventually being foreclosed from purchasing any of CA's Mass-Market Cigar products from CA. These injuries are of the type that the Sherman Act was designed to prevent, and flow from that which makes Defendants' conduct unlawful.

Answer: No answer is required to the allegations of Paragraph 139 because the Court has dismissed the claim to which it relates.

140. Plaintiff seeks damages and other relief as permitted by law for the injuries if suffered as a result of Defendants' violations of the Sherman Act, 15 U.S.C. § 2.

Answer: No answer is required to the allegations of Paragraph 140 because the Court has dismissed the claim to which it relates.

Count VI
Unlawful Agreement in Restraint of Trade in Violation of Sherman Act Section 1
(15 U.S.C. § 1)
(Against All Defendants)

141. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if set forth herein.

Answer: No answer is required to the allegations of Paragraph 141 because the Court has dismissed the claim to which it relates.

142. CA and HLA entered into an agreement for the purposes of foreclosing Plaintiff from effectively competing in the market for distribution of CA's Mass-Market Cigars. The agreement achieved the purpose for which it was undertaken and unreasonably restrained trade.

Answer: No answer is required to the allegations of Paragraph 142 because the Court has dismissed the claim to which it relates.

143. The anticompetitive effects that resulted from Defendants' unlawful agreement outweigh any purported precompetitive justifications.

Answer: No answer is required to the allegations of Paragraph 143 because the Court has dismissed the claim to which it relates.

144. CA and HLA, through their unlawful agreement in restraint of trade, have harmed competition by ensuring that Plaintiff was deprived from receiving equal pricing terms for CA's Mass-Market Cigars. Under healthy and fair competition, Plaintiff would have received similar prices, rebates, and promotional discounts to those offered to HLA, and

Plaintiff would have continued providing competition to HLA in the Pennsylvania region.

Answer: No answer is required to the allegations of Paragraph 144 because the Court has dismissed the claim to which it relates.

145. As a direct, foreseeable, and proximate result of Defendants' agreements in restraint of trade, Plaintiff was damaged by, without limitation, lost sales and profits, costs of trying to maintain its business reputation and relationship with its customers, and diminution in value of its business, all in amounts to be proven at trial.

Answer: No answer is required to the allegations of Paragraph 145 because the Court has dismissed the claim to which it relates.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The allegations of Count I fail to state a claim on which relief may be granted against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA.

SECOND AFFIRMATIVE DEFENSE

(No Discriminatory Prices)

Commonwealth-Altadis and Altadis USA did not sell the same brands, sizes, styles, or flavors of mass-market cigars to HLA at discriminatory prices on contemporaneous sales with respect to Plaintiff.

THIRD AFFIRMATIVE DEFENSE

(No Lost Sales)

Plaintiff did not lose any sales to HLA as a result of the alleged discriminatory sales to HLA.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Antitrust Injury)

There was no injury to competition and Plaintiff did not suffer any antitrust injury as a result of the alleged discriminatory sales to HLA.

FIFTH AFFIRMATIVE DEFENSE

(Lawful Conduct)

Plaintiff's claims are barred because Commonwealth-Altadis and Altadis USA's alleged conduct was lawful, justified, and pro-competitive, constituted bona fide business practices, and was carried out in furtherance of HLA's independent and legitimate business interests.

SIXTH AFFIRMATIVE DEFENSE

(No Harm to Competition)

Plaintiff's claims are barred, in whole or in part, because the conduct alleged did not cause any harm or injury to competition, the competitive process, or consumers.

SEVENTH AFFIRMATIVE DEFENSE

(Damages Speculative and Uncertain)

Plaintiff's claims for damages are barred because its alleged damages, if any, are too speculative, uncertain, and remote, and because of the impossibility of ascertaining and allocating these alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Plaintiff's claims are barred, in whole or in part, because Plaintiff would be unjustly enriched if it were allowed to recover any part of the damages alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

(Failure To Mitigate Damages)

Plaintiff failed to mitigate any damages that it may have suffered.

TENTH AFFIRMATIVE DEFENSE

(Statute of limitations)

Plaintiff's claims are barred in whole or in part due to the expiration of the statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

(Equitable Defenses)

Plaintiff's claims are barred by the equitable doctrines of unclean hands, in pari delicto, unjust enrichment, and laches.

TWELFTH AFFIRMATIVE DEFENSE

(No Injunctive Relief)

Plaintiff has failed to allege any irreparable injury, threat of imminent harm, or any other reason why it does not have an adequate remedy at law or why its alleged injury requires injunctive relief.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Causation/Supervening Cause)

Plaintiff's claims are barred, in whole or in part, because injuries alleged by Plaintiff, to the extent any exist, were caused, in whole or in part, by the conduct of third parties for whom Commonwealth-Altadis and Altadis USA, through forces in the marketplace over which Commonwealth-Altadis and Altadis USA have no control, or through acts or omissions on the part of the Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

(Setoff/Contribution)

Any damages claimed against Commonwealth Brands, Commonwealth-Altadis, or Altadis USA are subject to setoff or contribution from another party.

FIFTEENTH AFFIRMATIVE DEFENSE

(Cost Justification)

All promotions offered to HLA that were not offered to Plaintiff were justified by the different costs attributable to HLA sales.

SIXTEENTH AFFIRMATIVE DEFENSE

(Functional Availability)

All promotions and discounts were functionally available to Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Real Party in Interest)

Plaintiff is not the real party in interest.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Real Party in Interest)

Plaintiff's claims are barred, in whole or in part, because none of Commonwealth-Altadis or Altadis USA's challenged actions or omissions substantially lessened competition within any properly defined market.

NINETEENTH AFFIRMATIVE DEFENSE

(No Liability for Actions of Other Party)

Plaintiff's claims are barred, in whole or in part, because Commonwealth-Altadis and Altadis USA are not liable for the acts of any other Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

(Incorporation of Other Affirmative Defenses)

Commonwealth Brands, Commonwealth-Altadis, and Altadis USA adopt and incorporate by reference any and all other affirmative defenses asserted or to be asserted by any other defendant in this proceeding to the extent that they or any one of them may share in such affirmative defenses.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of Other Affirmative Defenses)

Commonwealth Brands, Commonwealth-Altadis, and Altadis USA have not knowingly or intentionally waived any applicable defenses and explicitly reserve the right to assert and rely on such other applicable defenses as may become available or apparent during further investigation and/or discovery proceedings. They further reserve the right to amend their Answer and/or their defenses accordingly, and/or to delete defenses that they determine are not applicable during the course of subsequent discovery.

PRAYER FOR RELIEF

WHEREFORE, Commonwealth Brands, Commonwealth-Altadis, and Altadis USA respectfully pray that all Plaintiff's claims be denied and dismissed with prejudice, that Plaintiff be granted no damages or costs, that no injunction be entered, that Commonwealth Brands, Commonwealth-Altadis, and Altadis USA be granted their reasonable attorney's fees and the costs of suit, and that Defendants be granted such other and further relief, whether of a legal or equitable nature, which the Court deems necessary, proper, and/or required based on the facts presented.

Respectfully submitted,

/s/ Carl W. Hittinger
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Altadis, U.S.A., Inc.*

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SATNAM DISTRIBUTORS LLC, D/B/A LION &
BEAR DISTRIBUTORS,
553 Winchester Road, Unit B,
Bensalem, PA 19020,

Plaintiff,

v.

COMMONWEALTH-ALTADIS, INC.,
5900 N. Andrews Avenue, Suite 1100,
Fort Lauderdale, FL 33309

COMMONWEALTH BRANDS, INC.
5900 N. Andrews Avenue, Suite 1100,
Fort Lauderdale, FL 33309

ALTADIS, U.S.A., INC.,
5900 N. Andrews Avenue, Suite 1100,
Fort Lauderdale, FL 33309

HAROLD LEVINSON ASSOCIATES, INC.,
21 Banfi Plaza,
Farmingdale, NY 11735

Defendants.

Civil Action No.: 2:14-cv-06660-LFR

CERTIFICATE OF SERVICE

I, Carl W. Hittinger, hereby certify that on November 17, 2015, I caused the foregoing Answer of Defendants Commonwealth-Altadis Inc., Commonwealth Brands, Inc., and Altadis, U.S.A., Inc. to be served electronically upon the following:

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