

FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 3 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OLEAN WHOLESALE GROCERY
COOPERATIVE, INC., BEVERLY
YOUNGBLOOD, PACIFIC
GROSERVICE, INC., DBA Pitco Foods,
CAPITOL HILL SUPERMARKET,
LOUISE ANN DAVIS MATTHEWS,
JAMES WALNUM, COLIN MOORE,
JENNIFER A. NELSON, ELIZABETH
DAVIS-BERG, LAURA CHILDS; NANCY
STILLER; BONNIE VANDERLAAN;
KRISTIN MILLICAN; TREPCO IMPORTS
AND DISTRIBUTION, LTD.;
JINKYOUNG MOON; COREY NORRIS;
CLARISSA SIMON; AMBER SARTORI;
NIGEL WARREN; AMY JOSEPH;
MICHAEL JUETTEN; CARLA LOWN;
TRUYEN TON-VUONG, AKA David Ton;
A-1 DINER; DWAYNE KENNEDY; RICK
MUSGRAVE; DUTCH VILLAGE
RESTAURANT; LISA BURR; LARRY
DEMONACO; MICHAEL BUFF; ELLEN
PINTO; ROBBY REED; BLAIR HYSNI;
DENNIS YELVINGTON; KATHY
DURAND GORE; THOMAS E.
WILLOUGHBY III; ROBERT FRAGOSO;
SAMUEL SEIDENBURG; JANELLE
ALBARELLO; MICHAEL COFFEY;
JASON WILSON; JADE CANTERBURY;
NAY ALIDAD; GALYNA
ANDRUSYSHYN; ROBERT BENJAMIN;
BARBARA BUENNING; DANIELLE
GREENBERG; SHERYL HALEY; LISA
HALL; TYA HUGHES; MARISSA

No. 19-56514

D.C. No.

3:15-md-02670-JLS-MDD

Southern District of California,
San Diego

ORDER

JACOBUS; GABRIELLE KURDT; ERICA PRUESS; SETH SALENGER; HAROLD STAFFORD; CARL LESHER; SARAH METIVIER SCHADT; GREG STEARNS; KARREN FABIAN; MELISSA BOWMAN; VIVEK DRAVID; JODY COOPER; DANIELLE JOHNSON; HERBERT H. KLIEGERMAN; BETH MILLINER; LIZA MILLINER; JEFFREY POTVIN; STEPHANIE GIPSON; BARBARA LYBARGER; SCOTT A. CALDWELL; RAMON RUIZ; THYME CAFE & MARKET, INC.; HARVESTERS ENTERPRISES, LLC; AFFILIATED FOODS, INC.; PIGGLY WIGGLY ALABAMA DISTRIBUTING CO., INC.; ELIZABETH TWITCHELL; TINA GRANT; JOHN TRENT; BRIAN LEVY; LOUISE ADAMS; MARC BLUMSTEIN; JESSICA BREITBACH; SALLY CRNKOVICH; PAUL BERGER; STERLING KING; EVELYN OLIVE; BARBARA BLUMSTEIN; MARY HUDSON; DIANA MEY; ASSOCIATED GROCERS OF NEW ENGLAND, INC.; NORTH CENTRAL DISTRIBUTORS, LLC; CASHWA DISTRIBUTING CO. OF KEARNEY, INC.; URM STORES, INC.; WESTERN FAMILY FOODS, INC.; ASSOCIATED FOOD STORES, INC.; GIANT EAGLE, INC.; MCLANE COMPANY, INC.; MEADOWBROOK MEAT COMPANY, INC.; ASSOCIATED GROCERS, INC.; BILO HOLDING, LLC; WINNDIXIE STORES, INC.; JANEY MACHIN; DEBRA L. DAMSKE; KEN DUNLAP; BARBARA E. OLSON; JOHN PEYCHAL; VIRGINIA RAKIPI; ADAM BUEHRENS; CASEY CHRISTENSEN;

SCOTT DENNIS; BRIAN
DEPPERSCHMIDT; AMY E.
WATERMAN; CENTRAL GROCERS,
INC.; ASSOCIATED GROCERS OF
FLORIDA, INC.; BENJAMIN FOODS
LLC; ALBERTSONS COMPANIES LLC;
H.E. BUTT GROCERY COMPANY;
HYVEE, INC.; THE KROGER CO.;
LESGO PERSONAL CHEF LLC; KATHY
VANGEMERT; EDY YEE; SUNDE
DANIELS; CHRISTOPHER TODD;
PUBLIX SUPER MARKETS, INC.;
WAKEFERN FOOD CORP.; ROBERT
SKAFF; WEGMANS FOOD MARKETS,
INC.; JULIE WIESE; MEIJER
DISTRIBUTION, INC.; DANIEL
ZWIRLEIN; MEIJER, INC.; SUPERVALU
INC.; JOHN GROSS & COMPANY;
SUPER STORE INDUSTRIES; W LEE
FLOWERS & CO INC.; FAMILY
DOLLAR SERVICES, LLC; AMY
JACKSON; FAMILY DOLLAR STORES,
INC.; KATHERINE MCMAHON;
DOLLAR TREE DISTRIBUTION, INC.;
JONATHAN RIZZO; GREENBRIER
INTERNATIONAL, INC.; JOELYNA A.
SAN AGUSTIN; ALEX LEE, INC.;
REBECCA LEE SIMOENS; BIG Y
FOODS, INC.; DAVID TON; KVAT
FOOD STORES, INC., DBA Food City;
AFFILIATED FOODS MIDWEST
COOPERATIVE, INC.; MERCHANTS
DISTRIBUTORS, LLC; BROOKSHIRE
BROTHERS, INC.; SCHNUCK
MARKETS, INC.; BROOKSHIRE
GROCERY COMPANY; KMART
CORPORATION; CERTCO, INC.;
RUSHIN GOLD, LLC, DBA The Gold
Rush; UNIFIED GROCERS, INC.;

TARGET CORPORATION; SIMON-HINDI, LLC; FAREWAY STORES, INC.; MORAN FOODS, LLC, DBA Save-A-Lot; WOODMAN'S FOOD MARKET, INC.; DOLLAR GENERAL CORPORATION; SAM'S EAST, INC.; DOLGENCORP, LLC; SAM'S WEST, INC.; KRASDALE FOODS, INC.; WALMART STORES EAST, LLC; CVS PHARMACY, INC.; WALMART STORES EAST, LP; BASHAS' INC.; WAL-MART STORES TEXAS, LLC; MARC GLASSMAN, INC.; WAL-MART STORES, INC.; 99 CENTS ONLY STORES; JESSICA BARTLING; AHOLD U.S.A., INC.; GAY BIRNBAUM; DELHAIZE AMERICA, LLC; SALLY BREDBERG; ASSOCIATED WHOLESALE GROCERS, INC.; KIM CRAIG; MAQUOKETA CARE CENTER; GLORIA EMERY; ERBERT & GERBERT'S, INC.; ANA GABRIELA FELIX GARCIA; JANET MACHEN; JOHN FRICK; PAINTED PLATE CATERING; KATHLEEN GARNER; ROBERT ETTEN; ANDREW GORMAN; GROUCHO'S DELI OF FIVE POINTS, LLC; EDGARDO GUTIERREZ; GROUCHO'S DELI OF RALEIGH; ZENDA JOHNSTON; SANDEE'S CATERING; STEVEN KRATKY; CONFETTI'S ICE CREAM SHOPPE; KATHY LINGNOFSKI; END PAYER PLAINTIFFS; LAURA MONTOYA; KIRSTEN PECK; JOHN PELS; VALERIE PETERS; ELIZABETH PERRON; AUDRA RICKMAN; ERICA C. RODRIGUEZ,

Plaintiffs-Appellees,

and

JESSICA DECKER, JOSEPH A.
LANGSTON, SANDRA POWERS,
GRAND SUPERCENTER, INC., THE
CHEROKEE NATION, US FOODS, INC.,
SYSCO CORPORATION, GLADYS, LLC,
SPARTANNASH COMPANY, BRYAN
ANTHONY REO,

Plaintiffs,

v.

BUMBLE BEE FOODS LLC; STARKIST
CO.; DONGWON INDUSTRIES CO.,
LTD.,

Defendants-Appellants,

and

KING OSCAR, INC.; THAI UNION
FROZEN PRODUCTS PCL; DEL MONTE
FOODS COMPANY; TRI MARINE
INTERNATIONAL, INC.; DONGWON
ENTERPRISES; DEL MONTE CORP.;
CHRISTOPHER D. LISCHESKI; LION
CAPITAL (AMERICAS), INC.; BIG
CATCH CAYMAN LP, AKA Lion/Big
Catch Cayman LP; FRANCIS T
ENTERPRISES; GLOWFISCH
HOSPITALITY; THAI UNION NORTH
AMERICA, INC.,

Defendants.

THOMAS, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion is vacated.

Judges McKeown, Wardlaw, Berzon, Owens, Miller, Collins, Bress, and Forrest did not participate in the deliberations or vote in this case.