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Attorneys for Swisher International, Inc.

19 UNITED STATES DISTRICT COURT  
 20 CENTRAL DISTRICT OF CALIFORNIA

21 TRENDSETTAH USA, INC. and  
 22 TREND SETTAH, INC.,

Plaintiffs,

v.

SWISHER INTERNATIONAL, INC.,

Defendant.

CASE NO. 8:14-cv-01664-JVS-DFM

**JUDGMENT**

1 On October 14, 2014, Plaintiffs Trendsetta USA, Inc. and Trend Setta, Inc.  
2 (“Plaintiffs”) initiated this action against Defendant Swisher International, Inc.  
3 (“Defendant”), asserting nine causes of action for (1) violation of Sherman Act, 15  
4 U.S.C. § 2; (2) violation of Florida Antitrust Law, Fl. Stat. § 542.19; (3) Breach of  
5 Contract; (4) Breach of Implied Covenant of Good Faith and Fair Dealing; (5) Trade  
6 Libel; (6) Tortious Interference with Contract; (7) Intentional Interference with  
7 Prospective Economic Relations; (8) Negligent Interference with Prospective Economic  
8 Relations; and (9) California violation of California’s Unfair Competition Law, Cal.  
9 Bus. & Prof. Code § 17200 et seq. Dkt. No. 1.

10 On May 19, 2015, the Court granted in part and denied in part Defendant’s motion  
11 for judgment on the pleadings and dismissed Plaintiffs’ claims for negligent interference  
12 with prospective economic relations and violation of California’s Unfair Competition  
13 Law, Cal. Bus. & Prof. Code § 17200 et seq. Dkt. No. 40.

14 On January 21, 2016, the Court granted in part and denied in part Defendant’s  
15 motion for summary judgment. The Court granted summary judgment in Defendant’s  
16 favor on Plaintiffs’ claims for trade libel, tortious interference with contract, and  
17 intentional interference with prospective economic relations. The Court denied  
18 summary judgment on Plaintiffs’ claims for violation of Section 2 of the Sherman Act,  
19 15 U.S.C. § 2, and violation of the Florida Antitrust Law, Fla. Stat. § 542.19. Dkt. No.  
20 99.

21 On February 1, 2016, Plaintiffs abandoned their claim for violation of the Florida  
22 Antitrust Law, Fla. Stat. § 542.19, in their Memorandum of Contentions of Fact and Law  
23 pursuant to Civil Local Rule 16-4.6. Dkt. No. 133, at 13.

24 On February 24, 2016, this Court entered the Final Pretrial Conference Order  
25 pursuant to Fed. R. Civ. P. 16, which stated that Plaintiffs plan to pursue claims for  
26 violation of 15 U.S.C. § 2 (Count 1); breach of contract (Count 3) and breach of the  
27 implied covenant of good faith and fair dealing (Count 4) and that the Final Pretrial  
28 Conference Order “shall supersede the pleadings.” Dkt. No. 162, at 7, 32-33. The Final

1 Pretrial Conference Order did not include any of Plaintiffs' other claims, including their  
2 claim for violation of the Florida Antitrust Law, Fla. Stat. § 542.19 *Id.*

3 This action came on for trial on March 15, 2016, in Courtroom 10C of the above-  
4 entitled Court, the Honorable James V. Selna, United States District Judge, presiding.  
5 After an eight-day trial and after deliberations, on March 30, 2016, the jury returned a  
6 Special Verdict in favor of Plaintiffs and against Defendant on each of the four causes  
7 of action tried: (1) breach of contract; (2) breach of the covenant of good faith and fair  
8 dealing; (3) violation of Section 2 of the Sherman Act by creating or maintaining a  
9 monopoly through anti-competitive practices; and (4) violation of Section 2 of the  
10 Sherman Act by attempting to create or maintain a monopoly through anti-competitive  
11 practices. On Plaintiffs' claims for breach of contract and breach of the covenant of  
12 good faith and fair dealing, the jury awarded \$9,062,679.00. On Plaintiffs' claims for  
13 monopoly and attempted monopoly under Section 2 of the Sherman Act, the jury  
14 awarded \$14,815,494.00. Dkt. No. 206.

15 Swisher moved for judgment as a matter of law or, in the alternative, for a new  
16 trial, on May 12, 2016. Dkt. No. 233. On August 17, 2016, the Court granted judgment  
17 in favor of Defendant, and in the alternative, a new trial, on Plaintiffs' cause of action  
18 for violation of Section 2 of the Sherman Act by creating or maintaining a monopoly  
19 through anti-competitive practices. The Court granted a new trial on Plaintiffs' cause of  
20 action for violation of Section 2 of the Sherman Act by attempting to create or maintain  
21 a monopoly through anti-competitive practices. Dkt. No. 262.

22 On October 10, 2016, Defendant filed a motion for reconsideration of the Court's  
23 August 17, 2016 order denying in part Defendant's motion for judgment as a matter of  
24 law on Plaintiffs' Section 2 claims, and for reconsideration of the Court's January 21,  
25 2016 order denying summary judgment on Plaintiffs' antitrust claims. Dkt. No. 268.  
26 On November 9, 2016, the Court granted Defendant's motion for reconsideration of the  
27 Court's January 21, 2016 order denying summary judgment on Plaintiffs' antitrust  
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1 claims. The Court granted summary judgment in favor of Defendant on Plaintiffs'  
2 antitrust claims for the reasons set forth in its order of November 9, 2016. Dkt. No. 274.

3 On December 14, 2016, the Court entered judgment in favor of Plaintiffs and  
4 against Defendant on Plaintiffs' claims for breach of contract and breach of the implied  
5 covenant of good faith and fair dealing. Dkt. No. 296. The Court entered judgment in  
6 favor of Defendant and against Plaintiffs on all of Plaintiffs' other claims, including  
7 Plaintiffs' claims for violation of Section 2 of the Sherman Act, 15 U.S.C. § 2; violation  
8 of the Florida Antitrust Law, Fla. Stat. § 542.19; trade libel; tortious interference with  
9 contract; intentional interference with prospective economic relations; negligent  
10 interference with prospective economic relations; and violation of the California Unfair  
11 Competition Law, Cal. Bus. & Profs. Code § 17200. *Id.*

12 On February 8, 2019, the Ninth Circuit Court of Appeals affirmed in part and  
13 reversed in part this Court's judgment and remanded the case to reinstate the jury's  
14 verdict in its entirety. Dkt. No. 349.

15 On July 22, 2019, Defendant moved for relief from judgment under Rule 60(b)(2),  
16 Rule 60(b)(3) and Rule 60(d) of the Federal Rules of Civil Procedure, or in the  
17 alternative, an order for expedited discovery. Dkt. No. 377. On August 19, 2019, the  
18 Court granted Defendant's motion for relief under Rule 60(b)(2), Rule 60(b)(3) and Rule  
19 60(d) of the Federal Rules of Civil Procedure for the reasons set forth in its order, Dkt.  
20 No. 426, and ordered a new trial, Dkt. No. 427.

21 On October 5, 2019, Plaintiffs moved for certification for interlocutory appeal of  
22 the Court's August 19, 2019 order under 28 U.S.C. § 1292(b). Dkt. No. 437. On  
23 November 12, 2019, the Court denied Plaintiffs' motion for certification. Dkt. No. 458.

24 On November 11, 2019, Plaintiffs filed a motion for reconsideration of the Court's  
25 August 19, 2019 order, or in the alternative, for relief under Rule 60(b). Dkt. No. 454.  
26 On November 18, 2019, Defendant moved to amend the Final Pretrial Conference Order  
27 entered on February 24, 2016, Dkt. No. 162, to assert two additional defenses of  
28 Illegality and Fraudulent Inducement. Dkt. No. 463. On January 21, 2020, the Court

1 denied Plaintiffs' motion for reconsideration, or in the alternative, for relief under Rule  
2 60(b) and granted Defendant's motion to amend the Final Pretrial Conference Order to  
3 assert two additional defenses of Illegality and Fraudulent Inducement. Dkt. No. 483.  
4 The Court *sua sponte* certified its August 19, 2019 order for interlocutory appeal. *Id.*

5 On January 31, 2020, Plaintiffs filed a petition for permission for interlocutory  
6 appeal of the Court's August 19 order with the Ninth Circuit Court of Appeals. On  
7 February 3, 2020, Plaintiffs filed a motion to assign the case to the prior panel of the  
8 Ninth Circuit that decided the first appeal of this Action. On February 13, 2020, the  
9 prior panel declined to accept the petition, and, on April 23, 2020, the Ninth Circuit  
10 denied Plaintiffs' petition for permission for interlocutory appeal.

11 On May 1, 2020, Plaintiffs filed a petition for writ of mandamus with the Ninth  
12 Circuit Court of Appeals for an order directing the reassignment of the Action and  
13 ordering reinstatement of the jury verdict and moved to assign the case to the prior panel.  
14 On May 7, 2020, the prior panel declined to accept Plaintiffs' petition. On July 21, 2020,  
15 the Ninth Circuit Court of Appeals denied Plaintiffs' petition for writ of mandamus and  
16 stated that "[n]o further filings will be entertained in this closed case." Dkt. No. 557-1.

17 On June 22, 2020, Plaintiffs filed a second motion for relief under Rule 60(b), or  
18 in the alternative, reconsideration of the Court's August 19, 2019 order. Dkt. No. 514.  
19 On July 31, 2020, the Court denied Plaintiffs' motion for relief under Rule 60(b), or in  
20 the alternative, for reconsideration. Dkt. No. 561.

21 On July 7, 2020, Defendant moved to compel discovery from Plaintiffs. Dkt. Nos.  
22 528, 531. On July 29, 2020, Magistrate Judge McCormick granted in part Defendant's  
23 motions to compel Plaintiffs to produce documents and information responsive to  
24 Defendant's discovery requests. Dkt. No. 560.

25 On August 17, 2020, Plaintiffs moved to voluntarily dismiss the Action with  
26 prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, asserting  
27 that they are unable to afford the litigation expenses of discovery or a second trial and  
28 intend to appeal the Court's orders granting Defendant relief under Rule 60 and denying

1 Plaintiffs' motions for reconsideration. Dkt. No. 565. Defendant disputed Plaintiffs'  
2 inability to afford the litigation expenses of discovery or a second trial, contested the  
3 premise that appellate jurisdiction can be created through voluntary dismissal, and  
4 requested conditions to Plaintiffs' voluntary dismissal to protect Defendant's entitlement  
5 to seek costs and attorney's fees and discovery relating thereto. Dkt. Nos. 574-1 and  
6 585.

7 On August 21, 2020, Defendant moved for contempt against Plaintiffs for  
8 violation of Magistrate Judge McCormick's order compelling compliance with  
9 Defendant's discovery requests. Dkt. No. 572.

10 On September 16, 2020, the Court granted Plaintiffs' motion for dismissal under  
11 Rule 41(a)(2) of the Federal Rules of Civil Procedure on terms that the Court found  
12 proper, as set forth in its order. Dkt. No. 591. The Court vacated Defendant's motion  
13 for contempt without prejudice and stayed pending discovery without prejudice. *Id.*

14 The Court NOW ENTERS JUDGMENT AS FOLLOWS:

- 15 1. Judgment is entered in favor of Defendant and against Plaintiffs on all of  
16 Plaintiffs' claims, including Plaintiffs' claims for violation of Section 2 of  
17 the Sherman Act, 15 U.S.C. § 2; breach of contract; breach of the implied  
18 covenant of good faith and fair dealing; violation of the Florida Antitrust  
19 Law, Fla. Stat. § 542.19; trade libel; tortious interference with contract;  
20 intentional interference with prospective economic relations; negligent  
21 interference with prospective economic relations; and violation of the  
22 California Unfair Competition Law, Cal. Bus. & Profs. Code § 17200.
- 23 2. The Court finds that it has not been judicially determined that Swisher is in  
24 default of its obligations under either of the private label agreements dated  
25 January 20, 2011 (as amended effective February 1, 2012), and February 2,  
26 2013, upon which Plaintiffs brought their claims for breach of contract and  
27 breach of implied covenant of good faith and fair dealing.
- 28 3. Defendant is the prevailing party in this Action and Plaintiffs are not

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entitled to any relief.

4. As the prevailing party, Defendant shall recover costs allowable under Federal Rule of Civil Procedure 54(d)(1) and Local Rule 54-3.
5. Any claim by Defendant for attorney's fees and related nontaxable expenses shall be presented by motion.
6. Plaintiffs may not assert the fact of their voluntary dismissal as a bar to Defendant's recovery of costs or attorney's fees.
7. The Court shall retain continuing jurisdiction for the reasons and purposes set forth in this Judgment and the Court's September 16, 2020, order granting Plaintiffs' motion for dismissal on terms found proper.
8. The Court acknowledges that Plaintiffs expressly preserve their right to appeal the Court's Rule 60 orders vacating the jury's verdict and ordering a new trial.

**IT IS SO ORDERED.**

Dated: September 28, 2020



Hon. James V. Selna  
United States District Court Judge