

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

**IN RE: FRESH AND PROCESS
POTATOES ANTITRUST
LITIGATION**

Case No. 4:10-MD-2186-BLW

ORDER

THIS DOCUMENT RELATES TO:

**Kansas Tag-Along Action Only
Associated Wholesale Grocers, Inc., v.
United Potato Growers of America,
Inc., et al., Case No. KS/2:13-cv-02182
(LAH)**

The Court has before it Counterclaim Defendant Associated Wholesale Grocers, Inc.'s Motion for Summary Judgment on Defendant Potandon Produce LLC's Counterclaim (Dkt. 871). On July 8, 2015, the Court issued an Order stating that the rule of reason standard applied to the counterclaim filed by Potandon. In light of that ruling, Potandon agreed that its counterclaim should be dismissed.

However, in order to preserve its appeal of that ruling, the Court and the parties agreed that AWG would file a motion for summary judgment on Potandon's counterclaim. Although AWG briefed the motion in some detail, Potandon is correct that based upon the Court's earlier Order, which is incorporated by reference here, the Court could conclude that Potandon had only pled a rule of reason violation of the Kansas Restraint of Trade Act. In turn, because Potandon did not amend its counterclaim, the Court finds that there is no genuine issue as to any material fact and AWG is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The Court will make no further findings or conclusions.

ORDER

1. Counterclaim Defendant Associated Wholesale Grocers, Inc.'s Motion for Summary Judgment on Defendant Potandon Produce LLC's Counterclaim (Dkt. 871) is **GRANTED**.



DATED: November 12, 2015

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief Judge
United States District Court