TABLE OF APPENDICES

APPENDIX

A.- Doc.# 241 Court of Appeals' judgment affirming the lower court's opinion.

United States Court of Appeals for the Eighth Circuit, Case No. 23-1684

Larry Rice, Plaintiff-Appellant, v. Interfood, Inc.; Jason Medcalf;Dirk Neerhoff;Nick Sharp;F.C.G.M. (Frank) van Stipdonk, Defendants-Appellees.

Appeal from United States District Court for the Eastern District of Missouri – St. Louis. (4:13-CV-01171-HEA)

Filed: May 24, 2023 [Unpublished]

Before LOCKEN, COLLOTON, and BENTON, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

Order Entered at the Direction of the Court: Clerk, U.S. Court of Appeals, Eighth Circuit. /s/ Michael E. Gans

B.- Final Judgment – Doc.# 139

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Case No. 4:13CV1171 HEA

Larry Rice, Plaintiff vs.

Interfood, Inc., et al., Defendants.

JUDGMENT

In accordance with the Opinion. Memorandum and Order entered on January 23, 2015, [Doc.# 102] IT IS HEREBY ORDERED, ADJUDGED AND DECREED

that Judgment is entered in favor of Defendants and against Plaintiff on all claims.

Dated this 30th day of May 2017.

Signed by Henry Edward Autrey

United States District Judge.

C.- Doc.# 102 - Order granting Counterclaim

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Case No. 4:13CV1171 HEA

Larry Rice, Plaintiff vs.

Interfood, Inc., et al., Defendants.

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendants=/Counterclaim Plaintiffs' (hereinafter Defendants), Motion for Summary Judgment on their Counterclaim for Breach of Contract, [Doc. No. 61], and Plaintiff's Motion for Summary Judgment on Defendants' Counterclaim, [Doc. No. 78]. A hearing on these motions was held on January 21, 2015. For the reasons set forth below, Defendants' Motion is granted and Plaintiff's Motion is denied.

Defendants filed their counterclaim seeking damages for Plaintiff's breach of a Settlement Agreement and Release entered into by the parties. The Agreement contains a release and covenant not to sue each of the Interfood Parties. Defendants seek attorneys' fees as damages for the breach. In relevant part, the Settlement Agreement provides:

The Settlement Agreement and Release provides as follows:

> The parties hereby fully and completely release and covenant not to sue one

another on all actual or potential claims between the parties based upon any fact that existed on December 11, 2009, the date on which the settlement agreement was executed. These mutual releases and covenants not to sue cover the parties, their subsidiaries and affiliates, their successors and assignees, and their officers, directors, agents and employees.

Plaintiff's Complaint alleged the following:

Interfood, Inc. was incorporated in Delaware in September 2006 by Steven E. Pozaric. Interfood is a wholly owned subsidiary of Interfood Holding B.V. Holding was a foreign business entity formed and existing under the laws of the Netherlands. Holding is the sole owner and sole Director of Tepco, B.V. Tepco is a foreign business entity formed and existing under the laws of the Netherlands.

Tepco and Plaintiff were shareholders in Waltepco Holding Company, an Indiana corporation which owns 100% of an Indiana corporation formed in 1994 named Interfood, Inc. (Interfood-IN).

Since 1994, Interfood-IN has been in the business of the distribution, marketing, sourcing, and sale of milk, milk powders, milk protein concentrates, anhydrous milk fat and blends, buttermilk, butter, cheese, lactose, whey powders, whey protein concentrates, whey protein isolates, casein, caseinate, and other dairy goods, products, and ingredients. Since that time, Interfood-IN has provided a number of services, including acting as a broker of the dairy goods, acting as a trader of the dairy goods, purchasing the dairy goods, and entering into contracts for the purchase of

the dairy goods from suppliers and then sells the dairy goods at a profit. Interfood is also engaged in the dairy business.

Tepco and Plaintiff entered into a "Shareholders Agreement "dated June 1, 2003, which requires anyone in the "Group" (Holding owned companies similar to Interfood around the world) who wishes to buy and/or sell something in the United States or Canada, or to buy and/or sell U.S. or Canadian products anywhere, to do so through Interfood-IN. The Shareholders Agreement gives Interfood-IN exclusive rights for the entire Group. The contract was signed by van Stipdonk representing Tepco and Jack Engels representing Holding.

After forming "Interfood, Inc." in Delaware, Neerhoff and van Stipdonk focused their efforts on establishing the business of the new company, Interfood Inc. of Delaware, which was a competitor of Interfood-IN in the dairy business, and diverted Interfood-IN's opportunities to Interfood, Inc. of Delaware in breach of their fiduciary duties as Directors of Interfood-IN, which they claimed to be.

Plaintiff alleged that he became aware of this alleged breach in early 2004 and tried to resolve them with van Stipdonk and Neerhoff.

The Complaint further alleged that in August 2006, the Interfood-IN board removed van Stipdonk as a director leaving Rice and Husmann as the entire board of Interfood-IN, which filed suit in Franklin County, Missouri in March 2006 to stop alleged violations of the Shareholders Agreement.

On March 10, 2014, the Court granted Defendants' Motion to Dismiss for Failure to State a Claim. The Court found that Count I was barred by the applicable

statute of limitations. Count II was dismissed because Defendants were not parties to the Shareholders Agreement which Plaintiff alleged was breached. Count III, the conspiracy count, was dismissed because there was no viable underlying cause of action.

Defendants seek summary judgment on their counterclaim arguing they are entitled to their attorneys' fees as damages for Plaintiff's filing of his action, in violation of the Settlement Agreement and Release, which contained the covenant not to sue one another on all actual or potential claims between the parties based on any fact that existed on December 11, 2009.

Initially, Plaintiff argues that Defendants' Motion should be denied because the record establishes that there has been no breach of the covenant not to sue. Plaintiff's argument, however, is belied by his pleading. Relying on the single phrase found in the Complaint, "starting in at least 2009, Defendants conspired. . .," Plaintiff argues that his claims are outside the perimeters of the Settlement Agreement, and therefore there has been no breach of the covenant not to sue. This phrase, however, can be interpreted as encompassing time *prior* to 2009, and further, all of 2009 prior to December 11, 2009, the end date of the covenant. The actions detailed in Plaintiff's complaint, and of which Plaintiff complains, clearly establish that Plaintiff's claims rest on actions which occurred prior to December 11, 2009.

With respect to Defendants' claim for attorneys' fees as damages for Plaintiff's breach of the agreement in filing this action, Plaintiff confuses the "American Rule" and Defendants' prayer for their

damages, which happen to be the attorneys' fees incurred in bringing this action to enforce the covenant not to sue.

While the Court agrees that the American Rule, which provides that each party pays its own fees and costs absent a specific statutory or contractual provision, *Monarch Fire Protection v. Freedom Consulting,* 678 F. Supp. 2d 927, 938 (E.D. Mo. 2009), ordinarily precludes an award of attorneys' fees to a prevailing party, the philosophical basis for the Rule is not applicable in this breach of the covenant not to sue action now before this court. Attorney's fees fall within the category of "costs of litigation" and not damages. In the instant matter however, the attorneys' fees *are* the damages for Plaintiff's breach of the Agreement. *Dallas Gas Partners, L.P. v. Prospect Energy Corp,* 733 F.3d 148, 158-9 (5th Cir. 2013).

Furthermore, even assuming that the attorneys' fees were not actual damages incurred as a result of the breach of the covenant, the attorneys' fees in this action fall within the exceptions to the American Rule.

A successful litigant may be awarded attorney fees under one of the exceptions to the American Rule if the litigant demonstrates the existence of special circumstances surrounding the litigation. *Grewell v State Farm Mut. Auto Ins. Co.,* 162 S.W.3d 503, 507 (Mo.App.W.D. 2005). Some examples of special circumstances include "where very unusual circumstances exists so it may be said equity demands a balance of the benefits" and "where the attorney fees are incurred because of involvement in collateral litigation." *Lett v. City of St. Louis,* 24 S.W.3d 157, 162 (Mo.App.E.D. 2000).

Motor Control Specialties, Inc. v. Labor and Indus. Relations Com 'n, 323 S.W.3d 843, 854 (Mo.App.W.D. 2010). Moreover, it is not necessary that there be a showing of third-party litigation. "Collateral litigation with a third-party is not mentioned, but rather collateral litigation as a 'natural and proximate' result of a wrong or breach of duty is required for the exception." *Id.*, at 855. The counterclaim for breach of the covenant not to sue was brought as a "natural and proximate" result of Plaintiff's bringing the original action, and therefore an exception to the American Rule applies. The attorneys' fees requested as damages herein were incurred because of need to bring the counterclaim. Defendants' Motion for Summary Judgment on their counterclaim will be granted.

Defendants seek a total of $90,615.81 in fees and costs. Defendants, however, have not detailed these fees and costs such that the Court can determine the reasonableness of the fees and costs. To do so, the Court requires a more detailed documentation of the rate at which the fees are billed, the subject matter of the charges and the amount of time per task. Plaintiff will be given an opportunity to file any objections to the amount of attorneys' fees submitted to the Court. Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment, [Doc.61], is granted.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment, [Doc. No. 78], is denied.

IT IS FURTHER ORDERED that Defendants shall, within 14 days from the date of this Opinion,

Memorandum and Order, submit a detailed statement of the rates, times expended and subject matter of their attorneys' fees to the Court for review.
IT IS FURTHER ORDERED Plaintiff shall, within 7 days from the filing of Defendants' statement, file any objections he may have. Dated this 23rd day of January 2015. /s/ Henry Edward Autrey
United States District Judge

D.- Doc.# 146 - Order granting legal fees
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION
Case No. 4:13CV1171 HEA
Larry Rice, Plaintiff vs.
Interfood, Inc., et al., Defendants.

OPINION, MEMORANDUM AND ORDER
This matter is before the Court on Defendants' Motion to Alter or Amend Judgment to include an Attorney's Fee award, [Doc. No.143]. Plaintiff opposes the motion. The motion is well taken, and therefore will be granted. In its Opinion, Memorandum and Order of January 23, 2015, the Court granted Defendants' motion for summary judgment on their claim for damages resulting from Plaintiff's breach of a covenant not to sue. The Court ordered Defendants to submit a statement of their attorneys' fees for the Court's review.
The Court found in the January 23, 2015 Opinion that Defendants' damages are their attorneys' fees incurred in bringing their counterclaim against Plaintiff. After the submission of the itemized statement of attorneys' fees, the Court entered

judgment without the inclusion of an attorney fee award. Defendants now ask the Court to amend the Judgment to include the award.

Although Plaintiff has filed a pleading entitled "Reply in Opposition to Defendants' Motion to Alter Judgment," the document is in effect a re-argument of Plaintiff's opposition to the entry of summary judgment in Defendants' favor.

Plaintiff does not dispute the amount sought or the reasonableness of the submitted billing rates. The Court has previously articulated its reasoning for granting Defendants' Motion for Summary Judgment and will not reiterate that rationale here. Plaintiff has presented nothing new to establish that he is entitled to reconsideration of the ruling.

The Court therefore must determine what the amount of an attorneys' fee award should be. To determine reasonable attorneys' fees, "the most useful starting point is ... the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Id. at 433. This calculation is referred to as the "lodestar approach." See, e.g., Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 552 (2010).

There is a strong presumption that the lodestar calculation represents a reasonable fee award. City of Burlington v. Dague, 505 U.S. 557, 562 (1992).

The Court must determine a reasonable hourly rate. "[D]etermining an appropriate 'market rate' for the services of a lawyer is inherently difficult." Blum, 465 U.S. at 495, fn. 11. "Where an attorney requesting fees has well-defined billing rates, those rates can be used to help calculate a reasonable rate

for a fee award." McDonald v. Armontrout, 860 F.2d 1456, 1459 (8th Cir. 1988).

Defendants have submitted a detailed billing which identifies the attorney performing the task, the amount of time expended, multiplied by the hourly rates for each attorney, and the legal task performed. While it appears to the Court, based on each attorney's experience, it also appears from this billing that several attorneys performed some of the same tasks, for example, analysis of certain pleadings and strategy. The Court is of the opinion that double or triple billing for conferences between attorney and analyzing strategy by several attorneys exceeds the notion of "reasonable." The Court will therefore reduce the fee request submitted by defense counsel by 15%. Counsel requests a total award of $92,349.10. This amount reduced by 15% leaves a reasonable fee of $78,496.74.

Conclusion

IT IS HEREBY ORDERED that Defendants' Motion to Alter or Amend Judgment, [Doc. No. 143], is granted.

IT IS FURTHER ORDERED that Defendants are awarded $78,496.74 in attorneys' fees as damages resulting from the need to file their counterclaim.

An Amended Judgment will be entered this same date. Dated this 22nd day of June 2017. /s/ Henry Edward Autrey, United States District Judge.

E.- Doc.# 242 - Order denying Rehearing

United States Court of Appeals for the Eighth Circuit, No: 23-1684

Larry Rice, Appellant v.

Interfood, Inc., et al., Appellees

Appeal from U.S. District Court for the Eastern District of Missouri – St. Louis (4:13-cv-01171-HEA)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 7, 2023

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

F.- Doc.# 233-4 - Order denying Rice rehearing.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Case No. 4:13CV1171 HEA

Larry Rice, Plaintiff vs.

Interfood, Inc., et al., Defendants.

Docket Text Order. Re: 223 Motion to Amend/ Alter Judgment Doc # 222,215, 214 by Plaintiff Larry Rice; and

Re:231 Memorandum in support of document 223 and 226 and Motion to amend or alter Order/Judgment 228 and 229 by Plaintiff Larry Rice; Ordered Denied. Signed by District Judge Henry Edward Autrey on 3/7/2023. (JEB)

G.- Doc.# 1 - Original Complaint, Sept. 16, 2013 ..

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Case No. 4:13-CV-1171-HEA

LARRY RICE, Plaintiff v.

INTERFOOD, INC. and its DIRECTORS:

Jason Metcalf, Dirk Neerhoff, Nick Sharp, and F.C.G.M. (Frank) van Stipdonk, Defendants.
JURY TRIAL DEMANDED

CIVIL COMPLAINT - DIVERSITY

Plaintiff Larry Rice for his complaint against Interfood, Inc. and its Directors states:

The Parties

1. Defendant Interfood, Inc. (hereinafter "Interfood") is and at all times pertinent to the issues herein was a US corporation authorized to do business in the State of Massachusetts, and is currently registered in Florida as a Foreign Profit Corporation under the name Interfood North America, Inc. with a Cross Reference Name of Interfood, Inc.

2.Defendant Interfood was incorporated in Delaware in September 2006.

3.Defendant Interfood's incorporator was Steven E. Pozaric.

4.Defendant Interfood is a wholly owned subsidiary of Interfood Holding B.V. (hereinafter "Holding")

5. Holding is and at all times pertinent to the issues herein, was a foreign business entity formed and existing under the laws of the Netherlands.

6.Holding is the sole owner and sole Director of Tepco, B.V. (hereinafter "Tepco")

7.Tepco is and at all times pertinent to the issues herein, was a foreign business entity formed and existing under the laws of the Netherlands.

8. At all times pertinent to this case Tepco and Rice were shareholders in Waltepco Holding Company (hereinafter Waltepco), an Indiana corporation which

owns 100% of an Indiana Company formed in 1994 named Interfood, Inc. (hereinafter "Interfood-IN").

9.For years Tepco claimed to own as much as 50.77% of Waltepco but never produced stock certificates to support that claim. Through knowledge and belief Rice and Tepco owned Waltepco 50/50.

10.All other defendants are or were directors of Interfood.

11. Neerhoff and van Stipdonk are also Directors of Holding and represented themselves as directors of Waltepco and of Interfood-IN as well.

12.Defendant Jason Medcalf is the President of Interfood.

13.Rice is and at all times pertinent to the issues herein, was a resident of the State of Missouri, residing in St. Louis County, Missouri, and a Director and Officer of Waltepco and Interfood-IN.

The Business of the Parties

14.Since 1994, Interfood-IN has been in the business of the distribution, marketing, sourcing, and sale of milk, milk powders, milk protein concentrates, anhydrous milk fat and blends, buttermilk, butter, cheese, lactose, whey powders, whey protein concentrates, whey protein isolates, casein, caseinate and other similar dairy goods, products and ingredients ("Dairy Goods"). Since that time Interfood-IN has provided a number of services, including but not limited to acting as a broker of Dairy Goods, acting as a trader of Dairy Goods, purchasing Dairy Goods, and entering into contracts for the purchase of Dairy Goods from suppliers and then sells those Dairy Goods at a profit (the "Dairy Business").

15.Interfood is also engaged in the Dairy Business.

16.Holding directly and indirectly through subsidiaries such as Tepco owns a number of companies similar to Interfood around the world, all of which together are referred to as the Interfood "Group".

Exclusivity Agreement

17.Tepco and Rice entered into a "Shareholders Agreement" [see **Attachment "A"** hereto] dated June 1, 2003 which requires anyone in the "Group" who wishes to buy and/or sell something in the US or Canada, or to buy and/or sell US or Canadian product anywhere, to do so through Interfood-IN.

18.As the Shareholders Agreement gives Interfood-IN exclusive rights for the entire Group, and since the largest trading company in the Group is Interfood BV, which is owned by Holding directly, i.e. not through Tepco, and paragraph 27 of the Agreement states that the parties have "all the authority necessary to carry out the agreements", the contract was signed by van Stipdonk representing Tepco and by Jack Engels representing Holding.

19.Since Holding is Tepco's only shareholder and only Director, and since Holding's directors can bind the company only when two of them sign, both van Stipdonk and Engels' signatures were necessary to make the contract legally binding on Holding and its subsidiaries.

20..The Shareholders Agreement paragraph 3. reads as follows:

Distribution, Marketing, Sourcing, and Selling. The Shareholders agree that Interfood, Inc. shall have, and from this moment on does have, the

exclusive right to distribute, market, source, and sell goods within the United States and Canada, including to companies within the United States and Canada, notwithstanding that the goods sold are or may be intended for use by such company or an affiliate or subsidiary thereof outside of the United States or Canada.

21.The Shareholders Agreement was prepared by the Dutch and it was understood by them and by Rice to give Interfood Inc. the exclusive right to buy and sell for the Group a) in the US and Canada, b) to US and Canadian companies no matter where they might be located and c) US sourced product no matter where it was located...

22.This understanding was expressed, discussed and agreed at several Group Board meetings.

23.Termination of the agreement requires the affirmative vote of 85% of the shares per paragraph 15 of the agreement, and there is also a "Deadlock" provision in paragraph 5 should one shareholder feel strongly about something and not be able to successfully negotiate for its approval.

24.In early 2004 Rice became aware of breaches of this exclusivity agreement and tried to resolve them with van Stipdonk and Neerhoff.

25.Rice talked to van Stipdonk about the territory violations at least quarterly, and always received assurances that the violations would be stopped, but along with those assurances there was almost always an attempt by van Stipdonk to justify exceptions.

26.On Dec 15 '04 van Stipdonk emailed Rice that "All other business accounts (other than Gay Lea, Parmalat, GVK and Agropur) will be transferred to you." "After our discussions last week we

immediately spoke to Brandon, Quique, Jason etc. (managing directors of the Group businesses in Australia, Mexico and Latin America respectively) to make the position of Inc. clear for the USA and Canada markets, as well as pushing them for support." Attachment B.

27.On Jan 26 '06 Rice wrote to Dirk Neerhoff (the Group CFO) quoting an agreement reached by all the Group companies: "the US and Canada are to be controlled by Inc. with one exception granted (Gay Lea for the UK office)... NO exception was made for anything else... buying or selling from or to anyone else in the US or Canada" Attachment C

LAW SUITS

28.In August 2006 the Interfood-IN board removed van Stipdonk as a Director leaving Rice and Husmann as the entire board which then filed suit in Franklin county MO in March '06 to stop the violations.

29.Starting on August 22, 2006 van Stipdonk, pretending to represent Tepco wrote letters stating that Tepco was removing Rice and Husmann from the Board and replacing them with van Stipdonk and other foreign Group employees. Attachment D: Alleged Tepco resolution pretending to remove the Board of Waltepco Holding; Attachment E: Van Stipdonk August 22, 2006 letter to Bank of Sullivan advising that Rice and Husmann will be removed from the Board; Attachment F: Van Stipdonk August 24, 2006 letter to Bank of Sullivan regarding Interfood-IN's bank account; and email from Rice to van Stipdonk about resulting bounced checks; Attachment G: Alleged September 1, 2006 Interfood-

IN Board resolutions signed by Neerhoff and van Stipdonk; Attachment H: Neerhoff September 5, 2006 letter signed as if he represented Interfood-IN; Attachment I: Neerhoff September 5, 2006 letter signed as if he represented Waltepco Holding; Attachment J: Neerhoff November 9, 2006 letter on Tepco letterhead giving instructions about employment at Interfood-IN; Attachment K: December 15, 2006 letter from Neerhoff on Interfood Holding letterhead, signed as "CFO Interfood Group" regarding Interfood-IN activities; Attachment L: Alleged Interfood-IN Board Resolutions dated April 6, 2007 signed by Neerhoff and van Stipdonk.

30. On September 5, 2006 Van Stipdonk and Neerhoff had a new company with the old "Interfood, Inc." name incorporated in Delaware so that they could run the business developed by Interfood-IN through the new company without telling customers and suppliers that this was a new company not associated with previous management, thus capitalizing on the goodwill developed by Interfood-IN.

31. On September 26, 2006 van Stipdonk and Neerhoff paid Mr. Husmann, Interfood-IN's President and Mr. Rice's business partner, $120,000- to leave Interfood-IN and to start a similar company of his own (DF Ingredients, Inc.)

32. In March 2007 van Stipdonk and Neerhoff had their lawyer, claiming to represent Interfood-IN, file suit against Rice and Husmann in Franklin County Missouri, Cause # 07AB-CC00086.

33. On January 14, 2008 Judge Forder issued an order/judgment in that case [Cause # 07AB-CC00086] stating that "The parties must adhere to

the strict provisions of the [shareholders] agreement." and found that whoever filed that case against Rice and Husmann did not in fact represent the Plaintiff.

COUNT I—BREACH OF FIDUCIARY DUTY AGAINST NEERHOFF and van STIPDONK

34. After forming "Interfood, Inc." in Delaware, Neerhoff and van Stipdonk focused their efforts on establishing the business of that new company, which was a competitor of Interfood-IN in the dairy business, and diverted Interfood-IN's opportunities to Interfood, Inc. of Delaware in breach of their fiduciary duties as Directors of Interfood-IN, which they claimed to be.

35. Van Stipdonk as a signer of the shareholder agreement and a self-professed representative of Tepco, owed Rice and Interfood-IN a fiduciary duty and a duty of loyalty not to act against their best interests as did Neerhoff as an Officer of Tepco, Director of Interfood Holding and the "CFO Interfood Group" which he claimed to be.

36. For the purpose of stealing Interfood-IN's business and running it through Interfood, Inc., Delaware in order to take the profit away from Rice, van Stipdonk purposely and maliciously misrepresented himself to Banks, courts, and Interfood-IN suppliers, employees and customers as a person who could bind and commit Tepco on his signature alone, knowing full well that he could only act if there had been binding decisions on Holding's board, and then only in conjunction with other board members.

COUNT II - Breach of contract:

37.Interfood has claimed damages of $3,276,000- against one of its US customers for allegedly canceling a contract for one year, after buying from Interfood for the previous two years, and in doing so has effectively admitted to breaching the exclusivity agreement with Rice; and has fixed the value of that breach at $3,276,000- per year. **Attachment M**

38.Furthermore, by allowing their attorney to file suit in Franklin County for matters involving in excess of $150,000- without shareholder approval, and pretending to represent Interfood-IN, van Stipdonk and Neerhoff breached point 4 of the contract which reads:

"The prior approval of the owners of seventy percent (70%) of the Stock is required for all Company transactions outside the normal course of business, including:

C. Instituting, compromising, or settling any legal action or proceeding involving an amount in excess of One Hundred Fifty Thousand and no/100 Dollars ($150,000-).

COUNT III—CONSPIRACY AGAINST ALL DEFENDANTS

39.Starting in at least 2009 Defendants conspired to do business in Dairy Goods in the US and Canada in violation of the Group's agreement with Rice.

Damages.

40. Interfood has established the damages at $3,276,000.00 per year with the sales to one customer to whom they sold for two years, so the minimum damages for those breaches come to $6.5 million.

41..Additional damages will be determined based on other breaches Interfood is obligated to reveal in the discovery stage of this suit.

42..Damages for filing the claim in Franklin County without shareholder approval are in excess of $2 million dollars and are still accumulating.

Plaintiff petitions the court:

43....Based on all of the above incorporated herein as if repeated word for word, plaintiff petitions the court to:

a) Issue an Injunction against defendants, their parent company and all related companies to immediately cease and desist from activities in violation of the agreement with Rice; and

b) Compensate Mr. Rice accordingly for damages, costs, expenses, interest, and punitive damages as the jury and court might determine are fair and reasonable.

Respectfully submitted,

/s/ Larry Rice, pro se,
127 Elm Street, suite 201
Washington, MO 63090
LarryatDFIngredients.com
636-583-0802 ext 106
September 16, 2013

H.- Doc.# 8, 9 – Defendants' Motion to Dismiss .....
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION
Case No. 4:13-CV-1171-HEA
LARRY RICE, Plaintiff vs.
INTERFOOD, INC., et al., Defendants.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants INTERFOOD, INC., F.C.G.M. VAN STIPDONK , DIRK NEERHOFF, JASON MEDCALF, and NICK SHARP (collectively "Defendants"), by and through counsel, hereby move this Court to dismiss Plaintiff LARRY RICE's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). In support, Defendants state that Count I of Plaintiff's complaint is barred by the applicable statute of limitations, Count II of Plaintiffs complaint improperly seeks contractual relief against individuals who were not parties to the contract, and Count III of Plaintiffs complaint purports to allege a civil conspiracy without a viable underlying substantive claim. Furthermore, any damage resulting from Defendants' alleged conduct in the complaint was not sustained by Mr. Rice, but rather by a corporation of which he was not even a shareholder. For these reasons, Plaintiffs complaint fails to state a claim for which relief can be granted.

Defendants incorporate by reference their memorandum in support of their motion to dismiss for failure to state a claim, which is being filed contemporaneously herewith.

WHEREFORE, Defendants respectfully request that this Court enter an Order dismissing the

complaint with prejudice and grant such other and further relief as this Court deems just and proper.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants INTERFOOD, INC. ("Interfood-Delaware"), F.C.G.M. VAN STIPDONK ("van Stipdonk"), DIRK NEERHOFF ("Neerhoff'), JASON MEDCALF ("Medcalf'), and NICK SHARP ("Sharp") (collectively "Defendants"), for their Memorandum in Support of Defendants' Motion to Dismiss for Failure to State a Claim, state as follows.

Introduction and Background

On its face, the complaint fails to state a claim upon which relief may be granted. Count I is barred by the applicable statute of limitations. Count II seeks contractual relief against individuals who were not parties to the contract. Count III alleges a civil conspiracy even though there is no viable underlying substantive claim. Finally, any damage resulting from Defendants' conduct as alleged in the complaint was not sustained by Mr. Rice, but rather by a corporation of which he was not even a shareholder. Accordingly, Mr. Rice's complaint should be dismissed.

It should be noted that this action is the latest chapter of more than six years of harassing and expensive litigation brought on by Mr. Rice. [1]

---

[1] Defendants believe this case may be disposed of pursuant to Federal Rule of Civil Procedure 12(6)(6) due to legal insufficiencies of the complaint. In the event that any of Mr.

The Missouri Court of Appeals has heard and decided three separate appeals arising of out the same operative facts alleged in the instant complaint. Those appeals arose out of an action filed in 2007 in the Circuit Court of Franklin County, Missouri, in which the court found that Mr. Rice was validly removed as a corporate director of Waltepco Holding Company (see Complaint 8). That judgment was affirmed on appeal. The parties to that action subsequently participated in court-ordered mediation and, ultimately, entered into a settlement agreement, which Mr. Rice subsequently repudiated. After the trial court entered a judgment enforcing that settlement agreement, Mr. Rice appealed and the judgment was affirmed. Upon remand, Mr. Rice refused to abide by the terms of the settlement agreement and was found in civil contempt of the trial court's judgment enforcing the settlement agreement. The Missouri Court of Appeals again affirmed the trial court's contempt judgment.

Now, Mr. Rice has filed a new action, re-alleging the same operative facts that were the basis of these previous proceedings. Fundamentally, those actions—and this one—concern a shareholder dispute involving several affiliated companies engaged in the business of brokering dairy goods. Mr. Rice continues to assert that Defendants violated what he claims is Interfood, Inc.'s (Indiana)

Rice's claims survive this motion, Defendants will be filing other motions seeking dismissal on the grounds that this action is completely precluded by the rulings in, and final resolution by settlement of, the prior litigation.

("Interfood-IN") [2] exclusive right, as between the shareholders of its parent corporation, to distribute, market, source, and sell certain goods within the United States and Canada. Notwithstanding the other procedural and substantive defects in his claim, Mr. Rice's complaint plainly fails to state a claim upon which relief may be granted.

Argument

I. THIS COURT SHOULD DISMISS COUNT I BECAUSE MR. RICE'S BREACH OF FIDUCIARY DUTY CLAIM IS TIME-BARRED.

A federal district court sitting in diversity jurisdiction must apply the law of the forum state when ruling on a limitations issue. Rademeyer v. Farris, 284 F.3d 833, 836 (8th Cir. 2002). In Missouri, breach of fiduciary duty claims are governed by the five-year statute of limitations period set forth in § 516.120(4) RSMo. Dempsey v. Johnston, 299 S.W.3d 704, 706 n.3 (Mo. App. 2009). The pertinent statute provides as follows:

> Within five years:
>
> *
>
> (4) An action for taking, detaining or injuring any goods or chattels, including actions for the recovery of specific personal property, or for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated.

---

[2] Mr. Rice was a corporate director and officer of Interfood-IN, and a shareholder of its parent corporation, Waltepco Holding Company. Complaint TT 8, 13. Mr. Rice, however, is no longer a director or officer of Interfood-IN or a shareholder of Waltepco Holding Company.

§ 516.120(4) RSMo.; *Klemme v. Best*, 941 S.W.2d 493, 497 (Mo. bane 1997) (affirming grant of defendants' motion to dismiss breach of fiduciary claims as time barred under § 516.120(4)).

Under Missouri law, a limitations period commences when the damage is "sustained and objectively capable of ascertainment." § 516.100 RSMo. The test for determining when damages are "capable of ascertainment" is an objective one ....."the statute of limitations begins to run when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury." Powel v. Chaminade Coll. Preparatory, Inc., 197 S.W.3d 576, 582 (Mo. bane 2006).

According to the allegations in Mr. Rice's complaint, Neerhoff and van Stipdonk breached their fiduciary duties as early as 2004. Complaint ¶ 24. Additionally, Mr. Rice alleges that Neerhoff and van Stipdonk formed Interfood-Delaware on September 5, 2006, to compete with Interfood-IN in the dairy business and divert the latter's opportunities to the former.

Complaint ¶¶ 30, 34. Accepting these allegations as true, a reasonably prudent person in Mr. Rice's shoes would have been put on notice as early as 2004. At the latest, Mr. Rice's damages were objectively capable of ascertainment on September 5, 2006, and the five-year statute of limitations governing his claim for breach of fiduciary duty ran on September 5, 2011. Mr. Rice filed this action on June 19, 2013, almost two years beyond this date. Therefore, Count I is plainly barred by the statute of limitations and must be dismissed with prejudice.

II. THIS COURT SHOULD DISMISS COUNT II BECAUSE NEITHER DEFENDANT NEERHOFF NOR DEFENDANT VAN STIPDONK WERE PARTIES TO THE CONTRACT THAT WAS ALLEGEDLY BREACHED.

Mr. Rice's breach of contract claim is not a model of clarity. Mr. Rice appears to allege that Neerhoff and van Stipdonk breached two provisions of the June 1, 2003 Shareholders Agreement, specifically paragraph 3 (the so-called exclusivity agreement) and paragraph 4 (requiring shareholder approval to initiate or settle certain legal actions). Complaint ¶¶ 37-38. These claims fail as a matter of law because Neerhoff and van Stipdonk were not parties to the Shareholders Agreement.

"[Materials attached to the complaint as exhibits may be considered in construing the sufficiency of the complaint." *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). Mr. Rice has attached the Shareholders Agreement as Exhibit A to his complaint. Exhibit A shows that the Shareholders Agreement is a contract between Mr. Rice and Tepco B.V., the two shareholders of Waltepco Holding Company in mid-2003.

It is fundamental that the defendants in an action for breach of contract must be the parties obligated to perform under the contract. See, e.g., Nachbar v. Duncan, 114 S.W.3d 421. 424 (Mo. App. 2003). Neither Neerhoff nor van Stipdonk were parties to the June 1, 2003 Shareholders Agreement, and thus, neither had any obligations under that contract. Accordingly, they are not proper defendants in any action for breach of the Shareholders Agreement. As a matter of law, Count II fails to state a claim.

III. THIS COURT SHOULD DISMISS COUNT III BECAUSE A CIVIL CONSPIRACY CLAIM CANNOT STAND WITHOUT A VIABLE UNDERLYING SUBSTANTIVE CLAIM.

Count III of Mr. Rice's complaint contains a single factual allegation: -Starting in at least 2009 Defendants conspired to do business in Dairy Goods in the US [sic] and Canada in violation of the Group's agreement with Rice." Complaint ¶ 39. The complaint does not specify which agreement was violated, although it does define the "Group" as "a number of companies similar to Interfood around the world." Complaint ¶ 16. Mr. Rice did not attach to the complaint any contracts between the Group and himself, nor does the complaint allege any facts showing the existence of such an agreement. However, it appears that the contract to which Mr. Rice is referring, is paragraph 3 of the June 1, 2003 Shareholders Agreement, which he refers to as "the Exclusivity Agreement." As set forth above, the Shareholders Agreement was a contract between Mr. Rice and Tepco B.V., and therefore, only those two parties could "violate" its terms.

"A civil conspiracy is an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful." *Envirotech, Inc. v. Thomas*, 259 S.W.3d 577, 586 (Mo. App. 2008). Although a plaintiff must plead elements showing the fact of conspiracy, civil conspiracy is more properly understood as a theory of joint and several liability than a stand-alone cause of action. Id. at 592 ("Although conspiracy has its own 'elements' that must be proven, it is not a separate and distinct action and is predicated on proof of the underlying wrong.") (emphasis added). Stated

another way, "a conspiracy does not give rise to a civil action unless something is done pursuant to which, absent the conspiracy, would create a right of action against one of the conspirators." *Id.* at 586. Accordingly, a plaintiff must plead facts of both the conspiracy and the underlying wrong, and "if the underlying wrongful act alleged as part of a civil conspiracy fails to state a cause of action, the civil conspiracy claim fails as well." *Id.*

To the extent that Mr. Rice has alleged that Defendants conspired to breach obligations to Mr. Rice under paragraph 3 of the Shareholders Agreement, he must also state a claim for the underlying breach of those obligations. As set forth in Section I, Mr. Rice's breach of fiduciary duty claims are time-barred. And, as set forth in Section II, Mr. Rice's breach of contract claims fail for lack of privity. Because he cannot state a claim against Defendants for any underlying wrongful act, Mr. Rice's civil conspiracy claim fails as a matter of law. See Levi v. Anheuser-Busch Co., Inc., No. 08-cv-00398-RED, 2008 WL 4816668 at *5 (E.D. Mo. Oct. 27, 2008) (granting the defendants' motion to dismiss the plaintiff's civil conspiracy claim after all underlying claims foundational to the conspiracy count were dismissed).

IV. MR. RICE CANNOT DIRECTLY SUE FOR ANY ALLEGED INJURY TO INTERFOOD-IN.

Finally, Defendants observe that the complaint does not allege any conduct by Defendants that directly injured Mr. Rice. Rather, the complaint alleges injury to Interfood-IN. Complaint ¶¶ 21, 24-25, 34-37, 39. Specifically, Mr. Rice alleges that Interfood-IN had an exclusive right to trade in dairy goods by

virtue of the June 1, 2003 Waltepco Holding Company Shareholders Agreement. To the extent that Mr. Rice claims that van Stipdonk and Neerhoff interfered with that right by forming Interfood-Delaware and diverting business away from Interfood-IN, he is asserting that they caused damage to Interfood-IN.

Under Missouri law, a shareholder may not maintain an action for his own benefit to recover corporate funds or property diverted by corporate officers and directors. *Dawson v. Dawson*, 645 S.W.2d 120, 125 (Mo. App. 1982). Because the injury is to the corporation, the right to redress that injury inures to the shareholders collectively—not to the shareholders individually. *Id.* Therefore, any action for a wrong to a corporation must be brought derivatively, on behalf of the corporation. Schick v. Riemer, 263 S.W.2d 51, 54 (Mo. App. 1953).

To the extent that Defendants diverted funds or property from Interfood-IN, the right to redress that injury can only be exercised by that corporation's shareholders, in the collective. Yet, Mr. Rice seeks to maintain this action for his own personal benefit. Indeed, Mr. Rice was not even a shareholder of Interfood-IN; he was a shareholder of its parent corporation, Waltepco Holding Company. Mr. Rice is no longer a shareholder of Waltepco Holding Company. Complaint ¶ 8, 9. Twice removed from the injuries he alleges, Mr. Rice cannot proceed under any of the theories pleaded. For this additional reason, Mr. Rice's complaint fails as a matter of law.

Conclusion

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion to Dismiss

for Failure to State a Claim, dismiss the complaint with prejudice, and grant such other and further relief as this Court deems just and proper.

/s/ Jeffrey L. Schultz and listing three more names
ATTORNEYS FOR DEFENDANTS
August 14, 2013

I.- Doc# 38 - District Court granting Defendants' Motion to Dismiss.....

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION
Case No. 4:13CV1171 HEA
Larry Rice, Plaintiff vs.
Interfood, Inc., et al., Defendants.

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendants' Motion to Dismiss for Failure to State a Claim, [Doc. No. 8] and Defendants' Motion for Sanctions, [Doc. No. 10]. Plaintiff has responded to the motions, and Defendant has filed a reply. Plaintiff filed a "Reply in Opposition to Defendants' Motion to Dismiss." For the reasons set forth below, the Motion to Dismiss is granted; the Motion for Sanctions is denied.

Standard for Motion to Dismiss

When ruling on a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim, the Court must take as true the alleged facts and determine whether they are sufficient to raise more than a speculative right to relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007). The Court does not, however, accept as true any allegation that

is a legal conclusion. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009). The complaint must have "`a short and plain statement of the claim showing that the [plaintiff] is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Twombly, 550 U.S. at 555 (quoting Fed.R.Civ.P. 8(a)(2)) and then Conley v. Gibson, 355 U.S. 41, 47 (1957), abrogated by Twombly, supra); see also Gregory v. Dillard's Inc., 565 F.3d 464, 473 (8th Cir.) (en banc), cert. denied, 130 S.Ct. 628 (2009). While detailed factual allegations are not necessary, a complaint that contains "labels and conclusions," and "a formulaic recitation of the elements of a cause of action" is not sufficient. Twombly, 550 U.S. at 555; accord Iqbal, 129 S.Ct. at 1949. The complaint must set forth "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; accord Iqbal, 129 S.Ct. at 1949; Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 594 (8th Cir. 2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S.Ct. at 1949. If the claims are only conceivable, not plausible, the complaint must be dismissed. Twombly, 550 U.S. at 570; accord *Iqbal*, 129 S.Ct. at 1950. In considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "the complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." Braden, 588 F.3d at 594. The issue in considering such a motion is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of the claim. See Neitzke v. Williams, 490

U.S. 319, 327 (1989). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' "Ashcroft v. Iqbal, --- U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). Thus, "although a complaint need not include detailed factual allegations, 'a plaintiffs obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.' " C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347, 591 F.3d 624, 629-30 (8th Cir.2010) (quoting Twombly, 550 U.S. at 555).

Facts and Background

Defendants move to dismiss this action on the grounds that Count I of Plaintiff's Complaint is barred by the applicable statute of limitations; neither Defendant Neerhoff nor van Stipdonk were parties to the contract allegedly breached in Count II; and Count III, based on an alleged conspiracy fails because there can be no conspiracy if there is no underlaying viable cause of action.

Plaintiffs brought this action against Defendants Interfood, Inc., "and its directors: Jason Medcalf, Dirk Neerhoff, Nick Sharp, and F.C.G.M. (Frank) van Stipdonk, alleging, as relevant for this motion the following:

The Complaint alleges that Interfood, Inc. was incorporated in Delaware in September 2006 by Steven E. Pozaric. Interfood is a wholly owned subsidiary of Interfood Holding B.V. Holding was a foreign business entity formed and existing under

the laws of the Netherlands. Holding is the sole owner and sole Director of Tepco, B.V. Tepco is a foreign business entity formed and existing under the laws of the Netherlands.

Tepco and Plaintiff were shareholders in Waltepco Holding Company, an Indiana corporation which owns 100% of an Indiana corporation formed in 1994 named Interfood, Inc. (Interfood-IN).

Since 1994, Interfood-IN has been in the business of the distribution, marketing, sourcing, and sale of milk, milk powders, milk protein concentrates, anhydrous milk fat and blends, buttermilk, butter, cheese, lactose, whey powders, whey protein concentrates, whey protein isolates, casein, caseinate, and other dairy goods, products, and ingredients. Since that time, Interfood-IN has provided a number of services, including acting as a broker of the dairy goods, acting as a trader of the dairy goods, purchasing the dairy goods, and entering into contracts for the purchase of the dairy goods from suppliers and then sells the dairy goods at a profit.

Interfood is also engaged in the dairy business.

Tepco and Plaintiff entered into a "Shareholders Agreement" dated June 1, 2003, which requires anyone in the "Group" (Holding owned companies similar to Interfood around the world) who wishes to buy and/or sell something in the United States or Canada, or to buy and/or sell U.S. or Canadian products anywhere, to do so through Interfood-IN. The Shareholders Agreement gives Interfood-IN exclusive rights for the entire Group. The contract was signed by van Stipdonk representing Tepco and Jack Engels representing Holding.

After forming "Interfood, Inc." in Delaware, Neerhoff and van Stipdonk focused their efforts on establishing the business of the new company, Interfood Inc. of Delaware, which was a competitor of Interfood-IN in the dairy business, and diverted Interfood-IN's opportunities to Interfood, Inc. of Delaware in breach of their fiduciary duties as Directors of Interfood-IN, which they claimed to be.

Plaintiff alleges that he became aware of this alleged breach in early 2004 and tried to resolve them with van Stipdonk and Neerhoff.

The Complaint further alleges that in August 2006, the Interfood-IN board removed van Stipdonk as a director leaving Rice and Husmann as the entire board of Interfood-IN, which filed suit in Franklin County, Missouri in March 2006 to stop alleged violations of the Shareholders Agreement.

Discussion

Motion to Dismiss

In assessing "plausibility," as required under the Twombly and Iqbal standard, the Eighth Circuit Court of Appeals has explained that courts "consider[ ] only the materials that are 'necessarily embraced by the pleadings and exhibits attached to the complaint.' " Whitney v. Guys, Inc, 700 F.3d 1118, 1128 (8th Cir. 2012) (quoting Mattes v. ABC Plastics, Inc., 323 F.3d 695, 697 n. 4 (8th Cir.2003)). Thus, courts may consider "'materials that are part of the public record or do not contradict the complaint.'" Miller v. Redwood Toxicology Lab., Inc., 688 F.3d 928, 931 (8th Cir.2012) (quoting Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir.1999), and citing *Illig v. Union Elec. Co.*, 652 F.3d 971, 976 (8th Cir.2011)). A more complete list of the matters

outside of the pleadings that the court may consider, without converting a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment, pursuant to Rule 12(d), includes "'matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned.'" Miller, 688 F.3d at 931 n. 3 (quoting 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, Federal Practice and Procedure § 1357 (3d ed.2004)).

Breach of Fiduciary Duties

Plaintiff's breach of fiduciary duty claim is barred by the applicable Missouri statutes of limitations, which is controlling in this diversity case. Zutz v. Case Corp., 422 F.3d 764, 774 (8th Cir.2005). Under Missouri law, there is a five-year statute of limitations for breach of fiduciary duty claims. Mo.Rev.Stat. § 516.120(4). This limitation begins to run when damage is sustained and capable of being discovered and not simply when a plaintiff learns of the injury or wrongful conduct. Klemme v. Best, 941 S.W.2d 493, 497 (Mo.1997). Creative Marketing Associates, Inc. v. AT & T, 476 F.3d 536 (8th Cir. 2007). The Complaint alleges that Plaintiff learned of the alleged breach in "early 2004" and began taking action to stop the alleged breach in 2006. At the very latest (although more accurately in 2004), Plaintiff's suit for breach of any fiduciary duty should have been brought within 5 years from 2006, i.e., in 2011. Because this action was filed two years later in 2013, the claim is barred.

Plaintiff's belated argument that this is actually a claim "arising out of contract" which therefore carries a ten year statute of limitation time period fails. The Complaint alleges a breach of fiduciary duty, a separate and distinct cause of action. Merely claiming it is a different cause of action does not transform the alleged claim into another viable claim. Wishing does not make it so.

Parties to the contract allegedly breached

Defendants argue that because they were not parties to the Shareholders Agreement, the breach of contract claim of Count II fails. The Court agrees. The Shareholders Agreement, which is attached as an exhibit to Plaintiff's Complaint establishes that the Contract is between Plaintiff and Tepco, B.V., the two shareholders of Waltepco Holding Company in mid-2003. Defendants in an action on a contract must be the parties obligated to perform under the Contract. *Nachbar v. Duncan*, 114 S.W.3d 421, 242 (Mo.App. 2003); *Calender v. City of Pine Lawn*, 2008 WL 276531 (E.D. Mo. 2008). Neither Defendant Neerhoff nor van Stipdonk were parties to the June 1, 2003 Shareholders Agreement.

Although Plaintiff now argues, again belatedly, that these defendants are sued as corporate representatives, such claim does not cure the Complaint's deficiencies. It is what it says, and Plaintiff's argument notwithstanding, the Complaint fails to state a cause of action against Defendants for breach of contract.

Conspiracy

Defendants are correct. Failure to state an underlying cause of action is fatal to Plaintiff's conspiracy Count. "If the underlying wrongful act

alleged as part of a civil conspiracy fails to state a cause of action, the civil conspiracy claim fails as well." *Envirotech, Inc. v. Thomas*, 259 S.W.3d 577, 586 (Mo.App. 2008); *Lacy v. Gray*, 2013 WL 3766567 (E.D. Mo. 2013). Count III must therefore be dismissed.

Considering the above analysis, Plaintiff's Complaint fails to set forth sufficient allegations to state claims against Defendants. The Court, therefore, concludes that the Motion to Dismiss is well taken.

Motion for Sanctions

Defendants seek sanctions against Plaintiff for his filing this action when Defendants claim Plaintiff's Complaint is not warranted by existing law and are presented for the improper purpose of harassing Defendants and needlessly increasing their costs of litigation. The Court is unpersuaded. A review of the pleadings establish that Plaintiff, a pro se litigant has a firm and genuine belief that Defendants committed the alleged wrongs contained in the Complaint. Although Plaintiff's Complaint cannot withstand Defendants' challenges, such fact does not also establish Defendants' ulterior motive theory. Based upon the pleadings before the Court, the Court cannot conclude that Plaintiff has run awry of Rule 11. The Motion for Sanctions will be denied.

Conclusion

Based upon the foregoing analysis, Plaintiff's Complaint fails to state a cause of action and must be dismissed.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss for Failure to State a Claim, [Doc. 8], is **GRANTED**.

IT IS FURTHER ORDERED that Defendants' Motion for Sanctions, [Doc. No. 10], is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Counterclaim in this matter remains for further proceedings.

Dated this 10th day of March 2014.
Signed
Henry Edward Autrey
United States District Judge

J.- Doc# 65 – Rice's Opposition to Summary Judgment on Counterclaim

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION
Case No. 4:13-CV-1171-HEA
LARRY RICE, Plaintiff v.
INTERFOOD, INC. and its DIRECTORS:
Jason Metcalf, Dirk Neerhoff, Nick Sharp, and F.C.G.M. (Frank) van Stipdonk, Defendants.

RICE's Reply in
Opposition to Motion for Summary Judgment

Comes now Plaintiff Larry Rice and in reply to defendants' Docs 61-63, Motion for Summary Judgment, states as follows:

Defendants' Motion
is based on a Lie:
Interfood-IN did NOT file the "State Lawsuit"

1. Defendants' Motion for Summary Judgment, Doc #61, "incorporate(s) by reference" Doc #63, which states [p2] that Interfood-IN initiated a lawsuit against Rice "in the Franklin County Circuit Court, Cause No. 07AB-CC00086 (the "State Lawsuit")." The filing attorney here, Jeffrey L. Schultz, admitted in open court in the "State Lawsuit", on the record, that Interfood-IN did not in fact file the suit, so his statement here is a lie plain and simple.

2. Rice's Reply [Doc # 21, ¶ 22,] to Defendants' Counterclaim here, which Rice incorporates by reference as though fully set forth herein, points out that this same lie was filed in Federal Court in Case No. 4:08-CV-00085 MLM just days after Judge Forder ruled in the State Lawsuit that Interfood-IN had not filed that suit... since there were no consequences to lying to the District Court at that time, these lawyers apparently feel confident in lying again here.

Everyone in the State Lawsuit agreed,
Including the Court,
that
Interfood did not file that suit.

3. In the State Lawsuit, on the record, in court, on July 13, 2009 Judge Lynch said that "if the Dutch group was in control of Interfood at the time this was filed in 2006, then clearly it was Interfood that brought it and had standing to do it, but if Mr. Rice was in control, then whoever this is that brought something purporting to be Interfood did not have authority to bring that lawsuit... Judge Forder said we've got to decide who was in control and then she made a determination that Mr. Rice was in control of Interfood [IN] at the time this suit was filed..." Transcript Page 51 lines 4-16, Attachment T, Doc # 32-2.

4. In response, Mr. Schultz said "I agree with your analysis, Your Honor..." ***Id*** lines 17-18.

5. Rice incorporates Doc # 32 and all of its attachments herein by reference as though fully set forth herein, including the Certified Attachment S containing the sworn affidavit of Michael Husmann and Larry Rice as undisputed officers and directors of Interfood-IN, that "Interfood did not authorize any attorney to appear for it to file [the State Lawsuit] or discovery documents or any claims whatsoever..." "None of these companies [Waltepco Holding, Interfood, Waltepco Realestate] had employed the filing attorney to institute this suit for Plaintiff."

This case is only complicated because Defendants' attorneys are rewarded in their lies.

6. Doc # 63, page 3 states that "According to the Complaint, Neerhoff was a director of Interfood-IN and an officer of Tepco. Complaint [Doc. # 1], ¶¶ 34-

35." The Complaint at ¶¶ 34-35 says that Neerhoff "Claimed to be" a director of Interfood-IN and an officer of Tepco, which is a far cry from stating that he actually was either of those.

TEPCO & Interfood Holding have NO employees, and All "authorized Tepco Documents" Require the signature of Two Directors of Interfood Holding.

7..Tepco's only shareholder is Interfood Holding, B.V.

8. Tepco's only Director is Interfood Holding, B.V.

9. Tepco has no employees. See Annual report given in discovery by Tepco with their Bates Stamp: TBV08897, ***Attachment 1***, p3 of 3, bottom of page.

10. Interfood Holding has no employees and four (4) directors. See Annual report given in discovery by van Stipdonk with Bates Stamp: TBV10504, ***Attachment 2***, p5 of 7.

11. Interfood Holding directors can not act on their own but rather require two signatures to make a document legally binding. Dirk Neerhoff, one of the Defendants here, testified for Tepco B.V. in May, 2009 that two of the Interfood Holding directors signed the shareholders agreement because ***two signatures are required*** to make the document an ***authorized, official*** document. The attorney representing Rice at the time asked Neerhoff, ***Attachment 3***:

"Q. who asked you to testify on behalf of Tepco, B.V.?

A. [Neerhoff]: Frank van Stipdonk and Jack Engles who are directors of Interfood Holding who is the director of Tepco BV asked me to do that. [Deposition p11 lines 9-11]

Q. What was the reason for having two signatures on behalf of Tepco BV on this document [the shareholders agreement]?

A. ... in the statutory books it says that two directors should sign to make an authorized document.

Q. Is it fair to say that a document signed on behalf of Tepco BV is not an authorized or official document unless signed by two of the board of directors?

A. As I mentioned it needs two signatures.

Q. And that's how Tepco BV has operated as long as you've been involved with Tepco?

A. As far as I'm aware of, yes. [p50 line23]

Q. To the best of your knowledge as a director of Tepco as of November 1, 2007 did Tepco still require the signature of two of the directors in order to engage in corporate action?

A. I think so, yes." [p433 line 22]

Any claim that the alleged November 1, 2007 Tepco action somehow breathed life into the void state lawsuit is absurd because 1) that document did not have two signatures so it was not an "authorized document"; 2) although the trial court observed that the notice period on that document seemed to be adequate, it did not hold a hearing on the validity of the document because it was not relevant to the determination of who was in control when the case was filed a year earlier; and 3) a void judgment is void for ever.

As of 2005
the Dutch had NO controlling interest in Waltepco or in Interfood-IN

12. Interfood Holding BV's 2006 annual report, signed by van Stipdonk and Neerhoff on September 14, 2007, [***Attachment 2***], states that "the consolidated annual accounts comprise the financial records of Interfood Holding B.V. and its group companies... ***Group companies*** are participating interests in which Interfood Holding B.V. has a majority stake, **or** in which it has a controlling interest in any other way." [Att 2, p3 of 7]

13. The annual report includes a list of companies of which Interfood Holding holds a controlling interest, albeit indirectly, through Tepco and Twedpa [Att 2, p4 of 7].

14. Waltepco and Interfood-IN are not consolidated because the "controlling interest... ceased to exist" ***id***, "*" on p 4 of 7.

15. That list of companies, consolidated and not, issued in September 2007, does not include Defendant Interfood-DE which was incorporated one

year earlier... even though the "disclosure of corporate interest certificate" filed in this case as Doc # 57 says that Interfood-DE is 100% owned by Tepco.

Defendants Admit their Breach of Contract

16. When asked what Tepco's intent was when signing the shareholder agreement, defendant Neerhoff testified for Tepco under oath that other members of the Group were not to sell in the US, especially without Interfood-IN's knowledge:
Q. Was it the intention of Tepco when it signed the shareholder agreement with Rice to allow other members of the Interfood Group to sell dairy product directly to Canadian and U.S. customers?

A. [Neerhoff]: No. Not—Especially not without the knowledge of Interfood, Inc. [IN]. [***Attachment 3***: Deposition p48 lines 3-4]

17. Van Stipdonk testified that the exclusivity clause in the shareholder agreement prohibited everyone in the Group except for Interfood-IN from selling US product to US customers [***Attachment 4***: June 17, 2009 Deposition]:

Q. Mr. van Stipdonk, I'd like to show you what's previously been marked as Exhibit D, it's the Shareholders Agreement. Are you familiar with this document, sir?

A. [Van Stipdonk] Yes, as far as I can tell from it, it's the same document.

Q. And you understand that to be the agreement between Tepco BV and Larry Rice concerning Waltepko Holding Company and the other matters referenced in the document?

A. Yes. [Attachment 4, Deposition page 57, line 12]

Q. Now is that your signature there at the bottom of the last page?

A. Yes. [Id. p 62, L 15]

Q. And to the right there's two additional signatures, Mr. Engels and I'm not sure what the other one is looking at it now.

A. That's Mr. Engels, this one and the name is on top.

Q. So that's his written name and his signature?

A. Correct. [Id. p 62, L 23]

Q. Let's look at the first page, the Paragraph 3 regarding shareholder covenants and with the subparagraph in there of distribution, marketing, sourcing and selling.

A. Yep. [Id. p 64, L 24]

Q. So does this mean that Interfood, Inc. [IN] has the exclusive right within the group to source goods for the United States and Canada?

A. In order to sell them in the U.S. and Canada, yes. [Id. p 65, L 23-24] ... What it means is buy/sell in the U.S. market U.S. product, buy U.S./Canadian products, sell it to the U.S./Canadian market. That does not conflict with how we operate as a group. So therefore this was absolutely acceptable to us. [Id. p 68, L 12-17]

Q. -- if, to use an example, if Interfood Australia came in to the U.S., sourced dairy product in the U.S.?

A. They could not. [Id. p 69, L 2]

Q. Marketed to U.S. customers and sold it to U.S. customers, would that be a violation of this agreement?

A. Yes. [Id. p 69, L 6]

Q. And similarly with respect to any other member of the Interfood Group, they came into the U.S., sourced goods in the U.S. which they then sold to U.S. customers, those activities would be a violation of this agreement?

A. That's what that says.

Q. And that's how you understood it when you signed it?

A. Yes. [Id. p 69, L 15]

Q. And that would in fact apply to all of the members of Interfood Group, that limitation on the ability to do intra U.S. products that's being signed here by you on behalf of Tepco is intended to limit the ability of all the members of the group to engaging in that intra U.S. business?

A. Correct. [Id. p 70, L 13]

18. Paragraph 37 of the original Complaint in this case, [Doc # 1, page ID # 7] states that defendant Interfood-DE has "effectively admitted to breaching the exclusivity agreement with Rice". The suit Interfood-DE filed in MA [see Doc # 12-1, verified by defendant Medcalf] stating that Interfood-DE sold US sourced dairy products in the US starting in January 2010... a clear violation of the shareholder agreement as explained by defendants Neerhoff and van Stipdonk above.

Request to file Amended Complaint

19. Because the original complaint mentioned historical events which Defendants used to confuse the Court as to the complaint being filed against Interfood-DE, Rice asked the Court for leave to file an amended complaint:

"Plaintiff respectfully asks that Plaintiff be given leave to amend the complaint within a reasonable time..." [Doc # 12, last sentence, emphasis added]

20. Having heard nothing from the Court on this request, Rice filed Doc # 40 [Civil Complaint – Diversity – 1st Restatement] docketed as "Amended Complaint", which Rice incorporates herein by reference as though fully set forth herein.

21. Rice acknowledges that sometimes, too often in his opinion, form rules over substance, particularly in lower courts, and that undoubtedly form has hurt Rice in this case even though he believes that the law, if not the Court, supports his claims.

WHEREFORE Rice requests that the Court accept Doc # 40 as a properly filed Amended Complaint, or alternatively, grant Rice a reasonable time period in which to file a Complaint [Amended, Restated, new ... whatever 'form' the Court may find acceptable]

The Franklin County Case is Void ab initio

22. Rice incorporates Doc # 60 here by reference as though fully set forth herein [Motion to Declare Cause # 07AB-CC00086 void ab initio].

23. On page 2 of Doc #63 being opposed here, Defendants state that a previous Rice Complaint against van Stipdonk was dismissed in July 2009... obviously that has nothing to do with Rice's claims

here against Interfood-DE for breaching the shareholders agreement in January 2010, but perhaps more to the point, since the "law suit" Defendants refer to is void ab initio for lack of a plaintiff and lack of subject matter jurisdiction, no "order or judgment" from that case, except for the determination of who was in control of the alleged plaintiff [Interfood-IN] when the case was filed, has any validity or relevance. [3]

24. The "settlement agreement" referred to by Defendants was a sham as will be discussed later, but in any case, since it required all parties to drop ongoing legal proceedings in other jurisdictions including other states and federal court, no state court had subject matter jurisdiction to order those actions or to force "compliance" through contempt penalties.

"No state, including Missouri, can grant subject matter jurisdiction to its courts to hear matters that

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[3] The United States Supreme Court has allowed a civil state court judgment to be attacked collaterally where a federal court had exclusive jurisdiction over the area. *See Kalb v. Feuerstein*, 308 U.S. 433 (1940) (holding that where Congress had given exclusive jurisdiction to a federal bankruptcy court, the state court's judgment in that area is subject to collateral attack). *See also* 18A CHARLES ALAN WRIGHT, ARTHUR R.MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE sec. 4428 (2d ed. 2002) ("State judgments may prove somewhat more vulnerable than federal judgments to defeat in subsequent federal litigation. So long as the lack of subject-matter jurisdiction is simply a matter of state law, it is clear that a federal court should accord the res judicata effects dictated by state law. Violation of exclusive federal jurisdiction, however, may leave a state judgment vulnerable to collateral attack.").

federal law places under the "exclusive" jurisdiction of the federal courts. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 n.6 (2009)." MO supreme Court, SC90542, Aug 23, 2010.

Defendants play a SHELL GAME with Settlement Agreement

25. The original settlement agreement was hand-written by Defendants' lawyers, signed by Neerhoff and van Stipdonk and emailed to the person acting as Rice's lawyer at the time... this is an uncontroverted fact made absolutely clear in the State Lawsuit, and Rice requests this Court take judicial notice of that suit which Defendants bring up ad nauseam. A court may take judicial notice of relevant proceedings in other courts. ***Kowalski v. Gagne***, 914 F.2d 299, 305 (1st Cir. 1990).

26. Rice's lawyer found the handwriting difficult to understand, had his assistant type it up, emailed the typed document to Defendants' lawyer, asked him to verify that it was a true and correct typed copy of the signed original, and asked that the typed copy be signed before showing it to Rice.

27. Defendants' lawyer confirmed the accuracy of the typing, had Neerhoff and van Stipdonk sign the typed copy, and emailed it to Rice's lawyer who showed it to Rice... who refused to agree to it.

28. In an absurd and otherwise unbelievable ruling, judge Lynch held that typing the signed-hand-written-agreement, made the typist the author, and the document went from being an offer from the

party who had already signed it, to an offer from the other party who refused to agree to it... right. Although this most likely came from frustration or corruption rather than stupidity, there it was, and the appellate court that gets its jurisdiction from the lower court which had none to bestow, agreed with Lynch who is after all an appellate judge, one of their own. When I showed this to an executive at the Saint Louis Bar Association, the executive said the judges were "cowards", which of course, doesn't change anything.

THE SHELL GAME

29. Defendants filed Doc # 62-3 to show that the appellate court affirmed the Judgment Enforcing Settlement Agreement.

30. The appellate court on March 11, 2011, PageID # 899, quote the Settlement as "6. ... covenants not to sue... based upon any fact that existed **on the date the settlement agreement is executed.**" Emphasis added. That in fact is what the original hand written offer said and what the typed copy said as well, but it is NOT what Rice was forced to sign under protest and under duress of ongoing, illegal, $1,000- daily fines.

31. Defendants state that "even after the Judgment Enforcing Settlement Agreement was affirmed [which would be March 11, 2011], Mr. Rice continued to attempt to avoid his obligations and, as a result, a contempt judgment was entered against him...

Ultimately, Mr. Rice executed... see Exhibit D"
Several points here:

a) ...State law and Federal Law concur that the state court has no subject matter jurisdiction to order anyone to comply with an alleged agreement to dismiss proceedings in Federal Court or to hold someone in contempt for not doing so, see ***Donovan v. City of Dallas***, 377 U.S. 408 (1964); accord, ***General Atomic Co. v. Felter***, 434 U.S. 12 (1977); ***Viehweg v. Mello***, 8 S.W.3d 187, 188-89 (Mo.App. 1999).

b) Defendants say that the settlement agreement was "executed" sometime after March 11, 2011.

c) "Exhibit D" is one of many "Settlement Agreements" Rice was forced to sign under duress, this one signed **Sept 20, 2011**, but... this is ***not*** the "*Agreement*" Lynch and his fellow judges claim Rice authored and *must* sign. This "*Agreement*" [Doc # 62-4] had been modified by ***inserting the words "December 11, 2009"*** so that point 6 now read: "6. ... covenants not to sue... based upon any fact that existed on **December 11, 2009**, the date the settlement agreement **is executed**." Emphasis added. See 30. above.

d) This "Settlement Agreement" illegally imposed by a judge acting outside of his capacity as a judge, is an absurdity as it states that the document was executed in 2009 when it is actually executed in 2011.

32. Whereas typing someone else's work does not make you the author, modifying an alleged offer and submitting it for signature does in fact convert that into an offer from the person modifying the document, and if there had been an agreement before, this was not it, and it is a document that no appellate court has reviewed, contrary to what Defendants here want this Court to swallow.

The Conduct
that forms the basis of Mr. Rice's action.

33. The conduct that forms the basis of Mr. Rice's action is Interfood-DE's sales starting January 2010 as sworn to by Interfood-DE in federal court in Massachusetts [Doc # 12-1]

34. The other defendants are being sued as directors of Interfood-DE.

35. Defendants claim that this **conduct predates** December 11, 2009 and is therefore covered by the [sham] Settlement Agreement imposed by a state court with no jurisdiction over the subject matter.

36. Defendants do not deny, because they can't, because they have already admitted to it under oath, that Interfood-DE breached the shareholder agreement starting in January 2010.

37. Defendants' defense apparently is that Defendants committed similar or perhaps substantially identical offenses against Rice many

times, and that some of those offenses were more than five years ago, and that because there is a five-year statute of limitations, they argue, they are inoculated against similar violations more recently, and presumably in the future.

38. In essence defendants argue that because they raped plaintiff eleven years ago and got away with it, they cannot be prosecuted now for raping plaintiff again four years ago. They are wrong... the statute of limitations starts when the violation is known by the injured party or when the injured party had reason to know of it, here that date is sometime after May 2012, the date the MA case was filed, but in any case, not before the first act was consummated in January 2010.

39. Defendants' argument would necessarily exclude Interfood-DE in any case, as van Stipdonk, Neerhoff, Tepco and Interfood Holding had an obligation to inform Rice of the existence and activities of Interfood-DE in the State Lawsuit, and instead hid Interfood-DE's existence from Rice.

40. Finally, as mentioned before in this suit, Rice has no knowledge of any violations of the shareholders agreement by defendant Interfood-DE prior to the January 2010 sales revealed through the MA suit in 2012 that started this suite, so at least as to the claims against Interfood-DE there is no statute of limitations that bars the claims, and as indicated above, there is sworn agreement by Neerhoff, van Stipdonk, Sharp and Interfood-DE as

to all of the elements of that sale being a breach of the shareholder agreement contract.

CONCLUSION

The State Lawsuit is void ab initio for lack of a plaintiff and of subject matter jurisdiction, and, had that not been the case, would be void regarding rulings on the alleged settlement agreement for lack of jurisdiction as the alleged agreement involved actions required in federal court. Regardless of the State Lawsuit, Rice's complaint against Interfood-DE, based on Interfood-DE's sales of US product in the US starting January 2010, and for sales contracted in 2010 for delivery in 2011 is not barred by a statute of limitations or by a settlement agreement not to sue for facts that existed on December 11, 2009, as Rice has made no claim that Interfood-DE consummated any sale in the US prior to January 2010, or that Interfood-DE has done anything prior to 2010; and there is no evidence that Defendants incurred any expenses that would not have been incurred to defend against the claims brought here against Interfood-DE.

WHEREFOR, plaintiff Rice moves that this Court:
- find the State Lawsuit, Cause No. 07AB-CC00086, void ab initio;

- accept the Amended Complaint [Doc # 40] as pending, or grant Rice leave to file an Amended Complaint based on the Interfood-DE sales from January 2010 forward; and - dismiss defendants'

counterclaim and defendants' motion for summary judgment.

Respectfully submitted,

By: /s/ Larry Rice, pro se
July 31, 2014
Attachments to document not reproduced here include Doc#65-3:
Dirk Neerhoff May 13, 2009 Testimony, and
Doc#65-4:
Frank van Stipdonk June 17, 2009 Testimony

K – Rice Petition for Rehearing, in the appellate court: No. 23-1684
IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
LARRY RICE
Plaintiff - Appellant
v.
INTERFOOD INC., et al
Defendants - Appellees
On Appeal from the United States District Court
for the Eastern District of Missouri, St. Louis
in Case No. 4:13-cv-01171-HEA
RULE 2 CODE OF JUDICIAL CONDUCT
PREAMBLE
The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of

integrity, will interpret and apply the law that governs our society.

Quotes from OPINION, MEMORANDUM AND ORDER - R.Doc.# 38

On a FRCP 12(B)(6) MOTION

"Defendants move to dismiss this action on the Grounds that Count I [fiduciary duty] of Plaintiff's Complaint is barred by the applicable [5-year] statute of limitations; neither Defendant Neerhoff nor van Stipdonk were parties to the contract allegedly breached in Count II; and Count III, based on an alleged conspiracy fails because there can be no conspiracy if there is no underlying viable cause of action." R.Doc.#38 at 3.

"Interfood, Inc. was incorporated in Delaware in September 2006" Id. at 4.

"Neerhoff and van Stipdonk... diverted Interfood-IN's opportunities to Interfood, Inc. of Delaware in breach of their fiduciary duties as Directors of Interfood-IN, which they claimed to be." Id. at 5.

"Plaintiff alleges that he became aware of this alleged breach in early 2004 and tried to resolve them with van Stipdonk and Neerhoff [in March 2006]" Id.

"At the very least (although more accurately in 2004), Plaintiff's suit for breaches of any fiduciary duty should have been brought within 5 years from 2006, i.e., in 2011. Because this action was filed two years later in 2013, the claim is barred." Id. at 7.

"Defendants argue that because they were not parties to the Shareholders Agreement, the breach of

contract claim of Count II fails. The Court Agrees." Id. at 8.

THE COURT'S CONCLUSIONS ABOVE MAKE ZERO SENSE:

1) Neither defendants' 12(b)(6) motion nor the court's Opinion, Doc#38, addresses the breach of contract claim against Interfood-DE, Count II – Breach of contract, Complaint ¶37. They only address the derivative claims that cannot be decided first.

2) The court took the before-Interfood-DE history in the petition-introduction and confuses it with the current breach of contract complaint against Interfood-DE (as suggested by defendants).

This misinterpretation of the claim in the light most favorable to defendants in their 12(b)(6) motion, is contrary to law, and led the court to conclude that Rice's breach of fiduciary duty claim is for "2004 when they started diverting product to Interfood-DE" and that Rice knew about it "in March 2006 when he sued to stop it." So the 5 year statute of limitations had run in 2011 barring this suit in 2013.

None of that is possible of course, because as the Order recognizes, Interfood-DE did not exist until Sept. 2006, when it was incorporated in Delaware. Any sales being diverted in 2004 were to some other entity not part of this suit.

3) Referring to Complaint, ¶38, Neerhoff and van Stipdonk say that they were not parties to the agreement but say nothing about Interfood-DE or ¶37.

The court seems oblivious to the fact that this is primarily a breach of contract claim against

Interfood-DE, and derivatively against its directors for allowing it. The court never addresses the 2010 and 2011 breaches that Interfood-DE "admitted to" in their suit against Select Veal. Complaint ¶37 & R.Doc-12.1.

4) Complaint ¶39, Count III - Conspiracy, involves [¶37] which is the breach of contract complaint against Interfood-DE which the court did not address. It makes no sense at all to say that the conspiracy fails because ¶38, an entirely unrelated claim, failed. First the court needs to Rule on ¶37, Interfood-DE's 2010-2011 breach of contract, and then it can rule on the conspiracy claim.

1st RESTATEMENT

Rice submitted a "1st RESTATEMENT" of his complaint as R.Doc-40, clarifying the confusion created by the district court's misinterpretation of the original complaint, possibly due to fraud upon the court. The restatement should have been allowed as it imposed no burden on the court or the defendants. Julianello v. K-V Pharm. Co., 791 F.3d 915, 922 (8th Cir. 2015). But it was disallowed in Order R.Doc-88.

STANDING

SCOTUS, the Mo. Sup. Court, and all Circuit Courts agree that a) Standing is to be presumed not to exist until it is affirmatively established on the record, by a preponderance of the evidence, b) the burden of proof of standing is on the person seeking the court's intervention, c) without standing on the part of a person seeking the court's ruling on a petition or

counterclaim, the court has no subject matter jurisdiction, and no authority to do anything but have the claim dismissed without prejudice, d) anything else is void, e) any decision based on a void order or judgment is also void, f) it is illegal to take action to enforce a void order or judgment, g) courts should take precautions to assure that they are not acting without jurisdiction or contrary to law.

COURT DID NOT DETERMINE STANDING

Appellant argues "the district court erred by not deciding standing first. We agree, vacate the district court's approval of the settlement agreement, and remand the case." Schumacher v. SC Data Ctr., Inc., 912 F.3d 1104, (8th Cir. 2019). "We review challenges to subject matter jurisdiction de novo. Quiles v. Union Pac. R.R. Co., 4 F.4th 598, 603 (8th Cir. 2021). GRASZ, Circuit Judge.

Establishing subject matter jurisdiction requires a party to show it has standing to sue. Young Am. Corp. v. Affiliated Computer Servs. (ACS), Inc. , 424 F.3d 840, 843 (8th Cir. 2005) (quoting Faibisch v. Univ. of Minn. , 304 F.3d 797, 801 (8th Cir. 2002)). In order to establish standing, a party must demonstrate (1) an injury in fact, (2) that is caused by the challenged conduct, and (3) that is likely to be redressed by a favorable judicial decision. Mausolf v. Babbitt , 85 F.3d 1295, 1301 (8th Cir. 1996). An injury in fact is the invasion of a legally protected interest, Oti Kaga, Inc. v. S. Dakota Hous. Dev. Auth. , 342 F.3d 871, 878 (8th Cir. 2003).

The judge below has repeatedly ruled in other cases that he is obligated to determine standing before

moving on to anything else, but here he has declined to meet that obligation.

Had the district court been looking at standing, when it thought that the complaint was about a company incorporated in Sept, 2006 doing something wrong in 2004, it would have dismissed the case for lack of standing or, more likely, it would have taken a closer look at the Select Veal case mentioned in Complaint ¶37, and filed here as R.Doc-12.1. There it would have seen that the sales complained about occurred in 2010 and 2011, and that Rice did have standing for that claim, and for the conspiracy claim based on it. Either way, a great deal of time and effort would have been saved.

The same is true of the counterclaim. Had the court been looking at standing, it would have seen that an agreement not to sue "for any claim that may have existed on December 11, 2009.", [Counterclaim, R.Doc-15, ¶17] gives no legally protectable interest vis-à-vis claims based on 2010 and 2011 breaches. The court would necessarily conclude that Interfood-DE had no standing to bring the counterclaim. See Oti Kaga, Inc. 342 F.3d 871, 878 (8th Cir. 2003), supra.

THE LIGHT MOST FAVORABLE TO THE NONMOVING PARTY

Rice's breach of contract claim against Interfood-DE is for their sales in 2010 and 2011, complaint ¶37. In Rice's conspiracy complaint against the directors for allowing these breaches, ¶38, he used the phrase "at least in 2009" because the sales started the first week of 2010 and the conspiracy must have started at least a few days before, say the last week of

December... the court decided to interpret that phrase to mean that everything happened before December 11, 2009, including the sales apparently, so that it would violate the agreement not to sue "for any claim that may have existed on December 11, 2009", in Counterclaim, R.Doc-15, ¶17. That is judicial misconduct which cannot be ignored on appeal.

"The [defendants] argue that the allegations in the complaint can be construed differently, that is, in a way more favorable to them. Such an argument is irrelevant, as we must construe the complaint in the light most favorable to [plaintiff, the non-movant in the motion to dismiss]." Hafley v. Lohman, 90 F.3d 264 (8th Cir. 1996). Bishop v. Glazier, 723 F.3d 957, 960-61 (8th Cir. 2013). Circuit Judge COLLOTON.

"When considering a motion for summary judgment, a court must scrutinize the evidence in the light most favorable to the nonmoving party, and the nonmoving party "must be given the benefit of all reasonable inferences." Mirax Chem. Prods. Corp. v. First Interstate Commercial Corp., 950 F.2d 566, 569 (8th Cir. 1991), Missouri Child Care Association v. Martin, 241 F. Supp. 2d 1032, 1036 (W.D. Mo. 2003). Judge LOKEN.

"CONTINUING VIOLATION" DOCTRINE

There is no claim or evidence, that there are any sales (breaches) prior to 2010, but even if there were, the 2010 and 2011 sales which Interfood-DE verified, would not be blocked, under the "continuing violation" doctrine, by an agreement not to sue "for any claim that may have existed on December 11,

2009". ***Ashley v. Boyle's Famous Corned Beef Co.***, 66 F.3d 164, 167-68 (8th Cir. en banc 1995). Judge LOKEN, participating.

RICE'S COMPLAINT AND STANDING

In 2013 Rice filed suit against Interfood-DE for 2010 and 2011 breaches of an exclusive territory agreement contained in a shareholder agreement between Rice and Tepco.

INTERFOOD-DE AGREED that a) they are bound by the exclusivity agreement, b) that they sold dairy products in the US in the first week of 2011 per an agreement reached with Select Veal at the end of 2010, and c) that those sales were breaches of the agreement with Rice.

Since this is a diversity case under Missouri law, which states that the damage requirement for a valid complaint is met automatically in a breach of contract complaint, and Rice has alleged damage to his personal and business reputational as well, all the requirements for the complaint are met. Only discovery and management remain, so that the jury can properly decide the award.

INTERFOOD-DE DEFENSE AND COUNTERCLAIM

Interfood-DE presented a 12(b)(6) motion [R.Doc-8] and a summary judgment motion on a counterclaim [R.Doc-61] alleging that Rice breached an agreement not to sue "for any claim that may have existed on December 11, 2009", Counterclaim, R.Doc-15, ¶17. The district court granted both [R.Docs-38, 102] without determining Rice's standing to bring the complaint, or Interfood-DE's standing to bring the counterclaim, and without addressing or even

mentioning the breach-of-contract claim against Interfood-DE.

THE QUESTIONS TO REVIEW DE NOVO ARE:

1) When both State and Federal law require the court to determine standing before ruling on the merits, did the district court err as a matter of law in not determining if Interfood-DE had standing to file the counterclaim on Rice's 2010 & 2011 breach of contract claim? In Schumacher this Court said "Yes" Unless Schumacher is overturned with some explanation here, this Court must either determine standing, or remand for the district court to do it, or explain why this is an exception.

2) Did Interfood-DE satisfy the three basic requirements for standing listed in Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992).? Specifically, did an "agreement not to be sued for any potential claim that existed in 2009" give Interfood-DE a legally protectable interest against being sued for breaching a contract in 2011? The answer is obviously "no", and therefore there is no standing, and the counterclaim must be dismissed, at least regarding the 2010 and 2011 breaches of the exclusivity agreement.

3) Since Interfood-DE agreed to all the elements of Rice's breach of contract claim against them, and Rice had standing to bring it, did Rice meet the requirements to survive a Rule 12(b)(6) motion? The answer is yes, and the district court's ruling to the contrary should be overturned.

4) Should the district court's rulings be reversed because they were obtained by fraud upon the court?

FRAUD UPON THE COURT

Federal courts have inherent power to vacate their own judgments upon proof that a fraud has been perpetrated upon the court. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 245-46, 64 S.Ct. 997, 88 L.Ed. 1250 (1944). United States v. Bishop, 774 F.2d 771 (7th Cir. 1985).

Federal Rule 60(d)(3) grants the Court power to "set aside a judgment for fraud on the Court." Thompson v. Mo. Bd. of Parole, No. 4:92-CV-888 JAR (E.D. Mo. Nov. 7, 2019) as does State Rule 74.06(d). T.B. v. N.B. & State, 478 S.W.3d 504 (E.D. Mo. 2015). Rule 60(b)(3) grants the Court power to set aside a judgment for fraud. See Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) (en banc); 11 Wright Miller § 2870, at 412; 12 Moore's § 60.21[4][g].

Defendants' lawyers implemented a deliberate scheme to deceive the court based on fabricated evidence which the court used in its orders and judgments.

The deception starts in defendants' R.Doc-9 at 1 "It should be noted that this is the latest chapter of more than six years of harassing and expensive litigation brought by Mr. Rice." Next page mentions the Franklin Case, stating that the parties "entered into a settlement agreement, which Mr. Rice subsequently repudiated." "Fundamentally, those actions – and this one – concern a shareholder dispute". Id. "Interfood-IN filed... the Franklin Case, (Interfood, Inc. v Larry Rice, Michael Husmann and DF Ingredients, Inc.) Cause No. 07AB-CC00086" against Rice, R.Doc-11 at5, and "the conduct alleged by Mr. Rice's Complaint occurred between 2004 and 2008." Id. at 8.

"Court must consider the Complaint itself, and not Defendant's characterization of the allegations contained therein." Tower Village v. Service Employees Intern. Union, 377 F. Supp. 2d 733 (E.D. Mo. 2005).

INTERFOOD-DE ADMITS
INTERFOOD-IN DID NOT FILE THE FRANKLIN CASE
[See their R.Doc-82 response to Rice's statement of facts]:

¶1. Rice and Husmann were directors and officers of Interfood-IN and Waltepco in 2003 [when the Franklin Case was filed].

¶2. Tepco attempted to remove Rice and Husmann from the boards of Waltepco and Interfood-IN in August 2006, and that effort was unsuccessful.

¶3. Van Stipdonk, allegedly acting on behalf of Tepco attempted to remove Rice and Husmann from the Waltepco board in November 2007.

Defendants claim that Tepco removed Rice and Husmann from the Waltepco board in November 2007. .....Interfood-DE's director Dirk Neerhoff however, testified that the November Resolution is not valid because it was not signed by two directors, R.Doc-65 at4.

¶5. Defendants deny that Mr. Cummings falsely claimed to represent Interfood-IN.

"Interfood did not authorize any attorney to appear for it to file [the Franklin Case] or any claims whatsoever..." "None of these companies [Waltepco Holding, Interfood, Waltepco Realestate] had employed the filing attorney to institute this suit"

Rice's Opposition to Summary Judgment R.Doc-65, quoting R.Doc-32-1 at2: affidavit of Michael Husmann and Larry Rice as undisputed officers and directors of Interfood-IN. Certified by the Franklin Court.

Since Rice and Husmann testified unopposed and without objection that they did not hire the filing attorneys, and the Franklin Case Petition claims damages only to Interfood-IN, and mentions no other plaintiff, there cannot be any question under Missouri law that the Franklin Case is void ab initio for lack of standing.

Furthermore, nobody has ever said that the Franklin Case was filed WITH standing. The law requires that the court presume that there is no standing unless it is affirmatively shown on the record to exist. Am. Strategic Ins. Corp. v. Goodell, 3:22-cv-05073-RK, 3 (W.D. Mo. Mar. 16, 2023).

Since the Franklin Case was filed without standing, it's orders are void, and district court decisions based on them are void as well, and attempting to enforce them, is against the law, Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828), so the district court erred, possibly due to fraud upon the court, in not looking for proof of standing before basing decisions on the Franklin Case.

On March 7, 2008 judge Forder ordered [R.Doc-212-3at6 ¶ 3] the filing attorneys to produce all documents showing who can sign for Tepco, and nothing was produced suggesting Frank van Stipdonk by himself could sign for Tepco.

This fraud goes to the court's jurisdiction. Because Interfood-IN did not file suit against Rice there was

no suit to settle, and whatever document was signed, was signed by imposters, and the counterclaim is baseless. Had the Franklin Case not been mentioned, the circuit court would have undoubtedly ruled differently.

The law is supposed to be applied equally to all in this country, and citizens deserve at least a brief legal explanation when it is not. Please reverse and remand for consideration excluding the Franklin Case.

Respectfully submitted,

/s/ Larry Rice, pro se
127 Elm Street, suite 201
Washington, MO 63090
Larry@DFIngredients.com
314-231-9895

Dated this 6th day of June 2023