UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: FRAGRANCE DIRECT PURCHASER ANTITRUST LITIGATION	Case No. 2:23-cv-02174-WJM-JSA
IN RE: FRAGRANCE INDIRECT PURCHASER ANTITRUST LITIGATION	Case No. 2:23-cv-03249-WJM-JSA
IN RE: FRAGRANCE END-USER PLAINTIFF ANTITRUST LITIGATION	Case No. 2:23-cv-016127-WJM-JSA

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

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The United States submits this Statement of Interest under 28 U.S.C. § 517, which permits the Attorney General to direct any officer of the Department of Justice to attend to the interests of the United States in any case pending in a federal or state court.

The United States enforces the federal antitrust laws and has a strong interest in their correct application. The United States enforces Section 1 of the Sherman Act, 15 U.S.C. § 1, both under the per se rule, *see, e.g.*, *United States v. Aiyer*, 33 F.4th 97 (2d Cir. 2022); *United States v. Lischewski*, 860 F. App'x 512 (9th Cir. 2021); *United States v. Apple, Inc.*, 791 F.3d 290 (2d Cir. 2015), and the rule of reason, *see, e.g.*, *United States v. Am. Airlines Grp. Inc.*, 121 F.4th 209 (1st Cir. 2024); *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003). The United States also files amicus briefs and statements of interest in private civil actions that implicate important Section 1 principles. *See, e.g.*, Br. for the United States of America as Amicus Curiae in Supp. of Panel Rehearing, *Winn-Dixie Stores, Inc. v. E. Mushroom Mktg. Coop., Inc.*, No. 22-2289 (3d Cir. Nov. 20, 2023) ("*Winn-Dixie* Amicus Br."); Statement of Interest of the United States of America, *Herzog v. Fluor Fed. Servs., Inc.*, No. 25-cv-61991 (S.D. Fla. Feb. 27, 2026); Statement of Interest of the United States of America, *In re: Apple Inc. Smartphone Antitrust Litig.*, No. 2:24-md-03113-JXN-LDW (D.N.J. Dec. 16, 2025).

The pending motion for judgment on the pleadings rests on a fundamental misapplication of the per se rule. It is well established that certain categories of inherently anticompetitive agreements are unlawful under Section 1 of the Sherman Act. *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 64-65 (1911). Yet movants propose that *Winn-Dixie Stores, Inc. v. Eastern Mushroom Marketing Cooperative, Inc.*, 89 F.4th 430 (3d Cir. 2023), governs the applicability of the per se rule and shields an alleged horizontal price-fixing conspiracy from per se scrutiny

whenever the conspirators also maintain a vertical, buyer-seller relationship, or at least whenever those vertical relationships facilitated the conspiracy.

Winn-Dixie establishes no such rule. The Third Circuit expressly declined to address the applicability of the per se rule because that issue was forfeited, resolving instead whether the challenged arrangement warranted quick-look analysis rather than full-scale rule of reason review. Nor does *Winn-Dixie* disturb longstanding Supreme Court and Third Circuit precedent recognizing that agreements among competitors concerning how they will compete are horizontal restraints potentially subject to per se condemnation, even where vertical relationships also exist or facilitate the alleged conspiracy. So *Winn-Dixie* cannot provide a basis for granting a motion for judgment on the pleadings using a theory that an alleged vertical relationship forecloses per se scrutiny.

The United States takes no position on any other issue raised by the motion, or on the truth of any party's factual assertions.[1]

BACKGROUND

Defendants Firmenich International SA, Givaudan SA, International Flavors & Fragrances Inc., and Symrise AG, and their related entities ("Defendants"), are the four largest producers of fragrance products, controlling nearly two-thirds of the U.S. and global markets. Direct Purchasers' Consol. Compl. ("DC") ¶¶ 3, 70, *In re Fragrance Direct Purchaser Antitrust Litig.*, No. 23-02174, ECF No. 107; Producer Indirect Purchaser Pls.' Corrected Consol. Am. Class Action Compl. ("IC") ¶¶ 4, 117, *In re Fragrance Indirect Purchaser Antitrust Litig.*, No. 23-03249, ECF No. 284; End-User Pls.' Consol. Compl. ("EC") ¶¶ 3, 124, *In re Fragrance End-*

[1] This Statement addresses only legal issues; the United States reserves the right to intervene at a later stage as appropriate.

User Plaintiff Antitrust Litig., No. 23-16127, ECF No. 38.[2] Defendants "occupy a critical point of the supply chain." DC ¶ 55; IC ¶ 79; EC ¶ 98. They source raw materials from "upstream" suppliers; convert those materials into fragrance ingredients and blends of ingredients called "compounds"; and sell the fragrance ingredients and compounds to "downstream" producers of consumer products, such as perfumes and candles. DC ¶¶ 1-3, 39; IC ¶¶ 1-4, 75; EC ¶¶ 2-3, 95.

As relevant here, Plaintiffs allege that, beginning in 2018, Defendants committed a per se violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by conspiring to fix the prices they charge for fragrance ingredients and fragrance compounds. DC ¶¶ 207-15; IC ¶¶ 263-75; EC ¶¶ 257-67.[3] According to Plaintiffs, Defendants carried out the conspiracy by (*inter alia*) coordinating a series of parallel price increases, DC ¶¶ 105-37; IC ¶¶ 153-85; EC ¶¶ 159-92; assuring each other that "they would not compete for business on price," DC ¶ 107; IC ¶ 155; EC ¶ 162; restricting the supply of fragrance ingredients by allocating among themselves the production of particular subsets of ingredients, DC ¶¶ 155-62; IC ¶¶ 203-12; EC ¶¶ 210-17; and monitoring their conspiracy through public statements and inter-Defendant sales of excess fragrance ingredients, DC ¶¶ 67, 138-39; IC ¶¶ 113, 186-87; EC ¶¶ 121, 193-94. Such sales allegedly allowed Defendants to learn of each of each other's capacity and price points and increased Defendants' dependency on each other. DC ¶ 67; IC ¶ 113; EC ¶ 121.

In February, this Court denied Defendants' motion to dismiss Plaintiffs' Sherman Act claims, finding that Plaintiffs had plausibly alleged an agreement among Defendants to fix

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[2] For purposes of this Statement, we assume the truth of the complaints' allegations. *See Zimmerman v. Corbett*, 873 F.3d 414, 417-18 (3d Cir. 2017).

[3] The Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs also allege a per se violation of Section 3 of the Sherman Act, 15 U.S.C. § 3. DC ¶¶ 105, 207-15; IC ¶¶ 153, 263-74. Section 3 proscribes the same conduct as Section 1 but applies to restraints of trade in or involving any territory of the United States or the District of Columbia. *See Robinson v. Jackson Hewitt, Inc.*, No. 19-9066, 2019 WL 5617512, at *5 n.7 (D.N.J. Oct. 31, 2019).

prices. *In re Fragrance Direct Purchaser Antitrust Litig.*, No. 2:23-02174, 2025 WL 579639, at *1, *7-9 (D.N.J. Feb. 21, 2025). Relying on *Winn-Dixie*, Defendants now argue that those same allegations do not state a claim under the per se rule because Defendants "have vertical supplier relationships with one another in addition to their horizontal relationships as competitors." Memorandum of Law in Support of Defendants' Motion for Judgment on the Pleadings ("Mot."), ECF No. 298-1, at 1, 10-13.[4]

LEGAL PRINCIPLES

Section 1 of the Sherman Act bars "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 1. Given the background law against which the Sherman Act was enacted, courts have long "understood § 1 to outlaw only *unreasonable* restraints." *Ohio v. Am. Express Co.*, 585 U.S. 529, 540 (2018) (citation omitted).

Restraints are categorized as "horizontal" or "vertical." Horizontal restraints are "agreement[s] among competitors on the way in which they will compete with one another." *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 99 (1984); *see Am. Express*, 585 U.S. at 543 n.7 ("[H]orizontal restraints involve agreements between competitors not to compete in some way."). On the other hand, when "firms at different levels of distribution" agree on the terms of their distribution relationship, those agreements are "vertical." *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 730 & n.4 (1988); *see also, e.g.*, *DeLong Equipment Co. v. Wash. Mills Abrasive Co.*, 887 F.2d 1499, 1505 (11th Cir. 1989) ("Vertical restraints occur

[4] Unless otherwise specified, ECF numbers refer to the docket in the Direct Purchaser Plaintiffs' case, No. 23-02174.

between entities at different levels of distribution in order to control the price or path of a product after the product leaves the manufacturer[.]").[5]

Restraints "can be unreasonable in one of two ways"—unreasonable "*per se*" or unreasonable as judged under the "rule of reason." *Am. Express*, 585 U.S. at 540-41. Some restraints are unreasonable per se based on their inherently anticompetitive "nature and character." *Standard Oil*, 221 U.S. at 64-65; *see, e.g.*, *NCAA v. Alston*, 594 U.S. 69, 89 (2021). These per se unlawful restraints include horizontal agreements to fix prices, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940); rig bids, *United States v. Fischbach & Moore, Inc.*, 750 F.2d 1183, 1192 (3d Cir. 1984); or allocate markets, *Palmer v. BRG of Ga., Inc.*, 498 U.S. 46, 49-50 (1990) (per curiam).[6] "As to these classes of restraints," Congress "determined its own criteria of public harm and it [i]s not for the courts to decide whether in an individual case injury ha[s] actually occurred." *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 211 (1959). Restraints that are not unreasonable per se are judged under the "rule of reason," a "fact-specific assessment" of "the restraint's actual effect on competition." *Am.*

[5] Courts have applied the same analysis in the context of dual-distribution relationships, where a manufacturer both sells its products through distributors (and thus has a vertical relationship with those distributors) and distributes the products itself (and thus competes with its distributors). *See Ill. Corporate Travel, Inc. v. Am. Airlines, Inc.*, 889 F.2d 751, 753 (7th Cir. 1989) (American Airlines sold reservations both through travel agents and through its own ticketing service). Consistent with *Board of Regents*' definition of horizontality, the dual-distribution cases treat restraints between dual-distributing manufacturers and their dealers as horizontal when the parties agree on the way they will compete with one another at the distribution level, *see, e.g.*, *Pitchford v. PEPI, Inc.*, 531 F.2d 92, 101, 104 (3d Cir. 1975); *Hobart Bros. v. Malcolm T. Gilliland, Inc.*, 471 F.2d 894, 899 (5th Cir. 1973), and as vertical when the parties agree on the terms of their supply relationship, *see, e.g.*, *AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d 525, 531 (3d Cir. 2006); *Red Diamond Supply, Inc. v. Liquid Carbonic Corp.*, 637 F.2d 1001, 1004 (5th Cir. 1981).

[6] Such restraints may escape per se treatment if the defendant establishes a defense, such as the ancillary-restraints defense. *See*, *e.g.*, *Texaco Inc. v. Dagher*, 547 U.S. 1, 7 (2006); *Deslandes v. McDonald's USA, LLC*, 81 F.4th 699, 705 (7th Cir. 2023); *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 345 (3d Cir. 2010). Defendants here do not appear to invoke any such defense.

Express, 585 U.S. at 541 (internal quotation marks and brackets omitted). "[N]early every . . . vertical restraint . . . should be assessed under the rule of reason." *Id.*

There is no one-size-fits-all version of the rule of reason. *See Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 781 (1999) ("What is required . . . is an enquiry meet for the case."). In some cases, courts conduct a detailed assessment of the defendants' market power and the restraint's potential to harm competition, sometimes referred to as a full-scale rule of reason. *See Alston*, 594 U.S. at 88 ("Most restraints challenged under the Sherman Act . . . are subject to the rule of reason," which is "a fact-specific assessment") (cleaned up). In other cases, "no elaborate industry analysis is required to demonstrate" a restraint's "anticompetitive character" under the rule of reason because "an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect." *Cal. Dental*, 526 U.S. at 770. The version of the rule of reason applied in these cases is called "abbreviated or 'quick look' analysis." *Id.*

ARGUMENT

This Court should decline Defendants' invitation to interpret *Winn-Dixie* as immunizing price-fixing competitors from per se scrutiny whenever conspiring competitors also have a vertical relationship, or whenever such a relationship is alleged to have facilitated the conspiracy.

I. *Winn-Dixie* does not govern the applicability of the per se rule.

Relying on *Winn-Dixie*, movants assert that in the Third Circuit, "the per se rule is inapplicable to 'hybrid relationships' that contain both horizontal and vertical aspects . . . ." Mot. 1, 10-13. This remarkable assertion, which quotes language not found in *any* Third Circuit case ("hybrid relationships"), is wrong on multiple levels. The first error lies in is its premise: that *Winn-Dixie* governs "how district courts should apply *both* the per se rule and the 'quick-look' approach." *Id.* at 10 n.7 (emphasis added).

Winn-Dixie involved a "unique" conspiracy among an agricultural cooperative, the cooperative's mushroom-farmer members, and the members' "downstream distributors"—some of which were integrated with the farmers, and some of which were not—to fix the prices charged by the distributors. 89 F.4th at 435-36. The question presented was whether the district court had erred in instructing the jury to assess the conduct under the full-scale rule of reason, rather than the quick look rule of reason. *See id.* at 435. The court of appeals held that the district court had not erred because (1) the conspiracy involved a collective effort among varyingly integrated "upstream farmers and downstream distributors" whose success depended on "coordination by multiple actors at multiple levels of the supply chain," and (2) "the interplay between the vertical and horizontal components" of the conspiracy "muddie[d] the theoretical economic conclusions" a court might have drawn to "label [the scheme] as obviously anticompetitive." *Id.* at 440-41 (cleaned up).

Far from addressing the applicability of the per se rule, the court of appeals noted that Winn-Dixie had not raised—and had thus "forfeited"—any argument that "the *per se* rule should apply to the [challenged] conspiracy," and the court accordingly cautioned that it "ha[d] no occasion to address [that argument]." *Winn-Dixie*, 89 F.4th at 442 n.7.[7] Indeed, the court began its analysis by asking whether there is any "set methodology for determining when the quick look applies," *id.* at 439, and the court's repeated articulations of its holding made no reference to the per se rule: The court stated that "quick-look condemnation is simply not appropriate," that

[7] The court added this language to its opinion on rehearing—after the government filed a brief explaining that the challenged restraint was per se unlawful and urging the court to either (1) apply the per se rule or (2) hold that the plaintiff had forfeited any argument under the per se rule. *Winn-Dixie* Amicus Br. 5.

"the District Court correctly rejected quick-look condemnation," and that "the District Court did not err in applying the [full-scale] rule of reason." *Id.* at 441-42.

Nor does *Winn-Dixie*'s analytical approach logically extend to per se determinations. The quick look is an abbreviated form of rule-of-reason analysis that courts may apply to restraints falling *outside* the per se rule when courts can "predict with confidence" that the restraint will be anticompetitive "in all or almost all instances." *Winn-Dixie*, 89 F.4th at 438-39 & n.5 (internal quotation marks omitted). In assessing whether that prediction was warranted in *Winn-Dixie*, the court of appeals looked to other conspiracies with "both horizontal and vertical components"—those addressed in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007), *Toledo Mack Sales & Service, Inc. v. Mack Trucks, Inc.*, 530 F.3d 204 (3d Cir. 2008), and *In re Insurance Brokerage Antitrust Litigation*, 618 F.3d 300 (3d Cir. 2010)—to determine whether the "unique, integrated hybrid scheme" gave rise to an "obvious inference of anticompetitive effect." *Id.* at 439-42 (internal quotation marks omitted).

But that sort of assessment of "the restraint's actual effect on competition" has no bearing in the per se context. *Am. Express*, 585 U.S. at 541 (cleaned up). The per se rule is categorical: It "establishes one uniform rule applicable to all industries alike" that need not be "rejustified" in each application. *Arizona v. Maricopa Cnty. Med. Soc'y*, 457 U.S. 332, 349, 351 (1982) (quoting *Socony-Vacuum*, 310 U.S. at 222); *see also Socony-Vacuum*, 310 U.S. at 226 n.59 (for such restraints, "the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy."); 15 U.S.C. § 7a note (Findings; Purpose of 2020 Amendment) ("Conspiracies among competitors to fix prices, rig bids, and allocate markets are categorically and irredeemably anticompetitive and contravene the competition policy of the United States."). In determining

whether a complaint states adequately alleges a per se claim, courts ask whether the restraint alleged falls within an established per se category, such as horizontal price fixing. *See, e.g.*, *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 648-50 (1980) (holding that agreement among wholesalers to eliminate credit is "merely one form of price fixing" and so was per se "illegal without further examination under the rule of reason"). Simply put, courts may not "examine the economic justification of [a] particular application of the *per se* rule." *Maricopa Cnty. Med. Soc.*, 457 U.S. at 349 n.19.[8]

Winn-Dixie's approach to choosing between quick-look and full-rule-of-reason analysis, then, can have no application to the determination of whether the per se rule applies.

II. Vertical relationships do not immunize horizontal restraints from per se condemnation.

Winn-Dixie also does not support the sweeping proposition that an alleged horizontal conspiracy is exempt from per se scrutiny merely because the co-conspirators also have vertical "relationships." Mot. 1. Nor does such immunity arise if those vertical relationships are purportedly "integral to the alleged horizontal conspiracy." Mot. 12. The applicability of the per se rule turns on the nature of the restraint imposed, not on the presence, or asserted importance, of vertical relationships among the co-conspirators.

The Supreme Court has repeatedly treated as horizontal—and thus potentially subject to per se condemnation—agreements among competitors over how they will compete, regardless of whether the parties also have a vertical relationship. In *Palmer*, for example, the Court held an agreement "unlawful on its face" under the per se rule against horizontal market allocations even though one of the parties not only competed with, but also (vertically) licensed materials from,

[8] By contrast, "a *new* per se rule is not justified until the judiciary obtains considerable rule-of-reason experience with the particular type of restraint challenged." *Maricopa Cnty. Med. Soc.*, 457 U.S. at 349 n.19.

the other. 498 U.S. at 47, 49-50. Similarly, in *Socony-Vacuum*, the Court held that a conspiracy, whose members included competing oil refiners and their vertically related customers, was horizontal price fixing and hence per se unlawful. 310 U.S. at 166-69 & n.4, 218; *see NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 133 (1998) (citing *Socony-Vacuum* as an example of a horizontal price-fixing case).[9]

Courts of appeals, including the Third Circuit, have followed this approach. *See, e.g.*, *Ins. Brokerage Antitrust Litig.*, 618 F.3d at 336-37, 344 (holding that plaintiffs pleaded a per se unlawful bid-rigging conspiracy among insurers, even though "the conspiracy was instigated, coordinated, and policed" by a vertically related broker) (cited with approval in *Winn-Dixie*, 89 F.4th at 439); *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1376, 1380 (3d Cir. 1992) (stating that plaintiffs had "present[ed] a horizontal boycott case" by offering evidence that a car distributor "and its dealers acted in concert" to prevent the plaintiffs from becoming dealers); *see also Deslandes*, 81 F.4th at 703 (applying per se rule to a "horizontal restraint" through which McDonald's and its vertically-related franchisees agreed not to compete for labor); *Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, 9 F.4th 1102, 1109 (9th Cir. 2021) (holding that agreement not to compete for labor was a "horizontal" restraint, even though

[9] *See, e.g.*, *United States v. Gen. Motors Corp.*, 384 U.S. 127, 129, 145 (1966) (group boycott among competing car dealers, as well as a vertically related car manufacturer, was per se unlawful); *Klor's, Inc.*, 359 U.S. at 208-09, 211-13 (group boycott among competing manufacturers and distributors, as well as a vertically related retailer, was per se unlawful); *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 140-42 (1948) (holding, in case involving defendants that competed but also had vertical distribution relationships, that "all the defendants" were part of a "horizontal" "price-fixing conspirac[y]"); *Fashion Originators' Guild of Am. v. FTC*, 312 U.S. 457, 461 (1941) (group boycott among competing garment retailers, their vertically related suppliers (competing garment manufacturers), and the manufacturers' vertically related suppliers (competing textile producers) was per se unlawful); *see also NYNEX*, 525 U.S. at 135 ("[P]recedent"—including *Klor's* and *Fashion Originators' Guild*—"limits the *per se* rule in the boycott context to cases involving horizontal agreements among direct competitors.").

parties were in a "subcontractor-subcontractee relationship"); *Apple*, 791 F.3d at 316-21 (holding that agreement was horizontal and per se unlawful even though participants were (1) Apple and (2) book publishers that competed with each other but were vertically related to Apple).

As these cases show, when the parties to a conspiracy are related both as competitors and as supplier-customers, the conspiracy's orientation depends on the nature of the restraint it imposes: If, as alleged here, the parties conspire to restrict their competition with each other, the conspiracy is horizontal. *See In re Chocolate Confectionary Antitrust Litig.*, 801 F.3d 383, 395 & n.7 (3d Cir. 2015) ("A horizontal price-fixing agreement occurs when competitors on the same market level agree to fix or control prices for their goods or services."); *Apple*, 791 F.3d at 297 ("[T]he Sherman Act outlaws agreements that unreasonably restrain trade and therefore requires evaluating the nature of the restraint, rather than the identity of each party who joins in to impose it, in determining whether the per se rule is properly invoked.").[10]

And it makes no difference if the vertical relationship is a means of effectuating the horizontal conspiracy and thus integral to it. In *Palmer*, for instance, rival bar-review course providers BRG and HBJ agreed to allocate Georgia to BRG and the rest of the country to HBJ; in connection with that agreement, HBJ "gave BRG an exclusive license to market HBJ's material in Georgia and to use its trade name [Bar/Bri]," 498 U.S. at 47, which guaranteed HBJ's compliance by preventing it from using its trade name in Georgia. In *General Motors*, the vertically related car manufacturer was involved in "enforc[ing]" and "policing" the group

[10] *United States v. Brewbaker*, 87 F.4th 563 (4th Cir. 2023), states incorrectly that the per se rule applies to "agreements between entities who are related *only* as competitors." *Id.* at 576 n.9. In any event, *Brewbaker* held the per se rule inapplicable not because of a mere supplier-customer relationship, but instead because, at the time the conspirators entered into the bid-rigging agreement, they were related vertically with respect to the same transactions that were the subject of the agreement. Specifically, the losing bidder supplied the very materials its co-conspirator used to win the bids and perform the resulting contracts. *Id.* at 576.

boycott among the competing car dealers. 384 U.S. at 143-44. And in *Socony-Vacuum*, the competing, integrated oil companies manipulated supply to increase prices by buying "distress gasoline" from independent refiners—their unindicted co-conspirators. 310 U.S. at 166-69 & n.4, 178-83, 218.

Winn-Dixie, of course, could not have altered Supreme Court or prior Third Circuit precedent. *See Pardini v. Allegheny Intermediate Unit*, 524 F.3d 419, 426 (3d Cir. 2008) ("A panel of this court cannot overrule a prior panel precedent. To the extent that the later case is inconsistent with the earlier case, the later case must be deemed without effect.") (cleaned up). Nor did *Winn-Dixie* purport to do so. As shown *supra*, *Winn-Dixie* did not address the applicability of the per se rule. And even as to quick look, *Winn-Dixie* did not suggest that sales among conspirators render "hybrid" a conspiracy among competitors to fix the prices at which they sell their good to third parties. *Cf. United States v. Brown University*, 5 F.3d 658, 670 (3d Cir. 1993) (observing that, where "competitors at the same market level agree to fix or control the prices they will charge," that is horizontal price fixing). Instead, *Winn-Dixie* turned on the "unique" nature of the conspiracy, which involved "a tailored set of interrelated vertical and horizontal agreements among growers and distributors" designed to fix the prices paid, not by the growers, but by the *downstream* distributors, and which required "coordination by multiple actors at multiple levels of the supply chain." 89 F.4th at 440-41.

CONCLUSION

The Court should assess Defendants' arguments about the applicability of the per se rule under the principles described in this Statement.

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2026, I electronically filed the foregoing brief by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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