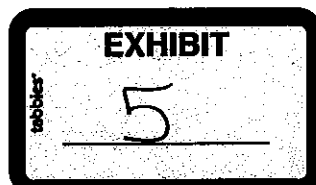


63. In addition to meeting the elements of Rule 23(a), the named plaintiffs/class representatives will establish that the elements of Rule 23b(3) are satisfied such that a class should be certified. Common questions of law or fact predominate over any questions affecting only individual class members. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy.

64. The economic and antitrust injuries to the proposed representatives, class and their business or property that flow directly from CHEP's conduct arise from common questions of fact or law and that predominate over any applicable to any individual are as follows:

- a. whether the wood pallet is a properly defined product sufficient to state a relevant product market;
- b. whether CHEP's conduct economically coerces class members to incur business costs directly related to CHEP's blue pallets that come into class members' possession. Such business costs consisting of, in part, sorting, use of on site storage and transportation, labor, segregating blue pallets, risk of loss, administrative, opportunity costs, generalized storage, handling among other customary business overhead costs;
- c. whether, absent CHEP's business conduct, the same business costs would be incurred by class members;
- d. whether the business costs associated with the class's possession and handling of CHEP's pallets results in the class being non-competitive in the pallet distribution market as opposed to CHEP when a potential customer is in the market for wood pallets.



- c. Whether CHEP's conduct in relation to pallet recyclers is essentially uniform within the lower forty-eight states of the United States.
- f. whether CHEP's business conduct constitutes an attempt to monopolize the markets, relevant geographic and product, for wood pallets and is thereby in violation of the antitrust laws of the United States;
- g. whether the named plaintiffs, class representatives and class members were injured in their business or property by reason of CHEP's violation of the antitrust laws of the United States and that such injuries are of the type the antitrust laws are intended to prevent and which flow directly from CHEP's unlawful conduct;
- h. whether the business conduct of CHEP constitutes a violation of the Sherman Antitrust Act, 15 U.S.C. § 2 (as amended) [15 U.S.C. § 15(a)]; and
- i. whether there is a proper measurement of money damages for injury to the business or property of the class.

#### **VIII. MANAGEABILITY: THE CLASS ACTION AS THE SUPERIOR METHOD**

In addressing the requirements of predominance and superiority pursuant to Rule 23(b)(3), the following are presented to the court.

65. No wood pallet recycler has expressed interest in or has undertaken an individual prosecution of the defendant upon the legal basis alleged in this complaint. The existence of any individual civil actions involving CHEP and a recycler pertains only to issues other than as alleged in this complaint.

66. There is no litigation now existing, nor any in the past, between recyclers (individually or as a class) and CHEP in which the legal basis or claim for relief are similar to the instant action.