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7	[Additional Counsel Appear on Signature Pa	[ge]
8 9		ES DISTRICT COURT
10		N DISTRICT OF CALIFORNIA
10	McLANE COMPANY, INC. and MEADOWBROOK MEAT COMPANY,	CASE NO. 15-cv-05310
12	INC.	COMPLAINT FOR VIOLATION
13	Plaintiffs,	OF THE SHERMAN ACT, 15 U.S.C. § 1
14	V.	
15	TRI-UNION SEAFOODS, LLC, d/b/a CHICKEN OF THE SEA	DEMAND FOR JURY TRIAL
16 17	INTERNATIONAL; KING OSCAR, INC.; BUMBLE BEE FOODS, LLC, f/k/a BUMBLE BEE SEAFOODS, LLC; and STARKIST CO.,	
18	Defendants.	
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		Case No. 15-cv-05310
	I C	OMPLAINT

1	Plaintiffs McLane Company, Inc. and Meadowbrook Meat Company, Inc. ("Plaintiffs"),	
2	by and through undersigned counsel, complain as follows:	
3	NATURE OF THE CASE	
4	1. This action arises from a conspiracy to raise, fix, stabilize, or maintain	
5	prices, allocate customers, and restrict capacity in the market for packaged seafood, including	
6	tuna, clam, crab, mackerel, oyster, salmon, sardines, and shrimp ("Packaged Seafood") sold in the	
7	United States, from at least as early as January 1, 2000, through the present (the "Relevant	
8	Period"), by Defendants Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea, King Oscar, Inc.,	
9	Bumble Bee Foods, LLC f/k/a Bumble Bee Seafoods, LLC, and StarKist Co. (collectively,	
10	"Defendants").	
11	2. Plaintiffs bring this action to (i) recover treble damages, attorneys' fees,	
12	litigation expenses, and court costs, and (ii) secure injunctive relief for violations of Section 1 of	
13	the Sherman Act of 1890 ("Sherman Act"), 15 U.S.C. § 1, pursuant to Sections 4 and 16 of the	
14	Clayton Act of 1914 ("Clayton Act"), 15 U.S.C. §§ 15 and 26.	
15	3. As alleged more fully below, by early 2000, growth in the Packaged	
16	Seafood industry had slowed, and the prospects for growth were dim. Beginning at least as early	
17	as January 2000, in an effort to combat the prospect of diminishing profits, Defendants and their	
18	co-conspirators conspired to raise, fix, stabilize, or maintain prices, allocate customers, and	
19	restrict capacity in the market for Packaged Seafood sold in the United States. As a direct and	
20	proximate result of Defendants' cartel activities, Plaintiffs were overcharged by Defendants for	
21	Packaged Seafood.	
22	JURISDICTION AND VENUE	
23	4. This Court has jurisdiction over the subject matter of this action pursuant to	
24	Section 4(a) and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, and 28 U.S.C. §§ 1331 and	
25	1337.	
26	5. Defendants and their co-conspirators engaged in conduct both inside and	
27	outside the United States that caused direct, substantial, and reasonably foreseeable and intended	
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anticompetitive effects upon interstate commerce within the United States, and upon import trade
 and commerce with the United States.

6. Venue is proper in this district pursuant to Sections 4(a) and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district, a substantial portion of the affected interstate trade and commerce discussed below has been carried out in this district, and one or more Defendants reside, are found, have agents, are licensed to do business, are doing business, or transact business in this district.

9 7. This Court has in persona jurisdiction over each Defendant because, inter 10 *alia*, each Defendant: (a) transacted business in the United States, including in this district; (b) 11 directly or indirectly sold or marketed substantial quantities of Packaged Seafood throughout the 12 United States, including in this district; (c) had substantial aggregate contacts with the United 13 States as a whole, including in this district; or (d) was engaged in an illegal price-fixing 14 conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable, and intended 15 effect of causing injury to, the business or property of persons and entities residing in, located in, 16 or doing business throughout the United States, including in this district.

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PARTIES

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A. <u>Plaintiff</u>

8. Plaintiff McLane Company, Inc. ("McLane") is a Texas corporation with
 its principal place of business in Temple, Texas. During the Relevant Period, McLane purchased
 Packaged Seafood directly from one or more Defendants, and has been injured in its business or
 property by reason of the antitrust violations alleged in this complaint.

9. Plaintiff Meadowbrook Meat Company, Inc. ("Meadowbrook") is a North
 Carolina corporation with its principal place of business in Rocky Mount, North Carolina. During
 the Relevant Period, Meadowbrook purchased Packaged Seafood directly from one or more
 Defendants, and has been injured in its business or property by reason of the antitrust violations
 alleged in this complaint.

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1	B. <u>Defendants</u>
2	10. Defendant Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea
3	International ("COTS") is a Delaware corporation with its principal place of business at 4510
4	Executive Drive, # 3, San Diego, CA 92121.
5	11. Defendant King Oscar, Inc. ("KOI") is a Delaware corporation with its
6	principal place of business at 3838 Camino Del Rio North, Suite 115, San Diego, CA 92108.
7	12. Defendants COTS and KOI (together, "Tri-Union") are wholly-owned
8	subsidiaries of Thai Union Frozen Products Public Company, Ltd. ("Thai Union"), a publicly
9	held company headquartered in Thailand.
10	13. Defendant Bumble Bee Foods, LLC, f/k/a Bumble Bee Seafoods, LLC
11	("Bumble Bee") is a Delaware corporation with its principal place of business at 9655 Granite
12	Ridge Drive, Suite 100, San Diego, CA 92123. Bumble Bee is a wholly-owned subsidiary of Lion
13	Capital, a private investment firm headquartered in Great Britain.
14	14. Defendant StarKist Co. ("StarKist") is a Delaware corporation, with its
15	principal place of business at 225 North Shore Drive, Suite 400, Pittsburgh, PA 15212. StarKist is
16	a wholly-owned subsidiary of Dongwon Enterprises Co., which is headquartered in Korea.
17	15. Defendants and their co-conspirators directly and through their affiliates
18	sold Packaged Seafood in the United States and in this district at artificially inflated prices during
19	the Relevant Period. Defendants are direct competitors in the United States Packaged Seafood
20	market.
21	AGENTS AND CO-CONSPIRATORS
22	16. Each Defendant acted as the principal of, or agent for, all other Defendants
23	with respect to the acts, violations, and common course of conduct described in this complaint.
24	17. Various other persons, firms, companies, and corporations not named as
25	Defendants have knowingly and willingly conspired with Defendants, and performed acts and
26	made statements in furtherance of the conspiracy and in furtherance of the anticompetitive
27	conduct.
28	
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1	18. The acts alleged to have been done by any Defendant or co-conspirator
2	were authorized, ordered, or done by its directors, officers, managers, agents, employees, or
3	representatives while actively engaged in the management, direction, or control of such
4	Defendant's or co-conspirator's affairs.
5	INTERSTATE TRADE AND COMMERCE
6	19. Defendants Tri-Union, Bumble Bee, and StarKist are the leading
7	manufacturers of Packaged Seafood sold in the United States.
8	20. The referenced Packaged Seafood products are produced by Defendants or
9	their affiliates in either the United States or overseas.
10	21. During the Relevant Period, Tri-Union, Bumble Bee, and StarKist, directly
11	or through one or more of their affiliates, sold Packaged Seafood throughout the United States in
12	a continuous and uninterrupted flow of interstate commerce, including through and into this
13	judicial district.
14	22. The activities of Defendants and their co-conspirators were within the flow
15	of, and intended to, and did, have a substantial effect on interstate commerce in the United States.
16	23. Defendants' and their co-conspirators' conduct, including the marketing
17	and sale of Packaged Seafood, took place within, and has had, and was intended to have, a direct,
18	substantial, and reasonably foreseeable anticompetitive effect upon interstate commerce within
19	the United States and upon import commerce with foreign nations.
20	24. The restraints alleged in this complaint have directly and substantially
21	affected interstate commerce in that Defendants have deprived Plaintiffs of the benefits of free
22	and open competition in the purchase of Packaged Seafood within the United States.
23	25. Defendants' agreement to inflate, fix, raise, maintain, or artificially
24	stabilize prices of Packaged Seafood, and their actual inflating, fixing, raising, maintaining, or
25	artificially stabilizing Packaged Seafood prices, were intended to have, and had, a direct,
26	substantial, and reasonably foreseeable effect on United States commerce and on import trade and
27	commerce with the United States.
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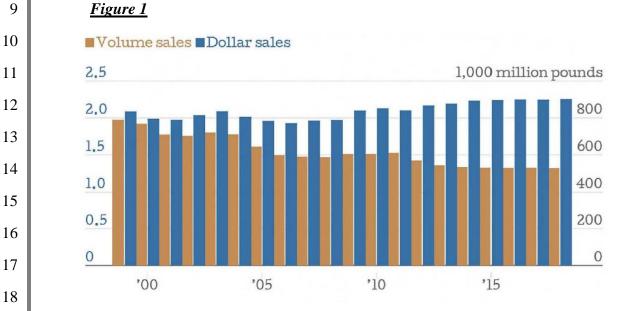
1	FACTUAL ALLEGATIONS
2	A. <u>Background</u>
3	26. Packaged Seafood is composed of raw seafood that is processed to preserve
4	and enhance flavor, and ensure product safety. Because it is typically caught far offshore, raw
5	seafood is usually delivered to canneries frozen or refrigerated.
6	27. Upon delivery to a processing plant, an initial quality control inspection is
7	performed to ensure the seafood was stored and transported at the proper temperature and is in
8	acceptable condition. The seafood is maintained at temperatures ranging from 0°Celsius to -18°C
9	until processing. Seafood passing the initial quality control inspection is prepared for packaging.
10	28. Accepted seafood is initially transferred to large ovens for "pre-cooking."
11	After further cleaning, the seafood is fed into filling machines where product packages (either
12	cans, pouches, or cups) are filled with pre-set amounts. Filled packages are moved to sealing
13	machines where they are closed and sealed.
14	29. Each package is affixed with a permanent production code identifying
15	plant, product, date packed, batch, and other information. Filled and sealed packages are then
16	cooked under pressure to make the products commercially sterile.
17	30. All three Defendants sell Packaged Seafood in the United States. StarKist,
18	Bumble Bee and Tri-Union all sell packaged tuna, clams, salmon, and sardines. Bumble Bee and
19	Tri-Union also sell packaged crabs, mackerel, oysters, and shrimp.
20	31. The United States Packaged Seafood industry generates annual sales of
21	approximately \$2.6 billion. Tuna is the largest category within Packaged Seafood, generating
22	estimated annual sales of approximately \$1.7 billion.
23	32. Defendants dominated the United States market for Packaged Seafood
24	throughout the Relevant Period. In 2001, Defendants had a combined market share of 85%, which
25	is approximately the same percentage they have today: StarKist 36-40%; Bumble Bee 25%; and
26	Tri-Union 20%.
27	33. After decades of growth, demand for Packaged Seafood has been declining
28	since 2000. From about 1950 until 2000, packaged tuna was the most popular seafood in the
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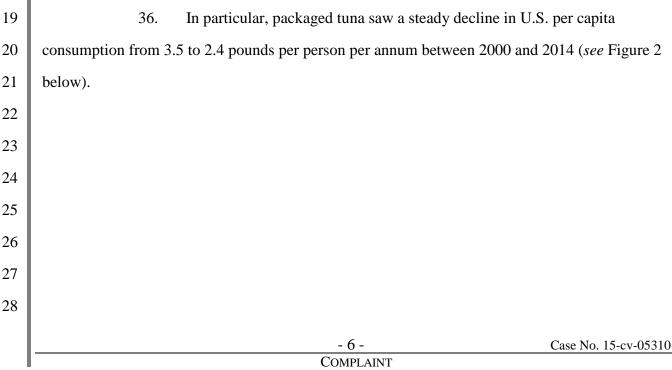
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United States. In 1990, the International Trade Commission estimated that Americans consumed
 between one-half and two-thirds of the global supply of packaged tuna.

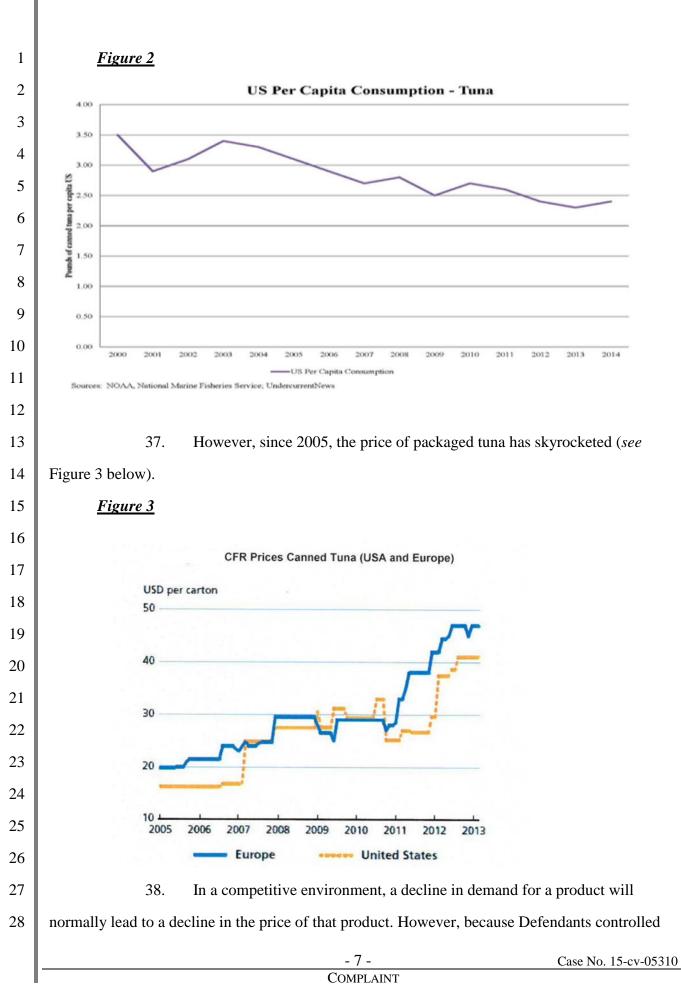
3 34. Since the 1990s, health and sustainability concerns, which range from fears
of mercury poisoning to fury over dolphin bycatch, have taken their toll. So, too, has a national
shift away from packaged seafood.

6 35. As a result, domestic consumption of Packaged Seafood has experienced a
7 steady decline since 2000 (*see* Figure 1 below). Yet, the prices of Packaged Seafood increased
8 steadily from 2000 to 2015.









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the market and agreed with each other to restrict capacity, allocate customers, and fix the prices
 of Packaged Seafood, the prices of Packaged Seafood were intentionally and collaboratively set at
 artificially high levels throughout the Relevant Period.

39. These price increases since the beginning of 2000 were a direct result of
Defendants' conspiracy to restrict capacity, allocate customers, and fix the prices of Packaged
Seafood in the United States. As a result, Plaintiffs paid artificially inflated prices for Packaged
Seafood purchased from the Defendants.

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B. <u>Defendants' Anticompetitive Conspiracy</u>

9 40. Beginning at least as early as January 2000 and continuing to the present,
10 Defendants Tri-Union, Bumble Bee, and StarKist participated together in anticompetitive
11 communications, including telephone calls (sometimes multiple times a day) and frequent face12 to-face meetings at pre-arranged locations, including hotels and restaurants. During these
13 meetings and telephone calls, Defendants shared sensitive business information, and entered into
14 agreements to fix, raise, stabilize, and maintain prices of Packaged Seafood sold to customers in
15 the United States.

16

41. Senior executives of the three companies met at least twice a year.

17 42. At other times, top executives regularly discussed prices and shared18 sensitive customer information.

19 43. Throughout the Relevant Period, Defendants communicated regularly by
20 telephone to discuss prices and sensitive customer information. For example, during at least one
21 telephone conversation between Bumble Bee and Starkist executives, Starkist informed Bumble
22 Bee that StarKist and Tri-Union were in agreement to raise prices.

44. As part of the conspiracy, Defendants discussed pricing, and agreed to
coordinate the timing and amount of price increases for Packaged Seafood sold to customers in
the United States. Defendants also agreed to restrict capacity and allocate customers.

26 45. Defendants agreed to exchange, and did exchange, information during their
27 telephone conversations and meetings for the purpose of monitoring and enforcing adherence to
28 their agreements.

1	46. Defendants had ample opportunities for collusion. Defendants routinely
2	attended trade shows and conferences during which they discussed Packaged Seafood pricing and
3	other aspects of their conspiracy. Defendants also collaborated on many projects during the
4	Relevant Period, including their joint "Tuna the Wonderfish" advertising campaign and the
5	International Seafood Sustainability Foundation.
6	47. The "Tuna the Wonderfish" advertising campaign, which ran from early
7	2011 through early 2012, was designed to stem the tide of declining sales of Packaged Seafood in
8	the United States. The "Tuna the Wonderfish" campaign gave Defendants ample opportunity to
9	conspire to raise and fix Packaged Seafood prices. Although the campaign was unsuccessful in
10	boosting consumption, Defendants nonetheless jointly implemented a price increase in 2012 in
11	the face of falling demand.
12	48. Defendants Bumble Bee and Tri-Union also co-operate on seafood
13	processing and packaging. Bumble Bee co-packs for the West Coast for Tri-Union in Bumble
14	Bee's Santa Fe Springs, California plant, while Tri-Union returns the favor for the East Coast at
15	its Lyons, Georgia plant.
16	THE CHARACTERISTICS OF THE UNITED STATES
17	PACKAGED SEAFOOD MARKET ARE CONDUCIVE TO COLLUSION
18	49. The structure and characteristics of the Packaged Seafood market in the
19	United States are conducive to a price-fixing agreement.
20	50. Packaged Seafood is a commodity product that is sold directly to retail
21	chains and through grocery wholesalers and distributors, such as Plaintiffs. Packaged Seafood
22	varieties contain similar amounts of seafood and are marketed in packages, including, but not
23	limited to, cans, pouches, and cups. Therefore, purchasers of Packaged Seafood are more likely to
24	be influenced by price when making a purchasing decision.
25	51. There are substantial barriers that preclude, or reduce, entry into the
26	Packaged Seafood market, including high start-up costs, manufacturing expertise, access to raw
27	materials, and access to distribution channels. Therefore, Defendants could collectively raise
28	prices without fear of being undercut by new entrants.
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1	52. Purchasers routinely source their Packaged Seafood from one of the three
2	Defendants. As a result, Defendants dominate the United States Packaged Seafood market.
3	53. Defendants possessed significant market power to raise prices for Packaged
4	Seafood above competitive levels in the United States.
5	54. There are no economically reasonable substitutes for Packaged Seafood.
6	Alternative seafood, such as frozen seafood or fresh seafood, require preparation, such as
7	cooking, before they can be consumed.
8	THE DOJ INVESTIGATION
9	55. The San Francisco office of the antitrust division of the United States
10	Department of Justice ("DOJ") is conducting an investigation into anticompetitive practices in the
11	United States Packaged Seafood industry. The DOJ has convened a grand jury, which is believed
12	to have been convened in the Northern District of California. Two of the three largest United
13	States Packaged Seafood manufacturers, Tri-Union and Bumble Bee, have publicly confirmed
14	receipt of grand jury subpoenas.
15	56. On July 23, 2015, Thai Union confirmed that its subsidiary, "Tri-Union
16	Seafoods LLC, operating in the United States under the brand Chicken of the Sea ha[d] received a
17	subpoena requiring the production of relevant information to the DOJ," and that "Chicken of the
18	Sea is cooperating fully with the investigation."
19	57. As an indication of the seriousness of the DOJ's investigation, Thai Union
20	also announced that it had suspended a planned public offering, which it had announced a week
21	earlier on July 17, 2015. The company stated that it wanted additional clarity on this investigation
22	before proceeding with the public offering, and that Thai Union has notified the Securities and
23	Exchange Commission of the suspension.
24	58. On July 23, 2015, Bumble Bee acknowledged receipt of a grand jury
25	subpoena, stating, "The Company did receive a grand jury subpoena relating to a US Department
26	of Justice investigation into potential antitrust violations in the packaged seafood industry. The
27	Company is cooperating fully with the investigation."
28	59. StarKist has not announced whether it received a grand jury subpoena.
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1	60. Upon information and belief, one of the Defendants applied for admittance
2	into the DOJ's corporate leniency program to report Defendants' price fixing activity and other
3	anticompetitive conduct violative of the Sherman Act § 1 in the United States Packaged Seafood
4	market.
5	61. Upon information and belief, one of the Defendants has been accepted into
6	the DOJ corporate leniency program.
7	PLAINTIFFS SUFFERED ANTITRUST INJURY
8	62. Defendants' conspiracy had the following effects, among others:
9	a. Price competition has been restrained or eliminated with respect to
10	Packaged Seafood; and
11	b. The prices of Packaged Seafood have been fixed, raised, maintained, or
12	stabilized at artificially inflated levels.
13	63. During the Relevant Period, Defendants charged supra-competitive prices
14	for Packaged Seafood sold to Plaintiffs. By reason of Defendants' alleged violations of the
15	antitrust laws, Plaintiffs have sustained injury to their businesses or property, having paid higher
16	prices for Packaged Seafood than they would have paid absent Defendants' alleged illegal
17	contract, combination, or conspiracy, and, as a result, have suffered damages in an amount to be
18	determined. This is an antitrust injury of the type the antitrust laws were meant to punish and
19	prevent.
20	FRAUDULENT CONCEALMENT AND
21	TOLLING OF THE STATUTE OF LIMITATIONS
22	64. Throughout the Relevant Period, Defendants affirmatively and fraudulently
23	concealed their unlawful conduct from discovery by Plaintiffs.
24	65. Plaintiffs did not discover, and could not have discovered through the
25	exercise of reasonable diligence, which they, in fact, exercised, the existence of the conspiracy
26	and Defendants' and their co-conspirators' involvement in the conspiracy until July 23, 2015,
27	when the DOJ's investigations first became public.
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1	66. Because the conspiracy was actively concealed until July 23, 2015,
2	Plaintiffs were unaware of Defendants' and their co-conspirators' unlawful conduct, and did not
3	know that they were paying artificially high prices for Packaged Seafood.
4	67. The affirmative acts of Defendants and their co-conspirators, including acts
5	in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that
6	precluded detection.
7	68. Defendants and their co-conspirators agreed among themselves not to
8	discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in
9	furtherance of their illegal conspiracy.
10	69. Defendants and their co-conspirators met and communicated secretly
11	concerning the pricing and marketing of Packaged Seafood as to avoid detection.
12	70. Plaintiffs could not have discovered the alleged conspiracy at an earlier
13	date by the exercise of reasonable diligence because of the deceptive practices and secrecy
14	techniques employed by Defendants and their co-conspirators to avoid detection of, and
15	fraudulently conceal, their contract, conspiracy, or combination. Defendants' conspiracy was
16	fraudulently concealed by various means and methods, including, but not limited to, secret
17	meetings, misrepresentations to customers, and surreptitious communications among Defendants
18	and their co-conspirators via telephone or in in-person meetings in order to prevent the existence
19	of written records.
20	71. Because the alleged conspiracy was affirmatively concealed by Defendants
21	and their co-conspirators until July 23, 2015, Plaintiffs had no knowledge of the alleged
22	conspiracy or any facts or information that would have caused a reasonably diligent person to
23	investigate whether a conspiracy existed.
24	72. None of the facts or information available to Plaintiffs prior to July 23,
25	2015, if investigated with reasonable diligence, could or would have led to the discovery of the
26	conspiracy prior to July 23, 2015.
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1	73. As a result of Defendants' and their co-conspirators' fraudulent
2	concealment of the conspiracy, the running of any statute of limitations has been tolled with
3	respect to Plaintiffs' claims of anticompetitive conduct alleged in this Complaint.
4	COUNT I
5	VIOLATION OF THE SHERMAN ACT § 1
6	74. Defendants and their co-conspirators entered into, and engaged in, a
7	contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of
8	the Sherman Act, 15 U.S.C. § 1.
9	75. Defendants' anticompetitive acts were intentionally directed at the United
10	States Packaged Seafood market, and had a substantial and foreseeable effect on interstate
11	commerce by raising and fixing Packaged Seafood prices throughout the United States.
12	76. The contract, combination, or conspiracy had the following direct,
13	substantial, and reasonably foreseeable effects upon commerce in the United States and upon
14	import commerce:
15	a. Prices charged to, and paid by, Plaintiffs for Packaged Seafood were
16	artificially raised, fixed, maintained, or stabilized at supra-competitive levels;
17	b. Plaintiffs have been deprived of the benefits of free, open, and unrestricted
18	competition in the United States Packaged Seafood market; and
19	c. Competition in establishing the prices paid for Packaged Seafood has been
20	unlawfully restrained, suppressed, or eliminated.
21	77. Defendants' and their co-conspirators' anticompetitive activities have
22	directly and proximately caused injury to Plaintiffs in the United States.
23	78. As a direct and proximate result of Defendants' unlawful conduct,
24	Plaintiffs paid artificially inflated prices for Packaged Seafood.
25	79. As a direct and proximate result of Defendants' unlawful conduct,
26	Plaintiffs have been damaged in their business or property by paying prices for Packaged Seafood
27	that were higher than they would have been but for Defendants' unlawful conduct, which has
28	resulted in an amount of ascertainable damages to be established at trial.
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1	PRAYER FOR RELIEF
2	WHEREFORE, Plaintiffs pray that the Court:
3	A. Adjudge and decree that Defendants' unlawful contract, combination, or
4	conspiracy constitutes a per se violation of Section 1 of the Sherman Act;
5	B. Adjudge and decree that each Defendant, and its successors, assigns, parents,
6	subsidiaries, affiliates, and transferees, and their respective officers, directors, agents, and
7	employees, and all other persons acting or claiming to act on behalf of any of them or in concert
8	with them, be permanently enjoined and restrained from in any manner, directly or indirectly,
9	continuing, maintaining, or renewing the combination, conspiracy, agreement, understanding, or
10	concert of action, or adopting any practice, plan, program, or design having a similar purpose or
11	effect in restraining competition in the United States Packaged Seafood market;
12	C. Enter judgment against Defendants, jointly and severally, in favor of Plaintiffs for
13	treble damages determined to have been sustained by Plaintiffs by virtue of Defendants' and their
14	co-conspirators' violations of the Sherman Act;
15	D. Award Plaintiffs their attorneys' fees, litigation expenses, and court costs, as well
16	as pre-judgment and post-judgment interest as permitted by United States law; and
17	E. Grant Plaintiffs such other and further relief as the case may require, or as the
18	Court deems just and proper under the circumstances.
19	JURY DEMAND
20	Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury.
21	Dated: November 19, 2015KAPLAN FOX & KILSHEIMER LLP
22	By: <u>/s/ Laurence D. King</u>
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17	Meadowbrook Meat Company, Inc.
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