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8
 9 **UNITED STATES DISTRICT COURT**
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 IN RE: PACKAGED SEAFOOD PRODUCTS
 11 ANTITRUST LITIGATION

Case No. 15-MD-2670 JLS
 (MDD)

12 THIS DOCUMENT RELATES TO:
 13 DIRECT ACTION PLAINTIFFS' CASES

15 AFFILIATED FOODS, INC.; AFFILIATED
 16 FOODS MIDWEST COOPERATIVE, INC.;
 ASSOCIATED FOOD STORES, INC.;
 17 ASSOCIATED GROCERS OF NEW
 ENGLAND, INC.; ASSOCIATED GROCERS,
 18 INC.; BROOKSHIRE BROTHERS, INC.;
 BROOKSHIRE GROCERY COMPANY;
 19 CERTCO, INC.; GIANT EAGLE, INC.;
 MCLANE COMPANY, INC.;
 20 MEADOWBROOK MEAT COMPANY, INC.;
 UNIFIED GROCERS, INC.; URM STORES
 21 INC.; and WESTERN FAMILY FOODS, INC.,

**CONSOLIDATED
 AMENDED COMPLAINT
 FOR VIOLATION
 OF THE SHERMAN ACT,
 15 U.S.C. § 1**

DEMAND FOR JURY TRIAL

22 Plaintiffs,

23 vs.

24 TRI-UNION SEAFOODS, LLC, d/b/a
 CHICKEN OF THE SEA INTERNATIONAL;
 25 THAI UNION NORTH AMERICA, INC.;
 THAI UNION GROUP PUBLIC COMPANY,
 LTD.; BUMBLE BEE FOODS, LLC, f/k/a
 26 BUMBLE BEE SEAFOODS, LLC; STARKIST
 CO., DEL MONTE FOODS COMPANY; and
 27 DONGWON ENTERPRISES CO., LTD.,

28 Defendants.

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1 Plaintiffs Affiliated Foods, Inc., Affiliated Foods Midwest Cooperative, Inc.,
2 Associated Food Stores, Inc., Associated Grocers of New England, Inc., Associated
3 Grocers, Inc., Brookshire Brothers, Inc., Brookshire Grocery Company, Certco, Inc.,
4 Giant Eagle, Inc., McLane Company, Inc., Meadowbrook Meat Company, Inc.,
5 Unified Grocers, Inc., URM Stores Inc., and Western Family Foods, Inc.
6 (collectively, “Plaintiffs”), by and through undersigned counsel, complain as
7 follows:

8 NATURE OF THE CASE

9 1. This action arises from a conspiracy to raise, fix, stabilize, or maintain
10 prices in the market for shelf-stable packaged seafood, including tuna, clams, crab,
11 mackerel, oysters, salmon, sardines, and shrimp (collectively, “Packaged Seafood”)
12 sold in the United States, from at least as early as January 1, 2003, through July 23,
13 2015 (the “Relevant Period”), by Defendants Tri-Union Seafoods, LLC d/b/a
14 Chicken of the Sea, Thai Union North America, Inc., Thai Union Group Public
15 Company, Ltd., Bumble Bee Foods, LLC f/k/a Bumble Bee Seafoods, LLC,
16 StarKist Co., Del Monte Foods Company, and Dongwon Enterprises Co., Ltd.
17 (collectively, “Defendants”).

18 2. Plaintiffs bring this action to (i) recover treble damages, attorneys’ fees,
19 litigation expenses, and court costs, and (ii) secure injunctive relief for violations of
20 Section 1 of the Sherman Act of 1890 (“Sherman Act”), 15 U.S.C. § 1, pursuant to
21 Sections 4 and 16 of the Clayton Act of 1914 (“Clayton Act”), 15 U.S.C. §§ 15 and
22 26.

23 3. As alleged more fully below, by early 2003, growth in the Packaged
24 Seafood industry had slowed, and the prospects for growth were dim. Beginning at
25 least as early as January 2003, in an effort to combat the prospect of diminishing
26 profits, Defendants and their co-conspirators conspired to raise, fix, stabilize, or
27 maintain prices in the market for Packaged Seafood sold in the United States. As a
28

1 direct and proximate result of Defendants' cartel activities, Plaintiffs were
2 overcharged by Defendants for Packaged Seafood.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over the subject matter of this action
5 pursuant to Section 4(a) and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, and
6 28 U.S.C. §§ 1331 and 1337.

7 5. Defendants and their co-conspirators engaged in conduct both inside
8 and outside the United States that caused direct, substantial, and reasonably
9 foreseeable and intended anticompetitive effects upon interstate commerce within
10 the United States, and upon import trade and commerce with the United States.

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

18 7. This Court has personal jurisdiction over each Defendant because, *inter*
19 *alia*, each Defendant (i) transacted business in the United States, including this
20 district; (ii) directly or indirectly sold or marketed substantial quantities of Packaged
21 Seafood throughout the United States, including this district; (iii) had substantial
22 aggregate contacts with the United States as a whole, including this district; or (iv)
23 engaged in an illegal conspiracy that was directed at, and had a direct, substantial,
24 reasonably foreseeable, and intended effect of causing injury to, the business or
25 property of persons and entities residing in, located in, or doing business throughout
26 the United States, including this district.

PARTIES

A. Plaintiffs

8. Plaintiff Affiliated Foods, Inc. is a Texas corporation with its principal place of business in Amarillo, Texas.

9. Plaintiff Affiliated Foods Midwest Cooperative, Inc. is a Nebraska corporation with its principal place of business in Norfolk, Nebraska.

10. Plaintiff Associated Food Stores, Inc. is a Utah corporation with its principal place of business in Salt Lake City, Utah.

11. Plaintiff Associated Grocers of New England, Inc. is a New Hampshire corporation with its principal place of business in Pembroke, New Hampshire.

12. Plaintiff Associated Grocers, Inc. is a Louisiana corporation with its principal place of business in Baton Rouge, Louisiana.

13. Plaintiff Brookshire Brothers, Inc. is a Texas corporation with its principal place of business in Lufkin, Texas.

14. Plaintiff Brookshire Grocery Company is a Texas corporation with its principal place of business in Tyler, Texas.

15. Plaintiff Certco, Inc. is a Wisconsin corporation with its principal place of business in Madison, Wisconsin.

16. Plaintiff Giant Eagle, Inc. is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

17. Plaintiff McLane Company, Inc. is a Texas corporation with its principal place of business in Temple, Texas.

18. Plaintiff Meadowbrook Meat Company, Inc. is a North Carolina corporation with its principal place of business in Rocky Mount, North Carolina.

19. Plaintiff Unified Grocers, Inc. is a California corporation with its principal place of business in Commerce, California.

20. Plaintiff URM Stores, Inc. is a Washington corporation with its principal place of business in Spokane, Washington.

1 21. Plaintiff Western Family Foods, Inc. is an Oregon corporation with its
2 principal place of business in Tigard, Oregon.

3 22. During the Relevant Period, each Plaintiff purchased Packaged Seafood
4 directly from one or more Defendants, and was injured in its business or property by
5 reason of the antitrust violations alleged in this complaint.

6 **B. Defendants**

7 23. Defendant Tri-Union Seafoods, LLC d/b/a Chicken of the Sea
8 International (“Tri-Union”) is a Delaware limited liability company with its
9 principal place of business at 9330 Scranton Road, Suite 500, San Diego, California
10 92121. Since 1996, Tri-Union has been a wholly-owned subsidiary of Thai Union
11 North America, Inc. f/k/a Thai Union International, Inc., a California corporation.
12 Thai Union North America, Inc., in turn, is a wholly-owned subsidiary of Thai
13 Union Group Public Company, Ltd. (“Thai Union Group”). All three companies are
14 led by Thiraphong Chansiri, who serves as the CEO and President of Thai Union
15 Group, the President of Thai Union North America, Inc., and a Director of Tri-
16 Union, at which Chansiri has a day-to-day leadership role. Thai Union Group and
17 Thai Union North America, Inc. controlled and supervised the business, operations,
18 and activities of Tri-Union, including the conduct alleged in this Consolidated
19 Amended Complaint, throughout the Relevant Period.

20 24. Defendant Thai Union North America, Inc. is a California corporation
21 with its principal place of business at 9330 Scranton Road, Suite 500, San Diego,
22 California 92121. Thai Union North America, Inc., processes and distributes frozen
23 shrimp, fish products, and other types of frozen and Packaged Seafood through its
24 subsidiaries, including Tri-Union.

25 25. Defendant Thai Union Group, a publicly held company headquartered
26 in Thailand, is a global processor and exporter of frozen seafood and Packaged
27 Seafood.

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1 26. As used herein, “Chicken of the Sea” collectively refers to Defendants
2 Tri-Union, Thai Union North America, Inc., and Thai Union Group.

3 27. Defendant Bumble Bee Foods, LLC f/k/a Bumble Bee Seafoods, LLC
4 (“Bumble Bee”) is a Delaware limited liability company with its principal place of
5 business at 9655 Granite Ridge Drive, Suite 100, San Diego, California 92123.
6 Bumble Bee is a wholly-owned subsidiary of Lion Capital, a private investment firm
7 headquartered in Great Britain.

8 28. Defendant StarKist Co. (“StarKist”) is a Delaware corporation with its
9 principal place of business at 225 North Shore Drive, Suite 400, Pittsburgh,
10 Pennsylvania 15212. From December 2002 until October 2008, StarKist was a
11 wholly-owned subsidiary of Del Monte Foods Company, at which time it was sold
12 to, and became a wholly-owned subsidiary of, Dongwon Enterprises Co., Ltd.

13 29. Defendant Del Monte Foods Company (“Del Monte”) is a Delaware
14 corporation with its principal place of business at One Market @ The Landmark,
15 San Francisco, California 94105.

16 30. Defendant Dongwon Enterprises Co., Ltd. (“Dongwon”) is a Korean
17 company with its principal place of business at 275 Yangjae-dong, 68 Mabang-ro,
18 Seoul, South Korea.

19 31. Del Monte managed the operations of StarKist Co. during the time it
20 owned StarKist, from December 2002 until October 2008, and thereafter continued
21 to manage StarKist, including its sales and Packaged Seafood pricing, under an
22 operating agreement with Dongwon until October 2010, at which time Dongwon
23 became the operator of StarKist. Key StarKist executives also served as Del Monte
24 executives during the time Del Monte owned and operated StarKist. For example,
25 Don Binotto served as StarKist’s CEO from the 1990s through November 2010
26 when StarKist was owned first by Heinz, then by Del Monte, and finally by
27 Dongwon. Joseph Tuza was a Del Monte marketing executive between May 2006
28 and August 2008, and then was a StarKist Sr. VP of Marketing, from August 2008

1 until November 2011. Dongwon controlled and supervised the business, operations,
2 and activities of StarKist, including the conduct alleged in this Consolidated
3 Amended Complaint, from at least October 2010 to the present.

4 32. As used herein, “StarKist” collectively refers to Defendants StarKist,
5 Del Monte, from December 2002 until October 2010, and Dongwon, from October
6 2008 through the present.

7 33. Defendants and their co-conspirators, directly and through their
8 affiliates, sold Packaged Seafood throughout the United States, including this
9 district, at artificially inflated prices during the Relevant Period. Defendants are
10 direct competitors in the United States Packaged Seafood market.

11 **AGENTS AND CO-CONSPIRATORS**

12 34. Each Defendant acted as the principal of, or agent for, all other
13 Defendants with respect to the acts, violations, and common course of conduct
14 described in this complaint.

15 35. Various other persons, firms, companies, and corporations not named
16 as Defendants knowingly and willingly conspired with Defendants, and performed
17 acts and made statements in furtherance of the conspiracy and the alleged
18 anticompetitive conduct.

19 36. The wrongful acts alleged to have been done by any one Defendant or
20 co-conspirator were authorized, ordered, or done by its directors, officers, managers,
21 agents, employees, or representatives while actively engaged in the management,
22 direction, or control of such Defendant’s or co-conspirator’s affairs.

23 **INTERSTATE TRADE AND COMMERCE**

24 37. Defendants Chicken of the Sea, Bumble Bee, and StarKist are the
25 leading manufacturers and suppliers of Packaged Seafood sold in the United States.

26 38. The referenced Packaged Seafood products are produced by Defendants
27 or their affiliates in the United States and overseas.

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1 45. Upon delivery to a processing plant, an initial quality control inspection
2 is performed to ensure the seafood is stored and transported at the proper
3 temperature, and is in acceptable condition. The seafood is maintained at
4 temperatures ranging from 0°C to -18°C until processed. Seafood passing the initial
5 quality control inspection is prepared for packaging.

6 46. Accepted seafood is initially transferred to large ovens for “pre-
7 cooking.” After further cleaning, the seafood is fed into filling machines where
8 product packages (either cans, pouches, or cups) are filled with pre-set amounts.
9 Filled packages are moved to sealing machines where they are closed and sealed.

10 47. Each package is affixed with a permanent production code identifying
11 plant, product, date packed, batch, and other information. Filled and sealed packages
12 are then cooked under pressure to make the products commercially sterile.

13 48. StarKist, Bumble Bee, and Chicken of the Sea sell Packaged Seafood in
14 the United States, including packaged tuna, clams, salmon, and sardines. Bumble
15 Bee and Chicken of the Sea also sell packaged crabs, mackerel, oysters, and shrimp.

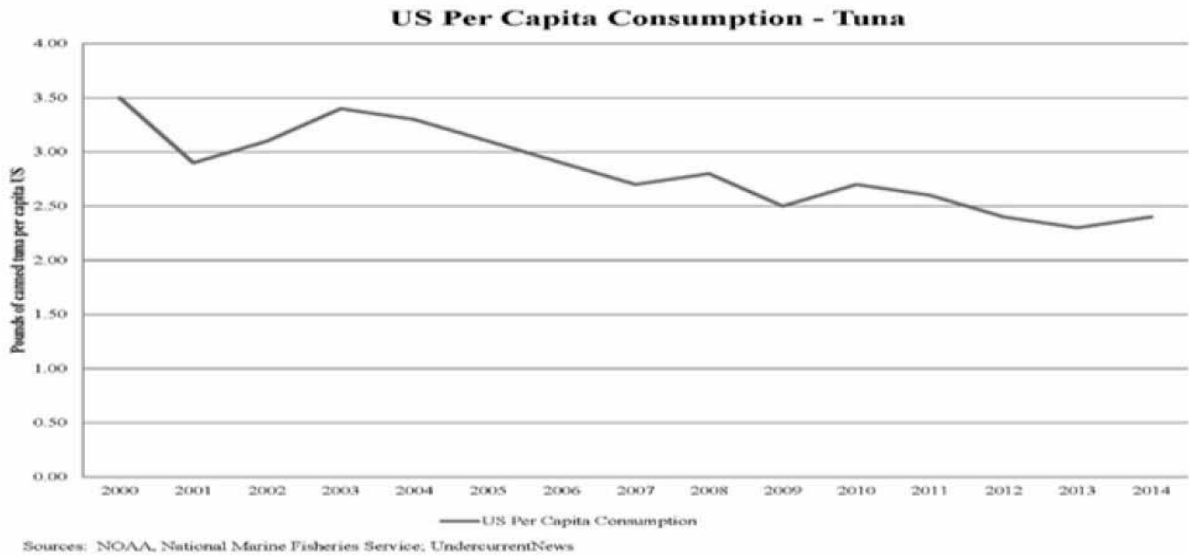
16 49. The United States Packaged Seafood industry generates annual sales of
17 approximately \$2.6 billion. Tuna is the largest category within Packaged Seafood,
18 generating estimated annual sales of approximately \$1.7 billion.

19 50. Defendants dominated the United States market for Packaged Seafood
20 throughout the Relevant Period, with a combined market share of 80-85%. Each
21 Defendant’s share of the market is almost identical to what it was at the beginning of
22 the Relevant Period: StarKist 40-44%; Bumble Bee 24-25%; and Chicken of the Sea
23 15-17%.

24 51. After decades of growth, since 2003, demand for Packaged Seafood has
25 been declining. From about 1950 until 2003, packaged tuna was the most popular
26 seafood in the United States. In 1990, the International Trade Commission estimated
27 that Americans consumed between one-half and two-thirds of the global supply of
28 packaged tuna.

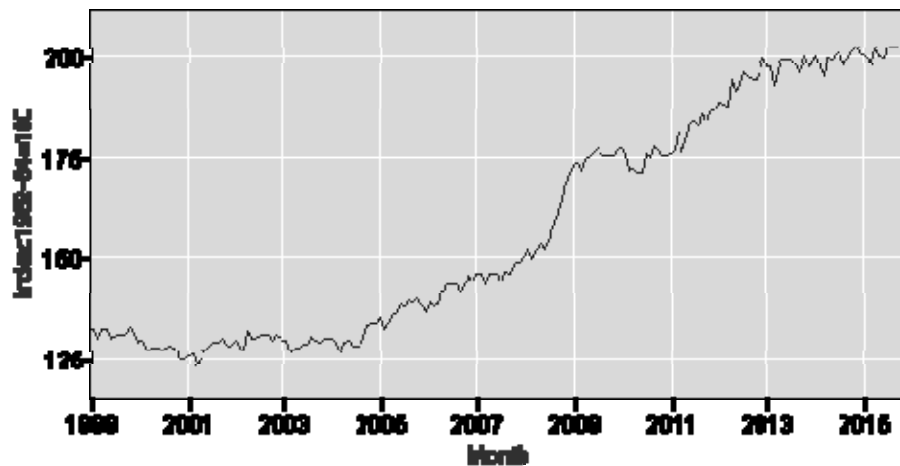
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Figure 2



55. Given the decline in consumption of Packaged Seafood, one would expect rational businesses to reduce the prices of Packaged Seafood, but that did not happen. The following Bureau of Labor Statistics chart depicts the change in U.S. city average prices for Packaged Seafood, from January 1999 through March 2015, confirming a substantial increase in price between 2003 and 2015.

Figure 3



1 56. In a competitive environment, a decline in demand for a product will
2 normally lead to a decline in the price of that product. However, because Defendants
3 controlled the market and agreed with each other to fix the prices of Packaged
4 Seafood, such prices were intentionally and collaboratively set at artificially high
5 levels throughout the Relevant Period.

6 57. The price increases since the beginning of 2003 were a direct result of
7 Defendants' conspiracy to fix the prices of Packaged Seafood in the United States.
8 As a result, Plaintiffs paid artificially inflated prices for Packaged Seafood
9 purchased from the Defendants.

10 **B. Defendants' Illegal Conspiracy in Violation of the Antitrust Laws**

11 58. During the Relevant Period, Defendants Chicken of the Sea, Bumble
12 Bee, and StarKist participated together in anticompetitive communications,
13 including telephone calls (sometimes multiple times a day) and frequent face-to-face
14 meetings at pre-arranged locations, such as hotels and restaurants. During these
15 meetings and telephone calls, Defendants shared sensitive business and bid
16 information, and entered into agreements to fix, raise, stabilize, and maintain prices
17 of Packaged Seafood sold in the United States. Among other things, they agreed not
18 to charge below a certain price, and coordinate price increases.

19 59. During the Relevant Period, senior executives of the Defendants met at
20 least twice a year, and regularly discussed prices and shared sensitive customer
21 information.

22 60. During the Relevant Period, executives of the Defendants also
23 communicated regularly by telephone to discuss prices and sensitive customer
24 information. For example, upon information and belief, during at least one telephone
25 conversation between Bumble Bee and StarKist executives, StarKist informed
26 Bumble Bee that StarKist and Chicken of the Sea agreed to raise prices.

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1 61. As part of the conspiracy, Defendants discussed pricing, and agreed to
2 coordinate the timing and amount of price increases for Packaged Seafood sold to
3 customers in the United States.

4 62. Throughout the Relevant Period, Defendants agreed to exchange, and
5 did exchange, information during their telephone conversations and meetings for the
6 purpose of monitoring and enforcing adherence to their anticompetitive agreements.

7 63. Defendants had ample opportunities for collusion. Defendants routinely
8 attended trade shows and conferences during which they discussed Packaged
9 Seafood pricing and other aspects of their anticompetitive conspiracy. Defendants
10 regularly attended the biannual “tuna conference” — typically held in Bangkok, but
11 never held in the United States (where there is more active antitrust enforcement) —
12 as well as regular meetings of the International Seafood Sustainability Foundation
13 (“ISSF”) and its governing body, the International Seafood Sustainability
14 Association. Defendants also collaborated on many projects during the Relevant
15 Period, including their joint “Tuna the Wonderfish” advertising campaign, the Tuna
16 Council (formerly known as the U.S. Tuna Foundation), and efforts of the ISSF.
17 Among other things, Chicken of the Sea leadership, including former President and
18 CEO John Signorino and former Sr. VP of Sales John Sawyer, attended a retirement
19 party held at the residence of Chris Lischewski, President and CEO of Bumble Bee.

20 64. The “Tuna the Wonderfish” advertising campaign, which ran from
21 early 2011 through early 2012, was designed to stem the tide of declining sales of
22 Packaged Seafood in the United States. The “Tuna the Wonderfish” campaign gave
23 Defendants ample opportunities to conspire to raise and fix Packaged Seafood
24 prices. Although the campaign was unsuccessful in boosting consumption,
25 Defendants nonetheless jointly implemented price increases at least three times in
26 2011 and 2012 in the face of falling demand.

27 65. There also were numerous interlocking relationships between Chicken
28 of the Sea, Bumble Bee, and StarKist, which fostered frequent high-level

1 discussions among the leadership of these companies. For example, between the late
2 1990s and 2009, StarKist and Chicken of the Sea had a co-packing agreement
3 concerning their facilities in American Samoa.

4 66. During the Relevant Period, Bumble Bee and Chicken of the Sea also
5 co-operated on seafood processing and packaging. Bumble Bee co-packed for
6 Chicken of the Sea on the west coast in Bumble Bee's Santa Fe Springs, California
7 plant, while Chicken of the Sea returned the favor on the east coast at its Lyons,
8 Georgia plant.

9 67. During the Relevant Period, it was commonplace for former executives
10 of one Defendant to later become executives at their former competitors. Within the
11 past 20 years, numerous individuals have held executive or senior sales/marketing
12 positions for more than one Defendant (while maintaining close interlocking
13 relations with former colleagues), including, but not limited to: Chris Lischewski
14 (VP of Procurement at StarKist from 1991 to 1998, and then President and CEO of
15 Bumble Bee, from 1999 to present); Jan Tharp (Sr. VP of Supply Chain at StarKist,
16 from December 2008 to July 2010, Sr. VP, Operations at Bumble Bee, from July
17 2010 to September 2012, and then Executive VP/COO at Bumble Bee, from
18 September 2012 to present); J. Douglas Hines (Sr. VP, Sales & Marketing at
19 Chicken of the Sea in the 1990s, joining Bumble Bee in 1997, where he served as
20 Bumble Bee's Executive VP and COO from September 2008 to September 2012);
21 Joseph Clancy (VP Sales/Marketing at StarKist, from 1985 to 2002, and then VP
22 Retail Sales at Chicken of the Sea, from November 2002 to December 2010); Kevin
23 McClain (VP of Supply Chain at Chicken of the Sea, from 1979 to 2009, and then
24 VP Resourcing at Bumble Bee, from 2009 to present); David Burt (General
25 Manager – Marketing at StarKist from 2000 to 2004, and then VP Sales Specialty
26 Markets at Bumble Bee, from March 2004 to present); Hubert Tucker (Sales
27 Manager at Chicken of the Sea, from December 1997 to July 2012 and then
28 Starkist's Director of Sales Eastern Zone, from July 2012 to present); Donald

1 Stanton (General Manager Inventory Control at StarKist, from 1985 to 2001 and
2 then VP Supply Chain at Bumble Bee, from October 2005 to January 2009); and
3 Dennis Hixson (VP Sales Specialty Markets at Chicken of the Sea, from 2005 to
4 2013, and then Sr. Retail Operations Manager at StarKist, from 2014 to present).

5 68. The fluid movement of executives among Defendants resulted in a web
6 of personal and professional relationships that facilitated anticompetitive agreements
7 and frequent exchanges of confidential and future price information.

8 69. W. Scott Cameron has held senior sales positions at Bumble Bee since
9 May 2000 and has served as Bumble Bee's Sr. VP of Sales since May 2007. He
10 frequently shared future pricing and customer information with the leadership of
11 Chicken of the Sea and StarKist. From October 2009 to September 2012, Cameron
12 regularly communicated with Charles "Chuck" Handford, StarKist's VP of Trade
13 Marketing, sometimes several times per day.

14 70. During the Relevant Period, Scott Cameron held frequent internal sales
15 conference calls at Bumble Bee attended by numerous account managers. On these
16 calls, he stated, inter alia, that he had been communicating with Chuck Handford of
17 StarKist about future pricing for customers.

18 71. During the Relevant Period, Bumble Bee's Scott Cameron also spoke
19 about future pricing with Frank Connelly, who was a Chicken of the Sea regional
20 sales manager from at least 2000 until his death in April 2012.

21 72. Chris Lischewski, President and CEO of Bumble Bee from 1999 to
22 present, had meetings at his office with Chicken of the Sea executives. He also had
23 discussions with StarKist executives by phone. Among others, Lischewski spoke
24 frequently with John Signorino, Chicken of the Sea President and CEO, from
25 January 2005 to October 2007, Shue Wing Chan (Signorino's successor since
26 October 2007), and Don Binotto of StarKist (StarKist CEO from the 1990s through
27 November 2010) to discuss pricing and customers. Lischewski and Ken Worsham,
28 Sr. VP of Marketing at Bumble Bee since at least 2001, regularly attended meetings

1 with Chicken of the Sea and StarKist executives. Lischewski attended meetings
2 with competitors at least twice a year.

3 73. During the Relevant Period, Ken Worsham, Bumble Bee's Sr. VP of
4 Marketing since at least 2001, frequently discussed future pricing and shared
5 customer opportunities with his father, Bob Worsham, a StarKist pricing consultant
6 since the 1980s, and then shared StarKist's future pricing information with
7 executives at Bumble Bee.

8 74. During the Relevant Period, Bumble Bee's Don George discussed
9 future pricing with former Chicken of the Sea associates. Don George was Sr. VP
10 of Trade Marketing and Innovation at Chicken of the Sea from June 1979 until May
11 2006, when he became VP of Trade Marketing at Bumble Bee.

12 75. In or around 2011, Jan Tharp, then Bumble Bee's Sr. VP Operations,
13 attended a meeting at a hotel with executives from StarKist and Chicken of the Sea,
14 at which the executives agreed that all three companies would collectively raise
15 prices. Tharp had previously served as StarKist's Sr. VP Supply Chain from
16 December 2008 through July 2010. In March 2011, effective May 2011, at least
17 Bumble Bee and StarKist announced a price increase.

18 76. During the Relevant Period, Chicken of the Sea held weekly executive
19 meetings on Fridays at 10:00 a.m. They were led by its CEO (John Signorino and
20 later Shue Wing Chan), and attended by all department heads, including John
21 Sawyer, Sr. VP Sales and Marketing, from 2006 until August 2013; Bob Blatt, CFO
22 from the late 1990s to 2013; Jim Davet, Sr. VP Operations, from 2005 until 2008;
23 Mike White, Director of Marketing since the late 1980s; and Kevin McClain, VP of
24 Supply Chain until 2009. At these meetings Sawyer, White, and Signorino/Chan
25 discussed competitors' future price increases for Packaged Seafood products. On
26 multiple occasions, Sawyer presented the group with StarKist's future price lists
27
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1 (described as “market intelligence”), which Sawyer received from StarKist.¹

2 77. During the Relevant Period, Mike White, Chicken of the Sea’s Director
3 of Marketing since the late 1980s, regularly contacted his counterparts at StarKist
4 (including Joseph Tuza, a Del Monte executive and StarKist Sr. VP of Marketing,
5 from August 2008 until November 2011), and Bumble Bee to confirm price
6 quotations that customers claimed to have received from his competitors.

7 78. During the Relevant Period, top leadership from all three companies,
8 including Shue Wing Chan (Chicken of the Sea President and CEO since November
9 2007), Chris Lischewski (Bumble Bee President and CEO), and Don Binotto
10 (StarKist CEO from the late 1990s to November 2010) agreed to underfill tuna cans,
11 and had numerous conference calls to discuss their agreement.

12 79. Discussions among the Defendants led to periodic coordinated price
13 increases at similar times and similar amounts during the Relevant Period, including,
14 as examples:

15 a. In the summer of 2003, at least Chicken of the Sea and Del
16 Monte, on behalf of StarKist, announced list price increases on certain Packaged
17 Seafood products;

18 b. In the first quarter of 2004, Bumble Bee, Chicken of the Sea, and
19 Del Monte, on behalf of StarKist, announced list price increases on certain Packaged
20 Seafood products;

21 c. In September 2004, effective in October 2004, Bumble Bee,
22 Chicken of the Sea, and Del Monte, on behalf of StarKist, announced list price
23 increases of 8% on packaged tuna products;

24 d. In the summer of 2008, Bumble Bee, Chicken of the Sea, and
25 Del Monte, on behalf of StarKist, announced list price increases of approximately
26

27 ¹ Chuck Handford, who was the StarKist VP of Trade Marketing, from October 2009 until
28 September 2012, was formerly employed by Bumble Bee, and a close friend of Messrs. White and Sawyer at Chicken of the Sea.

1 8.5%, and the reduction of the most popular packaged tuna size from 6 oz. to 5 oz.,
2 which resulted in an effective price increase of approximately 20%;

3 e. In March 2011, effective May 2011, at least Bumble Bee and
4 StarKist announced list price increases;

5 f. In January 2012, effective late March or early April 2012,
6 Chicken of the Sea, StarKist, and Bumble Bee announced list price increases across
7 their lines of tuna products; and

8 g. In March-April 2012, effective July 2012, at least StarKist and
9 Bumble Bee announced list price increases.

10 80. Further to the conspiracy, between late December 2011 and January 18,
11 2012, extensive telephone communications occurred between senior executives and
12 sales personnel of Bumble Bee, Chicken of the Sea, and StarKist (including, on
13 information and belief, Chris Lischewski and Scott Cameron of Bumble Bee, and
14 John Sawyer of Chicken of the Sea) that resulted in an agreement to raise list prices
15 across their lines of tuna products. Advanced copies of price announcements were
16 circulated among Defendants' executives. Pursuant to the agreement, StarKist
17 announced a list price increase on January 13, 2012, effective March 26, 2012;
18 Bumble Bee announced a virtually identical list price increase on January 17, 2012,
19 effective April 1, 2012; and Chicken of the Sea announced a virtually identical list
20 price increase on January 18, 2012, effective April 1, 2012. Depending on the
21 product, the price increases led to virtually identical list prices or price increases by
22 a virtually identical amount.

23 81. Bumble Bee, Chicken of the Sea, and StarKist also colluded to resist
24 efforts by environmental groups, such as Greenpeace, to make their products more
25 sustainable and less harmful to oceanic ecosystems. For example, Defendants were
26 subjected to substantial outside pressure to curtail the use of fish aggregating devices
27 ("FADs"), which have been widely criticized as environmentally damaging because
28 of, among other things, the large number of bycatch (including endangered sea

1 turtles, sharks, and other non-targeted animals) inadvertently ensnared by the
2 devices.

3 82. Executives from Bumble Bee, Chicken of the Sea, and StarKist were
4 concerned that a switch to a more sustainable method of fishing would decrease
5 supply and put pressure on their margins. In late 2011, executives from the three
6 companies began discussing the issue via email. They reached an agreement not to
7 sell any branded FAD-free packaged tuna product during a teleconference the week
8 of February 6, 2012, that was confirmed in a February 17, 2012 email. As a result of
9 the agreement, to this date, the three companies still do not offer any branded FAD-
10 free packaged tuna products.

11 83. Chicken of the Sea, Bumble Bee, and StarKist also entered into an
12 agreement to limit promotions and discounts on Packaged Seafood that undercut
13 their published pricing; the agreement was policed by senior executives of each
14 company. For example, between approximately May 2012 and June 2013, there
15 were complaints exchanged, predominantly by emails between senior executives of
16 the companies, about incidents of perceived overly aggressive promotions. A
17 complaint would typically result in reassurances among the companies that the
18 particular advertisement or promotion was an isolated incident, rather than a play for
19 additional market share, and that the promotion would not undercut the market price.

20 **THE CHARACTERISTICS OF THE UNITED STATES**
21 **PACKAGED SEAFOOD MARKET ARE CONDUCTIVE TO COLLUSION**

22 84. The structure and characteristics of the Packaged Seafood market in the
23 United States are conducive to a price-fixing agreement.

24 85. Packaged Seafood is a commodity product sold directly to retail
25 grocery chains, grocery wholesalers, and food distributors. Packaged Seafood
26 varieties contain similar amounts of seafood, and is marketed in packages, including,
27 but not limited to, cans, pouches, and cups. Purchasers of Packaged Seafood are
28 more likely to be influenced by price when making a purchasing decision.

1 of collusive conduct among packaged seafood manufacturers in violation of
2 Section 1 of the Sherman Act, 15 U.S.C. § 1.” (ECF 34-1 at pp 3-4).

3 91. On July 23, 2015, Thai Union confirmed that its subsidiary, “Tri-Union
4 Seafoods LLC, operating in the United States under the brand Chicken of the Sea
5 ha[d] received a subpoena requiring the production of relevant information to the
6 DOJ,” and that “Chicken of the Sea is cooperating fully with the investigation.”

7 92. As an indication of the seriousness of the DOJ’s investigation, Thai
8 Union, on July 17, 2015, announced it had suspended a planned public offering. The
9 company stated that it wanted additional clarity on the DOJ investigation before
10 proceeding with the public offering. Thai Union notified the Securities and
11 Exchange Commission of the suspended public offering.

12 93. On July 23, 2015, Bumble Bee acknowledged receipt of a grand jury
13 subpoena, stating, “[t]he Company did receive a grand jury subpoena relating to a
14 US Department of Justice investigation into potential antitrust violations in the
15 packaged seafood industry. The Company is cooperating fully with the
16 investigation.”

17 94. On December 3, 2015, Assistant Attorney General Bill Baer of the
18 DOJ’s Antitrust Division, commented on the abandoned plan for a merger between
19 Thai Union and Bumble Bee, stating that “[o]ur investigation convinced us – and the
20 parties knew or should have known from the get go – that the market is not
21 functioning competitively today, and further consolidation would only make things
22 worse.”

23 **PLAINTIFFS SUFFERED ANTITRUST INJURY**

24 95. During the Relevant Period, Defendants’ conspiracy had the following
25 effects, among others:

26 a. Price competition was restrained or eliminated with respect to
27 Packaged Seafood; and
28

1 100. The affirmative acts of Defendants and their co-conspirators, including
2 acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a
3 manner that precluded detection.

4 101. Defendants and their co-conspirators agreed among themselves not to
5 discuss publicly, or otherwise reveal, the nature and substance of the acts and
6 communications in furtherance of their illegal conspiracy.

7 102. Defendants and their co-conspirators met and communicated secretly
8 concerning the pricing and marketing of Packaged Seafood to avoid detection.

9 103. Throughout the Relevant Period, Defendants secretly agreed to
10 implement very similar or identical price increases on Packaged Seafood at similar
11 times. To avoid detection by their customers, including Plaintiffs, Defendants issued
12 announcements and made other communications to the market that were intended to
13 mislead their customers, including Plaintiffs, into believing that the pricing actions
14 were taken independently by each Defendant because of cost increases that
15 Defendants falsely claimed were unavoidable and industry-wide.

16 104. In the summer of 2003, at least Chicken of the Sea and Del Monte, on
17 behalf of StarKist, announced price increases for certain packaged tuna products,
18 pretextually citing raw material cost increases. Chicken of the Sea's announcement
19 falsely blamed the increase on falling "[c]atch rates," and a resulting increase in
20 Skipjack prices, among other things.

21 105. In the first quarter of 2004, Defendants each collusively increased their
22 packaged tuna prices by similar amounts. On September 2, 2004, Del Monte Foods
23 (at the time the parent of StarKist) held an earnings conference call on which its
24 Chair, Rick Wolford, falsely attributed the joint price increases not to collusion, but
25 to a "similar experience that we all have with tight Skipjack as well as tight albacore
26 supplies."

27 106. In the summer of 2004, Chicken of the Sea, Del Monte, on behalf of
28 StarKist, and Bumble Bee announced increases in the price of 6 oz. packages of

1 “chunk light” tuna, falsely attributing the price increase to increases of raw materials
2 due to, among other things, dwindling supply of light tuna. In an August 30, 2004
3 communication to its sales agents, Chicken of the Sea falsely advised that the price
4 increase was due to an increase of prices of raw material costs, including natural gas,
5 steel, freight and fuel, as well as “poor catch rates and tight supply.” It instructed its
6 agents: “It is critical that this information be shared with all customers
7 **immediately**.” On September 2, 2004, Chicken of the Sea announced to all of its
8 customers that it would increase prices by approximately 8% on 6 oz. light tuna,
9 effective on orders placed after October 18, 2004. According to the announcement,
10 the increase was attributable to, among other things, “poor fishing conditions.”

11 107. Plaintiffs accepted and relied on the proffered reasons for the price
12 increases, in some cases incorporating the explanation into their contemporaneous
13 internal communications about why all three suppliers were increasing their prices
14 in very similar amounts. For example, on September 24, 2004, after receiving
15 Defendants’ misleading communications, Plaintiff Unified Grocers, Inc. circulated
16 an internal memo advising of the joint increase, attributing its cause to the
17 explanation provided by the suppliers: “dwindling Fish supplies and additional cost
18 pressures.”

19 108. Defendants’ above represented statements were false because during
20 the time period of the price increases, the demand for packaged tuna was falling
21 steeply, while catch volumes for both Skipjack (the dominant canning light grade
22 tuna) and Yellowfin (another popular light grade tuna), were increasing; the falling
23 demand for tuna, when coupled with increased catch volumes, should have led to
24 price decreases – not increases. Defendants’ statements were also misleading
25 because they failed to disclose that the true reason for the increase was Defendants’
26 illegal conspiracy.

27 109. Another example of Defendants’ efforts to mislead their customers,
28 including Plaintiffs, occurred in the summer of 2008 when StarKist, Bumble Bee,

1 and Chicken of the Sea each announced that they would downsize their packaged
2 seafood products from six ounces to five ounces, and increase prices by an average
3 of approximately 8.5% across the board. To mask their lockstep pricing as
4 independent action, Defendants again falsely cited increases in industry costs. For
5 example, in its June 27, 2008 announcement, Bumble Bee attributed the joint move
6 to increases in the “[c]osts of protein, packaging, steel, aluminum, transportation and
7 fuel.”

8 110. On August 27, 2008, Del Monte Foods issued a price announcement to
9 all of its “Valued Customers,” advising of a StarKist price increase, effective
10 November 3, 2008, due to “continued escalation of global Tuna fish prices,” and
11 stating that “[o]ver the next several days our sales agency and/or local sales
12 management will be in contact with you to provide additional details and review
13 plans that will continue the growth of our mutual business.” In accordance with its
14 announcement, Del Monte’s agents and representatives contacted its customers over
15 the next several months to provide detailed, but misleading, explanations for both
16 recent and forthcoming StarKist price increases.

17 111. For example, on or about October 1, 2008, Plaintiff Affiliated Foods,
18 Inc. received a copy of a presentation from a Del Monte/StarKist sales agent falsely
19 blaming the price increases on “significant fish price inflation since the start of
20 2007,” and stating that additional increases would be necessary because “[s]ince the
21 7/21/08 price increase, fish costs have continued to increase. Light Meat costs are up
22 an additional 18% and White Meat costs are up an additional 14%,” driven in part
23 by “high fuel costs.” These representations were false because the prices of both
24 crude oil and Skipjack tuna (a light meat tuna) were flat or declining at the time the
25 price increases were announced. Del Monte/StarKist’s statements also were
26 misleading because they failed to disclose that the true reason for the increase was
27 Defendants’ illegal agreement.
28

1 112. Pretextual and misleading reasons for price increases were included in
2 Defendants' communications with Plaintiffs about Packaged Seafood price increases
3 throughout the Relevant Period.

4 113. For example, in its March 2011 announcement of a price increase
5 effective in May 2011, StarKist cited increases in "Crude index," "Packaging costs,"
6 and "Fish costs." In its January 2012 announcement of a price increase effective
7 March 2012, StarKist cited increases in the costs of crude oil, metal, and
8 transportation, as well as "Record high fish costs." Chicken of the Sea, in its January
9 2012 announcement of a price increase effective March 2012, placed the blame on
10 "High fish prices" and "higher raw material costs." Again in its March 30, 2012
11 announcement to "Our Valued Customers" of another price increase effective July
12 2012, Bumble Bee cited "global inflation, transportation cost increases stemming
13 from global demand on fossil fuel, and resource materials (most notably on fish)."
14 And StarKist, in its April 2012 announcement to "Our Valued Customers" of a price
15 increase, effective in July 2012, cited "numerous costs increases" and escalating
16 "fish costs" as the reasons for the price increase. These statements were misleading
17 because they failed to disclose that the true reason for the increase was Defendants'
18 illegal agreement.

19 114. Plaintiffs could not have discovered the alleged conspiracy at an earlier
20 date by the exercise of reasonable diligence because of the deceptive practices and
21 secrecy techniques employed by Defendants and their co-conspirators so as to avoid
22 detection of, and fraudulently conceal, their contract, conspiracy, or combination.
23 Defendants' conspiracy was fraudulently concealed by various means and methods,
24 including, but not limited to, secret meetings, misrepresentations to customers, and
25 surreptitious communications among themselves and their co-conspirators via
26 telephone and in-person meetings so as to prevent the existence of written records.

27 115. Because the alleged conspiracy was affirmatively concealed by
28 Defendants and their co-conspirators until July 23, 2015, Plaintiffs had no

1 knowledge of the alleged conspiracy, or any facts or information that would have
2 caused a reasonably diligent person to investigate whether a conspiracy existed.

3 116. None of the facts or information available to Plaintiffs prior to July 23,
4 2015, if investigated with reasonable diligence, could or would have led to the
5 discovery of the conspiracy prior to July 23, 2015.

6 117. As a result of Defendants' and their co-conspirators' fraudulent
7 concealment of the price-fixing conspiracy, the running of any statute of limitations
8 is tolled with respect to Plaintiffs' claims of anticompetitive conduct alleged in this
9 complaint.

10 **COUNT I**

11 **VIOLATION OF THE SHERMAN ACT § 1**

12 118. Defendants and their co-conspirators entered into, and engaged in, a
13 contract, combination, or conspiracy in unreasonable restraint of trade in violation of
14 Section 1 of the Sherman Act, 15 U.S.C. § 1.

15 119. Defendants' anticompetitive acts were intentional, were directed at the
16 United States Packaged Seafood market, and had a substantial and foreseeable effect
17 on interstate commerce by raising and fixing Packaged Seafood prices throughout
18 the United States.

19 120. The contract, combination, or conspiracy had the following direct,
20 substantial, and reasonably foreseeable effects upon commerce in the United States
21 and upon import commerce:

22 a. Prices charged to, and paid by, Plaintiffs for Packaged Seafood
23 were artificially raised, fixed, maintained, or stabilized at supra-competitive levels;

24 b. Plaintiffs were deprived of the benefits of free, open, and
25 unrestricted competition in the United States Packaged Seafood market; and

26 c. Competition in establishing the prices paid for Packaged Seafood
27 was unlawfully restrained, suppressed, or eliminated.
28

1 121. Defendants’ and their co-conspirators’ anticompetitive activities
2 directly and proximately caused injury and harm to Plaintiffs in the United States.

3 122. As a direct and proximate result of Defendants’ unlawful conduct,
4 Plaintiffs paid artificially inflated prices for Packaged Seafood.

5 123. As a direct and proximate result of Defendants’ unlawful conduct,
6 Plaintiffs were damaged in their businesses or property by paying prices for
7 Packaged Seafood that were higher than they would have been but for Defendants’
8 unlawful conduct, which has resulted in an amount of ascertainable damages to be
9 established at trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray that the Court:

12 A. Adjudge and decree that Defendants’ unlawful contract, combination,
13 or conspiracy constituted a per se violation of Section 1 of the Sherman Act;

14 B. Adjudge and decree that each Defendant, and its successors, assigns,
15 parents, subsidiaries, affiliates, and transferees, and its respective officers, directors,
16 agents, and employees, and all other persons acting or claiming to act on behalf of
17 any of them or in concert with them, be permanently enjoined and restrained from in
18 any manner, directly or indirectly, continuing, maintaining, or renewing the
19 combination, conspiracy, agreement, understanding, or concert of action, or
20 adopting any practice, plan, program, or design having a similar purpose or effect in
21 restraining competition in the United States Packaged Seafood market;

22 C. Enter judgment against Defendants, jointly and severally, in favor of
23 Plaintiffs for treble damages determined to have been sustained by Plaintiffs by
24 virtue of Defendants’ and their co-conspirators’ violations of the Sherman Act;

25 D. Award Plaintiffs their attorneys’ fees, litigation expenses, court costs,
26 and pre-judgment and post-judgment interest at the highest rates permitted by
27 United States law; and
28

1 E. Grant Plaintiffs such other and further relief as the case may require, or
2 as the Court deems just and proper under the circumstances.

3 **JURY DEMAND**

4 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by
5 jury.

6 Dated: May 23, 2016

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