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10  
11 IN RE: PACKAGED SEAFOOD PRODUCTS  
12 ANTITRUST LITIGATION

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

13 THIS DOCUMENT RELATES TO:

14 DIRECT ACTION PLAINTIFFS' CASES

15  
 16 AFFILIATED FOODS, INC.; AFFILIATED  
 17 FOODS MIDWEST COOPERATIVE, INC.;  
 18 ALEX LEE, INC.; ASSOCIATED FOOD  
 19 STORES, INC.; ASSOCIATED GROCERS OF  
 20 NEW ENGLAND, INC.; ASSOCIATED  
 21 GROCERS, INC.; BIG Y FOODS, INC.;  
 22 BROOKSHIRE BROTHERS, INC.;  
 23 BROOKSHIRE GROCERY COMPANY;  
 24 CERTCO, INC.; DOLLAR TREE  
 25 DISTRIBUTION, INC.; GREENBRIER  
 26 INTERNATIONAL, INC.; FAMILY DOLLAR  
 27 STORES, INC.; FAMILY DOLLAR  
 28 SERVICES, LLC.; FAREWAY STORES, INC.;  
 THE GOLUB CORPORATION; GIANT  
 EAGLE, INC.; KMART CORPORATION; K-  
 VA-T FOOD STORES, INC.; MCLANE  
 COMPANY, INC.; MEADOWBROOK MEAT  
 COMPANY, INC.; MERCHANTS  
 DISTRIBUTORS, LLC; SCHNUCK

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

**REDACTED VERSION**

**DEMAND FOR JURY  
TRIAL**

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MARKETS, INC.; UNIFIED GROCERS, INC.;  
URM STORES INC.; WESTERN FAMILY  
FOODS, INC., and WOODMAN’S FOOD  
MARKET, INC.,  
  
Plaintiffs,  
  
vs.  
  
TRI-UNION SEAFOODS, LLC, d/b/a  
CHICKEN OF THE SEA INTERNATIONAL;  
THAI UNION GROUP PUBLIC COMPANY,  
LTD.; BUMBLE BEE FOODS, LLC, f/k/a  
BUMBLE BEE SEAFOODS, LLC; STARKIST  
CO., DEL MONTE CORPORATION; and  
DONGWON INDUSTRIES CO., LTD.,  
  
Defendants.

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1 Plaintiffs Affiliated Foods, Inc., Affiliated Foods Midwest Cooperative, Inc.,  
2 Alex Lee, Inc., Associated Food Stores, Inc., Associated Grocers of New England,  
3 Inc., Associated Grocers, Inc., Big Y Foods, Inc., Brookshire Brothers, Inc.,  
4 Brookshire Grocery Company, Certco, Inc., Dollar Tree Distribution, Inc.,  
5 Greenbrier International, Inc., Family Dollar Stores, Inc., Family Dollar Services,  
6 LLC, Fareway Stores, Inc., Giant Eagle, Inc., The Golub Corporation, Kmart  
7 Corporation, K-VA-T Food Stores, Inc., McLane Company, Inc., Meadowbrook  
8 Meat Company, Inc., Merchants Distributors, LLC, Schnuck Markets, Inc., Unified  
9 Grocers, Inc., URM Stores Inc., Western Family Foods, Inc. and Woodman’s Food  
10 Market, Inc. (collectively, “Plaintiffs”), by and through undersigned counsel,  
11 complain as follows:

12 **I. NATURE OF THE ACTION**

13 1. This action arises out of an overarching, continuous conspiracy to fix,  
14 stabilize, or maintain the prices of shelf-stable packaged tuna products (*i.e.*, tuna in  
15 cans, pouches and ready-to-eat servings) (“Packaged Tuna”) by Bumble Bee Foods  
16 LLC, Tri-Union Seafoods LLC d/b/a Chicken of the Sea, and StarKist Co. (along  
17 with certain other entities described below) (collectively, “Defendants”). It began  
18 at a time uncertain, but at least by 2004, and continued in force or effect, or both,  
19 until at least July 2015. (the “Relevant Period”).

20 2. This conspiracy was effectuated by at least the following means: (a)  
21 agreeing to decrease the sizes of pouches and cans in which Packaged Tuna is sold;  
22 (b) agreeing to issue collusive price increases on Packaged Tuna; (c) agreeing to  
23 follow each other’s price increases; (d) agreeing to limit promotional offers for  
24 Packaged Tuna; and (e) agreeing not to sell branded canned tuna labeled as caught  
25 without the use of fish aggregation devices (*i.e.*, that it is “FAD-free”). As a result  
26 of Defendants’ cartel, Plaintiffs have paid inflated prices for Defendants’ products.

27 3. The United States Department of Justice (“DOJ”) is conducting a  
28 criminal investigation of this conspiracy. On December 7, 2016, it filed a criminal

1 information against Walter Scott Cameron, a Senior Vice-President of Sales for  
2 Bumble Bee, alleging a conspiracy to fix prices of packaged seafood, including  
3 Packaged Tuna. *United States v. Cameron*, No. 3:16-cr-00501-EMC (N.D. Cal.)  
4 (ECF No. 1). Cameron, who goes by the name “Scott” (and is referred to as Scott  
5 Cameron throughout this Complaint), has held senior sales positions at Bumble  
6 Bee since May 2000 and has served as Bumble Bee’s Senior Vice President of  
7 Sales since May 2007. As detailed below, Cameron entered into agreements with  
8 Chicken of the Sea and StarKist to increase prices. Cameron pled guilty on January  
9 25, 2017.

10 4. On December 21, 2016, the DOJ filed a criminal information against  
11 Kenneth Worsham, a Senior Vice President of Marketing for Bumble Bee, alleging  
12 his participation in a conspiracy to fix the prices of packaged seafood, including  
13 Packaged Tuna. *United States v. Worsham*, No. 3:16-cr-00535-EMC-1 (N.D. Cal.)  
14 (ECF NO. 1). Kenneth Worsham has been a Bumble Bee Senior Vice President of  
15 Marketing since at least 2001. Kenneth Worsham frequently discussed future  
16 pricing and shared customer opportunities with his father, Bob Worsham, a  
17 StarKist pricing consultant since the 1980s, as well as with Mike White, Chicken  
18 of the Sea’s Director of Marketing since the late 1980s. As detailed below,  
19 Kenneth Worsham entered into agreements to increase prices with the leadership  
20 of Bumble Bee and StarKist. Kenneth Worsham pled guilty on March 15, 2017.

21 5. Both plea agreements for Scott Cameron and Kenneth Worsham state  
22 that:

23 [T]he defendant participated in a conspiracy with other  
24 persons and entities engaged in the manufacture and sale  
25 of packaged seafood, the primary purpose of which was  
26 to fix, raise and maintain the prices of packaged seafood  
27 sold in the United States. In furtherance of the  
28 conspiracy, the defendant engaged in conversations and  
discussions and attended meetings with representatives of  
other major packaged-seafood-producing firms. During

1           these conversations, discussions and meetings,  
2           agreements and mutual understandings were reached to  
3           fix, raise and maintain the prices of packaged seafood  
4           sold in the United States.

5           Worsham Plea Agreement, ¶4(b); Cameron Plea Agreement, ¶4(b).

6           6.       Chicken of the Sea has confirmed that it is an amnesty applicant with  
7           respect to packaged seafood. Under the DOJ’s Leniency Guidelines, for Chicken of  
8           the Sea to receive conditional amnesty, the company must admit to its participation  
9           in a criminal antitrust violation, such as price fixing. *See*  
10          <https://www.justice.gov/atr/page/file/926521/download>.

11          7.       On May 8, 2017, Bumble Bee agreed to plead guilty and to pay a  
12          criminal fine in the amount of no less than \$25 million, and potentially as high as  
13          \$81.5 million, in connection with charges that it had fixed the prices of packaged  
14          seafood, which was defined as consisting of shelf-stable tuna (*i.e.*, Packaged  
15          Tuna). Specifically, the information filed by the DOJ stated that Bumble Bee had  
16          (a) engaged in conversations and discussions and attended meetings with  
17          representatives of other major packaged-seafood-producing firms; (b) agreed and  
18          reached mutual understandings during these conversations, discussions and  
19          meetings, to fix, raise, and maintain the prices of packaged seafood sold in the  
20          United States; and (c) negotiated prices with customers and issued price  
21          announcements for packaged seafood in accordance with the agreements and  
22          mutual understandings reached. Bumble Bee has also agreed to cooperate in the  
23          DOJ’s ongoing investigation.

24          8.       This Second Consolidated Amended Complaint (“Complaint”) is filed  
25          under Section 4 of the Clayton Act (15 U.S.C. § 15), to recover treble damages,  
26          costs of suit and reasonable attorneys’ fees for violations of Section 1 of the  
27          Sherman Act (15 U.S.C. § 1).

28

1 **II. JURISDICTION AND VENUE**

2 9. The Court has original federal question jurisdiction over the Sherman  
3 Act claim asserted in this complaint pursuant to 28 U.S.C. §§ 1331 and 1337 and  
4 Sections 4 of the Clayton Act (15 U.S.C. § 15).

5 10. During the Relevant Period, Defendants, directly or through one or  
6 more their affiliates, sold Packaged Tuna throughout the United States in a  
7 continuous and uninterrupted flow of interstate commerce, including through and  
8 into this district.

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

13 12. The conspiracy alleged in this Complaint has directly and  
14 substantially affected interstate commerce in that Defendants deprived Plaintiffs of  
15 the benefits of free and open competition in the purchase of Packaged Tuna within  
16 the United States.

17 13. Venue is proper in this District pursuant to Sections 4(a) and 12 of the  
18 Clayton Act (15 U.S.C. §§ 15 and 22), and 28 U.S.C. § 1391(b), (c), and (d)  
19 because Defendants reside, transact business, are found within, or have agents  
20 within this District, and a substantial part of the events giving rise to Plaintiffs'  
21 claims occurred and a substantial portion of the affected interstate trade and  
22 commerce described below was carried out in this district.

23 14. Defendants are amenable to service of process under Fed. R. Civ. P.  
24 4(k)(1)(A) and the long-arm statute of California (Cal. Code Civ. P. §410) because  
25 each has transacted business in this state and because the California long-arm  
26 statute extends jurisdiction to the limits of due process and each Defendant has  
27 sufficient minimum contacts with the state of California to satisfy due process.  
28



1           15. This Court has personal jurisdiction over Defendants because, *inter*  
2 *alia*, each Defendant: (a) transacted business in this district, the United States and  
3 its territories, and the District of Columbia; (b) directly or indirectly sold and  
4 delivered Packaged Tuna in this district, the United States and its territories, and  
5 the District of Columbia; (c) has substantial aggregate contacts with this district,  
6 the United States and its territories, and the District of Columbia; and (d) engaged  
7 in anticompetitive conduct that was directed at, and had the intended effect of  
8 causing injury to, persons and entities residing in, located in, or doing business in  
9 this District, the United States and its territories, and the District of Columbia.

10 **III. PLAINTIFFS**

11           16. Plaintiff Affiliated Foods, Inc. is a Texas corporation with its principal  
12 place of business in Amarillo, Texas. During the Relevant Period, Affiliated Foods,  
13 Inc. purchased Packaged Tuna directly from one or more of the Defendants and  
14 was injured in its business or property by reason of the antitrust violations alleged  
15 in this Complaint.

16           17. Plaintiff Affiliated Foods Midwest Cooperative, Inc. is a Nebraska  
17 corporation with its principal place of business in Norfolk, Nebraska. During the  
18 Relevant Period, Affiliated Foods Midwest Cooperative, Inc. purchased Packaged  
19 Tuna directly from one or more of the Defendants and was injured in its business  
20 or property by reason of the antitrust violations alleged in this Complaint.

21           18. Plaintiffs Alex Lee, Inc. and its wholly-owned subsidiary, Merchants  
22 Distributors, LLC (together, “Alex Lee”) are, respectively, a North Carolina  
23 corporation and a North Carolina limited liability company, with their principal  
24 places of business in Hickory, North Carolina. During the Relevant Period, Alex  
25 Lee purchased Packaged Tuna directly from one or more of the Defendants and  
26 was injured in its business or property by reason of the antitrust violations alleged  
27 in this Complaint.

1           19. Plaintiff Associated Food Stores, Inc. is a Utah corporation with its  
2 principal place of business in Salt Lake City, Utah. During the Relevant Period,  
3 Associated Food Stores, Inc. purchased Packaged Tuna directly from one or more  
4 of the Defendants and was injured in its business or property by reason of the  
5 antitrust violations alleged in this Complaint.

6           20. Plaintiff Associated Grocers of New England, Inc. is a New  
7 Hampshire corporation with its principal place of business in Pembroke, New  
8 Hampshire. During the Relevant Period, Associated Grocers of New England, Inc.  
9 purchased Packaged Tuna directly from one or more of the Defendants and was  
10 injured in its business or property by reason of the antitrust violations alleged in  
11 this Complaint.

12           21. Plaintiff Associated Grocers, Inc. is a Louisiana corporation with its  
13 principal place of business in Baton Rouge, Louisiana. During the Relevant Period,  
14 Associated Grocers, Inc. purchased Packaged Tuna directly from one or more of  
15 the Defendants and was injured in its business or property by reason of the antitrust  
16 violations alleged in this Complaint.

17           22. Plaintiff Big Y Foods, Inc. is a Massachusetts corporation with its  
18 principal place of business in Springfield, Massachusetts. During the Relevant  
19 Period, Big Y Foods, Inc. purchased Packaged Tuna directly from one or more of  
20 the Defendants and was injured in its business or property by reason of the antitrust  
21 violations alleged in this Complaint.

22           23. Plaintiff Brookshire Brothers, Inc. is a Texas corporation with its  
23 principal place of business in Lufkin, Texas. During the Relevant Period,  
24 Brookshire Brothers, Inc. purchased Packaged Tuna directly from one or more of  
25 the Defendants and was injured in its business or property by reason of the antitrust  
26 violations alleged in this Complaint.

27           24. Plaintiff Brookshire Grocery Company is a Texas corporation with its  
28 principal place of business in Tyler, Texas. During the Relevant Period, Brookshire

1 Grocery Company purchased Packaged Tuna directly from one or more of the  
2 Defendants and was injured in its business or property by reason of the antitrust  
3 violations alleged in this Complaint.

4 25. Plaintiff Certco, Inc. is a Wisconsin corporation with its principal  
5 place of business in Madison, Wisconsin. During the Relevant Period, Certco, Inc.  
6 purchased Packaged Tuna directly from one or more of the Defendants and was  
7 injured in its business or property by reason of the antitrust violations alleged in  
8 this Complaint.

9 26. Plaintiff Dollar Tree Distribution, Inc., a wholly-owned subsidiary of  
10 Dollar Tree, Inc., is a Virginia corporation with its principal place of business in  
11 Chesapeake, Virginia. During the Relevant Period, Dollar Tree Distribution, Inc.  
12 purchased Packaged Tuna directly from one or more of the Defendants and was  
13 injured in its business or property by reason of the antitrust violations alleged in  
14 this Complaint.

15 27. Plaintiff Greenbrier International, Inc., a wholly-owned subsidiary of  
16 Dollar Tree, Inc., is a Delaware corporation with its principal place of business in  
17 Chesapeake, Virginia. During the Relevant Period, Greenbrier International, Inc.  
18 purchased Packaged Tuna directly from one or more of the Defendants and was  
19 injured in its business or property by reason of the antitrust violations alleged in  
20 this Complaint.

21 28. Plaintiff Family Dollar Stores, Inc., a wholly-owned subsidiary of  
22 Dollar Tree, Inc., is a Delaware corporation with its principal place of business in  
23 Matthews, North Carolina. During the Relevant Period, Family Dollar Stores, Inc.  
24 purchased Packaged Tuna directly from one or more of the Defendants and was  
25 injured in its business or property by reason of the antitrust violations alleged in  
26 this Complaint.

27 29. Plaintiff Family Dollar Services, LLC (formerly known as Family  
28 Dollar Services, Inc.), a wholly-owned subsidiary of Plaintiff Family Dollar Stores,

1 Inc., is a North Carolina limited liability company with its principal place of  
2 business in Matthews, North Carolina. During the Relevant Period, Family Dollar  
3 Services, LLC purchased Packaged Tuna directly from one or more of the  
4 Defendants and was injured in its business or property by reason of the antitrust  
5 violations alleged in this Complaint.

6 30. Plaintiff Fareway Stores, Inc. is an Iowa corporation with its principal  
7 place of business in Boone, Iowa. During the Relevant Period, Fareway Stores, Inc.  
8 purchased Packaged Tuna directly from one or more of the Defendants and was  
9 injured in its business or property by reason of the antitrust violations alleged in  
10 this Complaint.

11 31. Plaintiff Giant Eagle, Inc. is a Pennsylvania corporation with its  
12 principal place of business in Pittsburgh, Pennsylvania. During the Relevant  
13 Period, Giant Eagle, Inc. purchased Packaged Tuna directly from one or more of  
14 the Defendants and was injured in its business or property by reason of the antitrust  
15 violations alleged in this Complaint.

16 32. Plaintiff The Golub Corporation, whose retail operating banners  
17 include Price Chopper and Market 32, is a Delaware corporation with its principal  
18 place of business in Schenectady, New York. During the Relevant Period, The  
19 Golub Corporation purchased Packaged Tuna directly from one or more of the  
20 Defendants and was injured in its business or property by reason of the antitrust  
21 violations alleged in this Complaint.

22 33. Plaintiff Kmart Corporation is a Michigan corporation with its  
23 principal place of business in Hoffman Estates, Illinois. During the Relevant  
24 Period, Kmart Corporation purchased Packaged Tuna directly from one or more of  
25 the Defendants and was injured in its business or property by reason of the antitrust  
26 violations alleged in this Complaint.

27 34. Plaintiff K-VA-T Food Stores, Inc., doing business as Food City, is a  
28 Virginia corporation with its principal place of business in Abingdon, Virginia.

1 During the Relevant Period, K-VA-T Food Stores, Inc. purchased Packaged Tuna  
2 directly from one or more of the Defendants and was injured in its business or  
3 property by reason of the antitrust violations alleged in this Complaint.

4 35. Plaintiff McLane Company, Inc. is a Texas corporation with its  
5 principal place of business in Temple, Texas. During the Relevant Period, McLane  
6 Company, Inc. purchased Packaged Tuna directly from one or more of the  
7 Defendants and was injured in its business or property by reason of the antitrust  
8 violations alleged in this Complaint.

9 36. Plaintiff Meadowbrook Meat Company, Inc. is a North Carolina  
10 corporation with its principal place of business in Rocky Mount, North Carolina.  
11 During the Relevant Period, Meadowbrook Meat Company, Inc. purchased  
12 Packaged Tuna directly from one or more of the Defendants and was injured in its  
13 business or property by reason of the antitrust violations alleged in this Complaint.

14 37. Plaintiff Schnuck Markets, Inc. is a Missouri corporation with its  
15 principal place of business in St. Louis, Missouri. During the Relevant Period,  
16 Schnuck Markets, Inc. purchased Packaged Tuna directly from one or more of the  
17 Defendants and was injured in its business or property by reason of the antitrust  
18 violations alleged in this Complaint.

19 38. Plaintiff Unified Grocers, Inc. is a California corporation with its  
20 principal place of business in Commerce, California. During the Relevant Period,  
21 Unified Grocers, Inc. purchased Packaged Tuna directly from one or more of the  
22 Defendants and was injured in its business or property by reason of the antitrust  
23 violations alleged in this Complaint.

24 39. Plaintiff URM Stores, Inc. is a Washington corporation with its  
25 principal place of business in Spokane, Washington. During the Relevant Period,  
26 URM Stores, Inc. purchased Packaged Tuna directly from one or more of the  
27 Defendants and was injured in its business or property by reason of the antitrust  
28 violations alleged in this Complaint.

1           40. Plaintiff Western Family Foods, Inc. is an Oregon corporation with its  
2 principal place of business in Tigard, Oregon. During the Relevant Period, Western  
3 Family Foods, Inc. purchased Packaged Tuna directly from one or more of the  
4 Defendants and was injured in its business or property by reason of the antitrust  
5 violations alleged in this Complaint.

6           41. Plaintiff Woodman’s Food Market, Inc. is a Wisconsin corporation  
7 with its principal place of business in Janesville, Wisconsin. During the Relevant  
8 Period, Woodman’s Food Market, Inc. purchased Packaged Tuna directly from one  
9 or more of the Defendants and was injured in its business or property by reason of  
10 the antitrust violations alleged in this Complaint.

11 **IV. DEFENDANTS**

12 **A. Bumble Bee**

13           42. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic  
14 corporation with its principal place of business at 280 10th Avenue, San Diego,  
15 California 92101. Bumble Bee produces and sells Packaged Tuna throughout the  
16 United States (including this District), its territories and the District of Columbia.  
17 Bumble Bee is a wholly-owned subsidiary of Lion Capital, a private investment  
18 firm headquartered in Great Britain.

19 **B. Thai Union and Tri-Union**

20           43. Defendant Tri-Union Seafoods, LLC d/b/a Chicken of the Sea  
21 International (“Tri-Union”) is a Delaware limited liability company with its  
22 principal place of business at 9330 Scranton Road, Suite 500, San Diego,  
23 California 92121.

24           44. Defendant Thai Union Group Public Company, Ltd. (“Thai Union”), a  
25 publicly held company headquartered in Thailand, is a global processor and  
26 exporter of frozen seafood and Packaged Tuna.

27           45. Since 2000, Tri-Union has been a wholly-owned subsidiary of Thai  
28 Union North America, Inc. (“TUNAI”), a California corporation with its principal

1 place of business at 9330 Scranton Road, Suite 500, San Diego, California 92121.  
2 TUNAI, in turn, is a wholly-owned subsidiary of Thai Union. All three vertically-  
3 integrated companies have been led by Thiraphong Chansiri, who serves as the  
4 CEO and President of Thai Union, the President of TUNAI, and a Director of Tri-  
5 Union, at which Chansiri has a day-to-day leadership role.

6 46. Throughout the Relevant Period, Thai Union controlled and  
7 supervised the business, operations, and activities of Tri-Union, including the  
8 conduct alleged in this Complaint. Thai Union has been described in the media as  
9 “the world’s biggest producer of canned tuna,” and is reported to export  
10 approximately 55% of its tuna to the United States.

11 47. REDACTED

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24 48. Since the acquisition, Thai Union has fully integrated Tri-Union into  
25 its global Packaged Tuna business. In 2007, Tri-Union’s President, John Signorino,  
26 was replaced by Thai Union’s former Executive Director and Chief Financial  
27 Officer, Shue Wing Chan, who is both a member of the Chansiri family and Thai  
28 Union’s self-styled “Global Leadership Team.” Prior to joining Tri-Union, he



1 served as the CFO of Thai Union.<sup>1</sup> REDACTED  
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[REDACTED]

54. As described herein, Thai Union approved Tri-Union’s participation in the 2008 collusive resizing of canned tuna. It was aware of and supported collusive price increases for Packaged Tuna. It was aware of and supported the 2012 agreement among Bumble Bee, Tri-Union and StarKist Company to refrain

1 from labeling their respective brands of canned tuna as “FAD-free,” *i.e.*, caught in  
2 an environmentally friendly manner.

3 55. REDACTED  
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10 56. Thus, Tri-Union has been and is the *alter ego* and agent of Thai  
11 Union. Moreover, Thai Union directly participated in the conspiracy described  
12 herein through personnel who had duties at Thai Union, such as Chan.

13 57. Thai Union also profited from the conspiracy. REDACTED  
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20 58. REDACTED  
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25 59. Thai Union and Tri-Union pitched themselves to Chicken of the Sea  
26 customers as one company, *i.e.*, Thai Union, the world’s largest canned seafood  
27 company. Given the breadth and scope of the conspiracy, and the benefits received  
28 by Thai Union as a direct result of the collusion alleged herein, it would be

1 inequitable to allow Thai Union to escape responsibility for the actions of the  
2 combined enterprise.

3 60. As used herein, “Chicken of the Sea” collectively refers to Defendants  
4 Tri-Union and Thai Union.

5 **C. Dongwon, Del Monte, And StarKist**

6 61. Defendant StarKist Co. is a Delaware corporation with its principal  
7 place of business at 225 North Shore Drive, Suite 400, Pittsburgh, Pennsylvania  
8 15212. From December 2002 until October 2008, StarKist was an operating  
9 segment of Del Monte Corporation, at which time it was sold to three members of  
10 the family-owned and managed Korean chaebol Dongwon Group. The purchasing  
11 companies were Dongwon Industries Co., Ltd. (“Dongwon Industries”), Dongwon  
12 Enterprise Co., Ltd. (“Dongwon Enterprise”), and Dongwon F&B Co. After the  
13 purchase, StarKist became a majority-owned subsidiary of Dongwon Industries,  
14 and since September 23, 2012, StarKist has been a wholly-owned subsidiary of  
15 Dongwon Industries. Each of the Dongwon Group affiliates is ultimately owned by  
16 Dongwon Enterprise, a family-owned holding company. Jae-chul Kim, who  
17 founded the conglomerate in 1969, owns 24.5% of Dongwon Enterprise, while his  
18 son and successor, Nam-jung Kim, owns 68%.

19 62. Defendant Del Monte Corporation (“Del Monte”), now known as Big  
20 Heart Pet Brands, Inc., is a Delaware corporation with its principal place of  
21 business at 1 Strawberry Lane, Orrville, Ohio, 44667. Del Monte acquired StarKist  
22 in 2002. Through StarKist, Del Monte produced and sold Packaged Tuna  
23 throughout the United States (including in this District), its territories and the  
24 District of Columbia. Del Monte sold StarKist to Dongwon on October 6, 2008.  
25 According to a filing by Del Monte with the Securities & Exchange Commission,  
26 “[a]t the time of sale, Del Monte entered into a two-year Operating Services  
27 Agreement (which was completed in September 2010) pursuant to which [Del  
28

1 Monte] provided operational services to Starkist Co. such as warehousing,  
2 distribution, transportation, sales, information technology and administration.”

3 63. Del Monte managed the operations of StarKist Co. during the time it  
4 owned StarKist, from December 2002 until October 2008, and thereafter continued  
5 to manage StarKist under an operating agreement with Dongwon Industries until  
6 October 2010, at which time Dongwon Industries became the operator of StarKist.  
7 Key StarKist executives also served as Del Monte executives during the time Del  
8 Monte owned and operated StarKist. For example, Don Binotto served as  
9 StarKist’s CEO from the 1990s through December 2005 when StarKist was owned  
10 first by Heinz, then by Del Monte, and then was rehired by Dongwon Industries.  
11 Joseph Tuza was a Del Monte marketing executive between May 2006 and August  
12 2008, and then was a StarKist Sr. VP of Marketing.

13 64. Defendant Dongwon Industries Co., Ltd. is a publicly traded company  
14 with its principal place of business at Dongwon Industries Building, 7<sup>th</sup> Floor,  
15 Mabang-ro 68 (Yangjae-dong), Seocho-gu, Seoul, South Korea. Dongwon  
16 Industries is part of the Dongwon Group, which has annual Packaged Tuna  
17 revenue of approximately \$1.4 billion. Dongwon Group is a chaebol, a family-  
18 controlled Korean conglomerate, in which corporate lines between member entities  
19 are often blurred. StarKist regularly describes itself as a subsidiary of Dongwon  
20 Group and as a subsidiary of Dongwon Industries.

21 65. Chaebols are closely-knit business groups in South Korea under the  
22 control of an extended family, with key flagship firms which are used as the  
23 instruments of control of other firms within the group. They have four key  
24 features: (1) the governance structure of the group involves family or extended  
25 family control; (2) the formal organizational structure of the group involves a  
26 group headquarters, located in an actual or *de facto* holding company, sometimes  
27 known as a “flagship” company, which controls a network of subsidiaries, which  
28 fall under the control of the family, the group as a whole, and of flagship firms

1 within the group; (3) the business structure of the firm encompasses a number of  
2 discrete products and services, some of which are wholly unrelated and others that  
3 are effectively vertically integrated; and (4) these groups are characterized by  
4 strong internal cultures of hierarchy, familism, and loyalty, with family members  
5 of the founder or his cohorts also occupying key managerial positions within the  
6 group.

7 66. The Dongwon Group is a Chaebol. The company started in 1969 and  
8 is dominated by Chair Jae-chul Kim (“J.C. Kim”) and members of his family or  
9 extended family, as described in more detail below. The group is headquarters is in  
10 Seoul, South Korea, where its holding company, Dongwon Enterprise, is located.  
11 Through its subsidiaries, it operates in a number of business sectors including,  
12 among other things, marine products, other food products, feed products, and pet  
13 food, packing materials, and aluminum foil products. REDACTED

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 REDACTED  
22 [REDACTED]

23 [REDACTED] In other words, as a chaebol, Dongwon  
24 does not follow the principles of corporate separateness that are expected of  
25 companies incorporated in the United States. Instead, the Dongwon entities,  
26 including Dongwon Industries and StarKist, operated as a single entity.

27 67. Dongwon Group controls approximately 75% of the Korean canned  
28 tuna market. At the time of the StarKist acquisition, it was reported that “the

1 transaction will help the Dongwon Group, whose affiliates include the world's  
2 biggest tuna fishing company, Dongwon Industries, and processed food maker  
3 Dongwon F&B, to create the world's biggest canned tuna business. 'We believe  
4 that the acquisition of StarKist seafood will help Dongwon establish a strong  
5 foothold and penetration in the U.S. market,' said Park In-gu, vice chairman of  
6 Dongwon Enterprise, which is the holding company for the conglomerate.' Park  
7 also stated that the deal was "a great opportunity for us to initiate operations in the  
8 United States."

9 68. Dongwon Group's website describes its mission to become the  
10 "world's biggest tuna company," through StarKist, which it describes as follows:

11 StarKist is the world's best tuna brand with 65 years of  
12 history, and holds the No.1 position in the US tuna  
13 market. Like Dongwon Group in Korea, StarKist is an  
14 iconic tuna brand in the United States, and has been  
15 controlled by Dongwon Group since 2008,  
16 accompanying Dongwon Group on its journey to  
17 globalization. Dongwon Group, which has already  
18 become the dominant player in Korea's tuna market, has  
19 focused on the steady growth of the world's tuna market  
20 and determined that tuna can be one of core resources  
21 that will lead future industries. Through the acquisition of  
22 StarKist, Dongwon Group has secured an opportunity to  
23 take off as the world's biggest tuna company, and will  
24 become de facto a globalized enterprise.

25 69. Dongwon Group purchased StarKist with the goal of globalizing and  
26 integrating StarKist with its existing seafood businesses. According to former  
27 StarKist CEO, In-soo Cho, "StarKist used to own boats and catch its own tuna and  
28 process it and sell it" until the "business was sold and became part of larger parts  
of businesses." StarKist's purchase by Dongwon Group, which owns one of the  
largest fishing fleets in the world, was done with the goal of returning StarKist to  
an integrated business model, "from the sea to the shelves." To do so, executives

1 from other Dongwon Group companies were brought to StarKist to oversee the  
2 company; the media reported a contemporaneous “string of exits” by StarKist’s  
3 U.S. executives.

4 70. REDACTED

11 71. REDACTED

24 <sup>2</sup> REDACTED

1           72. In 2012, Dongwon Industries dismissed several StarKist executives  
2 and replaced them with executives from the Dongwon entities—a move intended  
3 to “better align and leverage Dongwon’s expertise and streamline the  
4 organization.” Among the Dongwon executives brought on to closely manage and  
5 control StarKist was Nam-jung Kim, who currently owns 68% of Dongwon  
6 Enterprise. Nam-jung Kim (the son of Dongwon Chair J.C. Kim) was appointed to  
7 the newly created position of chief operating officer to lead the “continued growth  
8 and expansion of Dongwon-StarKist global business.” His biography, according to  
9 Bloomberg, demonstrates the seamless integration between the Dongwon affiliates,  
10 including StarKist:

11                               Nam-jung Kim served as Vice President of Dongwon  
12 F&B Co., Ltd. Mr. Kim served as the Chief Operating  
13 Officer of StarKist Co. since 2012 until October 2014.  
14 Mr. Kim's lasting relationship with the tuna industry took  
15 off in 1996 at the Dongwon F&B tuna plant in  
16 Changwon. He served as the Chief of Management  
17 Supporting Division at Dongwon Industry Co., Ltd. He  
18 served as a Director of Construction Division at Donwon  
19 Systems Corporation and Vice President of Dongwon  
20 Enterprise Co., Ltd. He became Product Manager of the  
21 sea laver category in 1999. Mr. Kim returned to  
22 Dongwon F&B in 2004 to work as Marketing Strategy  
23 Manager until 2006. He continued to diversify his  
24 business acumen by leading the Finance & Planning  
25 Department of Dongwon Industries Co. Since 2008, he  
26 served as the Head of the Finance and Planning  
27 Department at Dongwon Systems and served as its Vice  
28 President of its construction arm. Immediately before  
joining StarKist, he served as Executive Vice President at  
Dongwon Enterprise since 2011, the holding company of  
the Dongwon conglomerate.

According to Bloomberg, Nam-jung Kim currently serves on the Board of  
Dongwon F&B, and as Vice Chair of StarKist.



1           73. Nam-jung Kim was to lead the growth of the combined Dongwon-  
2 StarKist global business. At the same time, Dongwon Industries stated its  
3 commitment to supply StarKist directly with a steady stream of tuna, and  
4 purchased a dedicated vessel to operate for StarKist in American Samoa. Dongwon  
5 added Jae Hoon Choi to the StarKist procurement team to lead the effort.

6           74. Also in 2012, Hyung-joo Kim was transferred from Dongwon F&B,  
7 where he served as chief financial officer, to become StarKist's senior vice  
8 president, finance. Andrew Choe joined Dongwon Enterprise in 2010 and was sent  
9 to StarKist in 2012 to work as senior vice president of supply chain and operations,  
10 before being named StarKist president and CEO in 2014. In addition, Ingu Park,  
11 the vice chair of Dongwon Enterprise, became the board chair of StarKist and  
12 served as interim president after Don Binotto left in November 2010, reporting  
13 directly to the Chair of Dongwon. According to Bloomberg, Ingu Park currently  
14 serves as both the CEO of Dongwon Precision Machinery Co. Ltd. and as Chair of  
15 the StarKist board of directors. He had previously served as Vice Chair and  
16 Director of Dongwon F&B.

17           75. Dongwon micromanaged StarKist's affairs and disregarded principles  
18 of corporate separateness with respect to StarKist. **REDACTED**

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

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REDACTED

76. REDACTED

REDACTED

77. REDACTED

REDACTED

78. REDACTED

REDACTED

1 REDACTED

2 [REDACTED]

3 79. Dongwon, including J.C. Kim and other senior Dongwon executives,  
4 not only established policy and direction for StarKist, but was the decision-maker  
5 concerning even routine matters at StarKist, and effectively took over the  
6 performance of StarKist's day-to-day operations in carrying out that policy and  
7 direction. Further, because of the disregard of corporate separateness and the lack  
8 of any meaningful distinction between the two companies, StarKist employees that  
9 performed acts in furtherance of the conspiracy did so on behalf of both Dongwon  
10 and StarKist (and Dongwon employees similarly acted on behalf of both StarKist  
11 and Dongwon).

12 80. REDACTED

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 81. StarKist Co. is the agent, instrumentality and *alter ego* of Dongwon,  
18 which directly participated in, and profited from, the conspiracy described herein.

19 82. REDACTED

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 83. REDACTED

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 REDACTED  
2  
3  
4  
5

6 84. As set forth below, Del Monte participated directly in various acts in  
7 furtherance of the conspiracy during the time it owned and operated StarKist.  
8 During the Del Monte years, StarKist functioned as an operating segment of Del  
9 Monte and was not an independent company. Multiple Del Monte employees  
10 served dual roles in both StarKist and Del Monte, including in their direct  
11 participation in the improper exchange of competitive information and illegal  
12 agreements. REDACTED

13  
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17

18 85. As used herein, “StarKist” collectively refers to Defendants StarKist,  
19 Del Monte (December 2002 until October 2010), and Dongwon (from October  
20 2008 through the present).

21 **V. AGENTS**

22 86. Defendants’ alleged wrongful acts were authorized, ordered, or  
23 performed by their directors, officers, managers, agents, employees, or  
24 representatives while actively engaged in the management of Defendants’ affairs.

25 **VI. INTERSTATE TRADE AND COMMERCE**

26 87. Defendants and their co-conspirators, directly and through their  
27 affiliates, sold Packaged Tuna throughout the United States, including this district,  
28

1 at artificially inflated prices during the Relevant Period. Defendants are direct  
2 competitors in the United States Packaged Tuna market.

3 88. Throughout the Relevant Period, there was a continuous and  
4 uninterrupted flow of invoices for payment, payments, and other documents  
5 essential to the sale of Packaged Tuna in interstate commerce between and among  
6 offices of Defendants and their customers located throughout the United States, its  
7 territories and the District of Columbia.

8 89. Throughout the Relevant Period, Defendants transported substantial  
9 amounts of Packaged Tuna in a continuous and uninterrupted flow of interstate  
10 commerce throughout the United States, its territories and the District of Columbia.

11 90. Throughout the Relevant Period, Defendants' unlawful activities, as  
12 described herein, took place within and substantially affected the flow of interstate  
13 commerce and had a direct, substantial and reasonably foreseeable effect upon  
14 commerce in the United States, its territories and the District of Columbia.

15 **VII. FACTUAL ALLEGATIONS**

16 **A. Background**

17 91. Packaged Tuna is composed of raw seafood processed to preserve and  
18 enhance flavor, and ensure product safety. Because it is typically caught far  
19 offshore, raw seafood is usually delivered to canneries frozen or refrigerated.

20 92. Upon delivery to a processing plant, an initial quality control  
21 inspection is performed to ensure the seafood is stored and transported at the  
22 proper temperature, and is in acceptable condition. The seafood is maintained at  
23 temperatures ranging from 0°C to -18°C until processed. Seafood passing the  
24 initial quality control inspection is prepared for packaging.

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

1           94. Each package is affixed with a permanent production code identifying  
2 plant, product, date packed, batch, and other information. Filled and sealed  
3 packages are then cooked under pressure to make the products commercially  
4 sterile.

5           95. StarKist, Bumble Bee, and Chicken of the Sea sell Packaged Tuna in  
6 the United States. The United States Packaged Tuna industry generates annual  
7 sales of approximately \$1.7 billion.

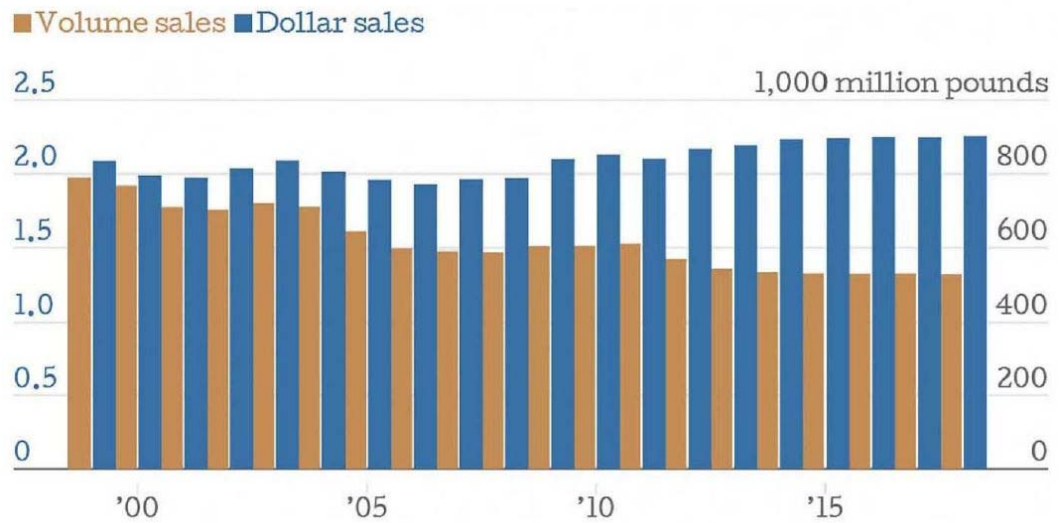
8           96. Defendants dominated the United States market for Packaged Tuna  
9 throughout the Relevant Period, with a combined market share of 80-85%. Each  
10 Defendant's share of the market is almost identical to what it was at the beginning  
11 of the Relevant Period: StarKist (40-44%); Bumble Bee (24-25%); and Chicken of  
12 the Sea (15-17%).

13           97. After decades of growth, since 2004, demand for Packaged Tuna has  
14 been declining. From about 1950 until 2003, Packaged Tuna was the most popular  
15 seafood in the United States. In 1990, the International Trade Commission  
16 estimated that Americans consumed between one-half and two-thirds of the global  
17 supply of Packaged Tuna.

18           98. Since the 1990s, health and sustainability concerns, which range from  
19 fears of mercury poisoning to fury over dolphin bycatch, have taken their toll. So,  
20 too, has a national dietary shift away from Packaged Tuna.

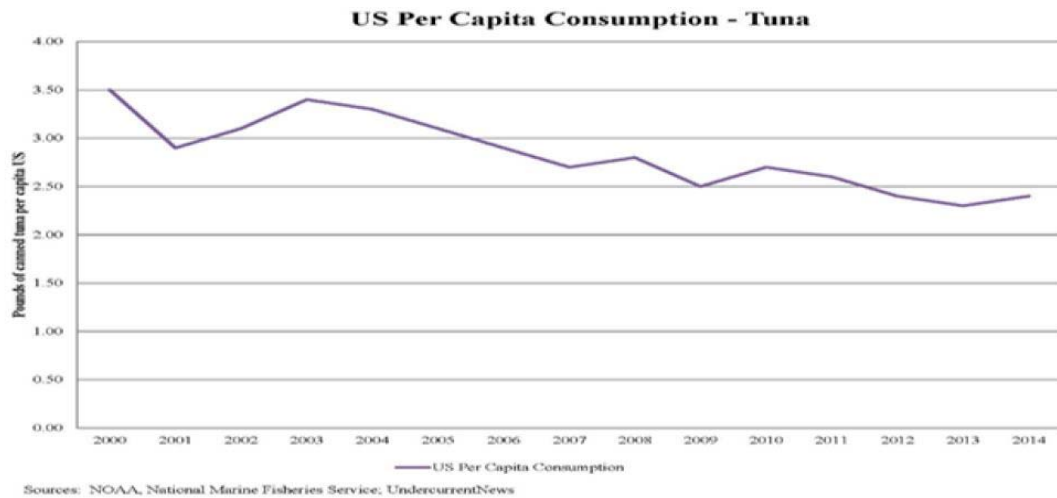
21           99. As a result, domestic consumption of Packaged Tuna has steadily  
22 declined since 2004. Yet, as shown in Figure 1 below, which contains data through  
23 2014 and projections thereafter, the prices, as represented by the spread between  
24 dollar sales and volume sales of Packaged Tuna, increased steadily from 2004 to  
25 2014.

**Figure 1**



100. In particular, Packaged Tuna saw a steady decline in U.S. per capita consumption between 2004 and 2014 (see Figure 2 below).

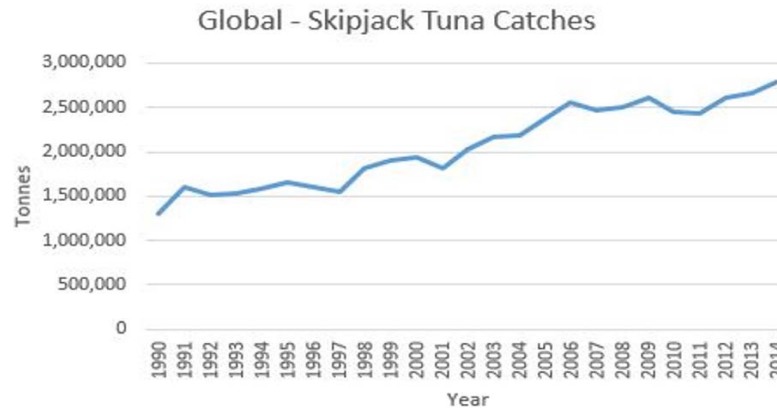
**Figure 2**



101. In addition, the use of environmentally destructive methods of fishing, including purse seiners and fish aggregating devices (“FADs”), have led to an oversupply of skipjack. Skipjack accounts for the vast majority of tuna sold in the

1 United States and is often described as “light tuna.” The following chart, taken  
 2 from the Western & Central Pacific Fisheries Commission’s 2014 “Tuna Fishery  
 3 Yearbook” published in 2015 shows that annual global catches of skipjack  
 4 increased between 1990 and 2014:

5 **Figure 3**



14 102. Given the oversupply of raw tuna (the main ingredient in Packaged  
 15 Tuna) and the decline in consumption of Packaged Tuna, one would expect  
 16 rational businesses to reduce the prices of Packaged Tuna, but that did not happen.  
 17 Instead, the Packaged Tuna prices paid by Plaintiffs to Bumble Bee, StarKist and  
 18 Chicken of the Sea remained flat or declined from at least as early as 2001 until the  
 19 collusive price increases in 2004 went into effect, at which time prices began to  
 20 rise, and continued to rise throughout the duration of the conspiracy, and remained  
 21 elevated well into at least 2015.

22 In a competitive environment, a decline in demand for a product will  
 23 normally lead to a decline in the price of that product, all other things being equal.  
 24 However, because Bumble Bee, StarKist, and Chicken of the Sea controlled the  
 25 market and agreed with each other to fix the prices of Packaged Tuna, such prices  
 26 were intentionally and collaboratively set at artificially high levels throughout the  
 27 Relevant Period.

28



1           103. The price increases since August 2004 were a direct result of  
2 Defendants' conspiracy to fix the prices of Packaged Tuna in the United States. As  
3 a result, Plaintiffs paid artificially inflated prices for Packaged Tuna purchased  
4 from Bumble Bee, StarKist, and Chicken of the Sea.

5           **B. The DOJ's Criminal Investigation**

6           104. On or around December 18, 2014, Thai Union announced that it  
7 intended to acquire Bumble Bee. However, regulatory proceedings concerning the  
8 proposed merger revealed Defendants had engaged in an anticompetitive price-  
9 fixing conspiracy concerning packaged seafood, including Packaged Tuna.

10           105. On July 23, 2015, Thai Union suspended the preferential public  
11 offering to fund its proposed acquisition of Bumble Bee in light of a criminal  
12 investigation commenced by the DOJ. Thai Union disclosed that both Bumble Bee  
13 and Chicken of the Sea had received grand jury subpoenas relating to an antitrust  
14 investigation of packaged seafood, including Packaged Tuna. The publication  
15 *Undercurrent News* reported that "Thai Union held a conference with analysts on  
16 the suspension of the share offer, in which the company's management said other  
17 US seafood producers have also received a subpoena requiring the production of  
18 relevant information to the DOJ."

19           106. On December 3, 2015, the termination of the planned merger of  
20 Chicken of the Sea and Bumble Bee was announced. According to a DOJ press  
21 release:

22  
23           "Consumers are better off without this deal," said  
24 Assistant Attorney General Bill Baer [{"Baer"}] of the  
25 department's Antitrust Division. "Our investigation  
26 convinced us – and the parties knew or should have  
27 known from the get go – that the market is not  
28 functioning competitively today, and further  
consolidation would only make things worse."

1           107. As noted above, Bumble Bee and two Bumble Bee executives have  
2 pled guilty to price-fixing Packaged Tuna, in violation of the Sherman Act.

3           **C. Pattern of Collusion**

4           108. During the Relevant Period, the Packaged Tuna industry was rife with  
5 collusion, often stemming from the close interpersonal relationships that had  
6 developed over many years. Defendants Chicken of the Sea, Bumble Bee, and  
7 StarKist participated together in anticompetitive communications, including  
8 telephone calls (sometimes multiple times a day), text messages, emails (often  
9 using private email accounts to avoid detection), and frequent face-to-face  
10 meetings at pre-arranged locations, such as hotels and restaurants. In these  
11 meetings, emails, text messages and telephone calls, Defendants shared sensitive  
12 business and bid information, and entered into agreements to fix, raise, stabilize,  
13 and maintain prices of Packaged Tuna sold in the United States. Among other  
14 things, they agreed not to charge below a certain price, and to coordinate price  
15 increases.

16           109. Defendants had ample opportunities for collusion. Senior executives  
17 from Del Monte, StarKist, Bumble Bee, Chicken of the Sea, Dongwon, and Thai  
18 Union routinely attended trade shows and conferences during which they discussed  
19 Packaged Tuna pricing and other aspects of their anticompetitive conspiracy.  
20 Defendants regularly attended the multi-day biannual Infofish “tuna conference”  
21 — typically held in Bangkok, but never held in the United States (where there is  
22 more active antitrust enforcement) — as well as regular meetings of the  
23 International Seafood Sustainability Foundation (“ISSF”) and its governing body,  
24 the International Seafood Sustainability Association. Defendants also collaborated  
25 on many projects during the Relevant Period, including their joint “Tuna the  
26 Wonderfish” advertising campaign, the National Fisheries Institute’s (“NFI”) Tuna  
27 Council (formerly known as the U.S. Tuna Foundation), and the collective efforts  
28 of the ISSF.

1 110. Frequent international trade meetings provided opportunities for  
2 fostering warm relationships with competitors and ultimately facilitated high-level  
3 collusion. REDACTED

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 111. Meetings hosted by the NFI and ISSF were typically limited to  
9 Defendants' high-level executives, and perhaps one organizer from the trade  
10 associations. The organizers often had roots in the defendant companies. REDACTED

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 112. For example, the NFI's "Tuna the Wonderfish" advertising campaign,  
22 which ran from early 2011 through early 2012, was designed to stem the tide of  
23 declining sales of Packaged Tuna in the United States. The "Tuna the Wonderfish"  
24 campaign gave Defendants ample opportunities to conspire to raise and fix  
25 Packaged Tuna prices. Although the campaign was unsuccessful in boosting  
26 consumption, Defendants nonetheless jointly implemented price increases at least  
27 three times in 2011 and 2012 in the face of falling demand.  
28

1           113. There also were numerous interlocking relationships between Chicken  
2 of the Sea, Bumble Bee, and StarKist, which fostered frequent high-level  
3 discussions among the leadership of these companies. For example, between the  
4 late 1990s and 2009, StarKist and Chicken of the Sea had a co-packing agreement  
5 concerning their facilities in American Samoa.

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

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

1 Tucker (Sales Manager at Chicken of the Sea, from December 1997 to July 2012  
2 and then Starkist's Director of Sales Eastern Zone, from July 2012 to present);  
3 Donald Stanton (General Manager Inventory Control at StarKist, from 1985 to  
4 2001 and then VP Supply Chain at Bumble Bee, from October 2005 to January  
5 2009); and Dennis Hixson (VP Sales Specialty Markets at Chicken of the Sea,  
6 from 2005 to 2013, and then Sr. Retail Operations Manager at StarKist, from 2014  
7 to present).

8 116. The fluid movement of executives among Defendants resulted in a  
9 web of personal and professional relationships that facilitated anticompetitive  
10 agreements and frequent exchanges of confidential and future price information.

11 117. W. Scott Cameron, who recently pled guilty to price-fixing Packaged  
12 Tuna, has held senior sales positions at Bumble Bee since May 2000 and has  
13 served as Bumble Bee's Sr. VP of Sales since May 2007. He frequently shared  
14 future pricing and customer information with the leadership of Chicken of the Sea  
15 and StarKist. From October 2009 to September 2012, Cameron regularly  
16 communicated with Charles "Chuck" Handford, StarKist's VP of Trade Marketing,  
17 about future pricing and customer information, sometimes several times per day.

18 118. During the Relevant Period, Cameron held frequent internal sales  
19 conference calls at Bumble Bee attended by numerous account managers. During  
20 these calls, he stated, inter alia, that he had been communicating with Chuck  
21 Handford of StarKist about future pricing for customers.

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

25 120. Chris Lischewski, President and CEO of Bumble Bee from 1999 to  
26 present, regularly had meetings at his office with Chicken of the Sea executives.  
27 He also had discussions with StarKist executives by phone. Among others,  
28 Lischewski spoke frequently with Dennis Mussell Chicken of the Sea President

1 and CEO prior to 2005, John Signorino, Chicken of the Sea President and CEO,  
2 from January 2005 to October 2007, Shue Wing Chan (Signorino's successor after  
3 October 2007), and Don Binotto of Del Monte/StarKist (StarKist CEO from the  
4 1990s through November 2010) to agree on pricing and customers. Lischewski  
5 and Kenneth Worsham, Sr. VP of Marketing at Bumble Bee since at least 2001,  
6 regularly attended meetings with Chicken of the Sea and StarKist executives.  
7 Lischewski attended meetings with competitors at least twice a year.

8 121. During the Relevant Period, Kenneth Worsham, Bumble Bee's Sr. VP  
9 of Marketing since at least 2001, frequently discussed future pricing and shared  
10 customer opportunities with his father, Bob Worsham, a StarKist pricing  
11 consultant since the 1980s, and then shared StarKist's future pricing information  
12 with executives at Bumble Bee. Kenneth Worsham recently pled guilty to price-  
13 fixing Packaged Tuna.

14 122. During the Relevant Period, Bumble Bee's Don George discussed  
15 future pricing with former Chicken of the Sea associates, including Mike White.  
16 Don George was Sr. VP of Trade Marketing and Innovation at Chicken of the Sea  
17 from June 1979 until May 2006, when he became VP of Trade Marketing at  
18 Bumble Bee.

19 123. During the Relevant Period, Chicken of the Sea held weekly executive  
20 meetings on Fridays at 10:00 a.m. They were led by its CEO (John Signorino and  
21 later Shue Wing Chan), and attended by all department heads, including John  
22 Sawyer, Sr. VP Sales and Marketing, from 2006 until August 2013; Bob Blatt,  
23 CFO from the late 1990s to 2013; Jim Davet, Sr. VP Operations, from 2005 until  
24 2008; Mike White, Director of Marketing since the late 1980s; and Kevin  
25 McClain, VP of Supply Chain until 2009. At these meetings Sawyer, White, and  
26 Signorino/Chan discussed competitors' future price increases for Packaged Tuna  
27 products. On multiple occasions, Sawyer presented the group with StarKist's  
28

1 future price lists (described as “market intelligence”), which Sawyer received from  
2 StarKist.

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

8 **D. Defendants’ Overarching and Continuous Collusive Scheme**

9 125. Defendants’ overarching and continuous scheme to fix prices for  
10 Packaged Tuna began at least as early as 2004, as demonstrated by the following  
11 specific examples:

12 **1. Collusion on Light Meat and White Meat Tuna Price**  
13 **Increases in 2004 and 2006**

14 126. REDACTED  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 127. REDACTED  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 128. REDACTED  
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129. REDACTED

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130. REDACTED

REDACTED



1 REDACTED

2 [REDACTED]

3 131. As a result of the discussions among the Chicken of the Sea, Bumble  
4 Bee and Del Monte/StarKist executives and employees between March and May  
5 2004, a conscious commitment to an unlawful common scheme, *i.e.*, an agreement,  
6 developed among Defendants and co-conspirators to increase prices of canned tuna  
7 sold to Plaintiffs and others in the U.S. by, among other conduct, coordinating  
8 price increase announcements or pricing terms, secretly and collusively  
9 exchanging pricing information and prospective pricing announcements and  
10 business plans, and collectively reducing quantity and restraining output.

11 132. REDACTED

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

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23 133. REDACTED

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134. REDACTED

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[REDACTED]

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[REDACTED]

[REDACTED]

<sup>3</sup> REDACTED

1 REDACTED

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5 136. Pursuant to their agreement, all three brands, Chicken of the Sea,  
6 Bumble Bee, and StarKist, increased their net prices on light and white meat  
7 Packaged Tuna in June and July of 2004. This was followed by a list price increase  
8 by each Defendant that was announced in late August and early September of  
9 2004. By September 2, 2004, Bumble Bee, StarKist, and Chicken of the Sea had all  
10 collusively raised list prices on light meat Packaged Tuna by an additional \$2.00  
11 per case in accordance with their unlawful agreement to increase Packaged Tuna  
12 prices to Plaintiffs and others in the United States.

13 137. REDACTED

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19 138. REDACTED

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24 139. REDACTED

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**2. Collusion on Package Size Changes in 2007-08**

152. REDACTED

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153. REDACTED

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156. REDACTED

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<sup>6</sup> REDACTED

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[REDACTED]

[REDACTED]

166. As discussed above, any Defendant that downsized their packages unilaterally would have faced fierce customer backlash and market share loss.

REDACTED

[REDACTED]

[REDACTED]

167. REDACTED

[REDACTED]

[REDACTED]

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REDACTED Chicken

of the Sea and Del Monte/StarKist began distributing five ounce cans of tuna to replace their six ounce cans, as well as downsized pouched tuna. The size change increased the price per ounce of packaged tuna sold to Plaintiffs by 20 percent. In

1 addition, as detailed below, by the time the downsize was announced, Defendants  
2 were colluding on a list price increase.

3 171. REDACTED

9 172. REDACTED

14 173. REDACTED

18 174. REDACTED

24 REDACTED

27 176. As reflected above, Thai Union authorized Chicken of the Sea to go  
28 forward with the collusive downsizing scheme.

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**3. Collusion on 2008 List Price Increases**

177. Not content with making customers pay the same amount for a smaller package of tuna, Defendants also colluded to raise list prices for Packaged Tuna in 2008.

178. REDACTED

179. REDACTED

180. REDACTED

181. REDACTED

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182. REDACTED

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183. REDACTED

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REDACTED

REDACTED

185. Del Monte, Chicken of the Sea, and Bumble Bee issued list price increases in the third quarter of 2008, many of which were nearly identical for various types of Packaged Tuna. Bumble Bee's list was issued on or around June 27, 2008, effective September 29, 2008. Chicken of the Sea advised its customers of its list price increase on or around July 3, 2008, effective September 1, 2008. On

1 or around June 17, 2008, Del Monte issued a list price increase effective July 21,  
2 2008.

3 186. REDACTED

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11 **4. Collusion on 2010 Net Price Increases**

12 187. REDACTED

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199. REDACTED

[REDACTED]

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[REDACTED]

202. REDACTED

[REDACTED]

203. On or about May 21, 2010, Bumble Bee issued its net price increase letter, which was effective in or around August 2010. All of the net price increase announcements were set at nearly identical levels. Like StarKist and Chicken of the Sea, Bumble Bee pretextually blamed fishing restrictions for its price increases.

**5. Collusion on 2011 Price Increases**

204. REDACTED

[REDACTED]

[REDACTED] out

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[REDACTED]

[REDACTED]

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[REDACTED]

214. REDACTED

[REDACTED]

215. On or around March 10, 2011, Bumble Bee announced to its brokers “broad scale list price increases” across many of its Packaged Tuna products, effective May 29, 2011, citing cost increases “with no signs of relief in the near future.”

216. REDACTED

[REDACTED]

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REDACTED

217. REDACTED

REDACTED

218. REDACTED

REDACTED

219. REDACTED

REDACTED

220. REDACTED

REDACTED

221. REDACTED

REDACTED

1 REDACTED

2 [REDACTED]

3 222. As set out above, by exchanging pricing information among high-  
4 level executives, the erstwhile competitors were able to police whether each was  
5 adhering to their agreement.

6 223. REDACTED

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 **6. Collusion on List Price Increases In 2011-12**

13 224. REDACTED

14 [REDACTED]

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23 225. REDACTED

24 [REDACTED]

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26 [REDACTED]

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REDACTED

226. REDACTED

REDACTED

REDACTED

227. REDACTED

REDACTED

REDACTED

228. The 2008-12 list price increases set benchmarks that affected all of Defendants' subsequent Packaged Tuna list prices. However, the Defendants' Packaged Tuna collusion did not stop after the March 2012 price increase.



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229. REDACTED

[REDACTED]

230. REDACTED

[REDACTED]

231. REDACTED

[REDACTED]

**7. Collusion on Offering “FAD Free” Branded Tuna Products**

232. Defendants also conspired not to compete by collectively agreeing not to offer branded tuna products labeled as being “FAD free.” FAD-free tuna is tuna caught without the use of fish aggregation devices. Because FADs are considered

1 unsustainable and destructive to ocean ecosystems, there is a growing demand  
2 among consumers for FAD-free tuna. However, FAD-free methods of catching  
3 tuna are costly. Defendants saw FAD-free tuna as a threat to their selling margins.  
4 However, if any one Defendant put out such a product, the others would have to  
5 follow or risk losing sales.

6 233. REDACTED  
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11 234. REDACTED  
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25 REDACTED  
26 235. REDACTED  
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1 REDACTED

2 [REDACTED]

3 236. REDACTED

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 237. Defendants’ agreement not to compete by producing branded tuna  
8 labeled “FAD Free” ensured that FAD-free tuna, which would be more costly to  
9 produce and have a lower profit margin, did not cannibalize sales of their non-  
10 FAD-free tuna products that were the subject of their price-fixing conspiracy.

11 **8. Collusion on Promotional Activity**

12 238. REDACTED

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 **VIII. THE UNITED STATES PACKAGED SEAFOOD MARKET IS**  
25 **CONDUCTIVE TO COLLUSION**

26 239. The structure and characteristics of the Packaged Tuna market in the  
27 United States are conducive to a price-fixing agreement.

1           240. Packaged Tuna is a commodity product sold directly to retail grocery  
2 chains, grocery wholesalers, and food distributors. Packaged Tuna varieties contain  
3 similar amounts of seafood, and are marketed in packages, including, but not  
4 limited to, cans, pouches, and cups. Purchasers of Packaged Tuna are more likely  
5 to be influenced by price than anything else when making a purchasing decision.

6           241. There are substantial barriers precluding, or reducing, entry into the  
7 Packaged Tuna market, including high start-up costs (processing plants can cost  
8 tens of millions of dollars to build and maintain), manufacturing expertise, access  
9 to raw materials, and access to distribution channels. Therefore, Bumble Bee,  
10 Chicken of the Sea, and StarKist (and the related entities named herein) could  
11 collectively raise prices, and, in fact, raised prices, without fear of being undercut  
12 by new entrants.

13           242. Purchasers routinely have sourced and do source virtually all their  
14 Packaged Tuna from Bumble Bee, Chicken of the Sea, and StarKist. Retailers and  
15 distributors must carry Defendants' product lines in order to stay competitive in the  
16 markets in which they do business. As a result, Bumble Bee, StarKist, and Chicken  
17 of the Sea dominated the United States Packaged Tuna market during the Relevant  
18 Period, and continue to do so.

19           243. Defendants possessed significant market power to raise prices for  
20 Packaged Tuna above competitive levels in the United States with a combined  
21 market share of 80-85% during 2004-2015. Upon information and belief, they  
22 conspired to ensure the stabilization and maintenance of their respective market  
23 shares in the Packaged Tuna market despite declining demand.

24           244. There are no economically reasonable substitutes for Packaged Tuna.  
25 Alternative forms of seafood, such as frozen seafood or fresh seafood, require  
26 refrigeration and preparation, such as cooking, before they can be consumed, and  
27 lack the convenience, consistent portion size, and ease of use of Packaged Tuna.

28

1 **IX. PLAINTIFFS SUFFERED ANTITRUST INJURY**

2 245. During the Relevant Period, Defendants' conspiracy had the following  
3 effects, among others:

4 a. Price competition was restrained or eliminated with respect to  
5 Packaged Tuna; and

6 b. The prices of Packaged Tuna were fixed, raised, maintained, or  
7 stabilized at artificially inflated levels.

8 246. During the Relevant Period, Defendants charged supra-competitive  
9 prices for Packaged Tuna sold to Plaintiffs. By reason of Defendants' alleged  
10 violations of the antitrust laws, Plaintiffs sustained damages, injury, and harm to  
11 their businesses or property in an amount to be determined, having paid higher  
12 prices for Packaged Tuna than they otherwise would have paid absent Defendants'  
13 alleged illegal contract, combination, or conspiracy. This is an antitrust injury of  
14 the type the antitrust laws were meant to punish and prevent.

15 **X. TOLLING OF THE STATUTE OF LIMITATIONS**

16 247. Plaintiffs had neither actual nor constructive knowledge of the facts  
17 constituting their claims for relief.

18 248. Plaintiffs did not discover, and could not have discovered through the  
19 exercise of reasonable diligence, the existence of the conspiracy alleged herein  
20 until at least July 2015. Indeed, the conspiracy was so organized and effective that  
21 it was only accidentally discovered by the DOJ in the process of reviewing internal  
22 company documents relating to the proposed merger between Chicken of the Sea  
23 and Bumble Bee.

24 249. Defendants engaged in a secret conspiracy and did not reveal facts  
25 that would put Plaintiffs on inquiry notice that there was an agreement to fix prices  
26 for Packaged Tuna. Defendants' collusive communications were conducted  
27 through private meetings, telephone calls, text messages, and emails between and  
28 among their executives that were not intended to be disclosed and were not

1 disclosed beyond an inner circle of trusted high-level colleagues. Defendants’  
2 communications with customers also offered plausible pretextual reasons for their  
3 similar price movements, Plaintiffs did not discover, and could not have discovered  
4 through the exercise of reasonable diligence, the existence of the conspiracy, and  
5 Defendants’ and their co-conspirators’ involvement in the conspiracy, until July  
6 23, 2015, when the DOJ’s investigation first became public.

7 250. REDACTED  
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11 251. Because the conspiracy was actively concealed through secret  
12 communications among Defendants and pretextual communications to customers  
13 until July 23, 2015, Plaintiffs were unaware of Defendants’ and their co-  
14 conspirators’ unlawful conduct, and did not know they were paying artificially  
15 high prices for Packaged Tuna.

16 252. The affirmative acts of Defendants and their co-conspirators,  
17 including acts in furtherance of the conspiracy, were wrongfully concealed and  
18 carried out in a manner that precluded detection.

19 253. Defendants and their co-conspirators agreed among themselves not to  
20 discuss publicly, or otherwise reveal, the nature and substance of the acts and  
21 communications in furtherance of their illegal conspiracy.

22 254. Defendants and their co-conspirators met and communicated secretly  
23 concerning the pricing and marketing of Packaged Tuna to avoid detection.

24 255. Throughout the Relevant Period, Defendants secretly agreed to  
25 implement very similar or identical price increases on Packaged Tuna at similar  
26 times. To avoid detection by their customers, including Plaintiffs, Defendants  
27 issued announcements and made other communications to the market that were  
28 intended to mislead their customers, including Plaintiffs, into believing that the

1 pricing actions were taken independently by each Defendant because of cost  
2 increases that Defendants falsely claimed were unavoidable and industry-wide.

3 256. REDACTED

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
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11 [REDACTED]  
12 257. REDACTED

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14 [REDACTED]  
15 [REDACTED]

16 258. REDACTED

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19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

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1 REDACTED

2 [REDACTED]

3 259. On September 2, 2004, Del Monte (at the time the owner of StarKist  
4 and the issuer of all StarKist price increases) held an earnings conference call on  
5 which its Chair, Rick Wolford, pretextually attributed the joint price increases not  
6 to collusion, but to a “similar experience that we all have with tight Skipjack as  
7 well as tight albacore supplies.”

8 260. REDACTED

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

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

24 262. REDACTED

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

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REDACTED

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263. REDACTED

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264. REDACTED

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266. REDACTED

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267. REDACTED

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268. REDACTED

[REDACTED]

1 REDACTED

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4 269. REDACTED

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12 270. On or around June 6, 2008, Chicken of the Sea sent a letter to its  
13 brokers giving the following rationale for price increases that occurred at the same  
14 time as the downsizing (prices were increased for remaining 6 oz. cans, and the  
15 price for 5 oz. cans was set at the same level as the price for the 6 oz. cans):

[l]ight meat tuna raw material prices have gone up over  
\$1,000 MT over the last two years. Prices are not  
expected to retreat due to the strong worldwide demand  
and a weak Dollar. Combine this fact with increases in  
production and supply chain costs Chicken of the Sea is  
announcing a list price increase on all chunk light tuna  
items...

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22 The letter also cited the following “increases unrelated to fish price: 15% increase  
23 in packaging; 29.5% increase in land and ocean freight; 30.0% increase in cannery  
24 utility; 33.3% increase in labor.”

25 271. Similarly, a published article at the time of the announcement of the  
26 can resizing stated that “a customer service representative for StarKist that  
27 explained that tuna prices have reached an all-time high, and coupled with the  
28 increased costs of transportation and other ingredients, they had to make a

1 change.” And another article said “in August of 2008 when the move had been  
2 implemented, StarKist stated that it did this primarily for environmental reasons,  
3 including the purpose of “sav[ing] two million gallons of water a year, while only  
4 taking out two teaspoons of tuna from each can.” The existence of a price-fixing  
5 conspiracy as a reason for the price increase was not disclosed.

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

15 273. For example, on or about October 1, 2008, Plaintiff Affiliated Foods,  
16 Inc. received a copy of a presentation from a Del Monte/StarKist sales agent  
17 falsely blaming the price increases on “significant fish price inflation since the start  
18 of 2007,” and stating that additional increases would be necessary because “[s]ince  
19 the 7/21/08 price increase, fish costs have continued to increase. Light Meat costs  
20 are up an additional 18% and White Meat costs are up an additional 14%,” driven  
21 in part by “high fuel costs.” Del Monte/StarKist’s statements were misleading  
22 because they failed to disclose that the true reason for the increase was Defendants’  
23 illegal agreement.

24 274. REDACTED  
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27 275. The 2008 collusive price increase agreement was particularly difficult  
28 to detect because it was formed through meetings in Bangkok and phone calls

1 between a close-knit group of high-level executives at the competing firms. The  
2 close ties and trust among executives, many of whom had previously worked  
3 together before moving to competing firms, made discovery of the conspiracy by  
4 their customers impossible.

5 276. Pretextual and misleading reasons for price increases were included in  
6 Defendants' communications with Plaintiffs about Packaged Tuna price increases  
7 throughout the Relevant Period.

8 277. REDACTED  
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16 278. REDACTED  
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20 279. In its March 2011 announcement of a price increase effective in May  
21 2011, StarKist cited increases in "Crude index," "Packaging costs," and "Fish  
22 costs." In its January 2012 announcement of a price increase effective March 2012,  
23 StarKist cited increases in the costs of crude oil, metal, and transportation, as well  
24 as "Record high fish costs." Chicken of the Sea, in its January 2012 announcement  
25 of a price increase effective March 2012, placed the blame on "High fish prices"  
26 and "higher raw material costs." Again in its March 30, 2012 announcement to  
27 "Our Valued Customers" of another price increase effective July 2012, Bumble  
28 Bee cited "global inflation, transportation cost increases stemming from global

1 demand on fossil fuel, and resource materials (most notably on fish).” And  
2 StarKist, in its April 2012 announcement to “Our Valued Customers” of a price  
3 increase, effective in July 2012, cited “numerous costs increases” and escalating  
4 “fish costs” as the reasons for the price increase. These statements were  
5 misleading because they failed to disclose the true reason for the increase was  
6 Defendants’ illegal agreement.

7 280. In connection with the 2011-12 price increases discussed above,  
8 Chicken of the Sea, StarKist, and Bumble Bee interacted mostly through  
9 telephonic communications, emails sent from private accounts with misleading  
10 subject lines, or face-to-face meetings, as described above. By these means,  
11 Defendants ensured that a written record of their interactions with each other  
12 concerning this price increase was not created. There was no way Plaintiffs could  
13 have discovered the existence of these communications any earlier than they did.

14 281. None of these communications ever mentioned Defendants’ collusion  
15 or the fact that, as DOJ’s Bill Baer stated in December 2015, their industry was  
16 “not functioning competitively.”

17 282. The guilty plea of Kenneth Worsham of Bumble Bee further raises the  
18 inference that the conspiracy was affirmatively concealed. Kenneth Worsham is  
19 the son of Robert Worsham, who was a pricing consultant for StarKist and, as  
20 alleged above, participated in the 2008 agreement to increase list prices for  
21 Packaged Tuna. The involvement of both father and son in the collusive activity  
22 provided Defendants with an avenue to pass competitive information in private  
23 with no need to present an explanation for why they were meeting and  
24 communicating.

25 283. Plaintiffs could not have discovered the alleged conspiracy at an  
26 earlier date by the exercise of reasonable diligence because of the deceptive  
27 practices and secrecy techniques employed by Defendants and their co-  
28 conspirators so as to avoid detection of, and fraudulently conceal, their contract,

1 combination, or conspiracy. Defendants' conspiracy was fraudulently concealed by  
2 various means and methods, including, but not limited to, secret meetings,  
3 misrepresentations to customers, utilization of personal email accounts, and  
4 surreptitious communications among themselves and their co-conspirators via  
5 telephone and in-person meetings so as to prevent the existence of written records.

6 284. Because the alleged conspiracy was affirmatively concealed by  
7 Defendants and their co-conspirators until July 23, 2015, Plaintiffs had no  
8 knowledge of it, or any facts or information that would have caused a reasonably  
9 diligent person to investigate whether a conspiracy existed.

10 285. None of the facts or information available to Plaintiffs prior to July  
11 23, 2015, if investigated with reasonable diligence, could or would have led to the  
12 discovery of the conspiracy prior to July 23, 2015.

13 286. Defendants thus actively misled their customers about the price-fixing  
14 scheme. Their various justifications for price increases did not disclose that they  
15 had agreed among themselves to fix, raise or stabilize the price of Packaged Tuna.  
16 Defendants' justifications for their price increases were also misleading, to the  
17 extent they were true even in part, because they failed to disclose that the price  
18 increases in fact resulted from their illegal agreement and conspiracy.

19 287. Because Defendants' agreement, understanding and conspiracy was  
20 kept secret, Plaintiffs were unaware of Defendants' unlawful conduct alleged  
21 herein, and did not know they were paying artificially high prices for Packaged  
22 Tuna during the Relevant Period.

23 288. As a result of Defendants' and their co-conspirators' fraudulent  
24 concealment of the price-fixing conspiracy, the running of any statute of  
25 limitations is tolled with respect to Plaintiffs' claims of anticompetitive conduct  
26 alleged in this complaint.

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**XI. DISCOVERY IS NECESSARY TO DETERMINE THE FULL SCOPE OF THE CONSPIRACY**

289. Discovery is necessary to determine the full scope of the conspiracy, including the time frame, products and participants. Plaintiffs reserve the right to amend or supplement this Complaint to add other Defendants, claims, time periods, products, or other allegations based upon discovery and further investigation. While there has not been sufficient time thus far to review all the documents produced by Defendants to date, Defendants’ and non-parties will produce more documents, and discovery is just starting in earnest. However, there are documents produced by Defendants that reveal communication and possible coordination between at least two Defendants regarding certain other packaged seafood products, including shelf-stable packaged salmon and specialty seafood products (shelf-stable packaged clams, mackerel, oysters, shrimp, and sardines) dating back to at least 2006. For example, REDACTED

[REDACTED]

**COUNT I**  
**VIOLATION OF THE SHERMAN ACT § 1**

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

291. Defendants’ anticompetitive acts were intentional, were directed at the United States Packaged Tuna market, and had a substantial and foreseeable effect on interstate commerce by raising and fixing Packaged Tuna prices throughout the United States.



1 292. The contract, combination, or conspiracy had the following direct,  
2 substantial, and reasonably foreseeable effects upon commerce in the United States  
3 and upon import commerce:

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

6 b. Plaintiffs were deprived of the benefits of free, open, and unrestricted  
7 competition in the United States Packaged Tuna market; and

8 c. Competition in establishing the prices paid for Packaged Tuna was  
9 unlawfully restrained, suppressed, or eliminated.

10 293. Defendants’ and their co-conspirators’ anticompetitive activities  
11 directly and proximately caused injury and harm to Plaintiffs in the United States.

12 294. As a direct and proximate result of Defendants’ unlawful conduct,  
13 Plaintiffs paid artificially inflated prices for Packaged Tuna.

14 295. As a direct and proximate result of Defendants’ unlawful conduct,  
15 Plaintiffs were damaged in their businesses or property by paying prices for  
16 Packaged Tuna that were higher than they would have been but for Defendants’  
17 unlawful conduct, which has resulted in an amount of ascertainable damages to be  
18 established at trial.

#### 19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray that the Court:

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

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

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

1 E. Grant Plaintiffs such other and further relief as the case may require,  
2 or 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  
5 by jury.

6  
7 Dated: May 8, 2017

8 **KAPLAN FOX & KILSHEIMER LLP**

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